SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
DOCKET NO.: A-000253-24 T04

TANYA BERRY,

Appellant,

V.

BOARD OF TRUSTEES, PUBLIC EMPLOYEE'S RETIREMENT SYSTEM

Respondent.

Civil Action

On Appeal from

Initial Decision dated June 17, 2024, under OAL Docket No. TYP-07566-23 and upheld by The Board of Trustees, Public Employee' Retirement System on August 14, 2024

Sat below:

Hon. Margaret M. Monaco, ALJ

Brief and Appendix of Appellant Tanya Berry

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Samuel M. Gaylord, Esquire
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On the Brief

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES CITED

STATUTES CITED

TABLE OF JUDGMENTS, ORDERS AND RULINGS

TABLE OF APPENDIX

INDEX TO TRANSCRIPTS

PRELIMINARY STATEMENT

Appellant, Officer Tanya Berry, should be granted her Accidental Disability Pension Benefits because the incident which occurred on March 15, 2014, was "undersigned and unexpected" and there was a delayed manifestation of the disability meeting all the requirements as set forth in Richardson vs. Board of Trustees, Police and Firemen's Retirement System, 192 N.J. 189 (2007) and reinstated in Moran v. Board of Trustees, Police and Firemen's Retirement System, 438 N.J. Super. 346 (App. Div. 2014) and Hayes vs. PFRS, 421 N.J. Super. 43 (App Div 2011. While perhaps not a "classic" accident in the sense that she didn't trip over something or fall because of something on the ground, it was an undesigned and unexpected traumatic event that resulted in Officer Berry' suffering a disabling injury while performing her job. Viewed in context, the injury was also caused by an event, or series of events, "external" to Officer Berry Richardson, supra, 192 N.J. at 212-13 qualifying her to receive her accidental disability pension. This Court on this purely legal issue is not required to afford the determining agency its normal deference as the Board's interpretation is inaccurate and contrary to the legislative objective of the pension statute. As such, this Court must overturn the decision of the ALJ as affirmed by the Board of Trustees, Police and Fireman's Retirement System and grant Appellant Berry her Accidental Disability Pension Benefits.

PROCEDURAL HISTORY

Petitioner, Ms. Tanya Berry, served as a Senior Corrections Police Officer with the New Jersey Department of Corrections. On August 31, 2022, Ms. Berry filed an application for accidental disability retirement benefits pursuant to N.J.S.A. 43:16A-7, asserting that she became permanently and totally disabled as a direct result of a traumatic event occurring during the performance of her regular and assigned duties (Aa1-Aa6).

As part of the application process, Ms. Berry's employer submitted the required Employer Certification for Disability Retirement, dated September 20, 2022, confirming her incapacity to perform the duties of her title. (Aa7-Aa8). The New Jersey Civil Service Commission's official job specifications for the title of Senior Corrections Police Officer were also submitted into the record. (Aa9-Aa11). The traumatic event in question occurred on March 15, 2014, while Ms. Berry was performing her assigned duties. She submitted an Incident Report dated March 16, 2014, documenting the details of the event. (Aa12-Aa15).

On June 13, 2023, the Board of Trustees of the Police and Firemen's Retirement System issued a final administrative determination denying Ms. Berry's application for accidental disability retirement benefits. (Aa16-Aa18). The Board found that although she was permanently and totally disabled from the performance of her duties, the March 15, 2014 incident did not meet the statutory

definition of a qualifying "undesigned and unexpected" traumatic event under Richardson v. Board of Trustees, Police & Firemen's Retirement System, 192 N.J. 189 (2007). The Board also determined that her application was not timely filed within five years of the incident and rejected the applicability of the delayed manifestation doctrine. (AA16-Aa18).

The matter was transferred to the Office of Administrative Law pursuant to a letter dated August 15, 2023 (Aa19), and a hearing was held before Administrative Law Judge (ALJ) Monaco. Ms. Berry testified in support of her claim. Following the hearing, the Administrative Law Judge issued an Initial Decision affirming the Board's denial. (Aa20-Aa34). The Board adopted that decision without modification. (Aa35). An appeal was filed with this Court on September 26, 2024, asserting that the incident was undesigned and unexpected, that the disability is the direct result of the traumatic event, and that the doctrine of delayed manifestation, as articulated in Hayes v. Board of Trustees, Police & Firemen's Retirement System, 421 N.J. Super. 337 (App. Div. 2011), applies and warrants reversal of the denial. (Aa36-Aa41).

