

**BOARD OF TRUSTEES OF THE POLICE PENSION FUND
OF THE CITY OF JACKSONVILLE, ILLINOIS**

IN THE MATTER OF THE
APPLICATION FOR
DISABILITY PENSION OF
AUGUSTINE VASQUEZ

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No.:

DECISION AND ORDER

COMES NOW the Board of Trustees of the Police Pension Fund of the City of Jacksonville, Illinois, pursuant to statutory authority contained in 40 ILCS 5/3 et seq., renders the following decision and order regarding the claim for disability pension filed by Applicant, Augustine Vasquez.

A hearing was held in this matter on August 21, 2020, at which time the Applicant, Augustine Vasquez was present in person before said Board and by legal counsel, Stephen P. Kelly, and presented evidence on behalf of his disability claim. Present on behalf of said Board of Trustees of the Police Pension Fund of the City of Jacksonville were as follows: Rex Ginder, President; Kevin Heitz, Vice President; Mark Lonergan, Secretary; David Langdon, Assistant Secretary and Brian Nyberg, Trustee. Attorney Richard V. Stewart, Jr. appeared on behalf of the City of Jacksonville which filed a Motion to Intervene in these proceedings which was granted by the Board and the City of Jacksonville was allowed to intervene and participate in these proceedings. Carla Boehl, CSR was present from Davis Reporting Service, 3 Hickory Hills Dr., Springfield, Illinois 62707 and prepared a transcript of the proceedings. Board Attorney Dennis Orsey was previously appointed by the Board to serve as Hearing Officer without objection.

All of the arguments made by or on behalf of the Applicant and the documentation submitted, including all medical reports and evaluations, have been fully considered by the Board. To the extent that any evidence, arguments, findings and conclusions submitted by the Applicant are in accordance with the findings, conclusions and views stated herein, they have been accepted, and to the extent that they are inconsistent with the findings,

conclusions and views stated herein, they have been rejected. To the extent that the testimony of witnesses or documentation submitted is not in accord with the findings herein, such testimony and documentation is not credited. There were fourteen (14) Board exhibits (Exhibit 1-12, including Exhibits 7A, 7B, 8A, 8B, 9A and 9B) which were stipulated to by the parties and entered into evidence. There were eight (8) Applicant Exhibits which were stipulated to by the parties and entered into evidence. There were twenty-seven (27) Employer Exhibits which were stipulated to by the parties and entered into evidence. (See attached lists)

II

FINDINGS OF FACT

Based upon a preponderance of the testimony and evidence provided at hearing and in the administrative record, the Board makes the following findings of fact:

1. This Board has jurisdiction of the person (Applicant) and subject matter of these proceedings.
2. At all times relevant hereto, the Applicant, Augustine Vasquez, was employed as a Police Officer with the Police Department of the City of Jacksonville, Illinois.
3. On August 31, 2018, when the Application for Benefit was filed, the Applicant held the rank of Patrolman. (Board Exhibit 1)
4. On August 31, 2018, the Applicant filed his application for benefit requesting a line of duty disability pension. (Board Exhibit 1)
5. The primary incident which caused of Applicant's psychological disability occurred on March 4, 2016 when Applicant was on duty and dispatched to an accident scene where he was exposed to a fellow officer who was killed in a vehicle accident..
6. Board finds Applicant is psychologically disabled from performing the full - unrestricted duties of a police officer for the City of Jacksonville, by reason of post

traumatic stress disorder which is confirmed by medical records and testimony presented.
(Board Exhibits 7, 7A, 8, 8A, 9 and 9A)

7. Applicant's date of hire with the Jacksonville Police Department was October 12, 2002. (Board Exhibit 1 and Rec. 109 - 110)

8. Applicant's last date of employment with the Jacksonville Police Department was September 18, 2018. (Board Exhibit 11 and Rec. 105)

9. Applicant's creditable service is 15 years; 11 months; and 7 days. (Board Exhibit 11 and Rec. 110)

10. Applicant's salary attached to rank on September 18, 2018 was \$66,628.64. (Board Exhibit 11)

11. City Treasurer, Ron Smiljanich verified pension benefit calculations for the Jacksonville Police Pension Board. (Board Exhibit 11)

12. The Board finds that the Applicant's stated disability did result from the performance of an "act of duty", as required for a duty disability pension under 40 ILCS 5/3 - 114.1.

III

APPLICABLE STATUTORY PROVISIONS

The applicable statutory provisions of the Pension Code provide as follows:

3-114.1. Disability pension - Line of duty.

