2012 IL App (1st) 111418-U

FIRST DIVISION
June 4, 2012

No. 1-11-1418

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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

CAREY HALL,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	
	)	No. 09 CH 42812
THE BOARD OF TRUSTEES OF THE VILLAGE OF	)	
PALATINE POLICE PENSION FUND,	)	Honorable
	)	Michael Hyman,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE KARNEZIS delivered the judgment of the court.
J. Rochford concurred in the judgment.
J. Hall concurred in part and dissented in part in the judgment.

ORDER

¶ *1* *Held:* We reverse the decision of the circuit court. The court reversed a decision of the Board of Trustees of the Village of Palatine Police Pension Fund denying plaintiff a mental disability pension. We find the Board could properly consider all the doctors' opinions regarding plaintiff's alleged disability. There was, therefore, evidence in the record to support the Board's finding that plaintiff failed to prove she was disabled and entitled to a disability pension.

¶ 2 Defendant, the Board of Trustees of the Village of Palatine Police Pension Fund (Board), denied plaintiff Carey Hall's request for a not-on-duty mental disability pension. The circuit court reversed the Board's decision, entering judgment in favor of plaintiff. The Board appeals the court's decision, arguing that, contrary to the court's findings, (1) the Board properly considered the opinions of the three physicians the Board was statutorily mandated to select pursuant to section 3-115 of the Illinois Pension Code (40 ILCS 5/3-115 (West 2008)) and (2) the Board's decision that plaintiff failed to prove she was mentally disabled was not against the manifest weight of the evidence. We affirm the decision of the Board and, therefore, reverse the decision of the circuit court..

¶ 3 Background

¶ 4 Plaintiff was hired by the Village of Palatine as a police officer in 1998. Plaintiff suffered a panic attack while on duty on July 14, 2008. Her supervisor put her on paid administrative leave and ordered her to undergo a fitness for duty evaluation. On July 31, 2008, following a psychological evaluation of plaintiff, her supervisor put her on unpaid administrative leave for four months because she was "found unfit for duty at this time" and so that she could pursue the recommended psychological and psychiatric treatment.

¶ 5 On August 25, 2008, plaintiff applied to the Board for a line-of-duty disability pension, claiming her "mental health was negatively influenced by the pressures endured while fulfilling my duties as a police officer." She asserted pressure she suffered as a police officer caused her to suffer from an adjustment disorder, anxiety

and depression. On October 4, 2008, she amended her application to request, in the alternative, a not-on-duty disability pension.

¶ 6 The Board held two hearings on plaintiff's application. During the hearings, the Board heard plaintiff's testimony and received into evidence assorted documentary evidence, including plaintiff's employment records, the fitness for duty evaluation performed by Stanard & Associates, Inc., and the medical records of Drs. Raza Mehdi, Monica Schmidtt and Janeen H. Paul. The Board also received the reports of Drs. Paul Pasulka, Geoffrey Shaw and Robert Reff, who had been selected to examine plaintiff by an independent agency at the behest of the Board pursuant to section 3-115 of the Pension Code.[1]

¶ 7 Plaintiff testified that she suffered a panic attack at work on July 14, 2008. She stated it was triggered by her supervisor, Sergeant Ingebrigtsen, because he reprimanded her. She had suffered a previous panic attack in 1998 while attending the police academy but reported it to no one. Plaintiff testified that in July 2008, she was stressed by her work environment. She felt the sergeant singled her out; her co-workers did not like her; she had been involved in shooting incidents that made her afraid; she did not trust her fellow officers; and she suffered mistreatment at the hands of her fellow officers.

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[1] Section 3-115 of the Pension Code provides, in relevant part:
"A disability pension shall not be paid unless there is filed with the board certificates of the police officer's disability, subscribed and sworn to by *** 3 practicing physicians selected by the board. The board may require other evidence of disability." 40 ILCS 5/3-115 (West 2008).

¶ 8 Plaintiff also testified that the following personal events were causing her stress in July 2008: her husband's possible deployment to Afghanistan; her fertility treatment, for which she took a hormone; her financial problems; the bankruptcy she filed that month; the death of her dog; the death of her husband's grandmother; and the work involved in the master's degree in education that she had been pursuing for over a year.

¶ 9 Plaintiff admitted she had used drugs since becoming a police officer, had lied on her application for employment regarding her use of illegal drugs, had lied on her pre-employment polygraph test regarding her use of illegal drugs and had lied to the police department about how she had damaged her computer. She stated she lied on her application to get her job because getting the job was important to her. She stated that getting a disability pension was also important to her but she was not lying about her disability because she had matured, had been completely honest about her past history and would not lie now. At the time of her testimony, plaintiff was receiving treatment for adjustment disorder, anxiety and depression. She was taking four medications for her conditions. She stated the stress which caused her to be relieved from active duty was caused by her job, her husband's possible deployment and her fertility treatments.

¶ 10 Sergeant Ingebrigtsen prepared a report concerning plaintiff's July 14, 2008, panic attack. In the report, he stated he saw plaintiff crying, shaking and out of breath. Plaintiff told the sergeant that she was on the verge of a panic attack. She told the

sergeant "that she is being micro managed, her husband might go to Afghanistan, he just got back from drill and they have not had time to go over what they will do by way of finances and other needs, she is going through fertility attempts and finally just coming to 'this place' causes her blood pressure to rise." The sergeant sent plaintiff home for the day.

