

PEKIN FIREFIGHTERS' PENSION BOARD

IN THE MATTER OF)
THE DISABILITY PENSION)
CLAIM OF:)
ENGINEER JAMI LUSHER,)
)
)
Applicant.)

DECISION AND ORDER

The Pekin Firefighters' Pension Board, under the statutory authority outlined in 40 ILCS 5/4-101 et seq., of the Illinois Pension Code, renders the following final decision concerning the application of Jami Lusher for pension benefits under 40 ILCS 5/4-110.1 of the Illinois Pension Code.

The Pension Board held a Hearing on August 29, 2022. The Applicant submitted evidence and arguments supporting the disability application at this hearing date.

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

A.
STATUTES TO BE CONSTRUED

The following provision of the Illinois Pension Code applies in this case:

5/4-110.1. Disability pension – Occupational disease disability pension.

Sec. 4-110.1. Occupational disease disability pension. The General Assembly finds that service in the fire department requires firefighters in times of stress and danger to perform unusual tasks; that firefighters are subject to exposure to extreme heat or extreme cold in certain seasons while performing their duties; that they are required to work in the midst of and are subject to heavy smoke fumes, and carcinogenic, poisonous, toxic or chemical gases from fires; and that these conditions exist and arise out of or in the course of employment.

An active firefighter with five or more years of creditable service who is found, pursuant to Section 4-112, unable to perform his or her duties in the fire department by reason of heart disease, stroke, tuberculosis, or any disease of the lungs or respiratory tract, resulting from service as a firefighter, is entitled to an occupational disease disability pension during any period of such disability for which he or she has no right to receive salary.

Any active firefighter who has completed 5 or more years of service and is unable to perform his or her duties in the fire department by reason of a disabling cancer, which develops or manifests itself during a period while the firefighter is in the service of the fire department, shall be entitled to receive an occupational disease disability benefit during any period of such disability for which he or she does not have a right to receive salary. In order to receive this occupational disease disability benefit, (i) the type of cancer involved must be a type which may be caused by exposure to heat, radiation or a known carcinogen as defined by the International Agency for Research on Cancer and (ii) the cancer must (and is rebuttably presumed to) arise as a result of service as a firefighter.

A firefighter who enters the service after August 27, 1971 shall be examined by one or more practicing physicians appointed by the board. If the examination discloses impairment of the heart, lungs or respiratory tract, or the existence of any cancer, the firefighter shall not be entitled to the occupational disease disability pension unless and until a subsequent examination reveals no such impairment or cancer.

The occupational disease disability pension shall be equal to the greater of (1) 65% of the salary attached to the rank held by the firefighter in the fire service at the time of his or her removal 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).

The firefighter is entitled to a child's disability benefit of \$20 a month for each natural or legally adopted unmarried child under age 18 dependent upon the firefighter for support. The total child's disability benefit when added to the occupational disease disability pension shall not exceed 75% of the firefighter's salary at the time of the grant of occupational disease disability pension occupational disease disability pension grant.

The occupational disease disability pension is payable to the firefighter during the period of the disability. If the disability ceases before the death of the firefighter, the disability pension payable under this Section shall also cease and the firefighter thereafter shall receive such pension benefits as are provided in accordance with other provisions of this Article.

If a firefighter dies while still disabled and receiving a disability pension under this Section, the disability pension shall continue to be paid to the firefighter's survivors in the sequence provided in Section 4-114. A pension previously granted under Section 4-114 to a survivor of a firefighter who died while receiving a disability pension under this Section shall be deemed to be a continuation of the pension provided under this Section and shall be deemed to be in the nature of worker's occupational disease compensation payments. The changes to this Section made by this amendatory Act of 1995 are intended to be retroactive and are not limited to persons in service on or after its effective date.

The child's disability benefit shall terminate if the disability ceases while the firefighter is alive or when the child or children attain age 18 or marry, whichever event occurs first, except that benefits payable on account of a child under this Section shall not be reduced or terminated by reason of the child's attainment of age 18 if he or she is then dependent by reason of a physical or mental disability but shall continue to be paid as long as such dependency continues. Individuals over the age of 18 and adjudged as a disabled person pursuant to Article XIa of the Probate Act of 1975, except for persons receiving benefits under Article III of the Illinois Public Aid Code, shall be eligible to receive benefits under this Act.

