2020 IL App (1st) 192163-U
No. 1-19-2163
December 14, 2020

FIRST DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

SEAN T. HENEGHAN Plaintiff-Appellant, v. CITY OF EVANSTON, a Municipal Corporation, Defendant-Appellee.	)))))))))	Appeal from the Circuit Court Of Cook County. No. 2019 CH 867 The Honorable Raymond W. Mitchell Judge Presiding.

PRESIDING JUSTICE WALKER delivered the judgment of the court.
Justices Pierce and Coghlan concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's denial of plaintiff's motion for summary judgment was proper, and the City of Evanston's decision denying health insurance benefits to plaintiff because he was not responding to what is reasonably believed to be an emergency was not clearly erroneous.

¶ 2 Plaintiff, Sean T. Heneghan, a firefighter for the City of Evanston (City), suffered a catastrophic injury during a live fire training exercise. The City's Firefighters' Pension Board (Board) denied plaintiff health insurance benefits under the Public Safety Employee Benefits Act (Act). 820 ILCS 320 *et seq.* (West 2014). The City found that plaintiff's injury did not

satisfy section 10(b) of the Act. 820 ILCS 320/10(b) (West 2014). Plaintiff sought judicial review of the City's denial of health benefit pursuant to the Act, and plaintiff moved for summary judgment. The circuit court denied plaintiff's motion and affirmed the decision of the City. Plaintiff now appeals the circuit court's denial of his motion for summary judgment, arguing that the court erred in holding that he was not responding to what he reasonably believed to be an emergency as required under section 10(b). For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Plaintiff was a full-time firefighter for the City. On June 10, 2016, plaintiff participated in a voluntary live fire exercise held at the Northeastern Illinois Public Safety Training Academy (NIPSTA) in Glenview, Illinois. His participation in this exercise was part of a firefighter training course, and his attendance was approved by the Division Chief. Plaintiff's testimony before the Board is the only eyewitness testimony of the incident contained in the record.

¶ 5 The exercise was carried out using a structure made of shipping containers and meant to simulate a residence. The intent of the exercise was "to make it as realistic as possible to fighting an actual fire" by recreating the conditions that firefighters encounter in emergency situations. The exercise involved several teams of firefighters working together to forcibly enter the structure and put out a live fire.

¶ 6 Plaintiff was in the roof ventilation team with another firefighter. There were other groups inside the structure putting out the live fire. Plaintiff's role in the exercise was to ventilate the roof for the firefighters inside the structure, while standing on a pitched roof and wearing a

self-contained breathing apparatus. During the exercise, the live fire generated smoke and combustible particles. The teams combatting the live fire relied on plaintiff to ventilate the structure, letting heat, combustible gas, and smoke being generated by the fire to escape. Ventilating the structure helps to extinguish the fire by lowering the structure's internal temperature and increasing visibility for the firefighters fighting the live fire.

¶ 7 Ventilation of the structure is a safety issue that protects the firefighters inside the structure. If the structure is not ventilated, heat and combustible fumes build up inside the structure. This makes it possible for flashovers, where fire moves rapidly through areas of high heat, to occur. Flashovers put the firefighters inside the structure in jeopardy of suffering injuries. Ventilation also allows smoke to escape, increasing visibility. If smoke builds inside the structure, firefighters cannot see and are at risk of being trapped inside. Firefighters can die or be seriously injured if the fire spreads uncontrollably or a flashover occurs, and they are unable to escape the structure.

¶ 8 The pitched roof had two pre-cut holes covered with plywood. These ventilation covers were positioned vertically next to each other along the pitched roof, with one near the peak of the roof and one near the roof's edge.

¶ 9 Plaintiff was first instructed to pry up the cover near the peak of the roof. This cover was tightly affixed to the roof. Plaintiff's teammate was instructed to use a saw to cut open ventilation holes in the plywood covers. However, the saw failed, and plaintiff was instructed to open the ventilation holes with his axe. Plaintiff retrieved his axe from the ground, climbed back onto the roof, and began using his axe to chop open the plywood covers. This caused the

plywood covers to start "lifting up," and the instructor directed Plaintiff to pry up the vent covers with the pick head of his axe.

¶ 10 After he removed the first cover, he was directed to pry up the cover near the roof's edge. This cover was easy to remove and gave no resistance. However, plaintiff's momentum caused him to lose his balance and fall approximately twelve feet to the ground.

