

No. 1-10-3725

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IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOANNE FERNANDEZ,)	Appeal from
)	the Circuit Court
Plaintiff-Appellee,)	of Cook County
)	
v.)	10 CH 16012
)	
BOARD OF TRUSTEES OF THE NORTH RIVERSIDE)	Honorable
POLICE PENSION BOARD, et al.,)	Stuart Palmer,
)	Judge Presiding
Defendant-Appellants.)	

JUSTICE McBRIDE delivered the judgment of the court.
Justices J. Gordon and Howse concurred in the judgment.

O R D E R

HELD: Plaintiff sought review of board’s denial of duty-related disability pension, this appellate court found the board’s determination was clearly erroneous and reversed the board’s decision.

¶ 1 Plaintiff Joanne Fernandez filed an application for a line-of-duty disability pension under section 3–114.1 of the Illinois Pension Code. 40 ILS 5/3–114.1 (West 2008) (the Code). She claimed that she was disabled when she slipped on ice after exiting her police car and

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sustained injuries to her shoulder. Following an administrative hearing, defendant, the Board of Trustees of the North Riverside Police Pension Board (the Board), determined that Fernandez was fully disabled from service in the police department but that she had not proven that her disability resulted from an "act of duty" and was therefore not entitled to a duty-related pension. The circuit court of Cook County reversed the Board's decision. The Board now appeals, claiming that its decision should be affirmed because Fernandez failed to establish that she was entitled to a duty-related disability pension.

¶ 2 The following testimony was given at the administrative hearing on Fernandez's application for a duty-related pension, which began on August 28, 2009. Fernandez testified that on February 22, 2007, she was a sergeant in the North Riverside police department and that she was working as a senior supervisor on the 4:00 p.m. to midnight shift. Upon arriving at the station that afternoon, Fernandez was told by the outgoing sergeant that two prisoners were in custody at the police station. One of those prisoners, Travis Tyus, had been arrested at approximately 3 p.m. that day for criminal damage to property. Fernandez left to begin her patrol at approximately 4 p.m. and she was contacted by dispatch at 4:30 p.m. and told that one of the prisoners had been released on bond.

¶ 3 Fernandez contacted dispatch between 5:30 and 5:45 p.m. to make sure that the remaining prisoner at the station, Travis, had been fed. She was contacted by dispatch at approximately 6 p.m. and told that the prisoner's mother was at the police station with bond money and that she was upset because her son had not yet been released. Fernandez was also told that the prisoner's fingerprints were not back from the crime lab and that dispatch would

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speak to the mother and contact Fernandez. Fernandez explained that it was Riverside police department policy to fingerprint all prisoners and to send those prints to a crime lab in Joliet for identification. The results on those fingerprints must come back from the crime lab before bond money can be posted and a prisoner can be released. Once the prisoner is identified and bond has been posted, an officer is assigned to come to the station and release the prisoner. Prisoners can usually be identified within two to three hours of their prints being sent for identification.

¶ 4 Dispatch contacted Fernandez at approximately 7:15 p.m., and told her that the prisoner's identification had been confirmed. Dispatch also informed her that the prisoner's mother was agitated because she felt the process was taking too long. Officer Fernandez told dispatch to have Officer Tom Bueneman come to the station and release the prisoner. Fernandez testified that she did not know if Bueneman was at the station at the time but that she assigned him because she did not believe that he was on call and because other officers were busy at the time. Approximately 20 minutes later, after she finished a traffic stop, Officer Fernandez called the station to ask if the prisoner had been released. Dispatch responded "negative." Fernandez told dispatch that she was en route to the police station.

¶ 5 Fernandez testified that she felt the situation was urgent because there was no reason that the prisoner should not have already been released and she did not want to violate his rights by detaining him longer than necessary. Fernandez explained that the prisoner's fingerprints had come back, the mother was at the police station with the bond money, and there was no indication that the detectives who arrested the prisoner wanted him kept at the police station for further questioning. She also understood police department rules and regulations to require the

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prisoner to be released and that it was a general practice to release a prisoner who had been identified and could post bond. Routinely, it should not take more than 15 to 20 minutes to release a prisoner once he or she had been identified through fingerprints. Although she worried that the situation could escalate, Fernandez did not feel the situation warranted activating the lights and sirens on her vehicle when she drove to the station. Fernandez acknowledged that a prisoner can be held for up to 72 hours and that she did not know if the detectives who arrested Travis interviewed him before they ran his fingerprints, which could have delayed the process. Fernandez testified that she also went to the station because she intended to speak to officer Bueneman about the situation with the prisoner and to discipline him in her supervisory role.