¶ 11 Plaintiff went to see her family physician, Dr. Mehdi, on the day after her panic attack. Dr. Mehdi had been treating plaintiff for mild depression and prescribing an anti-depressant for her since 2001. Dr. Mehdi's medical records stated his finding that plaintiff had "[a] lot of stressors," mentioning specifically her fertility treatments and her husband's deployment to Afghanistan. Dr. Medhi wrote a letter to the police department stating that plaintiff was under Dr. Medhi's medical care, she was "currently suffering from an adjustment disorder causing her extreme anxiety and depression," and she could return to work on July 21, 2008. Dr. Mehdi's records show he examined plaintiff again on September 11, 2008. She told him that "she's getting better." On September 24, 2008, at plaintiff's request, Dr. Mehdi wrote a letter in support of plaintiff's application for a disability pension. Dr. Mehdi stated that, due to the severity of plaintiff's adjustment disorder, anxiety and depression symptoms, he believed plaintiff was not able to fulfill her duties as a police officer. Dr. Mehdi believed plaintiff's employment as a police officer "contributed greatly" to the onset and severity of her symptoms and noted as contributing factors the possible deployment of plaintiff's husband and her infertility treatments.

¶ 12 A police department record shows plaintiff phoned the department in July 15, 2008, to inform the department that she would be off until July 21, 2008, on doctor's orders. Plaintiff stated she was diagnosed with an adjustment disorder and explained that her disorder was caused by her dog dying, her husband's deployment and her fertility treatments. She "stated she had 'lost it' with [her sergeant] last night because she perceived something he said as being 'shitty,' but it was not really 'shitty.' "

¶ 13 After meeting with plaintiff when she reported for duty on July 21, 2008, her police chief determined that she needed additional time off and put her on paid administrative leave for a week. He ordered her to report to Stanard & Associates on July 24, 2008, for a fitness for duty evaluation.

¶ 14 The report prepared by Stanard & Associates, based on what plaintiff told them and her demeanor, stated the opinion that "[g]iven the significant anxiety and depressive symptoms [plaintiff] is currently reporting, the examiners find her unfit for duty as a police officer." The report recommend that plaintiff receive four months of psychotherapy and consult with a psychiatrist for a prescription for psychotropic medication.

¶ 15 On July 30, 2008, based on Stanard's opinion, the police chief put plaintiff on unpaid administrative leave for four months so that she could receive the recommended treatment. Through a combination of the Family Medical Leave Act, her own sick days and sick days donated by other employees, plaintiff continued to receive a paycheck until December 10, 2008. The police chief offered plaintiff the option of an unpaid 90-

day leave of absence or termination for unauthorized absence. Plaintiff refused the leave of absence and the chief terminated her employment effective January 5, 2009.

¶ 16 Plaintiff consulted psychologist Dr. Schmidtt on August 18, 2008, and met with her at least 13 times. In a September 29, 2008, treatment summary that Dr. Schmidtt prepared for consideration by the Board, she stated her diagnosis as "adjustment disorder with mixed anxiety and depressed mood." She found plaintiff suffered stress and anxiety as a result of her husband's possible deployment, work, money, fertility issues and graduate school.

¶ 17 Plaintiff consulted psychiatrist Dr. Paul on August 21, 2008, at which time Dr. Paul diagnosed her with adjustment disorder with anxiety and depression and adjusted her medication. Dr. Paul saw plaintiff every few weeks. The latest visit shown in the record is October 30, 2008, at which time Dr. Paul diagnosed plaintiff with "adjustment disorder with anxiety." Dr. Paul found plaintiff not capable of performing her duties as a police officer.

¶ 18 Dr. Pasulka, a Board-selected psychologist, examined plaintiff on January 28 and 30, 2009, for seven hours. He submitted a certificate finding plaintiff "not disabled for service in the Palatine Police Department." In his February 19, 2009, report, he agreed that plaintiff suffered from adjustment disorder with anxiety and depression. Dr. Pasulka believed the disorder was "currently in partial remission" but had been "recently exacerbated by evaluation of this matter." It was his opinion that plaintiff's prognosis was good because the stressors which she reported (fertility treatment, an abusive

relationship, deployment of husband, dog dying, filing for bankruptcy, husband's grandmother dying, working at police department) had all been resolved. He found plaintiff was doing well in her graduate school program and, "with continued academic success, appropriate treatment, and freedom from stressors, prognosis is good."

¶ 19 Dr. Shaw, a Board-selected psychiatrist, examined plaintiff on February 20, 2009, for two hours. He certified plaintiff as disabled. Dr. Shaw diagnosed plaintiff with adjustment disorder with anxiety and depression, found her to be in partial remission and recommended continued treatment. Dr. Shaw found plaintiff should not be a police officer. He noted plaintiff had negative feelings toward the Palatine police department and police work in general and she had admitted she was better suited to another career such as teaching.

¶ 20 Dr. Reff, a Board-selected psychiatrist, examined plaintiff February 24, 2009, and certified plaintiff "disabled." He diagnosed her with panic disorder without agoraphobia and adjustment disorder with anxiety and depression and found "her psychiatric condition is currently stable and in remission." Dr. Reff opined that plaintiff was not limited in her capacity to function in her day-to-day life. He thought that, "under certain circumstances such as recurrence of the intensity and extent of her psychosocial stressors including those associated with work and her personal life, it is likely that she would again become symptomatic." He found plaintiff "developed an intense negative association to anything related to her work" with the Palatine police department and it was unlikely she would be capable of returning to full unrestricted

work as a police officer. Dr. Reff did not believe plaintiff was disabled "as regards to performing other jobs, only as regards to working in any capacity as a police officer," which, more likely than not, was not a temporary condition.

