2013 IL App (1st) 121107-U

FIFTH DIVISION
March 22, 2013

No. 1-12-1107

DENISE MAHONEY, Plaintiff-Appellant, v. THE EVERGREEN PARK POLICE PENSION BOARD, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of Cook County No. 11 CH 37325 Honorable Lee Preston, Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice McBride and Justice Howse concurred in the judgment.

ORDER

¶ 1 Held: The decision of the Evergreen Park Police Pension Board denying plaintiff's application for a line-of-duty disability pension is reversed. Circuit court's order affirming the Board's decision is reversed.

¶ 2 Plaintiff Denise Mahoney filed an application for a line-of-duty disability pension under the Illinois Pension Code (40 ILS 5/3–101 *et seq.* (West 2010)) (the Code). Plaintiff, a police officer, claimed that she became disabled when she slipped on ice while exiting her police car and injured her knee. Following an administrative hearing,

defendant, the Evergreen Park Police Pension Board (the Board), found plaintiff was not entitled to a line-of-duty disability pension and awarded her a not-on-duty disability pension. On administrative review, the circuit court of Cook County affirmed the Board's decision. Plaintiff appeals the Board's denial of her request for a line-of-duty disability pension. She argues that (1) the Board's finding that she failed to prove she was injured is against the manifest weight of the evidence and (2) its finding that she failed to prove that her injury, if any, resulted from an act of duty is clearly erroneous. We reverse.

¶ 3 Background

¶ 4 Plaintiff, a sergeant with the Evergreen Park Police Department, filed an application for a disability pension with the Board on November 1, 2010. On her application, she made the following statements. Plaintiff claimed that she was injured on January 24, 2009, while on patrol as the day shift watch commander. When she heard an Evergreen Park police officer request assistance regarding an offender who fled on foot, she immediately proceeded to the officer's location, arrived on the scene and left her squad car to assist the officer. She described the injury as follows:

> "As I was trying to reach the officer on foot[,] my right foot landed on a patch of ice. My right foot went forward and my right knee twisted to the right. I heard a popping noise and my knee buckled. I immediately felt pain in my knee and within minutes it began to swell."

Plaintiff reported that she had four operations on her knee including, in July 2010, a

total knee replacement. She stated that, as a result of permanent physical restrictions following the knee replacement, she was told she could not return to her position as afternoon patrol sergeant and there was no position that could accommodate her. Plaintiff sought a "line-of-duty" disability pension pursuant to section 3–114.1 of the Code. 40 ILCS 5/3-114.1 (West 2010). She requested, in the alternative, a "not-on-duty" disability pension pursuant to section 3-114.2 of the Code. 40 ILCS 5/3-114.2 (West 2010).

¶ 5 On July 5, 2011, the Board held an administrative hearing on plaintiff's application. Plaintiff gave the following testimony. She had started working for the Evergreen Park Police Department in January 2002 and ultimately attained the rank of sergeant. At 9:00 a.m. on January 24, 2009, she was "out on the street" as the shift supervisor when she heard a radio call by an officer in foot pursuit of a subject. Plaintiff was driving to the officer's location in her squad car when she heard another officer, Officer Johnson, radio in a new location for the subject. Plaintiff diverted to Officer Johnson's location and arrived on the scene.

¶ 6 Plaintiff testified that she parked her squad car facing northbound and saw Officer Johnson further north on the street with the subject. She immediately exited her car and ran to assist Officer Johnson. Evergreen Park police officers LaCompte and Camer were also at the scene, as well as several Chicago police officers. Plaintiff stated she was already out of her car when Officers LaCompte and Camer arrived. She testified that the weather was cold, there "was some ice and snow on the ground"

and the sidewalk had "thick patches of ice and some parts snow."

¶ 7 Plaintiff testified that, as she exited her car to assist Officer Johnson with the subject, her right foot landed on a piece of ice and went forward. The patch of ice was "rather large" and directly outside her car door "up by the front tire." She had put her left foot down, then her right foot and began to run at the same time. Her right knee went to the right and she heard a popping sound. She felt immediate pain, but continued on to Officer Johnson's location. Plaintiff slowed for a minute but then continued on, running the "few 100 feet" to where Officer Johnson was with the subject. She testified she hurt her knee attempting to run slipping on the ice. She stated she "began to run as [she] exited the squad car" because she heard Officer Johnson on the radio calling out verbal commands to the subject and the subject was not complying. She came to the assistance of Officer Johnson. Officer Johnson was putting handcuffs on the subject when plaintiff reached him. She told Officer Johnson that she injured her knee.

¶ 8 Plaintiff testified that, when she arrived back at the police station, she felt pain in her knee, saw her knee was swollen and informed her deputy chief of the injury. Plaintiff then went to the emergency room at Little Company of Mary Hospital, where X-rays were taken of her knee. Plaintiff's knee was bandaged and she was given crutches, pain medication and a referral for an orthopedic doctor. Plaintiff filed a written report with the police department regarding her injury.

