2019 IL App (2d) 180459-U
No. 2-18-0459
Order filed February 20, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

STEVEN ANDERSON,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 17-MR-75
	)	
BOARD OF TRUSTEES OF	)	
THE LIBERTYVILLE POLICE	)	
PENSION FUND,	)	Honorable
	)	David P. Brodsky,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justice Hudson concurred in the judgment.
Justice Schostok specially concurring.

ORDER

¶ 1 *Held*: Where the pension board decided in a close case that the pain, weakness, and instability caused by pensioner's degenerative knee arthritis had improved to the point that he was no longer disabled, the deferential standard of review weighs in favor of affirming the termination of his line-of-duty pension on administrative review.

¶ 2 Plaintiff, Steven Anderson, applied for line-of-duty disability pension benefits based on two left-knee injuries he suffered in 2004 and 2005 while on duty. The Village of Libertyville Police Pension Board found that plaintiff was disabled but that he was entitled only to a non-line-

of-duty pension because his condition was preexisting. The circuit court reversed the denial of line-of-duty disability benefits, and we affirmed the award for plaintiff in December 2009. *Anderson v. Village of Libertyville Police Pension Board*, No. 2-08-0636 (2009) (unpublished order under Supreme Court Rule 23).

¶ 3 Plaintiff's line-of-duty disability benefits were terminated in 2016 based on the medical opinion of one physician who concluded that plaintiff had recovered from his injury. Plaintiff filed a complaint against the Board of Trustees of the Libertyville Police Pension Fund (Board) for administrative review in the circuit court, which reversed the termination.

¶ 4 The Board appeals, arguing that (1) the trial court erred in barring the Board from presenting expert testimony about plaintiff's former hobby, jiu-jitsu, a martial art and combat sport system, and (2) the Board's finding that plaintiff recovered from the disability is not against the manifest weight of the evidence. This is a close case that is fraught with credibility and methodology issues. Under the circumstances, our deferential standard of reviewing factual questions weighs in favor of reversing the trial court and reinstating the Board's decision to terminate benefits.

¶ 5 I. BACKGROUND

¶ 6 A. Injuries in 2004 and 2005

¶ 7 Plaintiff served as a Village of Libertyville police officer from September 11, 1996, to April 14, 2006. On January 23, 2007, plaintiff filed an application for a line-of-duty disability pension with the Board based on injuries he suffered on February 14, 2004, and September 1, 2005.

¶ 8 On February 14, 2004, while on duty, plaintiff was dispatched to a burning home. As plaintiff ran up the driveway toward the home, he slipped and injured his left knee. On

September 1, 2005, while on duty, plaintiff responded to a domestic disturbance at a residence. Plaintiff had to kick in the front door, which injured his left knee and shoulder. Plaintiff's pension application asserted that his left-knee injuries prevented him from climbing or descending stairs, to walk on uneven surfaces, or to jog and jump without sharp left-knee pain and numbness.

¶ 9 At the hearing on plaintiff's application, he testified that in 1992, before he became a police officer, he injured his left knee, which required arthroscopic knee surgery. Before the two injuries at issue, plaintiff also had two surgeries to his right knee.

¶ 10 Plaintiff further testified about the house fire on February 14, 2004. He was the first to arrive and encountered a snow bank blocking his path to the burning house. He jumped over the snow bank and felt pain in his left knee. Plaintiff entered the home, assisted the residents, and directed traffic while the fire was extinguished. The emergency conditions initially distracted plaintiff from the injury to his knee, but he felt a sharp pain after 20 or 30 minutes. Plaintiff reported his injury and followed his supervisor's recommendation to go to the emergency room. On February 20, 2004, Dr. Thomas Baier ordered that plaintiff serve on light duty.

¶ 11 On March 10, 2004, plaintiff came under the care of Dr. Roger Chams, who ordered an MRI, which revealed that plaintiff had a "tear" in his left knee. Dr. Chams ordered plaintiff to stop working. Plaintiff underwent surgery to repair a partial ACL tear on April 9, 2004, and completed physical therapy. In May 2004, Dr. Chams allowed plaintiff to return to full, unrestricted police duties.

¶ 12 On July 21, 2004, an arbitrator heard plaintiff's worker's compensation claim to pay for the surgery. The arbitrator found that plaintiff had a 25 percent permanent partial disability of

the left leg and that plaintiff's slip on the snow and ice on the driveway arose out of the scope of his employment.

¶ 13 Plaintiff also testified about the domestic dispute call on September 1, 2005. Plaintiff responded to an emergency call that a woman was being held hostage by her husband. Plaintiff and another officer went to the address, where he resorted to forcing the door open. Plaintiff struck the door with his right shoulder and right knee to open it.

¶ 14 Plaintiff twisted his left knee when he forced the door open, and he reported his injury. About 20 or 30 minutes after the call, plaintiff was sent to the emergency room, where he was X-rayed and sent home.

¶ 15 On September 22, 2005, Dr. Chams prescribed three weekly glucosamine injections to the left knee. The injections did not relieve the pain, and a second MRI showed that the left knee joint had collapsed. Dr. Chams suggested that plaintiff get a second opinion from Dr. Scott Logue, who agreed with Dr. Chams that plaintiff needed a distal femoral osteotomy, a procedure where either the tibia (shinbone) or, in this case, femur (thighbone) is cut and then reshaped to relieve pressure on the knee joint. The osteotomy would be a stop-gap measure until plaintiff grew old enough for a full knee replacement. Plaintiff worked full duty until he underwent the osteotomy on April 17, 2006. Plaintiff underwent physical therapy for 10 months.

¶ 16 On October 25, 2006, Dr. Chams ordered a functional capacity evaluation, concluding that plaintiff was unable to perform the physical requirements of a police officer and any attempt to return to a pre-injury job might result in further injury.

¶ 17 On November 28, 2006, plaintiff was restricted to only sedentary work due to the injury he suffered on February 14, 2004. Plaintiff never returned to full and unrestricted duty as a police officer after the April 17, 2006, surgery.

¶ 18 B. Line-Of-Duty Disability Benefits Effective January 2007

¶ 19 Plaintiff applied for the line-of-duty disability pension on January 23, 2007. He testified that, before he suffered the two injuries while on duty, he ran marathons, participated in "Ironman" triathlon competitions, and exercised about 20 hours per week. From 1999 to 2004, plaintiff participated in five full Ironman competitions and about one hundred shorter races.

