

No. 1-12-1391

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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|--|---|------------------|
| RONALD ANDERSON, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellant, |) | Cook County. |
| |) | |
| v. |) | |
| |) | 11 CH 14874 |
| VILLAGE OF MAYWOOD, an Illinois Corporation, |) | |
| and VILLAGE OF MAYWOOD POLICE PENSION |) | |
| BOARD, |) | Honorable |
| |) | Rita M. Novak, |
| Defendants-Appellees. |) | Judge Presiding. |

PRESIDING JUSTICE NEVILLE delivered the judgment of the court.
Justices Hyman and Pierce concurred in the judgment.

ORDER

- ¶ 1 *Held:* A police officer is not entitled to a line of duty disability pension where the medical evidence shows that no specific act performed by the officer during his police service caused his disability.
- ¶ 2 On March 23, 2011, the Board of Trustees of the Maywood Police Pension Fund (Board) issued an order awarding Ronald Anderson (Anderson), an officer with the Maywood police

department, a "not on duty" disability pension equal to 50% of his salary pursuant to section 3-114.2 of the Illinois Pension Code (Pension Code). 40 ILCS 5/3-114.2 (West 2010). The Board found that Anderson was not entitled to a "line of duty" disability pension equal to 65% of his salary, pursuant to section 3-114.1 of the Pension Code (40 ILCS 5/3-114.1 (West 2010)), because his disability did not result from the performance of an act of duty as defined by section 5-113 of the Pension Code. 40 ILCS 5/5-113 (West 2010). Anderson filed a complaint for administrative review arguing that he was disabled due to the performance of an act of duty and, therefore, entitled to 65% of his salary. On April 10, 2012, the circuit court affirmed the Board's decision and denied Anderson's request for in the line of duty disability benefits, and he filed the instant appeal.

¶ 3 We find that the Board did not err when it determined that Anderson's disability resulted from witnessing multiple traumatic events over time as a police officer, and not from the performance of a specific act of duty during his police service. Therefore, we hold that the Board's decision was not against the manifest weight of the evidence, and we affirm the decision of the circuit court.

¶ 4 Background

¶ 5 In 1994, Anderson began working for the Maywood police department as a patrol officer. On May 21, 2007, Anderson filed an application for an in the line of duty disability pension or in the alternative, if necessary, for a not in the line of duty disability pension with the Board. Anderson submitted a written statement with his application describing his emotional or psychological disability. Anderson stated that he has been a police officer for the village of

Maywood for over thirteen years and during that period of time, he suffered psychological impairment from being traumatized by several incidents at work. He stated that he had been involved in multiple shootings, witnessed great bodily dismemberment to victims of crimes, investigated crimes involving children, witnessed senseless deaths including the death of a fellow officer and close friend who was brutally shot and killed in the line of duty. The Board conducted hearings on March 24, 2009, May 18, 2009, June 29, 2009, and December 20, 2010. Anderson was the only witness to testify before the Board.

¶ 6 Anderson's Testimony

¶ 7 Anderson testified to a number of specific acts of violence which he witnessed or encountered as a Maywood police officer. The incidents that Anderson described occurred within a twelve year period, between 1995 and 2007.

¶ 8 During one of the incidents, Anderson had to apply pressure to a man's arm that was severely cut to prevent it from bleeding. He later found out that the man was infected with HIV. Anderson described the incident as "a shocker, that now this person who I saved might be killing me, because he got HIV." The incident caused him to suffer chest pains, sweating and anxiety. Anderson was not infected with HIV.

¶ 9 During a second incident, Anderson had to rescue a driver from a burning car that was hit by a train. Anderson testified that his mental state was "pretty messed up" after the incident.

¶ 10 In a third incident, Anderson arrived on the scene of a shooting and was told that Jeffrey Lowenthal had been shot. Anderson testified that Lowenthal was the police and fire commissioner. Anderson patrolled the area trying to find the suspect, but the suspect was

not found. Anderson testified that he met Lowenthal when he was a child. Lowenthal's death bothered him a lot and he had a lot of anxiety and was very nervous.

