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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

VILLAGE OF LOMBARD,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellant,)	
)	
v.)	No. 11-MR-1625
)	
JOSEPH METALLO, BOARD OF)	
TRUSTEES OF THE LOMBARD POLICE)	
PENSION FUND, RICH SHAFER, Pension)	
Board President, KAREN KOENIG, Board)	
Vice President, BENNY RANALLO,)	
Pension Board Secretary, TOM WIRSING,)	
Pension Board Assistant Secretary, and)	
JERRY PETERSON, Pension Board Trustee,)	
all in their official capacity,)	Honorable
)	Bonnie M. Wheaton,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The Board's finding that the police officer was entitled to a line-of-duty pension was not against the manifest weight of the evidence. The doctrine of collateral estoppel did not preclude the officer from bringing his claim before the Board. Affirmed.

¶ 2 On June 26, 2007, the Board of Trustees of the Lombard Police Pension Fund granted to co-appellee Joseph Metallo a line-of-duty pension. The Village of Lombard appeals, arguing that: (1) the Board's finding that Metallo's condition was duty related was against the manifest weight of the evidence; and (2) the doctrine of collateral estoppel precluded Metallo from bringing his claim before the Board. For the reasons that follow, we disagree with the Village, and we affirm.

¶ 3 I. BACKGROUND

¶ 4 Metallo, an undercover narcotics officer for the Lombard Police Department, was in two separate accidents. The first occurred in 2005 while off duty. The second occurred in 2006 while on duty. By mid-2007, Metallo's right knee was deemed too disabled for Metallo to continue his duties as a police officer. Therefore, neither party disputes that, at a minimum, Metallo is entitled to a non-duty disability pension (worth 50% of his most recent salary (40 ILCS 5/3-114.2 (West 2010))). The contested issue is whether the second, 2006 accident contributed to Metallo's ultimate state of disability, thereby entitling him to a line-of-duty pension (worth 65% of his most recent salary, his retirement pension, or the pension provided under subsection (d), whichever is greatest (40 ILCS 5/3-114.1 (West 2010))). We now recount the circumstances of each accident, the medical treatment that followed, and the various expert opinions on causation.

¶ 5 On September 5, 2005, Metallo was injured in an off-duty motorcycle accident. He suffered a left clavicle fracture, a closed head injury with a fracture to the petrous temporal bone, a subdural hematoma, and fractures to the right femur, tibia, and fibula. Dr. Steven Louis surgically treated the fractures in the right leg. He inserted titanium rods for stabilization of the leg and knee area. Because of the serious nature of the injury, it was difficult to diagnose soft tissue damage, such as damage to the knee-stabilizing posterior cruciate ligament (PCL).

¶ 6 In January 2006, Metallo returned to work. His bone fractures had healed, but, even after following physical therapy instructions and exercises, Metallo continued to experience instability in his knee. For example, Metallo felt that his knee was weak and occasionally buckled. He felt occasional pain and could not do a “deep knee bend.” Due to this instability, Louis began to suspect PCL damage. In August 2006, Louis referred Metallo to Dr. Steven Chudik for consultation regarding a likely PCL injury.

¶ 7 However, on September 13, 2006, before the consultation with Chudik, Metallo was injured during an on-duty drug bust. Metallo had been dispatched to a house in Carol Stream, where it was suspected that certain individuals possessed illegal narcotics. Upon entering the house, Metallo became entangled with a suspect. During the struggle, Metallo’s leg twisted and he struck his right knee on the tile floor. He was transported to the hospital emergency room.

¶ 8 The next day, on September 14, 2006, Metallo saw Chudik. However, diagnosis was difficult due to swelling in the knee area. Ultimately, Chudik determined that Metallo had damaged his menisci and would require surgery.

¶ 9 On October 30, 2006, Chudik performed a meniscal surgery to Metallo’s right knee. At that time, because Metallo was already under anesthesia, Louis removed the titanium rods. Also during the meniscal surgery, the doctors saw that the PCL was indeed ruptured. After the surgery, Metallo participated in physical therapy, but he was not able to return to duty. Metallo’s knee was too unstable, and it was determined that he would need surgery to repair his PCL.

