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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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SHANNEN POULOS,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 14-MR-503
	)	
BOARD OF TRUSTEES OF THE ROUND	)	
LAKE BEACH POLICE PENSION FUND,	)	Honorable
	)	Christopher C. Starck,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Justices Jorgensen and Burke concurred in the judgment.

**ORDER**

¶ 1 *Held:* The Board's ruling that plaintiff was no longer disabled for purposes of a line-of-duty disability pension was not against the manifest weight of the evidence: the medical evidence conflicted, and, despite plaintiff's attacks on the evidence against her, the Board was entitled to credit it.

¶ 2 Following a hearing that commenced on September 26, 2013, and concluded on January 16, 2014, the Board of Trustees of the Round Lake Beach Police Pension Fund (Board) terminated line-of-duty disability pension benefits previously awarded to plaintiff, Shannen Poulos. Plaintiff sought administrative review in the circuit court of Lake County. The trial court reversed the Board's decision, and the Board now appeals. The sole issue on appeal is

whether the Board's decision is against the manifest weight of the evidence. We reverse the trial court's judgment.

¶ 3 Plaintiff joined the Round Lake Beach police department in 2000 and suffered an injury to her right wrist in August 2003. It is undisputed that the injury occurred in the line of duty. Plaintiff underwent three surgical procedures in connection with her injury. In September 2003, Craig S. Williams, M.D., a hand surgeon, performed an operation to repair her right triangular fibrocartilage. Plaintiff returned to work after recovering from the surgery. However, she continued to experience symptoms from the wrist injury and was taken off duty. In October 2005, Williams performed surgery to shorten plaintiff's ulna. That procedure involved fixation of the bone with a plate and screws. In November 2006, Williams performed surgery to remove the plate and screws.

¶ 4 Prior to the second surgical procedure, Michael I. Vender, M.D., performed an independent medical evaluation (IME) in connection with a workers' compensation claim filed by plaintiff. Vender indicated that the prognosis for full recovery following ulnar shortening was "guarded" and that "with her current condition, it is expected [plaintiff] would have difficulty performing certain exertional activities such as forcible arrests and altercations." Vender noted that plaintiff might also have difficulty "with handling certain weapons under certain demanding circumstances."

¶ 5 During the interval between her second and third surgical procedures, plaintiff applied for a line-of-duty disability pension, and independent medical evaluations (IMEs) were performed by three physicians: Michael W. Orth, M.D., David M. Zoellick, M.D., and Charles Carroll IV, M.D. All three physicians certified that plaintiff was disabled for service in the police department. Orth noted in his written report that plaintiff did not have the normal use of her

right wrist: she experienced pain with fine motor movements of her wrist as well as forceful or repetitive movements. Zoellick's written report stated that plaintiff's wrist condition precluded her from using a firearm and would "restrict[] her in her ability to apprehend suspects." Carroll stated in his written report that he considered plaintiff disabled from police service "[a]t the present time" and that pain and diminished strength would put her and other officers at risk. All three physicians believed that plaintiff could return to light duty. Orth and Zoellick believed that plaintiff's disability was permanent. Carroll believed that plaintiff had a "reasonable prognosis" to return to "police type work," depending on the results of future surgery to remove the plate that had been attached to her ulna in her second surgical procedure.

¶ 6 In January 2007, the Board awarded plaintiff a line-of-duty disability pension. Thereafter, pursuant to section 3-115 of the Illinois Pension Code (Code) (40 ILCS 5/3-115 (West 2012)), plaintiff received annual medical examinations to determine whether she remained disabled. Zoellick examined plaintiff between 2008 and 2012 and on each occasion he found that she remained disabled. However, in 2013, plaintiff was examined by John J. Koehler, M.D., who concluded that she was not disabled. Zoellick's and Koehler's findings at each examination are discussed below.

