NOTICE
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2026 IL App (5th) 260066-U

NO. 5-26-0066

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

JOSHUA MAHAN, Plaintiff-Appellee, v. MARION POLICE PENSION BOARD, TOM WOODS, RONALD SWAFFORD, JESSIE THOMPSON, TERANCE HENRY and TAMMY BEASLEY, Defendant-Appellant.	)	Appeal from the Circuit Court of Williamson County. No. 25-MR-21 Honorable Amanda Byassee Gott, Judge, presiding.

JUSTICE VAUGHAN delivered the judgment of the court.
Justices McHaney and Clarke concurred in the judgment.

ORDER

¶ 1 *Held*: The Marion Police Pension Board's decision to terminate Mahan's disability pension is reversed where the decision was against the manifest weight of the evidence and Mahan's due process rights were violated.

¶ 2 Appellant, Joshua Mahan, appeals the most recent findings of the Marion Police Pension Board (Board), which again terminated his line-of-duty disability pension. On appeal, Mahan contends that two of the board members should have been removed from the panel of decision makers due to their bias and that the Board's decision is against the manifest weight of the evidence. For the following reasons, we reverse the Board's decision.

¶ 3 I. BACKGROUND

¶ 4 Mahan began working as a police officer for the Marion Police Department on October 15, 2007. He was injured in the line-of-duty on May 20, 2011, and applied for line-of-duty disability pension benefits. The application was granted on July 26, 2012. Subsequent disability hearings, required to determine Mahan's continued eligibility for benefits, resulted in continued benefits in 2016 and 2017. In 2018, the Board determined that Mahan was no longer eligible for benefits based on a report from Dr. Joseph Yazdi. Mahan appealed that decision and the Williamson County circuit court reversed the Board's decision. In January 2020 the Board notified Mahan of the next hearing to determine his continued eligibility for disability pension benefits. The hearing was ultimately held on March 10, 2021. Following that hearing, Terrence Henry moved for a finding that Mahan had "recovered from his disability to his thoracic spine and his disability payments should cease." Tammy Beasley Wright seconded the motion. Ultimately, the benefits were terminated with a 4-1 vote with Jessie Thompson being the only Board member to deny the motion. Mahan appealed and the circuit court affirmed. Mahan then appealed to this court, and we reversed the Board's termination of benefits finding the decision was against the manifest weight of the evidence. See *Mahan v. Marion Police Pension Board*, 2023 IL App (5th) 210426, ¶ 35. The decision also expressed disapproval of the Board's attorney, Dennis Orsey, serving in the dual capacity of both the Board's attorney and the hearing officer for the proceedings. *Id.* ¶ 36.

¶ 5 Another review hearing was scheduled for November 21, 2024. On November 15, 2024, Mahan's counsel filed a motion to exclude Board members Tammy Beasley Wright and Terrance Henry from Mahan's hearing. The motion alleged that after the appellate court decision was issued, a Board meeting was held on March 29, 2023, to consider, *inter alia*, approval of the retroactive payment of benefits due to Mahan. The motion further alleged that the meeting was recorded and

during the meeting two Board members, Beasley Wright and Henry, made comments that revealed a predisposition of those Board members that Mahan was not entitled to disability pension benefits. As to the statements, the motion alleged the following statements were made during the hearing: (1) "At 59:00 a comment was made by a board member about how to win the next time and Tammy Beasley commented, 'let's go for broke,' at 59:20"; (2) "At 1:03:52 Terrance Henry commented regarding Mahan's appearance at the meeting to the effect that 'he'll probably come in jogging' to which the response was laughing"; (3) "At 1:05:20 a comment was made by Terrance Henry that Mahan was 'probably teaching Zumba' "; (4) "At 1:06:20-25 Tammy Beasley Wright commented that she was not going to move to approve the [retroactive disability pension benefit] payment"; and (5) "[A]t 1:06:56 [Beasley Wright] stated she acknowledged her approval [of Mahan's retroactive disability pension benefit payments] 'under protest.' " Mahan's motion alleged that the statements by those two Board members expressed a bias that Mahan was not entitled to continuing benefits, a disagreement with prior decisions and a likelihood that they would "ignore evidence submitted at the hearing." Mahan alleged that it was prejudicial and deprived him of due process and a fair hearing to allow those two of the five Board members to participate in the planned review hearing.

¶ 6 The Board responded by admitting it did not know the hearing was recorded and that the comments made by Henry and Beasley Wright were taken out of context and did not represent any predisposition on making a future determination as to whether Mahan should continue to receive disability benefits. The response claimed that Mahan's motion was an "eleventh hour attempt to remove pension board trustees [and] appears to be designed to 'muddy the waters' immediately prior to the scheduled hearing." It stated that review of the actual recording would allow a listener to clearly ascertain that comments were "typically surrounded by laughter" and were "stated in

jest." It further stated that the result of the vote at the meeting was to pay retroactive benefits to Mahan based on our appellate court decision. The response further relied on the presumption of a fair tribunal (citing *Klomann v. Illinois Municipal Retirement Fund*, 284 Ill. App. 3d 224 (1996)), that an inquiry as to impartiality could be made (citing *Turcol v. Pension Board of Trustees of Matteson Police Pension Board*, 359 Ill. App. 3d 795 (2005)), and that Mahan was required to prove that the Board member had adjudicated the facts as well as the law in advance of hearing the case (citing *Waste Management of Illinois, Inc. v. Pollution Control Board*, 175 Ill. App. 3d 1023 (1988)).

¶ 7 The hearing proceeded before hearing officer, James Dobrovolny, on November 21, 2024. Orsey continued to represent the Board. Dobrovolny stated that the burden of proving continued entitlement to disability benefits was on Mahan. Before the merits of the case were addressed, Dobrovolny first addressed the pending motion to recuse two of the Board members. The parties agreed that the recording could be placed into evidence, instead of the transcript, and the hearing officer stated that it would come in under the Open Meeting Act. Mahan noted that at the 19-minute mark of the recording, it was clear that the members knew the meeting was being recorded.

