No. 131305

IN THE

SUPREME COURT OF ILLINOIS

TAMICA N. RAINEY,

Plaintiff-Appellee,

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

Defendant-Appellant.

On Appeal from the Illinois Appellate Court,
First Judicial District, No. 1-23-1993.
There Heard On Appeal from the Circuit Court of Cook County, Illinois County Department, Chancery Division, 2022 CH 11069.
The Honorable Joel Chupack, Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE

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ARGUMENT

The brief filed by Defendant-Appellee, the Retirement Board of the Policeman's Annuity & Benefit Fund (hereinafter "Pension Board" or "Board") is a case study in obfuscation.

I. THE BOARD'S UNDERSTANDING OF SECTION 5-154 AND 5-156 IS INCORRECT.

The Board's appeal is dominated by its contention that Section 5-154 governs initial hearings for disability benefits while Section 5-156 exclusively governs the discontinuation of disability benefits. (Bd. Brief, p. 8-9). This is demonstrably false. Nevertheless, the Board expands on its wayward argument by claiming that Plaintiff-Appellee, Officer Tamica N. Rainey's[1] ("hereinafter "Officer Rainey" or "Rainey") 2022 hearing was held pursuant to Section 5-156 while her first hearing for benefits in 2017 was "brought pursuant to Section 5-154." *Id.,* at 9. Again, this is not true. The proofs required at both the 2017 and 2022 hearings were the same, the applied-for benefit was the same, and Sections 5-154 and 5-156 applied to all the hearings.

The *Rainey* Court correctly points out that Section 5-156 applies to any hearing regarding disability benefits, stating: "The language of section 5-156, which governs how proof of a disability should be furnished to the Board—

1. The Board's Brief incorrectly spells the first name of the Plaintiff-Appellee as "Tamika".

initially ***and at status proceedings*** to determine whether a disability has ceased…" [emphasis added] *Rainey v. Ret. Bd. of the Policemen's Annuity & Ben. Fund of the City of Chi.,* 2024 IL App (1st) 231993, *P46.

Section 5-156 contains procedures that apply to both the initial application and to ongoing status hearings in which the officer's right to continued benefits is reviewed, including Section 5-154 duty disability, Section 5-154.1 occupational disease disability, and Section 5-155 ordinary disability.

Contrast Section 5-156 (*Proof of Disability)* with Section 5-154 which defines the duty disability benefit but does not provide any procedures or evidentiary requirements for attaining the benefit. Likewise, Section 5-154.1 and Section 5-155 define the occupational disease disability benefit and ordinary disability benefit, respectively. While each defines a specific benefit, neither provides a procedure or evidentiary requirement that must be met in order to receive those benefits. That function belongs to Section 5-156 and applies to all disability hearings that take place before the Board.

The Board acknowledges that it conducted two separate hearings concerning Officer Rainey in 2017 and 2022 and that updated medical records and a new IME were introduced in 2022. (Bd. Brief, p. 13). However, the Board is mistaken when it refers to the second hearing as one brought "under Section 5-156" and the 2017 proceeding as brought "pursuant to Section 5-154." (*Id.,* at 9, 13).

Perhaps the Board's error is understandable given that the *Koniarski* and *Warner* cases, the unpublished orders upon which it relies, both make the same mistake in their sparse treatment of the issue. *See Warner v. Retirement Board of the Policeman's Annuity & Benefit Fund of Chicago*, 2022 IL App (1st) 200833-U; *Koniarski v. Retirement Board of the Policeman's Annuity & Benefit Fund of Chicago*, 2021 IL App (1st) 200501-U. The *Rainey* court and its published opinion finally got it right and awarded attorney's fees to Officer Rainey.

II. SECTION 5-228(b) APPLIES TO ANY HEARING INVOLVING DUTY DISABILITY BENEFITS.

The Board urges a "strict construction" of Section 5-228(b) that is inconsistent with decades of precedent calling for the Illinois Pension Code to be liberally construed for its participants. See *Holland v. City of Chicago,* 289 Ill. App. 3d 682, 689-90 (1997). However, even if this Court applies a strict construction of Section 5-228(b) as the Board advocates, the results should be the same as the lower court opinion. That is because every officer who appears before the Board on an initial application *or* status hearing is there on his or her application for disability benefits, whether new or continued. In fact, Section 5-156 of the code states that "A disabled policeman who receives a duty, occupational disease, or ordinary disability benefit shall be examined at least once a year by one or more physicians appointed by the board. When the disability ceases, the board shall discontinue payment of the benefit, and the policeman shall

be returned to active service." Although officers are examined at least once a year, only a small percentage of them are called back to the Board for a status review hearing. When that happens, there is no new pleading filed by the Board or the officer. The officer appears on his or her original application for benefits. Hence, Section 5-228(b) applies.

