

No. 1-13-1662

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

DEBORAH WHITED,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	No. 12 CH 25251
VILLAGE OF HOFFMAN ESTATES, a municipal)	
corporation; JAMES NORRIS, Hearing Officer for)	
the Village of Hoffman Estates,)	Honorable
)	Sophia H. Hall,
Defendants-Appellees.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Hyman and Justice Neville concurred in the judgment.

O R D E R

- ¶ 1 *Held:* The municipality's decision denying plaintiff health insurance benefits under the Public Safety Employee Benefits Act is affirmed where the record shows that the municipality's finding that plaintiff did not suffer a catastrophic injury while responding to an emergency was not against the manifest weight of the evidence.
- ¶ 2 Plaintiff Deborah Whited appeals from an order of the circuit court affirming an adverse final decision by defendants, the Village of Hoffman Estates (the Village) and James Norris,

hearing officer for the Village, denying her health insurance benefits under section 10 of the Public Safety Employee Benefits Act (the Act) (820 ILCS 320/10 (West 2010)). On appeal, plaintiff contends that defendants' findings that she did not suffer a catastrophic injury on April 24, 2010, and that such injury was not the result of an emergency, were clearly erroneous.

¶ 3 Section 10 of the Act provides, in relevant part, that a full-time law enforcement officer is eligible to receive health insurance benefits if she meets two preconditions. *Springborn v. Village of Sugar Grove*, 2013 IL App (2d) 120861, ¶ 25. First, the officer must have suffered a catastrophic injury in the line of duty. 820 ILCS 320/10(a) (West 2010). Second, the injury must have occurred as the result of the officer's response to fresh pursuit, or the officer's response to what is reasonably believed to be an emergency, an unlawful act perpetrated by another, or during the investigation of a criminal act. 820 ILCS 320/10(b) (West 2010). The officer must satisfy both of these requirements to be entitled to benefits. See *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012, ¶¶ 53-57.

¶ 4 The record shows that plaintiff was employed with the Village as a full-time police officer since October 1989. On March 12, 2004, plaintiff sustained an injury to her right knee during a mandatory police training session. Between 2004 and 2010, plaintiff underwent three arthroscopic knee surgeries, and on several occasions, was placed on restricted light duty due to her injured right knee. On January 3, 2011, plaintiff applied to the Village's police pension fund for a duty-related disability pension based solely on the March 2004 injury. Following a hearing, the board of trustees of the police pension fund awarded plaintiff a line-of-duty disability pension based on the March 12, 2004, injury. A month later, on May 24, 2011, plaintiff submitted a request to the Village specifically asking it to determine "whether or not the activities which

caused the injuries and permanent duty-related disability" entitled her to receive health insurance benefits pursuant to section 10(b) of the Act.

¶ 5 At a hearing, plaintiff testified that she had been a police officer for the Village for 21½ years and had been receiving a disability pension since April 28, 2011. On March 12, 2004, plaintiff participated in a mandatory defensive tactics training session and was engaged in a simulated one-on-one combative arrest with another officer when she felt a pop in her knee. Plaintiff sustained a knee injury which required arthroscopic surgery in July 2004. Following that surgery, she returned to work on light duty, performing community relations services. Plaintiff underwent a second arthroscopic knee surgery in June 2005 after her doctor found a tear in her knee which could have been missed during the first surgery. Plaintiff continued working on light duty until January 2010, when she returned to full duty with no restrictions. From January through April 2010, plaintiff performed her duties without any issues or medical treatment related to her knee injury.

¶ 6 Plaintiff further testified that on April 24, 2010, she was responding to a domestic call, and as she descended the stairs at the police station, her knee buckled causing her to stumble. Plaintiff caught herself on the railing, and although she was in pain, she continued on to the call. At the subject apartment building, plaintiff's knee again gave out on the stairs. She told Sergeant Brady "my knee gave out, but I'm fine," and they proceeded to the call. Sergeant Brady advised her to have her knee examined. Three days later, plaintiff's doctor examined her knee, advised her that she should not be on patrol with her knee condition, and placed her back on light duty. In July 2010, plaintiff underwent a third knee surgery due to another tear in her knee and continuing pain. Plaintiff remained on light duty until January 2011, when she was placed at the front desk.

