

FIRST DIVISION
August 21, 2017

No. 1-16-2279

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

EMPERATRIZ AQUINO,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
CITY OF NORTHLAKE POLICE PENSION)	
FUND, THE BOARD OF TRUSTEES OF THE)	No. 15 CH 16310
NORTHLAKE POLICE PENSION FUND, and)	
The Members of THE BOARD OF TRUSTEES)	
OF THE CITY OF NORTHLAKE POLICE)	
PENSION FUND; JAY MILITELLO,)	
LORELEI GRUNDY, KEN BERES, CAROL)	
LAMPARD, and RICHARD HAACK,)	Honorable
)	Kathleen M. Pantle,
Defendants-Appellees.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Connors and Justice Simon concurred in the judgment.

ORDER

Held: The pension board's denial of a duty related pension was not against the manifest weight of the evidence. We therefore affirm the pension board's decision.

¶ 1 Plaintiff-appellant, Emperatriz Aquino, suffered an injury while on duty on June 20, 2013. On June 7, 2014, plaintiff filed an application for disability pension benefits with the Northlake Police Pension Board seeking a duty-related disability pension. This was later amended to also seek a non-duty related disability pension. She maintained she could no longer perform her duties as a Northlake police officer after sustaining multiple injuries on June 20, 2013. After being evaluated by several independent medical experts, the pension board held a hearing to determine whether plaintiff was entitled to a duty or non-duty pension. At the conclusion of the hearing, the pension board voted to deny plaintiff both. On October 15, 2015, the pension board issued a written decision which explained that plaintiff had failed to prove she was physically disabled from performing the duties of a police officer. Plaintiff appealed to the circuit court, which affirmed the pension board's order.

¶ 2 Plaintiff now appeals the pension board's decision to this court. Upon this court's review, we agree with the circuit court and conclude that the pension board's finding that plaintiff is not physically disabled is not against the manifest weight of the evidence. Accordingly, the pension board's order is affirmed.

¶ 3 JURISDICTION

¶ 4 On July 20, 2016 the trial court entered an order affirming the decision of the Northlake pension board. Plaintiff timely filed a notice of appeal on August 16, 2016. Accordingly, this court has jurisdiction over this matter pursuant to Article VI, Section 6 of the Illinois Constitution, and Illinois Supreme Court Rules 301 and 303. Ill. Const. 1970, art. VI, §6; Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); Ill. S. Ct. R. 303 (eff. May 30, 2008).

¶ 5

BACKGROUND

¶ 6 The plaintiff joined the City of Northlake police department on February 15, 2008. On June 20, 2013, plaintiff was on duty when she was dispatched to the scene of an abandoned vehicle on the Lake Street on-ramp to I-294. While directing traffic at the scene, the owner of the abandoned vehicle arrived in another car. The plaintiff approached the driver's side of the arriving vehicle and began to speak to the driver. The plaintiff had her back to the passing traffic using the on-ramp. While talking with the owner of the abandoned vehicle, the mirror of a passing vehicle struck the right side of her body. Plaintiff was pressed between the passing car and the parked car. She felt pain on the right side of her body and had difficulty breathing. An ambulance transported plaintiff to Elmhurst Memorial Hospital.

¶ 7 At the hospital plaintiff was ambulatory, denied chest pain, or having any shortness of breath. She complained of having lower back pain, mostly in the right gluteus and above the buttocks, radiating down the right lower extremity. An evaluation at the time showed plaintiff had tenderness on her right side near her hip, but no hematomas, masses, or crepitus (*i.e.* cracking of the joints). A battery of tests were performed on plaintiff and all came back normal with no signs of acute injury. The ER doctor diagnosed plaintiff with a deep muscle contusion of the lumbosacral region. He prescribed pain medication and referred plaintiff to a surgeon, Dr. Stephen Boghossian.

¶ 8 Dr. Boghossian treated the plaintiff from June 24, 2013 until August 13, 2013. Dr. Boghossian prescribed the plaintiff pain medication and physical therapy. Eventually, he referred her to Dr. Daryl O'Connor, an orthopedic specialist. Dr. O'Connor first treated plaintiff on August 20, 2013 and last treated her on January 24, 2014. He treated her a total of six times. Dr. O'Connor requested plaintiff take an EMG, also known as a nerve conduction test. Dr. Kami Strong

performed the test on September 9, 2013. Eventually, Dr. O'Connor sent plaintiff to Dr. Samir Sharma, a pain specialist. Dr. Sharma first examined plaintiff on September 19, 2013. On September 30, 2013, Dr. Sharma performed a lumbar sympathetic nerve branch block injection (LSNB), which was meant to relieve the pain. Plaintiff continued to see Dr. Sharma through 2014 and 2015. She also continued to receive LSNB injections during that time. Plaintiff reported diminished pain during this time but still complained of pain in her right side. Eventually, Dr. Sharma diagnosed plaintiff with complex regional pain syndrome (CRPS).

