

No. 1-12-2053

**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(3)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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MATTHEW HICKS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	11 CH 35585
	)	
CITY OF DES PLAINES POLICE PENSION BOARD	)	
BOARD and its MEMBERS,	)	Honorable
	)	Rita M. Novak,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE HALL delivered the judgment of the court.  
Presiding Justice Lampkin and Justice Gordon concurred in the judgment.

**ORDER**

*HELD:* The Pension Board did not err when it based the police officer's pension on the salary attached to rank of sergeant on the date of the officer's suspension of duty rather than the actual salary of the officer.

¶ 1 The City of Des Plaines Police Pension Board (Board) awarded Matthew Hicks (Hicks) a non-duty disability pension equal to 50% of the salary attached to his rank of sergeant at the date

of his suspension of duty. Hicks filed a complaint for administrative review of the Board's decision alleging that his disability pension should have been based on his actual salary at the time of his suspension of duty. The circuit court affirmed the Board's decision and Hicks filed this appeal.

¶ 2 We find that the Board did not err when it determined that Hicks' pension should be based on the salary attached to the rank of sergeant on the date of Hicks' suspension of duty, rather than his actual salary. Therefore, we hold that the Board's decision was not clearly erroneous, and we affirm the decision of the circuit court.

¶ 3 BACKGROUND

¶ 4 Hicks began his employment as a police officer with the city of Des Plaines police department (city) in 1992. On May 24, 2009, Hicks was involved in an automobile accident, while he was off duty. As a result of the accident, Hicks suffered injuries to his head, neck, shoulders, back, ribs, knees and feet. Hicks underwent a total of seven surgeries after the accident. Hicks did not return to full duty after the accident; instead, he was only able to perform light duty for the department from the end of June 2009 through October 2009, and light duty intermittently, from October 2009 to August 4, 2010. On March 25, 2011, Hicks filed an application for a disability pension with the Board.

¶ 5 A hearing was held on September 13, 2011, and Hicks testified that he held the rank of sergeant at the time of his suspension of duty, but that he had previously served as commander for three years. A document entitled "Personnel Status Form" was admitted into evidence as exhibit A and it indicates (A) that Hicks' rank was changed from police commander to police

sergeant as a form of "reclassification," with an effective date of February 1, 2010, (B) that Hicks' salary was to be frozen at \$106,863, and (C) that the 15 year longevity of \$1500 would be changed to the 15 year sergeant longevity of \$1,919. Hicks received his last pay check from the city on August 4, 2010, and on August 5, 2010, he went on unpaid leave of absence.

¶ 6 On September 15, 2011, before the Board rendered its written decision, Hicks filed a motion to reconsider in which he stated that the Board's attorney had informed his attorney that the Board had decided to calculate his pension based on the salary attached to the rank of sergeant pursuant to the pay plan in effect from January 1, 2010, through December 31, 2010. The Board determined that the salary attached to the rank of sergeant on the date of Hicks' suspension of duty was \$97,367, plus \$1,919 in longevity pay. Hicks argued that the salary attached to his rank was \$106, 863, and that his pension should be based on that amount. Therefore, Hicks, requested that the Board, before it rendered its written decision, reconsider its finding regarding the salary it used to calculate his pension.

¶ 7 On September 23, 2011, the Board rendered its written decision in which it found (A) that Hicks was unable to fully perform the functions of a police officer as a result of his injuries and his limitations due to his multiple surgeries, and (B) that Hicks' salary for pension purposes was \$97,367, the salary attached to the rank of sergeant at the time of Hick's suspension of duty, plus \$1,919 in longevity pay. The Board stated: "[w]hile there was evidence and argument presented to the Board in favor of Hicks' salary being considered as that of a commander, for pension purposes (\$106,863, plus \$1500 longevity), the Board finds no support for doing so in the Pension Code, the relevant regulations, or relevant case law." The Board granted Hicks a non-

duty disability pension, effective September 13, 2011.

¶ 8 On January 30, 2012, Hicks filed a complaint for administrative review in the circuit court. The court found that the Board's decision was not erroneous or contrary to law. Accordingly, the court affirmed the decision of the Board. Hicks now appeals.

¶ 9 ANALYSIS

¶ 10 A reviewing court, when deciding an appeal from a judgment in an administrative review proceeding, reviews the administrative agency's decision, not the trial court's decision.