¶ 20 Plaintiff testified that he owned a landscaping company and was physically active with it. He further testified that, after the April 2004 ACL procedure to treat the first injury, he remained a member of the police bicycle unit; and at the time of the hearing, plaintiff still could ride a stationary bicycle.

¶ 21 The Board selected three doctors to evaluate plaintiff under section 3-115 of the Pension Code (40 ILCS 5/3-115 (West 2006)), and to determine whether he was disabled and unable to perform the duties of a Libertyville Police Officer because of his alleged injuries.

¶ 22 All three doctors concluded that the September 1, 2005, injury aggravated the February 14, 2004, injury and that plaintiff was disabled. Dr. William Hopkinson described the causation and duration of plaintiff's disability as "[o]steoarthritis, left knee, posttraumatic. *** It is my opinions [sic] that these conditions are permanent and related to the injury in question." Dr. Hopkinson opined that plaintiff's restrictions and inability to return as a police officer were related to the work-related injury suffered on February 14, 2004.

¶ 23 Dr. Nikhil Verma concluded that "the patient did suffer from preexisting degenerative changes of the knee including lateral and patellofemoral compartments. *** I do believe that the injury resulted in aggravation of his preexisting condition with subsequent material worsening of the condition." Dr. Verma opined that plaintiff's injury was specifically related to his work injury on February 14, 2004, and that he was unable to return as a police officer.

¶ 24 Dr. Thomas C. Tingle concluded that "[plaintiff] was noted to have some grade 3 chondral changes of the apex of his patella.[1] The chondral changes noted most likely were pre-existing. *** The patient's disability is permanent. *** [Plaintiff's] history of responding to a house fire while running on icy ground and subsequently struggling with the home owners could cause an acute lateral meniscal tear." Dr. Tingle opined that plaintiff was permanently disabled from his work-related injury.

¶ 25 On November 28, 2007, the Board entered a written order awarding plaintiff a non-line-of-duty pension but denying a line-of-duty pension. The Board found plaintiff to be not credible, based on the Board's observation of his demeanor and the "subjective complaints" that plaintiff made to the physicians, the psychiatrists, and the psychologists who had treated, examined, or evaluated him.

¶ 26 The Board also pointed out that his left knee injury was not mentioned in any of the three reports prepared as part of the September 1, 2005, incident where he forced open the door. The Board found that plaintiff's "history of Ironman competitions, marathons, outside active employment as a landscaper, and roughly 20 hours a week spent exercising *** were a major contributing cause to [plaintiff's] left knee problems."

¶ 27 The Board gave "minimal weight" to the medical experts' opinions that were based on plaintiff's "subjective complaints and selective presentation of [plaintiff's] 'facts' and statements." The Board found that plaintiff's left knee injuries caused his disability from service

[1] Chondral deterioration can result in "chondromalacia," also known "runner's knee," which is a condition where the cartilage on the undersurface of the patella deteriorates and softens.

in the police department but that plaintiff failed to meet his burden of establishing that the disability resulted from an act of duty under section 3-114.1 of the Pension Code.

¶ 28 On December 19, 2007, plaintiff filed a complaint for administrative review in the circuit court. The court noted that plaintiff was the only witness to testify before the Board. The court also noted that the Board found that plaintiff had made a consistent complaint about his left knee injury. The court found that the reports regarding plaintiff kicking in the door did not diminish plaintiff's credibility because those reports were prepared by someone other than plaintiff and there was nothing in the record to indicate the source of the information. The court also identified inaccuracies in the reports.

¶ 29 Furthermore, the court found there was "absolutely no basis" for the Board to find that "plaintiff's Iron Man competitions, marathons, landscaping employment and 20 hours a week exercise routine *** 'were a major contributing cause to the applicant's left knee problems.' " The court concluded that the Board should not have manufactured that conclusion without "some kind of medical or other causation testimony."

¶ 30 The court determined that the Board's denial of line-of-duty benefits was against the manifest weight of the evidence. The court pointed out that there was no reliable conflicting or impeaching evidence to rebut plaintiff's testimony and the consistent medical opinions of the three independent physicians. The court reversed the Board's decision and entered an order granting plaintiff a line-of-duty disability pension.

¶ 31 On appeal, we found the trial court's analysis to be persuasive and affirmed the award of line-of-duty disability benefits on December 17, 2009. *Anderson*, No. 2-08-0636, slip op. at 13.

¶ 32 C. Independent Medical Examinations and Treatment (2010-2016)

¶ 33 Section 3-115 provides that the disabled police officer must submit to medical examination at least once each year before age 50, as verification of the continuance of disability for service as a police officer. 40 ILCS 5/3-115 (West 2010). On February 24, 2010, Dr. Verma conducted a second independent medical exam, after which he opined that plaintiff remained disabled "with restrictions unchanged from his functional capacity evaluation of October 25, 2006." Dr. Verma concluded that plaintiff's "current diagnosis is left knee lateral compartment arthrosis status post distal femoral osteotomy with severe patellofemoral chondromalacia." He found that no further treatment was necessary but predicted that plaintiff eventually would require a total knee arthroplasty, commonly known as total knee joint replacement. Dr. Verma opined that "performance of total knee arthoplasty would not allow [plaintiff] to return to an unrestricted activity level."

¶ 34 On June 24, 2011, the Board directed plaintiff to see Dr. David Belger for his annual independent medical exam. Plaintiff reported "pain with any prolonged walking or standing and inability to run at any pace, kneel, or perform even his routine exercise protocol in any gym and has not been attempting to do so because of his left knee." Dr. Belger concluded that plaintiff remained disabled and suffered from lateral compartment arthrosis. Dr. Belger opined that plaintiff's disability is permanent and will require a total knee replacement.

¶ 35 On August 14, 2012, plaintiff saw Dr. Chams for treatment. Dr. Chams performed a procedure for an injury to his *right* knee from a slip and fall. Dr. Chams also conducted a comparative examination of plaintiff's left knee, which demonstrated normal range of motion and no crepitus, which is a crackling, grating, or popping sensation. The left knee had normal patella and quadriceps, normal meniscus, normal ligaments, and normal motor strength. Another comparative exam of plaintiff's left knee on September 23, 2012, was normal.

