

No. 1-10-3793

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).

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

FRANCES FARMER LUCZAK,)
) Appeal from the
) Circuit Court of
 Plaintiff-Appellant,) Cook County
)
 v.)
) No. 08 CH 33285
 BOARD OF TRUSTEES OF THE ROLLING MEADOWS)
 POLICE PENSION FUND,)
) Honorable
 Respondent-Appellee.) Dorothy Kirie Kinnaird,
) Judge Presiding.

PRESIDING JUSTICE EPSTEIN delivered the judgment of the court.
Justices Joseph Gordon and McBride concurred in the judgment.

ORDER

Held: The police pension board's decision to deny plaintiff's application for disability pension benefits was not against the manifest weight of the evidence. The decision of the Board of Trustees of the Rolling Meadows Police Pension Fund and the judgment of the circuit court of Cook County are affirmed.

¶ 1 In this administrative review action, plaintiff, Frances Farmer Luczak, appeals from a decision of the Board of Trustees of the Rolling Meadows Police Pension Fund (the Board) that denied her application for disability pension benefits. We affirm.

¶ 2 BACKGROUND

¶ 3 Plaintiff was a police officer for the city of Rolling Meadows from April 12, 1994 through April 5, 2007. On November 7, 2006, plaintiff became the subject of an internal investigation by the Rolling Meadows police department for submitting a falsified receipt in order to obtain reimbursement for equipment. During a meeting that day, she admitted altering the receipt, but gave conflicting accounts regarding the details. The next day, November 8, 2006, plaintiff was assigned to standby duty status. On November 13, 2006, plaintiff was notified that she would be required to report for a “fitness for duty evaluation.” She remained on standby duty status. In December 2006, plaintiff filed an EEOC complaint against the police department. On December 13, 2006, plaintiff, still on standby status, was transferred to the Administrative Services Division.

¶ 4 On January 11, 2007, plaintiff admitted she had (1) submitted a falsified receipt for her 2006 equipment; (2) failed to respond to a question on her employment application concerning whether she had ever been hospitalized or received treatment for a mental condition or disorder; (3) failed to truthfully answer the question on her employment application concerning whether she had ever been hospitalized for any reason.

¶ 5 On January 15, 2007, Dr. Eric Ostrov, a psychologist, evaluated plaintiff. In a letter to the police chief, dated February 16, 2007, Dr. Ostrov stated that plaintiff was not fit for duty as a police officer. Dr. Ostrov opined that plaintiff “was not forthcoming and was defensive about psychological problems she apparently had in the past.”

¶ 6 On February 22, 2007, based on the results of her fitness for duty evaluation, plaintiff was

informed that the police department would be seeking to have her separated from the department, and that she would be placed on sick leave while the separation was pending. On the same day, plaintiff filed a grievance with the City of Rolling Meadows. In her grievance complaint, she asserted that her own psychologist had determined that she was in fact fit for duty.

¶ 7 On March 15, 2007, plaintiff and the City of Rolling Meadows participated in mediation regarding plaintiff's EEOC complaint. On March 22, 2007, the police department's chief sent a written request to the city manager of Rolling Meadows for an order discharging plaintiff from the police department. On March 28, 2007, plaintiff and the City of Rolling Meadows entered into a settlement agreement regarding plaintiff's EEOC complaint. The parties agreed that the plaintiff's employment with the police department would cease on April 5, 2007.

¶ 8 On or about March 27, 2007, plaintiff had filed an application for line-of-duty disability pension benefits; she resubmitted an application on April 25, 2007. Plaintiff stated that she suffered stress and mental anguish as a result of exposure to tuberculosis from a suspect in 1999, and suffered stress and mental anguish as a result of her husband and stepson being involved in a minor car accident in 2006, in which she was the first to respond; neither was taken to the hospital. Plaintiff alternatively sought a not-on-duty mental disability pension. Pursuant to section 5/3-115 of the Pension Code (40 ILCS 5/3-115 (West 2006)), the Board employed an independent agency to select three doctors to examine plaintiff regarding her alleged disability.

