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## BACKGROUND

¶ 4 On the evening of February 12, 2008, the plaintiff was on duty and in uniform as a member of the City of Marion Police Department. The plaintiff was dispatched to investigate a silent alarm at the Harry Crisp property. On this date, the area had experienced an ice storm, leaving ice and snow on the ground. As the first police officer to arrive at the Crisp property, the plaintiff observed a parked vehicle near the mansion's guesthouse and two individuals inside the guesthouse. The plaintiff relayed on the radio the license plate number of the vehicle and proceeded to the guesthouse to identify the two occupants. After checking the outside scene, the plaintiff made contact with the two individuals and asked them to step outside. While outside the guesthouse, the plaintiff interviewed them, and based on their demeanor and responses, the plaintiff determined that the individuals were properly on the property. The plaintiff advised the individuals that they could return to the guesthouse, and the plaintiff then turned and walked approximately 20 yards in the snow to return to his patrol car.

¶ 5 At the hearing on the plaintiff's application for a line-of-duty disability pension, the plaintiff testified that he had continued to scan the area while returning to his patrol car, where he had intended to call in the subjects' names on his vehicle radio to check for outstanding warrants. The plaintiff testified that he did not call in the occupants' names from his portable radio because he first wanted to reach the safety and quiet of his squad car. The plaintiff testified that as he opened his patrol car door, he slipped on the snow and ice, fell with his leg pinned under him, and immediately felt knee pain. After falling, the plaintiff used his portable radio to call dispatch for assistance.

¶ 6 Following the plaintiff's radio request for assistance, Officers Joseph Molitor and Jody Wright arrived in separate vehicles on the scene, and they transported the plaintiff to Heartland Regional Hospital for medical evaluation and treatment. The plaintiff

acknowledged that as the two officers arrived to provide assistance, he did not relay the names of the suspects and was unaware of whether the names were ultimately checked for outstanding warrants. Both Officer Molitor and Officer Wright testified that the plaintiff did not notify them that he had not completed his investigation of the property or request them to do so.

¶ 7 While at the hospital, Sergeant Dan Burns interviewed the plaintiff and prepared a report on the incident. During his hospital stay, the plaintiff also discussed the incident via telephone with Assistant Police Chief John Eibeck. The plaintiff at no time indicated that he had not completed his investigation prior to his fall and did not discuss a need to verify the identities or status of the occupants.

¶ 8 At the commencement of the plaintiff's hearing before the Pension Board, the plaintiff requested limited consideration solely for a duty-related disability pension, pursuant to section 3-114.1 of the Illinois Pension Code (Pension Code) (40 ILCS 5/3-114.1 (West 2008)). After the initial hearing on October 13, 2009, and an additional hearing on November 17, 2009, the Pension Board denied the plaintiff's application for a line-of-duty disability pension. In its December 22, 2009, decision, the Pension Board found that the plaintiff's testimony, that he had not completed his investigation when he fell, lacked credibility. The Pension Board found, "[W]hen [the plaintiff] turned his back on the subjects and walked the twenty yards to his patrol car, [he] had effectively concluded his investigation of the alarm and had concluded that the persons he observed at the guest house were properly on the scene." The Pension Board determined that "the injury sustained by Officer Leonard in falling on snow and ice [was] not a risk related to his employment as a police officer" and that "at the time of Officer Leonard's fall \*\*\*, [he] was not performing an act within the line of duty as a police officer." Accordingly, the Pension Board concluded, "Officer Leonard's injury in slipping on snow and ice is not compensable as a

line of duty injury."

¶ 9 On January 6, 2010, Leonard filed his complaint in the circuit court, seeking the administrative review of the Pension Board's decision. Pursuant to its August 15, 2010, order, the circuit court, by docket entry, determined that the Pension Board's conclusion, that the plaintiff had completed processing the burglary alarm call when he turned his back on the two people he found on the scene, was clearly erroneous and against the manifest weight of the evidence. The circuit court instead concluded that the plaintiff had not yet cleared the scene of the investigation at the time of his fall and that his injury therefore occurred in the line of duty.

