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FIRST DIVISION  
May 31, 2011

No. 1-10-0523

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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DEMETRIOS KEREAKES,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 09 CH 15967
	)	
THE RETIREMENT BOARD OF THE POLICEMEN'S	)	
ANNUITY AND BENEFIT FUND OF THE CITY OF	)	The Honorable
CHICAGO,	)	Sophia H. Hall,
	)	Judge Presiding.
Defendant-Appellee.	)	

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Hall and Justice Rochford concurred in the judgment.

**O R D E R**

*HELD:* An on-duty officer that was injured while crossing the street on foot after having testified in satisfaction of a subpoena was not engaged in an "act of duty" as defined by section 5-113 of the Illinois Pension Code and, therefore, was entitled only to ordinary disability benefits.

Plaintiff, Demetrios Kereakes, a Chicago police officer, was denied duty disability benefits by defendant, the Retirement Board of the Policemen's Annuity and Benefit Fund (Board). On

1-10-0523

appeal, Kereakes contends the Board erred in its finding where he sustained disabling injuries while engaged in an "act of duty" as defined by section 5-113 of the Illinois Pension Code (Code) (40 ILCS 5/5-113 (West 2006)). Based on the following, we affirm.

#### FACTS

The facts are not in dispute.

On November 29, 2006, Kereakes was on duty and went to the courthouse at 26th Street and California Avenue, Chicago, Illinois, to answer a subpoena issued by the State's Attorney's Office. After testifying, Kereakes exited the courthouse to return to his vehicle in order to drive to his police station. While crossing the street on foot, Kereakes was injured. Kereakes was placed on medical leave.

Kereakes filed an application for duty disability benefits. The Board held evidentiary hearings, finding Kereakes' injuries were disabling. Notwithstanding, in its March 27, 2009, written order, the Board said it was Kereakes' burden to prove that he was disabled, that the injury was sustained in an "act of duty" incident, and that there was a causal connection between the disability and an identifiable "act of duty" incident. The Board concluded that:

"[W]hile on duty, [Kereakes] was not in the performance of an 'act of duty' as such is defined in

1-10-0523

the [Code] when he was a pedestrian crossing 26th Street on his way back to the police station and was then struck by a motor vehicle.

Kereakes was not[,] at the time of the incident, involved in an act of police duty inherently involving special risk not ordinarily assumed by a citizen in the ordinary walks of life as is more fully provided for in [section] 5-113 [of the Code]."

In response, Kereakes filed a petition for administrative review. The circuit court affirmed the Board's decision. This appeal followed.

#### DECISION

Prior to addressing the substance of Kereakes' contention, we first must determine the accurate standard of review. Kereakes argues that the appropriate standard of review is *de novo* because the question before us is one of law. In contrast, the Board argues that the appropriate standard of review is clearly erroneous because the issue before us is whether the Board properly applied the undisputed facts to relevant provisions of the Code.

When a party appeals a circuit court's judgment of an administrative review proceeding, it is this court's duty to review the decision of the administrative agency, not the circuit

1-10-0523

court. *Sarkis v. City of Des Plaines*, 378 Ill. App. 3d 833, 836, 882 N.E.2d 1268 (2008). "In cases involving whether an officer's disability arose from an 'act of duty,' this court has held that, when the facts are undisputed, the interpretation of the term 'act of duty' in the Pension Code is an issue of statutory construction to be reviewed *de novo*." *Id.* As previously stated, the facts are undisputed; therefore, we must engage in statutory construction to determine whether Kereakes was involved in an "act of duty" when he was injured. As a result, our review is *de novo*. *Id.*

Kereakes contends he was engaged in an "act of duty" as defined by the Code and was therefore entitled to duty disability benefits. The Board responds that Kereakes' injury did not occur while he was engaged in an "act of duty."

An officer is entitled to receive duty disability benefits when he or she is injured in the "performance of an act of duty." 40 ILCS 5/5-154 (West 2006). An "act of duty" is defined as:

"Any 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 any act of

1-10-0523

heroism performed in the city having for its direct purpose the saving of the life or property of a person other than the policeman." 40 ILCS 5/5-113 (West 2006).