¶ 7 At her 2008 examination, plaintiff complained of pain in her right wrist, which radiated to the elbow and decreased strength. She indicated that she was able to lift a gallon of milk but had to lock her wrist to avoid dropping it. She reported difficulty holding her eight-month-old twins. Although she felt that she could fire a weapon, she did not believe that she could do so repeatedly and did not think she could defend herself or subdue a suspect. Zoellick noted that plaintiff had a good range of motion of the wrist but "lack[ed] 5-10° extension." He also noted

that her grip was weaker with her right hand than with her left. It was Zoellick's opinion that plaintiff had made some improvement but remained disabled.

¶ 8 Plaintiff's 2009 examination took place in October. Plaintiff reported to Zoellick that her wrist motion was better. However, she reported that forceful extension of her wrist was painful. She was concerned that her wrist would leave her vulnerable in a confrontation with a suspect. She also expressed concerns about being able to fire a weapon repeatedly. Otherwise, she felt that she "could do most of her work." Zoellick observed that plaintiff's wrist had a "very good" range of motion and that her grip strength appeared "nearly symmetrical." However, Zoellick concluded that she remained disabled due to pain with forceful extension of the wrist and difficulty firing her gun.

¶ 9 The 2010 examination took place in December. Plaintiff reported to Zoellick that, after the 2009 examination, she had obtained a seasonal job at a clothing store, working 10 to 15 hours a week in 4-to-5 hour shifts. The work was not strenuous but included repetitive activities, such as folding sweaters, and plaintiff experienced soreness and swelling after work. Sometimes, she had muscle spasms. She also indicated that she had been dropping things, that she had difficulty opening jars, and that writing or typing for any length of time made her wrist tired. She continued to express a lack of confidence in her ability to fire a weapon repeatedly. Although Zoellick noted that plaintiff had a full range of motion in her wrist, he concluded that she was incapable of firing her weapon repeatedly or defending herself and that she thus was disabled from serving as a police officer.

¶ 10 Zoellick examined plaintiff again on January 12, 2012. Earlier that day plaintiff had undergone a functional capacity examination (FCE) performed by Melanie Wokwicz, a physical therapist. Plaintiff had brought an unloaded weapon and duty belt to the FCE. Wokwicz

observed that plaintiff had problems buckling the belt, removing the gun from its holster, and dislodging a jammed shell-casing from the weapon. Wokwicz concluded that plaintiff was capable of performing sedentary and light work. Wokwicz observed that plaintiff's limitations involved fine motor capabilities. Wokowicz noted that plaintiff's "large motor tasks [were] consistently handled well with wrist stabilized in proper position." However, plaintiff's grip and manual dexterity were poor. Zoellick observed that plaintiff had a full range of motion in her wrist and that her grip strength with her right hand was good (but not as good as with her left hand). Noting the results of the FCE, Zoellick concluded that weakness of the right hand and problems with fine dexterity of the right wrist would impair plaintiff's ability to fire a weapon repeatedly or to defend herself in hand-to-hand combat.

¶ 11 As noted, in 2013, Koehler examined plaintiff. His written report states, "[plaintiff's] current complaints include only that she described reduced fine motor skills with the right hand and that she from time to time says she 'drops things.'" Based on his physical examination, Koehler reported the following findings:

“Inspection of her wrist revealed the surgical incision, which had healed well with no hypertrophic scar formation and no keloids. She had equal bilateral hand temperature. She had equal capillary refill and sensory and motor function.

Range of motion of the digits was fully intact in flexion and extension. Range of motion of the wrist was equal bilaterally in flexion, extension, and ulnar and radial deviation. Excursion was good bilaterally. At the extremes of extension, as well as ulnar deviation, she did report some discomfort on the right wrist. There was no effusion about the wrist, no swelling, and no asymmetry. There was no evidence of arthritis changes in the wrist or hands comparing both of them together. The same was true for the forearms

and elbows with good range of motion. There was no muscle atrophy. No skin surface changes.

Stretching of the digits in flexion and extension was equal and symmetrical bilaterally. Stretching the wrist in flexion and extension was equal and symmetrical bilaterally. Power gripping was what I believed to be 4½/5 and bilaterally equal. Stressing of the wrist in flexion and extension revealed good strength bilaterally. She reported some mild discomfort of the right wrist on stretching extension. On flexion, she had good strength bilaterally at 5/5 and weakness and very little pain on the right with stressing and flexion. Push/pull stress was well tolerated bilaterally.”

