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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

| | | |
|-------------------------------------|---|-------------------------------|
| GERALD QUINLAN, |) | |
| |) | Appeal from the Circuit Court |
| Plaintiff-Appellant, |) | of Cook County. |
| |) | |
| v. |) | No. 12 CH 32395 |
| |) | |
| THE BOARD OF TRUSTEES OF THE ELK |) | |
| GROVE VILLAGE FIREFIGHTERS' PENSION |) | The Honorable |
| FUND, |) | Mary Lane Mikva, |
| |) | Judge, presiding. |
| Defendant-Appellee. |) | |

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Pucinski and Justice Mason concurred in the judgment.

ORDER

¶ 1 *Held:* The Pension Board's decision denying plaintiff line-of-duty disability pension benefits is affirmed where the record shows that the Board's finding that plaintiff is not permanently disabled from his injuries was not against the manifest weight of the evidence.

¶ 2 Firefighter Plaintiff-Appellant, Gerald Quinlan, seeks reversal of the Board of Trustees of the Elk Grove Village Firefighters' Pension Fund's decision to deny his request for line-of-duty disability pension benefits after he was injured on the job. The parties dispute whether the injuries left Quinlan "permanently" disabled within the meaning of section 4-112 of the Illinois Pension Code (Code). 40 ILCS 5/4-112 (West 2000). We find sufficient credible medical

evidence for the Board's decision that Quinlan was not permanently disabled, and accordingly, Quinlan has failed to show that the Board's decision is against the manifest weight of the evidence. We affirm the rulings of the board and the circuit court.

¶ 3

BACKGROUND

¶ 4

Beginning in 1978, Gerald Quinlan worked as firefighter for Elk Grove Village. On December 20, 2008, while responding to a call, Quinlan slipped on ice and fell hard on his right side. Quinlan testified that immediately following the fall, he felt excruciating pain in his right elbow and shoulder. Paramedics examined Quinlan at the scene and transported him to an emergency room. The emergency room doctor diagnosed him with trauma-related contusions to the right wrist, elbow, and shoulder as well as a sprained wrist, injured elbow, and injury to the tendons in the shoulder. The doctor prescribed pain medications and released Quinlan later that evening.

¶ 5

Before the pension board, seven doctors testified—two were Quinlan's personal doctors, one was at his counsel's request, two were at the Village's workers' compensation carrier's request, and three were at the Board's request under section 4-112 of the Code. 40 ILCS 5/4-112 (West 2000).

¶ 6

Quinlan saw Dr. David Anderson on December 23, 2008. Between December 2008 and September 2010, Quinlan was seen by Dr. Anderson over 20 times. Dr. Anderson initially diagnosed Quinlan with neck trapezius pain (neck muscle pain/stiffness), right shoulder contusion (bruise) and rotator cuff strain, right posterior elbow pain and contusion, right wrist pain, and a possible scapholunate (wrist) ligament injury. Anderson recommended Quinlan see Dr. Timothy Havenhill, a wrist specialist. Quinlan first met with Dr. Havenhill on January 20,

2009, and at least seven more times. Dr. Havenhill diagnosed Quinlan with a right wrist scapholunate tear injury and recommended physical therapy.

¶ 7 Quinlan began physical therapy for both his right shoulder and right wrist in February 2009, which continued until April 2010. Dr. Anderson administered several rounds of cortisone shots in Quinlan's shoulder, and Dr. Havenhill did likewise in Quinlan's right wrist.

¶ 8 At the request of the Village's workers' compensation carrier, Dr. Paul Papierski conducted an independent medical evaluation of Quinlan on April 29, 2009. Dr. Papierski concluded that Quinlan had a right shoulder sprain with persistent tendinosis, shoulder acromioclavicular joint and degenerative joint disease (arthritis of the shoulder joints). Papierski also found a scapholunate (wrist) ligament tear in Quinlan's right wrist. Papierski recommended an arthroscopy of the shoulder with subacromial decompression (to reduce pressure to muscle). He determined Quinlan could work light duty. On July 15, 2009, Dr. Papierski issued an addendum to his original report, that Quinlan could work medium level duty.

¶ 9 Dr. Havenhill released Quinlan to light duty work on July 29, 2009, after another evaluation during which Quinlan complained that he still had wrist pain. Dr. Havenhill noted Quinlan, who had been attending therapy sessions for his wrist, “essentially graduated.”

