

**IN THE MATTER OF THE
DISABILITY APPLICATION OF:

LIEUTENANT CHRISTOPHER DUNNE,

APPLICANT.**

This matter comes before the Board of Trustees of the East Peoria Firefighters' Pension Fund ("Pension Board") upon the disability application of Lieutenant Christopher Dunne ("Applicant"). The Pension Board, pursuant to the statutory authority set forth in 40 ILCS 5/4-101 *et seq.*, of the Illinois Pension Code, renders the following decision concerning Applicant's claim for line-of-duty disability pension benefits.

In reaching its decision, the Pension Board carefully considered all testimony elicited of witnesses at the hearing and reviewed all exhibits made part of the administrative record. The Pension Board considered all arguments made by Applicant and documentation submitted. To the extent arguments, findings and conclusions submitted by Applicant are in accord with the findings, conclusions and views stated herein, they have been accepted, and to the extent testimony of witnesses or documentation submitted is not in accord with the findings herein, such testimony or documentation is not credited.

I. FINDINGS OF FACT

Based upon a preponderance of the evidence in the administrative record, the Pension Board makes the following findings of fact:

Preliminary Matters

1. Applicant is a regular member of the City of East Peoria Fire Department ("Fire Department") holding the rank of Lieutenant. (Tr. 11).¹
2. Applicant is married and has three (3) dependent children under the age of eighteen (18). (Tr. 11).
3. Applicant received his probationary appointment with the Fire Department on February 16, 2000. (Bd. Ex. 1, p. 1).
4. Applicant received his regular appointment to the Fire Department on February 15, 2001 (Bd. Ex. 1) and was promoted to Lieutenant in 2017. (Tr. 13).
5. On or about April 25, 2022, Applicant submitted to the Pension Board an application for line-of-duty disability pension benefits pursuant to 40 ILCS 5/4-110. Applicant cited injuries to his left elbow, right ankle, right shoulder, and left shoulder as the reason for the application. (Bd. Ex. 1, p. 5).
6. The Pension Board held a hearing on Applicant's line-of-duty disability application on December 5, 2023 (Tr. 1), which was continued to April 9, 2024.
7. Pension Board Exhibits 1 through 22 were admitted into the record without objection. (Tr. 6; Tr. 86).
8. Applicant's Exhibits 1 through 10 were admitted into the record without objection. (Tr. 9).

¹ Citations to Board Exhibits will be referenced as "(Bd. Ex. __, p. __)". Citations to Applicant Exhibits will be referenced as "(App. Ex. __)". Citations to Hearing Transcript will be referenced as "(Tr. __)".

Applicant's Medical Condition and Treatment

9. In 2002, Applicant injured his right leg while working for the Fire Department. He received medical care and treatment for that injury. (Tr. 14).

10. After this injury, Applicant returned to full, unrestricted duty. (Tr. 14-15).

11. In 2004, Applicant injured his left hand and wrist, received medical treatment, and returned to full, unrestricted duty. (Tr. 15).

12. Applicant also injured his left shoulder while working for the Fire Department, requiring surgery. Following physical therapy, he returned to full, unrestricted duty. (Tr. 15-16).

13. In 2007, Applicant again injured his left shoulder, but was able to return to full, unrestricted duty. (Tr. 16).

14. On May 15, 2020, Applicant was on duty and was called to fire. (Tr. 17).

15. After leaving the station for the call, Applicant's engine was deferred so it returned to the station. (Tr. 17).

16. While stepping back off the engine, Applicant stepped on his boots, injuring his right ankle and his left elbow. (Tr. 17-18).

17. Applicant left his boots next to the engine when it had left the station, and then stepped on the boots when exiting the rig returned, twisting his right ankle. (TR. 53-54).

18. Applicant was prescribed physical therapy for both injuries. (Tr. 19).

19. As of July 2020, Applicant's right ankle was fine, but his left elbow was still hurting. (Tr. 20).

20. On July 10, 2020, Applicant was released to full, unrestricted duty, but his left elbow was still causing him pain. (Tr. 20-21).

