

No. 1-12-3536

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BRENDA O'NEAL,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	No. 12 CH 7211
THE RETIREMENT BOARD OF THE POLICEMEN'S)	
ANNUITY AND BENEFIT FUND OF THE CITY OF)	
CHICAGO,)	Honorable
)	Richard J. Billik,
Defendant-Appellee.)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Quinn and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Retirement Board decision which denied plaintiff's application for duty disability benefits was not against the manifest weight of the evidence when it was supported by evidence in the record.

¶ 2 Plaintiff Brenda O'Neal appeals from a circuit court order affirming a decision of the Retirement Board of the Policemen's Annuity and Benefit Fund (the Board), which found O'Neal disabled and granted her ordinary disability benefits. On appeal, O'Neal contends that the Board's decision to deny her duty disability benefits is against the manifest weight of the evidence. We affirm.

¶ 3 On July 29, 2011, O'Neal filed a claim for disability benefits alleging that several injuries to her back over the course of her career as a Chicago police officer rendered her disabled and unable to work.

¶ 4 The Board held a hearing on O'Neal's application on November 29, 2011. O'Neal and Dr. Peter Oris testified at the hearing. The documentary evidence before the Board consisted of relevant portions of O'Neal's medical records and medical reports prepared for the hearing by Dr. Jay Levin, a physician who was retained by the Board to perform an independent examination and evaluation of O'Neal.

¶ 5 According to Dr. Levin's reports, O'Neal sustained a work-related back injury in May 1995. O'Neal also sustained work-related injuries in 1998 and 1999. Her back pain worsened between 2008 and 2010, and ultimately, in November 2010, her pain was so severe that she could not get out of bed. O'Neal told Levin she suffered from, *inter alia*, low back pain which radiated from her waist and bilateral pain in the buttocks. Levin noted that O'Neal demonstrated "significant motor weakness." After reviewing O'Neal's medical records, Levin opined that O'Neal suffered from long-standing complaints related to her lumbar spine dating back to 1995 and that her symptoms were unrelated to her November 2010 bouts of back pain rather, they were "long standing underlying degenerative changes of the lumbar spine." Levin further opined that O'Neal's inability to return to work "related to degenerative changes *** and not any acute injury at work."

¶ 6 Among O'Neal's medical records was a report from Dr. Preston Wolin who opined after examining O'Neal following a July 1996 on-duty injury, that her symptoms as she described them, did not correlate with his clinical findings and that her pain appeared to be "hyper-exaggerated." Also, included in O'Neal's medical records were reports from Dr. Xavier Pareja and Dr. Brian Goelz. Dr. Pareja opined that O'Neal's lower back pain was "due to injuries while at work as well as the constant wearing of heavy equipment including a bullet proof vest." Dr.

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Goelz concluded that "for more than a decade" O'Neal's symptoms were exacerbated by several car accidents and injuries while on duty.

¶ 7 At the hearing, O'Neal testified that she was appointed a member of the Chicago Police Department in June 1991. She suffered an off-duty injury to her upper spine in 1994. However, she clarified that she was unable to work because of problems with her L5-S1 vertebrae. She first injured her lower back while on duty in March 1995, and has consistently suffered back pain since that time, including a recurrence of that injury in September 1996. O'Neal explained that a "recurrence claim" of an injury means that an officer reports to the medical section and explains that she previously injured a certain part of her body; that this body part was hurt again, and that it was related to the first injury. In November 1998, O'Neal was injured in an on-duty motor vehicle accident. She submitted a recurrence claim regarding that injury in August 1999. At that time, O'Neal saw Dr. Eguali who opined that her symptoms were related to her 1998 on-duty injury. In April 2000, when O'Neal had a recurrence of her back pain that was related to the 1998 injury, Dr. Eguali opined that she was suffering from acute or chronic neck and lower back syndrome. After another doctor questioned this conclusion, Eguali changed his opinion from an on-duty recurrence to an off-duty injury.

¶ 8 Dr. Peter Oris then testified that after reviewing the medical records, he had no reason to disagree with Dr. Levin. He did not think that any of the examining physicians "substantially" disagreed that O'Neal was suffering from a long-standing degenerative process. The following exchange then took place:

"Q: Isn't it reasonable to assume from all of these records that the degenerative condition of her back that [was] discussed earlier, is the result of traumatic injuries on duty?

A: I would have no problem with someone who made that diagnosis, but Dr. Levin does not make that diagnosis. He doesn't say anything about it. He doesn't have an opinion about it.

He responded specifically to was this the result of any acute injury on that date—and I think it was 2010—and he says, no, this is longer standing.

Q: Right. Dr. Levin says, no, this is the result of what had happened to her since 1995.

A: Right, and the others assume it was related to her multiple injuries, but they, too, have no other than a knowledge of general—other than a knowledge of how disease progresses, they have no specific information in this record to make that assessment I don't believe.

So I have no problem with that diagnosis. Certainly trauma over a period of years causes degenerative disease."

¶ 9 On January 27, 2012, the Board denied O'Neal's duty disability claim finding that (1) she is disabled and unable to return to service as a police officer, (2) did not present testimony from a treating physician, and (3) failed to establish that her disability resulted from the "claimed on duty incidents." The Board then awarded O'Neal ordinary disability benefits. O'Neal filed a petition for administrative review, and the trial court ultimately affirmed the Board's decision.

