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**No. 131305**

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In the  
**Supreme Court of Illinois**

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TAMIKA RAINEY,

*Plaintiff-Appellee,*

v.

THE RETIREMENT BOARD OF THE POLICEMEN'S ANNUITY  
AND BENEFIT FUND OF THE CITY OF CHICAGO,*Defendant-Appellant.*

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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.

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**BRIEF OF DEFENDANT-APPELLANT**

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**ORAL ARGUMENT REQUESTED**

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### NATURE OF THE CASE

On January 26, 2017, Defendant, The Retirement Board of the Policeman's Annuity and Benefit Fund of the City of Chicago ("Pension Board"), awarded Plaintiff a duty disability benefit related to a neck/cervical injury caused by two on-duty motor vehicle accidents. *See Rainey v. Retirement Board of the Policeman's Annuity & Benefit Fund of the City of Chicago*, 2024 IL App. (1<sup>st</sup>) 231993, ¶8. Pursuant to Section 5-156 of the Illinois Pension Code ("Code"), and subsequent to the original grant of duty disability benefits, Plaintiff was required to undergo annual examinations. On October 27, 2022, after conducting an evidentiary hearing, the Pension Board issued a written decision and order finding Plaintiff was no longer disabled as a result of her duty-related injury.

On administrative review, the Circuit Court of Cook County reversed the Pension Board's decision, concluding, in part, the City of Chicago's failure to assign Plaintiff to an active police officer position (full, unrestricted, or limited duty) required the Pension Board to continue her disability benefits, citing *Kouzoukas v. Retirement Board of the Policeman's Annuity & Benefit Fund of Chicago*, 234 Ill. 2d 446 (2009)<sup>1</sup>. *Rainey*, 2024 IL App (1<sup>st</sup>) 231993, ¶31. After reversing the Pension Board, the Circuit Court granted Plaintiff's petition for attorney's fees in the amount of \$33,981.94. *Id.*, ¶32.

On appeal, the Appellate Court affirmed the Circuit Court's judgment reversing the Pension Board's decision and awarding her reasonable attorney's fees and remanded the case to the Circuit Court to award additional attorney's fees and costs incurred.

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<sup>1</sup> Currently, this Honorable Court is also considering the *Kouzoukas* Court's ruling in *Moreland v. Retirement Board of the Policeman's Annuity and Benefit Fund of the City of Chicago*, Case No. 131343, which may indirectly impact the instant case.

*Rainey*, 2024 IL App (1<sup>st</sup>) 231993, ¶¶68-71. In awarding attorney’s fees, the Appellate Court refused to follow two prior decisions denying attorney’s fees in similar cases. *See Warner v. Retirement Board of the Policeman’s Annuity & Benefit Fund of Chicago*, 2022 IL App (1<sup>st</sup>) 200833-U; *Koniarski v. Retirement Board of the Policeman’s Annuity & Benefit Fund of Chicago*, 2021 IL App (1<sup>st</sup>) 200501-U.

### **ISSUE PRESENTED FOR REVIEW**

Whether the court erred in awarding Plaintiff her reasonable attorney’s fees and costs pursuant to 40 ILCS 5/5-228(b) (West 2024) based on the reversal of the Pension Board’s decision to discontinue her duty disability benefits.

### **STATEMENT OF JURISDICTION**

On October 27, 2022, the Pension Board issued a decision and order finding Plaintiff had recovered from her injury and discontinuing her disability benefits. R. C051-67. On November 14, 2022, Plaintiff filed a complaint for administrative review. R. C011-72. On July 23, 2023, the Circuit Court of Cook County (“Circuit Court”) issued an Order reversing the Pension Board’s decision and awarding attorney’s fees and costs. R. C929-33. On September 29, 2023, the Circuit Court issued an Opinion and Order denying the Pension Board’s motion to reconsider. R. C963-66. On October 26, 2023, the Pension Board filed its Notice of Appeal. R. C1001-1002.

On March 15, 2024, the Circuit Court entered an order awarding Plaintiff attorney’s fees and costs in the amount of \$33,981.94. Supp2 R. C043-45. On April 29, 2024, the Illinois Appellate Court, First District, granted the Pension Board’s Motion for Leave to File an Amended Notice of Appeal, which then included the order awarding Plaintiff’s attorney’s fees and costs. Supp2 R. C047-49.

On November 8, 2024, the Appellate Court issued its opinion reversing the Pension Board's decision to terminate Plaintiff's disability benefits and affirming the award of her reasonable attorney's fees and costs pursuant to 40 ILCS 5/5-228(b). On December 11, 2024, the Pension Board filed its Petition for Leave to Appeal related to the decision to award Plaintiff's attorney's fees and costs. On March 26, 2025, this Honorable Court granted the Pension Board's petition for leave to appeal. Accordingly, Illinois Supreme Court Rule 315 conveys jurisdiction to this Court.

### **STATUTES INVOLVED**

The following provisions of the Illinois Pension Code ("Code"), in pertinent part, have application in this case:

#### **40 ILCS 5/5-115 Disability**

Disability. "Disability": A condition of physical or mental incapacity to perform any assigned duty or duties in the police service.

#### **40 ILCS 5/5-154 Duty Disability Benefit**

(a) An active policeman who becomes disabled on or after the effective date as the result of injury incurred on or after such date in the performance of an act of duty, has a right to receive duty disability benefit during any period of such disability for which he does not have a right to receive salary, equal to 75% of his salary, as salary is defined in this Article, at the time the disability is allowed; or in the case of a policeman on duty disability who returns to active employment at any time for a period of at least 2 years and is again disabled from the same cause or causes, 75% of his salary, as salary is defined in this Article, at the time disability is allowed; provided, however, that:

(i) If the disability resulted from any physical defect or mental disorder or any disease which existed at the time the injury was sustained, or if the disability is less than 50% of total disability for any service of a remunerative character, the duty disability benefit shall be 50% of salary as defined in this Article.

(ii) Beginning January 1, 1996, no duty disability benefit that has been payable under this Section for at least 10 years shall be less than 50% of the current salary attached from time to time to the rank held by the policeman at the time of removal from the police department payroll, regardless of whether that removal occurred before the effective date of this amendatory Act of 1995. Beginning on January 1, 2000, no duty disability benefit that has been payable under this Section for at least 7 years shall be less than 60% of the current salary attached from time to time to the rank held by the policeman at the time of removal from the police department payroll, regardless of whether that removal occurred before the effective date of this amendatory Act of the 92nd General Assembly.

(iii) If the Board finds that the disability of the policeman is of such a nature as to permanently render him totally disabled for any service of a remunerative character, the duty disability benefit shall be 75% of the current salary attached from time to time to the rank held by the policeman at the time of removal from the police department payroll. In the case of a policeman receiving a duty disability benefit under this Section on the effective date of this amendatory Act of the 92nd General Assembly, the increase in benefit provided by this amendatory Act, if any, shall begin to accrue as of the date that the Board makes the required finding of permanent total disability, regardless of whether removal from the payroll occurred before the effective date of this amendatory Act.

#### **40 ILCS 5/5-156 Proof of Disability – Physical Examination**

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. 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.

#### **40 ILCS 5/5-228(b) Administrative Review**

(a) The provisions of the Administrative Review Law, and all amendments and modifications thereof and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the retirement board provided for under this Article. The term "administrative decision" is as defined in Section 3-101 of the Code of Civil Procedure.

(b) If any policeman whose application for either a duty disability benefit under Section 5-154 or for an occupational disease disability benefit under Section 154.1 has been denied by the Retirement Board brings an action for administrative review challenging the denial of disability benefits and the policeman prevails in the action in administrative review, then the prevailing policeman shall be entitled to recover from the Fund court costs and litigation expenses, including reasonable attorney's fees, as part of the costs of the action.

#### **STATEMENT OF FACTS**

On January 26, 2017, Plaintiff was awarded a duty disability benefit pursuant to Section 5-154 of the Code. The cause of her disability was an injury to her neck/cervical area caused by two motor vehicle accidents. *Rainey*, 2024 IL App. (1<sup>st</sup>) 231993, ¶8. Thereafter, pursuant to Section 5-156 of the Code, Plaintiff was required to undergo annual examinations conducted by a physician. In 2022, the annual examination was conducted by Dr. M. Bryan Neal. (R. C144-60). Following Dr. Neal's exam, the Pension Board scheduled a hearing on March 24, 2022, to determine whether her duty disability benefits should be continued, modified, or discontinued. *Id.*, ¶¶11-14.

On March 24, 2022, Plaintiff appeared at the hearing and requested a continuance, which was granted. (R. C301). The Pension Board scheduled the next hearing for June 30, 2022. (R. C303-304). However, on June 25, 2022, Plaintiff submitted additional medical records related to her medical condition. (R. 306-17). Accordingly, the hearing

was rescheduled to August 25, 2022, to provide Dr. Neal and the Pension Board with time to review the additional medical records. (R. C316).

On August 25, 2022, Plaintiff appeared at the hearing, and she requested another continuance, which was denied by the Pension Board. The Pension Board conducted the hearing and voted to discontinue her duty disability benefits based on Dr. Neal's reports. *Rainey*, 2024 IL App (1<sup>st</sup>) 231993, ¶¶19-25; R. C363-4. On October 27, 2022, the Pension Board issued a written decision and order, finding Plaintiff was no longer disabled as a result of her duty-related injuries. *Id.*, ¶29; R. C051-67.

The Circuit Court reversed the Pension Board's decision, concluding, in part, the City of Chicago's failure to reinstate Plaintiff to a police position within the police department required the Pension Board to continue to pay her disability benefits, citing *Kouzoukas v. Retirement Board of the Policeman's Annuity & Benefit Fund of Chicago*, 234 Ill. 2d 446 (2009). *Rainey*, 2024 IL App (1<sup>st</sup>) 231993, ¶31; R. C963-66. After reversing the Pension Board, the Circuit Court granted Plaintiff's petition for attorney's fees in the amount of \$33,981.94. *Id.*, ¶32; Sup2. R. C43-45.

On appeal, the Appellate Court affirmed the Circuit Court's decision reversing the Pension Board's decision to discontinue Plaintiff's disability benefits and awarding her reasonable attorney's fees and remanded the case to the Circuit Court to award additional attorney's fees and costs incurred. *Rainey*, 2024 IL App (1<sup>st</sup>) 231993, ¶¶68-71. On December 11, 2024, the Pension Board filed a Petition for Leave to Appeal pursuant to Illinois Supreme Court Rule 315. On March 26, 2025, this Honorable Court granted the Petition for Leave to Appeal.

## ARGUMENT

Illinois has long followed the “American Rule” regarding the award of attorney’s fees, *i.e.* each party to litigation must bear its own litigation expenses and attorney’s fees, regardless of who won. *Morris B. Chapman & Associates, Ltd. v. Kitzman*, 193 Ill. 2d 560, 572 (2000). Prevailing parties are prohibited from recovering their attorney’s fees from the losing party absent express authorization by statute or by contract between the parties. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 64.

Because they are in derogation of the common law, statutes that allow for the recovery of attorney’s fees should be strictly construed. *See Sandholm*, 2012 IL 111443, ¶ 64. Nothing is to be read into such statutes by intendment or implication. *Id.* Even if the underlying statute has remedial features, “it will be strictly construed when determining what persons come within its operation.” *JPMorgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 463 (2010). To the extent an award of attorney fees turns on issues of statutory construction, review is *de novo*. *State ex rel. Schad, Diamond & Shedden, P.C. v. My Pillow, Inc.*, 2018 IL 122487, ¶18 (finding the plaintiff law firm was not entitled to recover attorney’s fees for work performed by the firm’s attorneys).

### **I. THE STRICT CONSTRUCTION OF SECTION 5-228(b) RENDERS THE LOWER COURTS’ DECISIONS WRONGLY DECIDED.**

In construing a statute, the goal is to ascertain and effectuate the intent of the legislature in enacting the provision. The statute’s language, given its plain and ordinary meaning, is generally the most reliable indicator of that intent, absent absurd or unjust results. *Bank of New York Mellon v. Laskowski*, 2018 IL 121995, ¶12. When reviewing the language of a statute, courts must consider the entire provision. *Lawler v. Univ. of*



*Chicago Medical Ctr.*, 2017 IL 120745, ¶12. Where the language in the statute is clear and unambiguous, courts will apply the statute as written without employing extrinsic aids of statutory construction. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006).

Here, the plain language of the Code provides the only instances when attorney's fees may be recovered from the Pension Board. Section 5-228(b) provides:

“If any policeman whose application for either a duty disability benefit under Section 5-154 or for an occupational disease disability benefit under Section 154.1 has been denied by the Retirement Board brings an action for administrative review challenging the denial of disability benefits and the policeman prevails in the action in administrative review, then the prevailing policeman shall be entitled to recover from the Fund court costs and litigation expenses, including reasonable attorney's fees, as part of the costs of the action.” 40 ILCS 5/5-228(b) (West 2024).

Section 5-228(b) unequivocally provides the award of attorney's fees is limited to two specific circumstances following the reversal of the Pension Board's decision on administrative review: (1) when the officer was denied disability benefits under Section 5-154, and (2) when the officer was denied disability benefits under Section 5-154.1.

In this case, the Pension Board previously awarded Plaintiff duty disability benefits pursuant to Section 5-154 of the Code in 2017, and she received those benefits for many years. The 2022 annual examination revealed Plaintiff may have recovered from the injury triggering her duty disability benefits, so the Pension Board then initiated proceedings pursuant to Section 5-156 of the Code to determine whether those duty disability benefits should be discontinued. Section 5-156 provides:

“Proof of disability--Physical examinations. [...] 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. *See* 40 ILCS 5/5-156 (West 2024).

Accordingly, Section 5-156 of the Code governed the discontinuation of Plaintiff's disability benefits since her original application for disability benefits, brought pursuant to Section 5-154 of the Code, was previously **granted**.

Therefore, pursuant to strict construction guidelines, 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. *See Kelly v. Ret. Bd. of Policemen's Annuity & Benefit Fund of City of Chicago*, 2022 IL App (1st) 210483, ¶ 67 ("The plain language of section 5-228 indicates that attorney fees and costs are 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."). When these provisions of the Code are read collectively, there is no ambiguity as to when an officer can recover attorney's fees, *i.e.* if the Pension Board's decision to **deny** duty disability benefits is reversed on administrative review, but not when its decision to **discontinue** those benefits is reversed on administrative review.

The Code's use of the word "discontinue" necessarily requires that a benefit was previously awarded to an officer, while the word "denial" infers an original action to obtain those benefits. Inasmuch as the instant matter does not involve the "denial" of a benefit sought pursuant to Sections 5-154 & 5-154.1, Section 5-228(b) is not applicable, and Plaintiff is not eligible for an award of costs and attorney's fees. *See Warner v. Ret. Bd. of Policemen's Annuity & Benefit Fund of City of Chicago*, 2022 IL App (1st) 200833-U, ¶¶68-69; *Koniarski v. Retirement Bd. of the Policemen's Annuity & Benefit Fund of the City of Chicago*, 2021 IL App (1st) 200501-U, ¶47.

In *Warner*, the Illinois Appellate Court, First District (First Division), considered whether the Pension Board’s decision to discontinue Ofc. Warner’s duty disability benefits pursuant to Section 5-156 was manifestly erroneous. 2022 IL App (1<sup>st</sup>) 200833-U, ¶47. In affirming the Circuit Court’s judgment reversing the Pension Board, the *Warner* Court was confronted with the application of Section 5-228, finding it was inapplicable since the proceeding was initiated under Section 5-156. *Id.*, ¶13.

