2016 IL App (2d) 151168-U
No. 2-15-1168
Order filed September 14, 2016

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JEFF LARSEN,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 15-MR-77
	)	
THE BOARD OF TRUSTEES OF THE	)	
BARRINGTON FIREFIGHTERS' PENSION	)	
FUND, JOHN MATLACHOWSKI, in His	)	
Official Capacity as Board President, and THE	)	
VILLAGE OF BARRINGTON,	)	Honorable
	)	Christopher C. Starck,
Defendants-Appellants.	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The Board's decision to deny plaintiff a line-of-duty disability pension and an occupational disease disability pension was not against the manifest weight of the evidence. Therefore, the circuit court's judgment reversing the Board's decision was reversed.

¶ 2 Plaintiff, former firefighter Jeff Larsen, sought disability benefits from the Board of Trustees of the Barrington Firefighters' Pension Fund (Board) based upon a respiratory condition that manifested symptoms during three work incidents in April 2013. The Board allowed the

Village of Barrington (Village) to intervene. After hearing, the Board denied plaintiff's request for a line-of-duty disability pension, as well as his alternate request for an occupational disease disability pension, but granted his request for a non-duty disability pension. The Board found that the workplace incidents that plaintiff maintains "caused" his disability merely triggered the symptoms of a pre-existing condition, and it further found that the workplace incidents neither caused nor contributed to the condition. On administrative review, the circuit court reversed the Board's decision and awarded plaintiff both a line-of-duty disability pension and an occupational disease disability pension. The Board and the Village now appeal, contending that the Board's decision was not against the manifest weight of the evidence. For the reasons that follow, we reverse the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff Larsen became a firefighter for the Village of Barrington Fire Department in January 1998. During his fifteen years as a firefighter, plaintiff responded to 38 structure fires. Plaintiff wore a self-contained breathing apparatus (SCBA) every time he was in a structure fire, but he did not always wear a SCBA during salvage and overhaul operations.

¶ 5 On May 17, 2013, plaintiff filed a written application for disability benefits with the Board. Therein, he sought a line-of-duty disability pension pursuant to section 4-110 of the Illinois Pension Code (Code) (40 ILCS 5/4-110 (West 2012)), and in the alternative, an occupational disease disability pension under section 4-110.1 of the Code (40 ILCS 5/4-110.1 (West 2012)). Both forms of disability pensions provide the recipient with a pension equal to 65% of the salary attached to their rank on the date the firefighter is removed from the payroll. Prior to hearing, plaintiff amended his application to include a request for, in the alternative, a non-duty disability pension under section 4-111 of the Code, which entitles the recipient to a

pension of 50% of his or her salary (40 ILCS 5/4-111 (West 2012)). On his application, plaintiff identified his disability as "reactive airway disease," which he stated manifests as "[a]cute respiratory reaction[s] when exposed to products of combustion from synthetic fires, and exertional asthma." Plaintiff listed an incident that occurred on April 18, 2013, as the "cause or onset" of the disability.

¶ 6 The Board held five days of hearings in 2014 regarding plaintiff's disability application. During the proceedings, it received various exhibits into evidence, including plaintiff's personnel and medical records, as well as heard testimony from five witnesses: Plaintiff Larsen, Fire Chief Jim Arie of the Barrington Fire Department, and three independent medical examiners appointed by the Board to examine plaintiff.

¶ 7 Though Plaintiff listed only one specific incident on his disability application as the cause of the disability, Plaintiff attributed his disability before the Board to three separate work-related incidents that occurred in April 2013. The first such incident occurred on April 8, 2013, when plaintiff experienced respiratory difficulty while responding to an electrical fire in a refrigerator kept inside a lab at Good Shepherd Hospital. Plaintiff explained that he was part of the jump crew that staged in the hallway just outside of the lab. He testified that "[t]here was a haze and an odor in the hallway" that caused him to feel "a sensation which felt like somebody [was] pushing on [his] throat with their thumb," and plaintiff started to cough heavily. He testified that although he and his fellow crewmembers were wearing SCBA's, they were not "on air." Following this incident, plaintiff sought treatment from Dr. Keith Gordey, the pulmonologist assigned by his primary care physician. Dr. Gordey assessed a cough and chest pain, and prescribed medication for the symptoms.

¶ 8 After the April 8, 2013, incident, plaintiff gave a recorded statement to a claims representative from the Intergovernmental Risk Management Agency, wherein he described the incident as follows:

> "[W]e had a call at Good Shepherd Hospital with a refrigerator. And we hadn't gotten anywhere, and we actually stayed from the building probably a considerable distance away. There was no smoke or haze or anything, but as we were approaching the area, you could smell something in the air from, you know—there was some byproduct in it. By the time I walked that call, I noticed that I was having the sensation right in my throat. It feels like a ball or something is in your throat. Kind of a burnt, almost a burning sensation, too. Luckily, when we walked up, we were there long enough for someone to walk up and say 'leave, you know you guys are done. You can go home.' So we turned around and left immediately."

¶ 9 When asked at hearing how long he was actually in Good Shepherd Hospital during this call, plaintiff replied: "minutes, probably." The report that was completed for the call indicated that "[t]he crew entered the lab and noticed an odor of burning electrical equipment," which plaintiff confirmed was the haze or odor he had referred to.

¶ 10 Plaintiff testified that he reported his symptoms to Assistant Chief Wenschhof within "a day or so" after the incident, but that he did not fill out a written injury report until requested by Wenschhof "several days later." Plaintiff testified that he submitted a written injury report along with an email explaining why there was a delay in reporting the incident, though neither document was located during the proceedings before the Board or the subsequent administrative review action.

