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FIRST DIVISION  
September 22, 2014

No. 1-14-0706  
2014 IL App (1st) 140706-U

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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COLLEEN P. KOENIGSHOFER,	)	
	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	
	)	No. 13 CH 9557
THE RETIREMENT BOARD OF THE	)	
POLICEMEN'S ANNUITY AND	)	Honorable
BENEFIT FUND OF THE CITY	)	Mary Lane Mikva,
OF CHICAGO,	)	Judge Presiding.
	)	
Defendant-Appellee.	)	

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JUSTICE CONNORS delivered the judgment of the court.  
Justices Cunningham and Harris concurred in the judgment.

**ORDER**

*Held:* The Board's decision to terminate plaintiff's duty disability benefits and instead impose ordinary disability benefits was supported by the record.

¶ 1 On February 4, 2014, the circuit court entered an order affirming the decision of The Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago (the Board) to terminate plaintiff Colleen Koenigshofer's duty disability benefits at 75% of her salary,

and instead to grant plaintiff ordinary disability benefits at 50% of her salary. For the following reasons, we affirm.

¶ 2

## I. BACKGROUND

¶ 3 In March 2002, the Board found plaintiff to be disabled as a result of an identified act of duty incident that occurred in 2001, and awarded plaintiff duty disability benefits at 75% of her salary subject to periodic review. At some point in 2013, a notice of hearing was issued informing plaintiff that pursuant to the provisions of the Illinois Pension Code (40 ILCS 5/1-101 *et seq.* (West 2012)) (the Code) a hearing was scheduled to determine plaintiff's continued eligibility for her disability benefits.

¶ 4 The first hearing was allegedly held on January 31, 2013.<sup>1</sup> On February 28, 2013, another hearing was held in this matter. Plaintiff stated at that time that she had an appointment scheduled with a doctor that the City of Chicago had referred her to, which was a prerequisite to reentering the workforce as a police officer.<sup>2</sup> Several doctors' reports appear in the record and were submitted to the Board for review.

¶ 5 On October 11, 2001, Doctor David Demorest performed an Independent Medical Examination (IME) and found that plaintiff had multiple issues related to her back as a result of a motor vehicle accident she suffered while on duty earlier that year. Dr. Demorest opined that plaintiff was unable to carry a gun belt because it exacerbated her pain, that she was unable to sit or stand for more than one hour, and that she could not perform her duties as a police officer at that time.

¶ 6 On August 26, 2004, Doctor David Spencer performed an IME and noted that plaintiff reported that she was involved in a traffic accident in 2001 that had aggravated her symptoms

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<sup>1</sup> There is no transcript of this hearing in the record. There is also no appendix to plaintiff's brief containing a Table of Contents to the record as required by Supreme Court Rule 342(a).

<sup>2</sup> The Board alleges that plaintiff returned to active duty on August 1, 2013.

from previous injuries she sustained in the 1990s while on duty. Dr. Spencer's physical exam revealed that she was in no particular discomfort, that she "sits comfortably in the examining room, arises to an erect position, using a cane and walks without a limp, with or without a cane." Dr. Spencer's back examination revealed limitation of motion with no pain.

¶ 7 Doctor Peter Orris conducted an annual review on October 7, 2011, and found that plaintiff had chronic low back pain due to a duty-related injury she suffered in 2001. Dr. Orris noted that plaintiff appeared to be able to fire and protect her weapon. He stated that she "ambulates easily without assistance" and that he saw "no medical reason that prevents her from qualifying with her weapon and returning to light duty."

¶ 8 On September 19, 2012, Doctor Jay Levin conducted an IME and submitted a report on September 28, 2012. In his report, Dr. Levin found no reason to support plaintiff's continued total disability but noted that since plaintiff had been "off work now for more than 10 years, she is significantly deconditioned."