¶ 9 Plaintiff testified that she ultimately underwent five surgeries on her knee. On

April 24, 2009, she had arthroscopic surgery for a meniscus repair. On October 21, 2009, she had surgery for a lateral release. On April 28, 2010, she had a partial knee replacement. On July 28, 2010, she had a total knee replacement. On June 15, 2011, she had arthroscopic surgery with debridement and manual manipulation of the prosthesis. Plaintiff testified that, prior to January 24, 2009, she had never sustained any type of injury to her right knee, had no symptoms related to her right knee and had not received any medical treatment or diagnosis related to her right knee.

¶ 10 The Board viewed a video recording taken by the dashboard camera on Officers LaCompte and Camer's squad car. It noted that, at 09:15:35, the audio on the recording reflected that the police dispatcher announced the subject was in custody. The Board stated the recording showed Officers LaCompte and Camer's squad car arriving at the scene at 09:15:56. It showed plaintiff seated in her squad car, which was parked facing LaCompte and Camer's car. It showed she exited her car after LaCompte and Camer's arrival.

¶ 11 Questioned regarding the video recording, plaintiff testified that she did not hear the dispatcher notify responding officers that the subject was in custody until she was outside her squad car and approaching Officer Johnson. When she exited her car, she did not know that the subject was in custody. Plaintiff testified she was not seated in her car at 09:15:35. As soon as she arrived on the scene, she parked her car to exit it. She stated she was in the process of exiting her car and did not know whether Officers LaCompte and Camer's squad car was already parked or whether it was just arriving

when she exited her car.

¶ 12 Documentary evidence admitted by the Board showed as follows. Plaintiff's medical record from Little Company of Mary Hospital showed that plaintiff reported to the emergency room at the hospital at 1:45 p.m. on January 24, 2009, complaining of pain and injury to her right knee and foot. The record stated "while on a foot pursuit [plaintiff] twisted her [right] knee" and "chasing someon[e] on [foot] slipped on ice." It noted "observable" swelling in plaintiff's right knee and her report of sharp pain and difficulty standing on her right leg.

¶ 13 The hospital record reflected that an x-ray of plaintiff's knee showed no fracture or dislocation. Hospital staff had diagnosed plaintiff as having a "sprained right knee (ligamentous sprain)" and told her she had "stretched and torn some of [her] ligament fibers." Plaintiff's knee was wrapped with an Ace bandage. She was ordered her to apply ice packs, prescribed ibuprofen and referred to Southwest Orthopedics for an orthopedic evaluation.

¶ 14 On January 28, 2009, plaintiff went to Dr. Chandler at Southwest Orthopedics for an evaluation. Dr. Chandler's intake report showed that plaintiff told him that she injured her knee "when she was trying to get out of her squad car and she slipped on a patch of ice. Her foot went one way and her knee went another." Plaintiff complained to Dr. Chandler of pain, swelling, a clicking sensation in her knee and joint pain unrelieved by ibuprofen. Dr. Chandler noted that the Little Company of Mary x-ray had shown "no radiographic evidence of any osteoarticular abnormality of the right knee."

He diagnosed plaintiff as having a right knee medial meniscus tear and a sprained medial collateral ligament (MCL) of the right knee. Dr. Chandler administered a corticosteroid injection in plaintiff's right knee and ordered that she could not return to work until after a magnetic resonance image (MRI) of her knee had been taken and reviewed.

¶ 15 On January 30, 2009, an MRI was taken of plaintiff's knee. The radiologist's report summarized the result of the test as "unremarkable MRI of the right knee without evidence of a meniscal tear." Dr. Chandler's follow-up report revised his diagnosis to "sprained right knee," prescribed physical therapy and pain medication and declared plaintiff "fit for work - with restrictions" on her physical activities.

¶ 16 On February 16, 2009, plaintiff returned to Dr. Chandler for a followup visit. Dr. Chandler's report showed that plaintiff complained that the pain in her knee was worsening, physical therapy was limited because of the amount of pain she was in and the pain medication was not working. Dr. Chandler diagnosed "right knee medial meniscus tear and MCL sprain right knee." He prescribed an anti-inflammatory medication, a knee brace and physical therapy.

¶ 17 On February 26, 2009, plaintiff went to see Dr. Baylis, an orthopedic surgeon. In his intake report, Dr. Baylis recorded that plaintiff injured her knee when "she was going to get a suspect and fell kind of [*sic*] having a valugus strain to her knee." She denied a history of similar problems in the past and reported pain with walking. Dr. Baylis diagnosed an "MCL strain, grade I to grade II." He ordered plaintiff to continue with

physical therapy, wearing the brace and performing only light duty at work.

¶ 18 On March 4, 2009, plaintiff again went to see Dr. Chandler. His report showed that plaintiff complained that her pain was worse despite physical therapy. Dr. Chandler diagnosed a sprained right knee MCL, reduced plaintiff's physical therapy sessions and prescribed light work duty.

¶ 19 On March 25, 2009, plaintiff returned to Dr. Chandler for another followup visit. Dr. Chandler's report showed plaintiff told him she fell at work on March 20, 2009, and "sustained an ankle and knee injury." Plaintiff told him she was wearing her knee brace when the new injury occurred and "the knee and foot 'gave out.' " An x-ray showed no abnormalities. Dr. Chandler diagnosed a sprained MCL ligament in plaintiff's right knee, right ankle sprain and internal derangement of the medial meniscus on her right knee. He ordered an MRI, physical therapy and anti-inflammatory medication.

