2018 IL App (2d) 170399-U
No. 2-17-0399
Order filed June 27, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JAMES CARNEY, Plaintiff-Appellee, v. LINCOLNSHIRE-RIVERWOODS FIRE PROTECTION DISTRICT, Defendant-Appellant (Janelle Carney, substitute plaintiff-appellee).	)	Appeal from the Circuit Court of Lake County. No. 16-MR-353 Honorable Diane E. Winter, Judge, Presiding.

JUSTICE Burke delivered the judgment of the court.
Justice McLaren and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* Because the Pension Board determined that plaintiff proved by a preponderance of the evidence that he was entitled to line-of-duty disability pension benefits under the Pension Code, the trial court did not err in finding that plaintiff had suffered a "catastrophic injury"; and the trial court did not err in finding that the injuries plaintiff incurred were in response to emergencies under the PSEBA, entitling plaintiff to collect insurance; affirmed.

¶ 2 Plaintiff, James Carney, filed a complaint for declaratory judgment against defendant, the Lincolnshire-Riverwoods Fire Protection District, seeking a ruling from the Circuit Court of Lake County that he was entitled to the health insurance benefits provided under section 10 of

the Public Safety Employee Benefits Act (PSEBA) (820 ILCS 320/10 (West 2016)). Following cross-motions for summary judgment, the trial court found in favor of plaintiff and against defendant and ordered defendant to pay plaintiff insurance benefits. To collect insurance benefits under section 10 of the PSEBA, a firefighter must suffer a catastrophic injury in the line of duty (820 ILCS 320/10(a) (West 2016)) and the injury must have occurred as the result of the firefighter's response to what is reasonably believed to be an emergency (820 ILCS 320/10(b) (West 2016)). Defendant appeals, arguing that the nature of plaintiff's disability, being mesothelioma, does not satisfy the "catastrophic injury" requirement of section 10(a) and that plaintiff did not establish that his illness was incurred during a response to what he reasonably believed to be an emergency, as required by section 10(b). Plaintiff died during the pendency of this case, and we granted an uncontested motion to substitute his widow, Janelle Carney, as party plaintiff in this case. We affirm.

¶ 2 I. BACKGROUND

¶ 3 Plaintiff began his employment with defendant on July 1, 2000. He was hired into the position of Firefighter/Paramedic. Previously, he had worked as a volunteer paid-on-call member of the Newport Township Fire Protection District.

¶ 4 The Board of Trustees of the Lincolnshire-Riverwoods Firefighters' Pension Fund (the Pension Board) expressly found that, at the time plaintiff was hired by defendant, plaintiff underwent an initial, required medical examination, which found defendant fit for duty.

¶ 5 The written job description for the positions held by plaintiff provided that he would have to have the ability to work in areas where sustaining traumatic or thermal injuries was possible and would have to have the ability to face exposure to carcinogenic dusts, such as asbestos and toxic substances, such as hydrogen cyanide, acids, carbon monoxide or organic solvents either

through inhalation or skin contact. During his career, plaintiff was repeatedly exposed to chemical dusts, carcinogenic fumes, and other substances while attending to specific and discreet calls, which were documented individually by written reports for the National Fire Incident Reporting System (NFIRS), which is the standard national reporting system used by U.S. fire departments to report fires and other incidents to which firefighters respond. Pension Board Exhibit 8 (which is plaintiff's summary judgment Exhibit 7, hereinafter referred to as Exhibit 7) lists the fire calls and hazmat calls to which plaintiff responded. Plaintiff also supplemented it with two additional emergency "run reports" dealing with a structure fire on February 19, 2006, and a rubbish fire on August 15, 2006.

¶ 6 On May 10, 2013, plaintiff sought medical attention due to trouble sleeping and coughing at night. A CT angiogram was performed on May 20, 2013, and plaintiff was diagnosed with pericarditis, which is swelling of the tissue around the heart. A pericardial window surgery was performed on plaintiff's chest on June 3, 2013, which revealed a tumor between his heart and the pericardium. Plaintiff underwent a program of chemotherapy. His career ended with the diagnosis and subsequent treatment for pericardial mesothelioma. As a result of his sickness and treatments, he was physically unable to perform his duties as a firefighter/paramedic for defendant.

