

**BEFORE THE BOARD OF TRUSTEES OF THE
PEORIA POLICE PENSION FUND**

IN THE MATTER OF THE)
DISABILITY APPLICATION OF:)
OFFICER IAN MCDOWELL,)
APPLICANT.)

DECISION AND ORDER

This matter comes before the Board of Trustees of the Peoria Police Pension Fund ("Pension Board") upon the disability application of Officer Ian McDowell ("Applicant"). The Pension Board, pursuant to the statutory authority set forth in 40 ILCS 5/3-101 *et seq.*, of the Illinois Pension Code, renders the following decision concerning Applicant's claim for line-of-duty disability pension benefits. A hearing was held before the Pension Board on February 24, 2020.

Applicant was duly and properly notified of the hearing and present for the hearing represented by Counsel, Stephen P. Kelly. Applicant submitted evidence during this hearing regarding his claim.

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 accordance 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 was a regular member of the Peoria Police Department (“Police Department”) holding the rank of police officer. (Bd. Ex. 1, p. 1).¹
2. Prior to his appointment to the Police Department, Applicant was a police officer for the City of Canton for approximately a year and a half. (R. 14).²
3. Prior to his appointment to the Police Department, Applicant passed a pre-employment physical examination. (R. 15).
4. Applicant received his probationary appointment to the Police Department on February 18, 2013. (Bd. Ex. 1, p. 1).
5. In September 2017, Applicant was involved in an officer involved shooting (“OIS”). Applicant was released to full duty after the investigation concluded. (R. 17-18).
6. On or about January 14, 2019, Applicant applied to the Pension Board for “line-of-duty” disability pension benefits pursuant to 40 ILCS 5/3-114.1. In his application, Applicant asserted that on February 1, 2018 “I was shot once in the right side of my groin by suspect that was fleeing on foot. The .380 bullet struck my femoral nerve, struck and broke my femur and ended up in my right hip where it was later removed.” Detailing his disability, Applicant wrote “I have ongoing severe pain throughout the right side of my body. I have not been able to continue physical therapy

¹ Citations to Exhibits admitted into the Administrative Record are designated as either Board Exhibits “(Bd. Ex. ___)” or Applicant Exhibit “App. Ex. ___”.

² Citations to the Transcript are designated (R. ___).

due to this nerve pain. In addition I have been diagnosed with PTSD and panic disorder. I am on medication for depression and anxiety and I am being seen weekly for psychological treatment.” (Bd. Ex. 1, p. 2).

7. Prior to February 1, 2018, Applicant did not sustain any injuries to his right hip or leg and had not undergone treatment for anxiety, depression or post-traumatic stress disorder. (R. 17)

8. The Pension Board held a hearing on Applicant's disability application on February 24, 2020. (R. 1).

9. Pension Board Exhibits one (1) through fifteen (15) were admitted into the record without objection. (R. 9).

10. Applicant Exhibits one (1) through five (5) were admitted into the record without objection. (R. 10, 40).

11. At the time of the hearing in the matter, Applicant was thirty-three (33) years old, married to Casey McDowell (R. 15) and had two (2) children under the age of eighteen (18) years old. (R. 16).

12. At the time of the hearing in the matter, Applicant amended his application to include an alternative non-duty disability. (R. 11).

The February 1, 2018 Incident.

13. In summary, Applicant testified, on February 1, 2018, Applicant was on a traffic stop at Southwest Jefferson and Apple in Peoria when the vehicle fled the scene and crashed. The suspect ran on foot and set up an ambush for Applicant and his partners. Applicant cut off the suspect and engaged in a face to face shoot out. Applicant got shot in the right side of his pelvis. The bullet went down to his femur and into his hip. After returning fire and the suspect was down, Applicant got into another officer's patrol car and went to St. Francis Hospital. (R. 18-20).