¶ 10 The following month Quinlan began light duty at the Elk Grove Fire Department during which time he continued to complain of problems with his wrist while using the computer. On August 7, 2009, Dr. Anderson recommended surgery on Quinlan's right shoulder, which took place in October 2009.

¶ 11 In March 2010, the Village's workers' compensation carrier required Quinlan to undergo another independent medical evaluation with a different doctor, Dr. Gregory Nicholson. Dr.

Nicholson recommended to the Village that Quinlan could be allowed to work light duty. That same month Dr. Anderson released Quinlan for light duty work.

¶ 12 Quinlan underwent a functional capacity evaluation (FCE) on April 15, 2010, at the recommendation of Drs. Anderson and Havenhill. An FCE objectively determines physical limitations and contrasts them with the individual's subjective complaints. Quinlan claims he gave full effort during the half day long evaluation and that he felt constant pain in his right shoulder the entire time. The results of the FCE showed Quinlan capable of the "very heavy physical demand level." Quinlan disputes the FCE findings.

¶ 13 After reviewing the FCE, Dr. Nicholson wrote the Village's workers' compensation carrier on June 8, 2010, that Quinlan was at maximum medical improvement and could return to full duty without work restrictions.

¶ 14 About seven months later, in January 2011, Quinlan retired from the fire department with a regular retirement pension without prejudice to his pending disability claim.

¶ 15 Dr. Basel Al-Aswad examined Quinlan on February 10, 2011 at the Board's request. According to Dr. Al-Aswad, although Quinlan could perform activities below shoulder level, he was unable to perform overhead activities or repetitive activities with his wrist. Dr. Al-Aswad deemed these restrictions to be permanent and Quinlan would not be able to return to work full duty as a firefighter. A few days later, Dr. Prasant Atluri examined Quinlan at the Board's request. Dr. Atluri found no objective findings indicating Quinlan needed ongoing restrictions and concluded that Quinlan could resume full firefighter duties. The Board's third doctor, Dr. Craig Phillips, examined Quinlan on February 22, 2011. He too found no reason Quinlan should be disabled and concluded Quinlan had reached maximum medical improvement and could work at a high level.

¶ 16 Quinlan's counsel selected Dr. Jeffery Coe who examined Quinlan on January 10, 2012. Dr. Coe determined Quinlan "permanently and totally incapable of performing full duty as a firefighter/paramedic."

¶ 17 On August 7, 2012, the Board issued a written decision and order unanimously denying Quinlan's application for line-of-duty disability benefits. The Board concluded, "[it] does not find that Applicant proved that he incurred 'sickness, accident, or injury' that rendered him 'disabled' within the meaning of the Pension Code." The Board exercised its discretion in giving less weight to the opinions of Drs. Anderson, Havenhill, Coe, and Papierski and greater weight to the opinions of Drs. Atluri, Nicholson, Phillips, and the FCE. The Board noted specifically that Dr. Papierski examined Quinlan before Quinlan underwent the FCE and surgery.

¶ 18 Quinlan filed a complaint for administrative review in the circuit court principally arguing the Board's decision was inconsistent with the manifest weight of the evidence. On August 22, 2013, the circuit court affirmed the Board's decision. Quinlan timely appeals.

¶ 19 ANALYSIS

¶ 20 Quinlan argues the evidence does not sufficiently support the Board's decision denying him line-of-duty pension benefits and finding him able to return to service as a firefighter under section 4-110 of the Code. 40 ILCS 5/4-110 (West 2000).

¶ 21 We review the administrative agency's decision, not the circuit court's. *Wade v. City of North Chicago Police Pension Board*, 266 Ill. 2d 485, 504 (2007). Whether the evidence supports the Pension Board's denial of benefits raises a question of fact which we review under the manifest weight of the evidence standard. *Wade*, 266 Ill. 2d at 504. The board's findings are *prima facie* correct, therefore, we defer and will not reverse simply because we would rule differently or the opposite conclusion is reasonable, but rather, only if the opposite conclusion is

clearly evident. *Marconi v. Chicago Heights Police Pension Board*, 255 Ill. 2d 497, 534 (2006); *Illinois Council of Police v. Illinois Labor Relations Board*, 387 Ill. App. 3d 641, 660 (2008); *Wade*, 266 Ill. 2d at 504. We do not reweigh the evidence and determine what evidence we believe to be more credible. *Haynes v. Police Board of the City of Chicago*, 293 Ill. App. 3d 508, 511-12 (1997). As long as credible evidence exists on which the Board relied in making its determination, we must affirm. *Robbins v. Board of Trustees of the Carbondale Police Pension Fund*, 177 Ill. 2d 533, 538 (1997). The petitioner bears the burden of proof to show the Board's decision is contrary to the manifest weight of the evidence. *Kouzoukas v. Retirement Board of Policemen's Annuity and Benefit Fund of City of Chicago*, 234 Ill. 2d 446, 464 (2009).

