

FIRST DIVISION
FILED: March 30, 2012

Nos. 1-10-3719

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOHN W. CHWARZYNSKI,)	APPEAL FROM THE
)	CIRCUIT COURT OF
Plaintiff-Appellant,)	COOK COUNTY.
)	
v.)	
)	No. 09 CH 39466
THE RETIREMENT BOARD OF THE)	
FIREMEN'S ANNUITY AND BENEFIT)	
FUND OF CHICAGO,)	HONORABLE
)	KATHLEEN M. PANTLE,
Defendant-Appellee.)	JUDGE PRESIDING.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* The appeal is dismissed for lack of jurisdiction.

¶ 2 The plaintiff, John W. Chwarzynski, brought this appeal, challenging an order of the circuit court that reversed the decision of the Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago (Board), denying his petition for occupational disease disability benefits, and remanded the matter to the Board for a new hearing. For the reasons that follow, we dismiss the appeal.

No. 1-10-3719

¶ 3 The record reveals that the plaintiff served as a member of the Chicago fire department (Department) since February 1987. Based on the advice of his treating physician, who indicated that he was not capable of working as a firefighter, the plaintiff was placed on the medical rolls on November 13, 2007. The plaintiff subsequently was informed that he would be placed on unpaid medical leave on November 12, 2008, as a result of his condition and the exhaustion of his one-year paid medical leave period. In October 2008, the plaintiff filed an application for occupational disease disability benefits pursuant to section 6-151.1 of the Code (40 ILCS 5/6-151.1 (West 2008)).

¶ 4 In a letter dated November 7, 2008, Dr. Isaac C. Morcos, an occupational health physician for the Department, stated that the plaintiff was placed on a medical layup on November 13, 2007, "due to chest pain and dyspnea which he experienced while off-duty." Morcos' letter also stated that the plaintiff's medical records indicated that he had undergone "an extensive cardiopulmonary work-up for his condition", which included the following: normal cardiac stress test and gated ejection fraction study (EF 60%) with exercise-induced bouts of coughing, normal chest x-ray and CT examination of the chest, normal M-mode, 2D-cardiac Doppler study, pan sinusitis with involvement of the osteomeatal complexes on CT of sinuses, and partially reversible airways obstruction on pulmonary function test with FEV1/FVC of 46%. Dr. Morcos also stated that the plaintiff had been receiving extensive medical treatment for his condition and that, despite such treatment, he continued to complain of persistent cough.

¶ 5 Dr. George S. Motto, a physician for the Firemen's Annuity and Benefit Fund (Fund) examined the plaintiff and prepared a written report dated November 18, 2008. In that report, Dr. Motto stated that the plaintiff had "a history of significant coughing episodes dating back at least

No. 1-10-3719

several years," but that he had not been removed from a fire scene because of this problem. Dr. Motto summarized the medications prescribed to the plaintiff and the various tests performed by Dr. Giacchino, the plaintiff's primary care physician, and by Dr. Rosenberg, a pulmonary specialist. Dr. Motto noted that the plaintiff "began coughing fairly significantly" and "had paroxysms of coughing" during the examination. Dr. Motto further stated that the plaintiff's "lungs were remarkably clear[,] although he does have a history of wheezing." In the "Comment" portion of his report, Dr. Motto stated that "[p]ulmonary function tests suggest obstructive disease."

¶ 6 The plaintiff's application was scheduled for hearing on December 17, 2008. On that date, the Board voted to defer the hearing until it received an independent medical examination (IME) with respect to the plaintiff's condition. Following this vote, counsel for the Board informed the plaintiff and his attorney that a list of the Board's approved IME physicians would be provided and that he would advise them of the name of the IME physician who would perform the examination. The plaintiff's attorney responded by stating that the plaintiff sought to assert his right to choose the doctor who would perform the exam, pursuant to section 6-153 of the Code.

¶ 7 On January 7, 2009, the Board notified the plaintiff that an appointment had been arranged for an IME to be performed by Dr. Terrence C. Moisan, a pulmonary specialist. Thereafter, the plaintiff and the Board exchanged written correspondence regarding his right to select the doctor who would perform the IME. On February 19, 2009, the Board denied the plaintiff's motion for appointment of one of three independent medical examiners chosen by him from the Board's list of approved pulmonary specialists. Dr. Moisan examined the plaintiff on March 11, 2009, and he interpreted a pulmonary function test on the following day.

No. 1-10-3719

¶ 8 Thereafter, the Board conducted an evidentiary hearing on seven dates over the course of nine months. Following the hearing, the Board denied the plaintiff's application for occupational disease disability benefits. The plaintiff sought judicial review of that decision in the circuit court of Cook County. On December 3, 2010, the circuit court reversed the Board's decision and remanded the matter to the Board for a new evidentiary hearing, based on the fact that the plaintiff had been denied his right to select the doctor who would render a second opinion. The plaintiff filed a notice of appeal on December 20, 2010, challenging the circuit court's order of December 3.

¶ 9 When the circuit court reverses a decision of an administrative agency and remands the case to the agency for further proceedings involving disputed questions of law or fact, the order is not final for purposes of appeal. *Wilkey v. Illinois Racing Board*, 96 Ill. 2d 245, 249-50, 449 N.E.2d 843 (1983); *Jelinek v. Retirement Board of Firemen's Annuity and Benefit Fund of Chicago*, 392 Ill. App. 3d 372, 378, 910 N.E.2d 750 (2009); *Cunningham v. Retirement Board of Firemen's Annuity and Benefit Fund of Chicago*, 389 Ill. App. 3d 1065, 1070, 907 N.E.2d 463 (2009). If, however, the agency on remand has only to act in accordance with the directions of the court and conduct proceedings on uncontroverted incidental matters or merely make a mathematical calculation, then the order is final for purposes of appeal. See *A.O. Smith Corp. v. Industrial Commission*, 109 Ill. 2d 52, 54-55, 485 N.E.2d 335 (1985); *Wilkey*, 96 Ill. 2d at 249-50.

¶ 10 Here, the circuit court's order of December 3, 2010, reversed the Board's final administrative decision and remanded the matter to the Commission for a new hearing. The remand order required the Board to conduct further proceedings involving disputed questions of law or fact. As a consequence, the circuit court's order of December 3, 2010, is not final (see *Wilkey*, 96 Ill. 2d at 249-

No. 1-10-3719

50), and this appeal must be dismissed for want of jurisdiction.

¶ 11 Appeal dismissed.