NO. 5-10-0293

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

JEFFREY W. VAUGHN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Jackson County.
	)	
v.	)	No. 09-MR-37
	)	
CARBONDALE POLICE PENSION BOARD,	)	Honorable
	)	W. Charles Grace,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Chapman and Justice Goldenhersh concurred in the judgment.

R U L E 2 3 O R D E R

Held: The circuit court's decisions that the plaintiff was injured as claimed and disabled for service were not against the manifest weight of the evidence. Further, the circuit court's decision that the plaintiff was injured during an act of duty was not clearly erroneous.

The defendant, Carbondale Police Pension Board (Board), appeals the judgment of the circuit court of Jackson County that reversed the Board's decision denying the plaintiff's petition for a line-of-duty disability pension pursuant to section 3-114.1 of the Illinois Pension Code (the Code) (40 ILCS 5/3-114.1 (West 2008)). The Board contends that its decisions that the plaintiff, Jeffrey W. Vaughn, was not physically disabled for service and was not injured as claimed were not against the manifest weight of the evidence. Further, the Board claims that its decision that the plaintiff was not injured during an act of duty was not clearly erroneous. For the reasons that follow, we affirm the circuit court.

On April 11, 2007, Vaughn filed an application with the Board for a line-of-duty disability pension under section 3-114.1 of the Code (40 ILCS 5/3-114.1 (West 2008)). In

the application, Vaughn stated that he hit the top of his head on his patrol car's door frame while attempting to retrieve his radio from inside the vehicle. He listed his injuries as a compression fracture of his T1-T3 vertebrae. The Board held a public hearing on the petition on February 5, 2009. Paul Echols, Vaughn's supervisor at the time of the accident, was a member of the Board. At the hearing, the Board was presented with the following evidence, predominantly in the form of testimony, written reports, and medical records.

The plaintiff testified that he was employed by the Carbondale police department as a patrol officer. On June 27, 2005, Vaughn was on duty and stopped in a parking lot when a motorist requested directions. He parked his patrol vehicle so that the driver's side door was abutting the curb of an island in the parking lot. Leaving the door open, Vaughn exited the vehicle and spoke with the motorist. While he was outside the vehicle, he heard the dispatcher repeatedly attempting to contact him, so he hurried back to the car, where he stood on the curb and reached headfirst through the driver's side door. As he was reaching in, he struck the top of his head on the car's door frame. The impact caused him to "see stars" and experience an immediate sharp pain in his arms. There was no abrasion or blood loss.

Vaughn reported the accident to his shift supervisor, Paul Echols, that day. Echols made a report of Vaughn's accident, in which he stated that Vaughn was injured when he reached into the car from a standing position to get his radio. The report stated that as Vaughn was reaching, "he felt a 'pull' and pain below the neck and between the shoulder blades." Echols listed Vaughn's injury as "soreness in the back." The report is signed by only Paul Echols.

The day after the accident, Vaughn went to see his primary care physician, Dr. Dale W. Blaise. Dr. Blaise recorded the following: "[Vaughn] hit the back of his head while getting in his car yesterday. He had a sharp pain between the shoulder blades. He has gotten progressive muscle spasms and pain since that. A little bit of headache." Dr. Blaise also

noted that while the injury "would probably heal without difficulty," he was going to refer Vaughn to a specialist. Vaughn was off work from June 28, 2005, through July 4, 2005. On July 19, 2005, Vaughn returned to Dr. Blaise because his left arm and back were giving him pain. An August 2005 MRI showed a compression fracture of Vaughn's T1-T3 vertebrae. Because of Vaughn's continued pain, Dr. Blaise recommended that Vaughn be kept on light duty, and Dr. Blaise referred him to a neurosurgeon. Vaughn never returned to work with the police department after his second appointment with Dr. Blaise. Dr. Blaise concluded that the plaintiff was not physically fit to perform the duties of a City of Carbondale police officer.

Echols stated at the hearing that Vaughn was never offered a light-duty position because there was no such assignment available. Echols further explained that in order for a light-duty assignment to be available, the injured individual must have a projected date when he or she will be back to full capacity. Because Vaughn did not have that projected date, light duty was not an option.