¶ 9 On June 7, 2014, plaintiff filed an application for disability pension benefits with the defendant-appellee, Northlake Police Pension Board, seeking a duty-related disability pension pursuant to 40 ILCS 4/5-110 (West 2016). She maintained that she could no longer perform the duties of a Northlake police officer due to the injuries she sustained on June 20, 2013. Plaintiff later amended her application to also request non-duty related disability benefits. In accordance with section 3-115, the pension board required plaintiff to be examined by three independent medical professionals: Dr. Paul Papierski, Dr. Michael Gear, and Dr. Preston Wolin. After plaintiff met with all three doctors, a hearing was held to determine whether plaintiff was entitled to a duty or non-duty disability pension. The hearings were conducted December 11, 2014 and July 23, 2015. Plaintiff testified on her own behalf, and various records of her treatment were admitted into evidence. The board received records from Elmhurst Memorial Hospital, Dr. Boghossian, Dr. Strong, Dr. O'Connor, Dr. Sharma, Dr. Kenneth Candido, Dr. Gregory Primus, Dr. Paul Papierski, Dr. Michael Gear, and Dr. Preston Wolin.¹ The defendant also received records from plaintiff's general physician. All records were entered into evidence. At the conclusion of the hearing, the

¹ Dr. Candido and Dr. Primus performed an independent medical evaluation on behalf of the City of Northlake's workers' compensation carrier. Their records were subpoenaed by the defendant and admitted into evidence.

board members voted to deny plaintiff both a duty related disability pension and non-duty related disability pension.

¶ 10 On October 15, 2015, the pension board issued a written decision and order stating the reasons for the denial. In denying plaintiff's claim, they found that plaintiff proved she was a police officer since 2008 and also a member of the pension fund. However, the pension board concluded that plaintiff had failed to prove that she is physically disabled from performing the duties of a Northlake police officer. The pension board did not dispute that plaintiff was struck by an automobile on June 20, 2013, but did conclude, based on the evidence before it, the accident did not render plaintiff incapable of performing her duties. In the over 40-page order,² it detailed the evidence before it and the weight given to each piece. The order specifically stated plaintiff had failed to demonstrate she suffered from CRPS or that it rendered her disabled. In reaching its conclusion, the pension board gave substantial weight to the objective findings of the doctors and tests. The pension board gave less weight to those opinions based on plaintiff's subjective complaints.

¶ 11 Plaintiff timely appealed to the circuit court for administrative review of the board's decision. After briefing and oral argument, the circuit court concluded the decision was not against the manifest weight of the evidence and affirmed the denial of pension benefits.

¶ 12 Plaintiff timely appealed the circuit court's order and this appeal now follows.

¶ 13 ANALYSIS

¶ 14 On appeal, plaintiff raises only one issue: the pension board's order denying her a duty or non-duty related pension was against the manifest weight of the evidence and should be reversed. Initially, we note that while defendant filed a pension application for both a duty

² The record does not contain a complete version of the pension board's decision.

related pension and non-duty related pension, nothing in the record demonstrates that plaintiff ever argued she was entitled to a non-duty pension. Plaintiff has consistently maintained that her injuries were the result of the June 2014 accident which occurred while she was on duty. See 40 ILCS 5/3-114.1 (West 2016) (providing for a disability pension resulting from the performance of an act of duty); 40 ILCS 5/3-114.2 (West 2016)(providing for a disability pension resulting from any cause other than the performance of an act of duty). Since plaintiff does not argue her injuries stem from the performance of a non-duty act, we only consider the denial of her request for duty related disability benefits.

¶ 15 Article III of the Pension Code provides for judicial review of any pension board decision as long as such review is in accordance with the Administrative Review Act. 735 ILCS 5/3-101 *et seq.*(West 2016); *Robbins v. Bd. of Trs. of the Carbondale Police Pension Fund*, 177 Ill. 2d 533, 537 (1997). The statute limits our review to the record before us and we may not consider new or additional evidence put forth by either party. *Robbins*, 177 Ill. 2d at 538. The statute further mandates that the “findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct.” 735 ILCS 3-110 (West 2016).

