

¶ 3 BACKGROUND

¶ 4 Mr. Graves testified that he began working for the defendant as a deputy sheriff on January 7, 1996. On October 3, 2006, he responded to an emergency call. He went to the MetroLink tracks, where he found a decapitated body. While dragging the body from the tracks, he slipped on gravel and twisted his left knee, injuring it.

¶ 5 Mr. Graves testified that he was initially treated by Dr. Lawrence Stein. Dr. Stein, an orthopedic surgeon, testified by evidence deposition. He stated that he first examined Mr. Graves on November 27, 2006. His impression, following the examination and x-rays, was that Mr. Graves had a possible lateral meniscus tear in the left knee. He stated that the x-rays showed the presence of "very early degenerative arthritic changes." A magnetic resonance imaging scan (MRI) was subsequently performed which showed the presence of a lateral meniscus tear and a possible medial meniscus tear. Dr. Stein testified that the radiologist who read the MRI noted, "There is no full-thickness cartilage loss identified." He stated that this meant that the radiologist did not identify any arthritis or degenerative process in Mr. Graves' knee.

¶ 6 Dr. Stein testified that on December 29, 2006, he performed a surgical arthroscopy of Mr. Graves' left knee. During the surgery he found a medial and a lateral meniscus tear, which he trimmed up. Dr. Stein testified that he had to resection the medial meniscus, an inner shock-absorbing cartilage surface. He also diagnosed Mr. Graves with chondromalacia patella. He explained that localized arthritic change is referred to as chondromalacia and extensive arthritic change throughout a joint or on a surface is referred to as frank degenerative arthritis or wear-and-tear arthritis. He went on to explain that over time chondromalacia can lead to extensive arthritic

change.

¶ 7 Dr. Stein testified that, postsurgery, Mr. Graves had continued left knee pain and left knee patellar chondromalacia/early degenerative arthritis with resulting patellofemoral symptoms. Dr. Stein stated that he treated Mr. Graves with cortisone to lessen inflammation and Synvisc viscosupplement injections to help repair and regenerate the articular surface.

¶ 8 Dr. Stein testified that the arthritic changes in Mr. Graves were not caused by his October 3, 2006, injury, but both the injury and surgery could have exacerbated any preexisting change. He testified that removing any portion of the cartilage can lead to increased stress placed on that portion of the knee joint and the knee surfaces. Dr. Stein explained that arthritis is an inflammation of a joint. He testified that because Mr. Graves had no symptoms prior to the accident, in his opinion, to a reasonable degree of medical certainty, the trauma to Mr. Graves' knee and the resulting surgery flared up or activated the inflammation process. He stated, "[S]o it preexisted, if you will, but wasn't activated or inflamed, but the injury and subsequent surgery, in my mind, in relating to that, stirred this up—in layman's terms, brought it about—."

¶ 9 In November of 2007, Mr. Graves was called to assist a fellow deputy at the scene of another emergency. At the scene he had to restrain a suspect who was attempting to run into oncoming traffic. Mr. Graves suffered an injury to his knee which aggravated and exacerbated his prior left knee injury.

¶ 10 Dr. Richard Lehman, an orthopedic surgeon, testified by evidence deposition. He stated that he initially examined Mr. Graves in January 2008, on referral from Dr. Stein. In his medical records dated January 22, 2008, Dr. Lehman wrote that x-rays of Mr. Graves' left knee showed preexisting degenerative arthritic changes which

were minimal. He ordered an enhanced MRI and determined that Mr. Graves had a breakdown in the patellofemoral articulation and a recurrent tear of the lateral meniscus. He recommended an arthroscopic evaluation.

¶ 11 On March 31, 2008, Dr. Lehman performed surgery on Mr. Graves' left knee. In his operative report he wrote that Mr. Graves had a substantial tear of the posterior horn of the medial meniscus, that the meniscus was frayed, and that there was fragmentation in the meniscus which was fairly significant. He wrote that the lateral meniscus was significantly torn and there was an anterior tear with a large component laterally. He wrote that the meniscus tear was almost a horizontal cleavage tear. He further noted that there were diffuse grade III changes in the central portion of the patella with some fronding and fragmentation. He stated that the patella was debrided extensively. Dr. Lehman testified that Mr. Graves' torn meniscus on the medial side was directly related to his work injury, while the changes of the patellofemoral articulation were degenerative.

