

No. 1-11-3170

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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KERRY McGUIRE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	No. 11 CH 3308
THE RETIREMENT BOARD OF THE POLICEMEN'S	)	
ANNUITY AND BENEFIT FUND OF THE CITY OF	)	
CHICAGO,	)	Honorable
	)	Mary Anne Mason,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE CONNORS delivered the judgment of the court.  
Justices Quinn and Simon concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Retirement Board's determination that plaintiff's fibromyalgia did not result from an injury incurred during the performance of an act of duty was not contrary to the manifest weight of the evidence. Accordingly, plaintiff was entitled only to an ordinary disability benefit and not the higher duty-related disability benefit.
- ¶ 2 Plaintiff Kerry McGuire, a Chicago police officer, brings this appeal from an order of the circuit court of Cook County affirming a determination by the Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago (Board) that plaintiff was ineligible to receive duty-related disability benefits because her fibromyalgia, which left her unable to

work, was not caused by an injury which she sustained while on duty. On appeal, plaintiff contends that, based on the medical evidence she presented, the Board should have found that her fibromyalgia was caused by a duty-related injury.

¶ 3 Plaintiff had been a Chicago police officer since September 1994. On July 26, 2009, while she was on patrol, her squad car was struck by another vehicle. Plaintiff sustained multiple injuries, including injury to her cervical spine. She testified at the hearing before the Board that she had been diagnosed with fibromyalgia and that she was unable to return to work. If the fibromyalgia was determined to have resulted from injuries she sustained while on duty, plaintiff would be entitled to a disability benefit of 75 % of her salary. 40 ILCS 5/5-154(a) (West 2010). But if her fibromyalgia did not arise from a duty-related injury, she would be entitled to an ordinary disability benefit of 50 % of her salary. 40 ILCS 5/5-155 (West 2010).

¶ 4 Plaintiff was treated for pain by Dr. Michael McNett, the owner and operator of the Center for Fibromyalgia, Fatigue, and Chronic Pain. Dr. McNett did not testify at the hearing before the Board, but his report was submitted. In that report, Dr. McNett stated that he first examined plaintiff on June 22, 2010. At that time he diagnosed her with fibromyalgia, although it was impossible to determine how long she had this condition. He also stated that although there are multiple possible causes of fibromyalgia, neck trauma has "clearly been shown to be associated with the subsequent development of the condition." In support of this claim, Dr. McNett appended the abstract of a 1997 paper which reported on a study of "fibromyalgia following cervical spine injury." According to the abstract, the study examined 102 patients with neck injuries and a control group of 50 patients with leg fractures. Of those with neck injuries, 21.6 per cent were diagnosed with fibromyalgia, whereas only 1.7 per cent of those with leg fractures were diagnosed with it. Dr. McNett, who described himself in the report as "one of the leading authorities in [fibromyalgia] in the country" concluded that to a reasonable degree of

medical certainty, the July 26, 2009 motor vehicle collision was responsible for plaintiff's fibromyalgia.

¶ 5 This opinion was contradicted at the hearing by Dr. Peter Orris, a professor at the University of Illinois Medical Center. Dr. Orris testified that he was not an expert on fibromyalgia, but he had reviewed the literature on that condition. He had also reviewed plaintiff's medical records. Dr. Orris did not disagree with the diagnosis of plaintiff as having fibromyalgia. He also agreed that plaintiff could not return to work because of this condition. However, it was his opinion that the injury she sustained to her neck in the motor vehicle accident was not the cause of plaintiff's fibromyalgia. In his review of the literature on fibromyalgia he found that traumatic injury was not the predominant cause. He also found that the study relied upon by Dr. McNett was contradicted by other studies. Dr. Orris stated that "everybody would agree" that fibromyalgia was a complex disorder with multiple causes, including psychological and perhaps genetic causes. He stated that although there was some discussion about traumatic injury being a "trigger," this was not well documented in the literature, and some recent literature had come to the opposite conclusion. Dr. Orris testified that according to plaintiff's medical records, she had experienced nine on-duty injuries in her career as a police officer. But according to Dr. Orris, the literature did not support a conclusion that someone who had been injured multiple times was more likely to develop fibromyalgia. More specifically, he testified that the literature on fibromyalgia did not support a relationship between traumatic injury and fibromyalgia.

¶ 6 Based upon this evidence, the Board concluded that plaintiff's fibromyalgia was not duty-related and she was only entitled to ordinary disability benefits. Plaintiff appealed to the circuit court of Cook County, which affirmed the determination of the Board. Plaintiff has now brought this appeal.

¶ 7 Our review is of the agency's determination, not that of the circuit court. *Hollinger International, Inc. v. Bower*, 363 Ill. App. 3d 313, 315 (2005). We will reverse factual determinations of the Board only if they are contrary to the manifest weight of the evidence, where an opposite conclusion is clearly evident. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 534 (2007); *Hollinger*, 363 Ill. App. 3d at 315. In reviewing the Board's determination, we may not substitute our judgment for that of the Board; rather, we must affirm the Board's determination where it is supported by evidence in the record. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992).

¶ 8 Here, the Board accepted the opinion of Dr. Orris that plaintiff's fibromyalgia was not caused by her on-duty automobile accident. Although not an expert on fibromyalgia, Dr. Orris testified that he had reviewed the literature on that condition, as well as plaintiff's medical records. He also testified that, based upon the literature, it was his conclusion that fibromyalgia was not caused by trauma. Dr. McNett did state in his report that he believed plaintiff's fibromyalgia was caused by the cervical injuries she sustained in her on-duty automobile collision. But he based this opinion on a study which did not purport to find a causal relationship between cervical injury and fibromyalgia. Rather, the study found only an association between the two. Furthermore, this was a 14-year-old study which only examined 102 cases of neck injury. The resolution of this conflicting evidence was, in the first instance, a matter for decision by the Board, which we must affirm if the record contains evidence to support it. *Abrahamson*, 153 Ill. 2d at 88. We find that the Board's determination to reject Dr. McNett's opinion of the cause of plaintiff's fibromyalgia was not contrary to the manifest weight of the evidence, where the doctor relied upon a single study which did not support his opinion. The burden was on the plaintiff to prove that she was entitled to a duty-related disability benefit. *Marconi*, 225 Ill. 2d at 532-33. She relied entirely upon the opinion of Dr. McNett, contained in his report. The Board

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found that plaintiff failed to meet her burden of proof and therefore was entitled only to an ordinary disability benefit. We find no basis for disturbing that determination.

¶ 9 Accordingly, we affirm the judgment of the circuit court of Cook County, which upheld the determination of the Board.

¶ 10 Affirmed.