2014 IL App (1st) 133675-U

No. 1-13-3675

September 12, 2014

FIFTH DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

ERWIN F. HLAVAC, JR.,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12 CH 20261
	)	
	)	
CITY OF BERWYN,	)	The Honorable
	)	Rita M. Novak,
Defendant-Appellant.	)	Judge presiding.

PRESIDING JUSTICE PALMER delivered the judgment of the court.
Justices Gordon and McBride concurred in the judgment.

O R D E R

¶ 1 *Held*: The circuit court's ruling allowing plaintiff's claim for insurance benefits and reversing the City of Berwyn's denial of plaintiff's claim for insurance benefits is affirmed where plaintiff's injury was the result of his response to what he reasonably believed to be an emergency.

¶ 2 Plaintiff, Erwin F. Hlavac Jr. (Officer Hlavac), was at all relevant times a police officer with defendant, the City of Berwyn (the City). Officer Hlavac was injured on August 4, 2009, while responding to a domestic disturbance and was later awarded a line-of-duty

disability pension as result of the incident. See 40 ILCS 5/3-115.1 (West 2010)). He subsequently petitioned the City for insurance benefits under section 10 of the Public Safety Employee Benefits Act (the Act) (820 ILCS 320/10 (West 2010)). That section provides in relevant part:

> "(a) An employer who employs a full-time law enforcement, correctional or correctional probation officer, or firefighter, who, on or after the effective date of this Act suffers a catastrophic injury or is killed in the line of duty shall pay the entire premium of the employer's health insurance plan for the injured employee, the injured employee's spouse, and for each dependent child of the injured employee until the child reaches the age of majority or until the end of the calendar year in which the child reaches the age of 25 if the child continues to be dependent for support or the child is a full-time or part-time student and is dependent for support. ***
>
> (b*) In order for the law enforcement, correctional or correctional probation officer*, firefighter, spouse, or dependent children *to be eligible for insurance coverage under this Act, the injury or death must have occurred as the result of* the officer's response to fresh pursuit, *the officer or firefighter's response to what is reasonably believed to be an emergency*, an unlawful act perpetrated by another, or during the investigation of a criminal act. Nothing in this Section shall be construed to limit health insurance coverage or pension benefits for which the officer, firefighter, spouse, or dependent children may otherwise be eligible." (Emphasis added.) 820 ILCS 320/10(a), (b) (West 2010).

¶ 3 Following a hearing, the City denied Officer Hlavac's claim for benefits. Officer Hlavac then filed a complaint for administrative review in the Circuit Court of Cook County, challenging the denial of his claim for insurance benefits. The parties ultimately filed cross motions for summary judgment. The circuit court granted Officer Hlavac's motion for summary judgment and ordered the City to provide the officer with continuing health insurance benefits under the Act. The City now appeals that judgment. For the reasons that follow, we affirm the decision of the circuit court that reversed the City's denial of Officer Hlavac's claim for insurance benefits.

¶ 4 The relevant facts of this case are not in dispute. After Officer Hlavac petitioned for insurance benefits under section 10 of the Act, the City held an investigational hearing at which Officer Hlavac testified to the following. On August 4, 2009, Officer Hlavac was on

patrol in his squad car when he was dispatched to a domestic disturbance that was in progress in a building located at 16th Street and Scoville Avenue in Berwyn, Illinois. The police dispatcher told Officer Hlavac that two tenants were fighting in the laundry room of the building and that one tenant had an object in hand and was threatening to batter another tenant with that object. Officer Hlavac drove to that location with his emergency lights and siren activated to "get there in an emergency fashion." He described the area as a busy strip in Berwyn. The building did not have a parking lot so Officer Hlavac double-parked his squad car at the intersection on 16th Street as close as he could to the building. Officer Hlavac then radioed dispatch that he had arrived. He did not ask for backup because dispatch had already sent another unit to the scene as backup. That unit, however, had not yet arrived.