¶ 36 On January 22, 2013, plaintiff consulted Dr. Chams for a strain and possible meniscus tear to his left knee. Dr. Chams found that plaintiff "is doing relatively well, but over the last 2 weeks he has changed some of his workout routines with deep squatting and has developed some pain in the posterolateral aspect of his knee. He does feel a pop when he deep squats. He has no swelling, no instability, and no locking."

¶ 37 Plaintiff acknowledged that he was doing "some body weight squats trying to improve some flexibility." Dr. Chams wrote that the January 22, 2013, exam was "pretty normal" and that an X-ray showed that the "[j]oint spaces are narrowed and beginning to show signs of bone-on-bone arthritic changes." Dr. Chams administered a cortisone injection to the left knee and instructed plaintiff to avoid painful positions. On April 3, 2013, an MRI disclosed a left shoulder tear as well.

¶ 38 On August 16, 2013, plaintiff again consulted Dr. Chams for pain in both knees (bilateral) and left shoulder pain. The left knee had normal range of motion and no crepitus through the range of motion. The examination was normal with the exception of medial/lateral tenderness and patellar crepitus/compression. The same findings were noted for plaintiff's right knee. Dr. Chams administered a cortisone injection in each knee. Plaintiff underwent left shoulder surgery by Dr. Chams on August 30, 2013.

¶ 39 The record does not contain any treatment records for the plaintiff's left knee between August 17, 2013, and May 12, 2015. Furthermore, the Board did not refer plaintiff for annual independent medical exams for 2012, 2013, or 2014.

¶ 40 On May 12, 2015, plaintiff consulted Dr. Chams again for bilateral knee pain. Plaintiff reported that it "significantly affects his day-to-day activities including prolonged walking, stairs, pain and stiffness after prolonged sitting. It also significantly affects his ability to work."

Dr. Chams noted decreased range of motion, lateral tenderness, and patellar crepitus in both knees. X-rays revealed bilateral compartment collapse as well as patellofemoral compartment collapse of plaintiff's knees, which in Dr. Chams' opinion was symptomatic of end-stage bilateral knee degenerative joint disease. Dr. Chams administered cortisone injections in both knees and discussed total knee replacement surgery as a definitive treatment for plaintiff's left knee.

¶ 41 Dr. Chams referred plaintiff for physical therapy by Mr. Parvanov, who noted that plaintiff's range of motion was significantly reduced. Mr. Parvanov discharged plaintiff from physical therapy on June 22, 2015, and recommended that he consult with an orthopedic surgeon specializing in joint replacement or cartilage graft recovery.

¶ 42 On Janaury 26, 2016, Dr. Chams conducted a follow up examination of bilateral knee pain. Plaintiff complained of patellar crepitus in both knees and medial joint space tenderness. Dr. Chams administered a cortisone injection to the left knee.

¶ 43 On July 18, 2016, Dr. Chams' nurse examined plaintiff for bilateral knee pain, noting bilateral positive findings on palpation at the medial joint space and crepitus. Plaintiff received another cortisone injection.

¶ 44 On September 29, 2016, Dr. Chams examined plaintiff for bilateral knee pain, and plaintiff reported that pain severely limited his daily activities. Plaintiff did not receive a cortisone injection.

¶ 45 D. Facebook, Jiu-Jitsu, and Surveillance (2012-2015)

¶ 46 On June 10, 2015, plaintiff returned to the Board an affidavit regarding his left knee and his activities since he was adjudicated disabled in 2007. The form inquired, "Have you taken part as a competitor or participant in any athletic/sport event(s), athletic/sport(s) competition(s),

or athletic/sport(s) training since the Pension Board awarded you a disability pension?" Plaintiff answered "yes" and indicated that he "[p]articipated in two 5k walks" on "unknown" dates. He did not mention jiu-jitsu, weight lifting, or bicycling.

¶ 47 However, a Facebook account bearing plaintiff's name displayed several exercise-related posts from August 2012 through December 2013. Plaintiff does not dispute the authenticity of the posts. A post from August 2012 states, "Got in 30 mins on the bike & knee feels good." Another contains a photograph of plaintiff riding a stationary bike.

¶ 48 In September 2012, plaintiff posted, "Weights are done, on the bike for intervals then PT." Plaintiff also posted: "trying to turn green *** hitting the weights." "Turn green" was a reference to the Incredible Hulk. Plaintiff posted "getting in morning breakfast rolls," which referred to exercising and practicing jiu-jitsu techniques. Another post reports, "Just finished an hour on the bike and am going into guerrilla [*sic*] mode with the weights." In reference to a jiu-jitsu training center, plaintiff posted: "2nd session in less than 12 hours. Doing what it takes." Plaintiff posted, "And another 1.5 hours of getting my ass handed to me."

¶ 49 In October 2013, plaintiff posted: "I love my carbon road bike but ride the cross bike more." A few weeks later, he responded to an advertisement for a 2.5-hour jiu-jitsu seminar: "I need a partner. Let's go 2 beat up old timers."

¶ 50 From 2012 to 2014, plaintiff participated in Gi and Brazilian jiu-jitsu, which plaintiff described as a martial art of joint and muscle manipulation in which two opponents square off against one another. Plaintiff testified that jiu-jitsu involves the use of "submission holds" and that a person scores points "by attempting to perform the joint lock or the muscle manipulation." Plaintiff testified that a person can perform a joint lock using his or her legs. The goal of jiu-jitsu is to force the opponent to submit by tapping out or saying "stop."

¶ 51 Plaintiff testified that if his opponent was on his or her back, he would be on top of the opponent by "laying on the hip." Plaintiff did not dispute that jiu-jitsu involves grappling with an opponent and ground fighting. Plaintiff testified that jiu-jitsu does not involve the use of a person's knees, but then agreed that a person can earn points in jiu-jitsu by "performing a takedown sweep and placing your knee on the opponent's belly."

¶ 52 Plaintiff testified that he was familiar with a maneuver called a "knee bar" and that "knee reaping" was recently made illegal in jiu-jitsu. Plaintiff "possibly" performed crouching and squatting during jiu-jitsu.

