

Witteman v. Brookfield Firefighters' Pension Fund

Appellate Court of Illinois, First District, Sixth Division

July 25, 2025, Order Filed

No. 1-24-1278

Reporter

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NICHOLAS WITTEMAN, Plaintiff-Appellant, v. BROOKFIELD FIREFIGHTERS' PENSION FUND and THE BOARD OF TRUSTEES OF THE BROOKFIELD FIREFIGHTERS' PENSION FUND, Defendants-Appellees.

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Opinion

[*1] JUSTICE HYMAN delivered the judgment of the court.

Justices C.A. Walker and Gamrath concurred in the judgment.

ORDER

1 *Held:* Pension board decision denying a line of duty pension and granting a non-duty

pension was not against the manifest weight of the evidence.

2 Nicholas Witteman, a firefighter for the Village of Brookfield Fire Department, applied for

a line of duty disability pension, claiming he had injured his back while helping lift an

overweight patient. After a hearing, the Board of Trustees of the Brookfield Firefighters'

Pension Fund found Witteman disabled, but his injury was not work-related. In a 66-page

decision, the Board cited inconsistencies in his testimony regarding the incident, including (i)

failing to report the injury to coworkers, (ii) amending his application describing how the injury

occurred, and (iii) his demeanor at the hearing. Conversely, the Board found the testimony of

the firefighter witnesses, although conflicting, to be credible and supported the finding that

Witteman's injury did not occur as he claimed. In a 3-1 vote, the Board denied a line-of-duty

pension but unanimously approved a non-duty pension. The circuit court upheld the [*2] Board's

decision.

3 On appeal, Witteman contends that the Board erred by (i) not resolving all the conflicts in

his coworkers' testimony, (ii) finding that he failed to report his injury timely, (iii) making an

adverse inference about his credibility based on amending his disability application, (iv)

manipulating expert medical testimony to reach its desired result, and (v) relying on his

demeanor at the hearing in assessing his credibility.

4 We affirm. The Board was not required to resolve every inconsistency in the witness's

testimony, nor barred from considering Witteman's amended disability application or his

demeanor in assessing his credibility. Witteman's remaining contentions—that the Board

found he delayed reporting his injury and manipulated expert medical testimony—lack merit.

Determining the cause of Witteman's injury, based on the evidence and testimony, was

squarely within the Board's authority and was not against the manifest weight of the evidence.

5 Background

6 Witteman joined the Department as a firefighter/paramedic in July 2010. On April 14,

2020, he and his partner responded to an ambulance call at a single-family residence. Three other

firefighters [*3] responded, too. The patient, an elderly, overweight man with limited mobility, asked

the firefighters to take him to the hospital. To do so, the man needed to be moved from a reclining

chair onto a stretcher. Witteman claimed that while lifting the patient's upper body out of the chair

and placing him on the stretcher, he felt a sharp pain in his lower back.

7 Witteman said his back pain worsened overnight and into the following day. His physician

referred him to an orthopedic surgeon, and he eventually underwent two back surgeries. His pain

persisted, and he has not returned to regular firefighting duties. He applied for a line-of-duty

disability pension, stating that he injured his back "transporting a large patient from chair onto a

cot, felt sharp pain in lower back."

8 Board Hearings

9 The Board held hearings regarding Witteman's disability application on May 13, 2022, and

April 13, 2023. Board Trustee Charles Romeo, who was present when Witteman allegedly injured

his back, recused himself. Before testimony began, the Board asked if Witteman wished to amend

his application to include a non-duty disability pension as an alternative. His attorney said he did.

10 Witteman [*4] Testimony

11 Witteman testified that early in his 24-hour shift on April 14, 2020, he and his partner, Brad

Pacyga, responded to a call at a single-family home

with a wheelchair ramp. The patient, who had

paraplegia with diabetes, weighed between 350 and 400 pounds. A second ambulance, with

firefighters Charles Romeo and Mark Pollard, and a fire truck driven by Matthew Dubik also

responded. The team was familiar with the patient and anticipated needing extra help due to his

weight and health condition.

