

2017 IL App (1st) 152483-U

No. 1-15-2483

Order filed February 24, 2017

Fifth Division

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JACQUELINE SPAARGAREN ,)	Appeal from the
)	the Circuit Court of
Plaintiff-Appellant)	Cook County.
)	
v.)	No. 14 CH 17347
)	
THE RETIREMENT BOARD OF THE POLICEMEN'S)	
ANNUITY AND BENEFIT FUND OF THE CITY)	The Honorable
OF CHICAGO,)	Rodolfo Garcia,
)	Judge Presiding.
Defendant-Appellee.)	

JUSTICE HALL delivered the judgment of the court.
Justices Lampkin and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* The Retirement Board of the Policemen’s Annuity and Benefit Fund of the City of Chicago’s decision awarding the plaintiff a disability pension at 50% rather than 75% of her salary was reversed. The Board’s decision was against the manifest weight of the evidence.

¶ 2 The plaintiff, Jacqueline Spaargaren, filed a petition for administrative review of a decision of the defendant, the Retirement Board of the Policemen’s Annuity and Benefit Fund of the City of Chicago (the Board), awarding her a duty disability benefit at 50% of the plaintiff’s salary rather than at 75% of her salary. The circuit court affirmed the Board’s decision. The plaintiff appeals contending that the Board’s decision that her disability was the result of a preexisting condition was against the manifest weight of the evidence.

¶ 3 BACKGROUND

¶ 4 I. Facts

¶ 5 On April 3, 2014, the plaintiff applied for a duty disability benefit. The Board held a hearing on her benefit application on July 24, 2014. The evidence before the Board consisted of the plaintiff’s medical records, an independent medical evaluation by Dr. Jay L. Levin and testimony by the plaintiff and Dr. Peter Orris, the Board’s consulting physician. Since this case presents an issue as to the sufficiency of the evidence, a detailed review of the evidence presented to the Board is required.

¶ 6 The plaintiff was appointed a member of the Chicago Police Department on December 7, 1992. It is undisputed that she suffered a number of injuries while on duty (IODs). Our review will be limited to those IODs pertinent to the cause of the plaintiff’s current disability.

¶ 7 A. History of the Plaintiff’s Injuries-On-Duty

¶ 8 On April 19, 1999, while making an arrest, the plaintiff twisted her back and experienced pain to her lower back extending into her right hip. The record does not contain an evaluation or recommended treatment by a physician. On January 1, 2002, a police supervisor's report of a medical absence stated that the plaintiff had suffered two slipped discs. On January 10, 2002, Dr. George S. Miz diagnosed the plaintiff with lumbar radiculopathy. The plaintiff was instructed to remain off work and to have physical therapy for two weeks. On February 12, 2002, Dr. Miz approved the plaintiff's return to work with no restrictions.

¶ 9 On December 13, 2006, the plaintiff was pursuing a suspect when she fell down a flight of stairs. She was initially treated at Little Company of Mary Hospital. On December 26, 2006, the plaintiff was seen by Dr. Daniel A. Troy. The plaintiff reported falling down a flight of stairs suffering a direct blow to her lower back and twisting injuries to her left knee and left ankle. In his examination of the plaintiff, Dr. Troy noted low back tenderness but no swelling. She was intact neurologically, had full leg strength and had no deficits to light touch from L3-S1. The doctor assessed the plaintiff as suffering ankle strain for which he prescribed anti-inflammatories, physical therapy and rest. On March 3, 2007, the plaintiff was released to return to work.

¶ 10 On January 17, 2009, the plaintiff injured her left foot and ankle, her right hand and back during a struggle with an arrestee. She underwent physical therapy for her foot, ankle and her right hand and wrist. On February 17, 2009, the plaintiff reported “ ‘[t]he only thing I feel is back pain.’ ‘It's about a 9/10.’ ” On February 19, 2009, she reported, “ ‘I have really bad back pain.’ ” There is no indication that the plaintiff received any back-related diagnosis or treatment

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at that time. On April 23, 2009, the plaintiff was released to return to full duty.

¶ 11 On March 5, 2010, the plaintiff was responding to a report of a violation of an order of protection when she slipped on the ice, injuring her left ankle and foot. She was treated at Advocate Trinity Hospital. On March 12, 2010, Dr. I. H. Duradogan diagnosed left ankle sprain for which the plaintiff underwent physical therapy. The plaintiff returned to work at the end of May 2010.

