

2024 IL App (1st) 232059-U
No. 1-23-2059
Order filed September 25, 2024

THIRD DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHERYL MAYER,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	22 CH 10732
)	
THE BOARD OF TRUSTEES OF THE CALUMET CITY)	
FIREFIGHTERS PENSION FUND,)	Honorable,
)	Michael T. Mullen,
Defendant-Appellee.)	Judge Presiding.

JUSTICE MARTIN delivered the judgment of the court.
Presiding Justice Lampkin and Justice D.B. Walker concurred in the judgment.

ORDER

¶ 1 *Held:* The decision of the Calumet City Firefighters Pension Fund (Board) to deny plaintiff a line-of-duty disability pension and award a non-duty disability pension was not against the manifest weight of the evidence. Therefore, the circuit court's judgment affirming the Board's decision is affirmed.

¶ 2 Plaintiff, Cheryl Mayer, is a firefighter/paramedic with the Calumet City Fire Department (Calumet Fire Department). She filed an application with the Calumet City Firefighters Pension Fund (Board) seeking a line-of-duty disability pension, or alternatively, a non-duty disability pension based on employment related psychological and emotional trauma. After a hearing, the

Board determined that plaintiff was entitled to a non-duty disability pension, but not a line-of-duty disability pension. On administrative review, the circuit court affirmed the Board's decision.

¶ 3 On appeal, plaintiff argues that the Board erred in its decision because it applied the wrong causation standard in weighing the evidence. For the reasons that follow, we affirm the circuit court's decision affirming the Board.¹

¶ 4 I. BACKGROUND

¶ 5 A. Administrative Hearing

¶ 6 On June 9, 2022, the Board held an administrative hearing on plaintiff's application for a disability pension where it admitted into evidence various exhibits and heard plaintiff's testimony. Admitted exhibits included plaintiff's application for disability benefits, her medical records, and medical reports prepared by four independent medical evaluators selected by the Board. The following facts are derived from the testimony and exhibits admitted at the hearing.

¶ 7 Plaintiff was 46 years old at the time of the hearing and the married mother of two sons, both over twenty-one years of age. Plaintiff's background included instances of domestic conflict between her mother and father; the murder of her older brother when she was nine years old; sexual molestation by a neighbor's teenaged son when she was ten and eleven years old; and verbal and physical abuse by her mother, until she left home at eighteen. In 1998, plaintiff was successfully treated with Zoloft for post-partum depression after the birth of her second son.

¶ 8 Plaintiff joined the Calumet Fire Department as a firefighter/paramedic on March 1, 2009. Before she was hired, plaintiff underwent and passed physical and psychological examinations. She was neither diagnosed with nor receiving treatment for any psychiatric conditions.

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon entry of a separate written order.

¶ 9 At the time plaintiff joined the Calumet Fire Department, she was also working for the Thornton Fire Department as a part-time firefighter. Plaintiff worked for both fire departments simultaneously, until December 2017, when the part-time position was no longer available. Plaintiff testified regarding a series of incidents she experienced during her employment with the Calumet Fire Department, which she alleged led to her disability.

¶ 10 In 2015, plaintiff responded to an active shooter scene where the shooter was fatally wounded by police. Emergency Medical Services (EMS) triaged the shooter as “black,” meaning he was “basically dead.” As plaintiff was placing a sheet over the shooter’s body, his eyes were open, and he started gasping for breath. Plaintiff acknowledged that following this incident, she continued working full duty without restrictions. She did not seek mental health counseling or report any mental issues to the Calumet Fire Department at this time.

¶ 11 In 2018, plaintiff responded to a call of a woman with a history of mental illness, who had refused transportation to the hospital the previous day. The woman had committed suicide by hanging herself with an electrical cord. Plaintiff observed the woman hanging by the neck in her closet. On the woman’s dresser were lit candles and pictures of her children. There were also notebooks containing notes to the police and her final wishes. Plaintiff experienced lingering emotional effects from what she observed and was prescribed Zoloft by Dr. Judith Pickett, her primary care physician.