12 To transfer the patient from a reclining chair to a stretcher, they performed a "trunk lift":

one firefighter lifted the patient's upper body while others moved his legs, sometimes using a bed

sheet. Witteman said he was positioned at the patient's head. As he placed his arms under the

patient's armpits and lifted and twisted to lower him onto the stretcher, he felt a sharp pain in his

lower back. The pain continued as they wheeled the patient down the ramp and over uneven

ground. Witteman said he bore most of the weight because of his positioning and felt every bump.

Lifting the stretcher over a curb and lowering it to the street was "incredibly painful." The

ambulance's [*5] mechanized lift then loaded the patient. Witteman drove, while Pacyga remained in

back with the patient.

13 The pain persisted throughout the drive and worsened when transferring the patient from

the stretcher to the hospital bed. Witteman did not cry out or show signs of pain, explaining that

he has a high pain tolerance and was focused on the patient. He did not tell his coworkers that he

was injured. After the call, he and Pacyga returned to the fire station, but Witteman did not inform

the lieutenant on duty or anyone else during the remainder of the shift that he had hurt his back.

14 To further explain his failure to report his injury, Witteman said "[a]t the time I was not

talking to my lieutenant, nor my other shift mate due to very disparaging things that they had said

and/or done to me." He described Lieutenant Dubik as one of "the most despicable people in the

world," and he did not think he could trust or talk to Dubik or Pacyga. He said the dispute arose

when Dubik and Pacyga told the fire chief that he was not eating meals with his fellow firefighters

and needed a psychological evaluation. This dispute prompted him to ask for a shift change, which

was pending [*6] at the time.

15 Witteman could not remember what he did the rest of his shift but acknowledged he went

on at least two more calls. He was able to perform his job duties because the calls were not

physically demanding. He said the pain continued to increase overnight; he had muscle spasms

and was unable to sleep. He did not tell anyone about his injury until the next morning, when

Lieutenant Kloss saw him stretching out his back on the floor and asked him what happened.

16 After his shift ended, Witteman went home. A few hours later, he called Fire Chief James

Adams to tell him he had injured his back. Witteman said Adams told him to rest and "do what

you guys normally do," but did not tell him to seek medical treatment. Witteman said he wasn't

sure what to do. When the pain did not subside, he called in sick for his next shift. He tried to see

a doctor but was unable to get an appointment until a week later. He went to his own doctor rather

than the Department's occupational health clinic because he said it was closed due to the COVID-

19 pandemic. After seeing his doctor, Witteman went to the fire station and filled out "Form 45"

to report his injury, so-called because [*7] it must be filed within 45 days of an injury.

17 About five years earlier, Witteman had injured his

back when lifting a patient who got

stuck behind a hot water tank. After physical therapy, he returned to full duty. He acknowledged

that although that injury was much less painful, he immediately informed his coworker about it

and submitted a Form 45 on the same day. He was aware of the Form 45 requirement from this

past injury and as he had helped firefighters fill it out when he served as union president. Asked

why he did not tell anyone about this injury as he had with his earlier injury, he said he did not

know the extent of it and did not want to "make a mountain out of a molehill." In the moment, he

was not sure if he needed medical treatment or if it would improve with time.

18 Witteman's doctor referred him to Dr. Anish Patel, an orthopedic surgeon. Dr. Patel gave

him injections and prescribed physical therapy. When those did not alleviate his pain, Dr. Patel

recommended spinal fusion surgery, which Witteman had on September 10, 2020. Witteman's

pain persisted after surgery, and he sought a second opinion from Dr. Matthew Ross. According

to Witteman, Dr. Ross said [*8] the first back surgery failed and recommended a second back surgery

to "start from scratch." Witteman's second surgery took place on July 14, 2021. Witteman's

condition improved with physical therapy but he continued to have pain, stiffness, and back

spasms. In May 2022, Dr. Ross opined that Witteman could not return to full-time work as a

firefighter and gave him a permanent 30-pound lifting, pushing, and pulling restriction. Other than

a few light-duty assignments, Witteman had not returned to full firefighter duties.

