2015 IL App (2d) 150109-U
No. 2-15-0109
Order filed October 16, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

PETE ALMEIDA, Plaintiff-Appellee, v. BOARD OF TRUSTEES OF THE ELGIN POLICE PENSION BOARD, JAMES E. LAMKIN, President, ROBERT L. CHRIST, Vice President, CHRIS TROIOLA, Secretary, JAMES R. ROSCHER, Assistant Secretary, and ROBERT O'CONNOR, Trustee, Defendants-Appellants.	)	Appeal from the Circuit Court of Kane County. No. 14-MR-682 Honorable David R. Akemann Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The Board's decision, terminating the plaintiff's non-duty disability pension, was not against the manifest weight of the evidence.

¶ 2 The defendant, the Board of Trustees of the Elgin Police Pension Board (Board), appeals from the trial court's order reversing the decision of the Board to terminate the not-on-duty disability pension (40 ILCS 5/3-114.2 (West 2000)) of the plaintiff, Pete Almeida. On appeal,

the Board argues that its decision to terminate the plaintiff's pension was not against the manifest weight of the evidence. We agree and reverse.

¶ 3 BACKGROUND

¶ 4 The plaintiff became a member of the Elgin police department in July 1990. On May 15, 2009, the plaintiff filed an application with the Elgin Police Pension Fund, seeking a line-of-duty disability pension under section 3-114.1 of the Illinois Pension Code (Pension Code) (40 ILCS 5/3-114.1 (West 2008)), or, in the alternative, a non-duty disability pension pursuant to section 3-114.2 of the Pension Code (40 ILCS 5/3-114.2 (West 2008)). The application indicated that the nature of the injury or disability was post-traumatic stress dating back to May 26, 2006, the date he was called to a fatal car crash involving a four-year old girl. On June 1, 2009, the plaintiff was terminated from his employment with the Elgin police department. The Board held hearings on the plaintiff's application over two days and received numerous exhibits into evidence.

¶ 5 On April 22, 2010, the Board denied the plaintiff's requests for both a duty and a non-duty related pension. On November 4, 2010, the trial court affirmed the Board's decision. On appeal, the plaintiff argued that the Board's decision denying his application for a non-duty disability pension was against the manifest weight of the evidence. We agreed and ordered the Board to award the plaintiff a non-duty disability pension. *People v. Almeida*, 2011 IL App (2d) 110179-U.

¶ 6 In accordance with the provisions of the Pension Code (40 ILCS 5/1-101 *et seq*. (West 2012)), the plaintiff subsequently submitted to annual medical exams certifying his continued disability. 40 ILCS 5/3-115 (West 2012).

¶ 7 At the request of the Board, Dr. A.E. Obolsky, examined the plaintiff on two occasions: October 10, 2012, and November 2, 2012. Dr. Obolsky issued a written evaluation on July 12, 2013. In this written evaluation, Dr. Obolsky stated that his forensic psychiatric evaluation of

the plaintiff comprised over 34 hours of record review, forensic psychiatric interview, forensic psychological and cognitive testing, and data analysis. Dr. Obolsky acknowledged that the plaintiff had experienced mental symptoms in the past, but opined that the plaintiff was "fabricating his currently reported mental symptoms." Dr. Obolsky noted the plaintiff's claim that his anxiety symptoms had not improved since he left the police department in 2009. Dr. Obolsky determined that the claim was unbelievable because the plaintiff was employed at a community college and had been able to engage in regular work with students and other professionals and had performed "highly sophisticated executive tasks." Dr. Obolsky explained that frequent and severe anxiety and depression would regularly impair the work performance of an individual but the plaintiff had positive annual employment evaluations from the community college in both 2010 and 2011. Dr. Obolsky concluded that the plaintiff's "condition of mental ill-being has already reached a degree of improvement that allows for full time gainful employment." Dr. Obolsky certified that the plaintiff was "not disabled."

¶ 8 On October 2, 2013, the plaintiff forwarded a letter from his treating physician, Dr. Best, to the Board and requested that it be added to the record. In that letter, dated September 19, 2013, Dr. Best stated that the plaintiff suffered from anxiety disorder and attention deficit disorder (ADD), that the two were co-morbid conditions, that the medication to treat those conditions tend to exacerbate each other, and that the plaintiff was fully disabled from police work due to his psychiatric disability.

¶ 9 At the request of the Board, Dr. Obolsky reviewed Dr. Best's letter and issued a letter in response on October 16, 2013. Dr. Obolsky stated that there is effective treatment for individuals who suffer from both anxiety and ADD. He noted the Dr. Best did not identify any specific reason why the plaintiff would not respond to treatment. Dr. Obolsky also opined that the plaintiff's conditions did not cause impairment as demonstrated by the fact that the plaintiff

was employed in a position that required cognitive and emotional functioning. Dr. Obolsky concluded that Dr. Best's letter contained no new or reliable evidence and that his opinions in his July 12, 2013, report had not changed.

¶ 10 The Board later forwarded additional records to Dr. Obolsky for review. The records included college transcripts, employment records, medical records, and psychiatric treatment records. In a letter to the Board, dated April 4, 2014, Dr. Obolsky stated that his review of these records did not change his opinions as stated in his July 12, 2013 report or in the October 16, 2013 letter.

