

2013 IL App (2d) 121300-U  
No. 2-12-1300  
Order filed July 30, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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SCOTT KERN,	)	Appeal from the Circuit Court
	)	of Kane County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 12-MR-110
	)	
THE BOARD OF TRUSTEES OF THE	)	
ST. CHARLES POLICE PENSION FUND	)	
and TIM BEAM, MIKE SCHUBERT, and	)	
CHRIS MINNICK, as Trustees of the	)	
St. Charles Police Pension Fund,	)	Honorable
	)	Thomas E. Mueller,
Defendants-Appellants.	)	Judge, Presiding.

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JUSTICE BIRKETT delivered the judgment of the court.  
Justices McLaren and Zenoff concurred in the judgment.

**ORDER**

¶ 1 *Held:* The Board's ruling that plaintiff's disability was not caused by an act of duty was not against the manifest weight of the evidence: although plaintiff's anxiety disorder manifested itself during acts of duty, the record did not show that the disorder was caused or aggravated by those acts.

¶ 2 Plaintiff, Scott Kern, appeals from an order of the circuit court of Kane County affirming the decision of the Board of Trustees of the St. Charles Police Pension Fund (Board) denying his

application for a line-of-duty disability pension and awarding him a nonduty pension instead. We affirm.

¶ 3 Evidence adduced at the hearing on plaintiff's application establishes the following facts. Plaintiff joined the St. Charles police department in 2001. A report from plaintiff's preemployment psychological assessment stated that personality tests "indicate that [plaintiff] is an immature individual who exhibited underlying indications of hostility and anxiety." In May 2005, plaintiff's primary care physician placed him on antidepressant medication. Plaintiff testified that at that time he was working a lot of midnight shifts and was more irritable than usual. He remained on the medication for about a year.

¶ 4 On July 4, 2005, while responding to a dispatch instructing him to conduct a well-being check, plaintiff became involved in an altercation with a man who was intoxicated and bleeding. At some point the man was able to get on top of plaintiff while they were both on the ground. The man reached for plaintiff's gun, but plaintiff was able to prevent the man from gaining possession of the weapon. Plaintiff was able to subdue the man. Plaintiff testified that, during the struggle, he thought he was going to be killed and he worried about his wife. Plaintiff did not report any psychological issues connected with the incident. He received precautionary treatment for exposure to the man's blood. Plaintiff also suffered a knee injury that ultimately required surgery. The surgery was performed in March 2006 and plaintiff returned to duty, without restrictions, in August of that year.

¶ 5 In the fall of 2006, plaintiff participated in a training exercise that simulated an encounter with a possibly armed suspect. Plaintiff testified that he "just gave up" and "quit the scenario." Plaintiff told a sergeant that he had not completed the exercise because he did not feel that he could

“control the guy” and “didn’t want to do any better than what I was doing.” Sometime in 2008, plaintiff participated in another training exercise, which he described as follows:

“In that scenario, it was a suspect in a small office who had a victim at his feet, and the condition of the victim was unknown, and I believe he had some type of bludgeon in his hand, and I was, you know, responding to the situation. I was not successful in getting him to leave the room. I believe when he did drop the bludgeon—and since he wouldn’t come out, I made the elementary mistake of walking into that confined space, this office, and he quickly drew a plastic knife and stabbed me. So it was essentially a death blow in this situation.”

¶ 6 In December 2009, plaintiff, who had been assigned to the detective division since 2007, requested to be reassigned to patrol duties. On January 4, 2010, plaintiff returned to work following a vacation. While on vacation, plaintiff had run into his partner’s wife, who related that the department had investigated a suicide. Plaintiff testified, “it really just turned my stomach to hear [about the suicide].” Plaintiff was alarmed by the intensity of his reaction to the news of the suicide.

¶ 7 On January 5, 2010, plaintiff and his partner traveled to the Kane County jail to fingerprint an inmate who was subject to outstanding warrants. The inmate raised his hand, and plaintiff feared that the inmate was going to strike him. Although the inmate did not do so, within two or three minutes plaintiff felt nauseous and thought that he was going to pass out. Plaintiff testified that he believed that he had suffered a panic attack. As a result of the incident, plaintiff took medical leave starting the following day. Medical records indicate that he experienced frequent panic attacks in January 2010. Plaintiff testified that he had a panic attack after being told that he would be assigned to patrol duty when he returned from medical leave. After receiving counseling for a few weeks,

plaintiff began a more intensive treatment program at Alexian Brothers Behavioral Health Hospital (Alexian Brothers). According to a letter from Ravinder Grewal, M.D., a psychiatrist at that facility, plaintiff was treated for posttraumatic stress disorder (PTSD) and for “Anxiety Disorder, NOS.” In the letter, Grewal wrote that “[t]his problem was triggered at work after the occurrence of an altercation [plaintiff] had with an intoxicated male on [July 4, 2005].”