¶ 10 Prior to the PCL surgery, in March 2007, the Village hired Dr. Bernard Bach to conduct an independent medical examination of Metallo. As will be discussed in further detail below, Bach reported that the PCL damage resulted solely from the 2005 motorcycle accident and predicted that

Metallo would be able to return to work following the PCL surgery. The meniscal damage was a result of the work accident, but Metallo had recovered from the meniscal surgery by that point. Based on Bach's report, the Village terminated Metallo's temporary total disability (TTD) benefits.

¶ 11 In June 2007, Chudik performed the PCL surgery. Again, Metallo participated in physical therapy, but it was not fully successful. Metallo did not regain sufficient functionality and stability to work as a police officer.

¶ 12 B. Workers' Compensation Proceedings

¶ 13 Meanwhile, Metallo's case came before a workers' compensation arbitrator, who was charged with determining whether Metallo's PCL injury and corresponding rod removal were connected to the 2006 work accident. On February 27, 2008, the arbitrator issued her decision, answering in the negative and stating:

“[T]he meniscal damage to the right knee in the form of a repair of the medial and lateral menisci *** is causally related to the [2006 work accident] ***, but *** the surgical procedures performed to remove the metallic rods and for the reconstruction of the [PCL] are not related to this [2006 work accident].”

The arbitrator denied all medical expenses representing treatment for the PCL reconstruction based on the finding that such injury was not caused or related to the work injury. The arbitrator terminated all work injury claims after April 10, 2007, the date by which the doctors expected Metallo's menisci injuries to have healed.

¶ 14 On January 23, 2009, the Illinois Workers' Compensation Commission affirmed the arbitrator's decision. On August 11, 2010, the circuit court affirmed the arbitrator's decision.

Finally, on November 16, 2011, this court affirmed the arbitrator's decision. *Metallo v. Illinois Workers' Compensation Commission*, 2010 IL App (2d) 100923WC-U (Hoffman, J., dissenting).

¶ 15 C. Pension Board Proceedings

¶ 16 On June 26, 2007, six months before the arbitrator issued her ruling in the workers' compensation case, Metallo applied for both duty and non-duty disability pensions. On November 15, 2007, the Board granted the Village leave to intervene "pursuant to its status as a 'municipality,' its interest in 'funding' the Pension Fund[,] and its potential responsibility for health insurance premiums for Metallo." In July 2008, the Board granted Metallo a non-duty disability pension, which neither party disputes. Then, on December 20, 2010, the Board heard testimony and evidence on the question of whether Metallo was entitled to a line-of-duty disability pension.

¶ 17 Specifically, the Board considered the opinions of six doctors: Louis (treating physician following the 2005 motorcycle accident); Chudik (treating physician who performed the meniscal and PCL surgeries); Drs. Gitelis, Freedberg, and Tonino (hired by the Board in 2008 to separately and independently examine Metallo); and Bach (hired by the Village in 2007 to conduct an independent examination of Metallo prior to Metallo's PCL surgery). Key excerpts of their opinions are as follows.

¶ 18 Louis testified that Metallo's knee was not functioning perfectly prior to the 2006 work accident. Due to the backward movement and placement of Metallo's shin at that time, Louis opined that Metallo had a PCL injury. Despite Louis's suspicion that Metallo had a PCL injury, and although he knew that Metallo worked as an undercover narcotics agent, he did not issue any work restrictions prior to the 2006 accident.

¶ 19 Chudik opined that Metallo injured his PCL in the 2005 motorcycle crash and that Metallo injured his menisci in the work accident. Chudik explained that, during the October 2006 surgery at which Louis was also present, he, Chudik removed portions of the medial and lateral menisci.¹ Typically, a patient can recover from a meniscal surgery in four to six weeks. The meniscal surgery was not a “repair” so much as it was an “excision,” decreasing the menisci’s role as secondary stabilizers to the knee. The menisci and PCL are not separate issues with respect to the functional stability of the knee. Therefore, even if the PCL rupture was of the same severity as it had been prior to the work accident, the removal of the supporting menisci worsened the symptoms of the PCL injury, and the excision of the menisci lowered the likelihood that the PCL surgery would be successful.