¶ 12 Dr. Lehman testified that after the surgery, he continued to treat Mr. Graves. He stated that he treated Mr. Graves with a series of injections with anti-inflammatory components and lubricants aimed at helping regenerate some of the articular cartilage of the knee. He opined that Mr. Graves' pain in his kneecap was more arthritic in nature than it was traumatic; however, he had some "kneecap pain secondary to weakness in his quad which I think was directly related to his surgery." Dr. Lehman testified that Mr. Graves' two surgeries resulted in a significant amount of cartilage loss in terms of the remaining cushioning effect. Dr. Lehman testified:

"I think you have somebody who has wear and tear in their joint, is doing okay, tears a meniscus, has a surgery, part and parcel to surgery as I stated before, is your quad gets a little bit weak so you start to manifest some discomfort from overloading your

kneecap because your quad isn't up to snuff. And I think that's where his pain was coming from. As I stated before, I think he had a traumatic tear of his meniscus at work. I think the patellofemoral arthritis which [Dr. Stein] found and I found was unrelated to his work and is related to the natural progression of degenerative joint disease in that particular area, but I think the symptoms are related to a manifestation of quad weakness and over-load of his knee cap."

Dr. Lehman stated that the atrophy following his knee surgeries and the overloading of the kneecap could be a causative factor with respect to Mr. Graves' patellofemoral pain.

¶ 13 On September 30, 2008, Mr. Graves underwent a functional capacity evaluation at the request of Dr. Lehman to determine his current functional abilities to return to his occupation as a patrol deputy for the defendant. The physical demand level of the job is listed as very heavy, requiring lifting of 100 pounds. The evaluator wrote that Mr. Graves could lift 70 pounds occasionally and 60 pounds frequently. The evaluator wrote that Mr. Graves' level of function did not meet the required demand level in his usual and customary employment as a patrol deputy. On October 7, 2008, Dr. Lehman wrote a letter stating, based on Mr. Graves' functional capacity evaluation, he is able to return to work with a lifting restriction of 70 pounds. He stated that Mr. Graves was at maximum medical improvement.

¶ 14 On March 4, 2010, Dr. Lehman wrote a letter stating that, in his opinion, "it would be very difficult for [Mr. Graves] to entertain law enforcement or work as a security guard." He went on to state that the only way to truly resolve Mr. Graves' knee problems was a total knee replacement. On March 5, 2010, Mr. Graves received a letter from the defendant terminating his service.

¶ 15 Dr. Lyndon Gross, an orthopedic surgeon, testified by evidence deposition. He testified that Mr. Graves was referred to him by Dr. Eavenson, a chiropractor. He

stated that Mr. Graves brought medical records and an MRI scan with him to the appointment. On April 6, 2010, Dr. Gross examined Mr. Graves and took x-rays. He stated that after looking at Mr. Graves' x-rays, it was his impression that there were some early degenerative changes in his patellofemoral articulation and some slight decreased joint space, or space on the outside or lateral part of his knee. Dr. Gross testified that, in his opinion, to a reasonable degree of medical certainty, Mr. Graves' knee pain and problems were from left knee degenerative joint disease, or arthritis of the left knee.

¶ 16 Dr. Gross stated that there are a number of factors involved in the degeneration of a knee. The factors include the person's size, genetics, and whether the individual has had a previous trauma to the cartilage or meniscus of the knee. He stated that Mr. Graves was a large man, which contributed to his knee problems. Dr. Gross testified that Mr. Graves had a portion of both the medial and lateral meniscus removed in both of his surgeries. He stated that the removal of that cartilage removes the shock-absorber in the knee. He testified that Mr. Graves' injury could have exacerbated and aggravated his preexisting patellofemoral degeneration, but he could not state this with medical certainty. He went on to state, with medical certainty, that Mr. Graves had some degeneration of the patellofemoral joint, and that over time it would continue to degenerate, with or without the injury.

