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2012 IL App (3d) 110599-U

Order filed July 3, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

ANDREW ROSZAK,)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit,
Plaintiff-Appellant,)	Kankakee County, Illinois,
)	
v.)	Appeal No. 3-11-0599
)	Circuit No. 11-MR-81
KANKAKEE FIREFIGHTERS')	
PENSION BOARD,)	Honorable
)	Adrienne W. Albrecht,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Wright and Holdridge concurred in the judgment.

ORDER

- ¶ 1 *Held:* Evidence was sufficient to support the decision of Pension Board finding that firefighter's disability had terminated and terminating his line-of-duty disability pension where physician's evaluation indicated that he had examined plaintiff and found little significant functional deficits that would prevent plaintiff from returning to work as a firefighter.
- ¶ 2 Plaintiff Andrew Roszak appeals from the trial court's order affirming the decision of the Kankakee Firefighters' Pension Board (Board) terminating his line-of-duty disability

pension. Plaintiff contends that the Board's termination of his disability pension was contrary to the manifest weight of the evidence and that the doctor's report supporting termination was unreliable. We affirm.

¶ 3 Plaintiff was hired by the Kankakee Fire Department as a paramedic in September of 2000. On December 2, 2003, plaintiff injured himself while attempting to lift a 350-pound patient onto a stretcher. Ten months later, he underwent rotator cuff surgery to his left shoulder.

¶ 4 Plaintiff filed an application for a line-of-duty disability pension with the Board on September 10, 2004. The Board denied plaintiff's application. Plaintiff filed a complaint for administrative review in the circuit court, and the trial court affirmed the Board's decision. On appeal, we reversed the Board's ruling. *Roszak v. Kankakee Firefighters' Pension Board*, 376 Ill. App. 3d 130 (2007). In accordance with our decision, the Board subsequently granted plaintiff's line of duty disability pension retroactive to December 2, 2004.

¶ 5 In accordance with the disability statute, plaintiff was periodically examined by physicians to determine whether he remained disabled for service with the fire department. See 40 ILCS 5/4-112 (West 2010). On January 14, 2009, plaintiff was seen by Dr. Thomas Hudgins. His examination revealed that plaintiff's left shoulder active range of motion was limited to about 90 to 120 degrees. He noted that plaintiff had limited internal rotation in his left upper extremity and had some tenderness but had no pain with external rotation. Dr. Hudgins concluded that plaintiff was not able to return to full duty.

¶ 6 On August 24, 2010, Dr. Louis Levitt evaluated plaintiff. Following his physical examination of plaintiff, Levitt determined that with appropriate commitment to exercise and

physical therapy, plaintiff could resume the work of a firefighter. In his report, Dr. Levitt indicated that plaintiff had a healed surgical scar on his left shoulder and that there was tenderness around the scar, but impingement testing was negative. He also reported no atrophic changes of the muscles of the left shoulder. Dr. Levitt noted that his examination of plaintiff "failed to demonstrate any strength deficits" and "failed to demonstrate any disuse atrophic changes to the shoulder girdle." He also noted that plaintiff's range of motion was not perfect but was more than functional to perform most work and avocational activities. Dr. Levitt noted that he did not have the opportunity to review plaintiff's original MRI scan or his surgical records. However, based on his physical assessment of plaintiff, Dr. Levitt did not believe plaintiff was disabled from returning to his pre-injury level of work. Dr. Levitt's report concluded that:

"Based on an examination in my office today, I believe [plaintiff] does not present an individual who is totally disabled from gainful employment, particularly when viewing the job description of a firefighter."

¶ 7 Plaintiff sought subsequent evaluations from two other physicians. Dr. Barry Boden examined plaintiff on November 2, 2010, and reported that plaintiff's rotary cuff muscles were strong. He noted that plaintiff had good external rotation strength with some left trapezial discomfort around the neck. Dr. Boden opined that plaintiff was suffering from rotator cuff tendonitis with mild loss of motion. He suggested physical therapy to work on range of motion and strengthening.

