No. 131343

IN THE
SUPREME COURT OF ILLINOIS

Donald B. Moreland,	)	
	)	Petition for Leave to Appeal from
Plaintiff-Respondent,	)	the Appellate Court of Illinois
	)	First Judicial District
v.	)	No. 1-24-0049
	)	
Retirement Board of the	)	There Heard on Appeal from
Policemen's Annuity and Benefit	)	The Circuit Court of Cook County,
Fund of the City of Chicago,	)	No. 22-CH-12585
	)	
Defendant-Petitioner.	)	Honorable Sophia H. Hall,
	)	Judge Presiding

REPLY BRIEF OF DEFENDANT-PETITIONER RETIREMENT BOARD OF THE POLICEMEN'S ANNUITY AND BENEFIT FUND OF THE CITY OF CHICAGO

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POINTS AND AUTHORITIES

I.
INTRODUCTION

Adopting Plaintiff's misinterpretation of this Court's decision in *Kouzoukas* and allowing the Appellate Court's decision in this matter to stand would wholly upend the disability scheme provided in various articles of the Illinois Pension Code (the "Code"), rendering the detailed legislative provisions therein mere surplusage. *DiFalco v. Bd. of Trustees of Firemen's Pension Fund of Wood Dale Fire Protection District Number One*, 122 Ill. 2d 22 (1988) (protecting the pension scheme established by the legislature). In fact, Plaintiff has already departed from the legislature's intended disability scheme by first applying for disability benefits, thus submitting himself to the Board's jurisdiction, then seeking reinstatement with the Chicago Police Department (the "CPD") before the Board had even rendered a decision on his application for disability benefits. This convoluted strategy undertaken by Plaintiff not only contravenes the exclusive original jurisdiction granted to the Board by the legislature to decide claims for disability benefits, but also subjects the decision making process to patently unreliable information.

Plaintiff's reinstatement attempt was denied following a rubber-stamp evaluation performed by the CPD's physician from Concentra Medical Center, Dr. Houseknecht. (C 1499).[1] The report and letter informing Plaintiff of the denial of his reinstatement made clear that the opinion of Plaintiff's treating physician, Dr. Mardjetko, had significant influence on the decision to deny reinstatement. (See C 1499) ("*Based on restrictions per treating physician*, member is not a candidate for Limited Duty."); (C 1501) ("The Aforementioned Individual: Is not cleared for full duty until the following medical concern

[1] "C _____" denotes reference to the Common Law Record filed on March 11, 2024.

is addressed: *Officer stated as permanently disabled by treating phys[ician]*."); (C 1502) ("*Officer is permanently disabled per treating specialist*."). (Emphasis added.) Moreover, it was clear that Dr. Mardjetko's opinion lacked material information. His opinion that Plaintiff is permanently disabled and could not safely use his department-issued firearm was given without knowledge that Plaintiff had successfully qualified with his firearm in or around January or March of 2021—before Dr. Mardjetko evaluated him. (C 249-50, 1120). Other than reliance on a misinformed treating physician's opinion, there is little-to-no explanation in the record regarding the basis for Concentra's recommendation that Plaintiff's request for reinstatement be denied. Indeed, there is no evidence that Concentra was even made aware of Dr. Levin's opinion.

The Board, partially due to Dr. Mardjetko's lack of credibility, opted to place more weight on the opinion of Dr. Levin when deciding upon Plaintiff's application for duty disability benefits. Even though Dr. Mardjetko was Plaintiff's treating physician, the Board was not required to afford greater weight to his opinions and conclusions. *Trettenero v. Police Pension Fund of City of Aurora*, 333 Ill. App. 3d 792, 802 (2d Dist. 2002). Simply stated, this was a classic "weight of the evidence" situation and the Board's decision was not against the manifest weight of the evidence. The CPD's denial of reinstatement in the middle of the disability process cannot mandate that the Board award duty disability benefits to an applicant who, based on competent evidence presented to the Board, was not disabled.

II.

