



I. **FINDINGS OF FACT**

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

**Preliminary Matters**

1. Applicant is a regular member of the City of Urbana Fire Department ("Fire Department") holding the rank of Engineer. (Tr. 10-11).<sup>1</sup>
2. Applicant is married and has two (2) adult children. (Tr. 11-12).
3. Applicant received his probationary appointment to the Fire Department on August 9, 1999. (Bd. Ex. 1, p. 1; Tr. 10).
4. Applicant received his regular appointment to the Fire Department on August 9, 2000 (Bd. Ex. 1; Tr. 10) and was promoted to Engineer in August 17, 2011 (Tr. 10-11).
5. On or about March 6, 2022, Applicant submitted to the Pension Board an application for line-of-duty disability pension benefits pursuant to 40 ILCS 5/4-110. Applicant cited injuries to both knees as the reason for the application. (Bd. Ex. 1, p. 1-3).
6. The Pension Board held a hearing on Applicant's line-of-duty disability application on November 29, 2023. (Tr. 1).
7. Pension Board Exhibits 1 through 12 were admitted without objection. (Tr. 7).
8. Applicant's Exhibits 1 through 3 were admitted without objection. (Tr. 8).

**Applicant's Medical Condition and Treatment**

9. On September 10, 2020, Applicant was on duty and was undergoing fire training at the fire institute. Applicant and his crew were assigned to perform a forced entry on the second story of the training center. While he was taking hose line upstairs, a crew member started to pull

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<sup>1</sup> Citations to Board Exhibits will be referenced as "(Bd. Ex. \_\_, p. \_\_)". Citations to Applicant Exhibits will be referenced as "(App. Ex. \_\_)". Citations to Hearing Transcript will be referenced as "(Tr. \_\_)".

the line and Applicant was twisted and slammed against the wall of the stairs. Applicant sustained injuries to his right shoulder and left knee. (Tr. 16-17).

10. The next day, Applicant was sent to occupational health at Carle Foundation Hospital, and he was told to stay off work for a month. (Tr. 17-18).

11. During the month off work, Applicant's left knee did not improve. He was told to stay off work for another month. (Tr. 18-19).

12. Applicant's knee did not improve, resulting in a series of two cortisone injections and physical therapy over the next couple of months. (Tr. 20; Bd. Ex. 11, p. 6565).

13. In December of 2020, Applicant returned to working full duty, but he was experiencing pain in his left knee. Applicant worked full duty until July of 2021, when he could no longer take the pain. (Tr. 21-22).

14. In June of 2021, Dr. Liu ordered an MRI of Applicant's left knee which revealed a large tear of the posterior horn of medial meniscus and minimal tear of the posterior and anterior horn of the lateral meniscus with mild to moderate chondromalacia of the medial joint line. (Tr. 22; Bd. Ex. 11, page 6565).

15. On November 3, 2021, Dr. Liu performed a left knee partial medial meniscectomy. (Tr. 23; Bd. Ex. 11, page 6565).

16. Applicant was prescribed physical therapy and work conditioning from November 12, 2021 to May 23, 2022. He was discharged to return back to work full duty on May 23, 2022. (Bd. Ex. 11, page 6565).

17. On April 4, 2022, Applicant reported an injury to his right knee he sustained during work conditioning. (Tr. 24; Bd. Ex. 11, page 6565).

18. Applicant's primary care physician ordered an MRI of the right knee, which was performed on June 6, 2022, revealing a complex tear of the posterior horn and body of the medial meniscus, full thickness ACL tear, non-displaced subchondral insufficiency fracture of the medial femoral condyle, and swelling. (Tr. 24-26; Bd. Ex. 11, page 6565-66).

19. At the time of the MRI on the right knee, Applicant was still experiencing pain in his left knee. (Tr. 26).

20. Presently, Applicant's left knee cannot bend more than 90 degrees without causing him pain. Applicant does not feel safe returning to full duty. (Tr. 30).

#### **Applicant's Work and Pay Status**

21. Applicant received PEDA benefits from the City of Urbana from July 18, 2021 to July 18, 2022. (Tr. 31).

22. Applicant filed a worker's compensation claim and received TTD benefits from July 19, 2022 to December 4, 2022. (Tr. 31).

23. After TTD benefits were ended, Applicant used his accumulated paid time off until he ceased receiving any compensation from the City on June 22, 2023. (Tr. 38).

24. The worker's compensation claim was settled on October 27, 2023. (Tr. 32).

#### **Pension Board's Independent Medical Examinations**

25. Pursuant to 40 ILCS 5/4-112 of the Illinois Pension Code, the Pension Board selected three (3) physicians to conduct an independent medical examination ("IME") of Applicant. Those physicians were Dr. David Saper, MD (Bd. Ex. 10), Dr. Yogen Patel, DO (Bd. Ex. 11), and Dr. Miguel A. Ramierz, MD OSF (Bd. Ex. 12). The Pension Board forwarded Applicant's treating medical records and related employment records to each of the independent medical examiners prior to examination.

**IME of Dr. David Saper, MD**

26. Dr. Saper is licensed to practice medicine in the State of Illinois and is board certified in orthopaedic surgery. (Bd. Ex. 10, p. 6553).

