

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NUMBER 2010 CA 1875**

**BOBBY J. LEE**

**VERSUS**

**EMPLOYEES' RETIREMENT SYSTEM OF CITY OF BATON  
ROUGE, PARISH OF EAST BATON ROUGE, & THE CITY OF  
BATON ROUGE**

**Judgment Rendered: June 10, 2011**

**Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge, Louisiana  
Docket Number C551147**

**Honorable Wilson Fields, Judge Presiding**

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**Daniel L. Avant  
Floyd J. Falcon, Jr.  
Baton Rouge, LA**

**Counsel for Plaintiff/Appellant,  
Bobby J. Lee**

**Denise Nelson Akers  
Baton Rouge, LA**

**Counsel for Defendants/Appellees,  
Employees' Retirement System of  
The City of Baton Rouge and  
Parish of East Baton Rouge**

**Dawn N. Guillot  
Baton Rouge, LA**

**Counsel for Defendant/Appellee,  
City of Baton Rouge**

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**BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.**

*McDonald, J. concurs and assigns reasons.*

**WHIPPLE, J.**

Plaintiff, Bobby J. Lee, sought judicial review of a decision of the Retirement Board of Trustees of the Employees' Retirement System of the City of Baton Rouge and Parish of East Baton Rouge ("the Retirement Board"), in which the Retirement Board concluded that Lee was ineligible for disability retirement benefits. From the district court judgment affirming the Retirement Board's decision, plaintiff appeals. For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

Plaintiff was hired by the City of Baton Rouge on December 2, 1996, as an EMT paramedic assigned to the Department of Emergency Medical Services ("EMS"), and he later was promoted to the position of EMS unit commander. On September 21, 2004, plaintiff injured his back during the performance of his duties as an EMS unit commander. He subsequently underwent a laminectomy and satellite disc placement at L5-S1 on June 22, 2006. Thereafter, his treating physician certified that plaintiff was physically incapable of performing the regular duties of an EMS unit commander. Accordingly, on October 12, 2006, plaintiff applied to the Employees' Retirement System of the City of Baton Rouge and Parish of East Baton Rouge ("Employees' Retirement System") for disability retirement benefits. However, the City of Baton Rouge then offered him a position as an emergency communications training officer, at the same pay level. Nonetheless, plaintiff declined the job offer, believing that he was not qualified to perform the job. Finding that plaintiff had been offered a job at the same level of pay for which he was qualified, the Employees' Retirement System determined that plaintiff was not eligible for disability retirement benefits.

On January 12, 2007, plaintiff instituted this suit, seeking review of the decision of the Employees' Retirement System that he was not eligible for disability retirement benefits. Thereafter, on joint motion of the parties, the district court remanded the matter to the Retirement Board to conduct an evidentiary hearing on plaintiff's eligibility for retirement benefits. The Retirement Board conducted a hearing on May 21 and June 25, 2009, at the conclusion of which it affirmed the determination of the Employees' Retirement System that plaintiff was not eligible for disability retirement benefits.

On subsequent review of the Retirement Board's decision by the district court below, the district court concluded that the Retirement Board had not acted arbitrarily or capriciously in reaching its decision. Thus, the district court rendered judgment upholding the Retirement Board's decision to reject plaintiff's application for disability benefits.

From this judgment, plaintiff appeals, contending that the district court erred in: (1) failing to rule that the decision of the Retirement Board was arbitrary, capricious, and characterized by an abuse of discretion; (2) failing to conclude that the record established that Lee was neither qualified nor capable of performing the normal duties of the position of emergency communications training officer; (3) failing to conclude that the decision of the Retirement Board was erroneous, in that plaintiff's prior experience as an EMS unit commander is not equivalent to the skills necessary to function as an emergency communications training officer; and (4) failing to enumerate factual findings in support of its decision.

