

Preliminary Matters

1. On December 11, 2010, Applicant submitted an application for disability pension benefits, seeking line-of-duty benefits. (Bd. Ex. #1).

2. Applicant was 50 years old at the time of his disability.

3. The Applicant began his employment with the City's Fire Department on September 4, 2001, as a probationary appointee, until September 4, 2002, when he became a regular appointee. (Bd. Ex. #1; Tr. p. 16).

4. Applicant sought disability benefits arising from an injury occurring on January 29, 2019, wherein he claimed he was injured when he fell in the fire station responding to an emergency call. (Bd. Ex. #1, page 2; Tr. p. 22-3).

5. A hearing was conducted on Applicant's application on December 16, 2021.

6. The Pension Board's exhibits 1 through 18 were admitted into evidence without objection. (Tr. p. 10-11). Board Exhibit 19 (Collective Bargaining Agreement) was also introduced into evidence. (Tr. p. 56).

7. Under the City's job description for the Firefighter/Paramedic position, among other things, an individual is required to maintain physical condition appropriate to the performance of assigned duties of the position. (Bd. Ex. 14 p. 3732).

Applicant's Injury.

8. On January 29, 2019, Applicant was on duty at the fire station when the alarm went off requiring him to respond to a residential smoke alarm. (Tr. 22-23).

9. Applicant slipped on a floor that was just mopped, falling on his right side. After getting up, Applicant was able to go on the emergency call. (Tr. 22-23).

10. After returning to the fire station, Applicant was having issues with his neck, pain in his right shoulder and hip, and he was limping when he walked. (Tr. 26-27).
11. Prior to the fall on January 29, 2019, Applicant experienced no problems with his right shoulder and right hip. (Tr. 27).
12. Applicant was treated by two orthopaedic specialists, Dr. Johnson and Dr. Osuji, for his right shoulder and right hip, respectively. (Tr. 30-31).
13. On April 2, 2019, Applicant underwent a surgical procedure to repair tears in his right shoulder, performed by Dr. Brent Johnson. (Tr. 31).
14. Starting in July of 2019, Applicant started rehabilitation and work hardening. (Tr. 33).
15. On August 15, 2019, Applicant followed up with Dr. Osuji for his right hip; Dr. Osuji recommended surgery for his right hip. (Tr. 33).
16. On December 9, 2019, Dr. Osuji performed a complete right hip replacement. (Tr. 33).
17. Following hip replacement surgery, Applicant returned to physical therapy and work hardening program in June of 2020. (Tr. 34).
18. While going through work hardening treatment, Applicant sustained an umbilical hernia in August of 2020; however, surgery was not recommended. (Tr. 35).
19. Applicant's treating physicians never released him to work full duty. Also, Applicant was never able to fully rehabilitate his injuries with the physical therapists and return to work as a firefighter. (Tr. 35-36).
20. Applicant lacks full range of motion in his right shoulder and has pain in his right hip precluding him from carrying more than 30-40 pounds up a flight of stairs. (Tr. 38-39).

Applicant's Pay Status

21. Applicant has not worked since February 7, 2019, when he was placed on duty injury. (Tr. 42).

22. Applicant received full salary from February of 2019 until September 9, 2021. (Tr. 42, 48-9).

23. Applicant received Temporary Total Disability ("TTD") benefits since September 10, 2021. (Tr. 49).

24. Regarding Applicant's pay status, the record was supplemented to include his last pay stub from the City and the pay stub for TTD benefits. (App. Group Ex. 1).

The Pension Board's IMEs

25. Pursuant to Section 5/4-112 of the Illinois Pension Code, three medical doctors conducted independent medical evaluations of the Applicant, namely Dr. George E. Charuk, Dr. Jasper A. Petrucci, and Dr. Miguel A. Ramirez. (Bd. Exs. 15-17).

Dr. George E. Charuk

26. On July 21, 2021, Dr. Charuk conducted an independent medical evaluation of the Applicant. (Bd. Ex. 16).

27. According to Dr. Charuk's report, he concluded "within a reasonable degree of medical certainty that [Applicant] is in fact permanently disabled." (Bd. Ex. 16, p. 3745).