STATEMENT OF FACTS

On March 15, 2014, Tanya Berry, was a Sr. Corrections Police Officer for the Department of Corrections. (Aa9-Aa11); (1T8:14-19). During her career, she was assigned to one facility, Edna Mahan Correctional Facility for women, and was familiar with the policies and procedures of the institution. (1T10:1-5);(1T21:10-20). She testified that she was assigned by the Lieutenant on first shift (which started at 6 a.m.) as a rover. (1T10:18-25). Further, she testified that not only was the assignment directed by the Lieutenant but so was the vehicle; Vehicle 1624. (Aa12-Aa15); (1T12:11-16).

She testified that she had been assigned as a rover in the past. (1T13:17-20). She testified as a rover she would have to escort inmates using the van. (1T14:18-24). She testified that throughout the shift she would get in and out of the van frequently picking up count and pre-count paperwork and delivering it to the proper location on site. (1T15:4-17).

Ms. Berry testified that the vehicle she was assigned, Van 1624, did not have a running board and the floor was too high for her to get into the vehicle without extreme exertion. (1T16:12-19); (Aa1-Aa6). She testified that at the time of the incident the facility was without vehicles as many of the vehicles were down needing repair. (1T31:13-21). Ms. Berry testified she is all of 5'3 and after she reported being injured the second shift Lieutenant, Lt. Perry, stated "I'm 6'2 and I

can't even get in this vehicle." (1T17:5-7). She reported and testified that as a result of their being no running board in which to hoist herself into the vehicle and with the floor being so high the movement by which she had to enter this particular assigned van is what caused her injury to her leg. (1T17:17-20);(Aa1-Aa6);(Aa12-Aa15);(1T18:3-7). She testified that she didn't plan on getting hurt or having to retire. (1T36:1-4). She did not notice that the lack of the running board and the floor being so high would be an issue. (1T36:5-15).

She testified that she completed her first shift and was on second shift when the pain in her knee and groin started. (Aa12-Aa15). She reported it to her area supervisor sergeant and then to Lieutenant Perry. (1T24:14-25). Ms. Berry testified that after she was injured, she returned to work. (1T27:17-19). She was attempting to get workers' compensation to provide medical care and eventually she testified she received her first surgery, and never returned to work. (1T28:13-15). Ms. Berry testified she went on to have approximately 7 to 9 knee surgeries in order to get well enough to return to work. (1T28:16-23).

As a result of this incident, she went on to receive authorized medical care through workers' compensation. Despite numerous surgeries over the years, Ms. Berry never regained her fitness for duty. (1T28:13-23). Ultimately, the Department of Corrections initiated the pension process and filled in the paperwork on September 6, 2022. (Aa1-Aa6); (1T30:4-10).

STANDARD OF REVIEW

The standard of review that applies in an appeal from a state administrative agency's decision is well established and limited. Russo v. Bd. Of Trs., 206 N.J. 14, 27 (2011)(citing In re Herrmann, 192 N.J. 19, 27 (2007)). This Court does grant a strong presumption of reasonableness to an agency's exercise of its statutorily delegated responsibility, City of Newark v. Natural Res. Council, 82 N.J. 530, 539 cert. denied, 49 U.S. 983, 101 S. Ct. 400, 66 L. Ed. 2d 245 (1980), and defer to its fact finding. Utley v. Bd of Review, 194 N.J. 534, 551 (2008). The agency's decision should be upheld unless there is a "clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record or that it violated legislative policies. In re Musick, 143 N.J. 206, 216 (1996); Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963); Caminiti v. Bd. of Trs., Police and Firemen's Ret. Sys., 431 N.J. Super. 1, 14 (App. Div. 2013) (Citing Hemsey v. Bd of Trs., Police and Firemen's Ret. Sys., 198 N.J. 215, 223-24 2009). On appeal, "the test is not whether an appellate court would come to the same conclusion to the original determination was its to make, but rather whether the fact finder could reasonably so conclude upon the proofs." Brady v. Bd of Review, 152 N.J. 197, 210 (1997) ("Charatam v. Board of Review, 200 N.J. Super. 74, 79 (App. Div. 1985). So long as the "factual findings" are supported by sufficient credible evidence, courts are obliged to accept them. Ibid.

