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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

MARIO FLORES,)	Appeal from the Circuit Court
)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 12 MR 538
)	
BOARD OF TRUSTEES OF THE)	
HUNTLEY FIRE PROTECTION DISTRICT,)	
the members of the BOARD OF TRUSTEES,)	
PRESIDENT MILFORD BROWN,)	Honorable
SECRETARY BONNIE BAYSER, and the)	David Akemann
HUNTLEY FIRE PROTECTION DISTRICT,)	Judge, Presiding.
)	
Defendants-Appellants.)	

JUSTICE BIRKETT delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court properly granted partial summary judgment in firefighter-plaintiff's favor and found that he was entitled to insurance benefits pursuant to the Public Safety Employee Benefits Act after he was injured in response to a mayday call that occurred during a live fire training exercise. 820 ILCS 320/10(b) (West 2012).
- ¶ 2 Defendants, the Board of Trustees of the Huntley Fire Protection District, its individual members, and the Fire Protection District (defendants), appeal from an order of the circuit court

granting partial summary judgment to plaintiff, Mario Flores, finding that he was entitled to insurance benefits as set forth in the Public Safety Employee Benefits Act (PSEBA) (820 ILCS 320/10(a),(b) (West 2012). On appeal, defendants contend that the circuit court erred in finding that: (1) plaintiff, a firefighter, was injured during his response to what was reasonably believed to be an emergency; and (2) the summary statement of causation in plaintiff's workers' compensation settlement agreement collaterally estopped the Huntley Fire Protection District (District) from asserting that plaintiff was not injured during an emergency. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 The record reflects that plaintiff was employed by the District as a firefighter. On March 17, 2009, the District conducted a mandatory live fire training exercise at the District's training tower. Plaintiff and Ed Gearen, another firefighter, were assigned to a Rapid Intervention Team (RIT) for the third training scenario of the day. Plaintiff testified that he was on the north side of the building on the ground level outside the building when a mayday call came in because a firefighter in the building was not answering his radio. At that time, someone yelled to ventilate the building. Plaintiff then proceeded to the west side of the building and quickly ascended the second story stairs to the scene of the fire. At that time he was wearing firefighting gear that weighed around 40 to 50 pounds. He said he ascended the stairs quickly because he believed that he was responding to an emergency situation at the time due to the mayday call. There was a door at the scene of the fire, and it was plaintiff's intention to open that door so that no more smoke accelerated into the building. When he got to the top of the staircase and began to open the door, he heard someone yelling that they had located the firefighter and not to open the door and instead to come back down. Plaintiff testified that when he ascended the stairs he planted his

right leg to turn to his left and he twisted his right leg at that point. He believed that was when he injured his knee; however, he did not begin to feel pain until going down the stairs after the mayday call had been cleared. He said that after he got down the stairs “and the adrenaline rush started to wear off,” the pain became worse. Plaintiff immediately went over to a Gearen, a senior firefighter, and reported the injury to him. Although he said the pain was growing significantly, plaintiff completed further duty assignments before returning to the fire station. Plaintiff completed an initial injury report on the date of the incident. In his first written history of the incident plaintiff indicated that he had twisted his right knee responding quickly to ventilate a building during a mayday situation in the course of training.

¶ 5 Captain Ravignie, who was in charge of the training exercise, testified that the mayday call occurred after they did an “accountability” during the exercise. Ravignie explained that an accountability consisted of calling each rig to make sure that it is accounted for. Ravignie said that accountability checks are commonly done during training exercises. After the mayday call went out, the building was ventilated and the call was terminated within a minute because the firefighter who was unaccounted for turned up inside the doorway of a structure.

¶ 6 Firefighter Smith, the subject of the mayday call, testified that the mayday call was a “miscommunication” because he was working with someone who was not his normal officer. He missed the accountability call on the radio during the exercise. Smith said that he heard the mayday call and was located within five seconds of hearing the call.

¶ 7 Lieutenant Eric Bentley testified that he was the supervising lieutenant for plaintiff and in the command tower doing command operations at the time of the training on March 17, 2009. Bentley heard the mayday call come in and at that time both plaintiff and Gearen went to open the door to ventilate the building. Bentley said that after the training exercise plaintiff told him

that he had hurt his knee during the mayday call.

¶ 8 Deputy Chief Keith Mallegni testified that he was at a fire station three to four miles away when the mayday call came in, but he responded to it because of his concern over the lost firefighter. Mallegni said that when he arrived at the scene plaintiff told him that he had twisted his knee in turning to run for the mayday call.