¶ 12 In 2019, plaintiff and her partner were the first responders to a call regarding a self-inflicted gunshot wound to the head from a double-barreled shotgun. Plaintiff described the deceased as having “no bone structure left in his skull, and his face was like a Halloween mask laying on the bed. There was a piece of his skull on the nightstand table.” The decedent’s mother was in an adjoining room and heard the shotgun discharge. Plaintiff testified that although she had no

training as a grievance counselor, she was assigned to console the mother, who was in shock.

¶ 13 In 2020, in response to the COVID-19 pandemic, the Calumet Fire Department enacted new protocols (pandemic protocols) that firefighters/paramedics were required to follow when responding to emergency calls. Under these new protocols, patients in full cardiac arrest, who would ordinarily be transported to the hospital, would be transported only if emergency personnel “were able to get a rhythm change after 20 minutes of resuscitation efforts.” If a patient was not resuscitated within the 20-minute window, emergency personnel were required to terminate resuscitation efforts. Plaintiff testified that after the pandemic protocols went into effect, she purposefully avoided taking the lead on full cardiac arrest calls to avoid having to make the decision to terminate resuscitation efforts.

¶ 14 In April 2020, paramedics were called to the scene where plaintiff’s father had suffered an apparent heart attack. The paramedics did not administer emergency care or treatment to plaintiff’s father, and they remained on the scene for only nine minutes. Plaintiff claimed she identified with the paramedics because of the pandemic protocols. She expressed concern that pursuant to the protocols she was being trained “on how to walk away from a full arrest and not treat them.”

¶ 15 Plaintiff’s father died, and she subsequently became depressed, suffered from insomnia, and began drinking heavily. She experienced nightmares and flashbacks of emergency calls involving suicides and fatal cardiac arrests. Dr. Pickett referred plaintiff to Dr. Nitin Thapar, a psychiatrist, who diagnosed plaintiff with an anxiety disorder. Plaintiff was initially prescribed Paxil but was later prescribed Xanax.

¶ 16 In July 2020, plaintiff began receiving psychological counseling from Dr. Katie Johnson, a licensed clinical professional counselor. On August 14, 2020, plaintiff reported to Johnson that she had suicidal ideations and had posted to Facebook that she put a firearm to her head and

contemplated committing suicide. Plaintiff was eventually referred to Dr. Kelsey Oster, for a neuropsychological evaluation. She was admitted into a 28-day inpatient substance-abuse program at Advanced Recovery Systems in Orlando, Florida. Plaintiff testified that the program helped her stop drinking. After her discharge from the program, plaintiff continued working full duty without restrictions. At the time of the hearing, plaintiff was still seeing Dr. Johnson “every week to two weeks.”

¶ 17 On February 12, 2021, plaintiff responded to a call involving a man in full cardiac arrest. As plaintiff was attempting resuscitation efforts, a female family member, who did not have a “do-not-resuscitate” order or a power of attorney, started yelling not to touch him. When plaintiff’s supervisor instructed emergency personnel to honor the woman’s wishes, plaintiff became upset and asked why they were not following the pandemic protocols. Plaintiff left the house and began complaining and swearing to a nearby police officer. Plaintiff returned to the station, but did not finish her shift, claiming she was sick and needed to go home. That was the last day plaintiff worked in a full and unrestricted capacity as a firefighter/paramedic for the Calumet Fire Department.

¶ 18 In August 2021, pursuant to section 4-110 of the Pension Code (Pension Code) (40 ILCS 5/4-110 (West 2020)), plaintiff applied to the Board for a line-of-duty disability pension. In the alternative, plaintiff sought a non-duty disability pension pursuant to section 4-111 of the Pension Code (40 ILCS 5/4-111 (West 2020)).

¶ 19 In support of her application, plaintiff claimed that she was permanently disabled and could no longer perform the duties of a firefighter/paramedic because she suffered from post-traumatic stress disorder (PTSD), anxiety, and depression resulting from the cumulative effects of traumatic incidents she experienced on the job.

