

STATE OF INDIANA) SS:

BEFORE THE STATE BOARD OF THE PUBLIC
EMPLOYEES' RETIREMENT FUND FOR THE 1977
POLICE AND FIREFIGHTERS' PENSION AND
DISABILITY FUND

IN THE MATTER OF JOHN W. THOMAS CAUSE NO. [REDACTED]

ADMINISTRATIVE ADJUDICATION

The above referenced matter came on to be heard in accordance with IC 4-22-1-1 by the duly appointed hearing officer, Burton L. Garten, on the 16th day of July, 1986 in the offices of the Public Employees' Retirement Fund, Suite 800 Harrison Building, 143 West Market Street, Indianapolis, Indiana 46204. Respondent, the Public Employees' Retirement Fund, was represented by H. Dudley Miller and the petitioner, John W. Thomas, was represented by Joseph A. Blumberg.

Testimony and exhibits were heard and admitted as evidence.

Burton L. Garten now recommends transfer of the hearing findings of fact and decision to the State Board for its final decision and disposition of said matter.

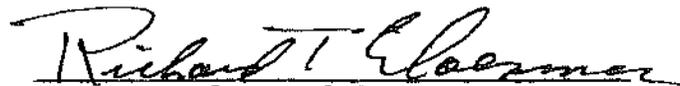
FINDINGS OF FACT AND DECISION AND CONCLUSIONS
OF LAW ARE FOUND IN THE ATTACHED REPORT
OF THE HEARING DATED JULY 16, 1986

ADMINISTRATIVE ORDER

Based on the foregoing, the State Board of the Public Employees' Retirement Fund does hereby deny disability benefits to John W. Thomas under IC 36-8-8-12(b) and IC 36-8-8-13.

All of which is ordered this 20th day of February, 19 87.

Richard T. Doermer, Chairman
Al H. Harding, Jr., Vice Chairman
Myrl W. Deitch, Jr., Trustee
Marie T. Lauck, Trustee
Marjorie Meyer, Trustee


Board of Trustees
Public Employees' Retirement Fund

STATE OF INDIANA
PUBLIC EMPLOYEES' RETIREMENT FUND
143 WEST MARKET STREET, SUITE 800
INDIANAPOLIS, INDIANA 46204

In the matter of receiving additional evidence for the review of the findings of fact and the initial determination of the Public Employees' Retirement Fund on the application for disability benefits from the 1977 Police and Firefighters' Pension and Disability Fund under IC 36-8-8-12 and IC 36-8-8-13 by John W. Thomas

Reason for Action: PERF initial determination letter dated February 27, 1986 denying disability benefits to John W. Thomas from the 1977 Police and Firefighters' Pension and Disability Fund.

Hearing Date: July 16, 1986

Place: Public Employees' Retirement Fund
Basement Conference Room-Harrison Bldg.
143 West Market Street
Indianapolis, IN 46204

FINDING OF FACT AND DETERMINATION

The above matter coming to be heard before Burton L. Garten, duly appointed to conduct administrative hearings, are provided by the Administrative Adjudication Act, Indiana Code 4-22-1.

The Public Employees' Retirement Fund (respondent) was represented by H. Dudley Miller. John W. Thomas (petitioner) was represented by Joseph A. Blumberg.

PETITIONERS' EXHIBITS

Copy of:

1. Form from Walter E. McDonald, M.D., F.A.C.S., to Calumet Township Trustee's office dated February 20, 1986. (1 page)
2. Report of S. Choslovsky, M.D., dated July 12, 1985. (1 page)
3. Report of A Slezas, M.D., dated August 22, 1985. (1 page)
4. Progress notes on John Thomas, dated from June 28, 1985 to May 30, 1986. (3 pages)
5. A letter from B. J. Speroff, Ph. D. [REDACTED] to Murray Stasick, M.D., dated June 6, 1985. (2 pages)

