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

BRIEF AND APPENDIX 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.
NATURE OF THE CASE

On November 15, 2024, the Appellate Court entered its judgment reversing a judgment entered in the Circuit Court of Cook County on January 5, 2024, in favor of the Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago (the "Board") and against Plaintiff and finding that the Board's decision to deny Plaintniff's application for duty disability benefits was supported by evidence in the record. No petition for rehearing was filed with the Appellate Court, and this Court allowed the Board's Petition for Leave to Appeal on March 26, 2025.

II.
ISSUES PRESENTED FOR REVIEW

A. Whether the Appellate Court decision conflicts with *Reed v. Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago*, 395 Ill. App. 3d 1 (1st Dist. 2009) and *Dowrick v. Village of Downers Grove*, 362 Ill. App. 3d 512 (2d Dist. 2005), and whether the Appellate Court's extensive reliance on *Kouzoukas v. Retirement Board of the Policemen's Annuity & Benefit Fund of Chicago*, 234 Ill. 2d 446 (2009), is warranted based on material distinctions from the present case.

B. Whether the Appellate Court decision is contrary to the unambiguous intent of the legislature that a Board-appointed physician must provide proof of disability to the Board for entitlement to disability benefits (40 ILCS 5/5-156) and conflicts with previous interpretations of an essentially identical provision in the Code, 40 ILCS 5/6-153, as discussed in *Nowak v. Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago*, 315 Ill. App. 3d 403 (1st Dist. 2000).

C. Whether the Appellate Court decision improperly strips the authority of retirement boards governed by Articles 5 and 6 of the Code to determine eligibility for disability benefits because, under the Appellate Court's ruling, the employer's determination regarding fitness for duty will always take precedence over a pension board's determination of disability.

III.
JURISDICTION

This Court has jurisdiction under Illinois Supreme Court Rule 315 because Appellant's Petition for Leave to Appeal was allowed on March 26, 2025

IV.
STATEMENT OF FACTS

The facts of this case are largely undisputed. Plaintiff sought line-of-duty disability benefits from the Board for injuries he sustained in a motor vehicle accident on February 28, 2017. The Board held a hearing and found that the lumbar spine and left hip injuries that Plaintiff experienced had been appropriately treated and that he recovered sufficiently to allow him to return to full unrestricted duty as a Chicago police officer. Accordingly, the Board found that Plaintiff was not entitled to either duty disability or ordinary disability benefits payable pursuant to Article 5 of the Code. 40 ILCS 5/5-154; 40 ILCS 5/5-155.

Immediately after the accident, Plaintiff complained of pain and soreness in his upper and lower back as well as his left hip and left knee. (C 126).[1] Despite his symptoms, Plaintiff did not seek medical treatment at the time of the incident, finding he was able to manage the pain. (C 109). Ultimately, Plaintiff did not seek medical treatment for any issues or symptoms related to the motor vehicle accident until April 2017. On April 10,

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

2017, Plaintiff went on medical leave as a result of his lower back pain for the first time since the motor vehicle accident. (C 101).

On May 9, 2017, Plaintiff was evaluated for complaints of lower back pain by his primary care physician, Dr. Robert Demke. Dr. Demke referred Plaintiff to a chiropractor, Dr. Steve Eickenberg, for physical therapy. (C 130). On June 1, 2017, Plaintiff underwent a course of physician therapy with Dr. Eickenberg at Chiropractic and Strength Training to treat his lower back symptoms. (C 109). On July 7, 2017, Dr. Demke released Plaintiff to return to full unrestricted duty with respect to his lower back and instructed him to return for an evaluation if he becomes symptomatic. Thereafter, Plaintiff returned to full duty on July 9, 2017. (C 110, 225).

On August 2, 2017, Plaintiff was evaluated by Dr. Brian Clay, a pain management specialist at Illinois Bone & Joint Institute, for complaints of lower back and lower extremity pain following his return to full duty. Dr. Clay recommended Plaintiff undergo an MRI of his lumbar spine and advised against additional therapy in favor of a home exercise regimen. (C 1464-65). Following his evaluation with Dr. Clay, Plaintiff's lumbar spine symptoms resolved with appropriate conservative care in the form of physical therapy. As a result, Plaintiff continued working full duty until December 2020. (C 131, 136, 252).

On December 2, 2020, Plaintiff went on medical leave after contracting COVID-19 and remained on leave until January 2021. On January 9, 2021, Plaintiff went back on medical leave due to recurrent lower back issues. (C 227-28, C 252-254). On January 14, 2021, Claimant returned to see Dr. Clay for the first time Since August 2017 regarding lower back and lower extremity pain. Based on the chronic nature of his lower back

symptoms, Dr. Clay recommended Plaintiff undergo an MRI of his lumbar spine and restart physical therapy with instructions to remain off-duty. (C 131-32). On January 21, 2021, Plaintiff underwent an MRI of his lumbar spine, indicating multi-level disc herniations at L2-L3, L3-L4, L4-L5 and L5-S1 along with multi-level disc degeneration. (C110). Based on his lumbar spine diagnosis, Dr. Clay referred Plaintiff for a surgical consultation with Dr. Steven Mardjetko at Illinois Bone & Joint Institute. (C134).

On February 22, 2021, Plaintiff met with Dr. Mardjetko for a surgical consultation with respect to his lumbar spine. Dr. Mardjetko recommended Plaintiff undergo an electromyography ("EMG") of his lower extremities to determine the involvement of special nerve roots and advised him to continue conservative treatment, finding his symptoms had already improved through physical therapy. (C 136-37).

On May 11, 2021, Plaintiff was evaluated by Dr. Shane Nho at Midwest Orthopedics at Rush for complaints of left hip pain. Dr. Nho diagnosed Plaintiff with femoral acetabular impingement and acetabular labral tear. Based on his left hip diagnosis, Dr. Nho recommended Plaintiff undergo a left hip arthroscopy, labral repair, acetabular rim trimming, femoral osteochondroplasty, and capsular plication. (C 111). On June 9, 2021, Claimant underwent a left hip arthroscopy, labral repair, acetabuloplasty, femoroplasty, synovectomy, and capsular plication performed by Dr. Nho. (C 1121-25, C 1192). Following his left hip surgery on June 9, 2021, Plaintiff underwent a postoperative course of physical therapy at Midwest Orthopedics at Rush. (C 1131-33, C 1144-46). On October 19, 2021, Plaintiff was evaluated by Dr. Nho regarding the status of his postoperative recovery. Dr. Nho found Plaintiff was progressing well in physical therapy, and, as a result, extended his physical therapy and recommended he remain off-duty. (C 111). On March 7,

2022, Plaintiff was later reevaluated by Dr. Nho, who placed Plaintiff at maximum medical improvement ("MMI") with respect to his left hip and released him to return to full, unrestricted duty. (C 152-54).

In a medical report dated June 13, 2022, Dr. Mardjetko opined Plaintiff is permanently disabled from active police duties with respect to his lumbar spine based on his inability to safely carry and discharge a firearm, despite Plaintiff's testimony that he successfully qualified with his firearm in or around January or March of 2021. (C 249-50, C 1120).

Pursuant to Section 5-156 of the Code, the Board selected Dr. Jay Levin to perform Plaintiff's independent medical examination ("IME"). (C 106-13). Dr. Levin is licensed to practice medicine in the State of Illinois and is board certified in orthopedic surgery. (C 117). Dr. Levin performed an IME on Plaintiff in relation to the conditions of his lumbar spine and left hip on May 10, 2022. (C 106-13). In a medical report dated May 10, 2022, Dr. Levin rendered the following diagnosis:

> "Lumbar myofascial strain and left labral tear status post left hip arthroscopy, labral repair, acetabuloplasty, synovectomy and capsular plication on June 9, 2021." (C 112).

Regarding Plaintiff's ability to return to work in any capacity, including limited duty assignment, Dr. Levin opined as follows:

> "[Plaintiff] can work in a full duty unrestricted capacity regarding his lumbar spine and left hip as it related to the occurrence of February 28, 2017. He reached Maximum Medical Improvement by March 7, 2022." (C 112).

As it relates to the February 28, 2017, occurrence, Dr. Levin concluded Plaintiff has the physical ability to safely carry, handle and use his Department-approved firearm, drive a motor vehicle, maintain an independent and stable gait without the assistance of external ambulatory supporting devices, and effectuate the arrest of an arrestee who is defined as an active resister. (C 112-13).

The Board found that there was evidence in the record sufficient to establish that Plaintiff is not disabled from performing full, unrestricted police duties in the Chicago Police Department (the "CPD"). It found that Plaintiff suffered lumbar spine and left hip injuries while performing his assigned duties as a Chicago police officer and that the objective medical evidence showed Plaintiff received treatment for his lumbar spine injury as well as treatment and surgery for his left hip injury. Following conservative treatment and/or surgical intervention for these duty-related injuries, Plaintiff was released to return to full, unrestricted duties by certain physicians.

Regarding his left hip injury, Plaintiff was placed at MMI and released to return to full, unrestricted duty by Dr. Nho in March of 2022 following successful surgery and postoperative physical therapy. As just noted, based on his improvement through conservative treatment and/or surgical intervention, Dr. Levin concluded Plaintiff is capable of working in a full, unrestricted capacity with respect to both his lumbar spine and left hip as it related to the occurrence of February 28, 2017.

Plaintiff testified that he successfully qualified with his firearm during his most recent qualification in or around January or March of 2021. The Board found by extension, there is no evidence in the administrative record indicating Dr. Mardjetko was aware of Plaintiff's successful qualification when he issued his opinion in June of 2022. While an

individual's treating physician may have a unique insight into his or her patient's condition, there is no requirement that a trier of fact give greater weight to that physician's opinions and conclusions. *Trettenero v. Police Pension Fund of City of Aurora*, 333 Ill. App. 3d 792, 802 (2d Dist. 2002). In this case, the Board elected to place greater weight on the opinions and conclusions of Dr. Levin, which was well within its authority to do as the trier of fact.

V.
ARGUMENT

A. Applicable standard of review and burden of proof.

The plaintiff "to an administrative proceeding bears the burden of proof, and relief will be denied if he or she fails to sustain that burden." *Marconi v. Chicago Heights Police Pension Board,* 225 Ill. 2d 497, 532 (2006). Meaning, even on appeal, Plaintiff bears the burden of proving the Board's decision was improper.