¶ 7 Plaintiff applied for disability benefits. He first applied for occupational disease disability benefits under section 4-110.1 of the Illinois Pension Code (Pension Code) (40 ILCS 5/4-110.1 (West 2016)). Before the hearing began on December 8, 2014, the Pension Board ordered plaintiff to submit to examinations by three independent medical experts, pursuant to section 4-112 of the Pension Code (40 ILCS 5/4-112 (West 2016)).

¶ 8 At the hearing, [1] plaintiff moved to amend the application to include an alternative line-of-duty pension under section 4-110 of the Pension Code (40 ILCS 5/4-110 (West 2014)), so that the application conformed to the medical evidence as established by the three examinations of the Pension Board's ordered physicians and to the records provided. The record reveals that plaintiff specifically requested the application to include a line-of-duty disability in the alternative to an occupational disease disability. A non-duty claim also was alternatively requested. One of the Pension Board's counsel stated that the record would so reflect that the board "will be considering a line of duty disability and then in the alternative an occupational disease or nonduty disability."

¶ 9 The Pension Board then heard testimony from plaintiff and also considered the documentary evidence, including the summary of fire calls and hazmat calls, the job description, and excerpts of defendant's policies admitted into evidence. The three doctors retained by the Pension Board to conduct independent medical evaluations of plaintiff each filled out a "disability Certificate." Each doctor opined on the certificates that plaintiff's disability was the result of the cumulative effects of acts of duty performed during his career with defendant. These opinions became findings of fact for the Pension Board in its findings and decision.

¶ 10 The Pension Board entered the following relevant conclusions of law:

> "2. [Plaintiff] is permanently disabled for service as a firefighter/paramedic for [defendant].
>
> 3. [Plaintiff] has proven by a preponderance of the evidence that his disability resulted from the cumulative effects of acts of duty.

[1] Defendant did not intervene in the hearing.

> 4. [Plaintiff] is entitled to a line-of-duty disability pension under Section 4-110 of the Illinois Pension Code.
>
> 5. [Plaintiff] has proven by a preponderance of the evidence that his disability is a disabling cancer that developed during a period when [plaintiff] was in the service of [defendant] and is a type of cancer which may be caused by exposure to heat, radiation or a known carcinogen as defined by the International Agency for Research on Cancer.
>
> 6. [Plaintiff] is alternatively entitled to an occupational disease disability pension under Section 4-110.1 of the *** Code." (Citations omitted.)

¶ 11 Because the Pension Board deliberated in a closed session, it later adopted and entered its findings and decision on January 17, 2015.

¶ 12 After plaintiff received the decision, plaintiff made several oral and written demands for payment of health insurance premiums by defendant pursuant to the terms provided by the PSEBA. The demands were expressly rejected by defendant. Thereafter on February 19, 2016, plaintiff filed this action for declaratory judgment, in which he sought a ruling by the circuit court that section 10 of the Pension Code required defendant to pay health insurance premiums on behalf of plaintiff, his spouse, and his children for life.

¶ 13 The parties filed cross-motions for summary judgment. In its motion, plaintiff noted the recent decision of *Bremer v. City of Rockford*, 2016 IL 119889, ¶ 32-33, which held that the definition of "catastrophic injury" includes disability pensions awarded under the Pension Code. Plaintiff argued that, since he was granted line-of-duty benefits by the Pension Board, under *Bremer*, he is entitled, as a matter of law, to receive insurance benefits from defendant.

