

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

MARK SCHNEIDER, Plaintiff-Appellant,

v.

ELGIN FIREFIGHTERS' PENSION FUND and THE BOARD OF TRUSTEES OF THE
ELGIN FIREFIGHTERS' PENSION FUND, Defendants-Appellees.

Appeal from the Circuit Court of Kane County.
Honorable Kevin T. Busch, Judge, Presiding.
No. 25-CH-10

JUSTICE MULLEN delivered the judgment of the court, with opinion.
Justices Schostok and Birkett concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, Mark Schneider, was employed as a firefighter/paramedic by the fire department of the City of Elgin (City). While responding to a dispatch, plaintiff injured his back. After undergoing medical treatment, plaintiff was unable to return to duty. During his recovery, the City promoted plaintiff from the rank of firefighter to lieutenant. Because of his injury, plaintiff sought a disability pension from defendants, the Elgin Firefighters' Pension Fund and the Board of Trustees of the Elgin Firefighters' Pension Fund (Board). Following an administrative hearing, the Board awarded plaintiff a line-of-duty disability pension based on a firefighter's salary.

¶ 2 Plaintiff asked the Board to reconsider, arguing that it had miscalculated his pensionable salary. Specifically, plaintiff asserted that his pension should have been based on a lieutenant's salary because he attained that rank during his recovery, making it the rank he held when he was

removed from the City’s fire department payroll. See 40 ILCS 5/4-110 (West 2022) (providing for the calculation of a line-of-duty disability pension in accordance with the “monthly salary attached to the rank held *** in the fire department at the date [the firefighter] is removed from the municipality’s fire department payroll”). The Board denied the request. Plaintiff then sought administrative review in the circuit court of Kane County, which affirmed the Board’s decision. On appeal, plaintiff reiterates the argument he made below—namely, that the Board should have based his pensionable salary on the rank of lieutenant. We agree with plaintiff and therefore reverse the decision of the Board and remand the matter for a redetermination of plaintiff’s pensionable salary.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff served as a firefighter/paramedic for the City’s fire department. On March 2, 2022, while responding to an emergency call, plaintiff injured his back as he helped lift a large male patient from a bathroom floor. Although plaintiff attempted to continue working, his condition progressively worsened. On March 15, 2022, plaintiff sought treatment from Dr. Cary Templin. Dr. Templin prescribed a course of therapy to stabilize the spine, recommended anti-inflammatory medication, and placed plaintiff on sedentary duty. An MRI conducted on April 28, 2022, revealed a disc bulge and tear at the L4-L5 disc space.

¶ 5 When conservative treatment failed, plaintiff consulted a neurosurgeon, Dr. Sergey Neckrysh, for a second opinion. On September 26, 2022, Dr. Neckrysh performed fusion surgery at the L4-L5 level. Plaintiff completed physical therapy and later began work hardening, but developed knee pain that required additional intervention. On September 21, 2023, Dr. Neckrysh determined that plaintiff had reached maximum medical improvement but was permanently unable to return to duty as a firefighter.

¶ 6 On October 30, 2023, plaintiff filed an application for a line-of-duty disability pension based on his back injury and subsequent fusion surgery. Pursuant to section 4-112 of the Illinois Pension Code (40 ILCS 5/4-112 (West 2022)), the Board required examinations by three physicians. None of the physicians recommended any treatment that would allow plaintiff to return to full and unrestricted duty. Plaintiff completed a functional capacity evaluation (FCE) on April 2, 2024. The FCE indicated that plaintiff could perform only at the medium-to-heavy physical-demand level, which was short of the very-heavy level required of a firefighter.

¶ 7 On June 4, 2024, the Board held a hearing on plaintiff's application for a disability pension. At that hearing, plaintiff testified regarding the March 2, 2022, accident, his medical treatment, and his inability to return to duty. Plaintiff testified that his last day of full, unrestricted duty was on or about March 15, 2022. He then worked light duty until June 2022, when Dr. Neckrysh removed him from work completely. While off work, plaintiff received benefits under the Public Employee Disability Act (5 ILCS 345/0.01 *et seq.* (West 2022)) for one year, after which he began receiving temporary total disability (TTD) benefits through workers' compensation. The TTD benefits were based on plaintiff's average weekly wage as a firefighter. As of the date of his testimony, plaintiff was still receiving workers' compensation benefits, with his most recent check dated May 28, 2024.¹ The check stub was admitted into evidence and reflects that the workers' compensation payment was made by the City. Plaintiff expected another TTD check for the period commencing May 29, 2024.

