2026 IL App (1st) 252491-U
No. 1-25-2491
Order filed November 19, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23 and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

FOURTH DIVISION

RAMON SILVA, Plaintiff-Appellant,

v.

THE RETIREMENT BOARD OF THE POLICEMEN'S ANNUITY & BENEFIT FUND OF CHICAGO, Defendant-Appellee.

Appeal from the Circuit Court of Cook County.
Honorable Allen P. Walker, Judge, Presiding.
No. 2022 CH 11495

JUSTICE MITCHELL delivered the judgment of the court.
Presiding Justice Lyle and Justice Ocasio concurred in the judgment.

ORDER

¶ 1 *Held*: The police retirement board's decision to terminate plaintiff's duty disability pension benefits is affirmed because it was not against the manifest weight of the evidence where the board found he was no longer disabled as a result of the duty-related injury.

¶ 2 Plaintiff, Ramon Silva, a police officer with the Chicago Police Department, appeals the decision of the Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago to terminate his duty disability benefits. The issue presented is whether the Board's decision was against the manifest weight of the evidence where the Board's physician found that

plaintiff's duty-related disability no longer prevents him from returning to limited duty and plaintiff did not introduce any evidence that he had complained of pain or symptoms related to the disability to his treating physicians in over five years prior to the Board's decision. For the following reasons, we affirm the decision of the Board.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff injured his lower back in 2007 while executing a search warrant in the line of duty. He later applied to the Board for disability benefits and received line-of-duty benefits pursuant to section 154 of the Policemen's Annuity and Benefit Fund. 40 ILCS 5/5-154(a) (West 2008). He continued to receive duty benefits until early 2021, after the Board terminated them due to his apparent failure to submit updated medical records.

¶ 5 Plaintiff's lower back injury was diagnosed as lumbar degenerative disc disease. His initial treatment involved four months of physical therapy and an epidural steroid injection. He later underwent a lumbar fusion surgery at L4-L5. Each year, plaintiff submitted to annual independent medical examinations to confirm his disability status. Reports prepared by the Board's physician, Dr. Peter Orris, following examinations in 2012 and 2013 indicated that plaintiff reported having daily back pain and taking regular medication for it. In the 2014 report, Dr. Orris indicated that plaintiff reported having daily back pain but was no longer taking regular medication. Beginning in 2015, plaintiff reported having only intermittent back pain and no longer taking regular medication.

¶ 6 In the 2016 report, Dr. Orris indicated that plaintiff did not bring any medical records with him, and that if surgery for the lower back was not contemplated, he appeared capable of sworn limited duty. In the 2017 report, Dr. Orris indicated that plaintiff brought one medical record—a medical summary dated December 1, 2016, from a visit with an orthopedic surgeon. At plaintiff's

visit on November 22, 2016, this orthopedic surgeon, Dr. Adrian Zachary, recommended plaintiff undergo a lumbar fusion at L3-L4. The 2017 report similarly indicated that if surgery was not contemplated, plaintiff appeared capable of returning to sworn limited duty. According to the 2018 and 2019 reports, plaintiff brought no additional medical records, with Dr. Orris noting in 2019 that he emphasized the need for records from plaintiff's treating physicians. The 2020 report indicated that plaintiff reported he was unable to return to duty because of upcoming knee surgeries. Dr. Orris stated in that report that plaintiff provided the same medical history he had conveyed for the past several years, "with no objective documentation from his treating physician." He stated that he saw no impairment that would prevent plaintiff from returning to sworn limited duty and urged him to provide documentation of the immediacy of the scheduled lumbar surgery but had not received any at the time of writing the report. He also recommended further assessment by a Board-selected orthopedic surgeon.

¶ 7 Dr. Orris most recently examined plaintiff in December of 2021 and afterwards completed a report in which he expressly opined that he sees no impairment related to the lumbar spine injury that would disable plaintiff from returning to sworn limited duty. He also stated that the medical records plaintiff provided contain no complaints related to the lower back, legs, or radicular pain or dysfunction since 2016, and that no physician notes any abnormal signs related to the lower back.

¶ 8 Plaintiff also suffered several off-duty injuries in the years following his departure from active police work, including to his hand, left shoulder, left knee, and both feet. Most recently, in 2022, plaintiff underwent a surgery to his left rotator cuff.

