

IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT, IN
AND FOR ORANGE COUNTY,
FLORIDA

DANTE CANDELARIA,

CASE NO.: 2014-CA-8-O

Petitioner,

v.

BOARD OF TRUSTEES OF THE
ORLANDO POLICE PENSION FUND,

Respondent.

Petition for Writ of Certiorari
from the Decision of the Orlando
Police Pension Fund Board of Trustees.

Robert K. Michael, Esquire,
for Petitioner.

Stuart A. Kaufman, Esquire,
for Respondent.

BEFORE H. RODRIGUEZ, MUNYON, EGAN, J.J.

PER CURIAM.

FINAL ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner, Dante Candelaria (“Petitioner”) seeks certiorari review of the Board of Trustees of the City of Orlando Police Pension Fund’s (“Board”) final order denying his application for disability benefits. This Court has jurisdiction pursuant to section 26.012, Florida Statutes and Florida Rule of Appellate Procedure 9.030(c)(3).

On May 7, 2013, Petitioner filed an application for Line of Duty Disability Benefits. On May 30, 2013, he requested a sixty-day extension to submit the completed application that was granted. On July 10, 2013, he submitted a second request to submit the application by October

31, 2013. The completed application was not submitted by October 31, 2013. On November 14, 2013, the application came before the Board for review. After the Board was advised that Petitioner's disability package was not timely submitted, it denied the application. Petitioner appeared at the Board meeting after his application was denied and addressed the Board. The Board did not reconsider its decision denying the application. The Board's final order was issued on December 5, 2013.

"The duty of the circuit court on certiorari review of an administrative agency decision is limited to three components: Whether procedural due process was followed, whether there was a departure from the essential requirements of law, and whether the administrative findings and judgment were supported by competent substantial evidence." *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995); *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). "It is neither the function nor the prerogative of a circuit judge to reweigh evidence and make findings [of fact] when [undertaking] a review of a decision of an administrative forum." *Dep't of Highway Safety & Motor Vehicles v. Allen*, 539 So. 2d 20, 21 (Fla. 5th DCA 1989).

Petitioner claims that his completed application was not timely submitted because the physician failed to complete the necessary paperwork and medical reports. Petitioner argues that he was denied due process and the Board departed from the essential requirements of law because he was only allowed five minutes to address the Board, his application was never reviewed, and the Board did not reconsider its decision or grant an extension. Petitioner requests the court quash the Board's order and require the Board to accept and review his completed application.

Due process requires fair notice and a meaningful opportunity to be heard. *Keys Citizens For Responsible Gov't, Inc. v. Florida Keys Aqueduct Auth.*, 795 So. 2d 940, 948 (Fla. 2001).

The Board's final order states that the matter was duly noticed for November 14, 2013 and Petitioner does not contest that he received notice of the hearing and in fact did appear and addressed the Board, although after his application was denied. Petitioner was granted two extensions to submit the application and did not timely submit a completed application. Therefore, Petitioner was provided notice and an opportunity to be heard, and thus was not deprived of due process.

A ruling constitutes a departure from the essential requirements of the law when it amounts to "a violation of a clearly established principle of law resulting in a miscarriage of justice." *Combs v. State*, 436 So. 2d 93, 96 (Fla. 1983). The term "clearly established law can derive from a variety of legal sources, including recent controlling case law, rules of court, statutes, and constitutional law." *Allstate Ins. Co. v. Kaklamanos*, 843 So. 2d 885, 890 (Fla. 2003).

According to the City of Orlando Code of Ordinances, the Board is authorized to promulgate rules, policies and procedures in connection with the application for hearing and determination of disability pensions, including the form of the application and medical questionnaires for completion by physicians. Orlando, Fla., Code of Ordinances tit. I, ch. 12, art. I, § 3(2) (2013). In the final order, the Board states that Petitioner was provided a copy of the guidelines stating that the completed application packet must be filed with the Pension Coordinator within thirty calendar days after the date the application was filed. The order also states that Petitioner was provided a copy of a notice advising that use of the forms provided is mandatory and failure to use the forms will result in the application being considered incomplete and unacceptable for presentation to the Board.

Petitioner was granted extensions but failed to submit a completed application by the October 31, 2013 extension deadline. In accordance with its policies, the Board was not required to review an incomplete application or grant an additional extension after Petitioner failed to provide a completed application by the deadline. Therefore, the Board did not depart from the essential requirements of the law when it denied Petitioner's incomplete application.

In conclusion, the Court finds that Petitioner was provided due process, the Board did not depart from the essential requirements of the law, and there was competent substantial evidence to support the Board's decision.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 21st day of August, 2014.

/S/

HEATHER PINDER RODRIGUEZ
Presiding Circuit Judge

MUNYON and EGAN, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished on this 21st day of August, 2014 to: **Robert K. Michael, Esq.**, 3030 N. Rocky Point Drive W., Ste. 150 Tampa, Florida 33607; **Stuart A. Kaufman, Esq.**, Klausner, Kaufman, Jensen, & Levinson, 10059 N.W. 1st Court, Plantation, Florida 33324.

/S/

Judicial Assistant