¶ 16 When an administrative appeal comes before this court, we review the decision of the administrative agency, and not the decision of the circuit court. *Marconi v. Chicago Heights Police Pension Bd.*, 225 Ill. 2d 497, 531 (2006). Rulings on questions of fact will be reversed only if such ruling is against the manifest weight of the evidence. *Id.* at 532. “An administrative agency decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.” *Abrahamson v. Illinois Dep’t of Prof’l Regulation*, 153 Ill. 2d 76, 88 (1992). If after examining the entire record we believe that the manifest weight of the evidence favors the party who did not prevail, then it is our duty to reverse the decision. *Derringer v. Civil Service Comm’n*,

66 Ill. App. 3d 239, 241 (1978). However, if the record contains some evidence to support the board's decision, the decision must be affirmed. *Marconi*, 225 Ill. 2d at 534. Under any standard of review, the plaintiff has the burden of proof and relief must be denied if he or she fails to sustain that burden. *Id.* at 532.

¶ 17 On appeal, plaintiff argues that the decision of the pension board to deny her a on-duty disability pension was against the manifest weight of the evidence. She contends that the evidence establishes five of the seven doctors who evaluated her found her to be disabled due to CRPS. She further argues that the opinions of the two doctors who found her not disabled were unreliable and should have been rejected. The pension board never disputed that plaintiff was injured in the June 2013 incident but did ultimately conclude, based on all the evidence presented at the hearings, the injuries she suffered had not left her disabled and incapable of performing the duties of a police officer. The pension board maintains this position before this court and argues its order denying benefits was not against the manifest weight of the evidence.

¶ 18 After a review of the evidence presented at the pension board hearings, we conclude the denial of a duty related pension was not against the manifest weight of the evidence. A review of the decision demonstrates the pension board placed greater weight on the objective findings of the doctors and tests and gave less weight to the findings based on the subjective complaints of the plaintiff. While plaintiff contends that five of the seven doctors concluded she had CPRS, in so arguing, plaintiff cites to her own hearing testimony and not the doctors' reports submitted into evidence. A review of the reports demonstrates the findings are not as conclusive as plaintiff argues.

¶ 19 In the order denying plaintiff's benefits, the pension board first discussed the accident and then plaintiff's subsequent treatment. The Elmhurst Hospital records noted that plaintiff was

ambulatory at the scene but complained of lower back pain, mostly around her right buttocks, radiating down her right leg. The hospital report stated plaintiff did not present chest pain or shortness of breath. Despite this notation, at the pension hearing, plaintiff stated she had chest pain and difficulty breathing after the accident. The hospital records further indicated that plaintiff x-rays, MRI, and CT scan all came back normal. While plaintiff testified that she had a bruise on the middle right side of her back, the ER report indicated “a small ecchymosis [a subcutaneous spot of bleeding] just above the right buttocks. There are no hematomas.” Dr. Boghossian, who saw plaintiff the day of the accident and several times thereafter, concluded plaintiff had only suffered a deep tissue bruise. On appeal, plaintiff argues the pension board should not have given weight to the ER tests and cites to ABC news and WebMD articles to support her contention. These articles were not part of the record and we reject their use on appeal; our review is limited to the record created during the administrative hearing. *Robbins*, 177 Ill. 2d at 538. Dr. Boghossian never opined that plaintiff suffered from CRPS.

¶ 20 Dr. Strong performed the EMG and nerve conduction study. While plaintiff argues the test revealed the presence of neuropathy of the peroneal nerve, the report indicates the decreased recruitment could be caused by either significant pain **or decreased effort**. Notably, the report concludes that there is no electrodiagnostic evidence of lumbar radiculopathy, lumbosacral plexopathy, or peripheral neuropathy. Despite plaintiff’s contention, the report does not definitively conclude she suffers from CRPS.

¶ 21 The records of both of plaintiff’s treating doctors were admitted into evidence. The board noted that Dr. O’Connor observed that plaintiff’s symptoms seemed out of proportion to the physical and other objective findings. He further reported that defendant seemed to have a delayed response to perceived pain palpations. Dr. O’Connor opined, “It is unclear to me what is causing

her symptoms.” While he presumed that plaintiff **may** have CRPS, he observed none of the physical symptoms. Specifically, he noted the lack of swelling in the affected area and her significant improvement with respect to her lower extremity symptoms. Despite her argument otherwise, Dr. O’Connor never specifically concluded plaintiff suffered from CRPS, only that she may.

