FPPTA

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.

Disability Benefits in Public Retirement Plans

- Approximately 2 in 5 adults aged 65 and older have a disability
- Disability benefits provide retirement income security to employees unable to work for an extended period
- A long term disability benefit is a monthly stream of income for employees unable to work due to physical/mental impairment
  - Two main ways of calculating:
    - “Disability retirement” approach = benefit calculated in same way as a service retirement benefit would be
    - “Income replacement” approach = benefit treated as a means of income replacement prior to retirement for participants unable to work

Disability Benefits in Public Retirement Plans (cont.)

- Standard of eligibility for disability benefits can vary from plan to plan
- The most **permissive standard** (used by a plurality of systems) = participant unable to perform the duties of their position
    - If participant unable perform job duties, and if condition expected to be permanent, they are eligible for disability benefit for as long as condition lasts assuming they've met vesting requirements
- Most **restrictive standard** = participant is unable to engage in any gainful employment
    - **"Total and permanent disability**

Public Retirement System Disability Incidence

- Public retirement systems vary in scope of covered populations:
  - some systems administer benefits for only one type of public employee, such as teachers, or public safety officers; others cover multiple employee types
- Different occupational classes have different rates of disability incidence
  - typically, police officers and firefighters experience a heightened probability of injuries compared to other types of public employees

Retirement Planning for Healthcare

- Healthcare costs: expectations vs. reality
  - Costs are often higher than one might expect (can cost >$300,000)
- Medicare
  - Available to retirees 65 or older
  - Original Medicare – Part A (hospital insurance) and Part B (medical insurance) – federal government coverage
  - Medicare Advantage (Part C) – private insurance
  - Medicare Part D (Drug Coverage) – also private insurance
- HSAs and VEBAs are additional vehicles for covering healthcare costs in retirement beyond Medicare

Voluntary Employees' Beneficiary Association (VEBA) Plans

- What are they?
  - Tax exempt trusts set up by employers or a group of employees to cover eligible medical expenses of its members, their dependents, or designated beneficiaries
  - Typically funded by the employer
  - Governed by Internal Revenue Code Section 501(c)(9)
  - This type of employee benefit program has waned in popularity in recent years, but some employers still offer them.

VEBA Plans (cont.)

- How a VEBA Plan Works
  - VEBAs permit employers to provide benefits to employees on the condition that employees abide by the following requirements:
    - Be a voluntary association of employees
    - Provide for payment of life, sick, accident or other similar benefits to members or their dependents or designated beneficiaries
    - Earnings must be used solely for the administration and payment of participant benefits and not line the pockets of private individuals or shareholders

VEBA Plan (cont.)

- Advantages and Disadvantages
  - PROs
    - Tax efficient means of saving for qualified expenses
    - Contributions don’t count against pension plan contribution limits
    - Flexibility to withdraw funds at any time
  - CONs
    - Complex IRS regulations and plan design limitations
    - Can be costly to set up, administer, and report requirements
    - Employees part of a group tat joins VEBA required to participate
    - 100% excise tax on VEBA assets that revert to the employer

Health Savings Account (HAS) Plans

- What are they?
  - Tax-advantaged account created for or by individuals covered under high deductible health plans to save for qualified medical expenses
  - Contributions made into account by individual or employer and are limited to a max amount each year
  - NO tax levied on contributions to HAS, HSA's earnings, or distributions used to pay for qualified medical expenses

HSA Plans (cont.)

- How an HSA Plan Works
  - You can contribute to your HSA only when enrolled in an HSA-eligible plan with no other coverage that would disqualify you. Anyone – including household members, friends, and employers – can contribute to the HSA
  - There are limitations on how much you can contribute to your HSA. These limitations depend on factors such as the type of coverage you have, your age, and when you qualified for an HSA

HSA Plans (cont.)

- Advantages and Disadvantages of HSA plans
  - **PROs:**
    - Contribution tax advantages
    - Distribution tax advantages
    - No income limits – everyone with a high-deductible health plan can open and contribute up to the IRS limit in them annually
    - Investment options

  - **CONs:**
    - Deductible requirements
    - Requires extra cash
    - Filing requirements

VEBA vs. HSA Plans

	HSA	VEBA
Employees contribute their own money?	Yes	No
Annual contribution limits	Max set by IRS	Determined by employer
Use to pay for COBRA if needed	Yes	Yes
Invest dollars in optional mutual funds	Yes	Yes
Pay for dependent qualified medical expenses up to their 26th birthday	Yes	Yes
Tax savings	Triple tax-advantaged for contributions, earnings and withdrawals for eligible medical expenses	Triple tax-advantaged for contributions, earnings and withdrawals for eligible medical expenses

VEBA vs. HSA Plans cont.

- The main difference from the employees' perspective is that the employer funds the VEBA account while employees mostly fund the HSA
- VEBA allows employers to set different limits than under HSA, which is controlled by tax law
- Both plans allow for post-employment use
- In HSA plans, the account holder can designate any beneficiary they want to. For VEBAs, the beneficiary is prescribed.

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