¶ 14 Plaintiff also submitted a statement of uncontested material facts in support of his motion for summary judgment. Plaintiff argued that the Pension Board specifically articulated that

plaintiff had established that his catastrophic injury was the result of the cumulative effects of specific acts of duty. Plaintiff argued that the documents accumulated by the Pension Board reflected the written records of the various responses attended by plaintiff. Plaintiff noted the several hundred incident responses of specific events, which plaintiff argued were, by their very terms, emergencies at which plaintiff suffered repeated insults to his body leading to the disabling injury that ended his career. Plaintiff noted that the Pension Board relied upon plaintiff's testimony, including plaintiff's repeated responses to fire calls at Nichols Aluminum, which was a high hazard facility within defendant's jurisdiction. Plaintiff argued that this evidence established that his condition was caused by the cumulative effects of events that occurred while he was responding to what he reasonably believed to be an emergency.[2]

¶ 15 Defendant argued that it was entitled to summary judgment because plaintiff could not prove that he suffered a "catastrophic injury" or that his illness was incurred during the response to an "emergency," as required under section 10 of the PSEBA. Defendant noted that the legislature did not intend the phrase "catastrophic injury" to be synonymous with a disease resulting in the award of an occupational disease disability pension. Defendant maintained, as it does on appeal, that the Pension Board awarded plaintiff a line-of-duty pension at his own request because of possible tax issues that might arise from the award of an occupational disease disability pension; that this does not negate the findings of the Pension Board that plaintiff proved by a preponderance of the evidence that his cancer was of the nature presumed to be an

[2] Plaintiff filed an affidavit in which he averred that all of the reported incidents summarized in Exhibit 7 were, in fact, emergency responses to either a fire or a hazmat hazard endangering the persons and /or property of the citizens of Lincolnshire-Riverwoods, with the exception of those entries excluded as emergencies in his affidavit.

occupational disease; and therefore, plaintiff is not entitled to insurance benefits and defendant, therefore, is entitled to judgment as a matter of law.

¶ 16 Even if the court determined that plaintiff was awarded a line-of-duty disability pension and that he suffered a "catastrophic injury," defendant further argued that plaintiff still did not qualify for insurance benefits under the PSEBA. Defendant noted that plaintiff testified in an asbestos case that his mesothelioma could have been caused by hundreds of different exposures that he had during his lifetime. Defendant argued therefore, that plaintiff could not establish what calls, if any, were causative factors in his disability, what roles that he took in responding to those specific calls, or whether he reasonably believed his responses were during emergency conditions.

¶ 17 Documents related to the asbestos case to which defendant refers were attached to its summary judgment motion. The documents provide that plaintiff gave a deposition in an asbestos lawsuit that he had filed against numerous agencies, including the parent company of Nichols Aluminum. During that deposition, plaintiff testified that he was exposed to asbestos, among other times, to the following: (1) while attending elementary school in Wadsworth, Illinois; (2) from the barn where he grew up; (3) from his grandmother's barn and from the boiler at her home; (4) when he helped his father change the brakes on their horse trailers and other vehicles; (5) while working at Kirschoffer Construction; (6) while working on construction projects at the Great Lakes Naval Base; and (7) while doing non-emergent inspections of mechanical rooms in over 100 commercial buildings.

¶ 18 Following oral argument, the trial court determined, based on case law, that the Pension Board's finding that plaintiff was entitled to line-of-duty disability pension benefits was determinative of whether plaintiff had suffered a "catastrophic injury". The court further found

that plaintiff's Exhibit 7 "sufficiently set out that his injuries as found by the doctors and the Pension Board to be—over the course of years—to have been incurred in the nature in the response to emergencies." The court stated: "Exhibit 7 is sufficiently detailed to provide the plaintiff who was on the scene and to also demonstrate that many of these responses were to larger—larger fires that anybody on the scene presumably could have been exposed." Accordingly, the court granted plaintiff's motion for summary judgment, ordered defendant to pay insurance benefits, and denied defendant's motion.

¶ 19 Defendant timely appeals. Additional pertinent facts will be discussed in the context of our analysis.

¶ 20 II. ANALYSIS

¶ 21 A. Standard of Review

¶ 22 This appeal arises from the circuit court's order granting plaintiff and denying defendant summary judgment. Pursuant to section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2010)), summary judgment should be granted only where the pleadings, depositions, admissions and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and that the moving party is clearly entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010). When, as here, the parties file cross-motions for summary judgment, they agree that only questions of law are involved and invite the court to decide the issues based on the record. *Pielet v. Pielet*, 2012 IL 112064, ¶28. However, the mere filing of cross-motions for summary judgment does not establish that there is no issue of material fact, nor does it obligate a court to render summary judgment. *Andrews v. Cramer*, 256 Ill. App. 3d 766, 769 (1993). We review summary judgment rulings *de novo*. *Pielet*, 2012 IL 112064, ¶ 30.