¶ 11 At the time of plaintiff's fall, he was wearing 75 pounds of gear and firefighting equipment, including a self-contained breathing apparatus, and holding an axe. Plaintiff was not provided with fall protection. He landed feet-first on the gravel below the roof, suffering bilateral calcaneal fractures as a result. Plaintiff was taken to the ER and had 8-9 screws inserted into each heel. Plaintiff's injuries required multiple surgeries, including an open reduction internal fixation, a subtalar fusion, and physical therapy, and left him with permanent pain and disabilities. He has permanent disabilities, causing him to be physically unable to work as a firefighter and will require a future fusion surgery and on-going life care.

¶ 12 On August 14, 2018, plaintiff applied for benefits pursuant to the Act with the City. Section 10 of the Act provides the continuation of employer-sponsored health insurance coverage for public safety employees, and their families, who are either killed or catastrophically injured in the line of duty. 820 ILCS 320/10(a) (West 2016). A firefighter is eligible for benefits under the Act if he or she is killed or catastrophically injured while responding "to what is reasonably believed to be an emergency." 820 ILCS 320/10(b) (West 2016). A catastrophic injury is synonymous with an injury resulting in a line-of-duty pension. *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 400 (2003).

¶ 13 In his application, plaintiff stated that he was injured "while participating in a live fire drill at NIPSTA." In response to an application question that asked whether plaintiff's injury was "in response to what was reasonably believed to be an emergency," plaintiff answered that his injury occurred during "a live fire drill" where "the safety of the additional firefighters was at risk if the fire and generating smoke and fumes were not ventilated properly out of the structure." His application also states that he had already been granted a line-of-duty disability pension.

¶ 14 The City denied plaintiff's application because, in the opinion of the City's Safety and Worker's Compensation Manager Robert Gustafson, plaintiff's injuries were "not in response to what was reasonably believed to be an emergency." Mr. Gustafson recommended in a signed memorandum that plaintiff not be granted health insurance in accordance with the Act. This recommendation memorandum was approved on September 27, 2018, denying plaintiff benefits under the Act.

¶ 15 On October 17, 2018, plaintiff was informed of the denial of health insurance benefits by letter. The letter stated that plaintiff's application for health insurance benefits was because the circumstances surrounding his injury did not satisfy section 10(b) of the Act. This reasoning is also reflected in Gustafson's recommendation memorandum.

¶ 16 On January 22, 2019, plaintiff filed a two-count complaint in the circuit court. Count I sought judicial review of the administrative decision and a reversal of the denial of his application. Count II, alternatively, sought declaratory judgment that defendant was obligated

to pay for his health insurance benefits under the Act. The circuit court reviewed plaintiff's complaint pursuant to a common law writ of *certiorari*.

¶ 17 On July 1, 2019, plaintiff filed a motion for summary judgment, arguing that he reasonably believed he was responding to an emergency during the training exercise.

¶ 18 On September 27, 2019, the circuit court entered its final order denying plaintiff's motion for summary judgment, dismissing count II, and affirming defendant's denial of plaintiff's application. The circuit court held that defendant's decision to deny plaintiff's health benefits under the Act was not clearly erroneous. On October 22, 2019, plaintiff filed his notice of appeal.

¶ 19 ANALYSIS

¶ 20 On appeal, plaintiff argues that 1) he suffered a catastrophic injury while responding to what he reasonably believed to be an emergency, and 2) the circuit court erred in concluding that he is not eligible for health insurance benefits under the Act.

¶ 21 The appeal arises from the circuit court's denial of plaintiff's motion for summary judgment. Summary judgment is proper only "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2016); 735 ILCS 5/2-1005 (West 2016); *Credit Union 1 v. Carrasco*, 2018 IL App (1st) 172535, ¶ 12. The trial court must view these documents and exhibits in the light most favorable to the non-moving party. *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill. 2d 307, 315 (2004). The purpose of summary judgment is not to try a question of fact, but

to determine whether a genuine issue of triable fact exists. *Adams v. Northern Illinois Gas Co*., 211 Ill. 2d 32, 42–43 (2004). "A genuine issue of material fact exists where either the material facts are disputed, or the material facts are undisputed but reasonable people may draw different inferences from those facts." *Sardiga v. Northern Trust Co*., 409 Ill. App. 3d 56, 61 (2011). Rulings on summary judgment motions are reviewed *de novo*. *Henyard v. Village of Dolton,* 2016 IL App (1st) 153374, ¶ 12.

¶ 22 However, plaintiff sought judicial review through a common law writ of *certiorari*. "A common law writ of certiorari is a general method for obtaining circuit court review of administrative actions when the act conferring power on the agency does not expressly adopt the Administrative Review Law and provides for no other form of review." *Hanrahan v. Williams*, 174 Ill. 2d 268, 272 (1996).

