

**BEFORE THE BOARD OF TRUSTEES OF THE  
PEORIA POLICE PENSION FUND**

IN THE MATTER OF THE )  
DISABILITY APPLICATION OF: )  
 )  
OFFICER BRADLEY HUTCHINSON, )  
 )  
 )  
APPLICANT. )

**DECISION AND ORDER**

This matter comes before the Board of Trustees of the Peoria Police Pension Fund ("Pension Board") upon the disability application of Officer Bradley Hutchinson ("Applicant"). The Pension Board, pursuant to the statutory authority set forth in 40 ILCS 5/3-101 *et seq.*, of the Illinois Pension Code, renders the following decision concerning Applicant's claim for line-of-duty disability pension benefits. Hearings were held before the Pension Board on May 25, 2018, August 22, 2019, February 24, 2020 and March 16, 2020.

Applicant was duly and properly notified of these hearing and present for these hearings represented by Counsel, Stephen P. Kelly. Applicant submitted evidence during these hearing regarding his claim.

In reaching its decision, the Pension Board carefully considered all testimony elicited of witnesses at the hearing and reviewed all exhibits made part of the administrative record. The Pension Board considered all arguments made by Applicant and documentation submitted. To the extent 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 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 was a regular member of the Peoria Police Department (“Police Department”) holding the rank of patrol officer. (Bd. Ex. 1, p. 1).<sup>1</sup>
2. Prior to being hired by the Police Department, Applicant worked as a police officer for the Casey Police Department for a year and a half (R2. 23-24)<sup>2</sup> and the Bartonville Police Department for five (5) years. (R2. 24).
3. Prior to being hired by the Police Department, Applicant passed a pre-employment medical examination. (R3. 48). Prior to his employment with the Police Department, Applicant did not have any medical treatment to his left shoulder. (R3. 48).
4. Applicant received his probationary appointment to the Police Department on October 23, 2000 and his regular appointment to the Police Department on November 24, 2001. (Bd. Ex. 1, p. 1).

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<sup>1</sup> Citations to Exhibits admitted into the Administrative Record are designated as either Board Exhibits “(Bd. Ex. \_\_\_)” or Applicant Exhibit “App. Ex. \_\_\_”.

<sup>2</sup> Citations to testimony will be referenced as (R1 pg.) for May 25, 2018 hearing, (R2 pg.) for August 22, 2019 hearing, (R3 pg.) for February 24, 2020 hearing and (R4 pg.) for March 16, 2020 hearing.

5. In October 2016, while off-duty, Applicant sustained a dislocation of the left shoulder when he was pushed downstairs interceding in a bar dispute. (R3. 49). Applicant was seen at the ER and treated by Dr. Johnson. Applicant did not undergo surgery. (R3. 49). As a result of his injury, Applicant was on light duty for approximately four (4) to six (6) weeks while undergoing conservative care. (R3. 50). Applicant was released to full and unrestricted patrol duties. Once released, Applicant did not have any problems performing essential job functions, ongoing symptoms or additional medical treatment in regard to his left shoulder. (R3. 51).

6. On or about July 11, 2017, Applicant applied to the Pension Board for "line-of-duty" disability pension benefits pursuant to 40 ILCS 5/3-114.1 or an alternative not on duty disability pension as a result of an injury to his left shoulder. (Bd. Ex. 2, p. 250).

7. In describing how his injury occurred, Applicant referred to a police report he wrote March 24, 2017. In summary, the report indicated Applicant responded to a 911 call of a woman screaming. Applicant arrived on scene and observed another officer putting a male subject in handcuffs. The subject was physically resisting a search. Due to a growing neighborhood presence, Applicant escorted the subject to his squad car for transport. Applicant attempted to pat the subject down for weapons when the subject violently attempted to pull and twist away. Applicant took the subject to the ground to control, search and prevent escape. As he took the subject down, he felt and heard a pop from his left shoulder. Once the subject was subdued and placed in his squad car, Applicant felt more pain in his shoulder and reported it to Sgt. Scott. Applicant responded to St. Francis

Hospital for medical treatment. Due to long wait times, Applicant sought treatment at Methodist Hospital where he was treated and released. (Bd. Ex.1, p. 7-8).

8. Further in his application, Applicant wrote “Underwent surgery by Dr. Johnson. Recovery not going as expected. Permanent restrictions may be provided that will preclude me from police work.” (Bd. Ex. 1, p. 2).

9. Applicant was not under any doctor’s care or treatment for his left shoulder on March 24, 2017 and had been cleared by both his and the City’s physician. (R3. 52).