¶ 20 An MRI of plaintiff's knee was taken on April 8, 2009. The radiologist's report summarized the result of the test as small joint effusion; moderate lateral patellofemoral degenerative change; subchondral cyst lateral tibial plateau; and meniscal degenerative change at the posterior and medial aspect of lateral meniscus. Dr. Chandler's follow-up report stated that plaintiff continued to suffer knee pain, her knee had "been giving out on her even when wearing the knee brace" and she now had foot pain as a result of her "new injury." He reviewed the MRI result and diagnosed plaintiff with a sprained MCL ligament of her right knee, right ankle sprain and internal derangement of the medial meniscus on her right knee. After plaintiff told him that she could not live with her

current level of pain, he ordered an arthroscopy of her right knee with lateral meniscectomy. Plaintiff underwent the surgery on April 24, 2009.

¶ 21 Additional reports by Dr. Chandler and his colleague, Dr. Durudogan, showed plaintiff failed to improve after the surgery, despite months of continued physical therapy and additional injections in her knee. She subsequently had four more surgeries, including a total knee replacement and a subsequent manipulation of the prosthesis.

¶ 22 A January 24, 2009, interdepartmental memorandum from plaintiff to Deputy Chief Gutkowski showed that plaintiff reported to Gutkowski that she had suffered an injury that day. She reported that, as she was exiting her squad car in order to assist Officer Johnson, her right knee twisted and she felt a sharp pain as she began to run to his location. Plaintiff informed Gutkowski that her knee began to swell as the afternoon went on, the pain became more intense and she had gone to the hospital.

¶ 23 A January 24, 2009, interdepartmental memorandum from Police Lieutenant Donovan to Police Captain Eisenbeis reported that plaintiff phoned Donovan at 1 p.m. on January 24, 2009, to advise him that she had injured her knee and needed to go to the hospital.

¶ 24 A March 23, 2009, interdepartmental memorandum from plaintiff to Chief Saunders reported that plaintiff was injured on March 20, 2009, as she was exiting the women's bathroom at the police station. Plaintiff stated her "right knee, previously injured on 1/24/09 gave out. As it gave out[, her] right ankle and foot bent reaching the

floor. [She] attempted to bring [her] foot back upright but it took several tries." She reported that she had continuous pain while standing and walking and had scheduled an appointment with Dr. Chandler.

¶ 25 Eight reports prepared by Detective Sergeant Jarzen in late September 2010 and early October 2010 detailed the results of his interviews with the other police officers who were at the scene when plaintiff alleged she injured her knee. The reports showed as follows: Officer Bahr remembered that plaintiff responded to Officer Johnson's location after hearing his radio call regarding the fleeing offender. Bahr also responded to the scene, saw nothing unusual and did not learn until later that plaintiff had been injured. Officer Brenza remembered that, when he arrived at the scene, the offender was in custody and plaintiff was standing and talking to other officers. He saw her walk back to her squad car and "all appeared normal."

¶ 26 Officer Camer remembered he and Officer LeCompte were riding together and responded to Officer Johnson's location. When they arrived at the scene, they exited their squad car and met plaintiff in the street. She had just exited her squad car, which was parked facing LeCompte and Camer's squad car. Camer did not see plaintiff get hurt or that she was limping or in apparent pain on the scene. He learned later that she had injured her knee as a result of the incident.

¶ 27 Officer LeCompte remembered he and Officer Camer exited their squad car at the scene and plaintiff pulled up at that time. LeCompte saw plaintiff in his peripheral vision. He saw that he did not need to assist Officer Johnson because the offender was

in custody. He did not see plaintiff assist in the apprehension of the offender. LeCompte did not observe any officer sustain an injury during the incident nor did he notice plaintiff limping or complaining of knee or leg pain.

¶ 28 Officer Johnson recalled seeing plaintiff at the scene but was not sure if she exited her squad car. Plaintiff did not assist in the apprehension and handcuffing of the offender. Johnson did not observe any officer sustain an injury at the scene. He learned later that plaintiff was injured during the incident. Officer Dwyer reported that when he arrived on the scene, plaintiff was outside her car, conversing with other officers. She displayed no signs of injury. Dwyer stated plaintiff appeared fine and uninjured. He saw her walk to her squad car and did not see her limping or favoring one leg.

¶ 29 Officer Stiers told Detective Sergeant Jarzen that he and Officer Trujillo were riding together and were the first officers to encounter the offender, who fled on foot. Stiers and Trujillo then responded to Johnson's location. Stiers did not notice any officers injured at the scene and learned later that plaintiff had been injured during the incident. Officer Trujillo reported that he and Officer Stiers responded to Officer Johnson's location after Trujillo had chased the offender on foot and lost sight of him. Trujillo did not observe anyone get injured during the incident and only later learned that plaintiff went to the hospital. Trujillo stated that it was cold outside and there was snow in the backyards but the streets were free and clear of ice. He told Detective Sergeant Jarzen that he had not been "wary" of any icy, snowy conditions because, otherwise, he

would not have chased the offender on foot.