Plaintiff testified that there were occasions when the police officers did not formally report their injuries, such as the time a couple officers slipped and fell on some ice on the way to a call.

¶ 7 Plaintiff testified that she was claiming she was entitled to health benefits based on the injury she incurred during training on March 12, 2004, and her knee buckle on April 24, 2010. Plaintiff acknowledged that at the prior hearing before the pension board, she testified that her knee gave out on April 24, 2010, as she walked down the stairs at the police station, and that it gave out another time at work, but not while responding to a call. Plaintiff explained that her knee gave out twice during the same call – at the police station and at the apartment building. Plaintiff also acknowledged that when she applied for her duty disability pension, she did not ask the pension board to consider the April 24, 2010, incident at the apartment building.

¶ 8 Former police sergeant Michael Brady testified that he worked with plaintiff for 21 years and was her supervisor for five years. Sergeant Brady was aware that plaintiff had some issues with her knee which caused her to be on light duty at times, but he had no knowledge of any further details.

¶ 9 Sergeant Brady testified that on April 24, 2010, he and plaintiff responded to a call regarding a domestic dispute at a first-floor apartment. Upon entering the building, there are three steps to descend to access the first floor. As they walked down those steps, plaintiff appeared to slip and said her knee gave out. They continued to the apartment, handled the call, and left the premises. Plaintiff told Sergeant Brady that she thought she was okay, and he then advised her to have her knee evaluated by a doctor and to let him know what happens. Prior to this incident, Sergeant Brady never saw plaintiff falter or become physically unstable, nor had he

received any complaints from other officers about her physical ability. When she was on full duty, plaintiff responded to calls as required.

¶ 10 Sergeant Brady testified that when an officer is injured on the job, she must notify her supervisor, who is required to advise the officer to seek medical attention and have a duty status form completed by a doctor. The duty status form indicates the diagnosis, the date the officer may return to work, and any work restrictions. The supervisor must also file a report regarding the nature of the injury, file workman's compensation forms, and notify the police chief. Sergeant Brady acknowledged that he did not complete an injury report or any other documentation when plaintiff's knee went out on April 24, 2010, and she never told him anything further about her knee. Plaintiff occasionally mentioned her knee when she went on or off light duty status, but they never discussed the April 24, 2010, incident after it occurred.

¶ 11 Plaintiff presented as evidence a duty status report dated April 28, 2010, which indicated that she was examined by her doctor for a right knee strain and placed on light duty. Plaintiff also presented substantially similar duty status reports for each of the following five months, and December 14, 2010. Plaintiff then rested her case.

¶ 12 Police lieutenant Rich Russo testified for the Village that an officer who is injured on the job must notify her immediate supervisor as soon as practical. The supervisor must first insure that the officer receives medical attention, if needed, and then must immediately investigate the incident and file a report that is sent up the chain of command. Lieutenant Russo further testified that the training session conducted on March 12, 2004, was to practice techniques and was not in response to an emergency, fresh pursuit, an unlawful act or the investigation of a criminal act. At the training sessions, the officers were instructed not to treat the mutual combat scenarios as real

life, and not to give full effort. Plaintiff did report her knee injury from the March 2004 training session to Lieutenant Russo, who was her immediate supervisor. He further testified that responding to a domestic disturbance call would be considered responding to an emergency, attempting to prevent an unlawful act and investigating a criminal act.

