

No. 1-16-2448

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ANTHONY HERNANDEZ,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	
)	No. 15 CH 12711
THE RETIREMENT BOARD OF)	
THE POLICEMEN'S ANNUITY AND BENEFIT)	
FUND OF THE CITY OF CHICAGO,)	Honorable
)	Kathleen Kennedy,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* The plaintiff was entitled to a line-of-duty disability pension where his disabling injury resulted from an act of duty; the judgment of the circuit court reversing the decision of the Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago is affirmed.

¶ 2 The Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago (Board) appeals from a judgment of the circuit court of Cook County that reversed its decision to deny the application of the plaintiff, Anthony Hernandez, for a line-of-duty disability

pension under section 5-154 of the Illinois Pension Code (Code) (40 ILCS 5/5-154 (West 2014)). For the reasons that follow, we affirm the judgment of the circuit court which reversed the decision of the Board.

¶ 3 The following facts are taken from the evidence of record presented at the Board's hearing on the plaintiff's application for pension benefits on May 29, 2015.

¶ 4 The plaintiff testified that he began working for the Chicago Police Department (CPD) in 1998. In May 2011, he signed a contract with his supervisor, Sergeant James Padar, to renovate Sergeant Padar's house in Michigan during the plaintiff's vacation time from CPD. In June 2011, Sergeant Padar terminated the contract and refused to pay the plaintiff for the work he had performed. The plaintiff confronted Sergeant Padar in September 2011 about his failure to pay, at which time Sergeant Padar told the plaintiff that he never processed his requests to take vacation time and, as a result, CPD would pay the plaintiff for days on which he worked on the house. Sergeant Padar told the plaintiff that he made similar arrangements for other officers and to "consider the money that [he] got from the City [of Chicago]" as payment for the renovation work. The plaintiff stated that he was unwilling "to be a part of [the] scam," and reported Sergeant Padar to CPD's Internal Affairs.

¶ 5 Within 24 hours of filing his report, the plaintiff was transferred out of Sergeant Padar's unit and assigned to a different team. He was denied the police vehicle he previously used to drive to and from work, and a commander, James O'Grady, repeatedly changed his schedule and assigned him to work in a guard shack. In early 2013, Commander O'Grady informed the plaintiff, who previously worked as an undercover narcotics officer, that he could no longer work "on the streets" because, "after filing this complaint of corruption against [Sergeant Padar], the people I work with would not back me up."

¶ 6 In May 2013, the plaintiff treated with therapist Joline Hartland, who diagnosed him with adjustment disorder "due to work stress" and removed him from work in two letters dated that month. Hartland noted that the plaintiff experienced "panic attacks, anxiety, low energy, intense worry, very poor sleep, and difficulty concentrating." According to CPD records, the plaintiff began taking "non-IOD [injury-on-duty]" leave for "stress related illness" in May 2013.

¶ 7 At the Board's request, the plaintiff underwent multiple examinations by psychologists Sara Michelson and Marva Dawkins between July 2013 and June 2014. In their reports, Michelson and Dawkins stated that the plaintiff "initially began to experience symptoms of anxiety" in 2011 "when he initiated an [I]nternal [A]ffairs complaint against his superior officers." Per the reports, the plaintiff felt "unsafe while on duty" and experienced "a sharp increase in acute anxiety whenever he ha[d] to perform work-related tasks, such as *** reporting to a police sergeant." Michelson and Dawkins concluded that the plaintiff's test data and clinical interview "confirm that he is experiencing significant mental health concerns" that rendered him unfit for police work.

¶ 8 Dr. Edward Tuder conducted an independent medical examination of the plaintiff in July 2014. In his report, Dr. Tuder diagnosed the plaintiff with panic disorder without agoraphobia and adjustment disorder with anxiety. Dr. Tuder noted that, as "consequences of being a whistleblower," the plaintiff experienced "substantial stress," weight gain, panic attacks, and insomnia. According to Dr. Tuder, the plaintiff claimed that "someone left a note at his house threatening his life" and he "believe[d] it would be unsafe to return to work." Dr. Tuder concluded that the plaintiff's disability resulted from his "on-duty experiences" and precluded him from performing police work.

¶ 9 In January 2013, the plaintiff filed a lawsuit against Sergeant Padar, Commanders Jose Ramirez and O'Grady, and the City of Chicago, seeking "to be protected against retaliation as a whistleblower," and a lawsuit against Sergeant Padar for breach of contract. On June 10, 2014, one day before the exhaustion of his available medical leave, the plaintiff filed his application for a line-of-duty disability pension.