Nevertheless, if the Court's review of the record shows that the agency's finding is clearly mistaken, the decision is not entitled to judicial deference, See H.K. v. Department of Human Services, 184 N.J. 367, 386 (2005); L.N. v. State, Div. of Med. Assist. and Health Servs., 140 N.J. 480, 490 (1985) nor is this Court bound by the agency's interpretation of a statute or its determination of a strictly legal issue. Mayflower Cec. Co. v. Bureau of Sec., 64 N.J. 85,93 (1973). The public pension systems are "bound up in the public interest and provide public employees significant rights which are deserving of conscientious protection." Zigmont v. Bd. Of Trs. Teachers' Pension & Annuity Fund, 91 N.J. 580, 583 (1983). Because pension statutes are remedial in character, they are liberally construed and administered in favor of the persons intended to be benefited thereby. Klumb v. Bd of Educ. Of Manalapan-Englishtown Reg'l High Sch. Dist., 199 N.J. 14, 34 (2009).

In this case, the Board adopted the ALJ's application of the law and the facts. Therefore, it is respectfully requested this Court focus on Judge Buono's insertion of facts not in evidence and his misapplication of the law and find his decision, and the Board's determination, not entitled to this Court's deference as it misinterprets the statute and the clear legislative intent as well as case law specifically expressed in Richardson vs. Board of Trustees, Police and Firemen's

Retirement System, 192 N.J. 189 (2007) and Moran v. Board of Trustees, Police and Firemen's Retirement System, 438 N.J. Super. 346 (App. Div. 2014).

LEGAL ARGUMENT

POINT I.

THE PFRS BOARD IMPROPERLY DETERMINED THAT OFFICER BERRY WAS NOT ENTITLED TO AN ACCIDENTAL DISABILITY PENSION BECAUSE THE INCIDENT CAUSING HER DISABILITY WAS UNDESIGNED AND UNEXPECTED.

The pivotal legal issue before the Court is whether or not the March 15, 2014 incident was an "undesigned and unexpected" event. Richardson v. Board of Trustees, Police and Firemen's Retirement System, 192 N.J. 189, 212-13 (2007), clarifying the meaning of the term "traumatic event" under N.J.S.A. 43:16A-7(1).

The Court explained, "[t]he polestar of the inquiry is whether, during the regular performance of his job, an unexpected happening, not the result of pre-existing disease alone or in combination with the work, has occurred and directly resulted in the permanent and total disability of the member." Id. at 214.

As delineated in Richardson, a claimant for accidental disability retirement benefits must establish:

> (1) that he is permanently and totally disabled;
>
> (2) as a direct result of a traumatic event that is
>
> a. identifiable as to time and place,
> b. undesigned and unexpected, and
> c. caused by a circumstance external to

> the member (not the result of pre-existing disease that is aggravated or accelerated by the work).
>
> (3) that the traumatic event occurred during and as a result of the member's regular or assigned duties;
>
> (4) that the disability was not the result of the member's willful negligence; and
>
> (5) that the member is mentally or physically incapacitated from performing his usual or any other duty.
>
> [Ibid. (emphasis added).]

The analysis of the "undesigned and unexpected" issue must commence with a review of the pension statute as outlined in Richardson. In order to be eligible for an accidental disability retirement the pension member must show that [s]he is "permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of h[er] regular or assigned duties and that such disability was not the result of the member's willful negligence." N.J.S.A. 43:16A-7(1). The Court found that in using the term "traumatic event," the Legislature did not mean generally to raise the bar for injured employees to qualify for accidental disability pensions. Id. at 210-11. Rather, the Legislature intended to "excise disabilities that result from pre-existing disease alone or in combination with work effort from the sweep of the accidental disability statutes and to continue to allow recovery for the kinds of unexpected injurious events that

had long been called 'accidents.'" Id. at 192. The Court went on to note that "some of our cases failed to recognize that critical limitation in purpose and persisted in the entirely wrong notion that the term traumatic event was intended, in itself, to more significantly narrow the meaning of accident." Id. at 210-211.

In order to analyze this case, it is critical to review the actual facts of Richardson. Officer Richardson was a corrections officer who suffered an injury while attempting to subdue an inmate who had forcefully jerked up from the ground, knocking the officer backward and causing him to fall back onto his left hand, injuring his wrist. Id. at 193. The Board denied his accidental disability finding the incident was not a traumatic event. The Court reversed stating that "a traumatic event is essentially the same as what we historically understood an accident to be an unexpected external happening that directly causes injury and is not the result of pre-existing disease alone or in combination with work effort." Richardson, supra, 192 N.J. at 212.

