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FIRST DIVISION
FILED: MAY 31, 2011

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

AMY MALONEY,)	APPEAL FROM THE
)	CIRCUIT COURT OF
Plaintiff-Appellant)	COOK COUNTY
)	
v.)	No. 09 CH 8985
)	
THE RETIREMENT BOARD OF THE)	
POLICEMEN'S ANNUITY AND BENEFIT)	
FUND OF THE CITY OF CHICAGO,)	HONORABLE
)	RICHARD J. BILLIK,
Defendant-Appellee.)	JUDGE PRESIDING.

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

ORDER

Held: Police retirement board erred in denying the plaintiff's application for occupational disease disability benefits without a hearing.

The plaintiff, Amy Maloney, appeals from the circuit court's judgment confirming the decision of the defendant, the Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago (Board), denying her petition for occupational disease disability benefits pursuant to section 5-154.1 of the Pension Code

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(Code) (40 ILCS 5/5-154.1 (West 2008)). For the reasons that follow, we reverse the circuit court's judgment, vacate the Board's decision, and remand the matter to the Board for further proceedings.

Although the current record on appeal omits most of the proceedings and evidentiary material that form the background for this case, the parties agree on the basic procedural facts, which are described in large part in a previous order issued by this court. See *Bagans v. Retirement Board of the Policemen's Annuity and Benefit Fund of Chicago*, No. 1-06-1521 (2007) (unpublished order under Supreme Court Rule 23). According to that previous order, the plaintiff became a police officer in September 1980 and, in February 2004, was diagnosed with a heart condition called "atrial flutter." When she exhausted her medical leave in February 2005, the plaintiff filed a petition for benefits with the Board. The parties agree that she did not work as an active-duty police officer after February 2005.

After hearing evidence regarding the extent of the plaintiff's heart condition, the Board granted her ordinary disability benefits pursuant to section 5-155 of the Code (40 ILCS 5/5-155 (West 2004)) but denied her occupational disease disability benefits under section 5-154.1. (The Board later revisited its decision, but this court held on appeal that the Board's initial decision should

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stand.) In June 2007, this court upheld the Board's finding that the plaintiff was not disabled due to a heart condition, and on that basis we upheld the Board's conclusion that she was not entitled to occupational disease disability benefits. See *Bagans*, No. 1-06-1521, slip op. at 12-14.

The Board's decision is not included in the record on appeal; we have only the description of the Board decision from our previous order. In that order, we noted that the Board presented expert testimony that her heart was not "significantly abnormal" and thus that she had no cardiac disability. *Bagans*, No. 1-06-1521, slip op. at 3. We also affirmed the Board's finding that the plaintiff was disabled but had no cardiac disability by noting that it "was entirely possible for the Board to conclude that Plaintiff did not suffer from atrial flutter, but that Plaintiff's visual impairment and other medical problems" entitled her to ordinary disability benefits. *Bagans*, No. 1-06-1521, slip op. at 13.

In April 2008, the plaintiff filed a second application for occupational disease disability benefits, premised on what she characterizes as an exacerbation or deterioration of the atrial flutter condition that was diagnosed in 2004. In October 2009, the Board issued a ruling stating that it had already denied a request for benefits from the plaintiff based on her heart condition. The Board thus denied her claim on the alternative bases that it had no

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authority to rehear her claim or that her claim was barred by principles of collateral estoppel. The plaintiff thereafter filed a complaint for administrative review. After the circuit court upheld the Board's decision, the plaintiff filed this timely appeal.

Pursuant to section 3-148 of the Code (40 ILCS 5/3-148 (West 2008)), we review the Board's decision in accordance with the Administrative Review Law (735 ILCS 3/1-101 *et seq.* (West 2008)). *Tucker v. Board of Trustees of the Police Pension Fund of the Village of Park Forest, Illinois*, 376 Ill. App. 3d 983, 986, 876 N.E.2d 121 (2007). Accordingly, we review the decision of the Board, not that of the circuit court. *Reed v. Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago*, 395 Ill. App. 3d 1, 12, 917 N.E.2d 1073 (2009). Where only a question of law is presented on appeal--as both parties agree is the case here--our review is *de novo*. *Reed*, 395 Ill. App. 3d at 12.

The plaintiff rests her appeal on the argument that her atrial flutter condition began in 2004, did not disable her from active police duty in 2005, but became disabling at some time after 2005. She argues, then, that the degeneration in her condition caused her atrial flutter to become a disability that is compensable under section 154.1 of the Code. In her words, she should be granted benefits because "she suffers from a heart disease that was

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diagnosed while she was on active duty, even if it was not a disability while she was on active duty."

The Board declined to address this argument, because it concluded that it had already determined that the plaintiff's heart condition was not disabling. Thus, the Board reasoned, the claimant was either asking for a rehearing or was trying to raise an issue she should have been collaterally estopped from raising. We disagree with both rationales. As the plaintiff explains in her briefs, she is not seeking a rehearing on the Board's prior determination that her heart condition was not disabling as of 2005; she is seeking benefits on the basis that her heart condition became disabling sometime thereafter. This issue, indeed this claimed disability, is new, and it could not have been resolved in the Board's previous decision. Accordingly, neither the prohibition against the Board's rehearing its decisions (see *Weingart v. Department of Labor*, 122 Ill. 2d 1, 15 (1988)) nor collateral estoppel (see *Hulbert v. Charles*, 238 Ill. 2d 248, 512, 938 N.E.2d 507 (2010)) bars the plaintiff's application.

Although the Board offers us other reasons that the plaintiff's application should be denied, such as its assertion that her alleged disability was caused by her activities after leaving police work, we cannot accept such factual assertions now, without requiring the Board to test the assertions against the

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evidence in the first place. In fact, the Board's argument on appeal underscores the point that, having rejected the Board's reasons for denying the plaintiff's application, we must remand the matter for further proceedings before the Board in order to avoid subverting the Board's role to consider the evidence in support of and in opposition to the plaintiff's application.

For the foregoing reasons, we reverse the judgment of the circuit court, which confirmed the Board's decision to deny the plaintiff's application for benefits, and we vacate the Board's decision. We remand the matter to the circuit court with directions that it be remanded to the Board for a hearing on the plaintiff's claim.

Reversed and remanded with directions.