FOURTH DIVISION
December 18, 2014

No. 1-13-3991

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DARRIN BOURRET, VINCENT BURCH, ROBERT CARTER, WILLIE DANIELS, DARRYL EDWARDS, JAMES GRUBISIC, BARBARA JENKINS, ANTHONY KATSIBUBAS, DEMETRIOS KEREAKES, DAVID LIPINSKI, EUGENE LEBOEUF, SAMUEL MANNO, BRENDAN MCCRUDDEN, KEVIN MUTH, GREGORY OUTLAW, ANGELA PITTMAN, MILAN SIPIC, SABRINA TAYLOR, HERMAN THOMAS, JAMES WASHBURN, JAMES WILSON, RICARDO DIXON, PHILLIP RICHARDSON, and FELICIA PAYNE,	)	Appeal from the Circuit Court of Cook County
Plaintiffs-Appellants,	)	No. 12 CH 35080
v.	)	Honorable Kathleen Kennedy, Judge Presiding.
THE RETIREMENT BOARD OF THE POLICEMEN'S ANNUITY AND BENEFIT FUND OF CHICAGO,	)	
Defendant-Appellee.	)	

JUSTICE EPSTEIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly dismissed a declaratory judgment and *mandamus* action filed against the police pension board by former Chicago Housing Authority (CHA) law enforcement officers who became Chicago Police Department officers. Whether characterized as a new hearing or a rehearing, the board was

not obligated to consider the officers' claims under section 5-214 of the Illinois Pension Code when the board previously had heard and granted their claims for service credit, based on the same CHA employment, under section 5-214.2 of the Illinois Pension Code.

¶ 2 The plaintiffs are twenty-four[1] Chicago Police Department (CPD) officers who were employed previously as Chicago Housing Authority (CHA) law enforcement officers. The plaintiffs each filed a claim with the Retirement Board of the Policemen's Annuity and Benefit Fund of Chicago (the Board) pursuant to section 5-214.2 of the Illinois Pension Code (40 ILCS 5/5-214.2 (West 2008)) for credit in the Policemen's Annuity and Benefit Fund (the Fund) for his or her period of service with the CHA. The Board granted the plaintiffs' claims and determined the amount each plaintiff would be required to pay to establish the creditable service in the Fund. According to the plaintiffs, the calculated amounts were prohibitively high. The plaintiffs then sought relief from the Board pursuant to section 5-214 of the Pension Code (40 ILCS 5/5-214 (West 2010)) and withdrew their section 5-214.2 claims. After the Board refused to consider their requested relief under section 5-214, the plaintiffs filed a complaint in the circuit court of Cook County, seeking a declaratory judgment and a writ of *mandamus* ordering the Board to "hold a hearing on Plaintiffs' amended claims and issue a final order on the merits of the claims." The circuit court initially denied the Board's motion to dismiss, but later granted the Board's motion for reconsideration and dismissed the amended complaint with prejudice. The plaintiffs appeal.

¶ 3 Regardless of whether the plaintiffs' claims are characterized as amended or as new claims—and whether the requested hearing is a rehearing or a new hearing—our conclusion remains the same: the plaintiffs may not have a "second bite at the apple" to pursue their

[1] The appellate briefs reference twenty-two plaintiffs; based on our review of the record, we understand that there are twenty-four plaintiffs, as reflected in the case caption above.

purported claims under section 5-214. For the reasons discussed herein, we affirm the judgment of the circuit court.

¶ 4 BACKGROUND

¶ 5 In 2009, each of the plaintiffs filed a claim with the Board for credit in the Fund for his or her period of service with the CHA, pursuant to section 5-214.2 of the Pension Code. 40 ILCS 5/5-214.2 (West 2008). Section 5-214.2 provides, in part, that "[a]n active policeman who is a member of this Fund *** may establish up to 10 years of additional service credit in 6-month increments for service *** as a law enforcement officer with the Chicago Housing Authority ***." *Id.* The statute further provides that "[t]he Fund must determine the policeman's payment required to establish creditable service under this Section by taking into account the appropriate actuarial assumptions, including without limitation the police officer's service, age, and salary history; the level of funding of the Fund; and any other factors that the Fund determines to be relevant." *Id.*

¶ 6 The Board granted the plaintiffs' claims for credit in the Fund pursuant to section 5-214.2 "[a]t various times during 2009 and 2010" and calculated the amount each plaintiff would be required to pay to establish creditable service in the Fund. According to the plaintiffs, the amounts were "tens, and in some cases, hundreds of thousands of dollars," which were "well beyond the financial ability of the Plaintiffs to pay." It does not appear that the plaintiffs sought administrative review of the Board's decisions.