Similarly, in *Koniarski*, the Illinois Appellate Court, First District (First Division), considered the Pension Board’s decision to discontinue duty disability benefits under Section 5-156 of the Code. After affirming the Circuit Court’s judgment reversing the Pension Board, the *Koniarski* Court refused to award attorney’s fees under Section 5-228, holding “[t]his appeal does not involve an officer's application for duty disability benefits under Section 5-154. Rather, it involves proceedings initiated by the Board under Section 5-156 to establish continuing proof of disability. Accordingly, Koniarski's request for fees is denied.” 2021 IL App (1<sup>st</sup>) 200501-U, ¶47 (internal citations omitted).

When awarding Plaintiff attorney’s fees, the Circuit Court never addressed these two cases as persuasive authority. See Supp2 R. C043-45. Nevertheless, the *Rainey* Court stated these prior decisions were “conclusory on this issue, and we do not find them persuasive.” *Rainey*, 2024 IL App (1<sup>st</sup>) 231993, ¶64. The conclusory nature of the prior decisions is not indicative of a lack of consideration, however. Rather, the courts relied on the plain language of the statute when finding the fee-shifting provision in Section 5-228(b) of the Code did not apply to the reversal of the Pension Board’s decision to *discontinue* disability benefits. The application of the plain and ordinary language of Section 2-228 does not equate to a “conclusory” analysis.

In fact, in defiance of these long-standing principles related to fee-shifting provisions, the *Rainey* Court expressly stated it was construing Section 5-228 liberally in favor of police officers consistent with the analysis adopted by courts when interpreting the Code related to the award disability benefits. See *Rainey*, 2024 IL App (1st) 231993, ¶57, citing *Holland v. City of Chicago*, 289 Ill. App. 3d 682, 689-90 (1st Dist. 1997). However, the *Rainey* Court’s liberal construction of Section 5-228 contradicts well-established precedent, thereby creating a future exception to existing precedent.

The *Rainey* Court’s conclusion ignores the strict construction of Section 5-228(b) and applies a different statutory construction standard, *i.e.* liberal construction, in order to link the initial decision to grant the disability benefit with the subsequent decision to discontinue those benefits. The Court justifies its decision, finding the legislature’s clear and logical intent to prioritize all officers who were “wrongly denied job-related disability benefits.” *Rainey*, 2024 IL App (1<sup>st</sup>) 231993, ¶62. However, the plain language of Section 5-228(b) and the plain language of Pension Code do not support the *Rainey* Court’s interpretation.

The plain language of the statute given its ordinary meaning demonstrates the legislature’s clear intent to only award attorney’s fees to the wrongful *denial* of an officer’s application for duty disability benefits. Merging the denial of benefits with the discontinuation of those benefits, which are two distinct legal processes, in order to award attorney’s fees demonstrates a profound re-writing of the plain language of Section 5-228(b), which should not be allowed. This liberal construction of the Code not only defies decades of Illinois precedent requiring strict construction of fee-shifting provisions but it also rewrites the plain language of the Code, and thereby, the legislature’s intent.

Previously, this Honorable Court refused to award attorney's fees to a law firm for successfully prosecuting a claim under the Illinois False Claims Act (740 ILCS 175/1 et seq.) ("Act"). *See supra My Pillow, Inc.*, 2018 IL 122487. In construing whether the Act permitted the recovery of attorney's fees for work performed by the plaintiff law firm, this Court reiterated the statute must be strictly construed despite the remedial purpose of the statute. *Id.*, at ¶18. Similarly, the overarching purpose of the Code should not control or override the principles requiring the strict construction of Section 5-228. Instead, the plain language of the statute should be strictly construed.

Based on the specificity and clarity of Section 5-228(b), there is no rationale for delving further into the legislature's intent regarding decisions discontinuing disability benefits. "[I]t is not this court's function to search for any subtle or not readily apparent intention of the legislature." *Bruso by Bruso v. Alexian Bros. Hosp.*, 178 Ill. 2d 445, 455 (1997). The courts "are most vulnerable to a legitimate accusation of "legislating from the bench" when we find ambiguity where there is none." *Ready v. United/Goedecke Services, Inc.*, 232 Ill. 2d 369, 404 (2008) (Kilbride, J., specially concurring). Thus, the plain language of Section 5-228(b) should not be expanded to include the award of attorney's fees to decisions made in accordance with Section 5-156 of the Code.

## **II. THE LIMITATION OF THE RECOVERY OF ATTORNEY'S FEES AND COSTS TO SECTIONS 5-154 AND 5-154.1 IS NOT ABSURD.**

The *Rainey* Court expanded the plain language of the Code when reaching its conclusion. In so doing, the Court rejected the prior decisions in *Warner* and *Koniarski*, asserting those courts' interpretation of Section 5-228, which distinguished between officers who were wrongly denied duty disability benefits in the first instance from those

whose duty disability benefits were discontinued thereafter, is an absurd result. *Rainey*, 2024 IL App (1<sup>st</sup>) 231993, ¶63. To justify its conclusion, the *Rainey* Court concludes the process for awarding disability benefits is indistinguishable from the process for having those benefits discontinued. *Id.*, at ¶60. On this point, the Court was mistaken.

The Pension Board conducted two separate hearings – (1) the original disability determination and (2) a hearing under Section 5-156, including the introduction of updated medical records and an new, independent medical examination. As such, each of these hearings involved distinct processes. In 2017, when considering whether to award duty disability benefits, the Pension Board was tasked with determining whether Plaintiff met **her burden** of proving she was disabled as a result of an “act of duty.” *See Summers v. Retirement Board of the Policeman’s Annuity and Benefit Fund of the City of Chicago*, 2013 IL App (1<sup>st</sup>) 121345, ¶18 (Section 5-154 provides a “duty disability benefit” when an officer becomes disabled in the performance of an “act of duty”).

Whereas in 2022, when evaluating whether Plaintiff should continue to receive those duty disability benefits in accordance with Section 5-156, the Pension Board must determine whether the officer has recovered from the injury causing his/her disability sufficient to return to police work, and according to at least one court, the Pension Board bears the burden of proof. *See e.g., Hoffman v. Orland Firefighter’s Pension Board*, 2012 IL App (1<sup>st</sup>) 112120, ¶38 (To terminate pension benefits, satisfactory proof must be presented to the Board that the plaintiff has recovered from the disability).

Clearly, Illinois courts have adopted different processes and standards for (1) awarding duty disability benefits (under Section 5-154 & 5-154.1, for example) and (2) reviewing and/or discontinuing duty, occupational, or ordinary benefits after an annual

examination (under Section 5-156). *See also* 40 ILCS 5/4-110, 5/4-110.1 & 5/4-112 and 40 ILCS 5/3-114.1, 5/3-114.6 & 5/3-116 (West 2024). Accordingly, the *Rainey* Court’s conclusion that the process for awarding duty disability benefits is indistinguishable from the process for having those benefits discontinued ignores years of legal precedent differentiating between these processes under the Code.

Notably, Section 5-228 was enacted effective August 16, 2019, so the legislature was clearly aware of the existing caselaw establishing the differences between denials and discontinuations of benefits when specifically referencing Sections 5-154 and 5-154.1 within Section 5-228(b). *See Rosenbach v. Six Flags Entertainment Corp.*, 2019 IL 123186, ¶ 31 (“We must presume that the legislature was aware of that precedent and acted accordingly.”) Accordingly, the *Rainey* Court’s merger of these two processes in order to reach its intended conclusion defies the courts’ prior interpretation and application of Pension Code to create these distinct processes.

Next, the *Rainey* Court contends the legislature, in specifically identifying Sections 5-154 and 5-154.1 within Section 5-228, somehow “prioritized officers wrongly denied job-related disability benefits”, thereby justifying the expansion of Section 5-228’s language to include the discontinuation of duty disability benefits under Section 5-156. *Rainey*, 2024 IL App (1<sup>st</sup>) 231993, ¶62. Counterintuitively, the Court contends the specific **limitations** contained within Section 5-228 somehow convey a legislative intent to **expand** the recovery of attorney’s fees to an unspecified section of the Code (namely, 5-156), and thereby, all decisions reversing any decisions made regarding the denial and discontinuation of duty disability benefits on administrative review. According to the *Rainey* Court, to hold otherwise would be absurd. *Id.*, at ¶63.

Besides being inherently contradictory, this logic is flawed in several ways. On its face, there is nothing absurd about the legislature expressly limiting the claims which trigger the possible recovery of attorney's fees. In this regard, very few provisions of the Pension Code permit the recovery of attorney's fees if the decision of the pension board is reversed on administrative review. No provisions of Article 3 or 4, for example, permit a successful Plaintiff to recover attorney's fees and costs. *But see*, 40 ILCS 5/6-222(b).<sup>2</sup>

In fact, when enacting Section 5-228, Representative Burke testified as follows:

“Thank you. This is an initiative of the Chicago FOP and it is a simple change to the pension article that allows them to have parity with the Chicago Firefighters Pension Fund, 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. It is a very limited set circumstances, a limited set of officers who are successful in appeals. So the liability to the pension fund would be severely limited. I would welcome any questions and I ask for an ‘aye’ vote.”

Clearly, the legislature expressed an intent to *limit* the exposure to the pension fund to claims for attorney's fees, while seeking to enact language similar to Article 6, *supra*.

*See* Illinois House Transcript, 2019 Reg. Sess. No. 37 (HB 2470).

As such, the legislature intended to mirror the language of Article 6 while limiting the award of attorney's fees to specific sections of the Code. This intent is reflected in the specificity used when enacting Section 5-228(b). By specifying Sections 5-154 and 5-154.1 as being the only sections triggering the potential award of attorney's fees, the legislature expressly limited the scope of claims eligible for recovering attorney's fees.

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<sup>2</sup> Defendant is unaware of any authority addressing the award of attorney's fees for the discontinuation of disability benefits under Article 6 of the Illinois Pension Code.



Accordingly, the literal interpretation of Section 5-228 (*see supra*, Section I) is aligned with the intent expressed by the legislature when enacting Section 5-228(b), and the *Rainey* Court's reliance on the "absurd" results doctrine violates basic rules of statutory construction. *See People v. Pullen*, 192 Ill. 2d 36, 42 (2000) (court may not, under the guise of statutory interpretation, "'correct' an apparent legislative oversight by rewriting a statute in a manner inconsistent with its clear and unambiguous language.>").

"[T]he absurd results doctrine merely permits a court to favor an otherwise reasonable construction of the statutory text over a more literal interpretation where the latter would produce a result demonstrably at odds with any conceivable legislative purpose. [Citation]. It does not, however, license a court to simply ignore or rewrite statutory language on the basis that, as written, it produces an undesirable policy result.'" *In re D.F.*, 208 Ill. 2d 223, 249-50 (Freeman, J., specially concurring, joined by McMorrow, C.J.) (quoting *Taylor-Hurley v. Mingo County Board of Education*, 209 W.Va. 780, 551 S.E.2d 702, 710 (2001)). "Where the words employed in a legislative enactment are free from ambiguity or doubt, they must be given effect by the courts even though the consequences may be harsh, unjust, absurd or unwise." (Internal quotation marks omitted.) *County of Knox ex rel. Masterson v. Highlands, L.L.C.*, 188 Ill. 2d 546, 557 (1999). Such consequences can only be remedied by a change in the law. *Id.*

Here, the legislature could not have been any more specific as to when an officer can recover attorney's fees from the Pension Board. And, prior to the enactment of Section 5-228, Illinois Courts clearly outlined the distinctions between granting duty disability benefits and discontinuing those benefits after annual review. Yet, the *Rainey* Court not only defied the plain language of Section 5-228, it invaded the province of the

legislature for determining when an award of attorney's fees would be appropriate under the Pension Code. Thus, the logic employed by the *Rainey* Court should be rejected as it wrongly assumes many aspects of Illinois pension law, including the legislature's alleged policy for prioritizing officers whose duty disability benefits were discontinued.

### **III. IF AMBIGUOUS, RULES OF STATUTORY CONSTRUCTION SUPPORT A LIMITED APPLICATION OF SECTION 5-228(b).**

The *Rainey* Court simply rewrites Section 5-228 of the Code to accommodate an unexpressed legislative policy in favor of officers seeking duty disability benefits. In so doing, the Court makes no finding that the language of Section 5-228 is ambiguous and cites no evidence the legislature ever desired such a policy, particularly in light of the very limited number of fee shifting provisions within the Pension Code.

Nevertheless, to the extent that there is any ambiguity, the enumeration of one or more specific items in a statute excludes other items which are not mentioned therein. *Crawford v. Love*, 243 Ill. App. 977, 980 (1<sup>st</sup> Dist. 1993). The cannon of statutory construction *expressio unius est exclusio alterius* better demonstrates the legislature's clear intent to only allow for the recovery of attorney's fees for hearings initiated under Sections 5-154 or 154.1. Although this rule may be overcome by a strong indication of contrary legislative intent, the *Rainey* Court cites nothing to overcome the undeniable absence of any reference to Section 5-156 within Section 5-228's fee shifting provisions. *See e.g. Baker v. Miller*, 159 Ill. 2d 249, 261 (1994).

Notably, when enacting Section 5-156, the legislature drew no distinction between the award of duty, occupational, or ordinary benefits when subjecting officers to annual examinations, and potentially, discontinuation of those benefits. Yet, the *Rainey*

Court's decision now dissects Section 5-156 to allow for the recovery of attorney's fees for the discontinuation of duty and occupational disability benefits, but not for ordinary benefits. Given the foregoing, the *Rainey* Court's interpretation of Section 5-228(b) is more so absurd given the three forms of disability benefits subject to annual review (and possible termination pursuant to Section 5-156) and the *Rainey* Court's allowance for the recovery of attorney's fees for only two of those circumstances.

In this regard, the Pension Board advised the *Rainey* Court of legislation proposed in 2024, which sought to amend Section 5-228 to include ordinary disability benefits awarded under Section 5-155 to subsection (b) and a new subsection (c) addressing the award of attorney's fees for duty, occupational, or ordinary disability benefits wrongfully terminated by the Pension Board. *Rainey*, 2024 IL App (1st) 231993, ¶65. The proposed amendment specifically provided the following:

“(c) If a policeman whose duty disability benefits, ordinary disability benefits, or occupational disability benefits are terminated by a majority vote of the Retirement Board brings an action for administrative review challenging the termination of those disability benefits and prevails in the action in administrative review, then the prevailing policeman shall be entitled to recover from the Fund court costs and litigation expenses, including reasonable attorney's fees, as part of the costs of the action.”  
H.B. 5264, 103<sup>rd</sup> Gen. Assemb., Reg. Sess. (Ill. 2024).

Notably, this amendment was not passed despite being proposed after the rulings in *Warner* and *Koniarski* were issued in 2022 and 2021, respectively. 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). *See Ready*, 232 Ill. 2d at 380, citing *Yoder v. Ferguson*, 381 Ill. App. 3d 353, 377-78 (1<sup>st</sup> Dist. 2008).

Furthermore, this 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. Importantly, the proposed legislation would clearly differentiate between the “denial” of disability benefits under subsection (b) and the “termination” of previously granted benefits under proposed subsection (c), triggering a fee shifting consequence if those decisions are reversed on administrative review.

