

2017 IL App (1st) 161826-U
No. 1-16-1826
Order filed September 15, 2017

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

| | | |
|--|---|--------------------------|
| MICHAEL D. LAW, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellant, |) | Cook County. |
| |) | |
| v. |) | No. 15 CH 12938 |
| |) | |
| THE BOARD OF TRUSTEES OF THE RIVER FOREST |) | Honorable |
| FIREFIGHTERS' PENSION FUND and THE VILLAGE |) | Anna Helen Demacopoulos, |
| OF RIVER FOREST, |) | Judge, presiding. |
| |) | |
| Defendants-Appellees. |) | |

JUSTICE HALL delivered the judgment of the court.
Justices Gordon and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* This court affirmed the decision of the Board of Trustees denying the plaintiff's application for a line-of-duty disability pension where the Board's finding that the plaintiff's injury was not sustained in an act of duty was not against the manifest weight of the evidence.

¶ 2 The plaintiff, Michael D. Law, filed a petition for administrative review of a decision of defendant Board of Trustees of the River Forest Firefighters' Pension Fund (Board), denying his application for a line-of-duty disability pension. The circuit court affirmed the Board's decision. The plaintiff appeals contending that the Board erred when it found that the plaintiff was not engaged in an act of duty at the time he was injured.

¶ 3 **BACKGROUND**

¶ 4 The plaintiff was employed as a firefighter by defendant Village of River Forest (Village). On June 17, 2013, the plaintiff injured his right wrist while inspecting a fire truck. On October 9, 2013, the plaintiff filed an application for a line-of-duty disability pension.

¶ 5 **Hearing Before the Board**

¶ 6 The hearing on the plaintiff's application took place on two dates: May 13, 2015, and July 13, 2015. It was undisputed that on June 17, 2013, the plaintiff was employed as a firefighter by the Village and was working as such on that date. It was further undisputed that the plaintiff was unable to return to work as a firefighter as a result of the injury to his right wrist. The relevant testimony is summarized below.

¶ 7 The plaintiff testified that on June 17, 2013, he was instructed by deputy chief Robert Nortier and Lieutenant Mark Finnegan, the fire department training officer, to inspect a ladder truck to which he had been assigned. In the course of his inspection, he climbed to the top of the ladder truck. The grips at the top of the ladder truck changed from vertical to horizontal. As he grabbed the now horizontal grip, his right wrist hyperflexed, and he felt a pop in his right wrist followed by a sharp pain. The pain subsided into a dull aching pain whenever he used his right hand to grip something.

¶ 8 The plaintiff testified further that he was selected to do the inspection since he had experience both as a firefighter and operating hydraulic equipment, and he had held a Class A commercial driver's license for 25 years. He explained that it was a daily responsibility of the driver to inspect a fire truck before driving it and that he had inspected every fire truck he had driven. Refusing an order to conduct the inspection would have constituted insubordination for which he could be disciplined.

¶ 9 Mark Finnegan, a lieutenant with the Village's fire department and the department's training officer (Lt. Finnegan), testified that the new ladder truck arrived in May 2013, and was placed in service in October 2013. The written regulations required that each driver who would be operating a new fire truck have 10 hours of drive time and 10 hours of operation time before the truck was placed into service. There was a daily inspection requirement but only for trucks already in service.

¶ 10 Lt. Finnegan did not recall if he was on duty on June 17, 2013, the day the plaintiff was injured. He did not know if Deputy Chief Nortier ordered the plaintiff to inspect the truck. The witness was not aware that a direct order had been given to the plaintiff to inspect the ladder truck. It was possible that a shift officer told the plaintiff to familiarize himself with the new ladder truck.

¶ 11 James Eggert, the Village's fire chief, testified that in the summer of 2013, the ladder truck was delivered to the Village's fire department. Before new equipment was placed in service, the fire department's practice was to conduct a training program consisting of 10 hours of driving and 10 hours of familiarization with the new equipment. Chief Eggert was not aware that the plaintiff had been given a direct order to inspect the new ladder truck.