¶ 21 On September 28, 2009, the Board denied plaintiff's application for a disability pension, finding plaintiff was not mentally disabled. It found plaintiff failed to prove she was disabled so as to render necessary her retirement or suspension from police service.

¶ 22 Plaintiff filed a complaint for administrative review of the Board's decision with the circuit court of Cook County. The court affirmed the Board's decision denying the line-of-duty disability pension. The court reserved ruling on the Board's denial of a not-on-duty pension. The court ordered the parties to submit supplemental briefs addressing *Hahn v. Police Pension Fund of the City of Woodstock*, 138 Ill. App. 3d 206 (1985), and "stating which medical evidence they believe is relevant to the determination of plaintiff's eligibility for a not-on-duty pension." In *Hahn*, a police officer, forced to retire when he was determined to be unfit for duty, applied to his police pension fund for a disability pension. The pension fund denied his application and Hahn appealed. The *Hahn* court held that "the only pertinent evidence of [Hahn's] fitness for duty would be those examinations given at or near the time of [Hahn's] retirement." *Hahn*, 138 Ill. App. 3d at 210. The court then reversed the pension fund's decision, finding the opinions of the doctors who examined Hahn eight and nine months after his retirement to be irrelevant and the police pension fund should not have relied

on those opinions in making its decision. *Hahn*, 138 Ill. App. 3d at 210-11.

¶ 23 The parties submitted the supplemental briefs. The court then remanded the case to the Board to reconsider its decision denying plaintiff a not-on-duty disability pension in light of *Hahn*. After a hearing on remand, the Board adopted its earlier decision and again denied plaintiff's application for a not-on-duty disability pension.

¶ 24 On April 28, 2011, after argument regarding the Board's decision on remand, the court reversed the Board's decision denying plaintiff a not-on-duty disability pension. The court found the Board's decision that plaintiff was not disabled was against the manifest weight of the evidence because "the only conclusion that could be reached is the opposite conclusion [to that] reached by the Board." Following *Hahn*, which the court held to be good law, the court reached the "opposite conclusion" that plaintiff was disabled at the relevant time, which was at the time she was put on administrative leave on July 31, 2008, because she was unfit for duty. The court referred to this time as plaintiff's "trigger date." The court stated that *Hahn* required that greater weight and relevance be given to the opinions of doctors as to plaintiff's condition at or around her "trigger date" and that the Board's opinion was based on plaintiff's condition at a later date and, therefore, contrary to *Hahn*. It entered judgment for plaintiff, awarding her a disability pension as of December 11, 2008.

¶ 25 On May 16, 2011, the Board filed a timely notice of appeal from the court's decision reversing its denial of plaintiff's application not-on-duty disability pension.

¶ 26 Analysis

¶ 27 1. Standard of Review

¶ 28 The Board appeals from the court's order reversing the Board's decision to deny plaintiff a not-on-duty disability pension. In an administrative review case such as the case at bar, we review the decision of the agency, here the Board, not that of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2007). On administrative review, we are limited to considering the evidence submitted in the administrative hearing and may not hear additional evidence for or against the agency's decision. *Marconi*, 225 Ill. 2d at 532. The standard of review we use to consider administrative decisions depends on the question presented. *Marconi*, 225 Ill. 2d at 532; *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill.2d 191, 205 (1998). We review a question of fact under the manifest weight of the evidence standard, a question of law *de novo* and a mixed question of law and fact under the clearly erroneous standard. *Marconi*, 225 Ill. 2d at 532. Under any standard of review, the burden of proof in an administrative proceeding lies with the plaintiff. *Marconi*, 225 Ill. 2d at 532-33.

¶ 29 The parties disagree as to our standard of review. The Board argues the main issue is "whether evidence of record supports the Board's denial of plaintiff's application for a disability pension" and that this is a question of fact to which we should apply the manifest weight of the evidence standard of review. Plaintiff responds that our review of the Board's decision concerns the question of "whether [plaintiff] was disabled within

the meaning of Section 3-114.2 of the Pension Code" and that this presents a mixed question of law and fact which we should review using the clearly erroneous standard. She also asserts that the issue of the evidentiary weight given to the medical evidence by the Board should be reviewed *de novo*. To determine the standard of review, we look at the questions presented.

¶ 30 The Board presents two questions. The Board's first argument is that the court erred in holding that, pursuant to *Hahn*, the Board should not have considered the opinions of Drs. Pasulka, Shaw and Reef because they were based on examinations of plaintiff made some six to eight months after plaintiff was put on administrative leave. This presents the question of whether an agency, in deciding an application for a disability pension, can consider as evidence all doctors' opinions regarding an applicant's fitness for duty or, following *Hahn,* only those opinions based on examinations of the applicant given at or near the time of the applicant's retirement or suspension from duty. This is a question of law which we review *de novo*.

¶ 31 The Board's second argument is that the court erred in finding the Board's decision to deny plaintiff a not-on-duty disability pension was against the manifest weight of the evidence. The question raised here is identical to the issue raised in *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497 (2007). In *Marconi*, the Chicago Heights Police Pension Board (CHPPB) appealed the appellate court's reversal of its decision denying a disability pension to the plaintiff, Marconi, a former police officer. On appeal to the supreme court, the CHPPB argued Marconi "failed to

meet his burden of proof by presenting insufficient evidence to support his claim that he [was] eligible for a disability pension." *Marconi*, 225 Ill. 2d at 533. Our supreme court stated the question presented in the case as: "whether the evidence of record support[ed] the Board's denial of [the plaintiff's] application for disability pension." *Marconi*, 225 Ill. 2d at 534. The court held that this presented a question of fact to be reviewed under the manifest weight of the evidence standard. *Marconi*, 225 Ill. 2d at 534.