¶ 17 Mr. Graves had another functional capacity evaluation on July 21, 2010. The evaluator found that Mr. Graves could lift 40 pounds occasionally, 28 pounds frequently, and 10 pounds constantly. On August 12, 2010, Dr. Lehman wrote a letter stating that it was a "final rating." He wrote: "It is my impression that the patient has a permanent partial disability of 13% at the level of the left knee based on his work related injury. He certainly has significant breakdown and degenerative changes

referable to his knee. I do not believe that he can return to work in the capacity of a police officer."

¶ 18 Dr. Joseph Ritchie, an orthopedic surgeon, testified by evidence deposition. He stated that he conducted an independent medical examination of Mr. Graves on referral from the defendant's attorney. He testified that he first examined Mr. Graves on December 3, 2007. He stated that Mr. Graves had sustained an injury at work and that he had undergone an arthroscopic procedure and was noted to have a meniscus or cartilage tear and some degenerative changes most notably behind his patella. He testified that Dr. Stein's finding of patellofemoral arthritis in December 2006 would not have been caused by the twisting of the knee from the October 2006 accident.

¶ 19 Dr. Ritchie testified that he examined Mr. Graves again on December 10, 2008, and on April 28, 2010. He stated that based upon his examinations of Mr. Graves, his review of the imaging, as well as his past medical history, it was his opinion, to a reasonable degree of medical certainty, that Mr. Graves' problems continued to be from degenerative changes in his knee and not from any work-related injury. In a letter from Dr. Ritchie to the defendant's attorney dated April 28, 2010, he wrote that, in his opinion, the degenerative changes in Mr. Graves' knee predated the injury that caused him to have his first arthroscopy. He went on to state that Mr. Graves was originally treated for meniscus pathology and the injury did not cause the degenerative change. He opined that the second arthroscopy was probably more for the degenerative change than for any residual problems from the injury. Dr. Ritchie testified that Mr. Graves' meniscus tear did not cause the changes behind his patella, but could have exacerbated or made the changes more symptomatic.

¶ 20 On November 18, 2010, Mr. Graves filed a complaint for declaratory judgment to determine the defendant's duty to pay benefits under the Benefits Act. On April 24,

2012, the parties filed a stipulation stating that Mr. Graves suffered a line-of-duty accident on October 3, 2006, and that as a result of this line-of-duty accident, he was injured. The parties further stipulated that Mr. Graves is disabled and that his disability necessitated his termination of employment with the defendant effective February 28, 2010. The parties stipulated that his disability from service as a deputy was permanent and that he had not been provided health insurance benefits by the defendant since February 28, 2010. The parties stipulated that the issue for the court to decide was whether Mr. Graves' injury and condition resulting from his line-of-duty accident on October 3, 2006, constituted a catastrophic injury for purposes of making him eligible for benefits under the Benefits Act. At the hearing on Mr. Graves' complaint, the defendant stipulated that if the court found a causal relationship between Mr. Graves' disability and his injury, then the injury would be a catastrophic injury.

¶ 21 Mr. Graves testified that he never had any kind of injury to his left knee prior to October 3, 2006. He stated that he never had any problems with his left knee and that he was never diagnosed with any type of arthritic condition prior to that date. Mr. Graves testified that he is unable to return to work as a sheriff's deputy because he is unable to run, kneel, squat, twist, or turn on his knee. He stated that he suffers from constant knee pain.

¶ 22 On March 29, 2011, the Social Security Administration issued an order finding that the demands of Mr. Graves' past relevant work exceeded his residual functional capacity and that his acquired job skills did not transfer to other occupations within the residual functional capacity. It found that considering Mr. Graves' age, education, work experience, and residual functional capacity, there were no jobs that existed in significant numbers in the national economy that he could perform. Mr. Graves was

found to be disabled and entitled to monthly disability benefits beginning March 2011.

