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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

WAYNE HOFFMAN,)	
)	
Plaintiff-Appellant,)	
)	Appeal from the Circuit Court
v.)	of Cook County.
)	
FIREFIGHTERS' PENSION FUND FOR THE)	
CITY OF DES PLAINES, BOARD OF)	No. 12 CH 4138
TRUSTEES OF THE FIREFIGHTERS' PENSION)	
FUND FOR THE CITY OF DES PLAINES, and)	
its individual members CHAIRMAN WILLIAM)	The Honorable
RICE, DONALD LECHNER, JEFF VALLEE,)	Peter Flynn,
SUSAN PEKOE and NICK CHIARO and the)	Judge Presiding.
CITY OF DES PLAINES,)	
)	
Defendants-Appellees.)	

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

ORDER

¶ 1 *Held:* The Board's determination that plaintiff's disability was not caused by his line-of-duty injuries was reversed as against the manifest weight of the evidence where the evidence clearly showed plaintiff's degenerative condition was aggravated by line-of-duty injuries which ultimately caused his disability.

¶ 2

BACKGROUND

¶ 3

Plaintiff, Wayne Hoffman, is a 57-year-old who worked as a firefighter/paramedic for the City of Des Plaines from 1996 to 2010. On September 28, 2010, plaintiff filed an application for line-of-duty disability pension pursuant to section 4-111 of the Illinois Pension Code. 40 ILCS 5/4-111 (West 2010). Plaintiff alleged his disability was the result of two work incidents, one on February 27, 2009, and the other on August 16, 2010. The Board of Trustees of the Firefighters' Pension Fund for the City of Des Plaines found plaintiff to be disabled from duty as a firefighter but found that his disability was caused by his degenerative back condition and not by his duties as a firefighter. The Board awarded Hoffman a non-duty disability pension pursuant to section 4-111. 40 ILCS 5/4-111 (West 2010). A line-of-duty disability pension entitles a firefighter to a disability pension "equal to the greater of (1) 65% of the monthly salary attached to the rank held by him or her in the fire department at the date he or she is removed from the municipality's fire department payroll or (2) the retirement pension that the firefighter would be eligible to receive if he or she retired (but not including any automatic annual increase in that retirement pension)." 40 ILCS 5/4-110 (West 2010). A "not-in-duty" disability pension entitles a firefighter to 50% of the firefighter's monthly salary. 40 ILCS 5/4-111 (West 2010). Plaintiff sought administrative review with the circuit court, and the court remanded the case to the Board for further consideration of the cumulative effects of the acts of duty. The Board reaffirmed its prior decision, and the circuit court affirmed. Plaintiff maintains his pre-existing condition was aggravated by his duties as a firefighter/paramedic, which would qualify him for duty disability pension benefits.

¶ 4 Because the issue in this case turns on whether plaintiff's line-of-duty injuries aggravated his pre-existing condition to the point where they caused him to be disabled, we summarize plaintiff's medical history, followed by the medical opinions at issue.

¶ 5 Plaintiff's Medical History

¶ 6 On March 25, 1998, an incident report described that plaintiff fell on his back while wearing his air pack.

¶ 7 On November 18, 1999, plaintiff was carrying a patient on a backboard down a staircase when he felt a pull in his lower back. Plaintiff went to Holy Family Medical Center and was diagnosed with an acute back strain.

¶ 8 On October 15, 2005, plaintiff saw Dr. Balocki for lower back pain and sciatica. A November 26, 2005 MRI of the lumbosacral spine was normal.

¶ 9 On August 10, 2007, plaintiff and three co-workers moved an obese patient on a bed sheet from the ambulance's cot to a hospital bed at Lutheran General Hospital. At one point, plaintiff needed to reach across the cot while still carrying the patient, resulting in a sharp pain in the left side of his back. Plaintiff was taken to the emergency department at Lutheran General Hospital.

¶ 10 On November 30, 2007, plaintiff saw Dr. Jerry Bauer. An MRI of plaintiff's cervical spine revealed diffuse spondylosis at C2 through T1 with central disc or osteophyte complexes at C2-C7. A CT of the cervical spine on December 17, 2007 showed mild to moderate stenosis at C3-C7. Plaintiff returned to Dr. Bauer on December 20, 2007. Though the neck pain had subsided, some tingling remained. Dr. Bauer felt that a four-level fusion and decompression might be needed. On January 23, 2008, plaintiff followed up with Dr. Bauer, and Dr. Bauer

noted an overall impression of spinal cord compression, but indicated that plaintiff was totally asymptomatic and had no treatment.

¶ 11 On March 6, 2008, plaintiff saw Dr. Balocki for neck and back pain and was provided Vicodin for pain. Dr. Balocki noted that a four-level fusion was planned for September 2008.