¶ 9 A. Administrative Hearings

¶ 10 The Board held three hearings, on April 1, 2008, May 19, 2008, and June 3, 2008. On April 15, 2008, the Illinois State Police revoked plaintiff's Firearm Owners Identification Card

1-10-3793

(FOID card) “based upon reports provided” by the Rolling Meadows police department.

¶ 11 *Alexander E. Obolsky, M.D.*

¶ 12 Dr. Obolsky was one of the three physicians selected to examine plaintiff pursuant to section 5/3-115 of the Pension Code. He examined plaintiff on December 3, 2007, regarding her complaints of an alleged psychiatric condition. In his 42-page detailed and comprehensive report, dated March 7, 2008, Dr. Obolsky noted that during his interview with plaintiff, she complained that she was suffering from over 20 different mental and physical symptoms. These included lack of appetite, loss of weight, decreased libido, nightmares, anhedonia, feeling worthless, feeling guilty, feeling overwhelmed, feeling rejected by police officers, feeling rejected by her mother, and poor self-esteem. She reported her symptoms as being frequent and severe. Dr. Obolsky noted that plaintiff traced the onset of her symptoms to November 2006 when she was asked to leave her job which she stated was due to submitting a fraudulent receipt for legitimate reimbursement.

¶ 13 Dr. Obolsky reported that plaintiff showed no signs of mental distress consistent with her reported symptoms and that her observed general behavior, appearance and mental status were contrary to the reported severity and frequency of mental symptoms.

¶ 14 Plaintiff reported a significant past psychiatric history to Dr. Obolsky. She told him that she had been in psychological therapy frequently since 1987. She stated that her adoptive mother abandoned her when she was 8 or 9 years old; her friend was murdered in 1987 and another friend died shortly thereafter in a car crash; in 1992 she was accused by her mother of having a sexual liaison with her father; she was psychiatrically hospitalized in 1998; she was involved in a

1-10-3793

significant motor vehicle collision; she was exposed to tuberculosis in 1999 which caused her to experience interpersonal conflict with department superiors; and she received psychotherapy treatment in 2000 for alleged sexual harassment at work. Plaintiff also told Dr. Obolsky that her ex-husband physically and emotionally abused her and then divorced her unexpectedly in 2001. She also reported that she witnessed a property damage motor vehicle accident in 2006 involving her second husband and stepson.

¶ 15 Dr. Obolsky had plaintiff undergo numerous tests: mental status examination; TSI-A (aimed at detecting post traumatic stress disorder); VSVT; MMPI-2; WCST (to assess problem-solving strategies); TMT (to measure mental flexibility); DS (to measure memory, attention, concentration); CPT-II (to measure pace, attention, and concentration); BDI-II, and the BAI. Dr. Obolsky provided a thorough explanation of each test and the results in his report.

¶ 16 Regarding the MMPI-2 test, Dr. Obolsky reported that plaintiff:

“selectively responded to test items so as to present herself in a specific manner, *i.e.*, depressed and anxious. [She] was cherry picking obvious symptoms of depression and anxiety on MMPI-2: while she endorsed obvious symptoms of depression and anxiety, she didn't endorse subtle and disorder-specific symptoms of depression and anxiety on MMPI-2. [She] did not obtain elevated scores on the MMPI-2 restructured clinical scales associated with depression, health anxiety stress, or interpersonal withdrawal, nor did she show elevations on MMPI-2 content scales associated with anxiety, depression, fears, or health concerns... In total the results of forensic psychological evaluation are not consistent with the

1-10-3793

presence of significant emotional or mood disorder that would be regarded as incapacitating and impairing from employment.”