*Thompson v. The Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago*, 379 Ill. App. 3d 498, 503 (2008). Judicial review of a decision of the Board is governed by the Administrative Review Law. 735 ILCS 5/3-102 (West 2010).

¶ 11 The applicable standard of review which determines the degree of deference given to the agency's decision depends upon whether the question is one of fact, one of law, or a mixed question of fact and law. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532 (2006). The Board's findings of fact are given considerable deference, but they are subject to reversal if they are against the manifest weight of the evidence. *Kouzoukas v. Retirement Board of the Policemen's Annuity*, 234 Ill. 2d 446, 463 (2009). While questions of law are reviewed *de novo*, mixed questions of law and fact are reviewed under the clearly erroneous standard. *Kouzoukas*, 234 Ill. 2d at 463.

¶ 12 Because this case involves an examination of the legal effect of a given set of facts, it involves a mixed question of fact and law, and the clearly erroneous standard of review applies. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). An

administrative decision is clearly erroneous only where the reviewing court, on the entire record, is left with the definite and firm conviction that a mistake has been made. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001).

¶ 13 The sole issue before this court on appeal is whether the Board erred when it granted Hicks a non-duty disability pension based on the salary attached to the rank of sergeant on the date of Hicks' suspension of duty. Hicks argues that his pension should have been based upon the salary that he was actually paid rather than the salary from the compensation schedule adopted by the city.

¶ 14 In order to resolve the issue in this case, we must construe the term "salary" in section 3-114.2 of the Illinois Pension Code (Pension Code). 40 ILCS 5/3-114.2 (West 2010). Pursuant to section 3-114.2 of the Pension Code, a "police officer who becomes disabled \*\*\* so as to render necessary his or her suspension or retirement from police service in the police department, shall be entitled to a disability pension of 50% of the salary attached to the officer's rank on the police force at the date of suspension of duty or retirement." 40 ILCS 5/3-114.2 (West 2010).

¶ 15 The Administrative Code, promulgated by the Illinois Department of Insurance, defines salary as:

"any fixed compensation received by an employee of a municipality that participates in one of the pension funds established under Article 3 or 4 of the Illinois Pension Code, which has been approved through an appropriations ordinance of the municipality. Salary is received regularly and is attached to the rank or class to which the \*\*\* officer is assigned." 50 Ill. Adm. Code § 4402.30 (eff. April 9, 1996).

¶ 16 The requirement that the police officer's pension be determined by the salary attached to the officer's rank is further emphasized in section 3-125.1 of the Pension Code, which provides: "'Salary' means the annual salary, including longevity, attached to the police officer's rank, as established by the municipality's appropriation ordinance \*\*\*. 40 ILCS 5/3-125.1 (West 2010).

"The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent, and the plain language of the statute is the best indication of that intent." *First American Bank Corp. v. Henry*, 239 Ill. 2d 511, 515 (2011). Where a statute is clear and unambiguous, we are not at liberty to depart from the plain language and meaning of the statute by reading into it exceptions, limitations or conditions that the legislature did not express. *DeSmet v. County of Rock Island*, 219 Ill. 2d 497, 501 (2006).

¶ 17 The plain language of the Pension Code reveals that a police officer's disability pension must be based on the salary attached to the officer's rank on the date of the officer's suspension of duty or retirement. Here, the evidence clearly establishes that Hicks' rank on the police force on the date of his suspension of duty was that of sergeant, regardless of the fact that he was being paid a higher salary. When the Board calculated Hicks' pension, it used the salary attached to the rank of sergeant as set forth in the compensation schedule adopted by the city, which was in effect on August 4, 2010. Therefore, based upon the entire record, we do not have a definite and firm conviction that the Board made a mistake when it based Hicks' pension on the salary that was attached to his rank of sergeant on the date of his suspension of duty as set forth in the compensation schedule adopted by the city.

¶ 18 As a result, we cannot say that the Board's decision was clearly erroneous. We find that

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Hicks' rank on the police force on the date of his suspension of duty was that of sergeant.

Therefore, the Board did not err when it based Hicks' pension on the salary attached to his rank of sergeant on August 4, 2010, rather than his actual salary.

¶ 19 Accordingly, we affirm the Board's decision.

¶ 20 Affirmed.