¹During questioning, plaintiff's attorney indicated that the most recent check for workers' compensation benefits was dated May 8, 2024. However, a copy of the check stub in the record is dated May 28, 2024. We attribute this discrepancy to either a misstatement by plaintiff's attorney or a typographical error in the transcript.

¶ 8 Plaintiff also testified that during his recovery, he remained on the fire department's promotion list and was instructed by the City to take the oath of office as a lieutenant. Plaintiff stated that he was formally promoted to lieutenant on April 12, 2024, and he introduced a "personnel action form" establishing that he was promoted to the lieutenant rank on that date. Plaintiff acknowledged, however, that he never performed any work as a lieutenant, never received lieutenant pay, and never contributed to the pension fund at a lieutenant's salary. Plaintiff further admitted that he was physically unable to perform the duties of a lieutenant. Plaintiff also stated that he had accrued sick, vacation, or compensatory time that had not yet been paid out by the City.

¶ 9 Following the presentation of evidence, plaintiff argued that because the City had formally promoted him, the rank of lieutenant was the rank he held upon his removal from the fire department's payroll and should therefore serve as the proper basis for calculating his disability pension. See 40 ILCS 5/4-110 (West 2022) (providing for the calculation of a line-of-duty disability pension in accordance with "the monthly salary attached to the rank held *** in the fire department at the date [the firefighter] is removed from the municipality's fire department payroll"). At the conclusion of the hearing, the Board went into closed executive session to discuss the matter. After reconvening, the Board voted to grant plaintiff a line-of-duty disability pension based on his pensionable firefighter salary, effective upon the termination of plaintiff's TTD benefits.

¶ 10 On June 28, 2024, plaintiff filed a motion to reconsider the Board's decision. Relying on section 4-110 of the Pension Code (40 ILCS 5/4-110 (West 2022)), *Sottos v. Firefighters' Pension Fund of Moline*, 2017 IL App (3d) 160481, and a May 2016 advisory opinion from the Illinois Department of Insurance (Department), plaintiff reiterated that he is entitled to have his pensionable salary based on the rank of lieutenant. Plaintiff also noted that after the Board's

hearing, the City paid out his earned benefit time using the first-year lieutenant pay scale. Plaintiff attached a copy of the payment, dated June 21, 2024, to his motion. On October 16, 2024, the Board voted to deny the motion to reconsider.

¶ 11 On January 15, 2025, the Board issued a written decision and order explaining its rationale for basing plaintiff's pension on the firefighter rank. In determining the appropriate salary attached to plaintiff's rank at the time he was removed from the fire department's payroll, the Board relied upon plaintiff's testimony and the evidence available to it at the time of the hearing. The Board emphasized that plaintiff was injured while serving as a firefighter, received workers' compensation based on the firefighter salary, never worked or qualified for work as a lieutenant, and never contributed to the pension fund at the lieutenant rate. Accordingly, the Board concluded that the firefighter rank was the correct rank "held" at the time plaintiff was removed from payroll for purposes of determining his pensionable salary. The Board concluded that plaintiff's "disability [pension] shall be effective the date he was removed from payroll with the Elgin Fire Department on June 4, 2024, based upon his annual pensionable salary attached to his rank of a firefighter as of that date in the amount of \$113,314.62."

¶ 12 Plaintiff filed a complaint for administrative review on January 27, 2025. On September 26, 2025, the circuit court affirmed the Board's decision. Plaintiff now appeals.

¶ 13 II. ANALYSIS

¶ 14 On appeal, plaintiff contends that the Board erred in calculating his pension using a firefighter's salary. Plaintiff notes that section 4-110 of the Pension Code requires a line-of-duty disability pension to be calculated in accordance with the "monthly salary attached to the rank held *** at the date [the firefighter] is removed from the municipality's fire department payroll." See 40 ILCS 5/4-110 (West 2022). According to plaintiff, at the time he was removed from the fire

department's payroll, he was a sworn lieutenant, and thus his disability pension should be based on the salary of a lieutenant.