Applicant's Medical Treatment

14. On February 1, 2018, Applicant was admitted to the hospital for a day or two for gunshot wound treatment. (R. 20).

15. On February 22, 2018, Applicant was evaluated by Dr. Stoecker for complaints of pain in the right upper thigh radiating down the right leg. Applicant could still feel the bullet and a hard-formed body was detected beneath the skin on the lateral aspect of the right hip at the iliac crest. (Bd. Ex. 15, p. 3191).

16. On February 23, 2018, Dr. Tanck removed the bullet under local anesthetic. The bullet was discovered in subcutaneous tissues. (Bd. Ex. 15, p. 3191).

17. On March 14, 2018, Applicant underwent an MRI of the pelvis and right upper leg. The MRI revealed a minimally impacted fracture involving the anterior cortex of the right subtrochanteric femur. Also noted was a hematoma and partial-thickness tear involving the vastus medialis and interemedius muscles adjacent the femur fracture. Applicant also had a contusion/strain involving the sartorius, gluteus medius, and rectus femoral muscles. There was mild edema involving the right femoral neurovascular bundle at the level of the proximal thigh corresponding to the path of the bullet. There was no focal discontinuity or hyperintense signal involving the visualized femoral nerve. There was a normal appearance of the right lumbosacral plexus and sciatic nerve. (Bd. Ex. 15, p. 3187).

18. On March 26, 2018, Applicant was examined by Dr. Kinzinger for complaints of right leg pain described as throbbing, popping and sharp. Further, Applicant reported worsening numbness in the right leg along with constant lancinating type nerve pain and some muscle spasms. Applicant reported pain in his thigh, lower back, anterior thigh and posterior leg going from his buttock down his leg. Applicant's pain symptoms worsened with movement and sitting too long. Upon

examination, Applicant had reduced sensation in the femoral nerve distribution of the right leg versus the left, extending down into the saphenous nerve distribution. Applicant had weakness in the right quadriceps but symmetric strength in the lower legs. Neuropathy was suspected as a result of the injury to the femoral nerve. Gabapentin and/or Lyrica was recommended along with nonoperative treatment. A possible hernia was also suspected. (Bd. Ex. 15, p. 3187).

19. On May 14, 2018, Applicant was reexamined by Dr Kinzinger. It was noted Applicant was getting strong and could walk around the house without crutches. Applicant still had anterior thigh muscle and right knee pain and weakness in the right quad. Upon examination it was noted Applicant had a full range of motion and no instability in the knee. Some groin pain was noted with resisted hip flexion. An x-ray of the femur showed a well-healed subtrochanteric gunshot injury. Dr. Kinzinger recommended increased weightbearing as tolerated and ordered an EMG and physical therapy ("PT"). (Bd. Ex. 15, p. 3187).

20. On May 14, 2018, Applicant was evaluated at Occupational Health Clinic by Dr. Linda Batek. It was noted gabapentin reduced Applicant's pain from 10/10 to 4-5/10 but his right groin pain was constant. In addition, Applicant was taking Aleve and Norco. Upon examination, Applicant was able to walk into the exam room and get on and off the exam table. Applicant had a slight limp and was unable to toe walk due to pain and weakness in the right thigh. Applicant was unable to externally rotate the hip due to groin pain. Significant pain upon palpation of the right femoral triangle made the examination difficult to complete. (Bd. Ex. 15, p. 3188).

21. On May 17, 2018, Applicant was examined by Dr. Russo for ongoing complaints of pain radiating into the right lower extremity. Applicant underwent an EMG/NCV of the right lower extremity. The findings were normal, including a femoral nerve study. (Bd. Ex. 15, p. 3188).

22. On May 21, 2018, Applicant was examined by Dr. Batek for continued complaints of moderate groin and right leg pain. Applicant reported he was unable to stand in one position for a long time and could walk only a block without stopping. Applicant was unable to undergo an inguinal ultrasound as recommended by general surgery due to significant inguinal pain. PT was suspended until the hernia was evaluated. Applicant was kept off work. (Bd. Ex. 15, p. 3188).

23. On June 5, 2018, Applicant followed up with Dr. Batek. It was noted the general surgery office would not see Applicant until his nerve pain was reduced. (Bd. Ex. 15, p. 3188).