In light of the timing of *Warner* and *Koniarski* decisions and the legislature’s rejection of the proposed subsection (c) thereafter, the *Rainey* Court misapplies a cannon of statutory construction when finding the proposed legislation “is clearly intended to extend the fee provision to officers who are denied ordinary disability.” *Rainey*, 2024 IL App (1<sup>st</sup>), ¶65. While the legislation proposes an award of attorney’s fees for the wrongful denial of ordinary disability benefits, the *Rainey* Court’s conclusion ignores the express language of proposed subsection (c) which provides if “duty disability benefits, ordinary benefits, or occupational disability benefits are **terminated** . . .” In fact, the *Rainey* Court never addresses the impact of proposed subsection (c).

The legislature’s creation of a new subsection (c) of Section 5-228 and its use of the word “terminated” when compared to Section 5-228(b)’s use of the term “denied” demonstrates further evidence the legislature never intended to award attorney’s fees for disability benefits wrongfully discontinued pursuant to Section 5-156. Otherwise, there would be no purpose for the proposed amendment if in fact the legislature intended to prioritize officers denied duty disability benefits when originally enacting subsection (b), as suggested by the *Rainey* Court. The Court’s analysis of this proposed legislation is flawed and does not justify its interpretation.

Given the legislature’s express limitation to proceedings where attorney’s fees may be recovered and its failure to act when confronted with the decisions in *Warner*

and *Koniarski, supra*, the *Rainey* Court's expansion of Section 5-228(b) is unsupported, regardless of the liberal construction employed in this instance. Contrary to the *Rainey* Court's analysis, a strict construction of Section 5-228(b) requires a finding that decisions terminating disability benefits pursuant to Section 5-156 of the Code, which are reversed on administrative review, are not subject to Section 5-228(b).

### **CONCLUSION**

WHEREFORE, for the foregoing reasons Petitioner, The Retirement Board of the Policeman's Annuity and Benefit Fund of the City of Chicago, respectfully requests this Honorable Court reverse the decisions awarding Plaintiff her reasonable attorney's fees and costs associated with the Pension Board's decision to discontinue her duty disability benefits, and award any relief this Court deems just.

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**CERTIFICATE OF COMPLIANCE**

I certify that this brief conforms to the requirements of Rules 341(a) and (b) and Rule 315(h). The length of this brief, excluding the pages 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), contains 20 pages.

/s/Vincent C. Mancini

Vincent C. Mancini

# APPENDIX

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

**IN THE MATTER OF THE  
DISABILITY APPLICATION OF:**

**OFFICER TAMICA RAINEY,  
  
CLAIMANT.**

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**SERVICE FILE NO. DD-53513**

**DECISION AND ORDER**

This matter comes before the Retirement Board of the Policemen's Annuity and Benefit Fund of Chicago ("Pension Board") upon the status review of Officer Tamica Rainey ("Claimant"), who appeared at the hearing without legal representation, to determine whether Claimant remains disabled and unable to return to duty with the Chicago Police Department ("CPD") pursuant to 40 ILCS 5/5-101 *et seq.*, of the Illinois Pension Code.

Hearings in this matter were held on March 24, 2022, June 30, 2022, and August 25, 2022. Following the hearings, all members of the Board voting on this matter reviewed and considered all of the documentary evidence and testimony. To the extent any voting member was not actually present when testimony was received, that member heard, considered, and accepted the findings of those members who heard the testimony as to credibility of the evidence and determinations as to the weight to be given to the credibility of the witnesses where relevant. The Board does now find and enters this Order as follows:

**A.  
FINDINGS OF FACT**

Based upon a preponderance of the evidence in the administrative record, the Pension Board makes the following findings of fact:

**Preliminary Matters**

1. Claimant was appointed as a member of CPD on April 26, 2004. (Bd. Ex. 1, p. 1).<sup>1</sup>
2. On or around May 6, 2016, Claimant applied for duty disability pension benefits. Claimant's claim was based on work-related motor vehicle accidents occurring on February 9, 2013 and March 13, 2015, in which she suffered injuries to her cervical spine, right shoulder, right foot, right hand, and bilateral knees. (Cl. Ex. 1, p. 2, 6-7).
3. On January 26, 2017, the Pension Board held a hearing on Claimant's application for duty disability pension benefits. At the hearing, Claimant was awarded a 75% duty disability benefit. (Bd. Ex. 1, p. 1).
4. On March 24, 2022, the Pension Board held a status hearing to determine whether Claimant remained disabled and unable to return to duty with CPD, which was continued to June 30, 2022 upon Claimant's request. (Tr. 206).
5. At the June 30, 2022, the Pension Board voted to discontinue Claimant's duty disability pension benefits pending a full evidentiary hearing. The hearing was continued to August 25, 2022. (Tr. 206).
6. At the August 25, 2022 hearing, Pension Board Exhibit 1, consisting of 29 pages, and Pension Board Addendums 1 through 2, consisting of 73 pages, were admitted into the record without objection. In addition, Claimant's Exhibit 1, consisting of 139 pages, was admitted into the record without objection. (Tr. 264).

**Claimant's Medical Care and Treatment Since January of 2017**

7. On February 16, 2017, Claimant underwent an MRI of her right shoulder at the request of Dr. David Smith. Based on a comparison to Claimant's previous right shoulder

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<sup>1</sup> Citations to Board Exhibits will be referenced as "(Bd. Ex. \_\_, p. \_\_)". Citations to Board Addendums will be referenced as "(Bd. Add. \_\_, p. \_\_)". Citations to Claimant's Exhibits will be referenced as "(Cl. Ex. \_\_, p. \_\_)". Citations to August 25, 2022 Hearing Transcript will be referenced as "(Tr. \_\_)".

arthrogram of December 31, 2014, Dr. Smith concluded there was "significant improvement in the overall disease process" with respect to her right shoulder. (Bd. Add. 2, p. 55).

8. On April 5, 2017, Claimant met with Dr. Smith to discuss her MRI report. Dr. Smith opined Claimant had reached maximum medical improvement ("MMI") with respect to her right shoulder, and, as a result, released her from his treatment. (Bd. Add. 2, p. 56).

9. On July 20, 2017, Claimant was evaluated by her treating neurosurgeon, Dr. David Frim, for symptoms related to Chiari malformation, including headaches, dizziness, nausea, and upper extremity pain. (Bd. Add. 2, p. 56).

10. On January 18, 2018, Claimant was reevaluated by Dr. Frim regarding her conservative treatment for Chiari malformation. Despite being recommended a Chiari decompression to treat her persistent headaches and upper extremity pain, Claimant communicated to Dr. Frim that she was unwilling to proceed with the recommended course of treatment. (Bd. Add. 2, p. 56).

11. On June 22, 2018, Claimant underwent an MRI of her brain as a result of her symptoms related to Chiari malformation. The radiology report indicated herniation of cerebellar tonsils and hypertrophied bilateral inferior nasal turbinates, and included a notation that such findings were "of indeterminate age." (Bd. Add. 2, p. 57).

12. On June 23, 2018, Claimant underwent an MRI of her cervical spine. The radiology report indicated disc bulges at C3-C4, C4-C5, and C5-C6, mild cervical spondylosis, loss of cervical lordosis likely due to intense muscle spasm, and herniation of cerebellar tonsils. (Bd. Add. 2, p. 57).

13. On October 4, 2018, Claimant was evaluated by her treating neurosurgeon, Dr. Brandyn Castro, regarding her Chiari malformation diagnosis and recent MRI imaging. Dr. Castro

concluded Claimant's Chiari malformation was stable and mostly unchanged from her previous MRI of January 11, 2017, with evidence of degenerative changes of her cervical spine. (Bd. Add. 2, p. 58).

14. In addition, Dr. Castro noted in his October 4, 2018 medical report that studies from May of 2016 indicated Claimant suffered left L5-S1 radiculopathy and bilateral C6 radiculopathy resulting from multiple traumatic motor vehicle accidents, "who also has a Chiari malformation." Dr. Castro did not provide an opinion or conclusion as to whether Claimant's Chiari malformation condition was related to her previous motor vehicle accidents. (Bd. Add. 2, p. 58).

15. On October 31, 2018, and again on November 19, 2018, Claimant was evaluated by Dr. Angelos Halaris, a licensed psychiatrist at Loyola University Medical Center. (Bd. Add. 2, p. 58-59).

16. Based on his evaluation, Dr. Halaris diagnosed Claimant with moderately severe symptoms of posttraumatic stress disorder ("PTSD"), including depression and anxiety, resulting from prior work-related motor vehicle accidents. As a result, Dr. Halaris referred her to a psychologist with expertise in treating patients with PTSD. (Bd. Add. 2, p. 58-59).

17. On February 19, 2020, Claimant was evaluated by Dr. Halaris as a follow-up to her PTSD diagnosis. Dr. Halaris concluded Claimant needed to remain under combined psychiatric and psychological care to treat her symptoms related to PTSD, finding her response to previous treatment was inadequate. (Bd. Add. 2, p. 59).

18. On March 22, 2022, Claimant was reevaluated by Dr. Halaris regarding her treatment for PTSD. Dr. Halaris found Claimant continued to suffer from PTSD-related symptoms, including depression, anxiety, insomnia, flashbacks, disturbing dreams, and avoidant behavior,



and recommended she remain under combined psychiatric and psychological care. (Bd. Add. 2, p. 60).

19. On March 30, 2022, Claimant was examined by Dr. Emily Mayekar at Midwest Orthopedic Consultants for complaints of right hand swelling, numbness, and tingling. Based on x-ray imaging, Dr. Mayekar diagnosed Claimant with right carpal tunnel syndrome versus cervical radiculopathy with right extensor carpi ulnaris (ECU) subluxation, right distal radioulnar joint osteoarthritis, and right chronic ulnar styloid nonunion. (Bd. Add. 2, p. 60-61).

20. Based on Claimant's right hand diagnosis, Dr. Mayekar recommended Claimant undergo electrodiagnostic testing, e.g., electromyography (EMG), and utilize nighttime splinting to treat her symptoms. (Bd. Add. 2, p. 61).

21. On April 1, 2022, Claimant was examined by Dr. Valerie Rygiel at Midwest Orthopedic Consultants for complaints of mild to moderate pain in her right shoulder, right foot, and right ankle. (Bd. Add. 2, p. 61).

22. Based on her examination, Dr. Rygiel ordered x-ray imaging of Claimant's right shoulder, right foot, and right ankle, which indicated no acute abnormalities. As a result, Dr. Rygiel prescribed Meloxicam to treat Claimant's symptoms, and further recommended she undergo a repeat arthrogram of her right shoulder. (Bd. Add. 2, p. 61).

23. On April 14, 2022, Claimant was examined by Dr. Luis Redondo at Midwest Orthopedic Consultants for complaints of bilateral knee pain. Dr. Redondo found x-ray imaging of Claimant's bilateral knees were "unremarkable within normal limits." (Bd. Add. 2, p. 62).

24. On April 15, 2022, Claimant was examined by Dr. Richard Lim at Midwest Orthopedic Consultants for complaints of cervical and lumbar pain. Based on his examination, Dr.

Lim recommended Claimant undergo new MRI imaging of her cervical spine and lumbar spine. (Bd. Add. 2, p. 62-63).

25. On April 20, 2022, Claimant underwent an MR arthrogram of her right shoulder, which indicated an extensive partial tear of the right subscapularis tendon, an interstitial tear of the right supraspinatus tendon, degenerative changes at the right humeral head, and “a relatively progressive course” of her condition compared to her right shoulder MRI of February 15, 2017. (Bd. Add. 2, p. 63).

26. On April 22, 2022, Claimant underwent an MRI of her cervical spine, which indicated multilevel cervical spondylosis. (Bd. Add. 2, p. 63-64, 70).

27. On April 25, 2022, Claimant underwent an MRI of her lumbar spine, which indicated multilevel lumbar spondylosis. (Bd. Add. 2, p. 64).

28. On April 26, 2022, Claimant underwent an MRI of her right knee, which indicated mild synovial effusion with Baker cyst, periarticular subcutaneous edema consistent with posttraumatic contusion, and Grade IV chondromalacia of the patella. (Bd. Add. 2, p. 64, 71).

29. On April 27, 2022, Claimant was evaluated by Dr. Rygiel regarding the results of her right shoulder MR arthrogram, which indicated a partial rotator cuff tear, pes planus, metatarsalgia, and improved tendinitis. Dr. Rygiel administered a subacromial steroid injection in Claimant’s right shoulder to treat her symptoms, and further recommended she undergo a course of physical therapy. (Bd. Add. 2, p. 64-65).

30. On April 27, 2022, Claimant underwent an MRI of her left knee, which indicated mild synovial effusion, midline synovial/ganglion cyst, Grade IV chondromalacia, and quadriceps femoris tendinosis. (Bd. Add. 2, p. 65, 71).

31. On April 29, 2022, Claimant was evaluated by Dr. Lim regarding the MRI results of her cervical and lumbar spine. Dr. Lim diagnosed Claimant with “left-sided lumbar radiculopathy secondary to L5-S1 disc herniation, cervical degenerative disc disease with radiculopathy,” and recommended she undergo an epidural steroid injection to treat her left lumbar radiculopathy. (Bd. Add. 2, p. 65).

32. In addition, Dr. Lim recommended Claimant undergo a cervical disc arthroplasty at C5-C6 to treat her cervical degenerative disc disease and radiculopathy. (Bd. Add. 2, p. 65).

33. On May 5, 2022, Claimant was evaluated by Dr. Redondo regarding the MRI results of her bilateral knees. Dr. Redondo diagnosed Claimant with Grade IV chondromalacia lateral facet of both knees, and recommended she undergo bilateral hyaluronic acid injections, physical therapy, and utilize a knee brace. (Bd. Add. 2, p. 65).

34. On June 8, 2022, Claimant was evaluated by Dr. Rygiel regarding her response to the subacromial steroid injection in her right shoulder. Dr. Rygiel found Claimant’s right shoulder improved as a result of the injection, despite persistent pain with overhead movements and reaching behind her back, and recommended continue physical therapy and use custom orthotics. (Bd. Add. 2, p. 66).

35. On June 15, 2022, Claimant was evaluated by Dr. Mayekar regarding her right hand pain and MRI/EMG results, which indicated her right hand appeared normal. Based on her inability to identify an underlying pathology related to Claimant’s discomfort, Dr. Mayekar attributed Claimant’s symptoms to her cervical radiculopathy. (Bd. Add. 2, p. 66-67).

36. On June 28, 2022, Claimant was reevaluated by Dr. Lim regarding her cervical/lumbar spine and complaints of lower left extremity pain. Dr. Lim recommended



Claimant continue physical therapy for her neck and lower back, and further discussed the possibility of surgical intervention. (Bd. Add. 2, p. 67).

**Report of Dr. Peter Orris, M.D.**

37. Dr. Orris is licensed to practice medicine in the State of Illinois and is board certified in occupational and environmental medicine. (Bd. Ex. 1, p. 4).

38. Since being awarded duty disability benefits in January of 2017, Claimant was sent by the Pension Board for annual status examinations with Dr. Orris. (Bd. Ex. 1, p. 13-16).

39. Prior to April of 2021, Dr. Orris consistently found Claimant disabled from performing full and unrestricted police duties due to her cervical pathology. (Bd. Ex. 1, p. 13-16).

40. On April 9, 2021, Dr. Orris met with Claimant for an annual status examination and certified her disabled, finding her unable to safely carry, handle, and use a department-approved weapon due to her cervical pathology. (Bd. Ex. 1, p. 4).

41. In a medical report dated April 9, 2021, Dr. Orris concluded as follows:

"[Claimant] remains disabled as she is unable to safely carry, handle, and use her weapon due to her cervical pathology. Though the specifics of her continued disablement and cause are not entirely clear. I would ask that I see her in early 2022 with her rehabilitation records and return to her neurosurgeon. At that point I would evaluate whether an IME would be helpful in sorting out this complex situation." (Bd. Ex. 1, p. 4).

