



## **Preliminary Matters**

1. On January 6, 2020, Applicant submitted an application for disability pension benefits related to diagnosis of cancer. On August 21, 2020, Applicant amended his application for disability pension benefits related to an injury to his right leg and hip. (Bd. Ex. 1).

2. Applicant was 53 at the time of disability hearing. (Bd. Ex. #1; Tr. 11; 31). He is married and has one adult child. (Tr. 11-12).

3. The Applicant began his employment with the Fire Department on December 6, 1993. He was continuously employed by the Fire Department, achieving the ranks of firefighter, engineer, and captain in that order. (Tr. 12-13).

4. Applicant sought disability benefits arising from an injury occurring on April 9, 2019, wherein he injured his right hip and leg when he fell from a ladder. (Bd. Ex. 1; Tr. 16-17).

5. A hearing was conducted on Applicant's application on April 7, 2022.

6. The Pension Board's exhibits 1 through 11 were admitted into evidence without objection. (Tr. 8-9). Applicant's Exhibit 1 was also admitted without objection. (Tr. 9-10).

7. The City of Peoria job description for the Fire Captain position categorized the requisite physical strength as "Very Heavy" requiring the individual to engage in frequent or occasion heavy lifting and physical movement. (Bd. Ex. 16 at 4247).

### **A. Applicant's Pre-Existing Physical Condition.**

8. Applicant sustained prior injuries while employed; the first injury occurred to his lower back when he was injured on duty on September 29, 2001. (Tr. 14).

9. Applicant received treatment and returned to full duty. (Tr. 14).

10. On April 2, 2007, Applicant suffered another lower back injury while working as a firefighter. (Tr. 14).

11. Applicant received treatment and returned to full duty. (Tr. 15).

12. On February 25, 2010, Applicant was also injured when he fell through a floor while on duty, resulting in a worker's compensation claim. (Tr. 15).

13. Applicant received medical treatment and returned to full duty. (Tr. 15).

**B. Applicant's Disabling Injury.**

14. On April 9, 2019, Applicant was working as a firefighter captain. (Tr. 15-16).

15. At that time, Applicant was not under regular medical treatment and was working full and unrestricted duty. (Tr. 16).

16. Applicant was assigned to clean two Mutual Aid Box Alarm System (MABAS) trucks/trailers during which he was on top of a ladder, about 10-15 feet off the ground, when the ladder kicked out at the bottom causing him to fall straight down. (Tr. 16-17).

17. Applicant was required to clean the equipment. (Tr. 38).

18. Applicant landed on a rung or a rail, breaking his femur at the hip. (Tr. 17).

**C. Applicant's Diagnosis and Medical Treatment.**

19. Applicant was taken to OSF Hospital, Emergency Room, to receive medical treatment for his right leg and right hip. (Tr. 18).

20. Applicant was treated by Dr. Thomas Mulvey, who diagnosed a right femoral neck fracture and performed surgery to repair the fracture. (Bd. Ex 4, p 166; Tr. 18-19).

21. Applicant continued to follow-up with Dr. Mulvey, who recommended physical therapy 2-3 times per week for 4-6 weeks. (Bd. Ex. 4, p. 150; Tr. 19-20).

22. On the June 26, 2019, visit with Dr. Mulvey, Applicant complained of a limp and discomfort in his right hip. (Bd. Ex. 4, p. 147; Tr. 19-20).

23. On July 31, 2019, Applicant was evaluated by Dr. Mulvey, who noted Applicant walks with an obvious limp. Dr. Mulvey advised it could take 6 to 12 months for recovery, which would be a gradual process. (Bd. Ex. 4, p. 144).

24. During his August 28, 2019, visit, Dr. Mulvey noted the CT scan showed a persistent fracture line in the femoral neck. Dr. Mulvey advised maximum medical improvement could take up to a year after the initial injury. (Bd. Ex. 4, p. 142).

25. On September 19, 2019, Dr. Mulvey released Applicant to restricted work, specifically sedentary work only. (Bd. Ex. 4, p. 137; Tr. 23-24).

26. Applicant returned to light duty at the fire station from September 27, 2019, to October 18, 2019. (Tr. 23).

27. From October 21, 2019, to January 29, 2020, Applicant did not work, using his sick time to receive treatment for cancer. (App. Ex. 1, p. 2-11; Tr. 24).

28. On January 30, 2020, Applicant returned to light duty until February 1, 2020. Thereafter, Applicant was placed on Injured on Duty status until July 17, 2020. (Tr. 24-25).