¶ 20 As part of the application process, the Board selected independent medical evaluators to assess the nature and extent of plaintiff's disability, as required by section 4-112 of the Pension Code (40 ILCS 5/4-112 (West 2020)). The chosen independent medical evaluators were Dr. Ronald J. Ganellen, Ph.D.; Dr. Robert A. Reff, M.D.; Dr. Henry G. Conroe, M.D.; and Dr. Robert M. Galatzer-Levy, M.D.

¶ 21 1. Dr. Ganellen

¶ 22 Dr. Ganellen evaluated plaintiff on December 22, 2021. He determined that plaintiff was currently unable to effectively function as a firefighter/paramedic as she was dealing with chronic, recurring episodes of a major depressive disorder and generalized anxiety disorder. Dr. Ganellen noted that plaintiff's medical records revealed she was being treated for anxiety and depression as early as 2018, but that these conditions "markedly" worsened after the death of her father in April 2020. The doctor determined that the father's death "exacerbated the pre-existing depression and anxiety; [and] this led to [plaintiff] becoming unable to function effectively as a paramedic/firefighter."

¶ 23 2. Dr. Reff

¶ 24 Dr. Reff conducted a virtual evaluation of plaintiff on January 24, 2022. He determined that plaintiff "was totally disabled to perform the duties of her job as a Firefighter/Paramedic due to her psychiatric conditions." Dr. Reff diagnosed plaintiff with recurrent major depression and PTSD. The doctor noted that plaintiff was receiving treatment and medication (Zoloft), for anxiety and depression as early as September 17, 2018, more than eighteen months prior to the death of her father. According to Dr. Reff, plaintiff was "disabled by a combination of pre-existing conditions and the contribution of the cumulative effects of firefighting duty." The doctor found that plaintiff "was able to suppress and keep her symptoms under reasonable control until her

father's death." Dr. Reff stated that the death of plaintiff's father "appears to have been the seminal event that occurred and caused her symptoms to have escalated beyond her capacity to control them."

¶ 25

3. Dr. Conroe

¶ 26 Dr. Conroe evaluated plaintiff on January 25, 2022. He diagnosed her with moderate recurrent major depression, generalized anxiety disorder, and PTSD. The doctor opined that plaintiff was permanently disabled and that even if she received additional treatment, it was unlikely she "would be able to resume full and unrestricted duty as a firefighter/paramedic." Dr. Conroe noted that plaintiff exhibited symptoms of anxiety and depression prior to her father's death, but that "they were moderate and did not interfere with her functioning at work." According to the doctor, the death of plaintiff's father "lessened her stress tolerance and affected her ability to respond appropriately to similar subsequent emergencies." Dr. Conroe determined that work events "were not the cause of [plaintiff's] disability, but rather her father's death and the surrounding circumstances fueled her emotional reactions to these demanding situations." The doctor opined that "intrusive thoughts following her father's death and her concern about how she had treated patients in similar situations were more likely than not the symptoms that significantly interfered with [plaintiff's] ability to safely and effectively function in her job."

¶ 27

4. Dr. Galatzer-Levy

¶ 28 Dr. Galatzer-Levy examined plaintiff on January 26, 2022. He diagnosed plaintiff with PTSD, anxiety disorder, and a substance-abuse disorder (alcoholism) in remission. Dr. Galatzer-Levy opined that plaintiff was permanently disabled in that her disability had "lasted for more than 12 months." The doctor found that plaintiff's disability was caused by the death of her father and circumstances surrounding his death. Dr. Galatzer-Levy determined that the "act of firefighting

and the cumulative effects of firefighting did not cause the disability *** [although they may have] acted as triggers and contributed to her disability.”

¶ 29 B. Board’s Decision

¶ 30 Following the administrative hearing, the Board issued its decision and order on October 14, 2022 denying plaintiff’s request for a line-of-duty disability pension. The Board determined that plaintiff failed to meet her burden of establishing a causal connection between her disability and service as a firefighter/paramedic. However, the Board found that plaintiff was disabled and entitled to a non-duty disability pension. On administrative review, the circuit court affirmed the Board’s decision on October 2, 2023. This appeal followed.