¶ 11 Plaintiff testified that a second incident occurred three days later, on April 11, 2013, when he responded to a call in a fire apparatus that had responded to a fire the prior day. He indicated that when he jumped into the rig, the gear inside of it "reeked of smoke still." The odor caused plaintiff to have a similar sensation to the one he had experienced responding to the refrigerator motor fire, wherein he felt like someone was applying pressure with their thumb on his throat. Plaintiff also coughed more and experienced more anxiety as compared to the refrigerator fire incident. Despite these symptoms, Plaintiff was able to complete the call. He stated that he reported the incident the same day to either Assistant Chief Wenschhof or another assistant chief who was on duty that day. Plaintiff did not complete a written injury report for the April 11 incident until June 4, 2013—more than two weeks after he filed a disability pension application.

¶ 12 The third on-duty incident, which was the only incident that plaintiff cited on his disability application, occurred on April 18, 2013. Plaintiff testified that there was significant flooding that morning, and a call came in reporting that a woman was having difficulty breathing in a car that was stranded in the flood water. Plaintiff arrived at the scene with the rest of his crew, donned the only "mustang suit" that was available, and began to wade through water that was approximately two and a half feet deep for a distance of approximately two-tenths of a mile in order to reach the woman. The rest of plaintiff's crew remained on dry land. When plaintiff reached the woman in her car, he observed that she was in severe distress and looked grave, so plaintiff began to carry her in order to get her to the ambulance. Plaintiff estimated that she weighed approximately 130 pounds. After carrying the woman about one-tenth of a mile, plaintiff began to have breathing problems, became very weak, and experienced tunnel vision. Plaintiff then requested assistance from a crewmember, who helped him carry the woman. Once

plaintiff, his crewmember, and the woman reached the next patch of water, plaintiff opted to carry her by himself because he was wearing the mustang suit. As he progressed through the floodwater, he again experienced extreme difficulty. He once again requested assistance from his fellow crewmember, but he went down with the woman just before the crewmember could reach them. With the help of his crewmember, they were able to keep the woman's head above the water. They eventually reached dry land, and plaintiff removed the woman's fur coat, which had become waterlogged. Plaintiff asked a fellow firefighter to bring the cot as close as possible to him and the woman, because plaintiff continued to experience difficultly with his vision and breathing, and "panic started setting in." By the time they reached the cot, plaintiff was on all fours because he did not have the strength to stand. After the woman was placed on the cot, plaintiff crawled on all fours to the back of the ambulance, where he sat in the captain's chair and tried to regain his composure. Plaintiff was not observed coughing during this incident, but he was described by a crewmember as appearing "tired and out of breath." As time went on, the crewmember reported that plaintiff "appeared to speak easer and was less out of breath."

¶ 13 At the scene, plaintiff denied needing medical attention, and told a crewmember that he was just exhausted from carrying the woman through the water and not getting any sleep the prior night. Plaintiff testified that he was "doing a lot in [his] power to not make this into an ordeal," and "was doing [his] best to try and just play it off as much as possible." By the time the call was completed, it was past his 24-hour shift, so plaintiff returned to the station, gathered his gear, and went home. Plaintiff testified that he continued to cough after he returned home, so he scheduled an appointment to see Dr. Gordey later that same day. As the hours passed, he began to feel better, but Dr. Gordey gave him an Albuterol nebulizer treatment.

¶ 14 At the request of the Village, plaintiff was pulled from active duty following this incident, and was sent to Dr. Daniel Samo on May 8, 2013, for an independent medical examination. Dr. Samo diagnosed plaintiff with reactive airway disease, and opined that he could not perform many of the tasks that a firefighter would ordinarily perform. He also restricted plaintiff from being exposed to products of combustion or other respiratory irritants, as well as restricted him from performing work that requires more than mild physical exertion. These restrictions effectively limited plaintiff to light-duty until his medical providers could complete his medical workup and until plaintiff could meet the physical demands of the job.

¶ 15 On May 17, 2013, plaintiff filed an application for disability benefits with the Board, wherein he sought a line-of-duty disability pension under section 4-110 of the Code (40 ILCS 5/4-110 (West 2012)), or in the alternative, an occupational disease disability pension pursuant to section 4-110.1 of the Code (40 ILCS 5/4-110.1 (West 2012)). Plaintiff continued to work for the fire department on light-duty after filing the application.

¶ 16 While on light-duty, plaintiff testified that he became symptomatic on three occasions. On May 24, 2013, while plaintiff was looking for a box of photographs amongst old gear in the loft, he developed a cough. The cough continued for a few hours after he returned to his desk, and a lieutenant recommended that he go home for the day. The second and third light duty occurrences were both on June 3, 2013, when plaintiff began coughing while driving in staff vehicles.

¶ 17 On June 4, 2013, after he had filed for disability pension benefits, plaintiff submitted four injury reports to Assistant Chief Wenschhof for the incidents that occurred on April 11, 2013 (coughing triggered by odor of smoke on gear in rig), May 24, 2013 (coughing triggered while searching for photographs in loft near old gear), and both incidents that occurred on June 3, 2013

(coughing triggered while driving in staff vehicles). Plaintiff contemporaneously submitted a memo, wherein he stated as follows:

> "I have included 3 [*sic*] [injury reports] for respiratory reactions I have had over the past few weeks. I apologize for the delay in submitting these [reports], however, I did not realize it was necessary until I noticed there was a pattern developing. After being in 2 different vehicles yesterday, and having similar reactions, I realized there was a trend forming. I also have not had any similar reactions outside the department. I hope this has not caused any inconvenience. I will be sure to document all future reactions immediately."