¶ 15 Defendants respond that plaintiff never worked as a lieutenant, never received pay at the lieutenant rank, never paid pension contributions at the lieutenant rate, and was never assigned to perform duties as a lieutenant. According to defendants, a mere promotion while on disability leave, without actual service or compensation at the higher rank, does not satisfy the statutory requirements for a pensionable salary at the higher rank. Thus, defendants contend, the Board's decision to award plaintiff a line-of-duty disability pension based on the salary of a firefighter was proper.

¶ 16 Under the Pension Code, the provisions of the Administrative Review Law (735 ILCS 5/3-101 to 3-113 (West 2022)) govern judicial review of final administrative decisions of the Board. 40 ILCS 5/4-139 (West 2022). In cases involving administrative review, the appellate court reviews the decision of the administrative agency, not the determination of the trial court. *Sottos*, 2017 IL App (3d) 160481, ¶ 13. The standard of review depends on whether the question presented is one of fact, one of law, or a mixed question of fact and law. *Beggs v. Board of Education of Murphysboro Community Unit School District No. 186*, 2016 IL 120236, ¶ 50. As to a question of fact, the agency's decision will not be reversed on appeal unless it is against the manifest weight of the evidence. *Sottos*, 2017 IL App (3d) 160481, ¶ 13. A question of law, however, is subject to *de novo* review. *Id.* A mixed question of fact and law is reviewed under the clearly erroneous standard. *Id.* Regardless of the applicable standard of review, the plaintiff bears the burden to demonstrate error in the agency's determination and will be denied relief if he or she fails to sustain that burden. *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532-33 (2006) (*per curiam*); *Carrillo v. Park Ridge Firefighters' Pension Fund*, 2014 IL App (1st) 130656, ¶ 21.

¶ 17 In the present case, the parties disagree on the appropriate standard of review to be applied in this appeal. Plaintiff argues that there are no disputed questions of fact in this case and that the question before us is purely a question of statutory interpretation. Thus, plaintiff asserts, the appropriate standard of review for this appeal is *de novo*. Defendants, on the other hand, assert that this court must review the facts and circumstances of plaintiff's promotion and the payments made while his disability application was pending and apply it to the statutory and administrative provisions at issue. Thus, defendants contend, the question before us is a mixed question of fact and law and the appropriate standard of review in this appeal is the clearly erroneous standard.

¶ 18 The issue before us is whether the Board properly awarded plaintiff a line-of-duty disability pension based on the monthly salary attached to the firefighter rank where plaintiff had been promoted to a lieutenant prior to being removed from the fire department's payroll. We conclude that this issue presents a mixed question of fact and law, as it involves the application of the Pension Code to the facts of plaintiff's case. See *Petrovic v. Department of Employment Security*, 2016 IL 118562, ¶ 21 (applying clearly erroneous review to the issue of whether the claimant committed misconduct warranting the denial of unemployment benefits); *Leach v. Department of Employment Security*, 2020 IL App (1st) 190299, ¶ 22 (reviewing determination of whether the claimant was eligible for unemployment benefits using the clearly erroneous standard); *Village of Chicago Ridge v. Chicago Ridge Firefighters' Pension Board of Trustees*, 2016 IL App (1st) 152089, ¶ 8 (applying clearly erroneous review to issue of whether 20% buyout increase in salary should be included in firefighter's pensionable salary); *Smith v. Board of Trustees of the Westchester Police Pension Board*, 405 Ill. App. 3d 626, 630 (2010) (applying clearly erroneous review to issue of whether "salary upgrade," merit pay, and holiday pay should be included in calculation of police officer's pensionable salary). But see *Sottos*, 2017 IL App (3d) 160481, ¶¶ 14, 17 (applying *de novo* review

