

IN THE MATTER OF THE)
DISABILITY APPLICATION OF:)
)
OFFICER MICHAEL PAHL,)
)
Applicant.)

The Board of Trustees of the Orland Hills Police Pension Fund (“Pension Board”), pursuant to the provisions of Article 3 of the Illinois Pension Code, 40 ILCS §5/3-101 *et seq.*, renders the following decision concerning the disability pension application of Officer Michael Pahl (“Applicant”).

The Pension Board has carefully considered all of the testimony elicited at the hearing and has reviewed all of the exhibits that were made a part of the administrative record. The Pension Board has considered all of the arguments made by Applicant and the documentation submitted. To the extent any arguments, findings, and conclusions submitted by Applicant are in accordance with the findings, conclusions and views stated herein, they have been accepted, and to the extent the testimony of witnesses or documentation submitted is not in accord with the findings herein, such testimony or documentation is not credited.

I. 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) Applicant is a regular member of the Orland Hills Police Department ("Police Department"). (Bd. Ex. 1).¹

2) Applicant was hired by the Police Department as a probationary officer on October 4, 2007. (Bd. Ex. 1).

3) On or about May 3, 2017, Applicant submitted an application to the Pension Board requesting a "line of duty" disability pension due to injuries to his left shoulder. (Tr. 22). At the December 6, 2017 hearing, Applicant voluntarily waived any claim for "not in the line of duty disability" benefits. (Tr. 9-10). According to the application, Applicant was injured as a result of a traffic crash while "responding to an emergency call with my emergency lights and sirens on." (Bd. Ex. 1, p. 4).

4) Applicant is sixty-four (64) years old. (Tr. 28).

5) Pension Board exhibits one (1) through fourteen (14) were admitted into the administrative record without objection. (Tr. 9).

Applicant's Relevant Physical Condition Prior to Incident

6) Applicant testified, prior to his employment with the Police Department, he underwent and passed a pre-employment physical examination. (Tr. 17-18).

¹ References to testimony from the transcript of hearing will be cited as (Tr. __). References to the Pension Board's exhibits contained in the administrative record will be cited as (Bd. Ex. __).

7) Additionally, prior to Applicant's admittance into the police academy, he was required to take and pass the Peace Officer Wellness Evaluation Report ("POWER") Test. (Tr. 18).

8) Prior to May 27, 2016, Applicant testified he had no injury to his left shoulder. (Tr. 19).

May 27, 2016

9) Applicant testified he was on duty as a full-time police officer, assigned to uniform patrol on May 27, 2016. (Tr. 14).

10) Applicant testified he responded to an emergency call "because I had the [automated external defibrillator]". (Tr. 32). Applicant stated, "I more or less self-dispatched, because as the supervisor that day, I had the [AED] in my vehicle." (Tr. 17). While responding, Applicant testified: "I got T-boned in the intersection. I mean, it was – according to the accident report, there were four eyewitnesses that, you know, indicated she neglectively (sic) didn't see or hear me coming and proceeded through." (Tr. 12-13).

11) Applicant further stated:

On impact, I was hit on the left side in the driver's door, and through the force of the impact, she shoved me diagonally across the intersection into a light pole on the southwest corner, in which case all airbags were deployed. I had to be extracted from the car through the fire department, placed on a stretcher and shipped off to the hospital where I spent the night for my injuries, and I was released the next day. (Tr. 19-20).

12) Regarding his injuries, Applicant testified:

The left shoulder, according to all the doctors, from the impact. Now, I don't – I don't know what they call it medically, the bone structures or whatever. So I'll just – it's the shoulder bone with the collarbone from

the impact, it pushed it together. And now every time to a certain degree – I mean, I can move this arm left and right, no problems. Scratch my back. However, with this one, just by going this forward, I have two tears in my rotary (sic) cuff, which by now are probably just healed and scar tissue, but the bones are rubbing together. (Tr. 22).

13) As to Applicant's inability to perform full, unrestricted police duty, he stated: "you know, if you want to take someone into custody and you have to wrestle with them, I don't have the strength anymore in my left arm to hang onto somebody... I don't have the strength in my left shoulder or left arm to detain someone." (Tr. 23-24).

14) Following his injury, Applicant underwent physical therapy and received cortisone shots. (Tr. 25).

