

No. 1-13-2542

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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WILLIAM C. BECKWITH,	)	Appeal from the Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 13 CH 4436
	)	
THE BOARD OF TRUSTEES OF THE HICKORY	)	
HILLS POLICE PENSION FUND,	)	
	)	Honorable Peter A. Flynn,
Defendant-Appellant.	)	Judge Presiding.
	)	

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JUSTICE DELORT delivered the judgment of the court.  
Presiding Justice Connors and Justice Hoffman concurred in the judgment.

**ORDER**

- ¶ 1 **Held:** An officer who slipped on a staircase while exiting the premises of a successfully completed police service call was not engaged in the “performance of an act of duty” so as to entitle him to a line-of-duty, rather than off-duty, disability pension. Accordingly, we confirm the decision of the pension board and reverse the decision of the circuit court.
- ¶ 2 Plaintiff William Beckwith was a police officer for the Village of Hickory Hills. He became injured and applied for a disability pension from defendant Board of Trustees of the

Hickory Hills Police Pension Fund (Board). The Board granted him an off-duty disability pension, but Beckwith believed he was entitled to more lucrative line-of-duty disability benefits. On administrative review, the circuit court reversed the Board's finding and awarded Beckwith a line-of-duty disability pension. We reverse the circuit court and reinstate the Board's decision.

¶ 3

### BACKGROUND

¶ 4 The Board held the hearing on this case on October 29, 2012. The evidence presented is largely uncontested. While on regular patrol on November 6, 2010, Beckwith received a call to respond to a domestic disturbance at an apartment building. He and a partner, Lieutenant Tom Deitz, arrived at the scene and ascended a staircase leading to the apartment in question. Upon entry, they discovered a brother and sister arguing. The officers quelled the disturbance, and the brother agreed to leave the premises. Having completed the call, Beckwith and Deitz descended a staircase to return to their vehicle, engaging in conversation along the way. At some point, Beckwith missed a step and began to fall down the stairs. Deitz grabbed Beckwith's shoulder and vest to prevent the fall. Beckwith twisted his lower back and felt a small pop, causing severe pain. Shortly thereafter, Deitz prepared a routine incident report indicating that Beckwith's fall was caused by a defective concrete step which had settled and become "narrow and low."

¶ 5 Beckwith required significant medical treatment for his injury. Eventually, he had surgery to repair a torn disc. He underwent rehabilitation and was eventually able to perform only at a "light-medium" physical demand level. One of his treating physicians recommended work limitations at that level. In February 2012, Beckwith filed an application for disability benefits with the Board. He sought a 65% pension for a line-of-duty disability (40 ILCS 5/3-114.1 (West 2010)) and alternatively, a 50% not-on-duty disability pension (40 ILCS 5/3-114.2

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(West 2010)). He was duly examined by three physicians appointed by the Board pursuant to section 3-115 of the Illinois Pension Code (Code) (40 ILCS 5/3-115 (West 2010)). All three linked the injury to the staircase incident, opined that Beckwith was no longer capable of performing full and unrestricted police duties, and that the incident aggravated a pre-existing degenerative disc condition.

¶ 6 At the conclusion of testimony at the October 29, 2012 hearing, the Board adopted motions to deny Beckwith a line-of-duty disability pension but grant him an off-duty disability pension. At the time of the vote, the Board had no written administrative decision before it. In fact, the transcript shows that the Board attorney stated that he would prepare a written decision in which he would “try to articulate the reasons for [the Board’s] vote” and return it to the Board at a later time. He admonished Beckwith’s counsel that the 35-day period for appealing the Board’s decision would not begin to run until the written decision was issued.

¶ 7 On January 14, 2013, the Board issued a written decision, signed by all five of its members. The record contains no transcript of any meeting held by the Board on that date, nor any other documentation illustrating that the Board met to adopt the written decision. In the written decision, the Board determined that Beckwith was disabled, but it denied his application for a 65% line-of-duty disability pension, instead granting him a 50% off-duty pension under section 3-114.2 of the Code. The Board noted that when Beckwith was injured, he had finished interacting with the subjects, had left their presence, and was not responding to any new service call. The Board determined that Beckwith was not involved in an “act of duty” because he was injured while assuming “the same risk ordinarily assumed by any citizen who descends the defective stairway at the apartment complex.” In particular, the Board focused on the capacity in

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which Beckwith was acting, noting that he was “not responding to a call or in any way involved in an act of police duty inherently involving special risk.”