### **DISCUSSION**

Judicial review of administrative decisions is governed by LSA-R.S. 49:964, which provides, in pertinent part, as follows:

G. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (6) Not supported or sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

When reviewing an administrative final decision, the district court functions as an appellate court. Wild v. State, Department of Health and Hospitals, 2008-1056 (La. App. 1<sup>st</sup> Cir. 12/23/08), 7 So. 3d 1, 4. An aggrieved party may obtain a review of any final judgment of the district court by appeal to the appropriate court of appeal. LSA-R.S. 49:965. On review of the district court's judgment, no deference is owed by the court of appeal to the factual findings or legal conclusions of the district court, just as no deference is owed by the Louisiana Supreme Court to factual findings or legal conclusions of the court of appeal. Doc's Clinic, APMC v. State, Department of Health and Hospitals, 2007-0480 (La. App. 1<sup>st</sup> Cir. 11/2/07), 984 So. 2d 711, 718-719, writ denied, 2007-2302 (La. 2/15/08), 974 So. 2d 665. Consequently, this court will conduct its own independent review of

the record and apply the standards of review set forth in LSA-R.S. 49:964(G).

In its determination as to plaintiff's eligibility for disability retirement benefits, the Retirement Board's decision was governed by City of Baton Rouge/Parish of East Baton Rouge Ordinance No. 1:470, which provides, in pertinent part, as follows:

Sec. 1:470 Disabled employees.

(a) Subject to the provisions of this section, employees who become disabled shall be entitled to disability retirement benefits in accordance with the provisions of this Code governing the employees' retirement system of the city-parish.

(b) If an employee becomes physically or mentally incapable of performing his normal duties, but is **qualified and capable** of performing the normal duties of some other employment position within the city-parish government under the existing civil services rules, which position is compensated at the same or a higher rate of remuneration, and for which position a vacancy exists, he shall be transferred to this position. This transfer shall be in lieu of the receipt of disability retirement benefits from the retirement system. If the employee refuses to accept such a transfer, he shall be ineligible to receive disability retirement benefits from the retirement system.

(Emphasis added).

As set forth above, after plaintiff became disabled from his duties as an EMS unit commander, the City of Baton Rouge offered plaintiff the position of emergency communications training officer at the same rate of pay. However, plaintiff refused to take the position, arguing that he was not qualified to perform that job. Thus, the issues presented to the Retirement Board and the district court below were whether plaintiff was "qualified and capable" of performing the normal duties of an emergency communications training officer and, thus, whether he became ineligible to receive disability retirement benefits based on his refusal to accept that position.

According to the job description for this position, an emergency communications training officer “performs responsible work in the operation of all telecommunications equipment in the 911 Emergency Communications Center and in the instruction and training of employees in the operation of the equipment,” including operating, and training employees in the operation of, the Computer Aided Dispatch System (“the CAD system”). Some of the essential work tasks of the position involve monitoring and receiving calls on multiple radio frequencies, determining the nature of the required assistance, and dispatching required units according to standard operating procedures. These tasks further require the emergency communications training officer to operate the audio telecommunications and computer equipment with a high degree of accuracy and to maintain applicable logs and forms. Additional work tasks include planning and conducting training and refresher programs for employees on the operation of all telecommunication equipment in the 911 Emergency Communication Center and preparing performance reports to evaluate employees’ performances.

As such, certain knowledge, skills, and abilities are needed to perform the job of emergency communications training officer, which involve: knowledge of the rules and regulations of the Federal Communications Commission, the City of Baton Rouge/Parish of East Baton Rouge, and the Department; knowledge of the CAD system as related to public safety and 911 systems; knowledge of the name and locations of the streets and principal buildings of the Parish and surrounding areas; knowledge of primary response responsibilities of all area emergency service provider agencies; knowledge of the principles involved in the operation of radio,

telephone, and related communications equipment; and the ability to train personnel in a manner conducive to full performance and high morale.