¶ 10 Following the hearing, the Board issued a unanimous written decision finding that, although the plaintiff was disabled, he failed to establish that his disability resulted from "a specific identifiable act of duty unique to police work." Rather, the Board found that his condition "result[ed] from a dispute with [Sergeant Padar] *** for unpaid private work done and his perceived harassment which followed ***." Additionally, the Board stated that the plaintiff's attempt "to associate his current medical problems" to alleged retaliation by his supervisors was not credible, particularly when he had taken non-injury-on-duty medical leave and had not attempted "to associate those days off with an act of duty incident." Consequently, the Board denied the plaintiff's application for a line-of-duty disability pension and, instead, awarded him a non-duty disability pension.

¶ 11 The plaintiff timely filed a complaint for administrative review of the Board's decision in the circuit court of Cook County. The circuit court reversed the Board's decision and granted the plaintiff's application for a line-of-duty disability pension. This appeal followed.

¶ 12 On appeal, the Board contends that the plaintiff is not entitled to a line-of-duty disability pension because his disability did not result from an act of duty as contemplated by the Code but, rather, from his contractual dispute with Sergeant Padar. The plaintiff, in response, claims that his disability resulted from retaliation that he incurred following his report to Internal Affairs and, therefore, was caused by an act of duty that entitles him to a line-of-duty disability pension.

¶ 13 The Code provides different pension benefits depending upon the circumstances of a police officer's disability. An officer employed by a municipality of more than 500,000 inhabitants, such as the plaintiff, who is disabled "as the result of injury incurred *** in the performance of an act of duty" is entitled to a line-of-duty disability pension equal to 75% of his salary. 40 ILCS 5/5-154(a) (West 2014). Generally, an officer who becomes disabled "as the result of any cause other than injury incurred in the performance of an act of duty" is entitled to 50% of his salary. 40 ILCS 5/5-155 (West 2014). To establish his entitlement to a line-of-duty disability pension, an officer must prove that: (1) he is an active police officer; (2) an injury was incurred; (3) the injury occurred in the performance of an act of duty; and (4) as a result of the injury, the officer became disabled and does not have the right to receive salary. See 40 ILCS 5/5-154(a) (West 2014). In this appeal, the parties only dispute whether the plaintiff's injury occurred in the performance of an act of duty.

¶ 14 As this matter involves an appeal from a judgment of the circuit court rendered in an administrative review action, we review the decision of the Board, not the determination of the circuit court. *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 504 (2007). Our standard of review depends upon the nature of the question we are addressing. As to questions of law, our review is *de novo*. *Kouzoukas v. Retirement Board of Policemen's Annuity & Benefit Fund of City of Chicago*, 234 Ill. 2d 446, 463 (2009). Questions of fact are reviewed using the manifest weight standard, while mixed questions of fact and law are reviewed under the clearly erroneous standard. *Id.*

¶ 15 The Board contends that this appeal involves a mixed question of fact and law concerning the legal effect of undisputed facts regarding the plaintiff's injury. We disagree. "[A] mixed question is one 'in which the historical facts are admitted or established, the rule of law is

undisputed, and the issue is whether the facts satisfy the statutory standard ***.' " *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 391 (2001) (quoting *Pullman-Standard v. Swint*, 456 U.S. 273, 289 n.19 (1982)). Here, the parties contest both the *factual issue* of whether the plaintiff's disability resulted from either his contractual dispute with Sergeant Padar or from his report to Internal Affairs, and the *legal question* of whether the cause of the plaintiff's disability constituted an act of duty under the Code. The former question is one of fact, subject to the manifest weight standard; the latter is one of law, which is reviewed *de novo*. *Kouzoukas*, 234 Ill. 2d at 463. We consider these issues in turn, each subject to its proper standard of review.

¶ 16 Turning first to the Board's determination that the plaintiff's disability resulted from his contractual dispute with Sergeant Padar, we note that the factual findings and conclusions of an administrative agency, such as the Board, are presumed to be *prima facie* true and correct. 735 ILCS 5/3-110 (West 2014). However, "[e]ven under the manifest weight standard ***, the deference we afford the administrative agency's decision is not boundless." *Wade*, 226 Ill. 2d at 507. An agency's finding is against the manifest weight of the evidence if the opposite conclusion is clearly evident or if the finding is unreasonable, arbitrary, and not based upon any evidence. *Lyon v. Department of Children & Family Services*, 209 Ill. 2d 264, 271 (2004). A reviewing court "may put aside any findings which are clearly against the manifest weight of the evidence." *Kouzoukas*, 234 Ill. 2d at 465.