¶ 5 Officer Hlavac explained that "I went to exit my car in a hurry because of it being a battery in progress, and I opened the door, and I went to jump out of the squad car in a hurry, and there were trucks coming." However, Officer Hlavac's vehicle was "sticking out" into 16th Street and the officer had to shut his door "before the truck took my door off." Officer Hlavac "swung back" into his vehicle and when there was a break in the traffic he "went to swing and jump out again." While doing so, Officer Hlavac "did something to his back" and "felt the pain" when he got out of his squad car. The pain did not prevent him from continuing to respond to the call. The officer walked to back of his squad car and rested a minute and tried to stretch to make his back feel better. Officer Hlavac explained "[i]t didn't knock me down to my knees, but there was an excessive pain, and then after I regained myself, to the best of my ability, I continue on to the call." The officer also explained that he exited his squad car in a hurry because of the traffic and because "it was an in-progress call" and he had to exit in a hurry to "stop somebody from being battered, which is my job."

¶ 6 Officer Hlavac further testified that his backup had not yet arrived, so he had to enter the apartment building alone. The officer entered the building's laundry room, where the disturbance had been reported, and discovered that the altercation had ended and that "everything was pretty calmed down at that point." Officer Hlavac spoke to one of the tenants in the laundry room and learned that the other tenant had returned to his or her apartment. The officer went and to that apartment and spoke to the tenant, who was "still quite aggravated and fired up." Officer Hlavac did not arrest either tenant and, although he was experiencing pain in his back, he remained on patrol for the rest of the day because he

"was needed." Officer Hlavac reported his back injury on August 11, 2009, when his back pain became progressively worse. He ultimately had surgery on his back and did not again work for the police department after June of 2010.

¶ 7 Officer Hlavac testified that once he entered the laundry room, he did not feel that the tenants were in physical danger and he did not feel threatened himself. He also did not arrest either tenant. However, Officer Hlavac explained that he did not know what to expect as he was driving to the scene and entering the laundry room. Additionally, he felt that every situation involving a potential battery "has some risk to it" and thus the situation required "urgent attention." Officer Hlavac testified that he would characterize the situation as an "emergency" and that he responded to the situation as he would with any other emergency.

¶ 8 After the investigative hearing took place, various procedural matters occurred and the City ultimately issued its written ruling on January 28, 2013. In a written letter, the City denied Officer Hlavac's request and stated:

> "Although Officer Hlavac met the first of three conditions for PSEBA benefits, he has not met the second or the third, so the City must deny his claim. His award of a line of duty disability pension meets the first statutory condition that he suffer a catastrophic injury, according to settled case law. The second condition, - - that the injury occurred during his response to an emergency - - has not been shown. The third condition, established in the *Gaffney* case, that the emergency or injury result from unforeseen circumstances, has not been met in this case because the call he responded to was not unusual or unforeseeable, and his injury arose while getting out of his police car quickly to avoid traffic; a routine occurrence."

¶ 9 Officer Hlavac then filed a complaint for administrative review in the circuit court of Cook County. Count I of the complaint sought a declaratory judgment, count II sought administrative review and count III sought a common law Writ of Certiorari. Officer Hlavac and the City then filed cross-motions for summary judgment. The central issue disputed in these motions was whether Officer Hlavac's injury "occurred as a result of his response "to what is reasonably believed to be an emergency," a requirement for benefits under the Act. See 820 ILCS 320/10(b) (West 2010). A hearing was held on that motion, after which the circuit court entered summary judgment in favor of Officer Hlavac. The circuit court specifically ordered that the City reimburse Officer Hlavac the total of the monthly employee

contributions paid by him from the date of the award of duty disability (August 30, 2011) to the date payment is made, and pay the entire premium under the City's healthcare insurance plan for Officer Hlavac and his spouse in accordance with section 10 of the Act. The City now appeals that judgment.

¶ 10 The City contends that we should reverse the circuit court's decision to award Officer Hlavac benefits under section 10 of the Act and that we should affirm the City's denial of such benefits. The City claims that Officer Hlavac is not entitled to benefits because his injury did not occur as a result of his response to what he reasonably believed to be an emergency. Instead, the City claims, Officer Hlavac was injured as the result of the routine and foreseeable act of exiting his squad car.