ARGUMENT

A. The only issues presented here are questions of fact, accordingly, the applicable standard of review in this case is whether the Board's decision was against the manifest weight of the evidence.

The applicable standard of review depends upon whether the question is one of fact, one of law, or a mixed question of fact and law, and determines how much deference is afforded to the Board's determination. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 390 (2001); *Medponics Illinois, LLC v. Department of Agriculture*, 2021 IL 125443, ¶ 29.

As determined by the Appellate Court and the Circuit Court before it, the issue in the instant matter is whether the Board properly found that Plaintiff was not disabled, and thus whether it properly denied Plaintiff's application for disability benefits. "The question of whether the evidence of record supports the Board's denial of plaintiff's application for a disability pension" is a question of fact and, as such, the manifest weight of the evidence standard applies. *Kouzoukas v. Retirement Board of the Policemen's Annuity and Benefit Fund of Chicago*, 234 Ill. 2d 446, 464 (2009) (citing *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 505 (2007)).

A decision is against the manifest weight of the evidence only when the opposite conclusion is clearly evident. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). Here, the Board's decision that Plaintiff is capable of returning to full duty was supported by some competent evidence in the record, and the fact that the CPD denied Plaintiff's reinstatement does not provide a basis to reverse that decision as being against the manifest weight of the evidence.

B. Plaintiff wholly mischaracterizes the Board's argument in this case regarding the distinction between the Board's determination of disability and a fitness for duty determination by the CPD.

As extensively explained in the Board's opening brief before this Court, the Board and the CPD, Plaintiff's employer, are tasked with separate determinations concerning Plaintiff's eligibility for an award of disability benefits on the one hand, and his ableness to return to active duty with the CPD on the other. Plaintiff mischaracterizes the Board's actions and arguments as an attempt to "force the employer to return [Plaintiff] to work" further asserting that "[n]either *Kouzoukas* nor any other Illinois case provides support for the proposition that the City of Chicago and its department of police must honor the Board's paid 'IME' doctor's report to the exclusion of claimant's treating physicians." (Brief of Plaintiff-Appellee, pp. 7, 8). This is an inaccurate representation of the Board's position. As Plaintiff concedes, "[t]he Board's IME doctor, Dr. Levin, opined that nothing is wrong with [Plaintiff] and he would be able to return to work without restrictions." (Brief of Plaintiff-Appellee, p.7). Relying in part on this opinion, the Board concluded that Plaintiff was not entitled to duty disability benefits. The Board does not, however, argue that this determination must result in Plaintiff being reinstated by the CPD. That determination is outside of the Board's purview.

Rather, the Board's position is that *Reed* and *Dowrick* allow for the outcome that occurred in this case: the Board determined that Plaintiff was not disabled and was thus not eligible to receive duty disability benefits, and the CPD found that it would not reinstate Plaintiff based on the opinion of Plaintiff's treating physician, Dr. Mardjetko. As the *Reed* court aptly stated, "[i]t is not incongruous (or unfair) that a [claimant] is denied a disability pension because he is 'essentially normal' and can return to active duty […] while he is denied reinstatement by [his employer]." *Reed v. Retirement Board of the Firemen's*

Annuity and Benefit Fund of Chicago, 395 Ill. App. 3d 1, 5 (1st Dist. 2009) (referencing *Dowrick v. Village of Downers Grove*, 362 Ill. App. 3d 512, 521 (2d Dist. 2005)). The "untenable catch-22" situation conceived in *Kouzoukas* does not apply here given the distinctions between that case and the instant circumstances.