**Report and Addendum of Dr. M. Bryan Neal, M.D.**

42. Dr. Neal is licensed to practice medicine in the State of Illinois and is board certified in orthopedic surgery. (Bd. Ex. 1, p. 29).

43. On November 4, 2021, Claimant was sent by the Pension Board for an independent medical examination ("IME") with Dr. Neal. The examination was directed to Claimant's cervical spine and right shoulder. (Bd. Ex. 1, p. 5).

44. Based on his examination, Dr. Neal rendered the following the diagnoses:



"1. Medical[ly] unexplainable subjective neck pain with suspect symptom magnification, amplification and/or fabrication, and suspected lack of full cooperative examination effort.

2. Medically unexplainable subjective right shoulder pain, with suspected symptom magnification, amplification and/or fabrication, and suspected lack of full cooperative exam effort." (Bd. Ex. 1, p. 26).

45. Regarding Claimant's current disabling conditions, Dr. Neal opined as follows:

"It is my opinion [Claimant] does not have any clinically significant organic cervical spine or right shoulder conditions, and that neither [Claimant's] cervical spine nor right shoulder is a current disabling condition." (Bd. Ex. 1, p. 27).

46. Regarding disability causation, Dr. Neal opined as follows:

"It is my opinion, assuming that the incident date is the reported incident date of March 13, 2015, that [Claimant's] right shoulder condition and her neck condition (the diagnoses I submit above) are not causally related to the March 13, 2015 work incident. I will point out that the first orthopedic evaluation after March 13, 2015, was the April 1, 2015 orthopedic evaluation of Dr. McClellan. At this time, he did not indicate her right shoulder was injured or that her neck was injured on March 13, 2015. His formal impression on this day does not include a neck diagnoses or right shoulder diagnoses. He indicated that prior to the event, that is, her past medical history, was consistent or supported a history of right shoulder impingement syndrome and cervicalgia, these being conditions which I interpret were existing prior to March 13, 2015. It is my understanding that prior to the March 13, 2015 motor vehicle accident, she was working as a police officer." (Bd. Ex. 1, p. 27).

47. Regarding any additional medical care or treatment recommendations, Dr. Neal opined as follows:

"[Claimant] is not under any care from any physician and is not receiving any treatment for her cervical spine or right shoulder. Indeed, I do not have any evidence she is under any treatment for any condition by any physician or medical provider other than an ophthalmologist.

At this time, it is my opinion no formal treatment is needed or indicated regarding [Claimant's] right shoulder condition or neck condition. Her right shoulder condition and her neck condition are medically unexplainable conditions where there are medically unexplainable subjective pain complaints, which I cannot explain with any organic musculoskeletal diagnosis. Unfortunately, it is my professional opinion that there are underlying psychosocial undercurrents which confound this clinical situation and that there are elements of symptom

magnification, amplification, and/or fabrication as well as a lack of a full cooperative examination effort. [Claimant] is not under any treatment for her cervical spine or her right shoulder joint by any medical provider at this time (based upon her history), a situation I find consistent with one where no clinically significant expressed cervical spine condition or clinically expressed right shoulder condition exists. I have reported the medication [Claimant] takes, although I have concern about the accuracy of this." (Bd. Ex. 1, p. 27-28).

48. Regarding whether Claimant could perform in a limited, light duty capacity, Dr.

Neal opined as follows:

"It is my professional opinion, within a reasonable degree of medical and surgical certainty, [Claimant] certainly can return to 'limited duty assignments.' If this involved office work, work in and around a police station where one would intermittently walk and sit, intermittently do desk work, computer work, paperwork, and phone work, as well as to intermittently interact with, talk to, or take reports from the public, it is my opinion, from the standpoint of [Claimant's] right shoulder condition and her cervical spine condition, she would be able to do this on a full-time basis without medical restrictions." (Bd. Ex. 1, p. 28).

49. Regarding whether Claimant could perform in a full, unrestricted capacity, Dr. Neal

cpined as follows:

"[A]s to whether [Claimant] could report to work and to work full duty full time without medical restrictions where she functioned and worked as a police officer (sworn officer of the law, authorized to arrest individuals when and if needed, and authorized to carry and use if indicated, a firearm), given I do not find [Claimant] has a clinically significant cervical spine condition, and given I find [Claimant] does not have a clinically significant and expressed right shoulder condition, with respect to her cervical spine and right shoulder [Claimant] is able to perform full-duty police officer work without restrictions.

From the standpoint of her cervical spine and right shoulder, given the diagnoses I have submitted, I find [Claimant] does have the physical ability to safely carry, handle, and use a firearm. It is my opinion [Claimant] has and can maintain an independent and stable gait. It is my opinion [Claimant] can safely drive and operate a motor vehicle...from the standpoint of [Claimant's] cervical spine and from the standpoint of her right shoulder, [Claimant] does have the physical ability to arrest an arrestee who might be an active resister." (Bd. Ex. 1, p. 28-29).

50. On July 8, 2022, Dr. Neal was requested by the Pension Board to review additional medical records submitted after his November 4, 2021 examination, and provide a supplemental addendum to his previous IME report. (Bd. Add. 2, p. 36).

51. In an addendum report dated July 27, 2022, Dr. Neal concluded Claimant's diagnoses were unchanged from his previous examination of Claimant in November of 2021. (Bd. Add. 2, p. 68).

52. Regarding treatment recommendations from Claimant's treating physician, Dr. Neal opined as follows:

"At the time of my Independent Medical Examination, it did not appear she was under any care for the conditions I saw her for. Each medical record of the more recent providers she has seen will speak for themselves as to whether any treatment is recommended. It is a different question as to whether she would like to undergo any treatment. My understanding the only past surgical treatment she had was a C-section (childbirth), hysterectomy (this means resection of the uterus), and eye surgery. It does not appear to me [Claimant] intends to undergo any formal treatment at this time because she really has not." (Bd. Add. 2, p. 71).

53. Regarding the prognosis for Claimant's ability to return to police service, Dr. Neal opined as follows:

"I do believe [Claimant] is able to return to limited duty as documented above. It is my professional opinion there are significant underlying biopsychosocial undercurrents which create an extremely strong headwind against her to return to a full-duty police officer without any restrictions and who will be willing to arrest and arrestee who is an active resistor. This simply is not going to be the case in this individual at this time; although, the reason this is the case is not related to any March 13, 2015 work incident." (Bd. Add. 2, p. 72).

54. Regarding any additional medical care or treatment recommendations, Dr. Neal opined as follows:

"I would recommend aerobic physical activity to promote aerobic conditioning and physical fitness. She can utilize symptomatology modalities such as stretching, heat etcetera if they are helpful. Over-the-counter analgesic and/or anti-inflammatory medications can be used on an as-needed basis." (Bd. Add. 2, p. 72).



**Pension Board's Final Conclusions of Fact**

55. The Pension Board voted 5-0 to terminate/discontinue Claimant's duty disability pension benefit pursuant to §5-154 of the Illinois Pension Code because she is no longer disabled as a result of her duty-related injuries sustained on March 13, 2015. (Tr. 282-283).

**B.****APPLICABLE STATUTORY PROVISIONS****40 ILCS 5/5-154 DUTY DISABILITY BENEFIT  
CHILD'S DISABILITY BENEFIT**

In pertinent part:

(a) An active policeman who becomes disabled on or after the effective date as the result of injury incurred on or after such date in the performance of an act of duty, has a right to receive duty disability benefit during any period of such disability for which he does not have a right to receive salary, equal to 75% of his salary, as salary is defined in this Article, at the time the disability is allowed; or in the case of a policeman on duty disability who returns to active employment at any time for a period of at least 2 years and is again disabled from the same cause or causes, 75% of his salary, as salary is defined in this Article, at the time disability is allowed; provided, however, that:

(i) If the disability resulted from any physical defect or mental disorder or any disease which existed at the time the injury was sustained, or if the disability is less than 50% of total disability for any service of a remunerative character, the duty disability benefit shall be 50% of salary as defined in this Article.

(ii) Beginning January 1, 1996, no duty disability benefit that has been payable under this Section for at least 10 years shall be less than 50% of the current salary attached from time to time to the rank held by the policeman at the time of removal from the police department payroll, regardless of whether that removal occurred before the effective date of this amendatory Act of 1995. Beginning on January 1, 2000, no duty disability benefit that has been payable under this Section for at least 7 years shall be less than 60% of the current salary attached from time to time to the rank held by the policeman at the time of removal from the police department payroll, regardless of whether that removal occurred before the effective date of this amendatory Act of the 92nd General Assembly.

(iii) If the Board finds that the disability of the policeman is of such a nature as to permanently render him totally disabled for any service of a remunerative character, the duty disability benefit shall be 75% of the current salary attached from time to time to the rank held by the policeman at the time of removal from the police

department payroll. In the case of a policeman receiving a duty disability benefit under this Section on the effective date of this amendatory Act of the 92nd General Assembly, the increase in benefit provided by this amendatory Act, if any, shall begin to accrue as of the date that the Board makes the required finding of permanent total disability, regardless of whether removal from the payroll occurred before the effective date of this amendatory Act.

#### **40 ILCS 5/5-156 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. 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.

### **C. ANALYSIS**

#### **Legal Standards To Be Used**

The purposes of laws for police officer's pension is beneficial in nature and such statutes should be liberally construed in favor of the police officer to be benefited. *Peifer v. Bd. of Trustees of Police Pension Fund of Vill. of Winnetka*, 57 Ill. App. 3d 102, 106 (1st Dist. 1978). The burden of proving the entitlement to any kind of disability pension rests with the applicant. *Daily v. Bd. of Trustees of the Springfield Police Pension Fund*, 251 Ill. App. 3d 119 (4th Dist. 1993); *Wall v. Police Pension Bd. of Vill. of Schaumburg*, 178 Ill. App. 3d 438 (1st Dist. 1988); *Evert v. Firefighters' Pension Fund of Lake Forest*, 180 Ill. App. 3d 656 (2d Dist. 1989). Due to their personal knowledge of the particular physical and emotional demand of the job, the members of the pension board are in the best position to determine pension questions. *Sanders v. Bd. of Trustees of City of Springfield Police Pension Fund*, 112 Ill. App. 3d 1087, 1091 (4th Dist. 1983). When deciding pension claims, it is particularly within the province of the pension fund board of

trustees to resolve any conflicts presented by the evidence and to determine the credibility of witnesses. *Peterson v. Bd. of Trustees of the Des Plaines Firemen's Pension Fund*, 54 Ill. 2d 260 (1973).

1. **Claimant is no longer disabled as a result of her duty-related injuries.**

Claimant was originally awarded duty disability pension benefits as a result of injuries to her cervical spine and right shoulder sustained in a duty-related motor vehicle accident on March 13, 2015. 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.

Section 5-154 of the Illinois Pension Code provides, in pertinent part, "An active policeman who becomes disabled on or after the effective date as the result of injury incurred on or after such date in the performance of an act of duty, *has a right to receive duty disability benefit during any period of such disability for which he does not have a right to receive salary*, equal to 75% of his salary, as salary is defined in this Article, at the time the disability is allowed." (Emphasis added). 40 ILCS 5/5-154.

The board of trustees of a police pension fund is statutorily empowered to verify an applicant's disability and right to receive benefits. *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 513 (2007). A police officer's entitlement to disability benefits is contingent on his continued disability, and the Board may revoke those benefits if he has recovered from the disability. *Peacock v. Bd. of Trustees of Police Pension Fund*, 395 Ill. App. 3d 644, 652, (1st Dist. 2009); citing *Rhoads v. Board of Trustees of the City of Calumet City Policemen's Pension Fund*, 348 Ill. App. 3d 835, 842 (1st Dist. 2004).

The Pension Board finds the objective medical evidence in the record establishes Claimant has recovered from her duty-related injuries for which she was awarded duty disability benefits,



FILED DATE: 11/14/2022 12:00 AM 2022CH11069

and is no longer disabled from police service. As required under the Pension Code, Claimant was sent by the Pension Board for an annual status examination with Dr. Peter Orris on April 9, 2021. After such examination, Dr. Orris render his opinion that Claimant remained disabled due to her cervical pathology, in part advising the Pension Board of the need for an orthopedic evaluation to further evaluate Claimant's cervical spine and right shoulder conditions.

On November 4, 2021, Dr. M. Bryan Neal performed an orthopedic evaluation on Claimant. Based on his physical examination and review of the medical documentation, Dr. Neal opined, "[Claimant] does not have any clinically significant organic cervical spine or right shoulder conditions, and that neither [Claimant's] cervical spine nor right shoulder is a current disabling condition." (Bd. Ex. 1, p. 27). Further, Dr. Neal opined, "[Claimant's] right shoulder condition and her neck condition are medically unexplainable conditions where there are medically unexplainable subjective pain complaints, which I cannot explain with any organic musculoskeletal diagnosis...there are underlying psychosocial undercurrents which confound this clinical situation and that there are elements of symptom magnification, amplification, and/or fabrication as well as a lack of a full cooperative examination effort." *Id.* While concluding Claimant was unable to return to full, unrestricted police duties, Dr. Neal specifically attributed Claimant's inability to significant underlying biopsychosocial undercurrents and "not related to any March 13, 2015 work incident." (Bd. Add. 2, p. 72). In this regard, there is no objective medical evidence in the record that concludes Claimant is disabled as a result of her duty-related injuries, but rather unrelated psychiatric/psychological conditions.

Therefore, based on the evidence in the administrative record, the Pension Board finds Claimant's duty disability benefits must be terminated because she has recovered from her original duty-related injuries.


**D.  
CONCLUSIONS**

1. The Retirement Board of the Policemen's Annuity and Benefit Fund of Chicago has jurisdiction over the parties and subject matter.
2. The Pension Board has proceeded in a proper and lawful manner.
3. Claimant is not entitled to continuance of duty disability pension benefits pursuant to §5-154 of the Illinois Pension Code because she is no longer disabled as a result of her duty-related injuries.

**IT IS THEREFORE ORDERED:**

That Claimant, Officer Tamica Rainey, is not entitled to continuance of duty disability pension benefits pursuant to §5-154 of the Illinois Pension Code.

Entered by the Retirement Board of the Policemen's Annuity and Benefit Fund of Chicago on the 29th day of September, 2022.

  
\_\_\_\_\_  
Recording Secretary

  
\_\_\_\_\_  
Executive Director

  
\_\_\_\_\_  
Benefits Manager

DATE: October 27, 2022

**THIS IS A FINAL AND APPEALABLE DECISION. THIS DECISION CAN BE REVIEWED IN THE CIRCUIT COURT BY FILING A COMPLAINT FOR ADMINISTRATIVE REVIEW WITHIN 35 DAYS FROM THE DATE THAT A COPY OF THIS DECISION WAS PLACED IN THE MAIL TO THE PARTY AFFECTED THEREBY.**



**CERTIFICATE OF SERVICE**

I, Robert T. Crawford, being first duly sworn on oath states that (s)he served copies of the attached Decision and Order on the person(s) named below by depositing same this 27th day of October, 2022 in the U.S. Mail at 221 N. LaSalle Street, Chicago, IL 60601.

(☒) PRIORITY MAIL SIGNATURE CONFIRMATION

TO: Officer Tamica Rainey  
P.O. Box 558571  
Chicago, IL 60655

Ralph J. Licari  
Ralph Licari & Associates  
135 S LaSalle Street #2200  
Chicago, Illinois 60603

Via Email: rita-il-ira.com

Robert T. Crawford

SUBSCRIBED and SWORN  
to before me this 27 day  
of October 2022.