¶ 8 The four instances referenced in Mahan's motion were played to determine the context. The comment stating, "I bet he'll come in jogging" was made after the treasurer stated that Mahan had to come in and filled out paperwork. Laughter is heard after the statement. The context for the "probably teaching Zumba" comment started with Orsey stating that no special meeting would be called to address the appellate court decision and that once the Board approved the payment of retroactive benefits, the check would be issued. In response, Henry stated, "He must have a bill to pay." Beasley Wright stated, "That's probably what it is, yeah." Orsey then agreed with Henry and Beasley Wright. An unidentified speaker stated, "Well, I'm surprised he's not here." Orsey replied,

"Saying hand me the check?" Henry then stated, "Yeah. That's what I'm saying. It sounds like—it sounds like he's got a bill to pay." Orsey agreed and stated he was "surprised he's not here today." An unidentified speaker stated they would get the check ready and stated, "He's probably not able to be here." Orsey stated that "he's probably working at his other job" and was interrupted by Henry who stated, "Teaching Zumba someplace. All right. What's our next thing?" Orsey replied that a motion was needed for the backpay amount. The treasurer clarified the amount was approximately $62,000. An unidentified speaker stated, "I'm going to draw on that" and a second unidentified speaker made the motion which was seconded by Board member Ronald Swafford. A vote was then taken and all voted yes, with Beasley Wright adding the words, "under protest." Thereafter, additional laughter is heard.

¶ 9 Following the audio presentation, the hearing officer asked Beasley Wright if she could be "fair and impartial and objective in hearing this matter today," and Beasley Wright said, "Yes, I do." She was then asked if she could "confine your consideration to whatever the evidence is that's in the record" with no "extraneous stuff from wherever." Beasley Wright said, "Absolutely." The same questions were asked of Henry, who also answered in the affirmative. The hearing officer stated, citing *Collura v. Board of Police Commissioners*, 113 Ill. 2d 361 (1986) and *Danko v. Harvey Police Pension Board*, 240 Ill. App. 3d 6633 (1992), that Mahan needed "to have a little bit more than what I have seen here so far" and denied the motion.

¶ 10 The hearing officer then admitted all the evidence, with no objection from either side, and allowed the parties to provide opening statements. Mahan testified that he was currently 43 years old and was injured on May 20, 2011. He was awarded line of duty pension benefits in 2012 and had not worked as a police officer since that time. He stated that he had seen no improvement in his condition since he testified previously in 2021. He explained that the problem was in the base

of his neck, upper back, and right between his shoulder blades. He stated that it felt like he had a constant hot rock there that tingled, burned, and radiated out. He would get spasms that started there and then wrapped into his chest and ribs. The spasms occurred randomly and came on with no warning. If he put too much strain or stretched the area, it would lock up and spasm too. That had been occurring since 2012. He was previously taking medication for the issue but no longer took it because the opiates became an issue.

¶ 11 Mahan went to a chiropractor once a week for an adjustment. He stated that the treatment would relieve a little bit of the pressure, but only on the day he went. He could not afford to go every day. Additional stress in the affected area made it burn more. If he pushed too much, like moving furniture in his house, it would spasm and put him down for the day. He compared the spasms to being tased. They would lock him up completely, he could not breathe and he could not move until the spasm ceased.

¶ 12 At the time of the hearing, Mahan worked a desk job selling modular homes. Prior to that he was a police officer for five and half years. He stated there were parts of the police job he could do, which included report writing and patrolling for at least an hour. However, when it came to putting a person in handcuffs, Mahan stated that if they fought him, they would be able to get away. He did not feel that he would be able to protect the public if an altercation occurred. Nor did he believe that he would be able to help a fellow officer in need. He would not be able to run, chase a suspect, or tackle a suspect. Mahan explained that lifting was also part of the job. If someone lay down on the ground and would not go to jail, typically the officer would pick them up off the ground and put them in the back seat of the patrol car. He could not do that. He stated that typically, while on patrol, the officer was alone. Mahan did not believe that climbing was a factor in police work. Mahan stated that running or having a fight with a suspect would be the biggest problem.

¶ 13 Mahan agreed that he had a functional capacity evaluation (FCE) in 2018. The results from that testing indicated that he was unable to return to the full duties of a police officer. He stated that FCE took four or five hours. He also participated in an FCE performed in 2024 after receiving a referral from Physician Assistant, Jennifer Alexander. The 2024 FCE lasted the same amount of time. He stated that at the beginning of the FCE, he sat in a room and did things with his hands, moving blocks from one side of a box to another. He stated that it seemed like a hand-eye coordination test. As the day went on, he started doing more physical things like going up and down steps and lifting things. He further explained that a physical therapist watched the program and took notes.

¶ 14 Mahan agreed that he was examined by Dr. Chintan Sampat in Joliet, Illinois. Mahan testified that the physician spent 10 minutes with him. The physician asked him a few questions, had him touch his toes, walk heel to toe, balance on his heels, and balance on his toes. That was it. He was not asked to lift anything, carry anything, perform activities to get his heart rate up, or do anything strenuous in the 10 minutes of evaluation. The physician did not ask him what his job duties as a police officer involved. Mahan told the physician that he did not think he could return to the job if he had to handle an altercation with anyone.

¶ 15 Mahan testified that he wakes up with a pain level of four every day. Depending on his activity, it will go up and come back down, but it is never lower than a four. He woke up every time he moved. He stated that if a chair did not have a backrest he could only sit for 5 or 10 minutes. If the chair had a back, he could sit there for a couple of hours as long as he could fidget.

