

**BEFORE THE BOARD OF TRUSTEES
TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS**

**Proposed Decision Recommended by the
Administrative Review Claims Hearing Committee**

In the Matter of: Thomas Schuerman

I. Introduction

Pursuant to the provisions of 80 Ill. Adm. Code 1650.650, an administrative review hearing was held on November 10 and 11, 2003 in Springfield, Illinois, to consider the appeal of Mr. Thomas Schuerman, a member of Teachers' Retirement System of the State of Illinois (TRS or the System). Mr. Schuerman petitions the TRS Board of Trustees (Board) to reverse the denial of his claim for TRS disability retirement annuity (DRA) benefits under the provisions of 40 ILCS 5/16-149.2 for the period June 13, 2000 to June 18, 2002. The sum of DRA benefits sought by Mr. Schuerman is \$31,920.54. At issue in this case is Mr. Schuerman's ability to perform his duties as a teacher during the above period.

The TRS Board of Trustees, the trier of fact in this matter as provided in TRS Rule 1650.620 (80 Ill. Adm. Code 1650.620), was represented at hearing by its Claims Hearing Committee comprised of Cinda Klickna, Molly Phalen and James Bruner. The hearing was presided over by Presiding Hearing Officer Ralph Loewenstein.

TRS' staff position was presented by attorney Scott Spooner of the law firm of Heyl Royster Voelker & Allen. Mr. Schuerman appeared *pro se*.

In support of his claim for DRA benefits, Mr. Schuerman argues the following:

- Mr. Schuerman has proven his continued disability during the period in question by a preponderance of the evidence.

- The submission of two written physician's certificates as required by §16-149.2(a) certifying the member "remains disabled under the standard of disability provided in Section 16-149" is an absolute bar to further challenge of continuing disability by the System.
- The Board has failed, as required by §16-149.2(f), to "prescribe rules governing the filing, investigation, control, and supervision of disability retirement claims" including "specific standards to be used when requesting additional medical examinations, hospital records or other data necessary for determining the employment capacity and condition of the annuitant," thereby denying Mr. Schuerman due process.
- Mr. Schuerman was further denied due process because his request for administrative review was filed on November 16, 2000, but was not heard by the Claims Hearing Committee until November 10-11, 2003.

In support of its denial of Mr. Schuerman's claim for DRA benefits, the System argues the following:

- Mr. Schuerman has not proven that he was disabled and unable to teach during the period in question by a preponderance of the evidence.
- The System has the right and obligation to question physician certificates, especially in the situation where it is provided evidence that such certificates may be based upon less than complete information provided by the claimant to the certifying physician. In this case, Mr. Schuerman was videotaped by the United States Postal Inspector's Office performing physical activities which called into question his claim that he could not teach due to low back problems.
- To the extent that rules are required by §16-149.2, they are found at 80 Ill. Adm. Code 1650.201 through 1650.211, particularly §1650.202 and §1650.203.
- Mr. Schuerman's *pro se* representation in a case involving complex medical evidence requiring physician depositions and Mr. Schuerman's unwillingness to stipulate to exhibits contributed to the pre-hearing process progressing slowly.

However, a lengthy pre-hearing process does not constitute a denial of due process.

After reviewing the Position Statements of the parties and the exhibits and admission of fact and genuineness of documents submitted therewith; hearing the evidence and viewing the exhibits presented at hearing; and considering the arguments of the parties, it is the determination of the Claims Hearing Committee that Mr. Schuerman is not entitled to disability retirement annuity benefits under the provisions of §16-149.2 for the period June 13, 2000 to June 18, 2002; that the System did not deny Mr. Schuerman due process in the hearing of this matter; and that the System has in fact promulgated the rules required by §16-149.2.

