

No. 1-16-2594

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

ANTHONY NOMELLINI,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 14 CH 09548
	)	
THE COOK COUNTY EMPLOYEES AND OFFICERS	)	
ANNUITY AND BENEFIT FUND and THE EX-OFFICIO	)	
FOR THE FOREST PRESERVE ANNUITY AND	)	
BENEFIT FUND,	)	Honorable
	)	Rita M. Novak,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.  
Justices Gordon and Ellis concurred in the judgment.

**ORDER**

¶ 1 *Held:* The Board erred in denying plaintiff’s application for duty disability benefits without a hearing on the merits because the terms of plaintiff’s settlement of his Workers’ Compensation claim did not bind his application before the Board.

¶ 2 Plaintiff Anthony Nomellini appeals from the circuit court’s order affirming the administrative decision of defendants, the Cook County Employees and Officers Annuity and Benefit Fund and the Ex-Officio for the Forest Preserve Annuity and Benefit Fund (the Board),

denying plaintiff's application for additional duty disability pension benefits. On appeal, plaintiff argues that the Board's decision to deny his duty disability was contrary to the Illinois Pension Code (Code) (40 ILCS 5/1 *et seq.* (West 2010)).

¶ 3 The facts of this case are not in dispute. Plaintiff was employed as a Cook County deputy sheriff beginning in May 1993. Plaintiff was injured while on duty on February 25, 2006. In March 2006, plaintiff filed an application for duty related disability benefits. In his application, he stated that his injury occurred when he "was sitting in a chair at [his] desk and the chair broke into two pieces and [he] fell to the floor." In April 2006, plaintiff filed a worker's compensation claim related to the same injury. His application for duty disability benefits was deferred until plaintiff's worker's compensation claim was resolved.

¶ 4 On May 12, 2008, plaintiff's settlement agreement with the Cook County Sheriff's Department, his employer, was approved by the Illinois Worker's Compensation Commission (IWCC) on his claim under the Illinois Workers' Compensation Act (IWCA) (820 ILCS 305/1 *et seq.* (West 2006)) for his fall to the floor when the chair he was sitting on broke. The settlement agreement indicated that plaintiff returned to his regular job on November 9, 2006, and was "temporarily totally disabled" from February 26, 2006 through August 29, 2006. Under the settlement contract, plaintiff received compensation for 26 3/7 weeks at the rate of \$452.32 per week for temporary total disability benefits. The total amount of settlement was \$28,496.28 and was a settlement of all claims without a finding of a specific loss. The settlement contract provided:

"Respondent [employer] offers and Petitioner [plaintiff] agrees to accept the sum of \$28,496.28 as full, final and complete settlement of the work injury claim only, on account of the work accident of

02/25/2006 and all known work injuries which allegedly resulted from this work accident. Petitioner hereby specifically waives his right of review under Section 19(h) and 8(a) of the Illinois Workers' Compensation Act.”

¶ 5 The section for plaintiff's signature contained the following waivers: right to a trial before an arbitrator, right to appeal the arbitrator's decision to the Industrial Commission, right to any further medical treatment at the employer's expense for the results of this injury, and right to any additional benefits if his condition worsened as a result of this injury. The contract was signed by plaintiff, his attorney, and his employer's attorney.

¶ 6 In December 2010, plaintiff filed an application for ordinary disability benefits indicating the disability was the result of being struck by a car as a pedestrian and listing August 30, 2006, as the date he first failed to appear at work due to the disability. In June 2011, plaintiff withdrew this application for ordinary disability benefits, stating that according to his physician, his current disability was related to his IWCA injury on February 25, 2006. He then filed an application for duty disability benefits. In the application, plaintiff indicated that he returned to work on the form, but in a written comment, plaintiff stated,

“Episodic need to restrain individuals daily or on an unscheduled basis. Emergency situations require heavy work 10% to 15% of the time. Employee is required to qualify with a firearm annually. Employee did return through the medical process but did not physically return to work.”

Plaintiff attached multiple medical reports and letters from physicians related to his injury.

¶ 7 Dr. Julie Wehner stated in a letter that she examined plaintiff in April 2006. She reviewed his medical records, including MRI reports. She observed that a March 2006 MRI report indicated disk herniations and mild denenerative changes. She also reviewed MRI reports from January 2006, which predated the work injury. She felt that plaintiff “has pre-existing significant cervical disk hernations \*\*\*.” She stated that surgical intervention would be reasonable.

