2016 IL App (4th) 150502-U

NO. 4-15-0502

FILED
April 5, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

DARYLE D. WILLIAMSON,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
BOARD OF TRUSTEES OF THE POLICE PENSION FUND OF THE CITY OF SPRINGFIELD, ILLINOIS; and RICK DHABALT, ROBERT DAVIDSMEYER, KEN CRUTCHER, JOSEPH PISAREK, WILLIAM MCCARTHY, THOMAS SELINGER, and DONALD KLIMENT, in their respective capacities as present or former members of the Board of Trustees of the City of Springfield Police Pension Fund,	)	No. 14MR430
Defendants-Appellees.	)	Honorable John M. Madonia, Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: Plaintiff, a police officer, was not entitled to a disability pension because he failed to establish that he was disabled within the meaning of the Illinois Pension Code (40 ILCS 5/3-101 to 3-152 (West 2010)).

¶ 2 Plaintiff, Daryle D. Williamson, appeals the judgment of the circuit court affirming the decision of the Board of Trustees of the City of Springfield Police Pension Fund (Board), denying him a disability pension under the Illinois Pension Code (Pension Code) (40 ILCS 5/3-101 to 3-152 (West 2010)). For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff was a police officer with the City of Springfield (City) from March 30, 1988, to October 1, 2011. He served as a patrol officer from 1988 to 1992. Next, he was promoted to detective and served in that capacity until 1999. During his time as a detective, plaintiff worked in the major case unit (homicides) and spent one year working on sex crimes. In 1999, he was promoted to sergeant and continued to work homicide investigations until his 2001 transfer to crime scene services. In January 2002, he transferred to the major offender unit, which focused on burglaries and robberies. In April 2002, he returned to crime scene services. Later in 2002, he was assigned to the operations division. In December 2002, he was promoted to lieutenant and assigned as watch commander. From December 2002 to 2007, he split his time between the duties of administrative lieutenant and shift lieutenant. In 2007, he was promoted to deputy chief of operations.

¶ 5 Between October 14, 2010, and July 19, 2011, plaintiff called in sick on approximately 45 days, alleging illnesses associated with his heart, diabetes, stress, and anxiety. In November 2010, he was demoted to commander because of his use of sick time, and he was assigned to the police academy. In early 2011, he was reassigned to the patrol officer division.

¶ 6 On May 4, 2011, plaintiff failed to qualify for his firearms test and was sent home. Shortly thereafter, plaintiff called in sick every day until he went to Proctor Hospital on June 20, 2011, to receive treatment for alcoholism.

¶ 7 On May 6, 2011, plaintiff filed an application with the Board for a line-of-duty disability pension under section 3-114.1 of the Pension Code (40 ILCS 5/3-114.1 (West 2010)). On May 9, 2011, plaintiff filed an application with the Board for a non-duty disability pension under section 3-114.2 of the Pension Code (40 ILCS 5/3-114.2 (West 2010)). Plaintiff alleged

he suffered from post-traumatic stress disorder (PTSD), depression, and anxiety disorder and was, consequently, unable to perform his duties as a police officer.

¶ 8 On June 20, 2011, plaintiff reported to Proctor Hospital to receive treatment for alcoholism. Plaintiff never returned to work. On October 1, 2011, plaintiff resigned from the City.

¶ 9 Over the course of three hearing dates between May 2013 and June 2013, the Board held hearings on plaintiff's applications for a line-of-duty disability pension and a non-duty disability pension. The issue before the Board was whether plaintiff had a present mental disability that rendered him unable to perform his duties as a police officer and, if so, whether the disability resulted from an act of duty.

¶ 10 A. Independent Medical Evaluations

¶ 11 The Board referred plaintiff to three psychiatrists to perform independent medical evaluations: Dr. Ryan Finkenbine, Dr. N.R. Sarma, and Dr. Lawrence Jeckel. To create each individual report, the psychiatrists used plaintiff's medical records, information provided by plaintiff's self-reporting, and their observations during the in-person interview. Plaintiff's medical records included a history of alcoholism, high blood pressure, diabetes mellitus type 2, high cholesterol, and obesity. Each psychiatrist was also provided with a description for the job title "commander."