Nowhere in Section 5-228(b) is the award of attorney's fees limited solely to new applications and/or first hearings. Furthermore, there is no language in Section 5-228(b) to suggest that the fee provision does not apply to officers who were previously awarded duty or occupational benefits. If the legislature intended that the fee provision of Section 5-228(b) be limited to new applications for duty or occupational disability, it would have written it into the statute. Indeed, the legislature did see fit to limit the application of the statute by excluding ordinary disability applications from the attorney's fee provision.

While Section 5-154 of the Illinois Pension Code defines the benefit, i.e. duty disability, Section 5-156 describes both the process for obtaining the benefit and the right to continue the benefit. When Officer Rainey appeared before the Board on June 30, 2022, her disability benefits had already been terminated. When she appeared for her final hearing on August 25, 2022, she was clearly applying to reinstate her disability benefits. The suggestion that she was not there on an application for benefits is preposterous.

The Board cites *Kelly v. Ret. Bd. of Policemen's Annuity & Benefit Fund of City of Chicago*, 2022 IL App (1st) 210483, as authority for its assertion that, "the discontinuation of Plaintiff's duty disability benefits in accordance with Section 5-156 does not permit the Circuit Court to award reasonable attorney's fees." (Bd. Brief, p. 9). *Kelly* made no such ruling. Rather, *Kelly* confirms that attorney fees and costs are properly awarded to an officer who prevails against the Board by challenging on administrative review the denial of the officer's application for duty disability benefits. Nowhere in the *Kelly* case does the court address the issue of an officer that has had her disability benefits "discontinued," suspended, or terminated and then had to have a subsequent hearing to put those disability benefits back in place.

The truth of the matter is that *Kelly* provides support for the instant case. The *Kelly* court states, "The plain language of section 5-228 provides that an officer is entitled to recover attorney fees and costs if (1) the Board denies the officer's application for "duty disability benefits," (2) the officer brings an action challenging the denial of "disability benefits" on administrative review, and (3) the officer "prevails" in the action in administrative review. *Kelly,* ¶70. Officer Rainey meets these three criteria.

The Pension Board can hardly claim that Rainey was not applying for and seeking disability benefits after the Pension Board terminated her benefits. Rainey was obviously at the Pension Board doing just that. This is evidenced in the record

on August 25, 2022, when the Pension Board's counsel offered a "compromise" to Rainey. (C. 758). The compromise would be for Rainey to agree to have the Pension Board award her a lesser "ordinary disability" benefit in exchange for her agreement not to proceed with her request for duty disability benefits. (C. 758). She refused and continued to pursue her duty-related disability benefit.

Additionally, just prior to the evidentiary hearing, Rainey was issued this warning by Board President Stiscak:

> **President Stiscak: …***the duty disability is no longer available* and so that's why we're not offering duty disability. Essentially, we're going to take a vote on the duty disability at this point.
>
> **Officer Rainey:** Ok.
>
> **President Stiscak:** And it will be with prejudice, meaning the duty disability is off the table, assuming the vote goes – whichever way it goes.
>
> (C. 331 -332).

The fact that the Pension Board's president stated that the Pension Board is not "offering" duty disability establishes, again, that Rainey was before the Board seeking those duty disability benefits. Her claim was denied by the Board, though she ultimately prevailed on administrative review.

It should be noted that while the Pension Board claims that it initiated the proceedings at issue here pursuant to Section 5-156, its argument omits the first three sentences of the section. (Bd. Brief, p. 8). The omitted sentences are as follows:

> Sec. 5-156. *Proof of disability - Physical examinations*. 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. In cases where the board requests an applicant to get a second opinion, the applicant must select a physician from a list of qualified licensed and practicing physicians who specialize in the various medical areas related to duty injuries and illnesses, as established by the board. The board may require other evidence of disability.
>
> 40 ILCS 5/5-156 (West 2024).