¶ 17 Based upon his examination and experience, Dr. Obolsky found:

“(1) [plaintiff] had no psychiatric impairment; and (2) that a review of available records indicates that 'on several occasions [she] was less than forthright in her communications with police department co-workers and superiors. She has been less than forthcoming on three separate occasions when she was psychologically evaluated. At the same time she does not exhibit symptoms of a personality disorder. This indicates a conscious, willful, and volitional choice on her part when she dissimulates. This behavior should be addressed by administrative measures; [her] behavior is not a sign of mental disorder and thusly does not cause mental impairment and the resultant disability.”

Dr. Obolsky concluded that plaintiff was “not disabled” and was “fit for duty now.” He stated: “It is my opinion held with a reasonable degree of medical psychiatric certainty that [plaintiff] has no psychiatric impairments that interfere with her ability to work as a police officer.”

¶ 18 *Robert A. Reff, M.D.*

¶ 19 Dr. Reff was also one of the three physicians who examined plaintiff regarding her alleged disability pursuant to section 5/3-115 of the Pension Code. Dr. Reff examined plaintiff on November 7, 2007 and submitted an eight-page report based on his interview with plaintiff and his review of various medical and personnel records.

¶ 20 Dr. Reff opined that “but for having been caught attempting to get reimbursed for

1-10-3793

purchases that she made without proper receipts, it is likely that she would still be working today for the Rolling Meadows Police Department.” He also noted that “[w]hile her problems with getting along with co-workers could be helped with ongoing individual psychotherapy, this is a chronic condition and not one that has contributed to a significant impairment in her capacity to perform the essential features of her job.” Dr. Reff opined that plaintiff had a personality conflict with her coworkers but was not psychiatrically disabled.

¶ 21 *Charles H. Ludmer, M.D., Ph.D.*

¶ 22 Dr. Ludmer was one of the three physicians who examined plaintiff pursuant to section 5/3-115 of the Pension Code. He performed a psychiatric evaluation of plaintiff on November 3, 2007 and produced a three-page report. Dr. Ludmer examined medical records and personnel records. Unlike the other two physicians, Dr. Ludmer concluded that plaintiff was temporarily disabled and that the disability was a “line of duty disability.” He diagnosed plaintiff with Adjustment Disorder with Anxiety and Depressed Mood.

¶ 23 Dr. Ludmer stated:

“She was not alleged to be disabled from police work until late in 2006. Her work record would support that, prior to that time, she functioned well in her role, despite some emotionally disturbing job-related events. The increase in her emotional distress followed the consequences of her transgression with the receipt for expenses. It appears that, if her department had handled that situation differently, instead of escalating it to appear to be in retaliation (leading to an EEOC complaint and a settlement), then her emotional distress might never have

increased to the level that it disabled her from work. At this point, it would be psychologically inadvisable for her to return to work at the Rolling Meadows Police Department. Her disability from that job is not the result of any preexisting condition, but it is related to events, which occurred in the line of duty. Her description of the evolution of her emotional distress is consistent with the results of my examination and review of records.”

¶ 24 *Eric Ostrov, J.D., Ph.D.*

¶ 25 Dr. Ostrov, a psychologist, examined plaintiff on January 15, 2007, at the request of the police chief. He issued his report, a one-page letter, on February 16, 2007. Dr. Ostrov noted that the bases for his opinions included: “a 45-minute interview with [plaintiff]; psychological testing of [plaintiff] using the Personal History Checklist for Adults, the Symptom Checklist-90-Revised, the Shipley Institute of Living Scale, the Personality Assessment Inventory and the Hilson Career Satisfaction Index; a review of relevant medical records obtained with [plaintiff]'s consent; and a transcript of an administrative interview of [plaintiff] taken on January 11, 2007.

¶ 26 Dr. Ostrov opined that plaintiff was “not fit for active duty as a Rolling Meadows police officer.” He also opined that plaintiff “was not forthcoming and was defensive about psychological problems she apparently had in the past.”