¶ 12 1. *Finkenbine's Report*

¶ 13 In Finkenbine's April 23, 2012, report, he opined that plaintiff was not disabled from performing the duties of a "commander." Finkenbine diagnosed plaintiff with PTSD, alcohol dependence, and panic disorder.

¶ 14 According to Finkenbine's report, plaintiff met the diagnostic criteria for chronic PTSD, with the onset of this disorder beginning around 1995, following the second of two early traumatic work-related exposures involving on-the-scene processing of homicide cases. Throughout the course of his employment, plaintiff investigated multiple homicides and other violent cases, which exposed him to trauma that contributed to the development and progression of PTSD. Plaintiff identified many examples of traumas he witnessed involving death, severe injury, and mutilation, which he associated with his feelings of anxiety, fear, shock, sadness, and "a sickening feeling." Additionally, plaintiff would sometimes feel anger or "anguish" over the suffering of victims and admitted he "didn't handle it well." Plaintiff worried whether he was "cut out for this type of work" and experienced anxiety about his career.

¶ 15 When plaintiff was promoted to deputy chief, these feelings occurred less frequently but did continue. He was required to return to crime scenes about once every six weeks in rotation with other administrative officers. Despite the less frequent exposure to traumatic events, his PTSD symptoms persisted. Finkenbine's report identified plaintiff's symptoms referable to PTSD: nightmares, flashbacks, physiologic distress, anhedonia (inability to feel pleasure from activities usually found enjoyable), feeling detached from his family, difficulty falling and staying asleep, and an increased startle response. Chronic PTSD means the symptoms have been ongoing and active for more than three months. Plaintiff's disorder had improved with treatment over the past five or six months but remained active and was moderate.

¶ 16 Finkenbine's report also stated plaintiff met the criteria for a diagnosis of alcohol dependence in early full remission per the Diagnostic and Statistical Manual of Mental Disorders (4th ed., text rev. 2000) (DSM-IV-TR). Plaintiff stated the onset of his alcohol problems

occurred in 1995, coinciding with the onset of PTSD symptoms. Plaintiff stated he was sometimes absent from work due to alcohol but continued to receive "good marks" from his supervisors. Finkenbine explained in his report "in early full remission" means plaintiff has not had any alcohol problems (or use) for more than a month.

¶ 17 Finkenbine also diagnosed plaintiff with panic disorder without agoraphobia. Finkenbine's report indicated the onset of this disorder likely occurred in 1999, when, according to medical records, plaintiff began treatment with Zoloft for panic attacks. Plaintiff's symptoms included anxiousness, sweating, shortness of breath, tremulousness, nausea, and feeling distraught. Finkenbine noted panic attacks were often associated with PTSD and alcohol use. At the time of the interview with Finkenbine, plaintiff's panic disorder was in partial remission.

¶ 18 Finkenbine noted plaintiff had previously been diagnosed by others with adjustment disorder, depression, generalized anxiety disorder, and bipolar disorder. However, he disagreed with those diagnoses based on plaintiff's medical documentation and self-reported symptoms.

¶ 19 Finkenbine opined none of these diagnoses are disabilities for the purpose of the Board's consideration based on the job description for "commander." When Finkenbine asked plaintiff to provide reasons that he believed prevented him from working, plaintiff stated (1) the stress of work worsens his hypertension, and he noted that on two past occasions his blood pressure had reached as high as 230/120; (2) his stress increased "exponentially" while working; and (3) he would confront "dead bodies" if he returned to work, causing him to "lose it." Further, plaintiff stated there would be some work-related precipitants, such as "driving by some places," that would exacerbate his symptoms.