¶ 53 Plaintiff competed in the Master & Senior World Jiu-Jitsu Championship in California in 2012 or 2013 and finished in second place. Plaintiff also competed in the 2013 Chicago Winter International Jiu-Jitsu Open. A photograph shows plaintiff standing on a podium with a medal from the tournament around his neck for finishing first in his division. Plaintiff participated in a jiu-jitsu seminar at Evolution Mixed Martial Arts Gym in 2013 or 2014, where he practiced joint locks and muscle manipulation. Numerous photographs in the record show plaintiff wearing a Gi at jiu-jitsu training seminars. Plaintiff denied performing jiu-jitsu at the seminars but may have done some stretching.

¶ 54 The Board hired a private investigation firm to follow plaintiff From June 2013 through March 2015. Richard Lange followed plaintiff from July 2014 to March 2015. The surveillance showed plaintiff going about his business unremarkably, except for an event on December 20, 2014, at a martial arts gym. Lange observed plaintiff at a jiu-jitsu seminar after learning about it from plaintiff's Facebook account. Plaintiff wore a jiu-jitsu Gi and prepared for the seminar by swaying side to side, as if to loosen his hips, and bending back to stretch his back. At one point, plaintiff performed stretches on the ground. Lange saw plaintiff pull one knee completely under

his chest under the weight of his body and extend the other knee straight outward behind him. Plaintiff alternated legs for the stretch. The instructor asked Lange to leave the seminar because it was limited to participants.

¶ 55 E. Termination Proceedings (2015-2017)

¶ 56 Section 3-116 of the Pension Code (40 ILCS 5/3-116 (West 2014)) provides that a police officer whose duty is suspended because of disability may be summoned to appear before the Board, and to submit to an examination to determine fitness for duty. If the police officer is found upon medical examination to have recovered from disability, the Board shall certify to the chief of police that the member is no longer disabled and is able to resume the duties of his or her position. 40 ILCS 5/3-116 (West 2014). Plaintiff submitted to annual independent medical exams in 2010 and 2011, which each confirmed his disability, but did not arrange exams in 2012, 2013, or 2014.

¶ 57 In May 2015, the Board initiated an independent medical examination and proceedings to determine whether plaintiff had recovered from his disability. 40 ILCS 5/3-115, 3-116 (West 2014). The Board convened for hearings over nearly two years, including for a remand from the circuit court.

¶ 58 In a deposition on October 25, 2016, Dr. Chams opined that plaintiff had not recovered from his disability and was a candidate for a total knee replacement, depending on his tolerance for pain. Dr. Chams had been treating plaintiff since 2004 and had diagnosed severe osteoarthritis in both knees, a condition that generally degenerates over time. Dr. Chams conceded that objective findings of degenerative joint disease can coincide with an absence of pain. Dr. Chams testified that in rendering treatment, he must, to some extent, depend upon a patient's subjective reports of pain and assume the patient is telling the truth. Plaintiff's left knee

had "decent strength" but "very limited range of motion." Plaintiff's most serious problem was pain. Dr. Chams was aware that plaintiff had been involved in jiu-jitsu. He would not have placed restrictions on plaintiff for that activity, even though it could aggravate his knee.

¶ 59 Plaintiff testified that his left knee was "no better" and "probably worse" than when he first injured it. The pain and symptoms in his left knee had "worsened" since the disability application had been granted. He quantified the baseline pain as ranging from a 5 to 9 out of 10. Plaintiff stated that the knee's weakness and instability would require a total knee replacement "if something happened again." He experienced pain mainly on the outside of his left knee, "ghost pains," instability, lack of strength, radiating pain in his left leg, and lower left leg numbness that gravitated up his leg. Plaintiff had difficulty running, biking, and standing and he could not walk as well as before. He "probably could jog" and had jogged a half-mile sometime in 2015. Plaintiff's ability to squat was the same as when the Board granted his disability application. Plaintiff conceded that he could climb and descend stairs and walk on uneven surfaces. Plaintiff could ride a stationary bike and had ridden a road bike as much as 20 miles since the Board granted his disability application. Plaintiff was a member of a gym and lifted weights there once or twice per week.

¶ 60 Plaintiff insisted that his affidavit reporting his participation in 5k races was complete and accurate, despite its omission of jiu-jitsu seminars and competitions. Plaintiff testified that he "didn't disclose anything, but I didn't try to hide anything either. Facebook's wide open. The privacy settings were wide open. *** I didn't try to hide anything." Plaintiff conceded during a July 2016 hearing that he had changed his privacy settings so his Facebook account was no longer visible to the public.

¶ 61 The Board retained Dr. Gregory Primus for the annual independent medical exam in 2015. He examined plaintiff on October 30, 2015, and concluded that plaintiff had recovered from his disability. In his November 15, 2015 report, Dr. Primus opined that "there does not seem to be any direct evidence of disability as it pertains to the left knee." Dr. Primus "recommended 'a fit for duty' test by [plaintiff's] department to get a better sense of his ability to return to work." The sedentary restrictions imposed on plaintiff in 2006 no longer applied following his examination in 2015.

¶ 62 Dr. Primus testified that plaintiff's two knee surgeries and series of cortisone injections did not prevent him from possibly recovering from his disability. According to Dr. Primus, many police officers can function at a high level with bone-on-bone arthritis, which does not, in and of itself, correlate to subjective pain complaints, restricted range of motion, or disability. It was possible for plaintiff to have severe osteoarthritis in his left knee and to have no disabling pain or disabling strength deficits. Plaintiff's subjective pain complaints did not correlate with the objective findings. Dr. Primus opined that, within a reasonable degree of medical certainty, plaintiff had recovered.

¶ 63 Dr. Primus' report was based on his review of plaintiff's medical records, plaintiff's prior functional capacity evaluation, prior independent medical examiner reports, Dr. Primus' own physical examination and interview of plaintiff, review of new X-rays, plaintiff's social media posts, surveillance video of plaintiff, and the Village's job description for a police officer. Dr. Primus found that plaintiff was no longer physically disabled to the point that he was unable to perform full and unrestricted police duty:

> "From an objective perspective, it appears that he should be able to perform full and unrestricted police duty. We have had access to his extensive profile, as well as

social media posts and surveillance videos, information his prior examiners may not have had access to, and that collection of information in its entirety does not reveal a person with disabilities, but a very functional individual. He focused on his left knee arthritis condition for this reason for disability, but his right knee also has bone on bone degenerative arthritis, very similar in scope and a little worse. He has bilateral bone on bone arthritis on the knees but only seemed to focus on the left knee due to a remote twisting injury that initiated treatment. Given his heavy-duty activities throughout the years, and given the fact that he also has X-ray evidence of bone on bone [osteoarthritis] on the right knee, it is very unlikely that the left knee [osteroarthritis] is symptom [*sic*] enough to warrant full disability."