¶ 9 On November 1, 2012, Dr. Orris stated that he saw no continuing disablement from the duty injuries that prevented her from qualifying with her weapon and returning to light duty in an office setting.

¶ 10 On December 4, 2012, Dr. Levin noted that plaintiff's current status was not a result of the 2001 injury and that she could ambulate without assistance and could discharge and protect her weapon.

¶ 11 The Board issued an order on March 20, 2013. The order stated that the Board members had reviewed:

“a) medical reportings, b) the testimony offered by [plaintiff], c) the opinion of Dr. Jay L. Levin as expressed in medical reports following his

independent medical examination 'IME' determined, 1) that [plaintiff] is currently deconditioned; and 2) [plaintiff]'s current physical condition was not the result of the injury sustained in the September 23, 2001 act of duty incident."

¶ 12 The Board further noted that Dr. Orris indicated in a November 1, 2012, report that he "saw no continued disablement from the duty injuries in the 1990s that prevented her from qualifying with her weapon and returning to light duty in an office setting." The Board determined that plaintiff's disability resulting from the act of duty incident had ceased. The Board found that plaintiff was no longer entitled to a duty disability benefit, but that because she was unable to return to work "as a result of a physical condition other than that which occurred in the Act of Duty incident", she was entitled to an ordinary disability benefit until further order of the Board.

¶ 13 The Board cited to section 5/5-155 of the Code in making its decision, which states in pertinent part that a "policeman who becomes disabled \*\*\* as a result of any cause other than injury incurred in the performance of an act of duty, shall receive ordinary benefit during any period or periods of disability exceeding 30 days, for which he does not have a right to receive any part of his salary." Ordinary disability benefit "shall be 50% of the policeman's salary." 40 ILCS 5/5-155 (West 2012). The Board also cited to section 5/5-156 of the Code which stated that a disabled policeman who received duty disability shall be examined at least once a year by one or more physicians appointed by the board. 40 ILCS 5/5-156 (West 2012).

¶ 14 Plaintiff appealed this ruling to the circuit court. The circuit court affirmed the Board's ruling. Plaintiff now appeals.

¶ 15

## II. ANALYSIS

¶ 16 On appeal, plaintiff contends that the record fails to support the Board's decision to terminate her duty disability and impose ordinary disability benefits. As an initial matter we note that the record does not contain any testimony from plaintiff regarding her past or current disabilities. The appellant has the burden to present a sufficiently complete record, and any doubts which may arise from the incompleteness of the record will be resolved against the appellant. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984) (no basis for holding the trial court abused discretion as there was no transcript of the hearing in the record).

¶ 17 The Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)) provides that our review extends to all questions of fact and law presented by the entire record. 735 ILCS 5/3-110 (West 2012). In administrative review cases, we review the decision of the administrative agency, not the decision of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006). We review rulings on questions of law *de novo*, and rulings of questions of fact will be reversed only if they are against the manifest weight of the evidence. *Wade v. North Chicago Police Pension Board*, 226 Ill. 2d 485, 504-05 (2007). " ' An administrative agency decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.' " *Wade*, 226 Ill. 2d at 504-05 (quoting *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992)). Under any standard of review, the burden of proof is on the plaintiff, and the failure to sustain that burden will result in denial of relief sought. *Wade*, 226 Ill. 2d at 505.

¶ 18 When reviewing the Board's decision, we may not reverse administrative findings merely because an opposite conclusion is reasonable or because we might have ruled differently. *Marconi*, 225 Ill. 2d at 534. In our examination of the Board's factual findings, we do not weigh

the evidence or substitute our judgment for that of the agency. *Marconi*, 225 Ill. 2d at 534.

Where the record contains evidence to support the Board's decision, we will affirm. *Id.*

¶ 19 It is undisputed that in 2001 plaintiff sustained injuries while performing an act of duty as defined in the Code. See 40 ILCS 5/5-113 (West 2012). The issue before us is whether the Board's findings that plaintiff was no longer disabled as a result of that act of duty, and that she was instead entitled to ordinary disability, were against the manifest weight of the evidence.

