

2013 IL App (2d) 120114-U
No. 2-12-0114
Order filed March 13, 2013

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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THOMAS POULOS,)	Appeal from the Circuit Court
)	of Lake County
Plaintiff-Appellee,)	
)	
v.)	No. 11-MR-623
)	
BOARD OF TRUSTEES OF THE CITY)	
OF WAUKEGAN POLICE PENSION)	
FUND, JAMES MERLOCK, JOSEPH)	
RAJCEVICH, LARRY SCHUTZ, MARTIN)	
VAN ANROY, EDWARD HEIDLER,)	
AND CINDY TEMKAMPE.)	Honorable
)	David M. Hall,
Defendants-Appellants.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Jorgensen and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiff, a police officer, was not entitled to a line-of-duty pension because he failed to establish that his mental disability resulted from “the performance of an act of duty” under section 3-114.1 of the Illinois Pension Code (40 ILCS 5/3-114.1 (West 2010)).

¶ 2 Defendants, the Board of Trustees of the City of Waukegan Police Pension Fund, *et al.* (Board), appeal from the judgment of the trial court reversing the Board’s decision to deny plaintiff,

Thomas Poulos, a line-of-duty pension under section 3-114.1 of the Illinois Pension Code (40 ILCS 5/3-114.1 (West 2010)). For the following reasons, we reverse.

¶ 3

I. BACKGROUND

¶ 4 On January 8, 2010, plaintiff, a police officer with the City of Waukegan (City), filed with the Board an application for a line-of-duty disability pension. Plaintiff alleged that he suffered from Post Traumatic Distress Disorder (PTSD) and “Generalized Anxiety Disorder,” and was, consequently, unable to perform his duties as a police officer.

¶ 5

A. Testimony Before the Board

¶ 6 The Board held an evidentiary hearing on March 2 and 7, 2011. Waukegan Police Chief Daniel Greathouse testified that his department had referred plaintiff to psychologist Alan Friedman to evaluate plaintiff’s fitness for duty. Greathouse, based on his own observations as well as Friedman’s reports, was of the opinion that something was “wrong with [plaintiff] mentally” and that he should not return to duty. Greathouse was aware of “incidents and problems that [plaintiff] has had that very well may have something to do with post-traumatic stress.” Greathouse was concerned that plaintiff might suffer a relapse if reinstated to duty “in a community like Waukegan, with the level of stress and the potential of incidents,” as plaintiff has “shown a propensity of having problems dealing with those situations.”

¶ 7

Plaintiff testified that he began work as a police officer with the City in 1995. He received multiple commendations throughout his career. Eventually, he was placed on leave because of “stress.” Plaintiff identified some particular incidents “that *** affected [him] psychologically.” First, Police Chief Juarez died of a heart attack. Second, the day after Juarez’s death, plaintiff was

at the scene of a traffic accident where a 17-year-old was (or had been) killed on impact. Plaintiff explained how this incident “affect[ed] [his] future performance as a police officer”:

“I watched it happen and wanted to be able to put a stop to it before it occurred, and I couldn’t—I mean, there was nothing I could do. And so then it just seemed like after—after stuff like that happened, that if an emergency call would go out for a similar situation where I wasn’t at, that the first thing I would do is start getting on the computer and asking the officers who were going there to let me know what kind of a car it was so I could make sure it wasn’t, you know, a family member if I couldn’t get ahold [*sic*] of my wife let’s say first; make sure the kids weren’t there. Because I just knew that I couldn’t, you know, stop everything that I wanted to stop from occurring.”

Plaintiff stated that “[t]his kind of anxiety, fear, wasn’t always present in [his] career.” Plaintiff believed that, “as a result of [this] and other events [he] experienced while in the line of duty[, he was] disabled from being a police officer.”

¶ 8 Plaintiff identified three incidents of anxiety that he had when he was younger, before he entered police training. First, when he was about four, he was pushed into a pool and feared drowning. Second, when he was about six, he thought a tornado was coming and ran for cover. “Somebody had to find [him], track [him] down, and bring [him] to his parents.” Third, he was “out with a couple of people before a wedding,” and the next morning had “almost like a panic attack before the wedding.” Plaintiff sought counseling. The therapist told him that the first two incidents were “just natural fears,” while the third was “probably *** the result of too many drinks the night before the wedding.”

