No. 131343

IN THE

SUPREME COURT OF ILLINOIS

DONALD B. MORELAND,

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. 1-24-0049
There Heard On Appeal from the Circuit Court of Cook County, Illinois
County Department, Chancery Division, 2022 CH 12585
The Honorable Sophia H. Hall, Judge Presiding

BRIEF OF PLAINTIFF-APPELLEE DONALD B. MORELAND

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PLAINTIFF'S STATEMENT OF ADDITIONAL FACTS

On February 28, 2017, Officer Moreland was on duty, assigned to the 015 Chicago Police Department ("CPD") District driving a marked CPD vehicle. (C. 27, 1583). During his tour of duty, he responded to an in-progress call of a person shot with his emergency equipment activated. (C. 27, 1584). Prior to arriving at the location, Moreland was involved in a traffic crash after his vehicle was struck by another vehicle causing Moreland's vehicle to spin and collide with a parked vehicle and a large tree. (C. 27, 1584).

On February 15, 2022, being unable to return to work, Moreland applied for duty disability benefits. (C. 92 - 93). A hearing was held by the Pension Board on October 27, 2022, and on December 2, 2022, the Pension Board issued its Decision and Order concluding that Moreland is not entitled to a Duty Disability pension pursuant to §5-154 of the Illinois Pension Code, nor is he entitled to an Ordinary Disability pension pursuant to §5-155. (C. 26, 42).

In May of 2022, after Moreland had applied for temporary disability benefits, the Board deferred the request in favor of a full hearing. (C. 1603). In light of the deferral, Moreland's attorney told him to request reinstatement with the Chicago Police Department. (C. 1603). Thereafter, Moreland applied for reinstatement as a police officer. (C. 1603-1604).

In September of 2021, Dr. Steven Mardjetko, MD told Moreland he could not release him back to work and that Moreland is permanently disabled from police work. (C. 1598 -1599). On June 13, 2022, Dr. Mardjetko authored a

medical report which states, "It is my medical opinion that Donald Moreland is permanently disabled from activities of active police work and also unable to safely carry and discharge a weapon." (C. 506, 1601-1602). Moreland testified that all his doctors recommended against back surgery because it could potentially do more harm than good. (C. 1608).

In July of 2022, as part of Moreland's reinstatement application, he underwent a physical examination with Dr. Kristin Houseknecht, a physician with Concentra Medical Center. (C. 238-239). She concluded that Moreland was not cleared for full, unrestricted duty because his treating physician, Dr. Mardjetko, had opined that he was "permanently disabled." (C. 1501). 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." (C. 505). 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. (C. 990-992).

Moreland testified that his medical condition as of the date of the hearing had not improved and that he is unable to safely carry, handle and use his department firearm because he suffers from "really bad back spasms" to the point that they are "debilitating", and he needs to lay on the ground. (C. 995). Since these spasms happen to Moreland all the time, there is no chance he could carry a firearm because he could be killed, or his gun could be taken and someone else could be killed. (C. 1609). Moreland further testified that his work restrictions have not changed regarding his inability to fire his weapon. (C. 1610).

The Board selected Dr. Jay L. Levin to examine Moreland, claiming that the exam was pursuant to §5-156 of the Illinois Pension Code. (C. 34). Dr. Levin performed the exam of Moreland's lumbar spine and left hip on May 10, 2022. (C. 34, 106). Levin's written report reads:

> ***1.) Diagnosis. Regarding the claimed incident, what is your current diagnosis?*** Lumbar myofascial strain and left labral tear status post left hip arthroscopy, labral repair, acetabuloplasty. synovectomy and capsular plication on June 9, 2021. ***Are there any current disabling conditions, other than the one(s) from the claimed incident?*** No. ***If so, what are those diagnoses?*** Does not apply.
>
> (C. 112).

Dr. Levin further opined that Moreland "can work in a full duty unrestricted capacity regarding his lumbar spine and left hip as it relates to the occurrence of February 28, 2017. (C. 112).