¶ 12 On August 28, 2008, plaintiff lifted a patient weighing approximately 350 pounds in order to transfer the patient onto an ambulance cot and immediately noticed that his back "was not right." Later that day plaintiff experienced a severe back spasm and was unable to sit or lie down. Plaintiff was taken to the Lutheran General Hospital emergency department. On September 9, 2008, plaintiff saw Dr. Salvador Cabanit, who assessed plaintiff with a lumbar strain and right sided sacroiliac strain. Plaintiff was referred to Dr. Reese on September 3, 2008, who ordered plaintiff off work. Plaintiff was also seen by Dr. Cabanit on September 9, 2008, who continued plaintiff's off-work status and ordered an MRI. An MRI on September 10, 2008 revealed diffuse mild degenerative disc disease and diffuse disc bulges. Plaintiff saw Dr. Balocki and was released for work full-duty on September 22, 2008.

¶ 13 On December 30, 2008, plaintiff was seen at Alexian Brothers for his annual physical. The examiner concluded plaintiff could work without restrictions.

¶ 14 On February 27, 2009, plaintiff was injured while lifting a 250-pound man. Plaintiff loaded the man onto a rolling cot and lifted him up so he could push the cot into the ambulance. While lifting the patient, plaintiff experienced a pop in his neck followed by sharp, stabbing pain radiating from his neck down into his left shoulder. He lost feeling in his left arm and dropped the patient. Plaintiff was taken to the Lutheran General Hospital emergency department with neck pain radiating to his left shoulder with tingling in his left forearm and numbness in his left upper arm. Plaintiff was referred to Dr. Bauer and was diagnosed with a cervical disc herniation

and cervical radiculopathy and taken off work. In a report on March 2, 2009, Dr. Bauer diagnosed plaintiff with cervical spondylosis and left cervical radiculopathy. An MRI of plaintiff's cervical spine was ordered and compared with the November 30, 2007 MRI. The MRI showed no significant change in the spondylosis, disc protrusions at C3 through C7, or multilevel stenosis. Plaintiff took time off work under the Family and Medical Leave Act (FMLA) to recover. Dr. Bauer ordered plaintiff to remain off work until May 10, 2009. Dr. Bauer ordered physical therapy. Plaintiff was released to work light duty as of March 5, 2009, with a lifting restriction of 15 pounds. On April 6, 2009, plaintiff followed up with Dr. Bauer and reported that the pain was mostly in the shoulder area with tenderness of the left trapezius. Dr. Bauer noted that strength in the arm had improved, with some numbness in the left arm. Plaintiff was ordered to continue physical therapy and pain medication. On May 6, 2009, plaintiff saw Dr. Bauer, who reported that physical therapy was complete and plaintiff was doing well with no radicular symptoms and discharged plaintiff to full duty as of May 11, 2009.

¶ 15 On December 22, 2009, plaintiff was seen at Alexian Brothers for his annual physical, and the examiner concluded plaintiff could work without restrictions.

¶ 16 On August 13, 2010, plaintiff saw Dr. Jack Perlmutter, complaining of continued pain in his cervical spine and into his left shoulder, and also for a second opinion regarding Dr. Bauer's December 2007 recommendation that a four level fusion and decompression be considered. The doctor noted continuing decreased strength in plaintiff's left hand and radicular pain from the left shoulder into the left forearm. Dr. Perlmutter reviewed the MRI from the March 2, 2009 and the CT scan from December 17, 2007 and noted the degenerative changes. Given the physical nature of plaintiff's position as a firefighter/paramedic, Dr. Perlmutter felt that plaintiff could no longer perform this work.

¶ 17 On August 16, 2010, plaintiff was carrying a patient weighing 500 pounds or more with four co-workers down a ramp when plaintiff felt pain in his neck, shoulder, and arm. After they loaded the patient into the ambulance, plaintiff remarked to one of his co-workers, "That really hurt." Lieutenant Michael Copeland testified that plaintiff was in pain after lifting the patient, and that plaintiff complained to him of pain after loading the patient into the ambulance. Plaintiff felt the pain was similar to what he felt on February 27, 2009. There is no work incident report for this injury. The pain did not subside and plaintiff did not return to work.

¶ 18 Instead, on August 24, 2010, plaintiff saw Dr. Theresa Walden, who assessed plaintiff with cervical radiculopathy and related his injury to the workplace incident of February 2009. Plaintiff's MRI of August 25, 2010 was essentially unchanged in terms of the degenerative disc disease.