15) Applicant further testified he has permanent work restrictions. Applicant stated, "lifting something nothing heavier than 20 pounds." (Tr. 26).

16) Applicant testified Dr. Bayless, an orthopaedic surgeon, recommended surgery. (Tr. 27). However, Applicant stated, "Well I don't want surgery. I don't feel that I should have to try to go through any more pain and suffering than what I've already been through. As we all know, there's nothing guaranteed in life, and at my age, I just feel that, you know, I shouldn't have to go through all that." (Tr. 27-28).

17) Applicant stated no medical doctor has cleared him for full and unrestricted police duty. (Tr. 31-32).

18) Following his injury, Applicant has never returned to full and unrestricted police duty. (Tr. 33). In fact, Applicant has not worked in any capacity at the Police Department, following his injury on May 27, 2016. (Tr. 33).

Recent Work and Pay Status

19) Applicant has never been offered a permanent light-duty position with the Police Department. (Tr. 33).

20) Following Applicant's injury, he received one full year of Public Employee Disability Act ("PEDA") benefits. (Tr. 34). Applicant's PEDA benefits ended on May 28, 2017. (Tr. 49).

21) Following PEDA, Applicant received Temporary Total Disability ("TTD") benefits in the amount of \$2,114.66 on a bi-weekly basis. (Tr. 35). Applicant is currently receiving TTD. (Tr. 35).

Functional Capacity Evaluation

22) On March 8, 2017, Applicant completed a functional capacity evaluation ("FCE"). (Bd. Ex. 10, p. 1008).

23) The FCE stated, in relevant part, "The Dictionary of Occupational Titles places [Applicant's] occupation as a Police Officer I in the medium strength category. Therefore, [Applicant] does not meet these strength requirements and may not return to work as a Police Officer I." (Bd. Ex. 10, p. 1011).

Pension Board's Independent Medical Examinations

24) Pursuant to §5/3-115 of the Illinois Pension Code, the Pension Board selected three (3) physicians to conduct an independent medical examination ("IME") of Applicant. Those physicians were George E. Charuk, D.O. (Bd. Ex. 12), Prasant Atluri, M.D. (Bd. Ex. 13), and Nikhil N. Verma, M.D. (Bd. Ex. 14).

IME of Dr. George Charuk

25) Dr. Charuk is licensed to practice medicine in Illinois and is Board

Certified in Physical Medicine and Rehabilitation. (Bd. Ex. 12, p. 1509).

26) Dr. Charuk examined Applicant on September 29, 2017, and certified Applicant disabled. (Bd. Ex. 12, p. 1491).

27) Dr. Charuk opined, "it is my opinion that [Applicant] is in fact disabled from performing full and unrestricted police duties. He has evidence of shoulder impingement and acromioclavicular joint arthritis in his left shoulder, which preclude him from doing full police duties." (Bd. Ex. 12, p. 1501).

28) As to Applicant's explanation, Dr. Charuk concluded: "I believe that [Applicant's] explanation is consistent with his subjective and objective findings." (Bd. Ex. 12, p. 1502).

29) Regarding causation, Dr. Charuk concluded, "In my opinion that due to the injury [Applicant] sustained on 5/27/2016 he has developed severe acromioclavicular joint arthritis and shoulder impingement that has been resistant to improvement with injections and with physical therapy. I believe within a reasonable degree of medical certainty that his disability is a result of the injury he sustained from the accident on 5/27/2016." (Bd. Ex. 12, p. 1502).

30) In his report, Dr. Charuk noted, "I do not believe that additional medical care and treatment would enable [Applicant] to return to full unrestricted police duties." (Bd. Ex. 12, p. 1503).

IME of Dr. Prasant Atluri

31) Dr. Atluri is licensed to practice medicine in Illinois and is Board Certified in Orthopaedic Surgery. (Bd. Ex. 13, p. 1527).

32) Dr. Atluri examined Applicant on October 3, 2017, and certified

Applicant disabled. (Bd. Ex. 13, p. 1515).

33) Dr. Atluri opined Applicant's left shoulder pain and stiffness "interferes with [Applicant's] ability to safely perform any forceful activity with the left upper extremity." (Bd. Ex. 13, p. 1519).