¶ 32 Here, the Board/appellant's argument is that the circuit court erred in reversing the Board's denial of plaintiff's application because plaintiff failed to meet her burden of proof to show that she was eligible for a disability pension. This argument is almost identical to the CHPPB/appellant's argument in *Marconi*. Accordingly, following *Marconi*, the question presented here is whether the evidence in the record supports the Board's denial of plaintiff's application, a question of fact we must review under the manifest weight of the evidence standard. *Marconi*, 225 Ill. 2d at 534. See also *Kouzoukas v. Retirement Board of the Policemens' Annuity and Benefit Fund of the City of Chicago*, 234 Ill. 2d 446,464 (2009); *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 505 (2007)

¶ 33 2. Which Doctors' Opinions May the Board Consider?

¶ 34 Following *Hahn v. Police Pension Fund of the City of Woodstock*, 138 Ill. App. 3d 206 (1985), the circuit court reversed the Board's denial of plaintiff's application for disability benefits because the Board relied on medical opinions regarding plaintiff's

disability at a time other than at the time she was put on administrative leave on July 31, 2008. It held that the Board's consideration of medical opinions of plaintiff's condition at a later date was contrary to *Hahn*. In *Hahn*, the plaintiff, Hahn, had applied for a disability pension shortly before he retired. The board of trustees denied his application after considering the testimony of eight medical experts regarding Hahn's condition. Four of the experts had found Hahn fit for duty as of the time of their examinations and the other four recommended that Hahn not return to police work at that time. *Hahn*, 138 Ill. App. 3d at 208-09.

¶ 35 The appellate court reversed the board of trustees' decision as being against the manifest weight of the evidence. *Hahn*, 138 Ill. App. 3d at 211. The court held that "the fact of disability" should be considered "as of the date of suspension of duty or retirement. Thus, the only pertinent evidence of [Hahn's] fitness for duty would be those examinations given at or near the time of Hahn's retirement [ ]." *Hahn*, 138 Ill. App. 3d at 210. The court, would "therefore focus only on the testimony of the four psychiatrists who examined [Hahn]" in the month of and the month following his retirement from police duty. *Hahn*, 138 Ill. App. 3d at 210. It regarded as "irrelevant" the testimony of the psychiatrists who examined Hahn some eight and nine months after his retirement and ordered that "the [board of trustees] should not be allowed to rely on the findings of [those] examinations." *Hahn*, 138 Ill. App. 3d at 210-11. Because three of the four psychiatrists who examined Hahn near the time of his retirement agreed that he was unfit for duty, the court found the board of trustees'

decision to deny Hahn disability benefits was against the manifest weight of the evidence. *Hahn*, 138 Ill. App. 3d at 211.

¶ 36 *Hahn*'s holding that the "only pertinent evidence of [an applicant for a disability benefits's] fitness for duty" is the "examinations given at or near the time" of the applicant's "suspension or retirement from duty" has never been explicitly overruled. However, that holding is no longer good law.

¶ 37 In *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497 (2007), our supreme court implicitly overruled *Hahn's* holding limiting evidence of an applicant's fitness for duty to opinions based on examinations given at or near the time of the applicant's suspension or retirement from duty. As previously outlined, *Marconi* involved an appeal from the appellate court's reversal of the CHPPB's denial of the plaintiff's application for disability benefits. On administrative review, the supreme court determined that there was sufficient evidence in the record to support the CHPPB's decision to deny the plaintiff's application. *Marconi*, 225 Ill. 2d at 543. The court found it was not clearly evident that the CHPPB should have reached an opposite conclusion and, therefore, the CHPPB's decision to deny Marconi disability benefits was not against the manifest weight of the evidence. *Marconi*, 225 Ill. 2d at 543.

¶ 38 Most relevant for our purpose is the court's "holding that the record in this case reveals a factual dispute as to plaintiff's impairment and disability *at the time that the [CHPPB] rendered its finding of facts and made it determination as to plaintiff's eligibility for a disability pension.*" (Emphasis added.) *Marconi*, 225 Ill. 2d at 540. This

statement and the court's subsequent analysis of the evidence before the Board show that, contrary to *Hahn*, the court considered evidence of Marconi's disability at the time the CHPPB made its decision. The court considered all of the medical opinions before the CHPPB, not just the opinions based on examinations of Marconi occurring at the time of his separation from active duty. Four of the opinions considered by both the CHPPB and the court were the opinions of the medical experts selected by the CHPPB pursuant to section 3-115 of the Code. Those opinions were based on examinations of Marconi conducted more than a year after he filed his application for disability benefits, and more than two years after he was removed from active duty and placed on disability leave. Contrary to *Hahn*, the court did not just consider the medical expert opinions based on examinations of the plaintiff made at the time of the plaintiff's separation from active duty or opinions of what the plaintiff's condition was at the time of separation from active duty.

¶ 39 It is not the case that the *Marconi* court was not aware of the *Hahn* decision. As the dissent in *Marconi* points out, the appellate court had reversed the CHPPB on the basis of *Hahn*, concluding that Marconi's medical condition at the time of his removal from active duty was the only relevant medical evidence the CHPPB should consider in making its initial determination of eligibility for a disability pension. *Marconi*, 225 Ill. 2d at 550 (Fitzgerald, J., dissenting). The CHPPB argued to the supreme court that the court should overrule *Hahn* so that the CHPPB would not be restricted in the medical evidence it could review. *Marconi*, 225 Ill. 2d at 550 (Fitzgerald, J., dissenting). The

dissent asserts that, by failing to address the threshold issue in the case, whether the CHPPB could properly consider evidence of Marconi's then-current medical condition, "the lower courts [were] left to wonder whether *Hahn* [had] been overruled by this court *sub silentio* or simply ignored." *Marconi*, 225 Ill. 2d at 551 (Fitzgerald, J., dissenting). Overruling *Hahn sub silentio* is exactly what the majority did.