¶ 19 On August 27, 2010, plaintiff saw Dr. Bauer with neck pain that radiated to the left upper arm. Dr. Bauer's note reads that the injury occurred on February 27, 2009. Dr. Bauer noted chronic left side neck pain radiating towards the shoulder with numbness in the left forearm and slight weakness in the left arm. Physical examination revealed reduced range of motion in the neck and some weakness in the left arm. Dr. Bauer reviewed the August 25, 2010 MRI and diagnosed disc herniations in plaintiff's neck which were causing chronic neck pain and radicular pain in the left arm. Dr. Bauer released plaintiff to perform light duty work only, prohibiting him from operating machinery, wearing an air pack, or lifting more than 50 pounds.

¶ 20 On September 28, 2010, plaintiff filed an application for line-of-duty disability pension benefits. Section 4-112 of the Pension Code provides that disability must be "established by the board by examinations of the firefighter at pension fund expense by 3 physicians selected by the board and such other evidence as the board deems necessary." 40 ILCS 5/4-112 (West 2012).

Pursuant to section 4-112, the Board selected Doctors Miledones N. Eliades, Daniel G. Samo, and Vikram C. Prabhu to conduct independent medical evaluations of plaintiff. All three doctors gave evidence depositions in proceedings before the Illinois Workers' Compensation Commission related to plaintiff's workers' compensation claims.

¶ 21 Plaintiff also applied for workers' compensation benefits. On September 29, 2010, plaintiff underwent a separate independent medical examination with Dr. Jesse Butler at the request of the workers' compensation insurer for the City of Des Plaines.

¶ 22 On October 19, 2010, plaintiff saw Dr. Balocki, who noted that plaintiff still had neck pain and believed it to be chronic at that point.

¶ 23 **Medical Opinions**

¶ 24 At his deposition, Dr. Bauer testified that during plaintiff's January 23, 2008 and March 2, 2009 visits, plaintiff's degenerative cervical spinal changes were asymptomatic, and that plaintiff had been asymptomatic for a year before the February 2009 incident. After the February 2009 incident, Dr. Bauer assessed cervical spondylosis and radiculopathy and plaintiff reported having become symptomatic contemporaneously with the incident. Dr. Bauer's physical examination of plaintiff revealed weakness of the left arm and tenderness across the back of the neck and paracervical muscles, with pain on extension and tilting of the head to the left. Dr. Bauer opined that the February 2009 accident had been a cause and contributing factor to plaintiff's disability. Dr. Bauer independently recollected plaintiff's account of the August 16, 2010 incident lifting the 500-pound patient, but "was not quite sure" why he did not include it in his records. Dr. Bauer opined that if the incident lifting the heavy patient occurred on August 16, 2010, this incident would also be a direct cause of either aggravating or causing plaintiff's radiculopathy. Dr. Bauer based his opinion on the fact that plaintiff had been asymptomatic for

over a year until the incident occurred. Dr. Bauer felt that the August 16, 2010 incident led to a permanent aggravation of plaintiff's condition, and that on plaintiff's August 27, 2010 visit, plaintiff was disabled from duty.

¶ 25 Dr. Butler performed an independent medical evaluation on September 29, 2010, reviewing plaintiff's history and radiographs. Dr. Butler assessed cervical spinal stenosis, cervical spondylosis without myelopathy and a lumbar strain. Dr. Butler found that the cervical spinal symptoms and treatments were not related to the August 2008 or the February 2009 cervical spinal injuries, but were temporary aggravations of underlying degenerative conditions. Dr. Butler's report states he reviewed plaintiff's medical records and that "[t]here has not been another injury within the past year." There was no mention of interviewing plaintiff himself. Dr. Butler did not believe there was an injury that occurred in August 2010. Dr. Butler noted a significant lapse in treatment from May 2009 until August 2010 that would indicate a return to baseline, but did not explain how plaintiff's cervical spinal condition suddenly deteriorated in August 2010. Dr. Butler felt that plaintiff was permanently disabled from duty due to his cervical spinal condition.

¶ 26 In order to determine whether plaintiff's disability was in the line of duty, the Board had requested Dr. Samo, Dr. Eliades, and Dr. Prabhu to answer the following questions based upon their examination of plaintiff and review of his medical records:

"A. Is it medically possible that the applicant's injury/illness is *a result of or caused by* his or her line of duty or his or her service as a firefighter and/or officer?

B. Is it medically possible that the firefighter's injury/illness is *a result of, or caused by*, sickness, accident, or injury incurred in or resulting from his duty as a firefighter or

from the cumulative effects of acts of duty during his service as a firefighter?"
(Emphasis added.)

¶ 27 Dr. Eliades, Dr. Samo, and Dr. Prabhu each responded to the above questions, "No."

¶ 28 The Board did not include any questions concerning whether plaintiff's line-of-duty injuries aggravated any preexisting condition.

