

# Illinois Official Reports

## Appellate Court

### *City of Peoria v. Firefighters' Pension Fund, 2019 IL App (3d) 190069*

Appellate Court  
Caption

THE CITY OF PEORIA, Plaintiff-Appellant, v. THE FIREFIGHTERS' PENSION FUND OF THE CITY OF PEORIA; JACK NIEUKIRK, BETH BALL, PATRICK NICHTING, RALPH PHILLIPS, and JOE TROGLIO, in Their Capacities as Trustees for the Firefighters' Pension Fund of the City of Peoria; and MICHAEL BROOKS, Defendants-Appellees.

District & No.

Third District  
No. 3-19-0069

Filed

December 10, 2019

Decision Under  
Review

Appeal from the Circuit Court of Peoria County, No. 17-MR-172; the Hon. Katherine S. Gorman Hubler, Judge, presiding.

Judgment

Affirmed.

Counsel on  
Appeal

Kenneth M. Snodgrass Jr. and Kevin O. Sheahan, of Hasselberg Grebe Snodgrass Urban & Wentworth, of Peoria, for appellant.

Robert B. McCoy, of Miller, Hall & Triggs, LLC, of Peoria, for appellee Michael Brooks.

Richard J. Reimer and Mark S. McQueary, of Reimer & Dobrovolny PC, of Hinsdale, for other appellees.

Panel

JUSTICE WRIGHT delivered the judgment of the court, with opinion.  
Justices Carter and Lytton concurred in the judgment and opinion.

## OPINION

¶ 1 Michael Brooks applied for and received a line of duty disability pension from the Firefighters' Pension Fund of the City of Peoria (Pension Board). The City of Peoria (City) was denied permission to intervene in the Pension Board's proceedings. In the circuit court of Peoria County, the City filed a complaint for administrative review of both the Pension Board's denial of the City's petitions for intervention and the grant of Brooks's line of duty disability pension. The circuit court affirmed these decisions of the Pension Board after Brooks challenged the City's standing to file a complaint for administrative review. The City appeals.

### ¶ 2 I. BACKGROUND

¶ 3 Defendant-appellee, Brooks, began working for the City of Peoria Fire Department (Department) in 1991. He began as a firefighter but eventually earned the title of engineer. On July 16, 2015, Brooks participated in a "collapsed house" exercise at the City of Peoria Fire Training Academy. The exercise involved diminished visibility, confined spaces, scattered debris, low profile techniques, and other obstacles. Brooks was extracted from the exercise after injuring his right knee. He was transported to OSF St. Francis Medical Center.

¶ 4 On January 19, 2016, Brooks submitted a line of duty disability application to defendant-appellee, the Pension Board. Brooks applied for a line of duty disability pension on the grounds that, due to the injury sustained during the July 16, 2015, "collapsed house" exercise, he needed a right knee replacement. The application indicated that, during the exercise, Brooks "felt a wall and pushed off \*\*\* with [his] right leg \*\*\* [and] immediately felt intense pain." Due to this injury, Brooks stated he could no longer perform his duties at the Department.

¶ 5 The Pension Board received initial reports prepared by three board certified orthopedic surgeons who, under section 4-112 of the Illinois Pension Code (40 ILCS 5/4-112 (West 2014)) performed independent medical examinations of Brooks. In preparation for their independent medical examinations, the surgeons reviewed Brooks's medical and employment records.

¶ 6 Dr. Joshua M. Alpert examined Brooks on February 9, 2016, and submitted a report to the Pension Board on February 22, 2016. In his report, Dr. Alpert stated Brooks "suffered from a pre-existing right knee osteoarthritis," which was "exacerbated during his work-related strain injury." The report stated Brooks's "disability related to his right knee osteoarthritis [wa]s not related to the work incident," but his "symptoms \*\*\* regarding inflammation and pain in his right knee were the result of his work injury." The "disability, in [Dr. Alpert's] opinion, was the result of some aggravation of the pre-existing right knee osteoarthritis." Brooks was "unable to \*\*\* perform his job as outlined in the job description."