¶ 12 Chief Eggert testified further that the new ladder truck was a demonstration model that was parked at the fire station as an accommodation to the vendor. The fire department made a commitment to purchase it. As of June 17, 2013, the Village board had not yet approved the purchase, and no training would have begun on the new ladder truck. The chief did not recall whether members of the fire department were permitted to drive the truck, but they were limited as to what they could do with the truck until the purchase was completed. While it was possible that the deputy chief had directed the plaintiff to familiarize himself with the truck, Chief Eggert was not aware of such an order. The department members were told to look over any of the fire trucks under consideration for purchase. Prior to the purchase of the truck, there was no requirement that the truck be inspected by the members of the department; it was strictly voluntary. The chief agreed that familiarization with the firefighting equipment made its operation safer and thus benefitted the community.

¶ 13 The hearing was adjourned until July 13, 2015, in order for the Board to question Deputy Chief Nortier. On July 13, 2015, the Village presented a motion to intervene in the proceedings and to present exhibits consisting of the Village ordinances pertaining to the fire department, the fire department rules and regulations and the fire department operating directives. The Village also requested to cross-examine the plaintiff. The Board granted the Village's motion.

¶ 14 Robert Nortier, deputy chief of the Village's fire department, testified that he was working on June 17, 2013, but was not present when the plaintiff was injured. Deputy Chief Nortier denied ordering the plaintiff to engage in any training or exercises on the new ladder truck on that date or any other date. On June 17, 2013, the Village did not yet own the ladder

truck. The ladder truck did not yet have a daily check sheet because the check sheets were only for in-service vehicles.

¶ 15 Deputy Chief Nortier testified further that on May 13, 2015, the plaintiff visited him at the fire station and asked if he recalled giving the plaintiff an order to inspect the new ladder truck. The witness stated that he would not have been the officer to give that order to the plaintiff; pursuant to the chain of command, the shift officer typically gave directions to individual firefighters.

¶ 16 Deputy Chief Nortier testified further that there was no order barring firefighters from inspecting the new ladder truck. The firefighters were allowed to climb on, inspect and operate the truck to determine if it was appropriate for purchase by the Village. On occasion, the witness observed members of the department on the ladder truck and did not order them off it. He had discussions with the members as to their opinions after they had an opportunity for a hands-on experience with the truck. The witness agreed that the community benefited by having the firefighters become familiar with new equipment by practicing on it.

¶ 17 Deputy Chief Nortier testified further that firefighters were not required to inspect new equipment, and no discipline would be imposed if a firefighter did not inspect the new equipment in order to offer an opinion on it. The firefighters became familiar with the equipment through the formalized training directed by supervisors. No formalized training on the ladder truck was conducted on June 17, 2013. The parties stipulated that the formalized training or “1010” training took place after the plaintiff was injured.

¶ 18 Recalled as a witness by the Village, the plaintiff testified that on June 17, 2013, the ladder truck was not yet in service. On that date, Deputy Chief Nortier told the plaintiff that the

department was going to purchase the ladder truck and told him to conduct a thorough inspection of the truck. Although he was not on duty, Lieutenant Finnegan was also present when the plaintiff received the order to inspect the ladder truck. The Illinois Department of Transportation required the plaintiff to inspect any vehicle he was going to drive, but the plaintiff did not know of any rule, regulation or operating directive of the Village that required him to inspect the ladder truck on June 17, 2013. The rules and regulations of the fire department did require him to do a full inspection every day of a truck he was assigned to drive. Contrary to his earlier testimony, the plaintiff acknowledged that he was not assigned to the ladder truck on June 17, 2013.

¶ 19 Called as a rebuttal witness, Chief Eggert testified that on June 24, 2013, the Village Board voted to purchase the ladder truck. While he recommended to the Village Board that the ladder truck be purchased, the Village Board could have declined to purchase the truck.