A plain and complete reading of Section 5-156 demonstrates that it applies to "duty, occupational disease, or ordinary disability" and not exclusively to cases regarding a denial of duty benefits that have been previously awarded as the Board wrongly suggests.

III. RAINEY WAS REQUIRED TO PROVE ALL OF THE ELEMENTS FOR A DUTY DISABILITY CLAIM AT HER HEARING IN 2022.

The Pension Board misleads this Court by suggesting that at the August 25, 2022 hearing, the Board no longer needed to determine whether Officer Rainey is disabled because of an act of duty. (Bd. Brief, p.13). In its Petition for Leave to Appeal to this Court, the Board maintained that at the 2022 hearing, "it must decide only whether that officer has recovered from the injury resulting in the disability. Issues surrounding an 'act of duty' or causation of the disability are no longer pertinent." (Board PLA, p. 8). But that is not what actually happened in Officer Rainey's case at the Board.

The Board required Rainey to connect her disability to the act of duty; the on-duty squad car accident where she suffered her multiple injuries. Tellingly, the Board claimed in the Appellate Court that: "There is no question the evidence in the record supports the conclusion plaintiff is no longer suffering from a disability originally causally linked to the traffic accidents." (Board Appellate Brief, p. 18). The Board also argued on appeal that, "[T]he evidence presented at the hearing on the termination of disability benefits revealed that according to Dr. Neal, Rainey was no longer disabled due to the injuries that had formed the basis of her original grant of duty disability benefits. Her benefits were removed on those grounds." (Board Appellate Brief, p. 21 - 22). Additionally, the Board's order states: "The Pension Board now concludes Claimant is no longer disabled and unable to return to police service *as a result of her duty-related injuries."* (C. 64, emphasis added).

Accordingly, there is no question that at her hearing on August 25, 2022, the issues that Rainey was required to prove were: 1) whether she was disabled *and*, 2) if she was disabled, the cause of the disability. These are the exact same issues the Pension Board addressed at Rainey's original disability hearing in 2017. If there is any doubt, consider these statements from the Board's Appellate Brief:

> There is no question the evidence in the record supports the conclusion plaintiff is no longer suffering from a disability originally causally linked to the traffic accidents. (Bd. Appellate Brief, p. 18).
>
> While the totality of the records and evidence may appear upon cursory review to present plaintiff as having some significant additional medical issues, ***those issues were not the issues relevant to the Pension Board's***

> ***review in 2022.*** (Bd. Appellate Brief, p. 25).
>
> To obtain a line-of-duty disability pension, a plaintiff must prove that the duty related injury is a "causative factor contributing… to the disability. A sufficient nexus must exist between the injury and the performance of an act of duty. ***While the plaintiff met this burden in 2017, she failed to do so in 2022.*** (Bd. Appellate Brief, p. 26).

Ironically, the Pension Board has abandoned its earlier determination that Rainey is no longer disabled as a result of her original duty-related injuries. It does not seek review of Rainey's disability benefits here. (See Board PLA, p. 1).

IV. RAINEY'S APPLICATION FOR DUTY DISABILITY BENEFITS WAS DENIED BY THE PENSION BOARD IN 2022.

The Pension Board boldly claims that Rainey's duty disability benefits were not denied by the Pension Board in 2022 because she had been receiving benefits for a number of years and the Pension Board, as required by the Code, initiated a new proceeding under Section 5-156 to determine whether she remained disabled years later. (Board Brief, p. 8).

The Appellate Court saw right through this argument, noting:

> In 2022, Officer Rainey was before the Board on what the Board has referred to as a status hearing *relative to her ongoing section 5-154 application for duty disability benefits*. Officer Rainey's request for ongoing disability benefits was denied by the Board, and she then prevailed on administrative review. (Emphasis Added).

Rainey, 2024 IL App (1st) 231993, [*P61].

The Court well understood that the evidentiary hearing was not limited to whether Rainey remained disabled but instead addressed *both* her disability *and*

the cause of the disability. The Pension Board required Rainey to prove that she was disabled, and that the disability was the result of the original injury on duty. In fact, the Pension Board's Brief with Appendix in the Appellate Court could not be any clearer when the Pension Board states, "To obtain a line-of-duty disability pension, a plaintiff must prove that the duty related injury is a 'causative factor contributing… to the disability." It also states: "While the plaintiff met this burden in 2017, she failed to do so in 2022." (Board Appellate Brief, p. 26). The fact that the Pension Board ruled that she failed to meet her burden of demonstrating that her duty-related injury was a causative factor of her disability at the August 25, 2022 hearing should close the book on the entire issue. It could not be more evident that the Board required Rainey to meeting the same evidentiary burden in 2022 when she appeared (without benefits) that she had to meet in 2017 at her initial duty disability hearing. As such, she is clearly entitled to an award of attorney's fees.