The applicable standard of review depends upon whether the question presented is a question of fact, a question of law, or a mixed question of law and fact. *Id.* "Rulings on questions of fact will be reversed only if against the manifest weight of the evidence." *Id.* The sole issue in this case is whether the Plaintiff's disabling injury was "incurred in the performance of an act of duty." *See* 40 ILCS 5/5-154. This issue presents a question of fact. Where "the sole issue is whether a work-related incident is a cause of a claimant's disability, this is a purely factual determination which we review under the manifest weight of the evidence standard." *Carrillo v. Park Ridge Firefighters' Pension Fund*, 2014 IL App (1st) 130656, ¶22. Rulings on questions of fact should only be reversed "if against the manifest weight of the evidence." *Marconi* at 532. Findings and conclusions of an administrative agency on questions of fact shall be held to be *prima facie* true and correct and will not be disturbed on review unless they are against the manifest weight of the

evidence. *Alm v. Lincolnshire Police Pension Bd.*, 352 Ill. App. 3d 595, 597-98 (2d Dist. 2004); 735 ILCS 5/3-110. Plaintiff asserts in his Standard of Review section the often-recited proposition in public pension fund cases that the beneficial purpose underlying the Code requires reviewing courts to liberally construe the evidence in this case in his favor. However, that plea is an overreach here. The principle that pension statutes should be liberally construed in favor of pensioners has its bounds. It applies only when there is a question about the Legislature's intent or the clarity of language used in a particular section of the Code. *Kanerva v. Weems*, 2014 IL 115811, ¶36, 13 N.E.3d 1228, 1239. There is no dispute in this case as to the meaning of the language of the sections of Article 5 at issue before the Court. This case involves a question of fact, i.e., whether the Plaintiff is disabled or not. Therefore, the canon of liberal construction applicable in statutory interpretation cases that Plaintiff attempts to invoke is distinctly immaterial to this Court's analysis in reviewing the Board's decision.

In finding that the Plaintiff was not disabled, the Board chose to give more weight to the findings of a board-certified orthopedic surgeon than the Plaintiff's treating doctor. It was well within its province to do so because the determination of whether or not a member is disabled is clearly a question of fact. While there is conflicting evidence in this record on that issue, it is the Board's duty to weigh that conflicting evidence. If there is any competent evidence in the record to support the Board's decision it must be affirmed, even if a reviewing court disagrees with the Board's decision. *Abrahamson v. Illinois Department of Professional Regulation.*, 153 Ill. 2d 76, 88 (1992).

B. The Appellate Court's decision conflicts with other Appellate Court decisions and improperly relies on distinguishable cases to reach its decision.

The Appellate Court's decision conflicts with the outcomes in two analogous appellate court cases, and it improperly relies upon various distinguishable cases to control the outcome of this case. Despite dealing with different articles of the Code, both *Reed v. Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago*, 395 Ill. App. 3d 1 (1st Dist. 2009) and *Dowrick v. Village of Downers Grove*, 362 Ill. App. 3d 512 (2d Dist. 2005) are applicable to the circumstances presented here, and the Appellate Court's decision is in conflict with the principles set forth, and the conclusions reached, in both of those cases.

Plaintiff has only considered the courts' opinions in *Reed* and *Dowrick* on a superficial level, relying in part on the fact that neither case involves Article 5 of the Code. He essentially dismisses the Board's reliance on these cases based on immaterial distinctions without addressing the circumstances of each case and the legal arguments asserted by the Board. In the first instance, contrary to Plaintiff's argument, this Court is not barred from considering case law simply because it deals with different articles of the Code. There is no reason for the interpretation of provisions (which are substantially similar, if not identical) from another section of the Code to foreclose the applicability of the principles and statutory language discussed in such cases. Indeed, the Appellate Court proceeded to reference an Article 6 case, *Nowak,* because no case to date had interpreted section 5-156. (App. Ct. Op. ¶ 25-28).

Plaintiff also continues to reference the dates of decision for *Reed* and *Dowrick*. While *Dowrick* was decided in 2005, which is prior to *Kouzoukas*, *Reed* was decided on October 19, 2009, one month after the decision in *Kouzoukas*. (It should also be noted that

the Appellate Court's decision in this matter only referenced *Reed I*, which was decided in 2007, despite the Board referencing both *Reed I* and *Reed II* in its appellate brief.) The *Reed* court thus reached its decision with the knowledge of the Illinois Supreme Court's holding in *Kouzoukas*, and *Reed* has yet to be overturned by any courts that have since relied on *Kouzoukas*. This is because *Kouzoukas* and *Reed* are factually distinguishable, and only the latter is analogous to this case.

In *Reed*, the board heard testimony from several doctors and ultimately denied the plaintiff's claim for disability benefits. *Reed*, 395 Ill. App. 3d at 2. In reaching this decision, the board found that the plaintiff's ability to perform his firefighting duties was not impaired to the extent that he could be deemed "disabled" under the Code. *Id*. The board's order noted that the plaintiff's condition was essentially normal, which would allow him to return to active duty with the Chicago Fire Department. *Id*. at 2-3. Contrary to the cases discussed below on which the Appellate Court so heavily relied in reaching its decision, there was no evidence of impairment or limitation with the plaintiff in *Reed* requiring accommodation upon his return to work. Because of this absence of a limitation on the plaintiff's ability to perform the duties of a firefighter, the *Reed* court did not reach the same conclusions seen in *Kouzoukas*, *Ohlicher*, and *Terrano*, all of which dealt with plaintiffs who could return to work *with limitations*, but could also reasonably be found disabled based on the medical evidence provided if their restrictions could not, or would not, be accommodated by their employer. Instead, the *Reed* court concluded that "[i]t is not incongruous (or unfair) that a firefighter is denied a disability pension because he is 'essentially normal' and can return to active duty […] while he is denied reinstatement by the CFD because he is 'unable to perform' the essential duties of a firefighter." *Id*. at 5.

In its analysis and discussion of its decision to affirm the board, the *Reed* court frequently referenced *Dowrick*—another firefighter's disability case in which the board's decision to deny the plaintiff disability benefits was upheld despite the employer not reinstating the plaintiff.[2] The plaintiff in *Dowrick* was examined by three independent physicians selected by the board; two of them concluded that plaintiff was unable to perform the duties of a firefighter, but the third concluded that there was no medical reason why the plaintiff could not perform his full-time full duty work without restriction. *Dowrick*, 362 Ill. App. 3d at 514. Based in part upon this medical evidence, the board denied the plaintiff disability benefits. *Id*. Like *Reed*, the plaintiff in *Dowrick* (at least based on the opinion of one physician) could return to full duty without any limitations or an accommodation needed upon his return.

In affirming the board's decision to deny the plaintiff disability benefits, the *Dowrick* court noted that "at first blush, it seems incongruous that separate administrative findings could lead to a firefighter being discharged because of a disability while also being denied a disability pension." *Id*. at 521. However, "[g]iven the compelling public interest in ensuring the fitness of firefighters to perform their duties, it is reasonable to conclude that the General Assembly deliberately set the bar lower for a municipality seeking to discharge an unfit firefighter than for a firefighter to obtain a disability pension, and committed the decisions to separate agencies with different missions." *Id*.

[2] The plaintiff in *Dowrick* was discharged as opposed to denied reinstatement, but as the court noted in *Reed*, "[w]hile *Dowrick* addressed the discharge of a firefighter rather than a denial of reinstatement, the reasoning in *Dowrick* applies with equal force here." *Reed*, 395 Ill. App. 3d at 5.

In sum, the absence of restrictions or limitations requiring accommodation upon a claimant's return to work does not allow for the administration of disability benefits to that claimant, regardless of the employer's decision on whether or not to reinstate them. Here, Plaintiff was released to full duty—without limitation or restriction—by Drs. Nho and Levin following their respective evaluations. As explained below, the Appellate Court's decision hinged on the Board's denial of disability benefits paired with the employer's failure or refusal to accommodate these limitations resulting in the "untenable catch-22" that the Appellate Court was concerned about. Crucially absent from the present case, however, are any limitations or restrictions placed on Plaintiff by the physicians that the Board relied upon in making its decision. That is a material distinction from the *Kouzoukas* case.

While Plaintiff finds himself in the same position as the plaintiffs in *Reed* and *Dowrick*, he cannot say the same regarding the plaintiffs in *Kouzoukas*, *Ohlicher*, and *Terrano*. In *Kouzoukas*, the plaintiff was evaluated by multiple physicians, and not a single one that treated or examined the plaintiff opined that she could return to full duty. *Kouzoukas*, 234 Ill. 2d at 467. Dr. Lewis found that the plaintiff was unable to work; Dr. Yapor stated that the plaintiff could not work as a police officer; Dr. Konowitz reported that he was unable to authorize the plaintiff to return to duty; Dr. Demorest, the board's physician, testified that he would not recommend that the plaintiff work full duty; and Dr. Spencer imposed bending and lifting restrictions on the plaintiff's return to work. *Id*. Despite all of this, the board concluded that the plaintiff's subjective complaints of pain do not prevent her full duty return to the CPD. *Id*. at 464-65. The crux of *Kouzoukas* boils down to whether the CPD offered the plaintiff a position that could accommodate her

limitations as prescribed by the host of physicians that evaluated her. The distinctions between *Kouzoukas* and the current case are captured in the following excerpt:

> "In the case at bar, the Board should have granted Kouzoukas a duty disability benefit and instructed her to present herself to the [CPD] with a doctor's release listing her restrictions *as determined at the hearing*. Then, if the [CPD] offered Kouzoukas a position *which accommodated the restrictions set forth in her doctor's release*, she would no longer be entitled to duty disability benefits. If, however, the [CPD] was unable to reassign Kouzoukas *to a restricted duty position within her limitations, she would remain eligible for duty disability benefits, unless she was found to be ineligible for some other reason or, as a result of a future examination, it was determined that she was no longer disabled*."
>
> *Kouzoukas*, 234 Ill. 2d at 471-72. (Emphasis added.)

Based on the above, limitations or restrictions requiring accommodation by the employer go hand-in-hand with a claimant's entitlement to disability benefits, and if those limitations are not being offered by the employer, then the board must grant disability benefits. If, however, there are no limitations to accommodate, then an employer's failure or refusal to offer the claimant a position for reinstatement simply has no relevance to the board's determination of whether a claimant is disabled. In the instant case, the record reflects competent evidence that Plaintiff is not limited in any way in his ability to return to duty, resulting in a stark contrast between Plaintiff's situation and the situation in *Kouzoukas*. In fact, Plaintiff returned to work for almost four years after the accident, from July 2017 to January 2021, without limitation. (C 225-26). Plaintiff is ineligible to receive

disability benefits because he is not disabled; there is medical evidence in the record supporting the Board's conclusion that Plaintiff can once again return to full, unrestricted duty, and the CPD's refusal to reinstate Plaintiff fits directly into the analysis employed by the courts in *Reed* and *Dowrick* allowing for an outcome of both a denial of disability benefits and denial of reinstatement by the claimant's employer. *See Reed*, 395 Ill. App. 3d at 5 ("The answer to why the same firefighter may be treated differently by different agencies lies in the different interests at stake in reinstating (or firing) a firefighter and in deciding whether a firefighter is disabled for pension purposes.") As the *Kouzoukas* court stated, the Board has the duty under the Code to determine whether a claimant is disabled. *Kouzoukas*, 234 Ill. 2d at 471. In this case, the Board performed that duty and acted properly as a fiduciary in evaluating the medical evidence and concluding that Plaintiff is not entitled to disability benefits.