24. On June 6, 2018, Applicant underwent a pelvic ultrasound and there was no evidence of a hernia. (Bd. Ex. 15, p. 3191).

25. On June 19, 2018, Applicant was examined by Dr. Batek for complaints of significant pain in the right groin region running down his leg into the foot. Applicant's symptoms were consistent with femoral nerve distribution. Applicant referred to a physical medicine specialist. (Bd. Ex. 15, p. 3188).

26. On July 3, 2018, Applicant was examined by Dr. Batek for complaints of piercing groin pain. Applicant was provided work restrictions including a maximum 4-hour workday in an office environment with positional changes as needed. He was to avoid static standing, prolonged sitting, and repetitive or sustained bending. Additionally, he was limited to 20 pounds lifting/carrying. (Bd. Ex. 15, p. 3189).

27. On July 6, 2018, Applicant was first seen by Dr. Carrie Steiner, of the First Responders Wellness Center. Applicant was diagnosed with PTSD. He was subsequently seen 20 times. Applicant reported sleep problems, intrusive thoughts and avoidance. He was further diagnosed with Panic Disorder and Major Depression. Dr. Steiner noted he was off for months due to a prior officer involved shooting and did not have trauma symptoms. Dr. Steiner also noted Applicant was

involved in combat in Afghanistan. Applicant participated in individual and group therapy and EMDR therapy. (Bd. Ex. 14, p. 3148).

28. On August 20, 2018, Applicant was examined by Dr. Snyder in the psychiatry clinic for complaints of groin pain and numbness along the medial right thigh. Dr. Snyder did not find any indication for additional imaging studies or electrodiagnostic tests. Dr. Snyder recommended desensitization techniques for the right groin pain, Cymbalta for neuropathic pain, and continued gabapentin and PT. (Bd. Ex. 15, p. 3189.)

29. On September 4, 2018, Applicant was reevaluated by Dr. Batek. It was noted Applicant continued water-based and land-based PT which were helping. Dr. Batek noted Applicant appeared to be improving functionally. Applicant was continued on work restrictions. (Bd. Ex. 15, p. 3189).

30. On October 15, 2018, Applicant followed up with Dr. Batek. Applicant noted he was doing well in PT until he pulled something running two (2) laps. Applicant's pain increased significantly, and he stopped PT. Applicant was placed on anti-inflammatories and muscle relaxants but stopped the relaxants due to side effects. Applicant continued on work restrictions. (Bd. Ex. 15, p. 3190).

31. On October 16, 2018, Dr. Stoecker prescribed Fluoxetine 20 mg for treatment of PTSD. (Bd. Ex. 14, p. 3149).

32. On October 16, 2018, Applicant was re-evaluated by Dr. Stoecker. Applicant advised Dr. Stoecker he was unable to perform PT due to pain. Dr. Stoecker recommended continued PT for the right hip and prescribed Relafen and Flexeril. (Bd. Ex. 15, p. 3190).

33. On November 15, 2018, Applicant was examined by Dr. Stoecker for complaints of persistent numbness in the right leg and right knee pain. Applicant noted pain during weight bearing and that his knee locked up. Applicant further noted that gabapentin was less effective,

and Aleve had light effect. Dr. Stoecker recommended Relafen for the knee pain and ordered an MRI of the lumbosacral spine regarding Applicant's persistent numbness. (Bd. Ex. 15, p. 3190).

34. On December 10, 2018, Dr. Batek authored an addendum note. The MRI results showed essentially no pathology, specifically none as a source of leg pain. Dr. Batek recommended a neurosurgery consultation. (Bd. Ex. 15, p. 3190).

35. Applicant's current medications include Fluoxetine 60 mg QD and Alprazolam 0.5 g qam and prn. (Bd. Ex. 14, p. 3150).

36. Applicant testified he still sees Dr. Steiner in person 2 times per month and talks to her on the phone and additional 2 times per month. (R. 32).