¶ 20 Addressing plaintiff's first two reasons he believed he was prevented from working, Finkenbine noted stress may contribute to his elevated blood pressure and the worsening of his diabetes, but stress is not the cause of hypertension or diabetes. Further, stress does not disable plaintiff from performing his work duties. Regarding plaintiff's third reason for his inability to work, Finkenbine noted that a worsening of his anxiety symptoms, however likely, would result from the work itself but would not disable him from it. Finkenbine stressed the timeline of events:

> "[Plaintiff] had symptoms of PTSD and panic disorder for between ten and fifteen years before he began to have any problems (for any reason) in the workplace. In other words, he *was* functioning during a time when he had the psychiatric illness. Further, according to his report to me, he was promoted, had a clean record, and was considered a stable and reliable officer. In addition, despite that PTSD and panic disorder symptoms worsened over time without treatment, at present, both have improved significantly with treatment and absent any worsening-contribution from alcohol use. It must be asked, if he was functioning during the worst of his symptoms, should he not be functional with fewer symptoms? In fact, alcohol dependence is in full remission and panic disorder is in partial remission. PTSD has improved from severe to moderate. Even if part of the improvement could be attributed to his departure from work, it is

> my opinion that a return to the workplace would not render the anxiety worse than before.
>
> In addition, according to the ["commander"] job duties summary, there is little suggestion that he would be working in the capacity that would re-expose him to crime scene processing in the same manner as occurred when he worked as a detective. Instead[,] the duties are almost entirely administrative." (Emphasis in original.)

¶ 21 Finkenbine stated even if plaintiff's position would require him to process crime scenes or have symptoms precipitated, the two disorders in question have improved after treatment. Thus, it would be unreasonable to conclude that since he was able to perform his duties prior to treatment, he would be unable to do so now. Additionally, since plaintiff's alcohol dependence is in remission, it does not cause him to be disabled or contribute to the worsening of his PTSD or panic disorder. Finkenbine concluded that plaintiff's present symptoms did not disable him.

¶ 22 2. *Sarma's Report*

¶ 23 In Sarma's May 17, 2012, report, she opined (1) plaintiff suffered a mental illness, which made him incapable of working as a police officer; and (2) the disability arose generally while he was working as a police officer performing his given duties. Sarma diagnosed plaintiff with PTSD, depressive disorder or bipolar depressive disorder without psychotic features, panic/anxiety disorder without social phobia, and chronic alcohol dependence in partial remission.

¶ 24 At the time of the report, plaintiff reported experiencing nightmares relating to past events, minimal panic attacks, and bouts of depression and insomnia. According to the report, in 1995, plaintiff began to have symptoms referable to panic and anxiety disorder. Plaintiff's symptoms were a result of witnessing homicide scenes. He began experiencing PTSD symptoms after his participation in investigations. He became an insomniac and began to drink alcohol excessively in order to sleep, resulting in addiction. Sarma noted plaintiff did not seek active treatment for his PTSD symptoms right away and his alcoholism became more disabling. Plaintiff sought treatment for his alcohol dependence in 2010, "and from there on it was all downward." His PTSD symptoms persisted, but the present treatment had provided relief from his depression and panic symptoms "to a degree." Regarding the outcome of future treatments, Sarma expressed concerns about whether plaintiff "may be able to function at all given his multiple physical problems associated with his psychiatric illness, which have the capacity to aggravate his psychiatric symptoms."

¶ 25 Sarma administered the Mississippi scale for PTSD, which is a self-rating scale that is used to show PTSD "in combat individuals and in non-combat veterans not that certain." A score of 107 is definitely positive for combat veterans. Plaintiff scored a 94 in addition to vividly describing his symptoms of PTSD, a positive indication for PTSD per the DSM-IV-TR. The Davidson Trauma Rating Scale also indicated plaintiff had symptoms referable to PTSD. In diagnosing plaintiff's panic disorder, Sarma observed in plaintiff 12 of the 14 symptoms referable to panic disorder as identified in the DSM-IV-TR. Other tests administered indicated plaintiff suffered from anxiety, depression, and alcoholism.

¶ 26 3. *Jeckel's Report*

¶ 27 In Jeckel's June 19, 2012, report, he opined (1) plaintiff presently has a disability that renders him unable to serve in the police department and (2) the disability began while acting in the line of duty as a police officer due to his exposure to traumatic experiences. Jeckel diagnosed plaintiff with PTSD, alcohol dependence, and bipolar II affective disorder.