¶ 7 Dr. Michael S. Lewis examined Brooks on February 12, 2016, and submitted his report to the Pension Board on February 22, 2016. Dr. Lewis diagnosed Brooks with "degenerative arthritis and osteochondromatosis of the right knee." Thus, "Brooks [wa]s unable to perform his regular daily tasks as a firefighter." Dr. Lewis opined that Brooks's disability was permanent. In Dr. Lewis's opinion, "the alleged disability [wa]s not a direct result of the

incident which occurred on July 16, 2015.” “Brooks had a long previous history of severe degenerative arthritis of the right knee prior to [that] alleged injury.” Though the July 16, 2015, incident temporarily exacerbated Brooks’s preexisting condition, “his disability and symptoms [we]re caused by his pre-existing condition and unrelated to any employment activities.”

¶ 8 Dr. James B. Stiehl examined Brooks on February 18, 2016, and submitted his report to the Pension Board on February 26, 2016. Dr. Stiehl stated Brooks had “advanced degenerative arthritis of his right knee and \*\*\* several significant osteochromatosis formations that \*\*\* clearly pre-exist the injury of July 16, 2015.” As “degenerative and permanent disabilities,” these conditions would “persist into the future and cannot be corrected.” Dr. Stiehl believed “the alleged disability [wa]s within all medical probability not a direct result of the incident which occurred on July 16, 2015.” Dr. Stiehl stated “the disability [wa]s solely caused by a pre-existing condition that appears to be unrelated to any employment activities.” At the time of the report, Brooks was “clearly disabled \*\*\* and clearly \*\*\* could not perform his job as a firefighter.”

¶ 9 On March 9, 2016, plaintiff-appellant, the City, filed a petition to intervene in the Pension Board’s proceedings for purposes of submitting evidence and cross-examining Brooks. The City argued it had an interest in the Pension Board’s proceedings because Brooks’s receipt of a line of duty disability pension would impact his future claims and the City’s liability under the Public Safety Employee Benefits Act (Benefits Act) (820 ILCS 320/1 *et seq.* (West 2014)). The City also argued it had an interest resulting from its statutory duty to contribute pension funds and ensure the pension statutes are correctly interpreted by the Pension Board.

¶ 10 On March 15, 2016, the Pension Board held a hearing to resolve the City’s petition to intervene and consider Brooks’s application for a line of duty disability pension. At the hearing, the City’s counsel admitted he did “not anticipate calling any additional witnesses” and all documents obtained by subpoena were contained in the Pension Board’s record. Thus, the City had no additional evidence to present to the Pension Board. Further, the City was asked by the Pension Board’s attorney whether it intended to make an offer of proof. Ultimately, the City chose not to do so. After arguments, the Pension Board denied the City’s petition to intervene.

¶ 11 Next, the Pension Board, without the City as a party to the proceeding, considered Brooks’s application for a line of duty disability pension. Brooks testified about the incident on July 16, 2015, and his work history at the Department. Specifically, Brooks said over the course of his career, he tried to “stay down in the valley,” which is the part of Peoria with “the most fires, the most calls.” Brooks said 18 of his 24 years at the Department were spent in “the valley,” where he averaged “six or seven, eight runs a day.” Both as a firefighter and as an engineer, Brooks wore “turnout gear,” which weighs approximately 80 pounds. Further, between “training and real fires,” Brooks estimated that he crawled in and out of buildings on his hands and knees thousands of times. After Brooks’s testimony, the Pension Board went into executive session. Thereafter, the Pension Board unanimously found that Brooks was disabled. Further, by a vote of 3-2, the Pension Board found Brooks was entitled to a line of duty disability pension.

¶ 12 On April 19, 2016, the City petitioned the Pension Board for permission to supplement the Pension Board’s record. The City advised the Pension Board that it was not fully informed of medical records relating to Brooks’s preexisting right knee condition before granting his line

of duty disability pension. The Pension Board granted the City's petition to supplement the record. The City also renewed its petition to intervene, which was denied on May 24, 2016.

