STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: January 2, 2014)

EDWARD J. YOUNG	:	
	:	
v.	:	**C.A. No. PC-2012-3573**
	:	
FRANK J. KARPINSKI, in his official capacity as Executive Director of the EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND	:	

DECISION

NUGENT, J. Before the Court is Edward J. Young's (Young or Appellant) appeal from a decision of the Retirement Board (Retirement Board) of the Employees' Retirement System of Rhode Island (ERSRI). The Retirement Board denied Young's application for accidental disability benefits. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts & Travel

Young, a correctional officer employed by the Rhode Island Department of Corrections, filed an application for accidental disability retirement on August 17, 2009. (Retirement Board Record Ex. 3 (hereinafter, R.).) In support of his application, Young claimed to have sustained a lower back injury while working at the Adult Correctional Institute on June 5, 2008. (R. Ex. 9.) On that date, Young slipped on a mat in a bathroom at work and fell backwards, landing heavily on his back and injuring his lower back, shoulder, and neck. Id.

Young's injury was documented by Dr. Louis Moran, Young's treating physician. (R. Ex. 6.) Dr. Moran submitted a Physician's Statement for Disability on behalf of Young stating that Young was no longer able to perform the duties of his particular job, including

standing for long periods and applying physical restraints using upper extremities, due to the injury sustained on June 5, 2008. Id. This conclusion was based partially on the results of an MRI performed on July 9, 2008 by Dr. Michael Deck, which concluded that Young had chronic degenerative disc disease as well as "a small central disc herniation projecting into the spinal canal." Id.

Dr. Michael Werle also submitted a letter to ERSRI supporting Young's application for accidental disability on August 20, 2009. (R. Ex. 5.) Dr. Werle stated that he had been treating Young for two years for "depression and anxiety related to stress in his job as a Correctional Officer." Id. In the six months prior to the letter, Dr. Werle stated that Young "has been having increasing difficulty meeting the demands of his job because of an increase in pain and the medication that Dr. Moran prescribed to control it." Id. Therefore, Dr. Werle concluded that Young "is no longer able to fulfill his duties as a correctional officer" and recommended "that he apply for work related disability retirement." Id.

After submitting his application for accidental disability, Young underwent three independent medical examinations. The first independent medical exam, conducted by Dr. Robert Fortuna, a specialist in orthopedic medicine, took place on October 19, 2009. (R. Ex. 10.) Dr. Fortuna reviewed Young's past medical history dating to 1990 and performed a physical examination of Young. Id. Dr. Fortuna concluded that Young had a "herniated lumbar disc" as well as "significant degenerative disc disease." Id. In his report, Dr. Fortuna concluded that "the patient appears to have sustained an aggravation of preexisting injury," and therefore "the patient is disabled from his work activity as a correctional officer." Id. However, Dr. Fortuna was "unable to state to a reasonable degree of medical certainty that the accident of 6/5/08 is the cause of the patient's present symptoms." Id.

Dr. William Garrahan, also a specialist in orthopedic medicine, examined Young on December 16, 2009. (R. Ex. 11.) Dr. Garrahan also performed a physical examination and discussed Young's medical history dating back to 1988. Id. Based upon this review and an analysis of MRI studies provided to him, Dr. Garrahan opined that Young was "disabled from working as a correctional officer" and that "[t]he primary cause of the disability is the work-related injury of June 5, 2008." Id. Finally, Dr. Kenneth Lambert, a third orthopedic specialist, examined Young on December 24, 2009. (R. Ex. 12.) His evaluation was based on "subjective complaints, history given by the claimant, medical examination and medical records and tests as provided." Id. Dr. Lambert concluded that "to a degree of medical certainty . . . [even if Young] improved, he would not be returned to a level that would allow him to return to his previous job type." Id.