¶ 18 At the request of the Village, plaintiff was evaluated by Dr. Terrence Moisan. Plaintiff told Dr. Moisan that his wife had "noted a cough" for "quite awhile," and that she had also observed a nocturnal wheeze. In his report of August 14, 2013, Dr. Moisan described plaintiff's symptoms as "a protracted dry cough" that emerged gradually, "long before" the April 2013 work incidents, and noted that the cough was not preceded by any specific illness or an identifiable exposure. He noted that plaintiff's cough was worse when he was exposed to irritants, such as the "perfume that his wife may wear or exposure to turnout gear that has been around a fire."

¶ 19 Dr. Moisan opined that plaintiff's "cough generator" is somewhere in plaintiff's airways, and that he likely suffers from "airway sensory hyperactive syndrome," which he described as having an exaggerated, "heightened sense of cough" around low level odors without symptoms of asthma. Dr. Moisan's report noted that there was "insufficient evidence to suggest that this is a work-acquired disorder," and recommended that plaintiff begin an empiric trial of anti-reflux medication and a more aggressive inhaled corticosteroid program.

¶ 20 With respect to plaintiff's work abilities, Dr. Moisan stated in his report that although plaintiff has no defined medical condition that precludes him from his firefighter duties, he commented that "if [plaintiff] has significant cough upon exposure to minor irritants, this may preclude the effective and safe use of SCBA and the performance of his duties, particularly while working on ladders or at heights where cough can cause syncope. Therefore, I would restrict these duties based on his current cough, irrespective of the underlying etiology, at least until it is further investigated and perhaps resolved." Plaintiff testified that he began to follow Dr. Moisan's treatment recommendations and began treatment for reflux.

¶ 21 As the result of Dr. Moisan's report, and at plaintiff's own request, plaintiff's light-duty assignment was discontinued on September 8, 2013. According to plaintiff, he wished to return to full duty in order to avoid losing pay.

¶ 22 Plaintiff returned to full duty on September 10, 2013, at 8:00 a.m. By 9:45 a.m., plaintiff reported that he began to have breathing problems similar to those he had experienced in the past—coughing and a sensation of pressure on his throat. Plaintiff testified that his coughing was triggered while doing a gear check in the front line engine, which he testified "smelled pretty heavy of smoke." Plaintiff was sent home, and he has not returned to work in any capacity with the Barrington Fire Department since that day.

¶ 23 Plaintiff testified that he had not found any triggering events for his symptoms outside of the fire department, and that he had no symptoms or reactions since September 10, 2013—the day he left the fire department. Plaintiff further testified that he was "off all meds," but that his wife carries an inhaler for him "in case there's a problem."

¶ 24 The Board also heard testimony from the Fire Chief of the Barrington Fire Department, Jim Aire. Chief Aire testified that the organizational structure of the fire department changed

dramatically in January 2014. Prior to that time, the Village had an intergovernmental agreement with the Barrington Countryside Fire Protection District, wherein the fire department was composed of three separate fire stations that provided fire protection services for approximately fifty square miles. By June 2013, Chief Aire explained, it became evident that a new agreement would not be reached, that the parties would split, and that a reduction in the fire department's workforce based on seniority would result. Though plaintiff was not formally notified that he was at risk for being laid off, Chief Aire testified that the conflicts between the Village and the fire protection district were widely known in the fire house, that there was a lot of speculation regarding the number of firefighters that would keep their jobs, and that the firefighters were well aware of their seniority within the department. He further explained that in the late summer or early fall of 2013, the number was set as to how many firefighters would remain employed, and plaintiff was on the list of people to be laid off. It was not until two lieutenants left to pursue other employment in the fall of 2013 that plaintiff moved up to the list of people who would keep their jobs. As of January 2014, the Barrington Fire Department had reduced staff and was operating just one fire station with a coverage area of approximately five square miles.

¶ 25 Chief Aire also testified as to the protocol for clearing gear after a fire. He indicated that gear is run through a specially-designed commercial grade washing machine after every significant fire, and that gear is washed annually regardless of exposure to contaminants. Firefighters are able to wash their gear whether they are on duty or not, and that if a firefighter washed his or her own gear while on duty, they could wear the gear of an off-duty firefighter of comparable size. Firefighters on shift typically wash the gear for firefighters who were off duty.

¶ 26 With respect to plaintiff's work incidents, Chief Aire testified that he instructed Assistant Chief Wenschhof to prepare a memorandum regarding the events of the April 18, 2013, flooding

incident. The report was completed on April 26, 2013, and it was upon review of this report that Chief Aire first learned that plaintiff was having breathing difficulties and that he was being treated by a pulmonologist. Chief Aire also learned that Wenschhof had withheld information and documentation from him regarding plaintiff's prior respiratory issues, including the refrigerator fire incident from April 8, 2013, and the April 11, 2013, incident wherein plaintiff began to cough after being near gear that "reeked of smoke still."

¶ 27 Chief Aire also testified that he observed plaintiff coughing while on duty on July 10, 2013, wherein plaintiff began coughing heavily while walking through the bay because turnout gear was left on the floor. Chief Aire testified that any residue that would have been on the turnout gear would have been minimal.