¶ 27 *Dr. Michael Edmond Shery*

¶ 28 Dr. Shery, a clinical psychologist, did not provide a report, but testified at the hearing. He was presented by plaintiff on April 1, 2008. Dr. Shery began seeing the plaintiff in December 2007, approximately eight months after she left the police department. He spent a total of 20

1-10-3793

hours treating plaintiff. Dr. Shery testified that he did not review any records from plaintiff's previous treating psychologists or physicians or any of the plaintiff's personnel records. He did not perform any diagnostic tests. Dr. Shery opined that plaintiff should not work as a police officer based on her depression and anxiety. His diagnosis was adjustment reaction with anxiety and depression. Dr. Shery also stated that plaintiff's symptoms – crying, suicidal ideation, homicidal ideation, anger, mood swings and autonomic activity – were triggered by Dr. Ostrov's report that plaintiff was unfit for duty.

¶ 29 *Robert Penn, M.D.*

¶ 30 Dr. Penn had been plaintiff's primary care physician since 1997. On December 19, 2006, plaintiff saw Dr. Penn because she had been suffering from insomnia and anxiety for one month. Plaintiff told Dr. Penn that she had been relieved from duty and the police department was alleging that she was unfit for duty due to her mental and emotional status. Dr. Penn told plaintiff that he had never known her to have psychological issues (mental or emotional) since she has been seeing him. Dr. Penn noted that plaintiff denied suffering symptoms such as panic attacks, memory or concentration problems, obsessive thoughts, compulsive behavior, antisocial behavior, suicidal ideation, or homicidal ideation. Dr. Penn concluded that plaintiff was suffering grief, prescribed a sleeping aid, and ordered a follow-up if her symptoms did not improve or became worse.

¶ 31 *Plaintiff's Testimony*

¶ 32 The Board also heard plaintiff's testimony. She testified that she was no longer able to perform as a police officer because she no longer trusted but despised police officers and wanted

no part of being a police officer. She stated: “It was what I loved to do and it was taken away.”

¶ 33

B. Board Decision

¶ 34 On June 3, 2008, the Board voted 5-0 to deny all of plaintiff's claims for a disability pension. On August 12, 2008, the Board entered its final written decision. In its 29-page written order, the Board made numerous findings of fact, including its findings with respect to all of the physicians and psychologists who examined plaintiff. The Board found the opinions of Drs. Obolsky and Reff to be persuasive and compelling, and agreed with those opinions. The Board did not find Dr. Ludmer's opinions compelling, and gave them no weight. The Board also gave no weight to Dr. Ostrov's opinion in his one-page letter. The board additionally gave no weight to Dr. Shery's testimony and opinions because his diagnosis was based on plaintiff's “subjective and uncorroborated claims regarding her psychiatric condition which have been contradicted and disproved by Dr. Obolsky, Dr. Reff and by [plaintiff's] own primary care physician, Dr. Robert Penn.” The Board also gave no weight to plaintiff's testimony because her testimony did not support her claims and the Board found the opinions of Drs. Obolsky and Reff more credible than it found plaintiff. The Board specifically found:

“Two of the three psychiatric experts, Dr. Obolsky and Dr. Reff, concluded that the Applicant was not disabled for service in the Rolling Meadows Police Department. The Board finds these psychiatrists' opinions are well founded with regard to the Applicant's status. Based upon the opinions of Dr. Obolsky and Dr. Reff, along with the report of Dr. Penn and the Applicant's assertions in her Grievance Complaint that her own clinical psychologist found her fit for duty, the

1-10-3793

opinions of Dr. Ludner, Dr. Ostrov and Dr. Shery concerning the Applicant's subjective and uncorroborated claims regarding her psychiatric condition will be given no weight by this Board.”

The Board concluded that plaintiff was not entitled to a line-of-duty nor a not-on-duty disability pension because she failed to establish that she was physically disabled for service. The Board further concluded that plaintiff was not entitled to a line-of-duty disability pension because she was not disabled while acting in the line of duty.

¶ 35 C. Circuit Court Proceedings

¶ 36 On September 9, 2008, plaintiff filed a complaint for administrative review in the circuit court of Cook County. On November 22, 2010, the circuit court affirmed the Board's decision. Plaintiff now appeals.