Vaughn was also treated by Dr. Allan Gocio, a neurosurgeon. Dr. Gocio noted in his report that Vaughn "hit head on [a] doorframe." A functional-capacity evaluation was performed, and Dr. Gocio concluded that Vaughn's condition was permanent and that he had reached his maximum level of improvement. Thus, Dr. Gocio placed Vaughn on a permanent limitation and restricted his activity to light-moderate duty. Light-moderate duty was defined as not working more than eight hours at a time, not standing or sitting for more than a six-hour period without a break, not lifting more than 30 pounds, and not engaging in excessive stooping or bending. Dr. Gocio also noted that Vaughn had "permanent limited activity" with his left arm that might require intermittent pain management. Overall, Dr. Gocio opined that Vaughn was not able to perform the duties of a City of Carbondale police officer.

Dr. Gocio referred Vaughn to a specialist to receive pain treatments. The specialist noted that Vaughn continued to "have pain in the neck, left shoulder, left arm, and the back of the head" that varied in intensity. Vaughn received three cervical epidural steroid injections and a few trigger-point injections, none of which provided permanent relief. Vaughn also participated in work-hardening at Carbondale Hospital three days a week, for four weeks. Even after the hardening, however, Vaughn's functional-capacity report indicated that he was not fit to return to work as a police officer.

Vaughn was then treated by Dr. John Wood in March 2007. Dr. Wood noted, "With respect to [Vaughn] returning to work as a police officer, my understanding is that it is a very high-demand position and I do not think that given his residual pain, particularly with neck motion, that [*sic*] he is going to be able to do that as effectively as a well-bodied person." Dr. Wood also noted that the cause of Vaughn's injuries was that "he struck his head on a car doorframe." Dr. Wood ultimately opined that Vaughn was not able to perform the duties of a police officer.

Vaughn was also examined by three physicians of the Board's choosing as required by the Code. The first of the Board's physicians, Dr. Suthar, met with Vaughn in May 2006 and again in 2008. Dr. Suthar opined that Vaughn was able to work as a patrol officer but should "work[] shifts and areas that may be 'less of a risk' if possible." Dr. Suthar did not believe that Vaughn was in need of additional work-hardening before returning to work. The doctor also expressed surprise that Vaughn did not suffer any abrasions or blood loss, given the extent of his injuries. Dr. Suthar again reviewed Vaughn's file in December 2008, stating: "It is my medical opinion that this patient is employable as a street officer. For long-term success it would be prudent to place him in an environment where he could avoid physical altercations with individuals."

Dr. Sandra Tate noted that Vaughn hit the top of his head on a door frame while

entering his patrol car to answer the radio. She further noted: "[The] job of a police officer requires that he be able to be in full pursuit or confrontation with individuals to promote safety not only for himself but for others. Therefore, it is my opinion that he would be unable to perform police work *** [and] that he is at maximum medical improvement."

The Board's third reviewing physician, Dr. Russell Cantrell, noted that Vaughn's injuries were caused by him hitting his head on a door frame. Dr. Cantrell stated there was no anatomic basis on which to restrict Vaughn's work activities and that while Vaughn was in a "state of generalized deconditioning," he could resume his regular work activities after participating in work-hardening exercises. However, Dr. Cantrell urged caution: "[W]ithout participation in a work conditioning or work hardening program, it does not appear as though Mr. Vaughn is currently capable of performing his regular activities as a police officer." Notably, Dr. Cantrell's report repeatedly misstated the date of Vaughn's accident and describes the accident as recorded in Echols' report, never as Vaughn described it.

Vaughn testified that while he was employed as a Carbondale police officer, he was one of two people who received the highest marks on the physical fitness test. He noted that he had a preexisting condition in his right arm but that it was distinct from his instant injuries. Vaughn testified that because of this accident he has shooting pain that starts under his left shoulder blade and goes through his left shoulder and down his left arm, causing numbness in his arm, hand, and fingers. He testified that he used to enjoy playing golf three or four times a week but that he now can only play a few times a year because of the severe headaches and numbness he experiences.

Vaughn filed an application for workers' compensation benefits with the City of Carbondale, which was settled before the instant hearing. In May 2006, Vaughn was directed to return to work by the City of Carbondale. Vaughn refused to do so and was terminated by the City of Carbondale on December 2, 2008.