¶ 13 On May 24, 2016, the Pension Board voted to submit the supplemental medical records to the three board certified surgeons "to see if that would change their opinion[s]" related to Brooks's right knee. Dr. Alpert supplemented his prior opinions with a letter dated August 2, 2016. Dr. Alpert said "[t]his [wa]s the first record where [he] \*\*\* heard of any pre-existing history of an ACL tear." However, Dr. Alpert did not change his previously stated opinions, "given the fact that \*\*\* Brooks ha[d] known pre-existing osteoarthritis, suffered a knee strain while at work[,] and would potentially benefit from a cortisone injection and physical therapy to get him back to his preinjury level." Dr. Alpert opined "[a]ny symptoms after that [we]re due to [Brooks's] osteoarthritis that [wa]s pre-existing in his right knee."

¶ 14 Dr. Lewis supplemented his opinions with a letter dated August 5, 2016. Dr. Lewis stated "[t]he [supplemental] records \*\*\* do not change my previously expressed opinions in any way." Dr. Stiehl supplemented his prior opinions with a letter dated August 5, 2016. Dr. Stiehl said his opinions were "not altered by th[e] record review." However, the supplemental medical records evidenced Brooks "had a long-standing knee problem which was an anterior cruciate ligament problem that was not caused by, aggravated or exacerbated by the \*\*\* injury on July 16, 2015." The cruciate ligament problem was not caused by a workplace injury but instead had an unknown cause. The anterior cruciate ligament problem was substantial and, "within all medical probability[,] the cause of [Brooks's] long-standing degenerative arthritis."

¶ 15 At a hearing held on September 26, 2016, the Pension Board again voted to request supplemental opinions from Drs. Alpert, Lewis, and Stiehl. The Pension Board sought the doctors' opinions on the following question: whether the cumulative effects of duty over 24-plus years of service contributed to Brooks's disability. On October 13, 2016, Dr. Alpert responded by letter to this question. Importantly, Dr. Alpert stated Brooks's disability was "due to his right knee pre-existing osteoarthritis" and that "the cumulative effects of duty over 24 years of service as a firefighter did contribute to the development of osteoarthritis in this case." Brooks's "pre-existing right knee osteoarthritis [wa]s multifactorial due to his chronic ACL tear, instability, his age, his weight, and wear and tear over time, as well as his 24 years of service."

¶ 16 On October 20, 2016, Dr. Stiehl responded to the Pension Board's question. Dr. Stiehl stated "cumulative effects of duty are within all medical probability not a factor in \*\*\* [this] case." Potential causations were "age, which is considered strong evidence[, and] obesity, which \*\*\* [Brooks] has with a BMI of 34." Further, Dr. Stiehl recognized Brooks had "long standing degenerative arthritis of the right knee." Brooks's prior anterior cruciate ligament problem was "within all medical probability the cause of the long-standing degenerative arthritis." However, there was "no supportive evidence that [Brooks] was ever injured on the job prior to July 16, 2015[,] \*\*\* [or that] working as a fire fighter [wa]s a cause of his arthritis."

¶ 17 Dr. Lewis responded to the Pension Board's question on October 21, 2016, stating there was "nothing in the medical records to indicate \*\*\* Brooks' condition [wa]s not a natural progression of his pre-existing degenerative arthritis." While Brooks "sustained a temporary exacerbation of his pre-existing condition on July 16, 2015, \*\*\* his disability and symptoms [we]re caused by his pre-existing condition and unrelated to any employment activities."

¶ 18 At a hearing held on November 27, 2016, the Pension Board affirmed its previous findings that Brooks was (1) disabled and (2) entitled to a line of duty disability pension. A final written

order was issued on January 30, 2017. The Pension Board discussed the denial of the City’s petition to intervene in the final written order. The Pension Board restated its finding that “the City’s interests would not be adversely impacted” by a denial. The Pension Board pointed out that the City declined to make an offer of proof and stated “every piece of medical evidence that [the City] had in the file” was submitted for review. The Pension Board also explained in the written order that Brooks was entitled to a line of duty disability pension because he was “currently disabled as a result of cumulative injuries incurred in or resulting from the performance of an act(s) of duty.” “[T]he cumulative effects of [Brooks’s] performance of firefighter’s [*sic*] duties culminat[ed] in the injury on July 16, 2015.”