¶ 28 The report indicated plaintiff's investigations while a homicide detective triggered his PTSD symptoms. In the mid-1990s, he began experiencing insomnia and flashbacks. He increased his alcohol consumption to suppress these symptoms and his drinking became more frequent. Plaintiff was able to achieve brief periods of sobriety but would turn to alcohol to suppress his "painful box of memories." Plaintiff indicated, after being treated at Proctor Hospital in June 2011, he abstained from alcohol.

¶ 29 At the time of the report, plaintiff continued to experience PTSD symptoms and consulted a psychiatrist monthly for medication checks. He still experienced brief flashbacks with tremors once every one to two weeks. He continued to avoid emotionally loaded topics. Additionally, he experienced nightmares once a month and had occasional startle reactions. Jeckel opined, "the symptoms of PTSD impair his ability to perform multiple tasks and adequately organize his thinking." However, plaintiff's life is "now far more 'balanced.' " He is engaged more deeply with his wife and family. He is no longer immersed in the "potentially traumatic business of homicide investigation." Additionally, Jeckel noted plaintiff's PTSD symptoms will fade with time and treatment.

¶ 30 B. Testimony Before the Board

¶ 31 Dr. Terry Killian testified before the Board. Plaintiff retained Killian, an Illinois licensed medical doctor, board certified in general psychiatry, to testify before the Board.

Killian diagnosed plaintiff with PTSD and alcohol dependence based on the same information used for the independent exams. Killian opined that those who suffer from PTSD will persistently avoid anything that reminds them of the trauma. Killian was also questioned regarding the accuracy for such diagnoses. Killian stated the determination for diagnoses of PTSD are much more subjective than objective, *i.e.*, a clearly apparent physical injury.

¶ 32 Killian reviewed the three independent exams prepared by Finkenbine, Sarma, and Jeckel. Killian agreed with all of the reports generally, except for Finkenbine's conclusion plaintiff could return to work. In response to Finkenbine's opinion that plaintiff could return to work because his present symptoms are better than they were when he was working, Killian states in the early years of plaintiff's PTSD, his symptoms were not bad. Killian suggested plaintiff's symptoms progressively worsened, as indicated in 2007 when plaintiff used 16 sick days, in 2008 his anxiety worsened, and in 2010 plaintiff experienced medical problems indirectly related to PTSD and anxiety.

¶ 33 Killian also stated Finkenbine did not consider a June 1, 2012, memorandum concerning the job description for "commander," which stated that every command officer responds in person to every crime scene and emergency. Killian also noted in Finkenbine's report, he stated even if plaintiff had to process crime scenes, his symptoms would not worsen. Killian disagreed with this assessment, stating, "re-exposure to trauma frequently triggers recurrences in PTSD. It's specifically stated in the DSM-IV that recurrences or exacerbations occur upon re-exposure. In conclusion, Killian opined plaintiff was disabled from working and the cause was from exposure to gruesome crime scenes.

¶ 34 Additionally, plaintiff and his wife, Paula Williamson, testified on his behalf and

discussed his symptoms and experiences, as described in the independent exams.

¶ 35 C. The Board's and Circuit Court's Decisions

¶ 36 On April 9, 2014, the Board held that plaintiff was not disabled within the meaning of the Pension Code and he did not have a mental disability that would prevent him from performing the work of a police officer. See 40 ILCS 5/3-114.1, 114.2 (West 2010).

¶ 37 First, the Board addressed Sarma's report and identified the following problems: (1) the report failed to identify a specific, identifiable act of police service which may have caused the alleged mental disorders; (2) plaintiff tested positive for PTSD on the Mississippi scale test because he provided vivid self-reported symptoms; (3) the report failed to address that plaintiff experienced dead bodies and gruesome crime scenes prior to 1995 without any symptoms of mental distress or emotional turmoil; and (4) Sarma failed to identify the criteria for PTSD, depression, and panic/anxiety disorder. Specifically, the Board suggested one symptom of PTSD Sarma ignored is that those that suffer from PTSD persistently avoid anything that reminds them of the trauma, including people and places. In regard to this symptom, the Board stated, in relevant part, as follows:

> "[Sarma's] report fails to consider critical evidence presented at the hearing such as why [plaintiff] would vacation with a past victim's family (Wingers), appear on 48 Hours regarding the Winger case, interview for magazine articles regarding homicides, drive over the Lake Springfield Spaulding Dam, where he found a body, instead of taking an alternative route, his failure to seek medical treatment for [16] years, his promotions

since 1995, his failure to transfer from the homicide unit, his failure to consult with his father and brother, who are or were both police officers, or consult with anyone else regarding his alleged mental health issues."