B.
FINDINGS OF FACT

A preponderance of the evidence suggests the following findings of fact:

1. The Pekin Fire Department hired the Applicant, Jami Lusher ("Applicant"), on May 28, 1996. (Bd. Ex. #1; Tr. p. 14).
2. The applicant did not object to the inclusion of Board Exhibits 1-5 into the record. (Tr. p. 8). Furthermore, Applicant entered into the record Applicant Exhibits 1-8 for the Board's consideration, and the Board did not have an objection. (Tr. p. 9).
3. The Applicant was admitted to and participated in the Pekin Firefighters' Pension Fund. (Bd. Ex. #1, Tr. p. 14). He took and passed a pre-employment physical, which did not indicate any cancer, illness, or other issues. (Tr. p. 21).
4. The applicant's date of birth is September 6, 1973. (Tr. p. 29). He is married and has two children, Aiden Lusher, 17, and Emma Lusher, 19. Neither child is mentally or physically disabled. (Tr. p. 12-14).

5. Before Applicant's hire date, he volunteered at Green Valley Fire Department. He took and passed a pre-employment physical for that job and had no health issues. (Tr. p. 29-30).

6. The applicant testified that at times in his firefighting career with Pekin, he performed overhauls with his air packs off, which was commonly accepted in the Pekin Fire Department. (Tr. p. 30).

7. Applicant testified that in his career as a firefighter for the City of Pekin, he had been exposed to the following conditions and carcinogens: Asbestos, Hydrogen cyanide, Acids, Carbon monoxide, Diesel, Formaldehyde, Benzole, Arsenic, Fumes and smoke, Radiation, extreme heat, extreme cold. The applicant further testified that some of the toxins touched his skin. (Tr. p. 19-21).

8. Applicant testified that in his career as a firefighter for the City of Pekin, he had been exposed to the following types of controlled fires: Brush and grass fires, cooking fires, dumpster fires, rubbish fires, Trash fires, waste fires, outside storage fires, Passenger vehicle fires, and structure and business fires. (Tr. p. 17-18).

9. The applicant testified that he served on the Hazmat team at the Pekin Fire Department for ten (10) years. His duties included responding to hazardous material calls, hazmat leaks, and burning hazardous things like farm equipment. (Tr. p. 36-37)

10. Before March 7, 2021, Applicant did not suffer from any cancer symptoms and did not have a cancer diagnosis or any pre-existing conditions. (Tr. p. 35 & 41 & 21).

11. Before March 7, 2021, Applicant did not undergo any medical treatment for cancer-related issues and was not on any cancer-related medications. (Tr. p. 21 & 35).

12. On March 7, 2021, Applicant was working full and unrestricted duties for the Pekin Fire Department. (Tr. p. 39).

13. On March 7, 2021, Applicant began having severe stomach pains throughout the day. At roughly 6 pm, Applicant notified his Captain that he needed to go to the hospital for the pain. The applicant was treated at Unity Point Hospital emergency room and a CT scan performed on Applicant discovered that Applicant had cancer in his liver and nodules in his lungs. (Bd. Ex. #4 p. 1065).
14. As of March 7, 2021, the applicants' diagnosis was stage IV carcinoma of the cecum, otherwise stated- metastatic colon cancer. (Bd. Ex. #4, p. 1066 & 1073).
15. On March 10, 2021, a colonoscopy with Biopsy was performed at Pekin Hospital by Dr. Penn, which demonstrated a large cecal mass. Biopsy confirmed an invasive carcinoma moderately differentiated. A chest CT scan showed multiple pulmonary nodules and suspicions of metastasis. (Bd. Ex. #4, p. 1065-1066).
16. The applicant has no prior medical history of cancer or surgeries. (Bd. Ex. #4, p. 1065).
17. The applicant has never smoked cigarettes or any tobacco product. (Ap. Ex. #6).
18. A mediport was placed on Applicant, and on March 30th, 2021, the applicant started chemotherapy. (Bd. Ex. P. 1066).
19. In early 2022 applicant experienced complications and side effects from his chemotherapy and had several visits to the hospital. (Tr. p. 23-24; Bd. Ex. #4, p. 1066).
20. The applicant currently receives chemotherapy every three weeks and takes medications daily. (Tr. p. 33-34).
21. The applicant currently suffers severe side effects from the treatment. (Tr. p. 34).
22. The last shift Applicant worked was in March of 2021. (Tr. p. 26).