to address the meaning of the phrase “ ‘at the date [the firefighter] is removed from the municipality’s fire department payroll’ ” in section 4-110 of the Pension Code (40 ILCS 5/4-110 (West 2014))). As noted earlier, a mixed question is reviewed under the clearly erroneous standard. *Petrovic*, 2016 IL 118562, ¶ 21. This standard is less deferential to the administrative agency than the manifest weight standard. *Id.* A decision is clearly erroneous when the reviewing court is left with the definite and firm conviction that a mistake has been committed. *Bolger v. Department of Children and Family Services*, 399 Ill. App. 3d 437, 448 (2010). To the extent we are required to interpret provisions of the Pension Code or any administrative rules, we will employ the *de novo* standard, using the general rules of statutory interpretation and construction. *Mercado v. S&C Electric Co.*, 2025 IL 129526, ¶¶ 20-21; *Ally Financial, Inc. v. Chicago Department of Administrative Hearings*, 2025 IL App (1st) 240025, ¶ 29. In addition to the standard of review, we are guided by the principle that pension statutes are to be liberally construed in favor of the rights of the pensioner. *Vokac v. Berwyn Police Pension Fund*, 2025 IL App (1st) 240338, ¶ 28.

¶ 19 To resolve the issue before us, we must first examine section 4-110 of the Pension Code (40 ILCS 5/4-110 (West 2022)), which addresses line-of-duty disability pension benefits for firefighters. Section 4-110 provides in pertinent part as follows:

“If a firefighter, as the result of sickness, accident or injury incurred in or resulting from the performance of an act of duty or from the cumulative effects of acts of duty, is found *** to be physically or mentally permanently disabled for service in the fire department, so as to render necessary his or her being placed on disability pension, the firefighter shall be entitled to a disability pension equal to the greater of (1) 65% of the monthly salary attached to the rank held by him or her in the fire department at the date he or she is removed from the municipality’s fire department payroll or (2) the retirement pension that

the firefighter would be eligible to receive if he or she retired (but not including any automatic annual increase in that retirement pension).” 40 ILCS 5/4-110 (West 2022).

The principles of statutory construction are well established. The primary objective of statutory construction is to ascertain and give effect to the intent of the legislature. *State Bank of Cherry v. CGB Enterprises, Inc.*, 2013 IL 113836, ¶ 56. The most reliable indicator of legislative intent is the language of the statute itself, given its plain and ordinary meaning. *Id.* In determining the plain meaning of statutory terms, a court should consider the statute in its entirety and keep in mind the subject the statute addresses and the apparent intent of the legislature in enacting the statute. 5 ILCS 70/1.01 (West 2022) (providing that in construing a statute, “[a]ll general provisions, terms, phrases and expressions shall be liberally construed in order that the true intent and meaning of the General Assembly may be fully carried out”); *Blum v. Koster*, 235 Ill. 2d 21, 29 (2009). If the statutory language is clear and unambiguous, it must be applied as written, without resorting to further aids of statutory construction. *State Bank of Cherry*, 2013 IL 113836, ¶ 56. A court may not depart from the plain language of the statute and read into it exceptions, limitations, or conditions that are not consistent with the express legislative intent. *Id.*

¶ 20 The operative statutory language at issue in this case centers on section 4-110’s mandate that a line-of-duty disability pension be based on “65% of the monthly salary attached to the rank held by [the firefighter] *** at the date he or she is removed from the municipality’s fire department payroll.” 40 ILCS 5/4-110 (West 2022). We will refer to this language as “the payroll clause.” Applying the plain language of the payroll clause to the facts of this case and construing the provision liberally in favor of the plaintiff, as we must, we are left with the definite and firm conviction that the Board committed a mistake in awarding plaintiff a line-of-duty disability pension based on a firefighter’s salary. The record in this case shows that plaintiff was formally

promoted to lieutenant on April 12, 2024, and was collecting TTD benefits from the City at that time. Plaintiff was still receiving TTD benefits on June 4, 2024, the date of the hearing on his application for disability benefits. In its January 15, 2025, decision and order, the Board found that plaintiff had been removed from the fire department's payroll on June 4, 2024, a date *after* he had been sworn in as a lieutenant. Applying the plain language of the statute, plaintiff held the rank of lieutenant at the date he was removed from the City's fire department payroll. Thus, the Board should have awarded plaintiff a line-of-duty disability pension based on the monthly salary attached to the rank of lieutenant because that is the rank he held on the payroll-removal date. Accordingly, the Board's decision to award plaintiff a line-of-duty disability pension based on the rank of firefighter was clearly erroneous.

