

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

JOAQUIN MENDOZA,)	2022 CH 03984
)	
Plaintiff,)	
)	
v.)	Complaint for
)	Administrative Review
)	
RETIREMENT BOARD OF THE POLICEMEN’S)	
ANNUITY AND BENEFIT FUND)	Calendar 1
OF CHICAGO,)	
)	
Defendant.)	Hon. Thaddeus L. Wilson
)	Judge Presiding

ORDER

On April 28, 2022, Plaintiff, Joaquin Mendoza, filed a complaint for administrative review against Defendant, the Retirement Board of the Policemen’s Annuity and Benefit Fund of Chicago (“Board”). For the reasons that follow, Plaintiff’s complaint for administrative review is DENIED.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The Board is a pension fund created under the Illinois Pension Code (40 ILCS 5/501 *et seq.* (West 2022)). The Chicago Police Department (“Department”) is a unit of municipal government created by municipal ordinance.

On August 31, 1998, Plaintiff began working for the Department. During his employment, Plaintiff worked various assignments as a police officer, including an assignment to Area 5 Headquarters as midnight Detective Sergeant. Plaintiff alleges that his performance as a police officer always met or exceeded expectations.

Upon starting one of his shifts at Area 5 Headquarters, Plaintiff entered the 25th District; met with desk crew, including the district supervisor and district sergeant, in the lobby; and asked

about prisoners in the detective division and investigations from patrol. Plaintiff then checked in with the third-shift watch commander for detective needs; Centers for Disease Control and Prevention for awareness; afternoon detective sergeants; the Robbery, Burglary, and Theft Unit; and Special Victims Units. Plaintiff also spoke with victims, witnesses, and offenders; checked the arrestee board for hold time and charges; assigned detectives; conducted well-being checks on prisoners; and responded in the field for high-profile cases.

Around October or November 2020, patrol and detectives were issued one set of Personal Protective Equipment (“Protective Equipment”), which included one set of gloves, a mask, and a paper jumpsuit. Detectives received no Protective Equipment replacement and were not provided fresh Protective Equipment every day. Not all employees working in close contact with each other were wearing Protective Equipment.

During the time that Plaintiff worked at the 25th District, the Department neither performed contact tracing nor required arrestees to be screened before being placed in an interview room or lockup. However, detectives who had COVID-19 symptoms were taken out of rotation, and called off duty without returning until after they were tested. The Department had no procedure for notifying detectives of their exposure to COVID-19, and Plaintiff only learned of the existence of COVID-19-positive colleagues after they were taken off duty or when the cleaning crew would come in.

When Plaintiff left the office to perform field duties, he routinely interacted with people who were not wearing Protective Equipment. Plaintiff himself also did not always wear Protective Equipment. During the underlying administrative proceedings, Plaintiff alleged that wearing the Protective Equipment was impractical for visual and audible communication and for reading body language. Leading up to November 11, 2020, Plaintiff worked 17 days straight, during which time,

he did not attend any public gatherings and traveled directly home from work. No one lived with Plaintiff during these 17 days, and he did not have contact with anyone outside of work who was exposed to COVID-19.

On November 11, 2020, Plaintiff felt extremely tired and began coughing. He went to bed and did not wake up for an entire day. Upon waking, Plaintiff was unable to stand. The Department arranged for Plaintiff to be picked up by an ambulance, which transported him to Northwestern Hospital, where he tested positive for COVID-19. Plaintiff was hospitalized for 42 days, followed by 30 days of in-patient treatment at Shirley Ryan Ability Lab. As a result of his illness, Plaintiff experienced a series of strokes that rendered him severely and permanently disabled. Plaintiff was unable to resume his duties as a Department police officer.

Plaintiff believed that he contracted COVID-19 during his 17-day work period with the Department. Plaintiff did not recall any specific incident where he was in contact with a COVID-19-positive person, or learning that any arrestee was COVID-19-positive. Throughout the 10 days before Plaintiff was diagnosed, no one from Area 5 Headquarters tested positive for COVID-19, but Plaintiff was constantly exposed to others working the day shift and during afternoons. During the time when Plaintiff contracted COVID-19, time off for the infection was no longer available, and he was required to appear in-person at work, and to interact with detainees, witnesses, fellow police officers, and members of the general public. He also oversaw cases and report writing, assisted detectives, and monitored arrestees, though he was not directly involved with detective investigations or deployed on buses. When police officers and other sergeants were deployed, they first came to Plaintiff's office before being released from the radio office.

Plaintiff did not himself file an Injured on Duty Report, though someone else from Area 5 Headquarters did regarding his COVID-19 diagnosis. Plaintiff also did not file a claim under the

Workers' Occupational Disease Act (820 ILCS 310/1 *et seq.* (West 2022)). However, Plaintiff did file with the Board an application for line-of-duty benefits.