¶ 11 On administrative review, the appellate court reviews the final decision of the administrative agency, not the decision of the circuit court. *Pedersen*, 2014 IL App (1st) 123402, ¶ 48. The applicable standard of review to apply when reviewing an administrative agency decision depends on whether the question presented is a question of fact, a question of law or a mixed question of law and fact. *Id*. In this case, the historical facts are undisputed and the question is whether those facts satisfy the requirement of section 10(b) of the Act that Officer Hlavac's injury must have occurred as a result of his "response to what is reasonably believed to be an emergency." See 820 ILCS 320/10(b) (West 2010). Therefore, the issue presented is a mixed question of law and fact, "which typically arises when 'the historical facts are not in dispute and the issue is whether the established facts satisfy the statutory standard.'" *Pedersen v. Village of Hoffman Estates*, 2014 IL App (1st) 123402, ¶ 52 (quoting *Village of Hazel Crest v. Illinois Labor Relations Board*, 385 Ill. App. 3d 109, 113 (2008). A mixed question of law and fact is subject to a clearly erroneous standard of review, under which a reviewing court must accept an administrative agency's findings "unless we are firmly convinced the agency has made a mistake." *Randolph Street Gallery v. Zehnder*, 315 Ill. App. 3d 1060, 1064 (2000).

¶ 12 We begin by noting that on appeal, the parties do not dispute that the requirements of section 10(a) of the Act have been met. Our supreme court has held that the phrase "catastrophic injury" in the Act is synonymous with an injury resulting in a line-of-duty disability under section 4–110 of the Illinois Pension Code (40 ILCS 5/4–110 (West 2010)). *People v. Gaffney*, 2012 IL 110012, ¶ 54. Here, Officer Hlavac was awarded a line-of-duty

disability as a result of his injury. Therefore, there is no dispute that Officer Hlavac suffered a "catastrophic injury" within the meaning of section 10(a) of the Act.

¶ 13 The issue in this case is whether Officer Hlavac's injury satisfied section 10(b) of the Act. As noted, the narrow question is whether the injury occurred as the result of Officer Hlavac's "response to what is reasonably believed to be an emergency." 820 ILCS 320/10(b) (West 2010).

¶ 14 Our supreme court most recently interpreted the meaning of the term emergency in *Gaffney*. In *Gaffney*, 2012 IL 110012, ¶ 59, our supreme court reviewed prior appellate court decisions interpreting the term emergency and noted that the Illinois Appellate Court had "consistently construed the term 'emergency' in section 10(b) of the Act as meaning a situation that 'is urgent and calls for immediate action.' " See *Gaffney*, 2012 IL 110012, ¶ 59 (citing cases). The court then reviewed dictionary definitions of the term "emergency" and modified the prior appellate court interpretations of that term by holding:

> "The plain and ordinary meaning of the term “emergency” in section 10(b) is an unforeseen circumstance involving imminent danger to a person or property requiring an urgent response. To 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*. ¶¶ 61, 64.

¶ 15 *Gaffney* involved two consolidated appeals. In one of those appeals, Gaffney was injured during a training exercise involving an actual fire on the third floor of a building. Gaffney wore full fire gear for the exercise, and his battalion chief instructed him to treat the exercise as an actual emergency. The fire hose became stuck as the crew was moving it between the second and third floors. Due to smoke, there was no visibility. Gaffney followed the hose back down to the second floor and discovered that it was hooked around a loveseat. In moving this piece of furniture, Gaffney injured his shoulder. *Gaffney*, 2012 IL 110012, ¶¶ 6–8.

¶ 16 Our supreme court held that Gaffney's training exercise became an emergency when the unforeseen event of the hose becoming stuck arose. *Id*. ¶ 66. This event created imminent danger and required an urgent response, as "the crew was stranded on the stairwell to the third floor of the burning building with no visibility and no water to put out the fire." *Id*.

Moreover, when Gaffney went to free the hose, he "put himself at risk of becoming lost and disoriented in the smoke-filled building." *Id*. ¶ 67. The court noted that Gaffney had no "option of ending his participation in the exercise after it became an emergency."

¶ 17 In the other appeal, a firefighter named Lemmenes was injured during a training exercise. The exercise took place at an abandoned factory. The firefighters were required to wear full fire gear. There was no actual fire, but the firefighters' masks were blackened in order to simulate live fire conditions, and they were told to act as if there was an emergency. The firefighters were instructed that a fellow firefighter was trapped inside the building, was running out of air, and would die if not found and rescued. The firefighters were given specific instructions for the exercise, including a predetermined path for running the fire hose into the building. Fire department supervisors testified that the individual acting as the trapped firefighter was never in real danger during the exercise, which was performed under " 'controlled conditions.' " *Id*. ¶¶ 21–24.