21. On September 15, 2020, Applicant was on duty and was called to a scene. While in full gear and stepping out of the engine, Applicant stepped into a pothole, injuring his right ankle. (Tr. 21-22).

23. Applicant was still receiving medical treatment for his left elbow at the time of the injury to his right ankle. Later, it was recommended that Applicant undergo a surgical procedure on his left elbow, but surgery was not authorized by the City's worker's compensation insurance company. (Tr. 23).

24. In February of 2021, Dr. Lawrence Li examined Applicant's injuries, agreeing with the recommendation of surgery on his left elbow and recommending further testing on his right ankle. (Tr. 25).

25. Applicant was simultaneously seeing two doctors for his left elbow and right ankle injury. (Tr. 26).

26. On May 4, 2021, Dr. Dsouza recommended surgery for Applicant's right ankle. (Tr. 27).

27. On May 21, 2021, Applicant underwent surgery on his left elbow, specifically a left elbow lateral epicondylectomy and debridement. (Tr. 26).

28. Following elbow surgery, Applicant received physical therapy. On July 16, 2021, while receiving physical therapy, Applicant allegedly injured his left shoulder. (Tr. 28-29).

29. On October 5, 2021, Applicant underwent arthroscopic on his left shoulder with posterior labral repair and debridement of a cyst and open subpectoral biceps tenodesis. (Tr. 36).

30. After finalizing post-operative treatment of his left shoulder, Applicant returned to treating his right ankle with Dr. Dsouza. Applicant was advised to have surgery on his shoulder first since he would be using crutches after the ankle was repaired. (Tr. 37-38).

31. In September of 2022, Applicant sought treatment on his right ankle with Dr. Dsouza. (Tr. 38).

32. On March 11, 2022, Applicant was released for full, unrestricted duty for his left shoulder injury. (Tr. 61).

33. On April 19, 2022, Dr. Dsouza informed Applicant that he was unable to perform the type of surgery Applicant require. (Tr. 62).

34. Despite being released for the shoulder injury, Applicant was unable to return to work due to the right ankle injury. (Tr. 63).

35. Applicant did not seek treatment from another doctor until April of 2023, when he had right ankle surgery. (Tr. 62).

36. Applicant underwent surgery on his right ankle, during which a brace was installed to reconstruct his ankle. (Tr. 41).

37. After ankle surgery, Applicant participated in physical therapy, but was never released to full, unrestricted duty. (Tr. 42).

Surveillance of Applicant

38. In June of 2021, Applicant was surveilled, and video was taken showing him actively playing with his kids at a swimming pool. He was shown picking up his young children and throwing them in the pool. (Tr. 57).

39. While playing with his kids, Applicant alleged he experienced shoulder pain, but did not report that pain to any medical provider. (Tr. 57).

Applicant's Work and Pay Status

40. Applicant filed a workers compensation claim. (Tr. 64).

41. Applicant did not receive PEDAs benefits from the City of East Peoria. (Tr. 63).

42. Applicant used his accrued and donated vacation and sick days through April 24, 2022. (Tr. 63).

43. Applicant was not offered a permanent light duty position. (Tr. 45).

44. Applicant's last day of regular pay was April 24, 2022. Applicant has not received any workers' compensation benefits after April 24, 2022. (Tr. 64).

Pension Board's Independent Medical Examinations

45. Pursuant to 40 ILCS 5/4-112 of the Illinois Pension Code, the Pension Board selected three (3) physicians to conduct an independent medical examination ("IME") of Applicant. Those physicians were Dr. Joshua M. Alpert, MD (Bd. Exs. 11, 17, 22), Dr. Vishal M. Mehta, MD (Bd. Exs. 12, 16, 21), and Dr. Jeffrey D. Williamson-Link, MD (Bd. Exs. 13, 18, 20). The Pension Board forwarded Applicant's treating medical records and related employment records to each of the independent medical examiners prior to examination.