23. The applicant received one full year of pay and benefits from the Pekin Fire Department pursuant to the Public Employee Disability Act (PEDA) from on or about April 8, 2021, until April 8, 2022. (Tr. p. 26).
24. After Applicant exhausted his PEDA leave, he was placed on sick leave and began drawing down his sick leave to remain in full pay status. (Tr. p. 31).
25. The applicant never has had and is not currently working in secondary or any employment. (Tr. p. 24 & 34).
26. The applicant has never received temporary total disability. (Tr. p. 31).
27. The applicant filed a worker's compensation case, 21 WC 007111, which is still pending. (Tr. p. 28).
28. The applicant filed for disability benefits on January 17, 2022. (Bd. Ex. #1)
29. Applicant participated to the best of his ability in four (4) Independent Medical Examinations (IMEs).
30. The applicant was not seen in person by Dr. Sweet. (Ap. Ex. 3).
31. Two of the four doctors found cancer unrelated to Applicant's firefighting duties, one found it inconclusive, and one found it to be directly related.
32. The applicant was evaluated by Dr. David Fletcher on June 11, 2022, for approximately 1.5 hours for an Expert Medical Review and Evaluation Report. The applicant went through several tests and also reviewed the records that are in the exhibits in the case. (Tr. p. 25-26).
33. Dr. Fletcher is the only board-certified occupational doctor who evaluated Applicant in this case and found cancer to be directly related and caused by acts of firefighting. (Tr. p. 41; Ap. Ex. #6 & 8).

34. Dr. Fletcher has served on the Workers Compensation Research Institute (WCRI) IL Advisory Committee and the Illinois Workers Compensation Commission (IWCC) since 2011, as well as the Medical Fee Advisory Board (MFAB).

35. Dr. Fletcher completed a Physician's Certificate of Disability for the Applicant. (Tr. p. 41; Ap. Ex. #6).

36. Dr. Fletcher based his conclusions on extensive research connecting firefighting duties to colon cancer, specifically the International Agency for Research on Cancer (IARC) and a well-known National Institute for Occupational Safety and Health (NIOSH) study. (Ap. Ex. #6).

37. Dr. Fletcher found that the Applicant's Cancer was the direct result of the acts of firefighting. (Ap. Ex. #6).

38. The applicant has done everything that his doctors have told him to do. (Tr. p. 23).

39. No doctor has treated or evaluated Applicant, who has cleared him for returning to full and unrestricted fire department duties. (Tr. p. 32).

40. The applicant is covered under a Collective Bargaining Agreement between the City of Pekin and the IAFF Local. There is no permanent light-duty position, and no light-duty position has ever been offered to him by the Employer. (Tr. p. 32).

41. The applicant's treating cancer doctors are at Illinois Cancer Center, and the applicant continues to see them regularly. (Tr. p. 22-23).

Independent Medical Examiners

38. As required by 40 ILCS 5/4-112 of the Pension Code, three physicians selected by the Board examined the records in this matter. These were: Dr. Donald Sweet, M.D. FACP (Bd. Ex. #3); Dr. Albert Mitsos, M.D. (Bd. Ex. #4); Dr. Nguyet A. Le-Lindqwister M.D. (Bd. Ex. #5). In addition to the Board's doctor, the Applicant selected his own doctor to evaluate him, Dr. David

Fletcher, M.D. MPH FACOEM, Board Certified in Occupational & Preventative Medicine. (Ap. Ex. 6, 7, & 8)

39. Dr. Sweet performed an IME which consisted of only a review of medical records and no in-person examination of the Applicant on April 19, 2022.