All three independent medical examiners submitted a cover sheet entitled "ERSRI Independent Medical Examination." On that sheet, each doctor was required to check "Yes" or "No" as to two statements summarizing their opinions. All three doctors checked "Yes" next to the box stating, "Based on my medical examination, it is my opinion to a reasonable degree of medical certainty that the applicant is physically or mentally incapacitated such that he/she cannot perform the duties of his/her position." (R. Exs. 10, 11, 12.) Dr. Garrahan and Dr. Lambert checked "Yes" next to the box stating, "It is my opinion to a reasonable degree of medical certainty that the applicant's incapacity is the natural and proximate result of an on the job injury and not the result of age or length of service." (R. Exs. 11, 12.) Dr. Fortuna checked "No" next to that box. (R. Ex. 10.)

The ERSRI's Disability Subcommittee (Disability Subcommittee) met and reviewed Young's application and the relevant medical records on December 3, 2010. At that meeting,

they recommended the denial of Young's application. (R. Ex. 32.) The Disability Subcommittee concluded that Young had not adequately demonstrated that he was disabled "as the natural and proximate result of a specific and identifiable accident while in the performance of a duty, as is required by R.I. Gen. Laws § 36-10-14." Id. The Disability Subcommittee referenced Young's "long history of back related problems and traumas" and noted that "any symptoms involving Young's back are more likely the result of age or length of service, as opposed to the natural and proximate result of any specific accident." Id. The Disability Subcommittee was persuaded by "the medical opinion of Dr. Fortuna, who . . . was unable to conclude that the alleged accident of June 5, 2008 is the cause of Young's present symptoms." Id. The Retirement Board affirmed the denial on December 8, 2010.

Young appealed the Retirement Board's decision, and the Disability Subcommittee held a Reconsideration Hearing on September 9, 2011, where Young appeared with legal counsel. (R. Ex. 41.) The Disability Subcommittee heard testimony and argument and voted again to recommend denial of Young's application on substantially the same grounds as its December 3, 2010 decision. Id. The Retirement Board affirmed the denial on September 14, 2011. (R. Ex. 42.) Young sought a direct appeal of the Retirement Board's affirmation on October 24, 2011.

On May 9, 2012, Young appeared with new counsel before the full Retirement Board. (R. Ex. 55.) After hearing testimony and argument, Retirement Board Member Michael Boyce (Boyce) moved to overturn the Disability Subcommittee's denial and award Young full accidental disability benefits. Id. The motion failed by a tie vote, with six Ayes and six Nays. Id. On June 13, 2012, the Retirement Board reconvened and voted to deny Boyce's motion and affirm the Disability Subcommittee's recommendation. (R. Ex. 59.) On June 14, 2012, the

Retirement Board notified Young by certified mail of the vote, and Young filed a timely administrative appeal on July 11, 2012 pursuant to § 42-35-15.

II

Standard of Review

This Court's appellate review of the decisions of administrative agencies such as ERSRI is governed by the Rhode Island Administrative Procedures Act, as set forth in §§ 42-35-1 et seq. See Rossi v. Emps.' Ret. Sys. of R.I., 895 A.2d 106, 109 (R.I. 2006). The relevant standard of review as set forth in § 42-35-15(g), provides as follows:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> "(1) In violation of constitutional or statutory provisions;
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> "(2) In excess of the statutory authority of the agency;
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> "(3) Made upon unlawful procedure;
>
> "(4) Affected by other error or law;
>
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

Accordingly, this Court defers to the administrative agency's factual determinations provided that they are supported by legally competent evidence. Arnold v. R.I. Dep't of Labor and Training Bd. of Review, 822 A.2d 164, 167 (R.I. 2003). Legally competent evidence is defined as "'some or any evidence supporting the agency's findings.'" Auto Body Ass'n of R.I.

v. State of R.I. Dep't of Bus. Regulation, 996 A.2d 91, 95 (R.I. 2010) (quoting Envtl. Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)).