¶ 23 The standards of review under a common law writ of *certiorari* are essentially the same as those under the Administrative Review Law. *Id*. On administrative review, an appellate court reviews the final decision of the administrative agency, not the decision of the circuit court. *Cepero v. Illinois State Board of Investment*, 2013 IL App (1st) 120919, ¶ 10. The applicable standard of review to apply on review of an administrative agency decision depends on whether the question presented is one of fact, one of law, or a mixed question of fact and law. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008). We now review the City's decision to deny plaintiff's application for benefits under the Act.

¶ 24 The purpose of the Act is to ensure the health benefits of public safety employees who have suffered catastrophic injuries in the line of duty. *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 16. Section 10(a) of the Act provides in relevant part:

> "An employer who employs a full-time * * * firefighter, who * * * suffers a catastrophic injury or is killed in the line of duty shall pay the entire premium of the employer's health insurance plan for the injured employee, the injured employee's spouse, and for each dependent child of the injured employee until the child reaches the age of majority * * *." 820 ILCS 320/10(a) (West 2014).

¶ 25 Our supreme court has defined "catastrophic injury" to mean an injury that results in the awarding of a line-of-duty disability pension. *Nowak*, 2011 IL 111838, ¶ 12. On September 27, 2018, the City approved plaintiff's receipt of a line-of-duty disability pension due to his injury sustained during the training exercise. Therefore, plaintiff sustained a catastrophic injury within the meaning of section 10(a).

¶ 26 The sole issue in this case is whether plaintiff's injury satisfied section 10(b) of the Act. Section 10(b) requires that the injury occur "as the result of the * * * firefighter's response to what is reasonably believed to be an emergency." 820 ILCS 320/10(b) (West 2014). Our supreme court has defined the term "emergency" as "an unforeseen circumstance involving imminent danger to a person or property requiring an urgent response." *Gaffney v. Board of Trustees of Orland Fire Protection District*, 2012 IL 110012, ¶ 64. "To be entitled to continuing health coverage benefits under section 10(b), the injury must occur in response to

what is reasonably believed to be an unforeseen circumstance involving imminent danger to a person or property requiring an urgent response." *Id*.

¶ 27 Here, the City found that plaintiff was not responding to what was reasonably believed to be an emergency. The issue presents a mixed question of fact and law. The historical facts are undisputed, and the legal standard is supplied by *Gaffney*. Cases that involve mixed questions of law and fact are subject to a clearly erroneous standard of review. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 392 (2001). An agency's decision is clearly erroneous "only where the reviewing court, on the entire record, is 'left with the definite and firm conviction that a mistake has been committed.'" *Id*. at 395 (quoting *United States v. United States Gypsum Co*., 333 U.S. 364, 395 (1948)).

¶ 28 In *Gaffney*, our supreme court considered the eligibility of two firefighters, Gaffney and Lemmenes, injured in separate training exercises. *Gaffney*, 2012 IL 110012. Gaffney was injured during a live fire training exercise on the third floor of a building. Gaffney wore full fire gear for the exercise, and his battalion chief instructed him to treat the exercise as an actual emergency. As the crew was moving the fire hose from the second floor to the third floor, it became entangled. The smoke from the fire left no visibility. Gaffney followed the hose back down to the second floor and discovered that it was hooked around a loveseat. When Gaffney flipped the loveseat backward, he injured his shoulder. *Id*. ¶¶ 6–8.

¶ 29 The court held that Gaffney's training exercise became an emergency when the hose became entangled. *Id*. ¶ 66. This unforeseen development involved imminent danger and required an urgent response because it left the crew "stranded on the stairwell to the third floor

of the burning building with no visibility and no water to put out the fire." *Id*. Moreover, when Gaffney went to untangle the hose, he "put himself at risk of becoming lost and disoriented in the smoke-filled building." *Id*. ¶ 67. The court further noted that Gaffney had no "option of ending his participation in the exercise after it became an emergency." *Id*.

¶ 30 In *Gaffney*'s companion case, Lemmenes was also injured during a training exercise. The exercise took place at an abandoned building. The firefighters arrived at the building in full fire gear with the fire engine's emergency light activated. There was no actual fire, but the firefighters' masks were "blacked out" to simulate live fire conditions, and they were told to act as if there was an emergency. The firefighters were instructed that a fellow firefighter was trapped inside the building, was running out of air, and would perish if not found and rescued. The firefighters were instructed to advance a hose into the building along a predetermined path. Fire department supervisors testified that the "trapped" firefighter was never in real danger during the exercise, which was performed under "controlled conditions." *Id*. ¶¶ 21–24. Lemmenes was injured when he attempted to free the "trapped" firefighter. *Id*. ¶ 22.