- a. Dr. Sweet found that the Applicant suffers from a disabling condition that prevents him from performing a firefighter's full and unrestricted duties. He wrote the following: Based solely on his medical records, yes. He has biopsy-proven advanced colon cancer with metastases to the lung (also biopsy documented) and liver. His disease per se has caused him to have pain and weight loss. His chemotherapy treatment has caused weakness and fatigue as well as a sensory neuropathy and a blood clot. He is unable to work as a result of these manifestations. His disease affects his liver, where the body generates energy, which is the capacity for doing work. Liver disease from cancer will diminish energy levels and cause anorexia or a loss of appetite, which in turn reduces nutrition-based energy levels. The chemotherapy that he receives is notorious for side-effects including loss of energy which is expressed as fatigue. Other side effects include anemia, which limits access to oxygen as well as nausea, vomiting and diarrhea, adding to nutritional loss and decreased energy stores. Mr. Lusher cannot and could not work full time under these circumstances. (Bd. Ex. #3, p. 1044).
- b. Dr. Sweet found that Applicant met the legal definition of permanent injury and he wrote the following: "Yes. His cancer is not curable and will be fatal (confidence level > 99%). He has two sites of metastases in vital organs and has shown no response to first line therapy and more recently demonstrates progressive disease. Future treatments might prolong his life." (Bd. Ex. # 3, p. 1045).
- c. Dr. Sweet opined on the causation of Applicant's cancer and related issues: "The causes of Mr. Lusher's disability are the cancer and its treatment. An act of firefighting duty or the cumulative effects of acts of firefighting duty did not cause or contribute to his disability. There is no evidence that firefighting causes colon cancer." (Bd. Ex. # 3, p. 1045).
- d. When asked whether Mr. Lusher could undergo any additional medical treatment that would reasonably be expected to return him to full and unrestricted duty as a firefighter? Dr. Sweet opined: "No".

- e. Dr. Sweet found that Applicant can perform in a light-duty capacity with his current restrictions and wrote the following: "He could perform light-duty work not for more than a few weeks or months, depending on future treatments and side effects as well as disease status." (Bd. Ex. #3, p. 1046).
40. Dr. Mitsos performed an IME on Applicant on March 31, 2022.
- a. Dr. Mitsos found that Applicant suffers from a disabling condition that prevents him from performing the full and unrestricted duties of a firefighter and wrote the following: "Yes. Mr. Lusher should not be working the full duties of a firefighter due to his pulmonary metastasis. However, it should be stated at this juncture that there is no causal relationship of Mr. Lusher's pulmonary metastasis to the events of his date of loss 03/07/21 or the work environment. Mr. Lusher can work; however, I would recommend that the work Mr. Lusher performs is office duty. Mr. Lusher suffers pulmonary metastasis due to his stage IV carcinoma of the cecum. **Mr. Lusher should not be involved in the type of duty of a firefighter, namely being involved with smoke, with environments which have considerable amounts of smoke and heat.** (Bd. Ex. #4, p. 1067-1068).
- b. Dr. Mitsos found that Applicant met the legal definition of permanent injury and stated the following: "Yes. Mr. Lusher's disability is permanent by the definition of the pension code as: Any disability that can be expected to result in death. Mr. Lusher's life expectancy will be severely restricted and barring accidental or cardiac event, Mr. Lusher will succumb to his current disease." (Bd. Ex. # 4, p. 1068).
- c. Dr. Mitsos found that Mr. Lusher's explanation of the onset of his condition is consistent with his medical findings and stated the following: "Yes. Mr. Lusher's condition is consistent with the medical findings. Mr. Lusher's explanation of the answer to the cause of his condition is consistent with the medical findings upon examination. That is to state Mr. Lusher's explanation of the cause of his condition is that it occurred idiopathically. He (Mr. Lusher) does not causally link his cancer to his firefighting activities." (Bd. Ex. # 4, p. 1068).
- d. Regarding the cause of Mr. Lusher's disability, Dr. Mitsos said: "Yes. Mr. Lusher is disabled. The cause of his disability however is due to metastatic carcinoma of the cecum. As stated above, the pulmonary metastasis would prevent Mr. Lusher from safely working at the activity level of the full duties of a firefighter and in

