

BEFORE THE BOARD OF TRUSTEES OF
THE PEORIA POLICE PENSION FUND

IN THE MATTER OF THE)
DISABILITY APPLICATION OF:)
)
OFFICER TIMOTHY WIGHT,)
 APPLICANT,)
)
)
AND)
)
CITY OF PEORIA,)
 INTERVENOR.)

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 Timothy Wight ("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 November 19, 2020 and December 18, 2020. Applicant was duly and properly notified of the hearing and was present. At hearing, Applicant was represented by Counsel, Attorney Stephen P. Kelly. During this hearing, the Applicant had the opportunity to submit evidence, present testimony, and question witnesses regarding this claim. The City of Peoria (Intervenor) was duly and properly notified of the hearing and was

present. At hearing, Intervenor was represented by Counsel, Attorney Kenneth M. Snodgrass and Attorney Kevin Sheehan. During this hearing, the Intervenor had the opportunity to submit evidence, present testimony, and question witnesses regarding this claim.

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

A.
FINDINGS OF FACT

Based upon the preponderance of the evidence, the Pension Board makes the following findings of fact:

Preliminary Matters.

1. The Pension Board held a hearing on Applicant's line-of-duty disability application on November 19, 2020, (Tr. 1)¹, which was continued and reconvened on December 18, 2020. (Tr. 177).

2. Pension Board Exhibits one (1) through twenty-one (21), Joint Exhibits one (1) through four (4), and TW Exhibits 3, 4 & 5 were admitted into the administrative record without objection on November 19, 2020. (Tr. 14, 15, 21, 24). On December 18, 2020, Joint Exhibits 1-A, 3-A, and 5 were admitted into the administrative record without objection. (Tr. 182-183).

3. On or about November 19, 2018, Applicant applied for a line-of-duty disability pension. (Bd. Ex. 1). The disability is based upon post-concussion syndrome / neurological condition. (Tr. 49). At hearing, Applicant amended the application to seek a line of duty disability, and in the alternative, a non-line of duty disability pension. (Tr. 50).

4. Applicant is a regular member of the Peoria Police Department holding the rank of Patrol Officer. He is forty-four 44 years old and has twenty-two (22) years of creditable service. (Bd. Ex. 1 & Tr. 80).

5. Applicant received his probationary appointment to the Peoria Police Department on September 17, 1998. (Bd. Ex. 1).

¹ References to testimony from the transcript of hearing will be cited as (Tr. ____). References to Exhibits from the Administrative Record will be cited as Board Exhibit (Bd. Ex. ____), Applicant Timothy Wight Exhibit (TW. Ex. ____), Intervenor City of Peoria Exhibits (Int. Ex. ____), or as Joint Exhibits (Jt. Ex. ____).

6. Applicant is divorced and has two dependent children under the age of 18. (Tr. 80).

Prior Injuries

7. The Applicant testified concerning prior work related injuries. Shortly after being hired he twisted his ankle; he recovered from this injury and returned to work. (Tr. 82).

8. In 2001 he sustained a serious injury when he was run over by a drunk driver. That injury shattered both his acetabulums (hip sockets). It took him approximately two years to recover from that injury. Prior to his recovery, the Police Chief called the Applicant into his office, along with a union representative. The Chief suggested the Applicant file for a disability pension and end his police career. The Applicant told the Chief he wanted to return to work; he eventually did recover, passed a fit for duty test, and returned to full duty in 2003. (Tr. 82-85).

9. The Applicant sustained two more injuries, these involved a torn knee, once around 2013-2014, and again around 2015-2016. He received treatment, underwent physical rehabilitation, and returned to full duty following fitness for duty exams. (Tr. 85-86).

10. Prior to July 28, 2017, the Applicant did not miss work for headaches or concentration issues and had not been diagnosed with a concussion or post-concussion syndrome. (Tr. 86).

Injury Causing Incident – July 28, 2017

11. On July 28, 2017, the Applicant responded to assist another officer with a criminal suspect that was fleeing. He was chasing a suspect on foot when he tripped, striking his face and wrists on a cement driveway. (Tr. 87).

12. Immediately after the fall, the Applicant felt lightheaded. He got up to continue the chase but had to pause for a few minutes beside a house because he felt lightheaded. He returned to the station to complete a report, but had difficulty entering it into the computer and kept putting in the wrong year. After another officer urged him to get checked out, he realized something was wrong and went to the emergency room at St. Francis hospital. (Tr. 87-89).

13. At the hospital, the Applicant was diagnosed with a concussion, and referred to a surgeon for his wrist injury. This occurred on July 28, 2017. The Applicant had never been diagnosed with a concussion prior to this incident. (Tr. 91).

14. At the direction of his employer, the Applicant was sent to the occupational branch at St. Francis hospital on July 31, 2017. He was diagnosed with post traumatic headaches and was restricted from work. (Tr. 91-93).

15. The Applicant was sent by his employer for additional medical evaluation. He saw Dr. Moody, who referred him to a neurologist named Dr. Pegg.

The Applicant was also referred for an MRI and cognitive therapy. Prior to this injury, he never saw a neurologist or received cognitive therapy. (Tr. 93-95).