¶ 22 Dr. Sharma, plaintiff’s other treating doctor, did definitively conclude plaintiff suffered from CRPS, however, the Board gave his opinions less weight because his conclusions were contradicted by the objective evidence in the record. They also discounted his finding because he was plaintiff’s treating doctor at the time of the proceedings. From September 2013 until February 2015, Dr. Sharma performed lumbar sympathetic nerve branch block injections in an attempt to reduce and manage plaintiff’s pain. During that time frame, plaintiff reported various reductions in her pain levels. At her December 17, 2014 appointment, plaintiff reported pain as 3 out of 10 and stated that she “feels she is getting stronger and feels overall significant improvement from baseline pain.” At the July 2015 hearing plaintiff acknowledged that the injections provided relief, but admitted she had not had since February 2015. Dr. Sharma did conclude plaintiff’s CRPS rendered her disabled from performing the duties of a police officer.

¶ 23 Plaintiff was also examined by five independent medical experts: Dr. Wolin, Dr. Papierski, Dr. Grear, Dr. Primus and Dr. Candido. Dr. Wolin examined the plaintiff on September 30, 2014 and certified her disabled due to CRPS. The pension board rejected his findings though because it was based on subjective findings. Dr. Wolin concluded plaintiff suffered from CRPS because she walked with a limp requiring a cane, her subjective complaints of pain and having a positive straight leg test. Despite his diagnoses, his notes indicated that plaintiff had a full range of motion in her hip and lumbar spine. Even though he indicated swelling in plaintiff’s right leg, the Board

discounted this finding because he provided no objective measurements. In his supplemental report, Dr. Wolin stood by his diagnoses of CRPS.

¶ 24 Dr. Papierski evaluated plaintiff on September 24, 2014. Dr. Papierski did initially certify plaintiff as disabled due to CRPS from an injury to her common peroneal nerve. This was based on the subjective complaints of plaintiff and the nerve study which indicated a mild “distal neuropathy of the common peroneal nerve to the extensor digitorum brevis.” As the pension board noted in its decision, such a diagnosis would indicate only plaintiff’s nerves in her foot and toes were affected, but at the hearing the plaintiff consistently denied any foot problems. She testified, “I don’t find my foot to be a problem. Its my right upper and lower and back areas.” Dr. Papierski found no swelling of the legs as both legs measured the same circumference above the patella and the right leg actually slightly smaller below the patella. Dr. Papierski’s notes further indicated that plaintiff was without complaints and walked comfortably out of the officer after the examination. At the hearing, plaintiff disputed this finding. Dr. Papierski did issue a supplemental opinion after reviewing Dr. Candido’s evaluation in which he concluded that plaintiff did not have CRPS.

¶ 25 Dr. Gear examined plaintiff on September 26, 2014. While he did find plaintiff disabled from performing her police duties, it was based on a finding of **mental** incapacity not a physically one. Dr. Gear is not a mental health professional, and his report did not indicate how he came to such a conclusion. He did conclude that he could find no objective evidence to substantiate a diagnosis of CRPS. He indicated that despite grimaces, plaintiff could move from sitting to a lying to a standing position without great difficulty. He found plaintiff gave exaggerated efforts and noted a negative straight leg test. His measurements found no swelling. He indicated that plaintiff had no hypersensitivity in her lower extremities. In his supplemental

report, Dr. Gear's opinion remained unchanged. In his opinion, the supplemental records indicated plaintiff was overweight and out of shape.

¶ 26 Dr. Primus evaluated plaintiff on March 14, 2014 as part of her worker's compensation claim. While plaintiff argues that Dr. Primus diagnosed her with CRPS, his report does not support such a conclusive statement. His report states, "given her persistence of symptoms, the dramatic nature that she describes her right lower extremity pain and disability, I do believe she carries a diagnosis of [CPRS]." However, in the same paragraph he also noted that the subjective complaints are not supported by the objective findings. He noted that she did not exhibit any of the objective symptoms of CRPS such as skin/hair changes, temperature asymmetry, and edema. Plaintiff informed Dr. Primus that she was having difficulty with activities of daily living (ADLs): moving, dressing, bathing, using the bathroom, and eating. This report conflicts with the records from plaintiff's general practitioner, which stated in January 2014 plaintiff needed no help with any ADLs.