¶ 10 Pursuant to section 5-228 of the Pension Code (the Code) (40 ILCS 5/5-228 (West 2010)), judicial review of a decision of the Board is governed by the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2010)). In administrative cases, this court's role is to review the decision of the administrative agency, not the determination of the trial court. *Rose v. Board of Trustees of the Mount Prospect Police Pension Fund*, 2011 IL App (1st) 102157, ¶ 66.

¶ 11 Our supreme court has held that the question of whether the evidence in the record supports the Board's denial of a plaintiff's application for a disability pension is a question of fact reviewed under a manifest weight of the evidence standard. *Kouzoukas v. Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago*, 234 Ill. 2d 446, 464 (2009). The findings and conclusions of the administrative agency as to questions of fact will be held to be *prima facie* true and correct (735 ILCS 5/3-110 (West 2010)), and an administrative agency's

decision is against the manifest weight of the evidence only when the opposite conclusion is clearly evident (*Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992)). Therefore, 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, 153 Ill. 2d at 88. It is not this court's function on administrative review to reweigh evidence or to make an independent determination regarding the facts. *Kouzoukas*, 234 Ill. 2d at 463. When the record contains evidence to support the agency's decision, that decision should be affirmed. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 534 (2006).

¶ 12 A plaintiff in an administrative proceeding bears the burden of proof, and relief will be denied when she fails to sustain that burden. *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 505 (2007).

¶ 13 On appeal, O'Neal contends that the Board's decision to award her ordinary disability benefits rather than duty disability benefits is against the manifest weight of the evidence because the evidence established that her disability is the result of multiple injuries sustained during her career as a police officer. Specifically, she contends that the Board misunderstood a "single line" in Dr. Levin's report, that is, that her disability was not the result of "any acute injury at work," but rather due to long standing degenerative changes.

¶ 14 The Board responds that although it was undisputed that O'Neal was disabled, she failed to carry her burden of proof to establish that her disability resulted from "an act of duty."

¶ 15 Pursuant to section 5-154(a) of the Code an active policeman who becomes disabled due to the performance of an act of duty has a right to receive a duty disability benefit equal to 75% of salary. 40 ILCS 5/5-154(a) (West 2010). An act of duty is, *inter alia*, any act of police duty which inherently involves a special risk that is not ordinarily assumed by a citizen. 40 ILCS 5/5-113 (West 2010). The ordinary disability benefit, on the other hand, is awarded to a policeman who becomes disabled "as the result of any cause other than injury incurred in the performance of

an act of duty" and consists of 50% of the officer's salary at the time that the disability occurs. 40 ILCS 5/5-155 (West 2010).

¶ 16 In the case at bar, although two examining physicians, Pareja and Goelz, concluded that O'Neal's back condition was caused by on-duty injuries, Levin opined that O'Neal's pain resulted from long standing degenerative changes to the lumbar spine without pinpointing the cause, *i.e.*, a specific injury or injuries responsible for the condition and Oris testified that he had no reason to disagree with that opinion. Specifically, Oris testified that none of the examining physicians disagreed about the long standing and degenerative nature of O'Neal's injuries. Oris then explained that Levin did not have an opinion on the cause of the condition and that there was "no specific information in the record," other than the fact that degenerative conditions progress over time to make such an assessment. Ultimately, Oris concluded that "trauma over a period of years causes degenerative disease."

¶ 17 This court affords discretion to the trier of fact concerning factual findings and will not make its own determination as to the facts of the case. *Kouzoukas*, 234 Ill. 2d at 463. It was for the Board, as the trier of fact, to analyze the credibility of the documentary information and the witnesses' testimony and to determine the weight to be accorded to the evidence before it. See *Payne v. Retirement Board of Firemen's Annuity and Benefit Fund*, 2012 Il App (1st) 112435, ¶ 53. Here, the Board clearly accepted Levin's opinion that O'Neal suffered from a degenerative condition and Oris's testimony that there was no specific information in the record to assess the exact cause of the degenerative condition. As evidenced by its decision, the Board accorded less weight to the reports from Pareja and Goelz. Consequently, we reject O'Neal's contention that Levin's "silence" regarding the specific cause of her degenerative condition renders his conclusion less credible than those of Pareja and Goelz. O'Neal did not present any medical testimony to rebut Levin's conclusion that she suffered from a degenerative condition or to establish that her condition resulted from either a specific on-duty injury or a combination of on-

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duty injuries. See *Wade*, 226 Ill. 2d at 505 (plaintiff in an administrative proceeding will be denied relief when she fails to meet her burden of proof).

¶ 18 The documentary evidence and testimony indicated that O'Neal suffered from a long-standing degenerative condition. Based on the record, this court cannot say that the Board's conclusion that O'Neal failed to establish that her disability resulted from on-duty injuries was against the manifest weight of the evidence or that it should have reached the opposite conclusion. See *Marconi*, 225 Ill. 2d at 540 (agency's factual findings may only be reversed when they are against the manifest weight of the evidence, "a very high threshold to surmount"); *Abrahamson*, 153 Ill. 2d at 88. Accordingly, we affirm the Board's decision to deny O'Neal duty disability benefits.

¶ 19 Affirmed.