As Chief Justice Weintraub explained and was quoted in Richardson, supra, at 201, in referencing Russo v. Teachers' Pension and Annuity Fund, 62 N.J. 142, at 152 (1973):

> "In ordinary parlance, an accident may be found either in an unintended external event or in an unanticipated consequence of an intended external event if that consequence is extraordinary or unusual in common experience. Injury by ordinary work effort or strain to a diseased heart, although unexpected by the individual afflicted, is not an extraordinary or unusual consequence in common experience. We

> are satisfied that disability or death in such circumstances is not accidental within the meaning of a pension statute when all that appears is that the employee was doing his usual work in the usual way."

The ALJ erred by applying a narrow and formalistic understanding of what constitutes an "undesigned and unexpected" event, concluding that because Officer Berry was performing a known job function—entering a van as part of her rover duties—the injury was not an "accident" under Richardson. This reasoning directly conflicts with case law, particularly Moran v. Board of Trustees, PFRS, 438 N.J. Super. 346 (App. Div. 2014), which emphasized the context and the confluence of circumstances surrounding the incident.

In Moran, the petitioner, a firefighter, was injured after using his body to forcibly enter a burning structure—a deviation from his typical assignment and training. The Appellate Division recognized that although the act of responding to a fire was within Moran's regular duties, the unexpected combination of: (1) the failure of backup resources, (2) the urgent presence of screaming victims, and (3) the need to force entry without standard tools, created an **"undesigned and unexpected"** situation sufficient to qualify under Richardson. Id. at 354.

Similarly, Officer Berry's attempt to enter the assigned van was not a routine step into a properly outfitted vehicle. The combination of circumstances—lack of a running board, the unusually high elevation of the van, the unavailability of alternate vehicles, and her physical stature—created an atypical, externally

influenced situation that led directly to her injury. She testified credibly that she had to physically "jump" and pull herself into the vehicle, a deviation from safe entry practice and one that produced an acute and audible knee injury. Just as in Moran, the event was **not unexpected in the abstract**, but became **traumatic** due to the **extraordinary confluence of circumstances**.

This is not unlike the analysis in Brooks v. Board of Trustees, PERS, 425 N.J. Super. 277 (App. Div. 2012), where the petitioner's ordinary job duty of supervising students unexpectedly turned into a traumatic event when the students dropped their end of a 300-pound weight bench, transferring the load entirely to the petitioner. As in Brooks, the unanticipated physical demands placed on Berry created a clearly traumatic event under *Richardson*.

Here, the Board erred in applying an unduly restrictive notion of an "undesigned and unexpected" event to Ms. Berry's March 15th, 2014 incident. She testified she was trained on how to use the vehicles but was unaware she would be assigned Vehicle 1624, that many of the other vehicles would be broken, that Vehicle 1624 would not have a running board and that the floor of the van would be so high. (1T36:1-17). She didn't have a choice about accepting the assignment, and if she had that would have been insubordination. Further, one would think that, especially in a prison facility, the equipment provided to the officers might be

in good working order. So, although not the classic slip and fall on ice, this incident meets the definition of an undesigned and unexpected event.

As a result of this unintended consequence of a clearly "external" event occurring, at the time she was working, means the incident meets the definition of undesigned and unexpected. Although she may have been aware that there was not a running board and that the floor was high she would have no way of knowing that climbing into the van would cause an injury so eventually debilitating it would force her employer to have to file for her Disability Pension. To be sure, if the "normal stress and strain" of the job had combined with a pre-existing disease then a traumatic event would not have happened. This is very different from saying that a traumatic event can't occur during ordinary work effort because indeed it can, did, and therefore, Ms. Berry's undisputed basis for her injury mirrors Richardson allowing this Court to reverse the Board's decision and grant Ms Berry her accidental disability pension benefits.

The Pension Statute is remedial in character, and statutes creating pensions should be liberally construed and administered in favor of the persons intended to be benefitted thereby. Geller v. Dep't of the Treasury, 53 N.J. 591, 597-98 (1969).

The Legislature did not intend to so narrowly construe the Statute as to eliminate access to Accidental Disability Pension benefits because someone receives training and should be aware of all possible scenarios. The Legislature intended to

eliminate occupational disease or repetitive type injuries that, although covered by New Jersey Workers Compensation are not the types of injuries covered by the Accidental Disability Pension portion of the Statute.