¶ 12 On June 26, 2011, the plaintiff injured her neck and upper back. She was seen at Little Company of Mary Hospital by Dr. James F. Skomurksi who diagnosed neck and lower back strain. On July 6, 2011, the doctor noted that the plaintiff's neck strain was improving, but her lower back strain persisted. On July 13, 2011, the plaintiff reported numbness in her right leg. On July 18, 2011, the plaintiff was examined by Dr. Steven Chandler, an orthopedic surgeon. She complained of constant pain and numbness in her lower back moving downward into the front of her right leg. Dr. Chandler diagnosed lumbar disc degeneration, lumbar spondylosis, lumbar radiculopathy and sciatica. The doctor ordered an EMG and an MRI to confirm the diagnoses.

¶ 13 The August 1, 2011, EMG revealed no denervation on the right side paraspinal muscles at L3, L4, L5 and S1. The EMG report concluded that "[d]ispite clinical symptoms, this study is normal. Specifically, there is no evidence of active lumbar-sacral radiculopathy on the right side at this time. There was no evidence to suggest a more distal peripheral neuropathy in the right leg." The results of the August 1, 2011, MRI of the plaintiff's spine revealed no focal disc herniation at the L1-L2 and L2-L3. At the L3-L4, L4-L5, L5-S1 and S1-S2, there was early disc desiccation but no significant narrowing of the central canal or foraminal stenosis. At the L5-S1

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there was a mild global disc bulge.

¶ 14 On August 5, 2011, the plaintiff had a follow-up visit with Dr. Chandler. The doctor reviewed the results of the MRI and the EMG and examined the plaintiff. Dr. Chandler's revised assessment was lumbar strain, lumbar disc degeneration, and lumbar spondylosis. The plaintiff returned to full duty as of August 22, 2011.

¶ 15 On April 21, 2012, the plaintiff strained her back while pulling an offender from a vehicle. A June 11, 2012, MRI revealed disc desiccation of the L3-L4 and L4-L5 paravertebral discs. On Jun 27, 2012, the plaintiff was seen by Dr. Donald Roland. She complained of low back pain, numbness, weakness and bowel and bladder problems. Dr. Roland did not have the June 11, 2011, MRI results, but the plaintiff told him the MRI showed a disc protrusion at the L4-L5 level and a disc tear. Dr. Roland diagnosed lumbar radiculopathy, lumbago and lumbar disc displacement. On Dr. Roland's recommendation, on July 17, 2011, the plaintiff was given an epidural steroid injection at the L4-5 and L5-S1 on the right side.

¶ 16 On July 24, 2012, the plaintiff was seen by Dr. Robert Strugala. Following the injection, she had experienced increased pain but her symptoms had improved. Dr. Strugala's assessment was low back pain with annular disc tear and disc herniation. The plaintiff was to commence physical therapy and to remain off work.

¶ 17 On August 9, 2012, the plaintiff complained of increased lower back pain following physical therapy. Dr. Strugala instructed her to go to the emergency room for an evaluation. At Little Company of Mary Hospital, the plaintiff reported pain in her lower back and left buttocks which began on April 21, 2012. The plaintiff underwent an MRI which revealed a tiny annular

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tear at the L4-L5 level. She was diagnosed with a herniated disc at L4-L5.

¶ 18 On September 24, 2013, at the plaintiff's request, Dr. Strugala clarified her lumbar spine issue. The doctor noted that the August 2012 MRI revealed multilevel degenerative disc disease and an annular tear at L4-L5. The L4-5 finding was also demonstrated on the June 2012 MRI, which also showed disc herniation at the L4-L5 level and mild to moderate facet arthrosis. On November 5, 2013, Dr. Strugala noted that the plaintiff complained of low back pain which increased with activity, and she was limited in her ability to tolerate prolonged sitting, standing or walking. The plaintiff also suffered from significant nerve damage to her right hand. Dr. Strugala's assessment was low back pain secondary to lumbar disc disease. The doctor examined the plaintiff on March 25, 2014; the assessment remained the same.

¶ 19 **B. Other Pertinent Facts**

¶ 20 On January 16, 2013, the plaintiff was holding a coffee cup when her right leg gave out, causing her to fall and cut herself on the cup. She suffered a six-centimeter laceration of her right palm and underwent surgery to repair a nerve. The plaintiff underwent treatment for renal cancer in 2013.