¶ 21 Our interpretation is consistent with *Sottos*, which also reviewed section 4-110 of the Pension Code. In that case, the plaintiff, a firefighter, suffered duty-related lower-back injuries and underwent two lumbar fusions. *Sottos*, 2017 IL App (3d) 160481, ¶ 3. After being medically disqualified from firefighting in 2012, the plaintiff applied for a line-of-duty disability pension. *Id.* ¶ 3. Following an administrative hearing, the defendant, the Board of Trustees of the Firefighters' Pension Fund of the City of Moline, voted to grant the plaintiff a line-of-duty disability pension. *Id.* ¶ 4. The defendant found that the plaintiff's last date on the city's payroll was March 7, 2014, and that the salary attached to the plaintiff's rank on that date was \$75,674.93, resulting in a monthly pension of \$4,099.06 (see 40 ILCS 5/4-110 (West 2014) (providing that a line-of-duty disability pension equals 65% of the monthly salary attached to the firefighter's rank on the date he or she is removed from the municipality's fire department payroll)). *Sottos*, 2017 IL App (3d) 160481, ¶ 4.

¶ 22 On its own motion, the defendant later convened a second hearing to reconsider its ruling. *Id.* ¶ 5. At the hearing, the city's human resources manager testified as follows regarding the plaintiff's salary history. *Id.* ¶¶ 5-6. Prior to February 27, 2013, the annual salary attached to the plaintiff's rank was \$72,204. *Id.* ¶ 6. In February 2013, after an anniversary increase, it rose to \$73,829.32. *Id.* The plaintiff received full pay from the city pursuant to the Public Employee Disability Act (5 ILCS 345/0.01 *et seq.* (West 2012)) through March 8, 2013, and pension contributions were withheld during that period. *Sottos*, 2017 IL App (3d) 160481, ¶ 6. After the Public Employee Disability Act payments ceased, the plaintiff began receiving TTD benefits from the city based on his February 2013 salary. *Id.* In May 2013, the city stopped withholding pension fund contributions from payments made to the plaintiff. *Id.* In June 2013, the plaintiff received a lump-sum payment from the city for accrued sick leave with a pension contribution withheld. *Id.* In January 2014, the city instituted a general wage increase that would have boosted the plaintiff's salary to \$75,674.93. *Id.* However, the plaintiff did not receive that general wage increase, and he did not make pension contributions based on that increased annual salary. *Id.* The plaintiff continued receiving TTD benefits from the city until a workers' compensation settlement contract was approved in February 2014. *Id.* In March 2014, the plaintiff was paid a lump sum by the city for his accumulated vacation and compensatory time, calculated at the higher salary of \$75,674.93. *Id.*

¶ 23 At the close of the reconsideration hearing, the defendant issued an amended written order finding that the plaintiff's last day on the city's payroll was March 8, 2013 (when Public Employee Disability Act benefits ended and TTD benefits commenced), that the plaintiff's salary at the time was \$73,829.32, and that the resulting pension should be reduced to \$3,999.09. *Id.* ¶ 7. The defendant also ordered that any excess pension contributions after March 8, 2013, be refunded. *Id.*

The defendant's amended order did not explain why it changed its position. *Id.* On administrative review, the circuit court reversed the defendant's amended decision and reinstated the defendant's original, higher pension award. *Id.* ¶ 8. The defendant appealed. *Id.*

¶ 24 The reviewing court addressed the meaning of the phrase “ ‘at the date [the firefighter] is removed from the municipality's fire department payroll’ ” in section 4-110 of the Pension Code (40 ILCS 5/4-110 (West 2014)). *Sottos*, 2017 IL App (3d) 160481, ¶ 17. Because the plaintiff's salary figures and payment history were undisputed, the court applied *de novo* review. *Id.* ¶ 14. Construing the statutory language liberally in favor of the plaintiff, the court concluded that the plaintiff remained on the city's payroll until 2014, making the 2014 salary controlling. *Id.* ¶ 18. The court emphasized that the plaintiff received TTD benefits from the city until February 2014 and also received a lump-sum payout from the city of his accrued vacation and compensatory time in March 2014 at the higher salary level. *Id.* The court found persuasive a May 2016 advisory opinion from the Department. *Id.* That advisory opinion determined that TTD benefits paid to a firefighter by his or her municipal employer constitute being on the municipality's payroll for the purpose of section 4-110 of the Pension Code. *Id.*