28. Based on his evaluation, Dr. Charuk opined the injuries sustained on January 29, 2019, caused the disability that prevented Applicant from performing his duties. (Bd. Ex. 16).

Dr. Jasper A. Petrucci

29. On August 20, 2021, Dr. Petrucci conducted an independent medical evaluation of the Applicant. (Bd. Ex. 17).

30. According to Dr. Petrucci's report, he determined Applicant was permanently disabled, and the "activities that are required by a firefighter could put his right total hip arthroplasty at risk for possible dislocation and/or injury in the future." (Bd. Ex. 17, at 3770).

31. Dr. Petrucci opined the incident on January 29, 2019, aggravated a pre-existing condition and contributed to the disability. (Bd. Ex. 17, at 3771-72).

Dr. Miguel A. Ramirez

32. On August 10, 2021, Dr. Miguel A. Ramirez conducted an independent medical examination of Applicant. (Bd. Ex. 18).

33. According to Dr. Ramirez's report, Dr. Ramirez found applicant is at maximum medical improvement and unable to perform the activities required for his full-time duties. (Bd. Ex. 18, at 3792).

34. Dr. Ramirez rendered the opinion the injury to Applicant's right shoulder and right hip resulting from the fall on January 29, 2019, caused his permanent disability. (Bd. Ex. 18, at 3792).

35. After closing statement, the Pension Board voted to grant Applicant's request for line of duty disability benefits effective September 9, 2021, but subject to any offsets for Worker's Compensation Benefits received from the City. (Tr. 75-76).

II. APPLICABLE STATUTORY PROVISIONS

40 ILCS 5/4-105b Permanent Disability.

§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

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.

Such firefighter shall also be entitled to a child's disability benefit of \$20 a month on account of each unmarried child less than 18 years of age and dependent upon the firefighter for support, either the issue of the firefighter or legally adopted by him or her. The total amount of child's disability benefit payable to the firefighter, when added to his or her disability pension, shall not exceed 75% of the amount of salary which the firefighter was receiving at the date of retirement.

§ 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

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, 621 N.E.2d 986 (4th Dist. 1993); *Wall v. Schaumburg Police Pension Bd.*, 178 Ill. App. 3d 438, 533 N.E.2d 458 (1st Dist. 1989); *Evert v. Firefighters' Pension Fund of Lake Forest*, 180 Ill. App. 3d 656, 536 N.E.2d 143 (1st 1989). Due to their personal knowledge of the particular physical and emotional demand of the job, the members of the pension board are in the best position to determine pension questions. *Sanders v. Springfield Police Pension Bd.*, 112 Ill. App. 3d 1087, 445 N.E.2d 501 (4th Dist. 1983).

Line-of-Duty Disability.

Applicant asserted a disability claim based upon an injury he sustained to his right shoulder and right hip on January 29, 2019, which he alleged arose out of the course of performing firefighting/paramedic duties. The elements a firefighter must prove in order to obtain a line of duty disability pension under Section 5/4-110 of the Pension Code are as follows:

1. He 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 department. *Gloss v. Board of Trustees, Firemen's Pension Fund of Chicago Heights*, 132 Ill. App.2d 736, 739 (1st Dist. 1971).

Applicant established he is a firefighter and a member of the City of Champaign's Firefighters' Pension Fund. The Pension Board also finds Applicant met his burden of establishing his injury resulted from an "act of duty."

The term "act of duty," as used in Section 4-110 of the Pension Code, is defined under Section 6-110 of the Pension Code. Section 6-110 of the Pension Code defines an "act of duty" 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." *Jensen v. E. Dundee Fire Protection Dist. Firefighters' Pension Fund Bd. of Trustees*, 362 Ill. App.3d 197, 203 (2nd Dist. 2005). In addition, it is for the Pension Board to determine whether the disability was caused by a covered act. *Id.* at 205. The Pension Board recognizes an "act of duty" need not be the sole or primary cause of Applicant's disability. Instead, it is sufficient that an "act of duty" is an aggravating, contributing, or exacerbating factor. *Vill. of Oak Park v. Vill. of Oak Park Firefighters' Pension Bd.*, 362 Ill. App.3d 357, 371 (1st Dist. 2005).