¶ 9 Firefighter Edward Gearen testified that he was assigned to the RIT with plaintiff on March 17, 2009, when he heard a mayday call about a missing firefighter over the radio. He and plaintiff started to gather up their tools when he heard a second mayday call over the radio, which is why Gearen said he knew it was a real mayday call. Gearen said that it was a RIT activation and they were expected to act in an emergency situation.

¶ 10 The record reflects that plaintiff was examined by three physicians in response to his application for a line of duty disability pension. Dr. Thomas Tingle authored a report dated October 20, 2010, in which plaintiff provided a history of injuring his right knee on March 17, 2009, during a training exercise when a lost firefighter call went out. Plaintiff told Dr. Tingle he was fully geared with approximately 50 to 100 pounds of equipment on him when he ran up an outside staircase to open a door when he felt pain or shifting on the medial aspect of his knee. It was the doctor's opinion that plaintiff's explanation of the injury was consistent with the medical records provided, as well as physical exam findings, in terms of his diagnosis of a right medial meniscal tear.

¶ 11 Dr. Michael Gitelis authored a report dated October 21, 2010, in which he recorded a history of plaintiff going up a flight of stairs to ventilate a second floor building, and that in doing this plaintiff twisted his right knee and felt a sharp pain on the inner aspect of his right knee. It was Dr. Gitles' opinion that plaintiff sustained an injury to his right knee in performing

this job activity which required two operative procedures.

¶ 12 Dr. Howard Freedberg authored a report dated October 26, 2010. In his report, he said that plaintiff told him that during the live fire training exercise he was going up to the second story using the stairs and felt pain in his right knee and reported it. It was Dr. Freedberg's opinion that plaintiff's explanation of how the disability occurred was consistent with his findings.

¶ 13 In the workers' compensation proceedings between plaintiff and the District, the parties entered into a "Settlement Contract Lump Sum Petition and Order" in which plaintiff's injury is described as occurring when he was "[r]esponding to mayday call in course of ventilating a building during training exercise." Plaintiff's injury was described as a medial meniscal tear which resulted in multiple surgeries to the right knee.

¶ 14 Plaintiff also applied for a line of duty disability pension for his knee injury. After an evidentiary hearing, the Huntley Firefighters' Pension Fund (Fund) denied plaintiff's request for such a pension. Plaintiff then filed a complaint for administrative review challenging the Fund's decision. On March 12, 2012, the circuit court reversed the Fund's decision and awarded plaintiff a line of duty disability pension.

¶ 15 On April 23, 2012, plaintiff sent the District a written demand for PSEBA benefits. On September 24, 2012, plaintiff filed a two count complaint for declaratory judgment. In count I he asked the court to rule that defendants were required under the PSEBA to pay the health insurance premiums for himself and his family. In count II, he sought attorney fees under the Attorneys Fees in Wage Actions Act (705 ILCS 225/1 (West 2012)). After receiving cross motions for summary judgment from the parties, the circuit court denied defendants' motion. It also denied in part plaintiff's motion for summary judgment with regard to attorney fees.

However, it granted partial summary judgment in favor of plaintiff and found that he was entitled to PSEBA benefits.

¶ 16 In finding that plaintiff was entitled to benefits pursuant to the PSEBA, the trial court ruled that the settlement between the parties in the Workers' Compensation case clearly established that the parties agreed that plaintiff injured himself responding to a mayday call. Therefore, the court held that defendants were collaterally estopped from arguing that plaintiff was not injured in the course of an emergency, relying on this court's decision in *Richter v. Village of Oak Brook*, 2011 IL App (2d) 100114. Additionally, the court found that plaintiff's injury occurred in response to what was reasonably believed to be an unforeseen circumstance involving imminent danger to a person or property requiring an urgent response. Therefore, it held that plaintiff was also entitled to insurance benefits pursuant to section 10(b) of the PSEBA based upon our supreme court's decision in *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012.

¶ 17

II. ANALYSIS

¶ 18 On appeal, defendants argue that the trial court erred in granting part of plaintiff's motion for summary judgment and ruling that he was entitled to insurance benefits pursuant to the PSEBA (820 ILCS 320/10 (West 2012)). Specifically, they argue: (1) plaintiff was not injured during his response to what was reasonably believed to be an emergency; and (2) they are not collaterally estopped from contesting plaintiff's claim for benefits based upon the summary statement in the worker's compensation order.

¶ 19 Summary judgment is appropriate if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2012).