¶ 29 Dr. Eliades performed an independent medical evaluation for the Board on March 24, 2011. Dr. Eliades did not note a history of trauma preceding plaintiff's November 30, 2007 visit to Dr. Bauer. Dr. Eliades assessed significant cervical degenerative disease. In Dr. Eliades' report to the Board, Dr. Eliades opined as follows:

"The degenerative changes seen in the cervical spine are a combination of his life-long activities and any injuries, major or minor, over the course of his life. As such while he may have had a period of increased symptomatology related to a work event, that specific event is not the cause of his disability."

¶ 30 Dr. Eliades believed that the upper extremity pain may be entirely from disc symptoms, and that plaintiff was disabled due to the severe cervical degenerative changes. Dr. Eliades believed that plaintiff's degenerative disc disease was the result of everyday activities such as picking up trash, but also testified that the cumulative effects of plaintiff's activities, including his work activities, could be a contributing factor to plaintiff's degenerative disc disease. At his deposition, Dr. Eliades testified that, to a reasonable degree of medical certainty, the cumulative effect of plaintiff's work incidents of August 2008, February 2009 and August 2010 did not cause or aggravate plaintiff's degenerative condition because there was not enough objective evidence to make the causal link, in part because all of plaintiff's life events are a cause of his degenerative back condition. Dr. Eliades testified that the February 27, 2009 accident caused a

temporary aggravation of plaintiff's symptoms. Dr. Eliades believed that plaintiff's disability is "a culmination of all of his life events, which includes his work events and his outside [sic]."

¶ 31 Dr. Samo also performed an independent medical evaluation of plaintiff for the Board on April 5, 2011. Dr. Samo opined as follows in his report:

"[Plaintiff] is disabled from his duties as a fire fighter *** due to his subjective complaint of pain with any lifting or carrying activities and also with the donning of his firefighter's ensemble. Since he states he is unable to perform these tasks, he will not be able to perform many of the essential job tasks of a fire fighter. *** I do not believe this problem was caused by his line of duty. The first complaint was during the 11/30/2007 visit with Dr. Bauer, and did not mention an inciting incident. Also, spinal stenosis is a degenerative process that takes many years to develop, and is not caused by any single incident. There can be flare ups of the symptoms due to a specific incident, but the underlying process is not changed by these flare ups."

¶ 32 But Dr. Samo did not note the August 16, 2010 injury or the August 24, 2010 visit to Dr. Walden and did not have any records regarding the August 16, 2010 injury. Dr. Samo also did not find any contributing cause in the February 27, 2009 incident because there was no change between the MRI in 2007 and the MRI after this incident. Dr. Samo also stated that he disagreed with Dr. Bauer regarding the opinion that the alleged August 16, 2010 incident was a contributing factor because plaintiff had seen Dr. Perlmutter a few days prior to that incident with the same symptoms. At his deposition, Dr. Samo testified that he assessed plaintiff with multilevel cervical spinal stenosis with a disc herniation at C6-7, chronic neck pain with radiating pain to the left upper arm, and then-asymptomatic recurrent lower back pain. Dr. Samo testified that he did not believe, as a matter of science, that day-to-day activities could accelerate

underlying disc conditions, but that only traumatic events could. Dr. Samo also noted that three days before the August 16, 2010 work incident, plaintiff saw Dr. Perlmutter complaining of the same symptoms that he later reported to Dr. Bauer on August 27, 2010, after the work incident. Because of this, Dr. Samo could not relate the August 16, 2010 work incident as the cause of plaintiff's symptoms. Dr. Samo did concede in his testimony that, hypothetically, if plaintiff had been able to work as a firefighter and then on August 16, 2010, had lifted a 500-pound patient resulted in neck pain that left plaintiff unable to perform his work duties, then that accident would have caused his disability. Dr. Samo also opined, to a reasonable degree of medical certainty, that the February 27, 2009 accident was a cause, aggravating, or contributing factor of the neck pain that radiated to plaintiff's left shoulder and left forearm tingling.

¶ 33 Dr. Prabhu performed an independent medical evaluation on April 6, 2011 and prepared a report dated May 11, 2011. In his report, Dr. Prabhu stated: "Based on a reasonable degree of medical certainty, I do not believe that his condition is caused solely as a result of his duty as a firefighter or from the cumulative effects of acts of duty during his service as a firefighter." At his deposition, however, Dr. Prabhu opined that the work accidents of February 2009 and August 2010 aggravated plaintiff's degenerative disc disease and/or spondylosis of the cervical spine. Dr. Prabhu based his opinion on the fact that plaintiff exhibited no symptoms at his examination with Dr. Bauer in January 2008 and there were no records related to plaintiff's cervical spine until plaintiff saw Dr. Bauer after the February 2009 incident. Dr. Prabhu testified that, within a reasonable degree of medical certainty, it is possible that the February 27, 2009 incident "could have aggravated a pre-existing condition."