¶ 6 Officer Fernandez arrived at the station at approximately 7:45 p.m. and parked her squad car in the parking lot of the adjacent public works building. She pulled her squad car into a parking space but then turned the vehicle so that she was parked across the parking space in case she had to leave the station in a hurry. Fernandez testified that when she arrived at the station, there were two squad cars and an unmarked detective's vehicle parked in the area where police officers usually parked their squad cars. The chief's parking spot in that area was vacant, but Fernandez testified that officers did not park there in case the chief came to the station. She acknowledged that there were additional available parking spaces in front of the police station, but testified that she parked in the public works lot because it was empty and because officers were allowed to park there after 5 p.m. Fernandez also testified that she did not park in the area near the rear entrance of the police station because at that time officers were not allowed to park in that area.

¶ 7 After exiting her vehicle, Fernandez was walking to the police station when she stepped in

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what she thought was a puddle of water that turned out to be "black ice." She lost her balance and fell backward, hitting her head, shoulder and hip against the pavement. Fernandez rolled onto her stomach and crawled off the ice. In the distance, she heard Scott Hickey, a public works employee, ask if she was okay. Fernandez responded that she was and then she got up and walked into the police station.

¶ 8 Officer Fernandez encountered officer Bueneman upon entering the station and asked him if the prisoner had been released. Bueneman responded yes. Fernandez then went to the communications center to report her injury. An accident report was prepared at 7:57 p.m. that night. It states that Fernandez lost her footing on ice after exiting her squad car in the public works parking lot and struck her head and right arm and hip on the ground. The report further states that "Fernandez added that Scott Hickey, of DPW, saw her on the ground. Fernandez states she is having difficulty lifting her right arm but refuses medical treatment at this time."

¶ 9 Fernandez also testified that her actions were unique to a police officer acting as a sergeant and that civilians were not responsible for ensuring that prisoners' rights were not violated. She explained that she needed to make sure that the other officers understood that if a prisoner is identified and bond is posted, the prisoner needs to be released to ensure his or her rights are protected. Fernandez also testified that a sergeant's duties include ensuring that prisoners are handled properly and that their liberties are protected. A document admitted into evidence sets for the duties of a sergeant in the North Riverside police department. It states that sergeants are responsible for acting as a shift supervisor and ensuring the safety and well-being of prisoners incarcerated or arrested during the shift. Sergeants are also responsible for supervising the

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officers on duty and for ensuring that all employees respond immediately to assignments.

Sergeants are required to make themselves available for emergencies and "special situations."

Sergeants are also required to provide leadership in implementing the police department's policies and procedures and to ensure that all employees properly carry out their duties and responsibilities, including the prevention of crime and the protection of life and property.

Finally, sergeants are responsible for maintaining positive public relations between the police department and citizens. At the administrative hearing, Fernandez testified that she considered the problem with the prisoner at the station to be a "special situation."

¶ 10 Cynthia Jania testified that she was working as a 911 dispatcher on February 22, 2007.

Jania testified that she remembered Fernandez getting hurt on that date, but that she did not "remember anything else really" because it was "so long ago." She testified that she did not "remember that far back" and agreed that she would not be able to testify to anything else about the events that took place on February 22, 2007. Although Jania heard that Fernandez had slipped and fell, she did not observe the fall and did not recall if she spoke to Fernandez on the night she was injured.

