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BOARD OF TRUSTEE ADMINISTRATIVE HEARINGS

In administrative proceedings, like local law plan disability hearings, the applicant (aka “petitioner) has what is called the *burden of persuasion*; that is, they must prove their case to the Board or they lose. Conversely, the Board, or its advocate, does not have the burden of disproving the applicant’s case.

The *standard of proof*, or the level of certainty the Board must have of the truth of a fact is the “preponderance of the evidence” standard. [1] “Preponderance of the evidence” is the most lenient civil standard of proof. It just means that the truth of that fact must be more likely than not. Essentially, the applicant must convince the Board of the merits of their case by 51%.

So, for example, if the applicant presented proof that their disability was total and permanent, a Board would merely need to be convinced that this fact is more likely to be true than not true. The Board would need to be similarly convinced of each other fact they are considering based on the substantial competent evidence admitted to the proceeding.

[1] Florida Dep’t of Transportation v. J.W.C., 396 So. 2d 778 (Fla. 1st D.C.A. 1981)

Florida's Administrative Procedures Act does not apply to hearings conducted by local law plans [1] and the hearings are not strictly governed by the rules of procedure.

Local law plan Boards must, however, provide each applicant with due process. This consists of: a fair and unbiased hearing; advanced notice of that hearing; and an opportunity to be heard. [2]

[1] Sec. 120.52(1), Fla. Stats.

[2] Massey v. Charlotte Cnty., 842 So. 2d 142 (Fla. 2d DCA 2003).

APPELLATE REVIEW

When courts review disability decisions by a local law plan boards (usually an appeal after the petitioner was denied benefits), One of the main things it looks for is whether the Board of Trustees' findings of fact were supported by competent, substantial evidence. [1]

This is a lenient standard, deferential to the board. The Court will not re-weigh the evidence that the board considered. In fact, it is bound only to review the evidence admitted during the Board's hearing. [2]

Instead, the petitioner must convince the Court that the Board's findings were not rationally based on the evidence and hearing (i.e. the "record"). [3] This is usually a difficult argument to make to persuade a presiding judge.

Note, however, that when a Court is reviewing a Board's application of the law (as opposed to its finding of fact) there is no deference to the Board's conclusions (the Court reviews them "de novo," or "anew"). [4] For example, deciding that a petitioner's disability was total and permanent is a finding of fact; but deciding that, based on that fact, the petitioner is entitled to a petition is an application of the law to that fact.

[1] Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 530 (Fla. 1995); Heifetz v. Dep't of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco, 475 So. 2d 1277 (Fla. 1st DCA 1985)

[2] Id.

[3] Id.; and see Tibbs v. State, 397 So.2d 1120 (Fla.1981), approved, 457 U.S. 31 (1982)

[4] Miami-Dade County v. Government Supervisors Ass'n of Florida, OPEIU AFL-CIO Local 100, 907 So.2d 591, 593 (Fla. 3d DCA 2005

Petitioners have the right to seek judicial review of a local law plan board decision by filing a petition for certiorari in Circuit Court. [1] This is like an appeal except that it is done by a trial court (Circuit Court) which evaluates the soundness of the board decision.

Note that some decisions of local law plan boards that are singled out by the Florida Statutes are reviewable by a formal appeal to the District Court of Appeal (most importantly pension forfeitures); [2] but most decisions, like disability determinations, are not singled out and not directly appealable to the District Court of Appeal.

[1] Rule 9.100(c), Fla. R. App. P.; Booker Creek Booker Creek Pres., Inc. v. Pinellas Planning Council, 433 So.2d 1306 (Fla. 2d DCA 1983); First Quality Home Care, Inc. v. Alliance for Aging, Inc., 14 So. 3d 1149, (Fla. 3rd DCA 2009).

[2] Sec. 112.3173, Fla. Stats.; Rule 9.030(b)(C), Fla. R. App. P.

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