16. In January of 2018, the employer physician, Dr. Moody, referred the Applicant to Dr. Jankowska, a neurologist at Illinois INI. At this time, the Applicant had not returned to work and was still having symptoms of headaches, blurred vision, and concentration issues. (Tr. 96-97).

17. Dr. Jankowska diagnosed the Applicant with post-concussion syndrome and vertigo. (Tr. 97).

18. Dr. Jankowska prescribed medications for the Applicant and referred him to Dr. Nersesyan, who is a neurologist and a headache specialist. She also referred the Applicant to Dr. Fitch, who treated the Applicant for issues with his eyes not tracking properly. (Tr. 97-101).

19. In June of 2018, the Applicant was released to go back to work in a light duty assignment. He was assigned to work for Sgt. Paul Deeb, and worked various clerical assignments which included computer data entry. (Tr. 101-102).

20. The Applicant testified he had difficulty in the light duty position as his symptoms continued. The computer screen would make him nauseous, give him headaches and cause dry heaves. (Tr. 103).

21. During the hearing, Paul Deeb testified concerning his observations of the Applicant while performing light duty work. Paul Deeb is a 21-year veteran of the Peoria Police Department; he is currently assigned as temporary Lieutenant of

the training division. In June of 2018, Deeb was the property crime Sergeant within the criminal investigation division. The Applicant was assigned light duty within that division, and Deeb was his supervisor. (Tr. 62).

22. Paul Deeb testified he observed and interacted with Applicant Wight during the time he supervised him. He observed that after only 10 to 15 minutes of working on the computer, the Applicant would look physically ill, and observed a change of color in his face. Deeb indicated the Applicant would occasionally send him an email that did not make sense, requiring a call for clarification. Deeb recalled one occasion where he sent the Applicant home because he looked extremely ill and was getting confused. (Tr. 63-65).

23. Paul Deeb testified that he supervised the Applicant from about June 2018 till about January 25, 2019, and that the Applicant had these problems throughout that time. Deeb further testified that he knew the Applicant prior to the injury in this case. Deeb and the Applicant had been on the hostage negotiating team prior to this injury; Deeb testified the Applicant did not exhibit any of the current problems at that time. (Tr. 65-66).

24. On November 5, 2018, the Applicant ended his treatment with Dr. Jankowska as she placed him at maximum medical improvement. The Applicant was not returned to full police duty, he was released with restrictions. (Tr. 104).

25. On November 14, 2018, the Applicant was seen again by Dr. Moody who placed him at maximum medical improvement, but did not return him to full duty as a police officer. (Tr. 104-105).

26. The Applicant's light duty assignment at the police department ended in January of 2019. This is because the collective bargaining agreement only allows 120 days of light duty. (Tr. 105).

27. The Applicant had approximately 900 hours of sick time accrued and requested to use that time; however, the City refused his request. As a result, he used other accrued benefit time until the City terminated his employment on March 8, 2019. The City has not offered him any other job in any other capacity. (Tr. 105-106).

28. The Applicant underwent examinations by the Pension Board doctors, City doctors and his own doctors. During these examinations, Dr. Noggle gave the Applicant a written test. That test caused the Applicant to experience dry heaving and headaches; he took several breaks, but was able to finish it on the second day. (Tr. 107-108).

29. The Applicant has not been released to full duty by Drs. Jankowska, Moody, Pegg, or Nersesyan. (Tr. 108-109).

30. The Applicant still has difficulty with multi-tasking; he gets frustrated and confused. He has short term memory loss and headaches; his vision problems have improved after he received special glasses, but they still persist later in the day. (Tr. 110-113).

Medical Evaluations

31. The Applicant received numerous medical evaluations, to include two neuropsychological evaluations, two workers' compensation independent medical exams, three Pension Board independent medical exams, and an additional applicant requested medical exam.

Intervenor's Neuropsychology Evaluation Report

Chad Noggle, Ph.D. (Bd. Ex. 9)

32. Dr. Chad Noggle is a clinical neuropsychologist, board certified by the American Board of Professional Psychology. He evaluated the Applicant on 04/20/2018 and 04/23/2018, to assess for presence, extent, and nature of neuropsychological impairment as part of a requested Independent Medical Examination. Dr. Noggle administered a battery of tests and prepared a written report of his evaluation. (Bd. Ex. 9, p.1051). Dr. Noggle's report lists the answers to eleven different questions posed to him by the Intervenor, however, it does not include the list of questions that were posed. (Bd. Ex. 9, p.1057-1058).

33. Dr. Noggle opined the Applicant was not disabled, and his condition was not work-related, stating:

"In his case, these difficulties are seen as related to psychiatric issues. However, from where these psychiatric issues have arisen is unknown. This IS NOT related to work-related factors or the event of discussion, Namely, this is not a PTSD presentation. There are features consistent with an atypical Major Depression and even features of Generalized Anxiety.

However, given the reported history, one must consider this as an Adjustment Reaction with primary somatic symptoms.” (Bd. Ex. 9, p. 1057).

34. Dr. Noggle disagreed with the Applicants treating physicians and opined the Applicant’s problem was psychological, he stated:

“I believe the root cause of Mr. Wight’s issues is that of a psychological nature. This is the only thing that fits his history and presentation. Consequently, vision therapy, neuro-optometric therapy, or behavioral optometry consultation is not warranted in my professional opinion.” (Bd. Ex. 9, p. 1057).

