

FOURTH DIVISION  
January 23, 2014

No. 1-13-1314

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

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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|---|---|---------------------|
| ELOISA CHAPARRO,                        | ) | Appeal from the     |
|   | ) | Circuit Court of    |
| Plaintiff-Appellee,                     | ) | Cook County         |
|   | ) |                     |
| v.                                      | ) | No. 12 CH 38746     |
|   | ) |                     |
| THE RETIREMENT BOARD OF THE POLICEMEN'S | ) |                     |
| ANNUITY AND BENEFIT FUND OF THE CITY OF | ) |                     |
| CHICAGO,                                | ) | Honorable           |
|   | ) | Kathleen M. Pantle, |
| Defendant-Appellant.                    | ) | Judge Presiding.    |

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JUSTICE EPSTEIN delivered the judgment of the court.  
Presiding Justice Howse and Justice Fitzgerald Smith concurred in the judgment.

**ORDER**

¶ 1 *Held:* The Board's decision awarding a police officer ordinary disability, and not duty disability, pension benefits was correct. The capacity in which the officer was working when she was injured was repairing equipment on an out-of-service surveillance van located inside a restricted access garage. Thus, the police officer's injury did not occur while she was performing an "act of duty" as defined by the relevant statute, section 5/5-154 of the Illinois Pension Code, because the duty did not involve "special risk, not ordinarily assumed by a citizen in the ordinary walks of life." We affirm the decision of the Board and reverse the judgment of the circuit court.

¶ 2 In this administrative review action, defendant, the Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago (the Board), appeals from the judgment of the

circuit court of Cook County reversing the Board's decision that plaintiff, Eloisa Chaparro, was entitled to ordinary disability benefits, and not duty disability benefits, because her injury did not occur while she was performing an act of duty. For the following reasons, we affirm the Board's decision and reverse the judgment of the circuit court.

¶ 3 The relevant facts are not in dispute. Chaparro, a Chicago police officer, was injured while on duty when she was climbing down a ladder from the top of a surveillance van. At the time, the van was in a restricted access Chicago police department garage and was not in service. Chaparro was attempting to repair a camera mounted on a turret on top of the surveillance van. Chaparro applied for duty disability benefits. After an evidentiary hearing, the Board denied her duty disability benefits because her injuries did not occur while performing an "act of duty" as defined by the relevant statute. However, the Board awarded her ordinary disability benefits. Chaparro filed an administrative review action. The circuit court reversed the Board's decision and ordered it to award Chaparro duty disability benefits. The Board now appeals.

¶ 4 In an appeal from a circuit court's judgment in an administrative review proceeding, this court reviews the decision of the administrative agency and not the decision of the circuit court. *Summers v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 2013 IL App (1st) 121345, ¶ 15; *Sarkis v. City of Des Plaines*, 378 Ill. App. 3d 833, 836 (2008). "In administrative review cases, this court reviews factual questions under the manifest weight standard, questions of law *de novo*, and mixed questions of law and fact under the clearly erroneous standard." *Buckner v. University Park Police Pension Fund*, 2013 IL App (3d) 120231, ¶ 13 (citing *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532 (2006)).

¶ 5 The issue here is whether Chaparro's disability arose from an "act of duty" as defined by the relevant statute, section 5-113 of the Illinois Pension Code. 40 ILCS 5/5-113 (West 2010).

As we recently noted, this is a purely legal issue in that it "requires us to interpret the language of the 'act of duty' statute." *Summers v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 2013 IL App (1st) 121345, ¶ 14. Thus, our standard of review is *de novo*. *Id.* Although the Board contends that the clearly erroneous standard applies, we would reach the same conclusion that Chaparro was not entitled to duty disability benefits, regardless of which standard of review we applied to this case.