V. THE BOARD'S RELIANCE ON UNPUBLISHED ORDERS IS HARDLY COMPELLING.

The Pension Board takes issue with the fact that the *Rainey* court, in a published opinion, awarded attorney's fees while two prior unpublished orders did not.

Illinois Supreme Court Rule 23(a) states:

> Opinions. A case may be disposed of by an opinion only when a majority of the panel deciding the case determines that at least one of

> the following criteria is satisfied: (1) the decision establishes a new rule of law or modifies, explains or criticizes an existing rule of law; or (2) the decision resolves, creates, or avoids an apparent conflict of authority within the Appellate Court.

The decision below in *Rainey* is a Rule 23(a) opinion. The cases that the Pension Board claims are in conflict are Rule 23(b) written orders which are reserved for cases which do not qualify for disposition by opinion. Ill.Sup.Ct.R. 23(b). These two cases, *Warner* and *Koniarski,* are both Rule 23(b) orders and, as such, are not precedential. Ill.Sup.Ct.R. 23(d)(1). *See Warner v. Retirement Board of the Policeman's Annuity & Benefit Fund of Chicago*, 2022 IL App (1st) 200833-U; *Koniarski v. Retirement Board of the Policeman's Annuity & Benefit Fund of Chicago*, 2021 IL App (1st) 200501-U. Nonprecedential Rule 23(b) orders entered on or after January 1, 2021, may be cited only for persuasive purposes. *Id.* Yet, these orders are the cases cited and relied upon by the Pension Board. *Rainey,* on the other hand, is the only published decision that addresses the issues raised by the Pension Board.

VI. THE APPELLATE COURT'S RELIANCE ON THE ABSURD RESULT DOCTRINE IS CORRECT

This Honorable Court has made clear, "[w]hen a proffered reading of a statute leads to absurd results or results that the legislature could not have intended, courts are not bound by that construction, and the reading leading to absurdity should be rejected." *Dawkins v. Fitness International, LLC*, 2022 IL 127561, [*P 27].

The Illinois legislature clearly intended that Section 5-228 apply to officers who were improperly denied duty-related disability benefits. Stating that the legislature only intended Section 5-228 to apply to officers on their "initial" application makes no sense. If that were the case, the Pension Board could easily approve duty disability benefits and, at its next monthly meeting, wrongly remove those benefits and thereby avoid paying attorney's fees when the wrongful denial is ultimately challenged and reversed on administrative review. That would be a profoundly absurd result that the law should never condone.

VII. LEGISLATION CURRENTLY PENDING IN SPRINGFIELD SEEKS TO CODIFY THE *RAINEY* APPELLATE OPINION

The Board cites a portion of the Illinois House Transcript for House Bill 2470 which is now Section 5-228 as evidence of the legislative intent to limit exposure to the pension fund on claims for attorney's fees. However, nowhere in the transcript is there ***any*** language or suggestion that Section 5-156 limits or prevents the recovery of attorney's fees. *See* Illinois House Transcript, 2019 Reg. Sess. No. 37 (HB 2470). This is because *all* disability claims require the application of Section 5-156. Representative Burke was clear when she stated that the fee provision applies "…where if a [sic] officer is appealing a denial of a disability benefit if they were to prevail upon appeal in the Circuit Court or in the Appellate Court that they would be able to have their legal fees reimbursed."

The Board believes that the fact that House Bill 5264 was not passed provides support for its position. However, the Board fails to advise this Court that two new bills were introduced in place of H.B. 5264. Senate Bill 1191 which proposes to amend Section 5-228 was filed on January 1, 2025, referred to assignments on January 24, 2025, and is currently pending. (S.B. 1191, 104th Gen. Assemb., Reg. Sess. (Ill. 2024)). House Bill 3354 which would also amends Section 5-228 was filed on February 7, 2025, referred to Rules Committee on February 18, 2025, re-referred to the Rules Committee on March 21, 2025, and is also currently pending. (H.B. 3354, 104th Gen. Assemb., Reg. Sess. (Ill. 2024)).