After hearing the evidence, the Board took Vaughn's petition for a disability pension under consideration. The Board decided two issues: first, whether Vaughn's disability was a result of an on-duty injury and, second, whether he was disabled to the extent that he was unable to return to work as a patrol officer. The Board answered both of these questions in the negative. In so holding, the Board found that reaching for a radio should not be an act of duty as defined by the Illinois Pension Code. The Board also questioned Vaughn's credibility because Echols' report's version of events was different than the version testified to by Vaughn and recorded by the doctors. Also, the Board focused on the different verbs used by Vaughn in describing his accident, noting that in his application for disability benefits Vaughn "hurried back to his car," while in a typewritten statement to the Board he "ran to the door." The Board found Dr. Cantrell's "examination report to be the most thorough and credible evidence of Mr. Vaughn's condition with respect to his asserted disability" but did not give a reason why it placed more weight on this report than the other five physicians' reports. The Board also questioned the lack of any abrasion on Vaughn's head, an issue initially raised by Dr. Suthar. In light of the foregoing, the Board denied Vaughn's application on March 24, 2009.

Vaughn then filed a complaint for administrative review on April 22, 2009, in the circuit court of Jackson County pursuant to the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2008)). In its June 7, 2010, order, the circuit court reversed the Board's decisions, highlighting a few areas where it expressly disagreed with the Board. First, the court found the Board's reliance on Echols' report to be misplaced because Vaughn neither saw nor signed Echols' report. While not calling into question Echols' credibility or integrity, the court found that Echols' report was not more reliable than the other evidence. The court also highlighted the Board's focus on the minute distinction between "hurried," "ran," and "rushed" in its attempt to find a credibility issue. The court noted the lack of evidence

supporting the assertion that Vaughn should have suffered an abrasion or a loss of blood after hitting his head. The court also specifically noted that not only was Echols Vaughn's supervisor on duty on the night in question but he authored a report that was evidence and was also a member of the Board deciding Vaughn's disability pension. The court stated, "The [Board's] decision appears to pick and choose, or cut and paste parts of numerous reports and disregard the rest of each report."

It is from the circuit court's reversal of the Board's decision that the Board appeals. On appeal, the Board contends that Vaughn was not physically disabled, was not injured as claimed, and was not eligible for a line-of-duty pension. We will examine each of these contentions in turn.

In administrative law cases, we review the decision of the administrative agency and not that of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006). Section 3-148 of the Code (40 ILCS 5/3-148 (West 2008)) provides that the judicial review of the Board's decision is governed by the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2008)). The Administrative Review Law provides that our review extends to all questions of fact and law presented in the record. *Marconi*, 225 Ill. 2d at 532. Our review is limited to the administrative record, and we cannot hear new or additional evidence in support of, or in opposition to, the decision of the administrative agency. *Marconi*, 225 Ill. 2d at 532. "The findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct." 735 ILCS 5/3-110 (West 2008).

The applicable standard of review depends upon whether the question before this court is one of fact or law or is a mixed question of law and fact. *Marconi*, 225 Ill. 2d at 532. Rulings on questions of fact will be reversed only if against the manifest weight of the evidence, while questions of law are reviewed *de novo*. *Robbins v. Board of Trustees of the*

Carbondale Police Pension Fund of the City of Carbondale, Illinois, 177 Ill. 2d 533, 532 (1997). Mixed questions of law and fact are reviewed under the clearly erroneous standard. *Marconi*, 225 Ill. 2d at 532.

First on appeal, the Board argues that its finding that Vaughn was not physically disabled for service in the police department was not against the manifest weight of the evidence. An administrative agency decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident; the mere fact that the reviewing court would have ruled differently does not justify the reversal of the administrative findings. *Robbins*, 177 Ill. 2d at 534. The Code defines a disability as a condition of physical or mental incapacity to perform any assigned duty or duties in the police service. 40 ILCS 5/5-115 (West 2008). The fact that an individual has physical limitations which prevent him from performing the duties of an active police officer is not dispositive of the question of whether he is disabled. *Terrano v. Retirement Board of the Policemen's Annuity & Benefit Fund of the City of Chicago*, 315 Ill. App. 3d 270, 275 (2000). An individual may be physically incapable of performing the duties of an active police officer and yet not be disabled within the meaning of the Code if a position is made available to the individual within the police department that can be performed by a person with his physical limitations. *Terrano*, 315 Ill. App. 3d at 275.