IME of Dr. Joshua M. Alpert, M.D.

46. Dr. Alpert is licensed to practice medicine in the State of Illinois and is board certified in orthopedic surgery. (Bd. Ex. 11, p. 1293).

47. On December 2, 2022, Dr. Alpert reviewed Applicant's medical records and completed an independent medical evaluation of Applicant, certifying him disabled from performing full and unrestricted duties due to his right ankle injury. (Bd. Ex. 11, p. 1286).

48. Regarding Applicant's disability, Dr. Alpert concluded as follows:

"Regarding his right ankle, he has MRI objective findings of a peroneal brevis tendon and peroneus longus tear, as well as anterior talofibular ligament strains. I think it would be difficult to go back to work full duty without restrictions as it relates to his right ankle. He is disabled at this time." (Bd. Ex. 11, p. 1286).

49. Dr. Alpert concluded surgical intervention may allow Applicant to return to full, unrestricted duty in four to six months. (Bd. Ex. 11, p. 1287).

50. Regarding disability causation, Dr. Alpert opined Applicant experienced “. . . a right ankle injury where he stepped in a pothole on September 15, 2020, that caused him to tear his peroneal brevis tendon in two different locations as well as sprain his ankle. That appears to be an injury that occurred to the ankle that is acute and work related.” (Bd. Ex. 11, p. 1287).

51. Dr. Alpert concluded Applicant could undergo surgical intervention and potentially return to work without restrictions. (Bd. Ex. 11, p. 1287).

52. On August 25, 2023, Dr. Alpert reviewed additional medical records following Applicant’s surgical procedure on his right ankle. Regarding the disability, Dr. Alpert stated Applicant appears to be on track to be able to return to work. (Bd. Ex. 17, p. 1410).

53. On January 31, 2024, Dr. Alpert reviewed post-surgery physical therapy records, stating his original opinion remains unchanged. (Bd. Exhibit 22, p. 1486).

IME of Dr. Vishal M. Mehta, M.D.

54. Dr. Mehta is licensed to practice medicine in the State of Illinois and is board certified in orthopedic surgery. (Bd. Ex. 12, p. 1312).

55. Dr. Mehta reviewed Applicant’s medical records and certified him disabled from performing full and unrestricted firefighter duties (Bd. Ex. 13, p. 2500).

56. Regarding Applicant’s disability, Dr. Mehta concluded as follows:

“The instability of his right ankle can cause him to have symptomatic instability at times when he needs to get in and out of a truck or perform other duties as a firefighter.” (Bd. Ex. 12, p. 1305).

57. Dr. Mehta concluded Applicant’s right ankle injury “could likely be resolved with surgical treatment.” (Bd. Ex. 12, p. 1305).

58. Regarding Applicant’s disability, Dr. Mehta concluded Applicant’s ankle injury fit his current pathology. (Bd. Ex. 12, p. 1306).

59. Regarding causation, Dr. Mehta wrote, “I do believe that the right ankle injury is the direct result of the September 15th, 2020 and May 6th, 2020 injuries.” (Bd. Ex. 12, p. 1306).

60. Dr. Mehta found Applicant could perform in a limited, light duty capacity if such a position were made available and offered to him. (Bd. Ex. 12, p. 1306).

61. On August 24, 2023, Dr. Mehta issued a supplemental report following his review of Applicant’s surgical records, stating his opinion had not changed. (Bd. Ex. 16, p. 1407).

62. On December 20, 2023, Dr. Mehta issued a supplement report after reviewing Applicant’s physical therapy records, stating the records “do not in any way alter, amend, or modify my initial opinions and conclusions.” (Bd. Ex. 20, p. 1483).

IME of Dr. Jeffrey D. Williamson-Link, M.D.

63. Dr. Williamson-Link is licensed to practice medicine in the State of Illinois and is board certified in occupational medicine. (Bd. Ex. 13, p. 1330).