(a) 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 equal to the greatest of (1) 65% of the salary attached to rank on the police force held by the officer at the date of suspension of duty or retirement, (2) the retirement pension that the police officer would be eligible to receive if he or she retired (but not including any automatic increase in that retirement pension), or (3) the pension provided under subsection (d), if applicable.

A police officer shall be considered "on duty" while on any assignment approved by the chief of the police department of the municipality he

or she serves, whether the assignment is within or outside the municipality. 40 ILCS 5/3 - 114.1.

Sec. 3-114.2. Disability pension - Not on duty.

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 of 50% of the salary attached to the officer's rank on the police force at the date of suspension of duty or retirement. 40 ILCS 5/3 - 114.2.

Sec. 3-115 Certificate of disability.

A disability pension shall not be paid unless there is filed with the board certificates of the police officer's disability, subscribed and sworn to by the police officer if not under legal disability, or by a representative if the officer is under legal disability, and by the police surgeon (if there be one) and 3 practicing physicians selected by the board. The board may require other evidence of disability. 40 ILCS 5/3-115.

5-113 Act of duty.

"Act of duty": Any act of police duty inherently involving special risk, not ordinarily assumed by a citizen in the ordinary walks of life, imposed on a policeman by the statutes of the State or by the ordinances or police regulations of the city in which this Article is in effect or by a special assignment; or any act of heroism performed in the city having its direct purpose the saving of the life or property of a person other than the policeman. 40 ILCS 5/5-113.

IV

ANALYSIS

The purpose of the laws for police pensions is remedial in nature, and such statutes should be liberally construed in favor of the policeman to be benefitted. People ex rel. Houren v. Board of Trustees of Firemen's Pension Fund of Village of Oak Park, 200 Ill. App. 242; Peifer v. Board of Trustees of the Police Pension Fund of the Village of Winnetka, Illinois, 58 Ill. App. 3d 102, 372 N.E. 2d 1106 (1978); Board of Trustees of the Police Pension Fund of the Village of Oakbrook v. Department of Insurance, 42 Ill. App. 3d 155, 356 N.E. 2d 171 (1976). Due to their personal knowledge of the peculiar physical

and emotional demand of being a police officer, the members of the Police Pension Board are in the best position to determine whether an Applicant is fit for duty or qualified for membership or benefits. Sanders v. Board of Trustees of the City of Springfield Police Pension Fund, 1 Ill. App. 3d 1087, 445 N.E. 2d 501 (1983). The Courts do not substitute their judgment for that of the pension board in such matters. Peterson v. Board of Trustees of the Firemen's Pension Fund of the City of Des Plaines, Illinois, 5 Ill. App. 3d 180, 281 N.E. 2d 368 (1971).

The burden of proof required to establish the entitlement to a disability pension, falls upon the Applicant. Wall v. Schaumburg Police Pension Board (1st Dist. 1st Div. 1988). 178 Ill.App.3d 438 N.E. 2d 458, 127 Ill.Dec.585. Thus, the elements a police officer must prove in order to establish his/her entitlement to "line of duty" benefits under 40 ILCS 5/3 - 114.1, are set forth as follows:

- (1) he or she is a police officer;
- (2) a sickness, accident or injury was incurred;
- (3) the sickness, accident or injury, incurred in or resulting from the performance of an "act of duty";
- (4) the police officer is found to be physically or mentally disabled for service in the police department; and
- (5) the disability renders necessary his or her suspension or retirement from the police service.

The Statute further requires a determination that a disability continues to exist. Section 3 - 115 of the Pension Code requires, in part, as follows:

...Medical examination of a police officer retired for disability shall be made at least once each year prior to the attainment of age 50, as verification of the continuance of disability for service as a police officer. No examination shall be required after age 50. 40 ILCS 5/3 - 115.

The preponderance of the medical evidence submitted herein, concludes that Applicant currently suffers from a disability of post traumatic stress disorder, which restricts him from performing full, unrestricted service, as required of a police officer for the City of

Jacksonville Police Department. With respect to the issue of disability, the Board believes that the testimony and evidence submitted is competent and persuasive.

The Applicant was acting in his capacity as a Police Officer at that time. He has sustained psychological injuries in such a manner that he is no longer able to perform his duties as a Jacksonville Police Officer without experiencing overwhelming anxiety. Applicant stated he continues to treat with Ed Scott, LCSW for counseling sessions approximately every two weeks. He stated he has treated with Ed Scott since 2018.