In support of its wholehearted dependence on *Kouzoukas*, the Appellate Court also discussed *Ohlicher v. Retirement Board of the Policemen's Annuity & Benefit Fund of Chicago*, 2024 IL App (1st) 231669-U and *Terrano v. Retirement Board of the Policemen's Annuity & Benefit Fund of Chicago*, 315 Ill. App. 3d 270 (1st Dist. 2000). However, like *Kouzoukas*, both of these cases are distinguishable based on the limitations and restrictions required upon the claimants' abilities to return to active duty and, similarly, do not control the outcome of this case.

In *Ohlicher*, the plaintiff was found to have suffered an injury, but the board concluded that the injury did not prevent him from performing limited duty. *Ohlicher*, 2024 IL App (1st) 231669-U, ¶ 22. Dr. Baxamusa and the board's appointed doctor, Dr. Neal, agreed that the plaintiff could return to duty, but in a limited and restricted capacity. *Id*. at

¶ 8, 10. Based on this ability to perform limited duty, the board erroneously concluded that the plaintiff was not disabled. *Id*. at ¶ 22. However, as was the case in *Kouzoukas*, the plaintiff was never offered a limited duty position with the CPD; that is, one that could accommodate the limitations imposed by his injury. *Id*. As a result, the record in *Ohlicher* clearly showed that the plaintiff was still disabled in some fashion—he could not return to full duty—and the CPD's inability or unwillingness to reinstate the plaintiff to a position that could accommodate those restrictions meant that the board remained responsible for the payment of disability benefits. The *Ohlicher* court went on, stating that once the plaintiff met his initial burden of showing that he was disabled, "if evidence was produced that the [CPD] offered [the plaintiff] a limited duty position, then it would have been his burden to introduce evidence demonstrating that he was physically incapable of performing the duties of the offered position." *Id*. at ¶ 24. Ultimately, the catch-22 situation identified in *Kouzoukas* presented itself and controlled the outcome in *Ohlicher*. The court concluded that the board's decision was against the manifest weight of the evidence because "the medical evidence established that his line-of-duty injury prevented him from performing the duties of an active police officer and no evidence was presented that he was offered a limited duty position within the [CPD]." *Id*. at ¶ 27. Again, there is no issue in this case that Plaintiff needed an accommodation assignment, so the reliance on *Kouzoukas* and *Ohlicher* is misplaced.

Similarly, in *Terrano*, the plaintiff's return to work was impeded by restrictions on his ability to perform full duty. *Terrano*, 315 Ill. App. 3d 270. There, Dr. Silver opined that the plaintiff has permanent limitations on squatting, kneeling, jumping, and running, but that he can return to work within those limitations. *Id*. at 272. In another report, Dr. Akkeron

opined that plaintiff has reached MMI and can perform sedentary duties but could not perform the duties of an active police officer. *Id*. at 272, 273. The court in *Terrano* concluded as follows:

> In light of the uncontradicted medical evidence establishing that the *plaintiff's injury prevents him from performing the duties of an active police officer* and in the total absence of any evidence of either the existence of a limited duty position within the [CPD] *which could be performed by an individual with the plaintiff's physical limitations* or that such a position was ever offered to the plaintiff, we conclude that the Board's finding that the plaintiff 'is not disabled as disability is defined in the Act' is against the manifest weight of the evidence." *Id*. at 275-76. (Emphasis added.)

This excerpt further supports the distinction between the cases chiefly relied on by both Plaintiff and the Appellate Court, since the record in this case does not contain uncontradicted medical evidence establishing that Plaintiff's capability to return to duty with the CPD was limited in some way. Rather, Plaintiff was released to full duty, and the requirement that Plaintiff be offered a position accommodative of some limitations had no bearing on the issue of disability here.

Finally, in *Koniarski*, the court noted "it is undisputed that [Koniarski] is unable to perform all the physical tasks necessary for full-duty police work, [and] all medical evidence introduced in the record indicates [Koniarski] has not fully recovered from her disability." *Koniarski v. Retirement Board of the Policemen's Annuity & Benefit Fund of Chicago*, 2021 IL App (1st) 200501-U, ¶ 38 (*Koniarski* is cited for persuasive purposes only, as it is an unpublished decision issued on March 22, 2021, thus falling after the

effective date of the 2021 amendment to Illinois Supreme Court Rule 23). Inappropriately, the board in *Koniarski* argued that the plaintiff was not "disabled" within the meaning of the Code because she was capable of performing a limited-duty position. *Id*. at ¶ 46. The *Koniarski* court disagreed, stating that "[u]nder these circumstances, where no limited-duty position is available to Koniarski and the CPD has expressly found that it cannot accommodate her physical limitations, she remains disabled and is entitled to disability benefits." *Id*. at ¶ 44.

Koniarski, like *Terrano* and *Ohlicher*, thus appropriately falls within the confines of *Kouzoukas*. The claimants in those cases were impaired to some degree and were not capable of returning to full, unrestricted duty. As a result of these limitations, denying duty disability benefits to such claimants was appropriately found to be against the manifest weight of the evidence because the evidence in those cases was clear that the claimant's employer would not, or could not, accommodate those limitations. This meant the claimants were still "disabled" within the meaning of the Code, and the Board remained responsible for the payment of disability benefits to those plaintiffs.

Once again, that situation is not the case here, meaning *Koniarski, Terrano, Ohlicher*, and most importantly, *Kouzoukas*, do not control the outcome of this case. Here, the Board found that Plaintiff was no longer "disabled" because the medical evidence and physicians' opinions indicated that Plaintiff could return to full, unrestricted duty, as was the case in *Reed* and *Dowrick*—not merely limited duty, as was the case in *Koniarski*, *Kouzoukas*, *Terrano*, and *Ohlicher*. The record in this case and the physicians' opinions on which the Board relied in reaching its decision constituted ample competent evidence establishing that Plaintiff was capable of returning to full, unrestricted duty. Under these

circumstances, whatever reason the CPD had for denying Plaintiff's reinstatement was immaterial to the Board's determination of whether he was entitled to receive disability benefits.

The CPD's decision to deny Plaintiff's reinstatement was seemingly based on a string of misinformed opinions. As the Appellate Court noted in its decision, the commanding officer of the CPD's medical services section wrote that the physical examination performed by Dr. Houseknecht as part of Plaintiff's reinstatement application "disclosed that [Plaintiff] is NOT QUALIFIED to return to duty without restrictions. Based on restrictions *per treating physician*, [Plaintiff] is not a candidate for Limited Duty." (C 1119) (App. Ct. Op. ¶ 12). The treating physician referred to in Dr. Houseknecht's opinion is Dr. Mardjetko, who opined that Plaintiff is "permanently disabled from activities of active police work and also unable to safely carry and discharge a weapon." (C 1120) (App. Ct. Op. ¶ 11). This opinion by Dr. Mardjetko, however, was rendered without the knowledge that Plaintiff requalified with his department-approved firearm (C 1615-16), diminishing the credibility of his opinion and tainting both Dr. Houseknecht's reliance on said opinion and the CPD's basis for denying Plaintiff reinstatement.

Unlike the plaintiffs in *Kouzoukas*, *Ohlicher*, and *Terrano*, Plaintiff does not dispute that he was released to full duty by multiple physicians: Dr. Nho, who concluded that Plaintiff reached MMI in March 2022 and approved his return to full unrestricted duty as to his left hip; and Dr. Levin, who performed an IME of Plaintiff specific to his lumbar spine and left hip issues and concluded that Plaintiff could work in a full unrestricted capacity. Contrary to *Kouzoukas*, *Ohlicher*, *Terrano*, and *Koniarski* then, the requirement of offering a position to the claimant that accommodates the limitations or restrictions on

their ability to perform the duties of a police officer simply does not extend to the circumstances here. Plaintiff is not burdened by any limitations and the opinions of multiple physicians support the Board's conclusion that Plaintiff is not entitled to disability benefits because he is capable of performing the duties of a police officer in a full, unrestricted capacity.

Regardless of the competent medical evidence justifying the Board's conclusion that Plaintiff is not disabled and thus not entitled to disability benefits, the Appellate Court's decision sets that medical evidence aside and compels the Board to administer disability benefits based on the outcomes in a host of immaterial cases, and because the CPD—before the Board had a chance to determine Plaintiff's entitlement to disability benefits—refused for unknown reasons to reinstate Plaintiff. In circumstances where limitations prevent a claimant's return to full duty, it is a logical conclusion that some sort of "disability" persists, and that a retirement board should be required to compensate a claimant for that disability if the claimant's employer cannot provide a position that appropriately accommodates those limitations. However, mandating the award of disability benefits in this case would force the Board to effectively breach the fiduciary duties owed to all members of the Fund, and would violate the Board's responsibility of ensuring that funds are not unfairly diverted to undeserving applicants. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 544 (2006). Furthermore, adopting Plaintiff's argument renders a fundamental section of Article 5 meaningless. Section 5-189 of the Code provides that the Board has exclusive original jurisdiction on all matters relating to or affecting the Fund, including the administration of pensions, benefits and refunds. 40 ILCS 5/5-189. The Appellate Court's decision renders the language providing for this exclusive original jurisdiction superfluous

by compelling the Board to administer disability benefits based on the ultimate determination of a separate agency (CPD) with a separate mission. *See Dowrick*, 362 Ill. App. 3d at 521 (discussing different interests at stake for the employer and pension board, which are separate agencies with different missions).

C. The Appellate Court's decision improperly disregards Section 5-156 of the Code and is therefore in direct conflict with its unambiguous and mandatory language.