¶ 64 Dr. Primus surmised that plaintiff's injury was not the same injury that caused him to qualify for disability pension benefits in the first place. In so reporting, Dr. Primus expressed doubt as to whether plaintiff actually was injured in the line of duty. He echoed the Board's prior skepticism, stating that plaintiff's complaints of left knee pain were subjective and not consistent with him not reporting pain in his right knee, lower back, or shoulder. Dr. Primus characterized the left knee injury as preexisting:

"[A]fter his work related twisting of the knee lead [*sic*] to an MRI, and subsequently surgery on the left knee, he was able to resume his normal and full duty job. This was several months after his arthroscopic surgery back in 2004. *** [After May 2005] all his treatment related to his left knee was related to his extensive pre-existing conditions, which included chronic chondromalacia and a chronic lateral meniscus tear, and not residual effects from his twisting injury on 2/14/2004. His preexisting conditions ultimately progressed to bone on bone arthritis, but this condition should not be found

> related to his twisting incident on 2/14/2004. In other words, his stated disability should be related to his arthritic condition that was pre-existing, and not related to a work injury."

¶ 65 To reinforce the opinion that plaintiff had never really been injured in the line of duty, Dr. Primus observed that "there have been concerns about causation since day one in this case as noted in the extensive medical records and investigation. He was found to not have a disability back in 2005, which more closely correlated with his functional status, and more closely related to his twisting incident at work." Dr. Primus noted that plaintiff's description of his symptoms changed after he learned the MRI findings, implying that plaintiff tailored his description of pain to the results.

¶ 66 Dr. Primus opined unequivocally in his report that plaintiff had recovered from his disability to the point where he should be able to resume full and unrestricted work as a police officer:

> "[W]e found no objective evidence that relates to a disability during our examination, and his sense of a disability was related to subjective pain and his understanding of his arthritic condition. He believes due to his arthritis, he cannot function as a police officer. He only related this sentiment to the left knee. Due to the review of the medical records, however, he clearly has functioned in very heavy activities, and even high impact activities, such as maintaining his landscaping company and being active in competitive jiu-jitsu. These records pertain to dates that post-date his left knee surgeries and status of being disabled and not able to work as a police officer. His surveillance footage definitely does not reveal someone with an obvious disability, as he manages himself with no altered gait, and no evidence of pain or impairment."

¶ 67 Dr. Primus noted that plaintiff's jiu-jitsu training seminars and competitions "that were revealed through investigative efforts reveal clear discrepancies between his subjective sense of pain or disability, and what he disclosed during his 2015 affidavit."

¶ 68 Dr. Primus opined that plaintiff's left knee condition was a matter of pain tolerance that had been managed with cortisone injections. Plaintiff complained of lateral knee pain and swelling with increased activity and a sensation of instability. However, Dr. Primus noted that a 2005 X-ray already showed almost complete collapse of the lateral compartment of the left knee. Dr. Primus noted that the October 30, 2015, X-ray demonstrated bone-on-bone osteoarthritis in both knees and that the right knee was slightly worse than the left. Dr. Primus agreed with Dr. Chams that plaintiff has bilateral degenerative joint disease, but Dr. Primus noted that one X-ray showed "normal alignment and well preserved joint space."

¶ 69 Dr. Primus compared plaintiff's knees and noted "very mild" pain on the lateral joint line of the left knee during the palpation test. He also noted normal strength at 5/5, normal reflexes, and normal provocative maneuvers, which are a commonly used method for healthcare professionals to determine the origin of pain. The findings did not support a conclusion that plaintiff remained disabled.

¶ 70 Dr. Primus tested plaintiff's left knee range of motion, which was 135 degrees and functional enough to "allow high-end athletes to perform." Plaintiff's range of motion would permit him to squat. The range of motion test did not elicit a pain response or support a conclusion that he remained disabled.

¶ 71 Dr. Primus testified that plaintiff had normal sensory findings that did not support a finding that plaintiff experienced numbness or tingling. Dr. Primus described his palpation test findings as "relatively unremarkable."

¶ 72 Dr. Primus described plaintiff's legs as extremely muscular, symmetrical, and not indicative of disability or nonuse. Plaintiff's knees did not have a significant angular deformity and "appeared fairly straight," and Dr. Primus did not observe plaintiff walking with a limp or swelling in the left knee.

¶ 73 Plaintiff contradicted Dr. Primus' account of the examination. Plaintiff testified that the examination was only five minutes, and Dr. Primus "didn't spend much time with me in comparison to the previous [independent medical examiners] [and] "didn't do half of the tests that the other doctors had done."

¶ 74 Plaintiff testified that Dr. Primus did not take his medical history and did not ask him about the 2004 or 2005 injuries. Plaintiff described his knee as swollen, with popping and tingling during the examination, which he described to Dr. Primus. Dr. Primus did not examine his right knee for comparison. Plaintiff disputed that Dr. Primus performed the provocative maneuvers listed in his report.

¶ 75 1. The Board's Decision

¶ 76 On November 4, 2016, the Board voted 3-2 to terminate the plaintiff's disability pension based on a finding that he had recovered from his disability. The written decision on December 20, 2016, framed the issue as not whether plaintiff was disabled between 2004 and 2007, or whether he remained disabled between 2008 and 2014, but whether he had recovered from his disability in 2016. The Board found that plaintiff had recovered from his disability.

¶ 77 The Board accorded substantial weight to Dr. Primus' opinion and incorporated by reference his report and deposition testimony. The Board accorded less weight to Dr. Chams' opinion, in part, because he was plaintiff's treating physician and thus "more inclined to believe his patient's subjective complaints."

¶ 78 The Board also found plaintiff to be not credible in describing his subjective complaints of pain and limited physical ability. The Board emphasized that plaintiff's omission of jiu-jitsu from his 2015 affidavit eroded his credibility. The Board concluded that, "to the extent that [plaintiff] provides subjective testimony that his knee is worse than it was when the Pension Board awarded [plaintiff] a disability pension in 2007, the Pension Board accords the testimony no weight."