¶ 30 Pursuant to section 3-115 of the Code (40 ILCS 5/3-115 (West 2010)), three independent physicians selected by the Board, Drs. Mitton, Cannestra and Hill, performed independent medical evaluations of plaintiff. Each physician certified that plaintiff was disabled and prepared a report of their findings. The Board admitted the reports into evidence.

¶ 31 Dr. Mitton reported that he examined plaintiff on April 21, 2011, and reviewed her medical and physical therapy records. He stated his opinion that she was permanently disabled as a result of her knee replacement. He diagnosed her as suffering right knee chondromalacia patella, right knee medial meniscal tear and right knee degenerative arthritis. Dr. Mitton stated that plaintiff did not suffer any known preexisting conditions and he found her explanation of how the injury occurred plausible and consistent with his findings. He opined that "Sgt. Mahoney's disability is directly related to the January 24, 2009[,] on-duty incident" and "her on-duty activities of January 24, 2009." Dr. Mitton stated that he knew of no further medical treatment that would allow plaintiff to return to full unrestricted police duties.

¶ 32 Dr. Cannestra examined plaintiff on April 29, 2011. He reviewed her medical records, physical therapy records, her application for benefits and the video recording from Officers LeCompte and Camer's squad car. He stated his opinion that plaintiff was permanently disabled. Dr. Cannestra recorded that plaintiff told him her injury occurred when her right foot slipped and her knee twisted when she stepped on ice and

snow exiting her squad car. She told him she heard a pop and was able to walk but not run. She described the incident as a fluid motion of the leg, with no knee buckle or giving out to the point of causing her to fall.

¶ 33 Dr. Cannestra's review of the video recording showed him plaintiff did, in fact, not run and "exiting her vehicle showed no obvious injury." He noted she did not appear to have slipped or twisted her knee, the video showed no obvious buckling or giving out of her right leg and she "was able to exit her vehicle and walk towards a nearby officer."

¶ 34 Dr. Cannestra found the video recording to be consistent with the history plaintiff had provided to him. He found it clear from the medical records that plaintiff had no previous right knee problem or injury and found it documented that she had a second injury on March 20, 2009, at work. It was Dr. Cannestra's opinion that, "[g]iven the lack of medical records or documentation to the contrary, it does appear that her disability is a direct result of the [January 24, 2009] incident."

¶ 35 Dr. Hill examined plaintiff on May 4, 2011, and reviewed her medical records. He stated that plaintiff's disability was permanent and the only pre-existing condition he found in the record was the fact that she was inherently hyper-mobile. It was Dr. Hill's opinion that "her injury of January 24, 2009[,] damaged the articular surface of her patellofemoral joint which lead to her subsequent four procedures."

¶ 36 On September 15, 2011, the Board reconvened. It voted unanimously to deny plaintiff a line-of-duty disability pension but awarded her a not-on-duty disability pension. In its written order, the Board stated that plaintiff proved that she is physically

disabled. It found the disability necessitated her suspension or retirement from police service and she was at least entitled to a not-on-duty disability pension.

¶ 37 The Board found plaintiff failed to prove that she suffered an accident or injury on January 24, 2009, or that any injury she may have suffered on that date resulted from or was incurred in the performance of an act of duty. The Board found plaintiff's testimony regarding how she was injured on January 24, 2009, was not credible and did not comport with the objective evidence.

¶ 38 The Board relied on what it found to be inconsistencies between the evidence and plaintiff's testimony and written statements. It pointed to plaintiff's statements that she exited her car immediately upon arriving at the scene, her right foot slipped on a "rather large" patch of ice outside her car door and her knee started to swell within minutes. The Board found that the video showed plaintiff was still in her car when LeCompte and Camer arrived, it did not show a large patch of ice outside plaintiff's car and plaintiff had also stated that she did not notice the swelling until she returned to the police station.

¶ 39 The Board pointed to plaintiff's statements that she had slipped and run at the same time, she had run the entire distance to Officer Johnson to come to his aid and she had told Johnson of her injury. The Board found the video did not show plaintiff slipping or running and, the dispatcher's announcement that the offender had been apprehended before plaintiff exited her car, showed that Officer Johnson did not need plaintiff's aid. The Board also pointed out that Officer Trujillo and Dr. Cannestra both

stated the streets were clear of ice and snow. The Board further pointed out that all the officers who had been interviewed regarding the incident, including Officer Johnson, were unaware while at the scene that plaintiff had injured her knee. It stated that the medical records showed plaintiff provided varying versions of the incident to her doctors and those versions were also inconsistent with the record.

¶ 40 The Board held that, "[b]ased on all of the aforementioned inconsistencies, the Board rejects the causation opinions of the [independent medial examiners] who predicated their opinions on [plaintiff's] verbal statements regarding how she injured her knee." The Board then noted that the first MRI, on January 24, 2009, was "unremarkable ... without evidence of a meniscal tear." It stated that, not until after plaintiff's knee gave out on March 20, 2009, did an MRI show the joint effusion and degenerative changes that necessitated her surgeries. The Board, therefore, held that plaintiff did not prove that she injured her knee on January 24, 2009, as she claimed.

