

CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

M E M O R A N D U M

TO: Gloria Johnson, Retirement Board Secretary
FROM: James T. Walker, Assistant City Attorney
SUBJECT: Menendez v. City of Hialeah
DATE: August 27, 2014

Enclosed is the draft of a memo addressed formally to Tom Perona as Chair of the Retirement Board. Such memo attaches and discusses a recent case handed down in the Third District, *Menendez v. City of Hialeah*. Please put a copy in each member's agenda packet for the next meeting. Thank you.

s/ James T. Walker

James T. Walker, Esq.
Assistant City Attorney

/mlp

cc: Robert V. Schwerer, City Attorney

CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Thomas K. Perona, Retirement Board Chair

FROM: James T. Walker, Assistant City Attorney

SUBJECT: Menendez v. City of Hialeah

DATE: August 27, 2014

This memo serves to attach for informational purposes, a copy of *Menendez v. City of Hialeah*, ___So.3rd___, Case No. 3D13-1069 (Fla 3rd 8/6/14), LEXUS 12037, WL-3844016. That is an opinion recently released by the Third District Court of Appeals, which handles most all appeals in Broward, Dade and Monroe Counties. There the appellate Court held that a disability retirant was barred from challenging a decision by the City of Hialeah to terminate his disability retirement. That is, the City determined that there was a dispatcher's opening and offered the position to Mr. Menendez, who was a firefighter. He refused to accept the proffered employment. The City treated his refusal as grounds for stopping his benefit. Mr. Menendez had the right to seek an appeal of the termination to the full Board of Trustees for the Retirement System. But he elected not to. Instead, he chose to file an original action in Circuit Court seeking declaratory judgment against the retirement system. The trial court declined to grant relief. The trial court held that Mr. Menendez was under a legal duty to first exhaust all available administrative remedies open to him within the retirement system before then proceeding to court. He could not avail himself of a judicial remedy without first attempting to exhaust his administrative remedy. When the trial court dismissed his case, he appealed to the Third District Court. But the appellate court agreed with the trial court. The opinion is brief and is merely a restatement of well-established law. A litigant must seek to take advantage of all avenues that are open at the administrative levels of the city, before seeking thereafter to challenge the city's actions in court.

Please let me know of any questions about this case.

s/ James T. Walker

James T. Walker, Esq.
Assistant City Attorney

/mlp

cc: Robert V. Schwerer, City Attorney

Menendez v. City of Hialeah

Court of Appeal of Florida, Third District
August 6, 2014, Opinion Filed
No. 3D13-1069

Reporter: 2014 Fla. App. LEXIS 12037; 2014 WL 3844016

Richard L. Menendez, Appellant, vs. City of Hialeah, Florida, Appellee.

Labor & Employment Law > Disability & Unemployment Insurance > Disability Benefits > Claim Procedures
Pensions & Benefits Law > Governmental Employees > Municipal Pensions

Notice: NOT FINAL UNTIL DISPOSITION OF TIMELY FILED MOTION FOR REHEARING.

Prior History: [*1] An Appeal from the Circuit Court for Miami-Dade County, Lower Tribunal No. 3-09584. Marc Schumacher, Judge.

Core Terms

Retirement, retirement system, permanent disability, disability benefits, medical committee, administrative remedy, job-related, exhaust, disability payments, board of trustees, trial court, discontinuance, Ordinances, lack of subject matter jurisdiction, administrative review, disability retirement, determinations, committee's, conclusions, firefighter, disability, terminated, permanent

Case Summary

Overview

HOLDINGS: [1]-The trial court correctly concluded that it lacked subject matter jurisdiction over a firefighter's action for declaratory relief against a city because, before filing his lawsuit, the firefighter failed to seek administrative review of a medical committee's determination that he was no longer totally and permanently disabled and the city's subsequent decision to cease paying its portion of his disability payments.

Outcome

Order affirmed.

LexisNexis® Headnotes

Pensions & Benefits Law > Governmental Employees > Municipal Pensions

HN1 To administer the City of Hialeah, Fla.'s Retirement System, Hialeah, Fla. Code § 70-131 establishes an independent board of trustees in whom is vested the general administration, management and responsibility for the proper operation of the retirement system.

HN2 If an employee of the city, including a firefighter, becomes unable to work because of a job-related disability, he or she may apply for permanent and total disability benefits with the Retirement Board of Trustees. Hialeah, Fla. Code § 70-248. The member's medical condition is then evaluated by the medical committee, which reports its written conclusions to the Retirement Board. Hialeah, Fla. Code §§ 70-138, -248. If the medical committee determines that the member is physically or mentally totally and permanently incapacitated from further performance of duty in the member's classified position and the Board of Trustees concurs, the member is medically retired. Hialeah, Fla. Code § 70-248.

Pensions & Benefits Law > Governmental Employees > Municipal Pensions

Labor & Employment Law > Disability & Unemployment Insurance > Disability Benefits > Review of Claim Decisions

HN3 Hialeah, Fla. Code § 70-248 provides that a member retired due to total and permanent disability shall be subject to a review of the member's condition by the medical committee at the request of the board of trustees as often as the board shall deem it advisable.

Labor & Employment Law > Disability & Unemployment Insurance > Disability Benefits > General Overview

Pensions & Benefits Law > Governmental Employees > Municipal Pensions

HN4 The City of Hialeah, Fla., has, by its code of ordinances, delegated plenary powers to the Retirement Board of Trustees for the Retirement System's administration. Hialeah, Fla. Code § 70-131. The Board's determinations regarding entitlement to disability retirement under Hialeah, Fla. Code § 70-248 are among the principal functions of the Board. The Board has sole jurisdiction to confirm or reject a medical committee's conclusions regarding the total and permanent disability status of an employee.

Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies

HN5 A party is required to exhaust administrative remedies prior to turning to a circuit court for relief.

Administrative Law > Judicial Review > Reviewability > Exhaustion of Remedies

HN6 Administrative remedies must be exhausted, subject to certain exceptions, before seeking alternative judicial remedies.

Counsel: Richard A. Sicking, for appellant.

William M. Grodnick; Ogletree, Deakins, Nash, Smoak & Stewart, P.C., and William R. Radford, for appellee.

Judges: Before SUAREZ, EMAS and SCALES, JJ.

Opinion by: SCALES

Opinion

SCALES, J.

Richard L. Menendez (Menendez), Plaintiff below, appeals from an order granting final summary judgment in favor of the City of Hialeah, Florida (the City) for lack of subject matter jurisdiction based on Menendez's failure to exhaust administrative remedies. We affirm.

I. The City of Hialeah's Retirement System

The City has, by ordinance, created a Retirement System. HIALEAH, FLA., CODE OF ORDINANCES ch. 70 (2002) (Hialeah's Code). **HN1** To administer its Retirement System, section 70-131 establishes an independent board of trustees (Retirement Board of Trustees or Retirement Board or the Board) "in whom is vested the general administration, management and responsibility for the proper operation of the retirement system." § 70-131, Hialeah Code.

HN2 If an employee of the City, including a firefighter, becomes unable to work because of a job-related disability, he or she may apply for permanent and total disability benefits with [*2] the Retirement Board of Trustees. § 70-248, Hialeah Code. The member's medical condition is then evaluated by the medical committee, which reports its written conclusions to the Retirement Board. §§ 70-138, -248. If the medical committee determines that the member is physically or mentally totally and permanently incapacitated from further

performance of duty in the member's classified position "and the Board of Trustees concurs[.]" the member is medically retired. § 70-248.

HN3 Hialeah Code further provides that a member retired due to total and permanent disability "shall be subject to a review of the member's condition by the medical committee at the request of the board of trustees as often as the board shall deem it advisable . . ." § 70-248.

II. Factual Background

The City hired Menendez as a firefighter on June 3, 1991. On November 28, 1995, Menendez applied for total and permanent disability retirement with Hialeah's Retirement System. On December 12, 1995, Menendez's application for disability retirement was approved by the Retirement Board of Trustees and he began receiving job-related disability payments.¹

A few years later, pursuant to section 70-248 of Hialeah's Code, the Retirement Board decided to review Menendez's disability status. The medical committee reexamined Menendez, and, in 2002, concluded that Menendez was no longer totally and permanently disabled. The medical committee found that Menendez was capable of performing administrative or light duties. Menendez did not challenge these findings before the Retirement Board.

On January 6, 2003, the City wrote Menendez, informing him that it could accommodate Menendez within his medical limitations and/or restrictions as a Fire Dispatcher in the Fire Department. The City instructed Menendez to report to work on March 3, 2003. Menendez did not report to work on March 3, 2003.

Upon being recalled by the City, and having failed to report for work as scheduled, Menendez was terminated for job abandonment. On March 28, 2003, the City informed Menendez that it would be discontinuing its portion of his job-related disability benefits.² Rather than seek administrative review by the Retirement Board of Trustees, Menendez filed a complaint seeking declaratory [*4] relief with respect to the rights of the parties and the legality of the City's discontinuance of its portion of his disability payments. The trial court found that Menendez's failure to exhaust his administrative remedies before the Retirement Board deprived it of subject matter jurisdiction to hear Menendez's case.

III. Analysis

¹ Menendez's annual job-related disability benefits had two pay components. The City itself paid a portion [*3] of Menendez's disability benefits, and the remaining payment came from Hialeah's Retirement System.

² The City did not seek discontinuance of the portion of Menendez's benefits paid by Hialeah's Retirement System. Due to an administrative error, the City's portion of Menendez's disability benefits were not actually terminated until March 2005.

HN4 The City has, by its code of ordinances, delegated plenary powers to the Retirement Board of Trustees for the Retirement System's administration. § 70-131. The Retirement Board's determinations regarding entitlement to disability retirement under section 70-248 are among the principal functions of the Board. § 70-248. The Retirement Board has sole jurisdiction to confirm or reject the medical committee's conclusions regarding the total and permanent disability status of an employee. *Id.*

Thus, the trial court correctly concluded that it lacked subject matter jurisdiction over the action since, before filing his lawsuit in the trial court, Menendez failed [*5] to seek administrative review by the Retirement Board of the following (i) the medical committee's determination

that Menendez was no longer totally and permanently disabled, and (ii) the City's subsequent decision to cease paying Menendez its portion of his disability payments. See *De Carlo v. Town of W. Miami*, 49 So. 2d 596, 596-97 (Fla. 1950) (holding that **HN5** a party is required to exhaust administrative remedies prior to turning to the circuit court for relief); see also *City of Coral Gables v. Fortun*, 785 So. 2d 741, 742 (Fla. 3d DCA 2001) (**HN6** "Administrative remedies must be exhausted, subject to certain exceptions not present in this case, before seeking alternative judicial remedies.").

Affirmed without prejudice to Menendez seeking review with the Retirement Board of Trustees.