¶ 10 The circuit court also determined that the Pension Board erred in interpreting the definition of "line of duty." The court held that "[c]learing the scene is, as a matter of law, part of any police call" and that the plaintiff had not cleared the scene. The circuit court therefore held that the plaintiff's injury was in the line of duty. Concluding that the Pension Board's conclusions were in error as a matter of law, that its factual determinations were against the manifest weight of the evidence, and that its application of the facts to the applicable law was clearly erroneous, the circuit court reversed the Pension Board's decision and remanded the cause with directions to award the plaintiff a line-of-duty disability pension.

¶ 11 On September 2, 2010, the defendants filed a timely notice of appeal.

¶ 12 ANALYSIS

¶ 13 "In administrative cases, we review the decision of the administrative agency, not the determination of the circuit court." *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 504 (2007). Section 3-148 of the Pension Code (40 ILCS 5/3-148 (West 2008)) provides that a judicial review of the Pension Board's decision is governed by the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2008)). Pursuant to the

Administrative Review Law, the scope of our review extends to all questions of fact and law presented by the entire record. 735 ILCS 5/3-110 (West 2008); *Wade*, 226 Ill. 2d at 504. Section 3-110 of the Administrative Review Law further provides that the administrative agency's findings and conclusions on questions of fact shall be held to be *prima facie* true and correct. 735 ILCS 5/3-110 (West 2008). The plaintiff bears the burden of proof in an administrative hearing. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532-33 (2006).

¶ 14 The amount of deference we give to the Pension Board's decision "depends upon whether the question presented is a question of fact, a question of law, or a mixed question of law and fact." *Id.* at 532. "Rulings on questions of fact will be reversed only if they are against the manifest weight of the evidence." *Wade*, 226 Ill. 2d at 504. "An administrative agency decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). We review questions of law *de novo*. *Marconi*, 225 Ill. 2d at 532.

¶ 15 A mixed question of law and fact "involves an examination of the legal effect of a given set of facts." *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). When the question presented is a mixed question of law and fact, we review the administrative decision to determine if it is clearly erroneous. *Marconi*, 225 Ill. 2d at 532; *Jones v. Board of Trustees of the Police Pension Fund of the City of Bloomington*, 384 Ill. App. 3d 1064, 1068 (2008); *Merlo v. Orland Hills Police Pension Board*, 383 Ill. App. 3d 97, 99-100 (2008). The Illinois Supreme Court has described this standard as being "between a manifest weight of the evidence standard and a *de novo* standard so as to provide some deference to the [agency's] experience and expertise." *City of Belvidere*, 181 Ill. 2d at 205. An agency's decision presenting a mixed question of law and fact "will be deemed

'clearly erroneous' only where the reviewing court, on the entire record, is 'left with the definite and firm conviction that a mistake has been committed.' " *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

¶ 16 The Pension Code must be liberally construed in favor of the rights of the applicant. *Johnson v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 114 Ill. 2d 518, 521 (1986). Section 3-114.1(a) of the Pension Code provides for a pension equal to 65% of the officer's salary if the officer becomes disabled as a result of "the performance of an act of duty." 40 ILCS 5/3-114.1(a) (West 2008). Specifically, section 3-114.1(a) provides, in relevant part, as follows:

"If a police officer as the result of sickness, accident[,] or injury incurred in or resulting from the performance of an act of duty, is found to be physically or mentally disabled for service in the police department, so as to render necessary his or her suspension or retirement from the police service, the police officer shall be entitled to a disability retirement pension equal to \*\*\* 65% of the salary attached to the rank on the police force held by the officer at the date of suspension of duty or retirement \*\*\*.

A police officer shall be considered 'on duty' while on any assignment approved by the chief of the police department of the municipality he or she serves, whether the assignment is within or outside the municipality." 40 ILCS 5/3-114.1(a) (West 2008) (entitled "Disability pension—Line of duty").

¶ 17 In contrast, section 3-114.2 of the Pension Code provides that an officer disabled as the result "of any cause other than the performance of an act of duty" is entitled to a disability benefit of 50% of his salary at the time the disability occurred. 40 ILCS 5/3-114.2 (West 2008) (entitled "Disability pension—Not on duty"). For purposes of these provisions,

the definition of "act of duty" set forth in section 5-113 of the Pension Code (40 ILCS 5/5-113 (West 2008)) applies. See *Robbins v. Board of Trustees of the Carbondale Police Pension Fund*, 177 Ill. 2d 533, 540-41 (1997).

