

BEFORE THE WILLOWBROOK POLICE PENSION FUND  
BOARD OF TRUSTEES

IN RE THE MATTER OF THE )  
DISABILITY APPLICATION OF )  
 )  
CHRISTOPHER M. DRAKE, )  
 )  
Applicant. )

SPECIAL BOARD HEARING  
October 19, 2018  
1:00 p.m.

REPORT OF PROCEEDINGS HAD and testimony  
taken before the WILLOWBROOK POLICE PENSION FUND  
BOARD OF TRUSTEES, taken at the Willowbrook Police  
Department, 7760 S. Quincy Street, Willowbrook,  
Illinois, before JANET L. HAYDEN, C.S.R., License  
#084-004484, a Notary Public qualified and  
commissioned for the State of Illinois.

1 PENSION BOARD MEMBERS PRESENT:  
2           MR. UMBERTO DAVI, President  
3           MS. CARRIE DITTMAN, Trustee  
4           MR. SCOTT EISENBEIS, Trustee  
5           MR. TIM KOBLER, Trustee  
6           MR. JOSEPH PEC, Trustee  
7  
8  
9  
10

11 ALSO PRESENT:  
12  
13           Mr. Charles Atwell, Board Attorney  
14  
15           Mr. Mark McQueary, Applicant's Attorney  
16  
17           Ms. Nancy Turville, Recording Secretary  
18  
19  
20  
21  
22  
23  
24

## I N D E X

2 WITNESS: CHRISTOPHER M. DRAKE

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**E X H I B I T S**

	Marked	Admitted
Board Exhibit No. 1-16	6	9
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1 PRESIDENT DAVI: Can we open the meeting?

2 MR. ATWELL: Okay. Open the meeting with a roll  
3 call, please?

4 PRESIDENT DAVI: Trustee Davi, D-a-v-i, Umberto  
5 Davi.

6 TRUSTEE PEC: Joseph Pec, P-e-c.

7 TRUSTEE KOBLER: Tim Kobler, K-o-b-l-e-r.

8 TRUSTEE EISENBEIS: Scott Eisenbeis,  
9 E-i-s-e-n-b-e-i-s.

10 MS. TURVILLE: Nancy Turville, T-u-r-n-v-i-l-l-e.

11 TRUSTEE DITTMAN: Carrie Dittman, D-i-t-t-m-a-n.

12 MR. McQUEARY: Mark McQueary on behalf of the  
13 applicant, M-c-Q-u-e-a-r-y.

14 MR. ATWELL: And we'll note that the applicant is  
15 here, too, today. And the record should reflect that  
16 this is the special meeting of the board of trustees of  
17 the Willowbrook Police Pension Fund to consider the  
18 application of Mr. Christopher M. Drake. Before we  
19 lose track on that, why don't we swear in Mr. Drake, if  
20 you will, please?

21 THE COURT REPORTER: Please raise your right hand.

22 (The oath was thereupon duly  
23 administered to the witness by the  
24 Notary.)

1 MR. ATWELL: All right. Counsel, do you have any  
2 other witnesses that we should swear in today?

3 MR. MCQUEARY: No, Mr. Atwell. I do not.

4 MR. ATWELL: Okay. All right. So, the parties  
5 have identified themselves for the record. Mr. Drake  
6 is represented by counsel here today. A couple  
7 comments I should make ahead of time. First of all, I  
8 would ask for a motion from the board to appoint me as  
9 hearing officer in this matter.

10 Is there a motion on the table?

11 PRESIDENT DAVI: There is. So moved.

12 MR. ATWELL: Second?

13 | TRUSTEE KOBLER: Second.

14 MR. ATWELL: All in favor?

15 | (Whereupon, the ayes were heard.)

16 MR. ATWELL: All right. Any opposed? Thank you.  
17 This is to consider the application of Mr. Drake, who  
18 has filed a request for a line of duty disability in  
19 this matter.

20 And, Counsel, my understanding is he has  
21 not requested an alternative not-on-duty disability.  
22 Does he wish to do so without prejudice to the claim  
23 for a line-of-duty?

24 MR. MCQUEARY: That's correct. We would ask that

1 you amend the application to include non-duty  
2 disability pension benefits in the alternative without  
3 prejudice to my client's duty disability claim.

4 MR. ATWELL: Okay. So, the request to amend the  
5 application on its face to request in the alternative  
6 not-on-duty disability.

7 And pursuant to that, can we have a  
8 motion to grant that request?

9 TRUSTEE PEC: So moved.

10 TRUSTEE KOBLER: Second.

11 MR. ATWELL: All in favor?

12 (Whereupon, the ayes were heard.)

13 MR. ATWELL: Any opposed? All right. In advance  
14 of the hearing today, I have provided a set of the  
15 exhibits, Volume 1 through 4, consisting of exhibits up  
16 through and inclusive of No. 16. And also which  
17 includes a video, which we'll discuss here in a moment.

18 (Whereupon, the documents were  
19 marked as Board Exhibit Nos. 1-16  
20 for identification.)

21 MR. ATWELL: My understanding is that counsel has  
22 presented here today Applicant's Exhibit No. 1; is that  
23 correct, Counsel?

24 MR. McQUEARY: Yes, sir.

1 (Whereupon, the document was marked  
2 as Applicant's Exhibit No. 1 for  
3 identification.)

4 MR. McQUEARY: We would also ask to amend the  
5 application which has been previously marked as Board  
6 Exhibit No. 1.

7 MR. ATWELL: Okay.

8           MR. MCQUEARY: With respect to the salary, the  
9 current salary, to reflect the current Collective  
10 Bargaining Agreement, which we have previously marked  
11 as Applicant Exhibit 1. We'd be asking that the board  
12 move that into evidence. If I could just draw the  
13 board's attention, I Bates stamped this on the bottom  
14 right-hand corner. So, if you look at pages 31, P-31  
15 of Applicant Exhibit 1, and P-32 of Applicant  
16 Exhibit 1, you'll see that Sergeant Drake's current  
17 salary as of May 1st, 2018, is \$108,735.

1 would just ask that the application be amended to  
2 reflect that current salary.

3 MR. ATWELL: That that's his request. Obviously,  
4 the board would have to reserve that, and confirm those  
5 figures.

6 MR. McQUEARY: Absolutely.

7 TRUSTEE DAVI: Can you repeat that figure, please?

8 MR. MCQUEARY: Sure. It's 110,912.70.

9 PRESIDENT DAVI: Thank you.

10 MR. McQUEARY: Thank you, sir.

11 MR. ATWELL: Counsel, any other exhibits that  
12 you're asking to introduce?

13 MR. McQUEARY: No, sir.

14 MR. ATWELL: Any objection to the board's exhibits  
15 which I have identified before?

16 MR. McQUEARY: No, sir.

17 MR. ATWELL: Okay. And I would have no objection  
18 to the exhibit for counsel. So, we can -- I believe we  
19 can stipulate that.

20 Can we have a motion from the board to  
21 have these documents -- exhibits entered without the  
22 need of further authentication or live testimony in  
23 this matter?

24 TRUSTEE KOBLER: So moved.

1 TRUSTEE EISENBEIS: Second.

2 MR. ATWELL: All in favor?

3 (Whereupon, the ayes were heard.)

4 (Whereupon, Board Exhibit Nos. 1-16  
5 was admitted in evidence.)

6 (Whereupon, Applicant's Exhibit  
7 No. 1 was admitted in evidence.)

8 TRUSTEE DITTMAN: May I see a copy of the  
9 exhibits, please?

10 MR. ATWELL: I'm sorry?

11 TRUSTEE DITTMAN: May I see a copy of the  
12 Applicant's exhibit?

13 MR. ATWELL: Certainly. I'm sorry there.

14 TRUSTEE DITTMAN: Thank you.

15 MR. ATWELL: Do you need an extra copy, anybody?

16 PRESIDENT DAVI: Yeah, we do. He just gave his  
17 up.

18 MR. ATWELL: All right. So, these are admitted  
19 for the board's consideration in this matter.

20 MR. PEC: Mr. Atwell, here's an extra copy in case  
21 you need it.

22 MR. ATWELL: I have one here. Thank you. A  
23 couple comments, too. During the hearing, if everybody  
24 can speak up so that the court reporter and us older

1 people like myself can hear everybody, and ask that not  
2 board members or anybody else talk over the other so  
3 that they -- the court reporter can take down the  
4 testimony in this particular matter without any  
5 complication.

6                   The preliminary comments here that the  
7 applicant, of course, has the burden of proof to  
8 establish that he is, in fact, disabled from performing  
9 full service as a police officer. And he also has the  
10 burden of proof to establish that the disability  
11 resulted from the performance of an act of duty as that  
12 term is set forth in the statute and been interpreted  
13 by the courts. This matter has been set pursuant to  
14 notice to the applicant and pursuant to the posting of  
15 the agenda in this particular matter, everything  
16 according to the requirements of the Open Meetings Act.

17                   The applicant will proceed to put on  
18 testimony in this particular matter. Once counsel and  
19 the applicant rest as far as the presentation of their  
20 case, I may have questions of the applicant, board  
21 members may have questions. And then, of course, the  
22 applicant would have an opportunity through counsel to  
23 review those issues and ask additional questions if  
24 necessary.

1                   Once both sides rest in this matter, then  
2 I would anticipate that the board may motion to go into  
3 executive session to deliberate this matter pursuant to  
4 the requirements of the exceptions under the Open  
5 Meetings Act. No decision is made during executive  
6 session. However, when the board members are in a  
7 posture to come to a decision, then we would come back  
8 onto the record, and at that time that decision would  
9 be made on the record pursuant to motion.

10                  In the event that the board deems it  
11 necessary that additional information might be  
12 necessary in this matter during the executive session,  
13 they could, of course, come out of executive session  
14 and express that situation. In the event that the  
15 board cannot come to a decision in this matter, then,  
16 of course, this matter could be continued to another  
17 date certain to continue the deliberations as be  
18 necessary.

19                  Any questions from the board members or  
20 counsel? Anybody in this matter?

21                  MR. McQUEARY: No, Mr. Atwell.

22                  MR. ATWELL: Okay. All right. At this time then,  
23 Counsel, you may proceed, if you will.

24                  MR. McQUEARY: The applicant is going to waive

1 opening statement in the interests of brevity. I'll  
2 give a closing, but we're going to waive opening. We  
3 would call our first witness, Sergeant Christopher  
4 Drake.

5 MR. ATWELL: Certainly.

6 MR. McQUEARY: Mr. Drake, can you introduce  
7 yourself to the board -- I know most know you here --  
8 and spell your last name for the record?

9 THE WITNESS: Christopher Drake, D-r-a-k-e.

10 CHRISTOPHER DRAKE,  
11 called as a witness by the Applicant herein, having  
12 been first duly sworn, was examined and testified as  
13 follows:

14

15 DIRECT EXAMINATION

16 By: Mr. McQueary

17 Q. And where are you currently employed?

18 A. **Willowbrook Police Department.**

19 Q. And how long have you been a member of the  
20 Willowbrook Police Department?

21 A. **21 years.**

22 Q. Prior to the Willowbrook Police Department  
23 did you have any sworn law enforcement experience?

24 A. **No.**

1 Q. And do you recall what date you received your  
2 official appointment to the Willowbrook Police  
3 Department?

4 A. **September 4th, 1997.**

5 Q. And what's your current rank?

6 A. **Sergeant.**

7 Q. How long have you been a sergeant?

8 A. **I was promoted December of 2013.**

9 Q. Prior to being hired by the police  
10 department, did you complete any physical agility test  
11 to be hired by the Willowbrook Police Department?

12 A. **Yes.**

13 Q. Can you explain to the board for the benefit  
14 of the board what physical agility test you had to  
15 complete?

16 A. **I completed a power test, which consisted of  
17 bench press, sit and reach, sit-ups, and a mile and a  
18 have run.**

19 Q. And did you successfully complete those  
20 physical agility tests?

21 A. **Yes, I did.**

22 Q. Prior to your employment or as part of your  
23 conditional offer of employment, did you undergo a  
24 physical examination by a physician?

1           **A. Yes.**

2           Q. And did you successfully pass that medical  
3 examination by a licensed physician?

4           **A. Yes.**

5           Q. And after being hired by the police  
6 department, did you undergo any training?

7           **A. Yes. I attended the Chicago Police Academy.**

8           Q. And how long was the training?

9           **A. 16 weeks.**

10          Q. Can you advise the -- I know there's police  
11 officers on the board, but for all of us could you  
12 explain to us the type of training that you underwent  
13 in the Chicago Police Academy?

14          **A. Well, in addition to the administrative  
15 training, we also engaged in defensive tactics,  
16 handcuffing, and wrestling techniques.**

17          Q. Did you have to complete a complete physical  
18 agility test on a regular basis?

19          **A. Yes.**

20          Q. You have to run, do push-ups, things of that  
21 nature?

22          **A. Yes.**

23          Q. Did you have any difficulties completing the  
24 training of the Chicago Police Academy?

1           **A. No.**

2           Q. Did you receive any awards from the Chicago  
3 Police Academy?

4           **A. I did. Upon graduation I was awarded with**  
5 **the outstanding recruit of my class.**

6           Q. Have you had an opportunity to review Board  
7 Exhibit No. 2, which is entitled: The Village of  
8 Willowbrook Job Description for Starting Patrol  
9 Officers?

10          **A. Yes.**

11          Q. When you reviewed that, obviously you  
12 reviewed the specific job description contained within  
13 that exhibit; is that correct?

14          **A. Yes.**

15          Q. Do you agree with what was outlined there  
16 with respect to the ability to recover a weapon from a  
17 suspect?