¶ 19 On March 6, 2017, the City filed a complaint for administrative review in the circuit court of Peoria County under section 4-139 of the Illinois Pension Code and article III of the Code of Civil Procedure (Code). See 40 ILCS 5/4-139 (West 2014); 735 ILCS 5/3-101 *et seq.* (West 2016). Brooks motioned to dismiss the City’s complaint for administrative review pursuant to section 2-619(a)(2) of the Code (735 ILCS 5/2-619(a)(2) (West 2016)). Brooks’s section 2-619(a)(2) motion to dismiss alleged “this case is totally devoid of any special circumstances to warrant party status, or standing, on behalf of the City.” The circuit court denied Brooks’s section 2-619(a)(2) motion to dismiss. On December 31, 2018, the circuit court affirmed the Pension Board’s decisions. The City filed a notice of appeal on January 25, 2019.

## II. ANALYSIS

¶ 20 On appeal, our review is governed by the Administrative Review Law (Review Law) and extends to all questions of fact and law presented by the record. See 40 ILCS 5/4-139 (West 2014); 735 ILCS 5/3-110 (West 2018). We focus on the decisions of the Pension Board and not those of the circuit court. See *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 531 (2006) (*per curiam*). With this posture in mind, we address the issues presented by the City. First, the City asks for a reversal of the Pension Board’s decision to deny its petitions to intervene. Second, the City submits the Pension Board erred by granting Brooks a line of duty disability pension.

¶ 22 We first address Brooks’s contention that if the Pension Board properly denied the City leave to intervene in the Pension Board’s proceedings, then the City, as a nonparty to those proceedings, lacks standing to challenge the grant of Brooks’s line of duty disability pension in our court. The Pension Board also advanced this position during oral argument in our court. We acknowledge the general rule that when the Review Law governs the review of an “administrative decision,” that review is limited and available only to (1) parties of record to the proceedings before the administrative agency (2) whose rights, duties, or privileges were adversely affected by the agency’s decision. See *Williams v. Department of Labor*, 76 Ill. 2d 72, 78 (1979); *222 East Chestnut Street Corp. v. Board of Appeals of the City of Chicago*, 14 Ill. 2d 190, 192 (1958); 40 ILCS 5/4-139 (West 2014); 735 ILCS 5/3-110 (West 2018).

¶ 23 Here, the circuit court considered and denied Brooks’s section 2-619(a)(2) motion to dismiss and then, with the City as a party, conducted an administrative review of the Pension Board’s decisions. Thus, Brooks’s decision to forego a cross-appeal of the circuit court’s denial of his section 2-619(a)(2) motion to dismiss, which presented a similar standing argument, is problematic. After due consideration to the procedural posture of this case, we conclude Brooks forfeited this standing argument. Hence, while this standing issue involves interesting questions of fact and law that have not been fully addressed by the case law, we must exercise

judicial restraint. We limit the scope of our review to issues properly preserved by the procedural progression of the specific case at bar. We next turn to the issues presented by the City.

¶ 24

#### A. Petition to Intervene

¶ 25

The City submits the Pension Board abused its discretion by denying the City’s petitions to intervene in the Pension Board’s proceedings. It is well established that a pension board’s authority to control pension funds and disability payments includes the power “to conduct the hearings and the discretion to decide who can participate in those hearings and to what extent.” *Williams v. Board of Trustees of the Morton Grove Firefighters’ Pension Fund*, 398 Ill. App. 3d 680, 688-89 (2010); accord *Village of Alsip v. Portincaso*, 2017 IL App (1st) 153167, ¶ 16. However, the case law recognizes that a pension board’s discretion may be abused if the pension board “ ‘acts arbitrarily or capriciously,’ ” *i.e.*, contravenes the legislative intent, fails to consider aspects of the problem, or offers explanations so implausible that they run contrary to agency expertise. *Williams*, 398 Ill. App. 3d at 689; *Village of Alsip*, 2017 IL App (1st) 153167, ¶¶ 16-17.

¶ 26

The case law provides that a municipality’s interest in the proper expenditure of pension funds may warrant intervention in pension board proceedings *when combined with another interest*. See *Village of Alsip*, 2017 IL App (1st) 153167, ¶ 19; *Williams*, 398 Ill. App. 3d at 689. For example, in *Village of Alsip* and *Williams*, the municipalities sought to intervene in the pension board proceedings to ensure the proper expenditure of public funds, *as well as* to provide a complete administrative record and to protect against future liability under the Benefits Act. *Village of Alsip*, 2017 IL App (1st) 153167, ¶ 19; *Williams*, 398 Ill. App. 3d at 689.