¶ 9 On October 10, 2020, the Board decided to suspend plaintiff's duty disability benefits, effective December 1, 2020, due to his failure to provide updated medical records. Plaintiff

eventually contacted the Board in January of 2022, upon discovering that his benefits had been terminated. The Board reinstated his benefits at that time but scheduled a hearing on his continued entitlement to duty disability benefits.

¶ 10 At the hearing, plaintiff testified on his own behalf and submitted various medical records. Plaintiff presented no other witnesses. Dr. Orris testified as the Board's physician and sole witness. Plaintiff testified that he continues to fall and that his doctor says this is because of his lower back. He testified that Dr. Zachary recommended he undergo a lumbar fusion surgery at L3-L4 in 2016 but that he has not undergone that surgery yet because of the other surgeries he needs to schedule first, including for his right rotator cuff, right hand, left knee, left foot, and neck. With respect to the most recent examination by Dr. Orris, plaintiff testified that he was not physically examined and it was "more of a meeting." He testified that Dr. Orris had all of his medical records from 2016 onward at the time of that exam. He finally testified that he is seeking treatment from Dr. Mendoza Lattes for his lower back and is awaiting approval from the medical section of the CPD to undergo further treatment.

¶ 11 Dr. Orris testified about his most recent examination of plaintiff, which he said was comprised of a "cursory" exam focused on the essential functions needed for an officer to return to sworn limited duty. He observed plaintiff's gait, range of motion in his knees, and ability to walk unassisted, sit, and get out of a chair. He testified that following the examination and review of the medical records, he concluded within a reasonable degree of medical certainty that, as it relates to plaintiff's lower back, he is no longer disabled and can return to sworn limited duty. Dr. Orris also testified about the impact of plaintiff's March 2022 rotator cuff surgery on his opinion, stating that he believed plaintiff's return to duty should be postponed until he recovers. He opined that after a period of recovery, he believed it would be beneficial to review the treating physician's

reports for the lower back, which "was the original disabling injury and continued to be the disability here." Dr. Orris agreed on cross-examination that there was some evidence that plaintiff was experiencing "issues at the adjacent [discs] above and below the surgery site."

¶ 12 Following the hearing, the Board issued a final administrative decision finding that plaintiff is no longer disabled as a result of his duty-related injury and is thus no longer entitled to duty disability benefits. In support of its decision, the Board relied on Dr. Orris's testimony and observations following his most recent examination of plaintiff. The Board also relied on the absence of any complaints related to the lower back across the most recent five years of plaintiff's medical records. The Board further found that, to the extent plaintiff maintains he is still disabled as a result of the lower back injury, his refusal to have the recommended lumbar fusion overcomes that because the surgery would have resolved the disability.

¶ 13 In spite of its finding that the duty-related disability had ceased, the Board found that plaintiff is still disabled as a result of his other off-duty injuries and awarded him ordinary disability benefits. The Board finally found that, had plaintiff timely provided updated medical records to the Board's physicians for review, the Board would have found as of December of 2020 that he had recovered from the duty-related disability and was eligible only for ordinary disability benefits. Thus, the Board ordered that plaintiff is entitled to ordinary disability benefits retroactive to December 1, 2020.

¶ 14 Plaintiff sought judicial review of the administrative decision in circuit court. The circuit court affirmed the Board's finding that plaintiff had recovered from the duty-related disability. However, it found that the Board's discontinuation and retroactive termination of duty disability benefits without any prior notice to plaintiff violated his procedural due process rights. After determining that there was no indication in the record that plaintiff received any notice of the

Board's intention to discontinue benefits in 2020, the circuit court ordered the Board to reinstate plaintiff's duty benefits from December 2020 to the date of the 2022 administrative hearing. This timely appeal followed. Ill. S. Ct. R. 303 (eff. July 1, 2017).

¶ 15 II. ANALYSIS

¶ 16 On appeal, plaintiff argues that the Board's decision was against the manifest weight of the evidence. He primarily argues that the Board incorrectly relied on the findings of Dr. Orris's most recent examination, which did not include a hands-on physical examination, and that Dr. Orris's testimony at the hearing undermined any finding that the lower back had recovered. Plaintiff further argues that Dr. Orris found him to be disabled in every independent medical examination prior to 2021, controverting the Board's finding that the medical records include no complaints about the lower back since 2016. He finally argues that his decision to postpone the recommended lumbar fusion surgery is reasonable and does not establish that he has recovered from the disability.