No court to date has interpreted the plain language of section 5-156, meaning this is a case of first impression and, therefore, of significant importance. The Appellate Court's departure from the unambiguous language of section 5-156 wholly fails to give effect to, and therefore conflicts with, the statutory language and intent of the legislature in requiring proof that the claimant is disabled from at least one board-appointed physician. Section 5-156 is unambiguous and provides as follows: "Proof of duty, occupational disease, or ordinary disability shall be furnished to the board by at least one licensed and practice physician appointed by the board." 40 ILCS 5/5-156. The Appellate Court did recognize the fundamental canon of statutory construction "that where a word or phrase is used in different sections of the same legislative act, a court presumes that the word or phrase is used with the same meaning throughout the act, unless a contrary legislative intent is clearly expressed." *Robbins v. Board of Trustees of the Carbondale Police Pension Fund of Carbondale*, 177 Ill. 2d 533, 541 (1997). Despite this recognition, the Appellate Court nonetheless absolves Plaintiff of his burden of proof to satisfy the requirements of section 5-156 because taking the statute as it is written "would ignore [*Kouzoukas*] and [*Ohlicher*]." (App. Ct. Op. ¶ 28).

As discussed above, *Kouzoukas* and *Ohlicher* are not applicable and should be ignored due to the distinctions between those cases and the matter at bar—specifically that the plaintiffs in those cases were released to work under specific restrictions requiring accommodation, while Plaintiff was released to work in an unrestricted, full duty capacity—and section 5-156 should be given effect as the legislature manifestly intended. The outcome reached by the Board and the CPD in this case is very tenable because Plaintiff is not impeded by any limitations requiring accommodation had the CPD reinstated him. Plaintiff was cleared to return to full, unrestricted duty, and the *Dowrick* and *Reed* courts ruled that such a situation is not an untenable catch-22 for the officer. The outcomes in the distinguishable line of cases relied on by Plaintiff and the Appellate Court were inapplicable to this case and are not a valid basis for reversal of the Board's decision.

In its discussion of section 5-156, the Appellate Court had to address *Nowak*, a First District Appellate Court case in which the court found 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" and that "[b]ecause Nowak failed to meet the requirement of section 6-153, the Board's decision denying him duty disability benefits must be affirmed." *Nowak v. Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago*, 315 Ill. App. 3d 403, 412 (1st Dist. 2000). The Appellate Court correctly recognized that if it followed the *Nowak* court's interpretation of section 6-153, which is identical to section 5-156 and was passed in the same legislative act (see 1963 Ill. Laws 228-29, 270), it would have to conclude that the Board properly denied Plaintiff disability benefits because the board-appointed doctor here released Plaintiff to work in a full unrestricted capacity. (App. Ct. Op. ¶ 28). Undeterred

by the striking similarities of these two sections and the *Nowak* court's previous application of the same unambiguous language, the Appellate Court, similar to its handling of *Reed*, chose to disregard the legislative mandate requiring evidence of disability from a board-appointed physician without a compelling analysis.

In sum, there is no justifiable reason for the Appellate Court to depart from the mandatory and unambiguous language interpreted by the court in *Nowak*. It is a fundamental premise of the legislative process that if the legislature intended a statute to mean something different than how it is literally written, or if it felt that the meaning of a statute required clarification, it can and would amend the statute to reflect that change. Where an enactment is clear and unambiguous, a court is not at liberty to depart from the plain language and meaning of the statute by reading into it exceptions, limitations or conditions that the legislature did not express. *Evanston Insurance Co. v. Riseborough*, 2014 IL 114271, ¶ 15 (citing *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990)). Section 5-156 has been around for more than twenty years. The legislature has had ample time to make any changes it felt were necessary, yet the language of section 5-156 has remained untouched and requires proof from at least one board-appointed physician that the claimant is disabled before that benefit can be awarded. Indeed, the legislature did not amend or change the language of section 6-153 after either the *Nowak* or *Reed* decisions. Accordingly, the plain language of section 5-156 must be enforced by the Court.

D. The Appellate Court's decision improperly strips the authority of retirement boards governed by Article 5 and 6 of the Code to determine eligibility for disability benefits.

If this case is not reversed, the ruling below will have serious adverse consequences for other pension boards charged with carrying out the legislature's intentions. As a result

of the Appellate Court's decision, the disability determination process conducted by the Board—and other similarly situated retirement boards—becomes obsolete. As the Illinois Supreme Court stated in *Kouzoukas*, "[t]he Board has the duty under the Code to determine whether a claimant is disabled." *Kouzoukas*, 234 Ill. 2d at 471. If upheld, the Appellate Court's decision would erroneously relieve the board of this duty by allowing the employer's decision on reinstatement to perpetually control the Board's determination of disability based on the record, medical evidence, and opinions provided to it. This outcome entirely nullifies the purpose of disability determination hearings conducted by the Board, rendering them a superfluous exercise.

There is only one instance in which the employer's determination is relevant to the Board's disability analysis: when the claimant has been released to work under a prescribed set of restrictions (meaning they are still physically limited in some way) and the employer has offered a position that can accommodate those restrictions. In this instance, offering an accommodative position means the claimant that cannot return to unrestricted duty still may not be "disabled" as that term is defined in the Code. *Kouzoukas*, 234 Ill. 2d at 469. However, this is not the case here, meaning the Appellate Court's decision incorrectly takes the decision out of the Board's hands and forces it to administer disability benefits to a claimant that has been cleared to return to full duty, without any limitations or restrictions. Again, as noted above, this outcome renders the exclusive original jurisdiction granted to the Board by section 5-189 mere surplusage because it allows the determination of an entirely separate body to control matters related to the Fund, which are specifically reserved to the Board alone, according to the Code. This is contrary to the legislature's intended scheme and cannot be permitted. *See Fisher v. Waldroe*, 221 Ill. 2d 102, 112

(2006) (noting that courts engaging in statutory construction should "[keep] in mind the subject [the statute] addresses and the legislature's apparent objective in enacting it and [avoid] constructions which would render any term meaningless or superfluous).

The courts in *Reed* and *Dowrick* discussed very similar situations and congruent statutory language, albeit dealing with firefighters as opposed to a police officer. The court in *Reed* provided that "there is [effectually] a higher bar for an administrative finding of disability than for a finding that a former fighter is unfit for reinstatement." *Reed*, 395 Ill. App. 3d at 5.

In a similar vein, the *Dowrick* court noted that, "[g]iven the compelling public interest in ensuring the fitness of firefighters to perform their duties, it is reasonable to conclude that the General Assembly deliberately set the bar lower for a municipality seeking to discharge an unfit firefighter than for a firefighter to obtain a disability pension, and committed the decisions to separate agencies with different missions." *Dowrick*, 362 Ill. App. 3d at 521. The Appellate Court's strained interpretation of *Kouzoukas* and its lineage unjustifiably conflates these missions and infringes upon the Board's duties under the Code and the requirement that it act as a responsible fiduciary to all members of the Fund. The Board's processes must be kept separate from those of the CPD. The Board makes an independent determination of whether a claimant is disabled to the extent that it should grant a disability benefit, and the CPD makes an independent determination of whether an injured officer is fit to resume the duties of an active police officer. That is how the statutory scheme was intended to operate.

The Appellate Court has now fundamentally disrupted that disability structure in derogation of this Court's long-established authority that the legislature's intent as

expressed in the plain language of the Code must be followed. *DiFalco v. Bd. of Trustees of Firemen's Pension Fund of Wood Dale Fire Protection District Number One*, 122 Ill. 2d 22 (1988).

VI.
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 case law in clear contradiction of other well-established case law. By doing so, it has created an untenable situation for pension boards charged by the legislature with making disability determinations under the Code. This decision must be reversed and vacated.

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: April 30, 2025

CERTIFICATE OF COMPLIANCE

I certify that this 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 25 pages.

By: /s/ Vincent D. Pinelli

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 Policemen's Annuity and Benefit Fund of the City of Chicago,	)	There Heard on Appeal from
	)	The Circuit Court of Cook County,
	)	No. 22-CH-12585
	)	
Defendant-Petitioner.	)	Honorable Sophia H. Hall,
	)	Judge Presiding

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

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

DONALD B. MORELAND, **Plaintiff,** **v.** **THE RETIREMENT BOARD OF THE POLICEMEN'S ANNUITY AND BENEFIT FUND OF THE CITY OF CHICAGO,** **Defendant.**	**Case No. 2022-CH-12585**

MEMORANDUM OF OPINION AND ORDER

This matter comes to be heard on Plaintiff Donald L. Moreland's Petition for Administrative Review of the Defendant Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago's decision denying Moreland's application for duty and ordinary disability benefits. The Board held that Moreland was not entitled to duty or ordinary disability benefits because it found that he is capable of performing full, unrestricted duties in the Chicago Police Department. Moreland argues that the decision is against the manifest weight of the evidence. This Court affirms the decision of the Board.

Standard of Review

Section 3-110 of the Administrative Review Law provides that in any administrative review action, review "shall extend to all questions of law and fact presented by the entire record before the court. No new additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court." 735 ILCS 5/3-110. The statute also mandates that the "findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct." 735 ILCS 5/3-110. "Accordingly, it is not a court's function on administrative review to reweigh evidence or to

make an independent determination of the facts." *Kouzoukas v. Retirement Board*, 234 Ill.2d 446, 463 (2009).

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. 234 Ill. 2d at 463 (citing *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 390 (2001)). Although the Board's findings of fact are given considerable deference, they are, nonetheless, subject to reversal if they are against the manifest weight of the evidence. *Id.* (citing *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205,* 216 Ill. 2d 455, 471-72 (2005)). 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).

"[T]he 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 standard of review applies. 234 Ill.2d at 464. In the instant case, Moreland argues that the Board's decision denying his application was against the manifest weight of the evidence because the record showed that CPD denied his request for reinstatement. Accordingly, this Court reviews this matter under the manifest weight of the evidence standard.

The burden of proving entitlement to a disability pension rests with the Plaintiff. *Daily v. Bd. of Trustees of the Springfield Police Pension Fund*, 251 Ill. App. 3d 119 (4th Dist. 1993). For a police officer to obtain disability benefits pursuant to Section 5-154 of the Pension Code, the police officer must prove (1) he or she is an active police officer, (2) the police officer is disabled within the meaning of Section 5-115 of the Pension Code, and (3) the disability resulted from an injury incurred in the performance of an act of duty. 40 ILCS 5/5-115, 154. Additionally, the Pension Code requires that "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 5/5-156.

The Board's Decision

The Board issued its Decision on December 2, 2022. It recounted that Moreland was employed by the Chicago Police Department ("CPD") on December 2, 2013. On February 15, 2022, he submitted his application for duty disability pension benefits. He stated that on

February 28, 2017 he was in a vehicle collision while on duty which injured his neck, lower and upper back, left and right hips, and left leg. He complained of pain, but up to that point had not sought any treatment.

On April 9, 2017, he sought treatment for his back and then went on medical leave for his back. On July 9, 2017 he returned to full duty.

On December 2, 2020, Moreland went on medical leave for COVID-19 and on January 9, 2021 he went back on medical leave for his back issues.