¶ 7 The plaintiffs assert that they "notified the Board" in September 2010 that they wished to apply for pension credit under section 5-214 of the Pension Code—rather than section 5-214.2—which, if granted, would allow the officers to receive service credit at a lower cost. Section 5-214(c) provides for service credit for a "member of the police department of the city"

for such individual's period of "performing safety or investigative work for the county in which such city is principally located or for the State of Illinois or for the federal government, on leave of absence from the department of police, or while performing investigative work for the department as a civil employee of the department." 40 ILCS 5/5-214(c) (West 2010). Section 5-214(b) provides for pension credit for, among other things, service rendered as a "temporary police officer in the city." 40 ILCS 5/5-214(b) (West 2010).

¶ 8 Counsel to the plaintiffs and other claimants submitted a "Memorandum of Claims" to the Board, dated October 25, 2011. Included as attachments to the memorandum were notarized documents from certain claimants entitled "WAIVER AND WITHDRAWAL OF SEC. 214.2 CLAIM,"[2] in which each claimant stated, "I have been advised that the Board will not hear my claim brought pursuant to section 214(c), because it has previously granted my claim under section 214.2." In the document, the claimant withdrew his or her section 214.2 claim and "waived any claim or entitlement to pension credit in the Fund under section 214.2."

¶ 9 The Memorandum of Claims asserted that "[e]ach of the Claimants was a temporary police officer in the city before their appointment as members of the CPD," and therefore "the Claimants are also entitled under 214(b) to credit in the Fund for the years they served as CHA police officers." The memorandum also discussed the Board's decision in 1988 to allow certain former cadets who later became CPD officers "to contribute to the Fund the amount that they would have contributed, plus interest, had they been policemen at the time they were cadets," despite the fact that "[t]he Board had previously, in 1985, considered and denied the Cadets [*sic*] request for service credit." Citing section 5-214, the claimants asked that the "Board

[2] Although the memorandum addressed the claims of a larger pool of claimants—some of whom had not submitted a prior section 5-214.2 claim—the record indicates that each of the plaintiffs executed a waiver of his or her previously-granted section 5-214.2 claim.

conclude that they be allowed to pay into this Fund-as the Cadets were allowed to pay into this Fund-for the time they were Police Officers for the CHA." According to the plaintiffs, the Board did not respond to their request for a hearing on the claims or their Memorandum of Claims.

¶ 10 After another request by plaintiffs' counsel, the Board notified counsel on July 18, 2012 that it would "conduct a status hearing for the purpose of setting a hearing date, where necessary, on the applications filed by officers seeking credit for prior CHA service." Plaintiffs' counsel appeared before the Board on July 24, 2012. According to the plaintiffs, the "Board refused to take any action on the Plaintiffs' claims brought pursuant to 5-214 because the Board asserted that it had no statutory authority to 'rehear' the Plaintiffs' 5-214.2 claim."

¶ 11 On September 17, 2012, twenty-two of the plaintiffs filed a complaint for declaratory judgment and *mandamus* against the Board in the circuit court. According to the complaint, the "the Board has reconsidered claims made by other officers and entered orders that were contrary to the Board's original decision." The complaint referenced the Board's treatment of the cadets (discussed in the claimants' October 2011 memorandum) and the Board's decision to grant the request of an Officer Muniz—whose section 5-214.2 claim had been granted—to refund his partial payment. The exhibits to the complaint included the October 2011 memorandum, the claimants' waivers, a transcript of a 1988 Board hearing addressing the cadet issue, and a one-page document regarding the refund of Officer Muniz's partial payment. The plaintiffs alleged in the complaint that they "have a statutory right to a hearing and determination on their amended claims under section 5-214 and the Defendant has a statutory obligation, to hold a hearing and make a determination on the merits of Plaintiffs' claims, yet the Board refuses to do

so." On October 23, 2012, the court granted the plaintiffs' motion to amend the complaint to add plaintiffs Phillip Richardson and Felicia Payne.