27. Dr. Saper reviewed Applicant's medical records and certified him disabled from performing full and unrestricted firefighter duties. (Bd. Ex. 10, p. 6548).

28. Regarding Applicant's disability, Dr. Saper concluded as follows:

"Firefighter Stewart is disabled from full and unrestricted firefighter duties due to his bilateral knee disability and pain from his work-related exposures from firefighter training and firefighter duty." (Bd. Ex. 10, p. 6548).

29. Dr. Saper concluded Applicant's disability resulted from acute injuries and were not an aggravation of any preexisting condition. (Bd. Ex. 10, p. 6548-49).

30. Regarding disability causation, Dr. Saper opined. "The alleged disabilities are a direct result of the September 10, 2020 injury and the subsequent work conditioning injury in 2022." (Bd. Ex. 10, p. 6548).

31. Dr. Saper concluded no further medical procedure or treatment would reasonably give Applicant a chance to return to full, unrestricted firefighter duty. (Bd. Ex. 10, p. 6549).

**IME of Dr. Yogen Patel, DO**

32. Dr. Patel is licensed to practice medicine in the State of Illinois and is board certified in Physical Medicine and Rehabilitation. (Bd. Ex. 11, p. 6576).

33. Dr. Patel reviewed Applicant's medical records and certified him disabled from performing full and unrestricted firefighter duties (Bd. Ex. 11, p. 6570).

34. Regarding Applicant's disability, Dr. Patel concluded as follows:

"After reviewing his job requirements, I do not think he can safely navigate his work environment given the ongoing pain related to his bilateral knees." (Bd. Ex. 11, p. 6570).

35. Dr. Patel concluded Applicant's disability is likely permanent, stating "I do not think that he will regain full function in both knees regardless of future surgical interventions and will likely not be able to return back to his prior level of function prior to his injury on September 10, 2020." (Bd. Ex. 11, p. 6570).

36. Regarding disability causation, Dr. Patel opined, "the alleged disability that the patient is claiming is a direct result of the September 10, 2020 incident." (Bd. Ex. 11, p. 6571).

37. Dr. Patel found Applicant could perform in a limited, light duty capacity if such a position were made available and offered to him. (Bd. Ex. 11, p. 6571).

**IME of Dr. Miguel A. Ramirez, MD**

38. Dr. Ramirez is licensed to practice medicine in the State of Illinois and is board certified in orthopaedic surgery. (Bd. Ex. 12, p. 6593).

39. Dr. Ramirez reviewed Applicant's medical records and certified him disabled from performing full and unrestricted firefighter duties. (Bd. Ex. 12, p. 6586).

40. Regarding disability causation, Dr. Ramirez opined as follows:

"It is my impression that it is more likely than not that the injury that currently causes his disability occurred during the September 2020 incident." (Bd. Ex. 12, p. 6587).

41. Dr. Ramirez found Applicant could perform in a limited, light duty capacity if such a position were made available. (Bd. Ex. 12, p. 6587).

**Pension Board's Final Conclusions of Fact**

42. The Pension Board voted 5-0 to award Applicant a line-of-duty disability pension effective June 23, 2023. (Tr. 47-48). Applicant shall receive disability benefits using the salary attached to rank of "Engineer" in the amount of \$91,490.08.

## II. APPLICABLE STATUTORY PROVISIONS

### **40 ILCS 5/4-105b Permanent disability.**

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

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

If a firefighter, as the result of sickness, accident or injury incurred in or resulting from the performance of an act of duty or from the cumulative effects of acts of duty, is found, pursuant to Section 4-112, to be physically or mentally permanently disabled for service in the fire department, so as to render necessary his or her being placed on disability pension, the firefighter shall be entitled to a disability pension equal to the greater of (1) 65% of the monthly salary attached to the rank held by him or her in the fire department at the date he or she is removed from the municipality's fire department payroll or (2) the retirement pension that the firefighter would be eligible to receive if he or she retired (but not including any automatic annual increase in that retirement pension). A firefighter shall be considered "on duty" while on any assignment approved by the chief of the fire department, even though away from the municipality he or she serves as a firefighter, if the assignment is related to the fire protection service of the municipality.

### **40 ILCS 5/6-110 Act of Duty.**

"Act of duty": Any act imposed on an active fireman by the ordinances of a city, or by the rules or regulations of its fire department, or any act performed by an active fireman while on duty, having for its direct purpose the saving of the life or property of another person.

## III. ANALYSIS OF CLAIM

### Legal Standards To Be Used

The burden of proving entitlement to any kind of disability pension rests with the applicant. *Daily v. Bd. of Trustees of the Springfield Police Pension Fund*, 251 Ill. App. 3d 119 (4<sup>th</sup> Dist. 1993); *Wall v. Schaumburg Police Pension Bd.*, 178 Ill. App. 3d 438 (1<sup>st</sup> Dist. 1989); *Evert v. Firefighters' Pension Fund of Lake Forest*, 180 Ill. App. 3d 656 (2<sup>nd</sup> Dist. 1989). When deciding pension claims, it is particularly within the province of the pension fund board of trustees to resolve

any conflicts presented by the evidence and to determine the credibility of witnesses. *Patelon v. Bd. of Trustees of the Des Plaines Firemen's Pension Fund*, 54 Ill. 2d 260 (1973). Due to their personal knowledge, the pension board members are in the best position to determine pension questions. *Sanders v. Springfield Police Pension Bd.*, 112 Ill. App. 3d 1087 (4<sup>th</sup> Dist. 1983).