¶ 37 STANDARD OF REVIEW

¶ 38 In administrative review cases, we review the administrative agency's decision, not the determination of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006). An administrative agency's findings of fact are deemed *prima facie* true and correct. 735 ILCS 5/3–110 (West 2008); *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). When reviewing an administrative agency's factual findings, we do not weigh the evidence or substitute our judgment for that of the agency. *Devaney v. Board of Trustees of Calumet City Police Pension Fund*, 398 Ill. App. 3d 1, 8 (2010). Our review is limited to ascertaining whether the agency's findings of fact are against the manifest weight of the evidence. *Id.* An administrative agency's factual findings are against the manifest

1-10-3793

weight of the evidence where the opposite conclusion is clearly evident. *Id.* “The mere fact that an opposite conclusion is reasonable or that the reviewing court might have ruled differently will not justify reversal of the administrative findings.” *Robbins v. Board of Trustees of the Carbondale Police Pension Fund*, 177 Ill. 2d 533, 538 (1997). “If the record contains evidence that supports the agency's decision, it should be upheld.” *Robbins*, 177 Ill. 2d at 538. Moreover, “it is not our function to reevaluate witness credibility or resolve conflicting evidence.” *Kramarski v. Board of Trustees of Village of Orland Park Police Pension Fund*, 402 Ill. App.3d 1040, 1048 (2010); see also *Marconi*, 225 Ill. 2d at 540 (“Faced with this conflict of evidence, it was the Board's function, as the finder of fact, to assess the credibility of the documentary information and the testimony of the witnesses and to determine the appropriate weight to be given the evidence”).

¶ 39 A pension board owes a duty to its fiduciaries and beneficiaries. *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 507 (2007); *Marconi*, 225 Ill. 2d at 543. “This fiduciary duty, however, is owed to *all* participants in the pension fund, not just plaintiff.” (Emphasis in original.) *Marconi*, 225 Ill. 2d at 544. A pension board's responsibility encompasses ensuring “adequate financial resources to cover the Board's obligations to pay current and future retirement and disability benefits to those who qualify for such payments” by “screening unqualified or fraudulent disability claims, so that funds are not unfairly diverted to undeserving applicants.” *Id.*

¶ 40

ANALYSIS

¶ 41 Plaintiff has abandoned her argument that she is entitled to a line-of-duty disability

1-10-3793

pension and argues only that she is entitled to a not-on-duty disability pension. She argues that the Board should have disregarded the opinions of the doctors who evaluated her seven months after she applied for her pension; namely, the three physicians “selected by the board” pursuant to the legislative mandate in section 5/3-115 of the Pension Code. She also contends that she is entitled to a not-on-duty disability pension because she is mentally unfit to serve as a police officer based on the revocation of her FOID card.

¶ 42 Section 3-114.2. of the Pension Code states:

“Disability pension--Not on duty. A police officer who becomes disabled as a result of any cause other than the performance of an act of duty, and who is found to be physically or mentally disabled so as to render necessary his or her suspension or retirement from police service in the police department, shall be entitled to a disability pension of 50% of the salary attached to the officer's rank on the police force at the date of suspension of duty or retirement.”

The Board concluded that plaintiff was not entitled to a not-on-duty disability pension because she failed to establish that she was disabled for service in the police department.

¶ 43 As noted earlier, this court must uphold the Board's decision “[i]f the record contains evidence that supports the agency's decision.” *Robbins*, 177 Ill. 2d at 538. Applying this standard, we must affirm the Board's decision because the record clearly contains evidence supporting its decision that plaintiff is not entitled to a not-on-duty disability pension under section 3–114.2 of the Code (40 ILCS 5/3–114.2 (West 2002) because she is not physically or mentally disabled for service in the police department. The Board found that plaintiff was not