¶ 8 Dr. Kevin Koutsky stated in a letter that he performed an independent medical evaluation of plaintiff in August 2006. He reviewed medical records as well as the prior MRI reports. He stated that plaintiff complains of chronic neck pain as well as pain radiating down both arms. His symptoms began after he was struck by a car in October 2005, but were aggravated when he fell after a chair broke while at work in February 2006. He found that plaintiff suffered from “chronic cervical spondylosis and radiculitis.” Dr. Koutsky stated that with plaintiff’s “current condition, it would be difficult to return full duty in a deputy sheriff’s position.”

¶ 9 A form for county physician statement of disability prepared by Dr. J. Mankowski was prepared in June 2011. The form states, “If patient is still disabled, what date should patient return to work?” Dr. Mankowski wrote, “to be determined, but ‘never’ per personal MD.” In the remarks section, Dr. Mankowski handwrote, “the physical requirements of the job as a deputy sheriff exceed the physical limitation reported by his treating/attending physician.” A handwritten addendum by Dr. Mankowski, dated April 7, 2011, stated that he recommended “grant disability from 2/28/06 to 10/16/2008.”

¶ 10 Dr. William Serantos completed the attending physician statement form in June 2011. The doctor indicated that plaintiff remained disabled and should never return to work.

¶ 11 A report from Dr. Bruce Montella, dated August 30, 2006, stated that plaintiff was having ongoing difficulties with activity related to neck and radiating arm pain. The doctor stated that

plaintiff wanted an epidural steroid injection. The continuing treatment included physical therapy, chiropractic care, anti-inflammatories, and low dose of pain medication. Dr. Montella stated, “I think that it is unreasonable for him to participate at work in any way at this time.”

¶ 12 An exhibit from Dr. Mark Sokolowski, dated November 18, 2013, stated that plaintiff complained of “neck pain, upper extremity pain, numbness and tingling in the first three digits of either hand, right shoulder pain, episodic visual changes.” The doctor’s assessment was that plaintiff has “multilevel cervical spondylosis and significant disc herniation.” Regarding his employment as a deputy sheriff, Dr. Sokolowski stated “he is certainly not going to be able to return to his occupation even after proceeding with surgery. He is significantly functionally limited and he is a significant risk of spinal cord injury should he be involved in a conflict situation, given the degree of stenosis within his cervical spine.”

¶ 13 In May 2012, the Board sent plaintiff a letter stating that it received notification of plaintiff’s final adjudication of his IWCA claim and that the adjudication of that claim exceeded the 75% benefit payment obligation of the Board. The letter further stated that his disability benefit has been processed to ensure all applicable pension benefit credit has been applied for the period of March 2, 2006 to August 29, 2006.

¶ 14 Plaintiff then requested an administrative hearing. A stipulation of facts from the parties was submitted at the hearing. In addition to the facts discussed above regarding plaintiff’s disability claim and his IWCA settlement, the parties stipulated that various treating physicians, as well as independent medical examinations, have indicated that while plaintiff has reached “maximum medical improvement, he remains unable to perform[] his job duties.” The stipulation cited to opinions from Dr. Mankowski, Dr. Wehner, and Dr. Koutsky. The stipulation further stated, “It should be noted, however, that [plaintiff’s] current physical condition was also

consistent with injuries [plaintiff] sustained in a non-duty related injury in October 2005.”

Noting the reports by Dr. Wehner and Dr. Koutsky, “both doctors did opine that [plaintiff] was unable to perform his job duties in his present condition.” The stipulation also stated that the denial of plaintiff’s duty disability claim was pursuant to section 9-159(c) of the Code (40 ILCS 5/9-159(c) (West 2006)).

¶ 15 On January 14, 2014, the hearing officer conducted a hearing on plaintiff’s duty disability claim. No testimony was presented, but exhibits were submitted and parties presented arguments. In May 2014, the hearing officer submitted his findings of fact, conclusions of law, and recommendation to the Board. The officer concluded that sections 9-159(c) and (d) governed plaintiff’s application and no monetary payment was due to plaintiff. Specifically, the hearing officer found:

“In the matter now before the Fund, [plaintiff] has established his entitlement to duty disability as to his first application for benefit. The Fund, through its[] Board acted favorably thereon in granting the benefit. As to the application seeking a continuation of the benefit, the fact that he has made no claim under the Illinois Workers’ Compensation Act nor has he received any payment of such claim speaks for itself in the denial of the benefit therein sought. Further, the duty disability benefit sought by [plaintiff] in his second application for duty disability must be denied because he was no longer an employee of Cook County at the time he made application.”