64. Dr. Williamson-Link reviewed Applicant’s medical records and certified him disabled from performing full and unrestricted firefighters duties. (Bd. Ex. 13, p. 1330).

65. Regarding Applicant’s disability, Dr. Williamson-Link concluded Applicant “is disabled from performing full and unrestricted duties. The firefighter has chronic right ankle pain. His MRI scan is abnormal.” (Bd. Ex. 13, p. 1330).

66. Dr. Williamson-Link concluded Applicant’s disability is consistent with the history obtained and the medical records noted. (Bd. Ex. 13, p. 1330).

67. Regarding disability causation, Dr. Williamson-Link opined as follows:

“It is my opinion based on review of the medical records and the history presented that the alleged disability for the . . . right ankle is a direct result of the May 6, 2020, September 15, 2020, incident.” (Bd. Ex. 13, p. 1330).

68. Dr. Williamson-Link found Applicant could perform in a limited, light duty capacity if such a position were made available. (Bd. Ex. 13, p. 1331).

69. On August 29, 2023, Dr. Williamson-Link issued a supplemental report after reviewing Applicant's surgical records, concluding "I would not alter amend or modify my initial opinions as stated in the January 19, 2023 report." (Bd. Ex. 18, p. 1414).

70. On December 26, 2023, Dr. Williamson-Link issued a supplemental report after reviewing physical therapy records, once again finding the records did not change his initial opinions and conclusions. (Bd. Ex. 20, p. 1484).

Pension Board's Final Conclusions of Fact

71. At the close of evidence on December 5, 2023, the Pension Board voted 5-0 to continue the hearing to allow the three (3) physicians to review additional physical therapy records provided by the Applicant at the hearing. (Tr. 83).

72. On April 9, 2024, the Pension Board reconvened the hearing, introducing the new supplemental reports from the IME doctors. (Tr. 86-87). The Pension Board voted 4-0 to award Applicant a line-of-duty disability pension effective April 24, 2022, subject to any applicable offsets. (Tr. 88-89).

II. APPLICABLE STATUTORY PROVISIONS

40 ILCS 5/4-105b Permanent disability.

"Permanent disability": any physical or mental disability that (1) can be expected to result in death, (2) has lasted for a continuous period of not less than 12 months, or (3) can be expected to last for a continuous period of not less than 12 months.

40 ILCS 5/4-110 Disability pension – Line of Duty.

If a firefighter, 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, is found, pursuant to Section 4-112, to be physically or mentally permanently disabled for service in the fire department, so as to render necessary his or her being

placed on disability pension, the firefighter shall be entitled to a disability pension equal to the greater of (1) 65% of the monthly salary attached to the rank held by him or her in the fire department at the date he or she is removed from the municipality's fire department payroll or (2) the retirement pension that the firefighter would be eligible to receive if he or she retired (but not including any automatic annual increase in that retirement pension). A firefighter shall be considered "on duty" while on any assignment approved by the chief of the fire department, even though away from the municipality he or she serves as a firefighter, if the assignment is related to the fire protection service of the municipality.

40 ILCS 5/6-110 Act of Duty.

"Act of duty": Any 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.

III. ANALYSIS OF CLAIM

Legal Standards To Be Used

The burden of proving entitlement to any kind of disability pension rests with the applicant. *Daily v. Bd. of Trustees of the Springfield Police Pension Fund*, 251 Ill. App. 3d 119 (4th Dist. 1993); *Wall v. Schaumburg Police Pension Bd.*, 178 Ill. App. 3d 438 (1st Dist. 1989); *Evert v. Firefighters' Pension Fund of Lake Forest*, 180 Ill. App. 3d 656 (2nd Dist. 1989). When deciding pension claims, it is particularly within the province of the pension fund board of trustees to resolve any conflicts presented by the evidence and to determine the credibility of witnesses. *Mehtaon v. Bd. of Trustees of the Des Plaines Firemen's Pension Fund*, 54 Ill. 2d 260 (1973). Due to their personal knowledge, the pension board members are in the best position to determine pension questions. *Sanders v. Springfield Police Pension Bd.*, 112 Ill. App. 3d 1087 (4th Dist. 1983).