¶ 18 Section 5-113 of the Pension Code defines an "act of duty," in pertinent part, as follows:

"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 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 2008).

¶ 19 "Something more than being 'on duty' is required to receive a line-of-duty pension." *Jones*, 384 Ill. App. 3d at 1069; *Merlo*, 383 Ill. App. 3d at 100. Although not all police functions involve "special risk," the term is not limited to only inherently dangerous activities. *Johnson*, 114 Ill. 2d at 521; *Jones*, 384 Ill. App. 3d at 1070. A police officer is entitled to line-of-duty benefits when he is injured while on duty performing an act involving a special risk not shared by ordinary citizens. 40 ILCS 5/5-113 (West 2008); *Johnson*, 114 Ill. 2d at 522. "[A]n officer performing duties involving special risks will be entitled to line-of-duty benefits even if the immediate cause of injury is an act involving only an ordinary risk." *Alm v. Lincolnshire Police Pension Board*, 352 Ill. App. 3d 595, 599 (2004). Further, the performance of an act of duty need not be the sole cause of the disability. See *Kellan v. Board of Trustees of the Firemen's Pension Fund of the City of Park Ridge*, 194 Ill. App. 3d 573, 582 (1990); *Olson v. City of Wheaton Police Pension Board*, 153 Ill. App. 3d 595, 598 (1987) (section 3-114.1 does not preclude the award of a line-of-duty disability pension based upon the aggravation of a preexisting physical

condition).

¶ 20 In *Johnson*, an officer on traffic control duty was working his assigned post when a citizen from across an intersection called to him asking for assistance in a traffic accident. *Johnson*, 114 Ill. 2d at 520. While crossing the intersection to respond, the police officer slipped on wet pavement and injured himself. *Id.* The supreme court concluded that the plaintiff's action in crossing the intersection to respond to a citizen's call for assistance constituted an act of duty as defined in the Pension Code, the officer was injured while performing that duty, and thus, the officer was entitled to a line-of-duty disability pension. *Id.* at 523.

¶ 21 In holding that the officer performed an act of duty in responding to a citizen's call for assistance, the court in *Johnson* noted that the officer had no choice but to respond and that no comparable civilian occupation existed. *Id.* at 522 (an officer responding to a citizen "must have his attention and energies directed towards being prepared to deal with any eventuality"). The supreme court noted that to be eligible for a line-of-duty pension, the officer need not be injured *by* the act of duty, but rather, the injury must occur *in the performance of* the act of duty. *Id.* The supreme court reasoned as follows:

"There can be little question, police officers assigned to duties that involve protection of the public discharge their responsibilities by performing acts which are similar to those involved in many civilian occupations. The crux is the capacity in which the police officer is acting." *Id.*

¶ 22 Since *Johnson*, courts have found the police officer injured in the performance of an act of duty where the officer (1) fell through a porch while serving a notice to appear (*Wagner v. Board of Trustees of the Police Pension Fund of Belleville*, 208 Ill. App. 3d 25, 29 (1991) ("While the act of walking across a porch is hardly unique to police officers, serving notices to appear generally is")); (2) was struck while effecting a traffic stop (*Barber*

*v. Board of Trustees of the Village of South Barrington Police Pension Fund*, 256 Ill. App. 3d 814, 815-18 (1993) (a traffic stop is a special risk activity), *abrogated on other grounds by Kouzoukas v. Retirement Board of the Policemen's Annuity & Benefit Fund of the City of Chicago*, 234 Ill. 2d 446 (2009)); (3) was riding a bicycle on patrol (*Alm*, 352 Ill. App. 3d at 596-603 (pedaling a bicycle was an act of duty because the bicycle patrol officer faced special risks not faced by ordinary citizens, including riding his bicycle at night over varying terrain and looking after his own personal safety while also remaining vigilant in the performance of his patrol duties)); (4) injured his shoulder while raising a malfunctioning railroad crossing gate (*Sarkis v. City of Des Plaines*, 378 Ill. App. 3d 833, 834-42 (2008) (where an officer was dispatched to railroad crossing, the officer's lifting of a malfunctioning gate involved a special risk not ordinarily assumed by a citizen in the ordinary walks of life)); (5) was injured attempting to remove concrete parking blocks in a parking lot (*Merlo*, 383 Ill. App. 3d at 98-103 (an officer who acted in police capacity in responding to a citizen's call to confront mischievous juveniles and immediately eliminate the resulting safety hazards to the general public was entitled to a line-of-duty pension for his injuries)); and (6) was injured during patrol when another car struck his vehicle (*Jones*, 384 Ill. App. 3d at 1065-74 (even though the officer was not responding to a call, he was conducting his patrol and an investigation, and he faced special risks associated with being on patrol duty)).