¶ 17 The Board contends that its decision was not against the manifest weight of the evidence where plaintiff's medical records do not indicate that he complained of any pain or symptoms related to the lower back since 2016, with some treating physicians even reporting the lower back was normal. The Board further argues that Dr. Orris's opinion was express, unimpeached, and supported by a documented pattern of improvement in his examinations of plaintiff in the years prior.

¶ 18 In administrative review actions, appellate courts review the decision of the administrative agency rather than the determination of the circuit court. *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 504 (2007). The standard of review depends on whether the issue is one of fact, law, or a mixed question of both. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532 (2006). Rulings on questions of fact will be reversed only if they are against

the manifest weight of the evidence. *Id.* The question of whether a police officer is entitled to disability benefits is one of fact, so the manifest weight of the evidence standard of review applies. *Peacock v. Board of Trustees of the Police Pension Fund*, 395 Ill. App. 3d 644, 652 (2009); *Marconi*, 225 Ill. 2d 497 at 534. "An administrative agency decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." (Internal quotation marks omitted.) *Wade*, 226 Ill. 2d at 504. If the record contains evidence that supports the Board's conclusions, then the reviewing court shall not disrupt those conclusions, even if an opposite conclusion is reasonable. *Carrillo v. Park Ridge Firefighters' Pension Fund*, 2014 IL App (1st) 130656, ¶ 21.

¶ 19 Under the Pension Code, a police officer is entitled to duty disability benefits if the officer becomes disabled as the result of injury incurred in the performance of an act of duty. 40 ILCS 5/5-154(a) (West 2020). A "disability" is a "condition of physical or mental incapacity to perform any assigned duty or duties in the police service." *Id.* § 5-115 (West 2020). Relevant to this case, the Pension Code contemplates line-of-duty benefits for injuries incurred in the performance of an act of duty and ordinary disability benefits for injuries sustained other than in the performance of an act of duty. *Id.* §§ 5-154, 5-155 (West 2020).

¶ 20 When a police officer has recovered from the disability, the Board shall discontinue payment of the benefit, and the officer shall return to active service. *Id.* § 5-156 (West 2020). Whether an officer has recovered from the disability turns on whether the condition renders him unable to perform the duties of a police officer. *Rainey v. Retirement Board of Policemen's Annuity and Benefit Fund*, 2024 IL App (1st) 231993, ¶ 46, *aff'd*, 2025 IL 131305; see *Mahan v. The Marion Police Pension Board*, 2023 IL App (5th) 210426, ¶ 34. "Disability benefits may be revoked on the basis of a single medical examination finding that the officer is no longer disabled."

Peacock, 395 Ill. App. 3d at 652; see *Trettenero v. Police Pension Fund*, 333 Ill. App. 3d 792, 800 (2002). It is squarely the function of the Board, as the finder of fact, to resolve conflicts in medical evidence, assess credibility of the evidence and witnesses, and determine the appropriate weight to be given the evidence. *Marconi*, 225 Ill. 2d at 540.

¶ 21 In proceedings to determine whether an officer remains disabled, the claimant bears the burden of proving his entitlement to continued benefits. *Peacock*, 395 Ill. App. 3d at 652; *Rainey*, 2025 IL 131305, ¶ 14 (confirming that Section 5-156 of the Pension Code requires the same proof for the initial award of duty disability benefits that it requires for the continuation of benefits: evidence establishing disability). Thus, plaintiff bore the burden at the administrative proceeding to prove that he is still disabled as a result of his duty-related injury.

¶ 22 Here, given the uncontroverted opinion of Dr. Orris and the absence of any complaints or treatment for the lower back since 2016, the Board's finding that plaintiff's duty-related disability had ceased was not against the manifest weight of the evidence.

¶ 23 First, Dr. Orris provided an uncontroverted medical opinion that plaintiff is no longer disabled from returning to limited duty as a result of his lumbar spine injury. His findings following the December 2021 examination were narrowly tailored to the functions necessary to return to limited sworn duty police work, which is the relevant inquiry to determine whether plaintiff had recovered from his disability. See *Mahan*, 2023 IL App (5th) 210426, ¶ 34. He found that plaintiff could walk unassisted, sit comfortably in a chair, and had full range of motion in his knees. The Board found that his opinion was supported by a documented pattern of improvement, as illustrated by the independent medical examination reports. According to the reports, plaintiff's reports of pain evolved from a daily frequency in 2012 and 2013 to an intermittent frequency in 2014 and 2015. He reported no longer taking regular medication for lower back pain beginning in 2015. Dr.