Jason Wasiukiewicz  
NOTARY PUBLIC



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

Tamika N. Rainey,

Plaintiff,

v.

Retirement Board of the Policemen's  
Annuity and Benefit Fund of the City  
of Chicago,

Defendant.

Case No. 2022 CH 11069

Calendar 2

**ORDER**

Plaintiff Tamika Rainey ("Rainey") seeks administrative review of Defendant Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago (the "Board") final administrative decision of August 25, 2022.

I.

Rainey began working as a member of the Chicago Police Department ("CPD") on April 26, 2004. (R. 372). On February 9, 2013 and March 13, 2015, Rainey was in two separate, on-duty traffic crashes and sustained multiple debilitating injuries. (R. 372). She sustained injuries to her cervical spine, right shoulder, right foot, right hand, and her knees. (R. 372).

The Board awarded duty disability benefits at 75% to Rainey on January 26, 2017 after a hearing was conducted. (R. 372). Rainey regularly received physical examinations to determine her condition. In the most recent examination of April 9, 2021, Dr. Peter Orris noted that Rainey continued to complain of upper extremity pain, neck pain, and right shoulder pain. He concluded that Rainey remained disabled and was unable to safely carry, handle, or use her weapon due to a cervical pathology. Rainey also saw Dr. M. Bryan Neal, who in November 2021 concluded that while Rainey's spine or right shoulder were not current disabling conditions, there were underlying significant conditions that would impede Rainey's ability to make an arrest. The Board conducted new status hearings on March 24, 2022, June 30, 2022, and August 2022 to determine whether Rainey remained disabled and unable to return to duty with CPD. On or around August 25, 2022, the Board terminated Rainey's disability benefits retroactive to July 1, 2022 and did not award an ordinary disability benefit. Rainey timely filed her complaint for administrative review. (R. 276-277, 386).

## II.

Judicial review of an agency decision extends to “all questions of law and fact presented by the entire record before the court.” 735 ILCS 5/3-110. The standard of review depends upon whether the issue presented is one of fact, law, or a mixed question of law and fact. *AFM Messenger Serv., Inc. v. Dep’t of Employment Security*, 198 Ill. 2d 380, 390 (2001). An agency’s factual findings are considered to be *prima facie* correct and are only reversed if against the manifest weight of the evidence. 735 ILCS 5/3-110. An agency’s application of a rule of law to established facts is a mixed question of law and fact that is reviewed under a “clearly erroneous” standard. *Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 211 (2008). An agency’s decision is clearly erroneous when the review court is left with the “definite and firm conviction that a mistake has been committed.” *Id.* The 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. *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485 (2007); *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532-33 (2006). To find that a decision is against the manifest weight of the evidence, the trial court must be able to conclude that all reasonable and unbiased persons acting within the limits prescribed by the law and drawing all inferences in support of the finding would agree that the finding was erroneous and that the opposite conclusion is clearly evident. *O’Boyle v. Personnel Board of Chicago*, 119 Ill. App. 3d 648, 653 (1<sup>st</sup> Dist. 1983). That an opposite conclusion might be reasonable or that the court might have reached or that the court might have reached a different conclusion is not adequate to set aside the agency’s decision. *Id.*

### A. Administrative Review of The Board’s Decision

Rainey cites *Kouzoukas v. Retirement Board of the Policemen’s Annuity*, 234 Ill. 2d 446 (2009) to support her position that the Board erred in terminating her benefits because she still suffered from disabilities and received several opinions from physicians that concluded that she would not be able to return to duty. The Board counters by stating that the *Kouzoukas* case is not on point because the disabilities that Rainey suffers from currently are not related to the on-duty accidents in 2013 and 2015. The Court finds that the *Kouzoukas* case is relevant to this matter.

In *Kouzoukas*, the petitioner was a police officer who injured her back when attempting to relocate an intoxicated man off the sidewalk and was met with resistance. *Kouzoukas*, 234 Ill. 2d at 448. She immediately sought treatment after the incident and thereafter applied for disability benefits with the board for which she was denied. *Id.* She appealed the decision and the trial court reversed the



denial and awarded her prejudgment interest. The appellate and supreme court affirmed the reversal of the denial because the finding of no disability was contrary to the manifest weight of the evidence. The petitioner sought medical assistance from several professionals who noted that she was experiencing severe pain in her back and joints. *Id.* at 454.

While this Court acknowledges due deference is awarded to administrative agencies, deference is not boundless. *Kouzoukas*, 234 Ill. 2d at 465, quoting *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 507 (2007). When reviewing an administrative agency's decision, we may put aside any findings which are clearly against the manifest weight of the evidence. *Sangamon County Sheriff's Department v. Illinois Human Rights Comm'n*, 233 Ill. 2d 125 (2009).

Here, Rainey produced several physicians' assessments regarding her pain. On August 4, 2022, Dr. James P. Leonard noted that Rainey had worsening symptoms to her neck and back as well as her right ankle/foot and right shoulder, which were listed as injuries she suffered as a result of her on-duty accidents. (R. 104). He also noted that Rainey had not been able to return to work since her second accident and that there was a chronicity of her symptoms that may require surgery. (R. 104). Additionally, in 2016, Dr. Rajeev Khanna found that Rainey's injuries were the result of the original accidents in 2013 and 2015. (R. 104). Dr. Khanna concluded that he did not believe that Rainey was able to safely carry and handle a department-approved firearm and that she was unable to return to full duty as she would not be able to make an arrest of someone who is an active resistor. (R. 104). Dr. Khanna concluded that the disability was the result of the underlying accident. (R. 104).

In 2021, Dr. Orris opined that Rainey's medical records have evidence of multiple chronic problems with her progressive cervical spine pathology (contributed to by the IOD) superimposed on a Chiari I malformation. (R. 5). He concluded that Rainey remains disabled as she is unable to safely carry, handle, and use her weapon due to her cervical pathology. (R. 5).

As for Rainey's current treatment, Dr. Richard Lim conducted an MRI of the spine in 2022, stating that the pathology has been worsening since 2016 and is ready to proceed with surgical intervention. (R. 137). Dr. Valerie Rygiel noted pathologies to the right shoulder, right foot and right leg and that she should not work. (R. 157). Dr. Luis Redondo noted bilateral traumatic injuries dating back to 2013, which is the year of the first accident. (R. 166). Dr. Emily Mayekar assessed a degenerative tear in Rainey's right wrist, which was an injury noted from her accidents. (R. 178). Dr. Angelos Halaris diagnosed Rainey with post-traumatic stress disorder as a result of the previous incidents in the course of her duty as an officer, inferring that her condition was related to the accidents. (R. 194).

Despite the overwhelming evidence of Rainey's disability, the Board accepted the opinion of Dr. Neal that Rainey was no longer disabled and could return to full duty without restrictions.

Rainey had the burden of proving her disability by demonstrating that she is incapable of performing any assigned duty and that no position within her limitations was offered to her. *See Terrano v. Board of the Policemen's Annuity & Benefit Fund*, 315 Ill. App. 3d 270, 274-76 (2000) ("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").

Rainey satisfied her burden of proof. Under a similar set of facts, the circuit court in *Kouzoukas*, found that the board's decision was against the manifest weight of the evidence. This ruling was affirmed on appeal by both the First District and the Illinois Supreme Court. In the instant case, the physician testimonies submitted by Rainey clearly establishes that the maladies she is currently disabled and that her maladies relate to and/or are consistent with the injuries she suffered in her two on duty accidents. The Board's decision to the contrary was against the manifest weight of the evidence.

Despite determining that Rainey is able to return to work, CPD will not reinstate Rainey to any position with or without restriction. In *Kouzoukas*, the Illinois Supreme Court explained:

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.

The Board, however, discontinued her disability pension. This places Rainey in a "Catch-22" situation, same as the courts found in *Kouzoukas*, unable to work because the CPD will not assign her a position in the police service, but unable to obtain disability benefits. *Kouzoukas* requires the Board to reinstate disability benefits at 75% to Rainey.

## **B. Attorney's Fees**

Section 5-228(b) of the Pension Code provides that:

(b) If any policeman whose application for either a duty disability benefit under Section 5-154 [40 ILCS 5/ 5-154] or for an occupational disease disability benefit under Section 5-154.1 has been denied by the Retirement Board brings an action for administrative review challenging the denial of



disability benefits and the policeman prevails in the action in administrative review, then the prevailing policeman shall be entitled to recover from the Fund court costs and litigation expenses, including reasonable attorney's fees, as part of the costs of the action.

40 ILCS 5/5-228(b). Rainey has prevailed and is therefore entitled to attorneys' fees and costs. The amount of the attorneys' fees and costs will be determined upon the filing of a petition for attorneys' fees and costs.

### III.

#### IT IS HEREBY ORDERED THAT:

1. The August 25, 2022 final administrative decision of the Retirement Board of the Policemen's Annuity and Benefit Fund of Cook County is REVERSED;
2. The Board is ordered to award Rainey a duty disability benefit pension at the rate of 75% of her salary retroactive to the date of application for benefits;
3. Rainey is entitled to an award of attorneys' fees and costs in an amount to be determined; and
4. This case is set for status to August 30, 2023 at 10:30 a.m. via Zoom.

**Zoom Meeting ID:** 940 2104 4687

**Password:** 296476

**Judge Joel Chupack**

ENTERED JUN 23 2023  
Circuit Court - 2227

Judge Joel Chupack

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

Tamika Rainey,

Plaintiff,

v.

Retirement Board of the County  
Employees' and Officers' Annuity and  
Benefit Fund of Cook County.

Defendant.

Case No. 2022 CH 11068

Calendar 2

11069

**OPINION AND ORDER**

Plaintiff Tamika Rainey ("Rainey") moves this Court to reconsider its June 23, 2023 Order (the "Order") reversing the Defendant Retirement Board of the County Employees' and Officers' Annuity and Benefit Fund of Cook County's (the "Board") final administrative decision of August 25, 2022.

I.

Rainey filed a petition for administrative review on November 14, 2022. She began working as a member of the Chicago Police Department ("CPD") on April 26, 2004. (R. 372). On February 9, 2013 and March 13, 2015, Rainey, in two separate, on-duty traffic crashes, sustained multiple debilitating injuries to her cervical spine, right shoulder, right foot, right hand, and her knees. (R. 372).

The Board, after hearing, awarded Rainey duty disability benefits at 75% on January 26, 2017. (R. 372). She regularly received physical examinations on her condition. In the most recent examination of April 9, 2021, Dr. Peter Orris noted that Rainey continued to complain of upper extremity pain, neck pain, and right shoulder pain. He concluded that Rainey remained disabled and was unable to safely carry, handle, or use her weapon due to a cervical pathology. Rainey also saw Dr. M. Bryan Neal, who in November 2021 concluded that while Rainey's spine or right shoulder were not current disabling conditions, there were underlying significant conditions that would impede her ability to make an arrest.

The Board conducted new status hearings on March 24, 2022, June 30, 2022, and August 2022 to determine whether Rainey remained disabled and unable to return to duty. On or around August 25, 2022, the Board terminated Rainey's disability benefits retroactive to July 1, 2022 and did not award an

ordinary disability benefit. Rainey timely filed her complaint for administrative review. (R. 276-277, 386). This Court reviewed the facts of the matter and granted judgment in favor of Rainey. The Board then filed a motion for reconsideration.

## II.

The purpose of a motion to reconsider is to bring to a court's attention: (1) newly discovered evidence; (2) changes to the law; (3) errors in the court's application of existing law. *Liceaga v. Baez*, 2019 IL App (1<sup>st</sup>) 181170 \*25. A reconsideration motion is not the place to raise a new legal theory or factual argument. *River Plaza Homeowner's Ass'n. v. Healey*, 389 Ill. App. 3d 268, 280 (1<sup>st</sup> Dist. 2009). Trial courts should not allow litigants to stand mute, lose a motion, and then frantically gather new material to show that the court erred in its ruling. *Id.* As a result, legal theories and factual arguments not previously made are subject to waiver.

The Board contends that the Court erred when it reversed the Board's denial of disability benefits. Specifically, the Board argues that Rainey was no longer disabled based on the injuries sustained during her previous on-the-job accidents. Additionally, the Board argues that the award of attorneys' fees was improper.

The Court considered the following facts. On August 4, 2022, Dr. James P. Leonard noted that Rainey had worsening symptoms to her neck and back as well as her right ankle/foot and right shoulder, which were listed as injuries she suffered as a result of her on-duty accidents. (R. 104). He also noted that Rainey had not been able to return to work since her second accident and that there was a chronicity of her symptoms that may require surgery. (R. 104). Additionally, in 2016, Dr. Rajeev Khanna found that Rainey's injuries were the result of the original accidents in 2013 and 2015. (R. 104). Dr. Khanna concluded that he did not believe that Rainey was able to safely carry and handle a department-approved firearm and that she was unable to return to full duty as she would not be able to make an arrest of someone who is an active resistor. (R. 104). Dr. Khanna concluded that the disability was the result of the underlying accident. (R. 104). In 2021, Dr. Orris opined that Rainey's medical records have evidence of multiple chronic problems with her progressive cervical spine pathology (contributed to by the IOD – injury on duty) superimposed on a Chiari I malformation. (R. 5). He concluded that Rainey *remains* disabled as she is unable to safely carry, handle, and use her weapon due to her cervical pathology. (R. 5).

As for Rainey's current treatment, Dr. Richard Lim conducted an MRI of the spine in 2022, stating that the pathology has been *worsening* since 2016 and is ready to proceed with surgical intervention. (R. 137). Dr. Valerie Rygiel noted pathologies to the right shoulder, right foot and right leg and that she should not work. (R. 157). Dr. Luis Redondo noted bilateral traumatic injuries dating back to



2013, which is the year of the first accident. (R. 166). Dr. Emily Mayekar assessed a degenerative tear in Rainey's right wrist, which was an injury noted from her accidents. (R. 178). Dr. Angelos Halaris diagnosed Rainey with post-traumatic stress disorder as a result of the previous incidents in the course of her duty as an officer, inferring that her condition was related to the accidents. (R. 194).

To the Board's point, Dr. Neal also examined Rainey on November 4, 2021 for Rainey's Status Review. (R. 378). Dr. Neal authored an Independent Medical Exam ("IME") report dated November 20, 2021. (R. 6). The IME was limited to Rainey's cervical spine and right shoulder. (R. 6). Dr. Neal opined that Rainey "does not have any clinically significant organic spine or right shoulder conditions, and that neither the examinee's [Rainey's] cervical spine nor right shoulder is a current disabling condition. (R. 28). Dr. Neal stated that, "Indeed, I do not have any evidence she is under any treatment for any condition by any physician or medical provider other than an ophthalmologist." (R. 28). Dr. Neal opined that with respect to her cervical spine and right shoulder the examinee is able to perform full-duty police officer work without restrictions" and that "From the standpoint of her cervical spine and right shoulder, given the diagnoses I have submitted, I find the examinee does have the physical ability to safely carry, handle, and use a firearm." (R. 29). On July 27, 2022, Dr. Neal authored an amendment to his IME report referable to Rainey's cervical spine and right shoulder. (R. 37). Dr. Neal's diagnoses were unchanged from his previous examination of Rainey. (R. 381).

