

NOTICE
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2013 IL App (4th) 120982-U
NO. 4-12-0982
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
May 29, 2013
Carla Bender
4th District Appellate
Court, IL

STEVEN C. ENGLUM,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Coles County
THE BOARD OF TRUSTEES OF THE POLICE PENSION)	No. 11MR323
FUND OF THE CITY OF CHARLESTON,)	
Defendant-Appellant.)	
)	Honorable
)	Mitchell K. Shick,
)	Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justices Appleton and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the circuit court, concluding that the injuries sustained by plaintiff, a police officer, occurred during the performance of an act of duty that involved special risk, entitling the officer to a line-of-duty disability pension.

¶ 2 In February 2010, plaintiff, Steven C. Englum, applied to the defendant, the Board of Trustees of the Police Pension Fund of the City of Charleston (Board), for a disability pension under the Illinois Pension Code (Pension Code) (40 ILCS 5/3-101 to 3-152 (West 2008)).

Following a hearing, the Board denied Englum a "line-of-duty" disability pension but granted him a "not-on-duty" disability pension.

¶ 3 In December 2011, Englum filed a complaint for administrative review.

Following an administrative review, the circuit court reversed the Board's decision, concluding

that Englum was injured in the line of duty for purposes of the Pension Code.

¶ 4 The Board appeals, arguing that its decision to deny Englum a line-of-duty disability pension was proper because Englum was not disabled as the result of an injury incurred while performing an "act of duty." We disagree and affirm the circuit court's reversal of the Board's decision.

¶ 5 I. BACKGROUND

¶ 6 During his December 7, 2008, shift, Englum, a City of Charleston police officer, received a call from police dispatch, indicating that the police chief requested that an officer respond to the Casey's General Store (Casey's) in Charleston, Illinois. Englum responded to the call in his patrol car. Having not been informed of the details of the dispatch, Englum entered Casey's cautiously but found nothing unusual. (Evidence submitted at a later hearing before the Board revealed that the call involved the "Shop for a Cop" program, which was a police charity program to assist disadvantaged children.)

¶ 7 Englum thereafter returned to the police station and parked his patrol car. As he exited his vehicle, Englum slipped on the snow and ice, injuring his left hand and right shoulder. No party disputes that Englum was injured in this incident.

¶ 8 In February 2010, plaintiff applied to the Board for a disability pension under the Pension Code (40 ILCS 5/3-101 to 3-152 (West 2008)). Following a hearing, the Board denied Englum a line-of-duty disability pension but granted him a not-on-duty disability pension. As a result, the Board awarded Englum a pension totaling 50% of his salary, as opposed to the 65% he would have received from a line-of-duty disability pension.

¶ 9 As part of its findings, the Board explained that it was denying Englum a line-of-

duty disability pension because it did not find his claim that he was acting in a continuing capacity of investigation credible. In particular, the Board found, as follows:

"[W]hether [Englum] was engaged in a *capacity* at the time of the incident in question, which involved a 'continuing investigation' of an incident, which satisfies the criteria of an 'act of duty', is a crucial question presented to the Board for its consideration. It would appear that the only documentary evidence which supports [Englum's] testimony of the occurrence[] is 'Applicant's Exhibit 6', which is the 'handwritten memo', prepared by [Englum], allegedly identifying the manner in which the accident happened and most particularly, the circumstances surrounding the same. However, whether said documentation is reliable and/or complements the testimony of [Englum], is a question for this Board's consideration.

The Board believes that the testimony of [Englum] and the primary evidence presented before the Board in support, is not only conflicting, but the same is confusing and does not appear to be credible. As the trier of fact, the Board is charged to evaluate the demeanor and credi[bility] of witnesses and evidence presented. No other documentation presented before the Board provides any specificity for the circumstances surrounding the incident in question other th[a]n the purported 'Applicant's Exhibit 6', which

was allegedly prepared at the Police Department and within *one to two hours after the injury occurred.*" (Emphasis in original.)

