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No. 3--09--1040

Order filed January 25, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2011

LARRY COYNE,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
Plaintiff-Appellee,)	Rock Island County, Illinois
)	
v.)	
)	
MILAN POLICE PENSION BOARD,)	No. 99--MR--53
By its President, SERGEANT)	
DAVID JONES, and VILLAGE)	
OF MILAN,)	Honorable
)	Lori R. Lefstein,
Defendants-Appellants.)	Judge, Presiding

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices McDade and Carter concur in the judgment.

ORDER

Held: The decision of the defendant police pension board denying plaintiff's application for a non-duty disability pension was against the manifest weight of the evidence where the board failed to address questions raised by this court on remand.

Appellant, the Milan Police Pension Board (the Board) appeals from a judgment of the circuit court of Rock Island County which reversed the Board's decision to deny a non-duty

disability pension to Larry Coyne (Coyne), a former Village of Milan policeman. This is the second time this matter has been before this court. We previously remanded this matter to the Board with instructions to address our questions regarding its decision to deny Coyne's application. See *Coyne v. Milan Police Pension Board*, 347 Ill. App. 3d 713 (2004) (*Coyne I*).

BACKGROUND

Coyne worked as a police officer in the Milan police department until November of 1995. In March of 1996, he filed an application with the Board requesting a line-of-duty disability pension (40 ILCS 5/3--114.1 (West 1996)) or, alternatively, a non-duty disability pension (40 ILCS 5/3--114.2 (West 1996)). The Board denied both requests, and the Rock Island County circuit court affirmed the Board's decision. Coyne appealed to this court, which affirmed in part, reversed in part, and remanded the matter for further proceedings.

1. Procedural History

The procedural history leading up to the 2004 appellate court decision is taken from the prior decision of this court. In 1990, Coyne submitted to a psychological evaluation by Dr. Rip O'Keefe to determine his fitness for a promotion to the rank of police sergeant. Dr. O'Keefe indicated that, from a psychological standpoint, Coyne was sound and suffered no

impediments that would hinder his performance as a sergeant. Coyne received the promotion.

The pension hearing occurred in June of 1998. The first witness to testify at the hearing was Dennis Baraks, chief of police in the Milan police department. Baraks said Coyne's job performance began declining in late 1994 or early 1995. Before that time, Coyne exhibited no problems and performed above-average work. The first sign of problems occurred when Baraks requested an explanation for Coyne's excessive speed while driving his squad car. According to department records, Coyne was responsible for 80% of the instances where an officer drove above 80 miles per hour. Upon receiving the request, Coyne "charged into [Baraks's] office" and claimed he deserved special consideration because he performed the most work in the department. Baraks acknowledged that Coyne had been "very active" on the police force and was extremely dependable in high-stress situations. However, after their confrontation on the speeding issue, Coyne became sullen, unreceptive to personal conversation, vindictive, and hostile.

In May of 1995, Baraks wrote a letter to Coyne expressing concern about his psychological fitness to perform police work. Baraks advised that Coyne's conduct was inappropriate and that he would be sent for a psychological evaluation if the conduct continued. The conduct did continue, and Baraks wrote another

letter warning Coyne of a possible suspension or psychological review. In October of 1995, Baraks wrote a third letter advising Coyne: "[F]or the past year your conduct has been irrational." He noted that Coyne was performing his duties at a fraction of his ability.

Baraks testified that as of November 1995, he did not believe Coyne was fit for police duty. His primary concern was not how Coyne would perform in the field, but rather the negative effect Coyne's presence would have on the department internally.