¶ 13 Kenneth Koop, the Village's risk manager, testified that he reviewed the Village's records containing plaintiff's medical injury reports and records, and found no reference or notation in any of those records regarding an injury on April 24, 2010. Koop learned about the April 24 incident on April 27, 2010, when he received an email from the watch commander stating that plaintiff was having problems with her knee and wanted to have surgery. Koop testified that he asked the chief of police to investigate whether plaintiff was injured when responding to the domestic call on April 24, 2010, and the chief informed him that she was not injured. Koop specifically asked if there had been a new incident and was told that there was no new incident, no new injury and no re-aggravation of the 2004 injury. Koop testified that he did not speak directly with plaintiff because she did not file a claim for worker's compensation. Instead, she had sent an email to her supervisor stating that she wanted to have surgery due to ongoing problems with her knee related to her original injury from 2004, and Koop was responsible for determining whether this was a valid claim and whether the Village was responsible.

¶ 14 Police chief Michael Hish testified that during the training session on March 12, 2004, plaintiff was not engaged in fresh pursuit, responding to an emergency or unlawful act, or investigating a criminal act. He further testified that his information at the time indicated that the incident that occurred on April 24, 2010, was not a new injury, but instead, was an aggravation of her 2004 injury. Plaintiff had returned to full unrestricted duty, but shortly after April 24,

2010, was back on light duty. Chief Hish testified that it was not possible to fall down the steps at the subject apartment building because upon entering that building, there are two steps to go up to the apartment, not down. Chief Hish had stopped at the apartment building that morning before the hearing to confirm that there were no steps to go down in the foyer. Chief Hish did not speak with Koop or Sergeant Brady about the April 24, 2010, incident because he was not chief of police at that time, and the former chief was involved in those discussions. Chief Hish further testified that in plaintiff's police report for the domestic disturbance call, there is no mention that she was injured during the call.

¶ 15 In rebuttal, plaintiff testified that her initial testimony was that her knee buckled when she was descending the stairs as she left the police station. She said her knee also gave out at the apartment building, but denied testifying what directions the stairs go in that building. She testified that, although she had been in that apartment building hundreds of times, she could not recall which direction the stairs run. Plaintiff testified that she reported her injury by telling Sergeant Brady immediately when it happened, and that this was the first time her knee had ever buckled. She reiterated that Sergeant Brady advised her to see her doctor, which she did, and that resulted in her move to light duty and her disability pension from the department.

¶ 16 Plaintiff presented several exhibits which were admitted into evidence including the July 8, 2011, decision of the Village's board of trustees of the police pension fund granting plaintiff a line-of-duty disability pension. Therein, the Board found that plaintiff had established that she was disabled due to the March 12, 2004, injury to her right knee which occurred during a training session. In the application for her disability pension, dated January 3, 2011, plaintiff indicated that she was injured in March 2004. There is no reference to an April 2010 injury. Also

included is plaintiff's December 20, 2010, memo to Police Chief Hish in which she questioned the findings of a doctor she had been referred to by worker's compensation. Following an examination on December 13, 2010, that doctor cleared plaintiff for full duty. Plaintiff stated that she advised the doctor "of what had occurred since the injury in 2004." She noted that this doctor agreed with her doctor that she also had arthritis which had gotten progressively worse since the 2004 injury. Plaintiff stated in her memo:

"I have been receiving treatments and surgeries since the injury due to the fact that the knee has never fully recovered. I have had problems with my knee giving out and am not able to squat down with the right knee. I am also not able to run up and down stairs. I can walk up and down the stairs slowly, but my knee has given out with no warning, so I have to use the railing."

¶ 17 Plaintiff subsequently filed a post-hearing brief arguing that she was entitled to health benefits under the Act because she suffered a catastrophic injury in the line of duty on April 24, 2010, while investigating a criminal act. Plaintiff asserted that an injury is considered catastrophic when it forces an officer to take a line-of-duty disability. She further argued that a catastrophic injury could result from the accumulation of several prior injuries or the aggravation of a preexisting injury. In addition, plaintiff argued that she was investigating a criminal act when she responded to the domestic disturbance call on April 24, 2010. Plaintiff also argued that her March 12, 2004, injury qualified her for benefits under the Act, claiming that training exercises were to be treated as real-life situations, and therefore, could be considered spontaneous urgent situations, or emergencies.

