

FOURTH DIVISION  
February 10, 2011

No. 1-10-0357

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

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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DAVID A. KNAPERREK,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 08 CH 40997
	)	
RETIREMENT BOARD OF FIREMEN'S ANNUITY	)	
& BENEFIT FUND OF CHICAGO, <i>et al.</i> ,	)	Honorable
	)	Martin S. Agran,
Defendants-Appellees.	)	Judge Presiding.

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PRESIDING JUSTICE GALLAGHER delivered the judgment of the court.

Justices Lavin and Pucinski concurred in the judgment.

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**O R D E R**

**HELD:** Where testimony indicated firefighter's back injury had improved and surgery was not required, Board's determination that he was not disabled as a result of on-duty incident was supported by the evidence; the Board's decision that plaintiff was not entitled to a duty disability benefit was affirmed.

Plaintiff David A. Knaperek appeals the decision of defendant, the Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago (the Board), that he was not disabled and therefore was not entitled to a duty disability benefit for his back injury. The circuit court affirmed the Board's decision. On appeal, defendant contends he was only examined by one doctor who did not specialize in orthopedics and that the Board's decision based on that doctor's opinion was contrary to the manifest weight of the evidence. We affirm.

On June 26, 2008, Knaperek applied for disability benefits pursuant to section 6-151 of the Illinois Pension Code (40 ILCS 5/6-151 (West 2008)) for an injury that occurred while he was a Chicago Fire Department (CFD) firefighter. In support of his application, Knaperek attested that on July 15, 2007, he was assisting an elderly man who was normally confined to a wheelchair but who had become pinned between the wheelchair and a wall. As Knaperek and another firefighter lifted the man into the wheelchair, Knaperek "felt something move and a sharp pain in the left side" of his back. Knaperek, who was then 42 years old, experienced numbness in his left leg while returning to the firehouse. That day, a diagnosis revealed a narrowing disk and a degenerative disk in Knaperek's lower back.

On September 17, 2008, a hearing was held on Knaperek's application for disability benefits. Three witnesses were

presented, including Knaperek and Dr. George Motto, the Board's physician. Knaperek was not represented by counsel.

Lieutenant Thomas Caradine testified he was present during the lifting incident and Knaperek immediately complained of leg and back pain afterward. Knaperek testified he had epidural steroid injections for his back pain and discussed back surgery with Dr. Richard Lim, his treating physician. Dr. Lim examined Knaperek eight times between July 2007 and August 2008. In August 2008, Dr. Lim reported that he recommended exercises to Knaperek "since the disc is getting smaller, and [Knaperek] is really not having that much pain."

Knaperek testified his surgery was postponed because of other health conditions, including a heart condition that is documented in the record. He said he continued to experience numbness and burning in his leg and back and had to exercise care while walking. Knaperek said he was walking a mile each day and performing knee-strengthening exercises twice a day. Knaperek testified Dr. Lim told him based on his most recent MRI that the disc protrusion had decreased and surgery would help his back pain but would not alleviate his leg pain. Dr. Lim told Knaperek his leg pain resulted from nerve damage that "could take a couple of years" to resolve.

Knaperek also acknowledged to the Board that in June 2007, about a month before the incident, he was arrested in Indiana for

driving under the influence, resulting in the suspension of his Illinois driver's license. Knaperek conceded that after he was stopped by police, he fled and was tackled to the ground by the arresting officer, but he said he was not injured in that incident.<sup>1</sup>

The Board called Dr. Motto as a witness. Dr. Motto examined Knaperek on July 15, 2008, and viewed Knaperek's initial and most recent MRIs. Knaperek complained of low back pain and told Dr. Motto he planned to have surgery. Dr. Motto stated Knaperek had a herniated disc that had "distinctly improved" based on the most recent MRI. Noting Dr. Lim's report of atrophy in Knaperek's left thigh muscles, which prompted the initial MRI, Dr. Motto said the tingling could have resulted from the atrophy. Dr. Motto testified that based on his examination of Knaperek and review of his medical records, Knaperek was not disabled from any injury sustained in the incident.

The Board made the following factual findings: Knaperek went on "medical layup" complaining of leg and hip pain after the incident; MRIs in August 2007 and August 2008 showed a protruding disc and a slight decrease in that protrusion; Dr. Lim found

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<sup>1</sup> The record indicates that in February 2008, Knaperek pleaded guilty to two misdemeanor charges and served 16 days in jail. A CFD investigation determined Knaperek failed to notify the department of the suspension of his driver's license. Knaperek took an unpaid personal leave of absence from the CFD in April 2008, and he applied for a medical leave of absence in May 2008.

Knaperek was experiencing little pain; and Dr. Motto stated Knaperek was not incapable of performing his job duties as a result of the incident. The Board concluded that Knaperek did not present sufficient evidence that he was disabled from the incident and, therefore, he was not entitled to a duty disability benefit.