10. On August 30, 2017, the City of Peoria filed a motion to intervene.

11. On May 25, 2018, the Pension Board held a hearing on Applicant's disability application. (R1. 1). Prior to the hearing, the City filed a motion to continue in order to obtain additional evidence regarding a non-work-related motor vehicle accident injury Applicant sustained in October 2017. (R. 4). At the conclusion of the hearing, the Pension Board agreed to continue the matter in order for the parties to obtain additional medical reports, accident and ambulance reports, physical therapy (“PT”) notes, an outstanding functional capacity evaluation report and worker’s compensation records. (R1. 33-34).

12. On January 10, 2019, the City withdrew its petition to intervene. (R2. 7)

13. On August 22, 2019, the Pension Board held a second hearing. (R2. 1).

14. Pension Board Exhibits one (1) through twenty-one (21) were admitted into the record without objection. (R2. 10).

15. Applicant Exhibits one (1) through twelve (12) were admitted into the record without objection. (R2. 11).

16. At the time of the hearing in the matter, Applicant was forty-nine (49) years old (R2. 49), married (R2. 23) and had three (3) dependent children under the age of eighteen (18). (R2. 46).

17. At the conclusion of the August 22, 2019 hearing, the Pension Board agreed to continue the matter until October 31, 2019 to permit a full and fair opportunity for the Board to review all the evidence. (R2. 82).

18. On February 24, 2020, the Pension Board held a third hearing on the matter. (R3. 1). On the same date, prior to the hearing, the Pension Board issued a subpoena to Captain Michael Scully to obtain a copy of Applicant's internal affairs investigation file. It was received prior to the hearing. The Board agreed to continue the matter to March 16, 2020. (R3. 7).

19. On March 16, 2020, the Pension Board held a fourth hearing on the matter. (R4. 1).

20. Applicant Exhibit thirteen (13), a worker's compensation lump sum settlement agreement, was admitted into the record without objection. (R4. 4).

21. Pension Board Exhibit 23A, B and C were admitted into the record over Applicant's counsel's objections as to timeliness and relevance. (R4. 5-6).

**The March 24, 2017 Incident**

22. In summary, Applicant testified that on March 24, 2017, he responded to a 911 call of a domestic dispute and injured his left shoulder when a suspect whom he was trying to search violently pulled away from him. (R2. 25-26).

23. Applicant testified he felt pain and a pop in his left shoulder and reported this to the City. (R2. 29).

24. Applicant testified a domestic disturbance is considered an emergency by department general order or procedure. (R2. 52).

25. Applicant testified the subject was charged with resisting but was unsure whether he was charged with battery. (R2. 52).

**Applicant's Medical Treatment**

26. On March 24, 2017, Applicant was seen in the emergency room as a result of his left shoulder injury. He underwent an x-ray of the shoulder that did not reveal any evidence of a fracture. (Bd. Ex. 12, p. 1472). On physical examination of the left shoulder, there was no ecchymosis or edema. He had fair range of motion but had pain with range of motion of the left shoulder including flexion, extension and abduction. The assessment was left shoulder strain. He was instructed to follow up with his family physician. (Bd. Ex. 13, p. 1487).

27. On March 31, 2017, Applicant underwent an MRI of the left shoulder with the following findings:

Impression was a low-grade teres minor muscle strain, negative for full thickness rotator cuff tear. Mild subscapularis insertional tendinosis. Large moderate glenohumeral condylar degeneration, with regions of near full-thickness condylar loss. Findings suggest old left shoulder trauma with a small Hill-Sachs deformity. Remote sprains of the capsule and inferior glenohumeral ligaments. There was also posterior labral intrasubstance tear and degenerative fraying anteriorly of the anterior labrum. Negative for paralabral cyst. There was a moderate AC joint degenerative joint disease with active inflammation. (Bd. Ex. 12, p. 1472).

28. Applicant was seen by orthopedic surgeon, Dr. Johnson, who determined Applicant required shoulder surgery. On May 10, 2017, Applicant underwent left shoulder

arthroscopy and anterior labral repair. The pre-operative diagnosis was left shoulder anterior inferior labral tear with instability and the post-operative diagnosis remained the same. (Bd. Ex. 12, p.1472).

29. Post-operatively, Applicant underwent physical therapy ("PT"). In his June 30, 2017, PT progress report, Applicant's reported pain was 5/10. It was noted he was very stiff and felt the same popping and clicking that he had prior to surgery. On examination he had 80 degrees of passive flexion, 25 degrees of passive external rotation and 0 degrees of passive internal rotation. (Bd. Ex. 13, p. 1487).