The case of *Taylor v. Retirement Board of the Policemen's Annuity and Benefit Fund of Chicago*, No. 22-CV-6104, 2023 WL 6213797 (N.D. Ill. Sept. 25, 2023), provides guidance here as well. In that case, the Northern District of Illinois confronted the separate determinations made by the Board and the CPD. In its discussion of the evidence presented to the Board, the court noted as follows:

> "[The plaintiff] points to no statute, regulation, or rule requiring the board to accept the city's or a physician's opinion when making a duty disability determination. To the contrary, the code vests the board with 'exclusive jurisdiction' to decide applications for duty-related disability benefits. [40 ILCS 5/5-189]. And the code authorizes the board to request additional evidence in its discretion before deciding a duty disability benefit claim. [40 ILCS 5/5-156]. Accordingly, [the plaintiff] does not plausibly allege that the agreement of the city and two physicians that an applicant is disabled creates an entitlement to a duty disability benefit under the code." *Id*. at *5.

Thus, as the court in *Taylor* explained, and as the Board has consistently argued here, the decision of the CPD should not control the Board's decision to award duty disability benefits to an applicant it has found to be capable of returning to full duty. Moreover, the Board is not arguing that the CPD should be bound by the decisions of the Board as Plaintiff erroneously suggests. The different missions of separate agencies, such as the Board and the CPD, may result in seemingly conflicting decisions. *Reed*, 395 Ill. App. 3d at 5 (referencing *Dowrick*, 362 Ill. App. 3d at 521). The answer to why such a conflict may exist is explained by the different interests at stake for purposes of reinstatement versus deciding whether a claimant is disabled for pension purposes. *Id*. This same explanation is

applicable to the instant matter, permitting both a denial of an application for disability benefits and a denial of reinstatement.

C. This Court is permitted to rely on opinions involving other articles of the Code, and Plaintiff's misinterpretation of the facts of this case does not allow for the application of distinguishable case law.

As Plaintiff correctly notes, *"*[*Reed v. Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago*, 395 Ill. App. 3d 1 (1st Dist. 2009)] was decided on October 19, 2009, approximately one month after this court's opinion in *Kouzoukas* was filed (September 24, 2009)." (Brief of Plaintiff-Appellee, p.11). Just as important, Reed's petition for leave to appeal was denied by this Court on January 27, 2010. *Reed*, 235 Ill. 2d 604 (2010). The timing of *Reed* is crucial given the exhaustive reliance by Plaintiff and the Appellate Court on *Kouzoukas*. Because *Reed* was decided *after* this Court issued its opinion in *Kouzoukas*, *Reed* was surely decided with awareness of that decision. Moreover, this Court was given the opportunity to address any inconsistencies that *Reed* may have caused, yet it declined to do so as evidenced by its denial of the plaintiff's petition for leave to appeal in *Reed*. See *Reed*, 235 Ill. 2d 604 (2010). To review, the *Reed* court confirmed that "[i]t is not incongruous (or unfair) that a [claimant] is denied a disability pension because he is 'essentially normal' and can return to active duty, as the Board determined here, while he is denied reinstatement by [his employer]." *Reed*, 395 Ill. App. 3d at 5. *Reed* is good law, has not been treated negatively by any subsequent case law, is applicable to the circumstances here, and should be deemed instructive in deciding this case. In fact, the legislature did not find it necessary to amend or alter the Code section at issue following the *Reed* decision.

Additionally, the Appellate Court erroneously referred to and relied on a different *Reed* case than the one primarily utilized in the Board's pleadings throughout the history of this matter. (See 11/15/24 App. Ct. Opinion, ¶ 38) (citing *Reed v. Retirement Board of the Fireman's Annuity & Benefit Fund of Chicago*, 376 Ill. App. 3d 259, 269 (1st Dist. 2007)). Because of this error, any discussion of the proper *Reed* case, which was decided in 2009, was critically absent from its opinion.