29. On June 17, 2020, Dr. Mulvey evaluated Applicant's condition, finding he "has a healed fracture with restoration of a reasonable level of function and range of motion. I think long term he might have some general occasional discomfort and will require a more moderate to low impact functional status . . ." (Bd. Ex. 4, p. 128; Tr. 25).

30. Also, on July 8, 2020, a physician for the City of Peoria found Applicant required permanent restrictions, including no lifting more than 35 pounds, no firefighter training, no ladder climbing, no unprotected height working, no running, and no jumping. (Tr. 26-27).

31. Applicant followed all treatment and physical therapy recommendations from his doctors and is unable to return to work in any capacity. (Tr. 39-40).

**D. Applicant's Pay Status.**

32. On July 17, 2020, the City of Peoria ended Applicant's employment, although it is unclear when the City ceased paying Applicant. (Tr. 28).

33. Applicant received full salary under the Public Employee Disability Act ("PEDA") for the time he was not working. (Tr. 32).

34. Applicant has a worker's compensation case pending, and at the time of the hearing he was not receiving temporary total disability payments (TTD). (Tr. 33).

35. Applicant requested disability benefits effective July 17, 2020, or the last date he was on payroll, whichever is later. (Tr. 34-38).

**E. The Pension Board's IMEs**

36. Pursuant to Section 5/4-112 of the Illinois Pension Code, three medical doctors conducted independent medical evaluations of the Applicant, namely Dr. Joseph K. Newcomer, MD, Dr. James P. Sostak, MD, and Dr. Nicholas Brown, MD (Bd. Exs. 9-11).

**Dr. Newcomer**

37. Dr. Newcomer performed an independent medical examination of Applicant on July 9, 2021. (Bd. Ex. 9, p. 1462-63).

38. Dr. Newcomer opined Applicant was permanently disabled from performing full and unrestricted duties. (Bd. Ex. 9, p. 1463).

39. Dr. Newcomer concluded the fall on April 9, 2019, was the direct result of Applicant's injury/disability. (Bd. Ex. 9, p. 1463).

**Dr. Sostak**

40. Dr. Sostak performed an independent medical examination of Applicant on July 19, 2021. (Bd. Ex. 10, p. 1470-77).

41. Dr. Sostak opined Applicant was permanently disabled from performing full, unrestricted duties and his disability was a direct result of the incident on April 9, 2019. (Bd. Ex. 10, p. 1475-76).

42. Dr. Sostak concluded there was no medical care or treatment that would enable Applicant to return to full, unrestricted duty and engaging in a heavy duty position such as fireman could potentially lead to a breakdown of the repair and worsen his condition. (Bd. Ex. 10, p. 1476-77).

**Dr. Brown**

43. Dr. Brown performed an independent medical examination of Applicant. (Bd. Ex. 11, p. 1485-87).

44. Dr. Brown opined Applicant was permanently disabled from full, unrestricted duties and his disability was a direct result of the April 9, 2019, incident. (Bd. Ex. 11, p. 1486).

45. Dr. Brown further concluded there was no additional treatment that would enable him to return to full and unrestricted firefighter duties. (Bd. Ex. 11, p. 1487).

**F. The Board's Decision**

46. After hearing closing arguments, the Board unanimously awarded Applicant a line of duty disability pension effective June 17, 2020, or since the day the City stopped paying him. (Tr. 45-46).

**II. APPLICABLE STATUTORY PROVISIONS**

**40 ILCS 5/4-105b Permanent Disability.**

§4-105b. Permanent Disability. "Permanent disability;" any physical or mental disability that (1) can be expected to result in death, (2) has lasted for a continuous period of not less than 12 months, or (3) can be expected to last for a continuous period of not less than 12 months.

#### **40 ILCS 5/4-110 Disability pension – Line of duty**

Disability pension - Line of duty. 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, pursuant to Section 4-112, 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).

A firefighter shall be considered "on duty" while on any assignment approved by the chief of the fire department, even though away from the municipality he or she serves as a firefighter, if the assignment is related to the fire protection service of the municipality.

Such firefighter shall also be entitled to a child's disability benefit of \$20 a month on account of each unmarried child less than 18 years of age and dependent upon the firefighter for support, either the issue of the firefighter or legally adopted by him or her. The total amount of child's disability benefit payable to the firefighter, when added to his or her disability pension, shall not exceed 75% of the amount of salary which the firefighter was receiving at the date of retirement.