¶ 23 In contrast, where a police officer did not face the sort of special risks associated with serving as a police officer at the time an injury occurred, courts have found that the injury was not suffered in the line of duty under the Pension Code. In *Morgan v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 172 Ill. App. 3d 273, 274 (1988), the officer was completing paperwork at the police station when he attempted to sit down in a chair and missed, injuring his head, neck, and back. The *Morgan* court concluded that the police

officer was not entitled to a line-of-duty disability benefit because he did not sustain his injuries in the performance of an act of duty under the Pension Code. *Id.* at 275. The court reasoned, "[C]ompleting police reports, albeit a function peculiar to police officers, [does not] inherently involve[] [a] special risk not ordinarily assumed by a citizen in the ordinary walks of life." *Id.* at 276-77.

¶ 24 Likewise, in *White*, the officer was injured while exiting his police vehicle to place a parking citation on an illegally parked car. *White v. City of Aurora*, 323 Ill. App. 3d 733, 736 (2001). Explaining that the police department also employed civilians to issue parking citations, the court held that the officer was completing a clerical act and that his injury was not the result of a special risk not ordinarily assumed by citizens in the ordinary walks of life. *Id.* at 736.

¶ 25 In *Fedorski*, the police officer, assigned to work as an evidence technician, was injured when the unmarked police vehicle in which he was riding was struck from behind while stopped at a red light. *Fedorski v. Board of Trustees of the Aurora Police Pension Fund*, 375 Ill. App. 3d 371, 375 (2007). The court held that because it was unclear whether evidence technicians faced any particular risks while photographing lineups and because civilians may perform this sort of work, the officer faced no risks peculiar to a police officer and was therefore not performing an act of duty when injured. *Id.* The court noted that the officer was not performing any activity relating to his duties as an evidence technician that created a special risk not ordinarily assumed by any automobile passenger. *Id.* at 376. The court also noted, "Had [the officer] been acting in a capacity involving a special risk when he was injured, he would have been entitled to a line-of-duty disability pension even though the immediate cause of the injury was an act—riding in an automobile—involving only ordinary risk." *Id.* at 375.

¶ 26 In *Filskov v. Board of Trustees of the Northlake Police Pension Fund*, 409 Ill. App.

3d 66 (2011), the officer suffered a foot injury while entering the rear seat of his police vehicle. After preparing station reports, the officer had left the police station and walked to the squad car to resume patrol. *Id.* Another officer driving the car inadvertently put the car in drive and drove over the injured officer's foot. *Id.* The court noted that the officer was not responding to a call, had yet to resume patrol, and was merely attempting to enter the rear seat of a vehicle that was still in the police station's parking lot. *Id.* at 72. The court determined that "the incident in question, entering a vehicle, did not involve a 'special risk, not ordinarily assumed by a citizen in the ordinary walks of life.'" *Id.* at 72 (quoting 40 ILCS 5/5-113 (West 2008)). The court also held, "The capacity in which [the officer] was acting was that of a passenger entering a motor vehicle, which is the same activity all passenger civilians do everyday." *Id.* at 73. Concluding that the scenario resembled that presented in *Morgan* and *Fedorski*, the court in *Filskov* denied the officer line-of-duty disability benefits. *Id.*