The Applicant testified that on March 4, 2016 he was working as the school resource officer at the Jacksonville High School as security at the basketball game. He further stated that he was in full uniform and had his radio. The game ended at approximately 7:00 p.m. and the Applicant testified that he stayed until the crowds dispersed. He indicated that it was approximately 7:30 p.m. when he left the school. The Applicant indicated that he was going to meet his wife and in-laws at Wendy's after the game. While going to his car after the game an emergency tone went off and the dispatcher announced that a baby was having difficulty breathing. Applicant testified that he was approaching the Wendy's and was looking for the automobile with the baby having difficulty breathing when he heard another emergency tone. The Applicant stated that it was reported that there was a vehicle accident involving an ambulance and a police car. The Applicant indicated that he contacted Lt. Hansell, the night supervisor and asked if he wanted him to respond. Lt. Hansell instructed the Applicant to respond to the scene of the accident.

The Applicant testified that he approached the scene of the accident he noticed that Officer Fitzgerald was lying across the passenger's side of the vehicle and that his arm appeared to be broken in several places. At some point shortly after approaching the vehicle it was discussed that a medical helicopter would be brought in. Having worked with the helicopters before, the Applicant volunteered to establish a landing zone. However, the weather prohibited a helicopter coming into the scene. The Applicant stated that once

the helicopter was cancelled, he returned to the scene of the accident. At that time, Officer Fitzgerald was being removed from the vehicle and was placed on a cot. The Applicant testified that the last thing he remembered at the scene of the accident was covering the blanket and fastening Officer Fitzgerald onto the cot.

Applicant testified that he left the scene of the accident and went to Passavant Hospital. He stated he did not remember driving to the hospital. However, he does remember when he was there that he telephoned his wife and advised her that it was not necessary for her to come to the hospital. He later found Officer Fitzgerald's wife and embraced her for quite a while until other members of the family arrived.

Testimony was presented on behalf of the Applicant by Kelly Capriotti who was a school counselor in the City of Jacksonville at the time in question. Ms. Capriotti testified that she is a professional licensed counselor and has known the Applicant approximately 4 to 5 years and prior to the accident on March 4, 2016. In addition, she indicated that she did not notice any mental issues with the Applicant prior to the incident. Ms. Capriotti indicates that the Applicant began having issues such as paranoia, withdrawn, not interacting with his children. Ms. Capriotti suggested to the Applicant that he talk with her husband who had similar experiences.

Testimony was offered on behalf of the Applicant by his wife, Jeanne Vasquez. Ms. Vasquez testified that the parties have been married for twenty-two years. Ms. Vasquez indicated that since the incident of March 4, 2016 the Applicant does not like to go out anymore, stays in the house mostly, does not interact with the small grandchildren or his children as much as he used to due to the anxiety that he feels. In addition, he does not sleep much, has violent nightmares and stays exhausted. Ms. Vasquez states that since the accident he is not the same man that she married.

Testimony was presented on behalf of the City by Jacksonville Police Lieutenant, Eric Hansell. Lieutenant Eric Hansell testified that he was working on the evening of March

4, 2016 and was the direct supervisor of the Applicant. He indicated that he has known Officer Vasquez since 2002 and considers him to be a credible and truthful person. Lt. Hansell testified that both he and the Applicant were on duty on March 4, 2016 and recalls the call coming in reporting an officer was involved in a crash. Lt. Hansell recalls authorizing Officer Vasquez to respond to the incident due to the severity of the call. Lt. Hansell testified that he arrived on the scene approximately five (5) minutes after the Applicant and was positioned next to the Applicant for most of the time during the call.

The Board sent the Applicant to three (3) doctors for independent medical examination, namely Dr. Philip Pan, Dr. David Conner and Dr. Lawrence Jeckel.

Dr. Philip Pan indicates in his Independent Medical Examination, as requested by the Board, that in his opinion the Applicant is not fit for duty as a police officer for the Jacksonville Police. (Board Exhibit 7) Dr. Pan states in his independent medical examination report that "Mr. Vasquez's psychiatric diagnosis is of Post-Traumatic Stress Disorder (PTSD) caused by multiple traumatic events in his police career, but primarily due to his responding to the scene of a motor vehicle accident on 3/4/16 that led to the death of Officer Scot Fitzgerald. This condition represents a permanent disability that prevents Mr. Vasquez from returning to his duties as a patrol officer in the Jacksonville Police Dept. Continued treatment with psychotherapy and psychotropic medications will hopefully improve Mr. Vasquez's condition, but are unlikely to render him fit for duty." Dr. Pan completed the statutorily required Certificate and indicated that in his opinion, the Applicant is not mentally able to perform the duties of a police officer. (Board Exhibit 7A)