¶ 16 On cross-examination, Mahan agreed that he was no longer taking any prescription medications for his condition. He also stated that he no longer took any nonprescription medications. His only prescription medications, which were Lithium, Adderall, and Cymbalta,

were not related to his injury or his back pain. He was only receiving medical treatment from the chiropractor. He continued to work for the same company as he did at his prior hearing before the Board. His salesman job consisted mostly of sitting at his desk. He could draw up floor plans, help a customer pick out colors, and order the items. There were also modular homes on site that he would show to potential customers. The only other employee was the owner of the company. He stated that he would run errands for his boss, if possible. Mahan disagreed that he ever cut the grass, explaining that they used a lawn care service for that work. He agreed that he had used a weedwhacker at his place of employment and at his home. He disagreed that he had ever used a sledgehammer to drive in stakes as part of his employment. He agreed that he told Dr. Sampat that his pain level could be as low as two. Mahan could not recall, during his 2024 FCE, if he took in the job description of a Marion, Illinois, police officer or if the FCE administrators looked online at the website to determine the job description. He also explained the 100-pound lifting requirement to be an officer was the threshold weight for any heavy-duty job description, not a medium- or light-duty job. He stated that most people weighed more than 100 pounds and if he had to pick them off the ground and put them in a squad car, it would be more than 100 pounds. Mahan stated that he did not provide any 100-pound number during the FCE and agreed that the 100-pound limit was not part of the Marion police job description either.

¶ 17 Mahan agreed that he read Dr. Sampat's report, which stated the evaluation was 20 minutes. He disputed the length of time. He agreed that he also performed some twisting and was asked if he experienced any pain while the physician manipulated his torso. Mahan stated that he had not worked any other job, except as the modular home salesman, since the prior hearing. He agreed that he was requalified to shoot his firearm annually and performed the requalification in September 2024 at the local range. He stated that he still had a FOID card, was qualified to carry

a firearm, and remained friends with some of his former police officer peers. One of them was Billy Lannom, with whom he had been friends since junior high school. He agreed that Lannon provided him with the copy of the recording of the board meeting that was addressed earlier at the meeting. He stated that he had the recording for about two months before he provided it to his attorney. When he got the tape, he listened to it. He did not immediately hand it over to his lawyer because he did not want anyone on the Board or the Board itself to face any repercussions about it. He eventually turned it over to his lawyer because he was "worn down and tired of getting beat up on it."

¶ 18 Mahan stated that he knew everyone, but the new member (Tom Woods) on the Board. He considered the president of the Board to be a close friend. He also used to consider Henry a friend but stated that he did not think Henry liked him anymore. He hoped that everyone on the Board was going to be fair and objective in their decision making. He agreed that the Board should make their decisions based on the evidence and testimony presented.

¶ 19 The hearing officer questioned Mahan about the prescriptions he was taking. Mahan stated that he took those prescriptions for ADHD and bipolar disorder with manic depressive episodes. The hearing officer asked Mahan to stand up and asked him what was on the front of Mahan's shirt. Mahan replied that it said "Zumba."

¶ 20 Mahan's counsel declined further direct examination. On cross-examination, Orsey asked why Mahan wore that shirt and Mahan stated that he bought the shirt after he heard the recording so he could wear it to the hearing. Following Mahan's testimony, his counsel rested.

¶ 21 The evidence submitted at the hearing consisted of the 2012 Board minutes awarding disability, Dr. David Lange's January 2012 independent medical examination (IME) report, Dr. Bernard Rerri's 2012 IME report, Dr. Rerri's January 14, 2021, and February 9, 2021, reports, the

12 exhibits from the 2016 hearing, Dr. David Robson's 2017 IME report, Dr. Joseph Yazdi's 2018 IME report, Dr. Yazdi's 2020 IME report, the Marion police officer job description, the FCE performed on February 14, 2024, chiropractic records from September 22, 2022, to December 4, 2023, Jennifer Alexander's medical records, correspondence to Dr. Sampat, Dr. Sampat's July 29, 2024, IME report, Dr. Sampat's curriculum vitae, Dr. Sampat's September 11, 2024, deposition, and the circuit court's November 24, 2021, judgment.

¶ 22 The 2012 meeting minutes revealed that despite the Board's ability to obtain three physician reports, they declined the opportunity to obtain a third report, after the first two physicians to examine Mahan found that he was disabled from working as a police officer. The reports included one from Dr. Lange addressing the T1-2 disc lesion that was symptomatic on the left side. The MRI revealed a tiny herniation to the right at the T2-3 level and a "rather large osteophyte was present to the left, essentially filling the midzone for the left T1 nerve root." Dr. Lange found that "it was reasonable to assume his mechanical parascapular pain on the left is due to the T1-2 lesion" and the "intermittent parasthesias on the left similarly are due to the spur in the T1-2 nerve root canal." Both surgical options were rejected by the physician who found that Mahan had reached maximum medical improvement (MMI). Dr. Lange further found that while Mahan was not totally disabled from all employment, he was disabled from performing police work, and recommended Mahan find alternative employment where no violence or heavy lifting was required.

¶ 23 Dr. Rerri's 2012 report revealed the same defects seen on the MRI by Dr. Lange, and Dr. Rerri also found the defects to be the cause of Mahan's complaints. Dr. Rerri also rejected surgical options. Dr. Rerri found Mahan was disabled as a result of his injury and believed he was capable of light duty and sedentary physical activities that would not involve lifting more than 20 pounds,

repetitive testing and bending of his spine, and activities involving violence or a sudden increase in physical activities. Dr. Rerri opined that due to the episodic and unpredictable symptoms, Mahan would do best with duties that did not require a constant level of heightened preparedness. Dr. Rerri stated, "I consider his disability level permanent with little prospects for little improvement" and recommended that Mahan not return as an active-duty police officer.