¶ 28 Chief Aire further testified as to plaintiff's most recent performance evaluation. In an evaluation completed on May 6, 2013, plaintiff was given a rating of 2.5 out of 4 for attendance because plaintiff had used 160.25 hours of sick time in 2012—more than two and a half times the department average for that year.

¶ 29 The Board also heard testimony and considered reports from three independent medical examiners appointed by the Board pursuant to section 4-112 of the Code (40 ILCS 5/4-112) (West 2014)). The physicians were each asked to opine as to whether plaintiff was disabled due to an act of duty or from the cumulative effects of acts of duty, and whether plaintiff suffered from an occupational disease that resulted from the fire service.

¶ 30 One such physician was Dr. David J. McElligott, a board-certified physician in internal and pulmonary medicine in the private practice of pulmonary medicine and critical care. He examined plaintiff on January 13, 2014, and thereafter provided a written report and testimony to the Board. In his report, Dr. McElligott stated that plaintiff is permanently disabled, citing

"airways obstruction/small airways disease" as his disability. Dr. McElligott found that plaintiff did not suffer from this condition when plaintiff was hired, and concluded that the disability was the result of, or caused by, his duties as a firefighter. Dr. McElligott noted that plaintiff had undergone multiple evaluations by occupational physicians and pulmonary specialists, and that a consistent finding among the physicians was a decrease in the measurements of his small airways. Dr. McElliott's report stated as follows:

> "Mr. Larsen is a nonsmoker and has no past history of airways obstruction. In point of fact, his 2009 spirometry was normal. He has had multiple occasions where he has been exposed to smoke and particulate matter/fumes in the course of his employment. I have no other explanation for the development of appreiably [*sic*] abnormal spirometry with evidence of small airways obstruction than this work exposure. *** No one particular exposure stands out, but I believe it is a cumulative effect."

¶ 31 At the hearing, Dr. McElligott explained that small airways disease is a variant of asthma, which makes plaintiff's airways more sensitive to inhaled irritants. When asked whether his small airway disease was work related, he reiterated that his conclusion was based predominantly on the lack of any other explanation for the development of the disease. Dr. McElligott testified that he used the process of elimination and the knowledge that plaintiff's occupation is associated with airways disease to reach his opinion. He indicated that he relied on the flooding event of April 18, 2013, to conclude that plaintiff was disabled, even though he was unaware of any particular irritants at that incident. He agreed that plaintiff had a "baseline problem" before April 2013, but that he was uncertain when, between 2009 and 2012, plaintiff's disability developed. Though he testified that he could not conclusively state that plaintiff's small airway disease was work related, Dr. McElligott concluded that, within a reasonable degree of medical

certainty, plaintiff's exposure to irritants at work was at least a causative factor in his disability. He also testified that plaintiff is "probably sensitive now to many things."

¶ 32 The Board also heard testimony from Dr. Terrence Moisan, a board certified physician in internal medicine, pulmonary disease, and occupational medicine. Dr. Moisan had evaluated plaintiff and issued reports on August 14, 2013, November 24, 2013, and January 28, 2014. Consistent with his reports, Dr. Moisan testified at hearing that plaintiff likely suffers from airway sensory hyperactivity. He opined that plaintiff's disorder "seemed to be kind of a *de novo* onset quite some time ago of an intermittent cough, and it became more accentuated over the last year," but he noted that the clinical manifestation of the disorder began "when the cough became incessant."

¶ 33 Dr. Moisan stated that plaintiff's protracted dry cough had a gradual onset that long predated the April 2013 incidents. He found plaintiff's cough to be progressive, and noted that other reported irritants outside of the workplace had triggered plaintiff's cough, such as the perfume that plaintiff's wife wore. As the progression of the cough was not the result of any particular exposure, Dr. Moisan opined that plaintiff's condition was not the result of any work-related exposure. He further testified that the plaintiff's records did not present him with any type of work exposure that would be biologically likely to cause plaintiff's condition. Absent evidence of any such exposure, Dr. Moisan's opinion was that cumulative exposures were not an issue in plaintiff's case, and that plaintiff's airway sensory hyperactivity was neither work related, nor caused by the cumulative effect of acts of duty.

¶ 34 Dr. Moisan testified that he determined that plaintiff had airway sensory hyperactivity, as opposed to reactive airways dysfunction syndrome (RADS), based on the fact that plaintiff did

not have any reaction to a Methacholine study (which Dr. Moisan described as a "stress test for the lungs") and because he did not respond to asthma medication. He elaborated as follows:

> "[A]n individual who has reactive airways dysfunction [syndrome], which is the physiologic equivalent of asthma, have [*sic*] positive Methacholine studies showing that their airways go into spasm. And when the airways go into spasm, that's the physiologic equivalent of an asthma attack. And that's what [RADS] refers to. Now, a lot of physicians aren't aware that there are two different disorders, and they label everybody who coughs as having [RADS] when, in fact, without Methacholine positivity, response to [asthma] medications, and things like that, you really cannot say that. ***[P]eople who have a heightened sense of cough around very low-level perfumes and odors *** but who are not clearly asthmatic, we say they have airway sensory hyperactivity."

¶ 35 With respect to plaintiff's spirometry, which is a breathing test that measures lung function, Dr. Moisan noted that his 2009 spirometry was normal, and he described plaintiff's 2012 spirometry as "borderline to very early obstruction." He noted that changes in spirometry test results can be caused by a number of reasons, including severe reflux, respiratory viruses, and pneumonia. He also noted that spirometry changes may not show up for months, and that it depends on when the spirometry is conducted.