6. A letter from Murray Stasick, M.D. to Mr. Prewitt, East Chicago Fire Department Pension Board, dated June 17, 1985, including one page of test results. (3 pages)
7. Records from St. Mary Medical Center, Gary, Indiana on John Thomas' [REDACTED] in September and October of 1983. (51 pages)
8. Records from St. Mary Medical Center Gary, Indiana on John Thomas' [REDACTED] in October of 1980. (10 pages)
9. Records from St. Mary Medical Center, Gary, Indiana on John Thomas, dated February 11, 1984. (2 pages)
10. The East Chicago Firemen's Pension Board Special Meeting minutes of May 20, 1985. (7 pages)
11. The East Chicago Firemen's Pension Board meeting minutes of November 25, 1985. (3 pages)

RESPONDENT'S EXHIBITS

Copy of:

1. An Application for Disability Benefits signed by John Will Thomas, May 14, 1985.
2. A letter dated January 7, 1986, from Arthur Paul Kebel, M.D., to T. P. Derloshon, Jr., Pension Administrator, PERF. (1 page)
3. A letter dated October 22, 1984 from Solomon J. Ard, East Chicago Fire Chief, to Robert A. Pastrick, Mayor of East Chicago. (1 page)
4. A letter dated October 15, 1984 from Captain John Thomas to Solomon J. Ard, East Chicago Fire Chief. (1 page)
5. A memo dated October 21, 1983 from the [REDACTED] to the East Chicago Fire Department regarding John Thomas. (1 page)
6. A memo dated October 25, 1980 from the Alcoholism Treatment Program to the East Chicago Fire department regarding John Thomas. (1 page)
7. A letter dated February 27, 1986, from T. P. Derloshon, Jr., Pension Administrator, PERF, to the City of East Chicago Fire Pension Fund. (2 pages)
8. A letter dated March 27, 1985 from John Thomas to the local pension board trustee. (1 page)
9. A letter dated March 7, 1986 from John W. Thomas, to T. P. Derloshon. (1 page plus the envelope indicating certified mail)

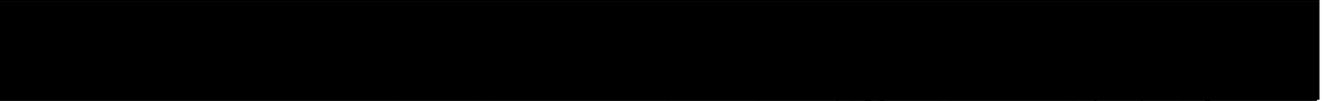
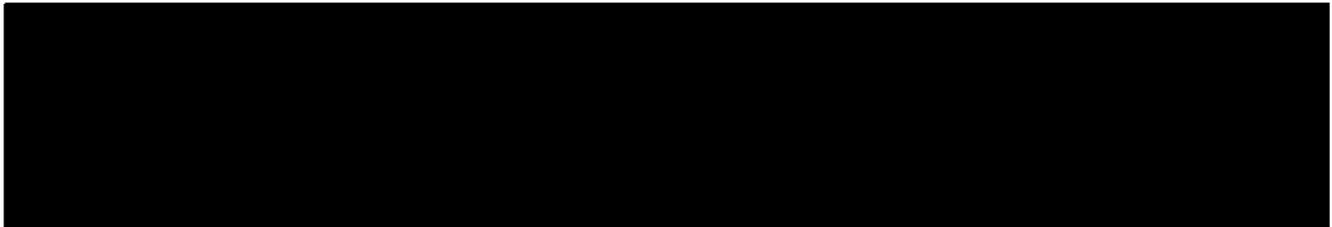
10. The East Chicago Firemen's Pension Fund Statement to Medical Examiner, signed by John W. Thomas, Jr. on March 18, 1961. (3 pages)
11. A letter dated August 25, 1986, from Robert S. Martino, M.D. to Burton Garten, Administrative Law Judge. (2 pages)
12. A letter dated August 28, 1986 from Robert S. Martino, M.D. to Burton Garten, Administrative Law Judge plus attached reports. (4 pages)