The Board does not contend that Rainey is not disabled at all, but whether her disabilities result from the injuries sustained during her accidents while she was on the job. Rainey sustained injuries to her cervical spine, right shoulder, right foot, right hand, and her knees. (R. 372). Dr. Neal only examined her cervical spine and right shoulder. (R. 6, 37). Rainey produced reports from her other physicians that stated a clear nexus between her disabilities and her injuries she sustained during her accident.

In the Order the Court found that: "[D]espite the overwhelming evidence of Rainey's disability, the Board accepted the opinion of Dr. Neal that Rainey was no longer disabled and could return to full duty without restrictions." The Board's decision that Rainey's current disability was not the result of original on-duty accidents against the manifest weight of the evidence. Rainey submitted examinations from eight physicians that found or indicated otherwise. The Board only had the report of Dr. Neal who performed a limited exam on Rainey. The Board fails to present anything in its Motion that alters the Court's findings.

The Court further found that that Rainey satisfied her burden in proving disability by demonstrating that she is incapable of performing any assigned duty and that no position within her limitations was offered to her. That placed Rainey in a "catch 22" situation and relied on the holding in *Kouzoukas*. Again, the Board has not presented anything in the Motion that alters that finding.

Rainey, is the "prevailing policeman" under the statute and, therefore, is entitled to recover from the Fund court costs and litigation expenses, including reasonable attorney's fees, as part of the costs of the action. 40 ILCS 5/5-228(b),

## III.

IT IS HEREBY ORDERED THAT:

1. The Board's Motion for Reconsideration is DENIED;
2. Rainey has to October 20, 2023, in which to file a petition for court costs and litigation expenses, including reasonable attorney's fees; and
3. This case is set for status on the filing of the petition to November 2, 2023 at 10:30 a.m. via Zoom.

**Zoom Meeting ID:** 940 2104 4687

**Password:** 296476

**Zoom Phone Number:** 312-626-6799

**Courtroom Law Clerk Numbers:** 312-603-5415 & 312-603-7208

ENTERED:

Judge Joel Chupack

SEP 29 2023

Circuit Court 2227

Judge Joel Chupack

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

FILED  
10/26/2023 11:36 AM  
IRIS Y. MARTINEZ  
CIRCUIT CLERK  
COOK COUNTY, IL  
2022CH11069  
Calendar, 2  
24955681

**TAMIKA RAINEY,**

**Plaintiff,**

**vs.**

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

**Defendant.**

**No. 2022 CH 11069**

**Honorable Judge Joel Chupack  
Calendar 2**

**NOTICE OF APPEAL**

NOW COMES Defendant-Appellant, THE RETIREMENT BOARD OF THE POLICEMEN'S ANNUITY AND BENEFIT FUND OF THE CITY OF CHICAGO, by and through its attorneys, REIMER DOBROVOLNY & LABARDI PC, and for its notice to appeal to the Illinois Appellate Court, First District, hereby appeals (1) the September 29, 2023, Order of the Circuit Court of Cook County (a copy of which is attached), which denied Defendant-Appellant's Motion to Reconsider its previous Order (entered June 23, 2023, a copy of which is attached) which reversed the Defendant-Appellant's administrative decision that Plaintiff is not entitled to continuance of duty disability pension benefits pursuant to §5-154 of the Illinois Pension Code, as well as (2) any future order awarding attorney fees and costs to be entered by the trial court on the pending petition for attorney fees and costs pursuant to 40 ILCS 5/5-228(b).

Defendant-Appellant requests this Honorable Court reverse the Circuit Court's orders of September 29, 2023, and June 23, 2023, as well as vacate any future order granting an award of attorney fees and costs, and affirm the decision of Defendant-Appellant finding that Plaintiff is not entitled to continuance of duty disability pension benefits.

FILED DATE: 10/26/2023 11:36 AM 2022CH11069

Respectfully Submitted,

By: /s/ Richard J. Reimer  
Attorney for Defendant-Appellant

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

Tamika Rainey,

Plaintiff,

v.

The Retirement Board of the  
Policemen's Annuity and Benefit Fund  
of the City of Chicago,

Defendant.

Case No. 2022 CH 11069

Calendar 2

**ORDER**

JOEL CHUPACK, Circuit Judge

Plaintiff Tamika Rainey ("Rainey"), petitions the Court for an award of attorneys' fees and costs in the amount of \$33,981.94 pursuant to 40 ILCS 5/5-228(b). Defendant Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago (the "Board") filed an objection to the Fee Petition. The Court, having reviewed the briefs, affidavit and exhibits, issues the following opinion and order.

I.

Rainey was appointed as a member of the Chicago Police Department ("CPD") on April 26, 2004. On May 6, 2016, Rainey applied for Duty Disability pension benefits with the Board based on two on-duty traffic crashes that occurred on February 9, 2013, and March 13, 2015. As a result of the traffic crashes, Rainey sustained injuries to her cervical spine, right shoulder, right foot, right hand, and knees. On January 26, 2017, the Board conducted a hearing on Rainey's Duty Disability claim and after the hearing she was awarded a Duty Disability benefit by the Retirement Board at 75%. On March 24, 2022, June 30, 2022, and August 25, 2022, the Board held status hearings to determine whether Rainey remained disabled and unable to return to duty with the CPD. At the conclusion of the most recent hearing on August 25, 2022, the Board voted to terminate Rainey's 75% Duty Disability benefit retroactive to July 1, 2022, and did not award her an ordinary disability benefit. The Board found that Rainey was no longer disabled from the two on-duty traffic crashes. Rainey filed a Complaint under Section 5-228(b) of the Illinois Pension Code (the "Pension Code") (40 ILCS 5/5-228(b)). On administrative review, the Court found in favor of Rainey, reversed

the Board's decision and affirmed its decision after the Board filed a Motion to Reconsider. Rainey now presents her Petition for Attorneys' Fees (the "Fee Petition") filed under Section 5-228(b).

## II.

The Board argues that attorneys' fees are inappropriate because Rainey did not seek them under Section 5-154 or 5-154.1, which are the only procedurally proper avenues to seek such awards. Additionally, the Board states that they contest the total number of hours in the Petition and the counsel's hourly rate.

Section 5-228(b) of the Pension Code, upon which Rainey relies, provides:

"If any policeman whose application for either a duty disability benefit under Section 5-154 or for an occupational disease disability benefit under Section 5-154.1 has been denied by the Retirement Board brings an action for administrative review challenging the denial of disability benefits and the policeman prevails in the action in administrative review, then the prevailing policeman shall be entitled to recover from the Fund court costs and litigation expenses, including reasonable attorney's fees, as part of the costs of the action."

This language is unambiguous. The Court does not need extrinsic aids to construe the meaning of the statute. Also, the Court is not convinced that the award of attorneys' fees is inappropriate due to Rainey seeking to retain her benefits rather than applying for them outright and being denied. The Court finds that such a narrow construction of the statute is not the legislature's intention nor can the Court read such prohibitive language into the statute. Because the Court finds that the statute upon which Rainey relies is an appropriate vehicle with which to seek relief, the next part of the analysis is to determine whether the fees were reasonable.

In determining the reasonableness of attorneys' fees, courts should consider "the skill and standing of the attorneys, the nature of the case, the novelty and/or difficulty of the issues and work involved, the importance of the matter, the degree of responsibility required, the usual and customary charges for comparable services, the benefit to the client, and whether there is a reasonable connection between the fees and the amount involved in the litigation. *Young v. Alden Gardens of Waterford, LLC*, 2015 IL App (1st) 131887. The lodestar method may also be appropriate where the court can determine the reasonableness of fees by multiplying the number of hours expended on the litigation by a reasonable hourly rate. *Robinson v. Point One Toyota Evanston*, 2017 IL App (1st) 152114 ¶ 14.



To support the Petition, Rainey attached two affidavits to attest to the reasonableness of the hourly rate. One is from Ralph Licari, Plaintiff's counsel of record. The second is from Paul Geiger, a colleague of Mr. Licari, who has litigated similar cases. Mr. Geiger attests that an hourly rate of \$450 is reasonable based on Mr. Licari's standing and experience. Mr. Licari attests that he prevailed on a fee petition in two other cases: *Nicholas Stella v. The Retirement Board* and *Timothy Whitmer v. The Retirement Board*. In each of these cases his hourly rate of \$450 was found to be reasonable based on the market rate and were supported by affidavits. Finally, upon reviewing the invoices and considering not only did this matter go through an initial administrative review but also a briefing of a motion for reconsideration, the Court finds that the amount of time spent on the litigation was reasonable. The Court finds that Plaintiff has met her burden in establishing the reasonableness of the attorneys' fees and costs requested.

### III.

#### IT IS HEREBY ORDERED THAT:

1. The Petition for Attorneys' Fees and Costs is GRANTED;
2. Judgment is entered in favor of Plaintiff, Tamika Rainey, and against Defendant, The Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago, in the amount of \$33,981.94;
3. The fee awarded in paragraph 2 shall be paid by no later than April 30, 2024; and
4. This is a final order that disposes of all matters before the Court.

ENTERED:

*Joel Chupack*  
 Judge Joel Chupack  
 MAR 15 2024  
 Clerk Court 2227

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

**TAMICA RAINEY,**

**Plaintiff,**

**vs.**

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

**Defendant.**

**App. No. 1-23-1993**

**Cook County No. 2022 CH 11069  
Honorable Judge Joel Chupack  
Calendar 2**

**AMENDED NOTICE OF APPEAL**

NOW COMES Defendant-Appellant, THE RETIREMENT BOARD OF THE POLICEMEN'S ANNUITY AND BENEFIT FUND OF THE CITY OF CHICAGO, by and through its attorneys, REIMER DOBROVOLNY & LABARDI PC, and amending its originally filed Notice of Appeal dated October 26, 2023, and for its Amended Notice of Appeal to the Illinois Appellate Court, First District, hereby appeals (1) the June 23, 2023, Order of the Circuit Court of Cook County which reversed the Defendant-Appellant's administrative decision that Plaintiff is not entitled to continuance of duty disability pension benefits pursuant to §5-154 of the Illinois Pension Code and awarding attorney's fees and costs, generally, (2) the September 29, 2023, order of the Circuit Court of Cook County denying Defendant's Motion to Reconsider the Circuit Court's June 23, 2023, order, as well as (2) the Circuit Court's order awarding \$33,981.94 in attorney's fees and costs pursuant to 40 ILCS 5/5-228(b) (a copy of which is attached), entered on March 15, 2024.

Defendant-Appellant requests this Honorable Court reverse the Circuit Court's orders of September 29, 2023, June 23, 2023, and March 15, 2024, and affirm the decision of Defendant-Appellant finding that Plaintiff is not entitled to continuance of duty disability pension benefits and deny the petition for attorney's fees.



Respectfully Submitted,

By: /s/ Nemura G. Pencyla  
Attorney for Defendant-Appellant

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2024 IL App (1st) 231993

FIFTH DIVISION  
November 8, 2024IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

No. 1-23-1993

TAMICA N. RAINEY,	)	
	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
	)	Cook County.
v.	)	
	)	No. 22 CH 11069
THE RETIREMENT BOARD OF THE POLICEMEN'S	)	
ANNUITY AND BENEFIT FUND OF THE CITY OF	)	Honorable
CHICAGO,	)	Joel Chupack,
	)	Judge Presiding.
Defendant-Appellant.	)	

PRESIDING JUSTICE MIKVA delivered the judgment of the court, with opinion.  
Justices Oden Johnson and Mitchell concurred in the judgment and opinion.

**OPINION**

¶ 1 In 2017, plaintiff Tamica Rainey was awarded duty disability benefits under section 5-154 of the Illinois Pension Code (Code) (40 ILCS 5/5-154 (West 2016)). Defendant, the Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago (Board), set Officer Rainey's disability status for hearing in 2022, and ultimately terminated her duty disability benefits based on its finding that she was "no longer disabled as a result of her duty-related injuries."

¶ 2 Officer Rainey filed a complaint for administrative review, and the circuit court reversed the Board's decision. The circuit court held that the Board's determination that Officer Rainey was no longer disabled, where the Board was aware that the Chicago Police Department (CPD) would

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not reinstate her for medical reasons, was against the manifest weight of the evidence. The circuit court relied on *Kouzoukas v. Retirement Board of the Policemen's Annuity & Benefit Fund of Chicago*, 234 Ill. 2d 446, 470 (2009), where our supreme court recognized that an officer was disabled if she “had a physical condition which made her incapable of performing any assigned duty and \*\*\* no position within her limitations was offered to her.” The circuit court reversed the Board’s decision outright and awarded Officer Rainey a duty disability benefit pension, retroactive to the date the Board had discontinued it. The circuit court also awarded Officer Rainey attorney fees and costs under section 5-228(b) of the Code (40 ILCS 5/5-228(b) (West 2022)).

¶ 3 The Board has appealed, arguing that its decision should be affirmed because it was not against the manifest weight of the evidence and it was error to award Officer Rainey attorney fees and costs. For the following reasons, we reverse the Board’s decision denying Officer Rainey continuing duty disability benefits and affirm the circuit court’s award of attorney fees and costs. We remand for a calculation of the additional fees and costs owed to Officer Rainey based on this appeal.

¶ 4 I. BACKGROUND

¶ 5 A. Officer Rainey’s Initial Award of Duty Disability Benefits

¶ 6 Officer Rainey was appointed as an officer with the CPD on April 26, 2004. In 2016, she applied for duty disability pension benefits, based on injuries she received in two work-related motor vehicle accidents. According to an “Injury on Duty Report” dated February 9, 2013, she “was a passenger in a Police vehicle that rolled over several times after a tire blow-out on the Eisenhower expressway.” In her affidavit in support of her duty disability benefits application, Officer Rainey stated that, as a result of that accident, she had a “concussion, bilateral detached retinas, and injuries to [her] right shoulder with two (2) dislocated ligaments, right hip, neck, lower

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back, right knee, and right ankle.” According to an “Injury on Duty Report” dated March 13, 2015, Officer Rainey “sustained injuries to her torso (acute back contusion) as a result of a motor vehicle crash.” Officer Rainey explained in her affidavit that she was “responding to a job assigned” to her in an unmarked police vehicle when she “was in a traffic crash with another vehicle” that caused injuries to her “neck, lower back, left shoulder, left knee, right hand, and right foot.”

¶ 7 In June 2017, as required by statute (see 40 ILCS 5/5-154 (West 2016)), Dr. Rajeev Khanna conducted an independent medical examination (IME) and completed a 20-page report, diagnosing Officer Rainey with “[n]eck pain-probable cervical disc syndrome,” lumbago, a right-hand sprain, “[r]ight shoulder pain-possible impingement syndrome versus labrum tear,” a right medial meniscus tear, and “[r]ight foot pain – possible Morton’s Neuroma.” Dr. Khanna said that Officer Rainey was “unable to return to limited duty or full duty at [that] time as she would have difficulty driving and/or safely carrying and handling a department approved firearm” or “effectuating an arrest of an arrestee who [was] an active resistor.” He concluded that her “disabling injury [wa]s causally related to” the two motor vehicle accidents and that her “most significant discomfort” was “her neck and right shoulder.” Dr. Khanna opined that Officer Rainey had “failed conservative treatment” and that “[i]f the treating spine surgeons and orthopedic surgeons believe[d] a cervical fusion and right shoulder arthroscopy would benefit [Officer] Rainey, she should pursue surgical intervention.”

¶ 8 The Board held a hearing on Officer Rainey’s application for benefits on January 26, 2017, and she was awarded a duty disability benefit of 75% of her salary. The benefits continued until June 30, 2022, when the Board discontinued them, effective July 1, 2022.