¶ 36 Dr. Moisan opined that the two instances in which plaintiff reported being exposed to odors or fumes—the April 8, 2013, refrigerator fire, and the April 11, 2013, residual odor on turnout gear—confirm that plaintiff has airway sensory hyperactivity. The exposures, he explained, would certainly cause someone with that disorder to have a coughing reaction. With respect to the April 18, 2013, flooding incident, however, Dr. Moisan testified that airway sensory hyperactivity was not the cause of the plaintiff's shortness of breath because there was

no identified trigger or exposure that preceded it. Instead, Dr. Moisan stated that "it remains speculative as to why he was short of breath that day. I don't think in the medical records there was any real finding."

¶ 37 Dr. Moisan testified that, in his opinion, plaintiff would be in the same medical condition even if he was not a firefighter. Dr. Moisan ultimately concluded that plaintiff was disabled to the point that he could not perform his duties as a firefighter, but he did not think that plaintiff's condition would be permanent.

¶ 38 The third physician was Dr. Edward R. Garrity, professor of medicine and the vice chairman for clinical operations at the University of Chicago. He evaluated plaintiff on October 4, 2013, and concluded that he suffered from reactive airways dysfunction syndrome (RADS), though he was unsure if the disability would be permanent. At hearing, Dr. Garrity described RADS as "a diagnosis of respiratory difficulties manifested by either cough or wheezing or difficulty breathing due to some relatively ill-defined exposure frequently, sometimes better defined. But the situation is that the inhaled substance leaves the airways highly reactive to other substances that can then cause problems upon exposure." He agreed that RADS generally results from either a single exposure to a relatively high level of irritant or chemical, or repeated lower doses of irritants or chemicals.

¶ 39 Dr. Garrity stated in his report that plaintiff's respiratory condition began when he was "exposed to some burning material (including a refrigerator) in December of 2012 [*sic*] when his syndrome began." Dr. Garrity acknowledged that some of the dates of events that he had did not match the medical records or the other doctors' reports. At hearing, Dr. Garrity testified that his understanding was that plaintiff was present when a refrigerator was on fire, at which plaintiff was exposed to a single significant exposure that he described as a "cloud of smoke." He also

testified that plaintiff's medical history did not include any prior events or exposures that led to respiratory symptoms, and that plaintiff had no symptoms prior to the refrigerator fire. He reported that the plaintiff told him during the evaluation that forced exhalation, vigorous exercise, smoke, and sudden changes in breathing trigger his coughing reactions. Dr. Garrity concluded that plaintiff's disability is the result of the performance of acts of duty or the cumulative effects of acts of duty related to his employment as a firefighter, at least in part because plaintiff did not have any prior respiratory issues.

¶ 40 When asked at hearing about Dr. Moisan's diagnosis of airways sensory hyperactivity, Dr. Garrity testified that the disease is very similar to RADS, and that he did not seriously disagree with Dr. Moisan's report, but that he reached a different conclusion as to whether the plaintiff's condition was work related. Dr. Garrity stated that his opinion was based on the facts as he recorded them, and he admitted that he may not have reviewed the entirety of plaintiff's medical records.

¶ 41 On September 17, 2014, the Board unanimously denied plaintiff's request for line-of-duty disability benefits, as well as his request for occupational disease disability benefits, but awarded plaintiff a non-duty disability pension under section 4-111 of the Code (40 ILCS 5/4-111 (West 2014)) in a written decision issued on December 9, 2014. The Board commented that plaintiff's inconsistent reporting and lack of candor regarding off-duty triggers negatively affected his credibility, and also found Dr. Moisan's conclusions regarding causation to be more reliable than the other two testifying physicians. On administrative review, the circuit court reversed the Board's decision, and awarded plaintiff both a line-of-duty disability pension and an occupational disease disability pension.[1] In so ruling, the circuit court concluded that Dr.

[1] We observe, as do the parties, that the circuit court improperly awarded plaintiff two

Moisan's opinion, that plaintiff's condition was not work related, was not credible or supported by the evidence. The Board and the Village now appeal from the circuit court's judgment, contending that the Board's decision to award plaintiff only a non-duty disability pension was not against the manifest weight of the evidence.

¶ 42 II. ANALYSIS

¶ 43 Under section 3-148 of the Illinois Pension Code (40 ILCS 5/3-148 (West 2014)), judicial review of a decision made by a pension board is governed under the terms of the Administrative Review Law (735 ILCS 5/3-101, *et seq*. (West 2014)). In administrative cases, our role is to review the decision of the administrative agency, not the determination of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006). Therefore, our review in the present case is limited only to the decision of the Board and, under the Administrative Review Law, we may only consider evidence that was originally presented to the Board. On administrative review, it is not this court's function to reweigh evidence or make an independent determination of the facts. *Board of Education of Round Lake Area School. v. Community Unit School District No. 116*, 292 Ill. App. 3d 101, 109 (1997). The "findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct." 735 ILCS 5/3-110 (West 2014). The instant appeal concerns whether plaintiff's employment as a firefighter was, at the very least, a causative factor that contributed to his disability—this is a question of fact. As such, we must defer to the Board on questions of fact unless its findings are against the manifest weight of the evidence, meaning that the opposite

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pensions. The intent of Article 4 of the Illinois Pension Code is to provide a firefighter with a pension upon retirement, disability, or the suffering of an occupational disease, but it is not intended to provide duplicate pensions to one single firefighter. *Markham v. Board of Trustees of Kankakee Fireman's Pension Fund*, 198 Ill. App. 3d 602, 604-05 (1990).

conclusion is clearly evident. *Carrillo v. Park Ridge Firefighters' Pension Fund*, 2014 IL App (1st) 130656, ¶ 21. If evidence contained in the administrative record is supportive of the Board's factual conclusions, we may not disrupt those conclusions, even where the opposite conclusion is reasonable. *Carrillo*, 2014 IL App (1st) 130656, ¶ 21. Even then, the deference afforded to the decision of the administrative agency is not boundless. *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 507 (2007). Where the decision of an administrative agency is arbitrary and capricious, a reviewing court should not hesitate to reverse the agency's decision. *Pierce v. Board of Trustees of Police Pension Fund of City of Waukegan*, 177 Ill. App. 3d 915, 917 (1998).