¶ 17 In this case, the evidence adduced at the plaintiff's hearing demonstrated that Sergeant Padar refused to pay him for renovation work that he performed in June 2011. Following a confrontation in September 2011, Sergeant Padar told the plaintiff to accept payment from the City of Chicago for vacation days that he requested but Sergeant Padar never processed. The

plaintiff reported Sergeant Padar to Internal Affairs and, soon afterwards, was transferred to another team, received a new schedule, was denied his police vehicle, and was assigned to work in a guard shack. Although the plaintiff subsequently took non-injury-on-duty leave for "stress related illness," Dr. Tudor opined that the plaintiff experienced "substantial stress" from "being a whistleblower ***." Likewise, psychologists Michelson and Dawkins noted that the plaintiff began experiencing anxiety after reporting Sergeant Padar to Internal Affairs. No evidence was presented at the hearing establishing that the plaintiff experienced any symptoms following his personal dispute with Sergeant Padar. Rather, all of his symptoms occurred after reporting Sergeant Padar to Internal Affairs.

¶ 18 Based upon this record, the only evidence adduced at the plaintiff's hearing demonstrated that his disability resulted from his report to Internal Affairs, and no evidence supported the Board's inference that his disability resulted from his contractual dispute with Sergeant Padar. See *People v. Davis*, 278 Ill. App. 3d 532, 540 (1996) ("If an alleged inference does not have a chain of factual evidentiary antecedents, then within the purview of the law it is not a reasonable inference but is instead mere speculation."). As the Board's finding that the plaintiff's disability resulted from a dispute with Sergeant Padar is not supported by any evidence, and the opposite conclusion is clearly evident, its determination regarding the cause of the plaintiff's disability is against the manifest weight of the evidence. *Kouzoukas*, 234 Ill. 2d at 465; *Lyon*, 209 Ill. 2d at 271.

¶ 19 The Board contends, however, that even if the plaintiff's disability resulted from whistleblowing activities, he is not entitled to a line-of-duty disability pension because his conduct did not constitute an act of duty under the Code. According to the Board, the existence of federal and state laws that protect whistleblowers demonstrates that whistle-blowing is not unique to

police work. Additionally, the Board submits that the plaintiff's whistle-blowing activities did not expose him to a special risk.

¶ 20 The interpretation of the term "act of duty," as used in the Code, presents a question of law, which this court reviews *de novo*. See *Nelson v. Artley*, 2015 IL 118058, ¶ 13; *Sarkis v. City of Des Plaines*, 378 Ill. App. 3d 833, 837 (2008). The purpose of statutory interpretation is to determine the legislative intent, which is best indicated by the statutory language, given its plain and ordinary meaning. *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 11.

¶ 21 The Code defines an "act of duty," in relevant part, as "[a]ny act of police duty inherently involving special risk, not ordinarily assumed by a citizen in the ordinary walks of life," or, which is imposed upon the officer by statute or regulation. 40 ILCS 5/5-113 (West 2014). Courts have developed "general rules *** to define and apply the term 'act of duty' to cases involving claimed psychological disabilities," such as the case at bar. *Trettenero v. Police Pension Fund of City of Aurora*, 268 Ill. App. 3d 58, 64 (1994). Namely, police officers must demonstrate that their psychological disabilities " 'are the result of a specific, identifiable act of duty unique to police work.' " *Robbins v. Board of Trustees of Carbondale Police Pension Fund of City of Carbondale, Illinois*, 177 Ill. 2d 533, 542 (1997) (quoting *Trettenero*, 268 Ill. App. 3d at 63). Courts deny line-of-duty disability pensions when the disability is traceable only to the general nature of being a police officer, or when the causes of the stress are not unique to police work. *Id.* The existence of a special risk is not limited to inherently dangerous activities, but depends upon "the capacity in which the officer is acting, rather than the precise mechanism of injury." *Village of Stickney v. Board of Trustees of Police Pension Fund of Village of Stickney*, 363 Ill. App. 3d 58, 65 (2005); see also *Johnson v. Retirement Board of Policemen's Annuity & Benefit Fund*, 114 Ill. 2d 518, 522 (1986) (finding that a police officer injured while crossing the

street performed an act of duty because, "at the time of his disabling injury, [he] was discharging his sworn duties to the citizens of Chicago by responding to the call of a citizen to investigate an accident" and had "no option as to whether to respond") (Emphasis in original.)