35. Dr. Noggle further opined that the Applicant’s condition is not related to his on-duty injury in 2017, but that the injury was the catalyst by which the issues emerged:

“Consultation with a psychiatrist and ongoing therapy for psychiatric issues are recommended. However, I do not believe his psychological issues stem from the fall in 2017, rather, this event was a catalyst by which underlying psychological issues emerged.” (Bd. Ex. 9, p. 1058).

Applicant’s Neuropsychology Evaluation Report

Patricia J. Andrise, Ph.D. (Bd. Ex. 10)

36. Dr. Patricia J. Andrise is a licensed clinical psychologist who examined the Applicant on 05/07/18, 05/08/18 and 07/10/18. The purpose of her evaluation was to determine the extent, if any, that the patient’s cognitive status has changed

due to neurological illness or injury and to compare the findings to those of Dr. Noggle. She conducted a battery of tests on the Applicant and rendered a written report. (Bd. Ex. 10).

37. Dr. Andrise reported the Applicant's condition had improved, but he still suffered from cognitive impairment due to his injury. (Bd. Ex. 10, p.1069).

38. Dr. Andrise discounted the testing and report by Dr. Noggle. She indicated the failure to inform the patient in advance as to the long length of the testing, failure to mark tests with the patients names, and failure to perform a feedback appointment would make his test data invalid and not interpretable. (Bd. Ex. 10, p.1066).

39. Dr. Andrise diagnosed the Applicant with post concussive syndrome. (TW Ex. 1, p.3887), and indicated he did not appear to be malingering:

"Mr. Wight's current profile is not suggestive of a malingerer despite his "overclaiming" of symptoms noted on psychological tests. Mr. Wight reports improvement in functioning since the injury. He also reports significant improvement since treatment changes implemented by Dr. Nersesyan. Mr. Wight has returned to work, as ordered, despite his symptoms. Mr. Wight's physician agree that he is injured and continue to medicate/prescribed other treatments such as speech therapy and vestibular therapy. Importantly, the patient's performance on testing suggest that he has returned to his baseline level of functioning. These are just a few examples disproving that Mr. Wight is attempting consciously fake or malinger for secondary gain. Malingerers do not have such characteristics."
(Bd. Ex. 10, p.1070).

Intervenor's Workers' Compensation Independent Medical Evaluation Report

Dr. Elizabeth S. Kessler, M.D. (Bd. Ex. 12)

40. Dr. Kessler is a physician and board-certified neurologist with a subspecialty in behavioral neurology. (TW. Ex. 4, p.4083-4086). She examined the Applicant on 10/11/18 for an independent medical evaluation. (Bd. Ex. 12, p. 1096).

41. Dr. Kessler disputed the treating physicians diagnosis of concussion, stating: "It is unclear in the medical records and given Mr. Wight's history to me if he sustained any concussion in the 7/28/17 accident." (Bd. Ex. 12, p.1111).

42. Dr. Kessler further disputed the necessity of treatment that was provided by the Applicants treating physicians:

"Treatment related to the closed head injury, possible concussion and possible cervical, muscle strain sustained in the accident would include the emergency department visit, two subsequent occupational medicine visits and the CT brain scan. (I am providing no opinions regarding any injury sustained by Mr. Wight to his right wrist in the 07/28/17 accident.) For any injuries sustained in the accident Mr. Wight did not require any of the neurology evaluations including by Dr. Pegg, Dr. Jankowska or Dr. Nersesyan. He required no additional imaging studies or multiple medications for any injuries that he sustained. While neuropsychological testing demonstrated no memory or cognitive impairments correlating with Mr. Wight's reported symptoms, he sustained no injury in the accident requiring the neuropsychological evaluations. Mr. Wight also sustained no visual system injury and required no optometric evaluation or treatment. In addition, he did not sustain a vestibular injury and requires no vestibular treatment. As Mr. Wight had no memory or cognitive impairment related to the accident, he has required no speech cognitive therapy related to the accident. Although Mr. Wight continues to report symptoms that he states affect his ability to function, none of the symptoms that he reports after a couple of weeks after the

accident would relate to any injuries that he sustained and he requires no additional evaluations or treatment due to the 7/28/17 accident. The symptoms that he reports at this time do not indicate any condition that could account for his symptoms aside from underlying psychological issues unrelated to the accident. Any psychotherapy that would be sought by Mr. Wight would not be necessitated by any injuries that he sustained in the accident."

(Bd. Ex. 12, p.1113).

Applicant's Workers' Compensation Independent Medical Evaluation Report

Dr. Gene O. Neri, M.D. (Bd. Ex. 11)

43. Dr. Neri is a physician, board certified in neurology and psychiatry. (TW. Ex. 2, p.3932). He examined the Applicant on 05/07/2018 for an independent medical evaluation. (Bd. Ex. 11, p.1079).