ARGUMENT

I.

THE APPROPRIATE STANDARD OF REVIEW IS WHETHER THE BOARD'S DECISION WAS CLEARLY ERRONEOUS

The review of an administrative agency's decision extends to all questions of fact and law presented by the entire record. *Kouzoukas v. Retirement Board of Policemen's Annuity and Benefit Fund of City of Chicago*, 234 Ill. 2d 446, 463 (2009). When reviewing an administrative agency's decision, the court should set aside any findings which are clearly against the manifest weight of the evidence. *Id.*

The applicable standard of review of an administrative agency's decision depends upon whether the question is one of fact, one of law, or a mixed question of fact and law. *Id.* Although the findings of fact by the Defendant, Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago ("Pension Board" or "Board") are given considerable deference, they are, nonetheless, subject to reversal if they are against the manifest weight of the evidence. *Id.* Questions of law, however, are reviewed de novo, while mixed questions of law and fact are reviewed under the clearly erroneous standard. *Id.,* at 463-464. "An administrative decision is clearly erroneous where the reviewing court is left with the definite and firm conviction that a mistake has been made." *Kouzoukas,* at 464.

In the instant case, this court should employ the clearly erroneous standard of review. It used the same standard of review for Officer Maria Kouzoukas. In that case, the Board questioned whether Kouzoukas was disabled within the meaning of the Code. *Id.,* at 464. In Officer Moreland's case, the Board is doing the same thing that it did in *Kouzoukas*, claiming that the officer is not disabled within the meaning of Article 5 of the Illinois Pension Code. Our high court explained: "To the extent that this issue requires us to interpret the meaning of the Code provision, it is a mixed question of law and fact, subject to the clearly erroneous standard." *Id.* Hence, the clearly erroneous standard is appropriate.

II.

***KOUZOUKAS* AND *TERRANO* ARE CONTROLLING**

It has long been the law in Illinois that a Chicago Police officer such as Moreland carries his burden of proving disability by demonstrating that he is incapable of performing any assigned duty and that no position within his limitations was offered to him. See *Terrano v. Retirement Board of the Policemen's Annuity & Benefit Fund,* 315 Ill. App. 3d 270, 274-76 (2000), *appeal denied,* 192 Ill. 2d 710 ("it 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"). That language from *Terrano* was cited with approval by the Illinois Supreme Court in *Kouzoukas v. Retirement Board,* where the Board unsuccessfully argued that its decision to grant or reject a claim for duty

disability benefits should not be dependent on the availability or offer of an assignment by CPD within the claimant's restrictions. *Kouzoukas,* 234 Ill. 2d 446, 470. (2009).

Officer Kouzoukas presented evidence that her doctors did not provide her with a release to return to work and, as a result, the Chicago Police Department would not reassign Kouzoukas to any position. The Court reasoned:

> Under these circumstances, Kouzoukas met her burden of proving that she was disabled. To hold otherwise would be to place Kouzoukas 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.
>
> *Kouzoukas,* 234 Ill. 2d 446, 471. (2009).

If the Board's appeal of the instant matter is successful, Moreland would find himself in precisely the same untenable "catch 22" as Officer Kouzoukas in that the Board maintains that he is not disabled even though his employer-provided physicians believe that he is disabled and CPD will not offer to reinstate or reassign Moreland to any CPD job. With these circumstances, the Board is obligated to find that Plaintiff Moreland is disabled. The Illinois Supreme Court held that the Pension Board should have granted Officer Kouzoukas a duty disability benefit, just as the Board should have provided the same duty disability benefits for Moreland in the instant matter.

III.

THE BOARD'S RETAINED IME DOCTOR CANNOT "RELEASE" A CHICAGO POLICE OFFICER TO RETURN TO WORK

At numerous points in its brief, the Board argues that Moreland was released to full duty without restrictions. (Bd. Brief, p. 12, 16, 18, 20). These statements are misleading and incorrect. No treating physician was called to testify by the Board. No treating physician cleared Moreland to return to police work.