On October 30, 2008, Knaperek filed a complaint in the circuit court for administrative review of the Board's decision denying him a disability benefit. The circuit court initially filed a written decision remanding the case to the Board to hear additional evidence "to determine to a greater degree of certainty whether or not Knaperek was disabled during the term of his medical leave." After the Board filed a motion to reconsider, the court affirmed the Board's decision, stating that it had erred in weighing the evidence in its first order.

On appeal, Knaperek challenges the Board's denial of duty disability benefits as against the manifest weight of the evidence. In particular, he argues that more than one Board-selected doctor should conduct examinations to determine a disability finding and that Dr. Motto was not qualified to make the determination because he is an internist, not a doctor specializing in back conditions.

The scope of our review of an administrative body's decision depends on whether the issue presented is one of law or fact.

*Carpetland U.S.A., Inc. v. Illinois Department of Employment Security*, 201 Ill. 2d 351, 369 (2002) (questions of law are reviewed *de novo*). A decision on an issue of fact, such as the existence of a disability, is reviewed under a manifest weight of the evidence standard. See *Kramarski v. Board of Trustees of Village of Orland Park Police Pension Fund*, 402 Ill. App. 3d 1040, 1048 (2010). This court reviews the Board's decision, not the determination of the circuit court. *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 504 (2007).

Article 6 of the Pension Code governs disability benefits to firefighters in cities, such as Chicago, with populations of more than 500,000 people. 40 ILCS 5/6-101 *et seq.* (West 2008).

Section 6-153 of the Pension Code provides, in relevant part:

"Proof of duty, occupational disease, or ordinary disability shall be furnished to the Board by at least one licensed and practicing physician appointed by the Board. In cases where the Board requires the applicant to obtain a second opinion, the applicant may select a physician from a list of qualified licensed and practicing physicians which shall be established and maintained by the [B]oard."

40 ILCS 5/6-153 (West 2008).

Under that provision, a determination of Knaperek's disability can be made by one or more who are doctors appointed by the Board and who are licensed and practicing physicians. See *Nowak v. Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago*, 315 Ill. App. 3d 403, 411-12 (2000) (under section 6-153, testimony of Board-appointed doctor to be considered together with all other evidence presented). Dr. Motto's determination of Knaperek's disability met that requirement. Although Knaperek finds noteworthy another section of the Pension Code that governs firefighters in smaller municipalities and that requires examinations by three Board-selected doctors in order to establish disability (40 ILCS 5/4-112 (West 2008)), that statute does not apply to Knaperek, a CPD firefighter.

Knaperek also contends Dr. Motto was not qualified to determine his disability because he was not a doctor specializing in back issues. Knaperek claims he should have been examined by "a specialist knowledgeable about the injury on which his application is based." Section 6-153 does not require a specialist in a particular medical field to make a disability determination. Moreover, as established by the record, Knaperek was examined eight times by his treating orthopedist, Dr. Lim, whose observations and conclusions were presented to the Board via the written record and the testimony of Knaperek and Dr.

Motto. Knaperek, who elected to appear before the Board without legal representation, was free to call Dr. Lim, or other doctors of his choosing, to testify on his behalf before the Board.

We next consider whether the Board's decision was contrary to the manifest weight of the evidence. Knaperek contends Dr. Motto's testimony lacked a sufficient factual basis and he argues that the Board did not consider Dr. Lim's opinions.

An administrative agency decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 534 (2006). The mere fact that an opposite conclusion is reasonable or that this court might have ruled differently will not justify reversal of the Board's findings; our review is limited to determining whether any competent evidence supports the Board's decision. See *Marconi*, 225 Ill. 2d at 534.

Dr. Motto's determination that Knaperek was not disabled was based on his own examination of Knaperek and his review of Knaperek's medical records, including the reports of Dr. Lim, who opined that Knaperek was not in much pain. Knaperek himself also testified he could walk a mile each day.

In an attempt to circumvent the impact of this testimony, Knaperek directs us to other cases in which Dr. Motto testified for the Board and where his opinions were contradicted by the

plaintiff or rejected by the Board, or where the doctor misstated certain testimony. See, e.g., *Wilfert v. Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago*, 318 Ill. App. 3d 507, 515 (2000); *Thigpen v. Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago*, 317 Ill. App. 3d 1010, 1020 (2000); *Nowak*, 315 Ill. App. 3d at 413 (Buckley, J., specially concurring). Disability determinations are fact-specific, and our consideration of the evidence presented to the Board in the case at bar is not affected by the amount of support for the doctor's conclusions in other proceedings.

Knaperek also asks, in his reply brief, that this court strike portions of the Board's brief that cite various non-precedential unpublished orders. Knaperek's argument was not properly presented in the form of a separate motion to strike, as required by Illinois Supreme Court Rule 361(a) (eff. Sept. 1, 2006)). See also *Advincula v. United Blood Services*, 176 Ill. 2d 1, 7 (1996). In any event, we have not considered the non-binding authority cited by the Board.

The record contains competent evidence to support the Board's conclusion that Knaperek was not disabled. Accordingly, the decision of the Board denying Knaperek a duty disability benefit is affirmed.

Affirmed.