

No. 1-11-1057

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

THOMAS SEBASTIAN,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 10 CH 34882
)	
CITY OF CHICAGO, DEPARTMENT OF BUILDINGS)	
AND REASONABLE ACCOMMODATION REVIEW)	
BOARD,)	Honorable
)	Kathleen M. Pantle,
Defendant-Appellees.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Epstein and Justice McBride concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly dismissed plaintiff's petition for a writ of *certiorari* when it was filed more than six months after the challenged decision.
- ¶ 2 Plaintiff Thomas Sebastian filed a petition for a writ of *certiorari* in the circuit court seeking to enforce a decision of the Reasonable Accommodation Review Board of the Mayor's Office for People with Disabilities (Review Board) and to compel the payment of damages. The

circuit court dismissed the petition as time-barred because it was filed more than six months after the Review Board's decision. Plaintiff now appeals contending, *inter alia*, that his petition was not time-barred because his damages accrued through the date when the reasonable accommodation actually occurred, rather than the date of the Review Board's decision. We affirm.

¶ 3 Although the record on appeal does not include a report of proceedings, the following facts can be gleaned from the common law record.

¶ 4 In 1987, Sebastian was hired by the City of Chicago's Department of Buildings (Department of Buildings) as an electrical inspector. In December 2008, he filed a "Reasonable Accommodation Request Form" requesting a change of activity, based upon of a diagnosis of degenerative joint disease and arthritis, for at least one month and until his physician's reevaluation and recommendation. The Department of Buildings denied the request. Sebastian then filed an appeal with the Mayor's Office for People with Disabilities.

¶ 5 On January 7, 2010, the Review Board granted Sebastian's appeal. The Review Board instructed the Department of Buildings to meet with Sebastian in order to determine whether he was still unable to perform the essential functions of his job and if his condition was unchanged to determine what accommodations, if any, he needed in order to perform those essential functions. Additionally, if Sebastian was unable to perform the essential functions of his position, the Department of Buildings was instructed to determine what other positions he was qualified for and to conduct a citywide search, for not less than three months, in order to identify suitable vacant positions. Sebastian was subsequently offered, and accepted, a position as an electrical inspector in the Department of Business Affairs and Consumer Protection. He began work on April 1, 2010.

¶ 6 On August 13, 2010, Sebastian filed a petition for a writ of *certiorari* in the circuit court seeking to enforce the Review Board's decision and to compel the payment of damages. The petition alleged that due to the Department of Buildings's initial refusal to make a reasonable accommodation he "lost" 13 months of salary and pension credits and was forced to use 34 days of sick, personal and vacation leave. The petition sought approximately \$95,000 in back salary, the payment of the missing pension contributions, and the restoration of the 34 days of leave.

¶ 7 The City of Chicago, the Department of Buildings and the Review Board (the City), filed a combined motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-619.1 (West 2010)), alleging that Sebastian had prevailed before the Review Board, his reasonable accommodation request had been granted, and he had been placed in an appropriate position. The motion further alleged that Sebastian's petition was untimely as it was filed more than six months after the Review Board's decision. In his response, Sebastian alleged that the petition was timely because it was filed within four months of April 1, 2010, the date of his reinstatement and the resumption of his "income stream." The circuit court subsequently granted the motion to dismiss.

¶ 8 On appeal, Sebastian contends that the circuit court erred when it determined that his petition for a writ of *certiorari* was untimely because the Review Board's January 7, 2010 grant of his appeal was advisory. He contends that the "final administrative agency decision" occurred when the Department of Buildings "acceded" to the Review Board's decision. He initially contends that this occurred on April 1, 2010 when he returned to work. However, in his reply brief, Sebastian argues that the operative date is March 18, 2010, when a suitable position was offered to him. The City, on the other hand, contends that the petition was properly dismissed as time-barred pursuant to the doctrine of *laches* because it was filed more than six months after the Review Board's decision.

¶ 9 The doctrine of *laches* is applied when a party's failure to assert a right in a timely manner causes prejudice to an opposing party. *Ashley v. Pierson*, 339 Ill. App. 3d 733, 737 (2003). In *City of Chicago v. Condell*, 224 Ill. 595, 598-99 (1906), our supreme court determined that the doctrine of *laches* applies to petitions for a writ of *certiorari*. The court subsequently established six months as the period of time within which a party must bring a petition for writ of *certiorari*. *Clark v. City of Chicago*, 233 Ill. 113, 115 (1908); see also *Koch v. Board of Trustees of the University of Illinois*, 39 Ill. App. 2d 51, 56 (1962) (six months is the time period during which the writ of *certiorari* must be filed unless there is a reasonable excuse for the delay).

¶ 10 Generally, a defendant asserting *laches* must prove a lack of due diligence by the plaintiff and that it was prejudiced. *Ashley*, 339 Ill. App. 3d at 739. A plaintiff's lack of due diligence is established by showing that more than six months have elapsed between the accrual of the cause of action and the filing of the petition, unless the plaintiff provides a reasonable excuse for the delay. *Ashley*, 339 Ill. App. 3d at 739, citing *Clark*, 233 Ill. at 115. In cases of civil servants seeking back payment of wages, prejudice is presumed. See *Lee v. City of Decatur*, 256 Ill. App. 3d 192, 197-98 (1994) (prejudice is inherent in civil service cases when the result would be an inconvenience to the public). The determination of *laches* is left to the sound discretion of the trial court and its decision will not be set aside absent an abuse of that discretion. *Lee*, 256 Ill. App. 3d at 196.

¶ 11 Here, the Review Board granted Sebastian's appeal on January 7, 2010. However, he did not file the instant petition for a writ of *certiorari* in the circuit court until August 13, 2010, more than seven months later. Although Sebastian contends that the petition was timely because it was filed within six months of his return to work, the date upon which he argues the Review Board's order was final and his damages claim was "ripe," he cites no authority for that position and failed to raise a damages claim before either the Department of Buildings or the Review

1-11-1057

Board. See *Owens v. Department of Human Rights*, 403 Ill. App. 3d 899, 926 (2010) (generally issues or defenses not placed before the administrative agency will not be considered for the first time on administrative review).

¶ 12 Accordingly, as Sebastian filed the instant petition for a writ of *certiorari* more than six months after the Review Board's decision and has failed to explain his delay, the circuit court did not abuse its discretion when dismissed the petition as time-barred pursuant to the doctrine of *laches*. *Lee*, 256 Ill. App. 3d at 196.

¶ 13 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 14 Affirmed.