Koehler concluded that, although plaintiff was suffering some soreness in her right wrist, she was not disabled from performing the duties of a police officer.

¶ 12 Later in 2013, plaintiff was reevaluated by Williams. His report states, in pertinent part, as follows:

“Overall it is apparent to me that [plaintiff] still has significant and ongoing limitations to her right wrist, which are related to her work-related injury and subsequent treatment, namely triangular fibrocartilage complex repair, ulnar shortening, and subsequent hardware removal. While I think she is functional on a day-to-day basis, I am highly skeptical that she could adequately defend herself in a physical confrontation and furthermore would have concerns about her even qualifying with a firearm with her right wrist due to endurance tissues [*sic*] from the repeated kick back of her firearm. I find it somewhat incredulous that Dr. Koehler can conclude based upon his limited pertinent examination that she was capable of returning to full duty activity as a police officer. Even if I were convinced that [plaintiff] were markedly improved and essentially

asymptomatic, I would not consider returning her to full unrestricted duty without objective documentation vis-à-vis a functional capacity evaluation. I would have great concerns regarding her safety, the safety of her fellow officers, and the public unless the appropriate level of function could be demonstrated in a functional capacity evaluation, especially considering the potential for physical confrontation which is incumbent with the duties of a police officer.”

¶ 13 Thereafter, Koehler prepared a supplemental report in which he indicated that, Williams’s report did not affect his opinion that plaintiff was not disabled. Koehler added that, as plaintiff’s surgeon, Williams had a conflict of interest in that he would be “interested in pleasing” plaintiff and might fear litigation.

¶ 14 On September 26, 2013, plaintiff testified before the Board. According to plaintiff’s testimony, Koehler did not have her fill out any paperwork describing her background or her physical condition. Prior to the physical examination, Koehler inquired about her thoughts on the topics of women in combat and gun control. He also asked her why she had become a police officer. When Koehler asked about plaintiff’s injury, she started to describe the incident that caused it. Koehler indicated that he just needed to know the diagnosis. Koehler began the physical examination itself by holding plaintiff’s right hand for about 10 seconds. Koehler indicated that plaintiff’s scars looked good. Koehler did not test her sensory or motor function or her range of motion. Koehler pushed on her head and shoulders, but did not perform “push or pull” testing on her wrists or hands. Nor did he perform any “power gripping” tests or check for swelling, effusion, or asymmetry. Koehler was about an hour late for the examination. The examination itself lasted about nine minutes. In contrast, the examinations with Zoellick and other physicians were one and a half to two hours long.

¶ 15 Asked about her work history subsequent to surgery, plaintiff testified that she worked for several months. At that point, the following exchange occurred:

“Q. But that was before the second and third surgeries, correct?”

A. Yeah.

Q. You haven’t worked since those surgeries?”

A. No, just light duty.”

Plaintiff also testified that she worked part time at a clothing store “in the Christmas season of 2010, slash, 2011.” However, she had to stop working, because of soreness related to activities such as folding clothing. At the time of the hearing, plaintiff was employed as a dispatcher, answering 911 calls and dispatching “police, fire, and rescue.” The work involved typing on a computer, which bothered her wrist. Plaintiff owned a gun, but had not fired it in years. She testified that she had difficulty with everyday tasks, such as writing, typing, and dressing her children. She also frequently dropped things in the kitchen. Plaintiff had regained flexibility and “some strength” in her wrist, but her strength was “not the same.”

¶ 16 After taking plaintiff’s testimony, the Board continued the hearing until January 16, 2014. During the intervening period, the Board took Koehler’s evidence deposition. Koehler testified that he was the chief medical officer of Physicians Immediate Care, which he had founded in 1987 and which operated 25 “urgent care/occumed” clinics in different states. Koehler was board-certified in occupational medicine. Although 99% of his practice was devoted to urgent care, he had been performing IMEs since the early 1990’s. He had performed more than 100 IMEs, but not more than 500. Koehler acknowledged that he did not have a specific recollection of plaintiff’s IME, but he testified that he performed the various tests discussed in his written report. He also reviewed various records related to plaintiff’s injury.