II. Factual Background

Thomas Schuerman was hired by the United States Postal Service as a distribution clerk at its Bloomington, Illinois facility on July 24, 1971. Mr. Schuerman sustained an injury to his low back while lifting a mail sack on October 28, 1972. He underwent surgery for his back injury on March 22, 1973 and again on December 8, 1994.

On December 19, 1981, through a vocational rehabilitation program provided under federal workers' compensation, Mr. Schuerman received a Bachelor of Science degree from Illinois State University in the field of elementary education. Mr. Schuerman was hired by the Bloomington-Normal School District on February 15, 1982. He was employed as a schoolteacher for the next 14½ years, until September 16, 1996.

On or about August 23, 1996, Thomas Schuerman was notified by the U.S. Department of Labor's Office of Worker's Compensation Program that his worker's compensation benefits were being terminated because he was considered vocationally rehabilitated, and was no longer suffering the loss of his wage-earning capacity. On September 16, 1996, Mr. Schuerman submitted his resignation to the Bloomington – Normal School District, advising said district that he could no longer continue his employment as a teacher because of his alleged total disability. On September 18, 1996, Mr. Schuerman notified the U.S. Department of Labor's Office of Worker's Compensation Program that he had resigned his position as a school teacher due to his recurring back problems.

Following his resignation as a teacher, Mr. Schuerman applied for disability benefits from TRS. Mr. Schuerman received TRS disability benefits under the provisions of 40 ILCS 5/16-149 between October 14, 1996 and June 13, 2000. These payments are not in dispute. Mr. Schuerman's monthly §16-149 disability benefit was \$1,464.20. His eligibility for §16-149 disability benefits expired on June 12, 2000. On July 25, 2000, TRS denied Mr. Schuerman's application for a disability retirement annuity under the provisions of §16-149.2

Mr. Schuerman is presently 51 years old (DOB 9/20/52). He has 18.53 years of TRS service credit. If he earns no more TRS service credit, he will be eligible to receive an age retirement annuity at age 60, beginning September 20, 2013.

Between October 2, 1998 and February 26, 2001, Thomas Schuerman was the object of videotaped surveillance conducted by the U.S. Postal Inspector's Office. These tapes were shared with TRS. The videotapes showed Mr. Schuerman golfing, attending college basketball games, visiting the Peoria riverboat casino, and conducting an inspection of a pickup truck.

As a result of receiving the postal inspector videotapes, the System requested an Independent Medical Examination (IME) of Mr. Schuerman by Dr. David Fletcher, M.D., of Decatur. As a part of the IME, Mr. Schuerman was administered a functional capacity examination (FCE). Based upon Dr. Fletcher's IME, which was conducted in light of the postal inspector videotapes and the results of the IME FCE, TRS staff denied Mr. Schuerman's claim for a disability retirement annuity. Mr. Schuerman challenged this decision by filing an administrative review request with the System on November 16, 2000. Thereafter, on June 18, 2002, Mr. Schuerman was determined to be able to return to teaching service by his treating physician, Lawrence Nord, M.D., of Bloomington. There is no claim that he is entitled to DRA benefits after this date.

III. Issue Analysis

Issue I: Did the System violate §16-149.2(f) by failing to “prescribe rules governing the filing, investigation, control, and supervision of disability retirement claims”?

The Committee finds Mr. Schuerman's “rules” argument to be without merit. The rules that govern the processing of DRA claims are set forth in 80 Ill.

Adm. Code 1650.201 to 1650.211. TRS rules 1650.202 and 1650.203 define the phrase “no longer disabled” and clearly sets forth the standard necessary to obtain a disability retirement annuity. Rule 1650.205 specifically delineates the standards that apply for medical examinations and the investigation of disability claims. Respondent is clearly compliant with §16-149.2(f).