¶ 10 In December 2011, Englum filed a complaint for administrative review. Following an administrative review, the circuit court reversed the Board's decision, concluding that Englum was injured in the line of duty for purposes of the Pension Code. The court explained its conclusions in a 13-page written order, as follows:

"While the Board has chosen to attach a sinister intent to the preparation and production of Exhibit 6, the explanations by *** Englum and his attorney as to Exhibit 6 were un-rebutted by other witnesses and evidence. Furthermore, the description of the incident in question contained within the handwritten memo is consistent with *** Englum's testimony throughout the proceedings. The Board's finding that *** Englum lacked credibility is against the manifest weight of the evidence in the case.

The dispatch logs *** clearly show that the Chief of Police dispatched a patrolman to the Casey's General Store at the time in question. The sworn testimony of [other officers and the dispatchers] further supports the claims. Furthermore, Sergeant [Justin] Peterson's testimony before the [B]oard was completely consistent with *** Englum's testimony ***. Sergeant Peterson confirmed that at the time in question, *** Englum came into the

Charleston Police Department and immediately reported that he had fallen. He was holding his left hand and appeared very pale as he described the incident in detail. Sergeant Peterson then dispatched a second patrol officer *** to take over the call that *** Englum was handling. In its decision and order, the Board does not attack the credibility of Sergeant Peterson or explain why it chose to ignore his testimony. Sergeant Peterson's testimony clearly establishes that *** Englum was still in the process of investigating the Chief of Police's dispatch at the time of this injury.

If *** Englum was not acting in his capacity as a patrol officer at the time of the incident, then the Board should have determined in what capacity was he acting. Nowhere in its decision and order does the Board attempt to make this determination or explain why it chose to find that Englum was not acting in his capacity []as a patrolman. The Board's finding in this regard is against the manifest weight of the evidence and clearly erroneous."

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 The Board argues that the circuit court erroneously reversed its decision to deny Englum a line-of-duty disability pension because Englum was not disabled as the result of an

injury incurred while performing an "act of duty." For the reasons that follow, we disagree.

¶ 14 A. The Standard of Review

¶ 15 When reviewing administrative findings, we look at the decision of the administrative agency, not the determination of the circuit court. *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 504, 877 N.E.2d 1101, 1112 (2007). When reviewing those findings, this court reviews factual questions under the manifest weight standard, questions of law *de novo*, and mixed questions of law and fact under the clearly erroneous standard. *Buckner v. The University Park Police Pension Fund*, 2013 IL App (3d) 120231 ¶ 13, 983 N.E.2d 125.

¶ 16 B. The Pertinent Sections of the Pension Code and the "Act-of-Duty/On-Duty" Standard

¶ 17 Section 3-114.1 of the Pension Code provides for a disability pension of 65% of the police officer's salary when the officer is disabled as a result of an "injury incurred in or resulting from the performance of an act of duty[.]" 40 ILCS 5/3-114.1(a) (West 2008). "A police officer shall be considered 'on duty' while on any assignment approved by the chief of the police department." 40 ILCS 5/3-114.1(a) (West 2008). Section 3-114.2 of the Pension Code provides for a disability pension of 50% of the officer's salary when the officer "becomes disabled as a result of any cause other than the performance of an act of duty[.]" 40 ILCS 5/3-114.2 (West 2008). The Pension Code defines an act of duty as follows:

" 'Act of Duty': 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 city in which this Article is in effect or by a special assignment[.]" (Emphasis added.) 40 ILCS 5/5-113 (West 2008).

As this court has explained in the past, not all police functions involve " 'special risk.' " *Jones v. The Board of Trustees of the Police Pension Fund of the City of Bloomington*, 384 Ill. App. 3d 1064, 1070, 894 N.E.2d 962, 967 (2008). However, this court has also noted that " 'special risk' " is not limited to inherently dangerous activities. *Id.* at 1070, 894 N.E.2d at 967-68. An officer who is injured while on duty does not qualify for an on-duty disability simply because he was "on duty." *Rose v. Board of Trustees of the Mount Prospect Police Pension Fund*, 2011 IL App (1st) 102157, ¶ 71, 958 N.E.2d 315. "The critical inquiry is the capacity in which the officer was acting at the time [he] was injured." *Buckner*, 2013 IL App (3d) 120231 ¶ 15, 983 N.E.2d 125.