19 Testimony of Fellow Firefighters

20 Witteman's fellow firefighters, Charles Romeo, Mark Pollard, Bradley Pacyga, and

Matthew Dubik, completed witness reports two weeks after the incident and testified before the

Board. Their testimony conflicted with Witteman's, with each other's and, at times, with their own

witness statements.

21 Romeo testified that he and Pollard took a second ambulance to the patient's home. When

they arrived, the patient was sitting in a recliner. He had a "Hoyer lift," a metal frame with a

triangle bar that patients can use to lift themselves. The patient used the Hoyer lift to move his

upper body onto the stretcher while Pollard, [*9] Pacyga, and Dubik assisted by moving his legs.

Romeo did not help move the patient, and he did not see Witteman helping either. He could not

recall who pushed the stretcher down the ramp and into the ambulance, but said Witteman may

have helped. During the call, Romeo never saw Witteman wince, fidget, grimace, or otherwise

indicate he was in pain, and Witteman never told him he was in pain. Romeo was assigned to a

different fire station and so did not speak to Witteman after the call.

22 Mark Pollard arrived at the patient's house with Romeo. His witness report stated that he,

Witteman, Pacyga, and Dubik "grabbed a different area of the patient and assisted moving/sliding

patient onto the [stretcher]." Before the Board, however, he could not recall how the patient got

onto the stretcher and had no memory of Witteman helping. But, he said, "[t]here would have been

no reason why" he would not have helped because "[i]t's not like a huge guy is going to be there

and someone just stands around and watches." Pollard also had no recollection of the patient

having a Hoyer lift. Witteman and Dubik wheeled the patient outside. Pollard offered to help lift

the stretcher over a high [*10] curb but Witteman and

Dubik declined. At no time did Pollard notice any

indication from Witteman that he was injured.

23 Bradley Pacyga, Witteman's partner, testified that the patient used a Hoyer lift to move

himself onto the stretcher because he did not want anyone to touch him. Once he got his upper

body and hips onto the stretcher, Pacyga and Pollard, who were at the patient's feet, moved them

over. Pacyga did not see Witteman lift the patient. He did not remember Witteman helping to push

the stretcher down the ramp but said it was possible. He said he drove the ambulance to the hospital

while Witteman attended to the patient in the back. When they got to the hospital, the patient

moved himself onto the bed because he did not want to be touched.

24 Pacyga testified that Witteman never told him he hurt his back and made no non-verbal

indications of pain. Nor did Witteman indicate for the rest of the shift that he had been injured or

was in pain. Pacyga disagreed with the suggestion that he and Witteman were not getting along at

the time but acknowledged they had a strained relationship in the past and did not speak to each

other outside of work.

25 Day Two of Hearings [*11]

26 The Board adjourned to subpoena additional witnesses. When it reconvened 11 months

later, Witteman's attorney asked to amend Witteman's disability application to add that not only

was he injured in transporting the patient from the chair to the stretcher, but "[a]lso, transporting

patient down wheelchair ramp and transporting patient over curb and parkway into ambulance."

The Board allowed the amendment.

27 Lieutenant Matthew Dubik testified that he took a fire truck to the call because he

recognized the address and knew that the patient's weight and physical condition might require

additional assistance. He described the patient as average, weighing about 220 or 230 pounds.

He denied that the patient weighed 400 pounds.

28 In his witness report, Dubik stated, "Pacyga, Pollard, and I helped place the patient's legs

on the cot. The patient then slid himself onto the cot with assistance from Pollard and me.

Pacyga, Pollard, Witteman, and I centered the patient on the cot and then raised the cot via the

electric motor." During his testimony, however, he said the patient did not want to be touched

and moved himself from the reclining chair to the stretcher. Witteman was [*12] near the patient's

head, Pollard and Pacyga were near his feet, and Dubik was on the side. None of the firefighters

lifted the patient. While he and Pollard took the patient down the ramp to the ambulance,

Witteman carried the medical equipment bags. He acknowledged that Witteman may have

assisted in moving the patient down the ramp, given the patient's weight.

29 Dubik never heard Witteman indicate injury or pain. Dubik went on two more calls with

Witteman during the shift and could not recall Witteman having trouble performing his duties.