¶ 40 The majority chose not to address the *Hahn* question directly, even though it was squarely before the court, having been raised in the briefs and then again in the dissent. It did, however, address it indirectly. The court considered the plaintiff's condition "at the time that the Board rendered its finding of facts and made its determination as to plaintiff's eligibility for a disability pension" to be determinative of whether the plaintiff should receive a disability pension. This is contrary to the holding in *Hahn*, a holding of which the court was clearly aware. "When the supreme court announces a new principle of law, it must be understood that all prior authority in conflict therewith becomes enervated, whether specifically or *sub silentio*" and the former cases are no longer good law. *Carter v. Chicago & Illinois Midland Ry. Co.*, 130 Ill. App. 3d 431, 436 (1985). Necessarily therefore, the supreme court's decision in *Marconi* overruled the earlier appellate court holding in *Hahn*. *Carter*, 130 Ill. App. 3d at 436.

¶ 41 Further, pursuant to section 3-115, a disability pension cannot be paid unless the Board receives, among other evidence, "certificates of the police officer's disability, subscribed and sworn to by *** 3 practicing physicians selected by the board." 40 ILCS

5/3-115 (West 2008). The three board-selected physicians need not all find that the police officer applying for a disability pension is disabled in order that a pension be awarded. *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 540-41 (2007). They do, however, need to address the issue of the applicant's disability. *Wade,* 226 Ill. 2d at 514. In order to do that, the board-selected physicians have to examine the applicant.

¶ 42 Nothing in the statute mandates the time frame within which the Board must select the physicians or the examinations by those physicians are to take place. Necessarily, the examinations will happen after the police officer has applied for a disability pension. But if an officer applies for a disability pension months after his separation from active duty, the relevant examinations will be performed months after that separation.[2] If, as *Hahn* holds, the Board can only consider medical opinions of an applicant's condition at the time of his separation from active duty, the Board would not be able to consider the opinions of the physicians the statute requires it to select, thus negating the statutory requirement. This makes no sense.

¶ 43 Accordingly, following our supreme court in *Marconi* and taking into account the

[2] Given that there is no deadline within which the Board is to appoint the physicians or the physicians are to submit their opinions, the examinations might arguably be performed months after filing of the application. However, a disability claimant is entitled to a timely hearing and decision on his application. *Marconi*, 225 Ill. 2d at 546. Therefore, although the time required for a sound opinion will vary depending on the facts of each case (*Marconi*, 225 Ill. 2d at 546), we presume the Board makes every effort to select the physicians in an expeditious manner so that the examinations can be conducted as soon as possible after filing of the application.

requirements in section 3-115, we find that the Board, in making its determination regarding plaintiff's application for a mental disability pension, was not limited to considering only those medical opinions regarding plaintiff's condition at or near the time of her separation from active duty. The Board properly considered all the medical opinions regarding plaintiff's condition.

¶ 44 3. Is Plaintiff Disabled?

¶ 45 The circuit court reversed the Board's determination that plaintiff should not receive a disability pension because she did not prove she was disabled. The question presented is whether the evidence supports the Board's denial of plaintiff's application for a disability pension. *Marconi*, 225 Ill. 2d at 534. This is a question of fact which we review under the manifest weight standard. *Marconi*, 225 Ill. 2d at 534.

¶ 46 On administrative review, we take an agency's findings of fact as *prima facie* true and correct. *Marconi*, 225 Ill. 2d at 534. An agency's ruling on a question of fact will only be reversed if it is against the manifest weight of the evidence, *i.e.* only if the opposite conclusion is clearly evident. *Marconi*, 225 Ill. 2d at 534. We will not reverse the agency's finding of fact merely because an opposite conclusion might be reasonable or we might have ruled differently. *Marconi*, 225 Ill. 2d at 534. If the record contains evidence to support the agency's decision, we must affirm that decision. *Marconi*, 225 Ill. 2d at 534.

¶ 47 As defined in section 5–115 of the Pension Code, a "disability" is “[a] condition of physical or mental incapacity to perform any assigned duty or duties in the police

services." 40 ILCS 5/5–115 (West 2010). As the applicant for the pension, it was plaintiff's burden to prove she was disabled. *Marconi*, 225 Ill. 2d at 536. The Board denied plaintiff's application for a mental disability pension because it found she did not prove she was mentally disabled so as to render necessary her retirement or suspension from police service. In a 65-page decision, the Board explained its reasons for the decision. The main bases for the Board's decision were (a) its finding that plaintiff was not credible and (b) its agreement with Dr. Pasulka's conclusion that plaintiff was not disabled and was capable of returning to police service.

¶ 48 It is our task to determine whether the evidence in the record support's the Board's denial of plaintiff's application, not to determine whether there is evidence to support an opposite conclusion. *Marconi*, 225 Ill. 2d at 540. On the basis of the evidence, the record supports the Board's denial of plaintiff's application for a mental disability pension.