¶ 22 Applying these principles, courts have found that the Code does not recognize an act of duty where a police officer's psychological injury results from the "perception of unfair treatment by the [police] department" (*Trettenero*, 268 Ill. App. 3d at 69); lack of career advancement (*Wall v. Police Pension Board of Village of Schaumburg*, 178 Ill. App. 3d 438, 444-45 (1988)); or "differences in management style with [a] superior" (*Olson v. City of Wheaton Police Pension Board*, 153 Ill. App. 3d 595, 599 (1987)). Where, on the other hand, a psychological injury results from activities involving risks not ordinarily encountered by civilians, courts have held that the injury results from an act of duty. For example, in *Village of Stickney*, an officer was demoted and ostracized in his police department after alleging that his police chief mishandled evidence, misused public funds, and interfered in a rape investigation. *Village of Stickney*, 363 Ill. App. 3d at 59-60. The Board granted the officer a line-of-duty disability pension and his employer appealed, arguing that "the stress that [the officer] experienced arose not from the specific incidents of police work, but from his interactions with the police chief." *Id.* at 61, 66. We rejected this argument, as the officer's conflict with the police chief "occurred in the context of [the officer's] police duties, i.e., managing evidence, investigating crimes, and conducting undercover operations." *Id.* at 66. Because those activities involved risks not ordinarily encountered by civilians, we concluded that the officer incurred his disability in the performance of his duties. *Id.*

¶ 23 Based upon the plain and ordinary meaning of an "act of duty" as defined in section 5-113 of the Code, and our decisions applying that term in cases involving psychological

disabilities, we find that, in this case, the plaintiff's disability resulted from an act of duty. The plaintiff, by the nature of his position as a police officer, was required to take action upon learning of Sergeant Padar's illegal activity. See *Johnson*, 114 Ill. 2d at 522. Reporting Sergeant Padar to Internal Affairs constituted a specific, identifiable act of police work and was, moreover, required by CPD's rules and regulations. See CPD Rules and Regulations, art. V, R. 21 (requiring police officers "to report promptly to the Department any information concerning any crime or other unlawful action.").

¶ 24 Additionally, because the plaintiff worked as an undercover narcotics officer under the supervision of the officer whom he accused of corruption, his conduct has no "clear counterpart in civilian life" and involved special risks not ordinarily encountered by civilians. *Alm v. Lincolnshire Police Pension Board*, 352 Ill. App. 3d 595, 601 (2004); *Village of Stickney*, 363 Ill. App. 3d at 66. Notably, the Code recognizes the existence of a special risk based not upon the level of danger faced by a police officer but, rather, the capacity in which the officer is acting when his injury occurs. *Village of Stickney*, 363 Ill. App. 3d at 65. Here, the plaintiff reported Sergeant Padar to Internal Affairs in his capacity as a police officer, in response to his supervising officer's request to engage in criminal conduct. Per the plaintiff's psychological reports, his conduct in reporting Sergeant Padar caused him to feel unsafe while on duty, suffer anxiety when interacting with superior officers, and experience substantial stress that rendered him unable to work as a police officer. Thus, even without relying upon Commander O'Grady's warning of physical danger, the plaintiff's conduct exposed him to a special risk of psychological injury that was unique to police work. As the plaintiff's conduct in reporting Sergeant Padar to Internal Affairs constituted a specific, identifiable act of police work and involved a special risk,

we find that he became disabled due to an act of duty and, therefore, is entitled to a line-of-duty disability pension.

¶ 25 In so holding, we reject the Board's reliance upon comments made by its members at the plaintiff's hearing, which reflected their disbelief that the plaintiff's conduct physically endangered him. These remarks contradicted the non-adversarial, fact-finding nature of pension hearings, were not evidence, and do not bear upon our interpretation of the Code. See *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 94-95 (1992) ("It is settled that an administrative hearing is not a partisan hearing with the agency on one side arrayed against the individual on the other. Rather, it is an administrative investigation instituted for the purpose of ascertaining and making findings of fact.").

¶ 26 Based upon the foregoing, we affirm the judgment of the circuit court which reversed the decision of the Board.

¶ 27 Affirmed.