¶ 24 The Marion police department job description revealed that officers generally worked four 10-hour shifts but based on manning and emergencies, overtime and off shift hours might be required. The officer "[m]ust have the physical ability to perform duties of a Patrolman" and operate "independent of constant supervision." The duties listed on the job description included responding to calls for service in a timely manner, providing service to the public as needed, monitoring and enforcing traffic laws, providing traffic direction and control after accidents, providing zone coverage as ordered, conducting "house watch" and "business checks" as requested, maintaining equipment, preparing reports, reporting evidence and concerns regarding law violations, and performing all other duties to be assigned by the city. Essential job functions included preventing crime, preventing accidents, responding to all call for emergency help, identifying and assisting in criminal apprehension, providing back up for other officers in need of help, being vigilant of individuals regardless of how harmless a situation may appear, initiating use of non-lethal means of apprehension, when appropriate, safely operating a vehicle in a high speed situation, keeping personal safety in mind when pursuing on foot, and maintaining awareness of the public and their need to feel safe and secure. The Marion police department qualifications further stated that the candidate "[m]ust qualify for age and physical ability requirements set forth by the Marion Police and the Fire Board and the State of Illinois."

¶ 25 Dr. Ripperda's January 22, 2016, report noted that Mahan's pain had not changed significantly since the time of the injury. The report noted that Mahan's description of his symptoms was consistent with the MRI findings from 2011, which showed an osteophyte complex left of the T2-T2 area of the spine. The physician found this was an atypical area of the spine to suffer injury or develop osteophytes given Mahan's age. The physician further opined that he would not consider Mahan to be disabled from any occupation, but he would require a job that permitted frequent scheduled changes of positions and possibly short (1-2 minute) unscheduled breaks as frequently as every half hour or so.

¶ 26 The 2016 materials also included Dr. Robson's January 11, 2017, IME report. Mahan complained of mid-back pain described as aching, stabbing, and burning, in nature. The physician opined that Mahan incurred a temporary injury in 2011 but did not incur any permanent injury or disability that prevented him from performing his duties as a police officer. His opinion did not find any herniation on the 2012 MRI and contended that the osteophyte seen would take years to form and the 2011 injury caused only a temporary strain and exacerbation due to his underlying pre-existing condition. Dr. Robson opined that Mahan was physically able to perform the duties of a police officer.

¶ 27 The evidence also contained an IME report from Dr. Yazdi dated June 17, 2018. Mahan complained of burning and sharp pain, as well as paresthesia between the shoulder blades that were constant on the left side and intermittent on the right side. The pain was ranked as a 5/10 in severity, which worsened with lifting that would cause spasms to spread to his chest and difficulty breathing. Dr. Yazdi saw no difference between the 2010 and 2011 MRI films. Dr. Yazdi opined that neither MRI demonstrated any type of pathology that would prevent Mahan from full duty work as a police officer.

¶ 28 A subsequent report from Dr. Yazdi, dated August 24, 2020, which addressed the circuit court judge's comments stemming from the 2018 report. Dr. Yazdi continued to opine that Mahan was capable of full duty police work.

¶ 29 The February 14, 2024, functional capacity evaluation revealed that "Mahan demonstrated the ability to perform 71.4% of the physical demands of his job" as a Marion police officer. The return-to-work items that Mahan was unable to achieve included occasional squat lifting, occasional power lifting, occasional shoulder lifting, occasional bilateral carrying, gross motor coordination, forward reaching, static balance up off the ground, power test 1, sit and reach (13.8 inches) power test 2, one minute sit up test and power test 4, 1.5 mile run in 15 minutes and 24 seconds. The report found that Mahan presented a Waddell score of 0 out of 5, which would suggest negative Waddell sign[1] and the potential for reliable pain reports during functional testing. The report found that Mahan demonstrated the ability to perform within the medium physical demand category based on the U.S. Department of Labor and the Dictionary of Occupational Titles, which was below his job's demand category. The report noted that Mahan's job as a Marion police officer was classified as a heavy physical demand job. The report further noted that Mahan demonstrated consistent effort throughout 80% of the testing, which "would suggest Mr. Mahan put forth full and consistent biomechanical and evidence based effort during this evaluation." The FCE found that Mahan's reported pain ratios were reliable 100% of the time, which suggested that pain could have been considered a limiting factor during functional testing.

¶ 30 Chiropractor Kelly Chullen's records indicated that Mahan continued to complain of moderate sharp pain and contained the chiropractic adjustment procedures provided to Mahan at

[1]" 'Waddell findings' (or 'Waddell signs') are the findings of clinical tests that are performed to identify patients whose back pain is not organic, *i.e.*, more likely to be of psychological origin." *Cassens Transport v. Illinois Workers' Compensation Commission*, 2021 IL App (2d) 200662WC-U, ¶ 12, n.1. "A negative Waddell finding indicates that the patient's reported pain is likely organic, not psychological." *Id.*

each appointment. The records spanned from September 22, 2022, through December 7, 2023. Medical records from Jennifer Alexander were also provided. Those records were dated January 29, 2024. At that visit, Mahan requested an FCE. Alexander provided the referral.

¶ 31 On July 12, 2024, the Board's attorney requested an IME with Dr. Sampat. All of the above records were forwarded with the correspondence. The evaluation was held on July 15, 2024. Dr. Sampat opined that Mahan's injury was "not a competent mechanism of injury to result in any disability." The physician found that Mahan had "fully recovered from the disability sustained from the simple soft tissue strain of the thoracic spine sustained on May 20, 2011." Dr. Sampat further opined that Mahan could return to full and unrestricted police officer duties. With regard to the 2024 FCE, the physician stated the testing was "a static test over one day, but Mr. Mahan presents with a normal neurological examination and has full range of motion of his spine with only subjective complaints but no objective abnormal findings." He stated that Mahan was no longer disabled based on his 20-minute examination of Mahan and two hours reading the records. He opined that Mahan was physically able to perform the duties of a police officer.