Here, the Board erred in applying an unduly restrictive notion of an "undesigned and unexpected" event to Ms. Berry's March 15, 2014 incident. It is a classic undesigned and unexpected event, and just because Ms. Berry didn't slip and fall doesn't mean the event isn't traumatic. The incident meets the definition of a traumatic event, was an unexpected consequence to an intentional event, trying to get into the assigned vehicle, and is sufficient to have this Court overturn the Board's decision.

POINT II.

THE FILING OF THE ACCIDENTAL DISABILITY PENSION APPLICATION WAS BEYONOD THE FIVE YEAR PERIOD DUE TO A DELAYED MANIFESTATION OF THE DISABILITY AND CIRCUMSTANCES BEYOND THE CONTROL OF THE MEMBER

The primary goal of statutory interpretation is to "discern and give effect to the legislative intent in light of the language used and the objects sought to be achieved by the enactment of the statute." See State v. Lewis, 185 N.J. 363,369 (2005); In re Broking, 381N.J.Super. 260, 263-64 (App.Div.2005). In interpreting the relevant language, this Court "should strive to avoid statutory interpretations that 'lead to absurd or unreasonable results." Lewis, supra, 185 N.J. at 369 (quoting State v. Gill, 47N.J. 441, 444 (1966)).

As used in N.J.S.A. 43:16A-7(1), "manifestation" relates to the "disability." In the context of this case, the "disability" is not the mere presence of a leg injury, with which petitioner coped for years receiving authorized surgical medical care, but a condition of such magnitude as to disable her from returning to her job as a Senior Corrections Police Officer. Something is "manifested" when it becomes "[c]learly apparent to the sight or understanding," when "show[n] or demonstrate[d] plainly." Webster's II New College Dictionary 665 (1995). "Manifest" is synonymous with "obvious;" "manifested" is synonymous with "reveal[ed]." Ibid.

It is clear that Ms. Berry didn't want to consider herself to be "disabled" and was doing everything she could to return to work. Specifically, it was her job that applied for Involuntary Accidental Disability Pension Benefits. (Aa1-Aa6).

In In re Crimaldi, the earliest possible delayed manifestation occurred more than five years after the traumatic event. Therefore, the issue was framed in terms of whether late filing was permissible "if the employee can show that the disability is not manifested until more than five (5) years after the accident." Crimaldi, supra, 396 N.J. Super. at 605 (App. Div. 2007) (internal quotation omitted). This language does not imply that a filing beyond the five-year limitation period can never be valid when a delayed manifestation occurs within five years of the traumatic event. In light of the remedial purposes of the legislation, the Court in

Shonda Hayes vs. PFRS, 421 N.J. Super. 43 (App. Div. 2011) held that the reasonableness test should apply.

The Hayes Court's analysis comported with the position advanced by the PERS Board in Crimaldi as to the time of delayed manifestation. There, the PERS Board asserted the petitioner "clearly knew of his disability [resulting from a traumatic event of August 5, 1994] by May 2001 when he was terminated from his second job." Crimaldi, supra, 396 N.J.Super. at 605. The critical fact is when the petitioner "knew or should have known that he was totally and permanently incapacitated from his duties." Ibid. In Crimaldi, the petitioner worked intermittently during the years between the traumatic event and his eventual termination, when he was terminated because his condition progressed to a point where he could no longer perform his duties satisfactorily. Id. at 602-03. Yet it was undisputed the manifestation of total permanent disability did not occur until he was terminated. It was not until then that the petitioner and his employer were aware of it.

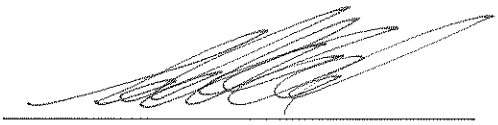
As was also held in Hayes, a delay in an injured worker seeking disability benefits is rare rather than common. Crimaldi, supra, 396 N.J,Super, at 607. Allowing this delayed filing would not significantly impact the number of such claims, or "be inconsistent with the liberal purposes behind our laws providing for disability pensions." Ibid. This particular claim was filed by Ms. Berry's employer

because she was still trying to do all the things necessary to return to work. (1T28:17-23). It was the magnitude of her injury which prompted her employer to eventually apply for benefits on her behalf, thus, satisfying the delayed manifestation requirement as set forth in Crimaldi and reiterated in Hayes.