The evidence deposition of Dr. Pan was submitted and considered by the Board. (Employer's Exhibit 22)

Dr. David Conner indicates in his Independent Medical Examination, as requested by the Board, that in his opinion the Applicant is not fit for duty as a police officer for the Jacksonville Police. Dr. Conner stated in his independent medical examination report

that it is his conclusion that “he is not now and is not likely to ever be able to return to work as a police officer and that he is currently disabled and likely to remain psychologically disabled from what appears to me to be a severe posttraumatic stress disorder from his police officer duties.” Dr. Conner further states that “I do think there is a causal connection between his exposure to the incident on March 4, 2016 and the posttraumatic stress disorder as that was the precipitating event and it seems quite clearly causal in nature. (Board Exhibit 8) Dr. Conner completed the statutorily required Certificate and indicated that in his opinion, the Applicant is not mentally able to perform the duties of a police officer. (Board Exhibit 8A)

The evidence deposition of Dr. Conner was submitted and considered by the Board (Employer’s Exhibit 20)

Dr. Lawrence Jeckel indicates in his Independent Medical Examination, as requested by the Board, that in his opinion the Applicant is not fit for duty as a police officer for the Jacksonville Police. Dr. Jeckel indicates “that Officer Vasquez has a permanent disability due to severe PTSD which prevents him from performing his duties with the Jacksonville Police Department.” In addition, Dr. Jeckel indicates, that “Based on my review of the records provided and the clinical evaluation, it is my opinion that Officer Vasquez’s PTSD symptoms are directly linked to the traumatic experience of witnessing the sever injury and ultimately the death of his colleague, Scot Fitzgerald, on March 4, 2016. (Board Exhibit 9) Dr. Jeckel completed the statutorily required Certificate and indicated that in his opinion, the Applicant is not mentally able to perform the duties of a police officer. (Board Exhibit 9A)

The evidence deposition of Dr. Jeckel was submitted and considered by the Board. (Employer’s Exhibit 21)

Applicant's request for a disability pension necessitates a determination of whether Applicant, at the time of the incident(s) in question, was performing an "act of duty" as required for entitlement for a "line of duty" disability pursuant to 40 ILCS 5/3 - 114.1. Although the term "act of duty" is not defined in 40 ILCS 5/3 - 114.1, interpretive assistance should be directed to 40 ILCS 5/5 - 113 of the Illinois Pension Code (Chicago Police Code), which defines the term "act of duty", as follows:

"Act of duty": Any act of police duty inherently involving special risk, not ordinarily assumed by a citizen in the ordinary walks of life, imposed on a policeman by the statutes of the State or by the ordinances or police regulations of the city in which this Article is in effect or by a special assignment; or any act of heroism performed in the city having its direct purpose the saving of the life or property of a person other than the policeman. 40 ILCS 5/5-113.

Our Courts have repeatedly referred to the fundamental rule statutory interpretation, as follows:

"...that where a word or phrase is used in different sections of the same legislative act, a Court presumes that the word or phrase is used with the same meaning throughout the act, unless a contrary legislative intent is clearly expressed. (Citations omitted.)" Robbins v. Carbondale (Ill.S.Ct. 1997), 177 Ill.2d 533 687 N.E. 2nd 39, 227 Ill.Dec. 116, 120.

The Illinois Supreme Court has expressly rejected the notion that the term "special risk" encompasses only inherently dangerous activities. Johnson v. Retirement Board of the Policemen's Annuity & Benefit Fund, 502 N.E. 2d 718 (Ill. 1986) the Applicant in Johnson was injured as he crossed the street to respond to a citizen requesting assistance regarding a traffic accident and slipped on the road. The Court in Alm v. Lincolnshire Police Pension Board 816 N.E.2d 389 393 (Ill. App. 2nd Dist. 2004), quoting the Johnson court writes "Johnson teaches that in determining whether an officer is entitled to a line-of-duty benefit, [t]he crux is the capacity in which the police officer is acting rather than the precise mechanism of injury." "As such, an officer performing duties involving special risks will be entitled to line-of-duty benefits even if the immediate cause of injury is an act involving only an ordinary risk." Alm 816 N.E. 2d at 393. The Applicants in both Alm and

Johnson were ultimately given line-of-duty benefits. The Applicant was on duty at the time of the incident which took place involving the vehicle accident between the ambulance and the police car which were responding to an emergency. The Applicant was dispatched to the scene of the accident by his direct supervisor, Lt. Eric Hansell. Applicant's actions on March 4, 2016 meet the definition of "act of duty".