¶ 11 The plaintiff objected to the examination by Dr. Obolsky, as Dr. Obolsky had determined that the plaintiff was not disabled when he first applied for a non-duty disability pension in 2009. In light of the objection, the Board selected a second psychiatrist, Dr. Stevan Weine, to examine the plaintiff. Dr. Weine performed an independent psychiatric evaluation of the plaintiff on March 4, 2014. In addition, Dr. Weine reviewed the decisions and orders in this disability case, medical records, and employment records. Dr. Weine opined that the plaintiff suffered from attention deficit hyperactivity disorder (ADHD) and generalized anxiety disorder. Dr. Weine did not believe that the plaintiff still suffered from major depression. Dr. Weine opined that, if the plaintiff sought regular treatment for his conditions, those conditions would continue to improve. Dr. Weine concluded that the plaintiff was "not disabled as a result of his conditions and they should not prevent him from performing full-duty police work or any other type of work. He may not want to be a police officer or may not be considered fit to be a police officer but it is not due to these or any other psychiatric disorders."

¶ 12 On October 18, 2013, Dr. Alexander Golbin issued a letter indicating that, starting in January 2013, he began to provide services to the plaintiff at the Sleep & Behavior Medicine Institute. Dr. Golbin noted that the plaintiff was diagnosed with major depressive disorder and

panic disorder and that the plaintiff had been receiving psychotherapy, hypnotherapy and pharmacotherapy. At the time of the plaintiff's last appointment, September 30, 2013, the plaintiff still reported intense symptoms of depression, anxiety and panic attacks. Dr. Golbin opined that "[b]eing under stress might adversely affect [the plaintiff's] emotional condition. Currently, it does not seem safe for [the plaintiff] to perform his duties as a police officer."

¶ 13 A hearing was held on May 13, 2014. Certain exhibits were introduced such as Dr. Obolsky's evaluation and report; medical records from the plaintiff's treating physician that were requested by Dr. Obolsky prior to his examination of the plaintiff; a letter from Dr. Obolsky after review of additional records; the plaintiff's employment records from Elgin Community College; Dr. Golbin's letter and treatment records; Dr. Weine's evaluation and report; and a letter from Dr. Best, the plaintiff's treating physician.

¶ 14 At the hearing, the plaintiff testified that he worked as a program coordinator at Elgin Community College. He had previously worked as a police officer for 22 years. He stopped working as a police officer due to his disability. He was diagnosed with anxiety disorder and ADD. He was being treated by Dr. Best for these conditions as well as depression. He was currently taking Trileptal, Ativan, and Adderall. The Ativan he only took occasionally when he had panic attacks. Lots of different things triggered his panic attacks.

¶ 15 The plaintiff further testified that he did not sleep well at night. He only got three to five hours per night. He was not currently seeing a counselor but he was looking for one that was more conveniently located. He had a constant feeling that someone was watching him and monitoring his phone calls. He did not believe that it was possible for him to return to work as a police officer. He had too many mental health issues and was worried about being able to make proper decisions. His current employment was very different than being a police officer. As a police officer he was exposed to many different situations and was required to make fast

decisions. In his current position, he had a chance to stop and think about things before proceeding.

¶ 16 On June 26, 2014, the Board found that the plaintiff had "recovered from his disability," and it terminated his disability pension. See 40 ILCS 5/3-116 (West 2012). In its order, the Board noted Dr. Obolsky's conclusion that the plaintiff was currently fabricating his symptoms of psychiatric disability. It noted that although the plaintiff claimed to be anxious during his interview with Dr. Obolsky, "Dr. Obolsky did not observe any behavioral manifestations of anxiety." The Board also noted the opinion of Dr. Weine that the plaintiff suffered from ADHD and general anxiety disorder but that such disorders would not prevent the plaintiff from working as a police officer or any other type of employment. The Board noted that the plaintiff had the option to subpoena these doctors to testify at the hearing but failed to do so. The Board concluded that the plaintiff's claims of psychiatric disability were not supported by the evaluations of Drs. Obolsky and Weine. The Board also found that the plaintiff's testimony and complaints of anxiety were not credible.

¶ 17 On December 30, 2014, the plaintiff filed a complaint for administrative review of the Board's decision (735 ILCS 5/3-103 (West 2014)) with the circuit court of Kane County, and the court subsequently reversed the Board's decision, finding that it was against the manifest weight of the evidence. The Board now appeals to this court, arguing that its determination was not against the manifest weight of the evidence.