Applicant's Line-of-Duty Disability Claim

The elements a firefighter must prove to obtain a line-of-duty disability pension are:

1. He or she is a firefighter;

2. An accident, injury or sickness was incurred;
3. The accident, injury or sickness was incurred in or resulted from the performance of an act of duty; and
4. The firefighter is permanently disabled for service in the Fire District. See *Gloss v. Bd. of Trustees, Firemen's Pension Fund of Chicago Heights*, 132 Ill. App. 3d 736, 739 (1st Dist. 1971).

The Pension Board finds Applicant satisfied his burden of proof and established each of the necessary elements to obtain a line-of-duty disability pension.

1. **Applicant is disabled from full and unrestricted duty.**

Applicant was a firefighter for the Fire Department on September 15, 2020, and at the time he applied for line-of-duty disability pension benefits. Applicant suffered an injury while performing the requirements of his job as a firefighter for the Fire Department. The objective medical evidence shows the September 5th incident resulted in a debilitating injury to Applicant's right ankle. Following surgery on that right ankle, it is the opinion of two of the three independent medical examiners Applicant is disabled from full and unrestricted firefighter duties as a result thereof. Further, there is no objective medical evidence contained in the administrative record that concludes Applicant can return to full, unrestricted firefighter duties. No permanent light-duty position within the Fire Department was offered to Applicant. As such, the Pension Board finds Applicant is disabled.

It should be noted the Pension Board finds no disability resulting from the other injuries identified in Applicant's application for disability benefits, namely his left elbow, right shoulder, and left shoulder, as the medical evidence established he was released for full, unrestricted duty by his treating physicians. Accordingly, the Pension Board only awards this disability benefit for the injury sustained to Applicant's right ankle on September 15, 2020.

2. Applicant is disabled as the result of an “act of duty.”

Applicant incurred his disabling injury from the performance of an act of duty. The term “act of duty” for purposes of Article 4 of the Illinois Pension Code should be construed in accordance with the definition contained in Article 6 of the Pension Code. *Jensen v. E. Dundee Fire Prot. Dist. Firefighters’ Pension Fund Bd. of Trustees*, 362 Ill. App. 3d 197, 203 (2d Dist. 2005). Section 6-110 of the Pension Code defines an act of day 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.

In Illinois, an act of duty need not be the sole cause of a disability. The claimant must prove only that the duty-related accident is a causative factor contributing to his disability. See *Luchesi v. Ret. Bd. of Firemen’s Annuity & Benefit Fund of Chicago*, 333 Ill. App. 3d 543, 550 (1st Dist. 2002). A sufficient nexus must exist between the disability and the performance of the act of duty for line-of-duty disability benefits to be appropriate. *Barber v. Bd. of Trustees of Vill. of S. Barrington Police Pension Fund*, 256 Ill. App. 3d 814, 818 (1st Dist. 1993). The claimant has the burden of establishing a causal connection between the act of duty and his disability. *Carrillo v. Park Ridge Firefighters’ Pension Fund*, 2014 IL App (1st) 130656, ¶ 27.

The Pension Board finds sufficient evidence supports the conclusion Applicant incurred his disabling injury from an “act of duty.” Applicant injured his right ankle while on-duty and while stepping off the fire engine responding to a call. Specifically, the opinion of all three (3) independent medical examiners found Applicant’s disabling injury was caused, in whole or in part, as a result of carrying out his assigned duties in responding to a call on September 15, 2020.

Therefore, based upon a preponderance of the evidence, the Pension Board finds Applicant is disabled so as to render necessary his suspension from service in the Fire Department. The September 15, 2020, incident resulting in a disabling injury to Applicant's right ankle prevents him from returning to full, unrestricted duty, so the Pension Board finds Applicant's disabling condition resulted from an "act of duty."

