

## COA Opinion: In determining eligibility for state disability retirement, court should consider only whether employee can return to his prior job

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In *Nason v. State Employees' Retirement System*, No. 290431, the Court of Appeals held that when the state is deciding whether a state employee qualifies for early retirement for a nonduty related injury under MCL § 38.24, it may only consider whether the employee can return to the position held prior to the injury. If the employee is unable to return to work in his prior capacity, he is considered permanently disabled and entitled to early retirement.

In *Nason*, petitioner was a Department of Corrections (DOC) guard that shattered his heel while on vacation. After examining the injuries, petitioner's orthopedic surgeon concluded that petitioner would never be able to return to his old job. The Administrative Law Judge concurred, issuing a proposed decision that found petitioner had suffered a total and permanent disability under MCL § 38.24 and therefore qualified for early retirement. The State Employees' Retirement System Board (the Board) rejected the decision, however, instead finding that petitioner was not permanently disabled because he could engage in other employment that he was qualified to perform based on training and experience predating his DOC position. The circuit court reversed the Board, reasoning that the Board reached too far back into petitioner's employment history.

The Court of Appeals held that the plain language of MCL § 38.24 only allows consideration of whether an employee can perform the state job from which the employee seeks retirement because of the injury, not other employment positions for which the employee may be qualified by experience and training. Because the Court could not determine whether the Board found that the petitioner was totally incapacitated relative to his DOC position, the Court vacated and remanded the case to the Board for further consideration.

In so holding, the Court overruled *Knauss v. State Employees' Retirement System*, 143 Mich. App. 644, 372 N.W.2d 643 (1985). *Knauss* had required the state to consider whether the petitioner is able "to engage in employment reasonably related to the [petitioner's] past experience and training." *Id.* at 649-50. The Court's ruling has the potential to expand dramatically the availability of state disability retirement benefits.