¶ 31 The court held that Lemmenes could not have reasonably believed that he was responding to an "emergency" under section 10(b). The court noted that the exercise was conducted under " 'controlled conditions,' " no one was in imminent danger at any point during the exercise, and "[n]o unexpected or unforeseen developments arose during th[e] drill, unlike the situation in *Gaffney* where the hose line became entangled in an unknown object." *Id*. ¶ 77-79.

¶ 32 Plaintiff argues that he was responding to what he reasonably believed to be an emergency when the saw failed during the exercise. We are not persuaded by this argument.

¶ 33 The plain language of section 10(b) of the Act provides that to be eligible for benefits, the firefighter's injury must have occurred "as the result of the * * * firefighter's response to what is reasonably believed to be an emergency." 820 ILCS 320/10(b) (West 2014). However, the Act does not define the phrase "as the result of," and no Illinois court has expressly defined or construed that phrase as used in the Act. *Marquardt v. City of Des Plaines*, 2018 IL App (1st) 163186, ¶ 23. In *Marquardt*, the court noted that the dictionary defines the term "result" as "[a] consequence, effect, or conclusion" and equates the phrase "as a result" with the phrase "because of something." *Id*. However, the court declined to equate the phrase "as the result of," as used in the Act, with proximate cause. *Id*.

¶ 34 With these definitions in mind, we conclude that plaintiff's catastrophic injury was not a consequence of the failure of the saw during the exercise. Plaintiff is conflating two separate developments during the exercise to create one ongoing emergency. The failure of the saw was certainly an unforeseen development and could reasonably be regarded as an emergency. If the vent covers were not removed, then the firefighters inside the structure would be in imminent danger from fire and explosions. However, plaintiff was able to climb from the roof, retrieve his axe, return to the roof, and pry open the first vent cover. The emergency that plaintiff describes was the failure of the saw and his belief that the vent covers could not be opened. That emergency ended once plaintiff was able to successfully pry open this first cover with his axe. "The question of whether an emergency exists is not categorical but depends on the circumstances of the moment." *Pedersen v. Village of Hoffman Estates*, 2014 IL App (1st) 123402, ¶ 58. Once he had a suitable replacement for the saw, he was able to continue with the

rest of the exercise. He could not reasonably believe that his fellow firefighters were still in imminent danger after finding a replacement tool. He also would have known that it was possible the open the remaining vent with his axe. More importantly, he was not injured because of his actions addressing the saw's failure.

¶ 35 The second unforeseen development was the lack of resistance in the second vent cover. Plaintiff mistakenly assumed that the second cover would be as tightly affixed to the roof as the first. Plaintiff stated that the second cover gave no resistance, and he lost his balance when he attempted to forcefully pry it open. Simply put, plaintiff miscalculated how much force would be necessary to open the cover, used too much force, and fell from the roof as a result. Plaintiff argues that he was still responding to the emergency of the saw's failure when he reached the second cover, but we are unpersuaded by this argument. As stated above, the emergency ended once plaintiff had a suitable replacement for the saw. This loose vent cover, although unforeseen, did not create a new emergency. Therefore, plaintiff's fall was due to his miscalculation of force, not from a consequence of the saw's failure.

¶ 36 Plaintiff seems to argue that the live fire exercise itself was the emergency and any resulting catastrophic injury thereby satisfies section 10(b). However, this would be an overly broad reading of *Gaffney*. Gaffney also faced a live fire, but the fire was not the emergency. The emergency was the unexpected tangling of the hose. *Id*. ¶ 67. The *Gaffney* court acknowledged that any live fire carries the potential for a life-threatening situation, and no matter the number of safety precautions, there is always a chance that someone may be injured or killed. *Id*. Nonetheless, the exercise did not become an emergency until something "went wrong." *Id.*

¶ 37 Here, the unexpected failure of the saw is what "went wrong" during plaintiff's exercise and created an emergency for his fellow firefighters. However, that specific issue was resolved, and the emergency had ended before plaintiff was injured. The lack of resistance in the second vent cover, although unexpected, did not involve imminent danger to a person or property requiring an urgent response. Therefore, the City's finding that plaintiff was not responding to an emergency under section 10(b) of the Act was not clearly erroneous. We are not left with a firm conviction that a mistake was made by the City of Evanston.

¶ 38 CONCLUSION

¶ 39 For the foregoing reasons, the decision of the City of Evanston to deny benefits pursuant to the Act was not clearly erroneous, and the circuit court properly denied the motion for summary judgment and affirmed the City's decision. We affirm the circuit court's order.

¶ 40 Affirmed.