¶ 34

The Board's Decision

¶ 35 On November 18, 2011, a hearing was conducted for plaintiff's application for line-of-duty disability pension benefits before the Board of Trustees of the Fire Pension Fund of the City of Des Plaines, Illinois.

¶ 36 On December 30, 2011, the Board issued its decision denying plaintiff line-of-duty disability pension benefits. The Board found that plaintiff was disabled, but that the "disabling condition is caused by his degenerative back condition and is not causally related to any specific act or acts of duty." The Board stated that the following facts support this conclusion: (1) "[t]hat as of the March 24, 2011 examination by Dr. Eliades, [plaintiff's] full neurologic exam was normal"; and (2) "[t]hat as of the April 5, 2011 examination by Dr. Samo, [plaintiff] reported some muscle tenderness, but his neurological exam was normal and [plaintiff] was not symptomatic for cervical disc problems at the time of the exam." The Board stated that it "relie[d] on the opinions of Doctors Samo, Eliades and Prabhu in concluding that the August 16, 2010 work incident did not cause the degenerative condition of [plaintiff's] cervical spine."

¶ 37 The Board stated that there "are no medical records that reflect a work injury on August 16, 2010. The Board stated that Dr. Prabhu's testimony that the February 2009 and August 2010 work incidents could have aggravated plaintiff's pre-existing degenerative disc disease was "inconsistent with the Physician's Certifications provided to the Board by Dr. Prabhu." The Board found that "the evidence in the record permits the inference that [plaintiff's] symptoms in August 2010 were of a temporary nature and overtime [sic] would resolve, as had occurred in 2007 and 2009, and that the ongoing degenerative process is the source of his disability."

¶ 38 On February 6, 2012, plaintiff filed an action for administrative review. On September 17, 2012, the court remanded the case to the Board for "further consideration of the cumulative effects of the acts of duty[,] in particular the August 16, 2010 incident."

¶ 39 The Board wrote another opinion on remand reaffirming its earlier decision. The Board found as follows:

"The Board hereby finds that the opinions of Doctors Samo, Eliades, Prabhu and Butler support the conclusion that [plaintiff's] disabling condition is caused by his degenerative back condition and is not causally related to any one specific act of duty nor caused by the cumulative effects of acts of duty."

¶ 40 On appeal on April 19, 2013, the Board's decision on remand was affirmed by the circuit court.

¶ 41 ANALYSIS

¶ 42 The provisions of the Administrative Review Law (735 ILCS 5/3–101 through 3–113 (West 2012)) apply to Article 4 of the Illinois Pension Code pertaining to pensions for firefighters. 40 ILCS 5/4-139 (West 2012). We review the administrative decision rather than the circuit court's decision. *Calabrese v. Chicago Park District*, 294 Ill. App. 3d 1055, 1065 (1998). The factual findings of the administrative agency are considered to be *prima facie* correct (735 ILCS 5/3–110 (West 2002)). Where the sole issue is whether a work-related incident is a cause of a claimant's disability, this is a purely factual determination which we review under the manifest weight of the evidence standard. *Carrillo v. Park Ridge Firefighters' Pension Fund*, 2014 IL App (1st) 130656, ¶ 22. "A judgment is against the manifest weight of the evidence when it appears from the record that an opposite conclusion is clearly evident." *Evert v. Board of Trustees of Firefighters' Pension Fund of City of Lake Forest*, 180 Ill. App. 3d 656, 660 (1989). "To make such a finding, a court must conclude that all reasonable and unbiased persons, acting within the limits prescribed by the law and drawing all inferences in support of the finding, would agree that the finding is erroneous and the opposite conclusion is

clearly evident." *Evert*, 180 Ill. App. 3d at 660 (citing *Hahn v. Police Pension Fund*, 138 Ill. App. 3d 206, 209 (1985)).

¶ 43 Plaintiff argues that the Board's decision was against the manifest weight of the evidence where the Board disregarded the testimony of unimpeached witnesses, mischaracterized certain medical testimony, and found, without any factual basis, that plaintiff's symptoms from the August 2010 incident would "resolve" at some point in the future.

¶ 44 Section 4-110 of the Pension Code pertaining to disability pensions for firefighters provides:

"§ 4-110. Disability pension – Line of duty. If a firefighter, as the result of sickness, accident or injury incurred in or resulting from the performance of an act of duty or from the cumulative effects of acts of duty, is found, pursuant to Section 4-112, to be physically or mentally permanently disabled for service in the fire department, so as to render necessary his or her being placed on disability pension, the firefighter shall be entitled to a disability pension equal to the greater of (1) 65% of the monthly salary attached to the rank held by him or her in the fire department at the date he or she is removed from the municipality's fire department payroll or (2) the retirement pension that the firefighter would be eligible to receive if he or she retired (but not including any automatic annual increase in that retirement pension)." 40 ILCS 5/4-110 (West 2012) (Emphasis added).