¶ 20 Gitelis recapped Metallo’s history, stating that, due to the serious nature of the 2005 motorcycle injury, it was difficult to assess any soft-tissue damage at that time. Soft tissue damage, such as a PCL injury, would render the knee area unstable. Following the 2006 work accident, Metallo continued to experience pain, weakness, and instability in his knee. On October 30, 2006, Metallo underwent arthroscopic surgery. Doctors performed a “cartilage resection” for a torn medial and lateral meniscal cartilage injury. Doctors noted a fair amount of scar tissue within the knee, and, although they did not fix it at that time, noted that the PCL was likely injured. Following the October 2006 surgery, Metallo continued to experience pain and instability. In June 2007, Metallo

¹ During this same surgery, and because Metallo was already under anaesthesia, Louis removed the titanium rods that had been put in following the motorcycle accident. However, Louis had always planned on removing the rods, and the rod removal was not necessitated by the work accident.

underwent PCL surgery. Following the PCL surgery, Metallo participated in physical therapy, but was unable to return to work. Gitelis concluded:

“When I reviewed the entire history, *** his history would suggest probably some degree of ligament injury that occurred [in 2005], but not enough to cause the knee to be grossly unstable *** Subsequently, [Metallo’s 2006 work injury] *** I believe caused a further injury to the [PCL] and in fact now either tore or further attenuated the ligament to the point that the patient had progressive problems with instability ***.”

¶ 21 Freedberg’s report stated without ambiguity that Metallo “[wa]s disabled from the work accident of [September 2006].” To Freedberg, the “most significant factor” was that, after recovering from the 2005 accident, Metallo had been sent back to full duty. Although medical records at that time indicate that Metallo was experiencing some pain, he was, nevertheless, able to function in a “very strenuous occupation.” However, after the work accident, Metallo was unable to work. Freedberg opined that Metallo would not be returning to work as a police officer in the near future. Therefore, in Freedberg’s view, the work accident exacerbated preexisting problems, including the PCL injury.

¶ 22 Tonino testified that the 2006 work accident, wherein Metallo slammed his knee to the ground, is the type of accident that could cause menisci tears and PCL damage. Tonino believed that the work accident aggravated any preexisting problems. The PCL and the menisci work together to stabilize the knee. A PCL tear combined with meniscal tears would lead to greater instability than a PCL tear alone.

¶ 23 Bach differed from the other experts, testifying that the 2006 work injury did not exacerbate Metallo’s preexisting injuries nor did it contribute to Metallo’s present state of disability. Rather,

in Bach's view, the work injury merely necessitated the meniscal surgery. A patient should recover from a meniscal surgery "within a three month time period[,] easily." Bach testified that Metallo's meniscal injuries were, in fact, healed by late March 2007 when he conducted his examination. Metallo's continued instability was due solely to his PCL injury, which he incurred in the earlier motorcycle accident. Bach stated in his report, "[c]ertainly[,] the injury to [Metallo's] right knee [in September 2006] did not cause the PCL injury." Bach nevertheless conceded that traumatic injuries involving twisting, such as Metallo's work accident, could cause injury to a persons "posterior-lateral corner" where that person has a preexisting PCL injury. Bach did not see Metallo after the March 2007 examination, at which time he predicted PCL surgery would enable Metallo to return to work. Bach could not provide an explanation as to why Metallo was not able to return to work after the 2006 work accident.

¶ 24 At some point after the close of evidence, as clarified at oral argument, the Village moved to stay the Board's ruling until after the avenues for appeal in the workers' compensation proceeding had been exhausted. The Board denied the motion.

¶ 25 On October 24, 2011, the Board ruled in favor of Metallo, stating:

"The evidence *** respecting [Metallo's] limitations prior to the September 13, 2006, accident[,] and the accident(s) which ultimately served as the reason which necessitated the PCL surgery, is conflicting and not easily reconciled. However, *in the event the accident of September 13, 2006[,] served to exacerbate [Metallo's] dysfunctional knee and/or accelerate [his] ultimate disability, the same is sufficient in law to entitle [him] to a [line-of-duty] disability [benefit]*. The Police Pension Code *** is remedial in nature and *** should be liberally construed in favor of the police officer to be benefitted. *** Thus, the Board believes that there is competent evidence in the record

suggesting that the September 13, 2006, work-related accident served to exacerbate a previous injury to [Metallo's] right knee (motorcycle accident of September 5, 2005) and, therefore, [Metallo] is entitled to a [line-of-duty] disability benefit.” (Emphasis added.)

Hence, although the testimony conflicted as to whether the work accident exacerbated the PCL tear itself, the Board found that the work accident did “exacerbate [Metallo's] dysfunctional knee and/or accelerate [his] ultimate disability.”