¶ 6 We first review the disability benefits available to Chicago police officers. Chicago police officers are covered by article 5 of the Illinois Pension Code. 40 ILCS 5/5-101 *et seq.* (West 2010) (the Code). Under section 5/5-155 of the Code, when a police officer becomes disabled, the officer is entitled to receive "ordinary" disability benefits equal to 50% of the officer's salary at the time the disability occurs. 40 ILCS 5/5-155 (West 2010). However, under section 5/5-154, a police officer is entitled to a substantially more generous benefit, *i.e.* a duty disability benefit, if the disability results from an injury incurred in the performance of an act of duty. 40 ILCS 5/5-154 (West 2010). "Act of duty" is defined in section 5-113 of the Code as follows:

"Any act of police duty inherently *involving special risk, not ordinarily assumed by a citizen in the ordinary walks of life,* imposed on a policeman by the statutes of this State or by the ordinances or police regulations of the city in which this Article is in effect or by a special assignment; or any act of heroism performed in the city having for its direct purpose the saving of the life or property of a person other than the policeman." (Emphasis added.) 40 ILCS 5/5-113 (West 2010).

The issue on appeal is whether the Board erred in its decision to award Chaparro ordinary disability benefits and not duty disability benefits. Such inquiry turns on the question of whether Chaparro sustained her injury in the performance of an "act of duty."

¶ 7 It is important to note, at the outset, that "[a]n officer does not perform an 'act of duty' merely by being on duty at the relevant time." *Sarkis*, 378 Ill. App. 3d at 837; accord *Mingus v. Board of Trustees of Police Pension Fund of Peoria*, 2011 IL App (3d) 110098, ¶ 13 ("An act of duty requires more than simply being on duty at the time of the injury."); *Rose v. Board of Trustees of Mount Prospect Police Pension Fund*, 2011 IL App (1st), ¶ 71 ("It is well established that an officer does not qualify for a 'line-of-duty' disability pension merely because he was injured while on duty."). Nor does the fact that an officer was, at the time of his injury, "performing his assigned duties \*\*\* necessarily indicate that he was injured during the performance of an 'act of duty.'" *Summers*, 2013 IL App (1st) 121345, ¶ 43. As we recently explained in *Summers*: "Simply put, “ 'not all police work involves special risks.' ” *Id.*, ¶ 46 (quoting *Fedorski v. Board of Trustees of the Aurora Police Pension Fund*, 375 Ill. App. 3d 371, 374 (2007)); accord *Jones v. Board of Trustees of Police Pension Fund of City of Bloomington*, 384 Ill. App. 3d 1064, 1070 (2008).

¶ 8 In construing the phrase "act of duty" in section 5-113, and whether an act was one "inherently involving special risk, not ordinarily assumed by a citizen in the ordinary walks of life," courts have looked to *Johnson v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 114 Ill. 2d 518, the seminal case interpreting "act of duty." See *Summers*, 2013 IL App (1st) 121345, ¶¶ 25, 29 (and cases cited therein). In *Johnson*, a police officer on traffic duty was crossing the street to respond to a citizen's call for assistance when he slipped and injured himself. *Id.* at 520. The Board decided that the officer was not entitled to a duty disability

benefit because he was not injured in an act of duty as defined by the Code. *Id.* As the Board reasoned, the injury resulted from the officer's act of "traversing a street" which did not involve a "special risk" and was instead "an act assumed by any citizen." *Id.* The Illinois Supreme Court rejected this reasoning, explaining:

"There can be little question, police officers assigned to duties that involve protection of the public discharge their responsibilities by performing acts which are similar to those involved in many civilian occupations. *The crux is the capacity in which the police officer is acting.*

When a policeman is called upon to respond to a citizen, he must have his attention and energies directed towards being prepared to deal with any eventuality.