“When parties file cross-motions for summary judgment, they agree that only a question of law is involved and invite the court to decide the issues based on the record.” *Springborn v. Village of Sugar Grove*, 2013 IL App (2d) 120861, ¶ 24 (quoting *Pielet v. Pielet*, 2012 IL 112064, ¶ 28). We review grants of summary judgment *de novo*. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008).

¶ 20 Defendants do not dispute that plaintiff’s injury was the basis for his line-of-duty disability pension. Therefore, since an injury resulting in a line-of-duty disability pension is considered a catastrophic injury, as a matter of law plaintiff has met the first requirement to be entitled to benefits pursuant to the PSEBA. *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 400 (2003). Accordingly, we turn to the issue of whether plaintiff has met the second statutory requirement, that is, under the facts of this case, whether his injury was sustained in response to what was reasonably believed to be an emergency. 820 ILCS 320/10(b) (West 2012).

¶ 21 A. “Emergency Response”

¶ 22 Defendants first argue that the trial court erred in granting part of plaintiff’s motion for summary judgment and ruling that he was entitled to insurance benefits pursuant to the PSEBA (820 ILCS 320/10 (West 2012)) when plaintiff was not injured during his response to what was reasonably believed to an emergency. Specifically, they argue that there was no evidence to support a finding that the mayday call was an unforeseen circumstance during the training exercise because Captain Ravignie testified that accountability checks are commonly done during training exercises, and firefighter Smith said the mayday call was a result of a miscommunication between personnel. Also, they claim that the speed with which personnel cleared the mayday call indicated that they were well prepared and trained to deal with the “foreseen” circumstance the firefighters encountered. They also contend that there was no

evidence to support an assertion that the unaccounted for firefighter or any other firefighters were ever in any imminent danger that required an urgent response when the mayday call went out. Finally, they argue that plaintiff did not reasonably believe that he was responding to an emergency situation when he was injured because he injured himself after the mayday call when he was descending the stairs.

¶ 23 The purpose of the PSEBA is to ensure health benefits for public employees who have suffered career-ending injuries. *Richter v. Village of Oak Brook*, 2011 IL App (2d) 100114, ¶ 16. Pursuant to the PSEBA, a firefighter and his or her family are entitled to specific health benefits if: (1) under section 10(a), the firefighter suffered a catastrophic injury or was killed in the line of duty; and (2) under section 10(b), the injury or death resulted from any of a specific list of situations, including the firefighter's "response to what is reasonably believed to be an emergency." 820 ILCS 320/10(a),(b) (West 2012). A "catastrophic injury" under section 10(a) of the PSEBA is synonymous with an injury resulting in a line-of-duty disability under section 4-110 the Illinois Pension Code. *Gaffney v. Board of Trustees of Orland Fire Protection District*, 2012 IL 110012, ¶ 54; 40 ILCS 5/4-110 (West 2012). Our supreme court has defined the term "emergency" as it appears in section 10(b) of the PSEBA as "an unforeseen circumstance involving imminent danger to a person or property requiring an urgent response." *Id.* ¶ 64. This court has repeatedly held that section 10(b) also requires that the claimant subjectively believe that he was facing an emergency, and that that belief was reasonable. *Springborn v. Village of Sugar Grove*, 2013 IL App (2d) 120861, ¶ 32 (citing *DeRose v. City of Highland Park*, 386 Ill. App. 3d 658, 661 (2008)).

¶ 24 In order to aid our analysis of this issue it is helpful to first discuss the facts and the holdings in *Gaffney* and *Springborn*. In *Gaffney*, the supreme court considered consolidated

appeals of summary judgment rulings on claims for benefits pursuant to section 10 of the PSEBA brought by firefighters Michael Gaffney and Brian Lemmenes. Like the instant case, the issue there was whether the firefighter was injured as a result of his response to what was reasonably believed to be an emergency. 820 ILCS 320/10(b) (West 2012). The court held that, under the undisputed facts, the “emergency” requirement was met in Gaffney’s case, but not in Lemmenes’ case. *Gaffney*, 2012 IL 110012, ¶¶ 69, 79.

¶ 25 Gaffney was injured during a training exercise involving a fire on the third floor of a building. Gaffney wore full fire gear for the exercise and his battalion chief instructed him to treat the exercise as an actual emergency. As the crew was moving the fire hose between the second and third floors, it became stuck. Gaffney followed the hose back down to the second floor and found that it was hooked around a chair. In moving the chair, he injured his shoulder. *Id.* ¶¶ 6-8.