CONCLUSION

For the foregoing reasons, the Board's denial of Ms. Berry's Accidental Disability Pension should be overturned as it misreads Richardson, misapplied Moran, Brooks and the legislative intent, and inappropriately narrowly construed the pension statute. Tanya Berry satisfied all of the Richardson requirements by demonstrating that the March 15, 2014, incident was undesigned and unexpected and provided evidence of the delayed manifestation enabling this Court to grant her Accidental Disability Pension Benefits.

Respectfully Submitted,



Samuel M. Gaylord, Esq.

cc: Juliana DeAngelis, Esq.

FILED, Clerk of the Appellate Division, August 26, 2025, **A-000253-24**

PFRSNJ
Police & Firemen's Retirement System of New Jersey

JAMES A. KOMPANY
Chairman

GREGORY PETZOLD
Executive Director

August 26, 2025

Via Electronic Filing

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Trenton, New Jersey 08625

Attention: Jennifer Jones, Case Manager

Re: Tanya Berry v. Board of Trustees,
Police and Firemen's Retirement System,
Docket Number: A-00253-24T4

On Appeal from a Final Agency Decision of the Board of Trustees, Police and Firemen's Retirement System of New Jersey, TYP-07566-23

Sat Below: Hon. Margaret M. Monaco, A.L.J.

Dear Ms. Hanley,

Pursuant to Court Rule 2:6-2(b), please find attached Respondent Board of Trustees, Police and Firemen's Retirement System of New Jersey's letter brief, in lieu of a more formal brief, on the merits.

TABLE OF CONTENTS

Superior Court of New Jersey-Appellate Division
RE: Tanya Berry v. PFRSNJ
August 26, 2025

PRELIMINARY STATEMENT

Appellant Tanya Berry ("appellant" or "Berry"), formerly a senior corrections police officer, improperly tries to reverse a decision of the Board of Trustees, Police and Firemen's Retirement System ("Board" or "Respondent") denying her involuntary Accidental Disability retirement benefits ("AD") application through this appeal. Appellant was injured on March 15, 2014. Appellant received an award of Ordinary Disability retirement benefits ("OD") from the Board. Aa9. After a full hearing in the Office of Administrative Law ("OAL") on January 18, 2024, an Initial Decision dated June 17, 2024 ("ID"), issued finding that appellant had failed to carry her burden of proof on the "undesigned and unexpected" element under Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189 (2007).[1] In light of the clear record, this appeal of the Board's adoption of the ID should be dismissed.

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS[2]

The record reflects that appellant began working for the New Jersey

[1] The "delayed manifestation" element of Richardson was not decided in the Initial Decision ("ID"), dated June 17, 2024, regarding Berry, and the Board does not contest it in these proceedings as a proper basis for her AD denial now.

[2] Because the Procedural History and Counterstatement of Facts are closely related, they are combined to avoid repetition and for the Court's convenience.

Department of Corrections in 2004. (Aa21).[3] She worked at the Edna Mahan Correctional Facility for Women ("facility"). Ibid. During the incident, she was assigned as a "rover", using a van to drive people and paperwork around the facility. (Aa22). She is five foot, three inches tall.

On March 15, 2014, Berry was assigned a van, Van 1624, and she had to repeatedly get into the vehicle by grabbing a handle and twisting and popping herself up into the driver's seat. (Ab4, Ab5). While doing so on that day, her right knee cracked and, while it twisted, she heard a "pop" from her right knee. (Aa22). She advised her shift lieutenant of the happenings, but she completed working the shift. Ibid.[4] This was during the first shift (the "incident"). Id.

She continued to work a second shift afterward, during which she experienced sharp shooting pains. Id. She went to an Urgent Care for treatment. Id. She received physical therapy after the incident for treatment. Id. Starting in January 2017, she started a series of seven total surgeries on her right knee. (Aa23). She never returned to work. Ibid. Her employer submitted an involuntary ordinary disability retirement system application on August 31, 2022. Id.

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[3] "Aa" citations refer to documents in Appellant's Appendix, previously filed with the Court.

[4] The ID place no weight on a statement by Lt. Perry about how hard he finds it to get into V1624 driver seat because it was uncorroborated hearsay under N.J.A.C 1:1-15.5(b) – the Residuum Rule. (Aa23).