¶ 11 Scott Hickey testified that he was working as an employee of the Village of North Riverside on February 22, 2007, but that he did "not really" recall anything in particular that happened on that date. Hickey was walking into the public works building and saw Fernandez's squad car parked in the public works parking lot. He believed that Fernandez was sitting in her vehicle at the time. Hickey observed Fernandez's squad car for only a "couple seconds" and he did not see Fernandez exit her squad car or slip and fall because he walked past her on his way to

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the public works building. Hickey did not remember having any communication with Fernandez and he did not recall Fernandez shouting out at him that she had fallen or asking Fernandez if she was allright. When asked if his testimony that he did not recall these events meant that they did not happen, Hickey responded that he did not “know if it happened or not. From what I saw, I don’t know. There was nothing I saw, so - - - .” Hickey testified that police cars were not frequently parked in the public works lot, but he also testified that it was “somewhat common” for police cars to be parked in the public works area.

¶ 12 On cross-examination, Hickey testified that he walked “right past” Fernandez’s squad car and that he did not pay attention to her. He agreed that Fernandez could have exited her squad car after he passed her. Hickey agreed that because the events took place two years ago, it was “possible” that he saw her fall but did not recall the event. However, he did not recall seeing Fernandez outside of her squad car to the “best of his knowledge” and believed that he would recall the incident had it occurred. Hickey learned that it was Fernandez in the squad car and that she had fallen a couple of days later when someone told him his name was in a report.

¶ 13 Hickey further testified that he did not know, “to be honest,” if Fernandez was the person he saw sitting in the squad car because there were “so many different people that drive the squads.” When asked if all of his testimony might be that he did not know if it was Fernandez in the squad car and that he did not know if she fell, Hickey responded “yes. That’s, I believe, what I said.”

¶ 14 Officer Bueneman testified that he worked the 4 p.m. to midnight shift on February 22, 2007. However, his memory of the events of that night was “not very good” because of the

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amount of time that had passed since that night. Bueneman testified that he was at the station at some point during his shift but that he did not recall his reason for being there. The only thing he recalled regarding Fernandez was that he parked his vehicle on the “hill,” which is where officers commonly park squad cars, and noticed Fernandez’s squad car parked in the public works parking lot. He found this “unusual” because there were three empty spots on the “hill” when he arrived and the “sally port,” which was used for prisoner intake, was also empty. He explained that this was not a frequent occurrence but that police cars were parked in the public works lot when the hill was full. He also acknowledged that he did not know if the parking spaces on “the hill” were full at the time Fernandez arrived at the station.

¶ 15 Officer Bueneman testified that Fernandez was not by her vehicle when he arrived at the station but that he did not recall if the vehicle was running. He did not recall if Fernandez was present when he entered the station or if anything unusual was taking place. Officer Bueneman did not recall if he otherwise came in contact with Fernandez or when he heard that Fernandez had been injured. He also did not recall if he spoke to any dispatchers about anything that took place at the station that might have been unusual. Although a bond receipt showed that he signed for the prisoner’s release at 7:45 p.m. on February 22, 2007, Bueneman testified that he did not recall if the police department “even had” a prisoner on that night because over two years had passed since that time and because many prisoners come into the station throughout any given day. Bueneman did not recall if there was an issue with a prisoner on the night of February 22, 2007, or if there was a situation involving Fernandez and the bonding out of a prisoner on that night. When asked if he meant that he did not recall or that no such incident

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took place, Bueneman responded that he meant he “did not recall.” Bueneman also testified that he did not remember every verbal argument with a prisoner or a prisoner’s parents that occurs in the police station because those types of arguments occur on a “weekly basis.”

¶ 16 Officer Bueneman testified that it was customary for police officers on duty to be involved with the bonding out of a prisoner and that the sergeant on duty is not “typically” involved unless there is a problem. Bueneman also explained that the police department did not have an official policy of bonding out prisoners as quickly as possible but that doing so was an “efficient way of running our business.”

¶ 17 One of the Board members reviewed Fernandez’s testimony regarding the incident with the prisoner and Fernandez considering bringing a disciplinary action against Bueneman. Bueneman responded that this did not refresh his memory, that he thought he would remember if a disciplinary action was going to be brought against him, and that he "couldn't even tell you if there was a prisoner that day, to be honest." He acknowledged that according to a "CAD log of events," Fernandez and another officer reported to the scene of a traffic stop at 7:37 p.m. on February 22, 2007, and that the stop was "cleared" at 7:41 p.m. Another event log showed that Fernandez and another officer responded to a traffic stop at 7:43 p.m. and that the stop was cleared at 7:51 p.m. The next log entry is an "injury to officer " at 7:57 p.m., which is when Fernandez was injured.