He also had no recollection of Witteman stretching on the floor, having difficulty walking,

being in pain, or unable to perform his firehouse chores that day. He learned that Witteman

was injured three or four shifts later.

30 Chief James Adams could not recall how he learned of Witteman's injury. He also could

not recall telling Witteman to seek medical help from his personal physician. He said he had

no reason to doubt Witteman's testimony that he called Adams three hours after he completed

his shift.

31 The Board selected three physicians-Dr. Richard Tuttle, Dr. Michael Peters, and Dr.

David Schneider-to perform independent medical [*13] examinations and assess whether

Witteman's back injury was work-related. The physicians submitted reports and provided

deposition testimony.

32 Dr. Tuttle examined Witteman and issued a report opining that Witteman was disabled

from performing full, unrestricted firefighter duties. Dr. Tuttle noted that Witteman injured his

back in 2015, but did not find that to be a pre-existing condition to his present injury. He stated

that, in his opinion, with a reasonable degree of medical certainty, the lifting incident solely

caused the back injury.

33 Dr. Peters also examined Witteman and similarly opined that he was disabled from

performing full, unrestricted firefighter duties and that "[t]he April 14, 2020 lifting injury was

the direct cause of aggravating his underlying degenerative lumbar spine disease." Dr. Peters

noted that Witteman's explanation of how the patient was transferred differed from the written

reports by the other firefighters present, but stated that the "transfer he described could still

have caused an exacerbation" of his underlying degenerative lumbar spine disease.

34 Dr. Schneider examined Witteman and opined that he is "completely disabled from work- [*14]

related activities after [the] injury which occurred on April 14, 2020." He noted that Witteman

had "pre-existing arthritis in his back" but concluded he had not experienced a significant

disability before the lifting incident.

35 Witteman was also examined multiple times by Dr.

Anis Mekhail, the Village's workers'

compensation physician. Dr. Mekhail diagnosed Witteman with a herniated disc that he said

was causally related to a work injury.

36 After Witteman testified, the Board sent additional medical records to the independent

medical experts and asked them to supplement their opinions based on this question: "If the

Pension Board were to conclude (based upon eye-witness testimony) Firefighter Witteman did

not participate in lifting a patient on the, April 14, 2020, call in question, would it change your

opinion regarding whether the Witteman's injury is duty related? If so, please explain further."

37 In his supplemental response, Dr. Tuttle noted that Witteman's medical records show that

his description of the incident had been consistent. But, if the Board found that Witteman did

not participate in lifting the patient, it would be his opinion to a reasonable degree [*15] of medical

certainty that the injury was not duty-related. Dr. Peters similarly concluded that Witteman's

injury would not be related to his firefighter duties if he did not participate in lifting the patient.

Dr. Schneider declined to give an opinion based on a "hypothetical observation" as to whether

Witteman could have injured his back if he had not lifted the patient. He stated that he could

only rely on the information from the patient, which he acknowledged the patient self-reported.

38 The Board also admitted Witteman's mental health records, which included diagnoses of

post-traumatic stress disorder, generalized anxiety disorder, and depression, for which he was

briefly hospitalized and a description of the medications to treat them. Witteman testified to

the Board about his mental health issues.

39 Board Decision

40 The Board voted 3 to 1 to deny a line-of-duty disability pension but unanimously awarded

a non-duty pension. The Board issued a 66-page written decision and order, which found that

Witteman failed to prove that lifting and transporting the patient was the cause of his disability.

41 The Board did not dispute that Witteman was disabled but found his [*16] testimony was not

credible and that he had misrepresented how his injury occurred. The Board cited Witteman's

failure to immediately report his injury to coworkers or complete a Form 45, despite having

done so with his earlier back injury. Further, Witteman testified that after speaking with Chief

Adams, he was unsure what to do regarding his injury; yet, as union president, he assisted

injured coworkers in completing Form 45 injury reports.