The Board's IME doctor, Dr. Levin, opined that nothing is wrong with Moreland and he would be able to return to work without restrictions. The decision as to whether a Chicago Police Officer can be released to work and is able to perform in a limited or full-duty position belongs to Moreland's employer, the City of Chicago, in consultation with the treating doctors that it provides for the treatment of duty-related injuries and the Police Department's Medical Services Section and its medical staff. The Board and its retained doctor cannot force the employer to return any officer to work. Rightly so, given the inherent risks of armed police work.

The Board's IME physician, Dr. Levin, readily acknowledges that he was not hired by the Board to treat Officer Moreland. He writes: "Mr. Moreland understands he presented for an Independent Medical Examination *and as such no physician-patient relationship has been established*." [emphasis added] (C. 106). Nevertheless, the Board argues that: "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." (Bd. Brief, p. 12). The Board conveniently excludes mention of the fact that its retained IME doctor, Dr. Levin, is the only doctor that did not place "any limitations or restrictions" on Moreland.

The Board concedes that, "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*." [emphasis added] (Bd. Brief, p. 12 - 13). The Board also acknowledges that if the CPD offered Kouzoukas a position which accommodated the restrictions in *her doctor's release*, she would no longer be entitled to duty disability benefits. (Bd. Brief, p. 13).

The problem for the Board is that the only work restrictions that must be accommodated upon a return to work are those imposed by the claimant's treating physician(s) and the employer, not the Board's retained IME doctor. See *Kouzoukas*, 234 Ill. 2d at 471-72. Neither *Kouzoukas* nor any other Illinois case provides support for the proposition that the City of Chicago and its department of police must honor the Board's paid "IME" doctor's report to the exclusion of claimant's treating physicians. Dr. Levin has never been one of Officer Moreland's treating physicians.

Although it maintains on the one hand that it is entitled to rely exclusively upon its retained doctor's IME report, the Board readily admits that: ". . . [L]imitations 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*." [emphasis added] (Bd. Brief, p. 13). This statement clearly demonstrates that the appellate court must be affirmed as there is no suggestion in the record that a Board-retained doctor can require Moreland's employer to impose work restrictions or make limited-duty accommodations.

Moreland's treating doctor, Dr. Mardjetko, in September of 2021 advised Moreland that he could not release him back to work and that he is permanently disabled from police work. (C. 1598-1599). Returning him to police work was *not* an option. *Id.* On June 13, 2022, Dr. Mardjetko wrote: "It is my medical opinion that Donald Moreland is permanently disabled from activities of active police work and also unable to safely carry and discharge a weapon." (C. 506, 1601-1602). Furthermore, it is undisputed that CPD would not reinstate Moreland in any capacity and that he was not a candidate for limited duty (C. 1605). Simply put, there is no position for him with CPD. *Id.*

IV.

THE BOARD'S CONTRIVED "CONFLICT" WITH ARTICLE 4 AND ARTICLE 6 DECISIONS MUST BE REJECTED

As a Chicago Police Officer, Moreland's disability case is heard pursuant to the statutes and procedures set forth in the Illinois Pension Code at Article 5, titled: *Policemen's Annuity and Benefit Fund — Cities Over 500,000* (§§ 5/5-101-

5/5-238). The Board in this appeal argues that certain non-Article 5 appellate court decisions are somehow in conflict with the case at bar and mandate reversal.