¶ 25 Further, the court found that the defendant, in arguing to the contrary, improperly conflated two separate concepts—(1) whether a payment counts as salary and (2) whether receiving payments from the municipality means the firefighter remains on its payroll. *Id.* ¶ 19. In other words, the defendant's argument addressed what constitutes salary, whereas the statutory issue concerned the date a firefighter is removed from the municipality's fire department payroll. *Id.* The court stated that even if the TTD benefits are not “salary,” a firefighter receiving TTD benefits directly from the municipality may still remain on the municipality's payroll. *Id.* ¶¶ 18-19. Accordingly, because the plaintiff remained on the municipality's payroll while receiving TTD

benefits—and later received a lump-sum payout from the city—the 2014 salary attached to his rank governed the calculation of his line-of-duty disability pension rather than the 2013 salary. *Id.*

¶ 26 Thus, *Sottos* squarely interpreted section 4-110 of the Pension Code and held that it must be construed liberally in favor of the applicant and that a firefighter remains “on payroll” while receiving TTD benefits paid by the municipality. The *Sottos* court used the later payroll-removal date (when TTD ceased) to determine the salary attached to the rank, thereby restoring the higher pension amount. As noted above, the record in this case establishes that plaintiff remained on TTD benefits through June 4, 2024, the date of the hearing on his application for disability benefits, which was the date the Board determined he had been removed from the fire department’s payroll. Because plaintiff held the rank of lieutenant at that time, the Board should have based his line-of-duty disability pension on the salary attached to the lieutenant rank.

¶ 27 Defendants assert that *Sottos* is distinguishable because it did not consider the definition of salary, as there was no dispute between the parties as to what salary should be applied. See *Sottos*, 2017 IL App (3d) 160481, ¶¶ 17-18. According to defendants, in this case, the disputed issue concerns the appropriate *salary* attached to the rank held by plaintiff at the time he was removed from the payroll. Defendants mischaracterize the issue presented. The issue in this case turns on the salary attached to the *rank held* by plaintiff at the time he was removed from the municipality’s fire department payroll. Hence, defendants’ attempt to distinguish *Sottos* on this basis is unpersuasive.

¶ 28 Defendants also assert that plaintiff was never assigned to perform lieutenant duties, never received a salary at the rank of a lieutenant, and never contributed to the pension fund at the lieutenant rate. But the plain language of section 4-110 of the Pension Code does not condition a disability pension on actual services performed, salary received, or contributions made in the

promoted rank. Rather, it turns on the *rank held* by the firefighter at the payroll-removal date. *Sottos* confirms that the analysis centers on the timing of the payroll removal and salary attached to the rank then held, not on the duties performed, salary received, or pension contributions made. Hence, the fact that plaintiff never worked as a lieutenant, never received a salary at that rank, and never contributed to the pension fund at the lieutenant rate is not relevant.

¶ 29 Defendants note that pursuant to section 1A-103 of the Pension Code (40 ILCS 5/1A-103 (West 2022)), the Department is authorized to promulgate rules necessary for the administration and enforcement of the Pension Code. 50 Ill. Adm. Code 4402.10 (1998). In accordance with this authority, defendants highlight that section 4402.30 of title 50 of the Illinois Administrative Code (Administrative Code) defines “salary” as:

“[A]ny fixed compensation received by an employee of a municipality that participates in one of the pension funds established under Article 3 or 4 of the *** Pension Code, which has been approved through an appropriations ordinance of the municipality. Salary is received regularly and is attached to the rank or class to which the firefighter or police officer is assigned.” 50 Ill. Adm. Code 4402.30 (1996).

Defendants assert that section 4402.30 of title 50 of the Administrative Code bars plaintiff from receiving a line-of-duty disability pension based on a lieutenant’s salary, because plaintiff never received fixed compensation regularly at that rank and produced no evidence that his salary was established as that of a lieutenant through an appropriations ordinance. However, section 4402.30 is contained in part 4402 of title 50 of the Administrative Code. That particular part was only intended to define the word “salary” as used in sections 3-125 and 4-124 of the Pension Code (40 ILCS 5/3-125, 4-124 (West 2022)). See 50 Ill. Adm. Code 4402.20 (1998) (“The purpose of this Part is to define the word ‘salary’ as used in Section 3-125 and 4-124 of the Illinois Pension Code

*** as it applies to pension funds formed pursuant to Articles 3 and 4 of the Illinois Pension Code”). The question before us does not involve either of those two sections of the Pension Code. Rather, it centers on section 4-110 of the Pension Code, which mandates that a line-of-duty disability pension be based on “65% of the monthly salary attached to the rank held by [the firefighter] *** at the date he or she is removed from the municipality’s fire department payroll.” 40 ILCS 5/4-110 (West 2022); see *Sottos*, 2017 IL App (3d) 160481, ¶ 17 (rejecting similar argument).