FACTS:

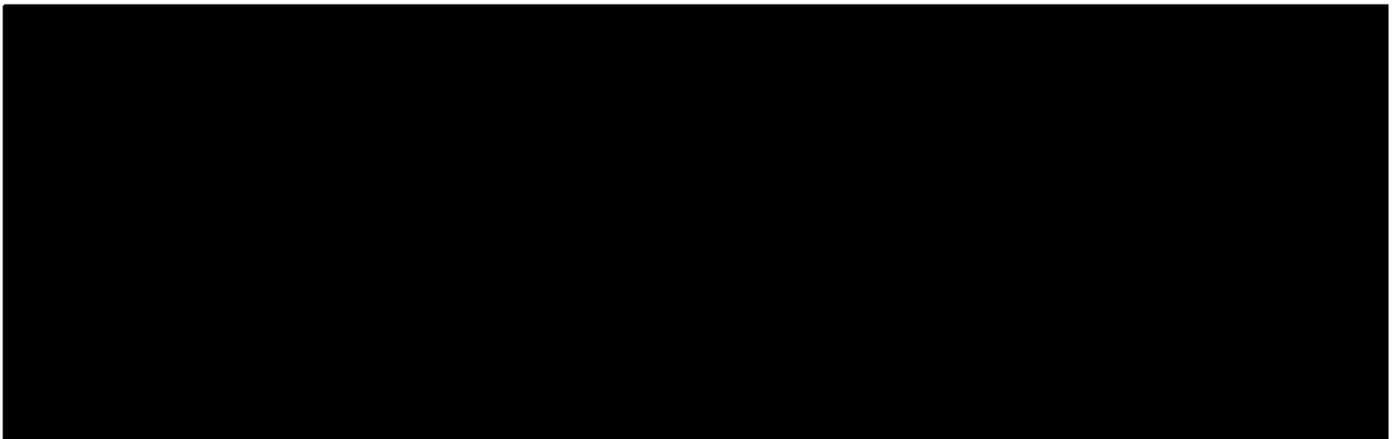
John W. Thomas was hired by the East Chicago Fire Department in 1961. He worked for the fire department until December 14, 1984, his official date of retirement.

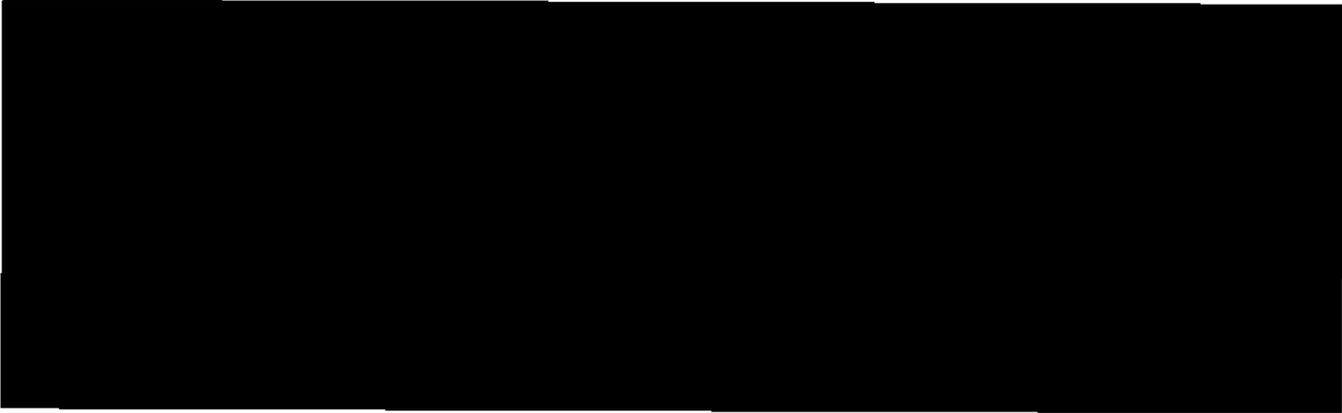
He was born November 12, 1938 and is presently 47 years of age.

