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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-667 / 90-628

ROBERT SHAFER,

Appellee,

vs.

WATERLOO POLICE PENSION BOARD OF TRUSTEES,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, L. D. Lybbert, Judge.

Waterloo Police Pension Board appeals the district court's sustaining a writ of certiorari ordering the board to reconsider its denial of a retired officer's petition for accidental disability benefits. **AFFIRMED.**

Timothy J. Luce, Assistant City Attorney, for appellant.

Kevin R. Rogers of Swisher & Cohrt, Waterloo, for appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

HAYDEN, P.J.

Plaintiff Robert Shafer was employed as a police officer by the City of Waterloo Police Department since July 1963. He has suffered from lower back trauma, with the pain increasing to the point he could no longer work as a police officer.

Shafer was injured several times in the course of his employment. He was in car accidents in 1970, 1977, and 1981 while working. He was also involved in assaults and altercations with criminal suspects. Dr. Delbridge, an orthopedic specialist, determined in the spring of 1987 Shafer had a swollen disk in his lower back which put pressure on his spinal cord and nerves. Shafer was placed on limited duty in May 1987. However, in October 1987 Dr. Delbridge recommended Shafer be taken off duty permanently. Shafer then resigned.

Shafer applied for accidental disability benefits pursuant to Iowa Code section 411.6(5). The Waterloo Police Pension Board of Trustees arranged for Shafer to be examined by a medical board in Iowa City. The medical board found Shafer was totally and permanently incapacitated because he was suffering from a degenerative spinal joint disease in the lower back. The medical board also found Shafer's condition was aggravated by his normal duty functions.

The board of trustees found there was no evidence Shafer was incapacitated by the actual performance of duty

at some definite time and place. The board denied Shafer accidental disability benefits, two-thirds of last pay. The board held he was only entitled to ordinary disability benefits, one-half of last pay.

Shafer filed a petition for writ of certiorari in district court. The court determined the board had misinterpreted the medical board's findings. The court found there was not substantial evidence to support the board's findings. The court concluded Shafer's condition was aggravated by the actual performance of duty at some definite time and place. The court remanded the case to the pension board. The board now appeals.

The board claims the court erred in finding it acted illegally. It points out it is not bound by the findings of Dr. Delbridge or the medical board. The board states it fully and fairly considered the evidence. It also states there was competent and substantial evidence to support its decision.

The scope of review is summarized in Asmann v. Board of Trustees, 345 N.W.2d 136 (Iowa 1984):

> Appeal to this court from a certiorari judgment of a district court is treated as an ordinary action, and will be affirmed if supported by competent and substantial evidence.
>
> Certiorari is appropriate where an inferior board, exercising judicial functions, acts illegally. An illegality is established if a board has not acted in accordance with a statute; if its decision was not supported by substantial evidence; or if its actions were unreasonable, arbitrary, or capricious. The plaintiff bears the burden to prove the illegality.

Id. at 138 (emphasis added).

Our review of the record convinces us the district court is correct. The pertinent portion of the statute reads:

> ...any member who has become totally and permanently incapacitated for duty as the natural and proximate result of an injury or disease incurred in or aggravated by the actual performance of duty at some definite time and place, ... shall be retired by the respective board of trustees, provided that the medical board shall certify that such member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

Iowa Code § 411.6(5).

The medical evidence in the record indicates Shafer's back injury was (1) aggravated by the multiple car accidents and assaults upon his person while in the line of duty, and (2) aggravated by the normal bending, stooping, and other movements associated with his regular police duties. The initial report from the medical board did not specifically consider the back injuries in relation to the accidents and assaults. It linked Shafer's normal police duties with his line of work.

A subsequent affidavit by Shafer's treating physician indicates the accidents and assaults aggravated Shafer's back condition. Additionally, at least one physician's report from Shafer's 1981 car accident shows distinct injury to the spine as a result of that accident.

In short, the record is replete with evidence showing definite times and places where Shafer either did or could

have suffered injury further aggravating his back condition. These injuries were incurred while in the line of duty.

We have discovered no evidence disputing the source or aggravating circumstances of Shafer's back injury. The facts are undisputed. The only issue is whether the board must render its decision based on the evidence before it or if it may disregard that evidence and reach its own conclusion unsupported by any evidence.

The board of trustees apparently feels it may decide to disregard the expert testimony before it and come to its own conclusion. However, there must be some evidence in the record to support the board's decision.

This is not a case where the board had to resolve a conflict of evidence. See Cloud v. Fort Dodge Police Pension Board, 372 N.W.2d 313, 316 (Iowa App. 1985). Rather, all the evidence either supports Shafer's claim of injury at a definite time and place in the line of duty, or else simply considers the effect of the normal police work without considering the particular accidents and assaults. This in itself is adequate to support an award of accidental disability benefits.

The medical board reported Shafer's condition "in all likelihood [has] been agrevated (sic) by the type of activity that he has been performing through the years." One member of the examining board stated the "standing, bending, twisting, lifting, stooping, and other physical

requirements of police work every day on the job ... aggravated [Shafer's] condition." The trial court indicated this is adequate to be "an injury or disease incurred in or aggravated by the actual performance of duty at some definite time and place ... " Iowa Code § 411.6(5). We agree. These individual injuries would, by their very nature, have occurred "at some definite time and place." This provides a second, separate basis to affirm the trial court and remand the case for reconsideration by the board of trustees.

It is axiomatic the finder of fact, while free to accept or reject expert testimony, may not do so arbitrarily or capriciously. Kaiser v. Stathas, 263 N.W.2d 522, 526 (Iowa 1978); Weddell v. Peet's Feeds, Inc., 266 N.W.2d 29, 32 (Iowa 1978). The evidence is overwhelming Shafer's various accidents that occurred on his police job aggravated his spinal injury "at some definite time and place." We find no evidence supporting the board of trustees' holding these accidents and activities did not aggravate Shafer's condition.

We determine the board of trustees acted illegally in making a decision without basis in the record. The district court's decision is supported by substantial evidence. We affirm the trial court on all issues.

AFFIRMED.