- the **smoke-filled environment**. This was not created by an act of duty as a fireman. (Bd. Ex. #11, p. 1179).
 - e. Dr. Mitsos found that Mr. Lusher did not suffer from pre-existing conditions (Bd. Ex. #4, p. 1069).
 - f. Dr. Mitsos found that Mr. Lusher could perform light duty only in an office setting. (Bd. Ex. #4, p. 1069).
41. Dr. Le-Lindqwister performed an IME on Applicant on May 10, 2022.
1. Dr. Le-Lindqwister found that Applicant suffers from a disabling condition that prevents him from performing the full and unrestricted duties of a firefighter and wrote the following: "Yes, he has metastatic cancer and is on chemotherapy with severe side effects." (Bd. Ex. #5, p. 1073).
 2. Dr. Le-Lindqwister found the disability to be permanent. (Bd. Ex. #5, p. 1074).
 3. Dr. Le-Lindqwister found it undetermined whether Applicant's disabling condition resulted from his service as a firefighter. (Bd. Ex. #5, p. 1073).
 4. When asked whether Mr. Lusher could undergo any additional medical treatment that would reasonably be expected to return him to full and unrestricted duty as a firefighter? Dr. Le-Lindqwister said: "No".
 5. When asked whether Mr. Lusher can perform in a light-duty capacity with his current physical condition/restrictions, Dr. Le-Lindqwister said: "No".
 6. Dr. Le-Lindqwister found it to be "undetermined" whether the Applicant's type of cancer may be caused by exposure to heat, radiation, or a known carcinogen defined by the International Agency for Research on Cancer. (Bd. Ex. #5, p. 1074).
42. Dr. David Fletcher, M.D. MPH FACOEM performed an IME on Applicant on June 11, 2022.
1. Dr. Fletcher examined Applicant in person. (Ap. Ex. #6).
 2. Dr. Fletcher opined that Applicant's disability was severe and certified that Applicant is certified as permanently disabled from Firefighting service. (Ap. Ex. #6 & 7).

3. Dr. Fletcher found Applicant's cancer to be caused by the acts of his firefighting. (Ap. Ex. # 6)
4. Dr. Fletcher based his findings on extensive cancer research. (Ap. Ex. 6).
5. Dr. Fletcher disagrees with the findings of Dr. Sweet and Dr. Mitsos. (Ap. Ex. #6).
6. Dr. Fletcher found that Applicant's cancer was caused by his activities through the City of Pekin. (Ap. Ex. #6).
7. Dr. Lusher found that Applicant had no history of similar problems with his diagnosis of colon cancer. (Ap. Ex. #6)
8. In regards to causation, Dr. Fletcher wrote the following, "In Regards to the causal relationship between his work and his cancer diagnosis, it should be noted that during firefighting activities, individual workers may be exposed too many known carcinogens (e.g., polycyclic aromatic hydrocarbons (PAH's), formaldehyde, benzene, 1, 3-butadiene, asbestos and arsenic) in violatitized cancer among firefighters and have prompted a number of exposure assessment and epidemiologic investigations. (Ap. Ex. #6).
9. In regards to cancer and firefighting, Dr. Fletcher wrote the following: "Colorectal cancer is the type of cancer which may be caused by exposure to heat, radiation, or a known carcinogen as defined by the International Agency for Research on Cancer (IARC)." (Ap Ex. #6; Ap Ex's # 2, 3,4 & 5).
10. Regarding the risk of cancer to firefighters, Dr. Fletcher wrote: "It is my opinion as a board-certified occupational medicine that there is an increased risk to firefighters developing colorectal cancer compared to the general public. When it comes to colorectal cancer risk among firefighters, the majority of scientific studies shows an increase in the range of 10% to 45% more compared to the risk in the general population." (Ap. Ex. #6).
11. In regards to what he used to come to his conclusions regarding firefighting and cancer, Dr. Fletcher wrote the following: "To close, there is significant support in the medical literature that demonstrates the increased risk of colorectal cancer and firefighting." (Ap. Ex. #6)