Obviously, there is no conflict between the Article 6 and Article 4 cases that the Board relies upon and, its careless treatment of the facts notwithstanding, this Court's decision in *Kouzoukas v. Ret. Bd. of Policemen's Annuity and Benefit Fund of City of Chicago*, 234 Ill. 2d 446, 463 (2009) once again controls. Indeed, several months ago, this Court denied the Board's Petition for Leave to Appeal in *Ohlicher v. Retirement Board of the Policemen's Annuity and Benefit Fund of City of Chicago,* 2024 Ill. LEXIS 675 [*1] (Sept. 25, 2024). *Ohlicher* was another failed attack on *Kouzoukas*. Additionally, on November 8, 2024, the Appellate Court issued a published opinion in *Rainey v. Retirement Board of the Policemen's Annuity & Ben. Fund of the City of Chicago*, 2024 IL App (1st) 231993. *Rainey* was decided one week prior to the appellate decision in the case at bar. The Circuit Court and the Appellate Court relied extensively on *Kouzoukas* in both *Ohlicher* and *Rainey*. Surprisingly, the Board never challenged the appellate opinion in *Rainey* regarding its application of *Kouzoukas.*[1]

In the instant case, the Board makes an absurd argument that the Appellate Court's opinion in the instant case conflicts with two earlier appellate court

[1] On December 11, 2024, the Board filed a Petition for Leave to Appeal ("PLA") to the Illinois Supreme Court which was allowed by the Court on March 26, 2025. The filed PLA specifically states "The Pension Board does not seek review of the Appellate Court's reinstatement of Ofc. Rainey's disability benefits. The only issue it sought an appeal on was the award of attorney's fees.

opinions; specifically, *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). *Reed*, however, is an Article 6 case and not an Article 5 case like the one at bar. Furthermore, *Reed* was decided on October 19, 2009, approximately one month after this court's opinion in *Kouzoukas* was filed (September 24, 2009). Additionally, Reed's petition for leave to appeal was denied by this Court on January 27, 2010. *Reed,* 235 Ill. 2d 604, (2010). Simply put, there is no conflict.

Likewise, *Dowrick* is an Article 4 case decided in 2005, four years prior to *Kouzoukas*. Article 4 has a much different procedure than Article 5 for establishing disability. Article 4 requires the use of three physicians selected and paid by the firefighters' pension fund. See 40 ILCS 5/4-112. In other words, *Dowrick* and *Reed* do not in any way address, interpret, or otherwise construe the statutes involved here.

It is important to note that *Reed* and *Dowrick* involve firefighters, not Chicago Police Officers. As the court states in *Reed:*

> 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. See *Dowrick*, 362 Ill. App. 3d at 520 (a municipality's "interest in ensuring the fitness of its firefighters may often diverge from the interests of the participants and beneficiaries of a pension fund in ensuring that the funds are not depleted by dubious claims"). In effect, there is a higher bar for an administrative finding of disability than for a finding that a former firefighter is unfit for reinstatement. See *Dowrick*, 362 Ill. App. 3d at

> 521 (the different missions of separate agencies may result in seemingly conflicting decisions).
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> *Reed,* 395 Ill. App. 3d 1 [*4-5].

The Board concedes that there is a "compelling public interest in ensuring the fitness of firefighters to perform their duties." *Dowrick*, at 521. This is not surprising as there is no mention of limited duty positions available for the firefighters in *Reed* or *Dowrick.* Of course, the Board does not cite to any authority for a similar "compelling public interest" in ensuring the fitness of Chicago Police Officers to perform their duties. That is because the Chicago Department has had a light-duty program in place for decades that allows officers to work with significant medical restrictions. In some cases, these jobs do not require the officer to wear a gun belt. *Kouzoukas,* at 459. In addition, accommodations for a Chicago Police Officer can be made for any standing and sitting restrictions. *Id.* The Board and the case law do not reveal comparable accommodations that may be made for firefighters.

Finally, the *Kouzoukas* case is an Illinois Supreme Court decision, and this Court recently reiterated the long-standing principle that our circuit and appellate courts are bound to apply supreme court precedent. *Yakich v. Aulds,* 2019 IL 123667, ¶13. This Court cautioned the appellate court that "[w]hen the [supreme] court has declared the law on any point, it alone can overrule and modify its previous opinion, and the lower judicial tribunals are bound by such decision and it is the duty of such lower tribunals to follow such decisions in similar cases." *Id.*,

(quoting *Blumenthal v. Brewer,* 2016 IL 118781, ¶ 61; quoting *Price v. Philip Morris, Inc.,* 2015 IL 117687, ¶ 38).