37. Applicant testified PT it was stopped due to maximum medical improvement. (R. 31).

38. Applicant testified there is no additional or follow up treatment for his gunshot and orthopedic injuries. (R. 36).

39. Applicant testified he followed all treatment programs recommended by his treating doctors and has not done every prescribed treatment. (R. 37-38).

40. Applicant testified no treating or evaluating doctor has told him he could go back to full unrestricted duty. (R. 38).

Applicant's Work and Pay Status

41. Applicant received one year of public employee disability act ("PEDA") benefits that terminated on or about February 1, 2019. (R. 34).

42. Applicant was separated from the Police Department on March 22, 2019 (R. 36).

43. Applicant testified no permanent light duty position was offered under his current condition. (R. 28).

44. As a result of his injuries, Applicant filed a worker's compensation claim against the City of Peoria which was settled April 23, 2019 for 47% man as a whole. (R. 29).

45. Applicant has not been employed in any other full-time capacity since February 1, 2018 but is attempting to start up a self-employed business. (R. 38).

46. Applicant testified his treating doctors haven't limited him from employment other than police work. (R. 38).

Pension Board's Independent Medical Examinations.

47. Pursuant to 40 ILCS 5/3-115 of the Illinois Pension Code, the Pension Board selected three (3) physicians to conduct an independent medical examination ("IME") of Applicant. Those physicians were Allison L. Jones, M.D., Stevan M. Weine, M.D. and David M. Anderson, M.D. The Pension Board forwarded Applicant's medical records and related employment records to each of the Independent Medical Examiners for review.

IME of Allison L. Jones, M.D.

48. Dr. Jones is board-certified in occupational and environmental medicine. (Bd. Ex. 13, p. 3142).

49. On June 29, 2019, Dr. Jones performed an IME of Applicant and certified Applicant disabled. (Bd. Ex. 13, p. 3134).

50. Regarding whether Applicant is disabled from performing full, unrestricted police duties, Dr. Jones opined Applicant is disabled due to "ongoing pain issues in the gunshot wound from an initial and ongoing standpoint related to his right femur fracture and ongoing local nerve pain in his right lower extremity related to with weight bearing and activities like walking/running. Records also indicate he has resultant panic disorder, PTSD." (Bd. Ex. 13, p. 3135).

51. Regarding the likely duration of Applicant's disability, Dr. Jones opined, "currently, [Applicant] has ongoing follow up with Orthopedics, a Home Exercise Plan from PT and is actively treating in individual and group psycho-therapy with the First Responders Wellness Center with a licensed Clinical Psychologist who is addressing and treating his related PTSD..." (Bd. Ex. 13, p. 3135)

52. Regarding pre-existing conditions related to Applicant's disability, Dr. Jones noted "[Applicant] has had on the job incidents of being involved with defensive shootings where he had to fire his weapon to protect himself or others on his SWAT team which may be compounding his current psychological recovery from an occupational stand point, however a psychiatrist will address the psychiatric claim." (Bd. Ex. 13, p. 3135).

53. Regarding the cause of Applicant's disability, Dr. Jones concluded Applicant's "...[r]ight lower extremity pain and resultant functional issues...appear to be the result of this February 1, 2018 incident. Some of his ongoing mental health issues may be a result of the fact the patient has had some previous responsive shooting incidents that resulted in citizen deaths and the patients concern that this puts him at greater risk in the proximate work and home geography." (Bd. Ex. 13, p. 3136).

54. Regarding Applicant's performance of light duty, Dr. Jones opined

[Applicant] may have the capacity for some type of limited or light to sedentary duty as recommended at various points as a trial by OSF Occupational Medicine/PT, however his mental health professional has been reluctant to return him to duties in the capacity of a police officer due to his ongoing mental health status. Any such specific limited or light to sedentary duty may require review and approval of his treating Orthopedic physician, Occupational Medicine and his treating mental health professional with the First Responders Wellness Center, Chicago for officer and safety compliance. (Bd. Ex. 13p. 3136).