¶ 11 Anderson also testified about the death of officer Tom Wood, one of his close friends. In October 2006, Anderson received a phone call while he was off-duty informing him that officer Wood had been killed while on his way home from the police department. Anderson was not involved in the investigation of officer Wood's death. Anderson wrote in his application for disability benefits that each day on patrol was challenging after officer Wood's death, and even going to the station was hard because every day for several months he would see officer Wood's car parked in the garage at the station with all "the blood-soaked interior, evidence tape, bio-hazard stickers and the fingerprint tape all over it." He had seen other cars in which the victim had been killed parked in the garage at the station and it would affect him, but in officer Wood's case, it had a "personal effect" on him. Anderson described his emotions after officer Wood's death as "having an anxiety rush for days on." Anderson testified that when he went to officer Wood's funeral his heart was racing and his palms were sweaty and he was very nervous. He still experiences flashbacks to the death of officer Wood.

¶ 12 In addition to these incidents, Anderson described several other traumatic experiences including one where he held the hand of a victim who was shot in the head and later died, and then he testified in court about the deceased's identification of the shooter; and an incident where a man was shot in the neck and eye. The accused shooter of the man who was shot in the neck and eye was the son of one of Anderson's childhood friends.

¶ 13 Anderson testified that there was no specific incident that triggered his disability, but, instead, "it was a build up over time" of being on the job. According to Anderson, as a police officer "you see certain things and have certain things done to you and you're constantly in this negative environment, it just takes a toll on you over the time."

¶ 14 Anderson testified that he could no longer perform his duties as a police officer because "over the time I have witnessed numerous traumatic events that has affected me, my health, my marriage, and my basic well-being in life." According to Anderson, he continues to see people who he grew up with constantly being killed and he described his experience of being a police officer as "constantly being in positions where *** you're rushing into a situation where you have to go where people are rushing away from. And when you get there, you don't know what to expect." Anderson testified that "work-related situations" caused his emotional and mental condition.

¶ 15 He testified that Dr. Morgan advised him to see a medical doctor to treat his psychological symptoms, but he has not been able to follow through with her recommendation because he no longer has insurance coverage and he is undergoing financial hardship due to the village's failure to make his disability payments on time.

¶ 16 Anderson's Employment Record with the Maywood Police Department

¶ 17 Anderson's personnel file from the village of Maywood was admitted into evidence and contains (1) numerous citizens' complaints filed against Anderson alleging police misconduct, (2) complaints filed against Anderson by other officers, (3) complaints filed against other officers by Anderson, (4) notices of suspension regarding disciplinary actions

taken against Anderson, and (5) letters of commendation and recognition.

¶ 18 In 2007, the police department brought disciplinary charges against Anderson alleging, *inter alia*, use of excessive force during an arrest and harassment of a fellow officer. A report prepared by the village's attorneys on June 5, 2007, stated: "disciplinary charges are pending against officer Anderson, seeking his termination for excessive use of force and harassment of Officer Turner."

¶ 19 Anderson's Medical Treatment and Psychological Evaluations

¶ 20 Anderson testified that his first treatment for stress and depression was at the age of sixteen at West Lake hospital.

¶ 21 On February 2, 2000, Anderson was admitted into West Lake hospital for chest pains due to work related stress and he remained in the hospital for four days. Anderson testified that he was diagnosed as having irregular heartbeats and informed that the stress of the job was affecting him.

¶ 22 In June 2006, Anderson was admitted into St. James hospital because he was experiencing stress at work and he was having "serious chest pains." Anderson's follow up care was with Dr. Percy C. May, his family physician.

¶ 23 Reports were submitted by: (A) Dr. Stacy Morgan, a licensed clinical psychologist and consultant for the village of Maywood; (B) Dr. Kathleen Tuder, a medical doctor, and Dr. Katherine Noll, Dr. Margaret Bongiorno and Dr. Ronald H. Rottschafer, psychologists, who were chosen by plaintiff; and (C) Dr. Don R. Catherall, a psychologist, Dr. Charles Ludmer, a psychologist and medical doctor, and Dr. Robert Reff, a medical doctor, who were chosen

by the Board.