18          **A. Yes, I do.**

19          Q. Do you agree with the job description that  
20 highlighted that you had to have the ability to  
21 surmount physical barriers?

22          **A. Yes.**

23          Q. And also included in that job description was  
24 patrol officer description.

1                   As a sergeant of the Willowbrook Police  
2 Department, are you also required to carry out the  
3 duties of a patrol officer in addition to your  
4 administrative duties as a sergeant?

5                   **A. Yes.**

6                   Q. And when you reviewed the police officer job  
7 description, did you agree with the skills and  
8 abilities that were defined in that job description?

9                   **A. Yes.**

10                  Q. In fact, that job description requires you to  
11 subdue and restrain suspects; is that correct?

12                  **A. Yes.**

13                  Q. You have to run and apprehend suspects; isn't  
14 that correct?

15                  **A. Yes.**

16                  Q. And during the course of your over 20-year  
17 career with the Willowbrook Police Department, have  
18 you, in fact, had to do those things?

19                  **A. Yes. Many times.**

20                  Q. In addition to the highlighted job  
21 description that is contained in Board Exhibit No. 2,  
22 what other things do police officers and sergeants with  
23 the Willowbrook Police Department have to do?

24                  **A. Well, we engage in all patrol activities, and**

1 **primarily responsible for arresting procedures.**

2 Q. When you climb an obstacle or arrest  
3 somebody, does that require the use of both of your  
4 extremities?

5 **A. Yes.**

6 Q. Your hands, your arms, your shoulders?

7 **A. Yes.**

8 Q. Prior to March 27, 2017, were you able to  
9 complete those duties?

10 **A. I was.**

11 Q. I want to now direct your attention  
12 January 26, 2016.

13 Do you recall that date?

14 **A. Yes.**

15 Q. What was your assignment that day?

16 **A. I was the patrol sergeant for the 3:00 to  
17 11:00 afternoon shift.**

18 Q. Were you in uniform?

19 **A. I was.**

20 Q. Were you driving a marked squad car?

21 **A. Yes.**

22 Q. At approximately 3:45 p.m. on that date, did  
23 you, in fact, respond to a dispatch call where police  
24 services were needed?

1           **A. Yes.**

2           Q. Can you explain to us the type of call you  
3 responded to?

4           **A. Officer Jose Lopez was a single unit on**  
5 **patrol that was dispatched via the radio to 301 Lake**  
6 **Hinsdale Drive for an ambulance assist involving a**  
7 **woman who had fallen. Upon his arrival he spoke to**  
8 **some witnesses. He spoke with the victim, and he**  
9 **determined that the case was actually a domestic**  
10 **battery, and this woman was the victim. During his**  
11 **investigation, he was confronted and then threatened by**  
12 **a male subject later identified as the offender in the**  
13 **case.**

14           Q. What happened upon your arrival?

15           **A. Officer Lopez then radioed for immediate**  
16 **backup based on his threat. Myself and Officer Volek**  
17 **responded with emergency lights and sirens to his**  
18 **assistance.**

19           Q. And what happened next?

20           **A. When we arrived, the victim was inside the**  
21 **actual building, and she was being attended to by the**  
22 **Tri-State Fire Department and paramedics. I spoke with**  
23 **Officer Lopez at that time, and gathered the**  
24 **information about who the offender was.**

1       Q.    At some point did you have some kind of  
2 interaction with the offender?

3       A.    I did. While we were in the vestibule area,  
4 right next to where the victim was, and identifying who  
5 the offender was, Officer Lopez located him advancing  
6 towards the vestibule area of that building towards our  
7 location. Upon that, when he entered inside, the  
8 subject, identified as John Harris, approached us and  
9 said, "Get away from my mother right now."

10      Q.    And what did Mr. Harris do after that?

11      A.    I explained to him at that time that he was  
12 -- could not see his mother, that his mother was being  
13 attended to by the paramedics, and he told us that he  
14 was going to see her anyway. He proceeded to push me  
15 in the chest and throw a punch at me. At that time he  
16 was under arrest, and a severe altercation took place  
17 until he was taken into custody.

18      Q.    Would you categorize him as an assailant?

19      A.    He was.

20      Q.    Was he actively resisting arrest?

21      A.    Yes, he was.

22      Q.    You said Officer Lopez called for police  
23 assistance; is that correct?

24      A.    Correct.

1           Q.    Do you have a duty to respond to calls for  
2 service like that when a police officer calls for help?

3           **A.    Yes, I do.**

4           Q.    If you didn't respond, could you be  
5 disciplined for that?

6           **A.    Yes.**

7           Q.    After the altercation did you experience any  
8 symptoms?

9           **A.    Yes. About 30 minutes afterwards, I could  
10 not pick up my left arm.**

11          Q.    Did you tell anybody about it?

12          **A.    I did. I notified Deputy Chief Mark  
13 Altobella and Chief Mark Shelton at the time.**

14          Q.    And what did you tell them?

15          **A.    I explained to them that I injured my arm  
16 during the altercation with Mr. Harris.**

17          Q.    Did you seek immediate medical treatment?

18          **A.    I did not.**

19          Q.    Can you explain to the board why not?

20          **A.    I was hoping that the injury would settle  
21 down, and that it wasn't that bad. And I just  
22 proceeded to continue to work.**

23          Q.    Did the symptoms that you experienced resolve  
24 themselves?

1           **A. They did not.**

2           Q. Did they get worse, or did they stay the  
3 same?

4           **A. They got worse.**

5           Q. On a scale of one to 10, what would you  
6 consider your pain level?

7           **A. About an eight.**

8           Q. Based on that experience, what did you do  
9 next?

10          **A. I made an appointment to see my primary  
11 physician.**

12          Q. What did you learn when you saw your primary  
13 physician?

14          **A. He just recommended at the time to go on just  
15 anti-inflammatories to see if the condition improved.**

16 BY MR. ATWELL:

17          Q. Can we identify who that physician is,  
18 please?

19          **A. Sure. Dr. Steven Sauerberg,  
20 S-a-u-e-r-b-e-r-g.**

21 BY MR. MCQUEARY:

22          Q. And just stepping back for a moment with  
23 respect to this incident, did you have an opportunity  
24 to review Board Exhibit No. 4, which is the case report

1 of this incident and ultimate arrest?

2 **A. Yes, I did.**

3 Q. And does that report accurately reflect the  
4 situation on that particular date and time?

5 **A. Yes, it does.**

6 Q. After your initial consultation with  
7 Dr. Sauerberg, did he make any recommend -- any  
8 treatment recommendations?

9 **A. He recommended that I see an orthopedic  
10 surgeon.**

11 Q. Do you remember what doctor he referred you  
12 to?

13 **A. Yes. Dr. William Heller, H-e-l-l-e-r.**

14 Q. And did you go see Dr. Heller?

15 **A. Yes, I did.**

16 Q. What did you learn when you saw Dr. Heller?

17 **A. Dr. Heller examined me and suggested that we  
18 try physical therapy to begin with. After the physical  
19 therapy, my condition had not improved. And he  
20 recommended an MRI of the left shoulder.**

21 Q. And can you explain for the benefit of the  
22 board what symptoms you were experiencing at the time?

23 **A. I had severe discomfort in the shoulder when  
24 I would try to raise my arm in any direction, and there**

1   **was just a constant pain.**

2       Q.    And after completing a course of physical  
3   therapy, did your shoulder improve?

4       **A.    It did not.**

5       Q.    And this is your left shoulder.  Correct?

6       **A.    Yes.**

7       Q.    And you -- I believe you just previously  
8   testified that Dr. Heller recommended surgery; is that  
9   correct?

10      **A.    He did, yes.**

11      Q.    Did you follow his recommendation?

12      **A.    Yes.**

13      Q.    What's your understanding of the surgical  
14   procedure that Dr. Heller performed?

15      **A.    He informed me that the labrum had detached  
16   from the bone completely, and he had to utilize four  
17   anchors to connect the labrum and the bone back  
18   together.**

19      Q.    Following surgery did you undergo any other  
20   treatment?

21      **A.    Yes.  I attended physical therapy for three  
22   months.**

23      Q.    How many days a week was that?

24      **A.    Three days a week.**

1       Q. At some point following your course of  
2 physical therapy, your surgery, and another course of  
3 physical therapy, did you return to full and  
4 unrestricted police duties?

5       **A. Yes.**

6       Q. I now want to direct your attention -- before  
7 I do that, upon returning to the police under full and  
8 unrestricted police duty, were you able to function as  
9 a normal police officer and sergeant for the  
10 Willowbrook Police Department?

11      **A. Yes.**

12      Q. Were you given any restrictions upon your  
13 return?

14      **A. No.**

15      Q. I now want to direct your attention to  
16 March 27, 2017.

17                    What was your assignment that day?

18      **A. I was a patrol sergeant for the 3:00 to 11:00**  
19 **afternoon shift.**

20      Q. Were you working in full uniform?

21      **A. Yes.**

22      Q. Were you driving a marked squad car?

23      **A. Yes.**

24      Q. What were your duties that day?

1           A. I was involved in the overall patrol duties  
2 of that day. And I was also considered a part of the  
3 team of that unit. I wasn't a separate entity. I was  
4 part of the team on the street as patrol.

5           Q. And was there a specific call that you recall  
6 responding to that day?

7           A. Yes.

8           Q. Can you explain the call that you responded  
9 to that day?

10          A. Officer Jose Lopez located a domestic dispute  
11 in progress. He got on the radio and had warned us  
12 that he needed assistance, that he had two combative  
13 subjects.

14          Q. And when he called for assistance, did you  
15 respond to his call for assistance by going to the  
16 call?

17          A. Yes. I responded with emergency lights and  
18 siren.

19          Q. And again, are you required to respond to  
20 these calls for assistance under your general orders?

21          A. Yes.

22          Q. Could you be disciplined if you said, "I'm  
23 not going to that call"?

24          A. Yes.

1           Q.    When you arrived on scene, whereabouts did  
2 this approximately happen, do you recall?

3           **A.    It occurred just near the intersection of**  
4 **Route 83 and 75th Street.**

5           Q.    And when you arrived, what, if anything, did  
6 you observe?

7           **A.    I observed Officer Lopez standing in between**  
8 **a female and a male who appeared to be arguing.**

9           Q.    And was that male later identified as Tavares  
10 Bateman?

11           **A.    Yes.**

12           Q.    Describe Mr. Bateman's interaction with the  
13 police that day.

14           **A.    Mr. Bateman was agitated. There was a**  
15 **domestic dispute between the two. He had possessed the**  
16 **car keys to -- I believe it was Columbia Scott was the**  
17 **female involved. He possessed her motor vehicle keys,**  
18 **and he had inserted those keys down his pants into his**  
19 **genital area.**

20           Q.    Did he want to give the keys back?

21           **A.    He did not. He said that he would like to --**  
22 **he'd prefer to go to jail other than giving the keys**  
23 **back.**

24           Q.    What happened following that?

1           A. Ultimately, after a lengthy discussion, I  
2 convinced him to give the keys back. They made an  
3 agreement to go their own separate ways. Mr. Tavares  
4 was instructed to go back in his motor vehicle  
5 northbound on Route 83, away from the scene.  
6 Unfortunately, he decided not to do that, and he got  
7 into his vehicle and traveled southbound directly at  
8 Ms. Scott.

9           Q. And what happened as a result of that?

10          A. I observed that this was going the wrong  
11 direction, and he was actually going back towards her.  
12 I stepped in between both vehicles. He exited his  
13 vehicle. He came at Ms. Scott, and said he was going  
14 to kill her.

15          Q. And when you say "come at Ms. Scott," can you  
16 describe what that means?

17          A. He was walking quickly towards her.

18          Q. Aggressively?

19          A. Yes.

20          Q. Did you believe that she was in danger of  
21 receiving a battery?

22          A. I did. When he said he was going to kill  
23 her, it was -- he was for sure that was his intention.

24          Q. And what was your response to his actions?

1           A. I told him immediately he was under arrest.  
2 He did not stop. Officer Lopez was on his left side, I  
3 was on his right side, and he refused to stop in his  
4 advancements, and we took physical action to take him  
5 to the ground.

6           Q. Did he comply with your lawful order that he  
7 was under arrest?

8           A. He did not.

9           Q. What did he do?

10          A. He continued to struggle and fight until he  
11 was ultimately put into handcuffs.

12          Q. Was he ultimately charged with a criminal  
13 offense in this matter?

14          A. Yes.

15          Q. Do you recall what the offense was that he  
16 was charged with?

17          A. He was charged with domestic battery, and he  
18 was also charged with aggravated battery of a police  
19 officer.

20          Q. When this occurred did you experience any  
21 symptoms after fighting with Mr. Bateman, taking him  
22 into custody?

23          A. As soon as we went to the ground, I felt my  
24 left shoulder pop. And it felt very similar to

1 **reinjuring the same shoulder.**

2 Q. On a scale of one to 10, one being the least,  
3 10 being the most, what was your pain level when you  
4 felt this pop in your shoulder?

5 **A. About an eight.**

6 Q. Did you tell anybody about it?

7 **A. Yes.**

8 Q. Who did you tell?

9 A. I immediately notified Deputy Chief Robert  
10 Schaller, S-c-h-a-l-l-e-r, and Chief Mark Shelton,  
11 S-h-e-l-t-o-n.