55. Lastly, regarding additional, reasonable medical care and treatment, Dr. Jones noted Applicant has a home exercise plan, sees his orthopedic surgeon as needed and continues treatment at the First Responders Wellness Center. (Bd. Ex. 13, p. 3137).

IME of Stevan M. Weine, M.D.

56. Dr. Weine is licensed to practice medicine in the State of Illinois and is board-certified in psychiatry and neurology and as a medical examiner. (Bd. Ex. 14, p. 3164).

57. On July 17, 2019, Dr. Weine performed an IME of Applicant and certified Applicant disabled. (Bd. Ex. 14, p. 3144).

58. Regarding whether Applicant is disabled from performing full, unrestricted police duties, Dr. Weine concluded “[Applicant] currently meets criteria for Post-Traumatic Stress Disorder and Major Depressive Disorder, which were first diagnosed in 2018... and is currently disabled in the sense that due to symptoms of these conditions (e.g. depressed mood, anxiety/panic, difficulty concentrating, low energy), he is unable to function as a full and unrestricted duty Police Officer” (Bd. Ex. 14, p. 3151-3152).

59. Regarding the likely duration of Applicant’s disability, Dr. Weine opined “[Applicant’s] disability is expected to last one or more years. The fact that he also suffered from a physical injury makes it more likely that he will continue to have PTSD and Major Depression.” (Bd. Ex. 14, p. 3152).

60. Regarding the cause of Applicant’s disability, Dr. Weine concluded Applicant’s disability is the direct result of the February 1, 2018 shooting. (Bd. Ex. 14, p. 3152).

61. Regarding Applicant’s performance of light duty, Dr. Weine concluded Applicant could not work in such a capacity. (Bd. Ex. 14, p. 3152).

62. Regarding whether Applicant's disability was caused by the on-duty activities or the cumulative effects of on-duty activities, Dr. Weine opined "...the disability from PTSD was directly caused by on-duty activities related to the February 1, 2018. It cannot be explained by a pre-existing condition." (Bd. Ex. 14, p. 3153.

63. Lastly, regarding additional, reasonable medical care and treatment, Dr. Weine concluded:

[Applicant] needs continued treatment for his disability due to PTSD and Major Depression. The overall aim of his treatment should be to diminish the traumatic stress and depression symptoms so as to promote his level of functioning so that he is able to maximize his familial, social and occupational function. He should receive evidence-based treatments including psychopharmacology, cognitive behavior therapy, supportive psychotherapy, sleep hygiene, and family therapy. Treatment should consist of weekly meetings with an individual psychotherapist experienced in treating Post-Traumatic Stress Disorder and Major Depression in police officers and monthly meetings with a psychiatrist with the same expertise. Although he is not seeing an individual therapist, he is not seeing a psychiatrist for his medications. Given the complexity of his situation, co-morbid physical injury, he should be seeing a psychiatrist who should be prescribing him medications. I estimate he would need continued treatment given the persistent nature of Post-Traumatic Stress Disorder, in the context of physical injury. Regarding the possibility of success, his prognosis is guarded in the sense that he will always be vulnerable to relapse of Post-Traumatic Stress Disorder and Major Depressive Disorder. However, were he to receive continued treatment as noted above, I would expect improvement and that with two years he could conceivably not be disabled by Post-Traumatic Stress Disorder and Major Depression symptoms and could return to work, but unlikely in the police department. If he returns to work, he should have at least one additional year of treatment after he returns to work. (Bd. Ex. 14, p. 3153.

IME of David M. Anderson, M.D.

64. Dr. Anderson is board-certified in orthopaedic surgery and orthopaedic sports medicine. (Bd. Ex. 15, p. 3199).

65. On July 15, 2019, performed an IME of Applicant and certified Applicant disabled. (Bd. Ex. 15, p. 3185).

66. Regarding whether Applicant is disabled from performing full, unrestricted police duties, Dr. Anderson found Applicant is disabled due to subjective complaints of right groin and right lower extremity pain. (Bd. Ex. 15, p. 3193).