Koehler was not asked to specify what records he reviewed. However, during cross-examination by plaintiff's attorney, the following exchange occurred:

“Q. In all, in your records that you have, you have ten reports from orthopedic surgeons who indicate that [plaintiff] is disabled from being a full-duty police officer, including a functional capacity examination, and in reviewing all of those reports, you believe that your report is more credible than theirs, correct?

A. My answer to that is that those physicians are entitled to their opinions based on the findings at the time of which they performed the examination, and my findings were done at the time of my examination, and whatever divergences might exist, then that's factual, that exists. However, I'm rendering my honest opinion based on my findings of this individual \*\*\*.”

¶ 17 When the hearing before the Board resumed, Round Lake Beach police officer Jeff Klipp testified that he had been awarded nonduty disability pension benefits in 2003, after sustaining nerve damage that resulted in foot drop. Koehler had reevaluated Klipp in 2012 and 2013. Koehler performed a short examination and had Klipp walk around the examining room. Koehler found that Klipp could return to duty. The Board observed Klipp walking. The record reflects that his right foot came up higher than his left foot. Plaintiff's 20-year-old daughter, Mallory Granger, testified that she was present when Koehler examined plaintiff. Granger testified that they waited about an hour to see Koehler and that the exam lasted about 10 minutes. Granger did not see Koehler bend, push, or pull plaintiff's wrists.

¶ 18 ANALYSIS

¶ 19 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)).

¶ 20 There is no dispute that a disability pension award is subject to termination if the recipient has recovered from the disabling condition sufficiently to return to service as a police officer. The only question here is whether the Board's determination that plaintiff is no longer disabled is against the manifest weight of the evidence. We conclude that it is not. The record before the Board contains conflicting evidence concerning plaintiff's condition and her ability to serve as a police officer. It was the Board's responsibility to weigh the evidence, determine the credibility of witnesses, and resolve conflicts in testimony. *Thigpen v. Retirement Board of Firemen's Annuity & Benefit Fund of Chicago*, 317 Ill. App. 3d 1010, 1017 (2000). That it might have been reasonable for the Board to reach a different conclusion does not justify reversal of the Board's decision. *Peacock v. Board of Trustees of the Police Pension Fund*, 395 Ill. App. 3d 644, 652 (2009). As this court explained in *Evert v. Board of Trustees of Firefighters' Pension Fund of the City of Lake Forest*, 180 Ill. App. 3d 656, 660 (1989), “It is not sufficient that there are mere conflicts in the testimony or that an opposite conclusion might be reasonable; since the weight of the evidence and the credibility of the witnesses are within the province of the agency, there need be only some competent evidence in the record to support its findings.”

¶ 21 Plaintiff recites a litany of perceived shortcomings in Koehler's qualifications and in the IME he conducted. Further noting that Koehler lacked an independent recollection of the IME,

plaintiff argues that the trial court correctly found that the Board's decision was against the manifest weight of the evidence. We disagree.

¶ 22 Initially, we note that the Board was not obliged to give any particular weight to whether Koehler had an independent recollection of plaintiff's IME. Koehler testified that he had "probably been involved in a thousand cases" since plaintiff's IME. Indeed, none of the other medical professionals who examined or treated plaintiff provided testimony, so there is no reason to believe that they would have had a better recollection of examining or treating plaintiff.

¶ 23 Plaintiff makes much of her testimony, and that of her daughter, that the IME conducted by Koehler lasted only 9 or 10 minutes. According to plaintiff, other medical professionals spent one and a half to two hours examining her. Although other physicians took X rays, there is no evidence that it was medically unreasonable for Koehler to refrain from subjecting plaintiff to yet another set of X rays. In other respects, comparison of the other physicians' written reports with Koehler's does not indicate that the IME performed by Koehler was necessarily any less thorough than those performed by other physicians. Moreover, in addition to conducting a physical examination, Koehler reviewed reports of prior examinations and other medical records.