ERSRI uses a two-tiered review process in which the Disability Subcommittee reviews applications for ordinary and accidental disability and votes to recommend approval or denial to the Retirement Board. R.I. Admin. Code 29-1-4:9-1 et seq. The Retirement Board then considers the recommendation and votes to either accept or reject it. Id. at 29-1-4:9-9. This two-tiered system has been likened to a funnel. See Envtl. Scientific Corp., 621 A.2d at 207-08. At the first level of review, the Disability Subcommittee sits "as if at the mouth of the funnel" and analyzes all of the evidence, opinions, and issues in order to arrive at a decision. Id. at 207. At the second level of review, the "discharge end" of the funnel, the Retirement Board does not receive the information considered by the hearing officer personally. Id. at 207-08. The Rhode Island Supreme Court has held that the "further away from the mouth of the funnel that an administrative official is when he or she evaluates the adjudicative process, the more deference should be owed to the factfinder." Id. at 208. Any credibility determinations made by the Disability Subcommittee should not be reversed unless they are "clearly wrong." Id. at 206.

III

Analysis

A

Evidence Before ERSRI and Findings of Fact

On appeal, Young challenges the Retirement Board's denial of his application for accidental disability benefits on the grounds that such denial was arbitrary or capricious or characterized by abuse of discretion. Young contends that the evidence in the record clearly established that he met the criteria for accidental disability benefits—that he was incapacitated

from service as a natural and proximate result of a work accident. Furthermore, Young contends that the Retirement Board's conclusion that his back problems were "more likely the result of age or length of service" is clearly erroneous in view of the available medical evidence. In response, the Retirement Board argues that Young is impermissibly asking this Court to substitute its own judgment as to the weight of the evidence on questions of fact. Moreover, the Retirement Board contends that its decision was based on competent evidence and, therefore, is not "clearly erroneous."

Under § 36-10-14, a state employee can apply for an accidental disability pension if the Retirement Board deems that he or she has met certain conditions. In pertinent part, that section provides as follows:

> "(a) Medical examination of an active member for accidental disability and investigation of all statements and certificates by him or her or in his or her behalf in connection therewith shall be made upon the application of the head of the department in which the member is employed or upon application of the member, or of a person acting in his or her behalf, stating that the member is physically or mentally incapacitated for the performance of service as a natural and proximate result of an accident while in the performance of duty, and certify the definite time, place, and conditions of the duty performed by the member resulting in the alleged disability, and that the alleged disability is not the result of willful negligence or misconduct on the part of the member, and is not the result of age or length of service, and that the member should, therefore, be retired.
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> "(b) The application shall be made within five (5) years of the alleged accident from which the injury has resulted in the members present disability and shall be accompanied by an accident report and a physicians report certifying to the disability; provided that if the member was able to return to his or her employment and subsequently reinjures or aggravates the same injury, the application shall be made within the later of five (5) years of the alleged accident or three (3) years of the reinjury or aggravation. The application may also state the member is permanently and totally disabled from any employment.

> "(c) If a medical examination conducted by three (3) physicians engaged by the retirement board and such investigation as the retirement board may desire to make shall show that the member is physically or mentally incapacitated for the performance of service as a natural and proximate result of an accident, while in the performance of duty, and that the disability is not the result of willful negligence or misconduct on the part of the member, and is not the result of age or length of service, and that the member has not attained the age of sixty-five (65), and that the member should be retired, the physicians who conducted the examination shall so certify to the retirement board stating the time, place, and conditions of service performed by the member resulting in the disability and the retirement board may grant the member an accidental disability benefit."

This Court is mindful that if an agency's factual findings are supported in the record by competent evidence, it must uphold those conclusions. See Auto Body Ass'n of R.I., 996 A.2d at 95. Specifically, § 42-35-12 requires that agency decisions "include findings of fact and conclusions of law, separately stated." Rhode Island courts have consistently held that "[t]he requirement that a municipal council's decision be accompanied by sufficient factual findings is especially important when evidentiary conflicts abound." Cullen v. Town Council of Town of Lincoln, 850 A.2d 900, 904 (R.I. 2004). This is because "[i]t is only by making basic findings of fact that a reviewing court is able to determine how such conflicts were resolved." Id.; see also Thorpe v. Zoning Bd. of Review of Town of N. Kingstown, 492 A.2d 1236, 1237 (R.I. 1985). If an administrative agency does not adequately disclose the facts upon which it based its decision, this Court will not "search the record for supporting evidence" or "decide for [itself] what is proper in the circumstances." See Cullen, 850 A.2d at 904. If an agency's findings of fact are insufficient, remand is appropriate to allow the agency to "correct deficiencies in the record and thus afford the litigants a meaningful review." Lemoine v. Dep't of Mental Health, Retardation & Hosps., 113 R.I. 285, 290, 320 A.2d 611, 614 (1974) (affirming Superior Court's remand for the taking of additional evidence).