¶ 79 The Board noted similarities in the opinions of Dr. Primus and Dr. Chams that tended to show that plaintiff was no longer disabled. The doctors agreed that a person can have severe degenerative arthritis, like plaintiff does, and not have disabling pain, lack of strength, or limited range of motion. Dr. Primus opined that it is the pain, weakness, and decreased range of motion from the degenerative arthritis that determines whether a person is disabled. The doctors disagreed as to whether plaintiff's pain and weakness rendered him disabled, but Dr. Primus measured plaintiff's left knee flexion to be 135 degrees, which was even more conservative than Dr. Chams' measurement of 140 degrees. Dr. Primus opined that, such a range of motion made plaintiff "very highly functional" and did not elicit any pain. He concluded that plaintiff had excellent strength, normal reflexes, and normal tension in his legs. The Board credited the opinion that plaintiff's subjective pain was coming from inflammatory arthritis or inflammation due to infection.

¶ 80 The Board disbelieved plaintiff's characterization of Dr. Primus' examination as brief and incomplete. The Board felt that plaintiff's testimony was motivated by his disagreement with the doctor's conclusion. The Board called the prior independent medical exams "stale" and not as probative as Dr. Primus' contemporary exam and opinion.

¶ 81 The Board found that plaintiff "did not receive any medical treatment to his left knee between 2006 and January 2013." Whether plaintiff told Dr. Chams in January 2013 that he was incorporating "deep squatting" into his workouts was disputed. Regardless, Dr. Chams found no swelling, no instability, and no locking, all of which plaintiff suffered in 2007 when he was found to be disabled.

¶ 82 The Board also found that plaintiff's left knee was not treated from August 17, 2013, to May 12, 2015. The Board implied that the May 12, 2015, treatment was prompted by its initiation of termination proceedings, including its request for an affidavit regarding plaintiff's condition and activities. Plaintiff increased the frequency of treatment during the evaluation process, which the Board believed was disingenuous and self-serving. The Board terminated plaintiff's disability pension based on the finding that he had recovered from his disability.

¶ 83 2. Circuit Court

¶ 84 On January 17, 2017, plaintiff filed a complaint for administrative review in the circuit court. On July 12, 2017, the circuit court remanded the matter to the Board for the limited purpose of considering and clarifying (1) "whether and to what extent the plaintiff actually participated in jiu-jitsu as opposed to the general statements about jiu-jitsu contained in the record and whether this additional information changes Dr. Primus' opinions [and] (2) whether Dr. Primus took into consideration the 2005 injury in addition to the 2004 injury when he determined plaintiff's current condition and whether consideration of the 2005 injury changes Dr. Primus' opinions."[2]

¶ 85

[2] The parties eventually agreed that Dr. Primus' opinion took into account the 2005 injury, and trial court removed the question from consideration on remand.

¶ 86 On remand, the Board made an offer of proof to introduce the February 2015 edition of the International Brazilian Jiu-Jitsu Federation Rule Book. Plaintiff objected to the rule book because it was issued after plaintiff's participation and the Board disclosed it just two hours before the hearing. The Board agreed to reserve the objection on the rule book, find an expert in Brazilian jiu-jitsu to testify, and direct Dr. Primus to issue a supplemental report that accounts for both incidents causing plaintiff's injuries.[3]

¶ 87 On remand, plaintiff testified that he participated in jiu-jitsu from 2012 through 2014. Plaintiff practiced jiu-jitsu by sparring with his son. He attained the levels of white belt, blue belt, and then purple belt. Plaintiff testified to performing joint locks, though he did not know all of them. He also performed Gi, where he tried to break the opponent's grip, and collar chokes on opponents. He denied performing knee locks or having them performed on him.

¶ 88 Plaintiff testified that, during jiu-jitsu competitions, he would walk onto the mat, shake his opponent's hand, and sit down with his legs straight out in front of him. Plaintiff remained seated to decrease risk of injury. His opponents were on their feet circling him, but he claimed to be able to prevent them from placing their hands on his knees and legs. No opponent ever tried to grab his legs, and plaintiff never tried to use his legs or knees during competition. Plaintiff did not perform any offensive moves but was never called for stalling. Plaintiff agreed that the goal in jiu-jitsu is to be the person on top who is controlling what is going on and earning points, but he participated mostly for stress relief and weight loss. He could not say unequivocally that he

[3] The Board ultimately was allowed to refer to the rule book during plaintiff's testimony, but it was not admitted into evidence. The court also granted plaintiff's motion to bar expert testimony on jiu-jitsu.

never stood over an opponent, and a photograph showed him doing so. Plaintiff conceded that he and his opponents performed submission holds.

¶ 89 On remand, Dr. Primus opined, "Based on review of my prior [independent medical exam] report responses and the medical records review summary contained within, as well as, the transcript from [plaintiff's] deposition taken on August 30, 2017, all my original opinions regarding this matter are unchanged."

¶ 90 On January 9, 2018 the Board reaffirmed its decision by voting 5-0 to terminate plaintiff's disability pension. In its "supplemental decision and order on remand," the Board reiterated that plaintiff's affidavit was untruthful because it omitted his participation in jiu-jitsu. The Board also found plaintiff's testimony regarding jiu-jitsu to be "conflicting, shifty, and self-serving." The Board concluded that the totality of the evidence, contrary to plaintiff's testimony, showed that his actual participation in jiu-jitsu involved more than just sitting, with his legs straight out in front of him, and with no leg or knee involvement.

¶ 91 The Board adopted Dr. Primus' opinion that plaintiff's participation in jiu-jitsu, his social media posts, the surveillance video, the medical records, and the objective physical examination supported the finding that plaintiff had recovered.

¶ 92 The matter returned to the trial court for further administrative review. On May 16, 2018, the court entered a hand-written finding that the Board's decision was against the manifest weight of the evidence. The record does not contain a transcript or otherwise show the court's reasoning. The Board filed a timely notice of appeal on June 12, 2018.

¶ 93 II. ANALYSIS

¶ 94 A. Termination of Pension

¶ 95 The Board adopted Dr. Primus' finding that plaintiff was no longer physically disabled to the point that he was unable to perform full and unrestricted police duty. The trial court reversed the Board's decision and reinstated plaintiff's pension. The Board argues that its finding of recovery is not against the manifest weight of the evidence and that plaintiff's pension should be terminated.