¶ 18 Fernandez was recalled to the stand and testified that Bueneman was incorrect when he testified that her vehicle was already parked in the public works lot when Bueneman arrived at the station. She acknowledged that a "prisoner, cell condition and time check report" indicates

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that the prisoner was released on bond at 8:00 p.m. on February 22, 2007, as opposed to the bond receipt, which indicated the prisoner was released at 7:45 p.m. She testified that officers will often round the time of release up or down, and that she knew that the prisoner was released at 7:45 p.m. by officer Bueneman, as reflected on the bond receipt. At that time, she was at the traffic stop that, according to the event log, was initiated at 7:43 p.m. and cleared at 7:51 p.m.

¶ 19 The Board found that Fernandez's injury did not result from an "act of duty," concluding that "falling [on ice] in the parking lot while exiting a vehicle is not an act unique to a police officer; it is an act an ordinary citizen may encounter in the ordinary course of life and carries no extraordinary risk." The Board found that Fernandez failed to prove that she was responding to an "emergency situation" when she fell and that, instead, she was acting in the capacity of a person who had "just parked their car." The Board found that none of the witnesses could confirm or corroborate Fernandez's testimony regarding the events that occurred or the existence of an emergency situation that required her immediate attention. Instead, according to the Board, Fernandez's testimony was "substantially different" from that of the other witnesses. In concluding that Fernandez failed to establish the existence of an emergency, the Board observed that Fernandez had time to turn her car around in the public works lot and found that, had there been an emergency, she would have instead parked her vehicle in closer parking spots that were available in the police squad parking area. The Board further observed that it was common for a prisoner to remain incarcerated for some time while awaiting results of fingerprints and that Fernandez did not mention an "emergency" situation in her initial worker's compensation report of injury. Finally, the Board stated that the incident which causes the injury must be unique to

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police service in order to qualify for a line-of-duty pension and found that, contrary to that requirement, Fernandez was injured when she parked in the public works parking lot and fell on the ice, “as would an average citizen.”

¶ 20 Fernandez then sought review of the Board's decision in the circuit court of Cook County. The circuit court reversed the Board's decision. This appeal followed.

¶ 21 The Code provides different pension benefits depending upon the circumstances of a police officer's incurred disability. An officer who is physically disabled “as a result of sickness, accident, or injury incurred in or resulting from the performance of an act of duty” is entitled to a “line-of-duty” pension equal to 65% of the salary attached to his or her rank. See 40 ILCS 5/3–114.1 (West 2008). An officer disabled “as a result of any cause other than the performance of an act of duty,” on the other hand, is entitled to a disability pension of only 50% of the applicable salary. See 40 ILCS 5/3–114.2 (West 2008).

¶ 22 In this case, there is no issue raised as to whether Fernandez is physically "disabled" within the meaning of the Code. At the administrative hearing, the Board stipulated that Fernandez is fully disabled. Based upon this stipulation, the Board found that as a result of slipping on ice on February 22, 2007, Fernandez sustained injuries to her shoulders that ultimately left her disabled from service in the North Riverside Police Department and qualified her for retirement from service.

¶ 23 The issue in this case is whether Fernandez's disability was the result of injuries she sustained while performing an "act of duty." Before considering this issue, we must determine the appropriate standard of review.

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¶ 24 It is well established that in administrative cases, our role is to review the decision of the administrative agency, and not the determination of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006). The appropriate standard of review concerning administrative decisions is contingent upon whether the question being reviewed is one of fact, one of law, or a mixed question of fact and law. *Marconi*, 225 Ill. 2d at 532. An agency's findings and conclusions on questions of fact are deemed *prima facie* true and correct and will not be overturned unless they are against the manifest weight of the evidence. 735 ILCS 5/3-110 (West 2008); *City of Freeport v. Illinois State Labor Relations Board*, 135 Ill.2d 499, 507 (1990). Where the question involved is one of law, our review is *de novo*. *Marconi*, 225 Ill. 2d at 532. For mixed questions of fact and law, or where a case involves an examination of the legal effect of a given set of facts, the court must apply a "clearly erroneous" standard of review. *City of Belvidere*, 181 Ill. 2d at 205. Under any standard, the applicant for disability pension benefits has the burden of proof to establish his or her entitlement to either a line-of-duty or nonduty disability pension. *Marconi*, 225 Ill. 2d at 532-33, 35.

