

STATE OF INDIANA
PUBLIC EMPLOYEES' RETIREMENT FUND
143 WEST MARKET STREET, SUITE 800
INDIANAPOLIS, INDIANA 46204

In the matter of receiving additional evidence for the review of the findings of fact and the initial determination of the Public Employees' Retirement Fund on the application for disability benefits from the 1977 Police and Firefighters' Pension and Disability Fund under IC 36-8-8-12 and IC 36-8-8-13 by Joseph A. Cox.

Reason for Action: PERF initial determination letter dated July 8, 1986 denying disability benefits to Joseph A. Cox from the 1977 Police and Firefighters' Pension and Disability Fund.

Hearing date: October 16, 1986 Place: Public Employees' Retirement Fund
PERF Conference Room-Harrison Bldg.
143 West Market Street
Indianapolis, IN 46204

FINDING OF FACT AND DETERMINATION

The above matter coming to be heard before Burton L. Garten, duly appointed to conduct administrative hearings, are provided by the Administrative Adjudication Act, Indiana Code 4-22-1.

The Public Employees' Retirement Fund (respondent) was represented by H. Dudley Miller. Joseph A. Cox, (petitioner) was represented by Andrew M. Goeglein.

PETITIONER'S EXHIBITS

Copy of:

1. A letter dated April 3, 1986 from Andrew M. Goeglein to Sgt. Steven Butz, Secretary of the Fort Wayne Police Pension Fund Board. (4 pages)
 - Part A - A letter dated March 14, 1986 from Stephen B. Schroeder, M.D. to Andrew M. Goeglein along with evaluations of Joseph A. Cox. (3 pages)
 - Part B - Findings and Impressions of S. B. Schroeder, M.D. about Joseph Cox. (2 pages)
 - Part C - A letter dated March 10, 1986 from Millard G. Hatcher, D.C. to Andrew M. Goeglein. (1 page)

- Part D - Progress notes on Joseph Cox from Neurophysical Health & Restoration center from September 5, 1985 through September 13, 1985.
- Part E - A letter dated March 10, 1986 from Bhupendra K. Shah, M.D. to Andrew M. Goeglein. (2 pages)
- Part F - A letter dated February 24, 1986 from Phillip J. Johnson, M.D. to Andrew M. Goeglein. (1 page)
2. A letter dated September 3, 1986 from Bhupendra K. Shan, M.D. to Andrew M. Goeglein. (1 page)
3. A list of sick days taken by Joseph Cox from January, 1980 through April 15, 1986. (3 pages)
4. A letter from David C. Rieman, Ft. Wayne Chief of Police dated August 29, 1986. (1 page)
5. Information on the medications, [REDACTED]

RESPONDENT'S EXHIBITS

- A. A letter dated April 16, 1986 from Steven W. Butz, Secretary of the Ft. Wayne Police Pension Fund Board, to PERF. (1 page)
- B. Application for Disability Benefits from Joseph Alan Cox, dated April 28, 1986. (1 page)
- C. A letter dated May 21, 1986 from Arthur Paul Kebel, M.D. to T. P. Derloshon, Jr. (2 pages)
- D. A letter dated June 12, 1986 from John R. Scott, M.D. of the Circle City Evaluation Clinic to T. P. Derloshon, Jr. (4 pages)
- E. A letter dated June 26, 1986 from Arthur Paul Kebel, M.D. to T. P. Derloshon, Jr.
- F. The Merck Manual, 14th Ed. 1982, pages 1380 through 1383 on [REDACTED] Syndromes. (4 pages)

FACTS:

Mr. Joseph Alan Cox was hired by the Ft. Wayne Police Department on January 2, 1970. In 1977 a fellow police officer fell on him from a ladder. He cannot recall exactly when his [redacted] pain began, but in August of 1981 he recalls [redacted] He was admitted to Parkview Hospital at the time. Stephen B. Schroeder, M.D. performed surgery upon [redacted]

[redacted]

[redacted]

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FINDINGS:

Indiana Code 36-8-8-12 reads in part:

Disability Benefits-Amount-Effect on Determination of Retirement Benefits:

- (a) If an active fund member is permanently or temporarily unable to perform all suitable and available work with the police or fire department for which he is or may be capable of becoming qualified, as determined under section 13 (36-8-8-13) of this chapter, he is entitled to receive during the disability, a benefit equal to the benefit he would have received if he had retired. . . .

Indiana Code 36-8-8-13 reads in part:

Determination of disability - Review - Termination of benefits - Appeals.

- (a) The local board shall determine, using the procedures prescribed for the 1925, 1937, or 1953 fund, whether a fund member is disabled as defined in section 12 (36-8-8-12) of this chapter.
- (b) The local board shall submit its findings of fact and its determination to the PERF board. The PERF board or its hearing officer shall review the findings of fact and the local board's determination and issue a final order within one hundred eighty (180) days after receipt of the findings and determination. If the PERF board does not issue its final order within one hundred eighty (180) days and if the delay is not attributable to the fund member or the member's employer, the local board's findings and determination are deemed to be the PERF board's final order.
- (c) If the PERF board approves the local board's determination, then the PERF board shall issue a final order adopting the local board's findings of fact and determination and shall comply with the determination. If the PERF board does not approve the local board's determination, the PERF board or its hearing officer may receive additional evidence on the matter before issuing its final order.
- (d) The PERF board or its hearing officer may request that the fund member be examined by a doctor selected by the PERF board. The results of the examination shall be submitted to the PERF board or its hearing officer. If a fund member refuses to submit to an examination, the PERF board shall find that a disability does not exist.
- (e) Disability benefits terminate when the disabled member reaches fifty-five (55) years of age and becomes eligible to receive retirement benefits. At least yearly until the member is fifty-five (55) years of age, the local board shall review the condition of the disabled fund member to determine whether the disability continues. The PERF board or its hearing officer shall review the local board's determination in the manner specified in subsections (b), (c), and (d). If the local board makes no determination, the PERF board shall determine if the fund member's disability continues.
- (f) Appeals of the PERF board's final order may be made under IC 4-22-1.

It has been established, pursuant to Indiana Code 36-8-8-12, that:

1. Mr. Joseph A. Cox was hired by the City of Ft. Wayne police department on January 2, 1970.
2. Mr. Joseph A. Cox has shown no objective evidence to justify his claim for disability.
3. Mr. Joseph A Cox is not permanently or temporarily unable to perform all suitable and available work with the police department for which he is or may become capable of being qualified.


It has further been established, pursuant to Indiana Code 36-8-8-13, that:

1. The local board (City of Ft. Wayne Police Pension Board) submitted its findings of fact and determination to the PERF Board on Joseph A. Cox's disability application.
2. The PERF Board did not approve the local board's determination.

DECISION AND CONCLUSION OF LAW:

Based upon the testimony, and in view of the above facts and findings, I, Burton L. Garten, duly appointed administrative law judge for the State Board of The Public Employees' Retirement Fund, would recommend denying disability benefits to Joseph A. Cox pursuant to IC 36-8-8-12 and IC 36-8-8-13.

November 5, 1986



Burton L. Garten
Administrative Law Judge
Public Employees' Retirement Fund