¶ 16 At its May 7, 2014 meeting, the Board adopted the hearing officer's recommendation and denied plaintiff's claim for benefits after August 29, 2006. In June 2014, plaintiff filed his petition for administrative review in the circuit court. In April 2015, following briefing and arguments, the trial court entered an order remanding the case to the Board for further hearing. Specifically, the court sought a determination of (1) the period of plaintiff's disability; (2) the amount plaintiff would have received had disability been granted and no offset applied; and (3) the Board's reasons why no additional benefit would be due.

¶ 17 In August 2015, the Board submitted its supplemental findings in response to the trial court's remand order. The Board stated that under section 9-159(d) of the Code, plaintiff was required to file an IWCA claim and receive compensation for that claim before the Board will take action on any application for duty disability benefits. The Board's records show that plaintiff filed his IWCA claim and received temporary total disability benefits for his injury. Plaintiff's settlement contract for his IWCA claim indicated that he received \$28,496.28, including \$5,746.25 in attorney fees. The Board further stated that plaintiff "also received temporary total disability benefits in the amount of \$17,931.26."<sup>1</sup> Plaintiff's total compensation from his IWCA claim was \$40,681.29.

¶ 18 The Board stated that after plaintiff's IWCA claim had been adjudicated, it considered his application. Plaintiff's employer reported that plaintiff was compensated through March 1, 2006, so the Board determined that plaintiff's period of disability was from March 2, 2006 through August 29, 2006, as consistent with the IWCA settlement contract. Duty disability benefits are 75% of the member's salary on the date of the injury, but are reduced by any compensation the member receives for the injury from IWCA pursuant to section 9-159(c) of the Code.

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<sup>1</sup> There is no documentation in the record showing this temporary total disability benefit of \$17,931.26 other than the Board's statement in the supplemental findings, but no dispute has been raised that such benefit was not received by plaintiff.

¶ 19 According to the Board, on the date of the injury, February 25, 2006, plaintiff's annual salary was \$52,921.44. He was entitled to 75% of his salary from March 2, 2006 to August 29, 2006, which totaled \$19,803.21. Because plaintiff received more than that amount from his IWCA claim, he was not eligible to receive any monetary benefit. He did receive pension credit for that period.

¶ 20 The Board finally stated that plaintiff "did not receive any compensation for his duty disability injury under the IWCA after the date of August 29, 2006." The Board concluded, "Because he was not compensated under the IWCA for injuries after August 29, 2006, as required by Section 9-159(d) of the Illinois Pension Code, he was not eligible for duty disability benefits from the Fund after that date."

¶ 21 In December 2015, plaintiff filed a motion in the circuit court to review the Board's supplemental findings, asking the court to direct the Board to comply with the April 2015 order and furnish the actual dollar amount plaintiff would have been entitled for the period the court finds plaintiff disabled.

¶ 22 In January 2016, the trial court issued a written order finding that "[t]he Board's supplemental findings satisfy the Court that the Board's decision must be affirmed. The decision is not against the manifest weight of the evidence, clearly erroneous, or contrary to law."

¶ 23 In February 2016, plaintiff filed a motion for reconsideration in the trial court. In his motion, plaintiff asserted that the Board maintained that plaintiff was in "non-employee" status, but plaintiff was a County employee and received health insurance. Plaintiff also contended that he remained disabled and the court ignored the findings of the Board's doctors as to his current disability. Plaintiff asked the court to consider the testimony of the Board's examining doctors



with regard to his current disability status. On August 29, 2016, following briefing, the trial court denied plaintiff's motion for reconsideration.

¶ 24 This appeal followed in compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015) with a timely notice of appeal filed on September 26, 2016. Accordingly, this court has jurisdiction of this appeal under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 25 On appeal, plaintiff argues that the Board's decision to deny his application for duty disability benefits was contrary to the provisions of the Code. Specifically, plaintiff contends that the terms of his IWCA settlement contract did not control his claim for ongoing duty disability benefits. In response, the Board asserts that plaintiff's claims are barred by *res judicata* and, alternatively, plaintiff's claim is barred by the Code.