¶ 24 Report from the Doctor for the Village of Maywood

¶ 25 Dr. Morgan stated in her report dated May 15, 2007, that Donald Mobley, chief of the Maywood police department, had initially directed Anderson to consult with her on May 31, 2006. Anderson was under her care from May 31, 2006 until September 6, 2006. Dr. Morgan recommended on June 16, 2006, that Anderson take a 30 day leave of absence due to work-related stress. Anderson resumed psychological services with Dr. Morgan on April 10, 2007, and she recommended, a second time, that Anderson take a leave of absence due to occupational stress. Dr. Morgan stated in her May 15, 2007, report that:

"Officer Anderson continues to manifest moderate to severe symptoms of PTSD, stress, anxiety and depression. Precipitants to such conditions include involvements in shootings *** he has witnessed horrible crime scenes*** crimes to children and the smell of death along with witnessing senseless death. Further, Officer Anderson is grieving the recent death of a very close friend who was a fellow officer that was brutally shot and killed in the line of duty. *** Officer Anderson expressed his concern and stress about repeatedly witnessing crimes against citizens from other officers and complaining to administration resulting in a reportedly retaliation against him. The chronic nature and accumulation of the aforementioned has taken a great toll on Officer Anderson's overall well being. ***Officer Anderson's current cognitive, emotional and psychological functioning inhibits him from focusing on tasks and instructions to perform his job duties.

Officer Anderson should remain on a leave of absence until further notice."

Dr. Morgan stated that Anderson was still under her care until further notice.

¶ 26 Reports from Plaintiff's Doctors

¶ 27 Dr. Tuder examined Anderson on June 27, 2007 and November 6, 2007. Dr. Tuder diagnosed Anderson with mild to moderate post traumatic stress disorder (PTSD) and opined that Anderson's present condition was related to his job. Dr. Tuder concluded based on a reasonable degree of medical certainty that Anderson's "current complaints are predominantly about *** avoiding thinking of and being reminded of work related traumatic exposures."

¶ 28 Dr. Noll examined Anderson on June 13, 14 and 15 of 2007. Dr. Noll noted that Anderson reported that he grew up in Maywood and when he became a police officer he thought he could make a difference in Maywood. However, he began to see violence beyond what he had ever imagined and because he cared, the extent of the violence had a devastating effect on him. Dr Noll also noted that officer Wood's death affected Anderson very severely. Dr. Noll opined that Anderson suffered from PTSD which was work-related. Dr. Noll attributed Anderson's PTSD to the violence Anderson observed and to the violence he is threatened with in his work as a Maywood police officer. Dr. Noll further opined that Anderson was clearly disabled by his chosen profession and will have to change his line of work if he is able to work again.

¶ 29 Dr. Margaret Bongiorno examined Anderson on July 9, 11 and 13 of 2007. Dr. Bongiorno described the deaths of officer Wood and the police commissioner as incidents that

represented enormous personal losses to Anderson and were severely traumatic experiences. Dr. Bongiorno noted in his summary and recommendations that Anderson described having witnessed several traumatic events during his work as a police officer. Dr. Bongiorno opined that Anderson suffered from PTSD, major depressive episode and generalized anxiety disorder.

¶ 30 Dr. Rottschafer examined Anderson on October 25, 27 and 31 of 2007 and November 3, 2007. Dr. Rottschafer opined that Anderson suffered from PTSD as a result of extreme stress suffered in his line of duty as a Maywood police officer over the course of 14 years.

¶ 31 Reports from Doctors Chosen by the Board

¶ 32 Dr. Catherall examined Anderson on March 7, 2008, and certified that Anderson was disabled. Dr. Catherall opined that Anderson (1) had PTSD as a result of exposure to traumas while working on the Maywood police force, and (2) developed a significant depression, which may be related to more factors than his trauma exposure. Dr. Catherall further opined that Anderson's disability was the direct result of the cumulative effects of "duty-related activities, specifically an accumulation of traumas encountered in his work as a police officer."

¶ 33 Dr. Ludmer examined Anderson on March 8, 2008, and certified that Anderson was disabled. Dr. Ludmer opined that Anderson's disabling illness has arisen from multiple traumatic events, experienced solely during the performance of his duties as a police officer for the Maywood police department.

¶ 34 Dr. Robert Reff examined Anderson on March 11, 2008, and certified that Anderson was

disabled. Dr. Reff wrote in his report that Anderson stated that he continues to relive the death of officer Wood, one of his best friends. Dr. Reff noted that it appeared that the final straw was when officer Wood was killed. Dr. Reff opined that Anderson (1) developed PTSD as a consequence of the cumulative effect of experiences that he had working as a police officer; (2) that Anderson also had a pre-existing history of Bipolar II disorder but that Anderson was not limited in his functioning or disabled due to Bipolar II disorder; and (3) that Anderson was disabled from functioning as a police officer by PTSD and not as a consequence of depression or other aspects of Bipolar II.