¶ 41 The Board then found, after assuming for the sake of argument that plaintiff did injure her knee while exiting her squad car on January 24, 2009, that the injury was not incurred in and did not result from the performance of an act of duty. It held that plaintiff's exiting the squad car did not involve a special risk not ordinarily assumed by citizens who exit cars in the ordinary walks of life. The Board stated that the video showed that the offender was already in custody when plaintiff exited her car, she did not exit the car in a quick and urgent manner and she was not responding to assist with the apprehension. It held that, if plaintiff did suffer an injury on January 24, 2009, it was

not incurred in the performance of an act of duty within the meaning of section 3-114.1 of the Code. The Board denied plaintiff's application for a line-of-duty disability pension and granted her a not-on-duty disability pension.

¶ 42 Plaintiff filed a complaint for administrative review of the Board's decision in the circuit court of Cook County. The court denied her complaint and affirmed the decision of the Board. Plaintiff filed a timely appeal.

¶ 43 Analysis

¶ 44 1. Standard of Review

¶ 45 Plaintiff argues that the Board's denial of her application for a line-of-duty disability pension should be reversed. In an administrative review case, we review the decision of the agency, not that of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006). We are limited to considering the evidence submitted in the administrative hearing and may not hear additional evidence for or against the agency's decision. *Marconi*, 225 Ill. 2d at 532.

¶ 46 The standard of review we use to consider administrative decisions depends on the question presented. *Marconi*, 225 Ill. 2d at 532; *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill.2d 191, 205 (1998). We review a question of fact under the manifest weight of the evidence standard, a question of law *de novo* and a mixed question of law and fact under the clearly erroneous standard. *Marconi*, 225 Ill. 2d at 532. Under any standard of review, the burden of proof in an administrative proceeding lies with the plaintiff. *Marconi*, 225 Ill. 2d at 532-33. To determine the standard of

review, we look at the questions presented.

¶ 47 Plaintiff makes two arguments.[1] She argues that the Board erred in finding that she failed to prove that she suffered an injury or accident on January 24, 2009. We review this purely factual determination under the manifest weight of the evidence standard of review. *Marconi*, 225 Ill. 2d at 534. On administrative review, we take an agency's findings of fact as *prima facie* true and correct. *Marconi*, 225 Ill. 2d at 534. An agency's ruling on a question of fact will only be reversed if it is against the manifest weight of the evidence, *i.e.* only if the opposite conclusion is clearly evident. *Marconi*, 225 Ill. 2d at 534. We will not reverse an agency's finding of fact merely because an opposite conclusion might be reasonable or we might have ruled differently. *Marconi*, 225 Ill. 2d at 534. If the record contains evidence to support the agency's decision, we must affirm that decision. *Marconi*, 225 Ill. 2d at 534.

¶ 48 Plaintiff also argues that the Board erred in finding that plaintiff failed to prove that any injury she may have suffered on January 24, 2009, resulted from or was incurred in the performance of an act of duty. This determination requires the application of disputed facts to the definition of an "act of duty," a combined question of law and fact that we review under the clearly erroneous standard. *Rose v. Board of Trustees of Mount Prospect Police Pension Fund*, 2011 IL App (1st) 102157, ¶69. Under this standard, we afford some deference to the agency's experience and

[1] There is no legal issue regarding whether plaintiff is physically "disabled" within the meaning of the Code. The Board found plaintiff was permanently disabled from service as a police officer and entitled to, at least, a not-on-duty disability pension.

expertise and must accept the agency's finding unless, after reviewing the record, we are 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, 391-95 (2001) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). Although this standard is largely deferential, it does not require a reviewing court to "blindly defer to the agency's decision." *AFM Messenger*, 198 Ill. 2d at 395.

¶ 49 1. Injury on January 24, 2009

¶ 50 Plaintiff argues the Board's finding that plaintiff failed to prove that she suffered an injury or accident on January 24, 2009, should be reversed. Although we afford considerable weight to the Board's factual and credibility determinations, nonetheless " '[e]ven under the manifest weight standard applicable in this instance, the deference we afford the administrative agency's decision is not boundless.' " *Kouzoukas v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 234 Ill. 2d 446, 465 (2009) (quoting *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 507 (2007)).

> "[O]ur review cannot amount to a rubber stamp of the proceedings below merely because the Board heard witnesses, reviewed records, and made the requisite findings. [Citations.] Even when the decision is supported by some evidence, which if undisputed would sustain the administrative finding, it is not sufficient if upon a consideration of all the evidence the finding is against the manifest weight." *Bowlin v. Murphysboro Firefighters Pension Board of Trustees*, 368 Ill.

App. 3d 205, 211-12 (2006).

"When reviewing an administrative agency's decision, we may put aside any findings which are clearly against the manifest weight of the evidence." *Kouzoukas*, 234 Ill. 2d at 465.

¶ 51 After a consideration of all of the evidence, we find no competent evidence in the administrative record to support the Board's finding that plaintiff failed to prove that she was injured on January 24, 2009. Plaintiff immediately reported the injury to her supervisor. She then went to Little Company of Mary Hospital complaining of pain and swelling in her knee. The hospital's records note the "observable" swelling in plaintiff's knee and her report of pain and difficulty standing. The hospital diagnosed plaintiff as having a sprained right knee and told her she had "stretched and torn some of [her] ligament fibers," bandaged her knee and referred her for an orthopedic evaluation.

