

# PENSION POINTERS



## Line-of-Duty Disability: Whose Decision Is It Anyhow?

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An integral part of every pension board's disability benefits process is sending the applicant to three independent medical examiners. Indeed, the opinions of these physicians usually constitute the most significant evidence on whether (1) the member is permanently disabled, and (2) whether the disability was the result of an act of duty (or the cumulative effects of acts of duty). Despite their significance, and as recently reiterated by the Illinois Appellate Court, the IME physicians' opinions are *not* binding.

Section 4-112 of the Illinois Pension Code requires that a disability pension "shall not be paid until disability has been established by the board by examinations of the firefighter at pension fund expense by 3 physicians selected by the board and such other evidence as the board deems necessary." 40 ILCS 5/4-112.

Though this provision seems straightforward, it and its analog for police officers has seen substantial litigation.

In *Wade v. City of N. Chicago Police Pension Board*, for instance, the Illinois Supreme Court made clear that this language *does not* require the board to follow its IME physician's opinions on the cause of a disability. 226 Ill. 2d 485, 514 (2007). In fact, the statutory text explicitly provides that this is "established by the board." 40 ILCS 5/4-112. And, if the board wants to, it can also consider "other evidence as the board deems necessary." *Id.* Therefore, while the Pension Code requires pension boards to appoint three IME physicians, the determination of an applicant's disability is ultimately the board's sole respon-

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sibility. What's more, Illinois courts have concluded that the Pension Code does not even require an opinion of one physician, let alone a concurrence of all three, to determine that a firefighter's disability is duty related. *Village of Oak Park v. Village of Oak Park Firefighters Pension Board*, 362 Ill. App. 3d 357, 369 (1st Dist. 2005).

Recently, the Illinois Appellate Court has reaffirmed the notion that the pension board—not the IME physicians—determines whether an applicant is disabled and whether there is a causal nexus with their employment. In *Cox v. the Board of Trustees of the Kankakee Police Pension Fund*, although the pension board did not follow all three of its IME physicians' conclusions, its decision was still affirmed. 2023 IL App (3d) 220213-U.

In *Cox*, a police officer claimed he injured his right shoulder while attempting to restrain an unruly female in an emergency room. The officer testified that he experienced pain in his right shoulder during the incident but did not seek immediate treatment. In addition, he filed a "Field Report" of the incident with his supervisor but did not disclose a shoulder

injury in his report. His supervisor also noted that he did not recall the officer mentioning any injury from the October 19 incident. The officer continued to work without restriction until five months later when he sought medical treatment for his shoulder. The officer eventually underwent a Functional Capacity Assessment ("FCA"), which concluded that he could perform at the "heavy" demand level of his full-duty job description. A physician's report supplementing the FCA opined that the officer's injury was causally related to the emergency room incident. The doctor offered no written explanation for his change in opinion. Based on the medical records and the job description of a police officer, three independent medical providers suggested the October 19 incident caused the officer's injuries.

The officer eventually filed a line-of-duty disability application. All three IME physicians found that the officer's disability was the result of an act of duty. Despite the physician's consensus, the pension board came to the opposite conclusion: the injury was *not* connected to his acts

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of duty as a police officer.

The board further found that the medical opinions on causation relied on the officer's self-serving history, which clearly contradicted the other evidence in the record. The officer's veracity was also undercut by the timing of the event and his medical treatment. The board emphasized that the officer continued to work until months later without restriction despite allegedly experiencing pain immediately after the incident. Had the rotator cuff tear resulted from the incident, the board believed the officer would have talked about the injury in his report or, at least, told staff in the hospital where the incident took place. However, the first mention of the pain was far removed in time from the event.

Therefore, even though all three IME physicians thought the disability was brought on by an act of duty, the pension

board found that evidence unpersuasive and instead found that the applicant was not entitled to a line-of-duty benefit.

Unsurprisingly, the officer appealed the board's decision. Ultimately, the Appellate Court affirmed the board's reasoning. It concluded it was not unreasonable for the board to view the medical opinions as speculative rather than conclusive on the issue of causation. As such, it upheld the board's denial of a line-of-duty pension.

Cox is an outlier, to be certain. Most IME physicians' reports are thorough and highly probative of whether a work accident caused a disability. Even so, as Cox illustrates, the IME opinions are not the final say. Pension boards retain the ultimate authority on whether a member is disabled and whether that disability arose due to an act of duty. Even if all three medical examiners reach one conclusion, the pension board can make the opposite finding. Of course, if your pension board is engaged with any disability application, we highly recommend you partner with your attorney before taking final action. ■

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