Plaintiff dwells on the fact that *Reed* and *Dowrick* involve firefighters rather than police officers and were decided under other articles of the Code rather than Article 5. While this is true, this fact is worthy of nothing more than a nominal consideration when considering the well-established ability of this Court to consider the analysis and discussions from those opinions. Courts are not limited to applying only case law that involves a specific article of the Code. See *Waliczek v. Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago*, 318 Ill. App. 3d 32, 36-37 (1st Dist. 2000) (Article 6 case finding persuasive the court's analysis in an Article 5 case); *Olson v. City of Wheaton Police Pension Board*, 153 Ill. App. 3d 595, 599 (2d Dist. 1987) (relying on Article 5 to decide an Article 3 case) (cited favorably by *Trettenero*, 333 Ill. App. 3d at 65); *Holland v. City of Chicago*, 289 Ill. App. 3d 682 (1st Dist. 1997) (court's discussion of Article 5 being persuaded and influenced by an Article 3 case); *Smith v. Retirement Board of the Policemen's Annuity and Benefit Fund of Chicago*, 391 Ill. App. 3d 542 (1st Dist. 2009) ("Legislative intent must be ascertained from a consideration of the entire act, its nature, its object, and the consequences resulting from different constructions.").

There is no reason for this Court to discount either *Reed* or *Dowrick* simply because those cases deal with articles of the Code other than Article 5. The circumstances presented

therein are parallel with the instant matter, whereas *Kouzoukas* is not, and this Court should afford them the application they require given their analogous nature. Plaintiff describes the Board's position as an attack on *Kouzoukas*, yet the Board is not asking this Court to overrule *Kouzoukas* or find that it misinterprets the Code. Rather, the Board is arguing, and has only ever argued, that *Kouzoukas* is simply distinguishable from this case based on the facts presented therein, meaning it does not control the outcome of this case. Instead, *Reed* and *Dowrick* should be applied based on their similarities and the principles discussed therein. Appropriately, the Circuit Court found *Reed* instructive. In contrast, the Appellate Court did not give itself the opportunity to analyze the impact of *Reed* because it evidently reviewed the wrong *Reed* case.

D. This case is one of first impression for Illinois state courts regarding the relevant language of 40 ILCS 5/5-156, which mandates that this Court affirm the Board's decision to deny Plaintiff's application for duty disability benefits.

Looking now specifically within Article 5, the requirements of Section 5-156 lend substantial support to the Board's decision to deny Plaintiff's application for duty disability benefits. That section provides, in relevant part, that "[p]roof of duty, occupational disease, or ordinary disability shall be furnished to the board by at least one licensed and practicing physician appointed by the board." 40 ILCS 5/5-156. Pursuant to this relevant language, the Board must have been correct in its determination that Plaintiff was not entitled to disability benefits because the statutorily required proof had not been provided to it. While the Appellate Court correctly reached this conclusion as well, surprisingly, it ultimately declined to interpret Section 5-156 based on its plain, unambiguous language, because "construing section 5-156 in the same manner that *Nowak* interpreted section 6-153 would ignore our supreme court's decision in [*Kouzoukas*]." (11/15/24 App. Ct. Opinion, ¶ 28).

As discussed at length in the Board's prior pleadings, *Kouzoukas* is distinguishable from the instant matter and allowing it to control the outcome here is erroneous. Adopting Plaintiff's and the Appellate Court's positions on this issue will render Section 5-156 mere surplusage. One of the fundamental principles of statutory construction is to view all of the provisions of a statute as a whole, and words and phrases should not be construed in isolation, but interpreted in light of other relevant portions of the statute so that, if possible, no term is rendered superfluous or meaningless. *Hooker v. Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago*, 2013 IL 114811, ¶ 37 (citing *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 422 (2002)). The Appellate Court's decision, if allowed to stand, effectively negates the legislature's intent when it drafted the mandatory and unambiguous language provided in Section 5-156.

It is important to clarify that, contrary to Plaintiff's suggestion, the Board raised this Section 5-156 argument before the Circuit Court. At oral argument, counsel for the Board noted the following after a recitation of the relevant language of Section 5-156: "If there's no board-appointed doctor saying [Plaintiff is] disabled, you haven't met that standard. … There's no Board-appointed doctor saying that he's disabled. The only Board-appointed doctor, Levin, is saying he's not. So on manifest weight standard, on traditional analysis of the Board's decision here, there's sufficient evidence for the Board's decision to be upheld." (R 20).[2]

