

Client Alert
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**COURT OF APPEALS ORDERS DEFERENCE TO PUBLIC EMPLOYER'S INITIAL
DETERMINATION IN SECTION 207-A CASE:
Matter of Ridge Road Fire District v. Schiano**

In a recent opinion, a divided New York Court of Appeals found a Ridge Road Fire District firefighter ineligible for General Municipal Law Section 207-a benefits where the District's initial determination denying benefits was supported by substantial evidence. In a four to three opinion, the Court of Appeals interpreted the collective bargaining agreement to impose a heavier burden on individuals seeking section 207-a benefits, while giving greater deference to the public employer's initial determination. This case has state-wide importance to police and firefighter unions that have or are seeking to negotiate General Municipal Law Section 207-a or 207-c procedures.

Facts

Firefighter Nowack of the Ridge Road Fire District ("District") alleged that he had sustained an on-duty back injury while driving a District fire truck. Firefighter Nowack claimed that after hitting a low-spot, manhole cover, or pot hole in the road, the truck's air suspension seat elevated and then dropped, causing a twinge or tightness in his lower back. Firefighter Nowack informed the District of his injury, completed an "accident-sickness packet", and submitted his application for General Municipal Law Section 207-a benefits.

Procedural Background

The District initially denied Firefighter Nowack's application, finding that the complained-of injury was a preexisting injury sustained off-duty. Firefighter Nowack exercised his right to a hearing in accordance with the collective bargaining agreement ("CBA").¹ The hearing was held before Hearing Officer Michael Schiano and each party presented their cases.

¹ The CBA provides that a hearing officer "shall conduct the hearing in accordance with the established rules of evidence, consistent with the NYS Administrative Procedure Act," and that "it is the employee's burden to prove that he is entitled to GML 207-a benefits." The State Administrative Procedure Act provides, in relevant part, that "[n]o decision, determination or order shall be made except upon consideration of the record as a whole or such

Hearing Officer Schiano found that there was substantial evidence to override the District's determination, and therefore found Firefighter Nowack eligible for Section 207-a benefits. The District challenged this determination in an Article 78 proceeding, whereby the Supreme Court granted the petition, annulled the decision, and remanded the proceeding. The Supreme Court found the standard of review applied by Hearing Officer Schiano was incorrect, and that the proper standard was whether the District's determination denying Firefighter Nowack benefits was supported by substantial evidence. On remand, Hearing Officer Schiano again found Firefighter Nowack eligible for benefits, concluding that the denial of section 207-a benefits was not supported by substantial evidence.

The District challenged the Hearing Officer's second determination. The Supreme Court granted the petition, vacated the decision, and reinstated the original denial of benefits. The Supreme Court found that because there was substantial evidence to support the District's decision to deny benefits, Hearing Officer Schiano's determination was arbitrary. The Supreme Court's decision was appealed to the Appellate Division.

The Appellate Division reversed the Supreme Court's decision and dismissed the District's petition, holding that the District's denial of benefits lacked substantial evidence that the disability was solely related to a prior non-work related injury. The Appellate Division's decision was appealed to the Court of Appeals.

Court of Appeals Decision

The Court of Appeals' majority, in reaching its decision, relied on the CBA and the parties' purported deference to the District's initial determination under the State Administrative Procedure Act ("SAPA"). The majority stated the parties agreed that, as applied to this case, the statute requires the District's determination be upheld if supported by substantial evidence. Using this interpretation, the majority found that Hearing Officer Schiano was required to give deference to the District's decision and that Firefighter Nowack had the burden of establishing that the District's denial was not supported by substantial evidence.

Substantial evidence, as defined by the Court, is "relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact. . . . The standard demands only that a given inference is reasonable and plausible, not necessarily the most probable." The majority, like the dissent and lower courts, found that there was evidence supporting both the District's and Firefighter Nowack's positions. The District offered evidence showing: an inconsistent story by Firefighter Nowack; testimony by individuals that examined the seat post-incident and concluded it was not defective; and Firefighter Nowack's physician's testimony

that the injury would not be accident-related if it did not occur as Nowack claims. Based on this evidence, the majority found substantial evidence supported the District's denial of benefits, rendering Hearing Officer Schiano's decision "irrational as a matter of law."

Importantly, the majority found that the record in support of Firefighter Nowack's contentions was not relevant. The existence of substantial evidence supporting Nowack was not considered in reviewing whether the District's denial of benefits was supported by substantial evidence.

Conversely, the three dissenting judges found that because either side might reasonably have prevailed, the hearing officer's ruling must be upheld. Unlike the majority, the dissent evaluated the decision by Hearing Officer Schiano as the relevant decision that must be reviewed for substantial evidence, not the District's initial determination. The dissent argued that it is the Court's job to determine, on review, whether the hearing officer's decision was arbitrary, not whether the District's denial of benefits was supported by substantial evidence.

The dissent argued that the majority was mistaken in finding there is agreement on the application of SAPA in this circumstance. SAPA applies to consideration of the record, which occurs only after the hearing -- there is no record in place or created prior to the hearing. It is only after all the evidence is submitted that a record comes into existence.

The majority not only mistakes this Court's role, it gives the 'initial determination' the veneer of an evidentiary hearing and elevates it beyond what it was -- a preliminary hearing made on the basis of a packet of forms -- while vitiating the role of the officer conducting the only full hearing in this case.

Rather, the majority undermines the process of an unbiased and informed review considering all evidence, and gives deference to the inherently biased initial determination.

Practical Impact

The majority's decision imposes a heavy burden on fire and police employees seeking Section 207-a and Section 207-c benefits where contract language similar to Ridge Road Fire District exists. The level of deference given to an initial determination has a substantial impact on all individuals seeking these benefits by providing the public employer with greater influence on the potential award of benefits. Where plausible evidence exists for denying benefits, the employer's initial determination will be very difficult to overturn when the substantial evidence standard is applied. In light of this decision, it is crucial that any potentially ambiguous contract language concerning the application of SAPA to 207-a or 207-c benefits be clarified through collective negotiations and, if necessary, modified to provide for a standard of review that provides for greater neutrality in the process.

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This client alert is not intended to provide legal advice with respect to any particular situation and no decision should be based solely on its content. Please feel free to contact Nathaniel G. Lambright at (315) 422-7111 or nglambright@bklawyers.com, or any Blitman & King attorney, with any questions or concerns regarding the issues raised in this client alert.