¶ 22 That Quinlan's injuries occurred in the line-of-duty is not an issue. Rather, the issue at the heart of this appeal involves whether Quinlan's injuries permanently disabled him within the meaning of the Code. Quinlan attempts to discount the conclusions of Drs. Atluri, Nicholson, and Phillips, claiming they solely relied on the FCE in reaching their conclusion. Quinlan claims that the FCE was inconclusive and the Board should not have relied on it. The Board responds that the record contains ample evidence refuting Quinlan's claim of permanent disability and he essentially asks us to reweigh the evidence.

¶ 23 Section 4-110 of the Code provides:

"If a firefighter, as the result of sickness, accident[,] or injury incurred in or resulting from the performance of an act of duty or from the cumulative effects of acts of duty, is found, pursuant to Section 4-112, to be physically or mentally permanently disabled for service in the fire department, so as to render necessary his or

her being placed on disability pension, the firefighter shall be entitled to a disability pension ***." 40 ILCS 5/4-110 (West 2000).

¶ 24 Section 4-112 of the Code provides:

"A disability pension shall not be paid until disability has been established by the board by examinations of the firefighter at pension fund expense by 3 doctors selected by the board and such other evidence as the board deems necessary." 40 ILCS 5/4-112 (West 2000).

¶ 25 In denying Quinlan's request for disability benefits, the Board relied on the medical opinions of Dr. Nicholson, Dr. Phillips, and Dr. Atluri that Quinlan was capable of returning to full firefighter duties. Each doctor examined Quinlan, reviewed his medical records, and read the FCE findings before concluding he was not permanently disabled by his injuries. Quinlan points out that each of these doctors relied on the FCE and they should not have done so. But the FCE was only a part of their analysis; they each conducted a physical examination as well as reviewed Quinlan's medical history. Dr. Nicholson's opinion was the only one that changed after he reviewed the FCE. Even if we were to eliminate for inconsistencies, *arguendo*, Dr. Nicholson's determination, as well as the FCE, the medical opinions of Dr. Atluri and Dr. Phillips still stand and the Board could rely on them alone. Both Phillips and Atluri not only found Quinlan not disabled but also able to return to full work duties as a firefighter.

¶ 26 Quinlan maintains that as the second doctor selected at the request of the Village's workers' compensation carrier, Dr. Nicholson's opinion should be discredited because it was the result of doctor shopping. The law, however, gives no relevance to who chose the doctor and why. See *Bowlin v. Murphysboro Firefighters Pension Bd. of Trustees*, 368 Ill. App. 3d 205,

211 (2006) (Immaterial that doctor whose opinion Board relied on was at request of workers' compensation carrier).

¶ 27 Quinlan relies on *Bowlin* where the appellate court reversed the Board's decision to deny disability benefits because the one doctor the Board relied on presented contradictory findings. *Bowlin*, 368 Ill. App. 3d at 212. The doctor found that even though the firefighter had a mild-to-moderate degree of permanent partial disability, he could return to unrestricted firefighting duties. *Bowlin*, Ill. App. 3d at 212. We find *Bowlin* distinguishable. The Pension Board relied on the conclusions of three different doctors, whose findings are not contradictory, unlike the single doctor in *Bowlin*. Even if we were to find the FCE was inconsistent, which we do not, the only doctor to rely exclusively on those findings was Dr. Nicholson. The findings of Drs. Phillips and Atluri would still stand. The Board can rely on the findings of Dr. Phillips and Dr. Atluri whose opinions consistently conclude that Quinlan was able to return to full firefighter duties.

¶ 28 CONCLUSION

¶ 29 Quinlan fails to satisfy his burden of proof that the Board's decision was against the manifest weight of the evidence where there was credible medical evidence that he was not permanently disabled. We affirm the decision of the circuit court of Cook County upholding the Board's decision to deny Quinlan line-of-duty disability pension benefits.

¶ 30 Affirmed.