

NOTICE  
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2014 IL App (5th) 130457-U

NO. 5-13-0457

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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JEFFREY W. VAUGHN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Jackson County.
	)	
v.	)	No. 12-MR-156
	)	
CARBONDALE POLICE PENSION BOARD,	)	Honorable
	)	Christy Solverson,
Defendant-Appellee.	)	Judge, presiding.

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JUSTICE SCHWARM delivered the judgment of the court.  
Presiding Justice Welch and Justice Cates concurred in the judgment.

**ORDER**

¶ 1 *Held:* The Board's denial of the plaintiff's procedural due process rights warranted reversal of its decision to terminate his pension benefits.

¶ 2 **FACTS**

¶ 3 In June 2005, while on duty as a police officer for the City of Carbondale, the plaintiff, Jeffrey W. Vaughn, sustained a compression fracture to his T1-T3 vertebrae by striking his head on the door frame of his squad car as he was attempting to retrieve his radio from inside the car. In April 2007, the plaintiff applied for a line-of-duty disability pension pursuant to section 3-114.1 of the Illinois Pension Code (40 ILCS 5/3-114.1 (West 2006)) and was later awarded the pension that he sought.

¶ 4 In May 2012, Dr. Jeffrey W. Ripperda examined the plaintiff at the request of the defendant, the Carbondale Police Pension Board (the Board). See 40 ILCS 5/3-115, 3-116 (West 2006). During the examination, the plaintiff reported experiencing occasional flare-ups of pain in his head, neck, and left arm. He also described having daily tingling in his left fingers.

¶ 5 Stating that he had reviewed the plaintiff's past medical records at length, Dr. Ripperda subsequently reported that the tingling in the plaintiff's fingers was "clearly ulnar neuropathology, confirmed via EMG in 2008," and was "unlikely work related." Ripperda further indicated that the plaintiff's current symptoms were inconsistent with pain from compression fractures and that an MRI done in July 2008 "showed resolution" of the plaintiff's injury. Ripperda concluded that the plaintiff was physically able to return to work as a police officer and that there were no "objective findings to suggest otherwise." Ripperda subsequently submitted his reported findings to the Board.

¶ 6 On June 26, 2012, at a previously scheduled meeting, the Board discussed whether the disability pensions of the plaintiff and three other police officers, who had also recently been reexamined, should be continued or terminated. The discussion indicated that Ripperda had examined all four officers and had concluded that all but the plaintiff were still disabled. After agreeing that "another hearing" on the matter was not required, the Board voted to accept Ripperda's report and to terminate the plaintiff's disability pension in light of Ripperda's reported findings. In July 2012, the Board sent the plaintiff a letter advising him of its decision.

¶ 7 On August 3, 2012, plaintiff's counsel served the Board's attorney with a petition for rehearing. The petition alleged that the plaintiff had a meritorious defense to the termination of his pension benefits and that he had not received notice of the meeting at which the Board had voted to terminate his benefits. The plaintiff's petition thus requested that the Board set aside the termination of his pension benefits and grant him a rehearing in the cause.

¶ 8 On August 7, 2012, in the circuit court of Jackson County, the plaintiff filed a complaint for administrative review pursuant to the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)). The complaint alleged that "on an unknown date," the Board had held a hearing on the plaintiff's disability pension and had voted to terminate the plaintiff's benefits effective June 26, 2012. The plaintiff's complaint argued that the Board's decision to terminate his pension benefits should be reversed.

¶ 9 On August 31, 2012, the Board's attorney sent plaintiff's counsel a letter advising that the Board had voted to deny the plaintiff's petition for rehearing. With respect to the plaintiff's claim that he had not received notice of the meeting at which the Board had voted to terminate his pension benefits, the letter alleged that by posting the Board's meeting agenda in advance of the meeting "as usual," proper notice had been given. The letter referenced and included a copy of the Board's posted agenda for its June 26, 2012, meeting, which listed "[m]edical re-evaluations of disability pensioners under 50" as one of the matters to be addressed. The letter advised plaintiff's counsel that if he had any questions regarding the Board's denial of the plaintiff's petition for rehearing, to "please

feel free to call." The letter further advised that an answer to the plaintiff's complaint for administrative review would follow.

¶ 10 On October 2, 2012, the Board filed an answer to the plaintiff's complaint for administrative review. In its answer, the Board acknowledged that on June 26, 2012, it had voted to terminate the plaintiff's pension based upon "the reviewing physician's report." The Board requested that the circuit court deny the plaintiff's request that the Board's decision be reversed.

¶ 11 On January 23, 2013, the circuit court held a hearing on the plaintiff's complaint for administrative review. At the hearing, when the court asked whether either party had additional argument, plaintiff's counsel and the Board's attorney both "answered that they would stand on the pleadings contained in the [c]omplaint and [r]esponse." The court subsequently took the matter under advisement.