It could be construed that Mr. Schuerman is arguing that §16-149.2(f) requires the System to establish standards to determine disability which the Committee finds it does not. However, even if this is his argument, TRS is still clearly compliant. The level of specificity required for disability standards was discussed in *Escalona v. Board of Trustees*, 127 Ill. App. 3d 357, 469 N.E.2d 297 (1st Dist. 1984). In *Escalona*, plaintiff sought recovery of disability benefits from the State Employees’ Retirement System (SERS). In its decision affirming denial of claimant’s demand for disability benefits, the Appellate Court for the First Judicial District of Illinois held:

In the context of disability determinations, however, it is our view that it would be impracticable – if not impossible – for SERS to articulate more precise standards. Since SERS must find that an individual is incapacitated to perform the duties of that particular individual’s position, it appears that the type of standard demanded by plaintiff could be enacted only if SERS were to publish separate standards for each job description. Even if this were practical, such standards would eliminate the flexibility necessary for decisions of this type. Where possible, SERS has published rules to further inform those persons affected by its decisions. Rule 8 pertains to disability claims. (6 Ill. Adm. Reg. 2119-21 (1982).) Section 3 of that rule defines the term “licensed physician”. Section 4 lists the information which SERS requires in the physician’s reports. Section 6 describes the systematic program established by SERS in order to investigate, control, and supervise disability claims. This section indicates that SERS may require, among other information, additional medical statements, independent medical examinations, and activity inspection reports. Section 7 provides that “duties of the member’s position” refers to the duties of the position as of the date the member’s name is removed from the payroll. We believe that SERS has provided as much guidance as possible without turning the process into a mechanical determination which would clearly be inappropriate in this context. (127 Ill. App. 3d at 362, 469 N.E.2d at 301.)

The Committee finds the disability rules promulgated by TRS provided Mr. Schuerman with sufficient guidance relative to the processing of his claim for a disability retirement annuity as well as defining disability under the statute. Said rules included, *inter alia*, the standards used by TRS to evaluate such claims, as well as the standards that apply to claims' investigations and medical examination procedures.

Issue II: *Did the lengthy pre-hearing process in Mr. Schuerman's administrative review deny him due process?*

In reviewing the voluminous pre-hearing record in the Claims Hearing Packet, the Committee notes that the preparation of this matter for hearing was fraught with contention. Mr. Schuerman was unwilling to stipulate to exhibits. This resulted in the filing of numerous motions and counter-motions contesting exhibits which had to be ruled upon by the Presiding Hearing Officer.

Furthermore, the matter involved a significant quantity of complex medical testimony requiring the depositions of physicians. Such matters are by their very nature time-intensive. In addition, Mr. Schuerman was not represented by counsel, which further contributed to the length of the pre-hearing process. The Committee finds the pre-hearing process was not unduly lengthy given all of these factors.

As stated in Landenheim v. Union Co. Hospital District, 76 Ill. App. 3d 90, 394 N.E.2d 770 (1979):

In this case appellant received notice, a hearing before an impartial tribunal, representation by counsel, the opportunity to cross-examine witnesses and to present evidence, and the opportunity to inspect documentary evidence against him. Generally, this is considered sufficient to insure due process in administrative proceedings. (76 Ill. App. 3d at 96, 394 N.E.2d at 774.)

The fact that a pre-hearing process is lengthy does not of itself constitute a denial of due process. The Committee finds that Mr. Schuerman was provided the panoply of due process rights to which he was entitled in the course of this proceeding.

Issue III: *Are the submission of the two physician certificates required by §16-149.2(a) to establish a claim for DRA benefits an absolute bar to the denial of a DRA claim?*

As stated in §16-149.2(a):

The disability retirement annuity shall be payable upon receipt of written certificates from at least 2 licensed physicians designated by the System verifying the continuation of the disability condition.

As further stated in §16-149.2(f):

The board shall prescribe rules governing the filing, investigation, control, and supervision of disability retirement claims.