¶ 12 On April 8, 2013, the Board filed a motion to dismiss the complaint under section 2-615 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-615 (West 2012). The Board contended that the complaint failed to conform with the Code of Civil Procedure because, among other things, the plaintiffs asserted two distinct causes of action—declaratory judgment and *mandamus*—in a one-count complaint. The Board further noted that while the complaint alleged that each plaintiff "made a claim" and that the plaintiffs "notified the Board" in September 2010 of their section 5-214 claims, no claim or notification was identified or attached to the complaint. The Board also asserted that the plaintiffs "overlook[ed] or purposely ignored" certain language in the transcript of the Board hearing on the cadet issue, *i.e.*, that "[n]one of the current petitioners were party to [the prior hearing and determination] proceedings, nor were any of the counsel representing the petitioners party to that proceeding *** These are totally different petitioners ***. [T]here was not a certified class, so that the decision in that isolated case did not affect the other officers ***." Arguing that "Plaintiffs are unhappy with the relief they sought and were granted and now seek rehearing by the Board for the purpose of changing their minds," the Board contended that it "has no statutory authority to grant a rehearing and without such a grant of authority, the Board did not and does not have any authority to rehear any of its final decisions." The Board also observed that *mandamus* is an "extraordinary remedy," and that "even if relief via mandamus is eventually set forth in an independent count (as required), that count cannot set forth a legally sufficient cause of action for a mandamus order requiring the Board to act beyond its statutory authority."

¶ 13 In their response to the motion to dismiss, the plaintiffs stated that "[t]his matter turns on whether the Board is correct in its assertion, in regards to these Plaintiffs, that the Board does not have the authority to reconsider one of its own decisions." The Plaintiffs argued that "[i]t is well-established that an administrative agency, such as the Board, has not only the powers expressly given to it by statute, but also has the authority to act which can arise by fair implication and intendment as an incident to achieving the objectives for which the agency was created." Discussing the Board's decision to refund Officer Muniz's payment on his section 214.2 claim, the plaintiffs asserted that "[t]he power to reconsider a prior decision must be implied from the statute just as the power to initially hold hearings and decide claims is implied from the statute." In addition, the plaintiffs contended that since they "waived the right to credit in the Fund which they acquired by virtue of the Board's decision and instead *** amended their claims by bringing them under a different section of the Pension Code, these were new claims." As new claims, the plaintiffs argued, the Board was not required to rehear or reconsider their prior decision; instead, the plaintiffs were entitled to a new hearing. The plaintiffs also asserted that they alleged the elements of *mandamus*: (1) a clear affirmative right to relief; (2) a clear duty of the public officer to act; and (3) clear authority in the public officer to comply. Attached to the plaintiffs' response to the motion to dismiss was a proposed second amended complaint, which, among other things, included two separate counts: a complaint for declaratory judgment and a petition for writ of *mandamus*.

¶ 14 On October 2, 2013, the circuit court entered an order detailing the parties' respective arguments and holding that it "cannot conclude that it clearly appears that no set of facts could be proved under the pleadings which would entitle Plaintiffs to relief." The court noted that the plaintiffs "point out that [the Board] not only has the powers expressly given to it by statute but

also has 'the authority to act which can arise by fair implication and intendment as an incident to achieving the objectives for which the agency was created.' " Denying the Board's motion to dismiss, the court granted the plaintiffs leave to file their second amended complaint, over the Board's objection.

¶ 15 The Board filed a motion to reconsider and a supporting memorandum; neither is included in the record on appeal. In an order entered on December 5, 2013, the court (a) granted the motion to reconsider, (b) vacated the October 2, 2013 order, and (c) dismissed the amended complaint with prejudice. The court observed that while the plaintiffs "cite no case in which the court approved administrative reconsideration based on 'fair implication and intendment,' " the cases cited by the Board "specifically address the requirement that administrative reconsideration must be expressly authorized by the enabling statute." In light of "the settled law on administrative reconsideration," the circuit court held that the facts pled by the plaintiffs "cannot support Plaintiffs' claims." The plaintiffs filed this appeal.

