

IN THE MATTER OF
CHARLES DAWSON-APPELLANT
7844 MAGLEDT ROAD
BALTIMORE, MARYLAND

RE: DECISION OF ERS
DENYING SERVICE RETIREMENT BENEFITS

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. CBA-11-024

* * * * *

OPINION

This matter comes before the Board on appeal by County employee, Charles Dawson, herein referred to as Dawson, from a decision of the Employee Retirement System ("ERS") Board of Trustees on April 12, 2011, which denied Dawson service retirement benefits for failure to meet the "creditable service" criteria of 'honorable and faithful' service to Baltimore County. Mr. Dawson appealed the decision to this Board and a hearing was held on November 30, 2011. Mr. Dawson was represented by Mary T. Keating, Esquire. The Employee Retirement System was represented by Suzanne Berger, Assistant County Attorney. Briefs were filed on December 19, 2011.

Subsequent to the filing of the brief, Counsel for Dawson filed a Motion to Strike certain Exhibits that were attached to the brief of the Counsel for the Employee Retirement System. Specifically, Counsel requested that the Board disregard the medical reports of Dr. Mohammad M. Rana of Kaiser Permanente on the basis that these records were neither offered or admitted during the hearing and the Appellant had no opportunity to object to their admission or use. No response to this Motion was filed by Counsel for the ERS; therefore the Board will only consider the reports of Dr. Rana submitted into evidence as ERS Exhibit 5.

Background

Mr. Dawson was born in Maryland but moved to Virginia at an early age. He is currently 42 years old. He attended high school in Virginia but did not complete the 12th grade; however, he did obtain a GED in the year that he should have graduated from high school. Mr. Dawson moved back to Maryland at approximately age 19 and was married. He currently has three (3) children, 21, 11 and 6 years old, who are living with their mother. He is currently divorced. Beginning in 1990 he worked various jobs as a stock boy, a baker, and laborer in construction. In October of 2000, Mr. Dawson applied for a position with Baltimore County and was hired as a Laborer. At that time he was not required to take a medical examination. Subsequently, Mr. Dawson was promoted to a Technician I (February 2001), and finally, Technician III.

As a Technician III he was required to operate commercial vehicles and heavy construction equipment for the Bureau of Highways, such as dump trucks, track loaders, belt loaders and front end loaders. In addition, he was required to salt and plow roads during snow emergencies. He was promoted to Technician II effective August 4, 2001.

Mr. Dawson testified that he had obtained his Commercial Driver License ("CDL") in 1990. At that time, he was not required to take a physical examination. In 1992, he had to take a physical in order to renew his license. He stated that he went into the doctor's office and filled in a form and then went in to see the doctor who asked questions, took his blood pressure and then he went into the waiting room after which he was able to leave. Seizure disorder was not checked on the form. He told the doctor that he had butterfly feelings which were considered aura's and was not given "any restriction". He stated that in 1994 he had abused alcohol and woke up in the hospital. He was told that he had a heart attack and had a seizure, but that it was confirmed non-epileptic. He was told to follow up with his own doctor. The doctor who said he

had the heart attack told Mr. Dawson that he could not drive for three (3) months. He was never told not to drive by a medical professional after that.

The records submitted by the Appellant (Appellant Exhibit 12) indicated that Dawson was admitted to Johns Hopkins Bayview Medical Center on September 11, 1994. He was discharged on September 13, 1994. The record indicates that Mr. Dawson had seizures from age 5 through 15. He was treated with Dilantin and Tegretol at Johns Hopkins Hospital. He also had a history of Ethanol abuse on weekends. He was admitted to the hospital ER due to a witnessed seizure. He remembered he was in a grocery store and then recalled being in an ambulance on his way to the hospital. His wife had stated that lately he was having spells for the last two (2) to three (3) months. He had no loss of consciousness and no generalized tonic-clonic activity. At his discharge he was prescribed 300 mg of Dilantin, and advised not to drive for three (3) months.

On March 30, 2000, Mr. Dawson was required to take a physical examination to meet the requirement of the Department of Transportation (DOT) in order to drive heavy equipment for Baltimore County. The examination was given by Concentra Medical Center and the physical examination form indicates that Mr. Dawson had no seizures, fits, convulsions, or fainting. The physical was submitted to the Motor Vehicle Administration of the State of Maryland and he was granted his CDL license (ERS Exhibit 2).