44. Dr. Neri diagnosed the Applicant as having "closed-head injury syndrome; flexion/extension injury, cervical spine; sleep disturbance secondary to closed-head injury syndrome and flexion/extension injury, cervical spine; convergence insufficiency secondary to closed-head injury syndrome. (Bd. Ex. 11, p.1082). Dr. Neri disputed Dr. Noggle's opinion. He explained his dissent and opined the Applicant was positive for a concussion/traumatic brain injury, indicating the Applicant's fall was the cause. (Id.). With respect to Dr. Noggle's report he stated:

"Finally, with regard to the neuropsychological evaluation that you have forwarded to me done by Dr. Chad Noggle, Ph.D., I wholeheartedly disagree with Dr. Noggle's assessment. It should be understood that in an evaluation of the patient with

regard to his neurological status, a neurologist should be the head of the team, and a neuropsychological evaluation is but a test to be taken into account in the process of evaluation which also may include EEG, EMG, MRI, CT or other neurological tests. It is not in and of itself a test purely diagnostic in nature, nor is the doctor giving the test able to diagnose the condition without a neurologist. It would appear that there are several discrepancies in this testing, certainly as compared to my evaluation and those of 2 other neurologists, Dr. Pegg and Dr. Jankowska, all of whom agreed that the patient had a cerebral concussion. The only dissenting vote is by Dr. Noggle, a non-practitioner of neurology. He basically states that the accident in question had "nothing to do" with the patient's state of ill-being currently when everyone else who has evaluated the patient, including the above-mentioned doctors as well as experts in neuro-optometry, speech therapy, audiology and neurology, all practitioners of neurology, have felt differently.

45. Dr. Neri was provided additional reports from other doctors and asked for comment. He addressed the report of Dr. Kessler as inaccurate and points out that she disagrees with all of the treating physicians:

"You have sent me further records from Dr. Jankowska, The Headache Clinic, Occupational Health, and a "Section 12 Exam" by Dr. Elizabeth Kessler. With regard to the follow-up exams of Dr. Jankowska et al., I find no significant change in any of my opinions.

However, with regard to the voluminous, though inaccurate letter by Dr. Kessler, this 18-page rant goes through virtually every single patient complaint and takes them all out of context, explaining how they could not be related to the patient's injury in any way. From start to finish, anyone who said differently, including the Emergency Room doctor at Saint Francis Hospital who diagnosed concussion, Dr. Pegg, a neurologist who diagnosed concussion, Dr. Moody, the patient's primary care who diagnosed concussion, Dr. Jankowska, a "concussion neurologist" who diagnosed concussion, Amanda Chapman, a speech and language specialist who also diagnosed postconcussive changes, and Dr. Andrise, whose report was consistent with cerebral concussion, was, according to Dr.

Kessler, misinformed. Dr. Kessler feels all of us are not only wrong but incompetent. I will not go through each and every one of her claims that I find offensive and wrong. Rather I would suggest it would be more fruitful to answer her complaints regarding my findings, though it is amazing how she has countered every treating medical practitioner on the plaintiff's side with disdain and disrespect.

With regard to my evaluation, she begins on page 13 of her report. She recounts my history and indicates on many occasions that I am wrong.

I have been in neurological practice for 40 years and although I have done and continue to do medical legal work, both for plaintiff and defense periodically, I have a full-time neurological practice. I have seen thousands of concussions over the last 40 years and treated them. Many of these patients had additional problems such as flexion-extension injury to the cervical spine occurring with the same injury, and sleep disturbance which, yes, does occur with concussions with quite a bit of regularity.

On the other hand, Dr. Kessler, to my knowledge, spends a huge amount of time on defense reports such as these time-consuming, pains-taking reports and has a convenient position at the James A. Lovell Center, a VA system hospital. Having worked at Hines VA Hospital for several years, I can honestly say that I never saw one fresh concussion the whole time. The VA system is not a place where you see concussions, as they occur on an acute basis and people in VAs are primarily chronically ill patients. Thus, there is certainly some question as to the number of concussions Dr. Kessler has seen and/or treated.

From her discussions in the records it would appear to me that she has a rather poor understanding of what a concussion is and the surrounding conditions that might be associated with it which also need to be treated, such as flexion-extension injury to the cervical spine and sleep disorder secondary to concussion." (Bd. Ex. 11, p.1088)

46. Dr. Neri indicated the additional reports do not change his opinion. He reported the Applicant "cannot return to full duty as a police officer either mentally or physically at this time." (Bd. Ex. 11, p.10-89-1090).

Pension Board's Independent Medical Evaluation Reports

47. The Pension Board contracted with INSPE Associates LTD. To select three physicians to perform medical examinations on the Applicant. (Bd. Ex. 16).

The physicians selected were: Leslie A. Masood, M.D. (Bd. Ex. 17); Ian S. Katznelson, M.D. (Bd. Ex. 18); and David M. Anderson, M.D. (Bd. Ex. 19).

Leslie A. Masood, M.D. (Bd. Ex. 17).

48. Dr. Masood is a physician certified by the American Board of Psychiatry and Neurology and the American Board of Independent Medical Examiners. She examined the Applicant on 05/21/19 and rendered a written report. (Bd. Ex. 17, p.3754-3763)

49. Dr. Masood opined that the Applicant is not disabled, but qualified that statement: "Officer Wight cannot be deemed "disabled" at this time. It is important to note, however, that the relationship between impairment and disability is complex." (Bd. Ex. 17, p.3755).