¶ 8 Plaintiff was examined by three physicians in connection with his pension application: Geoffrey S. Shaw, M.D., Alexander E. Obolsky, M.D., and Stevan M. Weine, M.D. Shaw and Obolsky concluded that plaintiff was disabled from serving as a police officer. Weine concluded that plaintiff was not disabled from serving as a police officer.

¶ 9 Shaw’s written report states, in pertinent part, as follows:

“[Plaintiff’s] disability is due to depression and severe anxiety. He had a history of depression which predated any work-related incident. He responded well to treatment in May 2005 and remained on medication for approximately one year. At the end of 2009[,] he had a recurrence of his depression and experienced a severe panic attack on [January 5, 2010]. Of note the panic attack was due to existing depressive disorder. Its occurrence did coincide with a stressful situation at the jail. However, the situation was well within normal duties and, although it may have been the precipitating event it was not the cause of his psychological problems. His panic attack was due to the underlying depressive condition. His disability is due to the underlying pre-existing depressive condition[.]”

¶ 10 Obolsky diagnosed plaintiff as suffering from “Anxiety Disorder Not Otherwise Specified (NOS) with Panic Attacks and Generalized Anxiety Features in Partial Remission.” In his written report, Obolsky stated, “It is my opinion held with a reasonable degree of medical psychiatric

certainty that [plaintiff's] mental disability is solely caused by a pre-existing depressive anxiety condition and is unrelated to any on-duty events or activities.” Obolsky noted in his report that plaintiff had recounted “several work incidents [that] led to his developing emotional distress.” The worst of these incidents was finding the body of a seven-week-old child who had died of Sudden Infant Death Syndrome. However, Obolsky discounted these incidents as causes of plaintiff's condition. According to Obolsky's report:

“[Plaintiff] experienced anxiety episodes even when he was not exposed to any threatening events at work. This is so because he has been suffering from a chronic waxing and waning depressive anxiety disorder causally unconnected to work events. The generalized stress of police work might have on occasion worsened his pre-existing depressive anxiety disorder but there is no specific act by [plaintiff] as a police officer that led to mental impairment and disability.”

¶ 11 In an appeal from a judgment in an administrative review proceeding, the appellate court reviews the administrative agency's decision, not the trial court's. *Harroun v. Addison Police Pension Board*, 372 Ill. App. 3d 260, 261-62 (2007). Although the agency's rulings on questions of law are reviewed *de novo*, findings of fact will be disturbed only if they are against the manifest weight of the evidence. *Id.* at 262. “ ‘An administrative agency decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.’ ” *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 504 (2007) (quoting *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992)).

¶ 12 Pursuant to section 3-114.1(a) of the Illinois Pension Code (Code), a police officer found to be disabled from service in the police department “as the result of sickness, accident or injury

incurred in or resulting from the performance of an act of duty \*\*\* shall be entitled to a disability retirement pension equal to \*\*\* 65% of the salary attached to the rank on the police force held by the officer at the date of suspension of duty or retirement[.]” 40 ILCS 5/3-114.1(a) (West 2012).

Where a disability results from any cause other than an act of duty, the officer is entitled to a pension equal to 50% of the salary attached to the officer’s rank at the date of suspension of duty or retirement. 40 ILCS 5/3-114.2 (West 2012). In order to receive a line-of-duty pension, an applicant must establish a causal connection between his or her disability and an act of duty. *Ryndak v. River Grove Police Pension Board*, 248 Ill. App. 3d 486, 489 (1993). A police officer who seeks a line-of-duty pension for a stress-related disability must show that the disability is “ ‘the result of a specific, identifiable act of duty unique to police work.’ ” *Robbins v. Board. of Trustees of the Carbondale Police Pension Fund of the City of Carbondale*, 177 Ill. 2d 533, 542 (1997) (quoting *Trettenero v. Police Pension Fund of the City of Aurora*, 268 Ill. App. 3d 58, 63 (1994)). Where the stress relates to the general nature of police work, an application for a line-of-duty pension will be denied. *Id.* (citing *Trettenero*, 268 Ill. App. 3d at 63).