¶ 9 Friedman testified that, in June 2008, Police Chief Biang asked him to evaluate plaintiff. After interviewing plaintiff and conducting psychological tests, Friedman concluded that plaintiff was unfit for duty because of “abnormal functioning,” namely PTSD due to duty-related stress. In July 2009, Biang asked Friedman to evaluate plaintiff a second time. After interviewing plaintiff and consulting with other treatment providers, Friedman concluded that there was enough “symptom improvement” that plaintiff could return to duty. In September 2009, the new police chief, Yancey, asked that Friedman evaluate plaintiff yet again. Friedman interviewed plaintiff and “saw a resurgence of the anxiety that was originally diagnosed [in] him.” Friedman detected “chronic PTSD” in plaintiff. Friedman was concerned that plaintiff could

“decompensate by being re-exposed to other traumatic incidents on the job which is part of the *** job description. There was a good probability he was going to be exposed to other traumatic incidents beyond just the one you [referring to plaintiff’s counsel] elicited from him regarding the 17-year-old who died at the scene.

There were at least two or three other fatalities that happened in a very short period of time of the incident that you elicited from him that concerned me because traumatic stress is cumulative. And everybody reaches a level of tolerance. And I felt he more than reached his level and didn’t have any more room, any more elasticity to absorb any more traumatic incidents.”

¶ 10 In February 2011, plaintiff’s counsel arranged a fourth evaluation by Friedman. Friedman determined to a reasonable degree of psychological certainty that plaintiff was disabled because of duty-related stress. Friedman criticized Dr. Henry Lahmeyer, a psychiatrist appointed by the Board to examine plaintiff, for attributing plaintiff’s current condition to his childhood anxieties. Friedman

suggested that, if plaintiff was carrying such anxiety from childhood, he would not have functioned, let alone excelled, as a police officer for as many years as he did. In time, however, plaintiff succumbed to stress, having been “definitely affected by these traumatic incidents, especially happening close in time.”

¶ 11 Friedman denied that plaintiff’s condition resulted “from generalized police stress of multiple origins.” Friedman elaborated:

“It originated or was caused by several traumatic incidents that he was exposed to immediately following the death of [Chief Juarez]. *** I think I mentioned all three. Actually, I didn’t get into what the incidents were.

But one had to do with the 17-year-old girl who died, where he saw the accident actually unfolding and occurring. That would be enough for some people to be an inducement for [PTSD]. And then an accident on Highway 41 with a truck driver, and then another fatality incident, all within a short period of time.”

Friedman further denied that plaintiff’s condition “resulted from a cumulative effect of traumatic duties performed over his career.” The stress was “[n]ot cumulative over the course of his career, but over the period of time in which these traumatic—these specific traumatic incidents happened that were involving fatalities.”

¶ 12 As part of its investigation, the Board subpoenaed an August 2009 report by Robert Johnson, a retired Illinois State Police officer. Johnson was retained by the City to investigate allegations of misconduct brought by plaintiff against several of his fellow officers. In the 200-page report, Johnson found nearly of the allegations to be unfounded, and recommended that plaintiff be terminated for submitting false reports.

¶ 13 Friedman was asked, in reference to Johnson's report, whether plaintiff might be experiencing "trauma" from fear of termination. Friedman replied that, in his opinion, "traumatic" incidents are "specific things that are threats to your physical integrity or your safety or your life." Neither termination from employment, nor the fear of it, meets the diagnostic definition of "trauma." Friedman also would not speculate on whether plaintiff's fear of termination "could have an effect" on his stress level.

¶ 14 B. Written Reports Submitted to the Board

¶ 15 The Board referred plaintiff to one psychiatrist, Lahmeyer, and two psychologists, Linda Grossman and Mark Goldstein, for evaluation. None testified, but each submitted a written report to the Board. Friedman's report of his most recent examination of plaintiff was also admitted into evidence.

¶ 16 1. Lahmeyer's Report

¶ 17 According to Lahmeyer's September 2010 report, plaintiff had a history of anxiety, panic attacks, and "feelings of doom" dating from an incident at age four in which he nearly drowned. His anxiety attacks sometimes involved heart palpitations and chest pain. When he was 21, plaintiff consulted a psychiatrist for anxiety and depression. During police training, plaintiff "found it very stressful to view fatalities in photos while somber music was playing." Also, during training his relationship with his girlfriend became strained, and she reported to the police chief that plaintiff drank too much and was suicidal. The chief referred plaintiff to a psychiatrist and an alcohol counselor. Upon becoming a police officer, plaintiff found the job "increasingly stressful" and was " 'gradually succumbing to the experience of seeing people die of natural causes.' " When plaintiff switched from patrol to undercover work, he witnessed a lack of integrity among some of his peers.