¶ 18 Lemmenes was injured when he attempted to free the trapped firefighter. *Id*. ¶ 22. Our supreme court held Lemmenes could not have reasonably believed that he was responding to an "emergency" under section 10(b). The court noted the exercise was conducted under " 'controlled conditions,' " no one was in imminent danger at any point during the exercise, and "[n]o unexpected or unforeseen developments arose during th[e] drill, unlike the situation in *Gaffney* where the hose line became entangled in an unknown object." *Id*. ¶ 77.

¶ 19 *Gaffney* has been interpreted in two decisions of the Illinois Appellate Court. First, in *Springborn v. Village of Sugar Grove*, 2013 IL App (2d) 120861, the appellate court considered in consolidated appeals whether two police officers making claims under the Act reasonably believed they were responding to emergencies. Springborn had observed a field of asphalt debris on a highway, activated his emergency lights, parked behind the pieces in the west northbound lane, and ultimately injured his back while clearing the road. *Springborn*, 2013 IL App (2d) 120861, ¶ 10. Cecala, the other claimant, parked his police vehicle behind a fallen traffic signal pole in the west southbound straight lane of a highway *Id*. ¶ 16. Cecala testified he knew his vehicle, blocking the downed signal, was itself a "hazard" and that it is "very dangerous for a police officer to be in the roadway even with the lights on." *Id*. Cecala believed the situation remained an emergency because he was aware of incidents where a person or police vehicle had been struck by oncoming traffic, even when

the vehicle's emergency lights were activated. *Id*. Cecala was injured while he and another officer were moving the fallen traffic signal. *Id*. ¶ 18. The court, relying on *Gaffney*, ultimately concluded the claims in both cases were allowable under the Act. *Id*. ¶ 42.

¶ 20 The court stated that each officer believed he was facing an emergency, noting that each officer characterized the situation as a hazard. The court also found that those officers' beliefs were subjectively reasonable. One of the defendants in *Springboard* argued that the felled traffic signal was not an unforeseen circumstance given the officers' past experiences with roadway obstructions such as traffic signals and light poles. The court rejected this argument and stated that "[defendant] overlooks a particular sense of foreseeability that the supreme court in *Gaffney* noted was expressed in dictionary definitions of "emergency." *Springborn*, 2013 IL App (2d) 120861, ¶ 36. "An 'emergency' includes "'a usu. distressing event or condition that can often be anticipated or prepared for but seldom exactly foreseen.'" *Id*. (quoting *Gaffney*, 2012 IL 110012, ¶ 62) (quoting Webster's Third New International Dictionary 741 (1993). Examples of this definition include "'wait until the [emergency] is over, prices will go down then,'" "'an [emergency] water supply'" "'[emergency] docking facilities,'" and "'[emergency] crews working to clear the roads.'" *Id*. (quoting *Gaffney*, 2012 IL 110012, ¶ 62) (quoting Webster's Third New International Dictionary 741 (1993). The court in *Springboard* then reasoned:

> "Thus, an event is no less dire if it falls within the kinds of events that police officers ought to anticipate encountering in their daily duties. *** We are simply rejecting the suggestion that past police experience with a certain kind of event renders a particular instance of such an event foreseeable for purposes of section 10(b). Here, as explained below, the roadway obstructions "involv[ed] imminent danger to a person or property requiring an urgent response." *** The additional requirement of foreseeability was satisfied because the particular circumstances of the events were not foreseeable, even as much as the police were prepared by their training and experience to address those types of events." *Id*. ¶ 36

¶ 21 Second, in *Pedersen*, the First District of this appellate court considered the denial of a firefighter's claim for benefits under section 10 of the Act. In that case, Pedersen and others responded to a call regarding a tanker truck fire on an Illinois toll road and proceeded to the location in full gear, with emergency lights and siren activated. After the fire was

extinguished, while Pedersen and other firefighters were cleaning the scene and packing their equipment, the fire engine remained positioned to protect the firefighters, who were still working upon the toll road. The fire engine's emergency lights remained activated as an additional safeguard for firefighters working in the area where the fire had just been extinguished. Pedersen was retrieving safety triangles from near the tanker truck and was within feet of the fire engine when the siren was inadvertently and unexpectedly activated. As a result, Pedersen's hearing was damaged and he was ultimately unable to continue working. *Id*. ¶ 9, 60. The appellate court found that Pedersen's testimony regarding these facts fell "within the scope of a response reasonably believed to be an emergency under the Act." *Id*. The court concluded that it was "therefore reasonable to believe the emergency was ongoing and the scene remained dangerous." *Id*. ¶ 60.