¶ 49 (1) Plaintiff's Credibility

¶ 50 The Board found plaintiff "not credible" and that she had "every motivation to tailor her subjective complaints and the causes of her alleged complaints to obtain a beneficial result." It is the responsibility of the agency to weigh the evidence, determine the credibility of witnesses and resolve conflicts in testimony and we defer to such findings of fact. *Hurst v. Department of Employment Security*, 393 Ill. App.3d 323, 329 (2009). We may not reweigh the evidence nor substitute our judgment for that of the agency on such findings. *Haynes v. Police Board of the City of Chicago*, 293 Ill. App.

3d 508, 511-12, 688 N.E.2d 794, 797 (1997)*; Launius v. Board of Fire & Police Commissioners*, 151 Ill. 2d 419, 427, 603 N.E.2d 477, 481 (1992).

¶ 51 In its decision, the Board pointed to the following inconsistencies and credibility issues in plaintiff's testimony and our review of the record shows there is evidence to support the Board's findings on these matters:

1. Plaintiff testified that her final disabling mental breakdown was on July 14, 2008. However, her own family physician, Dr. Mehdi, found she was fit to return to work on July 21, 2008, *i.e.*, not disabled.

2. Plaintiff enrolled in a master's degree program in the fall of 2007 and was taking classes toward an education degree at the time of her July 2008 breakdown. She testified she experienced no stress from going to school. However, Stanard's report states that plaintiff told Stanard that studying and taking tests had been taxing for her with a full-time work schedule and personal stressors. Plaintiff testified she did not remember telling Stanard this.

3. The Board also "accord[ed] some weight to the fact that" plaintiff was pursuing her master's degree in education approximately one year before her alleged disabling episode. The Board found this supported an inference that plaintiff was actively working toward a career change rather than wanting to continue with police work.

4. Plaintiff told assorted doctors she last smoked marijuana at her brother's wedding May 2008. However, she testified to the Board that she did not actually

remember smoking marijuana because she was too intoxicated to remember.

5. Stanard reported plaintiff told Stanard that she smoked marijuana between 100 and 500 times in college. Plaintiff testified she did not remember telling Stanard how much she smoked in college. She then amended her testimony to state that she did tell Stanard.

6. The Board found, "[i]mportantly, [plaintiff] admitted that she lied about her illegal drug use on her application" for employment with the Palatine Police Department (department). On plaintiff's application for employment, she had stated she used illegal drugs " a few times in college." During her polygraph test, she stated she once used opium in 1993, once used mushrooms in 1994 and last used marijuana in 1996. During the polygraph test, she also stated that the only false statement on her application was regarding a temporary job she neglected to list.

In contrast, the July 24, 2008, report from Stanard shows plaintiff told Stanard that, during college, she had used marijuana between 100 and 500 times, experimented with acid and mushrooms three to 10 times and cocaine one or two times. Her statements to Stanard show she lied on her application and also during the polygraph test.

7. Plaintiff told Stanard that she lied about her drug history during the application process for her job. During her testimony before the Board, she stated she had told the truth during her examination by Stanard and admitted

that she had lied about her illegal drug use on the application in order to get her job. She stated she was willing to lie to get her job because getting a job was important to her. She also stated that her application for disability benefits was important to her.

Plaintiff testified that, although she lied on her application to get a job, she would not lie in order to receive a pension, explaining that she was much younger when she filled out the application and had matured since then. She stated it was wrong of her to lie to get her job, but a lot of officers lied to get their job and it was not unique to her. She stated she had been honest with the doctors examining her and had admitted a lot of things that many people would never admit. She stated she was now completely honest, shared everything and had no reason to lie. The Board found plaintiff's justification for why she lied on her application and her rationale for why her past lies should not affect her credibility "without merit."

8. The Board found plaintiff had also lied about how her department computer became damaged in 2001. The record shows plaintiff told Stanard she had struck the computer and damaged it but she gave the department another explanation.

9. Plaintiff testified she had thought of crashing her squad car into trees and the police station and had thought of committing suicide while on duty. She stated the last time she considering committing suicide was the last day she

worked at the department. However, she then admitted that the first time (and, necessarily, the only time) she thought about committing suicide was on her last day with the department, July 15, 2008. Further, the report from Stanard shows she told Stanard that she did not have "suicidal ideation" and she had denied a history of such. On cross-examination, plaintiff stated she could not remember whether she told Stanard she had suicidal thoughts. Lastly, Drs. Pasulka, Shaw and Reff did not report that plaintiff ever experienced suicidal ideation.

¶ 52 The Board then looked to plaintiff's allegation that she suffered harassment and abuse in the department. It found "simply no evidence to support" her allegations. Our review of the evidence in the record supports the Board's finding. With regard to her job stress, plaintiff testified that she had to draw her weapon early in her career with the department and the incident caused her to suffer loss of sleep, stress and anxiety. She did not know what year the incident happened. Plaintiff testified she felt unsafe during a domestic violence call because the other responding officer refused to communicate with her. She stated another officer refused to communicate with her during another call at a hotel. Plaintiff testified that, during another domestic violence call in June or July 2008, she thought another officer "would shoot" her because she had charged the officer with deleting her computer files and the officer had been suspended. But neither she nor the other officer had drawn their guns. She testified that she reported the incident to the police chief and a police commander. There is no record of her reporting that incident.

¶ 53 Plaintiff testified that another police officer had physically attacked her during an off-duty incident and her relationship with that officer was thereafter extremely stressed and uncomfortable. She testified she was afraid of a dozen of her fellow officers and did not trust her fellow officers to protect her on a call. She testified that other officers had called her names, belittled her, refused to answer her questions while on a call, made derogatory statements about her on the radio and refused to go on investigations with her. She stated she started experiencing anxiety when she went to work during the spring and summer of 2008, that she would start shaking as soon as she hit the Palatine city limits on her way to work.