**Applicant's Line-of-Duty Disability Claim**

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

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

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

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

Applicant was a firefighter for the Fire Department on September 10, 2020, and at the time he applied for line-of-duty disability pension benefits. Applicant suffered an injury while performing the requirements of his job as a firefighter for the Fire Department. The objective medical evidence shows the September 10<sup>th</sup> incident resulted in a disabling condition in Applicant's knee, and the unanimous opinion of all three (3) independent medical examiners found Applicant is disabled from full and unrestricted firefighter duties as a result thereof. Further, there is no objective medical evidence contained in the administrative record that concludes Applicant



can return to full, unrestricted firefighter duties. No permanent light-duty position within the Fire Department was offered to Applicant. As such, the Pension Board finds Applicant is disabled.

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

Applicant incurred his disabling injury from the performance of an act of duty. The term “act of duty” for purposes of Article 4 of the Illinois Pension Code should be construed in accordance with the definition contained in Article 6 of the Pension Code. *Jensen v. E. Dundee Fire Prot. Dist. Firefighters’ Pension Fund Bd. of Trustees*, 362 Ill. App. 3d 197, 203 (2d Dist. 2005). Section 6-110 of the Pension Code defines an act of day as “[a]ny act imposed on an active fireman by the ordinances of a city, or by the rules or regulations of its fire department, or any act performed by an active fireman while on duty, having for its direct purpose the saving of the life or property of another person. 40 ILCS 5/6-110.

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

The Pension Board finds sufficient evidence supporting the conclusion Applicant incurred his disabling injury from an “act of duty.” Specifically, the unanimous opinion of all three (3) independent medical examiners found Applicant’s disabling injury was caused, in whole or in part, as a result of the firefighter training incident on September 10, 2020. Therefore, based upon a

preponderance of the evidence, the Pension Board finds Applicant is disabled so as to render necessary his suspension from service. As Applicant last received compensation from the municipality on June 22, 2023, his disability pension is effective June 23, 2023.

**IV. CONCLUSIONS**

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

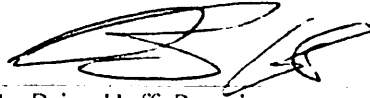
2. Applicant is entitled to a line-of-duty disability pension pursuant to ~~§4-110~~ of the Illinois Pension Code, effective June 23, 2023, because he sustained a disabling injury in the performance of an act of duty.

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

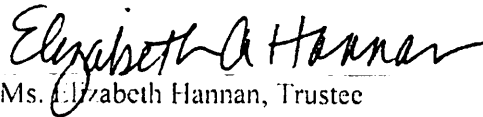
**IT IS THEREFORE ORDERED:**

That a certificate of payment be issued to Applicant, Firefighter Mark Stewart, pursuant to 40 ILCS 5/4-125 of the Illinois Pension Code, stating Applicant's entitlement to a line-of-duty disability benefit, effective June 23, 2023.

BOARD OF TRUSTEES OF THE URBANA FIREFIGHTERS' PENSION FUND

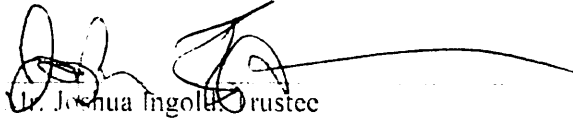


Mr. Brian Hoff, President



Ms. Elizabeth Hannan, Trustee

Mr. Robert Kouzmanoff, Trustee



Mr. Joshua Ingolia, Trustee

Mr. Mark Clapp, Trustee

DATE: May 3, 2024

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



**CERTIFICATE OF SERVICE**

I, Vincent C. Mancini, being first duly sworn on oath states that he served copies of the attached Decision and Order, and Certificate of Payment on the person(s) named below by depositing same this 7<sup>th</sup> day of May, 2024 in the U.S. Mailbox at 15 Spinning Wheel Road, Hinsdale, Illinois 60521:

(X) PRIORITY MAIL SIGNATURE CONFIRMATION

(X) FIRST CLASS MAIL

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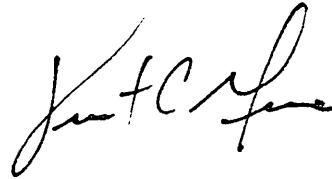
TO: Engineer Mark Stewart  
539 County Road, 2200 East  
Broadlands, Illinois 61816

*(Priority Mail Signature Confirmation)*

Stephen P. Kelly, Esq.  
Stephen P. Kelly, Attorney at Law, L.L.C.  
2710 North Knoxville Avenue  
Peoria, IL 61604

*(First Class Mail)*

SUBSCRIBED and SWORN  
to before me this 7<sup>th</sup> day  
of May, 2024



  
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