Orris began to note in 2016 that he believed plaintiff capable of returning to sworn limited duty if surgery was not contemplated. Reports following independent medical examinations over the next several years indicated that plaintiff was contemplating surgery with his orthopedic surgeon, despite plaintiff providing no treating reports documenting this beyond one visit summary from 2016. In the 2020 report, Dr. Orris stated that he saw no impairment that would prevent plaintiff from returning to sworn limited duty.

¶ 24 Second, plaintiff, whose burden it was to prove he remains disabled as a result of his duty-related injury, cites to no treating physician reports in the record that would indicate he sought any medical treatment or made any complaints of lower back pain or symptoms to his treating physicians since 2016. The closest indication of any back-related problems in the record is a report from 2021 documenting a CT scan of plaintiff's *cervical* spine, but plaintiff agreed on cross-examination that his cervical spine issues were "unrelated." Furthermore, there is no indication of any follow-up with a physician, any treatment recommended or undertaken as a result of that scan, or any connection to his disabling injury.

¶ 25 To be sure, plaintiff has a myriad of other injuries and health issues for which he has continually sought medical care over the years. Though plaintiff indicated at the hearing that he sought care from Dr. Mendoza Lattes for his lower back, this court could not locate in the record—nor do the parties cite to—any records of appointments or visit summaries with Dr. Mendoza Lattes, or any reports prepared by him. Notably, plaintiff also testified that his "doctor" told him he keeps falling because of his back, but he neither identified that doctor by name nor offered any documentation of this purported medical opinion. It is also unclear from the testimony how recently he has seen Dr. Mendoza Lattes.

¶ 26 Plaintiff's arguments in favor of reversal of the Board's decision are unpersuasive. He argues that his decision not to undergo the recommended lumbar fusion surgery was reasonable because of the number of other surgeries he plans to have first, and because of the time it takes to recover from each of them. Courts treat the failure to pursue ongoing treatment as evidence undercutting a claim of continuing disability. *Peacock,* 395 Ill. App. 3d at 653; see *Turcol v. Pension Board of Trustees of Matteson Police Pension Fund*, 359 Ill. App. 3d 795, 803 (2005) ("[A] compensable disability will not be found if [the claimant] unreasonably refuses necessary medical treatment."); see also *Coyne v. Milan Police Pension Board ex rel. Jones*, 347 Ill. App. 3d 713, 725 (2004) ("In other words, the term 'disability' excludes conditions that can be remedied without significant danger or extraordinary suffering, and when medical opinion offers a reasonable prospect for relief.").

¶ 27 Here, plaintiff has not yet undergone the recommended lumbar fusion (and has slated years' worth of other surgeries ahead of it in priority). More importantly, though, there is no documentary evidence that he has actually sought *any* treatment, medication, physical therapy, or rehabilitation of any kind for his lower back since this surgery was recommended to him in 2016. And while courts consider the reasonableness of an officer's decision not to undergo a recommended treatment (*Coyne*, 347 Ill. App. 3d 713 at 725 (reinforcing that if refusal is within the "bounds of reason," a claimant's "freedom of choice should be preserved")), here, even if plaintiff has reasonably decided to postpone the lumbar fusion in particular, he failed to establish that he is pursuing any course of treatment in the meantime.

¶ 28 Next, plaintiff cites to *Mahan* to argue that the Board improperly relied on the independent medical examination of a single doctor to decide that plaintiff's disability ceased. In *Mahan*, the court reversed a pension board's decision to terminate disability benefits where the board had

relied entirely on a doctor's examination report which "lacked any specific finding that Mahan was no longer disabled." 2023 IL App (5th) 210426, ¶ 33. The court found that, though the doctor had checked a box on the form indicating that Mahan was able to physically perform the duties of a police officer, he did not explain how he reached that conclusion. *Id.* ¶ 34. This case is easily distinguished. Here, Dr. Orris made express findings in his most recent examination report that directly address the specific functions required to return to sworn limited duty. He observed plaintiff's gait, his ability to walk and sit, and the range of motion in his knees. Based on these observations, and his review of the medical records, he opined that the lumbar injury is not preventing plaintiff from returning to limited duty.

