

COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD

RALPH J. NASUTI

Appellant

v.

SAUGUS RETIREMENT BOARD

Appellee

No. CR-93-491

DECISION

September 12, 1995

The appeal of Ralph J. Nasuti from a decision of the Saugus Retirement Board denying the Saugus Police Chief's application for involuntary accidental disability retirement benefits was heard by the Division of Administrative Law Appeals.

The DECISION of the Administrative Magistrate is incorporated herein by reference and its Findings of Fact 1-10 are adopted by this Board as our own.

Relying on recent decisions promulgated by this Board, the Magistrate dismissed this case for lack of jurisdiction. The Appellant has filed objections to the dismissal. In addition, the Division of Administrative Law Appeals, by letter, has also requested that we reconsider our position with respect to the jurisdictional issues in cases of the nature herein. We have

agreed to do so.

The facts in this case indicate that after the Police Chief's filing of the involuntary application for accidental disability retirement benefits, the Appellant fully cooperated in all respects with the processing of the application. Moreover, after the denial of the application by the Appellee, it was the Appellant who filed the appeal to this Board (likely because of the language contained in the notice of denial provided by the Appellee - see exhibit 2). We agree that, against this background, the Appellant's actions have effectively transformed the application from that of an involuntary one to a voluntary one.

Accordingly, this matter is remanded to the Division of Administrative Law Appeals for a hearing on the merits.

COMMISSION OF PUBLIC HEALTH
By:

Joseph L. Cohen, M.D.

Joann E. Flaminio
Governor's Appointee

Anthony E. Penski
Assistant Attorney General
Chairman