12. Dr. Lusher found that Applicant is unable to work due to his disability.

C. ANALYSIS

The Applicant bears the burden of proof. Marconi v. Pekin Police Pension Board, 225 Ill.2d 497, 532 (2006) (See also Evert vs. Firefighters' Pension Fund of Lake Forest, 180 Ill.App.3d 656, 536 N.E.2d 143, 129 Ill.Dec.459 (1989); Scalise vs. Westchester Firemen's Pension Fund, 264 Ill.App.3d 1029, 637 N.E.2d 1040, 202 Ill.Dec.304 (1993); Graves vs. Pontiac Firefighters' Pension Board, 281 Ill.App.3d 508, 667 N.E.2d 136, 217 Ill.Dec.343 (1996). It is particularly within the province of the Board to resolve conflicts in the evidence and determine the witnesses' credibility. Peterson v. Board of Trustees of the Des Plaines Firemen's Pension Fund, 54 Ill.2d 260, 263 (1973). Due to their personal knowledge of the particular physical and emotional demands of the job, the members of the Pension Board are in the best position to determine pension questions. Sanders v. Board of Trustees of the City of Springfield Police Pension Fund, 112 Ill.App.3d 1087, 1091-1092 (4th Dist. 1983). The purpose of laws for disability pensions is remedial in nature, and such statutes should be liberally construed in favor of the Applicant to be benefitted. Peifer. v. Board of Trustees of the Police Pension Fund of the Village of Winnetka, 57 Ill.App.3d 102, 106 (1st Dist. 1978).

1. Elements – 40 ILCS 5/4-110.1

The elements that a firefighter must prove to obtain an occupational disease disability pension under 4-110.1 of the Pension Code are as follows:

1. He or she is an active firefighter with at least five years of creditable service; and

2. Unable to perform his or her duties in the fire department by reason of heart disease, stroke, tuberculosis, or any disease of the lungs or respiratory tract resulting from service as a firefighter; or
3. Unable to perform his or her duties in the fire department because of disabling cancer, which develops or manifests itself during a period while the firefighter is in the service of the fire department, and the type of cancer involved must be a type which may be caused by exposure to heat, radiation or a known carcinogen as defined by the International Agency for Research on Cancer and (ii) the cancer must (and is rebuttably presumed to) arise as a result of service as a firefighter.

A. **The applicant did establish the requirements of obtaining an occupational disease disability under 40 ILCS 5/4-110.1.**

The Board notes that the Applicant has more than five years of creditable service as a Pekin Firefighter. The Board further notes that the Applicant suffered from a disease of the Liver and Lungs that ultimately caused his disability. The Board specifically finds that the Applicant's disease of the Liver and Lungs did result from his service as a firefighter. The Board notes that an "Act of Duty" is considered "service as a firefighter." The Board notes that the definition of "Act of Duty," again, as stated above, is as follows:

- (1) Any act imposed on an active firefighter by the ordinances of a city;
- (2) Any act imposed on an active fireman by the rules or regulations of a city's fire department; or
- (3) 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.

The Board finds that the Applicant did establish that he participated in multiple "Act of Duty" requirements to establish his claim to a disability pension. The portion of the Applicant's "service as a firefighter" that stems from an "Act of Duty" satisfies the requirement that his disease of the Liver and Lungs stemmed from his "service as a firefighter."

The Board is cognizant of the holding in Lindemulder v. The Board of Trustees of the Naperville Firefighters' Pension Fund, 408 Ill. App. 3d 494, 946 N.E.2d 940 (2d Dist. 2011). In that matter, the Court held:

Plaintiff's alternative contention is that the legislative findings in section 4-110.1, combined with the evidence, entitled him to an occupational-disease disability pension. We have already determined that the Board's finding that the evidence showed that plaintiff's COPD was not caused or exacerbated by an occupational exposure was not against the manifest weight of the evidence. The question then becomes whether the legislative findings alone can provide the causal nexus. This is a question of law that we review *de novo*. *Jones*, 384 Ill.App.3d at 1067, 323 Ill.Dec. 936, 894 N.E.2d 962. In enacting section 4-110.1 the legislature found:

"[S]ervice in the fire department requires firefighters in times of stress and danger to perform unusual tasks; that firefighters are subject to exposure to extreme heat or extreme cold in certain seasons while performing their duties; that they are required to work in the midst of and are subject to heavy smoke fumes, and carcinogenic, poisonous, toxic, or chemical gases from fires; and that these conditions exist and arise out of or in the course of employment." 40 ILCS 5/4-110.1 (West 2006).

Courts are not empowered to adjudicate the accuracy of legislative findings, but must accord great deference to the legislature's fact-finding authority. *Empress Casino Joliet Corp. v. Giannoulis*, 231 Ill.2d 62, 75, 324 Ill.Dec. 491, 896 N.E.2d 277 (2008). Consequently, we defer to the legislative findings in section 4-110.1.