30. Post-operatively, Applicant continued treatment with Dr. Moody with occupational health. Applicant was placed on restrictions from August 10 to September 13, 2017 including restrictions to sedentary work, maximum waist level lift and carry of 5 pounds, no overhead use of the left arm, no use of the left arm away from the body, no tactical training, no confrontational situations and no operation of commercial or industrial vehicles. (Bd. Ex. 12, p.1473).

31. On October 22, 2017, prior to Applicant's functional capacity evaluation ("FCE"), Applicant was involved in a car accident in Iowa the morning after his daughter's wedding. Applicant testified, his son requested to use Applicant's SUV to drive to Minnesota to pick up a vehicle he purchased at auction after he learned his friends, who went to retrieve the vehicle on his behalf, were stranded as the vehicle was not running. Applicant and one of the stranded friend's fathers decided to go with. Applicant was in the back seat sleeping and the other father was in the front passenger seat. Around 6:30 or 7:00 am, Applicant's son fell asleep and the vehicle traveled into the center median and rolled over an

undermined amount of times. Applicant was hospitalized for four (4) days for neck and back pain and was treated by a neurosurgeon. Applicant did not injure his left shoulder. (R3. 34-37).

32. Applicant's discharge summary indicated he suffered a C1 nondisplaced fracture, a T3 compression fracture and a L3 transverse process fracture. He was fitted for an Aspen surgical collar and prescribed a fentanyl patch, Percocet and valium. He was discharged home with instructions to follow up with a neurosurgeon in Peoria. (App. Ex. 7, p. 353)

33. Applicant was treated by neurosurgeon, Dr. Johnson, in Iowa and was cleared for the FCE. (R2. 37).

34. On December 21, 2017, Applicant underwent an FCE at Athletico. It was determined Applicant performed at 96.88% having met 31/32 job demands. Applicant was deficient in the "Overhead Lift Occasional" activity. Applicant was only able to lift twenty (20) pounds whereas the job demand was twenty-five (25) pounds. (App. Ex. 6, p. 287).

35. On April 12, 2019, Applicant underwent a second FCE at ATI upon the referral of his retained physician Dr. David Fletcher. (App. Ex. 12, p. 441). The results indicated Applicant was working within the heavy physical demand level above the required medium level but was below competitive during a repetitive overhead reaching task. Specifically, the report noted "[A]pplicant is meeting the lift requirements of his job position. However, the ability to defend himself, or others in an emergency situation is compromised, secondary to decreased ROM and strength within the left UE. The ability



to act as a first responder and perform effective CPR, push/pull or drag others to safety in an emergency “could be” compromised. (App. Ex. 12, p. 442-443).

36. On April 25, 2019, Dr. Fletcher issued a finding that Applicant was disabled per Applicant’s attorney’s request for a review of the FCE. Dr. Fletcher’s concurred with the FCE that concluded Applicant ability to defend himself perform in an emergency could be compromised. (App. Ex. 11). Dr. Fletcher certified Applicant disabled as a direct result of his March 24, 2017 work injury. (Bd. Ex. 11, p. 438).

37. Applicant testified no doctor, other than Dr. Huddleston, has concluded he can return to full and unrestricted duty. (R2. 61).

38. Applicant testified he has followed all his treating physician’s treatment recommendations and he has not refused any recommendation. (R2. 61).

#### **Applicant’s Work and Pay Status**

39. Applicant returned to work a couple days after the May 24, 2017 incident on light duty. (R3. 30).

40. On April 11, 2017, Applicant was placed on administrative leave by the City. Applicant testified he had received a call from Sergeant Oberle asking where he was and instructing him to respond to the Lieutenant’s office for a drug and alcohol examination. (R3. 31). Applicant told Sergeant Oberle he was sick and needed to run home first. Applicant was working third shift, light duty at the time and had been showing up at 11. He was told he was supposed to be there at 10:45. Applicant eventually took a breathalyzer and was not over the legal limit. (R3. 32).

41. After his May 4, 2017 surgery, Applicant received his full salary while recovering. (R3. 33).

42. Applicant was terminated by the City on July 17, 2017. (R3. 33). Applicant grieved the termination, but his grievance was later withdrawn as part of a settlement agreement wherein Applicant resigned from his employment with a neutral job reference. (R3. 56).

43. Effective February 2018, Applicant was employed by Green Chevrolet as a sales associate. The sales associate position does not require him to exceed the restrictions placed up him by Dr. Johnson. (R3. 39).

44. Applicant testified he was not offered a permanent light duty position. (R3. 54).

45. Applicant did not receive Public Employee Disability Act ("PEDA") benefits. (R3. 54).

46. As a result of his shoulder injuries, Applicant filed a worker's compensation claim that was settled. (R3. 59).

47. Applicant received temporary total disability ("TTD") benefits from September 6, 2017 to January 10, 2018 and for five weeks starting May 11, 2018 at \$933/week for a total amount of \$21,466.59. (R3. 60-61).