This Court's analysis of Section 5-156 is pivotal for Illinois courts moving forward because, as the Appellate Court noted in its decision, "[n]o Illinois decision has interpreted this portion of section 5-156." (11/15/24 App. Ct. Opinion, ¶ 25). In attempting to

[2] "R _____" denotes reference to the Report of Proceedings filed on March 11, 2024.

demonstrate that Section 5-156 has been interpreted in the past, Plaintiff provides this Court with more irrelevant discussion of prior decisions. He notes that this is not a case of first impression because *Rainey* and *Kouzoukas* both addressed Section 5-156. While it is true that Section 5-156 was mentioned in those cases, Plaintiff misses the mark due to his myopic view of the limited language from Section 5-156 at issue in those cases. In *Rainey*, the court analyzed the portion of Section 5-156 stating that "[w]hen the disability ceases, the board shall discontinue payment of the benefit, and the policeman shall be returned to active service." *Rainey v. Retirement Board of the Policemen's Annuity and Benefit Fund of Chicago*, 2024 IL App (1st) 231993, ¶ 46; 40 ILCS 5/5-156. Clearly, the *Rainey* court did not address the board-appointed physician mandate in Section 5-156. Likewise, in *Kouzoukas*, Section 5-156 is minimally discussed, and the language referenced there differs from the relevant language here. See *Kouzoukas*, 234 Ill. 2d at 472 (referencing various sections of Article 5 and noting that Section 5-156 covers a change in disability status being revealed after a required annual physical examination). Once again, the portion of Section 5-156 discussed in *Kouzoukas* is not at issue here.

This complete dearth of case law interpreting *the relevant language* from Section 5-156 was the driving force behind the Appellate Court's consultation of *Nowak v. Retirement Board of the Firemen's Annuity and Benefit fund of Chicago*, 315 Ill. App. 3d 403 (1st Dist. 2000). Despite being an Article 6 case, *Nowak* is responsible for a significant portion of the Appellate Court's analysis because the statutory language construed in that case is identical to Section 5-156. *Nowak* interpreted and applied Section 6-153 of the Code, which, in relevant part, provides the following language (seen in Section 5-156 as well): "Proof of duty, occupational disease, or ordinary disability shall be furnished to the

Board by at least one licensed and practicing physician appointed by the Board." 40 ILCS 5/6-153; 40 ILCS 5/5-156. In finding that the board's decision *must* be affirmed, the court in *Nowak* noted that "the plain language of section 6-153 mandates that, before granting a disability benefit, the Board must receive proof of the claimant's disability from at least one physician appointed by the Board." *Nowak*, 315 Ill. App. 3d at 411-12. Such proof was not received by the Board in this case, meaning its decision to deny Plaintiff's application for duty disability benefits must be affirmed as well.

In relation to the board-appointed physician requirement stated in Section 5-156, Plaintiff puts forth an argument that stretches the bounds of credibility. He argues that at the times relevant to this case the only "Board-appointed physician" was Dr. Orris and that the Board operated with some devious scheme to prevent Dr. Orris from opining on whether Plaintiff was disabled. Plaintiff stated that "Dr. Orris was present at the hearing and testified briefly but the Board did *not* want him to opine on whether Officer Moreland was disabled from police work." (Brief of Plaintiff-Appellee, p.15). Plaintiff then excerpts the hearing transcript, conveniently omitting necessary context from the discussion between Plaintiff's Counsel and the Board's attorney Mr. Rick Reimer, which went as follows:

> MR. REIMER: All right. Does anybody else have any questions of Officer Moreland? If not, then you indicated that you wanted to question, Dr. Orris.
>
> MR. LICARI: Dr. Orris or Dr. Buchanan. Either one is fine.
>
> MR. REIMER: This is not to render an opinion?
>
> MR. LICARI: Correct.
>
> MR. REIMER: This is to clarify some testimony?