¶ 16 ANALYSIS

¶ 17 On appeal, the plaintiffs do not reference the alleged reconsideration of the cadets' and Officer Muniz's claim, instead contending that "[c]onsideration of Plaintiffs' 5-214 claims would not constitute a rehearing at all." "Since the Plaintiffs' claims were raised under a different section of the statute," the plaintiffs assert, "they are new claims." Arguing that the Board holds hearings every month despite any express grant of authority to do so, the plaintiffs assert that the Board has "not only the powers expressly given to it by statute but also has the authority to act, which can arise by fair implication and intendment, as an incident to achieving the objectives for which the agency was created." Observing that "[w]hen a court is considering

a 2-615 motion to dismiss, the court must accept all well-pleaded facts as true," the plaintiffs assert that they "have pleaded that they are entitled to a hearing on their 5/5-214 claims."

¶ 18 Citing section 5-189 of the Pension Code, the Board responds that "it is clear from the express language used that the Board is a quasi-judicial body and has the power and the duty, after notice to the party involved, to hear and determine benefits related issues." 40 ILCS 5/5-189 (West 2012). In contrast, according to the Board, "absent an express provision in an agency's enabling statute authorizing rehearing, no administrative agency has authority to rehear its final decisions." Asserting that there is no "mechanism in the Illinois Administrative Law (735 ILCS 5/3-101 *et seq.*) or the Pension Code which permits the Board to provide a rehearing on a matter that has previously been finally determined," the Board contends that the complaint, "does not and cannot state a cause of action for which relief, in any form, can be granted." The Board also argues that the plaintiffs only "identified and argued the rehearing issue in the Circuit Court and did not argue, in the alternative, that they are entitled to a new independent hearing." The Board thus claims that the plaintiffs waived the " 'new hearing' argument." Even assuming such argument was not waived, the Board contends the plaintiffs "do not qualify for relief under either Section 5-214(b) or (c)," and therefore the complaint "facially cannot state a cause of action for which the Circuit Court can provide relief."

¶ 19 A section 2-615 motion to dismiss "challenges the legal sufficiency of a complaint based on defects apparent on its face." *Armagan v. Pesha*, 2014 IL App (1st) 121840, ¶ 35; 735 ILCS 5/2-615 (West 2012). "All well-pleaded facts in the complaint are taken as true and a reviewing court must determine whether the allegations of the complaint, construed in a light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be

granted." *Id.* We review the circuit court's ruling on a section 2-615 motion to dismiss *de novo*. *Id*.

¶ 20 As a threshold matter, we note the plaintiffs' notice of appeal and opening appellate brief refer to the dismissal of their *second* amended complaint, whereas their reply brief refers to the dismissal of the *amended* complaint. Based on our review of the record, we understand that the circuit court dismissed the *amended* complaint. Specifically, the court's order entered on December 5, 2013, vacated the court's October 2, 2013 order—which, in part, had granted the plaintiffs leave to file their second amended complaint—and also dismissed with prejudice "Plaintiffs' Amended Complaint for Declaratory Judgment and Other Relief filed October 23, 2012." In any event, regardless of which version of the complaint is considered, our conclusion remains the same.

¶ 21 As another preliminary matter, we disagree with the Board's assertion that the plaintiffs "did not argue, in the alternative, that they are entitled to a new independent hearing" and thus waived such argument on appeal. In its response to the Board's motion to dismiss, the plaintiffs contended, in part, that "since Plaintiffs waived the right to credit in the Fund which they acquired by virtue of the Board's decision and instead Plaintiffs amended their claims by bringing them under a different section of the Pension Code, these were new claims." "As new claims," the plaintiffs reasoned, "the Board was not required to rehear or reconsider their prior decision." Although the plaintiffs' arguments in the circuit court focused on the Board's alleged "power to *reconsider* a prior decision," the plaintiffs stated in their response to the motion to dismiss that they "are entitled to a hearing on their *new* claims." (Emphases added.) As the "new claim" argument was raised before the circuit court, it has not been forfeited by the plaintiffs for purposes of this appeal. We thus turn to the merits.

¶ 22 An administrative agency—like the Board—has no general or common law powers. *Julie Q. v. Dept. of Children and Family Services*, 2013 IL 113783, ¶ 24. The agency is "limited to those powers granted to it by the legislature in its enabling statute." *Id.* Courts consistently have held that an administrative agency may "allow a rehearing, or modify and alter its decisions, only where authorized to do so by statute." *Pearce Hospital Foundation v. Illinois Public Aid Comm'n*, 15 Ill. 2d 301, 307 (1958); *Weingart v. Dept. of Labor*, 122 Ill. 2d 1, 15 (1988) (same). We disagree with the plaintiffs' unsupported contention that the circuit court "read[] these cases too broadly."