Superior Court of New Jersey-Appellate Division
RE: Tanya Berry v. PFRSNJ
August 26, 2025

On or about August 31, 2022, appellant's employer filed for involuntary disability benefits, allegedly resulting from the incident. (Aa19-Aa21). By letter dated June 13, 2023, the Board granted appellant involuntary OD and denied her AD. (Aa16-Aa18). A hearing was held on January 18, 2024; Berry was the only witness. (Aa21)(T)(Aa34). An ID issued finding that appellant had not carried her burden of proof on the "undesigned and unexpected" element. (Aa20-Aa34). The ID is extensive and complete. The Board adopted the ID without exceptions on August 12, 2024. (Aa35).

The record supports that Appellant was performing her normal work activities including working as a rover on March 15, 2024 and she was no injured during a "traumatic event" that day.

ARGUMENT

POINT I

BERRY HAS FAILED TO SATISFY THE STRINGENT REVIEW STANDARD FOR APPEALING THE BOARD'S DENIAL DECISION.

The appellate standard of review for an appeal from the Board's denial decision by this Court is stringent. Case law provides that, "review of administrative agency action is limited. 'An administrative agency's final quasi-judicial decision will be sustained unless there is a clear showing that it is arbitrary, capricious or unreasonable, or that it lacks fair support in the record.'" Russo v. Bd. Of Trs.,

Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)(citations omitted); Gerba v. Bd. of Trs., Pub. Employees' Ret. Sys., 83 N.J. 174, 189 (1980)("On judicial review of an administrative agency determination, courts have but a limited role to perform."). Case law also accords a strong presumption of reasonableness to an agency's exercise of its statutorily delegated responsibility, as well as its fact-finding. See Mazza v. Bd. Of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 29 (1995) (Handler, J., dissent). Further, an administrative agency's determination is presumptively correct and, on review of the facts, a court will not substitute its own judgment for that of an agency where the agency's findings are supported by substantial credible evidence. See also Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); Campbell v. New Jersey Racing Comm'n, 169 N.J. 579, 587 (2001). If an appellate court "is satisfied after its review that the evidence and the inferences to be drawn therefrom support the agency head's decision, then it must affirm even if the court feels that it would have reached a different result itself." Clowes v. Terminix Int'l Inc., 109 N.J. 575, 588 (1988); In re Stallworth, 208 N.J. 182, 194 (2011) (citation omitted) ("A reviewing court 'may not substitute its own judgment for the agency's, even though the court might have reached a different result.'"); Kasper v. Bd. of Trs., Teacher's Pension & Annuity Fund, 164 N.J. 564, 580-81 (2000).

Only where an agency's decision is arbitrary or capricious, or unsupported by substantial credible evidence in the record, may it be reversed. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980); Atkinson, 37 N.J. at 149. Moreover, the party who challenges the validity of the administrative decision bears the burden of showing that it was "arbitrary, unreasonable or capricious." Boyle v. Riti, 175 N.J. Super. 158, 166 (App. Div. 1980) (internal citations omitted). Berry has failed to meet this stringent standard.

POINT II

THE BOARD CORRECTLY ANALYZED THE LAW AND FACTS AND DETERMINED THAT APPELLANT FAILED TO SATISFY HER BURDEN OF PROOF FOR THE UNDESIGNED AND UNEXPECTED ELEMENT.

The starting point for the Board's legal analysis of the issue of whether the incident was a "traumatic event" is the application of the "undesigned and unexpected" standard. See Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 212-13 (2007). Berry argues that the Board's decision to adopt the ID "inappropriately narrowly construed" the statute. (Ab17). Richardson specifies a "traumatic event" to be "caused by a circumstance external" to the member. Id. at 212. As applied by the Board and analyzed in the ID, this requirement means that the disabling injury must be either: (1) an unintended external event, or (2) an

unanticipated consequence of normal work activity (an intended external event), where the consequence was extraordinary or unusual in common experience. Id. at 201. The incident, i.e., getting into the van, was not an unintended external event as it was intentional conduct. (Aa28). This element is not satisfied when the member performs his usual work done in the usual way. See Russo v. Teacher's Pen. & Annuity Fund, 62 N.J. 142, 154 (1973). As reviewed in the ID, the petitioner must establish that the disabling injury was the result of an external force that resulted in an unanticipated consequence of normal work activity that was itself extraordinary or unusual in common experience. See Cattani v. Bd. of Trs., Police & Firemen's Ret. Sys., 69 N.J. 578, 581 (1976) (a fireman's strenuous work effort in dragging heavy hoses without adequate manpower to assist was not an "accident"). See also Russo, 62 N.J. at 145 (a school custodian with advanced heart disease suffered a heart attack at work – not a traumatic event).