¶ 21 **II. Prehearing Proceedings**

¶ 22 The plaintiff's Chicago Police Department medical leave was exhausted on September 19, 2013. Thereafter, she filed her application for a duty disability benefit. On May 14, 2014, the plaintiff was seen by Dr. Jay L. Levin, an orthopedic physician, for an independent medical examination. On June 9, 2014, after reviewing the two MRIs of the plaintiff's lumbar spine taken following the April 21, 2012, IOD and the plaintiff's medical history relating to her

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complaints of lower back pain, Dr. Levin diagnosed the plaintiff as suffering from radiculitis in the lower extremities, on the right side more than on the left side. Dr. Levin opined that the diagnoses of a left L4-L5 disk herniation, shown by the August 9, 2012, MRI and the radiculitis of the lower extremities were related to the April 21, 2012 occurrence.

¶ 23 Based on his May 14, 2014 examination and the plaintiff's history of IODs and her medical records, and assuming the accuracy of the historical information, Dr. Levin concluded that the plaintiff's current disability was the result of the April 21, 2012, IOD. The doctor further concluded that because the plaintiff showed improvement following the June 26, 2011, IOD, which was consistent with the normal result shown in the August 1, 2011, EMG of the lower extremity, the plaintiff's current condition did not stem from a prior medical injury. Currently, the plaintiff could not return to police duty.

¶ 24 III. July 24, 2014 Disability Hearing

¶ 25 Dr. Peter Orris, the Board's consulting physician, testified at the hearing. Dr. Orris reviewed the plaintiff's medical records and test results but did not physically examine the plaintiff. Dr. Orris opined that the plaintiff's current disability was the result of diffuse degenerative disc disease, a chronic condition which would have developed over a long period of time.

¶ 26 Dr. Orris relied on Dr. Miz's January 10, 2002, diagnosis that the plaintiff was suffering from lumbar radiculopathy. The doctor linked Dr. Miz's diagnosis to Dr. Chandler's July 18, 2011, diagnosis of lumbar disc degeneration, meaning that the plaintiff had arthritis in the spine. According to Dr. Orris, the arthritis was the result of preexisting chronic trauma. Dr. Orris

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acknowledged that both lumbar radiculopathy and lumbar spondylosis, diagnosed by Dr. Chandler, might predate an injury but could be acute as well.

¶ 27 Dr. Orris opined that the mild degenerative disc and facet joint disease shown on the August 1, 2011, MRI was chronic. Dr. Orris opined that the diffuse degenerative disc disease and diffuse arthritis over a number of levels shown in the June 12, 2012, MRI established a degenerative progression over a period of time producing chronic disc disease. The doctor further opined that the August 1, 2011, and the June 11, 2012, MRI results supported the finding that the plaintiff's condition did not indicate a single injury. Accordingly, the June 11, 2012, MRI results showed a chronic condition predating even the June 26, 2011, IOD.

¶ 28 Dr. Orris maintained that Dr. Levin's opinion that the plaintiff's current condition did not stem from any prior medical injury confirmed that the plaintiff was suffering a chronic condition, pointing out that Dr. Levin's report "doesn't refer to the underlying arthritis which is causing the radiculopathy. Clearly, that improved and is somehow decreasing the pressure on the particular nerve to produce a finding of no radiculopathy back in 2011." Dr. Orris was questioned further by the plaintiff's attorney as follows:

Q. Okay, doctor, but if you look, the question - - [Dr. Levin's] asked: " 'Is the disabling injury the result of the incident?' "

A. That's correct.

Q. " 'Assuming the historical information to be accurate, yes.' "

A. That's correct.

Q. So the disability is a result of the IOD of 2012, correct?

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A. That's correct.

Q. And also, doctor, there is a prior injury. You talk about the June 26th, 2011, injury, but there is also an injury that predated that in June 2002 - - January of 2002, which could have caused all the findings that you saw in '11, correct?

A. Correct.

Q. And that was also an IOD injury, correct?

A. As I understand it, yes.¹

Q. Okay. So all of the injuries that [the plaintiff] has, the January '02, June of '11 and April of '12, are all IODs according to - -

A. As I understand it, yes.”

¶ 29 Questioned by the Board's attorney, the plaintiff testified that she suffered a low back injury in the April 21, 2012, IOD. At the time of the hearing, she suffered extreme pain in her lower back area on her right side radiating over to her hip into her groin area. She had numbness and had no feeling in her leg and feet. The plaintiff was still seeing Dr. Strugala. She acknowledged that she had seen Dr. Miz in 2002, but she did not recall why.