The minimum requirements for the job include EMT certifications, a high school diploma (or equivalent), and six months in the operation and training of employees on the operation of the CAD system in a 911 center. However, the job description further provides that “[a]ny equivalent combination of education and experience” can be substituted for those job requirements.

Plaintiff testified at the hearing before the Retirement Board as to why he believed he was not qualified for the position of emergency communications officer. Specifically, Lee testified that in his approximate ten years of service with EMS, he had never worked in the communications division and was never trained in the operation of the telecommunications equipment or the CAD system, other than the handheld radio he carried in the emergency vehicle. According to Lee, his only exposure to the CAD system was during a one-day orientation when he was first hired in 1996, when he was shown the communications system. Lee further contended that at the time he applied for disability retirement benefits in 2006, he was not computer literate, and his typing skills were limited to hunting and pecking. Thus, Lee reasoned that he would not be capable of providing instruction and training to other employees in the operation of telecommunications equipment given that he did not know how to operate the equipment himself.

Lee also offered the testimony of Charles Saucier, an emergency communications training officer with EMS. Saucier opined that the CAD system orientation session for new hires who would be working in the field (such as plaintiff, when hired) did not give the individual training experience in the operation of the CAD system. He further testified that an entry-level

communications officer goes through a training process that takes approximately three to four months. Saucier further testified that, in his opinion, it would take a minimum of two years for an individual with no communications experience to acquire the skills and competency to become a full-fledged communications officer qualified to move up to an emergency communications training officer position.<sup>1</sup>

Moreover, Saucier testified that as an emergency communications training officer, in 2006, he was routinely required to “step up” to the position of communications shift supervisor if one of the supervisors was not available. Thus, Saucier was of the opinion that someone with no skills as an emergency communications training officer would not be capable of serving as an EMS communications shift supervisor.

Similarly, Paula Canella, who is also an emergency communications training officer, testified that an integral understanding of the operation and function of the SCA system is essential to serving in that position. While acknowledging that it was not a job requirement at the time plaintiff was offered the position of emergency communications training officer, Canella further testified that an individual in this position needs certain typing skills and that people who “hunt and peck” “can’t cut it.”

Michael McDonald, another employee of the City of Baton Rouge, testified that after fifteen years of working in the field as an EMT, he was injured and no longer able to perform those job duties. While he was offered a lateral transfer to the position of emergency communications training officer at that time, he voluntarily declined the position. Rather, he took a

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<sup>1</sup>However, when later questioned about the fact that the job description for an emergency communications training officer lists as a requirement six months experience with the communications system, rather than two years, Saucier acknowledged that he did not know where he had gotten the two-years-experience requirement to which he had testified. (R. 131-132).



“demotion” and cut in pay to go to the communications division as an emergency communications officer. McDonald explained that the reason for his decision was his “considerable concern” about his ability to perform as an emergency communications training officer when he did not “know the job.” McDonald further testified that after having served in the position of emergency communications officer for sixteen months, he still did not think that he was competent to train other communications officers.

On the other hand, Cheli Roberson, a senior human resources analyst with the City of Baton Rouge, testified that, as part of her duties, she analyzed whether plaintiff was qualified for the position of emergency communications training officer. In doing so, she assessed plaintiff’s education and experience to determine if he met the minimum qualifications for the position. Roberson explained that much of the required knowledge, skills and abilities for both the position of EMT unit commander and emergency communications training officer were similar, and the educational level required for an EMT unit commander was actually higher than that of an emergency communications training officer.

However, because there was some question or concern about the requirement of knowledge of the communications system, Roberson contacted Joe Morris, who at the time was the operations officer in the communications division of EMS, to obtain Morris’s opinion as to whether this skill was a transferable skill or easily learned.<sup>2</sup> According to Roberson, Morris advised that the training or learning curve on the technology would be one to two months at a maximum, but that plaintiff’s paramedic experience and unit commander experience would be very applicable. With

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<sup>2</sup>Indeed, Morris had himself transferred from the operations division in the field to the communications division, where he supervised all the communications officers.

this assessment from Morris, a determination was made that plaintiff met the minimum requirements for the position of emergency communications officer, and the position was offered to plaintiff.