¶ 32 Dr. Sampat's deposition was taken on September 11, 2024, and he testified that he was a board-certified orthopedic surgeon with a subspecialty in the treatment of people with spine problems. He agreed that he performed an IME on Mahan on behalf of the Marion Police Pension Board. He summarized his report findings. He explained that an FCE was a test where a person went to a physical therapist and was asked questions about their injury and symptoms and then underwent a series of physical exam tests that included bending, lifting, twisting, sitting, standing, and carrying things to determine the patient's functional capacity. While that occurred, the therapist would also ask about pain and measure blood pressure and heart rate because normally an increase in pain results in an increased blood pressure or heart rate. Dr. Sampat noted that

Mahan showed that he put forth consistent effort for only 80 percent of the test. He stated that during his testing he performed Waddell sign testing on Mahan; he further stated that Waddell signs would suggest symptom magnification or malingering. He found two during his testing, which included a pretend twist of the spine which elicited a pain response from Mahan and touching his spine which caused Mahan to jump off the table. He opined that those were exaggerated responses and were Waddell signs found during the examination. He agreed that the FCE showed normal psychodynamics, meaning that Mahan put forth full effort and gave reliable pain scores based on the McGill Pain Questionnaire and Ransford Pain Drawing.

¶ 33 Dr. Sampat testified that Mahan incurred a minimal type of injury and "there was no competent mechanism of injury to cause a long term disability for 13 years." The previously performed MRI and imaging studies showed chronic mild arthritic changes, which were normal for someone Mahan's age. He had a normal neurological exam and showed a couple of Waddell signs suggestive of symptom magnification on exam. He stated that "[g]iving him the benefit of doubt, worst case scenario would be that he did have a strain of the spine" but "[t]here was nothing broken." He further stated, "There was no herniated disk or any type of neurological problem." He agreed with several of the doctors who previously examined Mahan who stated there was "no reason for long term disability in this case." He agreed that Mahan was fit for duty and could return to full unrestricted police duties.

¶ 34 On cross examination, he confirmed his belief that Mahan only incurred a strain as a result of his work accident. He explained that the strain was a temporary condition which typically caused about 12 weeks of inflammation. During that time, Mahan could not work as a police officer, but after the pain and inflammation were gone in 6 to 12 weeks, Mahan would have been back to his baseline state where he was working as a police officer. He opined that Mahan was at maximum

medical improvement (MMI) three months after the incident. He explained that MMI was that Mahan was biologically "at his baseline state where he was functioning as a police officer before." He did not know if Mahan's current symptoms were the same as the 12-week post injury time because he only asked about the current symptoms. Dr. Sampat reviewed Dr. Yazdi's report and agreed that Mahan's symptoms were the same as seen during Dr. Sampat's exam. He stated that he did not know how long Mahan's 2024 FCE lasted but expected it lasted between two and four hours. He agreed that Mahan's FCE was listed as 80 percent consistent but disagreed that the therapist considered that a reliable test. He said, "You should ask the person that did it. I would not consider that fully reliable. I would say that's 80 percent reliable." He stated that the FCE finding that the test suggested Mahan "put forth full and consistent biomechanical and evidence-based effort during the evaluation" did not make sense to him because Mahan was only 80 percent consistent.

¶ 35 Dr. Sampat was asked about the 2018 FCE but stated he was not provided that document. Dr. Sampat stated that he was not aware that the 2018 FCE report concluded that 100 percent of Mahan's reported reliability pain ratings suggested pain was a limiting factor and found that Mahan was capable of only performing a medium physical demand level occupation. Dr. Sampat stated that based on his review of the Marion police department description, Mahan could do all duties required of a Marion police officer. He did not know where that description would be classified by the Dictionary of Occupational Titles. He did not know if the Marion police department job description was a medium level job. He stated that in his mind, "I consider [a patrolman's job] to be a very heavy job because he has to do all kinds of things as a police officer" and opined that Mahan was "capable of doing everything from that perspective and everything that's on his job description." When asked what the age and physical ability requirements set by

the Marion Police and Fire Board and State of Illinois were, Dr. Sampat responded, "I know that he met those requirements when he was working before the injury, and a minor injury would only cause minor inflammation" like he previously discussed. He stated, "I don't know the exact physical ability *** I do not know the exact age and physical ability requirements set forth by the Marion Police and Fire Board and the State of Illinois." He agreed that he did not ask the Board for any other document that might outline the physical requirements.

¶ 36 Additional evidence included an April 13, 2021, report from Dr. Rerri that stated Mahan was his patient in July 2012. At that time, both he and Dr. Lange opined that Mahan's injury would keep him from performing all the duties of a police officer and the injury was permanent in nature. They also concluded that surgical intervention had a great likelihood of "failure and furthering the damage to the thoracic area." Dr. Rerri evaluated Mahan again on January 14, 2021, and requested that new films be taken and physical therapy be considered; however, Mahan's health insurance interrupted that plan when his pension was terminated and those did not occur. Based solely on the January 14, 2021, meeting Dr. Rerri again opined that Mahan had not recovered from the injury, the injury remained permanent in nature, and that Mahan was unable to perform all the duties of a police officer.

¶ 37 A copy of the March 16, 2018, FCE was also included in the record. It stated, "This job specific evaluation was performed in a 100% kinesiophysical approach and Mr. Mahan demonstrated the ability to perform 81.6% of the physical demands of his job as a Police Officer." The report indicated that the unsuccessful return to work test items included occasional squat lifting, occasional power lifting, occasional shoulder lifting, occasional bilateral carrying and gross motor coordination. The report classified Mahan as demonstrating the ability to perform medium physical demand work based on the Dictionary of Occupational Titles, noting that Mahan's "job

as a Police Officer is classified within the 'HEAVY Physical Demand Category.' " The sit and reach test found he could only reach 4.5 inches, which was short of the required 15 inches. He performed 15 sit-ups in 38 seconds "prior to mechanical deficit due to mm spasm and pain at upper thoracic region." His heart rate increased and was comparable to the 6 out of 10 pain level expressed. He attempted to bench press 172 pounds as required but failed to complete on any repetition and experienced spasms and pain in the intrascapular region. As to the run requirement, Mahan was able to run .35 miles in 8.5 minutes, which was classified as an "avoid" job simulated activity as indicated by his increased heart rate.