Contrary to Appellant's argument, Moran v. Bd. of Trs., Police & Firemen's Ret. Sys., 438 N.J. Super. 346 (App. Div. 2014), does not clarify the application of the "undesigned and unexpected" because its facts are so different from the facts here. In Moran, a trained firemen was confronted with an "empty" burning building with two people in it and no fire tools to use to enter it and no back-up fire units arriving. 438 N.J. Super. at 351. He injured himself by manually

breaking into the building to save them. Id. at 354 (Moran court admits it is "not a classic accident"). The Moran "traumatic event" conclusion was based on a rare combination of "unusual circumstances" and no facts in this record supports any such application here, regardless of a demand for use of a "wider lens." Id.

Brooks v. Bd. of Trs., also does not support reversal here. 425 N.J. Super. 227 (App. Div. 2012). In Brooks, the Court reversed the Board's final action because the Board adopted a foreseeability analysis to find that the "undesigned and unexpected" (i.e., not "undesigned and unexpected" because petitioner could have anticipated the dangers involved helping students carry a heavy weightlifting bench). Id. at 283-284. No foreseeability analysis was utilized here, because it was foreclosed in Brooks. Rather, appellant argues that training or an alternative van with alternative equipment or alternative work options for Appellant make the incident "undesigned and unexpected." (Aa14). Arguing that this is not a "classic" accident is disingenuous because it is not an "accident" at all. (Ab13).

As applied by the Board and analyzed in the ID, the "undesigned and unexpected" requirement means that the disabling injury must be an unintended consequence that was extraordinary or unusual in common experience. This record demonstrates that this requirement is unsatisfied. The Appellant's knee condition following the incident was a common outcome in ordinary experience after climbing

in and out of a tall van driver door, so it is not "undesigned and unexpected." Appellant's work – climbing into the van - is her "usual work in the usual way" and does not constitute a "traumatic event." It strains credulity to believe that a specific instance of going into the van, as that is such a frequent work activity, constitutes an accident. She did not testify that there was anything unanticipated, extraordinary or unusual about that specific instance. (Aa28). The record that going into the van is so ordinary that it cannot be a "traumatic event." "Berry suffered an injury due to ordinary work effort, which does not meet the Richardson standard. " Ibid.

There is nothing in the liberal construction of the pension statute which applies in this case or pertains to the "undesigned and unexpected" element. (Ab13). Nothing in the ID itself constitutes a "narrow and formalistic understanding" of the "undesigned and unexpected" element. (Ab11).

POINT III

SUBSTANTIAL, CREDIBLE EVIDENCE IN THE WHOLE RECORD SUPPORTS THE BOARD'S DECISION, SO IT IS NOT ARBITRARY OR CAPRICIOUS.

The whole record in this matter is clear and undisputed that appellant's disabling injury from getting into the driver's seat of V1624 did not result from a "traumatic event" because it was not "undesigned and unexpected." Substantial credible evidence supports the Board's conclusion that appellant failed to carry her

burden of proof to satisfy this Richardson element for the "traumatic event" definition. The Board was not arbitrary and capricious in denying AD and adopting the ID.

The Board gave weighty consideration to the facts before it in determining the outcome here. In particular, several factual findings contained in the ID were incorporate into the Board's denial decision by adopting the ID. They provide a clear and reasonable basis for the Board's determination that appellant did not qualify for AD.

In adopting the ID, the Board made no finding that appellant was injured after being subjected to some external force. She did not close the van door on her right knee. The ID concluded that at the time of injury, appellant was engaged in "normal work activity," i.e., getting into the driver's seat of V1624. Aa27. There is no basis now for concluding that the incident was a "traumatic event." Nothing about the denial of AD in the ID results from an overly narrow construction of the "undesigned and unexpected" element in N.J.S.A. 43:16A-7.

Finally, the ID rejected the contention that she was unaware that she would be assigned to V1624 and that was a significant fact for "undesigned and unexpected." Aa28. The ID dismisses the significance of such a random assignment. The unanticipated consequence, appellant's disabling injury, a knee

injury requiring several surgeries, was not unusual in common experience for what she was doing as a rover.

Based on these facts, as well as the other facts contained in the ID, which form the basis for the Board's decision, there is substantial, credible evidence in the record supporting the Board's AD denial. Denial of AD is not arbitrary and capricious or unreasonable and should be sustained on appeal.

CONCLUSION

For these reasons, the Board's denial of AD to Berry should be affirmed and her appeal should be dismissed.

Respectfully submitted,

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