¶ 23 The Pension Code, which governs the Board, states that "provisions of the Administrative Review Law *** shall apply to and govern all proceedings for the judicial review of final administrative decisions of the [Board]." 40 ILCS 5/5-228 (West 2012). The Administrative Review Law provides, in part, that "[e]very action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date that a copy of the decision to be reviewed was served upon the party affected by the decision." 735 ILCS 5/3-103 (West 2012). If viewed as a request for reconsideration of the Board's original determinations regarding the plaintiffs' section 5-214.2 claims, we are not aware of any statutory or other authority that would compel, or even permit, the Board to reconsider their final administrative decisions after the conclusion of the 35-day period, and nothing in the record indicates that the plaintiffs' section 5-214 claims were asserted during such period. See, *e.g.*, *Sola v. Roselle Police Pension Bd.*, 342 Ill. App. 3d 227, 230-31 (2003) (noting that "[a]lthough an administrative agency's procedural rules may allow for an extension of the 35-day review period, the Pension Code provides no such extension," and thus the pension board "lack[ed] jurisdiction to reconsider decisions after the

expiration of the 35-day period"); see also *Rutka v. Bd. of Trustees of the Cicero Police Pension Bd.*, 405 Ill. App. 3d 563, 566 (2010) (stating that the pension board, "an administrative agency, lacks jurisdiction to reconsider its final decisions after the expiration of the 35-day period"). Given the Board's inability to reconsider their original decisions, section 2-615 relief is appropriate.

¶ 24 The plaintiffs argue, however, that administrative agencies such as the Board have not only the powers expressly granted by statute, but also the authority to act, which can arise by "fair implication and intendment," as an incident to achieving the objectives for which the agency was created. As an example of a "power or authority implied from the statute 'by fair implication and intendment,'" the plaintiffs contend that the Board holds hearings every month "[d]espite the absence of any express provision that gives the Board the authority to hold evidentiary hearings and decide claims." To the contrary, we agree with the Board that the Pension Code expressly authorizes the Board to conduct hearings. See, *e.g.*, 40 ILCS 5/5-189 (West 2012) (providing, among other things, that the Board is authorized to pay or take certain other actions with respect to any pension provided the pensioner concerned "shall be notified and given an opportunity to be heard concerning the proposed action"); see also 40 ILCS 5/5-193 (West 2012) (authorizing the Board "to compel witnesses to attend and testify before it on any matter concerning the fund").

¶ 25 Even assuming *arguendo* that the Board's authority to conduct hearings arises by "fair implication and intendment" as an incident to achieving the objectives for which the Board was created, none of the cases cited by the plaintiffs involve administrative rehearing based upon "fair implication and intendment." See, *e.g.*, *Crittenden v. Cook County Comm'n on Human Rights*, 2012 IL App (1st) 112437, ¶ 90 (commission did not have power to impose punitive

damages in the absence of an express statutory grant of authority); *Ikpoh v. Dept. of Professional Regulation*, 338 Ill. App. 3d 918, 926-27 (2003) (department had the implied power to discipline a revoked license); *Albazzaz v. Illinois Dept. of Professional Regulation*, 314 Ill. App. 3d 97, 104 (2000) (department had implied power to impose a length of time during which a suspension should be enforced). We will not conclude that there is an implied right to a rehearing when the Pension Code and Administrative Review Law expressly provide that the plaintiffs should have challenged the Board's original administrative decisions within 35 days, which they apparently failed to do. See *Sharp v. Bd. of Trustees of the State Employees' Retirement System*, 2014 IL App (4th) 130125, ¶ 18 (noting that, under the Administrative Review Law, the review of a pension board's initial approval of pension benefits was limited to a 35-day period after the decision was issued "unless the General Assembly granted the Board authority to revisit its final decision outside of the 35-day period").