¶ 26 When a party appeals the circuit court's decision on a complaint for administrative review, the appellate court's role is to review the administrative decision rather than the circuit court's decision. *Siwek v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 324 Ill. App. 3d 820, 824 (2001). The Administrative Review Law provides that judicial review of an administrative agency decision shall extend to all questions of law and fact presented by the entire record before the court. 735 ILCS 5/3-110 (West 2012). "In an action under the Administrative Review Law, factual determinations by an administrative agency are held to be *prima facie* true and correct and will stand unless contrary to the manifest weight of the evidence." *Kimball Dawson, LLC v. City of Chicago Department of Zoning*, 369 Ill. App. 3d 780, 786 (2006); see also 735 ILCS 5/3-110 (West 2012). "The standard of review, 'which determines the degree of deference given to the agency's decision,' turns on whether the issue presented is a question of fact, a question of law, or a mixed question of law and fact." *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 216 Ill. 2d 455,

471 (2005) (quoting *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 390 (2001)). However, “[t]he rule that an administrative agency’s findings of fact should not be disturbed unless they are against the manifest weight of the evidence does not apply where the question involved is one of law, such as the proper interpretation of a statute.” *DiFoggio v. Retirement Board of County Employees Annuity & Benefit Fund of Cook County*, 156 Ill. 2d 377, 380-81 (1993). “Rather, in such a case, the Board's finding is not binding on the court.” *Id.* at 381. “Where there is no question of fact, and the issue is solely one of law, we review the agency’s decision *de novo*.” *Village of Alsip v. Portincaso*, 2017 IL App (1st) 153167, ¶ 11. Additionally, whether *res judicata* bars a subsequent claim is a question of law, which is reviewed *de novo*.” *Amalgamated Transit Union, Local 241 v. Chicago Transit Authority*, 2014 IL App (1st) 122526, ¶ 13. Here, we find that the issues raised on appeal, the doctrine of *res judicata* and the interpretation of a statute, involve questions of law, and therefore, our standard of review is *de novo*.

¶ 27 Initially, we address the Board’s contention that the doctrine of *res judicata* binds plaintiff’s application for duty disability benefits based on his IWCC settlement. “Under the doctrine of *res judicata*, ‘a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand, or cause of action.’ ” *City of Chicago v. Illinois Workers' Compensation Commission*, 2014 IL App (1st) 121507WC, ¶ 48 (quoting *J & R Carrozza Plumbing Co. v. Industrial Commission*, 307 Ill. App. 3d 220, 223 (1999)). “Administrative agency decisions have *res judicata* effect when the agency's determination is made in proceedings which are adjudicatory, judicial, or quasi-judicial in nature.” *Id.* “To establish *res judicata*, a party must show: (1) that the former adjudication

resulted in a final judgment on the merits; (2) that the former and current adjudications were between the same parties; (3) that the former adjudication involved the same cause of action and same subject matter of the later case; and (4) that a court or administrative agency of competent jurisdiction rendered the first judgment.” *Id.*

¶ 28 The Board argues that three of the elements of *res judicata* have been met, but fails to set forth any argument that there is an identity of parties between the IWCC settlement and the instant action. Before the IWCC, the party was the Cook County Sheriff’s Department, and here, the party is the Board. While both are public entities, they are not the same entity. Therefore, we find there is no identity of parties, which defeats the applicability of *res judicata* in this case. *Id.* ¶ 49; see also *Hannigan v. Hoffmeister*, 240 Ill. App. 3d 1065, 1076 (1992) (concluding that two state agencies were not identical parties for *res judicata* purposes); *Rhoads v. Board of Trustees of the City of Calumet City Policemen’s Pension Fund*, 293 Ill. App. 3d 1070, 1075 (1997) (agreeing with *Hannigan* and holding that the City of Calumet City and the Calumet City Police Pension Board were different parties, precluding the application of collateral estoppel). We need not consider whether the other elements of *res judicata* are met in this case because the failure to satisfy one element renders the doctrine inapplicable. *City of Chicago*, 2014 IL App (1st) 121507WC, ¶ 48.

¶ 29 We turn to the Board’s decision to deny plaintiff’s application for duty disability benefits. Section 9-156 of the Code sets forth the duty disability benefit for its members. The statute states, in relevant part:

“Any employee who becomes disabled after January 1, 1987, as the result of injury incurred on or after the date he has been included under the Article and in the performance of an act or acts

of duty, shall have a right to receive a duty disability benefit during any period of such disability for which he receives no salary. The benefit shall be 75% of salary at date of injury; provided, that if disability, in any measure, has resulted from any physical defect or disease which existed at the time such injury was sustained, the duty disability benefit shall be 50% of salary at date of such injury.” 40 ILCS 5/9-156 (West 2010).