50. Dr. Masood did not answer the Pension Board's question's directly as they were posed, but instead gave a series of conclusions. Among those conclusions

she indicated: "Officer Wight should be capable of performing in a light duty capacity" and "Certainly more treatment can be offered the claimant that has not been attempted." (Bd. Ex. 17, p.3755-3756). Her report does not answer the direct question of whether or not the Applicant can perform full and unrestricted police duties. (Bd. Ex. 17, p.3755-3756).

Ian S. Katznelson, M.D. (Bd. Ex. 18).

51. Dr. Katznelson is a physician licensed in Illinois, and board certified by the American Board of Psychiatry and Neurology with added qualification in Clinical Neurophysiology. (Bd. Ex. 18, p.3781). He examined the Applicant on 05/30/19 and rendered a written report. (Id.).

52. Dr. Katznelson opined that the Applicant was disabled from unrestricted police duties. He also commented on the possibility that the disability was caused by emotional and psychological factors other than the physical injury, indicating that it would still be disabling. Dr. Katznelson stated:

"My opinion is that Officer Wight is disabled from performing unrestricted police duties. I believe that he suffered a concussion, resultant post-concussive syndrome and cervical strain as a result of his fall on 7/27/17. He also injured his right wrist, but I would defer comments regarding that to an orthopedist. Concussions and resultant post-concussive syndromes are usually self-limited problems that resolve over weeks or months and steadily improve with time. Since he is nearly 2 years post-injury I would expect that his post-concussive complaints would have nearly resolved by now, and I cannot fully explain why he continues to have symptoms at the current level, although he has improved. His MOCA score of 25

was not normal, and indicated to me some level of cognitive dysfunction. I think it is possible that there are emotional and psychological factors present as alluded to by his neuropsychology assessments. Nevertheless, whatever the cause of his symptoms, they are problematic, interfere with full cognitive functioning, and are not compatible with unrestricted police work. He has ongoing headaches, visual problems and difficulty with concentration at times. Even a minor lapse in attention or concentration at a critical moment, for example, during pursuit, using his firearm, rescue, or protection could endanger himself or others.
(Bd. Ex. 18, p.3772-3773).

53. Dr. Katznelson opined that the Applicant's disability was directly related to his work related injury in July of 2017, he stated:

"My opinion is that Officer Wight's concussion, cervical strain and post-concussive syndrome resulted directly from the fall he sustained in July 2017. He had symptoms following the fall of neck pain, headaches, difficulty with concentration and the records clearly note that in ER he felt somewhat "dazed" and he had difficulty thinking following the fall. At nearly 2 years postinjury, he has continued to note symptoms that I would have expected to nearly have resolved by this point, and I cannot fully explain why continues to have them at this level. However, the fact that his symptoms have improved all the while, would at least follow the trajectory of a post-traumatic injury. As noted above and as indicated in his neuropsychological testing, there may be some emotional or psychological factors playing a role."
(Bd. Ex. 18, p.3773-3774).

David M. Anderson, M.D. (Bd. Ex. 19)

54. Dr. Anderson is a physician, board certified by the American Board of Orthopaedic Surgery, with a subspecialty in Orthopaedic Sports Medicine. (Bd. Ex. 19, p.3796). He examined the Applicant on 06/17/19 for the purpose of an independent medical evaluation in regard to a line-of-duty disability pension for his right wrist. (Bd. Ex. 19, p.3785), and rendered a written report. (Id.).

55. Dr. Anderson indicated the Applicant was not disabled, but qualified that statement to indicate that it applied to the injury of the right wrist only. He made notation of this on the physician's certificate (Bd. Ex. 19, 3784).

56. Dr. Anderson also made it clear within his report that his opinion was limited to the Applicant's right wrist. He indicated there is no disability with respect to the wrist as the Applicant has recover following surgery:

"Officer Wight's current diagnosis pertaining to the right wrist is status post right wrist arthroscopy with debridement. Officer Wight is doing very well with his right wrist and does not have any significant physical limitations, although he occasionally experiences mild soreness and popping. He is able to perform full and unrestricted police duties with the right wrist."

"Officer Wight does not have a disability specific to the right wrist as a result of the 07/28/2017 work injury. The 07/28/2017 work incident was the direct cause of his right wrist injury, however Officer Wight has done well following surgery and does not have any significant limitation with the right wrist."
(Bd. Ex. 19, p.3789).

Applicant's Independent Medical Evaluation Report

David J. Fletcher, M.D. (TW. Ex. 2).

57. Dr. Fletcher is a physician, board certified in both Occupational and Preventive Medicine. (Tw. Ex. 2, p.4148). He examined the Applicant on 10/19/20 and rendered a written report. (Id.).

58. Dr. Fletcher opined the Applicant is disabled for full unrestricted police duties and stated:

“Due to the nature of his complaints, he would not be able to return to full duty work as a police officer. He could work in an environment with certain limitations and ample opportunity for breaks. He should not work above on heights and not climb ladders. He is not disabled from all gainful employment. While he is able to drive a personal vehicle, I would not have him drive a commercial vehicle.”
(Tw. Ex. 2, p.4156).

59. Dr. Fletcher further opined: “I feel there is a direct causal relationship between his current medical conditions and the incident at work in July 2017.” (Id.).