¶ 30 Defendants also direct us to section 4-118.1(d) and (e) of the Pension Code (40 ILCS 5/4-118.1(d)-(e) (West 2022)). Those provisions state:

“(d) ‘Salary’ means the annual salary, including longevity, attached to the firefighter’s rank, as established by the municipality appropriation ordinance, including any compensation for overtime which is included in the salary so established, but excluding any ‘overtime pay’, ‘holiday pay’, ‘bonus pay’, ‘merit pay’, or any other cash benefit not included in the salary so established.

(e) The contributions shall be deducted and withheld from the salary of firefighters.” 40 ILCS 5/4-118.1(d)-(e) (West 2022).

Relying on the aforementioned language, defendants assert that plaintiff was required to establish that he made contributions to the pension fund at the lieutenant rate and that there was an appropriation ordinance to support an increased salary at the lieutenant rank. Defendants argue that plaintiff failed on both counts. Defendants’ reliance on these provisions is misplaced.

¶ 31 Section 4-118.1 of the Pension Code (40 ILCS 5/4-118.1 (West 2022)) governs the percentage of a firefighter’s salary that shall be contributed to the pension fund. Section 4-118.1(d) (40 ILCS 5/4-118.1(d) (West 2022)) addresses what constitutes salary for calculating the pension

contribution. The issue before us does not involve a calculation of a firefighter's pension contribution. Thus, defendants' reliance on section 4-118.1(d) is unavailing. Moreover, section 4-118.1(e) (40 ILCS 5/4-118.1(e) (West 2022)) merely requires that pension contributions "be deducted and withheld" from a firefighter's salary. Defendants do not dispute that pension fund contributions were deducted and withheld from plaintiff's firefighter salary. And we read nothing in the plain language of section 4-118.1 that requires a firefighter to contribute to the pension fund at the salary attached to the particular rank for which he or she is awarded a disability pension.

¶ 32 In support of their position, defendants also direct us to *Chicago Ridge Firefighters' Pension Board*, 2016 IL App (1st) 152089. At issue in that case was whether a one-day "buyout" increase of a firefighter's pay should be included in the firefighter's pensionable salary. *Id.* ¶ 8. Crucially, unlike this case, *Chicago Ridge Firefighters' Pension Board* did not involve a determination of the rank held by the firefighter at the time he was removed from the municipality's fire department payroll. Thus, defendants' reliance on *Chicago Ridge Firefighters' Pension Board* is unpersuasive.

¶ 33 Additionally, defendants contend that the Department's May 2016 advisory opinion supports their decision to award plaintiff benefits based upon his rank as a firefighter. In the case addressed by the Department in the advisory opinion, the firefighter was injured in May 2013. For the year following the injury, he received pay and benefits pursuant to the Public Employee Disability Act. After that, the firefighter received TTD benefits. While receiving TTD benefits, the firefighter was promoted to the rank of engineer. The Department was asked to address two questions: (1) the rank held by the individual (firefighter or engineer) for pension purposes and (2) the meaning of the phrase in section 4-110 of the Pension Code to be "removed from the municipality's fire department payroll."