¶ 30 During the plaintiff's testimony, board members interjected with questions to the plaintiff. Board member Hamburger asked, “Do you work? What do you do in your free time? What do you do?” The plaintiff responded, “I take care of my children. I try to strengthen my back, do some exercises. I - -,” at which point the plaintiff's testimony was interrupted by board member Neely who asked if the plaintiff was awaiting surgery. Further on in the plaintiff's

¹ On the January 1, 2002, medical absence form, the injury box was marked, not the injury on duty box.

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testimony, board member Hamburger stated, “Sort of back to what I was asking before, do you have any hobbies? What do you do?” The plaintiff’s attorney attempted to clarify the question explaining to the plaintiff that the Board wanted to know what she did on a typical day. Board member Neely interjected to remind the plaintiff that she was under oath. The plaintiff testified that she taught energy and mind body connection and acknowledged that she was paid for her work. The following colloquy ensued:

“MS. NEELY (a board member): So when you were asked if you worked and you answered no, the correct answer is yes?

[THE PLAINTIFF]: Yes.

* * *

MS. HAMBURGER: I find it interesting that when asked if you worked, you said that you didn’t and then you have to go somewhere and you have a relationship with a brick and mortar entity.

MS. NEELY: That pays her.”

¶ 31 The plaintiff’s attorney attempted to clarify the situation by eliciting from the plaintiff that over the past 13 months she had not received a salary from the police department and that she had a family to support. The colloquy continued as follows:

“MS. NEELY: Counsel, we suggest that she be honest with us. When asked if she worked, she should have disclosed that.

* * *

MR. LICARI (the plaintiff’s attorney): I understand, but I mean - -

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MS. NEELY: She lied under oath.

MR. LICARI: Well, it's not lying. It's maybe a misunderstanding. Work, getting up and going to a job - -

MS. NEELY: I'm sorry. I don't think there is any discrepancy. Do you get up and do you get paid?

You may not call it lying under oath, but from where I sit - -

MR. LICARI: Misunderstanding.

MS. NEELY: Okay. You can call it what you want, but I have a hard time believing anything else that comes out of her mouth.

[THE PLAINTIFF]: I'm sorry. I thought you meant in regards to the police department. Sorry.

MS. NEELY: Now, how would you possibly think that?"

¶ 32 On September 25, 2014, the Board issued its written decision and order. The Board determined that the plaintiff was currently disabled as a result of the April 21, 2012, IOD and was entitled to a duty disability benefit. The Board found that the plaintiff's current disability resulted from degenerative disc disease and lumbar radiculopathy that were longstanding in nature and exacerbated by the August 21, 2012, IOD. The Board noted that Dr. Levin did not reference or consider the findings made in 2002 which were addressed by Dr. Orris. The Board concluded that the plaintiff failed to carry her burden of proof that her current disability was not the product of her preexisting back condition. Finally, the Board found that the plaintiff was not a credible witness on the issue of her current medical condition.

¶ 33 IV. Circuit Court Proceedings

¶ 34 On October 27, 2014, the plaintiff filed her petition for administrative review. The plaintiff argued that the Board's findings were not supported by the evidence. The plaintiff requested that the circuit court reverse the Board's decision and award her a duty disability benefit at the rate of 75% of her salary.

¶ 35 The circuit court affirmed the decision and order of the Board. The plaintiff filed a timely notice of appeal.

¶ 36 ANALYSIS

¶ 37 The parties agree that the plaintiff suffered an IOD on August 21, 2012, and that she was currently disabled. The sole issue is whether the Board's determination that the plaintiff's current disability resulted from her preexisting condition was against the manifest weight of the evidence.

¶ 38 I. Standard of Review

¶ 39 Our review in this case extends to all questions of fact and law presented by the entire record. *Cole v. Retirement Board of the Policemen's Annuity & Benefit Fund of the City of Chicago*, 396 Ill. App. 3d 357, 367 (2009) (citing 735 ILCS 5/3-110 (West 2006)). Rulings on questions of law are reviewed *de novo*; rulings on questions of fact will be reversed only if they are against the manifest weight of the evidence. *Wade v. North Chicago Police Pension Board*, 226 Ill. 2d 485, 504-05 (2007). Where the record contains evidence supporting the Board's factual conclusions, we will not disrupt those conclusions, even if an opposite conclusion is reasonable. *Carrillo v. Park Ridge Firefighters' Pension Fund*, 2014 IL App (1st) 130656, ¶ 21.

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Under any standard of review, the plaintiff bears the burden of proof. *Cole*, 396 Ill. App. 3d at 367. Failure to sustain that burden will result in the denial of the relief sought by the plaintiff. *Cole*, 396 Ill. App. 3d at 367.