¶ 25 In this case, both parties assert that the Board's decision should be reviewed under the manifest weight of the evidence standard. We disagree.

¶ 26 In addition to making various factual findings, the Board interpreted the meaning of the statutory phrase "act of duty" and then applied its factual findings to that interpretation to conclude that Fernandez was not entitled to a line-of-duty pension. Under these circumstances, some courts have held that when the facts are *undisputed*, the interpretation of the term "act of duty" in the Code is an issue of statutory construction to be reviewed *de novo*. See *Sarkis v. City*

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of Des Plaines, 378 Ill. App. 3d 833, 836 (2008); *Fedorski v. Board of Trustees of the Aurora Police Pension Fund*, 375 Ill. App. 3d 371, 373 (2007); *Alm v. Lincolnshire Police Pension Board*, 352 Ill. App. 3d 595, 598 (2004). On the other hand, some courts have found that, on what appeared to be undisputed facts, the issue of whether the police officer was performing an act of duty presented a mixed question of fact and law, and therefore the clearly erroneous standard of review applied. See, e.g., *Jones v. Board of Trustees of the Police Pension Fund*, 384 Ill. App. 3d 1064, 1068 (2008); *Merlo v. Orland Hills Police Pension Board*, 383 Ill. App. 3d 97, 99–101 (2008). Recently, in *Rose v. Board of Trustees of the Mount Prospect Police Pension Board*, 2011 Ill. App. (1st) 102157 ¶ 69, the appellate court stated that while the interpretation of the phrase "act of duty" required *de novo* review, the clearly erroneous standard applied where the Board applied *disputed* facts to the definition of an "act of duty."

¶ 27 This appeal requires us to interpret the meaning of the statutory phrase "act of duty" and to consider whether the disputed facts, applied to that interpretation, support the Board's decision. Accordingly, this case involves a mixed question of law and fact and we apply the clearly erroneous standard of review. See *Rose*, 2011 Ill. App. 102157, ¶69. This standard lies between the manifest weight of the evidence standard and a *de novo* standard. *AFM Messenger Service Inc. v. Department of Employment Security*, 198 Ill.2d 380, 391-95 (2001). Under this standard, we afford some deference to the agency's experience and expertise and we must accept the agency's finding unless after reviewing the record we are left with the " 'definite and firm conviction that a mistake has been committed.' " *AFM Messenger*, 198 Ill. 2d at 391-95, quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948). Although this standard is

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largely deferential, it does not require a reviewing court to "blindly defer to the agency's decision." *AFM Messenger*, 198 Ill. 2d at 395.

¶ 28 We initially determine the meaning of the statutory phrase "act of duty." The Code defines an "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." (Emphasis added.) 40 ILCS 5/5-113 (West 2008). Our supreme court has interpreted the definition of an "act of duty" and found that the term "special risk" used in section 5-113 is not limited to inherently dangerous activities. *Johnson v. Retirement Board of Policemen's Annuity & Benefit Fund*, 114 Ill. 2d 518, 521 (1986). In *Johnson*, a police officer was at his assigned post when a citizen called to him from across an intersection for assistance in a traffic accident. While crossing the intersection, the officer slipped and injured himself. The retirement board denied the officer's request for disability benefits for an injury sustained in the line of duty, reasoning that the injury was not sustained by assuming a "special risk" but instead was sustained by simply "traversing a street" as would any other person. *Johnson*, 114 Ill. 2d at 520.