On January 21, 2012 he had an MRI of his lumbar spine. On February 22, 2021, Dr. Mardjetko met with Moreland for a surgical consultation for his back.

On April 23, 2021, Moreland had an MR arthrogram of his left hip. On May 11, 2021, he saw Dr. Shane Nho. Dr. Nho did a left hip arthroscopy on Moreland. On March 7, 2022, Dr. Nho found that Moreland could return to full, unrestricted duty regarding his left hip.

In September 2021, Dr. Mardjetko opined that Moreland was totally disabled as to his back. On June 13, 2022, Dr. Mardjetko opined that, with respect to his lumbar spine, Moreland was permanently disabled based on his inability to safely carry and discharge a firearm.

The Board appointed an Independent Medical Examiner ("IME"), Dr. Levin. After examining Moreland on May 10, 2022, Dr. Levin opined that Moreland was capable of full, unrestricted duty and stated Moreland could safely carry, handle, and use his firearm and effectuate an arrest of an active resister.

The Board issued its decision on December 2, 2022 finding that Moreland was not entitled to a "Duty Disability or Ordinary Disability pension benefit pursuant to §5-154, 155 of the Illinois Pension Code because he is capable of performing full, unrestricted police duties in the Chicago Police Department."

In addition, the Board commented on other evidence in the record which it did not consider. In the record was evidence that Moreland, after May 26, 2022, had presented himself to CPD for reinstatement. As a component of the reinstatement evaluation, CPD sent Moreland to Dr. Kristen Houseknect for a physical examination which occurred on July 22, 2022. On August 16, 2022, Dr. Houseknect opined that Moreland was completely disabled. On August 31, 2022,

the CPD issued a letter denying Moreland's request for reinstatement citing Dr. Houseknect's assessment. In its Decision, the Board noted that "[a]s the Pension Board has the exclusive jurisdiction over Claimant's claim . . . . [a]ny reference to the determination as to the City's assignment decisions in the Chicago Police Department does not overcome Pension Board's exclusive jurisdiction over this subject matter."

Discussion

Moreland seeks reversal of the Board's decision that he was not "disabled" as defined in Section 5-115. Specifically, he asserts that, because he presented evidence of CPD's refusal to reinstate him in any capacity, the Board's finding that he was able to perform full and unrestricted duties was against the manifest weight of the evidence.

Section 5-115 defines "disability" as "[a] condition of physical or mental incapacity to perform any assigned duty or duties in the police service." 40 ILCS 5/5-115. The Supreme Court of Illinois in *Kouzoukas v. Retirement Board* clarified the meaning of "perform any assigned duty or duties." 234 Ill. 2d 446, 469-70 (Ill. 2009). The *Kouzoukas* Court stated that a claimant "who cannot return to full police duties, still may not be disabled within the meaning of the code if a position is made available to her which can be performed by a person with her physical disability." *Id.* at 469 (internal quotations omitted) (relying in relevant part on *Terrano v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 315 Ill. App.3d 270, 274-75 (1st Dist. 2000)). The court then stated that to constitute an "assigned duty" in the context of an applicant having only limited capacity, a position must actually be offered by the police department to the claimant. 234 Ill. 2d at 469-70; *see Gardner v. Bd. of Trs. of the Ill. Mun. Ret. Fund*, 2023 IL App (3d) 220404-U, ¶ 80.

Thus, the *Kouzoukas* Court first determined that the evidence on record supported finding only limited capacity in the applicant to perform assigned duties, and then defined "assigned duties" in that context to mean a duty pursuant to a position actually offered to the claimant.

Other cases have followed that analysis. In *Koniarski v. Ret. Bd. of the Policeman's Annuity & Ben. Fund of the City of Chi.*, 2021 IL App (1st) 200501-U, the court first acknowledged that "it is undisputed that [Officer Koniarski] is unable to perform all the physical tasks necessary for full-duty police work." *Id.* at ¶ 38-43. It then addressed the issue of "assigned

duty." *Id.* Another example is *Gardner*. 2023 IL App (3d) 220404-U. In *Gardner*, the Board first found a claimant capable of only limited duties, but ultimately held the claimant "not disabled" because it found she was assigned a position within her accommodations. *Id.* at ¶ 80. Because neither the claimant nor the Board on administrative review disputed that the claimant was capable only of limited duty, the *Gardner* Court moved directly to the issue of "assigned duty" and whether the position actually was accommodative. *Id.*

In the instant case Moreland argues that the Board's decision is against the manifest weight of the evidence because the Board failed to consider that the CPD refused to hire him. That evidence was presented to the Board prior to its decision. Moreland relies on *Kouzoukas* in arguing that that case requires the Board to consider that evidence. Moreland's reliance is unavailing. The requirement to offer a position to satisfy "assigned duties" was required in *Kouzoukas* only because the evidence supported the fact that the applicant had limited capacity. Here Moreland does not argue that the evidence failed to show that he was fully capable to perfor the duties of a police officer.

Additionally, the Board argues that it is not bound by the hiring decisions of the Chicago Police Department. In its briefs, the Board argues that the Board's decision regarding disability benefits and the CPD's decision regarding reinstatement are each completely independent of the other.

In support, the Board references *Reed v. Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago*. 395 Ill. App.3d 1 (1st Dist. 2009). This Court finds *Reed* instructive. In *Reed*, the claimant was denied both a disability pension by the Retirement Board and reinstatement by the Chicago Fire Department. To resolve the seeming conflict of those two decisions, the *Reed* Court quoted at length from *Dowrick v. Village of Downers Grove*;

> "Given the compelling public interest in ensuring the fitness of firefighters to perform their duties, it is reasonable to conclude that the General Assembly deliberately set the bar lower for a municipality seeking to discharge an unfit firefighter than a firefighter to obtain a disability pension, and committed the decisions to separate agencies with different missions."

Id. at 5 (quoting *Dowrick*, 362 Ill. App 3d at 512, 521 (2nd Dist. 2005)).

The *Reed* Court went on to state:

> It 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].

Id. at 12.

The instant case presents a similar comparison. The Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago's responsibilities in—and the public's interest in—controlling disability benefits are different from the public's interest in the hiring decisions and responsibilities of the Chicago Police Department. Accordingly, this Court finds that the Board appropriately disregarded CPD's hiring decision because it found Moreland capable of full, unrestricted duty.

Conclusion

This Court, having reviewed the Record, finds that the Board's decision to deny Moreland's claim for disability benefits because it found he is capable of performing full, unrestricted duties in the Chicago Police Department is not against the manifest weight of the evidence and affirms the decision.

Entered:

Judge Sophia H. Hall

1/5/24

ENTERED
Judge Sophia H. Hall-0162
JAN 5 2024
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

DONALD B. MORELAND, ***Plaintiff,*** **-v-** THE RETIREMENT BOARD OF THE POLICEMEN'S ANNUITY AND BENEFIT FUND OF THE CITY OF CHICAGO, ***Defendant.***	)	**Trial Court Case No.** 2022 CH-12585 **Honorable Judge Sophia H. Hall** **Judge Presiding**

NOTICE OF APPEAL

Plaintiff, Donald B. Moreland, ("Moreland"), by and through his attorney, Ralph J. Licari of Ralph J. Licari & Associates, Ltd., has filed his Notice of Appeal to the Appellate Court of Illinois, First Judicial District, Chicago, Illinois, from the Order entered by the Honorable Judge Sohpia H. Hall on January 5, 2024 (a copy of which is attached) wherein the prior ruling of the Defendant Retirement Board, which had denied Moreland's claim for both ordinary and duty disability benefits at the rate of 75% of his salary, was affirmed by the Circuit Court on Administrative Review.

By this appeal, Moreland respectfully requests the Appellate Court reverse the Trial Courts Order of January 5, 2024, and award Moreland duty disability benefits at the rate of 75% of his salary and costs and litigation expenses, including reasonable attorney fees, as part of the costs of the action mandated by 40 ILCS 5/5-228(b).

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, an attorney, under penalties as provided by law pursuant to 735 ILCS 5/1-109, hereby certify, that on this 8th day of January, 2024, I e-filed the foregoing **NOTICE OF APPEAL** using the Odyssey E-File Illinois System and directly served a copy via e-mail on the following listed party:

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2024 IL App (1st) 240049

No. 1-24-0049

Opinion filed November 15, 2024

Fifth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

DONALD B. MORELAND, Plaintiff-Appellant, v. THE RETIREMENT BOARD OF THE POLICEMEN'S ANNUITY AND BENEFIT FUND OF THE CITY OF CHICAGO, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 22 CH 12585 Honorable Sophia H. Hall, Judge Presiding.

JUSTICE NAVARRO delivered the judgment of the court, with opinion.
Presiding Justice Mikva and Justice Mitchell concurred in the judgment and opinion.

OPINION

¶ 1 The Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago (Board) denied the application of plaintiff, Donald B. Moreland, for duty disability benefits. On administrative review, the circuit court affirmed the Board's decision. Moreland now appeals that judgment and contends that the Board's decision to deny him disability benefits was in error. Moreland argues that the Board's decision placed him in an untenable catch-22 situation where he is unable to work because his own employer, the Chicago Police Department, has determined he

is disabled and will not assign him a position within the department yet he cannot obtain disability benefits. For reasons that follow, we reverse the Board's decision.

¶ 2 I. BACKGROUND

¶ 3 In 2013, Moreland became a Chicago police officer. On February 28, 2017, Moreland was on duty and responding to a call of a person shot when his vehicle was involved in a traffic accident, resulting in his vehicle hitting a parked vehicle and tree. As a result of the accident, Moreland sustained various injuries, including to his lower back and left hip. Five years later, Moreland applied for duty disability benefits due to the injuries he suffered to his back and left hip because of the traffic accident. Moreland's application proceeded to an October 2022 hearing.

¶ 4 A. The Hearing

¶ 5 At the hearing, the Board and Moreland entered numerous medical records into evidence. Moreland also testified and discussed the February 28, 2017, vehicle accident that resulted in his various back and left hip ailments. Immediately following the accident, Moreland experienced back and left hip pain, but he hoped it would dissipate with time. Approximately six weeks after the accident, Moreland went to the emergency room due to severe lower back pain. There, he was diagnosed with sciatica on his right side and prescribed various medications. On April 10, 2017, Moreland went on medical leave due to the back pain.