¶ 40 II. Applicable Principles

¶ 41 In administrative review cases, it is the decision of the administrative agency that is reviewed, not the decision of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006). “ ‘An administrative agency decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.’ ” *Wade*, 226 Ill. 2d at 504-05 (quoting *Abrahamson v. Illinois Department of Profession Regulation*, 153 Ill. 2d 76, 88 (1992)).

¶ 42 Nonetheless, our deference to the Board’s decision is not without limitations. *Scepurek v. Board of Trustees of Northbrook Firefighters’ Pension Fund*, 2014 IL App (1st) 131066, ¶ 26. “Even under the manifest weight standard *** the deference we afford to the administrative agency’s decision is not boundless.” *Wade*, 226 Ill. 2d at 507. “Even when the decision is supported by some evidence, which if undisputed would sustain the administrative finding, it is not sufficient if upon consideration of all the evidence the finding is against the manifest weight.” *Bowlin v. Murphysboro Firefighters’ Pension Board of Trustees*, 368 Ill. App. 3d 205, 211-12 (2006). Where the record does not show evidentiary support for the agency’s determination, the reviewing court will not hesitate to grant relief. *Bowlin*, 368 Ill. App. 3d at 212.

¶ 43 III. Discussion

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¶ 44 Section 5-154 of the Pension Code (Code) (40 ILCS 5/5-154 (West 2014)) provides in pertinent part as follows:

“(a) An active policeman who becomes disabled *** as the result of injury incurred *** in the performance of an act of duty, has a right to receive duty disability benefit during any period of such disability for which he does not have a right to receive salary, equal to 75% of his salary, as salary is defined in this Article at the time the disability is allowed; *** provided, however, that:

(i) If the disability resulted from any physical defect or mental disorder or any disease which existed at the time the injury was sustained, or if the disability is less than 50% of total disability for any service of a remunerative character, the duty disability benefit shall be 50% of salary as defined in this Article.” 40 ILCS 5/5-154 (West 2014).

¶ 45 Section 5-154 has been construed as providing benefits in two separate instances: “ ‘(1) where a disability occurs *as a result of* (is caused by) an on-duty injury; and (2) where a disability *results from* (stems from) a *preexisting condition* as opposed to being *caused by the injury.*’ (Emphasis in original.)” *Cole*, 396 Ill. App. 3d at 369 (quoting *Samuels v. Retirement Board of the Policemen’s Annuity & Benefit Fund of the City of Chicago*, 289 Ill. App. 3d 651, 661 (1997)). The court in *Samuels* further explained as follows:

“In the first instance, the duty disability benefit is 75% of the officer’s salary. In the second instance, where the disability ‘*resulted from* any disease or defect or mental disorder or any disease which existed at the time the injury was sustained,’ the duty

disability is 50% of the officer's salary. (Emphasis added.) [Citation.] The statute does not include language stating that, even if an officer has a physical defect, mental disorder or disease prior to the subsequent on-duty injury, the officer is entitled to a duty disability pension of 75% of salary if, 'but for' the on-duty injury the disability would not exist. Instead, under the statute, the officer will be given a duty disability pension of 50% of his salary if the disability 'resulted from' the preexisting condition, notwithstanding the effect the on-going injury may have had on the preexisting condition." *Samuels*, 289 Ill. App. 3d at 661-62 (quoting 40 ILCS 5/5-154 (West Supp. 1995)).

¶ 46 The plaintiff maintains that the Board's finding that her current disability resulted from her preexisting condition was against the manifest weight of the evidence. We agree.

¶ 47 The Board found that the plaintiff's current disability "resulted from and was aggravated by a pre-existing physical defect as more fully set forth in 1) x-rays and MRI's taken within days after the 2002 & 2011 incidents in part finding degenerative disc disease and lumbar radiculopathy were long standing in nature and were exacerbated by the 2012 on-duty incident."

The Board explained its reliance on Dr. Orris's opinion as follows:

"Dr. Levin's medical reporting did not make reference to or consider findings made in the year 2002. The reports and findings made in 2002 were more fully referenced in the testimony of Dr. Orris addressing the pre-existing medical condition of [the plaintiff] at the time of the 2011 incident more fully identified in her affidavit. [The plaintiff] failed to establish by her burden of proof that her current disability was not the result of her pre existing [*sic*] back condition."