To this end, the Board has enacted TRS Rule 1650.205, Medical Examinations and Investigation of Disability Claims, which provides in relevant part:

- a) *A member applying for or receiving benefits pursuant to 40 ILCS 5/16-149, 16-149.1 or 16-149.2 shall furnish the System medical records, earnings statements, Social Security benefit or claim information, federal and state tax returns, and any other information deemed relevant by the System to process the member or annuitant's disability claim.*
- b) *A member or annuitant shall submit to an independent medical examination at the discretion of the System. The cost of independent medical examinations shall be borne by the System.*

Clearly, TRS staff had the statutory right and duty, particularly in light of the videotapes provided to it by the U.S. Postal Inspector's Office, to question Mr. Schuerman's DRA physician certificates and to seek an independent medical examination to verify the legitimacy of his DRA claim. The Committee finds Mr. Schuerman's argument in this regard to be without merit.

Issue IV: *Was Thomas Schuerman incapacitated to perform the duties of his position as a teacher during the period June 13, 2000 to June 18, 2002?*

At the heart of this case is whether Mr. Schuerman was disabled, i.e., unable to teach, during the period in question. The standard of proof to establish

disability is the preponderance of the evidence, i.e., evidence that is of greater weight than the evidence offered in opposition. The Committee notes that Mr. Schuerman as claimant, not the System, bears the burden of proof in this administrative review proceeding. In making this determination, it is appropriate to consider evidence which arose before and during the period in question to the extent the evidence is relevant. The video surveillance tapes produced prior to June 13, 2000, as well as between June 13, 2000 and February 26, 2001 and meet this criteria. The Committee finds that Mr. Schuerman failed to prove that he was unable to return to teaching during the period June 13, 2000 to June 18, 2002.

Mr. Schuerman's Case

At hearing, Mr. Schuerman presented the testimony of Drs. John Whittington and Lawrence Dowden as well as that of Kevin Neblock, exercise physiologist. All three of these witnesses testified that Mr. Schuerman was unable to teach during the period in question. However, the Committee finds the testimony of these witnesses to be less persuasive than that of the System's witnesses for the following reasons.

Dr. Whittington

Dr. Whittington is a board-certified family practitioner presently employed by St. Francis Medical Center in Peoria. Dr. Whittington saw Mr. Schuerman as a patient from July 1990 to July 2000.

Dr. Whittington treated Mr. Schuerman for chronic low back pain. Treatment included the prescription of morphine, Tylenol with codeine, Dilaudid and Levo-Dromoran.

Dr. Whittington testified that he had been told by Mr. Schuerman that he had played golf during the years he had been treating Mr. Schuerman. However, not until the hearing had Dr. Whittington seen the postal inspector videotape of Mr. Schuerman. Notwithstanding the physical activities depicted in the videotape, Dr. Whittington testified that Mr. Schuerman was disabled and could not teach as of July 2000. Dr. Whittington also testified that his treatment was based very little upon examination of Mr. Schuerman but predominantly upon the statements of Mr. Schuerman regarding his back problems.

Of particular concern to the Committee is that on April 19, 2000, Dr. Whittington signed Mr. Schuerman's DRA certification with the notation "present

function limitations are standing 30 minutes and walking 30 minutes” and further noting that Mr. Schuerman has severe impairment relative to bending. Yet on April 26, Mr. Schuerman is seen golfing, walking, and bending with no impairment. Given that Dr. Whittington’s April 2000 DRA certification and its disability diagnosis is based upon Mr. Schuerman’s subjective statements regarding pain and functional capacity and are at odds with the contemporaneous video record, the Committee finds the certification and Dr. Whittington’s testimony to be of little persuasive value.

Dr. Dowden

Dr. Lawrence Dowden is a family practice doctor who is also board certified in addiction medicine. His practice is in Bloomington. Dr. Dowden saw Mr. Schuerman as a patient eleven times between March 13, 2001 and July 1, 2002.