¶ 26 Additionally, the Board, citing *Ballweg v. City of Springfield*, 114 Ill. 2d 107 (1986), found that the doctrine of collateral estoppel did not bind it to arbitrator's ruling in the workers' compensation case. The Board reasoned that the appeal in the workers' compensation case was still pending at the time of its ruling, and, therefore, the finality requirement of collateral estoppel had not been met.

¶ 27 The Village sought administrative review in the circuit court. The parties filed briefs similar to those submitted in the instant appeal, and, after entertaining oral argument, the court affirmed the Board's decision “for the reasons stated on the record.” However, the appellate record does not contain the transcripts of the oral argument and above-referenced “stated reasons.” This appeal follows.

¶ 28 II. ANALYSIS

¶ 29 The Village argues that: (1) the Board's finding that Metallo was entitled to a line-of-duty pension was against the manifest weight of the evidence; and (2) the doctrine of collateral estoppel precluded Metallo from bringing his claim before the Board. We address each point in turn.

¶ 30 A. Manifest Weight

¶ 31 The Police Pension Code (40 ILCS 5/3-101 *et seq.* (West 2010)) is remedial in nature and should be construed liberally in favor of the police officer to be benefitted. *Board of Trustees of the Policemen's Pension Fund of the Village of Oak Brook v. Illinois Department of Insurance*, 42 Ill. App. 3d 155, 159 (1976). The elements that a police officer must prove in order to establish his or her entitlement to line-of-duty disability benefits are as follows: (1) he or she is a police officer; (2) a sickness, accident, or injury was incurred; (3) the sickness, accident, or injury was incurred in or resulted from the performance of an “act of duty;”² (4) the police officer is found to be physically or mentally disabled for service in the police department; and (5) the disability renders necessary his or her suspension or retirement from police service. 40 ILCS 5/3-114.1 (West 2010). Here, the parties agree that elements one, two, three, and five have been met. Moreover, as a component of element four, they do not dispute that the drug bust constituted an “act of duty.” The question is whether the drug bust led to Metallo’s ultimate state of disability.

¶ 32 A work injury need not be the sole cause of the disability; if the work-related accident exacerbates a preexisting condition, then an applicant is entitled to a line-of-duty disability benefit.

²The term “act of duty” has been defined as “[a]ny act of a 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); *Trettenero v. Aurora*, 268 Ill. App. 3d 58, 65 (1994) (“act of duty” in 40 ILCS 5/5-113 should be applied in defining “act of duty” under 40 ILCS 5/3-114.1 (West 2010)).

Wade v. City of North Chicago Police Pension Board, 226 Ill. 2d 485, 505 (2007). Causation is an issue of fact to be determined by the Board. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 534-36 (2006). A factual determination by the Board is afforded great deference and is to be reversed only if it is against the manifest weight of the evidence. *Lindsey v. Board of Education*, 354 Ill. App. 3d 971, 978-79 (2004). We review the final decision of the Board, rather than that of the circuit court. *Village of Stickney v. Board of Trustees of Police Pension Fund of Village of Stickney*, 347 Ill. App. 3d 845, 848 (2004).

¶ 33 Here, the undisputed evidence before the Board was that two injuries were at issue: the PCL tear originating in the 2005 accident and the meniscal damage originating in the 2006 accident. The doctors' opinions deviated, however, as to exactly how Metallo's knee came to its ultimate state of disability. The possibilities were: (1) the excision of the menisci, which functioned as secondary support structures, caused the PCL, unaltered from its damaged 2005 state, to be unable to support the knee, even post-PCL surgery (posited by Chudik and not excluded as a possibility by Louis, Freeberg and Tonino); (2) the 2006 work accident not only damaged Metallo's menisci, but also worsened Metallo's 2005 PCL injury (posited by Gitelis, Freeberg, and Tonino, and not excluded as a possibility by Chudik and Louis); or (3) Metallo's disability was due solely to his 2005 PCL injury, which was not aggravated in any way by the 2006 accident (posited by Bach only). Of course, the first two possibilities would entitle Metallo to a line-of-duty disability pension, whereas the third would not.