Pursuant to the statutory guidelines of § 36-10-14, Young submitted to three independent medical examinations conducted by physicians engaged by the Retirement Board. Young also submitted two additional reports from his physician and his psychologist. Two of the three independent physicians, Dr. Garrahan and Dr. Lambert, concluded that Young was disabled as a result of the June 5, 2008 accident. (R. Exs. 11, 12.) Specifically, both doctors opined "to a reasonable degree of medical certainty that the applicant's incapacity is the natural and proximate cause of an on the job injury and not the result of age or length of service." (R. Exs. 11, 12.) Dr. Fortuna was unable to find that the June 5, 2008 accident was "the cause of the patient's present symptoms and findings." (R. Ex. 10.)

Young's physician, Dr. Moran, submitted a statement concluding that the June 5, 2008 accident caused Young's inability to "perform [the] duties of a prison guard." (R. Ex. 6.) Finally, Dr. Werle, Young's psychologist, submitted a letter to the Retirement Board stating that Young was "no longer able to fulfill his duties as a correctional officer" and that he had "recommended that he apply for work related disability retirement." (R. Ex. 5.) Thus, out of a total of five doctors who provided opinions regarding Young's disability, four concluded that he was incapacitated as a direct and proximate result of the accident on June 5, 2008, while at work.

The Disability Subcommittee and the Retirement Board credited the determination of Dr. Fortuna, the only doctor unable to conclude that the June 5, 2008 accident was "the cause of the patient's present symptoms and findings," in spite of the conflicting opinions. (R. Exs. 10, 60.) Dr. Fortuna concluded that Young "appears to have sustained an aggravation of preexisting injury" but did not identify which injury he believed Young to have aggravated. (R. Ex. 10.) He referenced two prior events: first, "a laminectomy performed at the Lahey Clinic in 1990"; and second, a "gunshot that [Young] sustained to his left thigh in the past." Id. A laminectomy is an

operation to relieve back pain caused by a herniated disc. Young was assaulted in 1988 by two inmates, resulting in injuries including a herniated disc in his lower back. (R. Ex. 12.) He had the laminectomy in 1990 and returned to work within the year. Id. Dr. Fortuna did not mention this work-related injury as the cause of Young's 1990 laminectomy. (See R. Ex. 10.) As noted, he reviewed Young's medical records back to 1990, not 1988 when this herniated disc occurred. Id.

Thus, the Disability Subcommittee and the Retirement Board received conflicting evidence and medical opinions as to whether Young was disabled as a natural and proximate result of an on-the-job injury. The Retirement Board's ultimate conclusion that Young was not disabled as a result of the June 5, 2008 accident was based on Dr. Fortuna's opinion, as well as the Disability Subcommittee's own review of Young's medical history. (R. Ex. 60.) Specifically, the Disability Subcommittee concluded that:

> "Young has had a long history of back related problems and traumas, dating at least to 1988, preceding the allegedly disabling accident on June 5, 2008. The medical records provided show that he has suffered from chronic lower back pain and degenerative changes, both of which existed prior to June of 2008. Based upon the records provided, the Subcommittee believes that any symptoms involving Young's back are more likely the result of age or length of service, rather than the natural and proximate result of any specific accident. Additionally, the Subcommittee is still persuaded by the medical opinion of Dr. Fortuna . . . Dr. Fortuna's conclusions are bolstered by other medical records indicating that in August of 2007, almost one year prior to the alleged accident, Young was suffering from chronic lower back pain." Id.