¶ 38 Additional medical records from Peggy Boyd, CNP, Elizabeth Eversmann,[2] and Jennifer Alexander, from 2012 to 2014 did not address Mahan's ability to work as a police officer. The records were for routine treatment of, *inter alia*, sinusitis, depression, coughs, headaches, sleep apnea, and left shoulder pain. Copies of the April 4, 2019, circuit court order reversing the Board's 2018 decision and the February 3, 2023, appellate court decision were also included in the record.

¶ 39 After the acceptance of the evidence, the parties provided closing argument and the Board adjourned to executive session following Henry's motion to adjourn that was seconded by Beasley Wright. After 47 minutes, the Board returned and the hearing officer stated, based on his presence with the Board during the adjournment, that a motion to terminate Mahan's benefits should be made. Henry made the motion and Beasley Wright seconded the motion. Board members Swafford, Henry, and Beasley Wright voted in favor of termination; Board members Thompson and Woods voted against the termination. Thereafter, the hearing officer terminated the benefits and stated a written order would follow.

[2]No qualifications of Eversmann were found in the record.

¶ 40 The April 9, 2025, written order again determined that Mahan was no longer disabled by finding the FCE was unreliable based on the report and testimony of Dr. Sampat. The order further found, citing *Grissom v. Board of Education of Buckley-Loda Community School District No. 8*, 75 Ill. 2d 314, 320 (1979), that Mahan's motion to removed trustees Beasley and Henry due to prejudicial statements was properly denied because Beasley and Henry's statements were merely "thoughtless and indiscreet" and "made months prior to the hearing."

¶ 41 Mahan timely appealed the Board's decision to the Williamson County circuit court. After briefing the issues, the parties presented oral argument on December 23, 2025, and the court took the matter under advisement. On December 31, 2025, the circuit court affirmed the Board's decision. Mahan timely appealed.

¶ 42 II. ANALYSIS

¶ 43 On appeal, Mahan argues that the Board's decision should be reversed because the hearing officer's denial of Mahan's motion to remove two of the Board members was erroneous and deprived him of due process due to an unfair hearing. He further argues that the Board's decision to terminate his police pension benefits was against the manifest weight of the evidence. The Board disagrees with both assertions and requests affirmation of its decision.

¶ 44 We start with Mahan's claim that the Board's decision, regardless of any due process issue, was against the manifest weight of the evidence. In administrative review cases, our role is to review the decision of the agency, not the decision of the circuit court. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006). The findings of fact made by an administrative agency are considered "*prima facie* true and correct." 735 ILCS 5/3-110 (West 2024); see also *Collura*, 113 Ill. 2d at 373. On appeal, we do not reweigh the evidence or resolve conflicting evidence. *Kouzoukas v. Retirement Board of the Policemen's Annuity & Benefit Fund of Chicago*,

234 Ill. 2d 446, 463 (2009). Our review of the Board's decision to terminate Mahan's pension because he is no longer totally disabled is reviewed under the manifest weight of the evidence standard. *Robbins v. Board of Trustees of the Carbondale Police Pension Board Fund*, 177 Ill. 2d 533, 538 (1997); *Mahan*, 2023 IL App (5th) 210426, ¶ 31. " 'An administrative agency decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.' " *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 504 (2007) (quoting *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992)). Our review of the Board decision determines whether the credible evidence, as weighed by the administrative agency, supports the agency's findings. *Id.* at 504-05.

¶ 45 The Board's conclusion that Mahan's pension should be terminated was two-fold. The Board found that Dr. Sampat was credible and the 2024 FCE was not credible relying highly on the Waddell signs found during both examinations. While both Dr. Sampat and the FCE found Waddell signs, the ultimate outcomes in the 2024 FCE and Dr. Sampat were conflicting, with the 2024 FCE finding that Mahan could only work a medium duty job and Dr. Sampat concluding that Mahan was capable of performing all of the duties of a police officer. As noted above, it is not our function to resolve conflicting evidence. *Collura*, 113 Ill. 2d at 372.

¶ 46 We find that the Board's conclusion that Mahan was no longer disabled from being a Marion police officer was against the manifest weight of the evidence. The undisputed evidence revealed that Mahan was injured in the line of duty in 2011. Two physicians, Drs. Lange and Rerri, reviewed Mahan's October 16, 2011, MRI and diagnosed a tiny herniation on the right at the T2-3 level and a large osteophyte on the left that filled the midzone for the left T1 nerve root. Both

physicians concluded that surgical intervention was too risky of an option to be viable for Mahan and opined that he was at maximum medical improvement (MMI)[3] and permanently disabled.

¶ 47 Despite this incontrovertible evidence, Dr. Sampat testified that Mahan's initial medical condition was merely a "strain" that would have healed within 6 to 12 weeks. As noted above, the initial diagnosis was not a strain, it was a herniated disc at T2-3 and a large osteophyte pressing on the nerve root at T1 for which no surgical intervention was recommended due to concerns of making the condition worse. "A police officer's entitlement to disability benefits is contingent upon his or her continued disability" and benefits may only be terminated if the officer's "has recovered from the disability." *Mahan*, 2023 IL App (5th) 210426, ¶ 30 (citing *Peacock v. Board of Trustees of the Police Pension Fund*, 395 Ill. App. 3d 644, 652 (2009)). It is difficult to comprehend how Dr. Sampat could address whether Mahan remained disabled from his original physical condition when Dr. Sampat's report and testimony revealed that he disputed the actual initial injury that was the basis of the initial disability finding.