¶ 29 Plaintiff further decries the scope and quality of Dr. Orris's examination. Though the statute requires that a disabled police officer "be examined at least once a year by one or more physicians appointed by the board," it does not define what this examination must entail. 40 ILCS 5/5-156 (West 2020). In *City of East Peoria v. Melton*, the Fourth District examined a similar argument under Article 4 of the Illinois Pension Code (40 ILCS 5/4-112 (West 2020)), the Firefighters' Pension Fund. 2023 IL App (4th) 220281, ¶¶ 39-40. There, the court determined that, "[w]here the legislature has intended an in-person or physical examination in other situations, the legislature has explicitly stated so," citing the Sexually Dangerous Persons Act (725 ILCS 205/4 (West 2020)) as an example. *Id.* ¶ 40. The Sexually Dangerous Persons Act, the court reasoned, requires evaluators to make a "personal examination" of the alleged sexually dangerous person. *Id.*

¶ 30 Here, just as in the Firefighters' Pension Fund, no such specific language defining "examination" exists in the Policemen's Annuity and Benefit Fund. The statute does define "disability" as an incapacity to perform the duties of police service. 40 ILCS 5/5-115 (West 2020). Dr. Orris's examination thus focused on the functions required to return to limited duty.

Furthermore, it was plaintiff's burden to prove he remained disabled as a result of the lumbar injury. *Rainey*, 2025 IL 131305, ¶ 14. Plaintiff introduced no evidence of the recent opinions of his treating physicians, who presumably would have conducted thorough physical examinations in their treatment of plaintiff. In the absence of that and any other indication of complaints or treatment for the lower back since 2016, the Board determined plaintiff has recovered. It is not this court's role to reweigh the evidence or substitute our judgment for that of the Board's. *Goodman v. Morton Grove Police Pension Board*, 2012 IL App (1st) 111480, ¶ 25.

¶ 31 Plaintiff next argues that Dr. Orris's opinion undermines the Board's decision because it changed in light of plaintiff's March 2022 rotator cuff surgery, which occurred after he last examined plaintiff. Dr. Orris testified that, due to the surgery, plaintiff would not be able to return to work immediately because he now requires a period of recovery. However, Dr. Orris did not state that the rotator cuff surgery or required recovery period changed his opinion with respect to plaintiff's lower back, the duty-related injury. His opinion regarding the lower back was specific, limited, and unaffected by plaintiff's need to recover from surgery.

¶ 32 Plaintiff also argues that the record *does* contain complaints related to the lower back more recently than 2016 because of the independent medical examination reports. He argues that the reports prior to 2021 all found plaintiff disabled. But this argument ignores the details in those reports beyond the ultimate conclusions and the years' worth of documentation by Dr. Orris of plaintiff's failure to provide reports from his treating physicians beyond the one medical summary from 2016. Furthermore, Dr. Orris began noting he believed plaintiff was ready to return to sworn limited duty as early as 2017. The Board's finding that there was no evidence that plaintiff complained of back pain or sought treatment for the lower back since 2016 was thus not against the manifest weight of the evidence.

¶ 33 Finally, plaintiff purports to raise a second issue on appeal: "whether the Pension Board violated Silva's due process rights by converting Silva's disability benefit from a duty benefit to an ordinary benefit retroactive to December 1, 2020." This issue is not properly before this court since it was resolved by the circuit court in favor of plaintiff, and the Board has not filed a cross-appeal. "A party cannot complain of error which does not prejudicially affect it ***." *Material Service Corp. v. Department of Revenue*, 98 Ill. 2d 382, 386 (1983). And failure to cross-appeal a partially adverse ruling is a jurisdictional bar to attacking that part of the judgment. *Caulkins v. Pritzker*, 2023 IL 129453, ¶ 79; *Mid-West National Bank of Lake Forest v. Metcoff*, 23 Ill. App. 3d 607, 610-11 (1974). Here, the circuit court reversed the Board's decision to reduce plaintiff's benefits retroactively. This was a final judgment favorable to plaintiff, making it one which he cannot appeal. Though the Board responds to plaintiff's arguments about this issue in its brief, the Board has not filed a cross-appeal seeking review of this part of the circuit court's decision. Thus, the issue of whether the Board violated plaintiff's due process rights is not properly before the court.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we affirm the decision of the Board and the judgment of the circuit court.

¶ 36 Circuit court judgment affirmed. Board decision to terminate plaintiff's duty disability pension benefits affirmed.