

## LEGAL ALERT

**Officer Denied a Duty Disability Pension Based On an Aggravation Theory When He Failed to Prove His Pre-Existing Back Condition Was Asymptomatic Prior to the Work Related Incident****FACTS**

In Olson v. Lombard Police Pension Fund, 2020 IL App (2d) 190113, Plaintiff, a Lombard police officer, was injured when arresting a burglary suspect in September of 2013. Plaintiff claimed to injure his leg and was rushed to the hospital. None of the initial hospital records referred to back pain. The initial medical reports, including the ambulance report, referred only to left leg pain which was diagnosed as a left hamstring strain. Further, during cross examination in the pension hearing, Plaintiff conceded that he did not receive any treatment for his back while at the emergency room on the day of the incident. From September of 2013 until January of 2014, Plaintiff treated with several doctors and attended physical therapy only to address his left leg strain. The medical records during that time contained no notes of complaints of back pain until late December of 2013. In late January of 2014, four months after the work incident, Plaintiff sought treatment for low back pain for the first time and denied that he had a significant history of pre-existing low back pain. Plaintiff was diagnosed with significant arthritis in his low back for which he underwent L4-5 lumbar fusion surgery in 2014.

During the pension proceedings, Plaintiff was examined by three physicians. He denied a prior back condition to all of the physicians. He further was inconsistent in his reporting as to when the back pain started. He told one of the three Pension Board physicians that his back pain started immediately on the day of the incident. He told the others that the pain began two months after the incident.

Medical records for the Plaintiff dated prior to the incident show that he had a severe pre-existing low back condition. Just three months prior to the incident, Plaintiff sought treatment in a hospital emergency room for severe back pain was brought on while he reached for a coffee cup in his kitchen.

For any questions or comments you might have regarding this newsletter, please feel free to contact:

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## **PENSION BOARD DECISION**

The Board concluded that Plaintiff had a pre-existing back condition that was neither caused nor exacerbated by an act of duty under Section 3-114.1 of the Police Pension Code. However, the Pension Board found Plaintiff was entitled to a non-duty disability pension. The Board based its decision on the medical records and Plaintiff's lack of credibility when testifying regarding his preexisting condition. Plaintiff sought review of the Board's decision arguing that the factual findings were contrary to the manifest weight of the evidence. The trial court affirmed the Pension Board's denial of the line of duty pension.

## **APPELLATE COURT DECISION**

The Court held that to obtain a line of duty pension, a plaintiff must prove that the duty related injury is a causative factor contributing to the claimant's disability. A disability pension may be based upon the line-of-duty aggravation of a preexisting injury. The Court agreed that the manifest weight of the evidence standard supported the Pension Board's findings that Plaintiff's disabling back pain was neither caused nor aggravated by an act of duty. The Court held that the Pension Board properly relied on the following evidence adduced at the hearing:

1. Plaintiff did not complain of back pain or treat for back pain until three months after the work incident;
2. Plaintiff failed to report back pain to his employer immediately after the incident;
3. Plaintiff had a symptomatic chronic pre-existing back condition that he was untruthful about; and
4. The medical evidence on balance supported the Board's decision that the pre-existing back condition was not aggravated by the incident.

A copy of the Appellate Court's decision in Olson v. Lombard Police Pension Fund, 2020 IL App (2d) 190113 is linked hereto:

<https://courts.illinois.gov/Opinions/AppellateCourt/2020/2ndDistrict/2190113.pdf>

## **TAKE AWAY**

When faced with a theory of aggravation of a pre-existing condition to support a claim for a line of duty pension, it is important to gather a full medical history of a Plaintiff's claimed disabling condition and to carefully determine whether the condition was symptomatic prior to the work incident. Further, Pension Boards, as finders of fact, can place more evidentiary weight on certain doctors' reports and records over other reports based on an express and supportable finding that certain reports are more thorough and thus more reliable.