On February 24, 2022, the Board conducted a hearing on Plaintiff's application for line-of-duty benefits. On March 25, 2022, the Board issued its decision denying Plaintiff line-of-duty benefits and awarding him \$5,151.08 per month in ordinary disability benefits under section 5-155 of the Illinois Pension Code. On April 28, 2022, Plaintiff instituted this administrative review action.

ANALYSIS

As the basis of his complaint for administrative review, Plaintiff argues that the Board erred in its March 25, 2022 order by denying him line-of-duty benefits. In its March 25, 2022 order, the Board concluded that Plaintiff was not entitled to line-of-duty benefits because he failed to meet his burden of establishing that he became disabled due to an "act of duty," as is required under sections 5-113 and 5-154 of the Illinois Pension Code. Compl., Ex. A, at 18. Thus, the sole issue contested here by the parties is whether the Board erred by finding that Plaintiff was not disabled due to an "act of duty," as contemplated by the Illinois Pension Code.

At the outset, however, the parties also dispute the appropriate standard of review that this Court should apply. The exact standard of review to be applied in administrative review cases depends upon whether the court must decide a question of fact, question of law, or mixed question of fact and law. *Beggs v. Bd. of Educ. of Murphysboro Cmty. Unit Sch. Dist. No. 186*, 2016 IL 120236, ¶ 50. Questions of law are to be reviewed under a *de novo* standard, whereas an agency's factual findings will only be reversed if they are against the manifest weight of the evidence. *Id.* "A mixed question of law and fact asks the legal effect of a given set of facts," or "whether established facts satisfy applicable legal rules." *Comprehensive Cmty. Sols., Inc. v. Rockford Sch.*

Dist. No. 205, 216 Ill. 2d 455, 472 (2005). Mixed questions of law and fact are to be reviewed under a clearly erroneous standard. *Apostolov v. Johnson*, 2018 IL App (1st) 173084, ¶ 18. “An administrative decision is clearly erroneous when[,] although there is evidence to support it, the reviewing court[,] on the entire evidence[,] is left with the definite and firm conviction that a mistake has been committed.” *Beggs*, 2016 IL 120236, ¶ 50 (internal citation omitted).

Plaintiff argues that this Court should apply a *de novo* standard of review here because the underlying facts are undisputed, citing to *Sarkis v. City of Des Plaines*, 378 Ill. App. 3d 833 (2008), to support this argument. In *Sarkis*, the court explained that it would apply a *de novo* standard of review when evaluating an underlying administrative decision, since the appeal required the court to interpret the language of the relevant statute. 378 Ill. App. 3d at 837.

Conversely, the Board argues that this Court should apply a clearly erroneous or manifest weight standard of review in this case, citing a string of cases. The Board further argues that courts have rejected the same contention advanced by Plaintiff that the fact that the underlying facts are undisputed warrants *de novo* review. By way of example, the Board cites to *Merlo v. Orland Hills Police Pension Bd.*, 383 Ill. App. 3d 97 (2008) and *Frisby v. Vill. of Bolingbrook Firefighters’ Pension Fund*, 2018 IL App (2d) 180218.

In *Merlo*, the court applied a clearly erroneous standard in reviewing the underlying agency decision. 383 Ill. App. 3d at 100. In reviewing the agency decision, the court considered whether the police officer challenging the decision was injured while performing an act of duty. *See id.*, at 100–03 (analyzing the provisions of the Illinois Pension Code and interpreting case law defining when a police officer should receive line-of-duty benefits following an injury incurred from an act of duty). Separately, in *Frisby*, the court explained that it would apply the clearly erroneous standard to review the underlying agency decision because the facts, while disputed in the

underlying proceedings, were undisputed before the court and the remaining issue on appeal was whether the injury of the appealing individual occurred during the performance of an act of duty. 2018 IL App (2d) 180218, ¶ 15.

Resolution of this dispute will require this Court to analyze the relevant provisions of the Illinois Pension Code and interpreting case law, to in turn determine whether Plaintiff was disabled due to an act of duty, entitling him to line-of-duty benefits. The clearly erroneous standard is to be applied during “an examination of the legal effect of a given state of facts[,] involv[ing] a mixed question of fact and law.” *Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 211 (2008). Since this case will involve applying the underlying facts to the governing law to determine whether Plaintiff is indeed entitled to line-of-duty benefits under the Illinois Pension Code, this Court will employ the clearly erroneous standard of review.