Applicant's Work and Pay Status

60. Applicant has not returned to full and unrestricted duties since the injury on July 28, 2017. (Tr. 106).

61. Applicant has received benefits under the Public Employees Disability Act (PEDA). (Tr. 146).

62. Applicant has filed an application for workers' compensation benefits in connection to the July 28, 2017 injury. At the time of hearing on this matter, Applicant's workers' compensation case remained pending. The Applicant is not currently and has not previously received temporary total disability (TDD) benefits due to this injury. (Tr. 149).

63. The Peoria Police Department has no light duty positions available for the Applicant. (Tr. 145-146).

Pension Board's Final Conclusions of Fact.

64. Applicant is now disabled from full and unrestricted duties as a police officer.

65. The Applicant's disability is due to a closed head injury received when striking his head on a concrete driveway. The Applicant's injury to his right wrist is not a disabling injury.

66. Applicant's disability resulted from an accident or injury incurred in or resulting from the performance of an act of duty, specifically the pursuit of a criminal suspect on July 28, 2017.

67. If the Applicant had a preexisting medical condition prior to July 28, 2017, it was not disabling prior to that date.

68. If Applicant's current disabling condition is related to a preexisting condition, then the Applicant's injury on July 28, 2017 aggravated or accelerated the preexisting condition to such a degree that the Applicant is now disabled to perform full and unrestricted police duties.

B.
STATUTE TO BE CONSTRUED

The following Statutory provisions have application in this case.

40 ILCS §5/3-114.1: Disability Pension - Line of Duty

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 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 5/3-114.2 Disability pension – Not on duty

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 5/5-113 Act of Duty

§5/5-113. "Act of Duty": Any act of police duty inherently 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.

C. ANALYSIS

Legal Standards to Be Used.

The purpose of laws for police officers' pensions is remedial 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). 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). 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). Moreover, "because the weight of the evidence and the credibility of the witnesses are within the province of the [agency], there need only be some competent evidence

in the record to support its findings," *Iwanski v. Streamwood Police Pension Board*, 232 Ill.App.3d 180, 184 (1st Dist. 1992).

Elements Necessary for a Line-of-Duty Disability Claim.

Applicant has the burden of proving he is disabled, and 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 duty related disability under 40 ILCS §5/3-114.1 are:

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

Officer

Evidence in the record demonstrates Applicant was a Peoria Police Officer at the time of his injury and at the time he applied for a pension. Applicant's status as a police officer is undisputed and the first element is satisfied.

Injury

The Applicant suffered an injury to his head which he claims caused his disability in this case. That injury occurred while he was in active pursuit of a criminal suspect. The Intervenor has not challenged the fact that the accident occurred, or that it was from the performance of an act of duty. The challenge made in this case is whether or not the injury actually caused a disability. The facts presented to the Pension Board indicate that the Applicant was chasing a criminal suspect, when he fell, striking his face on a cement driveway. He went to the hospital shortly afterwards for treatment. The Pension Board finds that an accident or injury occurred, satisfying the second element.

Act of Duty

The third element requires the injury come from an "act of duty". The term "act of duty" for purposes of Article 3 of the Pension Code is construed in accordance with the definition contained in Article 5 of the Pension Code. *Robbins v. Board of Trustees of the Carbondale Police Pension Fund*, 177 Ill.2d. 533 (1997). 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).

In this case, Applicant was chasing a criminal suspect, which constitutes an act of police duty inherently involving special risk. This is a task not ordinarily assumed by citizens in the ordinary walks of life, and it was a task imposed on the Applicant by the statutes of the State of Illinois, specifically, 725 ILCS 5/107-16, which states:

It is the duty of every sheriff, coroner, and every marshal, policeman, or other officer of an incorporated city, town, or village, having the power of a sheriff, when a criminal offense or breach of the peace is committed or attempted in his or her presence, forthwith to apprehend the offender and bring him or her before a judge, to be dealt with according to law; to suppress all riots and unlawful assemblies, and to keep the peace, and without delay to serve and execute all warrants and other process to him or her lawfully directed.

(725 ILCS 5/107-16).

The Pension Board finds the Applicant was performing an "act of duty" at the time he fell, striking his head/face on the cement driveway, such that element three has been met.

Disability

The only issues remaining are whether or not the injury sustained by the Applicant on July 28, 2017, caused him to be disabled and required his suspension or retirement from police service. This is the contested matter in this case, and it comes with some conflicting opinions from a number of Doctors. First, it is noted that the Applicant was treated at the St. Francis emergency room by Dr. Theodor

Schmidt, who diagnosed a concussion on date he fell. (Bd. Ex. 3, p.511). Thereafter, he saw numerous treating physicians, to include Drs. Moody, Pegg, Jankowska, Andrise, who all generally agree the Applicant suffered an injury requiring treatment.

Conflict arose when City examiners disclaimed the Applicant even had a concussion in the first place, and further claimed his treatment was unnecessary. (Bd. Ex. 9, p.1057). Dr. Noggle claimed the Applicants problems were psychological, but also claims that he believes the Applicant's fall in 2017 was the catalyst by which the underlying psychological issues emerged. (pre-existing medical issues will be addressed infra). Dr. Andrise objected to Dr. Noggle's testing practices and indicated his test was invalid. Dr. Kessler, another City examiner, found fault with virtually all other doctors, and Dr. Neri had a terse response for Dr. Kessler.