¶ 9 B. The Board’s Termination of Officer Rainey’s Duty Disability Benefit

¶ 10 After she was awarded her benefit, Officer Rainey saw Dr. Peter Orris annually. According



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to the Board's findings of fact, before April 2021, Dr. Orris had "consistently found [her] disabled from performing full and unrestricted police duties due to her cervical pathology." In his April 9, 2021, report, Dr. Orris said that Officer Rainey "continue[d] to complain of upper extremity pain, neck pain, right shoulder pain," and that her medical records from that year had "evidence of multiple chronic problems with her progressing cervical spine pathology (contributed to by the IOD [(injury on duty)]) superimposed on a Chiari I malformation (Cerebellum extending from Skull to neck which is congenital) being the primary Disabling physical factor." Dr. Orris noted that "[i]n addition she ha[d] been diagnosed with [post-traumatic stress disorder (PTSD)] and [wa]s being treated." Dr. Orris concluded:

"Of. Rainey remains disabled as she is unable to safely carry handle and use her weapon due to her cervical pathology. Though the specifics of her continued disablement and cause are not entirely clear, I would ask that I see her in early 2022 with her rehabilitation records and return to her neurosurgeon. At that point I would evaluate whether an IME would be helpful in sorting out this complex situation."

¶ 11 The Board then directed Officer Rainey to see Dr. M. Bryan Neal for an IME, with a focus on her cervical spine and right shoulder. Dr. Neal completed a 25-page IME report. He examined Officer Rainey and also reviewed and summarized Officer Rainey's medical records from February 2013 through April 2021. He considered her medical history, her current symptoms, and the results of tests that measured range of motion, strength, palpation, and reflexes. Dr. Neal also obtained digital radiographs of Officer Rainey's cervical spine and right shoulder.

¶ 12 Dr. Neal diagnosed Officer Rainey with "[m]edically unexplainable subjective" pain in both her neck and right shoulder "with suspected symptom magnification, amplification and/or fabrication, and suspected lack of full cooperative" effort with the exam. He concluded that she

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“d[id] not have any clinically significant organic cervical spine or right shoulder conditions, and that neither [her] cervical spine nor right shoulder [wa]s a current disabling condition.” He also found that her “right shoulder condition and her neck condition” were “*not causally related to the March 13, 2015 work incident.*” (Emphasis in original.)

¶ 13 Dr. Neal also said that it was his “professional opinion that there [were] underlying psychosocial undercurrents which confound[ed] this clinical situation.” He concluded that Officer Rainey could “safely carry, handle, and use a firearm,” “maintain an independent and stable gait,” “safely drive and operate a motor vehicle,” and “arrest an arrestee who might be an active resister.” Dr. Neal said that because he found she did not have either a “clinically significant” condition of her cervical spine or right shoulder, Officer Rainey “[wa]s able to perform full-duty police officer work without restrictions.” (Emphasis in original.) At the conclusion of his report, Dr. Neal stated his opinions were within “a reasonable degree of medical and surgical certainty.”

¶ 14 On March 11, 2022, the Board sent notice to Officer Rainey that it would hold a hearing on March 24, 2022, via video-conference, to determine whether her duty disability benefits should be continued, modified, or discontinued. Officer Rainey was advised to “present to the Board for its consideration all proofs which [she] deem[ed] necessary to establish entitlement to the benefits sought or a continuation of any benefit previously awarded.” She was also provided with a website where she could access the Board’s rules of procedure and advised that she could be represented by an attorney.

¶ 15 At the March 24 hearing, Officer Rainey, appearing without counsel, requested a 60-day continuance so she could “fulfill upcoming medical appointments [for] her disability,” obtain the medical documents she had already requested from her doctors, and possibly obtain counsel. The Board granted her a continuance to June 30, 2022.

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¶ 16 At the June 30, 2022, hearing, the Board's attorney, Mr. Reimer, told Officer Rainey that the Board had only just received her document submission and that both the Board and the Board's doctor needed an opportunity to review it. The Board voted to suspend Officer Rainey's benefits, effective the next day, because she had failed to timely provide her medical records 14 days prior to the June 30, 2022, hearing date. The Board set a date for an additional hearing to give it a chance to review her submission. The Board continued the hearing to its next meeting in August 2022.

¶ 17 Officer Rainey's submission to the Board included her 2016 duty disability benefits application and almost 100 pages of medical records from 2016 through 2022 regarding her cervical and lumbar spine, right shoulder, knees, right hand, eyes, and "[n]euro/psychiatry." These medical records were presented without testimony. While they are somewhat difficult to understand without such testimony, they do include the following notations. With respect to her cervical spine, the notations refer to a "[d]egenerative change" in 2016, magnetic resonance imaging (MRI) findings "of chronic duration" in 2018, and a decrease in her range of motion for "cervical flexion, extension and axial rotation" in 2022. As to her shoulder, in 2022, she was found to have "[i]mpingement [s]yndrome" and a rotator cuff tear, and one doctor noted "[d]egenerative changes" in part of her shoulder and said the "comparison [wa]s consistent with a relatively progressive course."

¶ 18 On July 26, 2022, Dr. Neal completed an addendum to his own report after reviewing Officer Rainey's documents. Dr. Neal again opined that "*no current diagnosis* with respect to the cervical spine or right shoulder [was] related, caused, or resulting from the March 13, 2015 motor vehicle accident." (Emphasis in original.) Although Dr. Neal again found that Officer Rainey could carry a firearm, maintain her gait, and safely drive a motor vehicle, he concluded that she could "*not \*\*\** safely effectuate an arrest of an arrestee who [was] defined as an active resistor."



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(Emphasis in original.) Although he made clear that he “did not find [Officer Rainey] was disabled and unable to return to work in any assigned position,” he also said:

“Regarding the ‘prognosis’ for the ability to return to police service, I do believe [Officer Rainey] is able to return to limited duty as documented above. It is my professional opinion there are significant underlying biopsychosocial undercurrents which create an extremely strong headwind against her to return to a full-duty police officer without any restrictions and who will be willing to arrest an arrestee who is an active resistor. This simply is not going to be the case in this individual at this time; although, *the reason this is the case is not related to any March 13, 2015 work incident.*” (Emphasis in original.)

¶ 19 On August 3, 2022, the Board sent a notice to Officer Rainey for an August 25, 2022, hearing. At that hearing, Officer Rainey said she was not ready to proceed, explaining, “I have conferred with counsel and I would like to request a continuance in order to proceed with representation.” The Board went into an executive session. Upon returning to open session, Officer Rainey was informed that the Board was not inclined to grant her request, and the following exchange occurred:

“MR. REIMER: Well, your benefits have been suspended, so you have nothing as far as an income source from—at least from the Board, you have no revenue stream and that’s—the Board understands that, so here’s a suggestion.

We could actually go ahead today kind of on an expedited basis, and what I would propose to you is we would admit all of the records, including the Board’s exhibit and your exhibits and then if you wanted to say something, what the Board could do if you agree to it is you could ask the Board to award you an ordinary disability benefit.

It would—the Board could act on that today.



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Is that something you would want to consider?

OFFICER RAINEY: Is that, as you guys say, without prejudice so that potentially in the future, you know, at a future hearing date, you guys would reconsider or reinstate the duty disability?

MR. REIMER: I would think that would be with prejudice, but I'm not the one that votes.

\* \* \*

PRESIDENT STISCAK: And it will be with prejudice, meaning the duty disability is off the table, assuming the vote goes—whichever way it goes.

\*\*\*

MR. REIMER: And here's what that means \*\*\*

The Board does not want to grant you a continuance, right?

They believe you've had enough, and, you know, the case law is pretty clear. I don't believe the circumstances that you're presenting are going to justify it.

So you can take the risk of having the Board go ahead today denying your disability benefits, your line-of-duty disability benefits or duty disability benefits, and that would mean there will be a decision and order where you're going to have to get an attorney to go through the administrative review process.

That's an option. That's a risk you take. That's your call. That's not my call. Nobody on the Board is telling you what to do.

But what they're trying to do is offer you a compromise, and the compromise if you want to take it—you don't have to—would be the Board would admit everything today and if you give specific authorization to the Board, the Board would award you an ordinary

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disability.”

¶ 20 Officer Rainey was given an opportunity to make a phone call, and the Board passed the case. When the case was recalled, Officer Rainey said, “I would like to continue to a future date without the benefit—to a date after the procedure that I have scheduled in October, preferably November or January.” The Board denied Officer Rainey’s request for a continuance, and the case proceeded to the hearing.

¶ 21 At that hearing, Mr. Reimer began by reviewing the procedures, including that Officer Rainey “ha[d] the burden of proving her entitlement to the continuation of her disability benefits.” The Board’s exhibits—including Dr. Neal’s IME report and the addendum—and Officer Rainey’s submission to the Board were put into evidence.

¶ 22 Officer Rainey then presented her opening statement. She talked about the first accident on February 9, 2013, how she “did everything possible short of having surgery to get back to work,” and how, after a year, she returned to full duty. The second accident then “exacerbat[ed] [her] neck and [her] lower back” and injured her left shoulder, left knee, right hand, and right foot.

¶ 23 Officer Rainey pointed out that Dr. Orris said she remained disabled, described issues with her right shoulder, and noted evidence of multiple chronic problems with her progressing cervical spine, in addition to her PTSD. At the conclusion of her opening statement, Officer Rainey said she was “available or willing to answer any questions.”

¶ 24 The Board had no questions for her. When asked if there was any other evidence that she wanted the Board to consider, Officer Rainey said she wanted the Board to consider “that this process, not just this process, the hearings, but this entire disability process” was “devastating and detrimental to [her] life.” She also said, “I think that I’ve provided multiple doctors’ notes,” and “I can’t even go back to work because the police department won’t even consider taking me back

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to work until I'm cleared from my doctors that they've sent me to, so I can't even go back to seek my job unless I'm cleared." She said again, "I can't go back to work—if you guys deny me today, I can't go back to work tomorrow because I am not cleared." Officer Rainey said the "whole process [wa]s out of [her] control" and asked the Board "to consider all the information in front of [it]." When Mr. Reimer asked if that was all she wanted the Board to consider, she said, "Yes, sir."

¶ 25 Without going into an executive or closed session first, the Board moved to discontinue Officer Rainey's duty disability benefits, and that motion unanimously passed.

¶ 26 In a letter dated August 29, 2022, the acting executive director of the Policemen's Annuity and Benefit Fund of Chicago (Fund) informed the CPD human resources department that the Board had found Officer Rainey's "current medical condition is such that he/she c[ould] be returned to service with the" CPD and that she should "seek a return to CPD service."

¶ 27 On September 27, 2022, Sergeant Philonies McCray, the sergeant/commanding officer of the CPD medical services section, wrote to the director of the CPD human resources division, stating that Officer Rainey submitted to a physical examination on September 12, 2022, and that the evaluation disclosed she was "NOT MEDICALLY QUALIFIED to return to duty."

¶ 28 On October 17, 2022, Officer Rainey, through her attorney, filed a motion to reconsider the Board's decision to terminate her disability benefits. In that motion, Officer Rainey asked the Board to reconsider its oral ruling, as she had not been cleared by the CPD to return to work. Officer Rainey attached to her motion documentation showing that the CPD had not offered her a position, with or without restrictions.

¶ 29 On October 27, 2022, the Board issued its written decision and order. The Board concluded that Officer Rainey was "no longer disabled as a result of her duty-related injuries," and therefore its termination of her duty disability benefits effective July 1, 2022, was proper. The Board found



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that “the objective medical evidence in the record establishe[d] [Officer Rainey] ha[d] recovered from her duty-related injuries for which she was awarded duty disability benefits, and [wa]s no longer disabled from police service.” The Board noted that “Dr. Neal specifically attributed [Officer Rainey]’s inability [to return to full, unrestricted police duties] to significant underlying biopsychosocial undercurrents and ‘not related to any March 13, 2015 work incident.’ ” According to the Board, the record contained “no objective medical evidence” to show Officer Rainey was disabled due to her duty-related injuries, but rather that her disability was the result of “unrelated psychiatric/psychological conditions.”

¶ 30

#### C. Circuit Court Proceedings

¶ 31 Officer Rainey filed her complaint in the circuit court on November 14, 2022, for both a writ of *mandamus* and for administrative review. On June 23, 2023, the circuit court reversed the Board’s decision. Relying on our supreme court’s decision in *Kouzoukas*, 234 Ill. 2d 446, the circuit court found:

“Despite determining that [Officer] Rainey is able to return to work, CPD will not reinstate [Officer] Rainey to any position with or without restriction. \*\*\* The Board, however, discontinued her disability pension. This places [Officer] Rainey in a ‘Catch-22’ situation, same as the courts found in *Kouzoukas*, unable to work because the CPD will not assign her a position in the police service, but unable to obtain disability benefits. *Kouzoukas* requires the Board to reinstate disability benefits at 75% to [Officer] Rainey.”

¶ 32 The circuit court also found that because Officer Rainey was the prevailing party, she was entitled to attorney fees and costs. On September 29, 2023, the circuit court denied the Board’s motion for reconsideration. On March 15, 2024, the circuit court granted Officer Rainey’s petition for attorney fees and costs, entering judgment in her favor and against the Board in the amount of

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\$33,981.94.

¶ 33 This appeal followed.

¶ 34 II. JURISDICTION

¶ 35 The circuit court denied the Board's motion for reconsideration on September 29, 2023, and the Board timely filed its notice of appeal on October 26, 2023. The Board appeals the court's June 23, 2023, order granting Officer Rainey's complaint for administrative review and its September 29, 2023, order denying reconsideration.

¶ 36 On April 29, 2024, we granted the Board's motion to file an amended notice of appeal to allow the Board to add the circuit court's March 15, 2024, order awarding attorney fees and costs.

¶ 37 We have jurisdiction over this appeal pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and Rule 303 (eff. July 1, 2017), governing appeals from final judgments entered by the circuit court in civil cases.

¶ 38 III. ANALYSIS

¶ 39 Review of an administrative agency's decision is governed by the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2022)). The Code specifically provides that the Administrative Review Law "shall apply to and govern all proceedings for the judicial review of final administrative decisions of the retirement board provided for under this Article." 40 ILCS 5/5-228(a) (West 2022). With certain exceptions, jurisdiction to review final administrative decisions is vested, in the first instance, in the circuit court (735 ILCS 5/3-104 (West 2022)) and is commenced by the filing of a complaint for administrative review (*id.* § 3-103). When an appeal is taken from the circuit court's decision on a complaint for administrative review, we review the administrative decision rather than the decision of the circuit court. *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 504-05 (2007).



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¶ 40 Our standard of review depends on the nature of the question presented. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 390 (2001). We review questions of law *de novo* (*id.*), we defer to an agency’s factual findings unless they are against the manifest weight of the evidence (*City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 204 (1998)), and we review mixed questions of law and fact for clear error (*AFM*, 198 Ill. 2d at 391).

¶ 41 On appeal, the Board argues that we must affirm its decision to terminate Officer Rainey’s duty disability benefits because it was not against the manifest weight of the evidence. In response, Officer Rainey relies on the fact that, under *Kouzoukas*, 234 Ill. 2d 446, a finding that a police officer is not disabled is against the manifest weight of the evidence where, as in this case, the CPD has refused to return that officer to work. As explained below, we agree with Officer Rainey, reverse the Board’s decision on that basis, and affirm the decision of the circuit court, including its decision to award attorney fees and costs to Officer Rainey.