1-10-3793

disabled for service based on the opinions of two psychiatric experts, Dr. Obolsky and Dr. Reff, as well as the report of plaintiff's primary care physician, Dr. Penn, and plaintiff's own assertions in her grievance complaint that her own clinical psychologist found her fit for duty. Dr. Obolsky opined regarding plaintiff's credibility that she was "less than forthcoming" indicating "a conscious, willful, and volitional choice on her part when she dissimulates." Dr. Reff opined that "but for having been caught attempting to get reimbursed for purchases that she made without proper receipts, it is likely that she would still be working today for the Rolling Meadows Police Department." The Board agreed with the opinions of Drs. Obolsky and Reff. The Board noted that plaintiff "did not disagree with any of the substantive matters set forth on the doctors' respective reports." The Board also concluded that "[t]he only evidence in the record that would support a finding that [plaintiff] is psychiatrically or psychologically disabled, are [her] subjective complaints, or opinions predicated upon those subjective complaints." The Board specifically found that plaintiff's testimony concerning her limitation and complaints was not credible. As this court has observed:

"In view of their personal knowledge of the peculiar physical and emotional demands of the policeman's job, the members of the boards of trustees of policemen's pension funds, the majority of whom are either active or retired police officers themselves, are obviously in the best position to determine, on the basis of relevant medical data, whether applicants for membership are physically and mentally fit to perform the duties of a police officer." *Sanders v. Board of Trustees of City of Springfield Police Pension Fund*, 112 Ill. App. 3d 1087,

1-10-3793

1091-92 (1983).

¶ 44 A. Opinions of Physicians Selected Pursuant to 40 ILCS 5/3-115

¶ 45 Plaintiff argues, however, that the Board should have given weight to Dr. Ostrov's opinion that plaintiff was unfit for duty because it was provided three months before she was terminated and should have disregarded the opinions of Drs. Obolsky and Reff, whose opinions were given seven months after her termination. Plaintiff relies on *Hahn v. Police Pension Fund of Woodstock*, 138 Ill. App. 3d 206 (1985).

¶ 46 In *Hahn*, four medical experts concluded that a police officer was fit for duty and four concluded he should not return to work. The *Hahn* court concluded that it was “an extremely close question.” *Hahn*, 138 Ill. App 3d at 210. The court decided that the only relevant evidence of the officer's fitness for duty would be those examinations given at or near the time of his removal from active duty, and not the evidence of his condition at a later date. Four psychiatrists had examined the officer at the time he resigned and three had found him unfit for duty. Thus, the *Hahn* court concluded that the Board's decision that the officer was fit for duty was against the manifest weight of the evidence.

¶ 47 *Hahn* is distinguishable from the facts of the instant case. Although Dr. Ostrov examined plaintiff at a time closer to her termination date than did the physicians who examined her pursuant to section 5/3-115 of the Pension Code (40 ILCS 5/3-115 (West 2006)), as the Board noted, Dr. Ostrov provided “no detail or explanation concerning his opinion.” Moreover, his opinion was based upon plaintiff being “not forthcoming and [being] defensive about psychological problems she apparently had in the past.” The Board therefore found that

“[w]hether Dr. Ostrov concluded that [plaintiff] was unfit because of psychological issues or because of [her] lack of veracity cannot be ascertained from the report or from Dr. Ostrov's notes from his interview with [plaintiff.” The Board concluded: “Dr. Ostrov's report leaves the Board guessing as to his opinion and as such, is given no weight by the Board.”

¶ 48 Thus, unlike *Hahn*, the instant case does not involve an extremely close question between various medical experts performing comparable levels of work with differing results. As the trial court noted, the question is which of the medical reports are the most complete and better substantiated. Dr. Obolsky's and Dr. Reff's reports were more thorough, complete, and expert analyses than Dr. Ostrov's one-page letter. Therefore, despite the seven-month time period between plaintiff's termination and the psychiatric evaluations performed by Dr. Obolsky and Dr. Reff, the Board's decision to accord them weight was not improper.