¶ 34 Initially, the Department determined that a firefighter receiving benefits under the Public Employee Disability Act remains on the fire department's payroll because such benefits constitute "continuing compensation." See 5 ILCS 345/1(b) (West 2012) (providing that "[w]henver an eligible employee suffers any injury in the line of duty which causes him to be unable to perform his duties, he shall continue to be paid by the employing public entity on the same basis as he was paid before the injury"). The Department further determined that because TTD benefits are generally paid by the employer, they should also be considered pay and the firefighter would be considered "on payroll" while receiving TTD benefits. The Department opined that for the TTD benefits to be considered part of the pensionable salary, "contributions must have been made by the individual on the salary attached to the engineer's rank (not the TTD itself)." The Department cautioned, however, that if the firefighter was taken off the payroll prior to the payment of TTD benefits, "then the individual's pension would be based on the rank of firefighter." The Department then remarked:

"It is notable that in the instant matter the individual received a promotion while on TTD. These benefits are paid to an injured employee until the employee has returned to work or has reached maximum medical improvement. As the individual was eligible for a line-of-duty disability, it follows that the employee was unable to perform the duties of his rank (firefighter), and his promotion to Engineer might be called into question. *As this issue was not contained in your request for an advisory opinion, the [Department] will offer no opinion on that matter.*

In conclusion, it is the [Department's] opinion that assuming the propriety of the promotion[,] the rank of engineer may be used if the following circumstances are met: the municipality and/or fire department was paying the TTD benefits to the employee, and, the

individual made contributions on the salary attached to rank of engineer for the period during which the individual was receiving the TTD benefits.” (Emphasis added.)

¶ 35 Defendants point out that plaintiff received TTD benefits based on the rank of firefighter, not lieutenant, and there was no other evidence presented to it that plaintiff made contributions to the pension fund based on the salary attached to the rank of lieutenant. Therefore, defendants reason, the Department’s 2016 advisory opinion supports their decision to award benefits based upon plaintiff’s rank as a firefighter. However, as the language italicized in the above passage makes clear, the Department did not address whether a firefighter who is unable to perform the duties of his or her rank and receives a promotion while on TTD is entitled to a pensionable salary at the higher rank. Moreover, although advisory opinions from the Department are entitled to considerable deference, they are not binding. See *Roselle Police Pension Board v. Village of Roselle*, 232 Ill. 2d 546, 559 (2009); *Sottos*, 2017 IL App (3d) 160481, ¶ 18; see also *Chicago Ridge Firefighters’ Pension Board*, 2016 IL App (1st) 152089, ¶ 19 (rejecting reliance on outside sources, including a Department advisory opinion, because language of statutory provision was clear and unambiguous). Other than section 4-110 of the Pension Code, the Department cited nothing in its advisory opinion to support its decision. As noted earlier, however, there is nothing in the plain language of the Pension Code that ties a firefighter’s pensionable salary to the rate of contributions he or she made to the pension fund before being removed from the municipality’s fire department payroll. Thus, we are unpersuaded by defendants’ reliance on the Department’s May 2016 advisory opinion.

¶ 36 Prior to concluding, we understand defendants’ view that the Board’s decision to award plaintiff a line-of-duty disability pension based on the salary of a firefighter was proper because plaintiff never worked as a lieutenant, never received pay at the lieutenant rank, never made

pension contributions at the lieutenant rate, and was never assigned to perform duties as a lieutenant. However, “[i]t is the dominion of the legislature to enact laws[,] and it is the province of the courts to construe those laws.” (Internal quotation marks omitted.) *In re Estate of Shelton*, 2017 IL 121199, ¶ 43. A court “can neither restrict nor enlarge the meaning of an unambiguous statute.” (Internal quotation marks omitted.) *Id.* Ultimately, the responsibility for the justice or wisdom of an enactment rests upon the legislature. *People v. Mayfield*, 2023 IL 128092, ¶ 27. If the legislature did not intend the result we reach today, we urge it to revisit this statute to ensure that the language employed clearly reflects its intent.

¶ 37

III. CONCLUSION

¶ 38 For the foregoing reasons, we reverse the judgment of the circuit court of Kane County, reverse the decision and order of the Board, and remand the matter to the Board for a redetermination of plaintiff’s pensionable salary based on the rank of lieutenant.

¶ 39 Reversed and remanded.

Schneider v. Elgin Firefighters' Pension Fund, 2026 IL App (2d) 250476

Decision Under Review: Appeal from the Circuit Court of Kane County, No. 25-CH-10; the Hon. Kevin T. Busch, Judge, presiding.

**Attorneys
for
Appellant:**

Scott P. Moran, of Anesi Ozmon, Ltd., of Chicago, for appellant.

**Attorneys
for
Appellee:**

Thomas S. Radja Jr., of Radja Collins Law, of Downers Grove, for appellees.
