

PENSION POINTERS



Whose Decision Is It? The Role of IME Physicians in Pension Disability Matters

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In pension disability matters, the Board's three Independent Medical Examination ("IME") physicians play a large role in determining whether an applicant is disabled. But are they the final word on whether a disability was caused by an act of duty?

Under Section 4-112 of the Illinois Pension Code, three physicians must be hired by the pension board to establish the existence of a disability (or lack thereof). 40 ILCS 5/4-112. That same section, however, also gives the pension board the authority to consider "such other evidence as the board deems necessary." And importantly, unlike the statutes that govern the Firemen's Annuity and Benefit Fund of Chicago, Section 4-112 *does not* require that the IME physicians confirm that a disability is duty-related. Instead, it is the Board's job to determine whether there is a causal relationship between the disability and a firefighter's acts of duty.

This distinction was explored in *Village of Oak Park v. Village of Oak Park Firefighters Pension Board*, 362 Ill. App. 3d 357 (1st Dist. 2005). In that case, the pension board considered whether a hearing-impaired firefighter was disabled as the result of an act of duty. Only two of the three IME physicians determined that the applicant was disabled. Of those two, one doctor indicated the hearing loss was a result of genetics and the other opined it was caused by firefighting. The third IME physician concluded that the firefighter's hearing loss was congenital and, therefore, not duty related. The pension board voted three-to-two to grant a line-of-duty disability pension benefit. It found that even if the applicant's hearing loss was

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congenital in origin, it was exacerbated by the noise he encountered performing his job duties. The Village of Oak Park, which had intervened, appealed.

Before the First District Appellate Court, the Village argued that the applicant was not entitled to a disability pension because his line-of-duty disability was not confirmed by the three physicians selected by the pension board. The court, however, disagreed. It construed Section 4-112 as *not* requiring a concurrence that a firefighter's disability was caused by their job duties. In fact, the court found that the Pension Code does not "even require an opinion of one physician, let alone a concurrence of all three, that his disability is duty related." *Village of Oak Park*, 362 Ill. App. 3d at 369. Therefore, the court upheld the pension board's decision to grant the line-of-duty disability benefits because there was sufficient evidence in the record to support the board's decision. The fact that only one physician opined that the applicant's hearing loss was job-related did not warrant the court's reversal.

Thus, whether an applicant is disabled is a question to be answered by IME doctors. On the other hand, whether any such disability was caused by an act of duty is up to the pension board.

However, that is not to say that IME doctors' opinions on causation are worthless. Many pension boards with pending line-of-duty benefit applications ask their IME physicians to opine on

whether the disability is 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. This is because physicians may have a unique perspective regarding whether the activity described can legitimately result in a disabling injury or whether the injury is more likely related to a genetic condition. The additional feedback from the IME physician examinations and reports serves as evidence from outside medical professionals that the pension board can use to base their decision to deny or accept an application for disability benefits. When a determination is based on the report of one or more IME physicians, along with other evidence in the record, it is much more difficult for interested parties to challenge the pension board's decision.

That being said, pension boards are not bound by those opinions and may base their determinations on other evidence within the record. But, boards must be careful in doing so. If pension boards do not follow the reports of one or more of the IME physicians, the written determination regarding the pension board's decision should lay out the specific reasons for declining to follow the physician report and cite to specific portions of the record supporting the pension board's determination. As always, pension boards should partner with their attorneys when considering disability pension benefit applications. ■