¶ 38 Next, the Board addressed Finkenbine's report. The Board stressed Finkenbine's opinion that plaintiff functioned adequately during the time he had a psychiatric illness, from 1995 to 2011, and was promoted, had a clean record, and was considered a stable and reliable officer. The Board adopted Finkenbine's conclusion that plaintiff does not have a mental disability that would prevent him from performing the work of a police officer because plaintiff functioned at the time he experienced the worst of his symptoms; therefore, he should be able to function with the present lesser symptoms.

¶ 39 The Board addressed the same problem with Jeckel's report as it did in Sarma's, in that neither psychiatrist identified symptoms of PTSD and failed to address why plaintiff did not persistently avoid people and places reminding him of the trauma.

¶ 40 In addressing Killian's report and testimony, the Board noted in its decision that Killian's report indicated he asked plaintiff if he had looked at PTSD criteria, in which plaintiff responded in the negative in a puzzled and confused manner. The Board found plaintiff's statement to be untruthful. The Board found that prior to Killian's assessment, plaintiff had previously completed a Penn Inventory assessment at the Veteran's Center, which sets forth the criteria for PTSD, and he had three independent exams completed by Finkenbine, Sarma, and Jeckel. Additionally, plaintiff received a book and compact disc (CD) from the U.S. Department of Veterans Affairs regarding PTSD.

¶ 41 In conclusion, the Board stated it gave more weight to the conduct of plaintiff and Finkenbine's report than it did the reports of Sarma and Jeckel and other evaluations. The Board found that plaintiff was not a credible witness.

¶ 42 The Board concluded, in relevant part, as follows:

> "[Plaintiff], a seasoned homicide investigator, instigated an elaborate scheme to obtain disability pension plan benefits by claiming PTSD, depression[,] and anxiety disorder, when in fact, he simply had an alcohol problem causing problems at work with absenteeism. Being on the verge of employment termination, he chose to create a ploy for a pension disability benefit."

¶ 43 On May 7, 2014, plaintiff filed a complaint for administrative review with the Sangamon County circuit court. On May 28, 2015, the court found plaintiff failed to meet his burden of establishing the decision of the Board to deny a disability benefit was against the manifest weight of the evidence or clearly erroneous. Further, the court found the record contained sufficient support to justify the Board's findings and opinions.

¶ 44 This appeal followed.

¶ 45 II. ANALYSIS

¶ 46 On appeal, plaintiff argues the Board erroneously denied him a disability pension because his PTSD disables him from working. The Board argues its decision to deny plaintiff a disability pension was proper because plaintiff does not have a mental disability that would prevent him from performing the work of a police officer.

¶ 47 When reviewing administrative cases, we review the decision of the

administrative agency, not the decision of the circuit court on administrative review. *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 504, 877 N.E.2d 1101, 1112 (2007). We review factual questions under the manifest weight standard, questions of law utilizing a *de novo* standard, and mixed questions of law and fact under the clearly erroneous standard. *Buckner v. The University Park Police Pension Fund*, 2013 IL App (3d) 120231, ¶ 13, 983 N.E.2d 125. This appeal presents a question of fact: whether the evidence of record supports the Board's denial of plaintiff's application for a disability pension. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 534, 870 N.E.2d 273, 293 (2006). As a result, the standard of review is manifest weight of the evidence. *Buckner*, 2013 IL App (3d) 120231, ¶ 13, 983 N.E.2d 125.