**Pension Board's Independent Medical Examinations.**

48. Pursuant to 40 ILCS 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 Leon M. Huddleston, M.D., David M. Anderson, M.D.

and James B. Boscardin, M.D. The Pension Board forwarded Applicant's medical records and related employment records to each of the Independent Medical Examiners for review.

**IME of Leon M. Huddleston, M.D.**

49. Dr. Huddleston is licensed to practice medicine in the State of Illinois and is board-certified in physical medicine and rehabilitation. (Bd. Ex. 12, p. 1481).

50. On November 30, 2017, Dr. Huddleston performed an IME of Applicant and certified Applicant disabled (Bd. Ex. 12, p. 1471) from full and unrestricted police duties as a result of a labral tear, Hill-Sachs deformity, Bankart fracture, moderate AC joint osteoarthritis and moderate glenohumeral degeneration with near full-thickness chondral loss. (Bd. Ex. 12, p. 1474).

51. Dr. Huddleston opined "[t]he disability is expected to last one year. Given the current diagnoses, his condition is expected to worsen." (Bd. Ex. 12, p. 1474).

52. Dr. Huddleston noted:

Applicant sustained a left shoulder, non-work-related injury in August 2016 when he was pushed down a flight of stairs as he attempted to break up a bar fight. He suffered an anterior dislocation of the left shoulder. The dislocation was reduced under anesthesia in the emergency room at St. Francis Medical Center. MRI of the left shoulder on 08/30/2016 revealed a Hill-Sachs deformity, a Bankart fracture and complex labral tear due to anterior and inferior dislocation with a moderate to large complex joint effusion. (Bd. Ex. 12, p. 1475).

53. Dr. Huddleston found the March 2014, 2017 incident aggravated Applicant's pre-existing shoulder condition and therefore contributed to his disability. (Bd. Ex. 12, p. 1476).

54. Dr. Huddleston concluded Applicant can perform in a limited or light duty capacity, within the restrictions provided by Dr. Moody, if such position is made available to him. (Bd. Ex. 12, p. 1476).

55. Last, Dr. Huddleston opined “[t]here is no additional reasonable medical care treatment that would allow [Applicant] to recovery from his disability and enable him to return to full and unrestricted police duties. The March 2017 incident caused an acute on chronic injury. If he returns to full and unrestricted duty, he is at high risk for reinjury.” (Bd. Ex. 12, p. 1476).

**IME of David. M. Anderson, M.D.**

56. Dr. Anderson is board-certified in orthopaedic surgery. (Bd. Ex. 13, p. 1497).

57. On December 4, 2017, Dr. Anderson performed an IME of Applicant and certified Applicant disabled (Bd. Ex. 13, p. 1483) due to significant limitation in strength and endurance, moderate limitations in his range of motion, functional deficits and plateaued progress seven (7) months left shoulder surgery. (Bd. Ex. 13, p. 1489).

58. Dr. Anderson found the likely duration of the disability permanent as Applicant underwent shoulder surgery in May 2017 and completed an extensive course of PT. Further he found Applicant has subjective complaints as well as objective deficits that preclude him from working as a full and unrestricted police officer. (Bd. Ex. 13, p 1489).

59. Dr. Anderson concluded Applicant had significant glenohumeral arthritis at the time of his shoulder arthroscopy which was likely pre-existing given his recent August 2016 and March 2017 shoulder injuries. However, Dr. Anderson noted:

Despite the arthritic changes being pre-existing, they were likely asymptomatic until the March 2017 work injury. The anterior labral tear likely resulted from the injury in August 2016. He had a shoulder injury in August 2016. He had a shoulder MRI following the injury that showed evidence of an interior labral tear and a Hill-Sachs injury. The injury in March 2017, aggravated his shoulder. (Bd. Ex. 13, p. 1489).

60. Dr. Anderson concluded Applicant's disability is a direct result of, or was permanently aggravated by, the March 24, 2017 incident. Dr. Anderson further opined "[i]t is likely the incident in August 2016 caused the anterior labral tear, however, [Applicant] did well following a course of [PT]. The March 24, 2017 incident aggravated the pre-existing labral tear and degenerative arthritis of the left shoulder to the point where he required surgery in May 2017." (Bd. Ex. 13, p. 1490).

61. Dr. Anderson found Applicant can work in a limited or light duty capacity including sedentary duty but limited from use of the left upper extremity, overhead activity, lifting more than 20 pounds and physical contact with people in confrontational situations. (Bd. Ex. 13, p. 1490).