¶ 96 The Board's termination of plaintiff's line-of-duty disability pension is subject to judicial review under what is commonly known as the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2016). When reviewing administrative findings, we review the final decision of the administrative agency and not the determination of the circuit court. *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 504 (2007). The party seeking administrative review bears the burden of proof. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532-33 (2006).

¶ 97 A pension board's decision to terminate disability benefits based on evidence that the pensioner has recovered from his disability is a factual determination that should not be reversed unless it is against the manifest weight of the evidence. *Antonelli v. Board of Trustees of the Hillside Police Pension Board*, 287 Ill. App. 3d 348, 354 (1997). The parties agree that the Board's finding that plaintiff recovered from his disability is subject to the manifest-weight-of-the-evidence standard of review.

¶ 98 An agency's findings and conclusions on questions of fact are held to be *prima facie* true and correct. 735 ILCS 5/3-110 (West 2016); *Board of Education of the City of Chicago v. Illinois Educational Labor Relations Board*, 2015 IL 118043, ¶ 15. It is the province of the agency to determine the credibility of witnesses and resolve conflicts in the evidence. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 540 (2006).

¶ 99 "[W]hen a court reviews an agency's factual findings, the court will not reweigh the evidence or substitute its judgment for that of the agency. Rather, the court simply determines whether the findings of fact are against the manifest weight of the evidence." *Board of Education of the City of Chicago*, 2015 IL 118043, ¶ 15. An agency's factual finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Wade*, 226 Ill. 2d at 504. "The mere fact that an opposite conclusion is reasonable or that the reviewing court might have ruled differently will not justify reversal of the administrative findings." *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992).

¶ 100 Three independent medical examiners concurred in 2007 that the osteoarthritis in plaintiff's left knee is permanent and degenerative and rendered him unable to serve as a police officer following the surgical interventions in April 2004 and April 2006. In turn, Drs. Primus and Chams agreed in 2016 that plaintiff suffered from bone-on-bone osteoarthritis in his left knee and that his condition is permanent, degenerative, and will not improve. But Drs. Primus and Chams disagreed as to whether plaintiff's pain, weakness, and instability in his left knee had abated to the point that he was no longer disabled.

¶ 101 As the trial court apparently determined, Dr. Primus' opinion is worthy of skepticism. First, Dr. Primus improperly reevaluated the reasons for the original disability finding. His opinion was influenced by the original dispute over disability and was based in part on his opinion that plaintiff's condition was preexisting. Dr. Primus emphasized the Board's doubts regarding causation and repeatedly suggested that plaintiff's degenerative arthritis predated the injuries, despite the rule against reevaluating the grounds for the original disability finding. See *Hoffman v. Orland Firefighters' Pension Board*, 2012 IL App (1st) 112120, ¶ 31 ("The Code does not authorize a board to terminate a pension, once given, based on evidence that the

firefighter was never disabled."). Dr. Primus claimed that he considered the three independent medical exams from 2007 that found plaintiff disabled and unable to return to work as a police officer, but his November 15, 2015, report did not include those reports. One could argue, as plaintiff does, that Dr. Primus placed too little weight on the 2007 independent medical examinations in concluding that plaintiff should never have been awarded a line of duty disability pension.

¶ 102 Second, in his report, Dr. Primus relied on Dr. Chams' finding in 2004 that plaintiff could return to work after his ACL procedure that year. But Dr. Chams' recommendation in 2004 necessarily predated the 2005 injury, which undermines Dr. Primus' opinion.

¶ 103 Third, Dr. Primus testified that he reviewed the surveillance video of plaintiff's day-to-day activities and social media posts, but he conceded that he did not observe plaintiff performing martial arts. Dr. Primus' consideration of plaintiff's participation in jiu-jitsu was limited to the description of his stretching at the martial arts studio, plaintiff's testimony, and the observations of the private investigator that plaintiff never appeared to be in pain.

¶ 104 Fourth, Dr. Primus conceded bias in favor of the Board. He testified that "all people that do independent medical evaluations, for the most part are heavily swayed toward the payor, because that's who I would say renders or offers the opportunity to do independent medical examination work." Dr. Primus insisted that his compensation by the Board did not influence his opinion, but his testimony nevertheless represents remarkable candor.

¶ 105 Plaintiff argues that the diagnoses of disability simply outnumber Dr. Primus' isolated opinion that he had recovered. Plaintiff emphasizes Dr. Chams' ongoing opinion that plaintiff is disabled and the disability findings by the three independent medical examiners at the time he received his pension. Indeed, the statute requires that an applicant establish his entitlement to a

pension by providing three medical certifications of his disability status. However, section 3-116 provides that a person receiving a disability pension can have that pension terminated based on only one medical examination that confirms the pensioner's recovery from that disability. *Trettenero v. Police Pension Fund of City of Aurora*, 333 Ill. App. 3d 792, 800 (2002 In this case, the Board had a sufficient evidentiary basis to adopt Dr. Primus' opinion, reject Dr. Chams' opinion, and consider the disability diagnoses by the other three independent medical examiners to be stale. *Peterson v. Board of Trustees of the Fireman's Pension Fund of the City of Des Plaines*, 54 Ill. 2d 260, 263 (1973) (It is particularly within the province of the administrative agency to resolve conflicts presented by the evidence and to determine the credibility of the witnesses).

¶ 106 Plaintiff argues that his line of disability pension can be terminated only if he recovers from his left knee bone-on-bone osteoarthritis. He concludes that his pension may never be terminated based on a recovery because Dr. Primus and Dr. Chams agreed that his condition is degenerative and permanent. We disagree. Plaintiff's theory would render moot the statutory annual independent medical examinations.