¶ 27

Here, the City argues intervention in the Pension Board’s proceedings was warranted due to the City’s interest in contributing to and ensuring the proper expenditure of pension funds, *together with* at least one other interest, such as: avoiding liability under the Benefits Act, developing a complete and accurate evidentiary record, and testing Brooks’s claims with a cross-examination.

¶ 28

In this appeal, it is logical to assume that the City has at least a broad interest in overseeing the proper expenditure of pension funds. Thus, we first consider whether this broad interest, together with the City’s purported interest in avoiding liability under the Benefits Act, supports the view that the Pension Board erred by denying the City’s petitions to intervene. In this case, both Brooks and the Pension Board have admitted to our court that Brooks is ineligible for benefits under section 10 of the Benefits Act. See 820 ILCS 320/10 (West 2014). Thus, the threat of potential liability under that statute, when combined with the broad interest in contributing to and ensuring the proper expenditure of pension funds, did not warrant the City’s intervention. Hence, the Pension Board’s denials were not an abuse of discretion on this basis.

¶ 29

Next, we consider the City’s interests in developing a complete and accurate evidentiary record and in testing Brooks’s claims with a cross-examination. In this respect, we observe that, before denying the City’s petition to intervene, the Pension Board provided the City with every opportunity to identify additional evidence and witnesses for the Pension Board’s consideration. In response, when before the Pension Board, the City conceded that it had no additional evidence or witnesses to provide to the Pension Board. Moreover, the City declined

to make an offer of proof on any additional information that was necessary for an accurate evidentiary record.

¶ 30 After the Pension Board initially granted Brooks’s line of duty disability pension, the City was granted permission to supplement the administrative record with information the City believed was necessary for a complete and accurate record and to the outcome of the Pension Board’s proceedings. Following the supplementation of the record, the Pension Board did not ignore the additional information highlighted by the City. Rather, after receiving this information, the Pension Board, on two separate occasions, sought additional opinions from Drs. Alpert, Lewis, and Stiehl. Consequently, it appears to this court that the Pension Board carefully developed a complete and accurate evidentiary record to address the concerns of the City and was able to do so without granting the City full party status through intervention.

¶ 31 Relatedly, although the City was unable to cross-examine Brooks about his preexisting right knee condition or the cumulative effects of his career, the record documents that those issues were thoroughly examined by Drs. Alpert, Lewis, and Stiehl at the Pension Board’s request. Thus, Brooks’s testimony did not provide the lone voice on these issues, as to render the evidentiary record incomplete or inaccurate. Further, even if the Pension Board allowed the City to intervene, the scope of any cross-examination of Brooks would not have been unlimited. The Pension Board would have been free to tailor or impose limitations upon the scope of that cross-examination. See *Village of Stickney v. Board of Trustees of the Police Pension Fund*, 347 Ill. App. 3d 845, 852-53 (2004). As noted above, the Pension Board has “the discretion to decide who can participate in [its] hearings and to what extent.” See *Williams*, 398 Ill. App. 3d at 688-89; *Village of Alsip*, 2017 IL App (1st) 153167, ¶ 16. There is nothing in this record to support the view that the Pension Board’s denials of the City’s petitions to intervene were arbitrary or capricious. See *Williams*, 398 Ill. App. 3d at 689; *Village of Alsip*, 2017 IL App (1st) 153167, ¶¶ 16-17. Hence, the Pension Board’s denials did not constitute an abuse of discretion.

¶ 32 In sum, our careful review of the record reveals that the City has demonstrated only a broad interest in ensuring the proper expenditure of pension funds. Without another identifiable interest, such as those demonstrated by the municipalities in *Village of Alsip* and *Williams*, the singular interest in overseeing the expenditure of pension funds did not mandate the City’s intervention. See *Village of Alsip*, 2017 IL App (1st) 153167, ¶ 19; *Williams*, 398 Ill. App. 3d at 689. Further, the City has not proven to our court that, contrary to the finding of the Pension Board, the City’s interests were adversely impacted by the denials of the Pension Board. Thus, we hold that, based upon this unique record, the Pension Board did not abuse its discretion. See *Village of Alsip*, 2017 IL App (1st) 153167, ¶¶ 16-17; *Williams*, 398 Ill. App. 3d at 689.