¶ 44 In order to be entitled to a line-of-duty disability pension, the Code provides that a firefighter must establish that he or she is physically or mentally permanently disabled "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." 40 ILCS 5/4-110 (West 2012). In other words, an applicant must establish a causal connection between his or her disability and an act of duty. *Ryndak v. River Grove Police Pension Board,* 248 Ill. App. 3d 486, 489 (1993). An act of duty is defined as "[a]ny 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). A "permanent disability" is defined in the Code as "any physical or mental disability that *** can be expected to last for a continuous period of not less than 12 months." 40 ILCS 5/4-105b (West 2012).

¶ 45 With respect to an occupational disease disability pension, section 4-110.1 of the Code provides that an active firefighter with five or more years of service who is unable to perform his

or her duties in the fire department by reason of heart disease, stroke, tuberculosis, or any disease of the lungs or respiratory tract resulting from their service as a firefighter is entitled to an occupational disease disability pension. 40 ILCS 5/4-110.1 (West 2012).

¶ 46 The plaintiff to an administrative proceeding bears the burden of proof, and relief will be denied if that burden is not met. *Marconi*, 225 Ill. 2d at 532-33. "A claimant need not prove that a duty-related accident is the sole cause, or even the primary cause, of his disability" in order to obtain a line-of-duty disability pension, "although a sufficient nexus between the injury and the performance of the duty must exist." *Carrillo*, 2014 IL App (1st) 130656, ¶ 23. The claimant need only prove "that the duty related accident is a causative factor contributing to the claimant's disability." *Id.* Indeed, a line-of-duty pension may even be based upon the duty-related aggravation or exacerbation of a claimant's preexisting physical condition. *Id.*; *Scalise v. Board of Trustees of Westchester Firemen's Pension Fund*, 264 Ill. App. 3d 1029, 1033 (1993); *Village of Oak Park v. Village of Oak Park Firefighters Pension Board*, 362 Ill. App. 3d 357 (2005). "Even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003).

¶ 47 On appeal, plaintiff contends that the Board misapplied Illinois law by considering only whether the three April 2013 incidents to which plaintiff attributed his disability were the "sole cause or genesis" of his lung condition. Though plaintiff acknowledges that the Board made a written finding that his firefighting duties were not a contributing cause to the disorder, he asserts that the Board reached this conclusion only by disregarding competent medical testimony.

Specifically, he argues that all of the examining physicians—including Dr. Moisan—concluded that April 2013 incidents were a "causative factor" in his disability.

¶ 48 In support thereof, plaintiff points to Dr. Moisan's testimony that plaintiff had not experienced any symptoms that prevented him from performing his firefighting duties until the April 2013 work incidents. Plaintiff also points to a portion of Dr. Moisan's testimony wherein he stated that plaintiff's April 2013 exposures "aggravated the symptoms." Thus, argues plaintiff, Dr. Moisan opined that the April 2013 work exposures were a causative factor in plaintiff's disorder because these three incidents "aggravated the underlying condition resulting in his symptoms which led to his disability."

¶ 49 Contrary to plaintiff's assertion, a review of Dr. Moisan's reports and his complete testimony before the Board reveals that he was not of the opinion that plaintiff's occupational exposures in April 2013 were a causative factor in his condition. Dr. Moisan plainly stated that plaintiff's cough had a gradual onset, and did not result from any particular exposure. Since the progression of the cough did not result from any exposure, he opined that plaintiff's condition was not the result of any work-related activity. Moreover, he indicated that plaintiff's records did not present him with any type of work exposure that would be biologically likely to cause plaintiff's condition and that, in the absence of any such exposure, his opinion was that cumulative exposures were not an issue in plaintiff's case.

¶ 50 Plaintiff's mischaracterization of Dr. Moisan's opinion is best refuted by Dr. Moisan's own description of airway sensory hyperactivity. He explained that a person with the disorder tends to cough when exposed to a much, much lower level of irritants as compared to someone without the disorder. In other words, the disorder manifests as a "heightened sense of cough" around low level odors without symptoms of asthma. It is not the exposure to the irritants that

cause the person to cough, but it is having the disorder that makes that person more susceptible to cough in the first place. By way of example, Dr. Moisan analogized it to being prone to sunburn, stating "[i]f you go out in the sun and you're prone to sunburn, you're going to get a sunburn. That doesn't mean [that] being out in the sun caused your skin to be sunburn prone." He also analogized it to someone with severe heart disease developing chest pain while running on a treadmill, stating:

> "[the] chest pain was a manifestation of the underlying heart disease. In other words, the treadmill didn't cause the coronary disease—it just showed that it was present. So, similarly here, if somebody with airway sensory problems gets around perfumes, dust, [and] irritants, they will cough. But it didn't give them their cough. The cough came out because of the exaggerated response that a normal person might not have."