Dr. Dowden testified that Mr. Schuerman suffered from degenerative disc disease and chronic low back pain. Dr. Dowden signed a DRA certification on behalf of Mr. Schuerman on July 1, 2002, even though Mr. Schuerman was released to work by Dr. Lawrence Nord, Mr. Schuerman’s orthopedic doctor, on June 18, 2002. It was Dr. Dowden’s testimony that Mr. Schuerman could not return to teaching service prior to June 18, 2002.

The Committee finds Dr. Dowden’s testimony to be unconvincing. Dr. Dowden specifically testified that he had no independent recollection of performing objective testing to determine Mr. Schuerman’s physical capacity nor of the medications he prescribed Schuerman. Dr. Dowden’s functional capacity conclusions regarding Mr. Schuerman were based upon a functional capacity examination performed for Dr. Nord by exercise physiologist Kevin Neblock on May 30, 2002, one month prior to Dr. Nord’s releasing Mr. Schuerman to work. Furthermore, like Dr. Whittington, Dr. Dowden’s disability diagnosis was based primarily upon Mr. Schuerman’s subjective representations. Lastly, Dr. Dowden was not privy to the videotapes that contradict Dr. Dowden’s conclusions regarding Mr. Schuerman’s ability to teach.

Kevin Neblock

Kevin Neblock is an exercise physiologist who performed two functional capacity examinations (FCE's) of Mr. Schuerman. The FCE's were performed on December 26, 2000 and May 30, 2002.

It was Mr. Neblock's testimony that Mr. Schuerman met 20 of the 28 job motions required of a teacher. Mr. Neblock went on to testify that the areas that Mr. Schuerman had not met were sustained standing, walking and bending, low level work, lifting, pushing, and pulling, which rendered Mr. Schuerman disabled to teach.¹

The Committee notes Mr. Neblock did not know how Mr. Schuerman came to be disabled from teaching. It was his assumption that Mr. Schuerman was injured on the job when in fact there was no such injury. Furthermore, Mr. Neblock was unaware of the extent of Mr. Schuerman's physical activity or his golfing. In evaluating Mr. Schuerman, Mr. Neblock relied upon Mr. Schuerman's self-evaluation of his physical capabilities. Mr. Schuerman appraised himself to possess the lowest of functional capabilities. In fact, Mr. Schuerman's functional capabilities as demonstrated by video surveillance were far in excess of those he reported to Mr. Neblock.

The Committee finds that Mr. Neblock's conclusions regarding Mr. Schuerman's disability were based upon a lack of full disclosure on the part of Mr. Schuerman. Hence, the Committee places little credence in Mr. Neblock's conclusion that Mr. Schuerman could not teach during the period in question.

TRS's Case

In contradiction to Mr. Schuerman's witnesses, the System presented the testimony of Dr. David Fletcher and Karen Caraway, exercise physiologist.

Dr. David Fletcher

Dr. David Fletcher, a Board-certified specialist in occupational medicine, is a Fellow of the American College of Occupational and Environmental Medicine, and a Fellow of the American College of Preventative Medicine. He is employed

¹ However, it was the testimony of Karen Caraway, the exercise physiologist who performed the IME FCE upon Mr. Schuerman that lifting, pushing and pulling capacity are not relevant to the ability to teach.

as the Medical Director of Safeworks, LLC, which operates clinics in Decatur and Champaign. Whereas Mr. Schuerman's testifying physicians were family practitioners with a generalist approach to medical treatment, Dr. Fletcher is a specialist in disability assessment. In this matter, where there is a dispute over Mr. Schuerman's capacity to teach, the Committee accords Dr. Fletcher's testimony greater weight than that of Mr. Schuerman's family physicians.