¶ 20 On August 20, 2015, the Board issued its written decision and order. Relevant to the issue on appeal, the Board found that the plaintiff was not required to inspect the ladder truck on June 17, 2013. The finding was based on: the testimony of Deputy Chief Nortier, Lt. Finnegan, and Chief Eggert denying or unable to confirm that the plaintiff had been ordered to inspect the ladder truck, that the ladder truck had not yet been purchased at the time of the plaintiff's injury, any inspections of the ladder truck were strictly voluntary and that no formal training on the ladder truck was done until after the Village voted to purchase the truck, which took place after the plaintiff was injured. In addition, there were no fire department regulations or Village ordinances requiring the plaintiff to inspect new equipment.

¶ 21 The Board found that the testimony of Deputy Chief Nortier and Lt. Finnegan had not been impeached. Due to the inconsistencies in his testimony and its self-serving nature as well as

the Board's observation of the plaintiff at the hearing, the Board found that the plaintiff was not a credible witness.

¶ 22 The Board concluded that the plaintiff was engaged in a voluntary activity at the time of his injury. Since he was not engaged in an "act of duty" at the time of his injury, the Board denied the plaintiff's application for a line-of-duty disability pension.

¶ 23 On August 28, 2015, the plaintiff filed a complaint for administrative review. Following a hearing, on June 7, 2016, the circuit court entered an order affirming the Board's denial of a line-of-duty disability pension to the plaintiff. This timely appeal followed.

¶ 24 ANALYSIS

¶ 25 The sole issue on appeal is whether the Board erred in denying the plaintiff's application for a line-of-duty disability pension.

¶ 26 I. Standard of Review

¶ 27 In administrative review cases, it is the decision of the administrative agency that is reviewed, not the decision of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006). "The applicable standard of review depends upon whether the question presented is one of fact, one of law, or a mixed question of fact and law." *Howe v. Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago*, 2015 IL App (1st) 141350, ¶ 43 (quoting *American Federation of State, County & Municipal Employees, Council 31 v. Illinois State Labor Relations Board State Panel*, 216 Ill. 2d 569, 577 (2005)).

¶ 28 The plaintiff maintains that the clearly erroneous standard applies to our review of the Board's decision because the issue presents a mixed question of fact and law. See *Howe*, 2015 IL App (1st) 141350, ¶ 46 (mixed questions of law and fact are subject to the clearly erroneous

standard of review). “A mixed question of law and fact typically arises when ‘the historical facts are not in dispute and the issue is whether the established facts satisfy the statutory standard.’ ” *Howe*, 2015 IL App (1st) 141350, ¶ 46 (quoting *Village of Hazel Crest v. Illinois Labor Relations Board*, 385 Ill. App. 3d 109, 113 (2008)). In the present case, the facts pertinent to whether the plaintiff was engaged in an act of duty when he was injured are in dispute. Therefore, the clearly erroneous standard is not applicable in this case.

¶ 29 We apply the following standards to our review of the Board’s decision: questions of law are reviewed *de novo*, and rulings on questions of fact will be reversed only if they are against the manifest weight of the evidence. *Wade v. North Chicago Police Pension Board*, 226 Ill. 2d 485, 504-05 (2007). For the Board’s decision to be against the manifest weight of the evidence, the opposite conclusion must be clearly evident. *Cole v. Retirement Board of the Policemen’s Annuity & Benefit Fund of the City of Chicago*, 396 Ill. App. 3d 357, 367 (2009).

¶ 30 Under any standard of review, the plaintiff bears the burden of proof. *Cole*, 396 Ill. App. 3d at 367. Failure to sustain that burden will result in the denial of the relief sought by the plaintiff. *Cole*, 396 Ill. App. 3d at 367.

¶ 31 II. Discussion

¶ 32 The plaintiff maintains that his entitlement to a line-of-duty disability pension is governed by section 4-110 of the Illinois Pension Code (Code) (40 ILCS 5/4-110 (West 2012)). Section 4-110 provides in pertinent part:

“If a firefighter, as the result of sickness, accident or injury incurred in or resulting from the performance of an act of duty or from the cumulative effects of acts of duty, is found *** to be physically or mentally permanently disabled for service in the fire

department *** the firefighter shall be entitled to a disability pension ***.” 40 ILCS 5/4-110 (West 2012).