¶ 20 Plaintiff contends that the Board never established that plaintiff's current disability resulted from a preexisting condition, or from any cause other than the injuries that occurred on duty. Plaintiff cites to section 5/5-154 of the Code which governs duty disability benefits, and which states that "if the disability resulted from any physical defect or mental disorder or any disease which existed at the time the injury was sustained, \*\* the duty disability benefit shall be 50% of salary as defined in this Article." 40 ILCS 5/5-154 (a)(i) (West 2012). Plaintiff further cites to *Samuels v. Retirement Board*, 289 Ill. App. 3d 651 (1997), which interpreted this statute to mean that duty disability benefits should be provided in two instances: where the disability occurs as a result of (is caused by) an on-duty injury, and where a disability results from (stems from) a preexisting condition as opposed to being caused by the injury. The *Samuels* court found that in the first instance, duty disability is 75% of the officer's salary, and in the second instance duty disability is 50% of the officer's salary. Plaintiff contends that because a preexisting condition must cause the disability in order to receive 50% of the duty disability benefit, and because there is no evidence in the record to support the proposition that plaintiff's current disability resulted from a preexisting or outside physical injury, the Board's findings must be reversed.

¶ 21 We note, however, that the Board did not award plaintiff *duty* disability under section 5/5-154(a)(i) of the Code. Rather, the Board awarded plaintiff *ordinary* disability under section 5/5-155 of the Code, which, as we previously noted, states in pertinent part that "[a] policeman \*\* who becomes disabled \*\*\* as the result of any cause other than injury incurred in the performance of an act of duty, shall receive ordinary disability benefit during any period or periods of disability." 40 ILCS 5/5-155 (West 2012). Here, we find that it was not against the manifest weight of the evidence for the Board to find that plaintiff was currently disabled as the result of a cause other than her on-duty injuries.

¶ 22 In 2001 and 2004, both of the doctors that examined plaintiff noted that she had been involved in an on-duty traffic incident in 2001. Dr. Demorest opined in 2001 that plaintiff could not perform her duties as a police officer at that time. Dr. Spencer noted in 2004 that plaintiff walked with a cane but that she was in no particular discomfort and that she could walk without a limp with and without her cane.

¶ 23 In 2011, however, Dr. Orris found that while plaintiff had low back pain related to the 2001 injury, she was able to fire and protect her weapon, and that she ambulated easily without assistance. He saw no medical reason that prevented her from qualifying with her weapon and returning to work in some capacity. And in 2012, Dr. Levin reported that there was no reason for plaintiff's continued total disability. He found that she could ambulate without assistance, and discharge and protect her weapon. Dr. Levin also noted, however, that because she had been off work for more than 10 years, she was significantly deconditioned. Dr. Orris reported that he saw no continuing disablement from the duty injuries.

¶ 24 Because two doctors who recently evaluated plaintiff found that she was no longer disabled as a result of duty-related injuries, we find that it was not against the manifest weight of

the evidence for the Board to find that plaintiff was no longer entitled to duty disability benefits at 75% of her salary. See *Marconi*, 225 Ill. 2d at 534 (where the record contains evidence to support an administrative agency's decision, we will affirm). Rather than find that plaintiff was no longer entitled to *any* disability benefits, however, the Board found that she was still entitled to ordinary disability benefits under section 5/5-155 of the Code, based on the fact that plaintiff was deconditioned after 10 years of inactivity. The Board's finding that plaintiff was currently deconditioned, which was not the result of an act of duty incident but rather a result of inactivity, is supported by evidence in the record and thus is not against the manifest weight of the evidence. *Marconi*, 225 Ill. 2d at 534. Accordingly, we affirm the judgment of the circuit court upholding the Board's findings.

¶ 25 Affirmed.