Plaintiff argues that the legislative findings that firefighters are subject to the conditions described in section 4-110.1 amount to a legislative finding that these conditions cause a negative impact on a firefighter. He thus seeks to bootstrap the legislative findings into proof of causation. This argument is untenable because the legislature specifically provided that a firefighter subject to those conditions must prove that his or her disability resulted from service as a firefighter:

"An active firefighter with 5 or more years of * * * service who is found, pursuant to Section 4-112, unable to perform his or her duties in the fire department by reason of heart disease, stroke, tuberculosis, or any disease of the lungs or respiratory tract, *resulting from* service as a firefighter, is entitled to an

occupational disease disability pension during any period of such disability for which he or she has no right to receive salary.” (Emphasis added.) 40 ILCS 5/4-110.1 (West 2006).

We, therefore, reject plaintiff’s contention.

Lindemulder v. Bd. of Trustees of the Naperville Firefighters’ Pension Fund, 408 Ill. App. 3d 494, 502-03, 946 N.E.2d 940, 947-48 (2d Dist. 2011).

While the Board notes that the Lindemulder Court expressly rejected the bootstrapping of the Legislative findings to proof of causation, the Board finds that Applicant’s service career as a Firefighter and his testimony before the Board supports the conclusion. The Lindemulder Court clearly holds that the Applicant must prove that the Applicant’s disability, subject to the conditions contained within the Statute, resulted from “service as a firefighter.”

The Applicant met his burden of proof in this regard. Again, there was evidence that the Applicant, given the conditions that were testified to, had a connection between Applicant’s fire service conditions, or fire service “Acts of Duty,” and his disability.

All four (4) doctors who performed IMEs concluded that the applicant had no pre-existing conditions before March 7, 2021. When Dr. Sweet and Dr. Mitsos opined about causation, they could not rebut the presumption that any lung cancer or disease of the lungs is presumed to be caused by firefighting. Dr. Le-Lindqwister was undetermined whether the acts of firefighting caused the type of Applicant’s cancer. However, the cancer nodules in the applicant’s lungs are presumptive even if the liver cancer is not. Non-presumptive cancer does not cancel out a presumptive one. Counsel for the applicant, in this case, provided detailed information to the board regarding the greater likelihood of cancer in firefighters. In a rebuttable presumption, the burden tends to shift to the other side to prove that the firefighting didn’t cause colon cancer. The two doctors, Dr. Sweet and Dr. Mitsos, definitively opined that there was no link between Applicant’s cancer and the ingestion and exposure to the elements previously listed in the applicant’s testimony. However, they provided no evidence or basis for this opinion. Neither is Board certified

and Dr. Sweet never even examined the Applicant in person. Dr. Mitsos wrote in his report, "*Applicant should not be involved in the type of duty of a firefighter, namely being involved with smoke, with environments which have considerable amounts of smoke and heat.*" This contradicts the fact that Applicant's fire-fighting duties did not cause or contribute to his cancer. It is not convincing to the board that he is warning against being in heat and smoke because of the applicant's cancer while simultaneously saying that the fire fighting duties of being in heat and smoke did not cause cancer. The board was provided zero evidence through the examinations or research by Dr. Sweet, Dr. Mitsos, or Dr. Le-Lindqwister that rebutted the presumption that the acts of firefighting caused cancer.

Conversely, Dr. Fletcher is a high-ranking Board Certified Occupational Specialist who has been researching cancer and providing workers' compensation decisions for over a decade. He provided the board with extensive research and a factual basis for every conclusion he opined. Dr. Fletcher even pointed out that Dr. Mitsos opined that the Applicant didn't believe that his duties didn't cause his cancer, which is ridiculous since the whole reason we are here today is that Applicant applied to a line of duty pension and filed a workers compensation case. The board has considered all of the records, IME's and the cancer research submitted by the doctors and found that the applicant had met all the requirements of an Occupational Disease Disability Pension. The weight of the doctors' IME was considered in totality, and the evidence was clear that none of the three doctors can say that colon cancer is not caused by firefighting and that exposure to hazardous conditions is inevitable. However, to the contrary, Dr. Fletcher's findings and evidence were compelling that the cancer was caused by acts of firefighting and was not met by a valid rebuttal to the contrary. Wherefore, Applicant completed all the elements needed to grant him a disability pension.