¶ 29 Our supreme court rejected the retirement board's reasoning. The court observed that police officers discharging their duties perform many tasks similar to those involved in civilian occupations, such as driving a car, climbing stairs, and crossing streets. *Johnson*, 114 Ill. 2d at 521-22. The court held that when determining whether an officer is entitled to a line of duty pension, the focus is not on whether the officer is performing an act unique to his or her occupation but, rather, "the capacity in which the police officer is acting" at the time of the injury. *Johnson*, 114 Ill. 2d at 522. The court stated:

“The provisions of the [Pension Code] conferring the right to duty-disability benefits do not require that an officer be injured by an act of duty. Rather, the duty disability is awarded when an officer is ‘disabled *** as the result of injury incurred *** in the performance of an act of duty.’ [Citation.] In the plaintiff’s case, the act of duty was the act of responding to the call of a citizen for assistance. In performing that act, he was injured.

The defendant's interpretation envisions a police officer involved in a gun battle, a high-speed car chase, or some other obviously dangerous situation in order to qualify for duty-disability benefits. This is an overly restrictive and unrealistic interpretation. If this court were to adopt the defendant's narrow reading of section 5-113, it could discourage police officers from the dedicated and enthusiastic performance of their duties, to the detriment of all the citizens ***.” *Johnson*, 114 Ill. 2d at 522-23.

The court observed that when called upon to respond to a citizen, a policeman must have his attention directed towards being prepared for any eventuality and that, unlike an ordinary citizen, a policeman has a duty to respond regardless of the hazard ultimately encountered. The court also observed that the officer in that case was discharging his sworn duties to the citizens of Chicago by responding to the call of a citizen's call and that there was no comparable civilian occupation to that of a traffic patrolman responding to such a call. *Johnson*, 114 Ill. 2d at 522.

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The court ultimately found that the action of the officer in crossing the intersection to respond to a citizen's call for assistance constituted an "act of duty" as defined by the Code. *Johnson*, 114 Ill. 2d at 523.

¶ 30 Our appellate court's have since applied *Johnson* and focused on the capacity in which an officer was acting, rather than the specific act that caused the injury, when considering whether the officer was entitled to an "act of duty" pension. For example, in *Alm*, the appellate court rejected the pension board's finding that a police officer who injured his knee while on bicycle patrol was not entitled to a "line-of-duty" pension because riding a bicycle did not constitute performing an "act of duty." *Alm*, 352 Ill. App. 3d 602. The officer in that case was on bicycle patrol when he noticed significant pain in his right knee. The officer was required to have surgery and later sought a "line-of-duty pension." *Alm*, 352 Ill. App. 3d at 597. The pension board held that the officer was not injured in the performance of an "act of duty" because the "manner in which [he] was pedaling his bicycle when his knee began to hurt did not involve any special risk not shared by civilians." *Alm*, 352 Ill. App. 3d at 597. The appellate court reversed, finding that "pedaling the bicycle" constituted "an act of duty" because while on patrol the officer "faced risks not ordinarily encountered by civilians," including, "falls and collisions as well as dangerous encounters with unsavory elements of society." *Alm*, 352 Ill. App. 3d at 601. The court found it insignificant that the officer was not facing those specific risks or responding to a call for assistance at the exact time he suffered the injury. *Alm*, 352 Ill. App. 3d at 601–02. Rather, the court reiterated that under *Johnson*, the proper focus is on the capacity in which the officer was acting at the time of the physical act which caused his injury, and not on the act

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itself. *Alm*, 352 Ill. App. 3d at 602. The court found that while riding his bicycle the officer was acting in a capacity of patrol officer, a capacity that involved special risks and that did not have a "clear counterpart in civilian society," and therefore held that the officer was entitled to a line-of-duty pension. *Alm*, 352 Ill. App. 3d at 601.

