

IN THE THIRTEENTH JUDICIAL CIRCUIT FOR THE STATE OF FLORIDA  
GENERAL CIVIL DIVISION

CHADRICK G. WHITTER, SR.,  
Petitioner,

Circuit Ct. Case no.: 22-CA-10495  
Division: B

v.

THE CITY OF TAMPA PENSION FUND FOR  
POLICE OFFICERS AND FIREFIGHTERS,  
Respondent.

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ORDER GRANTING AMENDED PETITION FOR WRIT OF CERTIORARI

This case is before the Court on Amended Petition for Writ of Certiorari (Doc. 17) seeking review of the Board's November 21, 2022 decision to deny, without reviewing its merit, firefighter Chadrick Whitter, Sr.'s (Petitioner) application for a service-related disability. The Board effectively dismissed the application on the ground that Petitioner resigned from his employment for reasons unrelated to his disability. Petitioner argues that the terms of the applicable service contract do not support the Board's action. The Court agrees. Having reviewed this case, and the recently decided *Charles v. City of Tampa Pension Fund for Police Officers and Firefighters*, 22-CA-10538 (Fla. 13<sup>th</sup> Jud. Cir. January 17, 2024), this Court determines that this case presents similar facts<sup>1</sup> and identical legal issues. This Court agrees with and adopts the findings and legal conclusions of its well-reasoned opinion in *Charles*. It is therefore,

ORDERED that 1) the amended petition (Doc. 17) is GRANTED, 2) Respondent's Order Discontinuing Whitter's Service-Connected Disability Retirement Application is QUASHED, and 3) this matter is REMANDED for a determination of Petitioner's application on its merit on

<sup>1</sup> Although the facts are not identical, the differences are not meaningful. In both cases, the basis for the Board's refusal to consider their applications was its conclusion that both petitioners resigned to avoid disciplinary action against them.

the authority of *Charles v. City of Tampa Pension Fund for Police Officers and Firefighters*, 22-CA-10538 (Fla. 13<sup>th</sup> Jud. Cir. January 17, 2024).

It is further ORDERED that Petitioner's motion for attorney's fees pursuant to §175.061(5), Florida Statutes, is GRANTED, conditioned on his prevailing in the matter on remand. All other pending motions are hereby DENIED.

ORDERED in Tampa, Hillsborough County, Florida, on the date imprinted with the

Judge's signature.

  
22-CA-010495 1/22/2024 2:59:56 PM  
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MARK WOLFE, Circuit Judge

*Electronic copies provided through JAWS to all parties so registered.*

IN THE THIRTEENTH JUDICIAL CIRCUIT FOR THE STATE OF FLORIDA  
CIVIL DIVISION

CHADRICK WHITTER,  
Petitioner,

CASE NO.: 22-CA-010495

vs.

DIVISION: B

CITY OF TAMPA PENSION FUND FOR  
POLICE OFFICERS AND FIREFIGHTERS,  
Respondent.

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ORDER GRANTING REHEARING ON ENTITLEMENT TO ATTORNEY'S FEES

The above-captioned matter came before the Court on Petitioner's January 30, 2024 Motion for Rehearing. (Doc. 30) Petitioner's motion urges the Court to revisit its award of attorney's fees which was conditioned on his prevailing in the administrative proceeding on remand. Petitioner contends it is enough that he was the prevailing party in this judicial proceeding and that a judgment is not required to entitle him to fees. In response (Doc. 31), the Pension Fund argues that an award of fees is conditioned on Petitioner obtaining a judgment in the administrative proceeding on remand, citing, among others, *Hialeah Medical Associates, Inc. v. United Auto. Ins. Co.*, 151 So. 3d 1279 (Fla. 3d DCA 2014), which construes the fee-shifting section 627.428, Florida Statutes (repealed 2023). The Court agrees with Petitioner that the plain language of section 175.061(5), which provides for an award of fees "in any judicial proceeding" in which he is "the prevailing party," entitles him to an award of reasonable attorney fees without qualification or limitation. See §175.061(5), Fla. Stat. Unlike section 627.428,<sup>1</sup> section 175.061(5) does not require the entry of a judgment to trigger an award for fees.

IT IS THEREFORE ORDERED:

That Petitioner's motion for rehearing is GRANTED. Petitioner is entitled to his attorney's fees for prevailing in this proceeding. To determine the amount of fees due, Petitioner will prepare and submit for the Court's signature its Order Setting Final Evidentiary Hearing on Attorney's Fees & Costs, Referring Parties to Mediation.<sup>2</sup>

ORDERED on this 9th day of February, 2024, at Tampa, Florida, by the signature of:

22-CA-010495 2/9/2024 10:30:12 AM

22-CA-010495 2/9/2024 10:30:12 AM

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Mark R. Wolfe, Circuit Court Judge

Electronic copies provided through JAWS

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<sup>1</sup> Section 627.428 allowed for fees to be awarded "upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any...insured."

<sup>2</sup><https://www.fljud13.org/Portals/0/Forms/pdfs/judges/jdgwolfe/Sample%20Order%20AttyFees%20CivilMed%20Wolfe.pdf>