¶ 13 The Board found that plaintiff suffered from general depression and anxiety and was mentally disabled from service as a police officer. Plaintiff does not argue that his disability resulted from any act of duty prior to July 4, 2005, when he was involved in an altercation with an intoxicated individual, and the record shows that plaintiff had been treated for depression prior to that date. Nonetheless, defendant argues that his disability resulted from a specific act of police duty—fingerprinting a suspect on January 5, 2010. Plaintiff contends that the anxiety attack that he experienced minutes later aggravated his preexisting mental or emotional problems and left him mentally unfit to serve as a police officer. It is true that, when the performance of an act of duty

results in the aggravation of a preexisting condition to the point that the officer is disabled from service, there is a sufficient causal connection between the act of duty and the disability to entitle the officer to a line-of-duty pension. This is so because, as noted in *Barber v. Board of Trustees of the Village of South Barrington Police Pension Fund*, 256 Ill. App. 3d 814, 818 (1993), the Code does not require “that the duty-related incident be the originating or primary cause of the injury.” Thus, in *Barber*, a police officer involved in a duty-related traffic accident was entitled a line-of-duty pension based on the reports of physicians who concluded that the accident either slightly or significantly aggravated a preexisting degenerative condition.

¶ 14 *Alm v. Lincolnshire Police Pension Board*, 352 Ill. App. 3d 595 (2004), also illustrates this principle. In that case, a police officer experienced severe knee pain while on patrol on a bicycle. He was diagnosed with a torn medial meniscus. Although the officer underwent several surgical procedures, his condition restricted his ability to run and perform other physical activities associated with police duties. We held that the officer was performing an act of duty when he experienced the knee pain and that he was entitled to a line-of-duty pension because, even though the disabling condition may have evolved over time, “the performance of plaintiff’s bicycle patrol duties aggravated the condition to the point that it was disabling.” *Id.* at 601.

¶ 15 Unlike in *Barber* and *Alm*, in *Rose v. Board of Trustees of Mount Prospect Police Pension Fund*, 2011 IL App (1st) 102157, a police officer suffered a nondisabling injury in an accident that resulted from the performance of an act of duty, but a subsequent accident unrelated to the officer’s duties aggravated the injury and caused it to become disabling. In holding that the officer was entitled to a line-of-duty pension, the *Rose* court reasoned that the officer “must show [merely] that the duty-related accident was ‘a causative factor contributing’ to that disability.” *Id.* ¶ 94 (quoting

*Luchesi v. Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago*, 333 Ill. App. 3d 543, 550 (2002)).

¶ 16 Plaintiff maintains that “[a]lthough the anxiety attack that [plaintiff] experienced while fingerprinting a suspect may not have been the primary cause of his disability, the record shows that it aggravated his condition to the point that he could not continue working as a police officer.” Plaintiff also argues that his disability is “directly related” to investigating the death of an infant and to participating in training exercises. We disagree. Although some or all of these activities may have precipitated acute episodes of anxiety, it does not follow that the activities themselves, or the anxiety they produced, somehow changed plaintiff’s condition—*i.e.*, the sickness or injury that disabled plaintiff from serving as a police officer. The anxiety that plaintiff experienced was a *manifestation*—a symptom—of an underlying psychological or psychiatric disorder or sickness. However, a manifestation of a disorder is not the same as the disorder itself. A traumatic knee injury might cause pain every time the injured individual climbs stairs, but it would be fatuous to suggest that, *by virtue of that pain alone*, the individual incurred an injury in the act of climbing stairs or that an injury resulted from climbing stairs. Furthermore, although it might sometimes be said that activities that cause an injury to become acutely painful “aggravate” that injury, that does not appear to be the sense in which the term was used in *Barber*, *Alm*, and *Rose*. In those cases the “aggravation” consisted of further damage to a previously injured body part. Here, there is no question that, when the fingerprinting incident occurred, plaintiff’s psyche was too fragile for police work, but the record does not show that it was any more so *because* of that incident or any other specific act of duty.

¶ 17 The acute anxiety plaintiff experienced is analogous to the pain associated with a traumatic physical injury. Were we to hold that plaintiff is entitled to a line-of-duty pension, there would be little justification for denying a line-of-duty pension to any officer who suffers a nonduty-related injury and who only later discovers that the injury makes it too painful to perform a particular act of duty. We therefore conclude that the evidence before the Board amply supports the Board's conclusion that plaintiff's disability did not result from the performance of an act of duty.

¶ 18 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 19 Affirmed.