#### **§ 6-110. "Act of duty."**

"Act of duty": Any act imposed on an active fireman by the ordinances of a city, or by the rules or regulations of its fire department, or any act performed by an active fireman while on duty, having for its direct purpose the saving of the life or property of another person.

### **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, 621 N.E.2d 986 (4<sup>th</sup> Dist. 1993); *Wall v. Schaumburg Police Pension Bd*, 178 Ill. App. 3d 438, 533 N.E.2d 458 (1<sup>st</sup> Dist. 1989); *Evert v. Firefighters' Pension Fund of Lake Forest*, 180 Ill. App. 3d 656, 536 N.E.2d 143 (1<sup>st</sup> Dist. 1989). Due to their personal knowledge of the particular physical and emotional demand of the job, the members of the pension board are in the best position to

determine pension questions. *Sanders v. Springfield Police Pension Bd.*, 112 Ill. App. 3d 1087, 445 N.E.2d 501 (4<sup>th</sup> Dist. 1983).

The findings and conclusions of an administrative agency on questions of fact are deemed prima facie true and will not be disturbed unless they are against the manifest weight of the evidence. *Alm v. Lincolnshire Police Pension Board*, 352 Ill. App. 3d 595, 597 (2<sup>nd</sup> Dist. 2004); 735 ILCS 5/3-110. The Pension Board's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Roszak v. Kankakee Firefighters' Pension Board*, 376 Ill. App. 3d 130, 138 (3<sup>rd</sup> Dist. 2007). Moreover, it is the Pension Board's function to evaluate witness credibility or resolve conflicting evidence. *Kramarski v. Bd. of Trustees of the Village of Orland Park Police Pension Fund*, 402 Ill. App. 3d 1040, 1048 (1<sup>st</sup> Dist. 2010); *Peterson v. Bd. of Trustees of the Des Plaines Firemen's Pension Fund*, 54 Ill. 2d 260, 296 N.E.2d 721 (1973). Thus, it is the responsibility of the Pension Board to weigh the evidence, determine the credibility of witnesses, and to resolve conflicts in testimony.

**Line-of-Duty Disability.**

Applicant asserted a disability claim based upon an injury he sustained to his right leg and hip, specifically a fracture of his right femoral neck, which arose during the course of performing firefighting/paramedic duties. The elements a firefighter must prove in order to obtain a line of duty disability pension under Section 5/4-110 of the Pension Code are as follows:

1. He is a firefighter;
2. An accident, injury or sickness was incurred;
3. The accident, injury, or sickness was incurred in or resulted from the performance of an act of duty (or cumulative effects of); and
4. The firefighter is permanently disabled for service in the department.

*Gloss v. Board of Trustees, Firemen's Pension Fund of Chicago Heights*, 132 Ill. App.2d 736, 739 (1<sup>st</sup> Dist. 1971).



Applicant established he is a firefighter and a member of the Peoria Firefighters' Pension Fund. Also, there is no dispute Applicant is disabled. As such, the only issue for the Board to decide is whether Applicant's disability resulted from an "act of duty."

The term "act of duty," as used in Section 4-110 of the Pension Code, is defined under Section 6-110 of the Pension Code. Section 6-110 of the Pension Code defines an "act of duty" as "[a]ny act imposed on an active fireman by the ordinances of a city, or by the rules or regulations of its fire department, or any act performed by an active fireman while on duty, having for its direct purpose the saving of the life or property of another person." *Jensen v. E. Dundee Fire Protection Dist. Firefighters' Pension Fund Bd. of Trustees*, 362 Ill. App.3d 197, 203 (2<sup>nd</sup> Dist. 2005). In addition, it is for the Pension Board to determine whether the disability was caused by a covered act. *Id.* at 205. The Pension Board recognizes an "act of duty" need not be the sole or primary cause of Applicant's disability. Instead, it is sufficient that an "act of duty" is an aggravating, contributing, or exacerbating factor. *Vill. of Oak Park v. Vill. of Oak Park Firefighters' Pension Bd.*, 362 Ill. App.3d 357, 371 (1<sup>st</sup> Dist. 2005).

Here, Applicant identified a work-related incident on April 9, 2019, during which he was required to get on a ladder to clean fire equipment. Applicant testified he was required to perform this act as part of his duties as Fire Captain. While at the top of the ladder, the ladder kicked out at the bottom causing him to fall 10-15 feet down, landing on his right side resulting in a fracture of his right femoral neck. Accordingly, Applicant introduced sufficient evidence to establish he was engaged in an act of duty when he was injured.