¶ 27 Dr. Kenneth Candido, a pain specialist, also performed an independent medical evaluation as part of the worker's compensation claim. Dr. Candido performed his evaluation on November 11, 2014. He reviewed plaintiff's medical records along with Dr. Primus's report and the EMG test results. He found plaintiff's back and hips to be normal. He applied deep digital pressure to the right leg without pain. Plaintiff's straight leg test was normal. Dr. Candido found plaintiff's right leg to be unremarkable, and importantly, it was clean shaven with pedicured toes and a toe ring. Dr. Candido stated this would be inconsistent with a person suffering CRPS. He could find no signs of CRPS. He specifically noted that plaintiff did not meet the Budapest clinical diagnostic criteria for CRPS. Having found no signs of CRPS, Dr. Candido opined that

plaintiff did not suffer from it. He concluded plaintiff had reached maximum medical improvement and could return to work as a police officer.

¶ 28 Given the evidence before the pension board, we find that its decision was not against the manifest weight of the evidence. In reaching this conclusion, we note that this court may not reweigh the evidence or substitute our view of the evidence for that of the administrative agency. *City of Belvidere v. Ill. State Labor Relations Board*, 181 Ill. 2d 191, 204 (1998). The record indicates that the pension board put greater emphasis on the objective findings than the subjective ones. The objective testing performed on plaintiff indicated normal functioning of her nerves and muscles. While several doctors concluded plaintiff may suffer from CRPS, those diagnoses were primarily based on plaintiff's subjective complaints. Even those doctors' notes indicated a lack of objective evidence corroborating a diagnosis of CRPS. The pension board, as the finder of fact, was free to place a greater emphasis on the objective findings than the subjective complaints of the plaintiff in reaching its decision. See *Peterson v. Bd. of Trs. of the Fireman's Pension Fund of the City of Des Plaines*, 54 Ill. 2d 260, 263 (1972) (stating that the pension board is tasked with resolving conflicts in the evidence).

¶ 29 In affirming the pension board's decision, we reject plaintiff's reliance on *Wade v. City of North Chicago Police Pension Bd.*, 226 Ill. 2d 485 (2007), and *Bowlin v. Murphysboro Firefighters Pension Bd. of Trs.*, 368 Ill. App. 3d 205 (2006). In *Bowlin*, the court found the denial of plaintiff's pension to be against the manifest weight of the evidence. In reaching this conclusion the court found that only one of the six examining doctors found plaintiff not disabled and determined the board's reliance on the one doctor's opinion misplaced. *Id.* at 211-212. This doctor, Dr. Wayne, concluded plaintiff suffered from a mild-to-moderate degree or permanent partial disability but at the same time concluded he could return to the highly physical job of a

firefighter. *Id.* at 211. Given this questionable finding, along with the other five doctors determining plaintiff to be permanently disabled, the court concluded the denial of a pension to be against the manifest weight of the evidence. *Id.* at 213.

¶ 30 *Wade* presented a similar factual situation to *Bowlin*. The *Wade* court found the denial of a pension to be against the manifest weight of the evidence, where only one of the five doctors concluded Wade to not be disabled and that doctor's own opinion was not well supported by the record. 226 Ill. 2d at 505-06. The court specifically concluded that the physician who found Wade not disabled presented no factual basis for his conclusions. *Id.* at 507. The court therefore found the pension board's reliance on this doctor's conclusion to be against the manifest weight of the evidence and overturned the denial of the disability pension. *Id.* at 507-08.

¶ 31 Unlike the board decisions in *Wade* and *Bowlin*, the denial of plaintiff's pension is supported by the record. Unlike those two cases, more than one doctor opined that plaintiff is not permanently disabled. The conclusions of these doctors, unlike those utilized by the pension boards in *Wade* and *Bowlin* to deny benefits, were based on the objective findings of the exams performed on plaintiff. While some doctors disagreed and found plaintiff disabled due to CRPS, those findings were based primarily on the subjective complaints of the plaintiff. Thus, the board's decision finds support in the record. *Marconi*, 225 Ill. 2d at 534. Accordingly, we cannot say that the opposite conclusion is clearly evident and that no rational trier of fact could have reached the conclusion the board did when it denied plaintiff benefits. We therefore affirm the pension board's denial of a duty related disability pension to plaintiff.

¶ 32 CONCLUSION

¶ 33 For the foregoing reasons, the decision of the pension board is affirmed.

¶ 34 Affirmed.