42 The Board also found that Witteman contradicted his testimony and written statements. He

initially claimed he was injured when he lifted the patient from the chair to the stretcher. Then,

after the first day of hearings, he amended his application to state he was also injured when he

transported the patient down the wheelchair ramp, over the curb and parkway, and into the

ambulance. The Board noted that "it was only after sitting through almost two days of

testimony and learning the record evidence impeached his claims did he change his

application." This amendment "directly contradicts his initial testimony, his Form 45 (which

[Witteman] filled out) and his pension application, which [Witteman] signed under the pains

and penalties [*17] of perjury." Consequently, the Board placed no weight on his testimony as to the

cause of his injury.

43 Conversely, the Board found the testimony of the responding firefighters credible. The

Board reviewed each witness's testimony and acknowledged that some of their testimony

about who lifted the patient and who moved the stretcher down the ramp was conflicting. But

none of the firefighters testified that Witteman moved the patient from the chair to the stretcher

or recalled Witteman saying or otherwise indicating he was injured.

44 The Board described Witteman's demeanor and conduct during his testimony as "evasive

and agitated." The Board said that Witteman's demeanor "combined with his shifting reasons

for disability, impeachment, and evidence contradicting his competing version of events led

the Board to find [Witteman] less than credible."

45 According to the Board, the medical evidence also did not support a finding that

Witteman's disability resulted from performing an act of duty. The Board noted all three

doctors found him to be disabled. Drs. Tuttle and Peters, on whom the Board relied, concluded

that if Witteman did not lift the patient, his disability was [*18] not work-related. The Board placed

no weight on Dr. Schneider's opinion, noting that his conclusion was inconsistent with his

agreeing that a patient's self-reporting may be inaccurate.

46 The Board ordered that Witteman be given a non-duty pension benefit of \$4,530.75 per

month, with a retroactive payment of \$8,823.59.

47 Administrative Review in Circuit Court

48 Witteman sought administrative review. The circuit court affirmed the Board's decision,

finding it was not against the manifest weight of the evidence.

49 The court noted that while some witness testimony was conflicting, enough testimony

supported the Board's findings that Witteman did not lift the patient from the chair to the

stretcher or move the stretcher to the ambulance. The court also concluded that the Board did

not err in finding Witteman was not credible based on his failure to notify the Department of

his injury, his decision to amend his application, and his decorum during the hearings. Lastly,

the court rejected Witteman's contention that the Board improperly weighed the testimony of

the independent medical examiners, stating the Board and not the doctors "determine whether

a covered act causes [*19] an applicant's disability." The court held that the facts supported the

Board's decision that Witteman's injury did not occur in the line- of-duty.

50 Analysis

51 Standard of Review

52 The Administrative Review Law governs appeals from administrative hearings. See 735

ILCS 5/3-101 to 3-113 (West 2022). We review the Board's decision, not the circuit court's.

Marconi v. Chicago Heights Police Pension Board, 225 Ill. 2d 497, 531 (2006). The standard

of review varies depending on whether the question involves facts, law, or a mix of both.

Cinkus v. Village of Stickney Municipal Officers Electoral Board, 228 Ill. 2d 200, 210 (2008).

53 The findings and conclusions of an administrative agency on questions of fact are deemed

prima facie true and will not be disturbed unless against the manifest weight of the evidence.

Trettenero v. Police Pension Fund of City of Aurora, 33 Ill. App. 3d 792, 849 (2002). When

deciding claims, the Board resolves conflicts presented by the evidence and determines the

credibility of witnesses. *Peterson v. Bd of Trustees of the Des Plaines Firemen's Pension Fund*, 54 Ill. 2d 260, 263 (1973). Additionally, "because the weight of the evidence and the credibility of the witnesses are within the province of the [Board], there need only be some competent evidence in the record to support its findings." *Iwanski v. Streamwood Police Pension Board*, 232 Ill. App. 3d 180, 184 (1992). That an opposite conclusion may be reasonable or that we might have ruled differently does not justify reversing administrative findings. *Kelly v. Retirement Board of the Policemen's Annuity & Benefit Fund of Chicago*, 2022 IL App (1st) 210483, 30. Whether a [*20] back injury is work-related constitutes a factual determination. Thus, we will affirm so long as the Board's decision is not against the manifest weight of the evidence.