Coyne was the only other witness to testify at the hearing. He said he suffered psychological impairment from being traumatized by several incidents at work. During one of the incidents, a drunk driver ran a red light in May of 1994 and hit the driver's door of Coyne's car. Coyne missed work for three months while recovering from injuries he sustained in the accident. During a second incident, an 18-year-old boy brandished a knife in March of 1995 and struggled with Coyne while trying to disarm his holstered service weapon. Realizing that his job could have required killing a teenager, Coyne became convinced that he was incapable of appropriately responding to violent acts (especially discharging his firearm). From that point on, he worked with no ammunition in his firearm. During a third incident, Coyne responded to a motor vehicle accident in November of 1995 where he crawled into an overturned car to

assist a trapped motorist. He said the experience caused a flashback to his own accident with the drunk driver. While rescuing the motorist, he experienced extreme claustrophobia and had serious difficulty staying inside the overturned car.

In addition to these incidents, Coyne described several other traumatic experiences, including a canoe accident where two persons drowned, several suicides, and a motorcycle accident where a young man was killed. Coyne was good friends with the parents of the young man who died in the motorcycle accident. He tried to perform CPR at the scene, but on the first compression, his hand broke through the young man's chest.

After the incident with the trapped motorist, Coyne went home and wrote a suicide note, laid out his funeral clothes, sat in the bathtub, and nearly shot himself while holding a loaded gun in his mouth. The next day he sought help from Dr. O'Keefe. He chose Dr. O'Keefe's office because the department had sent him there in 1990 for his sergeant's evaluation. The doctor suggested in-patient mental health treatment, but Coyne refused to be committed and instead commenced a course of outpatient treatment. He did not return to work.

Coyne testified that when he left active duty, he was depressed and felt like everyone was "out to get [him]." He described himself as "a time bomb waiting to go off." His symptoms included sleeplessness, nightmares, inattentiveness,

uncontrolled anger, a fluctuating appetite, loss of energy, and paranoid thoughts. He said his nightmares often involved replays of "ugly calls" and prior traumatic events on the job. Other dreams involved situations where he had to defend himself against an oncoming assailant. Sometimes in those dreams, he could not pull the trigger on his weapon; other times, he pulled the trigger and then reached out to grab the bullet because he wanted it back.

According to Coyne, Dr. O'Keefe saved his life by helping him gain enough control to prevent him from harming himself or others. In addition to Dr. O'Keefe's psychological treatment, Coyne also received psychiatric treatment from Dr. G. Narayan. Both doctors advised him to leave police work and find a job where he could keep busy with accomplishable tasks. Accordingly, he acquired a truck and began driving as an independent contractor. He said truck driving satisfied the doctors' recommendation because it did not involve public interaction or high pressure. He simply picked up loads and dropped them off without any employee-supervisor relationship.

Coyne testified that he needed additional treatment from Dr. O'Keefe but could not afford it. He was \$70,000 in debt from starting his trucking business, and the business was just breaking even. Additionally, his health insurance through the Village of Milan only covered 50% of the bills from his mental

health treatment. He already had an outstanding balance of \$2,500 to \$3,000 with Dr. O'Keefe.

Coyne testified that his last visit to Dr. O'Keefe was sometime in 1997, and that he treated with Dr. Narayan through late 1997 or early 1998. He said he followed all the instructions the doctors gave him, and he was still taking prescription medication. Sometimes, however, he did not take his medication because it made him feel "real blah." He said he was not capable of performing police work because he could not respond appropriately to stressful and violent situations.

In addition to written records from Drs. O'Keefe and Narayan, the evidence included records from three doctors appointed by the Board to evaluate Coyne. The doctors were Henry Conroe, Jonathan Kelly, and Richard Harris. The evidence also included a report from Dr. Eric Ostrov, whom Coyne visited on a referral from Dr. Kelly.

Dr. O'Keefe's records show that Coyne drafted three memoranda outlining numerous events leading to his psychological disability. The events ranged from disagreements with Chief Baraks to incidents where Coyne witnessed deaths. In January of 1996, Dr. O'Keefe wrote:

"It is my opinion that Sgt. Coyne is currently unable to function as a police officer. He poses a significant risk to himself and to the well being of

others. He is placed on medical leave from his employment as a police officer due to job related stress factors. I believe the Milan Police Department should proceed to evaluate Sgt. Coyne for a job related disability retirement."