He still “found it difficult to deal with the trauma and death he witnessed.” He would “re-experience the smells or see the faces of victims.” He became fearful that he or his family would die. He was particularly fearful that he would have a heart attack. On three occasions, he went to a hospital with what he felt were heart-attack symptoms, and each time he was found healthy, yet “was not reassured.” His fear of a heart attack worsened after Chief Juarez died of one in 2002. The day after Juarez died, plaintiff witnessed a 17-year-old girl die in an automobile accident. Her death worsened his anxiety. He had an “obsessive concern about her death.” He “recalled seeing her dead, naked body at the hospital and vividly recalled how beautiful she was and how perfect her body was.” Plaintiff underwent therapy with several specialists and was prescribed medication. One specialist, Mara Pfister, whom plaintiff began to see in 2006, reported that plaintiff was not following his medicine regimen and, consequently, had “recurrent bouts of acute anxiety.” Pfister also reported that plaintiff’s anxiety spells often occurred after had consumed alcohol the night before. Plaintiff reported to Pfister that he drank three nights per week and consumed seven to eight beers on each occasion. Plaintiff reported to Lahmeyer that, on one night in 2006, he had a panic attack after consuming six or seven beers.

¶ 18 Plaintiff further reported to Lahmeyer that he was not currently undergoing psychotherapy or taking any medicines except an occasional Xanax. Plaintiff no longer had “panic attacks or any significant anxiety or depression.” Plaintiff claimed that he was symptom-free because “he no longer has to go to work where he fears retaliation for informing on fellow police officers.” Plaintiff also said that he did not believe he was disabled, but that the City had offered him a disability pension so that he would not claim retaliation for reporting police misconduct.

¶ 19 Lahmeyer noted that Friedman had administered plaintiff the Minnesota Multiphasic Personality Inventory-2 (MMPI-2). Lahmeyer believed that the results of the test were of questionable validity because the scales indicated symptom exaggeration. Validity questions aside, Lahmeyer disagreed with Friedman that the profile suggested PTSD. According to Lahmeyer, the profile instead indicated

“(a) very high somatization (experiencing emotional and psychological concerns as physical symptoms); (b) generally elevated psychological distress, including anger, disregard for societal norms, a deep suspicion of others and their motives, including a sense of persecution, anxiety, low mood[,] and confused thinking; and (c) increased suicide risk.”

¶ 20 Lahmeyer asked psychologist Daniel Lilie to administer the MMPI-2 to plaintiff. Lilie’s July 2010 report was submitted to the Board. Lilie found indications that plaintiff exaggerated or fabricated symptoms. According to Lilie, plaintiff’s profile was

“characteristic of people with a life-long pattern of pessimism and joylessness. The exaggerated or fabricated clinical symptom pattern is marked by vague somatic complaints, depression, oppositional tendencies, irritability, and anxiety.”

Lilie wrote that, “[w]hile the pattern of subjective complaints and objective testing results might point to diagnoses of Conversion, Anxiety[,] or Somatization Disorders, *** [t]he possibility of exaggeration or malingering for secondary gains cannot be ruled out.”

¶ 21 Lahmeyer believed that the profiles Friedman derived from his two administrations of the Personality Assessment Inventory (PAI) to plaintiff were invalid because of plaintiff’s lack of candor. Particularly, plaintiff may have been minimizing his use of drugs or alcohol. Validity

questions aside, the PAI profiles were consistent with “Centralized Anxiety Disorder and Somatization.” The profiles were not, Lahmeyer found, indicative of PTSD.

¶ 22 Lahmeyer diagnosed plaintiff with “chronic conditions of Somatization Disorder and Panic Disorder with some symptoms of PTSD that date to early traumas of several near drowning experiences.” Plaintiff reported no current “panic attacks, depression or symptoms of PTSD.” Lahmeyer found that plaintiff was not “currently disabled.” Moreover, Lahmeyer saw “no evidence that [plaintiff’s] previously diagnosed conditions are in any way duty-related.” He expanded:

“There is ample evidence that [plaintiff] is not a reliable historian in his relating psychiatric history, his substance abuse history[,] and his reporting of symptoms on psychological tests. *** Therefore, symptoms and causal connections [plaintiff] reports may not be reliable. For example, he attributes his current symptoms of PTSD to recent trauma experienced while working. This cannot be taken at face value because these symptoms predate his employment with the [City]. [Plaintiff] experienced recurrence of panic and anxiety as early as the first days of training.

He now attributes his disability to traumas witnessed while working, but he clearly experienced anxiety and fear from stressful interpersonal relationships during his tenure with the [City], including a relationship with a girlfriend in 1995 and during his marriage. His lifelong anxiety disorder and maladaptive personality led to increasing conflict. He was able to work until his anxiety increased as a result of his decision to become an informant for the FBI and because the traumas he reports as the cause of his symptoms were *** experienced frequently while in the line of duty.”