¶ 31 Other decisions have similarly focused on the capacity in which an officer was acting to find that the officer was injured while performing an "act of duty." See, e.g., *Jones*, 384 Ill. App. 3d at 1074 (where an officer was injured when a transport van he was driving on routine patrol was hit by another vehicle, the appellate court rejected the pension board's conclusion that the officer was not performing an "act of duty" because he only "encountered the general risks attendant to driving a car," and observed that "even if driving a car involves only an ordinary risk, [the officer] was acting in a capacity that involved special risk when he was injured - routine patrol"); *People v. Wagner*, 208 Ill. App. 3d 25, 29 (1991) (where an officer was injured when his leg fell through a rotted plank on a porch while attempting to serve a notice to appear, the court stated that "while the act of walking across a porch is hardly unique to police officers, serving notices to appear generally is"). Recently, in *Rose*, the appellate court reversed the pension board's denial of the petitioner's application for a line-of-duty pension where the board found that the officer involved in an accident while driving his squad car was not performing an "act of duty" because driving a squad car did not involve special risks that were not ordinarily assumed by a citizen. The appellate court found although the officer was performing the act of driving at the time of the accident, the officer performed that act in the capacity of a patrol officer, which involved "special risks" and required "special skills," such as "having his

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attention and energies directed towards being prepared to deal with any eventuality." *Rose*, 2011 IL App 102157, ¶¶ 76, 77, 84, quoting *Johnson*, 114 Ill. 2d at 522.

¶ 32 Applying these principles to the present case, we conclude that Fernandez met her burden and established that she was injured while performing an "act of duty." The record reveals that at the time she was injured, Sergeant Fernandez was acting in the capacity as a sergeant and the senior supervisor on the 4 p.m. to midnight shift. In this capacity, she was responsible for supervising the officers on duty during that shift and she was accountable for those officers' conduct and performance. Her duties also required her to respond to special situations and to provide leadership in implementing the department's policies and procedures. She was further required to ensure that all employees properly carried out their duties and that those employees responded to assignments immediately. Finally, Fernandez was responsible for the well-being of the prisoners being held at the station and for maintaining positive public relations. There is no dispute that a sergeant acting as a senior shift supervisor is required to perform duties that have no counterpart in civilian society and encounters risks unique to police service. It was in the capacity of a sergeant acting as a senior supervisor that Fernandez returned to the police station to resolve an issue involving the bonding out of a prisoner. In the process of doing so, she slipped on ice and suffered injuries that ultimately left her disabled from service in the police department. Under these circumstances, we conclude that Fernandez was acting in a capacity that amounted to an "act of duty" when she was injured and that she is therefore entitled to a line-of-duty pension.

¶ 33 The Board in this case, however, interpreted the statute to require that the incident which

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causes the injury be unique to police service in order to qualify for a line-of-duty pension. Under this standard, the Board found that Fernandez was not entitled to a line-of-duty pension because falling on ice while exiting a vehicle was not an act unique to a police officer that carried extraordinary risk but instead was an act that any ordinary citizen might perform. The Board similarly found that Fernandez had not proven that the situation involving the bonding out of a the prisoner was an "emergency" that required her immediate attention.

¶ 34 The Board's interpretation of "act of duty" runs counter to our supreme court's holding in *Johnson*. The Board improperly focused on the precise physical act that caused Fernandez's injuries and required that the act be unique to police service. However, to qualify for line-of-duty pension, Fernandez need not have been responding to an "emergency" situation or to have been injured by a specific act that is unique to police service. See, e.g., *Sarkis*, 378 Ill. App. 3d at 840 (where an officer was injured while lifting a malfunctioning railroad crossing gate, the appellate court found that it was not necessary for there to have been a disruption in traffic or for the officer to be responding to an emergency or acting under a general or specific police order for the officer's action to be classified as an "act of duty"). Instead, to determine whether Fernandez was injured while performing an "act of duty," the proper focus is on the capacity in which she was acting at the time she slipped on the ice and injured her shoulder. See *Johnson*, 114 Ill. 2d at 522.

¶ 35 The Board in this case also relied upon the decision in *White* to find that Fernandez not engaged in an "act of duty." In *White*, a divided panel of the Second District, concluded that an officer on patrol, was not entitled to a "line-of duty" disability pension when he slipped while

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exiting his vehicle to place a parking citation on an illegally parked car. *White*, 323 Ill. App. 3d at 736. The majority in *White* found that the police officer's action of citing a parking ticket amounted to a clerical action, which can be performed by regular citizens in ordinary life, and that therefore the patrol officer was not performing an “act of duty” when he was injured. *White*, 323 Ill. App. 3d at 736.