¶ 52 Both of the doctors who examined plaintiff shortly after the January 24, 2009, incident diagnosed her with an injury to her right knee requiring treatment. On January 28, 2009, orthopedic surgeon Dr. Chandler diagnosed plaintiff as having a right knee medial meniscus tear and an MCL of the right knee. He administered a corticosteroid injection in plaintiff's right knee and ordered an MRI of her knee. A few days later, after considering the "unremarkable MRI of the right knee without evidence of a meniscal tear," Dr. Chandler diagnosed a "sprained right knee," prescribed physical therapy and pain medication and declared plaintiff "fit for work - with restrictions."

¶ 53 In mid-February, plaintiff complained that the pain in her knee was worsening

and Dr. Chandler again diagnosed "right knee medial meniscus tear and MCL sprain right knee." On February 26, 2009, orthopedic surgeon Dr. Baylis diagnosed an "MCL strain, grade I to grade II." On March 4, 2009, plaintiff reported to Dr. Chandler that her pain was worse despite physical therapy and he again diagnosed a sprained right knee MCL, reduced her physical therapy sessions and prescribed light work duty. The hospital and the doctors' examinations all showed that plaintiff injured her knee on January 24, 2009.

¶ 54 The Board points out that the first MRI scan, taken on January 30, 2009, was, according to the examining radiologist, an "unremarkable MRI of the right knee without evidence of a meniscal tear." Although the MRI showed no abnormality explaining the reason for plaintiff's knee pain, this does not mean that plaintiff failed to present objective evidence of her pain or that she did not prove that she was injured on January 24, 2009. *Kouzoukas*, 234 Ill. 2d at 465. The hospital and doctors' observations and diagnoses are, themselves, objective evidence of plaintiff's pain and injury resulting from the January 24, 2009, incident. *Kouzoukas*, 234 Ill. 2d at 466.

¶ 55 Further, the three independent medical examiners retained by the Board, Drs. Mitton, Cannestra and Hill, all found that plaintiff's disability was related to the January 24, 2009, incident. Each came to this conclusion after examining plaintiff and reviewing her medical records. Dr. Mitton stated that he found plaintiff's explanation of how the injury occurred plausible and consistent with his findings. Dr. Hill concluded that plaintiff's "injury of January 2009[,] damaged the articular surface of her patellofemoral

joint which lead to her subsequent four procedures." Dr. Cannestra concluded that, "[g]iven the lack of medical records or documentation to the contrary, it does appear that her disability is a direct result of the [January 24, 2009] incident." Dr. Cannestra went so far as to examine the video recording and found that it was consistent with the history plaintiff provided to him. Each of these doctors found plaintiff sustained a disabling injury on January 24, 2009.

¶ 56 The Board rejected the causation opinions of its own independent medical experts on the basis that the doctors had predicated their opinions on plaintiff's verbal statements regarding how she injured her knee and the Board found plaintiff was not a credible witness. It found her testimony and statements rife with inconsistencies. However, it is well recognized that the assumption is "that patients tell their doctors their true conditions and have no motive to falsify." *Lambert v. Downers Grove Fire Department Pension Board*, 2013 IL App (2d) 110824, ¶27 (citing *Roszak v. Kankakee Firefighters' Pension Board*, 376 Ill. App. 3d 130, 143-44 (2007)).

¶ 57 We agree with the Board that plaintiff's various statements regarding the circumstances surrounding her injury were inconsistent with other evidence. For example, plaintiff stated she ran to Officer Johnson but the video shows she walked. She stated her help was needed with the offender but the evidence shows the offender was already in custody when she arrived. She stated she told Officer Johnson about her injury but Officer Johnson stated he knew nothing about it until later.

¶ 58 However, plaintiff's statements regarding exactly how she injured her knee were

not inconsistent. Plaintiff consistently stated that she slipped on ice with her right foot, her right knee twisted, she heard a pop and she felt immediate pain. This account of her injury is reflected in her application for a disability pension, in her testimony and in her medical records as having been told to all of the examining physicians. Plaintiff had stated her knee swelled up. The Little Company of Mary medical record, made only a few hours after the injury, supports this assertion.

¶ 59 The Board relied on the video recording and the other officers' recollections of the incident in determining that plaintiff's account of her injury was contradicted by the evidence. The video recording and the officers' statements are not inconsistent with plaintiff's statement of how she injured her knee on January 24, 2009. Our review of the video recording shows that the squad car driven by Officer LeCompte arrived at the scene at 09:15:53. The video shows plaintiff's squad car, with lights flashing, was already parked further up the street. It was parked behind another car and facing LeCompte's car. Plaintiff is seen opening the door to her squad car at 09:15:55, within two milliseconds of when LeCompte's car came to a stop. She exits her car and starts walking in LeCompte's direction. The video does not show her slip, twist, limp or delay her progress. There is no visible ice or snow on the street in front of LeCompte's car.