V.

THIS COURT SHOULD AGAIN REJECT THE BOARD'S "EXCLUSIVE JURISDICTION" ARGUMENT.

The Board once again makes the same ill-conceived and incorrect "exclusive jurisdiction" argument that it has repeatedly seen defeated in every trial and appellate court where it has been raised. The "exclusive jurisdiction" argument was explicitly rejected by this Court in *Kouzoukas* when it stated:

> The Board argues that its decision to grant or reject a claimant's application for duty disability benefits should not be dependent on the availability of an assignment in the Chicago Police Department within the claimant's restrictions. According to the Board, such a holding encroaches on the "exclusive original jurisdiction" bestowed upon it by the Pension Code. See 40 ILCS 5/5-189 (West 2006). We disagree.
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> *Kouzoukas,* 234 Ill. 2d 446, 470-471. (2009).

There is nothing new or different about the Board's exclusive jurisdiction argument in this case that would differentiate it from *Kouzoukas* in 2009 or *Ohlicher* and *Rainey* in 2024. The Board cites no new authority to support its consistently rejected position on exclusive jurisdiction. It should be rejected.

VI.

THE BOARD'S RELIANCE ON A STRICT READING OF 40 ILCS 5/5-156 IS MISPLACED

Initially, it must be noted that the Board's assertion that, "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" is false. On November 8, 2024, the Appellate Court issued a published opinion in *Rainey v. Retirement Board of the Policemen's Annuity & Ben. Fund of the City of Chicago*, 2024 IL App (1st) 231993. The *Rainey* court did in fact address §5-156 of the Pension Code. *Rainey,* at p. 46-47. The court in *Kouzoukas* also addressed §5-156 when discussing a duty disability benefit. 234 Ill.2d 446, 472 (2009).

40 ILCS 5/5-156 went into effect on August 14, 1998, nearly twenty-seven years ago. *Terrano* was decided two years later, in 2000. *Kouzoukas* was decided in 2009, *Ohlicher* and *Rainey* were decided in 2024. All were decided under the statutory framework that included the current version of §5-156.

A circuit court is presumed to know the law and apply it properly, absent an affirmative showing to the contrary in the record. *In re C.R.*, 191 Ill. 2d 338, 344 (2000). It would follow that both the Illinois Appellate Court and Illinois Supreme Court knew of, and properly applied, §5-156 when its decisions were issued. Additionally, 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. This has not happened.

Although it never made the argument in the circuit court, the Board now argues that it is impossible for Moreland to prevail because §5-156 requires that proof of disability can only be "furnished to the board by at least one licensed and practicing physician appointed by the board." See 40 ILCS 5/5-156. As the Board

sees it, because Dr. Levin found no disability in his written report, Moreland failed to satisfy the statute. There are two fatal flaws in the Board's position.

First, the physician selected to conduct Moreland's IME, Dr. Levin, is not the Board's appointed physician. The Board acknowledges in paragraph 47 of its Decision and Order which states: "the Pension Board *selected* Dr. Jay L. Levin to perform claimant's independent medical examination." [emphasis added] (C. 34). At the time of the hearing in this case, the Board's appointed physician was Dr. Peter Orris. He is identified as the Board's doctor at numerous locations in the record. (C.156, 481, 956, 1570, 1648). Dr. Orris was present at the hearing and testified briefly but the Board did *not* want him to opine on whether Officer Moreland was disabled from police work. At the hearing, the Board's counsel had this unusual exchange with the Board's appointed physician, Dr. Orris:

> Q: Just so we make it clear, doctor, you're not here rendering an opinion with respect to either the existence of a disability or the cause of a disability; is that true?
>
> A. Correct.
>
> (C. 1631).