62. Last regarding additional, reasonable medical care and treatment, Dr. Anderson concluded Applicant plateaued following the May 2017 shoulder surgery and it is unlikely additional medical care would reasonably expect him to recover and enable him to return to full and unrestricted police duties. Dr. Anderson suggested an intraarticular and/or subacromial injection but noted, given the underlying glenohumeral arthritis, it is unlikely one or both of the injections would result in significant or indefinite improvement of Applicant's symptoms. Further, Dr. Anderson concluded surgery would not allow Applicant to return to full and unrestricted police duties. (Bd. Ex. 13, p. 1490).

**IME of James B. Boscardin, M.D.**

63. Dr. Boscardin is licensed to practice medicine in the States of California, Illinois and Indiana and is board-certified in orthopaedic surgery. (Bd. Ex. 14, p. 1513).

64. On December 7, 2017, Dr. Boscardin performed an IME of Applicant and certified Applicant disabled (Bd. Ex. 14, p. 1503) due to limited defensive and offensive capabilities with the left upper extremity particularly in any action utilizing the left shoulder at shoulder level or above. Dr. Boscardin further noted Applicant has limited internal rotation and some weakness in the left shoulder as compared to the right. (Bd. Ex. 14, p. 1506).

65. Dr. Boscardin noted Applicant was only six (6) months postop and it was too early to predict what Applicant's final outcome would be in terms of duration. Dr. Boscardin suggested Applicant undergo an FCE to establish range of motion and muscle strength, determine cooperation and verify absence of magnification and/or lack of compliance. (Bd. Ex. 14, p. 1507).

66. Dr. Boscardin found Applicant had a shoulder dislocation in August 2016 that rendered him more likely to ongoing difficulties with his left shoulder. (Bd. Ex. 14, p. 1507).

67. Dr. Boscardin concluded Applicant's August 2016 event placed his left shoulder at risk and the arrest of the subject (in March 2017) put stress on Applicant's shoulder. (Bd. Ex. 14, p. 1507).

68. Dr. Boscardin found Applicant can work in a limited or light duty capacity limited from offensive and defensive maneuvers of the left arm at shoulder level or above. (Bd. Ex. 14, p. 1507).

69. Last, regarding additional, reasonable medical care and treatment, Dr. Boscardin noted Applicant was only six (6) months post op and opined “[a]t this time I am stating he is disabled, but it is more on a temporary basis at this point until further information is gathered in terms of an FCE and other results of more aggressive physical therapy.” (Bd. Ex. 14, p. 1508).

70.

**City of Peoria’s Independent Medical Examination**

71. On June 27, 2018, Dr. Mark N. Levin issued a worker’s compensation IME report on behalf of the City of Peoria based on Applicant’s medical records, vehicle crash reports and FCE. (Bd. Ex. 16, p. 1572).

72. Dr. Levin noted opined “...it is possible that because of an injury of October 22, 2017, the Functional Capacity Evaluation performed two months later may not be his true functional abilities.” (Bd. Ex. 16, p. 1573).

73. Specifically, Dr. Levin noted Applicant’s multiple cervical fractures and skull fracture from his October 22, 2017 motor vehicle accident may have impacted his FCE as he was still recuperating and healing from his injuries when the FCE was performed and may have had limited strength. (Bd. Ex. 16, p. 1573).

74. Regarding whether Applicant’s failure to complete physical therapy for the left shoulder prior to the FCE may have affected the results of the FCE, Dr. Levin opined:

The only restriction on the Functional Capacity Evaluation was a slight 5-pound variance with overhead activity, which would impose on his full-duty work. He did meet 96.88% of the job demands. Since he had not completed the therapy for the left shoulder, it is quite possible that if he had completed the therapy or proceeds with physical therapy and possible work

conditioning, a new Functional Capacity Evaluation would show the abilities to work full duty. (Bd. Ex. 16, p. 1573).

75. Dr. Levin opined “..at this point in time, it would be appropriate to proceed with a course of physical therapy for upper extremity strengthening two to three times a week for a maximum of four weeks with the possibility of a two to four week course of work hardening, followed by a repeat Functional Capacity Evaluation with Validity.”

**Pension Board’s Supplemental Medical Reports**

76. On November 20, 2018, Dr. Huddleston issued an addendum after reviewing additional records including the FCE results and medical notes related to Applicant’s car accident. Dr. Huddleston noted Applicant suffered a C1 nondisplaced fracture, a T3 compression fracture and a L3 transverse process. Dr. Huddleston further noted his opinion changed and Applicant is not disabled from police work and is able to perform the essential work duties at a greater than 95% level. (Bd. Ex. 20, p. 1587-1588).

