

CLIENT ALERT

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Appellate Court Interprets Illinois Pension Code's Requirements for Non-Duty Disability Pension Benefits for Combined Service Firefighter

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Ever since the Illinois General Assembly enacted provisions to allow firefighters to combine creditable service from two or more fire departments or fire districts, firefighters have used this flexibility with their pensions to seek new opportunities within the fire service for advancement and improved salary or benefits. However, as the Illinois Appellate Court recently ruled, the decision to switch jobs is not without risk of benefit loss, particularly where a firefighter switches employers and experiences a non-duty injury.

As the First District Appellate Court confirmed recently in *Wessel v. Wilmette Firefighters' Pension Fund*, 2024 IL App (1st) 230565,¹ firefighters need seven years of creditable service with their *current* employer to qualify for a non-duty disability benefit; creditable service time with prior employers will not count toward the seven-year requirement except in one rare set of circumstances set forth in the statute.

Injured firefighters may apply for three different types of disability benefits: (1) line-of-duty; (2) non-duty; and (3) occupational disease disability pensions. Unlike the other two varieties, line-of-duty disability pensions are available to firefighters immediately upon the commencement of their

¹ On March 14, 2024, Wessel filed a Petition for Leave for Appeal with the Illinois Supreme Court.

employment. Non-duty disability pension benefits, on the other hand, are only available only if a firefighter has “at least 7 years of creditable service.” (40 ILCS 5/4-111) Similarly, firefighters cannot apply for occupational disease disability pensions until they have five years of creditable service. (40 ILCS 5/4-110.1)

But what happens if the firefighter who is injured has combined creditable service with a prior employer? Section 4-109.3 of the Illinois Pension Code provides the answer. (40 ILCS 5/4-109.3)

- In cases of occupational disease disability pensions, a firefighter *can* meet the five-year minimum requirement by using prior creditable service from a different employer. Moreover, both pension funds share the financial obligation of the firefighter’s occupational disease disability benefit on a *pro rata* basis. (40 ILCS 5/4-109.3(m))
- Line-of-duty and non-duty disability benefits are treated differently. For line-of-duty disability pensions, the *last* pension fund is responsible to pay a benefit based only on the firefighter’s service with that fund. (40 ILCS 5/4-109.3(l))
- The same is true for non-duty disability pensions: “the last pension fund is responsible to pay” a non-duty disability pension “*provided that the firefighter has at least 7 years of creditable service with the last pension fund.*” (40 ILCS 5/4-109.3(n)) There is only one exception, which is reserved for instances where “a firefighter began employment with a new employer as a result of an intergovernmental agreement that resulted in the elimination of the previous employer’s fire department.” (40 ILCS 5/4-109.3(n))

In *Wessel*, the court straightforwardly enforced these provisions. In that case, a firefighter worked with the Wilmette Fire Department for over nine years, from September 2010 to January 2020, when he voluntarily resigned to take a job with the Lake Villa Fire Protection District on February 1, 2020. He combined his creditable service between Wilmette Firefighters’ Pension Fund and Lake Villa Firefighters’ Pension Fund under Section 4-109.3 of the Illinois Pension Code. (40 ILCS 5/4-109.3)

Unfortunately, the firefighter became injured off-duty, so he applied for a non-duty disability pension from Lake Villa Firefighters’ Pension Fund on February 16, 2021.² Several months later while the Lake Villa application was still pending, he also filed a separate application for a non-duty disability pension with the Wilmette Firefighters’ Pension Fund on May 15, 2021.

Wilmette’s Board of Trustees denied the firefighter’s application. The Board found that the firefighter was not eligible for non-duty disability pension benefits under Sections 4-111 and 4-109.3(n) of the Illinois Pension Code, because at the time he applied, he was no longer an employee of the Wilmette Fire Department. The firefighter filed a complaint in circuit court seeking administrative review of the Board’s decision. The circuit court sided with Wilmette, and the firefighter appealed.

On appeal, the key question was whether, under Sections 4-111 and 4-109.3 of the Illinois Pension Code, the firefighter was entitled to a non-duty disability pension from the Wilmette Firefighters’ Pension Fund. Like the circuit court, the First District Appellate Court’s answer was “no.”

The appellate court reasoned that, because the Lake Villa Firefighters’ Pension Fund was the firefighter’s last pension fund, where he had less than seven years of service, he was not entitled to a non-duty disability pension under the plain language of Section 4-109.3(n).

The court rejected the firefighter’s arguments that the exception for combining service applied to him and that he had earned a vested right to the pension based on his nine years of service with the Wilmette Fire Department. The court also declined to import the statute’s occupational disease disability pension *pro rata* provisions into cases involving non-duty disability benefits.

² The Lake Villa Firefighters’ Pension Fund stayed its process on *Wessel*’s non-duty disability application, pending the outcome in the litigation against Wilmette Firefighters’ Pension Fund.

The lesson from *Wessel* is that firefighters considering changing jobs must be aware of the potential ramifications of that decision. On one hand, if they are awarded an occupational disease disability pension, firefighters can use combined creditable service to meet the five-year minimum requirement. On the other hand, if they suffer a non-duty injury in their latter employment, the seven-year clock on their eligibility for a non-duty disability pension will have restarted and potentially make them ineligible for a non-duty disability benefit.

In short, the *Wessel* case is a cautionary tale for combined service firefighters that except for one special circumstance, firefighters cannot rely on prior creditable service to count towards a non-duty disability pension.

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