¶ 51 Dr. Moisan was also asked at hearing to explain the level of exposure that the plaintiff may have had when he was near gear that smelled like smoke and began to cough on April 11, 2013. Dr. Moisan explained:

> "When we gauge level of exposure *** we look for significant exposures that cause—that cause now, not trigger, but cause—a respiratory illness. These are generally large exposures, often inadvertent. The mask comes off. They're in the middle of a fire, things like that. That's quite different than exposures which can trigger symptoms. Those are two different things. Again, the analogy with the sunburn. So when I talk about significant, we have to look at surrogates, right, because we can't measure exactly. So we have to look at what is common sense after a certain type of exposure. Someone who is exposed to turnout gear that may have some residual odors on it and coughs, that is [a] minimum exposure. That didn't cause the disease but, yes, it caused the cough."

¶ 52 Dr. Moisan also indicated that airway sensory hyperactivity is not a condition that frequently develops in firefighters. Finally, he opined that plaintiff would be in the same condition even if he was not a firefighter. Though plaintiff is correct that Dr. Moisan stated that the April 2013 incidents "aggravated the symptoms," in light of his complete testimony and written reports, it is clear that Dr. Moisan's opinion was that the April 2013 work incidents merely "triggered" coughing reactions—not that these exposures were a causative factor that exacerbated plaintiff's condition.

¶ 53 The record contains conflicting evidence and medical opinions, as Drs. McElligott and Garrity both opined that plaintiff's employment as a firefighter was at least a causative factor in his condition. Notwithstanding, the Board was not required to accept the majority view of the medical examiners. Expert testimony, like other testimony, is to be weighed by the trier of fact. *Village of Oak Park*, 362 Ill. App. 3d 357, 359 (2005). As the finder of fact, it was the Board's function to assess the credibility of the records and the testimony of the witnesses, and to determine the appropriate weight to be given to the evidence. *Marconi*, 225 Ill. 2d at 544. It is the Board's responsibility to weigh the evidence, determine the credibility of the witnesses, and resolve conflicts in the testimony. *Thigpen v. Retirement Board of Firemen's Annuity & Benefit Fund of Chicago*, 317 Ill. App. 3d 1010 (2000).

¶ 54 Here, the Board reconciled the conflicting evidence and medical opinions in a lengthy written decision. Therein, the Board found Dr. Moisan to be more thoughtful and thorough in his review of plaintiff and the relevant evidence than the other two physicians. It noted that Dr. Moisan gave significant consideration to plaintiff's medical evaluations and tests, as well as his familiarity with the fire service and the hazards firefighters are exposed to.

¶ 55 The Board also outlined the reasons it afforded less weight to the opinions of the other testifying physicians. Specifically, the Board indicated that it was not persuaded by Dr. McElligott's opinion that plaintiff's lung condition was triggered on April 18, 2013 (the flooding incident), when no irritant was in the air, and also noted that Dr. McElligott's conclusion that plaintiff's condition was related to his employment as a firefighter was based primarily on the lack of any other explanation.

¶ 56 With respect to Dr. Garrity, the Board commented that it found his opinion less reliable for several reasons. It noted that he repeatedly misstated the dates and significance of the key incidents in his written report and during his testimony before the Board, stating that he had a "poor grasp of the timeline and [the] details of the Plaintiff's symptoms." The Board also noted that Dr. Garrity's testimony suggested that he believed the refrigerator event was a relatively significant exposure, which the Board commented was in conflict with other evidence regarding the incident, including plaintiff's own account. Coupled with Dr. Garrity's testimony that he may not have reviewed the entirety of plaintiff's medical records, the Board found that his conclusions regarding plaintiff's disability were "less reliable."

¶ 57 The Board's reliance on Dr. Moisan's opinion over that of the other testifying physicians fell within its province as the finder of fact, was reasonable, and was supported by the record. Though the medical opinions in this matter are not diametrically opposed, the Board weighed the medical testimony, and specifically found Dr. Moisan's opinion to be the most credible based on his thoroughness and consideration of multiple aspects of plaintiff's medical history. In light of all of the testimony and reports considered by the Board, we cannot say that the Board's reliance on Dr. Moisan's opinion regarding the issue of causation over the opinions of the other physicians was against the manifest weight of the evidence. We therefore reject plaintiff's

assertion that the Board considered only whether plaintiff's April 2013 incidents were the "sole cause" of his condition, as the Board properly conducted a causative factor analysis, upon which the Board relied heavily on Dr. Moisan's findings and conclusions.

¶ 58 In a similar vein, plaintiff asserts that he sufficiently demonstrated that the work-related incidents in April 2013 exacerbated his underlying airway condition, which resulted in his suspension from full and unrestricted duties as a firefighter. While plaintiff's cough has been uniformly identified by medical professionals as an airway condition, it is ultimately the causation of this condition that determines plaintiff's eligibility for disability pension benefits. As outlined *supra*, however, the Board reasonably relied on Dr. Moisan's opinion that plaintiff's airway condition did not stem from any act of duty, or cumulative acts of duty, related to his work as a firefighter, and that the April 2013 events merely triggered coughing reactions, rather than caused or exacerbated plaintiff's condition.