¶ 48 An administrative agency's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88, 606 N.E.2d 1111, 1117 (1992). Even if an opposite conclusion is reasonable or the reviewing court might have ruled differently, this will not justify reversal of an administrative agency's decision. *Id.* Therefore, if the administrative agency's decision is supported by the record, it is to be affirmed. *Commonwealth Edison Co. v. Property Tax Appeal Board*, 102 Ill. 2d 443, 467, 468 N.E.2d 948, 958 (1984). Further, "[t]he findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct." (Emphasis added.) 735 ILCS 5/3-110 (West 2010).

¶ 49 The plaintiff, as the applicant for disability pension benefits, has the burden to establish he is entitled to either a duty-related or non-duty disability pension. *Marconi*, 225 Ill. 2d at 536, 870 N.E.2d at 295. Section 3-114.1(a) of the Pension Code provides for line-of-duty

disability pensions and states, in pertinent part:

> "If a police officer[,] as the result of sickness, accident[,] or injury incurred in or resulting from the performance of an act of duty, is found to be physically or mentally disabled for service in the police department, so as to render necessary his or her suspension or retirement from the police service, the police officer shall be entitled to a disability retirement pension ***." 40 ILCS 5/3-114.1(a) (West 2010).

¶ 50 Section 114.2 provides for non-duty disability pensions and states, in relevant part:

> "A police officer who becomes disabled as a result of any cause other than the performance of an act of duty, and who is found to be physically or mentally disabled so as to render necessary his or her suspension or retirement from police service in the police department, shall be entitled to a disability pension ***." 40 ILCS 5/3-114.2 (West 2010).

¶ 51 "Disabled" is not defined in the Pension Code. Webster's dictionary defines "disability" as the "inability to pursue an occupation because of physical or mental impairment." Merriam-Webster's Collegiate Dictionary 328 (10th ed. 2000). The term "inability" is defined as the "lack of sufficient power, resources, or capacity." Merriam-Webster's Collegiate Dictionary 584 (10th ed. 2000). The parties do not dispute the definition of "disabled," but rather, whether plaintiff is disabled within the meaning of the Pension Code.

¶ 52 In this case, we conclude the record evidence is sufficient to support the Board's finding that plaintiff failed to prove he was disabled from working as a police officer. As noted in its decision, the Board relied on its own observations, Finkenbine's report, plaintiff's conduct over the past several years, medical records, and employment records in reaching its conclusion that plaintiff was not disabled from working. Even though Finkenbine was the only psychiatrist to conclude plaintiff was not disabled from work, it was the Board's function to resolve conflicts in medical evidence. *Swanson v. Board of Trustees of Flossmoor Police Pension Fund*, 2014 IL App (1st) 130561, ¶ 31, 7 N.E.3d 124. "An administrative agency's prerogative undoubtedly includes making credibility determinations between doctors who render competing opinions. But when the evidence weighs heavily against a single doctor, and the agency chooses to adopt that doctor's opinion, the agency must articulate the findings underlying its choice to facilitate meaningful review." *Coyne v. Milan Police Pension Board*, 347 Ill. App. 3d 713, 724, 807 N.E.2d 1276, 1285 (2004) (Third District). Here, the Board articulated the findings for its decision in a detailed, 18-page decision. The decision included credibility determinations and the weight it gave to evidence.

¶ 53 In this case, the Board found Finkenbine's opinion credible and relied upon it to support its conclusion that plaintiff was not disabled from working. Finkenbine's conclusions, combined with the board's concerns regarding the timing of plaintiff's decision to seek help for his PTSD, his work history, his other physical ailments, and his lack of credibility, as determined by the Board, provide the necessary support in the record to uphold the Board's decision. Thus, we are unable to find, based upon the record before us, that the opposite conclusion is clearly apparent. *Abrahamson*, 153 Ill. 2d at 88, 606 N.E.2d at 1117.

¶ 54 After fully reviewing the record, we hold the Board's conclusion that plaintiff failed to satisfy his burden of establishing his eligibility for a disability pension is not against the manifest weight of the evidence. Because we uphold the decision of the Board to deny plaintiff a disability pension altogether, we need not address whether plaintiff's alleged disability was duty or non-duty-related.

¶ 55 III. CONCLUSION

¶ 56 For the foregoing reasons, we affirm the circuit court's judgment affirming the Board's determination.

¶ 57 Affirmed.