¶ 6 The following month, Moreland's primary care physician, Dr. Robert Demke, evaluated him and referred him to a chiropractor for physical therapy. Dr. Demke also recommended Moreland receive a magnetic resonance imaging (MRI), but the imaging was not approved. In early July 2017, following a course of physical therapy, Dr. Demke cleared Moreland for full, unrestricted duty, and Moreland returned to such duty. The following month, Dr. Brian Clay, a pain management specialist at the Illinois Bone and Joint Institute, evaluated Moreland due to his

further complaints of low back and low extremity pain. Although Dr. Clay also recommended an MRI, the imaging was again not approved. Dr. Clay advised Moreland to complete a home exercise regimen. Moreland continued working full, unrestricted duty until early December 2020, when he went on medical leave after contracting COVID-19. His COVID-19 medical leave lasted until January 8, 2021.

¶ 7 The following day, Moreland continued to be on medical leave, but now due to recurring issues with his back, specifically "really bad" back spasms. Later that month, Moreland returned to Dr. Clay for the first time since 2017 complaining of lower back and lower extremity pain. Dr. Clay recommended an MRI, more physical therapy, and remaining off-duty. In late January 2021, Moreland underwent an MRI, which revealed multiple herniated discs and disc degeneration. According to Dr. Clay, Moreland's disc issues "appear[ed] to be clinically significant." Based on the MRI, Dr. Clay diagnosed Moreland with low back pain, lumbar radiculopathy, and lumbar disc herniation. In light of these diagnoses, Dr. Clay referred Moreland to Dr. Steven Mardjetko, an orthopedic surgeon at the Illinois Bone and Joint Institute. In February 2021, Moreland met with Dr. Mardjetko, who advised Moreland to undergo an electromyography of his lower extremities and to continue with physical therapy, which had been helpful to his symptoms.

¶ 8 Over the next two months, Moreland underwent additional imaging on his lower back, including the electromyography, and left hip. The electromyography report indicated that Moreland had evidence of mild chronic L5 radiculopathy on his right side. As for Moreland's hip issues, Dr. Ritesh Shah, a doctor at the Illinois Bone and Joint Institute, diagnosed him with left hip impingement and a labral tear. Also, around this time, according to Moreland's testimony, he passed an annual prescribed firearm qualification certification with the Chicago Police Department.

¶ 9 In June 2021, Dr. Shane Nho, an orthopedic surgeon at Midwest Orthopaedics at Rush, performed a hip arthroscopy and related procedures on Moreland's left hip. During his recovery, Dr. Mardjetko again evaluated Moreland's low back issues, which were described in notes as "significant pain." Due to the chronic nature of Moreland's back issues, Dr. Mardjetko recommended that Moreland perform a functional capacity evaluation. Until that evaluation was performed, Dr. Mardjetko considered Moreland "temporarily disabled." According to Dr. Mardjetko's notes, the functional capacity evaluation would provide insight into the "kind of work options" that would exist for Moreland. Moreland testified that he requested the functional capacity evaluation, but his request was denied because he had already been deemed disabled by Dr. Mardjetko. By October 2021, according to Dr. Nho's medical notes, Moreland was progressing well from the hip surgery, but he still recommended that Moreland continue physical therapy and remain off-duty. During this month, Moreland exhausted his medical leave and began a personal disability leave of absence that did not include pay.

¶ 10 In March 2022, Dr. Nho reevaluated Moreland and determined that he had reached maximum medical improvement with respect to his left hip and approved his return to full, unrestricted duty as it related to the left hip issues. However, Dr. Nho noted in his report that Moreland continued to complain of low back pain and was seeing specialists for the issue. Two months later, the Board's appointed doctor, Dr. Jay Levin, performed an independent medical examination of Moreland, specific to his lumbar spine and left hip issues, which included evaluating Moreland in person and reviewing his medical records. In his report to the Board, Dr. Levin concluded that Moreland could "work in a full unrestricted capacity regarding his lumbar spine and left hip as it relates to the occurrence of February 28, 2017." Specifically, Dr. Levin found that Moreland could (1) safely carry, handle and use his firearm; (2) maintain an

independent and stable gait without the assistance of external ambulatory supporting devices; (3) safely drive a motor vehicle; and (4) safely effectuate the arrest of an arrestee who was actively resisting arrest.

¶ 11 Also in May 2022, after Moreland had applied for temporary disability benefits, the Board deferred the request in favor of a full hearing. In light of the deferral, Moreland's attorney told him to request reinstatement with the Chicago Police Department. Thereafter, Moreland applied for reinstatement as a police officer. The following month, due to his back issues, Dr. Mardjetko opined that: "Moreland is permanently disabled from activities of active police work and also unable to safely carry and discharge a weapon." Moreland testified that all his doctors recommended against back surgery because it could potentially do more harm than good.

¶ 12 In July 2022, as part of Moreland's reinstatement application, he underwent a physical examination with Dr. Kristin Houseknecht, a physician with Concentra Medical Center. She concluded that Moreland was not cleared for full, unrestricted duty because his treating physician, Dr. Mardjetko, had opined that he was "permanently disabled." Later that month, Sergeant Stanley Williams, the commanding officer of the Chicago Police Department's medical services section, wrote to Robert Landowski, the director of the Chicago Police Department's human resources division, that the physical examination "disclosed that [Moreland] is NOT QUALIFIED to return to duty without restrictions. Based on restrictions per treating physician, [Moreland] is not a candidate for Limited Duty." According to Moreland's testimony, the restrictions placed on him by his treating doctors did not qualify him for limited duty, and the Chicago Police Department had not offered him a position in any capacity to return to work. Moreland testified that, had the Chicago Police Department offered him "any" position to return, he would have accepted it.

¶ 13 During the hearing, Moreland testified that he had an 11-month-old daughter and still suffered from debilitating back spasms, which required him to lay on the ground to alleviate. Moreland explained that, due to those spasms, there was "no chance that [he] could carry a gun." Moreland further testified that he was doing everything he could to return to work by following a treatment plan from the Illinois Bone and Joint Institute. The only other testimony at the hearing came from Dr. Peter Orris, who explained some of the procedures that Moreland underwent. Dr. Orris did not give an opinion about whether Moreland was disabled. Following the testimony, the Board held a closed meeting to deliberate. Subsequently, the Board voted 6 to 0 to deny Moreland duty disability benefits and ordinary disability benefits.

¶ 14 B. The Written Decision and Order

¶ 15 In the Board's written decision and order, it detailed the evidence and testimony from the hearing, including Moreland's lengthy medical history following his February 28, 2017, vehicle accident. In particular, the Board observed that, following the independent medical examination of Moreland, Dr. Levin concluded that Moreland could safely carry, handle, and use his firearm as well as other official functions. In turn, the Board noted Dr. Levin's opinion that Moreland could work in a full, unrestricted capacity. The Board further observed that Dr. Mardjetko, Moreland's treating physician, concluded that Moreland could not safely carry, handle, and use his firearm and, ultimately, opined that Moreland was permanently disabled from active police duties. However, the Board asserted that nothing in the record demonstrated Dr. Mardjetko was aware that Moreland passed an annual prescribed firearm qualification certification with the Chicago Police Department in 2021 when Dr. Mardjetko rendered his opinion regarding Moreland's permanent disability.

¶ 16 Although the Board highlighted that Dr. Mardjetko and Dr. Levin reached opposite conclusions on Moreland's ability related to his firearm and opposite opinions on his ability to work in a full, unrestricted capacity, the Board placed a greater emphasis on the opinions and conclusions of Dr. Levin, in part, due to Dr. Mardjetko's apparent unawareness of Moreland's firearm certification. Additionally, the Board asserted that it "ha[d] the exclusive jurisdiction over [Moreland's] claim," and based upon the evidence, it found that Moreland was "not disabled from police service because he is capable of performing police duties in the Chicago Police Department." The Board added that "Any reference to the determination as to the City's assignment decisions in the Chicago Police Department does not overcome [the Board's] exclusive jurisdiction over this matter." Consequently, the Board denied Moreland duty disability and ordinary disability benefits.

¶ 17 C. Circuit Court Proceedings

¶ 18 In December 2022, Moreland filed a two-count complaint in the circuit court. Count I, which he later voluntarily dismissed, was for a writ of *mandamus* compelling the Board to award him disability benefits immediately. Count II was for administrative review of the Board's decision pursuant to the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2022)). The Board appeared and filed the administrative record in the case. Following briefing and oral argument, the circuit court found that the Board's decision to deny Moreland's claim for disability benefits was not against the manifest weight of the evidence and affirmed the Board's decision.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 Moreland contends that the Board erred in denying him duty disability and ordinary disability benefits. He argues that the Board's decision placed him in an untenable catch-22

situation where he is unable to work because his own employer, the Chicago Police Department, has determined he is disabled and will not assign him a position within the department yet he cannot obtain disability benefits.

¶ 22 Moreland sought duty disability benefits pursuant to article 5 of the Illinois Pension Code (Code) (40 ILCS 5/5-101 *et seq.* (West 2022)). Article 5 of the Code governs the policemen's annuity and benefit fund for cities with a population over 500,000 people, such as Chicago. The Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2022)) governs judicial review of final administrative decisions of the Board. 40 ILCS 5/5-228 (West 2022). In administrative review, we review the decision of the administrative body, here the Board, rather than that of the circuit court. *Medponics Illinois, LLC v. Department of Agriculture*, 2021 IL 125443, ¶ 28.

¶ 23 The standard of review determines how much deference we afford the Board's determination. *Id.* ¶ 29. The standard of review depends on whether the issue on appeal is a question of law, a question of fact, or a mixed question of law and fact. *Id.* Whether a claimant is disabled within the meaning of the Code (see 40 ILCS 5/5-115 (West 2022)) is a question of fact. *Kouzoukas v. Retirement Board of the Policemen's Annuity & Benefit Fund of Chicago*, 234 Ill. 2d 446, 464, 469-70 (2009). The Board's "factual findings are *prima facie* true and correct and will not be disturbed unless they are against the manifest weight of the evidence." *Chaudhary v. Department of Human Services*, 2023 IL 127712, ¶ 95. Factual findings will be deemed against the manifest weight when the opposite conclusion is clearly evident. *Id.*

¶ 24 In an administrative hearing, the claimant, here Moreland, has the burden of proof. *Kouzoukas*, 234 Ill. 2d at 464. Under section 5-154(a) of the Code (40 ILCS 5/5-154(a) (West 2022)): "An active policeman who becomes disabled *** as the result of injury incurred *** in the performance of an act of duty, has a right to receive duty disability benefit" generally at the

rate of 75% of his or her salary. For ordinary disability benefits, "[a] policeman less than age 63 who becomes disabled *** as the result of any cause other than injury incurred in the performance of an act of duty, shall receive ordinary disability benefit during any period or periods of disability exceeding 30 days, for which he does not have a right to receive any part of his salary" at a rate of 50% of his salary. *Id.* § 5-155. The Code defines "[d]isability" as "[a] condition of physical or mental incapacity to perform any assigned duty or duties in the police service." *Id.* § 5-115. The only issue in this case is whether the Board properly found that Moreland was not disabled.