¶ 23 On June 7, 2012, the circuit court entered an order on Mr. Graves' complaint for declaratory judgment. It found that Mr. Graves' injury resulting from his line-of-duty accident on October 3, 2006, constituted a catastrophic injury for purposes of making him eligible for benefits pursuant to the Benefits Act (820 ILCS 320/1 to 99 (West 2006)). The court ordered the defendant to pay the premium on the defendant's health plan on behalf of Mr. Graves and his spouse in accordance with the Benefits Act and to reimburse him for all sums paid for health insurance coverage and health-related costs since his separation from the defendant. The defendant was ordered to pay sums due and owing on May 28, 2010, through April 24, 2012, said sums totaling \$26,275.13. The defendant was ordered to reimburse Mr. Graves for any subsequent costs of health insurance coverage which he was forced to incur prior to the order being implemented by the defendant. The defendant was ordered to pay Mr. Graves' taxable costs for the filing of the lawsuit. The defendant filed a timely notice of appeal.

¶ 24

ANALYSIS

¶ 25

The defendant argues that the circuit court's finding that Mr. Graves suffered a catastrophic injury within the meaning of the Benefits Act is against the manifest weight of the evidence. "A judgment is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence." (Internal quotation marks omitted.) *Kunkel v. P.K. Dependable Construction, LLC*, 387 Ill. App. 3d 1153, 1157 (2009).

¶ 26

Section 10(a) of the Benefits Act provides in pertinent part:

"An employer who employs a full-time law enforcement, correctional or correctional probation officer, or firefighter, who, on or after the effective date of this Act suffers a catastrophic injury or is killed in the line of duty shall pay the entire premium of the employer's health insurance plan for the injured employee, the injured employee's spouse, and for each dependent child of the injured employee until the child reaches the age of majority ***." 820 ILCS 320/10(a) (West 2006).

The supreme court has held that the phrase "catastrophic injury" is synonymous with an injury resulting in a line-of-duty disability under the Illinois Pension Code. *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 400 (2003); see also *O'Loughlin v. Village of River Forest*, 338 Ill. App. 3d 189, 197 (2003) ("Here, it is clear that the legislature of Illinois intended for the Act to cover police officers and firefighters who were forced to take a line-of-duty disability."). The defendant contends that because Mr. Graves did not receive a line-of-duty disability but was awarded social security disability benefits for degenerative joint disease of the left knee, he did not establish the existence of a catastrophic injury in the pleadings and failed to carry his burden of proving that his disability was a line-of-duty injury. The defendant argues that Mr. Graves failed to prove that his disability was the result of a line-of-duty injury and not the result of degenerative joint disease.

¶ 27 The defendant argues that the burden was on Mr. Graves to produce expert medical evidence proving the relationship between his disability and his line-of-duty injury and that he failed to do so because the only expert medical evidence he provided was the cross-examination of the defendant's expert witnesses. This is inaccurate. Mr. Graves offered and the court admitted medical records of his treatment with Dr. Stein and Dr. Lehman. In his office notes dated May 30, 2007, Dr. Stein wrote that Mr. Graves' continued issues of retropatellar pain from chondromalacia/early degenerative arthritic type change were mild, "but could have been exacerbated with his injury and

subsequent surgery." In a letter dated August 12, 2010, Dr. Lehman wrote that Mr. Graves had permanent partial disability of 13% at the level of the left knee based on his work-related injury.

¶ 28 The defendant further argues that the circuit court's decision was against the manifest weight of the evidence because overwhelming expert medical evidence showed that Mr. Graves' disability was the result of degenerative joint disease rather than a catastrophic injury in the line of duty.