The Disability Subcommittee noted that it was "persuaded by the medical opinion of Dr. Fortuna, who noted that the 'patient has a herniated lumbar disc on the left side at L4-5 . . .' and 'significant degenerative disc disease on that level which is consistent with his low back pain.'" (R. Ex. 60.) However, the Disability Subcommittee did not explain why it chose to discredit the

opinions of Drs. Garrahan, Lambert, Moran, and Werle and did not even mention any of their conclusions in its findings of fact. In fact, the Disability Subcommittee cited both Dr. Garrahan and Dr. Lambert's analysis of Young's prior back surgery and back pain without addressing whether the injury of June 2008 aggravated a preexisting medical condition caused by the herniated disc and laminectomy in 1988 and 1990, respectively. (Exs. 11, 12, 60.) In addition, the Disability Subcommittee did not present any factual basis for rejecting the conclusions of two of the three independent medical examiners whose opinions were presumably unbiased. See LaFazia v. Conn. Seafood Producers, Inc., 538 A.2d 670, 671-72 (R.I. 1988) ("[I]t would thwart the purpose of appointing an impartial examiner if the parties were allowed to furnish information of their own choosing to the physician."). A finding of fact regarding why Dr. Fortuna's opinion was credited was especially crucial in the Disability Subcommittee's recommendation, in light of the two other conflicting medical opinions provided. See Cullen, 850 A.2d 904 (noting that a reviewing court must be able to look to findings of fact to determine how evidentiary conflicts were resolved).

This Court finds that these factual determinations, in light of the record as a whole, are not "competent evidence" sufficient to support the Retirement Board's conclusion that the June 5, 2008 accident had not caused Young's disability. See Nat'l Labor Relations Bd. v. Crafts Precision Indus., Inc., 16 F.3d 24, 27 (1st Cir. 1994) ("[A] reviewing court is not barred from setting aside a Board decision when it cannot conscientiously find that the evidence supporting the decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's view."). This Court cannot conduct a meaningful review of the Retirement Board's adopted findings without adequate findings of fact, and, therefore, remands this case to the Retirement Board for proceedings consistent with this

opinion, including adequate findings of fact and conclusions of law in accordance with § 42-35-12. See Bernuth v. Zoning Bd. of Review of Town of New Shoreham, 770 A.2d 396, 401 (R.I. 2001) (holding that the Superior Court should have remanded an administrative agency appeal when the findings constituted an incomplete record with inadequate factual findings); see also Buffonge v. Prudential Ins. Co. of Am., 426 F.3d 20, 30-32 (1st Cir. 2005) (remanding case to administrator for a more thorough inquiry into appellant's denial of long-term disability benefits); Rocha v. State, 705 A.2d 965, 967-69 (R.I. 1998) (affirming trial court's remand of appellant's denial of workers' compensation benefits when medical testimony in support of benefits was not disputed).

B

Statutory Construction

A secondary issue in this case is the Retirement Board's incorrect interpretation of § 36-10-14 as requiring that Young prove that the June 5, 2008 accident was the sole cause of his present disability. The Rhode Island Supreme Court has held that a member can qualify for accidental disability benefits even if the member's disability was caused by multiple, work-related accidents.[1] Pierce v. Providence Ret. Bd., 15 A.3d 957, 968 (R.I. 2011). In Pierce, the Court held that "'an accident' must be read to include multiple accidents." Id.; accord Rivera v. Emps.' Ret. Sys. of R.I., C.A. No. PC-08-4409 (R.I. Super. Dec. 13, 2013) (applying the holding

[1] Although Pierce did not specifically address § 36-10-14, the statute at issue in the present case, this Court notes that the relevant portion of the ordinance and the statute, respectively, are identical. Sec. 17-189 of the Providence Code of Ordinances, at issue in Pierce, states that the right to accidental disability benefits may arise if a "member is physically or mentally incapacitated for the performance of service as a natural and proximate result of an accident, while in the performance of a duty." Sec. 36-10-14, at issue here, states that the right to accidental disability benefits arises if a "member is physically or mentally incapacitated for the performance of service as a natural and proximate result of an accident, while in the performance of duty."

in Pierce to an ERSRI case involving accidental disability benefits pursuant to another analogous statute, G.L. 1956 § 45-21.2-9).