Turning to the merits of this dispute, section 5-154(a) of the Illinois Pension Code provides, in part, that “[a]n active policeman who becomes disabled . . . as the result of injury incurred . . . in the performance of an act of duty[] has a right to receive [line-of-duty] disability benefit[s]. . . .” 40 ILCS 5/5-154(a) (West 2022). Relatedly, section 5-113 of the Illinois Pension Code defines an “act of duty” as “[a]ny 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 [Illinois] statutes[,] . . . [Chicago] ordinances or police regulations[,] . . . or [] special assignment.” 40 ILCS 5/5-113 (West 2022).

Within its March 25, 2022 order, the Board articulated that, to obtain line-of-duty disability benefits, a police officer must prove that he or she is an active policeman, that he or she is disabled due to a physical or mental incapacity resulting from an act of duty, and that he or she is unable to perform any assigned duties in the Department. Compl., Ex. A, at 12. The Board found at the outset

that Plaintiff met his burden of establishing “that he [was] unable to perform any assigned duties in the [] Department, [was] under the age of 63, [was] disabled due to a physical incapacity, and . . . [was] unable to perform any assigned duties in the [] Department.” *Id.* However, the Board also found that Plaintiff failed to meet his burden of establishing that his disability resulted from an act of duty. *Id.*

According to the Board, Plaintiff failed in multiple ways to prove that his disability resulted from an act of duty. *See id.*, 12–18 (detailing the numerous reasons why the Board could not find that Plaintiff’s disability was caused by an act of duty). First, the Board noted, Plaintiff was unable to identify the specific duty in which he was engaged that caused his disability. *Id.*, at 14. Also, the Board explained, Plaintiff failed to establish that his act leading to his disability was mandatory. *Id.*, at 15. Last, the Board articulated, Plaintiff’s risk of exposure to COVID-19 was not inherent to his duties with the Department, or of a nature not ordinarily assumed by the average citizen. *Id.*, at 18. Plaintiff now challenges each of these findings made by the Board.

Specifically, Plaintiff argues that the Board’s conclusion that he needed to identify at least one specific act of duty to recover line-of-duty benefits is incorrect, in light of *Alm v. Lincolnshire Police Pension Bd.*, 352 Ill. App. 3d 595 (2004). In *Alm*, the circuit court affirmed a pension board’s denial of a police officer’s application for line-of-duty benefits, which the police officer filed after incurring pain and swelling in his knee while pedaling his bicycle as a member of his police department’s bicycle patrol unit. 352 Ill. App. 3d at 596–97.

On appeal, the court noted that the police officer’s injury “was not the result of any specific, identifiable, physical trauma,” but rather “[might] have developed over the course of time.” *Id.*, at 601. The court also noted that Plaintiff had demonstrated that he incurred his disabling injury while pedaling his bicycle, specifically, and that the remaining issue thus became whether said pedaling

was an act of duty. *Id.* Noting that, while on bicycle patrol, the police officer faced special risks not ordinarily encountered by civilians, the court found that the officer's performance of bicycle patrol involved special risks and that, therefore, his disabling injury resulted from an act of duty. *Id.*

Contrary to the appellate court's finding, however, the Board argued during the appeal that the police officer was merely pedaling a bicycle when he incurred his disabling injury, which does not, alone, involve a special risk. *Id.*, at 602. Rejecting this argument, the court emphasized "that the proper focus [was] on the *capacity* in which the officer [was] acting, [and] not the precise act leading to injury." *Id.* The court found that, applying this lens to the case before it, the police officer was acting in a capacity that involved special risks. *Id.*

Plaintiff here argues that the above discussion in *Alm* instructs that, in evaluating whether a police officer's disabling injury resulted from an act of duty, the Board should look to the capacity in which the officer was acting, and not for any specific duty that the officer was performing. However, this argument is unpersuasive. When explaining that the Board should only consider the capacity in which a police officer was acting, rather than the specific act in which the officer was engaged, the court was referring to the analysis for whether special risks were involved in a specific act. The court did not instruct that the Board apply such a lens when assessing, overall, whether the police officer was engaged in an act of duty. Moreover, the court in *Alm* identified a specific act of duty in which the police officer before it was engaged, namely, pedaling a bicycle as a part of his police department's bicycle patrol unit.

Unlike the police officer in *Alm*, Plaintiff here did not identify one or more specific acts in which he was engaged when incurring his disabling injury, which was his COVID-19 infection. Plaintiff's inability to specify at least one such act is also unlike the showings made by the police

officers in a wealth of other, similar cases, also cited to by Plaintiff. *See, e.g., Johnson v. The Retirement Bd. of the Policemen's Annuity & Benefit Fund*, 114 Ill. 2d 518 (1986) (“In the plaintiff’s case, the act of duty was the act of responding to the call of a citizen for assistance.”); *see also, e.g., Sarkis*, 378 Ill. App. 3d at 837–41 (analyzing whether a police officer’s lifting of a crossing gate constituted an act of duty, entitling him to line-of-duty benefits). Consequently, the Board did not err by finding that Plaintiff was not entitled to line-of-duty benefits, partly because he failed to identify a specific act of duty leading to his disabling injury.