¶ 22 We agree with the reasoning in these appellate court decisions and, applying *Gaffney* to the undisputed facts of this case, we find that Officer Hlavac is entitled to benefits under section 10 of the Act. Officer Hlavac was injured while he was responding to an emergency 911 call of a domestic disturbance. The officer was told by dispatch that two tenants were fighting in the laundry room of a building and that one tenant was threatening to batter the other tenant with an object. Officer Hlavac activated his emergency lights to arrive at the scene in an "emergency" fashion. The officer explained the circumstances requiring him to double park and that he had to exit his vehicle in a "hurry" because there was a "battery in progress" and because he needed to "stop somebody from being battered." He also explained that there is risk in every situation involving a potential battery and that the situation required "urgent attention." The above facts, known to Officer Hlavac at the time he responded to the dispatch, led him to reasonably believe that there was an in-progress domestic disturbance that was urgent and required immediate action. We find that these facts clearly establish that Officer Hlavac was injured while responding to an emergency.

¶ 23 In holding to the contrary, the City found that there was no emergency and that the officer's injury did not result from an unforeseen circumstance because the call he was responding to was "not unusual or unforeseeable" and instead his injury arose "while getting out of his police car quickly to avoid traffic; a routine occurrence."

¶ 24 As did the court in *Springboard*, we reject the assertion that simply because it might be generally foreseeable that a police officer could be called to a domestic disturbance, "a

particular instance of such an event [is] foreseeable for purposes of section 10(b)." *Springborn*, 2013 IL App (2d) 120861, ¶ 36. We agree with the court's reasoning in that case that "an event is no less dire if it falls within the kinds of events that police officers ought to anticipate encountering in their daily duties." *Id*. As the court noted in *Pedersen*, 2014 IL App (1st) ¶ 58, "the question of whether an emergency exists is not categorical, but depends on the circumstances of the moment." We also find the City's suggestion that Officer Hlavac was injured while exiting his police car to avoid traffic, a "routine" occurrence, to be overly simplistic and a misreading of *Gaffney*. As the circuit court wisely noted in this case, *Gaffney* does not require a reviewing court to parse through each incremental act an officer takes in his response to what he believes to be an emergency. For example, Gaffney was injured when a hose became tangled on a loveseat and he had to move that piece of furniture. While it is certainly foreseeable to a firefighter that a hose might become stuck on a piece of furniture, this did not end our supreme court's inquiry or serve as a basis to deny the firefighter's claim for benefits. Similarly in this case, when appropriately viewed in a broader context, the particular circumstances that confronted Officer Hlavac were not foreseeable and meet the definition of an emergency under section 10(b) of the Act. Officer Hlavac did not have to rush out of his squad car simply because of traffic and he was not injured as a result of simply exiting his squad car. The officer's injury was the result of the unforeseeable circumstances of there being a domestic disturbance taking place in a building, of that building having no parking lot and thus requiring the officer to double park in front of the building, and of there being heavy traffic on the street at the time. Because of these circumstances, and because Officer Hlavac reasonably believed that an in-progress domestic disturbance required his immediate attention, the officer was required to rush out of his squad car and was injured while doing so.

¶ 25 We find that these facts establish that Officer Hlavac's injury was the result of his response to what he reasonably believed to be an emergency. After reviewing the record and undisputed facts, we are left with the firm conviction that the City made a mistake in finding to the contrary. Accordingly, the City's denial of Officer Hlavac's petition for insurance benefits under the Act was clearly erroneous. We therefore reverse the judgment of the City denying Officer's Hlavac's claim for benefits and affirm the judgment of the circuit court of Cook County.

¶ 26 Circuit court decision affirmed and City's decision reversed.