54 Conflicting Witness Testimony

55 Witteman argues that the Board erred by failing to consider the credibility of the firefighter witnesses or address the inconsistencies in their testimonies. He identifies six areas of discrepancy: (i) the estimated weight of the patient, which ranged from 220 to 400 pounds, (ii) who brought the stretcher in from the ambulance, (iii) how the patient was moved from a chair to a stretcher, (iv) who moved the patient's stretcher from the house to the ambulance, (v) who carried the stretcher over the curb, and (vi) to whom Witteman reported his injury and when. Witteman accuses the Board of selectively using testimony to support its decision and failing to resolve conflicts among the witnesses.

56 The Board has the authority to consider the credibility of witnesses. *Miller v. Board of Trustees of the Oak Lawn Police Pension Fund*, 2019 IL App (1st) 172967, 40. Witteman contends, however, that the Board must evaluate the testimony of every witness and "resolve any and all conflicts." He relies on *Smith v. Department of Professional Regulation*, 202 [*21] Ill. App. 3d 279, 284 (1990). As in other cases, the *Smith* court explained the trier of fact's role in an administrative hearing, "It is for the hearing officer, as the trier of fact, to evaluate all evidence, judge the credibility of witnesses, resolve any conflicts in the evidence, and draw reasonable inferences and conclusions from the facts." *Id.* The court in *Smith* did not hold that the trier of fact (here, the Board) must resolve every conflict of evidence. Nor did it require that a decision explain how conflicts in evidence and testimony were resolved. Indeed, Witteman does not cite any authority (and we found none) supporting his argument.

57 The record contains "some competent evidence" to support the Board's findings. Nothing more is required. *Iwanski v. Streamwood Police Pension Board*, 232 Ill. App. 3d 180, 184 (1992). The Board found Witteman's testimony about the occurrence of his injury to be not credible, based on contradictions and his failure to report it immediately, despite having done so five years earlier. Initially, he claimed he had injured his back while lifting the patient out of the chair, but amended his application to include transporting the patient down the ramp, over the curb and parkway, and into the ambulance. [*22] Due to these inconsistencies, the Board placed no weight on Witteman's testimony regarding the cause of his injury.

58 The Board acknowledged that the other witnesses' testimonies were conflicting on who

moved the patient from the chair to the stretcher and down the ramp, over the curb, and into

the ambulance. Nonetheless, the Board concluded that the witnesses consistently testified that

Wittelman took no part. This testimony sufficiently supports the Board's conclusion that an act

of duty, that is, lifting the patient onto a stretcher and transporting him down a ramp and into

an ambulance, was not the cause of Wittelman's injury. Because this finding was not against

the manifest weight of the evidence, we will not disturb it.

59 Notification of Injury

60 Wittelman contends the Board erred in finding he improperly reported his injury without

evidence on proper injury reporting. Wittelman states that he reported his injury well within the

45-day requirement. He references language in the Board's order observing that he did not

report his injury immediately although it was significantly worse than his earlier back injury.

61 Wittelman misconstrues the Board's finding. The Board [*23] acknowledged Wittelman notified

the Department within 45 days. Rather, the Board questioned the timing and manner in which

he reported his injury. The Board noted that he did not report the injury immediately, as he had

done in the past. This relates to credibility, which falls within the Board's province. *Miller*,

2019 IL App (1st) 172967, 40. The Board deemed it not credible that if Wittelman were

experiencing the worst pain in his life, he would not have said anything immediately, or that

no coworker noticed he was injured or in pain. So, while the Form 45 report was timely, the

Board found it not credible that he would not have disclosed it in some way.

62 Amendment to Application

63 Before the start of the hearing, the Board asked Wittelman if he wanted to amend his

application to seek a non-duty pension as an alternative. He agreed, and the Board amended

the application without prejudice. Before the second day of hearings, Wittelman asked to amend

his application to state that he also injured himself while transporting the patient down the

ramp, over the curb and parkway, and into ambulance.