Section 3-114.1 of the Code sets forth the guidelines for a line-of-duty pension:

> "(a) If a police officer[,] as the result of sickness, accident or injury incurred in or resulting from the performance of an act of duty, is found to be physically or mentally disabled for service in the police department, so as to render necessary his or her suspension or retirement from the police service, the police officer shall be entitled to a disability retirement pension equal to the greatest of (1) 65% of the salary attached to the rank on the police force held by the officer at the date of suspension

of duty or retirement, (2) the retirement pension that the police officer would be eligible to receive if he or she retired (but not including any automatic annual increase in that retirement pension), or (3) the pension provided under subsection (d), if applicable.

A police officer shall be considered 'on duty' while on any assignment approved by the chief of the police department of the municipality he or she serves, whether the assignment is within or outside the municipality." 40 ILCS 5/3-114.1(a) (West 2008).

A not-on-duty pension is available under the following circumstances:

"A police officer who becomes disabled as a result of any cause other than the performance of an act of duty, and who is found to be physically or mentally disabled so as to render necessary his or her suspension or retirement from police service in the police department, shall be entitled to a disability pension." 40 ILCS 5/3-114.2 (West 2008).

In making its determination of whether Vaughn was physically disabled, the Board was presented with six doctors' opinions, only one of whom unconditionally supported Vaughn's return to work. The Board found this physician's, Dr. Cantrell's, evaluation to be the "most credible" but did so without explanation or apparent basis. In fact, Dr. Cantrell's conclusion directly contradicted four of the doctors' opinions, with the fifth doctor conditionally agreeing that Vaughn could return to work. Dr. Blaise concluded that Vaughn was not fit to return to work as a police officer, despite his initial impressions. After conducting a functional-capacity examination and Vaughn testing in the light-moderate-duty range, Dr. Gocio concluded that Vaughn was not fit to return to work as a police officer. Dr. Wood opined that Vaughn would not be able to perform high-demand duties of a police officer because of his residual pain. Further, even the majority of the Board's physicians did

not have unqualified support for Vaughn's return to work. Dr. Suthar suggested that Vaughn be given a lower risk position because of his residual pain, ultimately suggesting a position where Vaughn could "avoid altercations with individuals." Dr. Tate found that Vaughn could do medium-demand work but that because of the nature of police work he was not capable of returning to work. Dr. Cantrell concluded, however, that Vaughn would be fit to return to work as a police officer after completing work-hardening exercises.

Not only did the Board review the doctors' recommendations, but it heard testimony and was presented with evidence regarding Vaughn's accident and his injuries. The evidence presented shows that Vaughn hit the top of his head on his patrol car's door frame, causing compression fractures in his T1-T3 vertebrae. Vaughn testified that pain radiated from his left shoulder blade, went down his left arm, and extended to his hand. He sought pain relief and tried a variety of remedies but to no significant or permanent avail. Vaughn testified that he had been in good physical health before the accident and that his quality of life was impacted because of the accident. The only notable physical activity in which Vaughn had participated recently was playing a few rounds of golf each year and shoveling snow, neither of which he did without pain.

The evidence clearly shows that Vaughn is physically disabled for service in the police department. Not only did four out of six physicians specifically opine that Vaughn was not fit to return to work, the fifth provided that he was fit to return to work but that a modified and less physically demanding position would be preferable. A modified position, however, was not an option for Vaughn, as explained by Echols. Thus, the question is whether Vaughn was capable of performing the duties of an active City of Carbondale police officer. We let the evidence stand for itself and conclude that the Board's decision that Vaughn was not physically disabled for service in the police department was against the manifest weight of the evidence.

The next issue on appeal is whether Vaughn was injured as claimed. The question of whether someone is injured as claimed under the Code is a question of fact and is reversed only if it is against the manifest weight of the evidence. *Ryndak v. River Grove Police Pension Board*, 248 Ill. App. 3d 486 (1993). We find that the Board's decision that Vaughn was not injured as claimed was against the manifest weight of the evidence.