¶ 25 It is undisputed that Dr. Levin, the Board's appointed doctor, performed an independent medical examination of Moreland and determined that Moreland could work full, unrestricted duty. Relying on Dr. Levin's determination, the Board argues that Moreland was ineligible to receive disability benefits due to the requirement of section 5-156 of the Code (*id*. § 5-156), which provides: "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." No Illinois decision has interpreted this portion of section 5-156. However, section 6-153 of the Code (40 ILCS 5/6-153 (West 2022)), which is a part of article 6 of the Code and governs the firemen's annuity and benefit fund for cities with a population over 500,000 people, has the same requirement and uses the same language: "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." Additionally, both provisions were created through the same legislation. See 1963 Ill. Laws 228-29 (§ 5-156); 1963 Ill. Laws 270 (§ 6-153).

¶ 26 In *Nowak v. Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago*, 315 Ill. App. 3d 403, 410 (2000), the appellate court interpreted the relevant portion of section 6-153 of the Code and noted the case presented an issue of first impression. The court highlighted that

the word " 'shall' " generally expressed the legislature's intent for a mandatory reading. *Id.* at 411. Given the legislature's use of the word "shall" in section 6-153, the court concluded the plain language of section 6-153 required "that, before granting a disability benefit, the [Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago] must receive proof of the claimant's disability from at least one physician appointed by [it]." *Id.* at 411-12. Because the doctor appointed by the Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago "was unable to conclude whether [the claimant-paramedic] was disabled," the claimant "failed to meet the requirement of section 6-153." *Id.* at 407, 412. Therefore, the appellate court affirmed the Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago's decision to deny the claimant duty disability benefits. *Id.* at 412.

¶ 27 Given the identical language of sections 5-156 and 6-153 of the Code, and their creation through the same legislation (see 1963 Ill. Laws 228-29 (§ 5-156); 1963 Ill. Laws 270 (§ 6-153)), section 5-156 should be interpreted in the same manner as section 6-153. See *Robbins v. Board of Trustees of the Carbondale Police Pension Fund of Carbondale*, 177 Ill. 2d 533, 541 (1997) ("It is fundamental that where a word or phrase is used in different sections of the same legislative act, a court presumes that the word or phrase is used with the same meaning throughout the act, unless a contrary legislative intent is clearly expressed."). To this end, one federal court has found that, under section 5-156, "the [C]ode requires 'duty, occupational disease, or ordinary disability' to be proven by 'at least one licensed and practicing physician appointed by the board.' " *Taylor v. Retirement Board of the Policemen's Annuity & Benefit Fund of Chicago*, No. 22-CV-6104, 2023 WL 6213797, at *2 (N.D. Ill. Sept. 25, 2023) (quoting 40 ILCS 5/5-156 (West 2022)).

¶ 28 If we were to interpret section 5-156 in the same manner that *Nowak* interpreted section 6-153, we would have to conclude that the Board properly denied Moreland disability benefits. As

previously discussed, Dr. Levin was the only doctor appointed by the Board in this case, and he concluded that Moreland could "work in a full unrestricted capacity" despite his lumbar spine and hip issues. In other words, Dr. Levin found that Moreland's physical condition did not prevent him from performing any assigned duties in the police service, and thus, he was not disabled within the meaning of the Code. See 40 ILCS 5/5-115 (West 2022). However, given the specific facts of the present case, construing section 5-156 in the same manner that *Nowak* interpreted section 6-153 would ignore our supreme court's decision in *Kouzoukas*, 234 Ill. 2d 446, and a recent decision by this court in *Ohlicher v. Retirement Board of the Policemen's Annuity & Benefit Fund of Chicago*, 2024 IL App (1st) 231699-U.

¶ 29 In *Kouzoukas*, 234 Ill. 2d at 448-49, a former Chicago police officer injured her back while on duty, and over the next year, she worked limited duty occasionally, but otherwise was on medical leave. Her primary treating physician concluded that she had to limit her walking, sitting, and standing to no more than 30 to 45 minutes at any given time and she could not wear her gunbelt. *Id.* at 454. After applying for duty disability benefits, the Board held a hearing, where the officer's primary treating physician testified that she could not perform desk duty due to her back issues. *Id.* at 455. The Board's appointed doctor testified that he did not provide an opinion in his report to the Board as to whether the officer could return to work because the officer's disability was not "clear cut." *Id.* at 457. But the Board's appointed doctor testified that it would not be " 'prudent' " to have the officer return to full, unrestricted duty, though she could return to work with specific restrictions. *Id.* The commanding officer of the Chicago Police Department's medical services section testified that there were various positions within the department that were considered "restricted duty positions," which could be assigned to officers needing accommodations. *Id.* at 459. The commanding officer suggested a position that could

accommodate the officer's needs, but he acknowledged such a position had never been offered to her. *Id.* at 460. Ultimately, the Board denied the officer duty disability benefits. *Id.* at 461.

¶ 30 On appeal to our supreme court, it initially concluded that many of the Board's factual findings—namely that the officer only experienced subjective pain and she could return to full, unrestricted work—were against the manifest weight of the evidence. *Id.* at 465-68. In addition, the court determined that the officer presented evidence that she could not perform " 'any assigned duty.' " *Id.* at 470. Although the Board presented evidence there was a position within the Chicago Police Department that "might" accommodate the officer's restrictions, the Board did not present any evidence that such a position was offered to her. *Id.* at 469. Given this, the court found "the manifest weight of the evidence show[ed] that [the officer] carried her burden of proving that she was disabled, that is, that she had a physical condition which made her incapable of performing any assigned duty and that no position within her limitations was offered to her." *Id.* at 470.

¶ 31 Still, the Board argued that the officer's application for disability benefits could not depend on the Chicago Police Department having an available position consistent with her restrictions because, to hold as such, would encroach on the Board's exclusive, original jurisdiction. *Id.* at 470-71. In rejecting this argument, the court stated:

> "The Board has the duty under the Code to determine whether a claimant is disabled. In the case at bar, [the officer] presented evidence which established that she had chronic back pain which severely limited her ability to sit, stand, walk, drive, and wear a gunbelt. Moreover, because of these limitations, [the officer's] doctors did not provide her with a release to return to work. As a result, the Chicago police department would not reassign [her] to *any* position. Under these circumstances, [the officer] met her burden of proving that she was disabled. To

> hold otherwise would be to place [her] in an untenable 'catch 22' situation—unable to work because the Chicago police department will not assign her to a position in the police service which she can perform, yet unable to obtain disability benefits." (Emphasis in original.) *Id.* at 471.

Consequently, our supreme court held that the Board wrongly determined the officer had not met her burden to prove she was disabled. *Id.* at 470-71.

¶ 32 In *Ohlicher*, 2024 IL App (1st) 231699-U, ¶ 8, based on an officer's elbow injury, his treating physician determined that he could return to work with sedentary, light duty but barred him from using his firearm. After the officer applied for duty disability benefits, the Board's appointed doctor concluded that the officer could return to limited duty and he had the ability to use a firearm. *Id.* ¶¶ 9-10. However, the Board's appointed doctor would not conclude that the officer could safely perform an arrest and did not conclude that he could return to full, unrestricted duty. *Id.* ¶ 10. The officer applied for reinstatement twice, and both times, the Chicago Police Department's medical services section denied his application and determined he was not qualified to return without restrictions and not a candidate for limited duty. *Id.* ¶¶ 11, 16. Still, the Board denied him duty disability benefits, finding him capable of performing police duties. *Id.* ¶¶ 12, 15.

¶ 33 On appeal, this court observed that, although the officer's treating physician and the Board's appointed doctor agreed the officer could perform limited duty work, the officer had "presented uncontroverted evidence that he was never offered a limited duty position within the [Chicago Police] Department." *Id.* ¶¶ 22, 25. As a result of the officer's restrictions and the department's failure to offer him a limited duty position, this court found the officer "was in a catch-22 situation" like the officer in *Kouzoukas*. *Id.* ¶ 26. The court stated:

> "[The officer] was denied reinstatement as the [Chicago Police] Department determined that his injury rendered him incapable of performing the duties of an active police officer. The Board determined he was not disabled and was ineligible to receive duty disability benefits because it found that his injury did not prevent him from 'performing sworn, limited police duties.' " *Id.*

This court concluded "where the medical evidence established that his line-of-duty injury prevented him from performing duties of an active police officer and no evidence was presented that he was offered a limited duty position within the Department," the Board's determination that the officer was not disabled within the meaning of the Code was against the manifest weight of the evidence. *Id.* ¶ 27. Notably, following the decision, the Board filed a petition for leave to appeal to our supreme court, which was denied. See *Ohlicher v. Retirement Board of the Policemen's Annuity & Benefit Fund of Chicago*, No. 130914 (Ill. Sept. 25, 2024).

¶ 34 *Kouzoukas* and *Ohlicher* demonstrate how section 5-115 of the Code (40 ILCS 5/5-115 (West 2022)), which defines "[d]isability," and section 5-156 of the Code (*id.* § 5-156), which requires a Board-appointed doctor providing proof of a claimant's disability to the Board, interact. First, *Kouzoukas* and *Ohlicher* help define the word "[d]isability" in the Code. See *id.* § 5-115 (a disability is "[a] condition of physical *** incapacity to perform any assigned duty or duties in the police service"). Although the word "any" is not defined by the Code, *Kouzoukas* and *Ohlicher* show that "any" means, in essence, "some." See Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/any (last visited Nov. 4, 2024) [https://perma.cc/44ZG-FQB6] (defining "any" as "a or some without reference to quantity or extent"). In other words, an officer is disabled if they cannot perform unrestricted work and limited duty work.

¶ 35 For example, in both *Kouzoukas* and *Ohlicher*, the Board's appointed doctors determined that Chicago police officers could return to work with restrictions, *i.e.*, perform limited duty work. *Kouzoukas*, 234 Ill. 2d at 457; *Ohlicher*, 2024 IL App (1st) 231699-U, ¶ 10. Ordinarily, those conclusions would mean that the officers were *not* disabled, because, despite their physical condition, they could perform *some* duty or duties, if those duty or duties were assigned to the officers. But, the evidence in both cases showed that the Chicago Police Department did not offer the officers positions accommodating their restrictions. *Kouzoukas*, 234 Ill. 2d at 470-71; *Ohlicher*, 2024 IL App (1st) 231699-U, ¶ 22. Thus, despite the Board's appointed doctors determining that the officers could perform *some* duties under the appropriate circumstances, the officers were nevertheless disabled within the meaning of the Code because no positions accommodating their limitations had been offered to them. See *Terrano v. Retirement Board of the Policemen's Annuity & Benefit Fund of Chicago*, 315 Ill. App. 3d 270, 276 (2000) ("[I]t is a firm offer of a limited duty position that could be performed by an individual with the applicant's physical limitations that renders the applicant not disabled within the meaning of the Code despite his inability to perform the duties of an active police officer.").