In November of 2000, Mr. Dawson reported to Concentra Medical Center complaining of an injury to his knee when he stepped off a vehicle and stepped into a hidden hole. The form that was filled out for Concentra had several questions concerning his prior medical history. (ERS Exhibit 3) The first question stated :

"Have you had any previous major medical problems? He answered, "No".

Have you been hospitalized? He answered, "No".

Have you had an injury that required you to see a physician? He answered, "No".

Have you had seizures? He answered, "No".

On the notes attached to that form, the following statement was made:

"PMH: Negative. Patient denies any prior injury to his knee. He is healthy, takes no medications, DENIES ALLERGIES."

In February 2003, Mr. Dawson again had to take a physical at Concentra Medical for the Motor Vehicle Administration (ERS Exhibit 4). That form asked for a medical history and had squares to check 'yes' or 'no'. One question asked: "Seizures, epilepsy – if yes list medications". Mr. Dawson checked "no" to that question and did not list any medications.

Mr. Dawson testified that he saw doctors regularly and that he was told he was having "auras". He stated he was instructed to take his medication and do a blood test periodically. He said that from 2002 to the time of his retirement, he had no automobile accidents and that the 'auras' were never an issue until 2009, when his crew chief looked at him and said, you are acting strange. He was required to take a drug test and was sent to the doctor, who would not approve him for driving from that point on. The doctor told him that he could not drive again and a form was given to him to give to his Crew Chief.

On June 23, 2009, he received a letter from the County indicating that because he was no longer eligible to drive and hold a Department of Transportation physical card, he did not meet the requirements of the job and was given four (4) options. These were as follows:

- (1) apply for and be granted retirement;
- (2) apply for and request for a leave of absence, approved under the FMLA, or otherwise and/or use any accrued vacation;
- (3) request and be granted a transfer to a position for which you are qualified; and

(4) resign from your position.

On July 9, 2009, he received a similar letter from the County indicating that four (4) options that were available to him and was told that failure to exercise one of the options by August 14, 2009 would be cause for charges of dismissal to be filed.

Mr. Dawson testified that he went to the County Human Relations Department to see if there was another job available for him but there was nothing for which he was qualified. On July 8, 2009, Mr. Dawson applied for disability retirement and on August 18, 2009, he submitted his Letter of Resignation to the Baltimore County Highway Department.

On April 12, 2011 the Board of Trustees of the ERS met to deliberate on various retirement applications. The Administrative Officer, Fred Homan was present at that meeting and he moved to deny Mr. Dawson retirement benefits based on failure to render 'honorable and faithful' service. Mr. Homan stated that the Members of the Board had reviewed the documents from Concentra Medical Center with respect to Mr. Dawson. They found that he had failed to disclose the fact that he was on medication during those medical examinations. He knew he was on medication and failed to disclose it thereby, as a heavy equipment driver, putting himself and others in possible danger if he had a seizure.

Decision

This is not an easy decision for this Board to determine. The law does not provide a definition of 'honorable and faithful' service. Each case must be taken on its own set of facts, circumstances and merits. Mr. Dawson claims that he was never told that he had epileptic seizures. He contends that all he felt were "auras", which were sensations of rather pleasant feelings and sometimes difficulty in catching his breath. Mr. Dawson was treated at the University of Maryland Medial System by Dr. Alan Krumholz in October 2009. The form filled

out at University of Maryland Hospital indicates that Dawson began having symptoms as a child in 1970. The first symptoms were staring. In response to the question of what year were you given a diagnosis of this disorder? The reply was 1970. (See ERS Exhibits 6 and 7)

A Memorandum from Dr. Todd L. Samuels of the Taylor Medical Group in Towson, Maryland indicates that Mr. Dawson was first treated by the Taylor Medical Group in 2002. (Appellant Exhibit 12) The Memo states:

"He has a history of partial complex seizures since childhood. He has frequent episodes of feeling like he is on a roller coaster. He then has brief episodes of decreased awareness. The spells always occur by warning. He did have a more severe seizure one week ago, at 12:20 a.m., he was lying in bed. His son found him lying on the bed whistling and shaking his leg. He then had a generalized tonic clonic seizure. After the seizure he was pacing the floor and took his clothes off. He is amnesic for the entire episode. He has no changes in his medications. He takes Lamictal 300 mg in the morning and 200 mg at night and Tegretol-XR 200 mg in the morning and 300 mg at night. ...