> MR LICARI: No, just to explain the procedures or the surgical procedures by Dr. Nho on June 9th of '21. Dr. N-h-o, Nho.
>
> MR. REIMER: Dr. Nho. All right. Is either doctor comfortable with answering that question? If they're not qualified, then we wouldn't let them testify. Dr. Orris, it looks like you're the one here. Do you feel comfortable rendering an opinion on that?

(C 1627). Based on this, Plaintiff's argument that the Board somehow acted to prevent Dr. Orris from rendering an opinion on Plaintiff's disability becomes nonsensical. Plaintiff's Counsel clearly shaped the scope of Dr. Orris's testimony, making the speculation by Plaintiff that the Board had some underlying motive to prevent Dr. Orris from rendering an opinion so that it could rely on the opinion of Dr. Levin even more desperate.

Plaintiff also cites various cases to sustain his assertion that "there is no IME contemplated in Article 5" and that the Board's reliance on an IME has been rejected in the past. (Brief of Plaintiff-Appellee, pp. 15-16). True, neither Article 5 nor any other article in the Code expressly uses the term "IME." However, reliance on IMEs is likewise not foreclosed in the Code or in Article 5; all that is required is that proof of disability be furnished to the Board "by at least one licensed and practicing physician." 40 ILCS 5/5-156. Additionally, the cases relied upon by Plaintiff simply support the fact that there are various Board-appointed doctors that have been relied upon in various cases. For example, Dr. Neal issued an IME and was the Board's relied-upon physician in *Rainey* and *Ohlicher*. *Rainey*, 2024 IL App (1st) 231993, ¶ 29; *Ohlicher v. Retirement Board of the Policemen's Annuity and Benefit Fund of Chicago*, 2024 IL App (1st) 231699-U, ¶¶ 22, 25. There was no objection made to Dr. Neal's opinion on the basis that he was an independent medical examiner. Here, inconsistent with Plaintiff's assertion, the Appellate Court's decision notes that "Dr. Levin was the only doctor appointed by the Board in this case." (11/15/24 App.

Ct. Opinion, ¶ 28). It was Dr. Levin's opinion that the Board relied upon in denying Plaintiff's application for duty disability benefits, and absent a Board-appointed physician's opinion indicating that Plaintiff is disabled, the mandatory requirement of proof of disability under Section 5-156 has indisputably not been satisfied. The only prudent decision that the Board could make consistent with its fiduciary duties and the plain language of the Code was to deny Plaintiff's request for duty disability benefits.

III.
CONCLUSION

For the reasons stated herein, it is evident that the Appellate Court exceeded its authority by choosing to disregard the plain language of the Code and misapplied immaterial case law in clear contradiction of other well-established, and applicable case law. By doing so, it has created an absurd and untenable situation for pension boards charged by the legislature with making disability determinations under the Code. Accordingly, the Appellate Court's decision must be reversed and vacated and the decision of the Circuit Court and the Board should be affirmed.

Respectfully submitted,

RETIREMENT BOARD OF THE POLICEMEN'S ANNUITY AND BENEFIT FUND OF THE CITY OF CHICAGO

By: /s/ Vincent D. Pinelli
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Date: June 18, 2025

CERTIFICATE OF COMPLIANCE

I certify that this **REPLY BRIEF OF DEFENDANT-PETITIONER RETIREMENT BOARD OF THE POLICEMEN'S ANNUITY AND BENEFIT FUND OF THE CITY OF CHICAGO** conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 13 pages.

By: /s/ Vincent D. Pinelli

CERTIFICATE OF FILING AND SERVICE

On June 18, 2025, I electronically filed the foregoing **REPLY BRIEF OF DEFENDANT-PETITIONER RETIREMENT BOARD OF THE POLICEMEN'S ANNUITY AND BENEFIT FUND OF THE CITY OF CHICAGO** with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system.

I further certify that the participants in this appeal named below were served through the Odyssey eFileIL system and by electronic mail at the email address listed below:

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure (735 ILCS 5/1-109), I certify that to the best of my knowledge, information, and belief, the statements in this Certificate of Filing and Service are true and correct.

By: /s/ Vincent D. Pinelli