¶ 36 More than one appellate court has explicitly rejected the holding in *White*, finding that it improperly focused on the act performed rather than the capacity in which the officer was acting at the time of the injury. See, e.g., *Alm*, 352 Ill. App. 3d at 602; *Jones*, 384 Ill. App. 3d at 1072; *Merlo*, 383 Ill. App. 3d at 102. We agree with these decisions and find the Board’s reliance upon *White* in this case misplaced.

¶ 37 The Board also found that the witnesses at the hearing could not corroborate Fernandez’s version of events and that those witnesses’ testimony was “substantially different” from that of Fernandez. However, there is no requirement that an applicant’s version of events be corroborated. Moreover, the record does not support the Board’s finding that Fernandez’s testimony was contradicted by the other witnesses’ version of events because none of those witnesses could remember the events that took place on the night that Fernandez was injured. For example, Jania, the dispatcher, testified that she could not remember “that far back” because it had been “so long ago.” She remembered Fernandez “getting hurt” but did not “remember anything else really.”

¶ 38 Similarly, officer Bueneman essentially testified that he did not recall if there was a situation with the bonding out of a prisoner on the night of February 22, 2007. Contrary to the

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Board's characterization of his testimony, Bueneman did not testify that he recalled the events that took place that night but that he did not remember any of the specific events that Fernandez testified to taking place. For example, Bueneman testified that his memory of that night was "not very good" due to the amount of time that had passed and that he did not recall if he had spoken to Fernandez or dispatch about anything unusual that night. Although a bond receipt showed that Bueneman signed for the prisoner's release, Bueneman testified that he did not recall if the police "even had" a prisoner on the night of February 22, 2007, because that night was over two years ago and because so many prisoners come into the station on any given day. When asked if he would remember a situation involving difficulty with a prisoner's mother, Bueneman testified that verbal arguments were a weekly occurrence and that he did not remember every argument that took place at the station. When asked if he recalled an incident involving Fernandez and the bonding out of a prisoner, Bueneman responded "no." When questioned further if he meant that no such incident took place or that he did not recall, Bueneman responded "I do not recall." A Board member reviewed Fernandez's testimony regarding the events surrounding the prisoner and asked if this refreshed Bueneman's memory. He responded "no" and testified that he thought he would remember if a disciplinary action was going to be brought against him and that he "couldn't even tell you if there was a prisoner that day, to be honest."

¶ 39 Likewise, Scott Hickey, the public works employee, testified that he did "not really" recall anything that happened in particular on the night of February 22, 2007. He initially testified that he walked past Fernandez's squad car on his way to the public works building and that he

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believed Fernandez was sitting in her car at the time. He did not see Fernandez slip and fall and he did not remember Fernandez shouting out to him or asking her if she was ok. Hickey was asked if he meant that he did not recall these events or that they did not happen, he answered that he did not know “if it happened or not.” He later acknowledged that he did not pay attention to Fernandez when he passed her and that she could have fallen after he passed her vehicle. He also agreed that because of the amount of time that had passed, it was “possible” that he saw her fall but that he did not recall the event. Under additional questioning, Hickey testified that he did not know, “to be honest,” if Fernandez was the person he saw sitting in a squad car because there were “so many different people that drive the squads.” When asked if all of his testimony might be that he did not know if it was Fernandez sitting in the squad car and that he did not know if she fell, Hickey responded “yes. That’s, I believe, what I said.”

¶ 40 We cannot say that any of the above testimony is inconsistent with or contradicts Fernandez’s testimony in any meaningful way. Due to the amount of time that had passed, each of these witnesses was uncertain of the events that took place on the night that Fernandez was injured. After reviewing the evidence presented at the administrative hearing in context of the proper interpretation of the statutory phrase “act of duty,” we are left with the “definite and firm conviction” that the Board erred in determining that Fernandez was not entitled to a line-of-duty pension. Accordingly, we find that the Board’s decision was clearly erroneous.

¶ 41 For the reasons stated, we find that Fernandez is entitled to a full line-of-duty disability pension. We therefore affirm the circuit court’s reversal of the Board’s decision.

¶ 42 Circuit court decision affirmed; Board decision reversed.