¶ 34 The evidence supported the Board's determination that either of the first two possibilities led to Metallo's ultimate state of disability. For example, Louis testified that, prior to the work accident, he suspected that Metallo had a symptomatic but *not* debilitating PCL injury. Louis allowed Metallo

to participate in physically taxing work activities, such as chasing down suspects. Then, during the work accident, Metallo's knee twisted and slammed to the floor. Even Bach conceded that, where a person already had a preexisting PCL injury, such an accident could lead to further injury (in his view, to the "posterior-lateral corner"). All six doctors agreed that the work accident caused the meniscal tears and necessitated the meniscal surgery. During the meniscal surgery, doctors saw for the first time the damaged PCL, thereby confirming that aspect of the problem. Following meniscal surgery, Metallo's knee continued to be unstable. Chudik explained that the meniscal surgery was an excision, decreasing secondary knee stabilization. The meniscal excision, therefore, worsened the PCL injury in the sense that the excision removed complimentary support structures. For the same reason, the meniscal excision decreased the likelihood that surgeons would be able to restore the PCL to its role of providing functioning support. Tonino similarly testified that a PCL tear combined with meniscal tears would lead to greater instability than a PCL tear alone. Moreover, Tonino believed that the work accident, wherein Metallo slammed his knee to the ground, was the sort of accident that could have worsened the PCL injury. Gitelis agreed that the work injury "tore or further attenuated the [PCL] to the point that the patient had progressive problems with instability." Freeberg also agreed that the work accident exacerbated preexisting problems, including the PCL. To him, the "most significant factor" was that, prior to the work accident, Metallo was able to perform at a full duty level. After the work accident, Metallo was, as certified by doctors, unable to work as a police officer.

¶ 35 Bach, the only doctor with a differing opinion, examined Metallo just once at the Village's request, in March 2007. Bach issued his report on Metallo's condition that same month. He did not see Metallo either immediately preceding the June 2007 PCL surgery nor after the PCL surgery.

Therefore, he determined that the 2005 PCL injury and the 2006 meniscal surgery comprised two separate, non-related injuries before Metallo's overall condition was known. We cannot conclude that it was unreasonable for the Board to discount Bach's opinion.

¶ 36 The Village's argument amounts to a reiteration of Bach's opinion, that the 2005 PCL injury and the 2006 meniscal surgery comprised two separate, non-related injuries. The Village points to Chudik's concession that the PCL itself may have been unaltered from its 2005 condition and that, typically, a patient can recover from a meniscal surgery in four to six weeks. However, these concessions do not preclude the finding that the two injuries at issue, each with its own origin, combined for greater knee instability than either would have caused in isolation. The Board was not bound to follow the opinion of Bach, who was hired by the Village and examined Metallo only once and at a time when Metallo's overall condition was not yet known, over the opinion of five other doctors, two of whom were Metallo's treating physicians and the other three of whom were hired by the Board to examine Metallo *after* Metallo's overall condition was known.

¶ 37 For these reasons, the Board's finding that the work accident exacerbated Metallo's preexisting condition, thus entitling him to a line-of-duty pension, was not against the manifest weight of the evidence.

¶ 38 B. Collateral Estoppel

¶ 39 The Village also argues that the doctrine of collateral estoppel precluded Metallo from bringing his claim before the Board where the workers' compensation arbitrator had already decided that the work injury did not exacerbate Metallo's PCL surgery. Collateral estoppel promotes fairness and judicial economy by preventing relitigation of an identical issue already resolved in a different proceeding involving the party against whom the bar is being sought. *Kessinger v. Grefco, Inc.*, 173

Ill. 2d 447, 460 (1996). Collateral estoppel is an affirmative defense, which generally must be set forth in the answer to the complaint and which may, if raised too late, be forfeited. *Allianz Insurance Company v. Guidant Corporation*, 387 Ill. App. 3d 1008, 1019-20 (2008). An application of collateral estoppel requires that: (1) the issue decided in the prior adjudication is identical to the one presented in the current case; (2) there has been a final judgment on the merits; and (3) the party against whom estoppel is asserted is a party or in privity with a party to the prior adjudication. *Ballweg*, 114 Ill. 2d at 113. Whether the elements of collateral estoppel have been met presents a question of law, subject to *de novo* review. *Matejczyk v. City of Chicago*, 397 Ill. App. 3d 1, 7 (2009). Still, collateral estoppel is an equitable doctrine, and, even if the three elements are met, the doctrine should not be applied unless it is clear that no unfairness will result to the party sought to be estopped. *Allianz*, 387 Ill. App. 3d at 1020-21 (referring to the three elements as “threshold” criteria), citing *American Family Mutual Insurance v. Savickas*, 193 Ill. 2d 378, 388 (2000).