¶ 35 The Board's Decision

¶ 36 The Board reviewed Anderson's testimony, his employment record with the Maywood police department, and his psychological evaluations and found: (1) that Anderson's disability resulted from a combination of factors and was not solely a result of the violence he experienced as a police officer; (2) that Anderson's medical records showed that no specific act of his employment caused his disorder, rather, he developed problems over time in response to stressful work-related situations; and (3) that Anderson failed to prove that his disability resulted from a sickness incurred in or resulting from the performance of an act of duty within the meaning of the Pension Code. Therefore, the Board concluded that Anderson's disability did not satisfy the "act of duty" requirement of section 3-114.1 of the Pension Code and it denied Anderson's application for a line of duty disability pension.

¶ 37 The Trial Court's Proceedings

¶ 38 On December 6, 2011, Anderson filed a petition for administrative review in the circuit

court. The court found that the Board's decision was supported "at least by some, if not the majority of the medical reports." Accordingly, the court found that the Board's finding that Anderson's disability was non-duty related was not against the manifest weight of the evidence or clearly erroneous. Anderson now appeals.

¶ 39

Analysis

¶ 40

A reviewing court, when deciding an appeal from a judgment in an administrative review proceeding, reviews the administrative agency's decision, not the trial court's decision. *Thompson v. The Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago*, 379 Ill. App. 3d 498, 503 (2008). Judicial review of a decision of the Board is governed by the Administrative Review Law. 735 ILCS 5/3-102. (West 2010). The applicable standard of review which determines the degree of deference given to the agency's decision, depends upon whether the question is one of fact, one of law, or a mixed question of fact and law. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532 (2006). The Board's findings of fact are given considerable deference, but they are subject to reversal if they are against the manifest weight of the evidence. *Kouzoukas v. The Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago*, 234 Ill. 2d 446, 463 (2009). The supreme court has held that "the question of whether the evidence of record supports the Board's denial of plaintiff's application for a disability pension is a question of fact and, as such, the manifest weight standard of review applies." *Kouzoukas*, 234 Ill. 2d at 464 (citing *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 505 (2007)); *Village of Oak Park v. Village of Oak Park Firefighters Pension*

Board, 362 Ill. App. 3d 357, 371 (2005) (holding that whether a disability was duty-related is a pure question of fact and, therefore, subject to the manifest weight standard of review). “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). Reversal of the administrative agency’s decision is not warranted based on the mere fact that an opposite conclusion is reasonable or that the reviewing court might have ruled differently. *Abrahamson*, 153 Ill. 2d at 88. Therefore, because this court will not substitute its judgment for that of the administrative agency, the administrative agency’s decision should be affirmed if the record contains evidence to support the decision. *Abrahamson*, 153 Ill. 2d at 88.

¶ 41 The Illinois Pension Code

¶ 42 Section 3-114.1 of the Pension Code provides that a police officer is entitled to a "line of duty" pension equal to 65% of the salary attached to the officer's rank on the police force at the date of suspension of duty or retirement if his disability results from an "injury incurred in or resulting from the performance of an act or duty." 40 ILCS 5/3-114.1 (West 2010). Section 3-114.2 of the Pension Code provides for a "not on duty" pension for a "police officer who becomes disabled as a result of any cause other than the performance of an act of duty" and entitles the officer to receive 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." 40 ILCS 5/3-114.2 (West 2010).

¶ 43 Section 5-113 of the Pension Code defines an “act of duty” 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 2010).

¶ 44 The sole issue on appeal is whether Anderson's disability resulted from an act of duty entitling him to a line of duty disability pension. In examining claims of duty-related stress, courts require that plaintiff-police officers demonstrate their disabilities are the result of "a specific, identifiable act of duty unique to police work." *Robbins v. The Board of Trustees of the Carbondale Police Pension Fund of the City of Carbondale, Illinois*, 177 Ill. 2d 533, 542 (1997). "Conversely, where the disability is traceable only to the 'general nature of being a police officer' and not to a specific act of police service, line-of-duty disability pensions are denied." *Robbins*, 177 Ill. 2d at 542 (citing *Ryndak v. River Grove Police Pension Board*, 248 Ill. App. 3d 486, 490 (1993) (holding that the stress and depression plaintiff claimed he suffered as a result of the violent nature of police duties are problems related to the general nature of being a police officer, and not a specific act of police service). "Similarly, where the causes of the stress are not unique to police work, line-of-duty disability pensions are also denied." *Robbins*, 177 Ill. 2d at 542.