12 Q. Did you seek immediate medical treatment?

13 A. I did the next day.

14 Q. Who did you go to see?

15 A. I went back to the primary physician, Steven  
16 Sauerberg.

17 Q. And what, if anything, did you learn when you  
18 spoke with Dr. Sauerberg?

19 A. He believed that the shoulder was injured,  
20 and that I needed to see my orthopedic surgeon.

21 Q. Did you follow his recommendation?

22 A. I did.

23 Q. Did you go -- you went and saw Dr. Heller; is  
24 that correct?

1           **A. Yes.**

2           Q. What did you learn when you saw Dr. Heller?

3           **A. Dr. Heller stated that he wanted me to go**  
4 **back to physical therapy to see if the shoulder would**  
5 **improve. After a brief time of physical therapy, it**  
6 **did not improve. And he actually suggested a cortisone**  
7 **shot, which we did, and that did not work as well.**

8           Q. In your course of treatment with Dr. Heller,  
9 can you describe to the board what symptoms you were  
10 experiencing in your left shoulder?

11           **A. It was very similar to the first injury, but**  
12 **in addition to that, I had severe pain in the biceps**  
13 **area.**

14           Q. So, Dr. Heller suggested that you undergo or  
15 recommended that you undergo a course of physical  
16 therapy treatment.

17           Did you, in fact, abide by his  
18 recommendation?

19           **A. Yes.**

20           Q. Did that work?

21           **A. No.**

22           Q. Could you describe after physical therapy the  
23 state or the symptoms you were experiencing with  
24 respect to your left shoulder?

1           **A. Yes. When you go through the physical**  
2 **therapy, the muscles surrounding the area did improve.**  
3 **However, the pain in the shoulder and the pain in the**  
4 **biceps did not.**

5           Q. And then it was recommended that you undergo  
6 a cortisone injection; is that correct?

7           **A. Yes.**

8           Q. And did you follow that recommendation?

9           **A. I did.**

10          Q. Did that provide any relief?

11          **A. No.**

12          Q. Is it fair to say that your shoulder was  
13 still in the same condition as it had been even after  
14 the cortisone shot?

15          **A. Yes.**

16          Q. And ultimately, Dr. Heller recommended  
17 surgery; is that correct?

18          **A. Yes.**

19          Q. What's your understanding of the second  
20 surgery that you underwent with Dr. Heller?

21          **A. Following the surgery, he informed me that**  
22 **two of the four anchors that he originally had -- that**  
23 **he originally had put through, had come dislodged or**  
24 **pulled from their reposed state. In addition to that,**

1 the biceps tendon was ruptured, and he had to perform a  
2 biceps tendonesis to repair the biceps.

3 Q. And following your surgery, did he recommend  
4 any treatment?

5 A. I attended physical therapy for six months.

6 Q. During the course of that six months, how  
7 many days a week did you attend physical therapy?

8 A. Approximately three.

9 Q. At any point did your shoulder improve?

10 A. Just the muscular area around the shoulder.

11 The biceps and the shoulder itself did not improve back  
12 to where it was before.

13 Q. Did Dr. Heller recommend any treatment  
14 following the six months of physical therapy?

15 A. No.

16 Q. After you had undergone the treatment, the  
17 physical therapy, the cortisone injection, the surgery  
18 and six more months of physical therapy, can you  
19 describe what symptoms you continued to experience with  
20 respect to your left shoulder?

21 A. I lost flexibility in the shoulder. It will  
22 not go past certain areas. I have very limited use of  
23 the biceps because it was rerouted off the bone where  
24 they had to drill into the humerus bone and insert a

1 screw. I'm very limited on what kind of weight or any  
2 kind of strain I can put on it.

3 Q. And at some point were you sent for a  
4 functional capacity evaluation?

5 A. Yes.

6 Q. Did you give 100 percent during that  
7 functional capacity evaluation?

8 A. I did.

9 Q. What is your understanding of the result of  
10 that functional capacity evaluation?

11 A. I was informed that I failed the test, and  
12 that I could not be released back to unrestricted full  
13 duty.

14 Q. And you were also seen by a Dr. McCall, who  
15 is a physician for the worker's compensation carrier.  
16 Correct?

17 A. Yes.

18 Q. And he reviewed the treatment that Dr. Heller  
19 had recommended and provided you; isn't that correct?

20 A. Yes.

21 Q. And is it your understanding that he agreed  
22 with the surgery and physical therapy, that, in fact,  
23 it was appropriate that Dr. Heller had prescribed?

24 A. He did.

1 Q. Did you meet with Dr. Heller following the  
2 functional capacity evaluation?

3 A. **I did.**

4 Q. What did Dr. Heller tell you?

5 A. **Dr. Heller put through --**

6 MR. ATWELL: I'd just state I would only object  
7 that I think the medical records speak for themselves,  
8 but go ahead. You can answer the question.

9 THE WITNESS: Dr. Heller explained that he was  
10 placing permanent restrictions consistent with the  
11 results of the functional capacity exam.

12 BY MR. McQUEARY:

13 Q. Did you go back to your primary care  
14 physician, Dr. Sauerberg, to get his opinion --

15 A. **I did.**

16 Q. -- at some point?

17 And what was his conclusion?

18 A. **He agreed with the findings of Dr. Heller.**

19 Q. Is it your understanding that both these  
20 physicians concluded that you had exhausted all  
21 appropriate treatment in order to return to work?

22 A. **Yes.**

23 Q. When you were released with permanent  
24 restrictions, what symptoms are you continuing to

1 experience?

2       A. I still have weakness in the arm. The  
3 shoulder does not move very well. I can only do a  
4 limited amount of things with the biceps tendon. And  
5 the overall pain is still at a level where it's -- has  
6 to be monitored with ibuprofen and things of that  
7 nature.

8       Q. Can you explain to the board why you believe  
9 that you can't perform the full and unrestricted duties  
10 of a police officer and police sergeant with the  
11 Willowbrook Police Department?

12      A. I do not believe that I can actively  
13 apprehend an offender. I don't believe that I can  
14 defend myself, and I don't believe I can defend or help  
15 another officer if they're in need of some kind of  
16 physical assistance.

17      Q. Are you familiar with the term "MMI"?

18      A. Yes.

19      Q. Can you tell us what it means?

20      A. Maximum medical improvement.

21      Q. Were you ever told by any physician that you  
22 were at maximum medical improvement?

23      A. Yes. Dr. Heller stated that I was.

24      Q. Now, the police department initially provided

1 you with a light duty position; isn't that correct?

2       **A. Yes.**

3       Q. Can you describe what the position was that  
4 they provided you?

5       **A. I was on desk duty, doing various  
6 administrative tasks.**

7       Q. Was this a temporary position?

8       **A. Yes.**

9       Q. Has anyone in the Village of Willowbrook or  
10 the Willowbrook Police Department offered you a  
11 permanent light-duty position?

12      **A. No.**

13      Q. To your knowledge, has the police department  
14 ever provided anyone with a permanent light-duty  
15 position?

16      **A. No.**

17      Q. And with that knowledge, did you ultimately  
18 submit an application to this board for a line-of-duty  
19 disability pension benefit?

20      **A. Yes.**

21      Q. As part of the application process, were you  
22 evaluated by three independent physicians selected by  
23 the police pension board?

24      **A. Yes.**

1 Q. Did you pick those doctors?

2 **A. No.**

3 Q. Were they selected for you?

4 **A. Yes.**

5 Q. As you sit here today, given the job  
6 description that you've reviewed, the Board Exhibit  
7 No. 2, which includes both the police officer and the  
8 sergeant for the Willowbrook Police Department, do you  
9 feel that you could perform the duties that those  
10 positions require?

11 **A. No.**

12 Q. As you sit here today, has any physician  
13 released you to full and unrestricted police duty?

14 **A. No.**

15 Q. Now, Sergeant Drake, are you currently  
16 receiving 100 percent of your salary?

17 **A. Yes.**

18 Q. At some point were you taken off light duty?

19 **A. Yes.**

20 Q. What were you placed on?

21 **A. I was placed on PEDA, which is the Public  
22 Employee Disability Act.**

23 Q. And do you know when your PEDA benefit  
24 expires?

1           **A. I believe in the beginning of January 2019.**

2           Q. And if the board were to award you a  
3 line-of-duty disability pension benefit, what date  
4 would you want that benefit to become effective?

5           **A. The expiration date of the PEDA.**

6           Q. Fair to say the day following the day PEDA  
7 ceases?

8           **A. Yes.**

9           Q. And have you had an opportunity to review  
10 Applicant Exhibit 1, which is the Collective Bargaining  
11 Agreement between the Village of Willowbrook and the  
12 police officers and sergeants of the Willowbrook Police  
13 Department?

14           **A. Yes.**

15           Q. Can I direct your attention to what's been  
16 previously Bates stamped as page 31?

17           Can you just identify for the record what  
18 your current salary is with the Willowbrook Police  
19 Department based on the Collective Bargaining  
20 Agreement?

21           **A. \$108,735.**

22           Q. And can I direct your attention to what's  
23 been marked as Bates stamped page 32 of Applicant  
24 Exhibit 1? It will be the next page over.

1 Specifically, the longevity section.

2 Can you explain or tell us what longevity  
3 based on your years of service you're entitled to?

4 **A. 16 years or more of service is 2 percent in  
5 annual increase.**

6 MR. MCQUEARY: I have nothing further.

7 MR. ATWELL: Okay. A few questions here, if you  
8 will, please.

9 CROSS-EXAMINATION

10 By: Mr. Atwell

11

12 Q. Officer Drake, what restrictions do you have  
13 at this time as you sit here today? Well, let me ask  
14 you first -- strike that.

15 Your application is based on an injury to  
16 your left shoulder; am I correct, sir?

17 **A. Yes.**

18 Q. With respect to your left shoulder, what  
19 restrictions do you have at this time?

20 **A. They were outlined in the functional capacity  
21 exam. I don't recall exactly what they were, but they  
22 had to do with restraining suspects and any kind of  
23 lifting.**

24 Q. And am I correct that was a functional

1 capacity exam in January 2018?

2       **A. Sounds right, sir.**

3       **Q. Or thereabouts?**

4       **A. Yes, sir.**

5       **Q. Which is part of the record, I believe, in**  
6 this case?

7       **A. Yes.**

8       **Q. And who -- so, what physician actually placed**  
9 restrictions on you at this time?

10      **A. Dr. William Heller.**

11      **Q. So, at this time what is your -- is there a**  
12 lifting restriction?

13      **A. I don't have an exact pound amount.**

14      **Q. And prior to the second occurrence -- well,**  
15 there was an occurrence back in, I believe, in 2003  
16 with the -- which you alleged in your application the  
17 dog -- attacked by a dog or a dog bite; am I correct?

18      **A. Dog bite.**

19      **Q. But you seem to address the last two**  
20 instances in 2016 and 2017.

21                   **Are those the ones that you're focusing**  
22 on?

23      **A. Yes.**

24      **Q. So, I believe that you stated before the 2016**

1 left shoulder injury, there was an altercation.

2 Both of these were an altercation, 2016  
3 and 2017?

4 **A. Yes.**

5 Q. Before the 2016, you said you could perform  
6 full duties for the department?

7 **A. Yes.**

8 Q. No restrictions?

9 **A. No restrictions.**

10 Q. Now, you had previous experience with pain  
11 and discomfort and function in your left shoulder prior  
12 to that date, did you not?

13 **A. Yes.**

14 Q. And what was the reason for that?

15 **A. We're unsure. I just had just discomfort in**  
16 **the arm. However, it never affected my job. I was**  
17 **able to continue and never missed a day of work.**

18 Q. So, fair to state that it was around 2012 was  
19 one of the times that received medical treatment  
20 because of your left shoulder problems?

21 **A. It was just looked at, yes.**

22 Q. There was an MRI?

23 **A. Yes.**

24 Q. Was it recommended to you at that time that

1 you should seek therapy -- or not therapy, but seek  
2 medical review from an orthopedic surgeon at that time?

3       **A. Yes.**

4       Q. And did you do so?

5       **A. Yes.**

6       Q. And who did you see?

7       **A. Dr. Durkin. I do not know his -- Michael**  
8 **Durkin, I believe. D-u-r-k-i-n.**

9       Q. After that, what did the doctor tell you?

10      **A. Dr. Durkin didn't recommend any kind of**  
11 **treatment. He didn't recommend surgery. He didn't**  
12 **recommend physical therapy. He said to continue on my**  
13 **fitness level that I continued to work on to strengthen**  
14 **the muscles around it, and didn't recommend anything**  
15 **further.**

16      Q. And what was the reason that you were having  
17 trouble with the shoulder, do you recall?

18      **A. I don't. I was just having discomfort in it.**  
19 **I wanted to get it looked at.**

20      Q. Did the physician ever tell you that was from  
21 weight lifting?

22      **A. No.**

23      Q. Never? Have you reviewed the records in this  
24 case which may demonstrate that there was a weight

1 lifting reason for the left shoulder problems?

2       **A. I recall, sir, after doing some kind of**  
3 **conditioning in my regular workouts, yes. I**  
4 **experienced a little bit of discomfort in the shoulder,**  
5 **yes. But I did not have a weight lifting injury.**

6       Q. So, no physician at that time, prior to 2016,  
7 recommended surgery?

8       **A. No, sir.**

9       Q. So, actually the left shoulder problems go  
10 back to 2003, do they not?

11      **A. When I was attacked by the dog in 2003, I did**  
12 **have dog bites on the left arm.**

13      Q. If you will look at Exhibit 6-29, please? I  
14 believe those records are from Family Medical Center of  
15 LaGrange.

16           Was that a treating physician or medical  
17 provider, Family Medical Center?

18       **A. Yes.**

19      Q. And on the top of 629, you will see up there,  
20 and I believe there's a date of 12/09/2011.

21       **A. Yes.**

22      Q. And I read from that. It says, "Left  
23 shoulder pain. Was lifting heavy incline lifting.  
24 Noticed pain afterwards."