¶ 31 II. ANALYSIS

¶ 32 “In an appeal from an administrative agency’s decision, we review the agency’s determination, not that of the circuit court.” *Lambert v. Downers Grove Fire Department Pension Board*, 2013 IL App (2d) 110824, ¶ 23. Here, our review is focused on the Board’s decision.

¶ 33 Section 3-148 of the Pension Code (40 ILCS 5/3-148 (West 2020)) provides that judicial review of a decision of the board is governed by the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2020)). See *McCumber v. Board of Trustees of the Oswego Fire Protection District Firefighters’ Pension Fund*, 2019 IL App (2d) 180316, ¶ 45; *Carrillo v. Park Ridge Firefighters’ Pension Fund*, 2014 IL App (1st) 130656, ¶ 21. Under the Administrative Review Law “our review extends to all questions of fact and law presented by the entire record.” *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532 (2006).

¶ 34 Initially, the parties disagree as to the appropriate standard of review. Plaintiff argues that the Board’s decision should be reviewed under the clearly erroneous standard because the question of whether the Board applied the correct legal standard in evaluating causation is a mixed question

of fact and law. The Board argues that the appropriate standard of review is manifest weight.

¶ 35 “The standard of review to be applied depends on whether the question presented is one of fact, one of law, or a mixed question of fact and law.” *McCumber*, 2019 IL App (2d) 180316, ¶ 47. The question of whether plaintiff’s employment as a firefighter/paramedic was a causative factor that contributed to her disability is a question of fact reviewed under a manifest weight of the evidence standard. See *McCumber*, 2019 IL App (2d) 180316, ¶ 47; *Covello v. Village of Schaumburg Firefighters’ Pension Fund*, 2018 IL App (1st) 172350, ¶ 42; *Carrillo*, 2014 IL App (1st) 130656, ¶ 22. 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 (1992).

¶ 36 However, “under any standard of review, a plaintiff to an administrative proceeding bears the burden of proof, and relief will be denied if he or she fails to sustain that burden.” *Marconi*, 225 Ill. 2d at 532-33. We now turn to the merits of plaintiff’s appeal.

¶ 37 To be entitled to a line-of-duty disability pension, a claimant is required to establish a causal connection between the claimant’s disability and an act of duty. *Covello*, 2018 IL App (1st) 172350, ¶ 43. “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.’ ” *McCumber*, 2019 IL App (2d) 180316, ¶ 50 (quoting 40 ILCS 5/6-110 (West 2014)).

¶ 38 A claimant is “not required to prove that a duty-related accident or illness was the primary or originating cause of his disability.” *Covello*, 2018 IL App (1st) 172350, ¶ 43. Rather, the claimant only needs “to prove that a duty-related accident or illness aggravated, contributed, or

exacerbated his disability.” *Id.* A “line-of-duty disability pension may be awarded when a firefighter establishes that an act of duty aggravated a preexisting condition.” *Id.*; see also *Carrillo*, 2014 IL App (1st) 130656, ¶ 23 (“a line-of-duty pension may be based upon the duty-related aggravation of a claimant’s preexisting physical condition”).

¶ 39 Here, the independent medical evaluators all agreed that plaintiff suffered from preexisting mental and emotional issues that contributed to her disability, namely, depression, anxiety disorder, and PTSD. The issue is whether plaintiff’s preexisting conditions were aggravated by her duties as a firefighter/paramedic, thereby establishing a causal connection between her disability and service as a firefighter/paramedic.

¶ 40 Plaintiff argues on appeal that the Board applied the incorrect causation standard by failing to determine whether her experience working as a firefighter/paramedic was a causative factor in aggravating or contributing to her preexisting conditions. Plaintiff contends that instead of applying the “causative factor” test to determine whether her employment as a firefighter/paramedic was a causative factor in her disability, the Board focused solely on the independent medical evaluators opinions as to the cause of her medical condition.