### ¶ 33 B. Brooks’s Line of Duty Disability Pension

¶ 34 Next, the City argues the grant of Brooks’s line of duty disability pension was not supported by the evidence and should be reversed. Whether the evidence contained in the record supports the Pension Board’s grant of Brooks’s line of duty disability pension is a question of fact. See *Marconi*, 225 Ill. 2d at 534. Under the Review Law, a pension board’s findings and conclusions on questions of fact “ ‘shall be held to be *prima facie* true and correct.’ ” *Id.*; 735 ILCS 5/3-110 (West 2018). For a reversal, the decision must be against the manifest weight of the evidence, meaning “ ‘the opposite conclusion is clearly evident.’ ” *Marconi*, 225 Ill. 2d at 534. We do not reweigh the evidence or substitute our judgment for

that of the Pension Board. *Id.* If the record contains “evidence to support” the Pension Board’s decision, the decision should be affirmed. *Id.*

¶ 35 Under section 4-110 of the Illinois Pension Code, if a firefighter, as a result of an injury resulting from an act of duty or the cumulative effects of acts of duty, is found to be physically permanently disabled for service, then he or she is entitled to a line of duty disability pension.<sup>1</sup> See 40 ILCS 5/4-110 (West 2014). The firefighter need not prove that his or her acts of duty were the “sole or even the primary cause” of the disability. (Internal quotation marks omitted.) *Prawdzik v. Board of Trustees of the Homer Township Fire Protection District Pension Fund*, 2019 IL App (3d) 170024, ¶ 40. If there is a “sufficient nexus” between the injury and the acts of duty, then the acts of duty need only be a “causative” or “aggravating, contributing[,] or exacerbating factor” to the disability. (Internal quotation marks omitted.) *Id.* Indeed, a disability pension may even be based upon the “aggravation of a preexisting condition.” (Internal quotation marks omitted.) *Id.*

¶ 36 Here, the Pension Board found Brooks was entitled to a line of duty disability pension because he was “currently disabled as a result of cumulative injuries incurred in or resulting from the performance of an act(s) of duty.” “[T]he cumulative effects of [Brooks’s] performance of firefighter’s [*sic*] duties culminat[ed] in the injury on July 16, 2015.” These findings are supported by Brooks’s testimony and both Dr. Alpert’s initial and supplemental opinions.

¶ 37 Brooks testified to his work history and duties within the Department since 1991, such as the frequency with which he responded to calls, crawled in and out of buildings on his hands and knees, and wore 80-pound turnout gear. Further, Dr. Alpert conducted an in-person medical examination of Brooks and reviewed Brooks’s extensive medical history and job description. Based on his initial review, Dr. Alpert stated Brooks’s “disability \*\*\* was the result of some aggravation of the pre-existing right knee osteoarthritis.” In his final supplemental opinion, Dr. Alpert opined that Brooks’s disability was “due to his right knee pre-existing osteoarthritis” and that “the cumulative effects of duty over 24 years of service as a firefighter did contribute to the development of osteoarthritis in this case.” While Drs. Lewis and Stiehl reached different conclusions, the Pension Board’s findings were nonetheless supported by Dr. Alpert’s opinions.

¶ 38 After carefully considering this record, we cannot say “the opposite conclusion” than that reached by the Pension Board was “clearly evident.” (Internal quotation marks omitted.) See *Marconi*, 225 Ill. 2d at 534. Notwithstanding any contrary views of the evidence or the opinions of Drs. Lewis and Stiehl, the record contains sufficient “evidence to support” the Pension Board’s decision. See *id.*

¶ 39 III. CONCLUSION

¶ 40 The judgment of the Pension Board, which was affirmed by the circuit court, is upheld and confirmed.

¶ 41 Affirmed.

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<sup>1</sup>At oral argument, the City conceded that Brooks is disabled.