¶ 30 “[A] plaintiff in an administrative proceeding bears the burden of proof, and relief will be denied if he or she fails to sustain that burden.” *Wade v. City of N. Chicago Police Pension Board*, 226 Ill. 2d 485, 505 (2007). The claimant need not prove that a duty-related accident is the sole cause, or even the primary cause, of his disability, but he must prove only that the duty-related accident is a causative factor contributing to the claimant's disability. *Luchesi v. Retirement Board of Firemen's Annuity & Benefit Fund of Chicago*, 333 Ill. App. 3d 543, 550 (2002). Thus, plaintiff, as an employee, was eligible to apply for a duty disability benefit.

¶ 31 In this case, the Board denied plaintiff's application for duty disability benefits based on two subsections of section 9-159 of the Code. First, the Board held that plaintiff was unable to receive any additional duty disability benefits because he already received in excess of 75% of his salary in his IWCC settlement. The Board relied on section 9-159(c) of the Code and the supreme court's decision in *DiFoggio*.

¶ 32 Section 9-159(c) of the Code states, in relevant part:

“If an employee who shall be disabled \*\*\* receive[s] any compensation or payment from the county for specific loss \*\*\* under the Workers' Compensation Act, the disability benefit \*\*\*

payable as the result of such specific loss \*\*\* shall be reduced by any amount so received or recoverable. If the amount received as such compensation or payment exceeds such disability benefit \*\*\* payable as the result of such specific loss \*\*\*, no payment of disability benefit \*\*\* shall be made until the accumulative amounts thereof equals the amount of such compensation or payment.” 40 ILCS 5/9-159(c) (West 2010).

¶ 33 Accordingly, under section 9-159(c), an employee’s disability benefit is to be reduced by the amount received in an IWCC claim for a specific loss. Here, it is undisputed that plaintiff received more than 75% of his salary in his IWCC claim temporary total disability for the period from February 26, 2006 to August 29, 2006. Plaintiff has not challenged that portion of the Board’s decision.

¶ 34 Further, in *DiFoggio*, the supreme court considered whether section 9-159(c) of the Code was intended to have duty disability benefits offset by payments of temporary total disability as well as permanent partial disability received under the IWCA. *DiFoggio*, 156 Ill. 2d at 381-82. There, the plaintiff argued that section 9-159(c) was ambiguous, and asserted that his duty disability benefits were to be offset only by his temporary total disability compensation received under the IWCA. *Id.* at 381-82. The court disagreed with the plaintiff’s interpretation and held that section 9-159(c) was “unambiguous” as it “does not distinguish between temporary total disability benefits and permanent partial disability benefits under the Workers' Compensation Act. Rather, Pension Code section 9-159(c) simply provides that any disability benefits paid or recoverable under the Workers' Compensation Act ‘as the result of such specific loss’ shall serve to offset Pension Code duty disability benefits.” *Id.* at 383.

¶ 35 The Board’s reliance on *DiFoggio* is misplaced because that decision does not address the issue here, specifically whether plaintiff is entitled to duty disability benefits after August 29, 2006. Plaintiff has not raised any issue with the offset of his duty disability benefits by his IWCC settlement.

¶ 36 The crux of plaintiff’s claim on appeal relates to the Board’s interpretation of section 9-159(d) of the Code as a basis to deny his claim for duty disability benefits. Section 9-159(d) provides, in relevant part:

“Before any action may be taken by the board on an application for duty disability benefit \*\*\*, the related applicant must file a timely claim under the Workers' Compensation Act \*\*\* to establish that the disability \*\*\* resulted from an injury incurred in the performance of an act or acts of duty, and the applicant must receive compensation or payment from the claim or the claim must otherwise be finally adjudicated.” 40 ILCS 5/9-159(d) (West 2010).