¶ 54 Although plaintiff testified that she "probably sometimes" reported the alleged derogatory comments, disparate treatment, discrimination and harassment she endured, there is no record of her doing so. She testified she verbally reported feeling unsafe to her chief, deputy chief and commander but there is no record of this. She testified the only complaint she made in writing about the harassment was to her human resources department on approximately July 4, 2008. After interviewing plaintiff and investigating her allegations, the human resources department determined the allegations to be "unfounded."

¶ 55 As the Board noted, besides being unsubstantiated, the work-related stressors cited by plaintiff (her problems with coworkers, alleged harassment, problems with supervisors and feelings of inferiority) were "all stresses that civilians regularly suffer in the ordinary walks of life," and nothing specific to police duty. In light of the plaintiff's

inconsistent testimony and admitted fraud, the Board accorded plaintiff's perceptions of misconduct against her in the workplace little weight.

¶ 56 The Board explained that it

> "had the opportunity to listen to [plaintiff's] firsthand testimony and to observe [her] demeanor. The Board took a great deal of time to both weigh [plaintiff's] testimony and to attempt to reconcile conflicts in [plaintiff's] testimony. To this extent, the Board finds [plaintiff's] testimony is both self-serving and inconsistent. The Board notes that [plaintiff] easily answered questions on direct examination, but that [she] struggled to answer questions on cross-examination."

Based on all of the above findings, the Board found plaintiff "not credible."

¶ 57 It was the Board's responsibility to weigh the evidence, determine the credibility of witnesses and resolve conflicts in testimony. *Hurst*, 393 Ill. App.3d at 329. We may not reweigh the evidence nor substitute our judgment for that of the Board on such findings and, accordingly, defer to the Board's finding that plaintiff was not credible. *Haynes*, 293 Ill. App. 3d at 511-12*; Launius*, 151 Ill. 2d at 427 (1992); *Hurst*, 393 Ill. App.3d at 329.

¶ 58 (2) Dr. Pasulka's Opinion

¶ 59 The record supports the Board's finding that Dr. Pasulka's report was more thorough and entitled to greater weight than the reports of Drs. Shaw and Reff. As the Board noted, Dr. Pasulka examined plaintiff over two days for seven hours, far in excess of the examinations performed by Drs. Shaw and Reff. Because the time he

spent examining plaintiff was so much longer than that spent by Drs. Shaw and Reff, he obtained much more information from her, as shown by the detailed 18-page report he prepared. That report goes into precise detail regarding what plaintiff told him, his observations of her, whether he believed her and what his opinion was.

¶ 60 As the Board noted, all three board-selected physicians agreed that plaintiff was in partial remission. Plaintiff herself said she was feeling better. Plaintiff's own testimony verified that, as Dr. Pasulka found, the personal stressors that triggered her condition (deployment of husband, dog dying, husband's grandmother dying, bankruptcy, doing well in her master's program) had been resolved. Plaintiff had testified that, before being relieved from duty in July 2008, she was stressed because of fertility treatments she was undergoing, her husband's possible deployment and her job. She admitted she told Stanard that her anxiety and uncontrolled crying were caused equally by work related issues and personal issues, identifying her husband's possible deployment and her fertility treatments as personal stressors. But both the fertility treatments and her husband's possible deployment were no longer an issue as early as one month later, August 2008. Plaintiff testified she had discontinued the fertility treatments in August 2008 after only two months of treatment and her husband's national guard unit deployed without him and, as she told Drs. Pasulka, Shaw and Reff, she was no longer experiencing anxiety regarding these stress factors.

¶ 61 Dr. Pasulka found no confirmation of plaintiff's allegations that she was harassed and singled out by the Palatine police department. As discussed above, neither did the

Board. As the Board noted, the only time plaintiff reported an incident to her human resources department, the department found the charge "unfounded." There was no documentary or testimonial evidence to support plaintiff's assorted allegations of when and how she had been harassed, frightened or intimidated.

¶ 62 Given that plaintiff told Dr. Pasulka that she could perform police duty if it was somewhere besides the Palatine police department, Dr. Pasulka had a basis for his conclusion that plaintiff was not disabled and could perform as a police officer. The Board, therefore, had a basis for finding that plaintiff's personality disorder did not render her disabled for police service. All three Board-selected physicians' agreed that plaintiff did not want to work for the Palatine police department, that she had intensely negative feelings toward the department. Indeed, Dr. Pasulka reported that, "given the apparent level of distrust and animosity [plaintiff] feels toward the Palatine Police Department, it is difficult to determine a course of treatment that could reasonably be expected to enable her to return to full and unrestricted police duties in that Department." However, as the Board noted, this merely rendered her unable to work for the Palatine police department, not unable to work as a police officer in any police department.

¶ 63 The evidence supports the Board's rejection of Dr. Shaw's and Dr. Reff's findings that plaintiff was disabled and thus could not perform police work. Drs. Pasulka, Shaw and Reff all agreed that plaintiff was in partial remission because the assorted personal stressors contributing to her panic attack had been resolved and her symptoms were

being controlled by medication and therapy. The Board did not question that plaintiff has an adjustment disorder with depression and anxiety. But, if an applicant's symptoms are controlled by medication or her condition is in remission, she is not "disabled" such that she cannot perform police service. See *Marconi*, 225 Ill. 2d at 521, 543.

¶ 64 The Board also rejected Drs. Shaw and Reff's conclusions that plaintiff was disabled because their conclusions were based on plaintiff's subjective complaints, which the Board had determined were not credible.