¶ 23 Lahmeyer wrote further that plaintiff’s panic disorder and somatization disorder

“clearly predate his service with [the City]. It appears his exposure to traumatic events exacerbated his conditions at times, but these were ameliorated with antidepressants and psychotherapy.”

¶ 24

2. Grossman’s Report

¶ 25 Grossman’s report was dated October 31, 2010. Plaintiff gave Grossman essentially the same history he provided Lahmeyer of panic and anxiety beginning in early childhood and continuing through and after police academy. Plaintiff reported that, after he became a police officer, “tension built up for him *** as he began to see increasing numbers of horrible sights.” He said:

“[H]e responded with great pain to sights of innocent people who were wounded or who had died. He described several such scenes including a traffic accident which caused the death of an older man about whom he said, ‘I found him dead in his SUV in his overalls, and I imagined him kissing his wife, saying to her, ‘See you later!’ He described finding a murdered baby in a closet, his mouth duct-taped, and a 16-year-old boy whom he found in a closet after the child hung himself. He also commented on the terrible odors to which he was subjected when he found corpses, citing one person who had been dead for 3 months when he discovered her. He said whenever he would go by the locations of these (and other) grizzly [*sic*] sights, he would remember all the details. ***

[Plaintiff] also related that he became very distressed when his Chief died of a heart attack. The next day, he said that he observed a 17-year-old girl who was killed in a car crash. He stated that he saw this girl’s corpse, and observed that her brain had been separated from her spinal cord. ***.”

Plaintiff reported that he still experienced “anxiety” and had frequent nightmares “about car accidents that end in human decapitation and other mutilation.” Plaintiff also claimed stress from having witnessed corruption among his fellow officers. Plaintiff remarked that his current stress level was “killing him.” He wanted to return to work, but was afraid of reprisal from his fellow officers because he had become a whistle-blower. Plaintiff reported that he had not been in treatment since June 2009, and did not want to return because “doing so would remind him of how intense his fear and anxiety were in the past,” and might trigger a relapse to that level of anxiety.

¶ 26 Grossman administered the PAI, and plaintiff’s profile indicated: (1) “[p]anic disorder without agoraphobia, chronic and episodic with childhood onset, currently in remission”; and (2) “[g]eneralized anxiety disorder, chronic and episodic with childhood onset, currently in remission.”

Grossman concluded:

“[Plaintiff] has a long-standing history of severe anxiety and panic disorders which have plagued him throughout his lifetime since his early childhood. He attributes his most recent exacerbations of this long-term illness to the combination of the requirement of viewing various traumatic scenes as a routine part of police duty, and his decision to testify against the police force to the FBI. It is likely that the stresses he has experienced as a result of this combination have exacerbated his pre-existing anxiety and panic disorder. However, there is no evidence to support that he suffers from [PTSD]. While he is currently experiencing remission of his mental disorders and is therefore fit to return to work, his likelihood of remaining symptom-free is low if he returns to the stresses normally associated with being a police officer. For [plaintiff], the combination of his stress upon witnessing traumatic events, coupled with his fear of reprisals from co-workers for his testimony against the police

department, strongly suggests a high level of risk of relapse if he returns to work as a police officer.”

¶ 27

3. Goldstein’s Report

¶ 28 Goldstein’s report is dated October 4, 2010. Unlike Lahmeyer’s and Grossman’s reports, which note a long history of panic and anxiety in plaintiff starting in his childhood, the history as related in Goldstein’s reports first mentions such symptoms occurring while plaintiff was a police officer. Plaintiff reported that he “began to get anxiety, specifically chest pain and heart palpitations.” Plaintiff claimed that he was “upset” when Chief Juarez died. The morning after Juarez’s death, plaintiff “witnessed a ‘T-Bone accident’ where a seventeen-year-old girl died.” Plaintiff reported observing incidents of racism and brutality among his fellow officers. When he reported this conduct to authorities, he began to feel “increasingly stressed out.” Plaintiff experienced “anxiety attacks” and sought treatment. Plaintiff reported that he currently experiences episodes of anxiety and “feelings of doom,” especially when alone.

¶ 29 Goldstein administered four diagnostic tests to plaintiff: the MMPI-2, the Millon Clinical Multiaxial Inventory-3 (MCMI-3), the Paulhus Deception Scales (PDS), the Trauma Symptom Inventory (TSI), and the Clinician Administered PTSD scale (CAPS). Goldstein considered the MMPI-2 profile to be valid. Plaintiff had elevations on the “Hypochondriasis scale, the Hysteria scale, the Psychasthenia Scale, the Schizophrenia scale, and the [PTSD] scale.” Under the MCMI-3, “possible diagnoses include[d] [PTSD], Generalized Anxiety Disorder[,] and Schizoid Affective Disorder.” Goldstein concluded that “the findings from the MMPI-2 and MCMI-3 are consistent with a diagnosis of either [PTSD], Generalized Anxiety Disorder[,] and/or Depression.”