As the Board correctly points out in its response brief, its finding in this regard is further supported by interpretation of the language within the Illinois Pension Code. It is axiomatic that a circuit court’s primary objective when construing a statute is to ascertain, as well as give effect to, the legislature’s intent. *Mich. Ave. Nat’l Bank v. Cnty. of Cook*, 191 Ill. 2d 493, 503–04 (2000). The legislative intent is best indicated by the language of the statute itself, *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 25, which, if clear, must be given its “plain and ordinary meaning[,] without resort to other aids of statutory construction.” *Murray v. Chi. Youth Ctr.*, 224 Ill. 2d 213, 235 (2007). However, if the statutory language is ambiguous, then the circuit court may look to other sources to decipher the legislature’s intent. *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 395 (2003). Statutory language is ambiguous when it is capable of reasonably being understood in more than one way. *Sangamon Cnty. Sheriff’s Dep’t v. Ill. Human Rights Comm’n*, 233 Ill. 2d 125, 136 (2009).

When a circuit court engages in its construction, a statute should be considered as a whole, with each provision interpreted in connection with every other section. *Lulay v. Lulay*, 193 Ill. 2d 455, 466 (2000). “In interpreting a statute, no part should be rendered meaningless or superfluous.” *Skaperdas v. Country Cas. Ins. Co.*, 2015 IL 117021, ¶ 15.

As earlier recited, section 5-154(a) of the Illinois Pension Code provides that, to obtain line-of-duty benefits, a police officer must “become[] disabled . . . as the result of injury incurred . . . in the performance of an act of duty[. . .].” 40 ILCS 5/5-154(a) (West 2022). In contrast, section 4-110 of the Illinois Pension Code permits a firefighter to recover line-of-duty benefits if he or she is disabled from service, “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.” 40 ILCS 5/4-110 (West 2022).

As illustrated by the above provisions, the legislature explicitly permits a showing of the cumulative effects of numerous acts of duty to obtain line-of-duty benefits under section 4-110 of the Illinois Pension Code, but not under section 5-154(a) of the Illinois Pension Code. This difference tends to suggest that, in drafting section 5-154(a) of the Illinois Pension Code, the legislature intended to limit a police officer to showing that his or her disabling injury resulted from a specific act of duty, to obtain line-of-duty benefits. The Board’s finding in its March 25, 2022 order that Plaintiff must show the same is consistent with this reading of section 5-154 of the Illinois Pension Code, and consequently, was not made in error.

However, Plaintiff also argues that the Board erred by finding that he failed to demonstrate that he was engaged in an act that involved a special risk. Plaintiff argues that, to the contrary, his work as a police officer leading up to his disabling injury involved the special risk of being exposed to the COVID-19 virus in the environments in which he had to work.

“A policeman is engaged in an activity inherently involving special risk whenever he is engaged in the performance of a duty peculiar to that of the office of a police officer, that is, to protect and serve the public.” *Johnson*, 137 Ill. App. 3d at 548. Here, since Plaintiff is unable to identify the exact act that he was engaged in when he incurred his COVID-19 infection, the Board

could not assess in his favor whether said act was peculiar to his job as a police officer. Nor is this Court able to now do the same. Therefore, the Board did not err by concluding that Plaintiff failed to meet his burden of establishing that the act of duty leading to his disabling injury involved any special risks. However, that does not mean that with the proper factual evidence contracting a disabling COVID-19 infection could not serve to establish the burden demanded under the law.


For similar reasons, nor could the Board find in Plaintiff's favor that the act leading to his disabling injury was mandatory. Although Plaintiff points out, in arguing otherwise, that, he was required to work his last 17 days with the Department in person, such still does not inform whether the exact act in which he was engaged that led to his injury was indeed itself mandatory. Therefore, the Board did not err in determining overall that Plaintiff failed to show that his disabling injury resulted from an act of duty.

As previously noted, the parties dispute whether this matter should have been analyzed under a *de novo*, clearly erroneous, or manifest weight standard of review. While the clearly erroneous standard was applied, this Court also clarifies that its present findings and ruling would be the same under a *de novo* or manifest weight standard of review.

CONCLUSION

Based on the foregoing discussion, the Board did not err by denying Plaintiff line-of-duty benefits in its March 25, 2022 order. Accordingly, Plaintiff's complaint for administrative review is DENIED.

ENTERED Judge Thaddeus L. Wilson – 1976
January 30, 2023
IRIS Y. MARTINEZ CLERK OF THE CIRCUIT COURT OF COOK COUNTY, IL

 1976

ENTERED: _____
Hon. Thaddeus L. Wilson
Circuit Court of Cook County
Chancery Division