¶ 8 Beckwith sought administrative review of the Board’s decision. The circuit court reversed, awarding him an on-duty disability pension by essentially finding that the call was still in progress when Beckwith and Deitz were walking down the staircase to exit the apartment building. This appeal followed.

¶ 9

#### ANALYSIS

¶ 10 Before we consider review of this appeal on the merits, we address a jurisdictional issue. As noted above, the Board voted to deny Beckwith’s pension without having any written decision before it. It did not issue a decision until over two months later. In September 2013, eight months after the Board closed this case by issuing its written decision, we issued a published opinion involving improper procedures by another pension board with respect to a disability hearing. In *Howe v. Retirement Board of the Firemen’s Annuity & Benefit Fund*, 2013 IL App (1st) 122446, the Chicago firefighters’ pension board denied a disability pension after entertaining only a single motion, which was a motion to grant the pension. The motion to grant the pension failed on a non-unanimous vote; it received more “no” votes than “yes” votes. Accordingly, the legal result of the vote was that the *status quo* remained in place and the application remained pending because the board had taken no action by majority affirmative vote. Nonetheless, the board in *Howe* issued a written administrative decision denying the pension, complete with signatures of some of the board members and reasoning, a month later. This court asked the board whether it had actually met again to review and adopt the written administrative decision by open vote, and the board responded that it had not. It appeared that

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rather than adopting the written decision in an open meeting, it circulated an attorney-prepared draft only to the faction of board members who had voted against the motion to grant the pension award, and who then signed the order. We remanded the case to the board for it to issue a valid administrative decision, holding: (1) the board never adopted a motion disposing of the application by a majority affirmative vote; and (2) the board violated the Open Meetings Act (5 ILCS 120/1 *et seq.* (West 2010)) by circulating the draft decision for signature rather than reviewing it and adopting it by majority vote. *Id.* ¶ 32. *See also Lawrence v. Williams*, 2013 IL App (1st) 130757 (invalidating electoral board administrative decision adopted by circulating it for signatures without taking an open vote).

¶ 11 We held in *Howe* that the board cannot dispose of a pension application except by an open vote upon a specific written administrative decision. The record before us now hints, but does not prove, that the Board followed the same practice we found in *Howe* to violate the Open Meetings Act. The Board vote was taken on October 29, 2012, but the signed written decision is dated January 14, 2013. The record before us contains no transcript of any January 14 proceedings, but it is nonetheless insufficient to justify vacating the Board's decision. We realize that *Howe* had not been issued when the Board concluded its work on this case. Even so, the Open Meetings Act was in force then and the Board was required to follow it. Based on *Howe*, we note that best practice dictates not only that the Board take final action on a pension application by voting on a specific written administrative decision, rather than just a motion, and that the record include a transcript or meeting minutes specifically demonstrating that the Board did so.

¶ 12 The Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2010)) governs our review of the Board’s decision. The scope of that review “extends to all questions of law and fact presented by the record.” *Village of Broadview v. Illinois Labor Relations Board*, 402 Ill. App. 3d 503, 505 (2010) (citing 735 ILCS 5/3-110 (West 2008)). “The applicable standard of review \*\*\* depends upon whether the question presented is a question of fact, a question of law, or a mixed question of law and fact.” *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532 (2006). The Board’s findings of fact are “held to be prima facie true and correct” (735 ILCS 5/3-110 (West 2010)) “and will be disturbed on review only if they are against the manifest weight of the evidence.” *Village of Broadview*, 402 Ill. App. 3d at 505 (citing *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 204 (1998)). The Board’s findings of fact are against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008) (citing *City of Belvidere*, 181 Ill. 2d at 204). We review the Board’s conclusions of law *de novo*. *Cinkus*, 228 Ill. 2d at 210-11. Mixed questions of fact and law “ ‘are questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or to put it another way, whether the rule of law as applied to the established facts is or is not violated.’ ” *Id.* at 211 (quoting *American Federation of State, County and Municipal Employees, Council 31 v. Illinois State Labor Relations Board*, 216 Ill. 2d 569, 577 (2005)). Under this standard, the Board’s decision will be reversed only when the reviewing court, based on the entire record, is “ ‘left with the definite and firm conviction that a mistake has been committed.’ ” *Board of Trustees of the University of Illinois v. Illinois Education Labor Relations Board*, 224 Ill. 2d 88, 97 (2007) (quoting *AFM*

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*Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001)).