Dr. O'Keefe's ultimate diagnosis was post-traumatic stress disorder stemming from "a series of work-related stressors" causing Coyne to "progressively deteriorate[] from his ability to do police work." The doctor advised that, in all likelihood, Coyne would never be able to resume such work.

Dr. Narayan also diagnosed Coyne with post-traumatic stress disorder and said: "[i]t is further advisable that he cannot return to his duties as a police officer [because] the renewed stress could be detrimental to his safety and the safety of other people." Commenting on the cause of Coyne's disorder, Dr. Narayan observed: "Mr. Coyne has gone through significant traumatic experiences through out [sic] ten years as a police officer."

Dr. Conroe diagnosed Coyne with major depressive disorder, describing his condition as "the cumulative effect of witnessing and experiencing events involving death, the threat of death or serious injury." The doctor further stated that Coyne could not control his emotions and judgment sufficiently to work as a police officer.

Dr. Kelly diagnosed Coyne with major depression, describing his condition as a "response to traumatic incidents he was exposed to on his job as a policeman." According to the doctor, Coyne was psychiatrically disabled from working as a police officer, but, with proper treatment, he could overcome his depression and resume such work.

Dr. Ostrov diagnosed major depression and stated that Coyne could not work as a police officer.

Dr. Harris opined that Coyne did not suffer from post-traumatic stress disorder and was not disabled from performing police work. In rendering this opinion, the doctor made multiple references to a conversation he had with Dr. O'Keefe. Dr. Harris's written report reads:

"Sgt. Coyne does not have a severe impairment rendering him unable to perform the duties of a police officer. He had an acute problem which was treated quickly and successfully. He currently has no signs of the symptoms necessitating treatment in November 1995. His acute disorder was largely a function of long-standing problems in interpersonal relationships stimulated by the not infrequent, volatile quality of the manager-managee relationship."

Dr. O'Keefe reviewed Dr. Harris's report and responded with a letter reiterating his position that, "based upon many hours of

treatment of Sgt. Coyne, *** he is disabled from police work and [the disability] is *** work-related." Dr. O'Keefe stated that Dr. Harris "misse[d] the point" and "went out of his way to focus only on that information that proved his conclusion." He also said Dr. Harris reported their conversation accurately but not completely. In particular, Dr. Harris omitted Dr. O'Keefe's firm position that Coyne is disabled as a result of work-related activities and that the disability is complete and likely permanent.

Coyne testified that Dr. Harris was arrogant and obnoxious and that they "didn't hit it off" during his evaluation. He said they spent little time discussing his work-related incidents because the doctor's questions did not elicit that information. Rather, according to Coyne, Dr. Harris spent most of his time asking about sex (Coyne's sex life and the sex lives of his co-workers).

After considering the foregoing evidence, the Board denied Coyne's pension application. The Board specifically found that Coyne failed to prove: a disability rendering him incapable of performing police work (a necessary element for both a line-of-duty and a non-duty pension), and a disabling condition resulting from an act of police duty (necessary for a line-of-duty pension). Additionally, the Board found two bases for denying pension benefits even if Coyne had satisfied the necessary

elements: his purported refusal to undergo reasonable medical treatment, and a lack of unanimity among the three board-appointed doctors regarding whether he was disabled from performing police work.

On administrative review, a judge from the Rock Island County circuit court upheld two of the Board's findings: (1) that Coyne failed to prove a disabling condition resulting from an act of police duty; and (2) that he refused to undergo reasonable medical treatment. Accordingly, the judge affirmed the Board's decision although she disagreed with its remaining findings. Coyne then appealed to this court.