¶ 30 On the TSI, plaintiff had the following elevations: (1) the “Anxious Arousal scale,” which “is associated with Post Traumatic hyper[-]arousal”; (2) the “Intrusive Experiences scale, which includes symptoms such as flashbacks, nightmares[,] and intrusive thoughts”; (3) the “Anger/Irritability” and “Defensive Avoidance” scales, which “are typical of Post Traumatic Avoidance both cognitively and behaviorally; and (4) the “Dissociation scale, which may suggest depersonalization.” Goldstein believed that, “[o]verall, [the] TSI profile is highly consistent with an individual suffering from [PTSD].”

¶ 31 On the CAPS,

“plaintiff reported experiencing intrusive recollections, avoidance and numbing, diminished interest or participation in activities, detachment, restricted range of affect, some hyper[-]arousal, sleep problems, irritability and problems with anger, problems with concentration[,] and some hypervigilance. The overall findings are consistent with an individual with a diagnosis of PTSD.”

¶ 32 In her summation paragraph, Goldstein noted that the TSI and PADS results were “both strongly indicative of [PTSD].” The MMPI-2 and MCMI-3 were consistent with either PTSD, “Generalized Anxiety Disorder[,] and/or Depression.” Goldstein noted that “plaintiff has been significantly psychologically impaired in the past, and appears to be significantly psychologically impaired at the present time.” He “suffers from significant anxiety [and] depression as well as a number of symptoms often found in individuals with [PTSD].” According to Goldstein, plaintiff’s “overall prognosis for returning to function as a police officer is fair to poor.” He “clearly” was presently unfit for duty, and was unlikely to become fit for another one to two years, even with “excellent psychological treatment.”

¶ 33

4. Friedman's Report

¶ 34 Friedman examined plaintiff four times, but only the report of the fourth examination, dated February 23, 2011, is in the record. Friedman wrote that plaintiff was presently unfit for police work and would remain so for the foreseeable future. As in his testimony before the Board, Friedman criticized Lahmeyer for laying too much emphasis on plaintiff's childhood anxiety. According to Friedman, plaintiff initially performed well as a police officer, but "began to deteriorate *** after an accumulation of traumatic incidents." Friedman also disagreed with Lahmeyer's interpretation of the results of the MMPI-2 that Friedman administered to plaintiff. Friedman did not believe there was evidence of symptom exaggeration. He also denied that plaintiff exhibited any "obsessive, schizoid[,] or paranoid traits." Friedman adhered to his prior diagnosis that plaintiff suffered from PTSD.

¶ 35

5. Johnson's Report and Correspondence Between Plaintiff and the City

¶ 36 In addition to Johnson's report, the Board subpoenaed a series of correspondence between plaintiff and the City that appear to be attempts at a settlement (settlement correspondence). Plaintiff objected to the correspondence as being irrelevant to whether he was disabled. Plaintiff did not appear to object to Johnson's report.

¶ 37

C. The Board's Decision and Review by the Trial Court

¶ 38 Following his counsel's closing argument, plaintiff himself spoke to the Board. He said that the "three traumatic incidents" to which he had testified were "just the tip of the iceberg as to what was going on." Plaintiff then mentioned "having to go into houses with people who have been passed away for months at a time and having to put those into a bag and have to walk out of the apartment building and then get called to go to lunch." He also mentioned one instance as an

undercover narcotics officer where two men approached him in the vestibule of an apartment building and appeared as if they “were going to take his life.” Plaintiff also noted that he used to have stomach upsets before executing search warrants.

¶ 39 After taking the matter under advisement, the Board issued a written order containing these findings:

“1. Two (2) of the three (3) reviewing physicians and mental health professionals who evaluated [plainiff] found that he was not suffering from [PTSD].

2. [Plaintiff] did not convince the Board that he was disabled and not fit for duty as a sworn police officer from a specific identifiable act of duty unique to police work.

3. That [plaintiff’s] psychological disabling condition resulted from the cumulative effect of traumatic duties performed over his career, rather than a specific act of employment.”

The Board denied plaintiff a line-of-duty pension. The Board entered a separate written order granting plaintiff a non-duty pension.