¶ 23 This case is governed by section 10 of the PSEBA. Under the PSEBA, a firefighter and his family are entitled to the specified health benefits if: (1) under section 10(a), the firefighter suffered a "catastrophic injury"; and (2) under section 10(b), the injury or death resulted from any of a listed set of situations including the firefighter's "response to what is reasonably believed to be an emergency." 820 ILCS 320/10(b) (West 2016); *Richter v. Village of Oakbrook*, 2011 IL App (2d) 100114, ¶ 16.

¶ 24 B. Catastrophic Injury Requirement (Section 10(a))

¶ 25 In *Krohe v. City of Bloomington*, 204 Ill. 2d 392 (2003), and subsequent cases, the supreme court construed the phrase "catastrophic injury" in section 10(a) as "synonymous with an injury resulting in a line-of-duty disability." *Krohe*, 204 Ill. 2d at 400. In *Bremer v. City of Rockford*, 2016 IL 119889, the supreme court further concluded that the legislature did not intend the phrase "catastrophic injury" in section 10(a) of the PSEBA to be synonymous with a disease resulting in the award of an occupational disease disability pension as defined by section 4-110.1 of the Pension Code. *Id*. 2016 IL 119889, ¶ 34.

¶ 26 Defendant does not dispute that the Pension Board found plaintiff had satisfied his burden of proof for both occupational disease disability pension benefits and line-of-duty disability pension benefits under the Pension Code. Defendant maintains that we should consider the nature of the disease that caused plaintiff to become disabled and the entire reason the Pension Board awarded the separate pensions. Defendant notes that the legislative intent behind enacting the PSEBA was to reward those emergency personnel who selflessly put their own bodily safety at risk while responding to an emergency; injuries resulting from such emergency incidents are specific and generally easy to identify, which is why the courts have determined that "catastrophic injuries" are synonymous with line-of-duty disability pension

awards. Defendant points out that *Bremer* does not include occupational diseases such as mesothelioma and heart disease in the catastrophic injury category because these types of diseases do not arise from specific or easy to identify emergency incidents but rather, develop cumulatively over time and can be attributed to non-employment sources and genetics. Defendant observes that this is bolstered by the fact that the legislature chose to reward those firefighters who become disabled from occupational diseases by lightening their burden of proof with a pension specifically created to compensate them. See 40 ILCS 5/4-110.1 (West 2016). Defendant asserts that, if this court construes the nature of the disease that caused plaintiff to be disabled, "the only clear conclusion is that [plaintiff] did not establish a 'catastrophic injury' of the nature contemplated by the court and the [legislature]." As such, defendant argues that plaintiff cannot satisfy section 10(a) and is not entitled to insurance benefits.

¶ 27 In essence, defendant's argument is an invitation to depart from Illinois Supreme Court precedent and an attempt to circumvent the legal consequences of the Pension Board's findings. Defendant's efforts are without merit.

¶ 28 In *Village of Vernon Hills v. Heelan*, 2015 IL 118170, the Village sought to avoid the legal consequences of the decision of the local Pension Board and conduct a post-decision hearing to determine whether the police officer, Heelan, suffered a "catastrophic injury" in the performance of an act of duty. The Village filed a declaratory judgment action, seeking to depose four doctors and to conduct additional discovery. The Village contended that it had a due process right to conduct an independent hearing in order "to litigate the nature, extent or causation of Heelan's injuries." *Id*. at ¶ 13.