2. The 2004 Appellate Court Decision

On April 13, 2004, this court reversed and remanded the decision of the Board. The court affirmed the Board's decision to deny the line-of-duty disability pension, but reversed and remanded on whether Coyne was entitled to a non-duty disability pension. The court noted that the overwhelming weight of medical opinion testimony supported a conclusion that Coyne was disabled. Yet, the Board, without explanation, chose to place all weight on the opinion of the one expert, Dr. Harris, who opined that Coyne was not disabled. This court observed that the Board's decision was entitled to some deference and that it was to be upheld unless it was against the manifest weight of the evidence. The court then determined the best course of action was to remand the

matter so that the Board could articulate or explain how it came to rely solely upon the opinion of the one expert who disagreed with the others regarding Coyne's disability. The remand was accompanied by specific instructions from this court to the Board:

"Our standard of review gives the Board the benefit of the doubt. But with no articulation of the findings upon which the Board based its determination, we cannot extend that benefit in an informed manner. An administrative agency's prerogative undoubtedly includes making credibility determinations between doctors who render competing opinions. But when the evidence weighs heavily against a single doctor, and the agency chooses to adopt that doctor's opinion, the agency must articulate the findings underlying its choice to facilitate meaningful review.

Considering the nature of our role as an appellate court, we believe the appropriate course is to remand with instructions for the Board to conduct further proceedings

consistent with the foregoing observations."

Coyne, 347 Ill. App. 3d at 724.

Regarding the Board's finding that Coyne had unreasonably refused necessary medical treatment, the appellate court again reversed the Board and remanded with instructions to explain its decision. This court noted that the Board had, without explanation, relied solely on Dr. Kelly's May 9, 1997, report. The court held:

"This analysis is insufficient to sustain a denial of pension benefits. By relying entirely on Doctor Kelly's report, the Board limited itself to the information contained in that report--most of which stemmed from an interview in January of 1997. We cannot simply draw a line between 1996 and 1997 and then conclusively declare, based on events preceding the line, that Coyne's conduct disqualifies him from receiving pension benefits. By doing so, the Board effectively ignored the year's worth of treatment Coyne underwent in 1997. Before the Board can conclusively determine whether Coyne's treatment choices disqualify him from pension eligibility, it must consider the

entire course of his treatment. This observation is particularly apt considering the above-stated rule that if a claimant's treatment choices are reasonable, his freedom of choice should be preserved even if he declines treatment that might mitigate the employer's damages. [Citation.] The Board apparently never even considered whether the treatment Coyne opted to undergo was reasonable (choosing instead to focus merely on the fact that he declined some treatment). Such analysis is incomplete.

Furthermore, when the Board adopted Doctor Kelly's report, it repeated the omission we discussed above in connection with Doctor Harris'[s] report. Based on Doctor Kelly's opinion, the Board stated that 'the weight of the psychiatric evidence showed that Coyne, with further treatment, could resume unrestricted police duties.' Yet the Board did not provide any explanation for its conclusion regarding evidentiary weight. Such an explanation is incumbent under the instant facts, where among the five

doctors who concluded that Coyne was disabled, Doctor Kelly stood alone in opining that he could be rehabilitated and resume unrestricted police work as a police officer. In fact, both of Coyne's treating physicians advised him to get out of police work altogether. On remand the Board is instructed to conduct further proceedings consistent with these observations. *Coyne*, 347 Ill. App. 3d at 726-27.

3. Board's Decision on Remand

The matter was remanded to the Board. On November 9, 2005, Coyne's attorney received notice that the Board had scheduled a hearing for January 11, 2006. The Board gave notice that it intended to take additional evidence by calling at least one of the Board's examining physicians to testify and supplement the record with additional evidence. Coyne's attorney filed a "Motion for Entry of Order Barring Milan Police Pension Board from Conducting an Evidentiary Hearing in Violation of Decision of Appellate Court" in the circuit court of Rock Island. The circuit court granted the motion and enjoined the Board from conducting additional evidentiary hearings and ordered the Board to comply with the appellate court's instructions to "explain" its prior ruling.

On February 8, 2007, the Board issued its decision and order on remand. In that order, the Board stated, without elaboration, specific reasons why it ruled as it did on Coyne's disability application.