V

CONCLUSIONS

The Board concludes credible evidence exists based upon a review of the medical reports of Dr. Pan, Dr. Conner and Dr. Jeckel and testimony of the Applicant and other witnesses that the Applicant is disabled based upon Posttraumatic Stress Disorder, which prevents him from performing the functions of a Police Officer. Further, the Board concludes that credible evidence exists based upon the evidence and testimony presented that Applicant's actions constitute an act of duty which entitles him to a line of duty disability benefit pursuant to 40 ILCS 5/3 114.1.

WHEREFORE, it is ordered by the Board of Trustees of the Police Pension Fund of the City of Jacksonville, Illinois that a Warrant for Benefits issue to Applicant, Augustine Vasquez, stating that the Applicant is entitled to a disability pension as a result of a cause from the performance of an act of duty according to the provisions of Section 5/3-114.1 of the Code. (40-ILCS 5/3-114.1). Said pension benefit shall be retroactive to the day after the Applicant's last day of compensation from the Department (i.e. benefits shall begin on September 19, 2018). This board shall retain jurisdiction of this cause to apply any setoff of benefits as may be provided for under the Police Pension Code and/or under any other applicable laws. This pension is subject to future modification pursuant to the Illinois Pension Code. Applicant shall be re-examined on an annual basis until he reaches age 50 in order to verify the continued eligibility for disability benefits pursuant to Statute 40 ILCS 5/3 - 115.

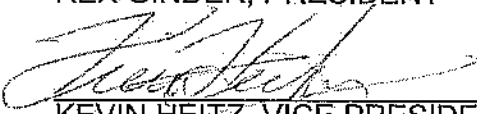
YOU, THE APPLICANT, AUGUSTINE VASQUEZ, PURSUANT TO ARTICLE III OF THE ILLINOIS CODE OF CIVIL PROCEDURE, 735 ILCS 5/4 ET SEQ., HAVE THE RIGHT TO SEEK JUDICIAL REVIEW OF THE BOARD'S DECISION, HOWEVER, YOU MUST FILE YOUR COMPLAINT FOR REVIEW WITHIN THIRTY FIVE (35) DAYS FROM THE DATE THAT A COPY OF THE DECISION SOUGHT TO BE REVIEWED WAS SERVED UPON YOU. YOU SHOULD REFER TO THE APPROPRIATE ILLINOIS STATUTE FOR FURTHER REFERENCE.

DATE: October 8, 2020

BOARD OF TRUSTEES OF THE POLICE
PENSION FUND OF THE CITY OF
JACKSONVILLE, ILLINOIS

BY: 

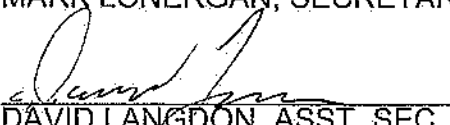
REX GINDER, PRESIDENT



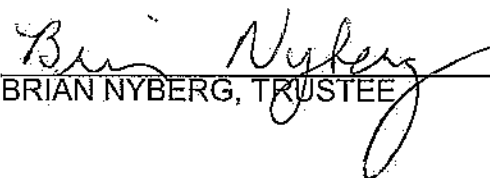
KEVIN HEITZ, VICE PRESIDENT



MARK LONERGAN, SECRETARY



DAVID LANGDON, ASST. SEC.



BRIAN NYBERG, TRUSTEE

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19. Minutes of the July 18, 2019 Regular Board meeting of the Community Unit School District #16
20. Deposition of Dr. David Conner on November 15, 2019
21. Deposition of Dr. Lawrence Jeckel on December 11, 2019
22. Deposition of Dr. Philip Pan on December 13, 2019
23. GIS Map
24. Workers' Compensation Claim
25. Amended Workers' Compensation Claim
26. Vehicle (Squad crash)
27. Vehicle (Squad door)


PROOF OF SERVICE

The undersigned hereby certifies that he has caused a true and correct copy of the foregoing document to be served upon:

Richard Stewart
Hesse Martone
1224 Centre West Dr., Suite 200E
Springfield, IL 62704

Stephen Kelly
Attorney at Law
2710 N. Knoxville Ave.
Peoria, IL 61604

by causing the same to be placed in a sealed envelope with postage fully prepaid, certified mail, addressed as aforesaid to the parties of record herein, and by placing said envelope in a U. S. Post Office Mailbox in Jacksonville, Illinois on the 13 day of October, 2020



Mark Longergan, Secretary
Jacksonville Police Pension Board