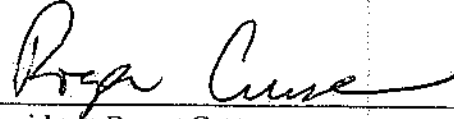
Here, Applicant fell while on-duty at the fire station while responding to an emergency call for a residential smoke alarm. Applicant was required to respond to the emergency call, and in so doing, he fell onto his right side injuring his shoulder and hip. This act constitutes an "act of duty" for purposes of Article 4 of the Pension Code.

Further, all medical professionals agree the January 29, 2019, fall resulted in Applicant's permanent disability, either directly (right shoulder) or by aggravating a preexisting condition (right hip). In this regard, Applicant followed all medical recommendations and completed physical therapy/work hardening to return to work, reaching maximum medical improvement. However, Applicant is still unable to perform his full-time duties as an engineer. Accordingly, the Pension Board concludes Applicant is permanently disabled as a result of an act of duty.

CONCLUSIONS

- (1) The Board of Trustees of the Champaign Firefighters' Pension Fund has jurisdiction over this disability claim.
- (2) Applicant is entitled to a "line of duty" disability pension under Section 4-110 of the Pension Code effective September 9, 2021.
- (3) Applicant's disability benefits are subject to an offset in accordance with Section 4-114.2 of the Pension Code for as long as he receives worker's compensation benefits.

BOARD OF TRUSTEES OF CHAMPAIGN
FIREFIGHTERS' PENSION FUND

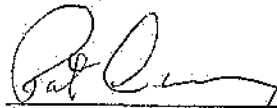


President, Roger Cruse

Trustee, Zach Tish



Trustee, Bradley Diehl



Trustee, Pat Devaney



Trustee, Gary Ludwig

DATED: May 26, 2022

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.

CERTIFICATE OF SERVICE

I, Roger Cruise, 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 26 day of MAY, 2022 in the U.S. Mail Box at MAHOMET POST OFFICE

(X) CERTIFIED MAIL

(X) FIRST CLASS MAIL

TO: Gregory P. Down
521 East Evans Street
Princeville, IL 61559

(By Certified Return Receipt Mail)

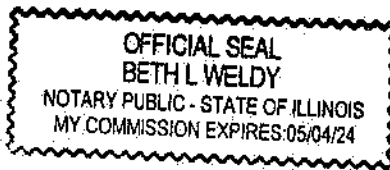
Mr. Stephen P. Kelly
2710 North Knoxville Ave.
Peoria, IL 61604

(By First Class Mail)

/s/ Roger Cruise

SUBSCRIBED and SWORN
to before me this 26 day
of May 2022.

Beth L. Weldy
NOTARY PUBLIC




BEFORE THE BOARD OF TRUSTEES
OF THE CHAMPAIGN FIREFIGHTERS' PENSION FUND

IN THE MATTER OF THE)
DISABILITY APPLICATION OF:)
ENGINEER GREGORY DOWN,)
APPLICANT,)


CERTIFICATE OF PAYMENT

Pursuant to Section 4-125 of the Illinois Pension Code, 40 ILCS 5/4-101 *et seq.*, this is to certify that the Applicant, Engineer Gregory Down, is entitled to payment of a Line of Duty Disability Pension Benefit effective September 9, 2021, and equal to 65% of the salary attached to the rank held by him on his last day of service, less any and all applicable offsets. The salary attached to the rank held by Applicant at the date of suspension of duty is \$90,935.70.

BOARD OF TRUSTEES OF CHAMPAIGN
FIREFIGHTER'S PENSION FUND



President



Secretary

DATE: May 26, 2022