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¶ 48 The reports and findings the Board referred to consisted of: a January 1, 2002 police supervisor's report of a medical absence for the plaintiff, which contained no information as to the nature or extent of the injury other than two slipped discs; Dr. Miz's January 10, 2002, diagnosis of lumbar radiculopathy; and Dr. Miz's February 12, 2002, approval for the plaintiff to return to work March 1, 2002. Contrary to the Board's finding of fact, the record does not contain the results of any x-rays or MRIs taken following the January 2002 IOD.

¶ 49 Dr. Orris's opinion as to the cause of the plaintiff's current disability is not supported by the evidence in the record. Dr. Orris relied on Dr. Miz's January 2002 diagnosis of lumbar radiculopathy and confirmed by Dr. Chandler's July 18, 2011, diagnosis of lumbar disc degeneration. Dr. Orris concluded from those findings that the plaintiff was suffering from the long-term effects of chronic osteoarthritis when she was injured on April 21, 2012. Dr. Orris pointed out that Dr. Levin did not refer to the underlying arthritis suffered by the plaintiff. However, there is no evidence that in January 2002, the plaintiff was suffering from disc degeneration when she was seen by Dr. Miz or that he diagnosed the plaintiff as suffering from disc degeneration in addition to lumbar radiculopathy.

¶ 50 In contrast to Dr. Orris's analysis of and opinion as to the cause of the plaintiff's current disability, Dr. Levin's analysis included the results of his physical examination of the plaintiff and his review of her medical records and test results. Dr. Levin opined that the plaintiff's disability was the result of the April 21, 2012, IOD and not of any medical injury. It was following the plaintiff's April 21, 2012, IOD that the left L4-L5 disk herniation was shown on the June 2012 MRI and that the August 2012 MRI showed an annular tear and multilevel

degenerative disc disease. The fact that until the April 21, 2012, IOD, the plaintiff returned to work full time after her previous IODs, evidenced the plaintiff's full recovery from her previous IODs, uncomplicated by any underlying condition.

¶ 51 We find that the Board's factual conclusions were not supported by the evidence. Dr. Orris's opinion that the plaintiff suffered from a preexisting arthritic condition was based on Dr. Miz's January 10, 2002, diagnosis linked to Dr. Chandler's July 18, 2011, diagnosis. However, other than the diagnosis itself, no information is contained in the record as to the plaintiff's condition when she was treated by Dr. Miz or her condition prior to the January 1, 2002, IOD. The only link between Dr. Miz's diagnosis and Dr. Chandler's diagnosis some nine years later was the finding of lumbar radiculopathy, which Dr. Chandler revised to lumbar strain after reviewing the MRI and EMG results.

¶ 52 Dr. Levin's opinion that the April 21, 2012, IOD was the cause of the plaintiff's current disability and not the result of any prior medical injury was substantiated by his examination of the plaintiff, his detailed review, with the exception of Dr. Miz's diagnosis, of her history of injuries, medical treatment and test results. While Dr. Levin did not testify, his analysis of the cause of plaintiff's current disability was more thorough than that of Dr. Orris. Moreover, Dr. Levin was an orthopedic doctor, while Dr. Orris acknowledged he was not "a back specialist."

¶ 53 To the extent that the Board found that the plaintiff was not a credible witness based on her denial of her employment status, that finding is not supported by the record. The plaintiff never denied that she was employed. Instead, she responded to the third of three questions put simultaneously to her by board member Hamburger. The plaintiff testified that she thought the

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board members were asking her if she was currently working at the police department. Later, she testified without any apparent hesitation to her work teaching and that she was paid for it. The comments of board members, Hamburger and particularly Neely, who accused the plaintiff of perjury, were prejudicial to the plaintiff. Under different circumstances, the plaintiff would be entitled to a new hearing.

¶ 54 The Board's decision that the plaintiff's current disability resulted from a preexisting condition was against the manifest weight of the evidence because there was no evidence that the plaintiff suffered from disc degeneration prior to her June 26, 2011, IOD. Significantly, the Board's decision ignored Dr. Orris's opinion that the January 1, 2002, IOD, could have caused all the findings seen in June 2011, which would have included the first diagnosis of degenerative disc disease. Therefore, the plaintiff's current disability "occurred as a result" of her IODs.

¶ 55 **CONCLUSION**

¶ 56 We reverse the decision of the Board which awarded the plaintiff a 50% of salary benefit and remand this case to the circuit court. We order the circuit court to award the plaintiff a 75% of salary benefit.

¶ 57 Circuit court reversed; the decision of the Board reversed; and the cause remanded to the circuit court with directions.