1                   Do you recall that?

2           **A. Yes.**

3           Q. So, you did find it necessary to seek medical  
4 treatment at that time?

5           **A. Yes. I was experiencing discomfort in the  
6 shoulder, yes.**

7           Q. And if you look at 6-25? And that's also  
8 from Family Medical Center, La Grange. And look at the  
9 progressive notes, which I believe they're dated  
10 January 11 -- I'm sorry, January 18, 2012. And in  
11 there, and I quote from there. It says, "MRI of the  
12 shoulder." This is the left shoulder. "Had a lot  
13 going on with the shoulder." And it also states,  
14 "Needs to go to see an ortho -- to get an ortho  
15 opinion."

16                   Do you recall that?

17           **A. Yes.**

18           Q. And you were also prescribed Vicodin, were  
19 you not?

20           **A. I'd have to look at the notes. Possibly,  
21 sir.**

22           Q. I think that may be reflected on page -- the  
23 previous page 6-24. In fact, I see in there at 6-24  
24 there was shoulder pain, and it says, "Vicodin" up on

1 top. And then down further it shows Prednisone.

2 Do you recall what Prednisone was for?

3 **A. I don't sir.**

4 Q. Was it for the same treatment, do you know?

5 **A. I'm not sure, sir.**

6 Q. And then if we can go to 7-16? And those are  
7 the Hinsdale Hospital records. Do you recall -- in or  
8 about January 12, 2012. I believe that's an MRI.

9 Do you recall going to Hinsdale for your  
10 left shoulder?

11 **A. Yes.**

12 Q. And again, I read down from the report there.  
13 It says, "Chronic weight-lifting-related left shoulder  
14 pain with decreased range of motion."

15 Do you recall that?

16 **A. Yes.**

17 Q. And then very --down at the bottom there, it  
18 talks about a chronic partially detached type Roman  
19 numeral eight SLAP lesion of the posterior labrum.

20 Do you recall that?

21 **A. Yes.**

22 Q. And was that also from weight lifting all  
23 this related?

24 **A. I was never injured by weight lifting. I**

1   **just felt it working out.**

2       Q.   And also I think describes on page 16 and 17  
3   that there's an impingement, and also diffused biceps,  
4   which I guess is called a tendonitis or disease of the  
5   tendon -- the joint.  See under Impressions up there?

6       **A.   Yes.**

7       Q.   Do you recall that?

8       **A.   Just by reading in here, sir, yes.**

9       Q.   Now, if you go to 7-44, please?  And in the  
10   center of that page there it talks about -- under  
11   Report, it talks about comparison.  And they did a --  
12   this was another study at Hinsdale Hospital that is,  
13   and this is dated 8/31/2016.

14               Now, is that after the -- the first  
15   altercation, I believe; am I correct?

16       **A.   Yes.  That's correct.  That was January  
17   of '16.**

18       Q.   So, after that, they did this MRI.  It stated  
19   -- and I'll quote from that.  "Compared with the prior  
20   study," and that was the one in 2012, "I suspect the  
21   degenerative changes with the inferior labrum have  
22   progressed."  And then that goes on.  It says, "A SLAP  
23   tear, I suspect, is probably quite similar.  The  
24   rotator cuff has progressed."

1                   Do you see that?

2           **A. Yes, sir.**

3           Q. So, they talk about a progression there.

4                   Did they address that with you?

5           **A. Dr. Heller informed me that he believes that**  
6           **the altercation enhanced it.**

7           Q. Okay. So, he felt that it aggravated it?

8           **A. Yes.**

9           Q. Bear with me just a minute, please. Now, if  
10          you go to 8-53, which is Midland Orthopedic Associates,  
11          is that one of your treaters also?

12           **A. Yes.**

13           Q. I believe the provider was Dr. Heller?

14           **A. Correct.**

15           Q. And it states in there in the Plan, states,  
16          "He," meaning you, "is anxious to undergo surgical  
17          treatment as he had been having pain for over five  
18          years, and was actually advised to have surgery back in  
19          2012."

20                   Do you recall that?

21           **A. I do not, sir.**

22           Q. So, at least according to this record, there  
23          is an indication that, according to the medical, that  
24          you were advised to have surgery back then?

1           **A. Dr. Durkin did not advise me of that.**

2           **Q. So, that wasn't reported to you though?**

3           **A. That was not.**

4           **Q. Has any doctor told you at this time that**  
5           **there is further therapy that can be done to return you**  
6           **back to full service?**

7           **A. No. I was told I was at maximum medical**  
8           **improvement. There was nothing more that could be done**  
9           **for me.**

10           **Q. Do you still lift weights?**

11           **A. I do not.**

12           **Q. Do you belong to any health clubs?**

13           **A. No.**

14           **Q. Any sports? Other activities?**

15           **A. None.**

16           **Q. So, how do you -- you've been off work for**  
17           **some time now. How do you -- what's your day like?**  
18           **What do you do?**

19           **A. It's been a horrible experience. Not much.**  
20           **A lot of walks.**

21           **Q. So, to keep yourself in condition, what are**  
22           **you basically doing?**

23           **A. Walking.**

24           **Q. So, chores around the house? Anything of**

1 that nature?

2 **A. Yes.**

3 Q. Are you currently taking any medication?

4 **A. I do.**

5 Q. Was is that?

6 **A. I do take blood a pressure medication on**  
7 **occassion.**

8 Q. And what is the blood -- is that the  
9 Lisinopril?

10 **A. No. It's Irbesartan.**

11 Q. Any others? I'm sorry.

12 **A. No.**

13 Q. Or any -- let's say, any medications for the  
14 left shoulder?

15 **A. No. None.**

16 Q. And have you been instructed to do any home  
17 exercises or anything of that nature for the left  
18 shoulder?

19 **A. Yes.**

20 Q. And what is that?

21 **A. I do have bands that were provided, and I do**  
22 **do the exercises that they recommended.**

23 MR. ATWELL: Counsel, before I forget, the video  
24 in this matter, I don't believe I have identified as

1 the Exhibits 1 through 16, nor in your exhibits. So,  
2 we probably ought to label that No. 17. So, if we can  
3 -- I think that was admitted, but it was not noted as  
4 far as an exhibit number. Are you okay with that?

5 MR. McQUEARY: Absolutely.

6 (Whereupon, the document was marked  
7 as Board Exhibit No. 17 for  
8 identification.)

9 MR. ATWELL: Okay. The board members have been  
10 provided that -- this is just a discussion. Keep it on  
11 the record though, please. Board members have provided  
12 the -- been provided the video as counsel has in this  
13 matter. Counsel has reviewed it. The board has. Is  
14 there any need, do you feel, at this time to go through  
15 that video? The doctors have also seen it.

16 THE WITNESS: Correct.

17 MR. ATWELL: -- to go through that video to  
18 identify anything in the video as far as the  
19 activities? I think it's on minute number 22, I  
20 believe, on the video.

21 MR. McQUEARY: We're comfortable that the board  
22 members have been diligent in their review of this  
23 voluminous information as well as the video. We don't  
24 want to take up the board's time with that.

1           MR. ATWELL: All right. We'll address that at a  
2 later as we go along if it be necessary.

3 BY MR. ATWELL:

4           Q.     Did you -- Officer, did you at all times  
5 immediately after the events, and I'm talking -- when  
6 I'm talking about the events, we'll only talk about  
7 2016, 2017, if you will. Because my understanding is  
8 you went back to full duty after the incident with the  
9 dog, and had no further problem then until 2016; is  
10 that fair to state?

11           **A.     Yes.**

12           Q.     So, when the event of 2016 occurred, did you  
13 immediately advise your fellow employees or supervisors  
14 that you were having a shoulder problem?

15           **A.     I did.**

16           Q.     Am I correct to state that it was 2016 you  
17 did not immediately seek medical?

18           **A.     That's correct.**

19           Q.     Do you recall when you first sought medical  
20 treatment, approximately?

21           **A.     The injury was in January. The surgery was**  
22 **in September. I want to say it was maybe June or July.**

23           Q.     And you continued to work full-time?

24           **A.     Yes.**

1 Q. So, was it a -- what was causing you problems  
2 after the -- let's say, after 2017, was the problem you  
3 were experiencing, was it a pain or was it a function?

4 A. **It was both.**

5 Q. It was. And in function, what -- can you  
6 explain that in a little more detail what you could not  
7 do with that left shoulder?

8 A. **Sure. I had limited flexibility with it. I**  
9 **definitely had a strength issue, and I had a consistent**  
10 **pain kind of in the center of the shoulder.**

11 Q. So, in the 2017 injury, you reported that  
12 right away again that you were having difficulty?

13 A. **I did.**

14 Q. And when did you first seek medical treatment  
15 on that?

16 A. **I believe it was the next day.**

17 Q. If we can go back to 5-6? 5-6 to 5-12? Can  
18 you identify exactly what that is? It's a narrative  
19 from -- respecting this event; am I correct?

20 A. **Yes.**

21 Q. And that's respecting the later event of  
22 March -- in March 27, 2017. Correct?

23 A. **Yes.**

24 Q. Do you recall whether that report provides

1 any history of your injury?

2       **A. I don't recall that there's anything in there**  
3 **about my injury.**

4       **Q. In -- strike that.**

5                   So, were you ever told that you had need  
6 -- that you needed a SLAP repair prior to the 2016  
7 event?

8       **A. No.**

9       **Q. Were you ever told that you had arthritis in**  
10 **your shoulder before the 2016 event?**

11       **A. I recall that they said I had issues with my**  
12 **shoulder, but he didn't recommend any kind of treatment**  
13 **for it.**

14       **Q. And when you -- so, prior to the 2016 event,**  
15 **you continued your weight lifting routine, did you?**

16       **A. Yes.**

17       **Q. And how often? How many times a week?**

18       **A. I mean, I was just a regular stay-in-shape**  
19 **guy. I would do my minimal workouts, and was a very**  
20 **fit officer.**

21       **Q. So, how many -- I'm sorry, how many --**

22       **A. Probably three, four days a week I'd workout.**

23       **Q. And in lifting, what was -- what, free**  
24 **weights?**

1           **A. Mostly low weight dumbbells, yes.**

2           Q. And then as far as what -- one of the  
3        medicals, I think, comments about an incline.

4                   So, when you did an incline, was that  
5        with the bar as far as --

6           **A. No. It was with dumbbells. And that's where**  
7       **I would feel discomfort.**

8           Q. And do you recall what your maximum weights  
9        you would have lifted at that time?

10          **A. I don't. It would vary probably from 40 to**  
11       **50 pounds. Nothing more than that.**

12          Q. For dumbbells?

13          **A. Yes.**

14          Q. Now, if we look at 6-8 -- I'm sorry, 6-118?  
15        And I believe that that 6-118, I believe that is  
16        May 23, 2017.

17                   So, that would be after the second injury  
18        -- or the -- after the 2017 event. Correct?

19          **A. Yes.**

20          Q. And that's the date of service that, I  
21        believe, that that talks about. Now, if you go down to  
22        the bottom, Subjective Comments, and it states:  
23        "Reports he is able to do just about anything, but is  
24        sore for three days after." And then, "Reporting can't

1 sleep. Past history, patient states he was involved in  
2 a fight at work. Felt a pop in his shoulder," so  
3 forth; is that fair to state?

4           **A. Yes.**

5           Q. So, when it states that you could do  
6 virtually anything, so was that a -- the function was  
7 -- do I read that that the function was okay, and it  
8 was just a pain situation? Or both?

9           **A. Oh, it was both. If I forced myself to do  
10 it, I could do it, but I was in pain and discomfort.**

11           Q. 6-32. 6-32, this is a note from Family  
12 Medicine dated on September 7 -- I'm sorry,  
13 October 7th, 2009. So, this is before your 2016  
14 injury.

15           And it states up -- and I'll read up on  
16 top, "Left shoulder and left side back pain. Left  
17 shoulder has been like this for ten years."

18           So, do you recall that?

19           **A. No, I don't.**

20           Q. A few more questions. Bear with me here.  
21 7-17. I don't think I referred to that. I may have  
22 referred to that, and I apologize if I have, but that  
23 again is a -- in January of 2012, states under the  
24 Impression: Degenerative rotator cuff, diffused biceps

1 tendonitis. And I think I may have referred to that,  
2 but do you recall that back in 2012?

3       **A. I remember going to the doctor for visits,**  
4 **yes.**

5       Q. So, prior to the 2016, that first event which  
6 you referred to, you were having difficulties with the  
7 left shoulder enough to seek medical treatment?

8       **A. Medical attention, yes, and to have it looked**  
9 **at.**

10      Q. Do you ever recall if the MRI comparison from  
11 2012 up to -- I think another MRI was August 31, 2016,  
12 after the second injury, that you were told that they  
13 were virtually the same with only a progression in  
14 change, or do you recall that?

15      **A. I do. Dr. Heller, this is his words --**  
16 **informed me verbally that the MRI was much worse after**  
17 **the injury.**

18      Q. Did you receive any temporary total worker's  
19 compensation? Temporary total disability benefits, do  
20 you recall?

21      **A. Just PEDA is all I'm aware of.**

22      Q. PEDA is the only thing?

23      **A. Yes.**

24      Q. And to the best of your knowledge, that

1 expires in January of this next year?

2 **A. Yes.**

3 Q. And there's a pending worker's compensation  
4 matter; is that correct, or no?

5 **A. Yes.**

6 Q. Has not been resolved yet at this time?

7 **A. No.**

8 MR. ATWELL: I turn it over to the board at this  
9 time. Do the board members have any questions at this  
10 time while I continue to review some notes here?