34) As to duration, Dr. Atluri concluded, "In the absence of additional treatment, [Applicant's] left shoulder condition is likely to partially improve over time. However, it is unlikely that [Applicant's] left shoulder function will improve sufficiently for him to resume full duty work activities." (Bd. Ex. 13, p. 1519).

35) Dr. Atluri noted, "The mechanism of injury described by [Applicant] is consistent with the clinical documentation and consistent with his findings at today's evaluation." (Bd. Ex. 13, p. 1520).

36) Dr. Atluri concluded, "The left shoulder adhesive capsulitis represents a complication of his left shoulder trauma and is therefore secondarily related to the work injury from May of 2016." (Bd. Ex. 13, p. 1520).

37) Finally, Dr. Atluri opined, "It is likely that [Applicant] would be capable of resuming full duty police work if he underwent additional treatment that has been recommended by his treating physicians." (Bd. Ex. 13, p. 1520).

IME of Dr. Nikhil Verma

38) Dr. Verma is licensed to practice medicine in Illinois and is Board Certified in Orthopaedic Surgery. (Bd. Ex. 14, p. 1542).

39) Dr. Verma examined Applicant on October 9, 2017, and certified Applicant disabled. (Bd. Ex. 14, p. 1533).

40) Dr. Verma opined, "At this point, my diagnosis is left shoulder

impingement with AC joint pain and biceps tenosynovitis. It is my opinion that [Applicant's] diagnosis is causally related to his work injury and motor vehicle accident based upon on acute onset of symptoms and appropriate cause to mechanism." (Bd. Ex. 14, p. 1537).

41) Dr. Verma concluded, "the [Applicant] has maximized conservative care, and I do not feel that further conservative care would result in meaningful benefit. As he has elected not to undergo surgery, he would be placed at MMI at this time." (Bd. Ex. 14, p. 1537).

42) Dr. Verma found, "Given his current functional examination as well as MRI studies, he would be disabled from full duty work activities." (Bd. Ex. 14, p. 1537).

43) Finally, Dr. Verma noted, "With surgical intervention, [Applicant] might or could be released to a full duty work, depending on his outcome following surgery." (Bd. Ex. 14, p. 1537).

II. APPLICABLE STATUTORY PROVISIONS

The following provision of the Illinois Pension Code has application:

40 ILCS 5/3-114.1 Disability pension – Line of duty

Disability pension – Line of duty. (a) If a police officer as the result of sickness, accident or injury incurred in or resulting from the performance of an act of duty, is found to be physically or mentally disabled for service in the police department, so as to render necessary his or her suspension or retirement from the police service, the police officer shall be entitled to a disability retirement pension equal to the greatest of (1) 65% of the salary attached to the rank on the police force held by the officer at the date of suspension or retirement, (2) the retirement pension that the police officer would be eligible to receive if he or

she retired (but not including any automatic annual increase in that retirement pension), or (3) the pension provided under subsection (d), if applicable.

A police officer shall be considered "on duty" while on any assignment approved by the chief of the police department of the municipality he or she serves, whether the assignment is within or outside the municipality.
[40 ILCS 5/3-114.1]

III. ANALYSIS OF CLAIM

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 (1993); *Wall v. Schaumburg Police Pension Bd.*, 178 Ill.App.3d 438 (1989); *Evert v. Firefighters' Pension Fund of Lake Forest*, 180 Ill.App.3d 656 (1989). 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). 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. Springfield Police Pension Bd.*, 112 Ill.App.3d 1087 (1983).

Applicant's Line of Duty Disability Claim

The elements a police officer must prove in order to obtain a line of duty disability pension under 40 ILCS 5/3-114.1 of the Pension Code are as follows:

1. He or she is a police officer;
2. An accident, injury or sickness was incurred;
3. From the performance of an act of duty;

4. The officer is found to be physically or mentally disabled;
5. The disability renders necessary his or her suspension or retirement from police service.