The Board does this so that it can later claim that IME doctors like Dr. Levin are the Board's "appointed" doctor in cases such as this one. In fact, several recent court decisions in which the Board was reversed had outside doctors such as Dr. Levin performing an IME rather than an evaluation by the Board's appointed doctor. (*See Whitmer v. The Retirement Board of the Policemen's Annuity & Benefit Fund of Chicago*, 2022 CH 11076, Appeal No. 1-23-0764

dismissed by the Board on November 13, 2023; *Rainey v. Ret. Bd. of the Policemen's Annuity*, 2024 IL App (1st) 231993, *Ohlicher v. Ret. Bd. of the Policemen's Annuity,* 2024 IL App (1st) 231699-U, *Koniarski v. Ret. Bd. of the Policemen's Annuity*, 2021 IL App (1st) 200501-U.)

There is no IME contemplated in Article 5. There is a review by the Board-appointed doctor and a possible second opinion. (40 ILCS 5/5-156 calls for an applicant to choose a doctor from a list of qualified licensed and practicing physicians who specialize in the various medical areas related to duty injuries and illnesses in cases where the board requests an applicant to get a second opinion). However, the Board rarely if ever utilizes the second opinion.

It is certainly odd that the Board would demand strict adherence to the wording of §5-156 when it often refuses to seek the opinion of its own appointed physician and relies on IME doctors exclusively without allowing claimants to seek the second opinion that §5-156 calls for.

The second flaw in the Board's §5-156 analysis is its reliance on *Nowak v. Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago,* 315 Ill. App. 3d 403 (2000). The appellate court in this case made quick work of that same argument, stating:

> "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."
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> *Moreland v. Ret. Bd. of the Policemen's Annuity*, 2024 IL App (1st) 240049, p. 38.

The reliance on *Nowak* is obviously misplaced in that paramedic Nowak did nothing to establish that he attempted to be returned to duty and was refused. For his part, Officer Moreland did attempt to be reinstated but was not cleared to return to work by his employer and the City-referred doctors that treated him for his on-duty injuries. (C. 505, 989-990). If he were cleared to work and/or offered a job within his limitations, he would return to work. (C. 505, 989-990).

In its decision, the Board conceded that Moreland's treating surgeon opined that he "is permanently disabled from active police duties with respect to his lumbar spine based on his inability to safely carry and discharge a firearm . . .." (C. 33). Though *Kouzoukas* and the "catch 22" that Moreland found himself in were strenuously argued at the hearing, the Board's lengthy seventeen-page

decision contains no mention of the case or of the Illinois Supreme Court's handling of the same "catch 22" situation.

VII.

THE BOARD'S POSITION HERE WOULD LEAD TO ABSURD RESULTS.

The Board dutifully followed the holdings in *Terrano* and *Kouzoukas* for nearly two decades. However, starting in 2019, the Board has been reversed by the circuit or appellate court on multiple occasions where it refused to provide disability benefits to an officer that the employer would not reinstate to a limited-duty position because of a disability.[2]

After multiple trial court failures, a denied petition for leave to appeal in *Ohlicher,* and three adverse appellate opinions in the last year alone, the Board has seemingly come up with a new a new tactic to get around *Terrano* and *Kouzoukas*. The Board believes that if it can get a paid doctor -- not the Board's appointed physician, currently Dr. Susan N. Buchanan (and, before her, Dr. Orris) -- to write a report stating that there is nothing wrong with an officer and that the officer can be returned to full duty, the officer then has absolutely zero recourse given the language of §5-156 and the *Nowak* decision. This view by the Board requires the

[2] *Whitmer v. The Retirement Board of the Policemen's Annuity & Benefit Fund of Chicago*, 2022 CH 11076, Appeal No. 1-23-0764 dismissed by the Board on November 13, 2023; *Rainey v. Ret. Bd. of the Policemen's Annuity*,2024 IL App (1st) 231993, *Ohlicher v. Ret. Bd. of the Policemen's Annuity,* 2024 IL App (1st) 231699-U, *Koniarski v. Ret. Bd. of the Policemen's Annuity*, 2021 IL App (1st) 200501-U.

court to ignore *Kouzoukas, Terrano,* and the large body of Article 5 case law that holds otherwise.