¶ 29 The Village contended that *Krohe*, which construed the phrase "catastrophic injury" as synonymous with an injury resulting in a line-of-duty disability, did not hold that receipt of a

line-of-duty disability pension automatically entitled an injured party to insurance benefits or that the granting of a line-of-duty disability pension by a pension board necessarily satisfied the elements of proof required under section 10(a).[3] In other words, the Village argued that "*Krohe* did not equate the two concepts" in the sense that proof of a line-of-duty disability pension "irrefutably" established a catastrophic injury under section 10(a) as a matter of law. However, the *Heelan* court refuted this, stating: "That is exactly what this court held in *Krohe* and subsequent cases." *Heelan*, 2015 IL 118170, ¶ 23. The court cited *Nowak v. City of Country Club Hills*, 2011 IL 111838, wherein the *Nowak* court explained that " 'catastrophic injury' " is a term of art, and it means an injury that results in the awarding of a line-of-duty disability pension." *Heelan* 2015 IL 118170, ¶ 23 (quoting *Nowak*, 2011 IL 111838, ¶ 12). In *Nowak*, the supreme court expressly equated the determination of a catastrophic injury with the award of a line-of-duty disability pension. *Nowak*, 2011 IL 111838, ¶ 29.

¶ 30 The Village argued alternatively that the facts in its case were distinguishable from those in *Krohe* and its progeny and that it was not barred from taking discovery or presenting evidence on the issue. The Village noted that the case law merely equated the definition of a catastrophic injury with the definition of a line-of-duty disability pension. The Village observed that *Krohe* never discussed the nature, extent, or cause of Krohe's injuries and did not address whether the city was entitled to litigate those issues in that declaratory judgment action. The *Heelan* court disagreed with this argument too, stating: "Because the legislature intended an injured public safety employee to be eligible for benefits under section 10(a) of the Act whenever his or her injuries were sufficient to qualify for a line-of-duty disability pension, the pension board's award establishes *as a matter of law* that the public safety employee suffered a catastrophic injury."

[3] The defendant conceded 10(b) was satisfied.

(Emphasis in original.) *Heelan*, 2015 IL 118170, ¶ 25. Agreeing with the lower court's view of precedent as controlling, the supreme court then quoted the appellate court's conclusion: " 'Accordingly, where it is uncontroverted that a line-of-duty disability pension has been awarded, section 10(a) is satisfied, and there is no need to engage in discovery or present evidence regarding the claimant's injury.' " *Heelan*, 2015 IL 118170, ¶ 25 (quoting *Village of Vernon Hills v. Heelan*, 2014 IL App (2d) 130823, ¶ 26).

¶ 31 In the present case, the Pension Board, after considering the evidence of fire incidents and hazmat calls to which plaintiff was assigned, found that plaintiff proved by a preponderance of the evidence that he was entitled to line-of-duty disability benefits under section 4-110.[4] Under *Heelan*, receipt of a line-of duty disability pension automatically entitles the injured party to insurance benefits under section 10(a), as he has met the standard of "catastrophic injury." Having met this threshold, there is no need to engage in discovery or present evidence regarding plaintiff's injury. Defendant's effort to re-litigate the Pension Board's determination is barred. [5] Moreover, *Bremer* has no application here because, although plaintiff was awarded an occupational disease disability pension in the alternative, he was awarded a line-of-duty disability pension.

¶ 32 C. Emergency Requirement (Section 10(b))

[4] The Pension Board did not award plaintiff benefits for both a line-of-duty disability pension and an occupational disease disability pension; the award was "in the alternative."

[5] Additionally, as pointed out by plaintiff, defendant did not intervene in the proceeding and did not seek judicial review of the conclusion of law rendered by the Pension Board. More than 35 days have passed since the Pension Board's determination, and thus the decision is final and binding. See *Sola v. Roselle Police Pension Board*, 2012 IL App (2d) 100608, ¶¶ 18-23.

¶ 33 As set forth above, a firefighter and his family are entitled to health benefits if, under section 10(a), the firefighter suffered a "catastrophic injury," and, under section 10(b), the injury resulted from any of a listed set of situations, including the firefighter's "response to what is reasonably believed to be an emergency." 820 ILCS 320/10(a), (b) (West 2014); *Richter*, 2011 IL App (2d) 100114, ¶ 16.

¶ 34 In *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012, our supreme court defined the legal standard for determining an emergency under section 10(b) of the PSEBA. The *Gaffney* court held that "[t]o be entitled to continuing health coverage benefits under section 10(b), the injury must occur in response to what is reasonably believed to be an unforeseen circumstance involving imminent danger to a person or property requiring an urgent response." *Id*. 2012 IL 110012, ¶ 64.