4. Circuit Court Review Following Remand

Coyne appealed the Board's order on remand to the circuit court of Rock Island County. On the issue of whether Coyne was disabled, the court found that the Board's finding that Coyne was not disabled for service as a police officer was against the manifest weight of the evidence. On the issue of whether Coyne had failed to undergo reasonable psychiatric treatment, the court again found the Board's conclusion was against the manifest weight of the evidence.

The Board brought the instant appeal, raising two issues on appeal: (1) whether the decision of the Board to deny non-duty disability benefits to Coyne was improper; and (2) whether the trial court erred in barring the Board from conducting an evidentiary hearing upon remand. In his brief, Coyne raises certain due process objections to the Board's decision.

ANALYSIS

1. Was Coyne Entitled to a Non-Duty Disability Pension?

The answer to this question depends, to some degree, upon the effect of this court's decision in the 2004 decision (*Coyne I*). On appeal, the Board maintains that the decision following the remand by this court was a completely new decision. The Board argues that this court should affirm its decision to rely solely upon one expert in denying Coyne's non-duty disability pension as being supported by the manifest weight of the evidence. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532 (2006).

Coyne argues, on the contrary, that this court already determined that the Board's original decision to deny a non-duty disability pension based solely upon one expert was against the manifest weight of the evidence *unless* on remand the Board could articulate a suitable explanation for its original finding in view of the seemingly overwhelming evidence in favor of awarding a pension. Coyne suggests that this court's review of the Board's decision on remand is subject to *de novo* review. Coyne refers to our supreme court's discussion of review following a remand. In *Clemons v. Mechanical Devices Co.*, 202 Ill. 2d 344, 350 (2002), the court stated, "after a remand, the trial court is required to exercise its discretion within the bounds of the remand. Whether it has done so is a question of law." Although the court in *Clemons* was addressing remand to trial court, the principle articulated therein holds true where remand was to an

administrative agency since, after a remand, an administrative agency is required to exercise its discretion within the bounds of the remand.

We find that *Clemons* states the appropriate standard of review in the instant matter. This court remanded the matter to the Board with a very specific and limited instruction on remand. The court told the Board that its decision to deny a non-duty pension to Coyne appeared to be against the manifest weight of the evidence--given that all but one of the experts were totally convinced that Coyne was disabled to the point where he could no longer serve as a police officer. This court was prepared to find that the Board's decision was against the manifest weight of the evidence. However, the court expressed some concern that the record *might* support the Board's conclusion, if only the Board had done an adequate job of articulating its reasons for going with the lone opinion against awarding a pension. Our purpose for remanding the matter to the Board was to allow the Board to articulate, from the existing record, how it could have reached the conclusion it reached.

We now must review the Board's decision on remand *de novo* to determine whether it has sufficiently explained its prior decision. Our instruction to the Board on remand was to explain how it came to rely upon the lone opinion of Dr. Harris when it was in such stark contrast to the overwhelming weight of the

evidence. We acknowledge that the Board can rely upon one expert's opinion, even when it is contradicted by other experts. *Kramarski v. Board of Trustees of the Village of Orland Park*, 402 Ill. App. 3d 1040 (2010); *Marconi*, 225 Ill. 2d at 534. However, in this matter, the Board, in its original decision, gave no explanation as to why it chose to rely upon Dr. Harris's opinion in view of the overwhelming weight of the evidence to the contrary. The purpose of remanding this matter was so the Board could inform this court as to how it came to rely upon Dr. Harris's opinion. Without such an explanation, the opposite conclusion from that reached by the Board was clearly apparent. *Coyne*, 347 Ill. App. 3d at 724.