¶ 24 Plaintiff argues that Koehler "ma[de] no mention of how [plaintiff's] fine motor skills have improved since her FCE [in January 2012] when she was unable to buckle her nylon duty belt and unload a gun." We note that the argument presupposes that plaintiff was, in fact, suffering from a motor impairment at the time of her FCE. In any event, the salient question is whether she suffered any motor deficit when Koehler performed the IME. After noting, in his written report, that plaintiff had "equal bilateral hand temperature," Koehler indicated that plaintiff also had "equal capillary refill and *sensory and motor function*." (Emphasis added.) In

other words, motor function was the same in both the injured wrist and the uninjured one.

Koehler's report further states:

“[Plaintiff] indicates dropping things with the right hand, but I do not detect weakness in her hand grip or the function of her digits. She was able to demonstrate fine motor skills slowly upon testing with opposition testing on a repeated repetitive basis. She performed well doing that. I do not believe what she describes as subjective complaints preclude her work as a full-duty police officer.”

¶ 25 Plaintiff notes that, unlike the physicians who examined her in the past, Koehler was not an orthopedic surgeon. We agree with the Board, however, that because Koehler was board-certified in occupational medicine, he was no less qualified than an orthopedic surgeon to render an opinion on plaintiff's ability to return to work. On a related point, plaintiff observes that Physicians Immediate Care's promotional material emphasized controlling employer costs and quickly returning employees to work. These are, of course, legitimate aims of an occupational medicine practice and in no way impair Koehler's ability to offer a disinterested medical opinion when conducting an IME. Nor, for that matter, was the Board required to disregard Koehler's opinion on the basis of Klipp's experience with Koehler in an entirely unrelated matter.

¶ 26 Plaintiff argues that this case is analogous to *Wade*. In *Wade*, the pension board determined, based on the opinion of a single examining physician, James Milgram, that an officer's knee injury—which had required surgery—did not render him disabled. Three other examining physicians and the officer's surgeon concluded that the officer was disabled. The *Wade* court observed that “[t]he reports of these doctors evince examinations more thorough than that conducted by Dr. Milgram, and analyses that were more complete and better substantiated” *Wade*, 226 Ill. 2d at 506. In choosing to discount Milgram's conclusion, the *Wade* court noted

two significant factual errors in Milgram's report, which led the court to believe that Milgram had "selectively disregarded, failed to recall, or never reviewed portions of plaintiff's medical records." *Id.* at 506 (quoting *Wade v. City of North Chicago Police Pension Board*, 359 Ill. App. 3d 224, 230 (2005)). Specifically, Milgram stated that no portion of the medical records that he reviewed established that the officer had told his treating physician that his knee "popped" at the time of the injury. *Id.* In fact, the records Milgram claimed to have reviewed revealed that the officer did tell his treating physician that his knee had popped. In addition, Milgram mischaracterized how surgical records described the officer's knee injury. *Id.* Finally, the *Wade* court noted that Milgram failed to consider the plaintiff's current symptoms. *Id.* at 507.

¶ 27 Here, as noted, the record does not show that examinations by other physicians were necessarily more thorough than Koehler's examination. Nor have we reason to suspect that Koehler failed to review, or that he misread, plaintiff's medical records. Although plaintiff contends that Koehler's report erroneously states that plaintiff returned to police work after her third surgery, plaintiff's own testimony seems to indicate that she at least returned to light duty. In any event, it does not appear that Koehler's opinion rested on that point in any significant degree.

¶ 28 In essence, plaintiff asks us to reweigh the evidence. It is not our prerogative, nor was it the trial court's, to do so. *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 272 (2009).

¶ 29 The fact that we determine the Board's decision is not contrary to the manifest weight of the evidence does not mean that the village cannot or should not consider all medical opinions and evidence available to it in determining plaintiff's future duty assignment. This order should

not be read as limiting the village's ability to assign plaintiff to appropriate duties in light of the medical evidence.

¶ 30 For the foregoing reasons, the judgment of the circuit court of Lake County is reversed.

¶ 31 Reversed.