¶ 40 On April 12, 2011, plaintiff filed a complaint for administrative review in the trial court, and the parties subsequently filed briefs. On January 6, 2012, the trial court issued an order reversing the Board’s decision and awarding plaintiff a line-of-duty pension. The trial court found that plaintiff was disabled and that his disability arose “from several specific, identifiable acts of police duty.” The court noted that “[t]he fact that the disability resulted from more than one specific act of duty does not prevent a finding that the disability resulted from an act of duty ***.”

¶ 41 The Board filed this timely appeal.

¶ 42 II. ANALYSIS

¶ 43 Section 3-148 of the Illinois Pension Code (Code) (40 ILCS 5/3-148 (West 2010)) states that judicial review of a retirement board's final decision shall proceed in accord with the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2010)). Judicial review of an administrative agency's decision "shall extend to all questions of law and fact presented by the entire record before the court." 735 ILCS 5/3-110 (West 2010). The appellate court reviews the decision of the administrative agency, not the decision of the trial court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006).

¶ 44 "The findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct." 735 ILCS 5/3-110 (West 2010). In other words, determinations of fact will be reversed only if against the manifest weight of the evidence. *Marconi*, 225 Ill. 2d at 534. A ruling is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Id.* Hence, the mere fact that an opposite conclusion is reasonable or that the reviewing court might have ruled differently will not justify reversal of findings of fact by an administrative agency. *Id.* In reviewing the agency's findings of fact, the court does not re-weigh the evidence or substitute its judgment for that of the agency. *Id.* "If the record contains evidence to support the agency's decision, that decision should be affirmed." *Id.*

¶ 45 Under section 3-114.1 of the Code (40 ILCS 5/3-114.1(a) (West 2010)), a police officer qualifies for a line-of-duty pension if

"as the result of sickness, accident or injury incurred in or resulting from the performance of an act of duty, [the officer] is found to be physically or mentally disabled for service in the police department ***."

¶ 46 Under section 3-114.2 of the Code (40 ILCS 5/3-114.2 (West 2010)), a police officer qualifies for a non-duty pension if his physical or mental disability is the “result of any cause other than the performance of an act of duty ***.” Section 5-113 (40 ILCS 5/5-113 (West 2010)) defines “act of duty” as

“[a]ny 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 in 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.”

¶ 47 The issue on appeal is not whether plaintiff has a mental disability, but whether that disability is duty-related. We recognize that, in some of its remarks, the Board appears to question plaintiff’s claim of *any* disability, duty-related or otherwise. For instance, the Board suggests that “the entire PTSD application was a charade, played to attempt to revive the botched settlement agreement of the Whistleblower case.” The Board, however, did award plaintiff a non-duty pension, finding that he has a “psychological disabling condition,” albeit not a duty-related one. Therefore, when properly construed, the Board’s challenge extends only to the trial court’s reversal of its finding that plaintiff’s disability resulted from his performance of an act of duty.

¶ 48 Before analyzing whether plaintiff has a duty-related disability, we address his challenge to the Board’s admission of Johnson’s report. Plaintiff denounces the report as inflammatory and irrelevant to the matter at issue, which is whether he developed a mental disability due to his exposure “to a series of traumatic events (violent deaths, scenes of horrible bodily harm, threats to life and safety) in the line of duty as a police officer.” The Board responds that the report, which

concluded that plaintiff had fabricated nearly all of his charges, is not only relevant to plaintiff's credibility, but to "whether stressors outside of police duties weighed on [him], and whether his expressed fears of retribution as a result of his false claims could have affected his current condition."

¶ 49 Since plaintiff obtained all relief requested in the trial court, he cannot complain of the Board's admission of evidence. See *Young v. Hummel*, 216 Ill. App. 3d 303, 312 (1991) (the plaintiffs, who prevailed below in their suit for injuries arising out of an automobile accident with the defendant, could not claim on appeal that the trial court erred in refusing to admit evidence of the defendant's intoxication at the time of the accident). Moreover, we need not consider the report, as we can conclude independently that plaintiff's mental disability is not duty-related, namely because it was caused by the general nature of police work, not by a specific act of duty.