The Disability Subcommittee premised its recommendation to deny Young's accidental disability benefits on Dr. Fortuna's finding that the June 5, 2008 accident was not "the cause of the patient's present symptoms." (R. Exs. 10, 60.) However, § 36-10-14 requires a finding that "the member is physically or mentally incapacitated for the performance of service as a natural and proximate result of an accident." The legal definition of the word "proximate" as defined in the context of accidental disability benefits "requires a factual finding that the harm would not have occurred but for the accident and that the harm was a natural and probable consequence of the accident." Pierce, 15 A.3d at 964 (citations omitted). Moreover, "'sole cause,' meaning one and one only, and 'proximate cause' are not synonyms." Id. at 965.

Neither Dr. Fortuna nor the Disability Subcommittee addressed the possibility that the June 5, 2008 injury aggravated a preexisting medical condition caused by the on-the-job herniated disc and resulting laminectomy in 1988 and 1990, respectively. If the June 5, 2008 injury aggravated the preexisting work-related injury and medical condition, then arguably Young was disabled as a natural and proximate result of an on-the-job injury and not age or length of service. Dr. Fortuna, in stating that the June 5, 2008 accident was not "the cause" of Young's inability to work, implicitly concluded that the statute required a singular accident to qualify for benefits, and the Disability Subcommittee implicitly adopted this incorrect—or, at the very least, incomplete—conclusion.

As stated above, the Disability Subcommittee noted that it also relied on its own review of Young's medical records in its decision. (R. Ex. 60.) The Disability Subcommittee specifically referenced an MRI from 2001 indicating "lower lumbar degenerative changes" and a

medical record from August 2007 referencing "chronic LBP" (presumably "lower back pain"). Id. The Disability Subcommittee found these medical records "significant" and indicative of a conclusion that Young's back pain was "more likely the result of age or length of service, rather than the natural and proximate result of any specific accident." Id.

Beyond merely referencing a handful of medical records and specific statements made by physicians, the Disability Subcommittee did not explain why it was persuaded that Young's back pain resulted from "age or length of service" and not a workplace accident. The Disability Subcommittee based its conclusion that Young suffered from "chronic lower back pain" almost exclusively on a singular reference from one doctor visit in August of 2007. (R. Ex. 60.) The Disability Subcommittee, however, did not address the fact that Young's "long history of back related problems and traumas" began with a work-related incident in 1988. See id. The Disability Subcommittee did not address the possibility that any evidence of back pain prior to 2008 could be attributed to Young's prior work-related injury and, thus, not disqualify him from accidental disability benefits. See Pierce, 15 A.3d. at 968 (holding that an applicant may qualify for accidental disability benefits if he or she is disabled as a result of multiple work-related accidents).

This Court finds that the Retirement Board's denial of Young's application for accidental disability benefits on the grounds that one specific incident did not cause his disability was affected by error of law. See § 42-35-15(f); Pierce, 15 A.3d at 967-68. On remand, the Retirement Board must consider whether Young's disability was the natural and proximate result of multiple workplace injuries, including the accidents on June 5, 2008 and in 1988 when he was assaulted by two inmates resulting in a herniated disc in his lower back, among other injuries.

IV

Conclusion

After review of the entire record, this Court finds that the decision to deny Young's application for accidental disability benefits was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. In addition, the Retirement Board's denial was affected by error of law in requiring Young to identify one singular accident causing his disability. Substantial rights of the Appellant have been prejudiced. Accordingly, this matter is remanded for findings of fact and conclusions of law consistent with this Decision. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Edward J. Young v. Frank J. Karpinski**
CASE NO:	**PC-2012-3573**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**January 2, 2014**
JUSTICE/MAGISTRATE:	**Nugent, J.**
ATTORNEYS:	
For Plaintiff:	**Mark P. Gagliardi, Esq.**
For Defendant:	**Michael P. Robinson, Esq.** **John H. McCann, Esq.**