In *Robbins v. Board of Trustees of the Carbondale Police Pension Fund*, 177 Ill.2d 533, 541-42 (1997), the Illinois Supreme Court set a definite standard for determining when a police officer's illness or injury is "incurred in," or "results from" the performance of an act of duty pursuant to 40 ILCS 5/3-114.1 of the Illinois Pension Code. The Illinois Supreme Court held that the term "act of duty" under 40 ILCS 5/3-114.1 of the Pension Code should be construed in accordance with 40 ILCS 5/5-113 of the Illinois Pension Code. That provision defines "act of duty" as follows:

Act of duty: Any act of police duty inherently involving special risk, not ordinarily assumed by a citizen in the ordinary walks of life, imposed on a policeman by the statutes of this State or by the ordinances or police regulations of the city in which this Article is in effect or by a special assignment; or any act of heroism performed in the city having for its direct purpose the saving of the life or property of a person other than the policeman." 40 ILCS 5/5-113.

An officer does not perform an "act of duty" merely by being in uniform and on duty. *Sarkis v. City of Des Plaines*, 378 Ill.App.3d 833, 837 (1st Dist. 2008); *English v. Northfield Police Pension Board*, 172 Ill.App.3d 344, 347 (1st Dist. 1988); *Morgan v. Retirement Board of the Policemen's Annuity and Benefit Fund*, 172 Ill.App.3d 273, 275 (1st Dist. 1988); *Jones v. Board of Trustees of the Police Pension Fund of the City of Bloomington*, 384 Ill.App.3d 1064 (4th Dist. 2008). Rather, "It is well established that a disability may result from multiple causes, and that in order to

obtain a full line-of-duty pension, a claimant need not prove that a duty-related accident is the sole cause, or even the primary cause, of his disability.” *Rose v. Bd. of Trustees of Mount Prospect Police Pension Fund*, 2011 IL App (1st) 102157, ¶ 92. Instead, “a claimant must only prove that the duty-related accident is a causative factor contributing to the claimant's disability.” *Id.* Moreover, “in deciding whether an officer is injured in an act of duty, the court must examine the capacity in which the officer was acting when he was injured.” *Merlo v. Orland Hills Police Pension Bd.*, 383 Ill. App. 3d 97, 102 (1st Dist. 2008).

In the instant matter, the Pension Board finds Applicant was a police officer for the Orland Hills Police Department and a member of the Orland Hills Police Pension Fund. Applicant has asserted a disability claim following an injury he sustained in a motor vehicle accident while responding to an emergency call. At the time of the occurrence, Applicant self-dispatched to an emergency call with an automated external defibrillator (“AED”). While responding to the emergency call, Applicant was “T-boned in the intersection,” causing permanent damage to his left shoulder.

The Pension Board finds Applicant was performing an “act of duty” at the time of his injury. The Pension Board finds the determinative question is the capacity in which Applicant was acting. Here, Applicant was responding to an emergency call with his lights and sirens activated, which required special skills and risk not ordinarily encountered by normal citizens. The injury to Applicant’s left shoulder and subsequent course of treatment have led to Applicant’s permanent disability. As a result, Applicant is prevented from performing full and unrestricted police duties.

In addition to Applicant's testimony, all three of the Pension Board's independent physicians have certified Applicant disabled. Dr. Charuk opined, "it is my opinion that [Applicant] is in fact disabled from performing full and unrestricted police duties. He has evidence of shoulder impingement and acromioclavicular joint arthritis in his left shoulder, which preclude him from doing full police duties." Dr. Charuk further concluded, "In my opinion that due to the injury [Applicant] sustained on 5/27/2016 he has developed severe acromioclavicular joint arthritis and shoulder impingement that has been resistant to improvement with injections and with physical therapy. I believe within a reasonable degree of medical certainty that his disability is a result of the injury he sustained from the accident on 5/27/2016." (Bd. Ex. 12, p. 1502).

Moreover, Dr. Atluri also reached the same conclusion as Dr. Charuk. Dr. Atluri opined Applicant's left shoulder pain and stiffness "interferes with [Applicant's] ability to safely perform any forceful activity with the left upper extremity." Dr. Atluri further concluded, "The left shoulder adhesive capsulitis represents a complication of his left shoulder trauma and is therefore secondarily related to the work injury from May of 2016."

Finally, Dr. Verma concurred with Dr. Charuk and Dr. Atluri. Dr. Verma concluded, "At this point, my diagnosis is left shoulder impingement with AC joint pain and biceps tenosynovitis. It is my opinion that [Applicant's] diagnosis is causally related to his work injury and motor vehicle accident based upon on acute onset of symptoms and appropriate cause to mechanism." Dr. Verma further found, "Given [Applicant's] current functional examination as well as MRI studies, he would be

disabled from full duty work activities.”