I have started the patient on Carbatrol 300 mg bid. He will discontinue the Tegretol-XR. He will continue on the current does of Lamictal 300 mg in the morning and 200 mg at night. EEG and cerebral MRI have been ordered. I would like to see him in 1 month for follow up. We did discuss driving and he is aware to pull over if he ever has a seizure aura. He never had a seizure without an aura."

This Memorandum was dated March 15, 2007. (See ERS Exhibit 7)

On March 30, 2000, Mr. Dawson took a physical examination for the Motor Vehicle Administration in order to obtain his Commercial Driver's License. The form inquired as to whether or not he had been subject to seizures, fits, convulsions or fainting. Mr. Dawson stated that he had not been subject to any of those conditions. (ERS Exhibit 2)

On November 14, 2000, Mr. Dawson was treated at Concentra Medical Center for an alleged injury to his knee after stepping off a truck and going into a concealed hole in the ground. The form which was filled out by Concentra Medical Center requested medical history. The question of whether he had previous major medical problems, Dawson answered - no. The second questions as to whether he had ever been hospitalized, Dawson answered - no. A third question asked if he had any injury that required him to see a physician, Dawson answered - no. In the column that asked about various physical problems with respect to the question that said: "Have you had seizures"?, Dawson answered - no. He also denied that he was taking any medications at that time. In fact, Mr. Dawson had been hospitalized at Johns Hopkins Bayview Medical Center in 1994 and was on Dilantin. A medical note from Kaiser Permanente dated 12/17/2002 indicates Mr. Dawson's history of seizure disorders and that he needed a referral to a neurologist. It indicated that he was currently taking Tegretol and Lamictal. (ERS Exhibit 5)

It is difficult for this Board to believe that Mr. Dawson was never aware of the fact that he was having epileptic seizures. The definition of aura as established by Stedman's Medical Dictionary, 28th Edition is as follows:

"1. Epileptic ictal phenomenon perceived only by the patient..."

In addition, the definition of aura as established by Merriam-Webster Medical Dictionary, is as follows:

"a subjective sensation (as of voices or colored lights or crawling and numbness) experienced before an attack of some nervous disorders (as epilepsy or migraine)"

Had he indicated on any of the forms that he was taking Dilantin or any of the other medications which had been prescribed for him, the doctor would have immediately determined that he was subject to epileptic seizures. At that point it would have been up to the County to determine whether he was able to work with proper medication or be transferred to another position where he would not put people on jeopardy driving heavy equipment.

By failing to properly fill out the forms and in effect, misleading the doctors and the County as to his physical condition, Mr. Dawson placed not only himself, but his fellow workers and possibly County citizens in jeopardy.

The Board is tasked with determining whether or not the Members of the Employees Retirement System were correct in making their determination that Mr. Dawson did not render honorable and faithful service to the County. In reviewing the testimony and evidence presented in the hearing and the arguments set forth in the briefs, this Board finds that the ERS was correct in denying disability retirement to Mr. Dawson on the basis of failure to render good and faithful service.

The ERS can not allow employees to falsify records which would ultimately have the possibility of placing County employees and County citizens in danger.

Therefore the Board will affirm the decision of the ERS.

ORDER

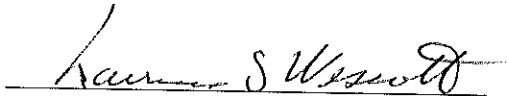
THEREFORE, IT IS, this 22nd day of February, 2012, by the Board of Appeals of Baltimore County, hereby

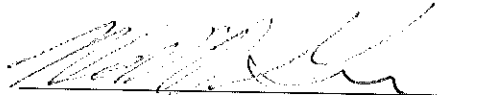
ORDERED that the request of Charles Dawson for accidental disability benefits under Section 5-1-223 of the *Baltimore County Code* be and is hereby DENIED; for failure to render honorable and faithful service, and it is further

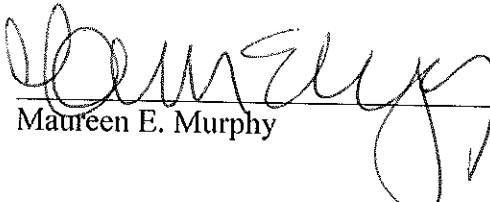
ORDERED that the April 12, 2011 decision of the Board of Trustees, Employees Retirement System, in which Mr. Dawson was denied disability service retirement benefits, is hereby AFFIRMED.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence S. Wescott, Panel Chairman


Wendell H. Grier


Maureen E. Murphy