The Board also ignores the fact that Justice Buckley who authored *Nowak* wrote a special concurrence expressing remorse for the decision and admitting that the Board's conclusion that was ultimately affirmed was wrong and against the manifest weight of the evidence. *Nowak,* 315 Ill. App. 3d at 412 (specially concurring). Given the choice between *Nowak* -- where the court admitted that it had affirmed an agency decision that was wrong and against the manifest weight of the evidence -- and *Kouzoukas, Terrano, Ohlicher, Whitmer, Rainey, Koniarski,* and the instant matter where the courts obviously got it right, the choice is clear. This Court should side with the body of law that interpreted the law liberally in favor of the pensioner. It should always be remembered that pension statutes are to be "liberally construed in favor of the rights of the pensioner." *Shields v. Judges' Retirement System,* 204 Ill. 2d 488, 494 (2003), citing *Matsuda v. Cook County Employees' & Officers' Annuity & Benefit Fund,* 178 Ill. 2d 360, 365-66 (1997).

Of course, allowing the Board to succeed merely because it retained a doctor to author an opinion that an officer has no disability and no work restrictions whatsoever would reward this Board that repeatedly goes out of its way to deny benefits that officers are entitled to. Allowing the Board to do so in cases where a paid doctor IME doctor (who is not the Board's appointed physician) writes an obviously flawed report that cuts directly against the bulk of the medical evidence received from treating physicians invites bad behavior, the

likes of which the Board has committed here with its bogus claim that its retained IME doctor has the ability "release" a CPD officer to duty. That is just not true.

Allowing paid non-treaters like Dr. Levin to control the outcome of cases also promotes absurd results. Consider the following hypothetical: A doctor hired by the Board solely to conduct an IME writes a report stating that there is nothing wrong with Officer Jim Mullen (a disabled, quadriplegic officer who was shot in the line of duty and often advocates for other injured CPD officers) and that Mullen can be returned to full duty without any work restriction. In that case, it would follow that there is no redress available to Officer Mullen via the courts if the Board ultimately accepts its bought-and-paid-for IME doctor's report. That is absurd, unfair, and profoundly unjust.

CONCLUSION

Kouzoukas remains the law in Illinois, and the Board does not seek its reversal. The Board readily concedes that 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*. (Bd. Brief. p. 13). The Board completely misunderstands the law with its contention that *Kouzoukas* and *Ohlicher* are not applicable alleging that the plaintiffs in those cases were released to work under specific restrictions requiring accommodation and Moreland was cleared to return to full, unrestricted duty. (Bd. Brief, p. 21). What the Board is missing is the fact that Moreland was not cleared for full unrestricted duty by a

treating doctor or by his employer. The Board believes that the written opinion of its selected doctor alone controls the outcome of this case, while conveniently ignoring the language in *Kouzoukas* that states: "if the CPD offered Kouzoukas a position which accommodated the restrictions in *her doctor's release*, she would no longer be entitled to duty disability benefits." [emphasis added] *Kouzoukas*, 234 Ill. 2d at 471-72, Bd. Brief, p. 13.

The decision below does not expand or conflict in any way with this Court's holding in *Kouzoukas*. As such, there is no legal basis for reversal.

WHEREFORE, Plaintiff, Donald B. Moreland, by and through his attorney, Ralph J. Licari, respectfully request this Honorable Court affirm the Appellate Court's decision and award Plaintiff all other relief this Court deems appropriate. Further, this Honorable Court should award court costs and litigation expenses, including reasonable attorney fees, as part of the costs of the action mandated by 40 ILCS 5/5-228.

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) 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 21 pages.

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No. 131343
NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

DONALD B. MORELAND,	)
	)
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 June 4, 2025, I electronically filed and served upon the Clerk of the above court the foregoing **BRIEF OF PLAINTIFF-APPELLEE, DONALD B. MORELAND**. I further certify that on June 4, 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