Therefore, based upon a preponderance of the evidence, the Pension Board finds Applicant is disabled so as to render necessary his suspension from police service. Whether the May 27, 2016 incident caused the disability or aggravated a pre-existing condition resulting in disability, the disabling injury was incurred in or resulted from the performance of an act of duty on that date.

IV. CONCLUSIONS

1) The Board of Trustees of the Orland Hills Police Pension Fund has jurisdiction over this disability claim.

2) Applicant, Officer Michael Pahl, is entitled to a line of duty disability pension under Section 3-114.1 of the Pension Code because he is currently disabled as a result of an injury incurred in or resulting from the performance of an act of duty.

3) The effective date of Applicant’s line of duty disability pension is the day following the date of his removal from the Village of Orland Hills’s payroll, with a pension based on the salary attached to rank as of that date.

4) Applicant’s line of duty disability pension benefit is subject to any applicable offsets and certification by the Village of Orland Hills Treasurer, pursuant to 40 ILCS 5/3-141.1.

5) Pursuant to 40 ILCS 5/3-114.5 of the Illinois Pension Code, and in accordance with *Eckman v. Board of Trustees for the Pension Fund of Elgin*, 143 Ill. App. 3d 757, 763 (2d Dist. 1986), Applicant’s line of duty pension benefit is subject to any applicable offsets. Applicant shall notify the Pension Board in the event of settlement or receipt of an award from any Worker’s Compensation case in order for

the Pension Board to determine whether there should be further offset pursuant to 40 ILCS 5/3-114.5 of the Illinois Pension Code. The Pension Board shall retain jurisdiction over this matter for this purpose only.

**BOARD OF TRUSTEES OF THE
ORLAND HILLS POLICE PENSION FUND**

William Gaides, President

Kevin Doyle, Vice President

John Daly, Secretary

Michelle Burke, Trustee

Michael Merlo, Trustee

DATED: _____ 2018

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 SERVED UPON THE PARTY AFFECTED THEREBY. THE AFFECTED PARTY MUST FILE A COMPLAINT FOR ADMINISTRATIVE REVIEW WITHIN 35 DAYS FROM THE MAILING DATE OF THIS DECISION.

CERTIFICATE OF SERVICE

I, William Gaides, being first duly sworn on oath states that he served copies of the attached Decision and Order, and Certificate of Payment on the person(s) named below by depositing same this _____ day of _____, 2018 in the U.S. Mail Box at 16033 94th Ave., Orland Hills, Illinois 60487:

☒ (X) CERTIFIED MAIL

☐ () FIRST CLASS MAIL

TO:

Officer Michael Pahl
9230 Board Walk Terrace
Orland Hills, Illinois 60487
(By Certified Mail)

William Gaides, President

SUBSCRIBED and SWORN
to before me this _____ day
of _____ 2018.

NOTARY PUBLIC

**BEFORE THE BOARD OF TRUSTEES OF THE
ORLAND HILLS POLICE PENSION FUND**

IN THE MATTER OF THE)
DISABILITY APPLICATION OF:)
)
OFFICER MICHAEL PAHL,)
)
APPLICANT.)

CERTIFICATE OF PAYMENT

Pursuant to Section 5/3-133 and Section 5/3.114.1 of the Illinois Pension Code, 40 ILCS 5/3-101 *et seq.*, this is to certify that Applicant, Officer Michael Pahl, is entitled to payment of a Line of Duty Disability Pension Benefit equal to 65% of the salary attached to the rank held by him at the time of his removal from the Orland Hills Police Department payroll, less any and all applicable offsets. The effective date of Applicant's line of duty disability pension benefit, subject to applicable offsets, is granted retroactive to May 29, 2017, the day following the date of his removal from the Village of Orland Hill's payroll. The amount of the benefit has been certified by the Treasurer of the Village in accordance with 40 ILCS 5/3-141.1.

BOARD OF TRUSTEES OF THE
ORLAND HILLS POLICE PENSION FUND

By: _____
PRESIDENT

SECRETARY

TREASURER, VILLAGE OF ORLAND HILLS

DATE: _____ 2018