Because these two new bills are currently pending in the Illinois legislature, the Board's contention that "the failure of the legislature to address these prior legal decisions can be an indication of the legislature's acceptance of the pre-existing judicial interpretation of Section 5-228(b)" is meritless. (See Bd. Brief, p. 18). Similarly, the Board's allegation that the "proposed legislation implies the legislature did not originally intend to award attorney's fees if the Pension Board's decision to ***terminate*** benefits was reversed on administrative review" is absurd. (Bd. Brief, p. 18, emphasis in original). The two pending bills were introduced in 2025, after the *Rainey* opinion was issued. The legislature is presumed to know how courts have interpreted a statute and may amend a statute if it intended a different construction. *In re Estate of Rivera*, 2018 IL App (1st) 171214, P. 55. The only proposed amendments to Section 5-228(b) clearly are in support of the

lower court opinion in *Rainey.* This is a clear indication that the legislature supports the approach taken in *Rainey* and seeks to codify its holding in the Pension Code and keep this recalcitrant Board at bay.

CONCLUSION

As a result of the Pension Board's wrongful termination and ultimate denial of her disability benefits, Officer Tamica Rainey was forced to litigate a Petition for Administrative review in both the Circuit Court, Appellate Court, and now the Illinois Supreme Court. The litigation has cost Officer Rainey many thousands of dollars.

The court below recognized that the legislature's clear and logical intent is to prioritize all officers who were "wrongly denied job-related disability benefits." *Rainey*, 2024 IL App (1st) 231993, [* P 62]. Furthermore, the plain language of Section 5-228(b) and the plain language of the Pension Code support the *Rainey* Court's interpretation.

The Board's use of the word "discontinuation" as opposed to "denial" as a basis for determining if fees are allowed should not be well received, particularly after the Board terminated Rainey's benefits and then forced her to present and meet the same evidentiary burden in 2022 that she had in 2017. Rainey's benefits were denied, and she is clearly entitled to an award of attorney's fees under Section 5-228.

One last thing. These proceedings were only necessary because the Board

refuses to follow this Court's explicit instructions on the issue of returning disabled officers to work. In *Kouzoukas v. Retirement Board of Policemen's Annuity and Benefit Fund of City of Chicago*, 234 Ill. 2d 446, 471 (2009), the Board was advised that it should have "granted Officer Kouzoukas a duty disability benefit and instructed her to present herself to the Chicago police department with a doctor's release listing her restrictions as determined at the hearing." If CPD offered Kouzoukas a position which accommodating her restrictions set forth in the release, she would no longer be entitled to duty disability benefits. *Id.,* at 471-472. On the other hand, if CPD would not reassign Kouzoukas to position within her limitations, she would continue to receive duty disability benefits. *Id.,* at 472.

This very specific guidance – issued back in 2009 – remains effective, simple, and workable today. It should have been used in this case. Problem is, the Board has never used it, preferring to carp and chafe against *Kouzoukas* and repeatedly force disabled officers into years-long court battles that those officers simply cannot afford. The Board's intransigence on the issue is precisely what caused Section 5-228(b) to come into existence a decade later in 2019.

WHEREFORE, Plaintiff, Tamica N. Rainey, by and through her attorney, Ralph J. Licari, respectfully request this Honorable Court affirm the decisions in both the Appellate Court and Circuit Court and award Plaintiff all other relief this Court deems appropriate.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief excluding the pages containing 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 16 pages.

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No. 131305
NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

TAMICA N. RAINEY,	)
	)
Plaintiff-Appellee,	)
	)
-v-	)
	)
THE RETIREMENT BOARD OF THE POLICEMEN'S ANNUITY AND BENEFIT FUND OF THE CITY OF CHICAGO,	)
	)
Defendant-Appellant.	)

The undersigned, being first duly sworn, deposes and states that on July 7, 2025, I electronically filed and served upon the Clerk of the above court the foregoing **BRIEF OF PLAINTIFF-APPELLEE, TAMICA N. RANEY**. I further certify that on July 7, 2025 service of the Brief will be accomplished through the Odyssey eFileIL system and via email to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ Ralph J. Licari
Ralph J. Licari

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Ralph J. Licari
Ralph J. Licari