¶ 26 The supreme court held that Gaffney’s training exercise became an emergency when the hose became stuck, which was an unforeseen event. *Id.* ¶ 66. This event created an imminent danger and required an urgent response since “the crew was stranded on the stairwell to the third floor of the burning building with no visibility and no water to put out the fire.” *Id.* It also held that when Gaffney went to free the hose, he “put himself at risk of becoming lost and disoriented in the smoke-filled building.” *Id.* ¶ 67.

¶ 27 Firefighter Lemmenes was participating in a training exercise in an abandoned building where he was also required to wear full fire gear. There was no actual fire, but the firefighters’ masks were blackened in order to simulate live fire conditions, and they were told to act as if there was an emergency. The firefighters were instructed that a fellow firefighter was trapped inside the building, was running out of air, and would die if not found and rescued. The

firefighters were given a predetermined path for running the fire hose into the building. Fire department supervisors testified that the individual acting as the trapped firefighter was never in real danger during the exercise, which was performed under “controlled conditions.” *Id.* ¶¶ 21-24. Lemmenes was injured when he attempted to free the trapped firefighter. *Id.* ¶ 22.

¶ 28 The supreme court held that Lemmenes could not have reasonably believed that he was responding to an “emergency” under section 10(b) because the exercise was under “controlled circumstances,” no one was in imminent danger at any point during the exercise, and “[n]o unexpected or unforeseen developments arose during th[e] drill, unlike the situation in *Gaffney* where the hose line became entangled in an unknown object.” *Id.* ¶ 77.

¶ 29 This court’s decision in *Springborn* also involved consolidated appeals involving benefits awarded under section 10 of the PSEBA, however, the *Springborn* case involved police officers. There, officers Christopher Springborn and Joseph Cecala were injured while clearing roadway obstructions in the course of their duties. *Springborn*, 2013 IL App (2d) 120861, ¶ 4. When the municipalities for which each was employed denied their requests for benefits, the officers brought a complaint in the trial court for declaratory judgment that he was entitled to benefits. Each alleged that he cleared the roadway obstructions in response to what he reasonably believed was an emergency. Springborn also alleged another ground for recovery under section 10(b). *Id.*

¶ 30 Officer Springborn was on routine patrol when he heard a dispatch that an off-duty officer was attempting to stop a paving truck that was dropping chunks of asphalt onto a roadway. *Id.* ¶ 8. Springborn testified that it was his belief that the chunks of asphalt posed an “emergency” and an “immediate safety hazard” and he began to move the chunks to the shoulder of the road. *Id.* ¶ 9. He later encountered a second area of asphalt chunks which he said presented an even greater hazard because the chunks were protruding into both lanes of traffic.

While attempting to clear some of those chunks, Springborn slipped and injured his back. *Id.* ¶ 10.

¶ 31 Officer Cecala was dispatched to investigate an automobile accident that may have been alcohol related. *Id.* ¶ 15. Cecala responded to the scene with light and sirens and considered the situation to be “an emergency.” *Id.* When he arrived at the scene, he saw a traffic light pole that had fallen into the roadway after apparently being struck by a vehicle involved in the accident. *Id.* ¶ 15. Cecala was concerned because the pole posed a roadway obstacle and still had live wires attached that had been pulled out of the ground. Cecala and another sergeant that responded to the scene successfully moved the pole with no injury to Cecala. However, Cecala then decided that the pole still posed a problem to a side street, so he and another officer moved the pole again, which is when Cecala was injured. Cecala testified that other than the fact that it still presented a hazard in its location, there was nothing that would have prevented him and the other officer from waiting for someone else to come, but they chose to move it at that point. *Id.* 15-18.

¶ 32 In affirming the trial court’s grant of summary judgment for both officers, this court held that the evidence presented to the trial court showed that both officers actually believed that they were facing emergencies since they each characterized the road obstruction as a “hazard” or an “emergency.” We also held that the officers’ subjective beliefs about the presence of an emergency were reasonable because the roadway obstructions involved imminent danger to a person or property requiring an urgent response. *Id.* ¶ 36. Additionally, these obstructions were not foreseeable, “even as much as the police were prepared by their training and experience to address those types of events.” *Id.*

¶ 33 In applying section 10(b) of the PSEBA as construed in *Gaffney* and *Springborn*, we find that the evidence presented to the trial court in this case does not disclose any issue of material fact. Although the parties draw conflicting inferences from those facts, especially those with regard to when plaintiff's injury occurred, on the material points only reasonable inferences are drawn by plaintiff. Based upon this evidence, we find: (1) plaintiff was injured "in response to what [was] reasonably believed to be an emergency (820 ILCS 320/10(b) (West 2012)); (2) the emergency was "an unforeseen circumstance involving imminent danger to a person or property requiring an urgent response" (*Gaffney*, 2012 IL 110012, ¶ 64); and (3) plaintiff's belief that he was facing an emergency was reasonable. *Springborn*, 2013 IL App (2d) 120861, ¶ 32.