¶ 35 Defendant contends that, as a matter of law, plaintiff cannot prove that his disability was due to events that occurred while responding to what "he reasonably believed to be an emergency." Defendant argues that, because plaintiff suffers from an occupational disease that developed cumulatively over time, it is impossible for plaintiff to prove what incidents caused or contributed to his injury or whether those incidents were incurred during responses to what plaintiff reasonably believed to be an emergency.

¶ 36 Defendant's argument rests on its assertion that, in order to recover under the PSEBA, the plaintiff must prove that the injury he received occurred during an emergency response which was the sole cause of his disability. However, in *Smith v. Armor Plus Co.*, 248 Ill. App. 3d 831, 840 (1993), we noted that "[a]n injury may have more than one proximate cause." Illinois law defines a proximate cause as:

> "a cause that, in the natural or ordinary course of events, produced the plaintiff's injury. It need not be the only cause, nor the last or nearest cause. It is sufficient if it combines with another cause resulting in the injury." Illinois Pattern Jury Instructions, Civil, No. 15.01 (2011).

¶ 37 In *Richter*, 2011 IL App (2d) 100114, ¶ 20, the plaintiff suffered an injury to his shoulders on January 4, 2000, and the injury occurred when the plaintiff was engaged in responding to an emergency, *i.e.*, a residential fire. The defendant argued that the shoulder injury the plaintiff sustained on January 4, 2000, was not the cause of the plaintiff's ultimate inability to continue working as a firefighter, because the plaintiff returned to work after receiving that injury. The plaintiff did not take substantial time off related to his shoulder condition until after he re-injured his shoulder during a November 2000 training exercise. The defendant argued that the November 2000 shoulder injury was the disabling event, that the training exercise was not an emergency, and that therefore the plaintiff's disabling injury did not result from his response to an emergency. *Id*. Citing *Smith*, we held that the plaintiff could recover under the PSEBA so long as the injury he sustained in January 2000 during an emergency response was a contributing cause of his disability, even if it was not the sole cause of that disability. *Id*. 2011 IL App (2d) 100114, ¶ 20-21.

¶ 38 We noted this point was similarly illustrated in *Phalin v. McHenry County Sheriff's Department*, 381 Ill. App. 3d 185 (2008), where the defendant raised the argument that, because only two of the plaintiff's four injuries arose from a response to an emergency, and the last injury before the plaintiff became disabled was not emergency-related, the plaintiff did not qualify for PSEBA benefits. *Id*. at 188. This court rejected that argument, noting that the PSEBA requires only that the plaintiff suffer "a catastrophic injury" as a result of responding to an emergency.

Id. The implication of this holding is that, as long as an emergency-related injury contributes to the eventual disability that qualifies as a "catastrophic injury," the plaintiff meets the requirements of PSEBA. See *Richter*, 2011 IL App (2d) 100114, ¶ 23.

¶ 39 In the present case, the Pension Board considered Exhibit 7, and its supporting documentation. This exhibit contains the numerous summaries of NFIRS run reports documenting plaintiff's participation in direct fire suppression and rescue activities for structural fires and auto fires.[6] The documents were subpoenaed for the hearing before the Pension Board and were described as "Incident Responses On-Duty With Summary Detail of the Nature of the Calls (Fire Incidents and Hazmat Incidents) (2000 to 2013)." The NFIRS reports submitted were summarized as being limited to fire incident and hazmat incident reports alone. A majority of the fire suppression was done combating residential blazes. Others were done during the course of extinguishing commercial fires. The pages document the year, date, the initial time of response, and the time the incident ended, along with a summary of the emergency responses made and the nature of the duties performed by the crew of which plaintiff was necessarily a part.

¶ 40 A summary of the documentation reveals that the calls were emergency situations involving structural fires, dumpster fires, and carbon monoxide poisoning events. Additionally, as pointed out by plaintiff, the inference that these emergency calls included toxic exposures is not farfetched given that the written job description promulgated by defendant predicts these toxic exposures.

[6] The Board was also presented with the actual incident reports for each event listed in the summary.