In ruling that Vaughn's injury did not happen as claimed, the Board stated that Vaughn's version of events "has been inconsistent" and that it found "more credible evidence" that Vaughn was not injured as claimed. This assertion is belied by the record. Vaughn consistently told the same story about his accident, and each of his medical providers recorded a substantially similar version of events–that Vaughn hit the top of his head on his patrol car's door frame while reaching into the car to retrieve his radio. Echols' report was the only record that did not contain Vaughn's version of events. No evidence was presented, however, that Vaughn saw or signed Echols' completed report. Further, any weight given to the minute linguistic differences between Vaughn's version of events, given over a number of years, should be minimal.

The record reflects that Vaughn was injured while on duty, attempting to reenter his police car to retrieve his radio. While Dr. Suthar noted that it was unusual to not have visible physical trauma given the force with which Vaughn hit his head (enough to fracture vertebrae), Vaughn's medical records clearly indicate that the compressed vertebrae resulted from the incident in question. Further, none of the other physicians called into question the causal relationship between Vaughn's injury and hitting his head on a door frame.

"If one decision maker on an administrative body is not completely disinterested, his participation 'infects the action of the whole body and makes it voidable.' " *Danko v. Board of Trustees of the City of Harvey Pension Board*, 240 Ill. App. 3d 633, 642 (1992) (quoting *Board of Education of Niles Township High School District 219 v. Regional Board of School*

Trustees of Cook County, 127 Ill. App. 3d 210, 214 (1984)). We therefore note Echols' role as Vaughn's supervisor, authoring a report in evidence, and participating in Vaughn's hearing. Overall, because Vaughn's version of events was not controverted and because the only challenge came from a report which Vaughn did not read or write, we conclude that the Board's finding that Vaughn was not injured as claimed was against the manifest weight of the evidence.

The last issue on appeal is whether Vaughn was injured while performing an act of duty. The Board found that Vaughn was not injured performing an act of duty and, specifically, that reaching for a radio should not be an act of duty under the Code. This issue presents a mixed question of fact and law, and we review the Board's ruling to determine whether it was clearly erroneous. See *Merlo v. Orland Hills Police Pension Board*, 383 Ill. App. 3d 97, 99-100 (2008). An agency's decision will be deemed clearly erroneous only where the reviewing court is " 'left with the definite and firm conviction that a mistake has been committed.' " *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

An injury that occurs in the line of duty entitles an officer to a larger pension than an ordinary disability pension. Compare 40 ILCS 5/3-114.1 (West 2008) with 40 ILCS 5/3-114.2 (West 2008). In order to be entitled to a line-of-duty disability pension under the Code, an officer must have an injury that results from an act of duty. 40 ILCS 5/3-114.1(a) (West 2008). An act of duty is one that arises out of the performance of a job-related task. *Daily v. Board of Trustees of the Police Pension Fund of Springfield, Illinois*, 251 Ill. App. 3d 119, 125 (1993). Section 5-113 of the Code defines the term "act of duty" as "[a]ny act of police duty inherently involving special risk, not ordinarily assumed by a citizen in the ordinary walks of life, imposed on a policeman." 40 ILCS 5/5-113 (West 2008). The term

"special risk" encompasses more than inherently dangerous activities; it includes duties to protect citizens, including driving automobiles, climbing stairs, and even crossing streets. *Johnson v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 114 Ill. 2d 518 (1986); *Alm v. Lincolnshire Police Pension Board*, 352 Ill. App. 3d 595 (2004). The supreme court in *Johnson* stated: "There can be little question, police officers assigned to duties that involve protection of the public discharge their responsibilities by performing acts which are similar to those involved in many civilian occupations. The crux is the capacity in which the police officer is acting." 114 Ill. 2d at 522.

In the case at bar, it is undisputed that Vaughn was on duty as a City of Carbondale police officer when he was injured. It is also undisputed that he was assisting a motorist when he rushed back to his car to retrieve his radio, at which time he hit the top of his head on his car's door frame. While this type of accident could occur to anyone, the issue is whether Vaughn was injured during an act of duty. Despite the seemingly mundane facts giving rise to Vaughn's injury, he was clearly acting as a police officer when he was injured. The Board's decision that Vaughn was not injured performing an act of duty is therefore clearly erroneous.

For the foregoing reasons, we affirm the decision of the circuit court of Jackson County in reversing the decision of the Carbondale Police Pension Board.

Affirmed.