¶ 45 The officer in *Robbins* claimed his mental disability resulted from an act of duty and was not

the result of generalized stress. He argued that the reports of the Board's psychologist and his three psychologists indicated conclusively that his disability resulted specifically from witnessing a suicide where a man shot himself in the face with a shotgun. *Robbins*, 177 Ill. 2d at 544. The court noted that the doctors who treated and examined the officer agreed that his stress was related to his police work, but none of the doctors connected the stress to any specific act that Robbins performed as a police officer. *Robbins*, 177 Ill. 2d at 544. In fact, one of the doctors opined that Robbins' "continuous exposure to possible violence, as well as the pace of his duties in general, were of considerable stress." In light of this evidence, the court affirmed the Board's finding that Robbins' stress did not result from the performance of a specific act of duty. *Robbins*, 177 Ill. 2d at 545.

¶ 46 The facts in this case are similar to the facts in *Robbins* because none of the doctors who examined or treated Anderson attributed his stress to a specific act that he performed as a police officer. Each of the doctors who examined Anderson concluded that Anderson's disability resulted from the accumulation of traumatic events that he experienced as a police officer. Dr. Morgan wrote that the chronic nature and accumulation of Anderson's work related stress has taken a great toll on officer Anderson's overall well being. Dr. Tuder concluded that Anderson's "current complaints are predominantly about *** avoiding thinking of and being reminded of work related traumatic exposures." Dr. Noll opined that Anderson has severe job related PTSD resulting from the violence he has observed and the violence he is threatened with in his work on the Maywood police force. Dr. Bongiorno noted in his summary and recommendations that Anderson described having experienced or

witnessed several traumatic events during his work as a police officer. Dr. Rottschafer opined that Anderson suffered from PTSD as a result of extreme stress suffered in his line of duty as a Maywood police officer over the course of 14 years. Dr. Catherall opined that Anderson's disability was the direct result of the cumulative effect of "duty related activities, specifically an accumulation of traumas encountered in his work as a police officer." Dr. Ludmer opined that Anderson's disabling illness has arisen from multiple traumatic events experienced solely during the performance of his duties as a police officer for the Maywood police department. Dr. Reff opined that Anderson developed PTSD as a consequence of the cumulative effects of experiences that he had working as a police officer. Even Anderson testified that there was no specific incident that triggered his disability; instead, it was a build up over time of witnessing numerous traumatic events that affected his health, marriage and "basic well being in life."

¶ 47 The record contains evidence that Anderson's psychological disorder resulted from the cumulative effect of multiple traumatic events witnessed by Anderson during his career as a police officer. See *Coyne v. Milan Police Pension Board*, 347 Ill. App. 3d 713, 725 (2004) (upholding the Board's decision to deny an officer a line of duty disability pension on the ground that the officer's psychological disorder resulted from the cumulative effect of traumatic duties he performed over his career as a police officer, and not from a specific act of the officer's employment). The medical evidence established that no specific, identifiable act performed by Anderson during his police service caused his disability; rather, his disability developed over time in response to stressful work-related situations. Therefore,

following *Robbins*, we find that Anderson's evidence does not satisfy the "act of duty" requirement in section 3-114.1 of the Pension Code because Anderson's evidence failed to establish that his disability is connected to a specific, identifiable act of duty he performed as a police officer. Accordingly, the Board's decision to deny Anderson a line of duty pension was not against the manifest weight of the evidence

¶ 48 Conclusion

¶ 49 We find that the medical evidence established that no specific, identifiable act performed by Anderson during his police service caused his disability. Instead, we find that Anderson's disability developed over time as a result of witnessing multiple traumatic events. Therefore, the Board did not err when it found that Anderson's disability did not meet the act of duty requirement in section 3-114.1 of the Pension Code. Accordingly, we affirm the decision of the circuit court that affirmed the Board and denied Anderson's request for a line of duty disability pension.

¶ 50 Affirmed.