¶ 45 The Code defines an "act of duty" as:

"Any act imposed on an active fireman by the ordinances of a city, or by the rules or regulations of its fire department, or any act performed by an active fireman while on

duty, having for its direct purpose the saving of the life or property of another person."
40 ILCS 5/6-110 (West 2012).

¶ 46 "[A] disability pension may be based upon the line-of-duty aggravation of a preexisting condition." *Scepurek v. Board of Trustees of Northbrook Firefighters' Pension Fund*, 2014 IL App (1st) 131066, ¶ 27 (quoting *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 505 (2007)). "This court has repeatedly held that 'plaintiff need not prove that an injury received on duty was the sole cause of his disability; the injury need only have contributed to the disability.'" (Emphasis added.) *Scepurek*, 2014 IL App (1st) 131066, ¶ 27 (quoting *Wilfert v. Retirement Board of the Firemen's Annuity & Benefit Fund*, 263 Ill. App. 3d 539, 543 (1994)). "There is no requirement that the applicant's job duties be the sole or primary cause of his disability; rather, it is sufficient that the duty-related activities were a contributing or exacerbating factor." *Village of Oak Park v. Village of Oak Park Firefighters Pension Board*, 362 Ill. App. 3d 357, 371 (2005). The claimant only needs to prove "that the duty-related accident is a causative factor contributing to the claimant's disability." *Carrillo*, 2014 IL App (1st) 130656 at ¶ 23 (quoting *Luchesi v. Retirement Board of the Firemen's Annuity & Benefit Fund*, 333 Ill. App. 3d 543, 550 (2002)).

¶ 47 As a case supporting the denial of line-of-duty benefits, the Pension Fund for the City of Des Plaines cites to the Second District's decision in *Evert*, where the court affirmed the Board's decision denying line-of-duty disability benefits where two doctors opined in their reports that the plaintiff's disability was attributable to his degenerative lower back condition and a third doctor's testimony, at best, indicated that a lifting injury at work may have been a factor in the disability. *Evert*, 180 Ill. App. 3d at 661.

¶ 48 The Pension Fund also relies on *Carrillo* for the denial of line-of-duty benefits, a case in which this court affirmed the Board's decision denying line-of-duty benefits where two of three board-appointed doctors opined that the plaintiff's disability was caused by her pre-existing knee condition. The plaintiff in *Carrillo* had two arthroscopic knee surgeries before even entering fire department employment, had three claimed injuries to her knee in 2002, 2005 and 2006 but returned to work without restrictions, and then in 2011 claimed she was disabled, even though there had been no new injury. *Carrillo*, 2014 IL App (1st) 130656 at ¶¶ 5, 10. Clearly, *Carrillo* is distinguishable from this case. The Board's reliance on *Carrillo* is misplaced.

¶ 49 We note that some cases have upheld a pension board's denial of line-of-duty pension benefits even where the majority of physicians opined the plaintiff qualified for disability. See *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 540-42 (2006) (*per curiam*) (board's decision denying disability pension benefits upheld even though only one in four psychiatrists who examined the plaintiff concluded he was not qualified to receive benefits, where the court found that this physician gave the most credible and persuasive evaluation); *Trettenero v. Police Pension Fund*, 268 Ill. App. 3d 58 (1994) (board's decision denying benefits was not against the manifest weight of the evidence even though only two out of seven psychiatrists supported that decision).

¶ 50 This court has held that line-of-duty disability pension benefits are properly awarded in cases where there is a pre-existing condition and injuries on the job, as finding that the line-of-duty injuries did not contribute at all to a later disability would "defy common sense." *Scepurek*, 2014 IL App (1st) 131066 at ¶ 30. In *Scepurek*, this court held that the Board decision denying the firefighter's application for a duty disability pension was against the manifest weight of the evidence where no evidence supported the Board's conclusion that the firefighter's disability had

been solely caused by a preexisting back condition and that the work-related injury did not contribute at all to the disability. *Scepurek*, 2014 IL App (1st) 131066 at ¶ 27. All the medical evidence, including reports made by the board's own independent medical evaluators, concluded that the work-related injury contributed at least in part to firefighter's permanent disability. This court stated: "In our view, to dismiss the *** incident as a causative factor would be to defy common sense. In other words, given the evidence in this case, the Board was totally unrealistic in its finding." *Scepurek*, 2014 IL App (1st) 131066, ¶ 30. This court thus held: "Under the facts of this case, this court finds that the plaintiff's back was injured on May 25, 2010 and that the Board's decision that this injury played no role whatsoever in his current permanent disability from back problems was contrary to the manifest weight of the evidence." *Scepurek*, 2014 IL App (1st) 131066 at ¶ 36.

