

RECENT CASES: Illinois

Court Defines a Police Line of Duty Injury for Pension Eligibility

Sarkis v. The Des Plaines Police Pension Board, et al, __ Ill App 3d __, 1st Dist. No. 1-06-2069 (Feb. 8, 2008)

Facts: Sarkis was a Des Plaines, Illinois police officer. While on traffic patrol duty, he was at railroad gates in his municipality that were malfunctioning. Specifically, the gates remained down, blocking traffic flow, although a train was not approaching. While manually lifting the gate to allow traffic to proceed over the railroad tracks, Sarkis injured his shoulder. The injury was later aggravated under circumstances not relative to the present case. As a result of the injury, all sides agreed Sarkis was unable to perform his duties as a police officer. The Police Pension Board awarded Sarkis only a 50 per cent of salary pension, ruling that the lifting malfunctioning railroad traffic control gates was not “a line of duty” injury. If it had been a “line of duty” injury, Sarkis would have received a pension at 65 per cent of his salary. Sarkis claimed that his injury, caused by manually lifting the railroad gates was an injury occurring while performing his duties as a traffic patrol officer, a “line of duty” injury.

The railroad traffic control gates in Des Plaines frequently malfunctioned causing substantial interference with the flow of traffic. The problem was so frequent that a group of civilian volunteers were recruited, trained to lift the gates manually and when needed performed this service for the town. Nevertheless, for reasons not disclosed, police officers still were, at least occasionally, called upon to perform this service. There were no trained civilians present when Sarkis was injured. The Police Pension Board agreed that the Sarkis shoulder injury was chronic and prevented him from performing as a police officer. However, they also concluded that with the availability of the private citizen group to lift malfunctioning gates, his act of manually lifting the non-functioning gates was not police work. Therefore, Sarkis was entitled to only a non-line of duty injury pension of 50 per cent of his salary, rather than 65 per cent of his salary, if the injury was from performing in the line of duty. Sarkis appealed: no evidence was introduced regarding why the unavailability of any of the volunteer civilians not being present to lift the gates.

Decision: The trial judge overruled the Pension Board. The appellate court affirmed. Sarkis was awarded a line of duty pension of 65 per cent of his salary.

Reason: The court concluded that the statutory clause applicable requires a definition of “act of duty” (40 ILCS 5/5-113 [West 2002]), that is, what acts are substantially unique to the police officer function. The specific statutory provision, in pertinent part states “...(an) act of police duty inherently involving special risk, not ordinarily assumed by a citizen in the ordinary walks of life, imposed on a policeman by statutes...or by ordinance or police regulations...or by special assignment;...” The Police Pension Board had reasoned that because there was a group of citizen volunteers in Des Plaines who sometimes undertook to manually raise non-functioning railroad gates, the act was in fact an act performed by ordinary citizens, and was not uniquely a function of police officers. Thus, not an “act of duty,” injury and Officer Sarkis was entitled to only 50 per cent of salary pension. The appellate court disagreed.

Sarkis had first argued that because he was on duty when injured, he was automatically entitled to the 65 per cent line of duty pension. The appellate court rejected that Sarkis argument. The mere fact that a police officer was working as a police officer when injured does not mean he/she was injured in the line of duty. The act the officer was performing is what controls. Hence, the issue here is what acts are unique to the police function! Does the fact that a few specially trained civilians sometimes lift malfunctioning railroad gates result in the act not one unique to police?

The appellate court held that “the proper focus is on the capacity in which the officer is acting, not the precise act leading to the injury” (emphasis in the quote). Here, Sarkis was working as a police officer assigned to traffic control. It is obvious that railroad gates in a down position interfere with traffic flow. The fact that specially trained citizens often lift malfunctioning downed railroad gates does not mean that Sarkis’ lifting the gates was not an act not ordinarily undertaken by civilians, the appellate court ruled. In the normal course of events, lifting the gates is not done by ordinary people. Sarkis was on traffic control assignment. Down gates that will remain down even when no train is approaching interferes with the normal flow of traffic. Therefore, the act of lifting the gates by Officer Sarkis was done in the line of Sarkis’ duty as a patrol officer. The court ordered that Officer Sarkis receive the 65 per cent of salary line-of-duty pension.