77. Dr. Huddleston concluded “[t]he FCE results show that it is likely that if the FCE was performed several months later that the [Applicant] would have performed at the 100% level. Which means that he should be at a 100% level now. Additionally, there is no functional or clinical difference between operating at 96% versus the 100% functional level. (Bd. Ex. 20, p. 1587-1588).

78. On October 26, 2018, Dr. Anderson issued an addendum after reviewing additional records including the FCE results and medical notes related to Applicant’s car accident. Dr. Anderson noted Applicant was last treated for his car accident related spine fractures on November 15, 2017 and his FCE was completed on December 21, 2017. Further Dr.



Anderson noted, “[Applicant] did not attend therapy for his shoulder for approximately two months prior to the [FCE]. [Applicant] was able to meet 31 out of 32 job demands. The one exception was he was limited with overhead reaching capacity strength to 20 pounds.” (Bd. Ex. 19, p. 1584-1586).

79. Dr. Anderson concluded it would be reasonable for Applicant to restart supervised PT two (2) to three (3) times per week for up to four (4) weeks and depending on his progress undergo three (3) to four (4) weeks of work conditioning before a repeat FCE. Dr. Anderson added that with further PT and work conditioning Applicant could possibly qualify for the work demands outlined in the job description for a police officer for the City of Peoria. However, if Applicant were unable to meet the lifting requirements, he would still be unlikely to use adequate force to apprehend subjects and protect himself and others. (Bd. Ex. 19, p. 1584-1586).

80. Last, Dr. Anderson found Applicant’s car accident did not reinjure his left shoulder but resulted in a disruption of the supervised PT and therefore affected the FCE results. However, Dr. Anderson opined, even after PT and work hardening, “...the ability for him to perform physically confrontational situations would likely remain limited and not allow him to return to full and unrestricted police duty.” (Bd. Ex. 19, p. 1584-1586).

81. On October 5, 2018, Dr. Boscardin issued an addendum after reviewing additional records including FCE results and medical notes related to Applicant’s car accident. Dr. Boscardin noted he was unaware of Applicant’s car accident injuries prior to issuing his original findings. In summary, Dr. Boscardin agreed with Dr. Levin that Applicant should undergo work hardening and a repeat FCE to determine his ability to return to work. Dr.

Boscardin also agreed with Dr. Levin that Applicant's undergoing of the original FCE was too close to his car accident injuries and may have affected his December 21, 2017 FCE. (Bd. Ex. 18, p. 1581-1582).

82. Dr. Boscardin opined Applicant's December 21, 2017 FCE indicated he was 96.88% capable of performing his job duties. Since Applicant has had adequate time to recover from the unreported injuries, a repeat FCE is recommended. (Bd. Ex. 18, p. 1581-1582).

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

83. As a matter of fact, in October 2016, Applicant was off duty when he injured his left shoulder intervening in a bar dispute and was pushed down the stairs. (R2. 49).

84. As a matter of fact, on March 24, 2017, Applicant was on-duty acting in the capacity of a patrol officer. (R2. 25-29).

85. As a matter of fact, Applicant is not disabled from full and unrestricted duties as a police officer. (R4, p. 17).

86. The Pension Board voted 5-0 to deny Applicant any type of disability pension benefit. (R4. 17).

II. **APPLICABLE STATUTORY PROVISIONS**

The following provisions of the Illinois Pension Code have 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 of duty 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 5/5-113 Act of Duty**

"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.

### **III. ANALYSIS OF CLAIM**

#### **1. Legal Standards to Be Used.**

The purpose 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. Board of Trustees*, 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. Schaumburg Police Pension Bd.*, 178 Ill.App.3d 438 (1st Dist. 1989); *Evert v. Firefighters' Pension Fund of Lake Forest*, 180 Ill.App.3d 656 (2d Dist. 1989). Due to

their personal knowledge of the peculiar physical and emotional demands of being a police officer, the members of a police pension board are in the best position to determine whether an Applicant is fit for duty or qualified for membership or benefits. *Sanders v. Board of Trustees*, 112 Ill. App. 3d 1087, 1091 (4th Dist. 1983).

**2. Applicant's Line-of-Duty Disability Claim.**

Applicant has the burden of proving that he is disabled, and that the disability occurred in the line of duty. *Wall v. Schaumburg Police Pension Board*, 178 Ill. App. 3d 438, 443 (1st Dist. 1988). The elements a police officer must prove in order to obtain a line of duty disability pension under 40 ILCS 5/3-114.1 are as follows:

1. He or she is a police officer;
2. An accident, injury or sickness was incurred in or resulted;
3. From the performance of an act of duty;
4. The officer is found to be physically or mentally disabled; and
5. The disability renders necessary his or her suspension or retirement from police service.