¶ 40 The Village essentially concedes that the element of finality was not met when the Board issued its pension finding and determined that collateral estoppel did not apply. In Illinois, finality requires that the potential for appellate review be exhausted. *Ballweg*, 114 Ill. 2d at 113. Here, the workers’ compensation case was pending before this court when the Board issued its pension finding. Therefore, per *Ballweg*, the finality requirement was not met.³

³ The *Ballweg* rule has been criticized by various Illinois intermediate courts. See, e.g., *Langone v. Schad, Diamond & Shedden*, 406 Ill. App. 3d 820, 834-35 (2011) (the case upon which *Ballweg* relies—*Relph v. Board of Education of DePue Unit School District No. 103*, 84 Ill. 2d 436 (1981)—did not involve appeals from final judgments terminating litigation but, rather, “orders remanding the cause to the trial court and thus only stood as the law of the case at the time”); *Terry*

¶ 41 The Village asks this court to overlook the finality requirement, contending that: (1) the Board abused its discretion in refusing to stay its proceedings until the workers' compensation appeal had concluded; and, (2) pursuant to this court's November 2011 disposition of the workers' compensation case and no subsequent review by the supreme court, potential for appellate review in that case has *now* been exhausted.

v. Watts Copy Systems, Inc., 329 Ill. App. 3d 382, 391-92 (2002) (Cook, J., concurring) (suggesting that the supreme court reconsider its statement that appellate review must have been exhausted before collateral estoppel is applied, noting that the case upon which *Ballweg* relies, *Relph*, dealt only with law of the case). Critics assert that the *Ballweg* rule allows for inconsistent judgments and note that remedies are available if the first judgment is subsequently reversed. *Id.* at 392 (citing Restatement (Second) of Judgments § 16 (1982)). Critics also note that the *Ballweg* rule is contrary to the rule in most jurisdictions. *Id.* (citing Restatement (Second) of Judgments § 13, Comment f, at 135, and Comment f, Reporter's Note at 140 (1982)). The preferred application of collateral estoppel, in their view, would not require that all appeals be exhausted, but would merely require that an "adequately deliberated and firm decision has been rendered by a court of competent jurisdiction." *Southeastern Illinois Electric Cooperative v. Illinois Human Rights Commission*, 162 Ill. App. 3d 806, 814 (1987) (Karns, P.J., dissenting).

Nevertheless, the *Ballweg* rule stands as law of the land in Illinois, and our supreme court continues to cite it. See, e.g., *State Building Venture v. O'Donnell*, 239 Ill. 2d 151, 159 (2010); *People v. Hopkins*, 235 Ill. 2d 453, 469 (2009); *In re A.W.*, 231 Ill. 2d 92, 100 (2008). The Village does not dispute this or even discuss the aforementioned criticisms.

¶ 42 The first argument is forfeited, because the Village cites no authority concerning the Board's refusal to stay its proceedings. See Ill. S. Ct. Rule 341(h)(7) (eff. July 1, 2008). Moreover, as the Village admits, its argument depends upon hindsight knowledge that this court's appellate decision in the workers' compensation case came mere weeks after the Board's decision (albeit, we note, four years after Metallo initiated proceedings before the Board) and that the supreme court did not hear the case. Knowledge available only in hindsight is not an appropriate measure by which to evaluate the Board's exercise of discretion. See, e.g., *People v. Henderson*, 39 Ill. App. 3d 164, 167 (1976).

¶ 43 The second argument fails as a creative attempt at redefining the finality requirement and, for that matter, the well-established principle of *de novo* review. The Village correctly notes that *de novo* review applies to the Board's finding that the finality requirement was not met. The Village is also correct that *de novo* review may be thought of as reviewing a matter as though anew, with the Board's ruling on the legal question having no binding effect. See, e.g., *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). However, this does not mean, as the Village implies, that we review the matter as it stands in present time. We review the undisputed facts as they stood at the time of the Board's decision, and we apply *de novo* review to those facts as they stood at that time. The Village cites no case law wherein *de novo* review operates to change the snapshot of facts by which we evaluate the finality requirement. Because the finality requirement has not been met, collateral estoppel cannot be applied.

¶ 44 Based on this resolution in favor of Metallo and the Board, we need not address the remaining points raised by the Board and Metallo.

¶ 45 III. CONCLUSION

¶ 46 For the aforementioned reasons, we affirm the decision of the Board and of the circuit court.

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¶ 47 Affirmed.