¶ 18 More than two decades ago, the Illinois Supreme Court held that a Chicago police officer on traffic-patrol duty who slipped and fell while crossing the street in an effort to respond to a citizen's request for help was performing an "act of duty." *Johnson v. Retirement Board of Policemen's Annuity & Benefit Fund*, 114 Ill. 2d 518, 522, 502 N.E.2d 718, 720 (1986). In so holding, the supreme court rejected a strict interpretation of act of duty, as follows:

"The [Board's] interpretation envisions a police officer involved in a gun battle, a high-speed car chase, or some other obviously dangerous situation in order to qualify for duty-disability benefits. This is an overly restrictive and unrealistic interpretation. If this court were to adopt the [Board's] narrow reading of section 5-113, it could discourage police officers from the dedicated and

enthusiastic performance of their duties, to the detriment of all the citizens of Chicago." *Id.* at 522-23, 502 N.E.2d at 720.

¶ 19 C. This Court's Holding in *Jones* Provides Guidance

¶ 20 In *Jones*, 384 Ill. App. 3d at 1065, 894 N.E.2d at 964, this court affirmed the circuit court's reversal of the Board of Trustees of the Police Pension Fund of the City of Bloomington, in a case in which that board, as in this case, denied a police officer a line-of-duty disability pension. This court held that the officer was performing an "act of police duty involving a special risk" where the officer was driving a police transport van on patrol and intending to investigate an area that had reports of "speeders." *Id.* at 1074, 894 N.E.2d at 971. The officer sustained shoulder and back injuries as a result of a traffic accident that occurred when a man driving a Buick " 'shot out' " in front of him. *Id.* at 1066, 894 N.E.2d at 964. Although the officer was not responding to a specific call, he was conducting patrol and general investigation, and faced special risk in that pursuit. *Id.* at 1074, 894 N.E.2d at 971.

¶ 21 D. The Board's Decision in This Case

¶ 22 Initially, we note that we agree with the circuit court that the Board's finding that Englum was not continuing the process of investigating the police chief's dispatch at the time of this injury is against the manifest weight of the evidence. The dispatchers testified as to the dispatch, Englum consistently testified that he was continuing his investigation when he returned to the police station, and Sergeant Peterson testified that the investigation was ongoing—indeed, Sergeant Peterson assigned another officer to continue the investigation. Thus, the only question remaining is whether the dispatch to Casey's involved "special risk." We conclude that it did.

¶ 23 Contrary to the Board's decision, Englum, like the police officer in *Jones*, was

performing an act of police duty that involved special risk when he slipped on the ice and snow, rendering him disabled. Here, the evidence showed that Englum was ordered by the chief of police through dispatch to "respond" to Casey's. At that point, Englum had no idea why he was being dispatched to Casey's and proceeded on the assumption that some sort of criminal activity was afoot. After arriving on the scene, Englum was unable to determine why he was dispatched to Casey's. Accordingly, Englum proceeded to the police station to further investigate the nature of the dispatch.

¶ 24 As we have explained, being "on duty" alone is insufficient to support a line-of-duty disability. See, for example, *Morgan v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 172 Ill. App. 3d 273, 276-77, 526 N.E.2d 493, 496 (1988) (officer was not performing an act of duty where the officer was injured when a chair slipped out from under him when he attempted to sit down while filling out a report). However, when, as here, the officer is acting in a capacity in which the officer is undertaking special risk, a line-of-duty disability is appropriate. See, for example, *Merlo v. Orland Hills Police Pension Board.*, 383 Ill. App. 3d 97, 102-03, 890 N.E.2d 612, 617-18 (2008) (officer was performing an act of duty where the officer responded to a civilian call of juveniles stacking concrete blocks and was injured when attempting to remove the hazard by unstacking the blocks). Englum arrived at Casey's on alert and prepared to deal with any eventuality. The record shows that he was unable to pinpoint the nature of the dispatch to Casey's when he arrived, so he proceeded to the police station in pursuit of answers. Englum was injured in that pursuit.

¶ 25 Having reviewed the record and the pertinent statutory authority, we agree with the circuit court that the Board's finding that Englum was not continuing the process of investigating

the police chief's dispatch at the time of this injury is against the manifest weight of the evidence. Accordingly, we conclude that the Board's decision to deny Englum a line-of-duty disability pension was clearly erroneous.

¶ 26

III. CONCLUSION

¶ 27

For the reasons stated, we affirm the circuit court's judgment reversing the Board.

¶ 28

Affirmed.