¶ 26 The other cases cited by the plaintiffs also are unavailing. Citing *City of Chicago v. Illinois Workers' Compensation Comm'n*, 2014 IL App (1st) 121507WC and *Hannigan v. Hoffmeister*, 240 Ill. App. 3d 1065 (1992), the plaintiffs contend that "since [their section 5-214 claims] were raised under a different section of the statute, they are new claims." In *City of Chicago*, the court considered whether an earlier decision of the Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago on a claimant's duty disability benefits claim had *res judicata* and/or collateral estoppel effect with respect to a later decision of the Illinois Workers' Compensation Commission based on the same accident and injuries. *City of Chicago*, 2014 IL App (1st) 121507WC, ¶ 2. In *Hannigan*, the court considered the effect of an earlier decision of the Illinois Industrial Commission on a later determination of the Board of Trustees of the Universities Retirement System. *Hannigan*, 240 Ill. App. 3d at 1067-68. In both *City of*

Chicago and *Hannigan*, the claimants sought relief under two different statutes (*e.g.*, the Workers' Compensation Act versus the Pension Code) from two different administrative bodies. In contrast, the plaintiffs seek relief under the same statutory scheme, *i.e.*, the Pension Code, from the same administrative agency, *i.e.*, the Board. Even if the claims at issue in *City of Chicago* and *Hannigan* were "new claims," those cases are significantly different from the instant case.

¶ 27 The plaintiffs' reliance on *Lelis v. Bd. of Trustees of the Cicero Police Dept.*, 2013 IL App (1st) 121985, also is misplaced. In *Lelis*, the officer filed an application for "line of duty" pension benefits in 1999; she alleged she was injured on March 28, 1998 while lifting a dead body onto a stretcher. *Id.* ¶ 4. The pension board denied the "line of duty" pension benefits in 2000, finding her not disabled at that time. *Id.* On administrative review, the court sustained the Board's decision. *Id.* ¶ 5. In 2011, the officer sent a letter to the Board requesting "line of duty" disability benefits. *Id.* ¶ 6. In completing the board's request for production and interrogatories, the officer wrote that her injuries occurred on March 28, 1998 and January, 2010. *Id.* After several board meetings where the officer was present, the board denied her application without hearing evidence, concluding that her 2011 application was a request to reconsider her 1999 application. *Id.* ¶ 7. The board concluded that it did not have jurisdiction to reconsider its 2000 decision and that the 2011 application was barred by the doctrines of *res judicata* and collateral estoppel. *Id.* The circuit court affirmed. *Id.* ¶ 8. The appellate court considered the administrative record, in which the officer disclosed her 2010 diagnosis of lupus, a chronic autoimmune disease; the officer had claimed that her back injury was aggravated or exacerbated due to the disease. *Id.* ¶¶ 20-21. The court concluded, in part, that the officer's "2011 application and documents submitted to the Board presented a sufficient basis to assert a

request for benefits based on her current condition and recent diagnosis, and therefore, was not a request to reconsider but a new claim for pension benefits." *Id.* ¶ 22.

¶ 28 The *Lelis* court held that the officer's lupus diagnosis was a new fact or development that necessitated a new hearing. Conversely, the amended complaint in this case does not allege any new facts or developments with respect to the plaintiffs that would permit or warrant a "new" hearing. Unlike in *Lelis*, nothing relevant happened between the Board's decisions on the plaintiffs' sections 5-214.2 claims in 2009 and 2010 and their subsequent assertion of section 5-214 claims. In fact, according to the plaintiffs, the CHA police department was disbanded in 1999, thus ending the plaintiffs' CHA service approximately a decade earlier than their asserted claims. Sections 5-214(b) and (c) were in existence in 1999 (and earlier), yet the plaintiffs apparently did not pursue claims seeking service credit for their CHA employment until 2009 and 2010[3]; section 5-214.2 became effective in February 2009. The plaintiffs' apparent dissatisfaction with their *granted* section 5-214.2 claims does not justify another proceeding before the Board. While we are sympathetic to their concerns about the cost of the service credit under section 5-214.2, we are not aware of any provisions of the Pension Code that would permit the plaintiffs to have a second "bite at the apple" to assert claims under the same statutory scheme before the same administrative agency based upon the same facts as the original claims; none of the cases cited by the plaintiffs allow such relief. The plaintiffs' position not only raises potential *res judicata*/collateral estoppel concerns, but also, at a minimum, would result in an inefficient piecemeal adjudication of claims before the Board.

[3] At all relevant times, section 5-214 of the Pension Code provided, in part, that "[a]ny participant in this fund *** who has rendered service as a member of the police department of the city for a period of 3 years or more is entitled to credit" as provided for the periods included in the statute, including in sections 5-214(b) and (c).