¶ 65 In conclusion, the Board stated it

> "[did] not doubt that [plaintiff] has a severe dislike for the [department] and certain officers within the [department]. However, [plaintiff's] alleged panic attack on July 14, 2008[,] does not constitute a disability within the meaning fo the Pension Code. [Plaintiff] received appropriate treatment and every independent medical examiner found that [plaintiff's] condition is in remission. Additionally, the personal stressors for which the record contains evidentiary support are no longer present in [plaintiff's] life.
>
> [Plaintiff] does not want to be a police officer anymore; that is clear. However, whether [plaintiff] wants to be a police officer and whether [plaintiff] is disabled so as to render necessary her suspension or retirement from police service are two different questions. Additionally, the Board is left with no evidence to support [plaintiff's] allegations about her work environment other

> than [plaintiff's] perceptions of misconduct. The Board accords [plaintiff's] perceptions no weight in light of her inconsistent testimony and admitted fraud. The Board finds [plaintiff] is not disabled within the meaning of the Pension Code and therefore denies [plaintiff's] application for either a line of duty or a not on duty pension." (Emphasis in original.)

¶ 66 There is evidence in the record to support this conclusion.

¶ 67 We grant that there is evidence in the record to support an opposite conclusion, such as Dr. Mehdi's July 24, 2008, letter stating plaintiff was disabled and Dr. Paul's statement that plaintiff was not capable of performing police duties. But it is our task to determine whether the evidence in the record support's the Board's denial of plaintiff's application, not to determine whether there is evidence to support an opposite conclusion. *Marconi*, 225 Ill. 2d at 540. There is ample evidence to support the Board's finding that plaintiff is not credible and that Dr. Pasulka's opinion is entitled to great weight. We, therefore, defer to the Board's conclusion that plaintiff failed to prove that she is mentally disabled such that she should receive a disability pension. No opposite conclusion is clearly evident, and the Board's decision is, therefore, not against the manifest weight of the evidence.

¶ 68 Conclusion

¶ 69 For the reasons stated above, we affirm the Board's denial of plaintiff's application for a not-on-duty disability pension. The circuit court's order reversing the Board's decision is reversed.

¶ 70 Reversed.

¶ 71 JUSTICE HALL, concurring in part and dissenting in part:

¶ 72 I agree with the majority that in determining whether to grant a disability pension, the Board may consider all medical opinions regarding the applicant's condition. I respectfully disagree with the majority's conclusion that plaintiff did not carry her burden of proof that she was disabled from carrying out her duties as a police officer.

¶ 73 While the court affords considerable weight to the Board's credibility determinations, nonetheless " '[e]ven under the manifest weight standard applicable in this instance, the deference we afford the administrative agency's decision is not boundless.' " *Kouzoukas v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 234 Ill. 2d 446, 465 (2009) (quoting *Wade v. City of North Chicago Pension Board*, 226 Ill. 2d 485, 507 (2007)). "When reviewing an administrative agency's decision, we may put aside any findings which are clearly against the manifest weight of the evidence." *Kouzoukas*, 234 Ill. 2d at 465.

¶ 74 At the center of the Board's decision to deny pension benefits was its determination that the plaintiff was not a credible witness. Therefore, it discounted the opinions of the Stanard psychologists Hunneke and Milofsky, the plaintiff's treating physician Dr. Medhi, the plaintiff's treating psychiatrist Dr. Paul, and independent psychiatrists Dr. Shaw and Dr. Reff, all of whom found that the plaintiff was disabled from performing her duties as a police officer. The Board chose to accept Dr. Pasulka's conclusion that the plaintiff was not disabled. While the Board found Dr. Pasulka's

analysis more thorough, much of his analysis agreed with the findings of the other doctors. Even more significant is the fact that Dr. Pasulka's conclusion that the plaintiff was not disabled was, like the conclusions of the other medical experts, based in large part on his examination of the plaintiff and the information she gave to him.

¶ 75 I find *Kouzoukas* instructive. In that case, the supreme court reversed the Board's denial of a disability pension to a police officer. The court found that the report of the one doctor who found that while the officer had pain, it was not disabling, did not provide sufficient support for the Board's decision where the other doctors found that the plaintiff had experienced a work-related injury resulting in disabling pain. *Kouzoukas*, 234 Ill. 2d at 468. The court also rejected the Board's determination that the plaintiff was not credible where "[t]he overwhelming majority of the documentary evidence and expert testimony presented by [the plaintiff] - including the testimony of the Board's own physician - supported her claim that she suffered from debilitating pain which prevented her return to full active duty in the Chicago police department." *Kouzoukas*, 234 Ill. 2d at 468.

¶ 76 As the majority found, and I agree, all the medical evidence must be considered. Like *Kouzoukas*, here the overwhelming majority of the medical evidence supports the plaintiff's claim that she was disabled from performing the duties of a police officer. The fact that her symptoms are in remission may reasonably be attributable to the fact that she is no longer working as a police officer.

¶ 77 Moreover, I disagree with the Board's determination that the plaintiff cannot be

believed, based in large part on her admission that, some ten years before, she lied in connection with obtaining employment with the police department. Since there was no need to admit to those lies in order to pursue her claim, her honesty at the hearing should have enhanced her credibility, rather than impugned it.

¶ 78 I would find that the plaintiff carried her burden of proof and is entitled to a not-on-duty disability pension. Therefore, the Board's decision is against the manifest weight of the evidence.

¶ 79 Accordingly, I concur in part and respectfully dissent in part.