¶ 12 On June 14, 2013, the circuit court entered a written order affirming the Board's decision to terminate the plaintiff's pension benefits. Citing *Peacock v. Board of Trustees of the Police Pension Fund*, 395 Ill. App. 3d 644, 652 (2009), in which it was held that "[d]isability benefits may be revoked on the basis of a single medical examination finding that the officer is no longer disabled," the court determined that the Board's finding that the plaintiff was no longer disabled was not against the manifest weight of the evidence.

¶ 13 On July 8, 2013, the plaintiff filed a motion to reconsider the circuit court's order affirming the Board's decision to terminate his pension benefits. In his motion to reconsider, the plaintiff noted that the circuit court's order "failed to mention" that the Board had "denied [him] a rehearing on the issue of his disability pension being

terminated." Asserting the Board had also failed to give him adequate notice of the meeting at which his benefits were terminated, the plaintiff alleged that the Board had denied him procedural due process. The plaintiff noted that the circuit court's order "made no mention" of the due process issue, either. The plaintiff thus asked the court to reconsider its order affirming the Board's decision. The plaintiff also argued that the Board should not have based its decision solely on Dr. Ripperda's opinion.

¶ 14 On August 27, 2013, the Board filed a response to the plaintiff's motion to reconsider. With respect to the plaintiff's claim that he had been denied due process, the Board argued that the plaintiff had waived judicial review of the issue by not raising it in a new complaint for administrative review. With respect to the plaintiff's argument that the Board should not have based its decision solely on Dr. Ripperda's opinion, the Board maintained that the circuit court had correctly applied the appellate court's holding in *Peacock*.

¶ 15 On August 28, 2013, the circuit court denied the plaintiff's motion to reconsider. On September 16, 2013, the plaintiff filed a timely notice of appeal.

¶ 16 ANALYSIS

¶ 17 The plaintiff argues that the circuit court erred in affirming the Board's decision to terminate his pension benefits because the Board denied him procedural due process by denying him "the basic requirement of notice and an opportunity to be heard" and because the Board's finding that he was no longer disabled was against the manifest weight of the evidence. In response, the Board contends that the plaintiff was given adequate notice of its June 26, 2012, meeting and that he waived judicial review of his

procedural due process claims by failing to properly raise them below. The Board further contends that its decision to terminate the plaintiff's pension benefits was not against the manifest weight of the evidence.

¶ 18 "It is firmly established that administrative proceedings must conform to the constitutional requirements of due process of law." *Wendl v. Moline Police Pension Board*, 96 Ill. App. 3d 482, 486 (1981). Moreover, "[t]he receipt of a disability pension is a property right which cannot be diminished without procedural due process." *Kosakowski v. Board of Trustees of the City of Calumet City Police Pension Fund*, 389 Ill. App. 3d 381, 387 (2009). "The essence of procedural due process is meaningful notice and a meaningful opportunity to be heard." *Trettenero v. Police Pension Fund of the City of Aurora*, 333 Ill. App. 3d 792, 799 (2002). "Perhaps the most essential due process protection is that of adequate notice concerning the actions contemplated." *Wendl*, 96 Ill. App. 3d at 487. "Though an evidentiary hearing is not required in every circumstance, the administrative proceedings employed must provide the party affected with a meaningful procedure to assert his claim prior to the deprivation or impairment of a property right," and "some form of hearing is required before an owner is finally deprived of his or her property interest." *Peacock*, 395 Ill. App. 3d at 654.

¶ 19 On appeal, the Board asserts that the plaintiff was given proper notice before it voted to terminate his pension at its June 26, 2012, meeting. At oral argument, the Board advised that in advance of the meeting, not only had it posted the meeting's agenda at Carbondale's city hall, it had also posted the agenda on the internet. The Board thus suggests that compliance with the notice requirements of the Open Meetings Act (5 ILCS

120/1 *et seq.* (West 2012)) was sufficient (see 5 ILCS 120/2.02(a) (West 2012) (requiring that a public body post its scheduled-meeting agenda "at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting" and on its website if applicable)). To satisfy the requirements of procedural due process, however, notice must be reasonably calculated to apprise the interested party of the pendency of the action (*Peacock*, 395 Ill. App. 3d at 654) and "must be so full and clear as to disclose what is proposed, including the anticipated effects of such administrative action" (*Wendl*, 96 Ill. App. 3d at 488).