Among the examining doctors hired by the parties, the Pension Board gives the greatest weight to Dr. Neri. His 40 years of neurological practice and firsthand experience with actual concussion patients provide important experience. His findings are also consistent with the multitude of treating physicians.

With respect to the Pension Board's IME's, the Pension Board gives the greatest weight to Dr. Katznelson. His report (Bd. Ex. 18) is direct and to the point. He focused directly on the questions posed by the Board and gave an explanation that demonstrated a knowledge of both the job requirements and the physical or mental capacity needed to perform those specific requirements. He indicated the Applicant is disabled for full and unrestricted duty because "Even a minor lapse in

attention or concentration at a critical moment, for example, during pursuit, using his firearm, rescue, or protection could endanger himself or others.” (Id. at 3773).

The other two Pension Board IME's receive lesser weight. Dr. Anderson is an orthopedic that only addressed the injury to the Applicant's right wrist. Dr. Anderson clearly noted that his opinion only related to the right wrist injury, which was not the issue in dispute. Dr. Masoon did not answer the questions posed in a direct manner. She indicated that “Officer Wight should be capable of performing in a light duty capacity” (Bd. Ex. 17, p.3755), however, that is not the issue. Light duty is not available, the disability determination hinges on whether or not the Applicant can perform full and unrestricted police duties, and she did not answer this question.

Pre-existing Medical Conditions

There is no requirement that the duty-related incident be the originating or primary cause of the injury, although a sufficient nexus between the injury and the performance of the duty must exist. *Barber v. Bd. of Trustees of Vill. of S. Barrington Police Pension Fund*, 256 Ill. App. 3d 814, 818 (1993). Illinois Courts have established that a disability pension may be based upon the line-of-duty aggravation of a preexisting physical condition. *Wade v. City of N. Chicago Police Pension Bd.*, 226 Ill. 2d 485, 505 (2007); See also: *Alm v. Lincolnshire Police Pension Board*, 352 Ill.App.3d 595 (2004); *Olson v. City of Wheaton Police Pension Bd.*, 153 Ill. App. 3d 595 (1987).

In this case, there has been a claim that the Applicant may have had preexisting underlying psychological issues, and that his current problems are somatic. Dr. Noggle claimed the Applicant's fall in 2017 "was the catalyst by which the underlying psychological issues emerged." If we believe this theory, the Applicant's injury would still be covered. If the fall and head injury aggravated a preexisting condition, to such an extent that it was "the catalyst by which it emerged", it would certainly be covered under the pension code.

Other Factors Considered in Weighing Evidence

In this case, we have numerous doctors, some with strongly differing opinions. However, the Pension Board is not limited to the evidence provided by Doctors, testimony of lay witnesses may be considered as well. In this case, there was one independent witness whose testimony has been unrebutted and unchallenged, that witness was Paul Deeb. Paul Deeb was the property crimes sergeant in the investigation division and served as the immediate supervisor over the Applicant when the Applicant worked light duty. Paul Deeb was not paid by either party to give his testimony. It is noted that he is an employee of the Intervenor (City of Peoria) and a member of their management staff. He testified concerning his observations of the Applicant during the time he supervised him, indicating there was a clear problem with the Applicant's ability to perform simple clerical tasks, such as entering data into a computer or sending an email. (Tr. 63). Paul Deeb also testified concerning his knowledge of the Applicant prior to the

accident / injury. Deeb testified that he had served on the hostage negotiating team with the Applicant and the Applicant did not exhibit any of his post injury problems at that time. (Tr. 66).

Consideration must be given to the work performed by the Applicant prior to the injury. A hostage negotiator requires a high level of cognition, the ability to communicate clearly and concisely and the ability to multitask at an extremely high level. They must maintain constant communication with their tactical entry teams, as well as their marksmen/observer teams and perimeter security units. Communication must be maintained with command staff, medics, and radio dispatch as well, not to mention the hostage taker and/or victim, depending on the circumstances. The very nature of the job requires a person with a high degree of cognition, an ability to multitask at an extremely high level, and to do so under great stress for many long hours at a time. What this tends to show is that the Applicant operated at this very high level prior to the injury, but after the injury, he could not function at a basic level for a short period of time.

Another factor concerning the testimony of Paul Deeb is his training and experience. Deeb is a veteran police officer with over 20 years on the job, he has experience as an investigator, and is a supervisor for the Peoria Police Department. Police officers, particularly detectives and investigators, are trained and experienced in detecting when people are being untruthful. As a supervisor, if he felt the Applicant was lying or faking an injury, the matter would have been a

disciplinary matter. In this case, Deeb testified the Applicant was a credible person (Tr. 66).

With respect to any theory the Applicant is faking or malingering, consideration must be given to the history of the Applicant. In 2001, the Applicant suffered a severe injury on duty when he was run over by a drunk driver. This injury shattered both of his hip sockets. During his recovery, he was called into the Chief's office along with a Union representative and told to file for a disability pension, (Tr. 84). He refused because he wanted to return to work. His recovery took two years, but he recovered. He returned to full duty in 2003 and continued working for another 14 years, up until the current injury. This begs the question - why would a person refuse a guaranteed line of duty disability pension, only to come back to work for 14 additional years, and then try to fake an injury? This may be circumstantial evidence, but it is strong circumstantial evidence. It serves to demonstrate the character of the Applicant and militates against any claim of malingering.