¶ 34 The evidence presented below clearly established that the emergency was unforeseen. A missing firefighter was not part of the training exercise. This fact was borne out by Deputy Chief Mallegni's testimony that he was several miles away when the mayday call came in but he responded to the call because he was concerned about the lost firefighter. Defendants argue that the mayday call was not an unforeseen circumstance because Captain Ravignie testified that accountability checks are commonly done during training exercises, and the speed with which personnel cleared the mayday call indicated that they were well prepared and trained to deal with the "foreseen" circumstances the firefighters encountered. We are not persuaded. The fact that accountability checks are commonly done is immaterial to the issue of whether a missing firefighter was foreseen. Unlike the Lemmenes case, in this case a firefighter who needed to be found was *not* part of the training exercise. *Gaffney*, 2012 IL 110012, ¶ 21. Likewise, the speed at which the lost firefighter was found does not affect the fact that his disappearance was an unforeseen circumstance.

¶ 35 We also find that this unforeseen circumstance involved imminent danger to a person or property which required an urgent response. The situation involved a lost firefighter in a building where a live fire training exercise was occurring. The failure of one firefighter to respond called for an immediate order to ventilate the building, we can assume to clear the building of smoke so that the other firefighters could find the lost firefighter. Plaintiff responded to that order by quickly ascending the stairs outside the building in order to open a door and ventilate the building. We reject defendants' claim that this situation did not involve imminent danger which required an urgent response because no firefighters were ever in any imminent danger. The *Gaffney* court did not suggest that this factor be analyzed in hindsight. Instead, we look to the circumstances of the situation as they occurred and find that when the mayday call was signaled the situation involved imminent danger to a person or property for which an urgent response was required.

¶ 36 We also find that plaintiff reasonably believed he was facing an emergency when he was injured. Defendants argue that plaintiff could not have reasonably believed that he was responding to an emergency situation when he was injured because he injured himself after the mayday call when he was descending the stairs. We disagree with this conclusion. The evidence indicated that plaintiff subjectively believed he was facing an emergency because he testified that during the training exercise he heard someone say that they could not locate a firefighter in the building. After that he heard someone yell to ventilate the building, and he ascended the stairs quickly. He also said he believed that he was responding to an emergency situation at the time due to the mayday call. We reject defendants' argument that plaintiff was not injured in response to an emergency because he testified that he only felt pain in his knee when descending the stairs and he did not descend the stairs until after the mayday call was terminated. The

record reflects that plaintiff testified that he believed that he injured his knee when he twisted it going up the stairs but he did not feel pain until the adrenaline wore off and he descended the stairs. Lieutenant Bentley also testified that after the training exercise plaintiff told him that he had hurt his knee during the mayday call. In addition, Deputy Chief Mallegni testified that when he arrived at the scene plaintiff told him that he had twisted his knee in turning to run for the mayday call. Moreover, whether he injured his knee ascending the stairs after the mayday call was signaled, or descending the stairs after the call was terminated, is immaterial. But for the emergency created by the unaccounted for firefighter plaintiff would not have been on the stairs where he was injured. As the supreme court pointed out in *Gaffney*, an important consideration is whether plaintiff had the option of ending his participation in the exercise after it became an emergency. *Gaffney*, 2012 IL 110012, ¶ 67. Here, plaintiff had to get back to the ground after the mayday call was terminated. Therefore, plaintiff clearly injured himself *in response to* an emergency. For all these reasons, we hold that the trial court properly granted plaintiff partial summary judgment and found that he was entitled to insurance benefits as set forth in the PSEBA (820 ILCS 320/10(a),(b) (West 2012)).

¶ 37

A. Collateral Estoppel

¶ 38 Since we have found that plaintiff's injury was sustained in response to what was reasonably believed to be an emergency pursuant to section 10(b) of the PSEBA (820 ILCS 320/10(b) (West 2012)) we need not address defendants' arguments with regard to collateral estoppel.

¶ 39

III. CONCLUSION

¶ 40 In sum, the trial court properly granted plaintiff summary judgment on the issue of his eligibility for health care benefits because he met the requirements as set out in the PSEBA. 820

ILCS 320/10(a),(b) (West 2012). Accordingly, the judgment of the circuit court of Kane County is affirmed.

¶ 41 Affirmed.