¶ 20 Here, we do not believe that publicly posting the agenda for the Board's June 26, 2012, meeting at city hall and on the internet was reasonably calculated to apprise the plaintiff of the pendency of the Board's action. The Board should have advised the plaintiff of the scheduled meeting by mailed letter. Even assuming that merely posting the agenda was reasonable, however, the agenda itself did not provide sufficient notice for purposes of procedural due process. The agenda listed "[m]edical re-evaluations of disability pensioners under 50" as one of the matters to be addressed, but that advisement did not clearly and fully disclose the Board's intended action or the resulting effects on the plaintiff's pension benefits. We thus conclude that the Board failed to provide the plaintiff with meaningful notice and that the plaintiff was thus denied procedural due process. See *Peacock*, 395 Ill. App. 3d at 655 (holding that the plaintiff's right to procedural due process was violated where "[t]here [was] no indication in the record that the plaintiff was given any prior notification of the Board's intention to terminate his disability benefits"); *Wendl*, 96 Ill. App. 3d at 487 (holding that the letters that the

plaintiffs received advising them of the pension board's upcoming meeting failed to comport with the requirements of due process where the letters "failed to adequately notify the plaintiff pensioners that a potential effect of the [meeting] was termination of their pensions"). We further conclude that by denying the plaintiff's petition for rehearing, the Board effectively denied the plaintiff a meaningful opportunity to be heard, which was also a denial of due process. See *Peacock*, 395 Ill. App. 3d at 655-57 (holding that the plaintiff was denied procedural due process where the pension board "did not grant him a hearing prior to the discontinuation of his disability benefits").

¶ 21 On appeal, noting that the plaintiff did not raise his procedural due process claims in the circuit court prior to filing his motion to reconsider and that he failed to seek judicial review of the Board's denial of his petition for rehearing, the Board contends that the plaintiff has waived consideration of the claims and that we should not consider them now. We disagree.

¶ 22 "Waiver is a limitation on the parties, not on the court." *Zaabel v. Konetski*, 209 Ill. 2d 127, 136 (2004). "In the interest of justice, a court may consider an issue that a party has waived." *Zaabel v. Konetski*, 209 Ill. 2d 127, 136 (2004). Moreover, "[a]ny due process claims are inherent in an administrative review action because the reviewing court has a duty to insure that due process and an impartial adjudication were provided at the administrative hearing." *Marozas v. Board of Fire & Police Commissioners of the City of Burbank*, 222 Ill. App. 3d 781, 791 (1991). Additionally, "[i]n administrative cases, we review the decision of the administrative agency, not the determination of the circuit court." *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 504

(2007). We further "consider all questions of law and fact presented by the record." *Cook County Board of Review v. Property Tax Appeal Board*, 339 Ill. App. 3d 529, 537 (2002).

"The purpose of administrative review is to make certain the agency has acted within its judicial bounds defined by law, to guard those statutory and constitutional rights guaranteed to one subject to administrative action, and to ascertain whether the record supports the order issued." *Edwards v. City of Quincy*, 124 Ill. App. 3d 1004, 1012 (1984).

¶ 23 Here, in his complaint for administrative review, the plaintiff specifically alleged that the Board had voted to terminate his pension benefits at a meeting held "on an unknown date." That the plaintiff was not even aware that the meeting had been held on June 26, 2012, indicated that he had not been present at the meeting and had not received adequate notice of it. Furthermore, when reviewing the transcript of the meeting, it is apparent that the plaintiff was not present, and it is further apparent that the plaintiff's absence was of no concern to the Board. After discussing Dr. Ripperda's report, the Board agreed that it did not need to have "another hearing" or a "special meeting or hearing" before voting to terminate the plaintiff's pension benefits in light of Ripperda's findings. The Board further noted that it was uncertain whether the plaintiff was even aware of Ripperda's findings. Paradoxically, the Board acknowledged that the plaintiff was likely "gonna want to fight" its decision. The Board ultimately agreed that it would inform the plaintiff of its decision by mail.

¶ 24 As previously noted, "[t]he essence of procedural due process is meaningful notice and a meaningful opportunity to be heard." *Trettenero*, 333 Ill. App. 3d at 799. "In this case, the Board afforded the plaintiff neither." *Kosakowski*, 389 Ill. App. 3d at 387. Without notice or a proper hearing, the Board unilaterally voted to terminate the plaintiff's disability pension that he had previously been awarded. "As a matter of due process, the Board should have provided the plaintiff with notice and an opportunity to be heard before [terminating] his pension." *Id.* In the interests of justice and fundamental fairness, we accordingly reverse the circuit court's judgment affirming the Board's decision and reinstate the plaintiff's benefits from June 26, 2012. Because we find that the Board violated the plaintiff's due process rights, we need not address whether the Board's determination that he is no longer disabled was against the manifest weight of the evidence. See *Cavarretta v. Department of Children & Family Services*, 277 Ill. App. 3d 16, 29 (1996).

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, the circuit court's judgment affirming the Board's decision to terminate the plaintiff's disability pension benefits is hereby reversed.

¶ 27 Reversed.