After considering the evidence, the Pension Board finds the Applicant is disabled for full and unrestricted police duty, and that his disability renders necessary his suspension or retirement from the Police Service. This satisfies elements four and five as noted above.

The Pension Board finds the Applicant has met the required burden; he has satisfied all the statutory requirements necessary for a line of duty disability pension.

D.
CONCLUSIONS

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

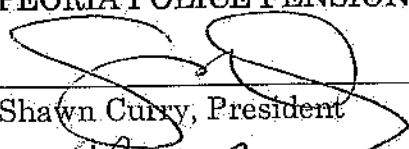
2. The Applicant is entitled to a line-of-duty disability pension under §5/3-114.1 of the Illinois Pension Code, based on 65 % of salary attached to his rank at the date of retirement, less any offsets that may apply.

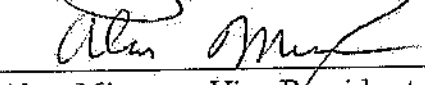
3. Pursuant to 40 ILCS §5/3-114.5 of the Illinois Pension Code Applicant cannot receive benefits under the Pension Code and the Worker's Compensation Act for the same injury. Applicant shall notify the Pension Board in the event of settlement or receipt of an award from any Worker's Compensation case, in order for the Pension Board to determine whether there should be an offset pursuant to §5/3-114.5 of the Illinois Pension Code, and the Pension Board will retain jurisdiction over this matter for this purpose only.

IT IS THEREFORE ORDERED:

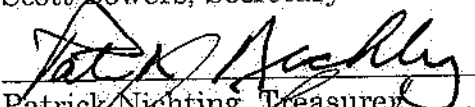
That a certificate of payment be issued to Applicant, Officer Timothy Wight, pursuant to §5/3-133 of the Illinois Pension Code, stating Applicant's entitlement to a line-of-duty disability benefit, effective the date following his removal from payroll.

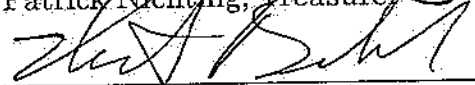
**BOARD OF TRUSTEES OF THE
PEORIA POLICE PENSION FUND**


Shawn Curry, President


Alan Misener, Vice President


Scott Bowers, Secretary


Patrick Nichting, Treasurer


Norman Burdick, Trustee

DATED: 03-25-21

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

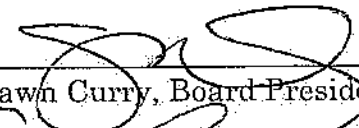
IN THE MATTER OF THE)
DISABILITY APPLICATION OF:)
OFFICER TIMOTHY WIGHT,)
APPLICANT,)
AND)
CITY OF PEORIA,)
INTERVENOR.)

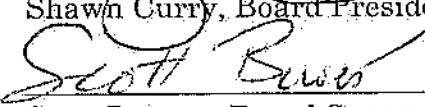
CERTIFICATE OF PAYMENT

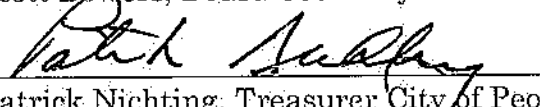
Pursuant to Section 5/3-133 and Section 5/3.114.1 of the Illinois Pension Code, 40 ILCS 5/3-101 *et seq.*, this is to certify that the Applicant, Officer Timothy Wight, is entitled to payment of a Line of Duty Disability Pension Benefit equal to 65% of the salary attached to the rank held by him at the 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 effective DATE REMOVED FROM PAYROLL. 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:


Shawn Curry, Board President


Scott Bowers, Board Secretary


Patrick Nichting, Treasurer City of Peoria

DATE: 03/25/11

CERTIFICATE OF SERVICE

I, BRYAN STRAND, being first duly sworn on oath states that (s)he served copies of the attached Decision and Order, and Certificate of Payment on the person(s) named below by depositing same this 24 day of SEP, 2021 in the U.S. Mail Box at 15 SPINNING WHEEL RD, HINSDALE, Illinois:

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

To:

Timothy L. Wight 2715 S. Faircrest Peoria, IL 61607 <i>(By Priority Mail Signature Confirmation)</i>	
MR. STEPHEN P. KELLY, Attorney at Law 2710 North Knoxville Avenue Peoria, Illinois 61604 (309) 681-1900 on behalf of the Applicant; <i>(By First Class Mail)</i>	MR. KENNETH M. SNODGRASS and MR. KEVIN SHEEHAN 201 Main Street, Suite 1400 Peoria, Illinois 61602 (309) 637-1400 on behalf of the Intervenor. <i>(By First Class Mail)</i>

AS / BOARD ATTY

Name / Title
On behalf of the
Peoria Police Pension Board

SUBSCRIBED and SWORN
to before me this 24th day
of SEPTEMBER 2021.

Allison C Sonnenberg
NOTARY PUBLIC