¶ 41 Contrary to plaintiff’s contentions, the record reveals that the Board did not solely rely on the independent medical evaluators’ opinions as to the cause of her medical condition. The Board also relied on plaintiff’s own testimony, where she acknowledged that she did not abuse alcohol or suffer from depression or PTSD, until after her father’s death. The documentary evidence and testimony presented at the administrative hearing gave rise to a factual issue concerning whether plaintiff’s preexisting conditions were aggravated by her duties as a firefighter/paramedic.

¶ 42 It is the Board’s “function to judge the credibility of witnesses, assign weight to the evidence, and resolve conflicts in the medical evidence.” *Gatz v. Board of Trustees of Village of*

Maywood Police Pension Fund, 2019 IL App (1st) 190556, ¶ 24. An administrative agency's findings and conclusions on questions of fact are considered *prima facie* true and correct and will not be disturbed unless they are against the manifest weight of the evidence. *Beggs v. Board of Education of Murphysboro Community Unit School District No. 186*, 2016 IL 120236, ¶ 50.

¶ 43 Plaintiff argued that the cumulative effects of the trauma she experienced as a firefighter/paramedic during incidents that occurred in 2015 (active shooter scene); 2018 (suicide by hanging); and 2019 (suicide by self-inflicted gunshot wound) aggravated and contributed to her preexisting mental condition, rendering her disabled and unable to continue her employment as a firefighter/paramedic. However, as the Board noted, plaintiff recovered from each of these incidents and “continued to work full unrestricted duty.”

¶ 44 Plaintiff was able to work with no apparent difficulty in performing her duties, until the death of her father in April 2020. After her father's death, plaintiff began drinking heavily and had thoughts of committing suicide. She also experienced nightmares and flashbacks of emergency calls involving suicides and fatal cardiac arrests. Plaintiff received psychological counseling and treatment for alcohol abuse. She continued working full duty without restrictions until February 12, 2021, when she responded to the cardiac arrest call.

¶ 45 The Board held that the cardiac arrest call itself did not cause plaintiff to ultimately stop working as a firefighter/paramedic, but rather it was her supervisor's decision to abide by a family member's protestations not to attempt resuscitation efforts. It determined that plaintiff's disability was caused by “her father's passing, and her reaction to the full arrest call on February 12, 2021.”

¶ 46 This finding distinguishes the instant case from *Prawdzyk v. Board of Trustees of Homer Township Fire Protection District Pension Fund*, 2019 IL App (3d) 170024. In *Prawdzyk*, the reviewing court determined that the evidence established that certain acts of duty causally

contributed to the claimant's disability "by aggravating the symptoms of his underlying psychological disorder and rendering it disabling." *Prawdzik*, 2019 IL App (3d) 170024, ¶ 55.

¶ 47 Here, the Board reasonably relied on the opinions of the independent medical evaluators and on the plaintiff's own testimony in finding that she failed to establish that her preexisting conditions stemmed from any act of duty, or cumulative acts of duty, related to her work as a firefighter/paramedic. "It is beyond argument that firefighters and other first responders are repeatedly exposed to stressful and gruesome events. But it is not enough to qualify for a duty disability pension to point to stress inherent in the job." *Covello*, 2018 IL App (1st) 172350, ¶ 50.

¶ 48 The Board made a factual finding that plaintiff failed to meet her burden of establishing a causal connection between her preexisting conditions and her duties as a firefighter/paramedic. In light of the record before us, and the deference we must afford to a board's credibility determinations and factual findings, we cannot say that the Board's finding that plaintiff failed to meet her burden of proof was against the manifest weight of the evidence. We find that the Board's finding was supported by competent evidence. "There need be only some competent evidence in the record to support the Board's findings." *McCumber*, 2019 IL App (2d) 180316, ¶ 48.

¶ 49 **III. CONCLUSION**

¶ 50 For the foregoing reasons, we conclude that the Board's decision denying plaintiff a line-of-duty disability pension and awarding nonduty disability pension benefits was not against the manifest weight of the evidence. Judgment of the circuit court affirmed.

¶ 51 Affirmed.