11

12 CROSS-EXAMINATION

13 By: Trustee Eisenbeis

14 Q. You said you had a severe altercation with  
15 Thomas. What did you mean by that, just out of  
16 curiosity?

17 **A. Thomas?**

18 Q. Oh, I'm sorry. With Harris.

19 **A. Harris, yes.**

20 Q. You described it as severe, and there was no  
21 detail on that. What did you mean by it was a severe  
22 altercation?

23 **A. Well, when he pushed me and attempted to  
24 punch me, he was actively resisting arrest. He**

1 continued to throw punches, and he continued to  
2 struggle with us until we were able to apprehend him.

3 Q. How long would you say that took?

4 A. Seemed like forever. I don't know. A few  
5 minutes.

6 Q. Okay. I'm not clear on the timeframe. It  
7 says you notified Deputy Chief Altobella and Chief  
8 Shelton, but you didn't seek medical attention  
9 immediately. When did you? Because I see 1/16 roughly  
10 is when it occurred, and I thought I saw something  
11 about 3/16. But I thought you mentioned something  
12 about May of '16 when you actually sought.

13 So, when was it that you actual sought  
14 medical attention for this injury?

15 A. The timeline I recall is it was January 26  
16 was the injury. I notified them verbally that day. I  
17 followed that up with an e-mail to both of them.

18 Q. And that was -- I think I saw that e-mail.  
19 Was it 3 of March of '16?

20 A. Sounds right.

21 Q. And then in May is when you actually sought  
22 medical attention?

23 A. I don't -- I don't recall from the March  
24 e-mail to when I saw my first visit. That could be

1 **right.**

2 Q. I thought that's what you brought up.

3 **A. That could be right.**

4 Q. Roughly. Okay.

5 MR. ATWELL: Any other questions?

6 TRUSTEE KOBLER: Yes.

7 CROSS-EXAMINATION

8 By: Trustee Kobler

9  
10 Q. Regarding the incident back in '16, you said  
11 that when you made the first report, you said you  
12 weren't able to pick your shoulder -- pick your arm up?

13 **A. Yeah. About a half hour afterwards, it was  
14 really stiff. I had a difficult time picking it up.**

15 Q. And then reviewing the first notice of  
16 injury, you didn't think that was a worry or severe to  
17 seek medical treatment then?

18 **A. I didn't. I wanted to see if it would clear  
19 itself up. I just wanted to keep working.**

20 Q. And regarding the incident back in '17, you  
21 attested the pain was eight out of ten?

22 **A. Yes.**

23 Q. Again, I mean, eight out of 10 is -- for me  
24 it would be extremely high. And then again no

1 immediate medical attention for pain that severe?

2       **A. I didn't go to the hospital that night, no.**

3       **I went to the doctor the next day.**

4       Q. And I know Attorney Atwell, regarding 6-32,  
5 you said you didn't recall having pain for the last ten  
6 years in your shoulder. And it says, "Left shoulder  
7 and left side back pain. Left shoulder's been like  
8 this for ten years. Hurts, most importantly needs some  
9 sleep. Hasn't slept well." But you don't recall that?

10     **A. I recall having several appointments, but I  
11 don't recall saying that I had pain for ten years.**

12     Q. And then on Exhibit 6-34, from the Medical --  
13 Family Medical Center in LaGrange. This was dated 11/5  
14 of '03. And you had already returned to work from the  
15 dog bite. Correct?

16     **A. I believe so. It was only about a week,  
17 maybe a few days I was off for the dog bite.**

18     Q. You said under -- this is my lack of  
19 knowledge. Under -- about half way down the page, it  
20 says, "Patient has been having severe pain in the left  
21 shoulder area last night that radiated to his," I'm  
22 going to guess it's head, severe headache. It kind of  
23 gets cut off here, or jumps down. And that was in '03?

24     **A. Yes. That's correct. When I was severely**

1 bitten by that dog, that dog was pulling my arms back  
2 and forth, and I experienced some shoulder pain in both  
3 arms actually.

4 Q. But this was three months after you were  
5 cleared for full duty?

6 A. Yes.

7 Q. And if I can continue, unless -- -

8 PRESIDENT DAVI: Sure.

9 BY TRUSTEE KOBLER:

10 Q. Exhibit 4.3. For not lifting up your arm,  
11 again going back to that, you didn't -- you wanted to  
12 hold off on filling out any claims, doing anything like  
13 that. Correct?

14 A. Yes.

15 Q. And I assume when you say, "tweaked your  
16 shoulder," what did you mean by that, or if that was an  
17 accurate statement?

18 A. Well, that was not my language. That was  
19 Chief Shelton's. However, I did mention to him that I  
20 had injured the shoulder, but I did say that I wanted  
21 to wait to see if it would improve.

22 Q. And can you elaborate on the -- Chief Shelton  
23 reported that you had -- you said you had past issues  
24 with sports to that shoulder. Can you elaborate on

1 that?

2       **A. I have no idea where Chief Shelton got that**  
3 **information. My recollection, we never had that**  
4 **discussion. I was an athlete, but I never injured my**  
5 **shoulder. I played baseball and basketball.**

6       Q. No injuries during your sports?

7       **A. No.**

8       TRUSTEE KOBLER: That's all I have for now.

9       PRESIDENT DAVI: I have some questions.

10

11                   CROSS-EXAMINATION

12                   By: President Davi

13       Q. There's a lot of stuff here, and we are -- as  
14 far as I can tell, we're going back to 2003; is that a  
15 correct statement? For medical attention?

16       **A. No, sir. I merely put the 2003 incident down**  
17 **as being relative to at that time, that arm was**  
18 **injured.**

19       Q. That's not what I'm asking. I want to know  
20 about your experience with medical attention, whether  
21 you put it down or not. Do we go back to 2003 as the  
22 starting point while you were working as a police  
23 officer; is that correct?

24       **A. I don't believe so, no.**

1           Q.    Is there more prior to 2003?

2           **A.    No.**

3           Q.    Okay.  So, 2003 would be the first time when  
4 you sought medical attention as a police officer; is  
5 that a correct statement?

6           **A.    Yes.**

7           Q.    And that was a dog bite.  Right?

8           **A.    Correct.**

9           Q.    They punctured your left arm; is that  
10 correct?

11           **A.    Both arms.**

12           Q.    Both arms.  You sought medical treatment  
13 about a week, if I understand your testimony?

14           **A.    Sounds right.**

15           Q.    And then went back to work?

16           **A.    Yes.**

17           Q.    No problems other than the wounds healing; is  
18 that correct?

19           **A.    Yeah.  Discomfort, wounds healing.**

20           Q.    Sure.  Any restrictions on duties then?

21           **A.    No.**

22           Q.    All right.  Anything happen between 2003 that  
23 required medical attention up until 2012?

24           **A.    No.**

1 Q. Between? Nothing?

4           A.     I felt discomfort in the arm while doing my  
5     normal workouts.

6 Q. So, you were doing your own personal workouts  
7 for fitness. Right?

8 A. Uh-huh.

9 O. Is that a yes?

10 A. Yes.

11 0. They can't pick up those things.

12 And so you said: I got to go get some  
13 medical attention. I got to have it looked at; is that  
14 correct?

15 A. Yes.

16 Q. And those are the notes that counsel asked  
17 you about -- Counsel Atwell asked you about, referring  
18 you to an exhibit; is that correct?

19 A. Yes.

20 Q. What came out of the 2012 medical attention?  
21 What was the result of that?

22           A.    Absolutely nothing, other than I had issues  
23 with the arm.  But no treatment was recommended  
24 whatsoever.

1 Q. How did you address the discomfort or the  
2 issues with your arm then?

3 A. **I limited how much I did that would affect**  
4 **it.**

5 Q. Which means what?

6 A. **I stopped doing any kind of activities that**  
7 **would bother it, and continued to working.**

8 Q. Such as?

9 A. **I didn't weight lift much.**

10 Q. What else?

11 A. **Lower weights. I didn't do any other**  
12 **activities that really -- didn't play any other sports.**

13 Q. Any issues at all related to stopping things  
14 at work as a police officer?

15 A. **No, none.**

16 Q. So, now we go to 2016. Correct?

17 A. **Correct.**

18 Q. And that's the third time you're now seeking  
19 medical attention while you working as a police officer  
20 or sergeant by that time probably. Right?

21 A. **Second time.**

22 Q. No. That would be the -- well, we got the  
23 dog?

24 A. **Yes.**

1 Q. 2003. We have 2012: I've got some pain.  
2 I'm lifting. I don't know what's going on. I got to  
3 go see somebody. I'm paraphrasing, but is that  
4 essentially correct?

5 **A. I misunderstood you. I thought you said**  
6 **work-related injury.**

7 Q. No. I didn't say anything about work  
8 related.

9 **A. Okay.**

10 Q. No. How you're working as a police officer.

11 **A. Yes.**

12 Q. In your capacity as a police officer. That's  
13 the time period I'm referring to.

14 **A. Okay.**

15 Q. Okay. So, 2016 is now the third time.  
16 Correct?

17 **A. Yes.**

18 Q. And this time, this is an incident.  
19 Mr. Harris, is that his name?

20 **A. Yes.**

21 Q. The guy who beat up his mom. Is that what he  
22 did?

23 **A. Yes.**

24 Q. And he punched or at least he tried to punch

1 you. Correct?

2 **A. Yes.**

3 Q. But he shoved you. Correct?

4 **A. Yes.**

5 Q. How many officers subdued him at that time?

6 **A. Two.**

7 Q. You and?

8 **A. Officer Lopez.**

9 Q. Officer Lopez, who was the first one on the  
10 scene. Correct?

11 **A. Yes.**

12 Q. And he did not succeed in punching you, did  
13 he?

14 **A. No. I ducked.**

15 Q. He tried, but he didn't succeed?

16 **A. Correct.**

17 Q. Very good. So you took him down along with  
18 Officer Lopez?

19 **A. Yes.**

20 Q. And then as you took him down, something  
21 happened. Correct? Or not?

22 **A. I don't know. I didn't feel it until**  
23 **afterwards.**

24 Q. About an hour later? Half an hour later?

1 A. About a half hour.

2 Q. Right? That's pretty quick, relatively?

3 A. Adrenalin, yeah.

4 Q. And the adrenalin wears off and all that.

5 Right? And now you're feeling you can't lift your left  
6 arm. Correct?

7 A. Yes.

8 Q. But it's not enough to get you to do  
9 something. Correct?

10 | A. No.

11 Q. And that incident was in January of '16. So,  
12 now we go to March, is it? No. February 27, 2016.  
13 So, approximately a month and a half later; is that  
14 correct?

15 A. Sounds right.

16 Q. Or not? I'm referring to Exhibit No. 4-3.

17 My apologies. I should have told you that. It's right  
18 there.

19 A. Yes, I have it.

20 Q. So, there's a date on 2/27/16. "Sergeant  
21 Drake had mentioned that he may have tweaked his  
22 shoulder, but wanted to wait and see if he started to  
23 feel better."

So, this is about a month and a half

1 after the actual incident. Correct, or not?

2 **A. Yes, sir. These are Chief Shelton's notes.**

3 **Q. I know.**

4 **A. I don't know when he wrote those.**

5 **Q. I understand. I understand. But at least**  
6 this is what he wrote. Right?

7 **A. That's what he wrote, yes.**

8 **Q. Did you get along well with Chief Shelton?**

9 **A. Yes.**

10 **Q. Any reason why Chief Shelton would put**  
11 something in this exhibit that did not occur?

12 **A. I don't know what his interpretation was,**  
13 **sir. I know we had a discussion, but I don't know -- I**  
14 **never saw this.**

15 **Q. I did not ask about his interpretation. I'm**  
16 asking you: Are you aware of any reasons why Chief  
17 Shelton may put something in this report that does not  
18 accurately reflect what you told him?

19 **A. No.**

20 **Q. So, and then on 2/29/16, two days later.**  
21 Right? He's leaving the office.

22 Did this happen, this conversation that  
23 he refers to in here?

24 **A. I know we had a few conversations, yes.**

1 Q. Yes, but I'm not asking about the few. I'm  
2 asking about this one.

3 Did this happen?

4 **A. I don't recall, sir.**

5 Q. Is it that you don't recall the date, or you  
6 don't recall actually telling him what he says in here?

7 **A. I don't recall the date.**

8 Q. That's fair enough, but you do recall telling  
9 him what he says in here. Right?

10 **A. I would have to read it. This is the first**  
11 **time I've read this.**

12 Q. Well, go ahead and read it.

13 **A. Okay. Yes, just based on the first**  
14 **paragraph, we did have a conversation of that. Yes.**

15 Q. What about the second paragraph, which is  
16 what I was asking you about?

17 **A. Yes. I do not agree with that.**

18 Q. Which part of this statement do you not agree  
19 with?

20 **A. I don't agree with Chief Shelton's statement**  
21 **that I had past issues with this shoulder from playing**  
22 **sports.**

23 Q. What else do you not agree with?

24 **A. The rest of it looks accurate.**

1           Q.    So, that's the only thing we should exclude.  
2 Right?

3           **A.    Yes.**

4           Q.    All right. Now, you testified earlier -- and  
5 certainly you can clarify that. I wrote it down --  
6 that you did not seek medical attention until  
7 June/July 2016. Those were your words. I want to know  
8 if that's correct, because now then I believe Sergeant  
9 Kobler suggested or somebody else suggested May you had  
10 sought medical attention.

11                   What's your recollection?

12           **A.    I don't, sir. I'd have to review all the**  
13 **documents. It was between May and July.**

14           Q.    Fair enough. But if we go back to the  
15 medical records from that particular period of time,  
16 they'll have a date on them. That's when you went in.  
17 Right?

18           **A.    Sure. Yes.**

19           Q.    All right. So, as far as you know, when were  
20 you first told that there was a need to do what's  
21 called slap repair? And I know what it stands for.  
22 It's in the middle of all these documents. We don't  
23 need to worry about it. It's mentioned enough.