67. Regarding the likely duration of Applicant's disability, Dr. Anderson opined "ongoing". (Bd. Ex. 15, p. 3193).

68. Regarding pre-existing conditions related to Applicant's disability, Dr. Anderson noted Applicant had a history of mild aches and pains in his knee prior to February 1, 2018 but was able to work full and unrestricted police duties despite knee symptoms. (Bd. Ex. 15, p. 3193).

69. Regarding the cause of Applicant's disability, Dr. Anderson opined "[a]lthough [Applicant] had a pre-existing condition with the right knee, his disabling symptoms are attributed to diffuse right lower extremity pain as a result of the 02/01/2018 injury." (Bd. Ex. 15, p. 3193).

70. Regarding Applicant's performance of light duty, Dr. Anderson found Applicant can perform in a limited or light duty position restricted from running, jumping, squatting, sitting more than 10-15 minutes and standing more than 2 hours at a time. Additionally, Applicant should be restricted from confrontational situations. (Bd. Ex. 15, p. 3194).

71. Lastly, regarding additional, reasonable medical care and treatment, Dr. Anderson concluded no additional reasonable medical care and treatment could reasonably be expected to enable Applicant to return to full and unrestricted police duties. Dr. Anderson suggested Applicant should be re-evaluated by physiatry or a pain management physician in regard to apparent saphenous nerve symptoms which can be treated by nerve blockage and/or ablation. (Bd. Ex. 15, p. 3194).

Pension Board's Final Conclusions of Fact.

72. As a matter of fact, on February 1, 2018, Applicant was on-duty acting in the capacity of a police officer.

73. As a matter of fact, Applicant is disabled from full and unrestricted duties as a police officer.

74. The Pension Board finds Applicant disabled as a result of an "act of duty". Applicant's duties as a police officer required, he patrol a designated area of the city in a motorized vehicle, to preserve law and order and to prevent and discover the commission of crimes and to enforce traffic regulations. Further, Applicant's duties required he apprehend or subdue potentially violent or dangerous persons. (Bd. Ex. 11, p. 3126).

75. As a matter of fact, no permanent light duty position is available.

76. The Pension Board voted 5-0 to award Applicant a line-of-duty disability pension (R. 46), effective March 22, 2019 (R. 36) subject to any applicable workers' compensation offsets.

II. APPLICABLE STATUTORY PROVISIONS

The following provisions of the Illinois Pension Code have application:

40 ILCS 5/3-114.1 Disability pension – Line of Duty

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 the 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 annual 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 5/5-113 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 this 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 for its direct purpose the saving of the life or property of a person other than the policeman.

III. ANALYSIS OF CLAIM

1. Legal Standards to Be Used.

The purpose of laws for police officer's pension is beneficial in nature and such statutes should be liberally construed in favor of the police officer to be benefited. *Peifer v. Board of Trustees*, 57 Ill. App. 3d 102, 106 (1st Dist. 1978). The burden of proving the 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 (2d Dist. 1989). Due to their personal knowledge of the peculiar physical and emotional demands of being a police officer, the members of a 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*, 112 Ill. App. 3d 1087, 1091 (4th Dist. 1983).

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. *Peterson v. Bd. of Trustees of the Des Plaines Firemen's Pension Fund*, 54 Ill.2d

260 (1st Dist. 1973). The courts do not substitute their judgment for that of the pension board in such matters. *Peterson v. Board of Trustees*, 5 Ill.App.3d 180, 184 (1st. Dist. 1971). The findings and conclusions of an administrative agency on questions of fact are deemed prima facie true and will not be disturbed unless they are against the manifest weight of the evidence. *Alm v. Lincolnshire Police Pension Bd.*, 352 Ill.App.3d 595, 597 (2d Dist. 2004); 735 ILCS 5/3-110. The Pension Board's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Rozak v. Kankakee Firefighters' Pension Bd.*, 376 Ill.App.3d 130, 138 (3d Dist. 2007). "It is not sufficient that there are mere conflicts in the testimony or that an opposite conclusion might be reasonable; since the weight of the evidence and the credibility of the witnesses are within the province of the administrative agency, there need be only some competent evidence in the record to supports its finding." *Id.* at 139 (citing *Evert*, 180 Ill.App.3d at 660).