64 Wittelman contends the Board erred by drawing an adverse inference from this amendment.

Wittelman cites [*24] section 2-616(a) of the Code of Civil Procedure (735 ILCS 5/2-616 (West

2022)), which allows a plaintiff to amend a complaint freely and suggests a pension application

should be treated similarly. He further asserts the Board should not differentiate between an

amendment it invites and one prompted by the applicant.

65 Again, Wittelman misinterprets the Board's finding. The Board did not draw an adverse

inference from his amendment regarding how the injury occurred. Instead, the Board

questioned whether the amendment, coming after hearing testimony from witnesses who said

he did not lift the patient, cast doubt on his credibility on the issue. As noted, the Board decides

witness credibility (*Miller*, 2019 IL App (1st) 172967, 40) and may find the timing of the

amendment raises doubt about his claim on how he injured his back.

66 Besides, the Board's inference had nothing to do with whether the Board invited the

amendment or Wittelman requested it. The initial amendment was a routine procedural request,

addressing if he wanted the Board to consider an alternative remedy. Wittelman's amendment

impacted his credibility by involving how his purported

injury occurred.

67 Independent Medical Experts

68 Witteman contends the Board manipulated the medical expert testimony to [*25] deny him a duty

disability pension. We disagree. The three medical experts found that Witteman was disabled.

The Board agreed. The medical experts also initially agreed that Witteman's injury was work-related. But after hearing testimony disputing Witteman's version, the Board sought

supplemental opinions. Two opined that Witteman's back injury was duty-related only if he

lifted the patient. The third provided a nonresponsive answer.

69 Although Witteman contends the Board "manipulated" the expert testimony, he cites no

authority that prohibits the Board from asking medical experts hypothetical questions based on

witness testimony. Based on all of the evidence, the Board can (and did) determine whether a

covered act caused a disability. See *Jensen v. E. Dundee Fire Protection District Firefighters'*

Pension Fund Board of Trustees, 362 Ill. App. 3d 197, 205 (2005).

70 Witteman's Demeanor

71 Witteman argues that the Board made an error in concluding that his "demeanor and

conduct to be evasive and agitated." He claims that the Board failed to consider that his

demeanor might have been caused by post-traumatic stress disorder, generalized anxiety

disorder, depression, and medications. As noted, Witteman's mental health history was part of

the record and considered in evaluating his demeanor. Regardless, [*26] the Board may consider

Willeman's account of what caused his injury. See *Jensen*, 362 Ill. App. 3d at 205.

72 Witteman also argues that even if he appeared

anxious or agitated, the Board should not

have relied on that in assessing his credibility. He relies on *Roszak v. Kankakee Firefighters'*

Pension Board, 376 Ill. App. 3d 130, 140 (2007), where a Board denied the firefighter a line-of-duty disability pension despite the unanimous medical opinions of three independent medical examiners stating that the firefighter was incapable of performing his duties. *Id.* at 143. The Board discounted the firefighter's testimony and the medical opinions because it felt the firefighter was evasive in responding to questions related to his job, living arrangements, earnings, and net worth. *Id.* at 141-43. The appellate court reversed the Board's decision, stating that the physical examinations supported the opinions and diagnoses, and the Board

should not have discredited the medical examiners' opinions based solely on the applicant's credibility in responding to tangential questions. *Id.* at 143-44.

73 Witteman similarly contends the Board should not have relied on what it described as his evasive demeanor in assessing his credibility. *Roszak* is distinguishable, however. There, the evasive responses [*27] were unrelated to the ultimate determination and did not affect the firefighter's truthfulness regarding his injuries. Unlike in *Roszak*, the testimony the Board found questionable was not tangential. For instance, Witteman acknowledged that in 2015, he immediately notified his coworker; yet, when he claimed to have a much more painful injury in 2020, he told no one until the next day, explaining that he is "not that kind of guy." In addition, after the first hearing day, he modified his explanation of how the injury occurred, which directly impacts on his credibility regarding the details of his injury.

74 The Board concluded that Witteman was disabled but, based on his demeanor and credibility, as well as the testimony of others, determined that he did not injure his back by lifting the patient and, thus, unrelated to his job. Again, the Board's finding was not against the manifest weight of the evidence.

75 Affirmed.