24                   When were you first told that you needed

1 that?

2 **A. Dr. Heller in September 2016.**

3 Q. In conjunction with this incident with  
4 Mr. Harris?

5 **A. Yes.**

6 Q. As a follow-up to that?

7 **A. Yes.**

8 Q. So, if you go back to 6-32? And I know  
9 Mr. Atwell asked you a question about that.

10 It's fair to say that all these medical  
11 records contain what are called either progress notes,  
12 or whoever you're speaking to writes down certain  
13 notes. Right? They do that?

14 **A. Sounds correct.**

15 Q. Yeah, okay. So, this thing here says, 6-32,  
16 "left shoulder's been like this for ten years."

17 Is that an accurate statement or not?

18 **A. I don't believe so.**

19 Q. And what is it that you believe about how  
20 long your left shoulder has been a problem?

21 **A. My recollection, prior to 2012, somewhere**  
22 **within that short period of time is when I started**  
23 **experiencing discomfort.**

24 Q. So, would it have been in conjunction with

1 when you sought the medical attention that you  
2 testified about earlier, 2012?

3           **A.    Correct.**

4           Q.    So, what do you think, this person here just  
5 came up with ten years and just put it on there?

6           **A.    I don't know.**

7           Q.    And maybe one more question. So, 7-17, again  
8 Mr. Atwell asked you questions about that. That  
9 particular MRI report has a date of January 12, 2012.

10           Do you see that on the upper left-hand  
11 corner?

12           **A.    I do.**

13           Q.    And it does mention under the Impressions,  
14 there are four them. Right? The fourth impression  
15 talks about chronic partially detached Type 8, roman  
16 numeral eight, slap lesion of the posterior -- superior  
17 labrum. Whatever that is. Accompanied by something  
18 else.

19           Do you see that?

20           **A.    Yes.**

21           Q.    So was that discussed with you at that time?

22           **A.    It was.**

23           Q.    Was that the first time it was discussed with  
24 you?

1           **A. Yes.**

2           Q. In 2012? Okay. And when you testified in  
3 response to Counsel Atwell's question related to what  
4 is it that you do today for exercise, your answer was  
5 partially: I go for walks. Right?

6           **A. Yes.**

7           Q. And then you said you had bands. What does  
8 that mean, "bands"?

9           **A. There's rubber bands that you use in physical**  
10 **therapy that's in lieu of weights.**

11           Q. And what is it that you do with those rubber  
12 bands?

13           **A. I do my stretching that stimulates**  
14 **strengthening of certain areas. He gave me list of**  
15 **exercises to do which I complete.**

16           Q. You pull them apart, is that what you do?

17           **A. That's one of them.**

18           Q. With your arms, or hands, or both?

19           **A. Depending on the movement.**

20           Q. Okay. So, how about is there some with the  
21 arms that you pull them apart? Is that what happens  
22 with these rubber bands?

23           **A. Specifically in which exercise are you**  
24 **referring to?**

1 Q. Well, I'm not referring to any exercises.

2 I'm asking you because you're the one that does the  
3 exercises. I don't do them.

4 So, tell me what exercises do you do now  
5 today to stay fit in addition to walking?

6 A. **I do all the strength exercises that they  
7 recommended for the shoulder.**

8 Q. Which are what?

9 A. **They recommend both arms.**

10 Q. Which are what?

11 A. **Lateral raises, side raises, front raises.**

12 Q. Do you do those with weights or with the  
13 rubber bands?

14 A. **With the rubber bands.**

15 Q. So are you -- the rubber band is static, and  
16 then you pull on it; is that correct?

17 A. **That's correct.**

18 Q. And what's holding it static? Is it some  
19 portion of your body?

20 A. **You tie it to something.**

21 Q. All right. And then you just pull it with  
22 one hand?

23 A. **As resistance, yeah.**

24 Q. And then perhaps your legs also, or not? Not

1 necessarily?

2       **A. Not necessarily.**

3       Q. It's just upper body? Is that what it is?

4       **A. Correct.**

5       Q. So I have a question here about -- you had  
6 two MRIs?

7       **A. I believe three.**

8       Q. All right. So when were those three? Could  
9 you give us the years they were done?

10      **A. Sure. 2012, 2016, 2017.**

11      Q. Thank you. On cross-examination you  
12 responded that Dr. Heller told you that the 2016  
13 altercation aggravated it.

14                   Aggravated what? Your shoulder?

15      **A. Yes.**

16      Q. So, that presumes that you had an issue  
17 before. When somebody -- when a doctor uses words like  
18 "aggravation," to me -- let me know what it does to you  
19 -- it presumes that you got something that got worse as  
20 a result of something that happened.

21                   Would you agree with that?

22      **A. Yes.**

23      Q. So, what was there before 2016?

24      **A. My understanding is that he reviewed the**

1 previous MRI from 2012, compared the two, and  
2 determined that that altercation had enhanced that  
3 injury.

4 Q. Whatever happened in 2012?

5 A. Yes.

6 PRESIDENT DAVI: All right. Thank you. I have no  
7 further questions.

8 MR. ATWELL: Just a couple of follow-ups, if you  
9 will, please?

10 RECROSS-EXAMINATION

11 By: Mr. Atwell

12 Q. If you will refer to 8-58? And this is a  
13 progress note from Dr. Durkin.

14 Dr. Durkin was your treating physician.  
15 Correct, sir?

16 A. Yes.

17 Q. All right. And on the bottom of that -- and  
18 I know we've discussed this before. This is dated  
19 January 30th of 2012. And it notes on the bottom, and  
20 I'll quote, "As I mentioned above, he does have  
21 reasonable active range of motion, some pain. And with  
22 any weight on the arm with bench press or a military  
23 press, the pain gets much worse. It seems as though he  
24 has a significant amount of arthritis and a SLAP tear."

1                   So, going back again to 2012, do you  
2 remember this being discussed with you with Dr. Durkin?

3                   **A. Briefly, yes.**

4                   Q. And but you're saying though that with  
5 respect to that timeframe, it was not recommended that  
6 you have surgery?

7                   **A. He did not recommend anything.**

8                   Q. I mean, did anybody recommend surgery during  
9 that period of time, 2012?

10                  **A. No. Dr. Durkin was the only orthopedic I**  
11 **saw.**

12                  Q. Did you also experience problems with your  
13 right shoulder?

14                  **A. Not that I'm aware of, no.**

15                  Q. Have you ever, as you sit here today?

16                  **A. No.**

17                  Q. And 8-54. Let me ask you first. The -- was  
18 it the event of 2016 or '17 that you experienced  
19 popping?

20                  **A. '17.**

21                  Q. And I think because the -- because the video,  
22 as part of the exhibits, we should probably bring that  
23 up. And at least go to -- I think -- I believe it's  
24 minute 22, and maybe just for a few moments that we can

1 clarify that positioning here. And while we're doing  
2 that, let me ask you a question, too.

3 As far as the event of 2016, the actual  
4 event that caused the -- or the timeframe that caused  
5 the problem, what was your -- can you explain what your  
6 -- what your resistance was, what your -- what the  
7 position of your body was when you experienced the  
8 problem in your shoulder? Or after -- I think you  
9 experienced it after the event; is that fair to state?

10 **A. Yes.**

11 Q. So, what were you doing at that time during  
12 the altercation that you believe caused the problem?

13 **A. I'm really not sure, sir. It was a**  
14 **full-fledged fight. He was attempting to attack us and**  
15 **hit us, and during the struggle I was manipulated in a**  
16 **lot of different ways.**

17 Q. So, there's nothing that you could recall as  
18 you sit here today what actually caused the problem?

19 **A. I did not know what part I injured and when**  
20 **during the course of it. Just felt it afterwards.**

21 Q. All right. So, let's go to 2017, which I  
22 believe that this video is -- demonstrates the 2015  
23 event.

24 Do you recall at that time what you were

1 doing that caused the problem?

2       **A. Yes. When we went down to the ground with**  
3 **Officer Lopez on the left arm, I was on the right arm.**  
4 **As I went down to the ground, when we landed, I felt my**  
5 **shoulder pop.**

6       **Q. So, you landed on what?**

7       **A. I don't -- I'm not sure.**

8       **Q. Right or left arm?**

9       **A. I don't know where I landed. Just as we went**  
10 **down.**

11       **Q. Did your left -- do you recall if your left**  
12 **arm had contact with the -- what was it, concrete?**

13       **A. It was grass, I believe.**

14       **Q. Grass. Do you recall if your left arm had**  
15 **contact with the grass as you went down?**

16       **A. I know my whole upper body made contact with**  
17 **the grass.**

18       **Q. You can't recall specifically what part of**  
19 **your body first contacted the grass?**

20       **A. No. I was hanging onto Mr. Tavares' arm.**

21       **Q. So, as you were descending to the ground, you**  
22 **were hanging onto him?**

23       **A. Yes.**

24       **MR. ATWELL: All right. So, I guess we've got it**

1 right away. That's quick. A lot better than I can do.  
2 Can we -- can you -- as you look at this -- and what  
3 number are we at now? 22?

4 MS. TURVILLE: It's at 22, yes.

5 BY MR. ATWELL:

6 Q. Can you point out on that video where you  
7 are?

8 A. **I'm directly in front of the squad car that**  
9 **we can see.**

10 Q. So, your position is the officer in front of  
11 the squad car. And as I look at this, sir, there's  
12 only officer in front of that squad car; is that  
13 correct?

14 A. **I believe that is me.**

15 MR. ATWELL: And let's proceed on the video then.

16 BY MR. ATWELL:

17 Q. And that's you directing the individual to  
18 get -- or no. Is another -- yes. You're directing him  
19 to get out. And that's the altercation?

20 A. **Yes.**

21 MR. ATWELL: If we can stop it?

22 BY MR. ATWELL:

23 Q. Where are you? Can you see where you are  
24 there?

1           **A. My back is facing us.**

2           PRESIDENT DAVI: He's right there. The back.

3 BY MR. ATWELL:

4           Q. The back to us?

5           **A. Yes.**

6           MR. ATWELL: And where are we on the video again,  
7 please? The number?

8           MS. TURVILLE: 22:13.

9 BY MR. ATWELL:

10          Q. And so, as I see that, at that time the  
11 suspect is on the ground; is that correct?

12          **A. It looks like he's on his way, yes. I see  
13 his left leg.**

14          Q. And it appears that your two -- left and  
15 right knee are on the ground at that time?

16          **A. Yes.**

17          MR. ATWELL: Can we just -- can we do that slow  
18 forward, or can't we?

19          MS. TURVILLE: I don't believe I have that option.

20          MR. ATWELL: Well, let's just proceed as we can  
21 here. There. Stop. And we are at what number?

22          MS. TURVILLE: 22:16.

23 BY MR. ATWELL:

24          Q. 22:16. And that -- your back is still to us

1 at that time; is that correct, sir?

2       **A. Yes.**

3       Q. And you're still -- it looks like your knees  
4 are on the ground, but your arms are not on the ground;  
5 is that fair to state?

6       **A. It looks like it, yes.**

7       MR. ATWELL: Can we go forward a little bit more,  
8 please? Stop, please.

9 BY MR. ATWELL:

10      Q. And your back is still to us as --

11      MR. ATWELL: I'm sorry, what's the number there?

12      MS. TURVILLE: 22:25.

13 BY MR. ATWELL:

14      Q. 22:25. And your back is -- you're still  
15 showing your back but to the left a little more.  
16 Correct?

17       **A. Yes.**

18      Q. All right. Your body position looks like  
19 your knees are still on the ground. I can't tell if  
20 your arms are on the ground at that time.

21                   Can you give us your view of that?

22       **A. I believe I had control of one of his arms at  
23 that point.**

24      Q. And how many other officers are there?

1 A. I believe there were four people on a shift  
2 that day.

3 Q. So, from what you can tell in this video,  
4 there were four officers, including yourself,  
5 assisting?

6 A. I think so.

7 MR. ATWELL: Let's go off the record a second.

8 (Whereupon, a discussion was held  
9 off the record.)

10 MR. ATWELL: Let's go back on the record. Let's  
11 go back to where they were standing so we can  
12 determine. I think you're probably right on that.

13 PRESIDENT DAVI: Could we have the officers who  
14 are there identified for the record?

15 MR. ATWELL: That's a good idea. Bear with me  
16 here. There's one, two, three. It does look like  
17 there's four officers.

18 PRESIDENT DAVI: Four officers. The third one  
19 comes.

20 MR. ATWELL: The third one is coming in.

21 | PRESIDENT DAVI: Okay. They're all there.

22 MR. ATWELL: They're all there.

23 | PRESIDENT DAVI: That was good.

24 MR. ATWELL: Okay. We can stop.

1 BY MR. ATWELL:

2 Q. So, it does appear that there are four  
3 officers including yourself assisting in the arrest?

4 A. Yes.

5 MR. ATWELL: And what number are we at again,  
6 please, now?

7 MS. TURVILLE: Right now we're at 22:18.

8 BY MR. ATWELL:

9 Q. Can you identify who those other officers  
10 are, sir?

11 A. Yes. Officer Nick Volek, V-o-l-e-k; Officer  
12 Jose Lopez, L-o-p-e-z; myself, Sergeant Drake; and  
13 Officer Martino, M-a-r-t-i-n-o.

14 MR. ATWELL: And let's proceed on the video a  
15 little more if you will, please. Stop. At this time  
16 it looks like the -- what number are we at?