¶ 33 In this case, there is no dispute that at the time he was injured, the plaintiff was on duty as a firefighter and that the injury left him unable to perform the duties of a firefighter. It is further undisputed that at the time of the injury, the plaintiff was inspecting a new ladder truck the fire department was considering purchasing, that he possessed a commercial driver’s license and that he was an “engineer” meaning that his duties as a firefighter included driving vehicles such as the ladder truck. The plaintiff maintains that applying section 4-110 to these uncontested facts, he qualified for a line-of-duty disability pension. However, section 4-110 does not define “act of duty.”

¶ 34 In *Jensen v. East Dundee Fire Protection District Firefighters’ Pension Fund Board of Trustees*, 362 Ill. App. 3d 197 (2005), the Board denied the plaintiff-firefighter a line-of-duty disability pension. On review, the appellate court determined that the Board erred by applying section 5-113 of the Code (40 ILCS 5/5-113 (West 2004)), defining an act of duty applicable to police officers, rather than section 6-110 of the Code (40 ILCS 5/6-110 (West 2004)) applicable to firefighters. *Jensen*, 362 Ill. App. 3d at 203-04 (construing section 6-110 to apply to cities with less than 500,000 inhabitants as well as more than 500,000 inhabitants).

¶ 35 Section 6-110 provides as follows:

“Any act imposed on an active fireman by the ordinances of a city, or by the rules or regulations of its fire department, or any act performed by an active fireman while on duty, having for its direct purpose the saving of the life or property of another person.” 40 ILCS 5/6-110 (West 2012).

¶ 36 The plaintiff acknowledged that the fire department rules and regulations and the Village ordinances did not require him to inspect the new ladder truck. To otherwise qualify as an act of duty pursuant to section 6-110, the plaintiff's act must have for its direct purpose the saving of the life or property of another person. The plaintiff relies on the testimony of Chief Eggert and Lt. Finnegan that familiarity of the firefighters with the equipment benefited the community. However, both men spoke of familiarity with the equipment as a benefit to the community in a general, common sense way. The plaintiff offered no evidence that his inspection of the ladder truck led him to saving the life or property of a particular person. Moreover, the evidence established that training on new equipment would begin prior to it being placed in service. The new ladder truck had not yet been purchased at the time the plaintiff was injured.

¶ 37 The plaintiff argues that the Board's finding that his testimony was not credible had no bearing on whether he was engaged in an act of duty at the time he was injured, relying on *Mingus v. Board of Trustees of the Police Pension Fund of Peoria*, 2011 IL App (3d) 110098. In *Mingus*, the plaintiff-police officer was injured when he stopped to assist a motorist whose vehicle was partly in a ditch and partly on the road. In denying the plaintiff a line-of-duty disability pension, the Board found the plaintiff's testimony that the vehicle presented a hazard requiring its immediate removal, which resulted in his injury, was not credible. The reviewing court reversed, finding that the Board mistakenly focused on the alternatives available to the plaintiff in rendering assistance instead of the fact that a police officer, unlike a citizen, was required to stop and assist the motorist. *Mingus*, 2011 IL App (3d) 110098, ¶ 15.

¶ 38 We find *Mingus* distinguishable from the present case. Unlike the police officer in *Mingus*, the evidence established that the plaintiff was not required to inspect the ladder truck at

the time he was injured. The plaintiff was not subject to discipline for refusing to inspect the ladder truck prior to its purchase, which had not yet taken place at the time of his injury. Unlike *Mingus*, whether the plaintiff had been ordered by a superior to inspect the ladder truck was pertinent to whether his inspection of the ladder truck was an act of duty. Based on its credibility determination, the Board found that no such order had been given to the plaintiff.

¶ 39 Since the opposite conclusion than that reached by the Board is not clearly evident, the decision of the Board was not against the manifest weight of the evidence.

¶ 40 We confirm the decision of the Board denying the plaintiff a line-of-duty disability pension and affirm the circuit court's judgment confirming the Board.

¶ 41 Affirmed.