¶ 29 Because the supreme court in *Krohe* held that the phrase "catastrophic injury" is synonymous with an injury resulting in a line-of-duty disability under the Illinois Pension Code, we look there to determine what a claimant must prove to establish a line-of-duty disability. For a police officer to obtain a line-of-duty disability pension under the Illinois Pension Code (40 ILCS 5/3-114.1(a) (West 2006)), he must prove that he is disabled from service in the police department and that his disability was caused by an injury incurred in or resulting from the performance of an act of duty. *Mingus v. Board of Trustees of the Police Pension Fund of Peoria*, 2011 IL App (3d) 110098, ¶ 12. The parties stipulated that Mr. Graves suffered a line-of-duty accident in which he was injured. They further stipulated that he is disabled and that his disability necessitated his termination from employment with the defendant. The sole issue was whether there was a causal connection between Mr. Graves' injury and his disability. To show a causal connection between a line-of-duty injury and a disability, the claimant need not prove that the duty-related accident was the sole cause, or even the primary cause of his disability; he need prove only that the accident is a causative factor contributing to his disability. *Luchesi v. Retirement Board of the Fireman's Annuity & Benefit Fund of Chicago*, 333 Ill. App. 3d 543, 550 (2002).

¶ 30 Dr. Stein testified that when he first examined Mr. Graves in 2006, his x-rays

showed very early degenerative arthritic changes. He stated that the radiologist who read Mr. Graves' MRI did not identify any arthritis or degenerative changes. Dr. Stein testified that when he performed arthroscopic surgery on Mr. Graves on December 29, 2006, he found chondromalacia patella. He testified that while Mr. Graves' October 3, 2006, injury and subsequent surgery did not cause his arthritic changes, they could have exacerbated any preexisting change. He further explained that the removal of cartilage during the surgery increased the stress on Mr. Graves' knee. Dr. Stein testified, to a reasonable degree of medical certainty, that the trauma to Mr. Graves' knee and the resulting surgery activated or inflamed his preexisting arthritis.

¶ 31 Dr. Lehman wrote in his January 22, 2008, office records that Mr. Graves' x-rays showed minimal preexisting degenerative changes in his left knee. Dr. Lehman testified that Mr. Graves' two surgeries resulted in a significant amount of cartilage loss thereby decreasing the cushioning in his knee. He further stated that his injury and surgery led to weakness in his quad which caused him to "overload" his kneecap. He stated that this caused the kneecap pain.

¶ 32 Dr. Gross testified that a number of factors lead to degeneration in a knee, including whether an individual has had a trauma to the meniscus or cartilage of the knee. Additionally, he said that Mr. Graves' surgeries removed some of the shock-absorbing cartilage in his knee. Dr. Gross testified that Mr. Graves' injury could have exacerbated or aggravated his preexisting degenerative arthritic changes in his knee.

¶ 33 Dr. Ritchie testified that while Mr. Graves' October 3, 2006, injury did not cause the degenerative changes to his knee, it could have exacerbated or made the changes more symptomatic.

¶ 34 Mr. Graves testified that he never injured his knee prior to October 3, 2006. He

further stated that he never had any complaints with his left knee, he never sought medical treatment for his knee, and he had never been diagnosed with arthritis in his knee. Dr. Lehman and Dr. Stein both found that when they originally examined Mr. Graves he had minimal degeneration of his knee. Dr. Stein testified that the radiologist who read Mr. Graves' initial MRI found no degenerative changes. Dr. Stein, Dr. Lehman, Dr. Gross, and Dr. Ritchie all testified that Mr. Graves' injury could have aggravated and exacerbated his preexisting degenerative arthritic changes in his knee. Dr. Stein, Dr. Lehman, and Dr. Gross all testified that the surgeries Mr. Graves underwent removed some of the shock-absorbing cartilage in his left knee.

¶ 35 A line-of-duty disability may result from multiple causes, and the duty-related injury need not be the sole cause, or even the primary cause, of the disability. *Rose v. Board of Trustees of the Mount Prospect Police Pension Fund*, 2011 IL App (1st) 102157, ¶ 92. A line-of-duty disability may be based on the aggravation of a preexisting physical condition so long as there is a sufficient nexus between the injury and the performance of the duty. *Id.* It was not against the manifest weight of the evidence for the circuit court to conclude that there was a causal connection between Mr. Graves' October 3, 2006, injury and his disability and that he suffered a catastrophic injury within the meaning of the Benefits Act.

¶ 36 CONCLUSION

¶ 37 For the foregoing reasons, the judgment of the circuit court of St. Clair County is affirmed.

¶ 38 Affirmed.