17 MS. TURVILLE: 22:25.

18 BY MR. ATWELL:

19 Q. 22:25. It appears to me that the suspect is  
20 pretty much in control; is that fair to state?

21 A. I know there were four of us, but I know he  
22 was still struggling. I don't know exactly when it --

23 Q. And can you tell from that -- look with your  
24 back to us, a little bit on the left, what position

1 your arms are in at that time?

2 **A. I can't tell what part of his body I have.**

3 MR. ATWELL: Let's move forward. Stop. And we  
4 are at number?

5 MS. TURVILLE: 22:31.

6 BY MR. ATWELL:

7 Q. All right. Fair to state that the suspect is  
8 under control at that time?

9 **A. I believe the other three officers have his  
10 upper body. I think I have his -- either his right  
11 leg, or I have some portion of him.**

12 Q. Do you know if he was handcuffed at this  
13 time?

14 **A. No. He wasn't handcuffed yet.**

15 Q. At this time you don't know the position of  
16 your arms, but it appears that you're still on your  
17 knees; is that fair to state?

18 **A. Yes.**

19 MR. ATWELL: Let's move forward. We can stop, I  
20 guess. And what's the number there, please?

21 MS. TURVILLE: 22:44.

22 BY MR. ATWELL:

23 Q. 22:44. So we moved forward quite a bit.  
24 There doesn't seem to be much further movement.

1                   Do we know if the suspect is in control  
2 -- being controlled at that time, or not?

3           **A. I know we're attempting to handcuff him.**

4           Q.    Do you know who did the handcuffing?

5           **A. I don't recall.**

6           Q.    Did you do it, or --

7           **A. I don't recall.**

8           Q.    You don't recall?

9           **A. Uh-uh.**

10          Q.    Fair to state that if you're down by his legs  
11 that somebody else further up on his body might have  
12 done the handcuffing, or not?

13          **A. That's fair to say.**

14          MR. ATWELL:   Let's go forward please.   Okay.

15          Stop.   So, number?

16          MS. TURVILLE:   22:56.

17          BY MR. ATWELL:

18          Q.    All right.   And at this time it looks like  
19 you raised your body.   So what position -- did you have  
20 your hands on the suspect at that time, do you recall?

21          **A. I'm sure I was holding onto something, but I  
22 don't know exactly what I was holding onto at that  
23 point.**

24          Q.    But it looks like -- am I fair to state that

1 at this point that most of the time that you had your  
2 hands down toward his legs and not by his arms?

3       **A. Yes. Initially I was with his arms, but when**  
4 **we went down to the body -- or down to the ground, I**  
5 **moved.**

6       Q. Did you have hold of his arms when you went  
7 down to the ground?

8       **A. I was attempting to.**

9       Q. Do we know if he's handcuffed at this time?

10      **A. I don't think so yet.**

11       MR. ATWELL: Okay. Let's continue. Let's stop.

12      BY MR. ATWELL:

13       Q. I see an officer there on the right. Is he  
14 reaching for the handcuffs or --

15      **A. It looks like it, yes.**

16       MR. ATWELL: The number on that is where?

17       MS. TURVILLE: 23:20.

18       MR. ATWELL: Okay. Let's continue, please. Stop.  
19 All right.

20      BY MR. ATWELL:

21       Q. The officer on the right of you, your back is  
22 still to us --

23       MR. ATWELL: And I'm sorry, again number, please?

24       MS. TURVILLE: 23:40.

1 BY MR. ATWELL:

2 Q. He is standing now. So, is it fair to state  
3 the suspect has been handcuffed at this time?

4 A. **I can't tell.**

5 Q. You're still on your knees?

6 A. **Yeah.**

7 MR. ATWELL: Let's continue. Stop. All right.

8 BY MR. ATWELL:

9 Q. Everybody is standing. Are they assisting  
10 the suspect as he --

11 A. **Yes.**

12 MR. ATWELL: And the number on here, please, that  
13 we're talking about?

14 MS. TURVILLE: 24:02.

15 BY MR. ATWELL:

16 Q. All right. So, I assume he's handcuffed at  
17 this time?

18 A. **Appears to be, yes.**

19 Q. Do you have your hands on the suspect?

20 A. **I don't think so.**

21 MR. ATWELL: Okay. Let's continue, please. So,  
22 we can stop. So now, the number?

23 MS. TURVILLE: 24:10.

24

1 BY MR. ATWELL:

2 Q. All right. It looks like the suspect is  
3 being escorted back to the police car; is that fair to  
4 state?

5 A. Yes.

6 Q. And it doesn't appear -- correct me if I'm  
7 wrong -- that you assisted him in getting to his feet?

8 A. Didn't appear to be, no.

9 MR. ATWELL: All right. Let's continue it,  
10 please. Stop.

11 BY MR. ATWELL:

12 Q. And is that -- where are you in that?

13 MR. ATWELL: Let's get the number on that first.

14 MS. TURVILLE: 24:18.

15 BY MR. ATWELL:

16 Q. And where are you located at that time,  
17 Officer?

18 A. I believe to the front of the car, left side  
19 of the --

20 Q. Toward the front?

21 A. Yes.

22 Q. So, from there on in did you provide any more  
23 assistance as far as in the apprehension here, or not?

24 A. No. I respond to booking with him, but that

1   **was the end of that.**

2           Q.    And there was no further altercation that  
3   you've identified that's been part of the event that  
4   we're talking about in a question?

5           **A.    No.**

6           Q.    Is there any reason --

7           PRESIDENT DAVI:   Actually, if I might ask, with  
8   your permission, could we run it again from the time  
9   that he was standing by the car?   Just one more time.

10          MR. ATWELL:    Okay.

11          MS. TURVILLE:   Back to 22?

12          PRESIDENT DAVI:   Yes.   Whatever the starting point  
13   was when you were first cued in.

14          MR. ATWELL:    You mean 22 up to here?

15          PRESIDENT DAVI:   Yes.   Yes.

16          MR. ATWELL:    Okay.   Whatever our last number was  
17   here would have been from 22.   Is that fair to state?  
18   I believe.   We started at --

19          MS. TURVILLE:   We started at 22.

20          MR. ATWELL:    And what was the last number we gave  
21   that -- where we ended before you starting to go back?

22          MS. TURVILLE:   24:18 I believe.

23          PRESIDENT DAVI:   So, can we go back to 22 and just  
24   run it?

1 MS. TURVILLE: Yes. We're at 22 now.

2 PRESIDENT DAVI: Okay. Thank you.

3 MR. ATWELL: We should state for the record that  
4 we watched -- we backed up the video from 22 --  
5 starting at 22 again, and what's the point now?

6 MS. TURVILLE: 24:18.

7 MR. ATWELL: So, 24:18. So, all parties had an  
8 opportunity to review the video run here. Any  
9 questions from the board on this? Any other questions  
10 from the board?

11 TRUSTEE KOBLER: If I may?

12 MR. ATWELL: Sure.

13 RECROSS-EXAMINATION

14 By: Trustee Kobler

15  
16 Q. I apologize. I didn't cover this all in the  
17 beginning when I was -- last time.

18 When did you determine to file for  
19 disability?

20 **A. I don't have the exact date of the  
21 application off the top of my head.**

22 Q. Is that when you decided to do it that day,  
23 or previously, and came in and filled out the  
24 application?

1           **A. I'm not sure I know what you're asking.**

2           Q. When did you determine that you needed to  
3 file for disability?

4           **A. After I received the information from**  
5 **Dr. Heller that I was at maximum medical improvement,**  
6 **and I had permanent restrictions.**

7           Q. Do you recall when that was?

8           **A. Probably February of '18.**

9           Q. If can I direct your attention to  
10 Exhibit 6-15? About halfway down. "Patient is  
11 having," and this is from Dr. Sauerberg. "Patient is  
12 having shoulder surgery -- too young for replacement.  
13 He is going to file for a disability from the police  
14 force." And that was dated on 6/5/17?

15           **A. Yes.**

16           Q. And then --

17           **A. Are you asking me to respond to that?**

18           Q. Is that when you decided or when --

19           **A. No. That was discussed if I couldn't recover**  
20 **from the injuries, yes.**

21           Q. And then on 10/9 of '17 on Exhibit 6-7.

22 PRESIDENT DAVI: What's that number again?

23 TRUSTEE KOBLER: 6-7.

24 MR. DAVI: Thank you.

1 BY TRUSTEE KOBLER:

2 Q. So, you saw Dr. Sauerberg again on 10/9 of  
3 '17. "Patient is here to discuss the shoulder.  
4 Insurance company will not approve any further therapy.  
5 He has an appointment on October 25." Further down,  
6 "The patient has an appointment with Dr. Heller on the  
7 25th." It says, " -- feeling he'd never be able to  
8 fully -- due to risk of injury and aggressive physical  
9 activity."

10                   What did you -- do you recall your  
11 conversation with the doctor? What did you discuss?

12           **A. No. I do not.**

13           Q. I mean, you made an appointment to see him.

14           **A. Right.**

15           Q. Without any -- it doesn't say that you were  
16 there regarding pain treatment or any other issues  
17 outside to discuss the specific shoulder here, or as I  
18 read it. Maybe I'm reading it wrong. To discuss the  
19 shoulder, and prior to your appointment with  
20 Dr. Heller.

21           **A. Yeah. It was common practice to see the  
22 primary prior to going to the orthopedic at that point.**

23           TRUSTEE KOBLER: Thank you.

24           TRUSTEE EISENBEIS: I have a question, and I think

1 it's in regards to Dr. Heller.

2 RECROSS-EXAMINATION

3 By: Trustee Eisenbeis

4

5 Q. You had mentioned that you had gone to  
6 therapy for three months somewhere along the way. I'm  
7 trying to figure out was it after your second SLAP you  
8 had gone for three months?

9 A. **The first surgery was three months.**

10 Q. Three months?

11 A. **Therapy.**

12 Q. But then your attorney, he mentioned six  
13 months when he asked you the question. So, I don't  
14 understand why -- was it three months you only went,  
15 and then what?

16 A. **Three months was the recovery from the first**  
17 **surgery. Six months was the recovery from the second**  
18 **surgery.**

19 Q. Because I heard two different timeframes, so  
20 that's why I just wanted to clarify.

21 MR. ATWELL: Any other questions from the board?  
22 Counsel?

23 MR. McQUEARY: Yeah, if you wouldn't mind,  
24 Counsel, I'd like to redirect?

1 MR. ATWELL: Please.

2 REDIRECT EXAMINATION

3 By: Mr. McQueary

4

5 Q. We just watched the video of the arrest from  
6 2017. I believe that occurred in March; is that  
7 correct?

8 **A. Yes.**

9 Q. This guy didn't want to be arrested, did he?

10 **A. No.**

11 Q. You attempted an escort hold. Did that work?

12 **A. No.**

13 Q. You told him he was under arrest. Did he  
14 comply?

15 **A. No.**

16 Q. Did you and I believe a total of three other  
17 officers -- so a total of four officers had to  
18 physically take this assailant to the ground; is that  
19 correct?

20 **A. Yes.**

21 Q. And he wouldn't handcuff right away; is that  
22 correct?

23 **A. Correct.**

24 Q. You had to forcibly put his arms behind his

1 back; isn't that correct?

2       **A. Yes.**

3       Q. Four officers working in tandem to take one  
4 individual into custody. Correct?

5       **A. Correct.**

6       Q. Explain to the board how he was actively  
7 resisting?

8       **A. He attempted to punch Officer Lopez to begin**  
9 **with, but then he got himself in kind of a cradle**  
10 **position where he put both arms behind his back, and**  
11 **would roll his shoulder, attempt to head butt or**  
12 **whatever he could do to avoid apprehension.**

13       Q. And was this something that is unique to  
14 police work, having to arrest combative violent  
15 subjects?

16       **A. Yes.**

17       Q. One last question. As you sit here today,  
18 has any physician told you that this 2017 incident was  
19 not a causative factor, at least in some part, to your  
20 shoulder injury that you're left with today?

21       **A. No.**

22       MR. MCQUEARY: I have nothing further.

23       MR. ATWELL: Nothing here. Anything from the  
24 board? Nothing else? Okay. So, both parties rest.

1 No further witnesses, Counsel; is that correct?

2 MR. McQUEARY: Correct. The applicant rests.

3 MR. ATWELL: We probably -- before we get to the  
4 question of executive session here, just so all parties  
5 understand that during executive session, only myself  
6 and the board members are present. It will be recorded  
7 according to the requirements of the Open Meetings Act.  
8 We would go into executive session pursuant to the  
9 exceptions, which is to deliberate a pending  
10 application for disability benefits. The board can  
11 consider also the alternative request for a not-on-duty  
12 disability benefit in this matter.

13 So that we understand, under no  
14 circumstances during my presence in the executive  
15 session do I try to influence the board. My job is  
16 only to advise the board what the law is. And we'll  
17 get to your closing statement counsel in just second.  
18 So, from that standpoint, I will just request that the  
19 board review the facts in that particular matter, and  
20 then once we have a chance, if the board is in a  
21 posture to come out of executive session and make a  
22 decision, they would do that on the record.

23 So, with that in mind, I would then ask,  
24 Counsel, do you have any closing argument?

1           MR. McQUEARY: I do. Thank you, Mr. Atwell. May  
2 it please the board, first on behalf of my client and  
3 myself, I'd like to thank all of you. I know this is a  
4 lot of material. I know you're all highly paid to be  
5 on the pension board. I say that jokingly because I  
6 know all of you volunteer your time, and this takes  
7 time away from your other duties, your family, your  
8 personal lives. So we want to thank you for donating  
9 your time here today, as well as going through all the  
10 material.

11           I think when we talk about line-of-duty  
12 disabilities, this is probably one of the most  
13 litigated areas in Article 3 pension funds. When I  
14 talk about Article 3, I'm talking about municipal  
15 police funds, and probably very litigated Article 5,  
16 which is the Chicago police pension fund.