¶ 48 Regardless, the basis of the Board's decision was that Dr. Sampat's opinion was more persuasive "because he considered the actual job requirements" Mahan would perform as a Marion police officer, as opposed to the general requirements established by the United States Department of Labor. Unfortunately, while Dr. Sampat testified, and his report concluded, that Mahan was not totally disabled from performing the physical requirements for Marion police officers, the basis of his opinion was contrary to Illinois law. While it is clear that Dr. Sampat reviewed the job

[3]In Illinois, factors to be considered in determining whether a claimant has reached MMI "include: (1) a release to return to work; (2) the medical testimony concerning the claimant's injury; (3) the extent of the injury; and (4) 'most importantly,' whether the injury has stabilized." *Mechanical Devices v. Industrial Comm'n*, 344 Ill. App. 3d 752, 760 (2003) (quoting *Beuse v. Industrial Comm'n*, 299 Ill. App. 3d 180, 183 (1998)).

description, it is equally clear that neither Dr. Sampat, nor the Board, questioned the duties on the job description for which no additional information was provided.

¶ 49 One of the statements in the Marion police department job description states "that the candidate "[m]ust qualify for age and physical ability requirements set forth by the Marion Police and the Fire Board and the State of Illinois." The actual physical ability requirements for either Marion or the State of Illinois were not listed in the job description. When questioned about the requirements during his deposition, eventually Dr. Sampat confirmed that he did not even know the physical demand level for an Illinois police officer, although he opined that the job would most likely be classified as a heavy physical demand level job, and never addressed the Illinois physical requirements for law officers.

¶ 50 The Illinois Law Enforcement Training Standards Board (ILETSB) was created by the Illinois Police Training Act (50 ILCS 705/1 *et seq.* (West 2024); 50 ILCS 708/5 (West 2024)). The ILETSB conducts the Law Enforcement Intern Training Program (Program) and has the authority to establish enrollment limitations. *Id.* § 10. In order to apply for the program, a person must "meet the minimum criteria established by the Board that includes, but is not limited to, physical fitness standards, educational standards, psychological standards, 21 years of age, of good character, and not convicted of a felony offense or other crime involving moral turpitude ***." *Id.* § 15.

¶ 51 The Illinois Law Enforcement Training and Standards Board established minimum physical and educational requirements for all interns in the Program. See 20 Ill. Adm. Code § 1725.101 (eff. June 23, 2023). Every intern is "required to perform and successfully complete all of the Board's physical fitness (POWER) tests in the sequence delineated in this Section." *Id.* § 1720.30(h). The POWER test includes the (1) sit and reach standard, (2) one minute sit-up standard, (3) bench press standard, and (4) 1.5 mile run standard all of which are defined in

Appendix A of the regulations. *Id.* §§ 1720.30(h)(1)-(4); *Id.* § 1725.Subpart C (Appendix A) (eff. June 23, 2023). The same physical fitness standards are also found in the Illinois Police Training Act. See *Id*. § 1720.Appendix A (eff. June 23, 2023).

¶ 52 The appendix provides the required test results for each applicant, based on age, sex, and weight. See *Id*. § 1725.Appendix A. It also explains the importance of each test. The sit and reach test is a "measure of the flexibility of the lower back and upper leg area," which was "an important area for performing police tasks involving range of motion and is important in minimizing lower back problems." *Id.* The sit up test was a "measure of the muscular endurance of the abdominal muscles," which was important "for performing police tasks that may involve the use of force" and "maintaining good posture and minimizing lower back problems." *Id.* The bench press test was to determine "the amount of force the upper body" could generate, and the run was "to measure the heart and vascular systems' capability to transport oxygen." *Id.* This test was "an important area for performing police tasks involving stamina and endurance" as well as "to minimize the risk of cardiovascular problems." *Id.*[4] More specifically here, we are unaware of why those same physical fitness requirements for new or intern police officers would not be applicable to a police officer returning to the force following a line-of-duty injury.

¶ 53 Here, both the 2018 and 2024 FCE were based on Illinois police department physical fitness requirements and included the POWER tests required by the regulations. In 2018, Mahan performed the FCE at 100% effort and, based on the test results, was only able to sufficiently perform a physical demand level of medium for employment. In 2024, due to findings made during

[4]This court may take judicial notice of readily verifiable facts if doing so will aid in the efficient disposition of a case, even if judicial notice was not sought in the trial court. *Kramer v. Ruiz*, 2021 IL App (5th) 200026, ¶ 32 n.3. Here, we take judicial notice of the Marion police department's application which contains the same fitness tests as the regulations. See https://cityofmarionil.gov/wp-content/uploads/2025/10/MPD-Application.pdf (last viewed July 28, 2026).

the 2018 testing, some of the required testing was eliminated. Mahan was 43 years old at the time of his examination with Dr. Sampat and the year of his most recent FCE. Based on the physical fitness requirements, Mahan was required to achieve a 12 inch result on the sit and reach test, 24 sit-ups in one minute, the ability to bench press 72% of his body weight and run 1.5 miles within 15 minutes and 24 seconds. During neither the 2018 FCE, which revealed 100% cooperation and effort, nor the 2024 FCE, which revealed 80% cooperation and effort, was Mahan able to perform the POWER test that was included during the 2018 and 2024 FCEs.

¶ 54 Equally at issue is the lack of evidence supporting a conclusion that Mahan could perform work at a heavy physical demand level. During both the 2018 and 2024 FCEs, Mahan was only able to provide effort comparable to a medium physical demand level job. The FCE classified the job of a police officer as a heavy physically demanding job. Although Dr. Sampat was unaware of the official classification for a police officer position under the Dictionary of Occupational Titles, he too testified that a police officer job was a very heavy physically demanding job. While Dr. Sampat opined that Mahan was malingering based on Waddell signs seen during both his evaluation and the FCE, his opinion fails to address Mahan's inability to perform at a physical fitness level greater than medium when full effort was provided and no limitation for either pain or malingering was seen in 2018. Considering all the evidence in the record, and the fact that the Board erred in relying on Dr. Sampat's opinion to support its decision that Mahan was not disabled, we conclude that the Board's decision was against the manifest weight of the evidence.