The Pension Board finds Applicant failed to sustain his burden of proving each of the elements necessary to obtain a line-of-duty disability pension.

**1. Applicant is not Disabled**

Applicant was a Peoria police officer on March 24, 2017, and at the time he applied for line-of-duty disability pension benefits. The Pension Board finds Applicant sustained

injuries to his left shoulder. The objective medical evidence shows Applicant has undergone multiple treatments for his left shoulder including physical therapy and surgery.

The original unanimous opinion of all three IME physicians was Applicant was disabled. However, upon review of additional records including documentation of Applicant's car accident and the December 21, 2017 FCE, the IME physicians' opinions changed.

Upon reviewing supplemental reports, including Applicant's FCE, Dr. Huddleston opined Applicant is not disabled from police work and is able to perform the essential duties of a police officer at a greater than 95% level. Dr. Huddleston noted Applicant's FCE was performed approximately two (2) months after the motor vehicle collision and he performed very well. Dr. Huddleston concluded had the FCE been performed several months later, Applicant would have performed at the 100% level. Last, Dr. Huddleston noted there is no functional or clinical difference between operating at the 96% versus the 100% functional level. (Bd. Ex. 20, p. 1587-1588).

Upon reviewing supplemental reports, including Applicant's FCE, Dr. Boscardin concluded Applicant should complete a short course of physical therapy, work hardening and a repeat FCE to determine whether he can return to full police duties. Dr. Boscardin noted he was not provided information pertaining to Applicant's car accident spinal injuries or FCE prior to his original opinion that Applicant was disabled, and his opinion was altered by the additional records. (Bd. Ex. 18, p. 1581-1582).

Upon reviewing supplemental reports, including Applicant's FCE, Dr. Anderson modified his original opinion as to Applicant's disability. Dr. Anderson noted Applicant was involved in a motor vehicle accident on October 22, 2017 that resulted in fractures in his cervical, thoracic and lumbar spine. Applicant was released from his treating physician on November 15, 2017 and underwent his FCE December 21, 2017. Dr. Anderson opined "...although the motor vehicle accident of October 22, 2017 did not appear to injure [Applicant's] left shoulder, it resulted in disruption of the supervised therapy and therefore may have adversely affected the results of the functional capacity evaluation. It is reasonable to have [Applicant] complete an additional course of physical therapy followed by work conditioning...". (Bd. Ex. 19, p. 1585-1586). However, Dr. Anderson concluded "[a]lthough it is possible he may qualify for the job demands outlined in his job description, I believe the ability for him to perform in physically confrontational situations would likely remain limited and not allow him to return to full and unrestricted police duty." (Bd. Ex. 19, p. 1586).

Additionally, the Pension Board reviewed the findings of Drs. Fletcher and Johnson and placed little weight on their findings that Applicant is disabled in so much as Dr. Fletcher was retained by Applicant to support his position and Dr. Johnson was Applicant's treating physician. Further, the Pension Board reviewed the findings of the second FCE and rejected them as contradictory because the results indicated Applicant performed at the heavy physical level above the required medium level yet concluded his ability to defend himself and in emergency situations "could be" compromised. The Board's rejection of the

FCE is supported by the Appellate Court's decision in *Kramarski v. Board of Trustees of the Village of Orland Park Police Pension Fund*, 402 Ill.App.3d 1040 (2010). In *Kramarski*, the Court held the board properly discounted a doctor's opinion that the plaintiff was disabled because it was premised on the possibility that plaintiff might incur a "future disability" should she someday be in a fight, rather than a current inability to work as a police officer. *Id* at 1049. Here, the FCE conclusion that Applicant's "... ability to act as a first responder and perform effective CPR, push/pull or drag others to safety in an emergency "could be" compromised" is rejected as it does not address Applicant's current ability to work as a police officer.

The Pension Board notes there is conflicting medical evidence in this case amongst the independent medical examiners but finds Dr. Huddleston's opinion that Applicant is not disabled is most and entitled to the greatest weight. The Board further finds Huddleston's opinion is supported by Dr. Levin's opinion.

In dealing with conflicting evidence, the Pension Board acts as the fact finder. Situations involving conflicting medical evidence were presented in *Swanson v. Board of Trustees of the Flossmoor Police Pension Fund*, 2014 IL App (1st) 130561 and *Kramarski v. Bd. of Trustees of the Village of Orland Park Police Pension Fund*, 402 Ill.App.3d 1040 (1st Dist. 2010). Both cases support the Pension Board's decision in this matter.