Tommy Loyacono, the chief of operations for EMS, testified that Lee had demonstrated that he was capable of teaching other people in performing his duties as an EMS unit commander, which had required him to train other paramedics. Also, while he acknowledged that he was not familiar with all the specific duties of an emergency communications training officer, Loyacono explained that a number of employees had successfully moved from the operations division to the communications division over the years upon becoming physically unable to perform the work in the field. He stated that while plaintiff would clearly have to learn "the basic skills" of a communications officer, having known plaintiff for as long as he had, Loyacono certainly thought that plaintiff had the mentality to do so.

With regard to the transition from a position in the operations division to a position in the communications division, Ralph Ladnier, the communications district manager for the communications division of EMS, testified that employees with a number of years of experience in the field, such as plaintiff, have a "tremendous" advantage in that they understand the standard procedures for field operations. Ladnier acknowledged that an individual would have to become "fairly accomplished" in the operation of communications and the CAD system before the individual could train others in those areas. However, he could not recall in his twenty years of experience any employee transferring from field operations who could not successfully perform in communications.

Moreover, Pam Porter, the EMS administrator responsible for running the entire department, testified that several employees had successfully

transferred from field operations to communications over the years. Porter observed that plaintiff already had teaching or training experience as a unit commander in the field and further noted that plaintiff, who was enrolled in medical school at the time of the hearing below, was “extremely intelligent” with a strong academic background. Thus, Porter believed that plaintiff would have had no trouble learning the duties of a communications officer. In fact, Porter opined that plaintiff probably could have learned the job “in less than a week.”

Considering the foregoing, it is clear that the conflicting opinions in the testimony as to the experience needed to perform the job of communications training officer and as to plaintiff’s ability to make the transition required the Retirement Board to make certain credibility determinations in reaching its decision. Thus, based on our independent review of the record, while giving “due regard” to any implicit credibility determinations, see LSA-R.S. 49:964(G)(6), we find no error in the district court’s judgment affirming the findings and decision of the Retirement Board. While, as with most jobs, some on-the-job training would clearly have been necessary, the record supports the finding that, given his education, intellect, and experience, plaintiff was qualified and capable of performing the job of emergency communications training officer. The mere fact that additional on-the-job training was required did not render plaintiff incapable of performing the job with the requisite training. Thus, we further find no abuse of discretion in the Retirement Board’s decision and finding that plaintiff was ineligible for disability retirement benefits. LSA-R.S. 49:964(G)(5).

Plaintiff’s assignments of error lack merit.

## **CONCLUSION**

For the above and foregoing reasons, the July 29, 2010 judgment of the district court is affirmed in its entirety. Costs of this appeal are assessed against Bobby Lee.

**AFFIRMED.**

BOBBY J. LEE

STATE OF LOUISIANA

VERSUS

COURT OF APPEAL

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**McDONALD, J. CONCURRING:**

*JMM*  
While I agree with the decision reached by the majority, I feel compelled to address the role of the district court sitting in appellate review. In our review the majority points out that "the district court concluded that the Retirement Board had not acted arbitrarily or capriciously in reaching its decision." However, the district court's judge's oral reasons do not reflect that he reviewed the record. He comments that "[a]fter listening to the oral arguments of all counsel involved, the court finds that the Board did not act arbitrarily and capricious [sic] in assigning Mr. Lee to the position. Therefore, the court will uphold the Board's decision." It is incumbent upon the district court to review the record in making its determination. While the district court need not give reasons for its decision unless specifically requested, if it does, the reasons should be complete in assessing what was considered in making the decision. The record is the only evidence to be considered by the district court; the arguments of counsel are not evidence. In addition to the arguments of counsel, the district court should clearly indicate that the record has been thoroughly reviewed.