¶ 18 ANALYSIS

¶ 19 The findings and conclusions of an administrative agency on questions of fact are deemed *prima facie* true and correct and are not to be disturbed unless they are against the manifest weight of the evidence. *Trettenero v. Police Pension Fund of City of Aurora*, 333 Ill. App. 3d 792, 801 (2002); 735 ILCS 5/3-110 (West 2014). The findings and decisions of the

agency are against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Trettenero*, 333 Ill. App. 3d at 801. Merely because an opposite conclusion is reasonable, or the reviewing court might have ruled differently, will not justify the reversal of the administrative findings. *Id.* As the weight of the evidence and the credibility of the witnesses are within the province of the agency, there need only be some competent evidence to support its findings. *Id.*

¶ 20 In the present case, there was sufficient evidence to support the Board's finding that plaintiff's disability had terminated. The Board considered the plaintiff's testimony as well as all the other documentation admitted into the administrative record, including the reports of Dr. Obolsky and Dr. Weine. The Board found the conclusions of Dr. Weine and Dr. Obolsky most persuasive. Dr. Obolsky opined that the plaintiff's "condition of mental ill-being [had] reached a degree of improvement that allow[ed] for full time gainful employment." Dr. Obolsky certified that the plaintiff was not disabled. Dr. Weine determined that the plaintiff suffered from anxiety and ADHD, but no longer suffered major depression. Dr. Weine concluded that the plaintiff's conditions were not disabling and should not prevent him from performing full-duty police work or any other type of work. Although Dr. Best opined that the plaintiff continued to be disabled, and Dr. Golbin opined that "it does not seem safe" for the plaintiff to work as a police officer, we must defer to the Board's assessment of the weight of the evidence and the credibility of the witnesses. *Id.*

¶ 21 The plaintiff argues that the opinions of Drs. Obolsky and Weine are not credible because they ignore relevant medical evidence, *i.e.*, that he takes medicine that can potentially affect his behavior and he is not following the advice of several physicians to receive counseling. The plaintiff argues that the opinions of his treating physicians show that he has not recovered from his disability because he suffers from insomnia, irritability, anger, hopelessness, and paranoia.

Despite the plaintiff's claim, the record shows that Drs. Obolsky and Weine did not ignore relevant medical evidence. Dr. Obolsky's examination of the plaintiff included a review of medical records and an extensive psychiatric interview in which the plaintiff discussed his medical history and the medications he was taking. Further, when additional medical records were sent to Dr. Obolsky for review, his opinion did not change. There is also no indication that Dr. Weine ignored any relevant medical evidence. Dr. Weine recognized that the plaintiff suffered from anxiety and ADHD but determined that these conditions were no longer at the point of being disabling. The mere fact that Dr. Best determined that the plaintiff was still disabled, and Dr. Golbin stated that it would not "seem safe" for the plaintiff to work as a police officer, is not enough to demonstrate that the Board's decision was against the manifest weight of the evidence. *Id.* at 800-01 (the Board's determination need only be supported by some competent evidence and benefits may be revoked on the basis of a single medical examination).

¶ 22 The plaintiff argues that Drs. Obolsky and Weine improperly made the analogy that because the plaintiff could function as an employee of a community college, he could function as a police officer. A review of the record demonstrates that neither doctor made this analogy. Dr. Obolsky cited the defendant's ability to perform effectively in his current employment as evidence to support his determination that the plaintiff was fabricating his current experience of mental health symptoms. Dr. Weine opined that the plaintiff's current mental health issues should not prevent him from performing full-time police work or any other type of work. Neither doctor concluded that he could work as a police officer because he could work at a community college.

¶ 23 The plaintiff's final argument is that the Board's determination is in violation of statutory requirements. Specifically, the plaintiff notes that the Pension Code does not authorize a board to terminate a pension, once given, based on evidence that the pensioner was never disabled.

Hoffman v. Orland Firefighters' Pension Board, 2012 IL App (1st) 112120, ¶ 31. Rather, the Code requires that proof of recovery be shown. *Id.*; 40 ILCS 5/3-116 (West 2014). The plaintiff argues that neither Dr. Obolsky nor Dr. Weine determined that he had "recovered" from his disability. We disagree. In his July 12, 2013 report, Dr. Obolsky stated that the plaintiff was "now fabricating his symptoms" and that his mental condition "has improved since previous evaluation to such a degree as to allow him to engage in full time gainful employment." Dr. Obolsky also wrote that the plaintiff "fabricates his current experience of mental symptoms, symptoms that he has experienced in the past." Dr. Obolsky concluded that the plaintiff "has already reached a degree of improvement that allows for full time gainful employment." Accordingly, Dr. Obolsky clearly concluded that the plaintiff had recovered from his disability. Dr. Obolsky never stated in his July 12, 2013 report, or any report thereafter that his determination that the plaintiff was no longer disabled was based on a belief that the plaintiff was never disabled.

¶ 24 Similarly, Dr. Weine acknowledged that the plaintiff suffered from anxiety and ADHD but determined that the conditions were not at the point of being disabling. Dr. Weine also found that the plaintiff had suffered from major depression in the past but that his symptoms had improved with treatment. Dr. Weine never stated that the plaintiff was fit for police duty because he was never disabled to begin with. Rather, Dr. Weine stated that the plaintiff's current conditions should not prevent him from performing full time police work or any other type of work.

¶ 25 For these reasons, the Board's finding that the plaintiff was no longer disabled and its corresponding termination of his disability pension was not against the manifest weight of the evidence.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, the judgment of the circuit court of Kane County is reversed.

¶ 28 Reversed.