IV. CONCLUSIONS

1. The Board of Trustees of the East Peoria Firefighters' Pension Fund has jurisdiction over this subject matter.

2. Applicant is entitled to a line-of-duty disability pension pursuant to §4-110 of the Illinois Pension Code, effective April 24, 2022, because he sustained a disabling injury in the performance of an act of duty, subject to any offsets.

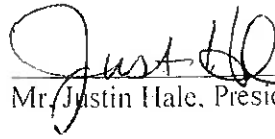
3. Applicant shall notify the Pension Board in the event of settlement or award from any Workers' Compensation case or PEDA benefits from the City in order for the Pension Board to determine whether there should be an offset pursuant to §4-114.2 of the Illinois Pension Code, and the Pension Board will retain jurisdiction over this matter for this purpose only.

4. Applicant's disability benefits shall be calculated using the salary attached to the rank of "Lieutenant" subject to him having made, or making, all necessary pension contributions according to that salary.

IT IS THEREFORE ORDERED:

That a certificate of payment be issued to Applicant, Lieutenant Christopher Dunne, pursuant to 40 ILCS 5/4-125 of the Illinois Pension Code, stating Applicant's entitlement to a line-of-duty disability benefit, effective April 24, 2022.

**BOARD OF TRUSTEES OF THE EAST PEORIA FIREFIGHTERS' PENSION
FUND**



Mr. Justin Hale, President



Mr. Andrew Rubel, Trustee



Mr. Samuel Sauder, Trustee



Mr. Bobby Zimmerman, Trustee

Mr. Jeff Becker, Trustee

DATE: 8-13-24

**THIS IS A FINAL AND APPEALABLE DECISION. THIS DECISION CAN BE
REVIEWED IN THE CIRCUIT COURT BY FILING A COMPLAINT FOR
ADMINISTRATIVE REVIEW WITHIN 35 DAYS FROM THE DATE THAT A COPY OF
THIS DECISION WAS PLACED IN THE MAIL TO THE PARTY AFFECTED
THEREBY.**

IN THE MATTER OF THE)
DISABILITY APPLICATION OF:)
)
LIEUTENANT CHRISTOPHER DUNNE)
)
APPLICANT.)

Pursuant to Sections 4-125 and 4-110 of the Illinois Pension Code, this certifies Applicant, Firefighter Christopher Dunne, is entitled to payment of a Line-of-Duty Disability Pension equal to 65% of the salary attached to the rank held by him at the time of his removal from the municipality's payroll, less any and all applicable offsets. The pension shall include any applicable additional benefit amount for dependents pursuant to Section 4-110 of the Pension Code. The effective date of Applicant's Line-of-Duty Disability Pension, subject to applicable offsets for worker's compensation benefits, is granted retroactive to April 24, 2022. The salary attached to the rank held by Applicant at the date of suspension of duty or retirement is \$102,753.59.

By: Just Her
PRESIDENT

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SECRETARY

15

CERTIFICATE OF SERVICE

I, Vincent C. Mancini, being first duly sworn on oath, states that he served copies of the attached Decision and Order, and Certificate of Payment on the persons named below by depositing same this 28th day of August, 2024 in the U.S. Mailbox at 15 Spinning Wheel Road, Hinsdale, Illinois 60521:

(X) PRIORITY MAIL SIGNATURE CONFIRMATION

(X) FIRST CLASS MAIL

TO: Lieutenant Christopher Dunne
402 Windsor Drive
Germantown Hills, Illinois 61548

(By Priority Mail Signature Confirmation and First Class Mail)

Mr. Stephen P. Kelly, Esq.
2710 North Knoxville Avenue
Peoria, Illinois 61604

(By First Class Mail)



cc: Lt. Justin Hale, President
East Peoria Firefighters' Pension Board

SUBSCRIBED and SWORN
to before me this 28th day
of August, 2024


NOTARY PUBLIC