2. Applicant's Line-of-Duty Disability Claim.

Applicant has the burden of proving that he is disabled, and that the disability occurred in the line of duty. *Wall v. Schaumburg Police Pension Board*, 178 Ill. App. 3d 438, 443 (1st Dist. 1988). The elements a police officer must prove in order to obtain a line of duty disability pension under 40 ILCS 5/3-114.1 are as follows:

1. He or she is a police officer;
2. An accident, injury or sickness was incurred in or resulted;
3. From the performance of an act of duty;
4. The officer is found to be physically or mentally disabled; and
5. The disability renders necessary his or her suspension or retirement from police service.

The Pension Board finds Applicant sustained his burden of proving each of the elements necessary to obtain a line-of-duty disability pension.

1. Applicant is disabled

Applicant was a Peoria police officer on February 1, 2018, and at the time he applied for line-of-duty disability pension benefits. The Pension Board finds Applicant sustained physical injuries to his right groin and leg and mental health injuries. The objective medical evidence shows Applicant has undergone multiple treatments for his right groin and right leg injuries including extensive PT. Additionally, Applicant has undergone extensive and ongoing mental health treatment.

The unanimous opinion of all three independent medical examiners is Applicant is disabled. Specifically, Dr. Jones found Applicant disabled due to both physical and mental health injuries. Dr. Weine, a psychiatrist, found Applicant disabled due to PTSD and Major Depressive Disorder, resulting directly from the February 1, 2018 incident. Dr. Anderson found Applicant physically disabled due to pain resulting from the February 1, 2018 incident.

Further, there is no objective medical evidence contained in the administrative record that concludes Applicant can return to full and unrestricted duty. As a result, the Pension Board finds Applicant is permanently disabled so as to render necessary his suspension or retirement from police service.

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

The Pension Board finds Applicant disabled as the result of performing an act of duty. The term “act of duty” for purposes of Article 3 of the Pension Code should be construed in accordance with the definition contained in Article 5 of the Pension Code. Article 5 defines an “act of duty”

as “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 this 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 for its direct purpose the saving of the life or property of a person other than the policeman.” 40 ILCS 5/5-113.

The Pension Board reaches its decision by focusing on the capacity in which Applicant was acting when he was injured, not the mechanism of the injury. *Merlo v. Orland Hills Police Pension Bd.*, 383 Ill. App. 3d 97, 102, (1st Dist. 2008). The Pension Board finds Applicant was engaged in an “act of police duty inherently involving special risk not ordinarily assumed by a citizen in the ordinary walks of life” on February 1, 2018 when he engaged in armed combat with an armed offender who fled the scene of a traffic stop. Applicant was shot by the offender and Applicant returned fire in fear for his life. Citizens in the ordinary walks of life do not pursue armed felons in an attempt to apprehend them. The Pension Board finds Applicant’s duties as a police officer required, he respond to emergency calls in order to protect life and property within the City of Peoria and apprehend or subdue potentially violent or dangerous persons. Further, Applicant’s action in engaging the offender was an act of heroism having for its direct purpose the saving of the lives of his fellow officers.

The Pension Board finds overwhelming evidence to support the conclusion that Applicant’s injuries were incurred from an “act of duty”, that Applicant’s injuries rendered him permanently disabled, and that Applicant’s disability renders necessary his retirement from police service. As such, Applicant is entitled to a line-of-duty disability pension benefit.

IV. CONCLUSIONS

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

2. Applicant is entitled to a line-of-duty disability pension under §3-114.1 of the Illinois Pension Code effective March 22, 2019, less applicable offsets, because he sustained permanently disabling injuries in the performance of an act of police duty.