Additionally, unlike an ordinary citizen, the policeman has no option as to whether to respond; it is his duty to respond regardless of the hazard ultimately encountered. In the case at bar, at the time of his disabling injury, *the plaintiff was discharging his sworn duties to the citizens of Chicago by responding to the call of a citizen to investigate an accident. There is no comparable civilian occupation to that of a traffic patrolman responding to the call of a citizen.*

The defendant's ultimate reliance on the fact that the plaintiff was "traversing a street" when he was injured is misplaced." (Emphasis added.) *Id.*

¶ 9 As the *Johnson* court explained, a police officer is awarded a duty disability benefit when injured in the *performance* of an act of duty. *Id.* at 522. The *Johnson* court held that “the action of the plaintiff in crossing the intersection *to respond to a citizen's call for assistance* constitute[d] an ‘act of duty’ as defined in the Illinois Pension Code.” (Emphasis added.) *Id.* at 523. Since *Johnson*, in determining whether an officer is entitled to a duty disability benefit, our focus has been on the *capacity* in which the officer was acting at the time of the injury. See, e.g., *Summers*, 2013 IL App (1st) 121345, ¶ 29; *Rose*, 2011 IL App (1st) 102157, ¶ 75.

¶ 10 In our recent opinion in *Summers*, we looked to the capacity in which the police officer was acting. There a Chicago police officer was injured while performing an assigned duty of lifting and handling police supplies. *Id.*, ¶ 1. During an evidentiary hearing, the officer testified that his “job responsibilities included loading and unloading a box truck and making deliveries of equipment and supplies to police facilities.” *Id.*, ¶ 4.

¶ 11 In discussing the “capacity” in which the officer was acting, we first clarified that “the precise physical act that caused the injury, *i.e.* lifting a box” was not relevant. *Id.*, ¶ 41. Similarly, here, we do not consider the precise physical act that caused Chaparro's injury. The fact that Chaparro was injured while climbing down a ladder is as irrelevant as the fact that the officer in *Johnson* was injured while traversing a street and that the officer in *Summers* was lifting a box. Rather, the critical inquiry is whether the capacity in which Chaparro was acting at the time of her injury involved a special risk.

¶ 12 In *Summers*, we rejected the police officer's argument that “delivering ‘special police equipment and supplies, in a police uniform, to police facilities throughout the City of Chicago’ represent[ed] a special risk not assumed by ordinary citizens.” *Id.*, ¶ 41. In support of his argument, the police officer had noted that his assigned job was “ ‘to deliver boxes of police

equipment, furniture, radios, and other supplies to police facilities in a clearly marked police vehicle.'" *Id.*, ¶ 24. As we stated, "[r]egardless of [his] characterization of the delivered items, it appear[ed] that the capacity in which [he] was acting at the time of his injury was as a delivery person." *Id.* We explained that, unlike a patrol officer, he "was acting in a capacity that has a 'clear counterpart in civilian life.'" *Id.* (quoting *Alm v. Lincolnshire Police Pension Board*, 352 Ill. App. 3d 595, 601 (2004)). In an attempt to distinguish her case from *Summers*, Chaparro argues that her work on covert equipment has no civilian counterpart. Similar to our reasoning in *Summers*, regardless of Chaparro's characterization of the equipment she was working on, the *capacity* in which she was acting at the time of her injury was as a repair person. Likewise, the fact that she was "assigned" to a unit "directly focused on fighting crime" does not change our analysis of the capacity in which she was acting when injured. See *Fedorski v. Board of Trustees of Aurora Police Pension Fund*, 375 Ill. App. 3d 371, 375-76 (2007) (title of an officer's duty assignment is not determinative of the capacity in which he is acting).

¶ 13 The Board correctly determined that the capacity in which Chaparro was acting at the time of her injury was not an act of duty because it did not involve a special risk. Unlike the officer in *Johnson*, who was responding to the call of a citizen to investigate an accident, Chaparro was making repairs to an out-of-service surveillance van. While "[t]here is no comparable civilian occupation to that of a traffic patrolman responding to the call of a citizen," there is a comparable civilian occupation to that of Chaparro making repairs to the van. As the Board notes, Chaparro was not "involved in any task involving special risk or any activity unique to being a Police Officer and in fact was doing exactly what any technician trained to make repairs does all day every working day."

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¶ 14 We conclude that Chaparro is not entitled to duty disability benefits because her disability was not caused by an injury incurred in the performance of an "act of duty" as defined by the Code. The decision of the Board is affirmed and the judgment of the circuit court is reversed.

¶ 15 Circuit court decision reversed; board decision affirmed.