¶ 51 The reasoning by this court in *Scepurek* is particularly on point for this case:

"If the Board's decision were allowed to stand, then no older firefighter/paramedic who has degenerative changes in his/her skeletal system (that the physicians testified all older people have) would be able to establish an on-the-job injury. *Scepurek*, 2014 IL App (1st) 131066, ¶ 35.

¶ 52 Even in *Carrillo* this court indicated that where an injury is sustained on the job, even though the pre-existing condition renders a plaintiff susceptible to injury, a resulting disability is covered. See *Carrillo*, 2014 IL App (1st) 130656, ¶ 32 n.1 (noting that even if the claimant's knee were a "time bomb," in that her preexisting condition rendered it unusually susceptible to minor trauma, she would still be entitled to benefits if her employment was a causative factor in her disability).

¶ 53 The Illinois Supreme Court has reversed a decision affirming a denial of line-of-duty disability as against the manifest weight of the evidence where there were split opinions between the examining physicians. See *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 505-06 (2007) (decision of city police pension board, denying police officer's application for line-of-duty disability pension, relating to condition of officer's knees, was against manifest weight of evidence; two of the four examining doctors specifically found that the line-of-duty injury aggravated officer's preexisting condition, while fifth doctor found officer was not disabled at all). Also on point for this case, the court in *Wade* held that the concurrence of all three pension board-selected examining physicians is not necessary and is not what the legislature intended in the Pension Code; otherwise, one physician can effectively dictate the outcome in disability cases. *Wade*, 226 Ill. 2d at 513-14.

¶ 54 In this case we similarly find that the Board's determination that plaintiff's "disabling condition is caused by his degenerative back condition and is not causally related to any specific act or acts of duty" was against the manifest weight of the evidence. In fact, the manifest weight of the evidence makes it clear that the opposite conclusion is evident: that plaintiff's condition was clearly either caused or aggravated by his line-of-duty injuries. On August 10, 2007, plaintiff and three co-workers moved an obese patient on a bed sheet from the ambulance's cot to a hospital bed at Lutheran General Hospital. After that incident, on November 30, 2007 an MRI of plaintiff's cervical spine revealed diffuse spondylosis at C2 through T1 with central disc or osteophyte complexes at C2-C7.

¶ 55 On August 28, 2008, plaintiff was again injured lifting a patient weighing approximately 350 pounds and was later seen by Dr. Cabanit on September 9, 2008, who ordered an MRI, and

that MRI of September 10, 2008 revealed diffuse mild degenerative disc disease and diffuse disc bulges.

¶ 56 After the August 16, 2010 incident, on August 24, 2010, plaintiff saw Dr. Theresa Walden on August 24, 2010, who assessed plaintiff with cervical radiculopathy and related his injury to the workplace incident of February 2009. On August 27, 2010, plaintiff saw Dr. Bauer with neck pain that radiated to the left upper arm. Dr. Bauer noted chronic left side neck pain radiating towards the shoulder with numbness in the left forearm and slight weakness in the left arm. Physical examination revealed reduced range of motion in the neck and some weakness in the left arm. Dr. Bauer reviewed the August 25, 2010 MRI and diagnosed disc herniations in plaintiff's neck which were causing chronic neck pain and radicular pain in the left arm. Dr. Bauer released plaintiff to perform light duty work only, prohibiting him from operating machinery, wearing an air pack, or lifting more than 50 pounds.

¶ 57 While degenerative changes in the cervical spine are common, particularly in older adults, aggravation of such conditions caused by lifting and transporting adults weighing upwards of 200 pounds is not. It is the increased risk of aggravation caused by the performance of duties routinely expected of firefighters/paramedics that renders plaintiff's disability compensable as a line-of-duty disability. Certainly "life events," not to mention genetic predisposition, may have contributed to or "caused" the degenerative changes to plaintiff's spine (as they would for any member of the general public), but the risk that such conditions would become symptomatic and eventually disabling is on this record the result, at least in part, of plaintiff's activities uniquely associated with his duties as a firefighter.

¶ 58 The Board relied on the reports of Dr. Eliades, Dr. Samo, and Dr. Prabhu, but the questions submitted by the Board to the doctors were inherently inadequate, as they were based

on the faulty premise that line-of-duty disability pension benefits are only available if injuries on the job were the sole *cause* of the condition. The Board asked nothing concerning aggravation of any condition. This renders the reports submitted by these doctors inadequate, as they were written in response to these faulty questions.