¶ 60 We grant that the video contradicts plaintiff's statements that she ran to assist Officer Johnson. She clearly did not run and, as the dispatcher's recorded voice shows, the offender was already in custody when plaintiff exited her car and haste was arguably not necessary. But this does not mean that plaintiff was not injured as she

described. Plaintiff claimed her right foot slipped, her right knee twisted, she heard a pop and then felt immediate pain. None of this is visible on the video but we do not think it necessarily would be visible to an observer.

¶ 61 The way plaintiff described the injury indicates it occurred quickly and entirely inside her knee. Unless plaintiff stumbled or fell, there would be nothing to show that she twisted her knee when she exited her car. Further, the video image is indistinct and plaintiff is partially hidden by her driver-side door. We cannot see exactly what happened when plaintiff exited her car. We also cannot see whether there is ice on the street where plaintiff stepped out of her car because the area is in shadow on the recording. The fact that there is no ice visible in front of Officer LeCompte's car does not mean there was no ice next to plaintiff's car. There is, however, quite an abundance of ice and snow visible in the surrounding neighborhood. Contrary to the Board's finding, the video recording does not contradict plaintiff's claim that she was injured on January 24, 2009. In fact, it neither verifies nor contradicts plaintiff's claim that she was injured on January 24, 2009.

¶ 62 Similarly, the officers' accounts of the incident neither verify nor contradict plaintiff's assertion that she was injured on January 24, 2009. Their statements show that the officers saw nothing unusual at the scene and did not know about plaintiff's injury until later. Contrary to the Board's finding, the fact that the officers saw and knew nothing about the injury while at the scene does not mean that the injury did not happen. Ultimately, we find any discrepancies between plaintiff's testimony and the

video recording and the officers' accounts are tangential to the issues before the Board and did not impact plaintiff's veracity concerning her injury. See *Lambert*, 2013 IL App (2d) 110824, ¶29; *Roszak,* 376 Ill. App. 3d at 139.

¶ 63 After examining all of the evidence in the administrative record, we reject the Board's finding that plaintiff failed to prove that she was injured on January 24, 2009. The evidence showed plaintiff immediately reported her injury and went to the hospital, her statements regarding exactly how she injured her knee were consistent and all of her examining physicians found she injured her right knee on January 24, 2009. Through the course of events, she had to undergo several medical examinations, two MRI's and five surgeries, one of which was a total knee replacement. The Board's decision that plaintiff did not prove she was injured on January 24, 2009, is against the manifest weight of the evidence.

¶ 64 2. Act of Duty

¶ 65 Plaintiff argues that the Board's finding that, "if she did suffer an injury on January 24, 2009, it was not incurred in and did not result from the performance of an act of duty within the meaning of Section 114.1 of the Pension Code" must be reversed. The Code provides different pension benefits depending upon the circumstances of a police officer's incurred disability. *Rose*, 2011 IL App (1st) 102157, ¶70. An officer who is physically disabled "as a result of sickness, accident, or injury incurred in or resulting from the performance of an act of duty" is entitled to a "line-of-duty" pension equal to 65% of the salary attached to his or her rank. 40 ILCS 5/3–114.1 (West 2010); *Rose*,

2011 IL App (1st) 102157, ¶70. On the other hand, an officer disabled "as a result of any cause other than the performance of an act of duty" is entitled to a "not-on-duty" disability pension of only 50% of the applicable salary. 40 ILCS 5/3–114.2 (West 2010); *Rose*, 2011 IL App (1st) 102157, ¶70.

¶ 66 The term "act of duty" in section 3-114.1 is construed in accordance with the definition of "act of duty" as used in section 5-113 of the Code (40 ILCS 5/5-113 (West 2010)). *Rose*, 2011 IL App (1st) 102157, ¶72. Section 5-113 defines an "act of duty" as "[a]ny act of police duty inherently involving special risk, not ordinarily assumed by a citizen in the ordinary walks of life, imposed on a policeman." 40 ILCS 5/5–113 (West 2010).

¶ 67 In *Johnson v. Retirement Board of Policemen's Annuity & Benefit Fund*, 114 Ill. 2d 518 (1986), our supreme court interpreted the definition of an "act of duty " in the context of an application for a line-of-duty disability pension such as that at issue here. It found that the term "special risk " used in section 5-113 is not limited to inherently dangerous activities. *Johnson*, 114 Ill. 2d at 521. The court noted that police officers discharging their duties perform many tasks similar to those involved in civilian occupations, such as driving a car, climbing stairs and crossing streets. *Johnson*, 114 Ill. 2d at 521-22. Therefore, when determining whether an officer is entitled to a line-of-duty pension, the focus is on "the capacity in which the police officer is acting" at the time of the injury rather than on whether the officer is performing an act unique to his or her occupation. *Johnson*, 114 Ill. 2d at 522 (supreme court held that a police officer's

action in crossing an intersection to respond to a citizen's call for assistance, during which he slipped and was injured, was an "act of duty" as defined by the Code).