In *Swanson*, the issue was whether Plaintiff met his burden of proving he suffered a stroke in the line of duty. Of the physicians who rendered opinions on causation, two concluded the officer's stroke was of "unclear etiology." *Swanson*, 130561 at ¶31-32. While

there was evidence to the contrary, the Court found an opposite conclusion was not clearly evident, and that it was the Board's function to resolve conflicts in medical evidence. *Id.* at ¶31. The Court affirmed the Pension Board's denial of line of duty benefits.

Similarly, in *Kramarski*, a police officer sought a line of duty disability as a result of psychological and physical problems. As to the physical disability claim, the pension board found that the officer was not physically disabled based on the sole opinion of one physician who found the officer was not disabled. *Kramarski*, 402 Ill.App.3d at 1049. There, the Board found the sole physician was the most thorough and thoughtful of the three of the doctors. The Court held this was sufficient evidence to support the Pension Board's finding the officer was not physically disabled. Likewise, in *Goodman v. Morton Grove Police Pension Board*, 2012 IL App (1st) 111480, the Court affirmed the Pension Board's decision denying line of duty disability benefits based on one physician's opinion. *Goodman*, 111480 at ¶15-17, 29.

The Pension Board finds ample evidence to support the conclusion that Applicant is not disabled. The Board finds Huddleston's opinion credible and relied upon it to support its conclusion that Applicant is not disabled from working. Huddleston's conclusions, combined with the Board's concerns regarding the timing of Applicant's disability application filed within a week of his termination and his lack of credibility, as determined by the Board, provide the necessary support in the record to uphold the Board's decision. Even though Huddleston was the only physician to conclude Applicant was not disabled from work, it was the Board's function to resolve conflicts in medical evidence. *Swanson* at ¶ 31. Assuming, arguendo, that Applicant was disabled, the Board concluded Applicant



failed to mitigate his injuries in that he did not undergo the additional reasonable PT and work hardening recommended by Drs. Boscardin, Anderson and Levin, and as such did not qualify to receive a line of duty disability pension. Having found Applicant not disabled, Applicant's line-of-duty disability pension benefit is denied.

#### **IV. CONCLUSIONS**

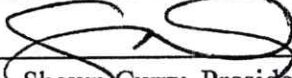
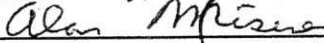
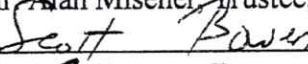
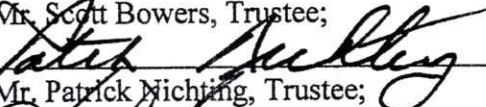

1. The Board of Trustees of the Peoria Police Pension Fund has jurisdiction over this subject matter.

2. Applicant is not entitled to a line-of-duty disability pension under §3-114.1 of the Illinois Pension Code because he is not disabled from performing full and unrestricted police duties.

**IT IS THEREFORE ORDERED:**

1. Applicant is not entitled to a line of duty disability pension based on the Board's finding Applicant not disabled from performing full and unrestricted police duties.

**BOARD OF TRUSTEES OF THE PEORIA  
POLICE PENSION FUND**

  
\_\_\_\_\_  
Mr. Shawn Curry, President;  
  
\_\_\_\_\_  
Mr. Alan Misener, Trustee;  
  
\_\_\_\_\_  
Mr. Scott Bowers, Trustee;  
  
\_\_\_\_\_  
Mr. Patrick Nichting, Trustee;  
  
\_\_\_\_\_  
Mr. Norman Burdick, Trustee.

DATED: \_\_\_\_\_

**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, Richard J. Reimer, 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 30 day of Sept., 2020 in the U.S. mailbox at 15 Spinning Wheel Road, Hinsdale, Illinois, 60521:


PRIORITY MAIL SIGNATURE CONFIRMATION

FIRST CLASS MAIL

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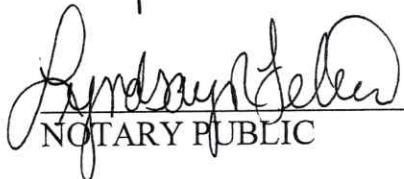
TO: Officer Bradley Hutchinson  
16431 Washington Road  
Morton, Illinois 61550  
*(By Priority Mail Signature Confirmation)*

Mr. Stephen P. Kelly, Esq  
2710 N. Knoxville Avenue  
Peoria, Illinois 6160  
*(By First Class Mail)*

  
Richard J. Reimer, Esq.

cc: Sergeant Shawn Curry, President  
Peoria Police Pension Board

SUBSCRIBED and SWORN  
to before me this 30<sup>th</sup> day  
of September 2020.

  
NOTARY PUBLIC