¶ 59 The circuit court attempted to remedy this problem by remanding the case to the Board for further consideration of *aggravation* of plaintiff's condition by his line-of-duty injuries. Upon deposition of the doctors, when the appropriate questions concerning aggravation of the condition were asked, two of the three Board-appointed doctors then acknowledged that the work injuries played a part in plaintiff's disability. Dr. Prabhu testified that the February 2009 and August 2010 work incidents could have aggravated plaintiff's pre-existing degenerative disc disease. Though the Board found that Dr. Prabhu's testimony was "inconsistent with the Physician's Certifications provided to the Board by Dr. Prabhu," it was not, as two very different questions were posed; for the certification report to the Board the questions dealt with whether the injuries on the job were the sole cause of plaintiff's condition, whereas at deposition the relevant question explored was aggravation of that condition.

¶ 60 In his report, Dr. Samo did not find the February 27, 2009 incident was a contributing cause because there was no change between the MRI in 2007 and the MRI after this incident. After the February 27, 2009 incident in which plaintiff was injured while lifting a 250-pound man and was seen by Dr. Bauer, in a report on March 2, 2009 Dr. Bauer diagnosed plaintiff with cervical spondylosis and left cervical radiculopathy. An MRI of plaintiff's cervical spine was ordered at that time and compared with the November 30, 2007 MRI. The MRI showed no significant change in the spondylosis, disc protrusions at C3 through C7, or multilevel stenosis. But the MRI in 2007 was performed after plaintiff had already been injured on the job twice

lifting patients, on November 18, 1999, and on August 10, 2007. The only prior MRI was a November 26, 2005 MRI of a different region of plaintiff's back (the lumbosacral spine area), which was normal. There is no indication in the record that there was any MRI of plaintiff's cervical spine prior to plaintiff's first line-of-duty injuries carrying obese patients. In Dr. Samo's report, he did not note the August 16, 2010 injury or the August 24, 2010 visit to Dr. Walden and did not have any records regarding the August 16, 2010 injury. Dr. Samo did concede in his testimony that, hypothetically, if plaintiff had been able to work as a firefighter and then on August 16, 2010, had lifted a 500-pound patient resulted in neck pain that left plaintiff unable to perform his work duties, then that accident would have caused his disability. Dr. Samo did, however, opine to a reasonable degree of medical certainty, that the February 27, 2009 accident was a cause, aggravating, or contributing factor of the neck pain that radiated to plaintiff's left shoulder and left forearm tingling. Notably, Dr. Samo testified that he did not believe, as a matter of science, that day-to-day activities could accelerate underlying disc conditions, but that only traumatic events could.

¶ 61 Only Dr. Eliades' opinion did not change concerning aggravation of plaintiff's condition at his deposition. Dr. Eliades testified that, to a reasonable degree of medical certainty, the cumulative effect of plaintiff's work incidents of August 2008, February 2009 and August 2010 did not either cause or aggravate plaintiff's degenerative condition. Dr. Eliades testified that although plaintiff may have had "increased symptomatology" related to specific work events, Dr. Eliades could not make the causal link in part because all of plaintiff's life events are a cause of his back condition.

¶ 62 Thus, two of the three Board-selected doctors conceded that the work injuries aggravated plaintiff's condition and were a factor in plaintiff's disability, which suffices to establish line-of-duty disability.

¶ 63 Plaintiff's injuries occurred in the line of duty, and the Board concluded that plaintiff is indeed disabled. There was absolutely no evidence in this case that plaintiff engaged in any other strenuous physical activity or other part-time employment which could have caused aggravation of his condition. There is also no evidence in the record that plaintiff would have been symptomatic without the duty-related injuries. The only intervening causes which would explain plaintiff's disability are these aggravating work injuries. The opposite conclusion of the Board's determination is clearly evident. Just as in *Scepurek*, it simply defies common sense that all of the above injuries did not either cause or aggravate plaintiff's degenerative condition to the point where they have now caused his disability.

¶ 64 Finally, plaintiff is correct that the Board's finding that plaintiff's injury incurred in August 2010 would "resolve" itself in the future is without any factual basis. None of the doctors gave such an opinion. This finding also is against the manifest weight of the evidence.

¶ 65 CONCLUSION

¶ 66 Because the Board's determination that plaintiff's disability was not caused by his line-of-duty injuries is against the manifest weight of the evidence where the evidence clearly showed plaintiff's degenerative condition was aggravated by line-of-duty injuries which ultimately caused his disability, we reverse the Board's decision. Plaintiff is entitled to line-of-duty pension benefits.

¶ 67 Reversed.