The seminal case interpreting "act of duty" is *Johnson v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 114 Ill. 2d 518, 502 N.E.2d 718 (1986). In *Johnson*, a police officer was injured while crossing a street to answer a call for assistance from a citizen in a traffic accident. The officer was on traffic control duty at the time. In holding the officer was injured in "the performance of an act of duty," the supreme court recognized that "[p]olice officers assigned to duties that involve protection of the public discharge those duties by performing acts which are similar to those involved in many civilian occupations," such as driving a car, using stairs, and walking across the street. *Id.* at 522. Accordingly, the term "special risk" as used in section 5-113 of the Code does not require inherently dangerous activities. *Id.* at 521. Instead, for purposes of determining whether a police officer was injured "performing an act of duty," the supreme court said "the crux is the capacity in which the police officer is acting." *Id.* at 522. Importantly, "[w]hen a policeman is called upon to respond to a citizen, he must have his attention and energies directed towards

1-10-0523

being prepared to deal with any eventuality." *Id.*

Since *Johnson*, this court has agreed that a court must examine the "capacity in which the officer was acting when he was injured." *Merlo v. Orland Hills Police Pension Board*, 383 Ill. App. 3d 97, 102, 890 N.E.2d 612 (2008) (citing *Alm v. Lincolnshire Police Pension Board*, 352 Ill. App. 3d 595, 602, 816 N.E.2d 389 (2004)). In concluding that a police officer was entitled to duty disability benefits because, while responding to a call from a civilian regarding juveniles creating a safety hazard in a parking lot, the officer was injured when he attempted to remove the safety hazard, this court said the officer "was not injured while performing an act of duty that is void of special risks unique to police work and encountered by ordinary citizens." *Merlo*, 383 Ill. App. 3d at 103.

Accordingly, although "an officer need not grapple with a criminal to perform an 'act of duty'" (*Sarkis*, 378 Ill. App. 3d at 839), a duty disability pension is "awarded to reflect the risks faced by an officer who is required to act and to reflect that those dangers are different from those encountered by officers who, while injured, are harmed in the performance of an act that is not unique to their profession. Therefore, the key consideration is the risks that are faced by an officer who is engaged in the duties of his job." *Id.* at 840. This court has

1-10-0523

provided, however, that "[a]n officer does not perform an 'act of duty' merely by being on duty at the relevant time. [Citation.] The performance of an 'act of duty' is not synonymous with an action taken by an officer on duty." *Id.* at 837.

We are mindful that pension acts must be liberally construed in favor of the petitioner (*Johnson*, 114 Ill. 2d at 521); however, we conclude that Kereakes was not engaged in an "act of duty" when he was injured. Although on duty, Kereakes was crossing the street as any other citizen would have at the time. Kereakes had completed his testimony inside the courthouse and was returning to his vehicle. Kereakes' attention was not sought by a citizen needing assistance (*Johnson*, 114 Ill. 2d at 522); he was not called to the scene to respond to a situation involving public safety (*Merlo*, 383 Ill. App. 3d at 103; *Sarkis*, 378 Ill. App. 3d at 840-41 (an officer was awarded a duty disability pension after he was injured raising a railroad crossing gate, which although performed by town officials and citizens in a patrol group, the act was not one commonly performed by citizens)); and Kereakes was not actively on patrol (*Alm*, 352 Ill. App. 3d at 602 (a duty disability pension was awarded to an officer that developed a knee injury from riding in the bicycle patrol unit which required him to perform tasks not encountered in civilian life)).

1-10-0523

Kereakes was at the courthouse in his capacity as an officer; however, he did not face any special risks unique to his profession when he was injured. Instead, similar to the officer in *Morgan v. Retirement Board of Policemen's Annuity & Benefit Fund*, 172 Ill. App. 3d 273, 526 N.E.2d 493 (1988), who was injured when he fell off his chair while completing a police report, and the officer in *White v. City of Aurora*, 323 Ill. App. 3d 733, 753 N.E.2d 1244 (2001), who was injured while exiting his police car to place a parking citation on another car, Kereakes' injury resulted from a risk comparable to those encountered in civilian occupations ordinarily assumed by citizens. *Morgan*, 172 Ill. App. 3d at 277; *White*, 323 Ill. App. 3d at 736. We, therefore, find Kereakes was not entitled to duty disability benefits.

We disagree with Kereakes' argument that in his capacity as an officer on duty he was subject to special risks because he had to maintain vigilance of potential harms to the public while crossing the street. Under Kereakes' interpretation, an officer is always performing an "act of duty" because an officer must always be prepared to "discharge a sworn duty" by "devoting [his] attention and energy to the public." Kereakes' interpretation would render sections 5-154 and 5-155 of the Code (40 ILCS 5/5-155 (West 2006) ("a policeman who becomes disabled \*\*\* as a

1-10-0523

result of any cause other than injury incurred in the performance of an act of duty, shall receive ordinary disability benefit)) meaningless where an officer is awarded duty disability benefits only if engaged in the performance of an "act of duty" when injured.

CONCLUSION

Because Kereakes was not injured while performing an "act of duty" as defined by section 5-113 of the Code, we affirm the judgment of the circuit court upholding the Board's decision to deny Kereakes duty disability benefits and award ordinary disability benefits.

Affirmed.