¶ 55 Mahan also argues that the hearing officer erred in denying his motion to exclude Board members Beasley Wright and Henry. He argues that the denial of the motion rendered the hearing unfair and amounted to a due process violation. The Board disagrees and states the hearing

officer's finding that the statements were "at most 'thoughtless and discreet' but [did] not show bias or prejudice" was correct.

¶ 56 Due process guarantees of an impartial tribunal are equally applicable to administrative proceedings. *Collura*, 113 Ill. 2d at 369. "In order to establish the bias or prejudice of an administrative decision maker, a claimant must show more than the mere possibility of bias or that the decision maker is familiar with the facts of the case." *Danko v. Board of Trustees of City of Harvey Pension Board*, 240 Ill. App. 3d 633, 641 (1992). "The claimant must demonstrate that the decision maker is not 'capable of judging a particular controversy fairly on the basis of its own circumstances.' " *Id.* at 642 (quoting *Grissom v. Board of Education*, 75 Ill. 2d 314, 320 (1979)). While we presume the Board was objective and fairly judged the case, "a claimant may show bias or prejudice '*** if a disinterested observer might conclude that the administrative body, or its members, had in some measure adjudged the facts as well as the law of the case in advance of hearing it.' " *Id.* (quoting *A.R.F. Landfill, Inc. v. Pollution Control Board*, 174 Ill. App. 3d 82, 89 (1988)). The entire decision will fail if one decision maker is not completely disinterested. *Id*.

¶ 57 In this case, four statements were made on remand when the issue of retroactive pay was placed before the Board. Three statements, based on the context provided, addressed "winning" the case the next time it was heard, Mahan's capabilities, and the Board's disapproval of the appellate court's decision to award benefits. The fourth statement did not provide the context. As disinterested observers, we cannot conclude that Terrance Henry and Tammy Beasley Wright did not prejudge the claim.

¶ 58 The comments regarding Mahan jogging or teaching Zumba show a strong prejudice of Mahan's capabilities, the same thing the Board would be addressing at the next disability hearing. When it was determined that Mahan had to come into sign paperwork, Henry stated that, "I bet

he'll come in jogging," which was followed by laughter. The context for the "probably teaching Zumba" comment is worse. As noted above, the conversation started with Orsey advising the Board that no special meeting would be called to address the appellate court decision and that once the Board approved the payment of retroactive benefits, the check would be issued. Thereafter, instead of recognizing the Board's responsibility to issue payments to disabled police officers, Henry stated, "He must have a bill to pay" with Beasley Wright making a similar comment of, "That's probably what it is, yeah," and Orsey then agreeing with Henry and Beasley Wright. Thereafter, an unidentified speaker stated, "Well, I'm surprised he's not here." Orsey replied, "Saying hand me the check?" Henry then stated, "Yeah. That's what I'm saying. It sounds like—it sounds like he's got a bill to pay." Orsey agreed and stated he was "surprised he's not here today." An unidentified speaker stated they would get the check ready and stated, "He's probably not able to be here." Orsey stated that "he's probably working at his other job and was interrupted by Henry who stated, "Teaching Zumba someplace."

¶ 59 First, whether Mahan had bills to pay is irrelevant to the Board obligation to issue retroactive benefits when its previous finding of no disability is overturned by a reviewing court. Second, although Henry was well aware of Mahan's job selling modular homes from the previous hearing, he ignored those facts and instead claimed that Mahan's job was teaching Zumba. Once again, the statement reveals a clear indication that Henry does not believe that Mahan was disabled either at the last hearing or would be disabled for any future hearing. The comments also show a strong dislike by the Board of both Mahan, personally, and the Board's requirement to pay the retroactive benefits.

¶ 60 Finally, the remaining comment was made during the vote to issue the retroactive benefits. At that time, Beasley Wright voted yes to issue the benefits, but stated her affirmation was "under

protest." Such comment shows both a lack of decorum of the judicial process as well as a lack of professionalism of a Board member.

¶ 61 While it is undisputed that these statements were made a year before the current hearing was held, it must also be understood that the statements were made over two years after the hearing that terminated Mahan's benefits on March 10, 2021. Equally concerning, is the fact that Beasley Wright was more concerned about "going for broke" to ensure they "won" at Mahan's next hearing, despite the fact that no evidence for that hearing had been developed. Such statement reveals a blatant disrespect for the required impartiality of the Board and undermines the fiduciary duty between a pension board member and the pension beneficiaries. See 40 ILCS 5/1-109; *Marconi*, 225 Ill. 2d at 543.

¶ 62 While Henry and Beasley Wright assured the hearing officer that they would confine their decisions in the current case based on the evidence presented, the statements are difficult to accept given the evidence presented. As noted above, the Board concluded that Dr. Sampat's opinion was more persuasive than the FCE, of which only the latter was based on the statutory physical fitness requirements in Illinois. We agree that the statements by Henry and Beasley Wright were "thoughtless and indiscreet." However, the statements, when considered in context, reveal an even higher level of bias and prejudice against Mahan and the issue of his disablement, than if taken out of context. To accept that Henry and Beasley Wright extinguished their bias for purposes of the hearing borders on the incredulous. Accordingly, we find that Mahan was denied due process by the Board based on Henry and Beasley Wright remaining on the Board panel and suggest their removal from the panel for any future hearings involving Mahan.

¶ 63 III. CONCLUSION

¶ 64 For the above stated reasons, we find that the Board's decision to terminate Mahan's pension benefits was against the manifest weight of the evidence and Mahan's due process rights were violated by allowing Henry and Beasley Wright to remain on the Board panel.

¶ 65 Reversed.