¶ 36 As our supreme court stated in *Kouzoukas*, 234 Ill. 2d at 471, to find an officer disabled under such circumstances would place the officer "in an untenable 'catch 22' situation—unable to work because the Chicago police department will not assign her to a position in the police service which she can perform, yet unable to obtain disability benefits." See also *Ohlicher*, 2024 IL App (1st) 231699-U, ¶ 26 (discussing the "catch-22 situation"). Placing an officer in such an untenable and unjust situation therefore precludes section 5-156 of the Code (40 ILCS 5/5-156 (West 2022))—requiring a Board-appointed doctor providing proof of a claimant's disability to the Board—from being applied as literally written. See *Cassidy v. China Vitamins, LLC*, 2018 IL

122873, ¶ 17 (asserting that the "literal reading [of a statute] must fail if it yields absurd, inconvenient, or unjust results").

¶ 37 In the present case, the Board's denial of Moreland's application for disability benefits placed him in the same catch-22 situation as the officers in *Kouzoukas* and *Ohlicher*, albeit under different circumstances. No one disputes that Dr. Levin, the Board's appointed doctor, concluded that Moreland could return to full, unrestricted duty, which ordinarily would mean Moreland is *not* disabled within the meaning of the Code. See 40 ILCS 5/5-115 (West 2022). Nevertheless, upon Moreland's application for reinstatement with the Chicago Police Department, the department declined to offer him *any* position—either a full, unrestricted duty position or a limited duty position. As such, Moreland's physical condition rendered him unable to perform any assigned duty or duties in the police service. See *id.* In turn, just like the officers in *Kouzoukas* and *Ohlicher*, the Chicago Police Department's denial of reinstatement renders Moreland unable to work for the department yet unable to obtain disability benefits to compensate him for his inability to work for the department. As a result, despite Dr. Levin's conclusion, the Board's finding that Moreland was not disabled within the meaning of the Code was against the manifest weight of the evidence, as the opposite conclusion is clearly evident based on the evidence. Given the evidence presented by Moreland, he met his burden to prove he is disabled within the meaning of the Code. Consequently, the Board's decision to deny Moreland duty disability benefits based on him being not disabled was erroneous.

¶ 38 We recognize the interpretation of section 6-153 in *Nowak* and the fundamental statutory interpretation cannon "that where a word or phrase is used in different sections of the same legislative act, a court presumes that the word or phrase is used with the same meaning throughout the act, unless a contrary legislative intent is clearly expressed." *Robbins*, 177 Ill. 2d at 541.

However, in *Nowak*, the issue of reinstatement to a position that could accommodate the claimant's physical condition never arose. The issue of reinstatement did arise in *dicta* in *Reed v. Retirement Board of the Fireman's Annuity & Benefit Fund of Chicago*, 376 Ill. App. 3d 259, 269 (2007), where a Chicago firefighter argued it was unfair for the Retirement Board of Fireman's Annuity and Benefit Fund of Chicago to deny him duty disability benefits when the Chicago Fire Department found him unfit for duty and denied him reinstatement. Initially, the appellate court found that the firefighter had forfeited review of this issue. *Id.* at 270. Nevertheless, relying on *Nowak*, the court concluded that, had the issue been preserved, the firefighter would not have been entitled to duty disability benefits because no Board-appointed physician had furnished proof that he was disabled. *Id.* However, the appellate court decided *Reed* in 2007, two years before our supreme court's decision in *Kouzoukas*, and the reinstatement issue was *dicta* because the claimant had forfeited administrative review of the issue. We cannot say how the *Reed* court would have discussed section 6-153 and the claimant's denial of reinstatement with the benefit of *Kouzoukas* and its repudiation of the catch-22 situation, which, as discussed, precludes section 5-156 of the Code (40 ILCS 5/5-156 (West 2022)) from being applied as literally written. See *Cassidy*, 2018 IL 122873, ¶ 17. But, to the extent the decisions are in conflict, *Kouzoukas* obviously takes precedent.

¶ 39 Still, the Board argues making its disability benefits decisions contingent on the Chicago Police Department's work assignments encroaches on the exclusive, original jurisdiction of the Board over disability benefits matters. See 40 ILCS 5/5-189 (West 2022) (providing that "[t]he Board shall have exclusive original jurisdiction in all matters relating to or affecting the fund, including, in addition to all other matters, all claims for annuities, pensions, benefits or refunds"). But this exact argument was rejected in *Kouzoukas*, 234 Ill. 2d at 470-72, and *Ohlicher*, 2024 IL

App (1st) 231699-U, ¶ 28. During oral argument, the Board also suggested that officers unhappy with their placement in catch-22 situations could simply sue the Chicago Police Department to be reinstated. However, in *Buttitta v. City of Chicago*, 9 F.3d 1198, 1205 (7th Cir. 1993), the Seventh Circuit Court of Appeals found that, where the Chicago Police Department provides an inactive officer a sufficient opportunity to demonstrate his or her fitness for active duty through a physical examination and the Chicago Police Department does not find the officer fit for duty, the inactive officer has no cause of action to be reinstated.

¶ 40 Given our conclusion that Moreland met his burden to prove that he is disabled within the meaning of the Code, the order of the circuit court and the decision of the Board must be reversed. See *Ohlicher*, 2024 IL App (1st) 231699-U, ¶ 30. Under the Code, to be entitled to duty disability benefits, a claimant must prove (1) he or she was an active police officer, (2) who became disabled, (3) as a result of an injury incurred in the performance of an act of duty. 40 ILCS 5/5-154(a) (West 2022). Because the Board only premised its denial of Moreland's application for duty disability benefits based on the disability element, which we have just concluded was against the manifest weight of the evidence, Moreland is entitled to duty disability benefits. See *Ohlicher*, 2024 IL App (1st) 231699-U, ¶ 30.

¶ 41 Additionally, as Moreland requests on appeal, he is entitled to court costs and litigation expenses, including reasonable attorney fees, for prevailing in this administrative review action. See 40 ILCS 5/5-228 (West 2022). To this end, we remand the matter to the circuit court to conduct a hearing to determine the court costs and litigation expenses, including reasonable attorney fees, to which Moreland is entitled pursuant to section 5-228 of the Code (*id.*). See *Siwinski v. Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago*, 2019 IL App (1st) 180388, ¶ 36. We note that Moreland has also requested that he be awarded the cost of any medical

insurance he incurred as a result of the Board denying him duty disability benefits. The court can consider this request in conjunction with its hearing to determine the costs and expenses he is entitled to statutorily. Further, upon remand to the circuit court, it shall order the Board to grant Moreland's application for duty disability benefits. See *id.* (upon remand to the circuit court to conduct a hearing on court costs and litigation expenses owed to a claimant-fireman, directing the court to also "enter an order remanding the matter to the [Retirement Board of the Firemen's Annuity and Benefit Fund of the City of Chicago] for an award of duty disability benefits").

¶ 42 III. CONCLUSION

¶ 43 For the foregoing reasons, we reverse the decision of the Board, reverse the judgment of the circuit court of Cook County, and remand the matter to the circuit court with directions.

¶ 44 Board decision reversed and circuit court judgment reversed; cause remanded.

No. 1-24-0049

***Moreland v. Retirement Board of the Policemen's Annuity & Benefit Fund of Chicago*, 2024 IL App (1st) 240049**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 22-CH-12585; the Hon. Sophia H. Hall, Judge, presiding.
Attorneys for Appellant:	Ralph J. Licari, of Ralph J. Licari & Associates, Ltd., of Northfield, for appellant.
Attorneys for Appellee:	Sarah A. Boeckman and Vincent D. Pinelli, of Burke Burns & Pinelli, Ltd., of Chicago, for appellee.

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT
COOK COUNTY, ILLINOIS

DONALD B. MORELAND
Plaintiff/Petitioner

v.

THE RETIREMENT BOARD OF THE POLICEMENS ANNUITY AND BENEFIT FUND, ET AL.
Defendant/Respondent

Reviewing Court No: 1-24-0049
Circuit Court/Agency No: 2022CH12585
Trial Judge/Hearing Officer: SOPHIIA H. HALL

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Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

CERTIFICATION OF RECORD

The record has been prepared and certified in the form required for transmission to the reviewing court. It consists of:

6 Volume(s) of the Common Law Record, containing 1736 pages
1 Volume(s) of the Report of Proceedings, containing 42 pages
0 Volume(s) of the Exhibits, containing 0 pages

I hereby certify this record pursuant to Supreme Court Rule 324, this 11 DAY OF MARCH, 2024

Iris Martinez

(Clerk of the Circuit Court or Administrative Agency)

IRIS MARTINEZ, CLERK OF THE COOK JUDICIAL CIRCUIT COURT ©
CHICAGO, ILLINOIS 60602

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Circuit Court/Agency No: 2022CH12585
Trial Judge/Hearing Officer: SOPHIIA H. HALL

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No. 131343

IN THE
SUPREME COURT OF ILLINOIS

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

NOTICE OF FILING

PLEASE TAKE NOTICE that on April 30, 2025, I caused to be filed with the clerk of the Supreme Court of Illinois, **BRIEF AND APPENDIX OF DEFENDANT-PETITIONER RETIREMENT BOARD OF THE POLICEMEN'S ANNUITY AND BENEFIT FUND OF THE CITY OF CHICAGO**, a copy of which is attached hereto and served upon you by operation of the Court's Odyssey electronic filing system.

Respectfully submitted,

RETIREMENT BOARD OF THE POLICEMEN'S ANNUITY AND BENEFIT FUND OF THE CITY OF CHICAGO
By: /s/ Vincent D. Pinelli
One of Its Attorneys

Vincent D. Pinelli (ARDC #3122437) (vpinelli@bbp-chicago.com)
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BURKE BURNS & PINELLI, LTD.
70 W. Madison Street, Suite 4300
Chicago, Illinois 60602; (312) 541-8600

CERTIFICATE OF FILING AND SERVICE

On April 30, 2025, I electronically filed the foregoing **BRIEF AND APPENDIX 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:

Ralph J. Licari
rjl@rjl-ltd.com
Ralph J. Licari & Associates, Ltd.
540 W. Frontage Road, Suite 3020
Northfield, Illinois 60093
(312) 541-8989
Counsel for: Plaintiff-Respondent

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