¶ 27 Accordingly, in determining whether the plaintiff is entitled to line-of-duty disability benefits, we must focus on the capacity in which the plaintiff was acting when injured and, in particular, any special risks he faced when acting in that capacity. See *Johnson*, 114 Ill. 2d at 522. Here, the plaintiff was performing a function peculiar to police officers—an act that ordinary citizens are not obligated to perform—in that he was responding to a citizen in need of assistance via the alarm. See *Johnson*, 114 Ill. 2d at 522 ("unlike an ordinary citizen, the policeman has no option as to whether to respond [to a citizen's request for assistance]; it is his duty to respond regardless of the hazard ultimately encountered" (emphasis omitted)). The plaintiff faced special risks as he maneuvered the unfamiliar, icy terrain: looking after his own personal safety while remaining vigilant in the performance of his duty to respond to the potential burglary or invasion and face a potentially hostile or violent response from potential intruders. See *Alm*, 352 Ill. App. 3d at 601; *Wagner*, 208

Ill. App. 3d at 29. Thus, unlike the plaintiffs in *Morgan*, *White*, *Fedorski*, or *Filskov*, the plaintiff here was injured while acting in his capacity as a police officer engaged in a function peculiar to police officers and inherently involving special risks not ordinarily assumed by a citizen in the ordinary walks of life. See 40 ILCS 5/5-113 (West 2008).

¶ 28 The plaintiff was engaged in an act of duty, entitling him to line-of-duty benefits, even though the immediate cause of the injury was falling on ice while entering his car, an act involving only an ordinary risk. See *Jones*, 384 Ill. App. 3d at 1073 ("even if driving a car involves only an ordinary risk, Jones was acting in a capacity that involved special risk when he was injured—routine patrol"); *Alm*, 352 Ill. App. 3d at 599 ("an officer performing duties involving special risks will be entitled to line-of-duty benefits even if the immediate cause of injury is an act involving only an ordinary risk"). Although the injury could have happened to a civilian entering his car on snow and ice, the plaintiff suffered the injury while performing a police act involving special risk, *i.e.*, responding to the burglar alarm. See *Fedorski*, 375 Ill. App. 3d at 375 (noting that the fact that the injury could have befallen anyone traveling in an automobile does not by itself foreclose a line-of-duty disability pension; the "focus is not on the precise mechanism of the injury, but on the capacity in which the officer was acting when injured, and, in particular, the special risks a police officer faces when acting in such a capacity").

¶ 29 We hold that the Pension Board's finding—that the plaintiff was not reentering his patrol car to relay the suspect's names on his vehicle radio but that he had concluded his investigation of the alarm call—does not preclude the plaintiff's entitlement to a line-of-duty disability pension. In *Johnson*, the supreme court made clear that the proper focus is on the capacity in which the officer is acting, not the precise act leading to the injury. See *Johnson*, 114 Ill. 2d at 522. Whether he planned to further radio-dispatch or not, the plaintiff remained on the property in response to the alarm, acting in a capacity that required him to

have his " 'attention and energies directed towards being prepared to deal with any eventuality' " (*Alm*, 352 Ill. App. 3d at 602-03 (quoting *Johnson*, 114 Ill. 2d at 522)).

¶ 30 In *Merlo*, the court rejected the argument that the officer was not engaged in an act of duty because the mischievous juveniles had already left the premises and because it was the duty of the village public works department, as opposed to the officer's duty, to move the parking blocks that ultimately caused him injury. *Merlo*, 383 Ill. App. 3d at 103 ("The respondent's position [mistakenly] focuse[d] solely on the acts of the petitioner at the specific instant of injury and not the capacity in which he performed those acts."). Likewise, we reject the Pension Board's argument that because the plaintiff had determined that the suspects were properly on the property, he was no longer engaged in an act of duty when he returned to his squad car. Instead, applying a liberal construction of the Pension Code in favor of the plaintiff, we conclude that he is entitled to a line-of-duty disability pension based on the risks he faced in his capacity as an officer on the property responding to a citizen's request for assistance via the alarm and the injury he incurred in performing that duty. See 40 ILCS 5/3-114.1(a), 5-113 (West 2008); *Johnson*, 114 Ill. 2d at 522; *Jones*, 384 Ill. App. 3d at 1074. The Pension Board erred in holding otherwise. See *Wade*, 226 Ill. 2d at 507 ("the deference we afford the administrative agency's decision is not boundless").

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, we affirm the judgment of the circuit court of Williamson County.

¶ 33 Affirmed.