¶ 41 Exhibit 7's documentation of plaintiff's activities was provided to the examining physicians, which they used in formulating their opinions. Drs. Gill and Moisan could not exclude plaintiff's firefighting duties as a cause of his disability. Dr. Samo certified that plaintiff's disability is a type of cancer which may be caused by exposure to heat, radiation, or a known carcinogen as defined by the International Agency for Research on Cancer. Dr. Samo also certified that the occupational disease disability resulted from plaintiff's service as a firefighter and/or paramedic. He opined that plaintiff's cancer manifested itself during a period when he was in the service of the fire department and arose as a result of service as a firefighter and/or paramedic. As stated, all of the physicians agreed that plaintiff was disabled, in part, due to the cumulative effects of acts of duty at work. Finally, plaintiff averred to the fact that all of the NFIRS reports that were summarized in Exhibit 7 were perceived, with few exceptions, as emergency responses. We note also that the parties had filed cross-motions for summary judgment, and defendant did not argue below and does not argue on appeal that there are disputed material issues of fact.

¶ 42 The Pension Board determined that plaintiff's disability arose from the cumulative effects of acts of duty. If the Pension Board was not presented with, and presumably relied upon, Exhibit 7 and its supporting documentation of the incidents, we would not have a basis to determine whether the acts of duty the Board referred to were emergency situations. Exhibit 7 answers that question, as it contains every fire/hazmat call plaintiff responded to from 2000 to 2013. A review of the exhibit shows that all were emergency situations, with the exception of those entries excluded as emergencies in plaintiff's affidavit, which also were not acts of duty. The Pension Board's findings of fact specifically reference plaintiff's duties fighting fires and

responding to Nichols Aluminum. The corresponding entries in Exhibit 7 concerning these activities show that the calls were emergencies as defined in *Gaffney*.

¶ 43 Defendant's reliance on *Gaffney* and *Wilczak v. Village of Lombard*, 2016 IL App (2d) 160205, is misplaced. In *Gaffney*, which involved two consolidated cases, one firefighter was injured during a training exercise involving an actual fire. The supreme court held that Gaffney's training exercise became an emergency when there arose the unforeseen event of the hose becoming stuck, which created imminent danger and required an urgent response, because the crew was stranded on the stairwell of the burning building with no visibility and no water to put out the fire. *Gaffney*, 2012 IL 110012, ¶ 66. The other firefighter in *Gaffney*, Lemmenes, also was injured during a training exercise. The supreme court held that Lemmenses could not have reasonably believed that he was responding to an "emergency" under section 10(b) because the exercise was conducted under controlled conditions. *Gaffney*, 2012 IL 110012, ¶ 77.

¶ 44 In *Wilczak*, we held that providing assistance to a person who did not suffer from an emergent medical condition was not responding to what the plaintiff reasonably believed to be an emergency. Accordingly, we held that there was no imminent danger that required immediate action. *Wilczak*, 2016 IL App (2d) 160205, ¶ 24.

¶ 45 Here, unlike in *Gaffney* and *Wilczak*, plaintiff and his crew had responded to a series of actual fires and hazmat incidents under uncontrolled conditions, which created imminent danger and required urgent responses. The fact that one specific incident cannot be pinpointed as the "emergency" that led to his disability is not relevant in light of the Board's findings that plaintiff's disability arose from the cumulative effects of acts of duty. As long as an emergency-related injury contributes to the eventual disability that qualifies as a "catastrophic injury," plaintiff meets the requirements of the PSEBA. See *Richter*, 2011 IL App (2d) 100114, ¶ 20-21.

¶ 46 In sum, under the unique facts and procedural posture of this case, we conclude that the trial court did not err in granting plaintiff's motion for summary judgment and awarding benefits under the PSBEA. Here, defendant, in essence, attempts to collaterally attack the Pension Board's decision to award a line-of-duty disability pension. The more prudent course of action in a case such as this is for a municipality or district to intervene as a matter of right in the Pension Board proceedings, defend against a line-of-duty pension, and appeal an adverse ruling.

¶ 47 III. CONCLUSION

¶ 48 Based on the preceding, the order granting summary judgment to plaintiff and denying defendant's cross-motion for summary judgment is affirmed.

¶ 49 Affirmed.