Cases such as this, where the underlying facts are undisputed and the question is whether an officer's injury qualified him for a line-of-duty disability pension, involve mixed questions of law and fact subject to a clearly erroneous standard of review. *Merlo v. Orland Hills Police Pension Board*, 383 Ill. App. 3d 97, 100 (2008).

¶ 13 The parties do not dispute the essential facts regarding Beckwith's injury, either with respect to its cause or its disabling effect. The issue to be resolved concerns whether those facts satisfy the statutory standard in the Pension Code. Accordingly, we will review the Board's decision under a clearly erroneous standard of review. *Id.*

¶ 14 Under section 3-114.2 of the Pension Code, an officer is entitled to a pension equal to 50% of his salary if he "becomes disabled as a result of any cause other than the performance of an act of duty, and who is found to be physically or mentally disabled so as to render necessary his or her suspension or retirement from police service in the police department." 40 ILCS 5/3-114.2 (West 2010). However, under section 3-114.1 of the Pension Code, an officer is entitled to a pension equal to 65% of his salary if, "as the result of sickness, accident or injury incurred in or resulting from the performance of an act of duty, is found to be physically or mentally disabled for service in the police department, so as to render necessary his or her suspension or retirement from the police service." 40 ILCS 5/3-114.1 (West 2010).

¶ 15 Both of these sections are found in Article 3 of the Pension Code, which applies to municipalities of a 500,000 population or less. Article 3 contains no definition of "act of duty." Nonetheless, reading the entire Pension Code *in pari materia*, our supreme court has engrafted a more precise definition from Article 5 (which governs Chicago police officers) onto Article 3

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cases involving officers from smaller municipalities. See *Robbins v. Board of Trustees of Carbondale Police Pension Fund*, 177 Ill. 2d 533, 540 (1997). Article 5 defines “act of duty” as follows:

“Any act of police duty inherently involving special risk, not ordinarily assumed by a citizen in the ordinary walks of life, imposed on a policeman by the statutes of this State or by the ordinances or police regulations of the city in which this Article is in effect or by a special assignment; or any act of heroism performed in the city having for its direct purpose the saving of the life or property of a person other than the policeman.” 40 ILCS 5/5-113 (West 2010).

¶ 16 Because the daily activities of a police officer are so varied, courts have been frequently called upon to determine whether a particular injury involves “special risk” so as to be classified as occurring in the line of duty rather than off duty<sup>1</sup>. Despite the ample case law, no specific test has been established to demarcate between the two types of injuries, and the cases do not themselves reveal a precise line of distinction. Accordingly, resolution of these cases involves a highly fact-based analysis.

¶ 17 A few principles are, however, well-established. First and foremost, an injury sustained while in uniform and “on the clock” does not mean that it is “line of duty.” *Sarkis v. City of Des*

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<sup>1</sup> In the interest of concision, we will not set forth an extensive contrasting list of “line of duty” versus “off duty” police disability cases herein. See *Summers v. Retirement Board of Policemen’s Annuity & Benefit Fund of City of Chicago*, 2013 IL App (1st) 121345, ¶¶ 29-40; *Rose v. Board of Trustees of Mount Prospect Police Pension Fund*, 2011 IL App (1st) 102157, ¶ 75 (summarizing cases).

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*Plaines*, 378 Ill. App. 3d 833, 837 (2008). Additionally, our supreme court has found that the term “special risk” used in section 5-113 is not limited to inherently dangerous activities. *Johnson v. Retirement Board of Policemen’s Annuity & Benefit Fund*, 114 Ill. 2d 518, 521 (1986). In *Johnson*, the officer was performing his assigned traffic control duties when he crossed the street to respond to a citizen’s request for help, falling on wet pavement and incurring injuries that paralyzed his right hand. *Id.* at 520. The pension board denied the officer’s request for disability benefits for an injury sustained in the line of duty, reasoning that the injury was not sustained by assuming a “special risk” but simply was “traversing a street” as any other person would. *Id.* The supreme court rejected that assertion, holding that the touchstone of an “act of duty” is not whether the officer is performing an act unique to his or her occupation but, rather, the capacity in which the officer is acting. *Id.* at 522. The court explained:

“In the case at bar, at the time of his disabling injury, the plaintiff was discharging his sworn duties to the citizens of Chicago by responding to the call of a citizen to investigate an accident. There is no comparable civilian occupation to that of a traffic patrolman responding to the call of a citizen.” *Id.*

¶ 18 The supreme court concluded that Johnson was injured while responding to a citizen’s request for help, which was an act of duty, noting that the officer had no choice but to respond. *Id.* at 522-523. The court further explained: “[t]he crux is the capacity in which the police officer is acting” rather than the precise mechanism of injury. “When a policeman is called upon

to respond to a citizen, he must have his attention and energies directed towards being prepared to deal with any eventuality.” *Id.* at 522.

¶ 19 Following *Johnson*, the appellate court has held that a police officer assigned to bicycle patrol was entitled to a line-of-duty pension for a disabling injury when he had knee surgery after experiencing pain while pedaling the bicycle. *Alm v. Lincolnshire Pension Board*, 352 Ill. App. 3d 595, 596 (2004). The *Alm* court held that “the proper focus is on the capacity in which the officer is acting, not the precise act leading to injury.” (Emphasis omitted.) *Id.* at 602. “As such, an officer performing duties involving special risks will be entitled to line-of-duty benefits even if the immediate cause of injury is an act involving only an ordinary risk.” *Id.* at 599.

¶ 20 By and large, cases allowing a line-of-duty disability involve officers who were going to the scene of a disturbance to respond to it, were on patrol, or were mitigating public safety hazards. *See Summers*, 2013 IL App (1st) 121345, ¶ 44 (summarizing cases).

¶ 21 With those basic principles established, we now examine cases with fact patterns similar to this one. In *Wagner v. Board of Trustees of the Police Pension Fund of Belleville*, 208 Ill. App. 3d 25, 26 (1991), an officer was injured when a rotted plank on a porch collapsed. The court held that his injury was duty-related, because the officer was trying to serve a notice to appear when his leg fell through the rotted plank. *Id.* at 29. The court noted that “[w]hile the act of walking across a porch is hardly unique to police officers, serving notices to appear generally is.” *Id.*

¶ 22 However, a different result was obtained in *Fedorski v. Board of Trustees of Aurora Police Pension Fund*, 375 Ill. App. 3d 371, 372 (2007), where the officer was injured in an auto accident while riding as a passenger headed back to the office after having completed

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photographs of suspects. The court found that the officer was subject to no special risk “at that particular time” because he was not acting in the role of an evidence technician or investigator at the time of the accident. *Id.* at 375-76.

¶ 23 Similarly, a line-of-duty disability was denied to an officer who was injured when he was not responding to a call and had not resumed patrol, but rather, was attempting to enter the rear seat of a vehicle that was still in the police station parking lot. The officer was standing outside the car and moving items off the seat when the incident occurred. This court noted: “[t]his was not a ‘special risk’ arising from his being a police officer. He was engaging in an ordinary risk that all citizens assume when they either enter a vehicle or move items off the seats of vehicles. The capacity in which he was acting was that of a passenger entering a motor vehicle, which is the same activity all passenger civilians do everyday.” *Filskov v. Board of Trustees of Northlake Police Pension Fund*, 409 Ill. App. 3d 66, 72-73 (2011) (citing *Johnson*, 114 Ill. 2d at 522).

¶ 24 Here, Beckwith had completed the domestic disturbance call and abated the incident. The record does not indicate anything to suggest that the incident would reignite. Accordingly, we cannot say that the evidence shows that Beckwith’s “attention and energies” needed to be “directed towards being prepared to deal with any eventuality.” Walking down a staircase does not involve “special risk, not ordinarily assumed by a citizen in the ordinary walks of life.” 40 ILCS 5/5-113 (West 2010). The Board justifiably found that he was not engaged in “special risk” activity. “Simply put, ‘not all police work involves special risks.’ ” *Summers*, 2013 IL App (1st) 121345, ¶ 46 (quoting *Fedorski*, 375 Ill.App.3d at 374).

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¶ 25

## CONCLUSION

¶ 26 The Board's decision was not clearly erroneous, as we are not left "with the definite and firm conviction" that the pension board committed a mistake. We reverse the judgment of the circuit court and confirm the Board's decision.

¶ 27 Circuit court judgment reversed; Board decision confirmed.