¶ 42                   A. The Board’s Finding That Officer Rainey is No Longer  
Disabled is Against the Manifest Weight of the Evidence

¶ 43 Officer Rainey argues—relying on *Kouzoukas*, 234 Ill. 2d at 470-72—that she is entitled to receive duty disability benefits because the CPD has found her not medically qualified to return to duty and that fact renders her disabled and entitled to benefits. The Board, which failed to cite *Kouzoukas* at all in its opening brief, argues in its reply brief that applying *Kouzoukas* here would be a “radical extension” of that case. We disagree and find, as did the circuit court, that Officer Rainey’s situation fits squarely within the rule that our supreme court announced in *Kouzoukas*. We further find that the Board has forfeited any argument that there may be an exception to the rule in *Kouzoukas* where, as here, the Board has found an officer is no longer disabled as a result

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of her initial duty-related injuries but is still disabled due to some unrelated cause. Accordingly, we reverse the Board's decision to discontinue Officer Rainey's duty disability benefit.

¶ 44 The question before our supreme court in *Kouzoukas* was whether the plaintiff there was disabled, as that word is defined in section 5-115 of the Code: “ ‘A condition of physical or mental incapacity to perform *any assigned duty* or duties in the police service.’ ” (Emphasis in original.) *Id.* at 469 (quoting 40 ILCS 5/5-115 (West 2006)). The court found that where the CPD would not return the officer in that case to active service, she had “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.

¶ 45 In response to the Board's argument 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 [CPD] within the claimant's restrictions” because such a rule “encroach[ed] on the ‘exclusive original jurisdiction’ bestowed upon it by the Pension Code” *Id.* at 470-71 (quoting 40 ILCS 5/5-189 (West 2006)), the *Kouzoukas* court found:

“The Board has the duty under the Code to determine whether a claimant is disabled. In the case at bar, [the plaintiff] 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 plaintiff's] doctors did not provide her with a release to return to work. As a result, the [CPD] would not reassign [the plaintiff] to *any* position. Under these circumstances, [the plaintiff] met her burden of proving that she was disabled. To hold otherwise would be to place [the plaintiff] in an untenable ‘catch 22’ situation—unable to work because the [CPD] will not assign her to a position in the police service which she can perform, yet unable to obtain disability benefits.” (Emphasis

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in original.) *Id.* at 471.

¶ 46 The language of section 5-156, which governs how proof of a disability should be furnished to the Board—initially and at status proceedings to determine whether a disability has ceased—encompasses the understanding the court had in *Kouzoukas* that a disability exists unless the officer is physically capable of active service. That statute provides, in relevant part, that “[w]hen the disability ceases, the board shall discontinue payment of the benefit, and the policeman *shall be returned to active service.*” (Emphasis added.) 40 ILCS 5/5-156 (West 2022).

¶ 47 The Seventh Circuit’s opinion in *Buttitta v. City of Chicago*, 9 F.3d 1198 (7th Cir. 1993), also confirms this. We look to federal cases as persuasive, but not controlling, authority. *People ex rel. Ryan v. World Church of the Creator*, 198 Ill. 2d 115, 127 (2001). *Buttitta* involved a due process claim and issues that are not relevant here. However, in its analysis of the due process rights created by the Code, the court examined the interaction between the Board’s authority to award disability benefits and the police department’s decision to reinstate an officer to active duty. The court explained that the Code “does not bestow upon the Pension Board the exclusive authority to determine when a disability ends and to compel the police department to return an officer to active duty.” *Buttitta*, 9 F.3d at 1203. Instead, the court reasoned that because “the Board has a duty to preserve pension funds and the [CPD] has a duty to keep unfit officers off the streets,” section 5-156 necessarily “require[d] both the Board and the [CPD] to be involved in th[e] process” of “transferring police officers between disability and active duty.” *Id.* at 1204. The Seventh Circuit reasoned: “As we construe the statute, a disability ceases only if the Board and the department agree to that effect. Thus, if the [CPD] denies reinstatement because of disability, whether new or pre-existing, the Board must continue payment of the benefit.” *Id.*

¶ 48 This court has followed *Kouzoukas* and held that if the CPD does not reinstate a police



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officer for medical reasons, that officer is disabled for purposes of the Code. See *Ohlicher v. Retirement Board of the Policemen's Annuity & Benefit Fund of Chicago*, 2024 IL App (1st) 231699-U, ¶ 27 (finding the Board's conclusion that the plaintiff "was not disabled within the meaning of the Pension Code" to be against the manifest weight of the evidence because "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 [CPD]"); *Koniarski v. Retirement Board of the Policemen's Annuity & Benefit Fund of Chicago*, 2021 IL App (1st) 200501-U, ¶¶ 40-44 (holding that "where no limited-duty position is available to [the plaintiff] and the CPD has expressly found that it cannot accommodate her physical limitations, she remains disabled and is entitled to disability benefits"). Although these are unpublished cases, we rely on them as persuasive authority, as we are entitled to do under Illinois Supreme Court Rule 23(e)(1) (eff. Feb. 1, 2023) (providing that a nonprecedential order entered under Rule 23(b) after January 1, 2021, "may be cited for persuasive purposes").

¶ 49 When the Board finally addresses *Kouzoukas* in its reply brief, it argues that where there is "a different disability unrelated to the original cause of disability," the officer need not be kept on duty disability benefits under *Kouzoukas*. The Board argues that "the new disability may or may not be related to the original injury and may or may not be related to an act of duty" and that "[w]ithout an application and examination of these new symptoms of disability, *Kouzoukas* isn't applicable." But the Board failed to make this argument until its reply brief and has therefore forfeited the argument. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) ("Points not argued" in the appellant's opening brief "are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.")

¶ 50 The Board's failure to address *Kouzoukas* in its opening brief is particularly disingenuous

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here, where Officer Rainey has been relying on *Kouzoukas* since she filed her motion to reconsider the Board's oral decision, and the circuit court wholly relied on *Kouzoukas* in reversing the Board's decision. The Board's argument appears to be that there is an exception to *Kouzoukas* where the Board finds, based on sufficient evidence, that a duty-related disability has ceased, but the officer is still disabled for another reason. However, that argument should have been presented in the Board's opening brief on appeal. As a result of the Board's failure to address *Kouzoukas* before its reply brief, the Board deprived Officer Rainey of the chance to respond to the Board's reading of the case in her brief and deprived this court of a fully developed discussion of what the Board would be allowed to do, under *Kouzoukas*, if it makes this finding.

¶ 51 At oral argument, Officer Rainey's counsel argued that the Board, having found that Officer Rainey was no longer disabled as a result of a duty-related injury but was still disabled, should have provided her with an ordinary disability benefit. Compare 40 ILCS 5/5-154(a) (West 2022) (providing that an active police officer who is disabled as the result of performing an act of duty is entitled to a duty disability benefit equal to 75% of the officer's salary, subject to certain exceptions) with *id.* § 5-155 (providing that a police officer who is disabled due to "any cause other than injury incurred in the performance of an act of duty" is entitled to an ordinary disability benefit of 50% of the officer's salary).

¶ 52 This may well be the appropriate course. The Board does not appear to doubt its own authority to reduce Officer Rainey's benefits to ordinary disability, as demonstrated by its "compromise" offer to her at the outset of the August 25, 2022, hearing. However, we will not review whether this reduction in benefits is the appropriate response, where, as here, the Board failed to either take that course or to even raise the question of what is allowed under *Kouzoukas* in this situation until its reply brief.



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¶ 53

B. Attorney Fees

¶ 54 The Board also contends that the circuit court erred when it awarded Officer Rainey attorney fees and costs pursuant to section 5-228(b) of the Code. *Id.* § 5-228(b). This requires us to interpret that statute, which is a question of law that we review *de novo*. *Dawkins v. Fitness International, LLC*, 2022 IL 127561, ¶ 27.

¶ 55 Section 5-228(b) provides:

“If any policeman whose application for either a duty disability benefit under Section 5-154 or for an occupational disease disability benefit under Section 5-154.1 has been denied by the Retirement Board brings an action for administrative review challenging the denial of disability benefits and the policeman prevails in the action in administrative review, then the prevailing policeman shall be entitled to recover from the Fund court costs and litigation expenses, including reasonable attorney’s fees, as part of the costs of the action.”  
40 ILCS 5/5-228(b) (West 2022).

¶ 56 The Board argues that this language is “clear and unambiguous,” allowing only “for recovery of these monies after successful reversal of a denial of an application for duty or occupational disability,” and therefore does not apply here where Officer Rainey was initially awarded duty disability benefits but those benefits were subsequently discontinued by the Board. We disagree.

¶ 57 We first note that the Code is meant to be liberally construed in favor of police officers. *Holland v. City of Chicago*, 289 Ill. App. 3d 682, 689-90 (1997). And our review of the language of the relevant provisions, when viewed in the context of the Pension Code as a whole, makes clear to us that this fee provision applies where, as in this case, an applicant for duty disability benefits has their benefits discontinued by the Board at a status hearing and succeeds in having that decision

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by the Board reversed on appeal.

¶ 58 Section 5-154 is titled “Duty disability benefit; child’s disability benefit” and provides, in part, that “[a]n active policemen 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 during any period of such disability for which he does not have a right to receive salary.” 40 ILCS 5/5-154(a) (West 2022). Section 5-154 provides for an ongoing right to benefits—during any period of such disability—but does not provide any procedures for applying for the benefit.

¶ 59 Section 5-156 contains those procedures that apply both to the initial application and to ongoing status hearings in which the officer’s right to continued benefits is reviewed. That section is titled “Proof of disability—Physical examinations” and provides, in its entirety:

“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. 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.” *Id.* § 5-156.

¶ 60 Reading the two sections together, it is clear that there are not two distinct processes—one for applying for benefits and the other for discontinuing them. Rather, section 5-154 defines the benefit and the ongoing right to that benefit, and section 5-156 describes the process for obtaining

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and reviewing the ongoing right to that benefit.

¶ 61 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. Under section 5-228(b), she brought "an action for administrative review challenging the denial of disability benefits" and prevailed. See *id.* § 5-228(b). She is entitled to costs and fees.

¶ 62 Section 5-228(b) applies only to officers who have applied "for either a duty disability benefit under Section 5-154 or for an occupational disease disability benefit under Section 5-154.1," clearly distinguishing them from officers who were denied *ordinary* disability benefits under section 5-155. *Id.* An occupational disease disability benefit is awarded to an officer who, after at least 10 years of service, "suffer[ed] a heart attack or any other disabling heart disease" but was not entitled to a duty disability benefit. *Id.* § 5-154.1(b). In providing for an award of fees and costs to an officer seeking duty disability or occupational disease disability but not ordinary disability benefits, the legislature clearly and logically prioritized officers who were wrongly denied job-related disability benefits.

¶ 63 While that is a rational distinction, distinguishing between officers who were wrongly denied job-related disability benefits in the first instance and those who were wrongly denied their ongoing job-related disability benefits, as the Board would have us do, makes no sense. As our supreme 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*, 2022 IL 127561, ¶ 27.

¶ 64 We acknowledge that this court has previously held that section 5-228(b) does not apply



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to cases like this one, where the Board terminates an ongoing duty disability benefit. *Warner v. Retirement Board of the Policemen's Annuity & Benefit Fund of Chicago*, 2022 IL App (1st) 200833-U, ¶¶ 68-69; *Koniarski*, 2021 IL App (1st) 200501-U, ¶ 47. However, these decisions are unpublished and are therefore not binding authority that the circuit court must follow. Ill. S. Ct. R. 23(e)(1) (eff. Feb. 1, 2023). We find that both decisions were conclusory on this issue, and we do not find them persuasive.

¶ 65 The Board also relies on the fact that recent legislation has been proposed that would allow for an award of fees and costs under section 5-228(b) for any officer who was wrongly denied any disability benefit, including ordinary disability, and also specifically for officers whose benefits were wrongly terminated by the Board. See 103d Ill. Gen. Assem., House Bill 5264, 2024 Sess. The bill is clearly intended to extend the fee provision to officers who are denied *ordinary* disability. While the Board contends that bill also expands the fee provision by extending awards of fees and costs to officers whose duty or occupational disease disability benefits are terminated, the bill could also be intended as nothing more than a clarification in this regard, perhaps in response to this court's decisions in *Warner* and *Koniarski*. See *Bruso v. Alexian Brothers Hospital*, 178 Ill. 2d 445, 458 (1997) ("in amending a statute, the legislature is presumed to have been aware of judicial decisions interpreting the statute and to have acted with this knowledge"). In short, this new legislation is not determinative on this issue before us.

¶ 66 Accordingly, we affirm the circuit court's award of attorney fees and costs to Officer Rainey.

¶ 67 IV. CONCLUSION

¶ 68 For the foregoing reasons, we reverse the decision of the Board and order the Board to reinstate Officer Rainey's duty disability benefits retroactive to July 1, 2022. We affirm the circuit

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court's judgment in all respects. We remand this case to the circuit court to allow that court to calculate an appropriate award of additional fees and costs incurred by Officer Rainey.

¶ 69 Circuit court judgment affirmed.

¶ 70 Board decision reversed.

¶ 71 Cause remanded with directions.



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***Rainey v. The Retirement Board of the Policemen's Annuity and  
Benefit Fund of the City of Chicago, 2024 IL App (1st) 231993***

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**Decision Under Review:** Appeal from the Circuit Court of Cook County, No. 22-CH-11096, the Hon. Joel Chupack, Judge, presiding.

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for  
Appellant:** Richard J. Reimer and Nemura G. Pencyla of Reimer Dobrovolny & LaBardi PC, of Hinsdale, for appellant.

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**Attorneys  
for  
Appellee:** Ralph J. Licari of Ralph J. Licari & Associates, Ltd., of Northfield, for appellee.

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

TAMIKA RAINEY

Plaintiff/Petitioner

Reviewing Court No: 1-23-1993

Circuit Court/Agency No: 2022CH11069

v.

Trial Judge/Hearing Officer: JOEL CHUPACK

THE RETIREMENT BOARD OF THEPOLICEMEN'S ANNUITY AND BENEFITFUND ET. AL OF THE CITY OF CHICAGO

Defendant/Respondent

E-FILED

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Thomas D. Palella

Clerk of the Appellate Court

APPELLATE COURT 1ST DISTRICT

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APPEAL TO THE APPELLATE COURT OF ILLINOIS  
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COOK COUNTY, ILLINOIS

TAMIKA RAINEY

Plaintiff/Petitioner

Reviewing Court No: 1-23-1993

Circuit Court/Agency No: 2022CH11069

v.

Trial Judge/Hearing Officer: JOEL CHUPACK

THE RETIREMENT BOARD OF THE  
POLICEMEN'S ANNUITY AND BENEFIT  
FUND ET. AL OF THE CITY OF CHICAGO  
Defendant/Respondent

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SUP2 C 3



# NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

TAMIKA RAINEY,	)	
	)	
<i>Plaintiff-Appellee,</i>	)	
	)	
v.	)	
	)	No. 131305
RETIREMENT BOARD OF THE POLICEMEN'S	)	
ANNUITY AND BENEFIT FUND OF THE CITY	)	
CHICAGO,	)	
	)	
<i>Defendant-Appellant.</i>	)	

The undersigned, being first duly sworn, deposes and states that on May 30, 2025, there was electronically filed and served upon the Clerk of the above court the Brief of Defendant-Appellant. On May 30, 2025 service of the Brief will be accomplished electronically through the filing manager, Odyssey EfileIL to the following counsel of record:

Ralph J. Licari  
Ralph J. Licari & Associates, Ltd.  
rjl@rjl-ltd.com

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/ Vincent C. Mancini  
Vincent C. Mancini

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/ Vincent C. Mancini  
Vincent C. Mancini