¶ 18 The Village filed a response brief arguing that the March 12, 2004, injury occurred during a training exercise, which was not an activity that qualified for benefits under the Act. The Village further argued that plaintiff did not sustain an injury on April 24, 2010, and even if she did, it was not a proximate or contributing cause of her catastrophic injury.

¶ 19 On April 23, 2012, Norris issued a decision denying plaintiff health insurance benefits under the Act. Norris stated that he had reviewed the testimony of the witnesses at the hearing, reviewed all of the documents admitted into evidence, considered the demeanor and credibility of the witnesses, determined the weight to be given to the testimony and documents, and reviewed the post-hearing briefs submitted by the parties. Norris summarized the evidence presented at the hearing, noting that plaintiff did not list the alleged April 24, 2010, injury in her application for her disability pension, and did not mention that injury when she previously testified before the pension board. Norris specifically found that plaintiff previously testified that her knee gave out while she was coming back from her office and did not give out responding to any particular call. Norris also found that the evidence showed there were no stairs going down upon entering the apartment building. Based on these findings and his observation of the demeanor of the witnesses, Norris expressly found that the testimony from plaintiff and Sergeant Brady was not credible. Norris further found that plaintiff did not sustain a catastrophic injury on April 24, 2010, and was not injured on that date while in fresh pursuit, in response to an emergency or unlawful act, or while investigating a criminal act. Norris did find that plaintiff sustained a catastrophic injury in the line of duty on March 12, 2004; however, that injury did not occur while in fresh pursuit, in response to an emergency or unlawful act, or while

investigating a criminal act. Accordingly, Norris concluded that plaintiff was not entitled to health insurance benefits under the Act.

¶ 20 Plaintiff appealed the Village's decision by filing a common law petition for a writ of *certiorari* in the circuit court of Cook County. The circuit court found that the Village's decision denying plaintiff benefits under the Act was not against the manifest weight of the evidence or clearly erroneous, and affirmed that decision.

¶ 21 On appeal, plaintiff contends that defendants' finding that she did not sustain a catastrophic injury on April 24, 2010, was clearly erroneous. Plaintiff argues that the evidence showed that she aggravated her March 2004 knee injury while responding to a call on April 24, 2010, and therefore, she is entitled to benefits under the Act. Plaintiff argues that the fact that she was placed on light duty on April 28, 2010, due to a right knee strain shows that she was injured on April 24, 2010. She further argues that a catastrophic injury can be the accumulation of several prior injuries, and the Act does not exclude preexisting injuries. Plaintiff also argues that defendants' finding that the injury on April 24, 2010, was not the result of an emergency was clearly erroneous.

¶ 22 Defendants argue that the evidence showed that plaintiff did not sustain an injury on April 24, 2010. Defendants note that the testimony showed that there are no steps going down at the apartment building, no injury report was filed, and plaintiff's disability pension was based solely on the March 12, 2004, injury with no mention of an injury in April 2010. Defendants further note that Norris found plaintiff's testimony not credible, and assert that plaintiff is asking this court to reweigh the evidence and find her credible.

¶ 23 Initially, we note that the parties disagree as to the proper standard of review for this case. Plaintiff asserts that the clearly erroneous standard applies because the issues involve mixed questions of law and fact where the facts are established, the law is undisputed, and the question is whether the facts satisfy the law. Conversely, defendants argue that plaintiff is challenging Norris' factual findings, and therefore, the proper standard of review is whether those findings were against the manifest weight of the evidence. Defendants agree that the determination of whether plaintiff was eligible for benefits under the Act in light of these facts is reviewed under the clearly erroneous standard.