¶ 49 The Board argues that *Hahn* has been abrogated by the amendment of 40 ILCS 5/3-115 which now mandates that a disability applicant be examined by “3 practicing physicians *selected by the board.*” 40 ILCS 5/3-115. The Board further argues that *Hahn* has been overruled by *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497 (2006). In view of our conclusion that *Hahn* is distinguishable from the instant case, we need not address these additional arguments.

¶ 50 B. Revocation of FOID Card

¶ 51 Plaintiff also argues that the Board's decision was against the manifest weight of the evidence because the revocation of her FOID card on April 15, 2008 (approximately one year after she was terminated from the police department) is determinative proof that she was

1-10-3793

mentally unfit to be a police officer. Police officers are exempt from the requirement of carrying a FOID card under the Firearm Owners Identification Card Act . 430 ILCS 65/2(c) (West 2008). Plaintiff asserts, however, that the law that allows revocation of a FOID card is more stringent and specific than the statute that allows a police officer to be granted a not-on-duty disability pension.

¶ 52 The Illinois State Police revoked plaintiff's FOID card pursuant to section 65/8(f) of the Firearm Owners Identification Card Act which states:

“The Department of State Police has authority to deny an application for or to revoke and seize a Firearm Owner's Identification Card previously issued under this Act only if the Department finds that the applicant or the person to whom such card was issued is *or was at the time of issuance:*

* * *

(f) A person whose mental condition is of such a nature that it poses a clear and present danger to the applicant, any other person or persons or the community[.]”

(Emphasis added.) 430 ILCS 65/8 (West 2008).

In its April 15, 2008 letter to plaintiff, the Illinois State Police stated it had revoked plaintiff's FOID card pursuant to this statutory provision, based “upon police reports provided to the Illinois State Police by the Rolling Meadows Police Department.” As the Board notes, the Illinois State Police did not indicate whether it revoked plaintiff's FOID card because it found that her mental condition posed a clear and present danger currently or “at the time of issuance” of the FOID card in 1994.

1-10-3793

¶ 53 For purposes of the statute, “mental condition” is defined by the statute as “a state of mind manifested by violent, suicidal, threatening or assaultive behavior.” 430 ILCS 65/8(f) (West 2008). There is no evidence in the record of any violent, threatening, or assaultive behavior by plaintiff. The only evidence of possible suicidal behavior was a Downers Grove Police Department Report from 1990 in which plaintiff was overcome by carbon monoxide in the garage attached to her home. Plaintiff claimed she was working on a car. Several times during her testimony, plaintiff denied that she attempted suicide in 1990 or that she has ever attempted suicide. As the Board notes: “Presumably, the [Illinois State Police] simply received the 1990 Downers Grove Police Report regarding the plaintiff's alleged suicide attempt and exercised its authority to revoke plaintiff's FOID card.” The record is simply unclear as to why the Illinois State Police revoked plaintiff's FOID card.

¶ 54 The Illinois State Police's revocation of plaintiff's FOID card does not prove that plaintiff was entitled to a not-on-duty disability pension because it does not constitute competent evidence with respect to plaintiff's *current* ability to function as a police officer. Plaintiff has not presented any case law in which a police pension board, in weighing the evidence, has considered the revocation of a FOID card. More importantly, as the trial court noted, the Board based its decision that plaintiff was not unfit for duty on the “thorough, thoughtful, and expert analyses” in the reports of two of the three psychiatric experts who examined plaintiff regarding her alleged disability pursuant to section 5/3-115 of the Pension Code. Plaintiff has presented no evidence that the evaluation in determining the revocation of the FOID card is more complete and better substantiated than the 42-page report submitted by Dr. Obolsky.

1-10-3793

¶ 55 We conclude that the decision of the Board denying plaintiff a not-on-duty disability pension was not against the manifest weight of the evidence. Accordingly, we conclude that the circuit court correctly affirmed the Board's decision of August 12, 2008. The decision of the Board of Trustees of the Rolling Meadows Police Pension Fund and the judgment of the circuit court of Cook County are affirmed.

¶ 56 Affirmed.