¶ 50 There was sufficient evidence to support its determination that plaintiff's mental disability was the "result of any cause other than the performance of an act of duty" (40 ILCS 5/3-114.2 (West 2010)). "In order to succeed in a claim for a line-of-duty disability pension, [the] plaintiff must establish a causal connection between [his] condition and an act of police service." *Ryndak v. River Grove Police Pension Board*, 248 Ill. App. 3d 486, 489 (1993). More specifically, the plaintiff must establish that his disability was "the result of a specific, identifiable act of duty unique to police work." (Internal quotation marks omitted.) *Robbins v. Board of Trustees of the Carbondale Pension Fund*, 177 Ill. 2d 533, 542 (1997) (quoting *Trettenero v. Police Pension Fund*, 268 Ill. App. 3d 58, 63 (1994)). Hence, a pension claimed on the basis of duty-related stress will be denied where either (1) "the causes of the stress are not unique to police work" or (2) "the disability is traceable only to the general nature of being a police officer and not to a specific act of police service." (Internal

quotation marks omitted.) *Id.* (quoting *Trettenero*, 268 Ill. App. 3d at 63-64). A line-of-duty pension is not allowed for a disability resulting from “generalized police stress of multiple origins.” *Id.* at 543.

¶ 51 We first note a class of evidence that we do not consider. In his interviews with Grossman and Goldstein, plaintiff claimed that his stress was caused in part by his witnessing several specific instances of misconduct by fellow officers and from his fear of reprisal from his peers and superiors for his decision to report the wrongdoing. In arguing before the Board and the trial court, however, plaintiff did not attribute any of his stress to these intradepartmental issues, but relied solely on his exposure to death, mayhem, and danger while performing his duties as a police officer. Consistent with this narrow focus, plaintiff argued to the Board that the settlement correspondence, involving (supposedly) a possible whistleblower action arising out of his reports of police misconduct, was unrelated to whether he had a duty-related disability. Likewise in this court, plaintiff does not claim that his disability is due to his observing the misdeeds of his peers or to his fear of retaliation for exposing their wrongdoing. Accordingly, we will not consider these incidents as potential contributors to plaintiff’s mental disability.

¶ 52 We focus, rather, on the following instances mentioned either in the testimony before the Board or in the specialists’ reports it received into evidence: (1) Chief Juarez’s death from a heart attack; (2) the death of a 17-year-old in a traffic accident the day after Juarez died; (3) a traffic accident in which a man dressed in overalls died; (4) the discovery of a 16-year-old boy who had hung himself; (5) the discovery of a murdered baby; (6) the discovery of a person who had been dead for three months; and (7) an occasion where, while doing undercover work, plaintiff feared that two men would kill him.

¶ 53 First, witnessing the death of a coworker from a heart attack is not a “special risk” of police work (40 ILCS 5/5-113 (West 2010)). See *Ryndak*, 248 Ill. App. 3d at 490 (“seeing a coworker die of a heart attack [is] not [a] circumstance[] unique to police officers”). As for the remaining incidents, even if we accepted that they represent a special risk of police work, the Board would have been justified in finding that plaintiff did not link his disability to “ ‘a specific act of police service’ ” (*Robbins*, 177 Ill. 2d at 542) (quoting *Trettenero*, 268 Ill. App. 3d at 63).

¶ 54 Several cases are illustrative here. In *Robbins*, the plaintiff claimed that his disability resulted from witnessing a suicide by shotgun while on patrol duty. The pension board denied the plaintiff a line-of-duty pension, and the supreme court upheld the decision. A psychologist appointed by the Board to examine the plaintiff “concluded that while [the plaintiff’s] stress was related to his police work, the stress was not connected to any specific act *** as a police officer.” *Id.* at 544. The plaintiff retained three psychologists, the first two of which stated that the plaintiff “had significant daily stress” while on patrol duty. *Id.* The third psychologist specifically concluded that (1) the plaintiff’s “ ‘past exposure to occasional violence was *not* problematic for him’ ”; and (2) his “ ‘continuous exposure to possible violence, *as well as the pace of his duties in general*, were of considerable stress.’ ” (Emphasis in original.) *Id.*

¶ 55 In *Batka v. Board of Trustees of the Village of Orland Park Police Pension Fund*, 186 Ill. App. 3d 715 (1989), the appellate court upheld the pension board’s denial of a duty-based pension. The plaintiff testified that his stress was caused by, *inter alia*, conflict with the police chief as well as “a certain case where a two-year-old child, who reminded him of his daughter, had drowned.” *Id.* at 718. Other evidence at the hearing, however, suggested that “plaintiff had handled other homicides and suicides in addition to that of the two-year-old girl and that, apparently, [his] extreme

reaction to the child's death was an isolated incident.” *Id.* Several specialists testified, who all “agreed that [the plaintiff] was suffering from stress, much of which was centered on his problems with [the police chief].” *Id.* “[T]he evidence,” the court noted, “indicated that no causal relationship existed between [the plaintiff’s] duties as a police officer and his alleged stress.” *Id.* at 724.

