

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

T. G. GRANTHAM,)
)
 Petitioner,)
)
 vs.) CASE NO. 89-2455
)
 DEPARTMENT OF ADMINISTRATION)
 DIVISION OF RETIREMENT,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

This matter came on for hearing in Pensacola, Florida, before Robert T. Benton, II, Hearing Officer of the Division of Administrative Hearings, on October 27, 1989. Mrs. Grantham, who attended the hearing in hopes of representing her husband, did not qualify as a qualified representative, within the meaning of Rule 221-6.008, Florida Administrative Code. But the Hearing Officer called her as a Hearing Officer's witness, in order to give her an opportunity to share pertinent information about the case.

Petitioner filed a proposed recommended order on November 16, 1989. The attached appendix addresses proposed findings of fact by number.

APPEARANCES

For petitioner: Larry D. Scott, Esquire
Department of Administration,
Division of Retirement
440 Carlton Building
Tallahassee, Florida 32399-1550

For Respondent: None

STATEMENT OF THE ISSUE

Whether an employee who has retired on ordinary early retirement and cashed more than 30 retirement checks should be heard on a claim made some two years or more after he retired that he is entitled to disability retirement benefits?

PRELIMINARY STATEMENT

By letter dated March 15, 1989, Melanie White, a benefits calculation specialist in respondent's employ, wrote petitioner Grantham, as follows:

Once a member cashes or has deposited the first benefit warrant for a specific type of retirement, that member may not submit an application for another type of retirement. Since you have chosen to retire under

the provisions of early service retirement and have cashed your first retirement warrant, you are therefore not eligible to change to disability or any other type of retirement benefit. If you believe there is some valid legal or factual basis for challenging this determination, you may petition Division for a hearing pursuant to Chapter 120, Florida Statutes.

Respondent's Exhibit No. 6. In response to this letter, petitioner did file a request for an administrative hearing, which respondent forwarded to the Division of Administrative Hearings, in accordance with Section 120.57(1)(b)3., Florida Statutes (1987).

FINDINGS OF FACT

1. On January 15, 1983, petitioner Tommy Gene Grantham left the Escambia County Sheriff's Department after more than 14 years as a deputy sheriff.

2. Respondent gave petitioner notice on April 27, 1983, of its intention to deny his application for disability benefits, which he had made on grounds he was "unable to lift, stand, or perform any type of physical exertion." Respondent's Exhibit No. 7.

3. Petitioner took appropriate steps to cause his application for disability benefits to be placed on the agenda of the State Retirement Commission for its December 13, 1983, meeting. On the following day, the Commission entered a final order dismissing cause, which had the effect of denying the application.

4. Respondent received petitioner's application for service retirement on December 4, 1986. Petitioner made this application because he needed the money.

5. He had only recently been released from the Pavilion, a mental ward at a hospital in Pensacola, where he had been confined in a padded cell from November 15 to December 1, 1966. On December 10, 1986, respondent acknowledged receipt of the application. Respondent's Exhibit No. 4.

6. The form acknowledgment said, "[O]nce you retire you can not add additional service nor change options. Retirement becomes final when the first benefit check is cashed." Respondent's Exhibit No. 4. By the time of the hearing in this matter, respondent had cashed more than 30 monthly retirement checks.

7. Nancy Grantham has been married to the petitioner for 15 1/2 years although, between September 5, 1986, and February of 1987, she and her husband were legally separated. Over the years, according to Mrs. Grantham, her husband has suffered from serious mental problems. It was she who took him to the Pavilion on November 15, 1986, when, she recalls, he was "talking crazy," anxious, depressed, and apparently suicidal.

8. At no time has any court adjudicated the petitioner incompetent.

9. The respondent's policy is to honor elections made by retirement system members, even members seeking disability retirement on psychiatric grounds, in the absence of an adjudication of incompetency.

CONCLUSIONS OF LAW

Unless a rule is challenged in accordance with Section 120.56, Florida Statutes, it is presumed valid in any Section 120.57 proceeding in which it applies. Central to the present controversy is Rule 22B-4.002(2), Florida Administrative Code, which provides:

Once the member files an application which is approved for a specific type of retirement and the member's first benefit warrant is issued and cashed or deposited, the member's right of entitlement to a different type of retirement is forfeited and a different type of retirement application may not be submitted.

Under the clear provisions of this rule, petitioner is not entitled to submit an application for disability retirement, and has not been eligible for more than two years.

RECOMMENDATION

It is, accordingly,

RECOMMENDED:

That respondent dismiss petitioner's application for disability retirement benefits.

DONE and ENTERED this 21st day of November, 1989, in Tallahassee, Florida.

ROBERT T. BENTON, II
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of November, 1989.

APPENDIX

With respect to petitioner's proposed findings of fact Nos. 1 and 6, the agency actions were not final at those times.

Petitioner's proposed findings of fact Nos. 2, 4 and 5 have been adopted, in substance, insofar as material.

With respect to petitioner's proposed finding of fact No. 3, it is not clear when the application was mailed.

COPIES FURNISHED:

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