3. Pursuant to §3-114.5 of the Illinois Pension Code Applicant cannot receive benefits under the Pension Code and the Worker's Compensation Act for the same injury. Applicant shall notify the Pension Board in the event of settlement or receipt of an award from any Worker's Compensation case, in order for the Pension Board to determine whether there should be an offset pursuant to §3-114.5 of the Illinois Pension Code, and the Pension Board will retain jurisdiction over this matter for this purpose only.

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IT IS THEREFORE ORDERED:

That a certificate of payment be issued to Applicant, Officer Ian McDowell pursuant to §3-133 of the Illinois Pension Code, stating Applicant's entitlement to a line-of-duty disability benefit, effective March 22, 2019.

BOARD OF TRUSTEES OF THE PEORIA
POLICE PENSION FUND

Mr. Shavar Curry, President:

Mr. Alan Miserfer, Trustee:

Mr. Scott Bowers, Trustee:

Mr. Patrick Nichting, Trustee:

Mr. Norman Burdick, Trustee:

DATED 08 15 20

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 SERVED UPON THE PARTY AFFECTED THEREBY. THE AFFECTED PARTY MUST FILE A COMPLAINT FOR ADMINISTRATIVE REVIEW WITHIN 35 DAYS FROM THE MAILING DATE OF THIS DECISION.

BEFORE THE BOARD OF TRUSTEES OF THE
PEORIA POLICE PENSION FUND

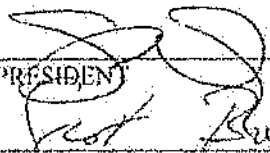
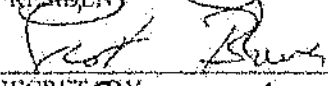
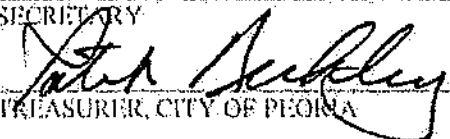
IN THE MATTER OF THE)
DISABILITY APPLICATION OF:)
OFFICER IAN MCDOWELL,)
APPLICANT.)

CERTIFICATE OF PAYMENT

Pursuant to Section 5/3-133 and Section 5/3.114.1 of the Illinois Pension Code, 40 ILCS 5/3-101 *et seq.*, this is to certify that the Applicant, Officer Ian McDowell, is entitled to payment of a Line of Duty Disability Pension Benefit equal to 65% of the salary attached to the rank held by him at the time of his removal from the Peoria Police Department payroll, less any and all applicable offsets. The effective date of the Applicant's line of duty disability pension benefit, subject to applicable offsets, is granted retroactive to March 22, 2019. The amount of the benefit has been certified by the Treasurer of the City in accordance with 40 ILCS 5/3-141.1.

BOARD OF TRUSTEES OF THE
PEORIA POLICE PENSION FUND

By:


PRESIDENT

SECRETARY

TREASURER, CITY OF PEORIA

DATE: 9-28-20


CERTIFICATE OF SERVICE

I, Richard J. Reimer, being first duly sworn on oath states that he served copies of the attached Decision and Order, and Certificate of Payment, on the person(s) named below by depositing same this 29 day of Sept., 2020 in the U.S. mailbox at 15 Spinning Wheel Road, Hinsdale, Illinois, 60521:

(X) PRIORITY MAIL SIGNATURE CONFIRMATION (X) FIRST CLASS MAIL

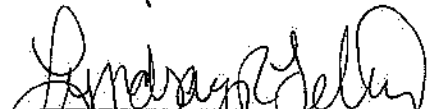
TO: Officer Ian McDowell
308 Circuit Court
East Peoria, Illinois 61611
(By Priority Mail Signature Confirmation)

Mr. Stephen Kelly, Esq.
Stephen Kelly Law
22710 North Knoxville Avenue
Peoria, Illinois 61604
(By First Class Mail)


Richard J. Reimer, Esq.

cc: Sergeant Shawn Curry, President
Peoria Police Pension Board

SUBSCRIBED and SWORN
to before me this 29th day
of September 2020.


NOTARY PUBLIC