¶ 107 Whether plaintiff has recovered from his disability turns on whether his condition currently renders him unable to perform his duties as a police officer, not on how he came to be disabled or whether his condition will improve. Dr. Primus reconsidered the basis for the original finding of disability, which was plainly improper, but his opinion was based primarily on his assessment that plaintiff lacks pain, weakness, or instability in his left knee. Dr. Primus described plaintiff's left leg as muscular and stable. He found dubious plaintiff's complaints that the degenerative arthritis caused pain sufficient to render plaintiff disabled, citing plaintiff's

ongoing involvement in his landscaping business, weight lifting, biking, and taking up jiu-jitsu five years after two knee surgeries

¶ 108 Plaintiff also argues that Dr. Primus failed to consider the 2005 injury, and the trial court remanded the cause to the Board to clarify the doctor's findings. The parties eventually agreed that Dr. Primus had considered the 2005 injury when rendering his opinions, so the second question was stricken from the remand order. In his brief in support of barring testimony from a jiu-jitsu expert, plaintiff conceded that "Dr. Primus previously considered the 2005 injury in determining [plaintiff] is no long disabled." Plaintiff cited specific portions of Dr. Primus' deposition testimony and requested that the second question for remandment be answered in the affirmative. It is unclear why plaintiff alleges on appeal that Dr. Primus did not take into account the 2005 injury.

¶ 109 The decision to terminate disability pension benefits can be sustained by the opinion of a single medical expert, and we should reverse the Board's decision only if it is against the manifest weight of the evidence. This is a close case, but there is evidence in the record to support the Board's conclusion that plaintiff, with the help of Dr. Chams and physical therapy, has managed his symptoms in a way that allowed him to resume normal activities, including serving as a police officer.

¶ 110 Plaintiff argues that he is credible, but it is the province of the Board to determine the credibility of witnesses and resolve conflicts in the evidence. See *Marconi*, 225 Ill. 2d at 540. The Board was in the best position to assess the witnesses' credibility and found plaintiff to be not credible. The Board emphasized that plaintiff had concealed his fitness regimen by submitting an affidavit with material omissions. Plaintiff documented on social media his weight lifting and competitive jiu-jitsu *after* he was awarded a disability pension. The Board found

plaintiff's attempt to downplay his activities to be self-serving, which also undermined his credibility as to the alleged pain and instability of his left knee. Plaintiff might have been suffering from bone-one-bone osteoarthritis, but his condition did not keep him from intense physical pursuits. It is difficult to say that the Board's conclusion is against the manifest weight of the evidence in that the opposite conclusion is clearly evident. The Board did not act arbitrarily or capriciously.

¶ 111 Plaintiff nevertheless argues that this case is analogous to *Wade*, 226 Ill. 2d at 507-08, in which the appellate court determined that the Board's decision to deny a line-of-duty pension was against the manifest weight of the evidence. In April 2002, Wade fell down a hill while escorting a prisoner. *Wade*, 226 Ill. 2d at 491. He experienced pain and swelling in his right knee, and an MRI revealed two tears in the knee. He had surgery in May 2002 and could not return to full duty as a patrolman. He acknowledged that he had preexisting problems with his right knee, including a 1989 football-related injury and surgery in 1997 following a baseball-related injury. *Wade*, 226 Ill. 2d at 492-93. X-rays taken in 1992 revealed "scant early degenerative changes" in his knees. *Wade*, 226 Ill. 2d at 493.

¶ 112 Four doctors found Wade to be disabled. *Wade*, 226 Ill. 2d at 496-99. One stated that Wade's condition "could [have] been aggravated" by the 2002 work incident. *Wade*, 226 Ill. 2d at 496. The other three affirmatively stated that his condition was either caused or aggravated by the work incident. *Wade*, 226 Ill. 2d at 498-99.

¶ 113 A fifth doctor, Dr. James Milgram, the sole dissenter, found that Wade was not disabled and that the tears in his knee were due to a preexisting condition. *Wade*, 226 Ill. 2d at 501. In his report, Dr. Milgram made multiple misstatements of the evidence which showed that he either "selectively disregarded, failed to recall, or never reviewed portions of plaintiff's medical

records." *Wade*, 226 Ill. 2d at 506. The supreme court agreed with the appellate court's assessment that Dr. Milgram "was not credible, because his conclusions were inconsistent with the facts available to him," and therefore the Board erred in relying solely upon his opinion to deny Wade a line-of-duty disability pension. *Wade*, 226 Ill. 2d at 507-08.

¶ 114 *Wade* is distinguishable from this case, where the divergence in the experts' opinions was based largely on plaintiff's subjective complaints about pain, rather than a disregard of objective medical evidence. The Board in *Wade* rested its decision upon the testimony of a doctor whose conclusion was inconsistent with the facts available to him. In contrast, Dr. Primus testified that he considered the 2004 and 2005 injuries, reviewed all the relevant medical records, and personally evaluated plaintiff. Dr. Primus opined that, despite the degenerative arthritis in plaintiff's left knee, he had recovered range of motion and strength sufficient to return to work as a police officer. Dr. Chams testified that plaintiff complained of disabling pain, but Dr. Primus pointed out that reports of pain are subjective and therefore difficult to prove or disprove. The Board was free assign more weight to Dr. Primus' testimony and to resolve the conflicts in testimony against plaintiff. See *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 207 (2003) (where parties presented conflicting expert testimony, it was within the province of the Commission to judge the credibility of the witnesses and to resolve any conflicts in their testimony).

¶ 115 B. Jiu-Jitsu Expert

¶ 116 The Board also appeals the trial court's order barring testimony from a jiu-jitsu expert on remand from the court. Because we determine that the termination of plaintiff's pension is not against the manifest weight of the evidence, we need not address the issue.

¶ 117 III. CONCLUSION

¶ 118 For the reasons stated, the judgment of the circuit court of Lake County reinstating plaintiff's line-of-duty disability benefits is reversed.

¶ 119 Reversed.

¶ 120 JUSTICE SCHOSTOK, specially concurring:

¶ 121 I agree with the trial court that Dr. Primus's opinion is worthy of skepticism. As the majority accentuates, there are many flaws in Dr. Primus' reasoning: he failed to place significant weight on the 2007 independent medical exams; he misread Dr. Chams' report; he placed great weight on the surveillance video and social media posts; he never observed the plaintiff perform martial arts; and he acknowledged his bias in favor of the Board.

¶ 122 Nonetheless, I must concur with the majority's interpretation of the applicable law and standard of review in this case. It was for the Pension Board, not this court, to determine the credibility of the witnesses and to resolve any conflicts any in the evidence. Although the evidence in favor of the Board's decision was clearly not overwhelming, it cannot be said that it was against the manifest weight of the evidence either.

¶ 123 As such, despite my skepticism, based on the law, the judgment of the circuit court reinstating the plaintiff's line-of-duty disability benefits must be reversed.