Dr. Fletcher conducted an independent medical evaluation (IME) of Mr. Schuerman on June 4, 2001. In conjunction with this IME, Dr. Fletcher reviewed the Postal Inspector's videotapes of Mr. Schuerman. Dr. Fletcher was also aware of the results of the functional capacity examination conducted by Karen (Neier) Caraway. As found by Dr. Fletcher:

The bottom-line assessment as far as a total instrument is that it's a mixed picture. But at a minimum he demonstrated the ability to work at the light-medium work level using the U.S. Department of Labor Dictionary of Occupational Titles. And that met his critical job demands as a teacher. And that was basically the assessment. As I said before, the focus of an FCE is what the work capacity is to the maximum effort generated. In this case his work capacity met his critical job demands. He demonstrated an ability to work as a teacher. And secondly, there is some inconsistencies noted on the functional testing that raises some issue about the validity of his subjective complaints.

Furthermore, based upon his observation of the videotapes of Mr. Schuerman, Dr. Fletcher concluded that at the time the videotapes were made, Mr. Schuerman was capable of teaching.

The Committee finds Dr. Fletcher's testimony to be more creditable than that of Mr. Schuerman's testifying physicians, because it was rendered with full and complete knowledge of Mr. Schuerman's demonstrated physical capacities. Additionally, Dr. Fletcher's conclusions were not based upon Mr. Schuerman's subjective assessment of his physical condition, but rather upon a detailed objective examination.

Karen (Neier) Caraway

Karen (Neier) Caraway is an exercise physiologist and assistant director employed by Safework Illinois, an occupational health facility in Champaign, Illinois. Ms. Caraway holds a Bachelors of Arts degree in experimental psychology with a biology minor from Millikin University, and a Masters of Science degree in exercise physiology from Illinois State University.

Ms. Caraway performed a functional capacity evaluation (FCE) of Mr. Schuerman on June 25, 2001. Ms. Caraway determined that Mr. Schuerman's physical demand for his middle school teaching duty was light to medium, and that he could safely lift between 20 to 40 pounds with ease on a day-to-day basis. Ms. Caraway concluded, based on the objective results of the FCE, that Mr. Schuerman demonstrated ability to meet and possibly exceed his teaching job requirements as of June, 2001. Ms. Caraway recommended as follows:

Mr. Schuerman has been in the patient role for an extended period of time and has undoubtedly learned much about functional testing and consistency. Although he produced mixed results today, it is important to look beyond his questionable effort and examine his demonstrated abilities during today's testing. His strength levels within his upper extremities and the physical tasks he performed today display his ability to return to work in some capacity. This evaluator does feel that he could return to teaching, or some other job position that enables him to work within the light-medium physical demand level. Therefore, it is recommended that the client return to full duty activities.

The Committee finds Ms. Caraway's testimony to be credible and more convincing than that of Mr. Schuerman's witnesses, and accepts Ms. Caraway's conclusion that Mr. Schuerman was functionally capable of returning to his teaching job. The Committee finds it significant that Ms. Caraway relied on the objective results of the testing protocol rather than the subjective complaints of Mr. Schuerman, in concluding that he was fully capable of performing his middle school teaching duties. It is of particular note to the Committee that Mr. Schuerman's FCE test results and the surveillance tapes of his activities were inconsistent with his subjective complaints and statements of limitations as well as his pre-examination questionnaire responses.

It is clear Mr. Schuerman had low back discomfort. However, the issue is whether that discomfort prevented him from teaching during the period in question. The Committee finds that Mr. Schuerman was functionally capable of teaching and not disabled under the Pension Code.

V. Conclusion

Accordingly, the Claims Hearing Committee finds in favor of the staff in this matter. Mr. Schuerman has failed to establish his claim for disability retirement benefits during the period June 13, 2000 to June 18, 2002. The Committee recommends the Board adopt this Proposed Decision.

VI. Notice of Right to File Exceptions

Exceptions to the Claims Hearing Committee's Proposed Decision must be filed within fifteen (15) days of receipt by the Petitioner. A Final Decision will be issued by the Board of Trustees after it has considered the Claims Hearing Committee's Proposed Decision and any exceptions filed by the Petitioner.