¶ 59 Plaintiff additionally argues that the Board did not have a valid basis for finding that he was not credible. Plaintiff particularly takes issue with the Board's comment that he did not immediately report the refrigerator incident, and he relies heavily on the testimony of Chief Aire, who testified as to Assistant Chief Wenschhof's failure to timely notify him of the plaintiff's respiratory problems. After reviewing the record, we note that the Board's written decision does misstate at least some of Chief Aire's testimony regarding the reporting of plaintiff's complaints. Specifically, the Board states that Chief Aire testified that he did not learn of plaintiff's complaints until "sometime during the disability pension process." However, a review of Chief Aire's testimony makes clear that he learned of plaintiff's complaints while reviewing Assistant Chief Wenschhof's April 26, 2013, memorandum—several weeks before plaintiff filed his application for disability benefits.

¶ 60 Notwithstanding the Board's misstatement, plaintiff's argument is a red herring. As a basis for finding plaintiff not credible, the Board did not rely upon the timeline as to when Chief Aire learned of plaintiff's respiratory difficulties, nor Assistant Chief Wenschhof's failure to timely apprise Chief Aire of said difficulties. Rather, the Board's written decision makes clear that it evaluated plaintiff's credibility based solely upon plaintiff's own statements and reporting history of past injuries—not upon the actions of others.

¶ 61 The Board noted that plaintiff did not immediately report the refrigerator incident, which it commented was inconsistent with plaintiff's demonstrated prior propensity to report all on-duty injuries, no matter how minor. Plaintiff testified that he did not report his symptoms to Assistant Chief Wenschhof until "a day or so" after the incident, and that he did not fill out an injury report until "several days later." Even then, plaintiff completed the injury report only after Assistant Chief Wenschhof requested that he do so. The report was never located in this case. Moreover, the Board indicated that it had other concerns with the manner in which plaintiff reported his injuries. For example, the Board found that the timing of plaintiff's June 4, 2013, submission of four written injury reports—for incidents that occurred in April, May, and June 2013—was suspect, given that plaintiff had already filed an application for disability benefits.

¶ 62 The Board also outlined a number of additional reasons it found plaintiff not credible. For example, it noted inconsistencies concerning the alleged triggers of plaintiff's symptoms. Plaintiff testified that only irritants that were present in the workplace trigger his symptoms, yet Dr. Moisan reported that plaintiff complained that his wife's perfume was a trigger. Dr. Garrity noted that plaintiff reported triggers such as forced exhalation, vigorous exercise, and sudden changes in breathing. The Board also commented that plaintiff's insistence that he has no sensitivity to anything outside of the workplace conflicts with Dr. McElligott's expectation that

plaintiff "is probably sensitive now to many things." As a result, the Board specifically found that plaintiff's claim that only those irritants present in the workplace triggered his symptoms was neither plausible nor credible, and thus undermined his credibility. As there is ample evidence in support of the Board's determination that plaintiff was not credible based upon what it found to be inconsistent reporting of workplace incidents and a lack of candor regarding off-duty triggers, we cannot say that the Board's determination was against the manifest weight of the evidence.

¶ 63 Finally, plaintiff asserts that he established his entitlement to a line-of-duty disability pension based upon a chain of events analysis. It is well established that in workers' compensation cases, causation can be established by either medical opinion testimony or by a chain of events that demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability. *International Harvester v. Industrial Comm'n*., 93 Ill. 2d 59, 63 (1982). The standards of the Workers' Compensation Act are applicable in pension cases, as the Pension Code was enacted to provide police officers and firefighters with benefits similar to those provided under the Workers' Compensation Act. *Kellan v. Park Ridge Firemen's Pension Fund*, 194 Ill. App. 3d 573, 581-82 (1990). Moreover, a chain of events analysis may be used to establish that a work-related injury aggravated a claimant's pre-existing condition. *Price v. Industrial Comm'n.*, 179 Ill. App. 3d 186, 193 (1996).

¶ 64 Plaintiff maintains that he was "found to have no problems with his lungs" on December 21, 2012, after a periodic examination conducted in order to obtain clearance to wear a SCBA. Though plaintiff was medically cleared for respirator use as a result of this examination, plaintiff testified that the Village's fire department physician informed him after the exam that there had been a "significant drop-off" in the results of his spirometry compared to the results of his prior

spirometry test, which was conducted in 2009. Dr. Moisan described this December 2012 spirometry as "borderline to very early obstruction," explaining that the results could have stemmed from a variety of causes, such as acid reflux, a respiratory virus, or pneumonia—none of which were related to plaintiff's work.

¶ 65 Moreover, the evidence before the Board established that plaintiff pursued treatment for his lung condition prior to the April 2013 incidents that he asserts caused his disability. On February 4, 2013, Dr. Keith Gordey, a pulmonologist, noted on plaintiff's records that "spirometry shows small airways obstruction." Moreover, Dr. Moisan's diagnosis was based, in part, on the onset of plaintiff's "protracted dry cough" that began "long before" April 2013.

¶ 66 Here, the evidence establishes that the onset of plaintiff's condition began at some undetermined time preceding the April 2013 incidents. Even in the absence of evidence demonstrating that plaintiff's respiratory condition existed prior to April 2013, the Board would not have been required to find a causal connection between the disability and the April 2013 work-related incidents in light of Dr. Moisan's opinion regarding causation. As the evidence before the Board did not demonstrate that plaintiff was in good respiratory health prior to the claimed work incidents, we are not persuaded by plaintiff's chain of events theory.

¶ 67 III. CONCLUSION

¶ 68 For the foregoing reasons, we find that the Board's decision to deny plaintiff a line-of-duty disability pension and an occupational disease disability pension, and instead grant a non-duty disability pension, was not against the manifest weight of the evidence. Accordingly, the judgment of the circuit court is hereby reversed.

¶ 69 Reversed.