Applicant must also introduce evidence establishing his employment was a causative factor in the disability. *Rose v. Board of Trustees of the Mount Prospect Police Pension Fund*, 2011 IL App (1st) 102157, ¶ 92; *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). An act of

duty aggravating a pre-existing condition may also establish the requisite causation nexus. *Cf. Carrillo v. Park Ridge Firefighter's Pension Fund*, 2014 IL App (1<sup>st</sup>) 130656, ¶23, citing *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 505 (2007).

Following his injury, Applicant underwent surgery and completed all proscribed physical therapy, but he was unable to achieve a sufficient level of recovery to allow him to return to full, unrestricted duty. There is no competent medical evidence disputing the opinions of all of the medical professionals that Applicant's disability was directly caused by the April 9, 2019, incident. In fact, each of the independent medical examiners opined there was no medical care or treatment which would allow Applicant to return to full, unrestricted duty. Accordingly, it is undisputed Applicant was and is unable to meet the physical requirements of being a firefighter. We conclude Applicant met his burden of proof for receiving line-of-duty benefits.

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**CONCLUSIONS**

(1) The Board of Trustees of the Peoria Firefighters' Pension Fund has jurisdiction over this disability claim.

(2) Applicant is entitled to a "line of duty" disability pension under Section 4-110 of the Pension Code effective June 17, 2020, or the date he was removed from the City's payroll whichever is later.

(3) Applicant's disability benefits are subject to an offset in accordance with Section 4-114.2 of the Pension Code for as long as he receives workers' compensation benefits.

**BOARD OF TRUSTEES OF THE PEORIA  
FIREFIGHTER'S PENSION FUND**

  
\_\_\_\_\_  
President, Joe Troglia

  
\_\_\_\_\_  
Trustee, Stefanie Tafr

  
\_\_\_\_\_  
Trustee, Tom Higgins

  
\_\_\_\_\_  
Trustee, Matt Smith

  
\_\_\_\_\_  
Trustee, Kent Tomblin

DATED: June 28<sup>th</sup>, 2022

**THIS IS A FINAL AND APPEALABLE DECISION. THIS DECISION CAN BE REVIEWED IN THE CIRCUIT COURT BY FILING A COMPLAINT FOR ADMINISTRATIVE REVIEW WITHIN 35 DAYS FROM THE DATE THAT A COPY OF THIS DECISION WAS 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, TRINA D. BONAS, 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 28<sup>th</sup> day of June, 2022 in the U.S. Mail Box at 419 Fulton, Peoria, IL 61602:

(X) CERTIFIED MAIL

(X) FIRST CLASS MAIL

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TO: Mr. John A. Schnibben  
127 S. Main Street  
Washington, IL 61571

*(By Certified Return Receipt Mail)*

Mr. Stephen P. Kelly  
2710 North Knoxville Avenue  
Peoria, IL 61604

*(By First Class Mail)*

1st Trina D. Bonas

SUBSCRIBED and SWORN  
to before me this 28<sup>th</sup> day  
of June 2022.

Michelle J. Desutter  
NOTARY PUBLIC



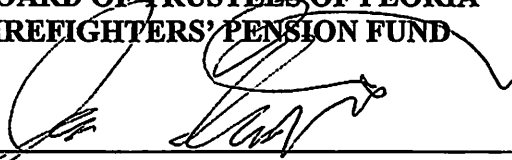
**BEFORE THE BOARD OF TRUSTEES OF THE  
PEORIA FIREFIGHTERS' PENSION FUND**

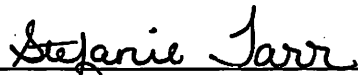
**IN THE MATTER OF THE                )**  
**DISABILITY APPLICATION OF:        )**  
  )  
**CAPTAIN                                     )**  
**JOHN A. SCHNIBBEN,                    )**  
  )  
**APPLICANT.                                )**

**CERTIFICATE OF PAYMENT**

Pursuant to Section 4-125 of the Illinois Pension Code, 40 ILCS 5/4-101 *et seq.*, this is to certify that the Applicant, Captain John A. Schnibben, is entitled to payment of a Line of Duty Disability Pension Benefit effective June 17, 2020, or since the day the City stopped paying him, and equal to 65% of the salary attached to the rank held by him on his last day of service, less any and all applicable offsets. The salary attached to the rank held by Applicant at the date of suspension of duty is \$106,648.93.

**BOARD OF TRUSTEES OF PEORIA  
FIREFIGHTERS' PENSION FUND**

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Secretary

DATE: June 28, 2023