Reviewing the Board's decision on remand, we find that it has failed to adequately explain its prior decision. As demonstrated in the first appeal, the evidence was overwhelming that Coyne was disabled. On remand, the Board gave the following reasons for placing greater weight on Dr. Harris's opinion than the opinions of all the other medical experts:

- a) Dr. Harris interviewed the applicant for a period of two hours and forty-five minutes;
- b) In conjunction with the clinical review, Dr. Harris reviewed voluminous material, including previous psychological reports, the applicant's personnel

- file, and treatment records from the applicant's treating psychotherapist, Rip O'Keefe, Ph.D.;
- c) Dr Harris spoke directly with Dr. O'Keefe;
 - d) Dr. Harris also spoke with Police Chief Baraks for a period of 30 minutes;
 - e) Dr. Harris took a thorough patient history from the applicant;
 - f) The formal mental status examination conducted on the applicant was normal;
 - g) Dr. Harris thoroughly reviewed all of the treatment records from the applicant's treating practitioners. Dr. Harris noted inconsistencies with the applicant's claim that he was suffering a post-traumatic stress disorder;
 - h) Dr. Harris noticed striking inconsistency in the applicant's account of his treatment frequency;
 - i) Dr. Harris ruled out a diagnosis of post-traumatic stress disorder and concluded that the applicant did suffer from a "personality disorder" which was manifested by the applicant's interpersonal problems in the workplace; and
 - j) Dr. Harris concluded that the applicant did not have a severe impairment rendering him unable to perform the duties of a police officer; rather, Dr. Harris

concluded that the appellant had an acute problem which was treated quickly and successfully. Dr. Harris concluded at the time of his interview that the applicant displayed no signs of the symptoms necessitating treatment.

We find that each one of these points is insufficient to support the Board's finding. While these statements are, no doubt, true, the Board's task on remand was to "articulate" and "explain" how Dr. Harris's findings were entitled to carry the weight of evidence *over the opinions of the other medical experts*. There is no articulation or explanation why Dr. Harris's opinions should carry more weight than the combined opinions of all the other experts. This is true for both questions upon remand--whether Coyne was disabled and whether he sought appropriate medical and psychological care. Reviewing the Board's response to our instructions upon remand *de novo*, we find that the Board failed to comply with our instructions. We find that the Board's determination that Coyne was not entitled to a non-duty disability pension is against the manifest weight of the evidence.

Likewise, we find nothing in the Board's decision on remand to dissuade us from our original conclusion that it was against the manifest weight of the evidence to find that Coyne had unreasonably refused necessary medical treatment. *Coyne*, 347

Ill. App. 3d at 726. On remand, we asked the Board to explain its rationale for this finding. However, in its ruling following remand, the Board failed to provide any support for its conclusion. Given the original record before us, including the overwhelming medical opinion testimony regarding the prescribed course of Coyne's treatment, and the Board's failure to adequately address our questions upon remand, we find that there is no support in the record for the Board's finding that Coyne refused to cooperate with medical treatment. The Board's finding is against the manifest weight of the evidence. We, therefore, reverse the judgment of the Board and order the Board to award Coyne a non-duty disability pension.

2. Did the Trial Court Err in Barring the Board
From Taking Additional Evidence?

The law is well settled that, on remand, the tribunal to which the matter is remanded can take only those actions which conform to the instructions on remand. See *Citizens Utilities Co. of Illinois v. Illinois Pollution Control Board*, 213 Ill. App. 3d 864 (1991) (tribunal on remand has no authority to act beyond the dictates of the mandate). Decisions following instructions on remand are reviewed *de novo*. *Clemons*, 202 Ill. 2d at 350.

Here, it is clear from the remand from this court that the mandate to the Board was to "explain" and "articulate" support

for its decision based upon the record that was before it. We find no error in the circuit court's order enjoining the Board from taking new evidence as this action was clearly contrary to the instructions from this court on remand to the Board.

CONCLUSION

The decision of the Board on remand failed to comply with the instructions from this court. The decision of the Board, denying Coyne a non-duty disability pension, was against the manifest weight of the evidence. We reverse the decision of the Board and remand the matter to the Board for the purpose of granting Coyne's application for a non-duty disability pension. In view of our judgment, we do not need to address the due process claims raised by Coyne in this matter.

Board reversed; cause remanded to the Board with directions.