¶ 68 Following *Johnson*, appellate courts considering whether an officer was entitled to an “act of duty” pension have focused on the capacity in which the officer was acting, rather than on the specific act that caused the injury. See *Rose*, 2011 IL App 102157, ¶¶ 76, 77, 84 (quoting *Johnson*, 114 Ill. 2d at 522) (court held that officer involved in an accident while driving a squad car was performing the act of driving in the capacity of a patrol officer, which involved "special risks" and required "special skills," such as " 'having his attention and energies directed towards being prepared to deal with any eventuality' "); *Jones v. Board of Trustees of the Police Pension Fund of the City of Bloomington*, 384 Ill. App. 3d 1064, 1074 (2008) (court held that an officer injured while driving a transport van on routine patrol was performing an “act of duty” because, “even if driving a car involves only an ordinary risk, [the officer] was acting in a capacity that involved special risk when he was injured - routine patrol”); *Alm v. Lincolnshire Police Pension Board*, 352 Ill. App. 3d 595, 602 (2004) (court rejected the pension board's finding that a police officer who injured his knee while on bicycle patrol was not entitled to a “line-of-duty” pension because riding a bicycle did not constitute performing an “act of duty”); *Wagner v. Board of Trustees of Police Pension Fund of Belleville*, 208 Ill. App. 3d 25, 29 (1991) (where an officer was injured when his leg fell through a rotted plank on a porch while serving a notice to appear, the court held that "while the act of walking across a porch is hardly unique to police officers, serving notices to appear generally

is").

¶ 69 The Board found plaintiff's injury was not incurred in and did not result from an act of duty under section 3-114.1 because, "[u]nder the circumstances present in this case and the facts in the record, [plaintiff's] capacity of exiting the squad car did not involve a special risk not ordinarily assumed by citizens who exit cars in ordinary life." Now, on appeal, the Board states that it "agrees with [plaintiff] that **if** (emphasis supplied) [plaintiff's] disability resulted from the January 24, 2009, incident, as she claimed, the disabling injury might have resulted from the performance of an 'act of duty' within the meaning of 40 ILCS § 5/3-114.1." It also asserts that it had "determined the cause of [plaintiff's] disability was the March 20, 2009, injury" and argues that this second injury was not the result of an "act of duty" under the Code.

¶ 70 First, applying the *Johnson* principles to the present case, the record clearly shows that plaintiff's injury did result from her performance of an "act of duty" under the Code. At the time plaintiff was injured on January 24, 2009, she was acting in the capacity of police sergeant and day shift supervisor. As such, she was responsible for supervising the officers on duty during the shift and required to respond to special situations and provide leadership. It was in her capacity of police sergeant and shift supervisor that plaintiff responded to Officer Johnson's location to assist him and supervise the scene. It was in this capacity that she stepped out of her squad car, slipped on ice and was injured.

¶ 71 The act of stepping out of a car is hardly unique to police officers. However,

plaintiff slipped while acting in her capacity as a police sergeant and supervisor responding to a call for assistance from a fellow officer, a position for which there is no comparable civilian occupation. Under these circumstances, we conclude that plaintiff was acting in a capacity that amounted to an "act of duty" when she was injured and was, therefore, entitled to a line-of-duty pension.

¶ 72 Second, the record does not support the Board's assertion that it determined that the cause of plaintiff's disability was her March 20, 2009, injury. The Board made only two references to the March 20, 2009, injury in its written decision and order.[2] It made the first reference in the "findings of fact" section of its decision, as follows: "On March 23 [*sic*], 2009, the Applicant's right knee gave out when she was walking out of the Police Department's women's bathroom." The Board made the second reference in the analysis section of its decision, as follows:

¶ 73 "Not until the Applicant's knee gave out on March 23 [*sic*], 2009, while walking out of a bathroom did she undergo an MRI that disclosed joint effusion, patellofemoral degenerative changes, a subchondral cyst and degenerative meniscal changes. Although the Applicant relates these degenerative changes to the alleged injury on January 24, 2009, these are injuries that were not noted on the January 30, 2009, MRI and the video clearly contradicts the Applicant's testimony."

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[2] The Board's decision refers to plaintiff's second injury as having occurred on March 23, 2009. The injury actually occurred on March 20, 2009. Plaintiff filed an interdepartmental memorandum reporting the injury on March 23, 2009.

The entirety of the Board's comments regarding plaintiff's March 20, 2009, incident consists of these two statements. In neither of these statements does the Board make a finding that the March 20, 2009, incident was the cause of plaintiff's disability and there is no medical expert testimony to support that conclusion.

¶ 74 The Board's assertion that plaintiff suffered her disabling injury on March 20, 2009, is a mischaracterization of the facts. March 20, 2009, may have been the day that plaintiff's knee finally gave out but it was not the day plaintiff initially injured it. All of the medical evidence shows that plaintiff suffered her disabling injury on January 24, 2009. The Board's argument here has no support in the record and, in fact, ignores all of the evidence of prior injury.

¶ 75 The Board's finding that plaintiff did not prove that her injury was incurred in or resulted from an act of duty under section 3-114.1 is clearly erroneous.

¶ 76 Conclusion

¶ 77 For the reasons stated above, we find that plaintiff is entitled to a line-of-duty disability pension. We, therefore, reverse the Board's denial of plaintiff's application for a line-of-duty disability pension and the circuit court's order affirming the Board's decision.

¶ 78 Reversed.