¶ 37 “The primary objective in construing a statute is to ascertain and give effect to the intent of the legislature.” *Prazen v. Shoop*, 2013 IL 115035, ¶ 21. “The most reliable indicator and best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning.” *Id.* “[I]t is beyond dispute that to the extent there is any question as to legislative intent and the clarity of the language of a pension statute, it must be liberally construed in favor of the rights of the pensioner.” *Id.* ¶ 39. Illinois courts “will not presume that the legislature intended to create a condition for forfeiture of pension benefits where the statute is silent on the subject.” *Id.* ¶ 38 (citing *Shields v. Judges' Retirement System of Illinois*, 204 Ill. 2d

488, 496-97 (2003)). “It is the dominion of the legislature to enact laws and the courts to construe them, and we can neither restrict nor enlarge the meaning of an unambiguous statute.”

*Id.*

¶ 38 Without citation to any authority, the Board contends that “[t]he purpose of Section 9-159(d) is to allow the IWCC to make an appropriate determination as to the nature and extent of an employee’s injury, along with a determination that it is duty related.” The Board states that plaintiff’s IWCC settlement contract “fixed” his period of disability as lasting from February 26, 2006 to August 29, 2006, with no provision for long term benefits. In its supplemental findings, the Board stated that plaintiff did not receive duty disability benefits after August 29, 2006 because he was not compensated by the IWCA after that date, as required by section 9-159(d). We disagree with the Board’s interpretation of section 9-159(d).

¶ 39 The plain language of section 9-159(d) contains no reference or suggestion that the time period in which an applicant received worker’s compensation benefits, whether by a settlement or other adjudication, is binding as to the applicant’s right to seek duty disability benefits under the Code. As we previously cited, section 9-156 of the Code sets forth the right of an employee under the Code to receive a duty disability benefit.

“Any employee who becomes disabled after January 1, 1987, as the result of injury incurred on or after the date he has been included under the Article and in the performance of an act or acts of duty, shall have a right to receive a duty disability benefit *during any period of such disability for which he receives no salary.*” (Emphasis added.) 40 ILCS 5/9-156 (West 2010).

The language of section 9-156 does not limit or bind the Board in any way to findings from the IWCC. Rather, the statute explicitly provides for the right to duty disability benefits “during any period” of disability. Here, plaintiff has applied for duty disability benefits based on his February 25, 2006 injury and seeks benefits for a period of time in which he claims he was disabled and received no salary. We find that the Board erred in denying plaintiff’s application under section 9-159(d) without conducting a hearing on the merits.

¶ 40 We find further support for our conclusion that the Board erred in denying plaintiff’s application without reaching the merits in the language of the IWCC settlement contract. Under the terms of the settlement, plaintiff waived certain rights, including the right to a trial before an arbitrator, the right to appeal the arbitrator’s decision to the Industrial Commission, the right to any further medical treatment at the employer’s expense for the results of this injury, and the right to any additional benefits if his condition worsened as a result of this injury. The contract also stated that plaintiff “specifically waives his right of review under Section 19(h) and 8(a) of the Illinois Workers’ Compensation Act.” Finally and most significant, the settlement agreement provided that it was a “full, final and complete settlement of the work injury claim *only*.” (Emphasis added.) The settlement contract detailed what plaintiff was paid for his work injury under its terms, but it does not establish what plaintiff was entitled to under the IWCA.

¶ 41 While the settlement contract’s language does foreclose plaintiff from seeking any additional benefits under the Workers’ Compensation Act, it contains no language, nor could it, relating to plaintiff’s ability to seek disability benefits from the Board. The settlement contract detailed the rights plaintiff was waiving under the IWCA, but did not restrict his ability to pursue his duty disability benefits under the Code. In its decision, the Board failed to establish how plaintiff’s claim before it was limited by any language of the settlement agreement or in the



Code. We have found no such support for their conclusions. Therefore, we reverse the Board's denial and remand for a hearing on the merits in accordance with the Code.

¶ 42 Plaintiff also complains that it was error for the hearing officer to conclude that he was not an employee at the time of his application in 2011 when nothing in the record supported such a conclusion. The Board concedes that the hearing officer's finding was error because plaintiff "technically" remained on the rolls of the Cook County Sheriff's office, but had not performed any work since his injury. "An administrative agency cannot base its decision upon facts, data, and testimony which do not appear in the record." *Novosad v. Mitchell*, 251 Ill. App. 3d 166, 174 (1993). Whether there is any issue over plaintiff's employment status at the time he applied for benefits would be another issue upon remand.

¶ 43 Based on the foregoing reasons, we reverse the decision of the circuit court of Cook County affirming the Board's denial of plaintiff's duty disability benefits application without a hearing and remand for further proceedings consistent with this decision.

¶ 44 Reversed and remanded.