The Board finds the IME report of Dr. Fletcher as supportive of this contention as well as the record which shows that Applicant was exposed to smoke particulates, toxic fumes, and hazardous materials throughout the course of his career and that he was, generally, physically fit and a non-smoker with no pre-existing conditions.

D.

CONCLUSIONS

1. The Pekin Firefighter's Pension Board has jurisdiction over this disability claim.
2. The Applicant, Jami Lusher, is entitled to a disability pension under 40 ILCS 4/110.1 of the Pension Code. Said Pension shall be awarded at the monthly salary attached to his rank as his removal from the municipality's payrolls. It shall be effective on the date of his removal from the municipality's payrolls, less any applicable offsets.
3. Applicant must furnish a copy of any Worker's Compensation settlement for the Board to determine if there are any offsets, and the Board reserves explicit jurisdiction for that matter.

A. MOTIONS:

1. On August 29, 2022, President Baughman motioned, seconded by Trustee Rendleman, to grant Jami Lusher's application for an occupational disease disability pension under 40 ILCS 5/4-110.1. **Roll Call Vote:**

Ayes – Baughman, Stubbs, Watt, Rendleman, Beckman

Nays – None.

Abstain – None

Absent – None.

Motion Carried.

2. On November 14, 2022, Trustee Baughman motioned, seconded by Trustee Rendleman, to approve this written decision and order. Roll Call Vote:

Ayes - Rendleman, Baughman, Beckham, Stubbs

Nays - \emptyset

Abstain - \emptyset

Absent - watt

Motion Carried.

**BOARD OF TRUSTEES OF THE PEKIN FIRE
PENSION FUND**


MR. JOE STUBBS, TRUSTEE

absent
MR. DAVID WATT, TRUSTEE


MR. TONY RENDLEMAN, SECRETARY


MR. ROY BECKHAM, TRUSTEE


MR. ROBERT BAUGHMAN, PRESIDENT

DATED: November 14, 2022

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


PEKIN FIREFIGHTERS' PENSION BOARD

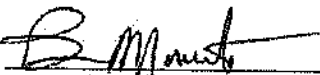
IN THE MATTER OF)
THE DISABILITY PENSION)
CLAIM OF:)
ENGINEER JAMI LUSHER,)
Applicant.)

Pursuant to sections 4-110.1 and 4-131 of the Illinois Pension Code (40 ILCS 5/4-110.1 and 40 ILCS 5/4-131), this is to certify that Applicant, Jami Lusher, is entitled to payment of an "Occupational Disease" Disability Pension by the findings outlined in the attached written Decision and Order and Benefit Calculator Report retroactive to removal from the municipality's payrolls, until further order by the Board of Trustees of the Pekin Firefighters' Pension Fund.

PEKIN FIREFIGHTERS' PENSION BOARD


ROBERT BAUGHMAN, President


TONY RENDLEMAN, Secretary


BRUCE MARSTON, City Finance Director

PEKIN FIREFIGHTERS' PENSION BOARD

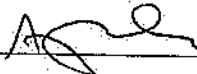
IN THE MATTER OF)
THE DISABILITY PENSION)
CLAIM OF:)
ENGINEER JAMI LUSHER,)
Applicant.)

CERTIFICATE OF SERVICE

I, Anthony Rendleman, on oath, swear and affirm that I served a copy of the attached "Decision and Order" and "Certificate of Payment" upon the person whose name is listed below this 28th day of November, 2022.

To: Jami Lusher
1416 N 5th ST.
Pekin, IL 61554
jamikeri@yahoo.com
(FIRST CLASS & CERT MAIL)

Stephen P. Kelly
2710 North Knoxville
Peoria, IL 61604
skelly@stephenkellylaw.com
(FIRST CLASS & CERT MAIL)


Tony Rendleman, Board Secretary
Pekin Firefighters' Pension Board

[X] Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil procedure, the undersigned certifies that the statements outlined in this instrument are true and correct, except as to matters therein stated to be on information and belief. As to such matters, the undersigned certifies that he verily believes the same to be true.