¶ 24 We review the final decision of the administrative agency rather than the circuit court's ruling. *Goodman v. Morton Grove Police Pension Board*, 2012 IL App (1st) 111480, ¶ 24. The standards of review under a common law writ of *certiorari* are the same as those under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2010)). *Hanrahan v. Williams*, 174 Ill. 2d 268, 272 (1996). The applicable standard of review depends upon whether the question presented is one of fact, law, or a mixed question of fact and law. *Cinkus v. The Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008). In this case, the first question presented is whether plaintiff suffered a catastrophic injury on April 24, 2010. Plaintiff claims she did, while defendants maintain that there is no evidence she was injured on that date. This is a question of fact.

¶ 25 An administrative agency's factual findings and conclusions are deemed *prima facie* true and correct, and those findings will be not be disturbed on review unless they are against the manifest weight of the evidence. *Cinkus*, 228 Ill. 2d at 210. An agency's factual determinations are against the manifest weight of the evidence only where the opposite conclusion is clearly

evident. *Id.* In administrative proceedings, the hearing officer, as the fact finder, is responsible for determining the credibility of the witnesses, weighing their testimony, and drawing reasonable inferences from the evidence. *Baker v. Department of Employment Security*, 2014 IL App (1st) 123669, ¶ 15. When reviewing an agency's factual findings, this court will not reweigh the evidence or substitute its judgment for that of the agency. *Cinkus*, 228 Ill. 2d at 210. Where there is evidence in the record that supports the agency's decision, it must be affirmed. *Goodman*, 2012 IL App (1st) 111480, ¶ 25. Moreover, in administrative proceedings, the burden of proof is on the plaintiff, and if she fails to meet that burden, relief will be denied. *Id.* at ¶ 26.

¶ 26 Here, we find that defendants' determination that plaintiff was not injured on April 24, 2010, was not against the manifest weight of the evidence. It is undisputed that plaintiff sustained her knee injury during a training session on March 12, 2004. The record shows that plaintiff's line-of-duty disability pension, awarded in 2011, was based solely on the March 2004 injury with no reference whatsoever to an April 2010 injury. If plaintiff had sustained a more recent injury in April 2010, it would have been included in her application for her disability pension as it would have been a substantial factor in her favor. The fact that plaintiff never mentioned such injury to the pension board weighs heavily against her.

¶ 27 Plaintiff claimed that she injured her knee on April 24, 2010, while responding to a domestic disturbance call. She claimed that injury was sustained when her knee buckled twice while descending stairs at the police station and at the apartment building while en route to the call. However, Police Chief Hish testified that the two steps in the foyer of the apartment building go up, not down. Moreover, there is no injury report as required by the police department. Kenneth Koop testified that he received an email stating that plaintiff was having

knee problems and requested a third surgery, which led him to ask the police chief to investigate whether plaintiff had been injured when responding to the call on April 24, 2010. The chief told Koop that plaintiff was not injured, and specifically, that there was no new incident, no new injury, and no re-aggravation of the old injury.

¶ 28 In addition, we note that plaintiff's December 20, 2010, memo to Police Chief Hish references "the injury in 2004," but makes no reference to an April 2010 injury. In this memo, plaintiff states that her arthritis has become progressively worse since the 2004 injury, that she received treatments and surgeries since that injury due to the fact that her "knee has never fully recovered," and that she had problems with her knee giving out.

¶ 29 Based on his review of all of the testimony and evidence presented, Norris expressly found the testimony from plaintiff and Sergeant Brady not credible. Sitting as the trier of fact, it was Norris' duty to determine the credibility of the witnesses, weigh the evidence and resolve any conflicts therein, and we will not disturb his findings. The evidence in the record supports Norris' determination that plaintiff was not injured on April 24, 2010, and thus, that decision is not against the manifest weight of the evidence.

¶ 30 Due to our finding that plaintiff did not suffer an injury on April 24, 2010, we need not consider her argument that such injury occurred while she was responding to an emergency and investigating a criminal act.

¶ 31 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 32 Affirmed.