Mr. Thomas has been a firefighter, a Captain, a District Chief, and an Assistant Chief with the fire department.



Mr. Thomas requested in 1985 that the local pension board, the East Chicago Fire Pension Board, change his status from regular pension to disability pension. The local board sent him to a doctor for an examination.





Mr. Thomas has received scores qualifying him for employment as a firefighter at the State and Federal levels.

FINDINGS:

Indiana Code 36-8-8-12 reads in part:

36-8-8-12 Disability benefits

- Sec. 12 (b) If a retired fund member who has not yet reached his fifty-fifth birthday is found to be permanently or temporarily unable to perform all suitable work for which he is or may be capable of becoming qualified, as determined under section 13 of this chapter, he is entitled to receive during the disability the disability benefit payments specified in subsection (a). During a reasonable period in which a disabled fund member is becoming qualified for suitable work, he may continue to receive disability benefit payments...

Indiana Code 36-8-8-13 reads in part:

Determination of disability - Review - Termination of benefits - Appeals.

- (a) The local board shall determine, using the procedures prescribed for the 1925, 1937, or 1953 fund, whether a fund member is disabled as defined in section 12 (36-8-8-12) of this chapter.
- (b) The local board shall submit its findings of fact and its determination to the PERF board. The PERF board or its hearing officer shall review the findings of fact and the local board's determination and issue a final order within one hundred eighty (180) days after receipt of the findings and determination. If the PERF board does not issue its final order within one hundred eighty (180) days and if the delay is not attributable to the fund member or the member's employer, the local board's findings and determination are deemed to be the PERF board's final order.

- (c) If the PERF board approves the local board's determination, then the PERF board shall issue a final order adopting the local board's findings of fact and determination and shall comply with the determination. If the PERF board does not approve the local board's determination, the PERF board or its hearing officer may receive additional evidence on the matter before issuing its final order.
- (d) The PERF board or its hearing officer may request that the fund member be examined by a doctor selected by the PERF board. The results of the examination shall be submitted to the PERF board or its hearing officer. If a fund member refuses to submit to an examination, the PERF board shall find that a disability does not exist.
- (e) Disability benefits terminate when the disabled member reaches fifty-five (55) years of age and becomes eligible to receive retirement benefits. At least yearly until the member is fifty-five (55) years of age, the local board shall review the condition of the disabled fund member to determine whether the disability continues. The PERF board or its hearing officer shall review the local board's determination in the manner specified in subsections (b), (c), and (d). If the local board makes no determination, the PERF board shall determine if the fund member's disability continues.
- (f) Appeals of the PERF board's final order may be made under IC 4-22-1.

It has been established, pursuant to Indiana Code 36-8-8-12, that:

1. John W. Thomas was hired by the East Chicago Fire Department in 1961.
2. John W. Thomas is a retired fund member who has not reached his fifty-fifth birthday.
3. John W. Thomas is not unable to perform all suitable work for which he is or may be capable of becoming qualified.

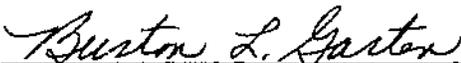
It has further been established, pursuant to Indiana Code 36-8-8-13, that:

1. The local board (East Chicago Fire Pension Board) submitted its findings of fact and determination to the PERF Board on John W. Thomas' disability application.
2. The PERF Board did not approve the local board's determination.

DECISION AND CONCLUSION OF LAW:

Based on the testimony and exhibits, and in view of the above facts and findings, I, Burton L. Garten, duly appointed administrative law judge, for the State Board of The Public Employees' Retirement Fund, would recommend denying disability benefits to John W. Thomas, pursuant to IC 36-8-8-12(b), and IC 36-8-8-13.

September 29, 1986



Burton L. Garten, Administrative Law Judge
Public Employees' Retirement Fund