¶ 56 In *Ryndak*, the plaintiff testified that, in his 22 years as a police officer, he had been “shot at, beaten, seen people die in automobile accidents[,] and had a fellow officer die right in front of him.” 348 Ill. App. 3d at 487. He recalled a specific instance in 1990 where he was beaten by an offender and required reconstructive surgery. *Id.* His personal physician observed that the plaintiff “suffered multiple stresses while employed in the police department,” and that his mental disability was the “result of the circumstances of his police occupation.” *Id.* at 488. Four psychiatrists also examined the plaintiff. Upholding the pension board’s denial of a duty-related pension, the appellate court noted that, while the personal physician found that the plaintiff’s mental disability “was caused by specific acts of his police service, the only psychiatrist to discuss a causal connection between plaintiff’s employment and his psychological disability *** specifically stated that plaintiff’s disability was not caused by an act of police service.” *Id.* at 490. Moreover, plaintiff’s stress and depression were the result of “the violent nature of police duties,” and were “problems related to the general nature of being a police officer and not to a specific act of police service.” *Id.*

¶ 57 Similarly, in *Coyne v. Milan Police Pension Board*, 347 Ill. App. 3d 713, 717 (2005), the plaintiff testified that he suffered psychological trauma from an incident in which a drunk driver struck him while he was driving on patrol, and from another incident where he physically struggled with a knife-wielding teenager who attempted to grab his service weapon. Almost all of the specialists who evaluated plaintiff diagnosed him with a psychological disorder. Some of them also

attributed his disorder to years of work-related trauma, but none identified any specific incident as responsible for the disorder. *Id.* at 719-20. The appellate court upheld the Board’s denial of a line-of-duty pension. The court said:

“The record is replete with evidence that [the plaintiff’s] psychological disorder resulted from the cumulative effect of traumatic duties he performed over his career as a police officer. The medical evidence shows that no specific act of his employment caused the disorder; rather, he developed problems over time in response to stressful work-related situations. This scenario does not satisfy the “act of duty” requirement in section 3–114.1.” *Id.* at 725.

¶ 58 Based on *Robbins*, *Batka*, *Ryndak*, and *Coyne*, we will not upset the Board’s determination that plaintiff’s condition “resulted from the cumulative effect of traumatic duties performed over his career, rather than a specific act of employment.” Lahmeyer, Grossman, and Goldstein all mentioned some of the incidents we listed above, but none of them attributed plaintiff’s condition to any specific incident(s). Goldstein found plaintiff “significantly psychological impaired,” but did not cite work-related stress as a cause at all. Lahmeyer acknowledged that plaintiff’s “exposure to traumatic events exacerbated his conditions at times,” while Grossman believed that plaintiff’s “viewing *various traumatic scenes* as a routine part of police duty” (emphasis added) likely “exacerbated his pre-existing anxiety and panic disorder.” As with the specialists in *Robbins* and *Coyne*, neither Grossman or Lahmeyer attributed plaintiff’s condition to any discrete cause; rather, Lahmeyer spoke generically of “traumatic events” while Grossman cited “various” occasions of trauma that plaintiff experienced as part of the “routine” duties of a police officer. The “act of duty”

requirement in section 3-114.1 of the Code is not satisfied where the disability is due to the general nature of police work. See *Robbins*, 177 Il.2d at 542, 544.

¶ 59 Friedman, we acknowledge, expressed his opinion in the language of *Robbins* and other cases. He denied that plaintiff's disability resulted from "generalized police stress of multiple origins" or from stress accumulated over the course of his career. Rather, plaintiff's condition "originated or was caused by several traumatic events that [plaintiff] was exposed to immediately following [Chief Juarez's death]." One incident, Friedman related, was the traffic accident, occurring the day after Chief Juarez's death, in which a 17-year-old girl was killed. According to Friedman, this incident alone "would be enough for some people to be an inducement for [PTSD]," but there were two other "fatality incident[s]," one involving "an accident on Highway 41 with a truck driver,"¹ and another that Friedman did not describe. Even if Friedman's opinion satisfied the requirements of *Robbins* and other authorities, the Board had also to consider the three specialists' opinions that diverged from Friedman's either by simply not identifying work-related stress as a cause of plaintiff's disability (Goldstein) or by attributing plaintiff's condition to unspecified trauma (Lahmeyer and Grossman). Under these circumstances, there clearly was "evidence to support the agency's decision." *Marconi*, 225 Ill. 2d at 534.

¶ 60 III. CONCLUSION

¶ 61 For the foregoing reasons, we reverse the judgment of the trial court and reinstate the decision of the Board.

¶ 62 Reversed.

¹ There is no other mention of this incident in the record, unless perhaps it is the accident involving the man in overalls that plaintiff reported to Grossman.