17           I think when we're dealing with  
18 line-of-duty disability benefits, it can be distilled  
19 down to really two questions. Number one: Is the  
20 applicant disabled? And the second question is: Does  
21 that disability -- is that disability a result of an  
22 act of duty? Before we can address the second  
23 question, we first have to address the initial  
24 question, which is whether or not the applicant is

100

1 disabled.

2 As I always say, this is primarily a  
3 medical question. When you review the voluminous  
4 material here, when you look at Sergeant Drake's  
5 primary care physician, Dr. Sauerberg, when you review  
6 his reports, the reports of his orthopedic surgeon,  
7 Dr. Heller, who actually opened him up twice and  
8 visualized damage to the area, as well as the three  
9 independent medical examinations conducted pursuant to  
10 the board's request -- as I like to say, these people  
11 don't have a dog in the hunt. They're independent.  
12 They don't care which way something goes. They're here  
13 to give you their independent medical judgment. All  
14 the physicians in the record conclude and the three  
15 independent medical examiners all certified and issued  
16 certificates of disability concluding that Sergeant  
17 Drake is disabled from full and unrestricted police  
18 service.

19 In addition, he underwent a functional  
20 capacity evaluation, commonly referred to as an FCE.  
21 That again was considered by the physical therapist,  
22 who is a doctor of physical therapy, that it was a  
23 valid test, and that he did not have the ability to  
24 function as a full and unrestricted police officer

1 based on the deficits in his left shoulder.

2 Dr. Heller reviewed the FCE, as well as  
3 your independent medical examiners, and they concluded  
4 that it was a valid FCE, and that he cannot work as a  
5 full and unrestricted police officer. I would submit  
6 to all of you that there is no evidence in the record,  
7 there is no physician here that says he can come back  
8 to full and unrestricted duty. Everyone concludes he's  
9 disabled, which I think then brings us to the second  
10 question.

11 The second question is whether or not his  
12 disability is a result of a performance of an act of  
13 duty. As I know most of you are aware, Article 3 of  
14 the pension fund does not define "act of duty." The  
15 legislature, in their infinite wisdom, decided to call  
16 it an act of duty and not define it. So, what the  
17 courts have done in an Illinois Supreme Court case  
18 entitled Robins said that an act of duty is defined in  
19 Article 5 of the Pension Code, which is the Chicago  
20 Police Pension Code. So, they adopted that definition.

21 And rather than give you a summation of  
22 what I recall that it says, I'll read it verbatim  
23 because it's only about four sentences. "An act of  
24 duty," correction. "Any act of police duty inherently

1 involved in special risk, not ordinarily assumed by a  
2 citizen in the ordinary walks of life, imposed on a  
3 policeman by the statutes of this state, or by the  
4 ordinance or police regulations of the city in which  
5 this article is in effect, or by special assignment, or  
6 any act of heroism performed in the city having for its  
7 direct purpose of saving -- the saving of a life or  
8 property of a person other than a policeman."

9                   In Johnson the Court grappled with this  
10 issue: What is an act of duty? I would submit that  
11 fighting with a bad guy with an offender and taking him  
12 into custody, it doesn't get too much higher standard  
13 than that. But the Johnson Court, which is an Illinois  
14 Supreme Court case, talked about the inherent danger is  
15 not a requirement for an act of duty. The crux of the  
16 matter is the capacity in which the police officer was  
17 working. I'll give you an example in Johnson.

18                   A police officer in the Chicago Police  
19 Department is working a traffic detail. A citizen  
20 calls over and says, "Officer, can you come help me?"  
21 He steps off the curb, starts to walk towards the  
22 citizen, he slips, he falls, and he's paralyzed. He  
23 gets a paralysis. I believe it was in his hand. The  
24 Illinois Supreme Court said, "It's not the mechanism of

1 injury. It's the capacity he was acting in." Normal,  
2 ordinary, everyday citizens don't respond to citizens'  
3 cries for help. They don't respond to citizens'  
4 request for assistance. And they affirmed the decision  
5 that this was, in fact, a line-of-duty disability  
6 pension.

7                   We also refer this board to a First  
8 District case out of -- a case out of the First  
9 District Appellate Court entitled "Summers versus the  
10 Retirement Board of Policemen's Annuity Fund." That is  
11 probably one of the most comprehensive cases that  
12 defines all the different acts police officers have  
13 engaged in that qualify as a line of duty. For  
14 instance, raising a railroad gate to allow traffic to  
15 pass: Line of duty disability pension. Moving parking  
16 blocks in a case called Merlo, M-e-r-l-o, to not  
17 obstruct the flow of traffic. That was considered a  
18 line-of-duty disability pension.

19                   Recently, down in the Fourth District,  
20 we've seen a case by the name of Gilliam,  
21 G-i-l-l-i-a-m, where an officer was training to be on  
22 bicycle patrol. She fell off. She injured herself,  
23 and the Court said that is a line-of-duty disability  
24 pension. The Court, I believe, in Mingus, M-i-n-g-u-s,

1 has said an officer on patrol that gets into a car  
2 accident, that's a line-of-duty disability pension.

3                   So, I think this is a really clear-cut  
4 case that when a police officer is conducting a unique  
5 and identifiable act, which is taking into custody a  
6 bad guy, an active resister, a combatant, a person  
7 who's committed a crime, and they're injured taking  
8 that person into custody, that to me clearly satisfies  
9 the definition of act of duty.

10                  Now, reading the tea leaves, and based on  
11 your questions, I would be remiss if I didn't address  
12 pre-existing conditions. Okay. This comes up in many,  
13 many pension boards. It's debated in squad rooms, roll  
14 calls all over the State of Illinois. I say that as a  
15 cop who went back and went to law school. But the  
16 Illinois Supreme Court addressed that issue in Wade,  
17 W-a-d-e. It's an Illinois Supreme Court case. And it  
18 stands for this very simple proposition: You take  
19 people as you find them.

20                  What the Illinois Supreme Court said in  
21 Wade is that the act of duty injury need not be the  
22 sole or even the primary cause, rather it is sufficient  
23 that the act of duty injury either aggravate,  
24 exacerbate, or in some way contribute to the disabling

1       injury.

2                   You've heard a lot of testimony. You've  
3        gone through a lot of medical records. Every  
4        independent medical examination in the record says that  
5        this is either -- that the March 2017 incident was  
6        either the primary or, if not, an aggravation. Under  
7        either of those theories, Sergeant Drake should be  
8        awarded a line-of-duty disability pension.

9                   The Second District, which is where the  
10       Village of Willowbrook sits, in a case called Alm,  
11       A-l-m. And I don't want to misquote the Court, so if  
12       you'll indulge me, I'd like to read it to you. "The  
13       performance of an act of duty need not be the sole  
14       cause of a disability because, as this Court has held,  
15       Section 3-114.1 does not bar the award of a  
16       line-of-duty disability pension based upon the  
17       aggravation of a pre-existing physical condition.

18                   Even if we are to assume that Sergeant  
19       Drake's shoulder had issues, had an injury, the medical  
20       records -- the unimpeached and uncontroverted medical  
21       records all conclude that the incident we just saw in  
22       the video in March of 2017, was a contributing factor  
23       to his disability. As such, we respectfully request  
24       that you grant Sergeant Drake a line-of-duty disability

1 pension.

2 MR. ATWELL: Thank you, Counsel. All right. If  
3 nothing else, is there a motion to retire into  
4 executive session in this matter to deliberate pursuant  
5 to the requirements of the Open Meetings Act in this?

6 TRUSTEE PEC: So moved.

7 TRUSTEE KOBLER: Second.

8 MR. ATWELL: Motion and second. A roll call,  
9 please? A "yes" would be --

10 PRESIDENT DAVI: Before the roll call, can you put  
11 a little caveat and we'll take a little break?

12 MR. ATWELL: What's that?

13 PRESIDENT DAVI: Can we take a little break after  
14 the roll call?

15 MR. ATWELL: Yeah. We will. Let's do a call on  
16 the motion. Roll call?

17 PRESIDENT DAVI: Aye.

18 TRUSTEE PEC: Pec is aye.

19 TRUSTEE KOBLER: Aye.

20 TRUSTEE DITTMAN: Aye.

21 TRUSTEE EISENBEIS: Aye.

22 PRESIDENT DAVI: Motion is passed.

23 MR. ATWELL: The motion is passed. I note the  
24 time is 3:00 o'clock. And so, before we convene an

1 executive session, let's take a break.

2 (Whereupon, the board retired  
3 into an executive session.)

4 MR. ATWELL: Let's go back on the record. And do  
5 we have a -- somebody has their phone on that has the  
6 time, the exact time?

7 PRESIDENT DAVI: It is 3:57 p.m.

8 MR. ATWELL: 3:57 p.m. So, the board was in  
9 executive session. Is there a motion to come out of  
10 executive session?

11 MR. KOBLER: So moved.

12 TRUSTEE PEC: Second.

13 MR. ATWELL: Motion and second. Roll call?

14 PRESIDENT DAVI: Aye.

15 TRUSTEE DITTMAN: Aye.

16 TRUSTEE PEC: Aye.

17 TRUSTEE EISENBEIS: Eisenbeis, aye.

18 TRUSTEE KOBLER: Kobler, aye.

19 MR. ATWELL: During executive session the board  
20 deliberated this matter pursuant to the Open Meetings  
21 Act. My understanding is that the board is now in a  
22 posture to come to a decision in this case.

23 I would ask: Is there a motion on the  
24 table to either grant or deny the line-of-duty

1 disability request?

2 PRESIDENT DAVI: There is a motion on the table.  
3 I so move to grant the application for disability  
4 pension benefits, line of duty.

5 MR. ATWELL: Okay. So, there's a motion on the  
6 table to grant the line-of-duty disability benefit.  
7 And a second?

8 TRUSTEE PEC: Second.

9 MR. ATWELL: A motion and second. A "yes" would  
10 be to grant the line-of-duty disability.

11 PRESIDENT DAVI: Do you want a roll call?

12 MR. ATWELL: Yes, please.

13 PRESIDENT DAVI: Davi says yes.

14 TRUSTEE PEC: Pec is a yes.

15 TRUSTEE KOBLER: Kobler, yes.

16 TRUSTEE EISENBEIS: Eisenbeis, yes.

17 TRUSTEE DITTMAN: Dittman, yes.

18 MR. ATWELL: Okay. A unanimous decision in this  
19 matter. Now, during the executive session, the board  
20 also discussed the PEDA.

21 Counsel, on this, I think PEDA exhausts  
22 sometime in January?

23 MR. McQUEARY: Yes, sir. That's our  
24 understanding.

1           MR. ATWELL: I've told the board that this  
2 decision is not final. As you know, it's not final  
3 until it's reduced to writing and submitted at an open  
4 meeting with notice to you, too, pursuant to the  
5 requirements of the Open Meetings Act. I anticipate  
6 that this decision, until I get the transcript, it  
7 probably won't be done for at least 30, probably 60  
8 days. It's probably going to be pretty close to that  
9 time, but I would suggest that -- and the calculation  
10 as you've represented, is going to have to be confirmed  
11 by finance, too, on this, too.

12           MR. McQUEARY: Absolutely.

13           MR. ATWELL: And you'll be provided notice as to  
14 what the calculation is before the hearing date. I  
15 would suggest then at this time at least a motion to  
16 commence the benefit starting with the exhaustion of  
17 the PEDA.

18                   Is there a motion on the table to do so?  
19 And that would be without waiting for the written  
20 decision, but I do anticipate having it by that time.

21           PRESIDENT DAVI: I can make the motion.

22           MR. ATWELL: Please.

23           TRUSTEE PEC: And I will second.

24           MR. ATWELL: Motion and second. Roll call?

1 PRESIDENT DAVI: Davi, yes.

2 TRUSTEE PEC: Pec, yes.

3 TRUSTEE KOBLER: Kobler, yes.

4 TRUSTEE EISENBEIS: Eisenbeis, yes.

5 TRUSTEE DITTMAN: Dittman, yes.

6 MR. ATWELL: Okay. Anything else?

7 MR. McQUEARY: No, sir. Thank you very much. On  
8 behalf of my client, thank you for your attention.

9 Thank you very much.

10 MR. ATWELL: Okay. All right. Nothing else from  
11 the board? Ifs not, is there a motion to adjourn?

12 TRUSTEE KOBLER: So motioned.

13 TRUSTEE EISENBEIS: Second, Eisenbeis.

14 MR. ATWELL: Motion and second. Roll call?

15 PRESIDENT DAVI: Davi, yes.

16 TRUSTEE PEC: Pec, yes.

17 TRUSTEE KOBLER: Kobler, yes.

18 TRUSTEE EISENBEIS: Eisenbeis, yes.

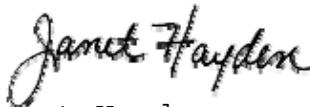
19 TRUSTEE DITTMAN: Dittman, yes.

20

21 (Which were all the proceedings had  
22 and testimony taken at the public  
23 hearing of the above-entitled  
24 cause.)

1 STATE OF ILLINOIS )  
2 ) SS.  
3 COUNTY OF DU PAGE )

4 I, Janet Hayden, C.S.R., duly qualified  
5 and commissioned for the State of Illinois, County of  
6 DuPage, do hereby certify that I reported in shorthand  
7 the proceedings had and testimony taken at the hearing  
8 of the above-entitled cause, and that the foregoing  
9 transcript is a true, correct, and complete report of  
10 the entire testimony so taken at the time and place  
11 hereinabove set forth.

12  
13  
14   
15 Janet Hayden



16 CSR License #084-004483  
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