¶ 29 In sum, the issue presented on appeal is whether the plaintiffs' amended complaint for a declaratory judgment and writ of *mandamus* stated a cause of action upon which relief can be granted. In an action for declaratory judgment, we consider "whether, under the facts alleged, there is a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant declaratory relief." *Denkewalter v. Wolberg*, 82 Ill. App. 3d 569, 571 (1980). "A trial court may properly grant a motion to dismiss a complaint for declaratory judgment if the plaintiff is not entitled to the relief sought under the facts alleged in the complaint." *Id.* For the reasons stated above, we conclude that the plaintiffs were not entitled to a hearing (if considered new claims) or rehearing (if considered amended claims) before the Board on their section 5-214 claims. Section 2-615 dismissal also was appropriate with respect to the plaintiffs' requested *mandamus* relief, particularly given that *mandamus* should be awarded only where "plaintiffs has established a clear right to this extraordinary writ" and "is never awarded in a doubtful case." *Kramer v. City of Chicago*, 58 Ill. App. 3d 592, 598-99 (1978). The plaintiffs' conclusory allegations regarding their "statutory right to a hearing and determination on their amended claims under Section 5-214" and the Board's "statutory obligation" to hold such a hearing are insufficient to state a cause of action for *mandamus*.

¶ 30 Although not necessary for our analysis (and not argued by the Board), we observe that the plain language of section 5-214.2 of the Pension Code appears to preclude the plaintiffs' assertion of claims under section 5-214. In their original, first amended and proposed second amended complaints, the plaintiffs quote section 5-214.2, in pertinent part, as follows:

> "[a]n active policeman…may establish up to 10 years of additional service credit in 6 month increments for service in a law enforcement capacity…provided that

> service credit is not available for that employment…under the retirement plan of the Chicago Housing Authority…"

However, the statute provides, in pertinent part, as follows:

> "an active policeman *** may establish up to 10 years of additional service credit in 6-month increments for service *** as a law enforcement officer with the Chicago Housing Authority ***, provided that: (1) *service credit is not available for that employment under any other provision of this Article*; (2) any service credit for that employment received under any other provision of this Code or under the retirement plan of the Chicago Housing Authority *** has been terminated; and (3) the policemen applies for this credit ***." 40 ILCS 5/5-214.2 (Emphasis added.)

To qualify for service credit under section 5-214.2, the statute requires that the "service credit is not available for that employment under any other provision of this Article." Section 5-214 and section 5-214.2 fall within the same article (Article 5 – "Policemen's Annuity and Benefit Fund – Cities Over 500,000") of the Pension Code. By applying for service credit under section 5-214.2 for their CHA employment, the plaintiffs conceded that service credit is not available for that employment under any other provision of the article, including section 5-214. By granting the section 5-214.2 claims, the Board expressly or implicitly found that service credit was not available for the plaintiffs' CHA employment under section 5-214 or any other section of Article 5 of the Pension Code. We view the plain language of section 5-214.2 as precluding the plaintiffs' pursuit of other claims under section 5-214. The plaintiffs' voluntary waivers and withdrawals of their section 5-214.2 claims do not invalidate this statutory language.[4] Given

[4] The effect of the plaintiffs' waivers and withdrawals of their section 5-214.2 claims is

that the allegations of the amended complaint are insufficient to state a cause of action upon which relief can be granted, dismissal under section 2-615 was proper.

¶ 31 Finally, even assuming *arguendo* that the plain language of section 5-214.2 does not preclude the plaintiffs' pursuit of claims under section 5-214, we agree with the Board that the plaintiffs simply do not qualify for service credit under section 5-214(b) or section 5-214(c). The record does not support the plaintiffs' assertion that they were "temporary police officer[s] in the city" for purposes of section 5-214(b). Furthermore, the plaintiffs' CHA employment does not appear to qualify as "safety or investigative work" for Cook County or for the State of Illinois or for the federal government or "investigative work" as a civilian employee of the CPD, for purposes of section 5-214(c). In any event, we need not explore the plaintiffs' section 5-214 claims, given our conclusion that the plaintiffs were not entitled to a rehearing or a new hearing on such claims.

¶ 32 CONCLUSION

¶ 33 We conclude that the plaintiffs are not entitled to pursue their purported claims under section 5-214, whether through a new hearing or a rehearing. We thus affirm the judgment of the circuit court of Cook County which, among other things, dismissed the plaintiffs' amended complaint with prejudice.

¶ 34 Affirmed.

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beyond the scope of this decision.