¶ 8 Dr. John McConnell assessed plaintiff's condition two days later. His report noted no tenderness over the neck and full range of motion. Specifically, the report stated "no

tenderness over the left shoulder; has 160 degrees of flexion and abduction; full internal and external rotation; mild pain with resisted abduction and flexion." Dr. McConnell recommended an MRI and exercises to relieve mild discomfort in the left shoulder.

¶ 9 At the disability pension hearing, plaintiff testified that he was doing home exercises prescribed by Dr. McConnell and that his limitations regarding his ability to function as a firefighter involved range of motion and strength in his left arm.

¶ 10 The Board determined that plaintiff was physically capable to return to his former position in the Kankakee Fire Department and voted to terminate his disability pension as of March 1, 2011.

¶ 11 ANALYSIS

¶ 12 Plaintiff argues that the Board's decision to terminate his disability pension is against the manifest weight of the evidence.

¶ 13 The findings and conclusions of an administrative agency on questions of fact are deemed *prima facie* true and correct and will not be disturbed unless they are against the manifest weight of the evidence. *Rhoads v. Board of Trustees of the City of Calumet City Policemen's Pension Fund*, 293 Ill. App. 3d 1070 (1997); see also 735 ILCS 5/3-110 (West 2010). The agency's decisions are against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Rhoads*, 293 Ill. App. 3d at 1075. The mere fact that an opposite conclusion is reasonable or that the reviewing court might have ruled differently will not justify the reversal of the administrative findings. *Id.* at 1076. Because the weight of the evidence and the credibility of the witnesses are within the province of the board, the reviewing court may not substitute its judgment for that of the agency's if there is sufficient

evidence in the record to support the agency's findings. *Iwanski v. Streamwood Police Pension Board*, 232 Ill. App. 3d 180 (1992).

¶ 14 Pursuant to section 4-112 of the Illinois Pension Code, medical examination of a firefighter receiving a disability pension "shall be made at least once each year prior to attainment of age 50 in order to verify continuance of disability." 40 ILCS 5/4-112 (West 2010). Section 4-112 further states:

"Upon satisfactory proof to the board that a firefighter on the disability pension has recovered from disability, the board shall terminate the disability pension. The firefighter shall report to the marshal or chief of the fire department, who shall thereupon order reinstatement into active service ***, in the same rank or grade held at the date he or she was placed on disability pension." 40 ILCS 5/4-112 (West 2010).

¶ 15 Here, there was sufficient evidence to support the Board's finding that plaintiff's disability had terminated. The Board reviewed the medical evidence and Dr. Levitt's report, which was based on the physical examination of plaintiff and medical documentation of his condition, and found Dr. Levitt's assessment credible. Dr. Levitt's examination of plaintiff indicated that there were no significant functional deficits in plaintiff's range of motion that would preclude him from returning to work as a firefighter in his position as a paramedic. He noted plaintiff's lack of desire to complete rehabilitation, but opined that with appropriate reconditioning, plaintiff could safely perform his duties.

¶ 16 Although plaintiff argues that the reports of Drs. Boden and McConnell discredit Levitt's assessment of his condition, their reports support Dr. Levitt's opinion. Both doctors

evaluated plaintiff and reported a lack of physical evidence of significant impairment in the left shoulder; neither physician indicated that plaintiff was disabled. Moreover, their assessments lacked an in depth review of the facts surrounding the injury and other medical documents. In light of Dr. Levitt's uncontradicted medical report, it was not against the manifest weight of the evidence for the Board to find plaintiff was no longer disabled and terminate his disability benefits.

¶ 17

CONCLUSION

¶ 18

The judgment of the circuit court of Kankakee County affirming the Board's decision to terminate plaintiff's disability benefits is affirmed.

¶ 19

Affirmed.