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DAVID DOMBROWSKI

Appellant

v.

POLICE AND FIREMEN'S
RETIREMENT SYSTEM

Respondent

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

ON APPEAL FROM THE FINAL
DECISION OF THE POLICE AND
FIREMEN'S RETIREMENT SYSTEM
BOARD OF TRUSTEES

DOCKET NO.: A-000292-24

**APPELLANT BRIEF ON BEHALF OF APPELLANT DAVID
DOMBROWSKI**

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STATEMENT OF PROCEDURAL HISTORY

Mr. Dombrowski, the petitioner, enrolled in the Police and Firemen's Retirement System ("PFRS") on January 1, 2015. (Pa005). He was hired as a police officer for Bergen County ("County"). Id. On June 9, 2021, Mr. Dombrowski filed an application for accidental disability retirement. Id. On April 11, 2022, the PFRS Board of Trustees ("Board") denied Mr. Dombrowski's application finding that he successfully met all of the qualifications required for accidental disability retirement except for one. (Pa021). The Board granted Mr. Dombrowski ordinary disability benefits on that date. Id. The reason for denying Mr. Dombrowski's application for accidental disability was that it was not "undesigned and unexpected." Id.

On July 11, 2022, the petitioner appeared before the Board and requested that it grant his request for a hearing to appeal the Board's decision, and the Board did so. Id. A hearing was held on March 27, 2023, before the Office of Administrative Law ("OAL"), and, on July 3, 2024, the OAL Court issued an initial decision recommending that the Board's decision be reversed and that Mr. Dombrowski should be granted accidental disability retirement benefits. Id. On June 27, 2023, the OAL court issued its recommendation that the Board's decision be upheld. Id. The Board rejected the OAL court's

recommendation and denied Mr. Dombrowski's appeal. Id. Mr. Dombrowski filed the instant appeal in response. (Pa001-Pa004).

Statement of Facts¹ ²

Prior to his retirement, Officer Dombrowski was employed by the North Arlington Police Department as a police officer for approximately six-and-a-half years. (T1 7:8-15). Officer Dombrowski was a field training officer, an animal protection liaison officer, he did background investigations for firearms, and was a LESO officer for government procurement. (T1 7:16-25). LESO officers pick up government surplus supplies to be used by law enforcement agencies. (T1 34:3-12).

On November 17, 2020, Officer Dombrowski and Officer Fiume, two of the LESO officers for North Arlington Police Department, drove to the Susquehanna Government Procurement site to pick up items that were procured for the North Arlington Police Department's use. (T1 8:3-20). Among the items were carpentry tools, dollies, and garbage cans. (T1 8:23-25; 9:1-3). The officers left at around 5:30 in the morning, drove three to three-and-a-half hours to the site, spent approximately two hours loading the items,

¹ The Office of Administrative Law hearing transcript dated March 27, 2023, will be referred to as "T1."

² Pursuant to Court Rule 2:6, items 12 and 13 of the Statement of Items Comprising the Record have not been included in the Appellant's Appendix due to the prohibition of stenographic transcripts and briefs in appendices.

and then drove another three to three-and-a-half hours back to the North Arlington Police Department, arriving at approximately 5:00 at night. (T1 9:10-15). It was cold, with the temperature being in the twenties. (T1 25:20-22). It was also dark and hard to see. (T1 37:1-12). There were no streetlights and only sporadic lighting in the parking lot where the unloading was taking place. (T1 41:11-17).

The officers were using Officer Dombrowski's father's truck, a black 2013 Ford F-150, model XLT, with a six-and-a-half-foot bed on it. (T1 13:8-25). When they arrived back at the police department, Lieutenant Encarnacao joined them and assisted in unloading the truck. (T1 14:1-15). Officer Dombrowski climbed onto the bed of the truck and was handing items down to Officer Fiume and Lieutenant Encarnacao. (Id.). Officer Dombrowski attempted to slide out a box of carpentry tools and heard a pop in his shoulder. (T1 14:16-18). Because of the darkness, Officer Dombrowski was unable to see what was around the box clearly or if anything was stuck on it. (T1 38:7-17). Even though it hurt, Officer Dombrowski felt compelled to continue unloading the items because the officers were on a deadline. (T1 14:18-23). When he got home, his arm felt "light and feathery" and "almost weak." (T1 15:1-6). The next morning he felt as if "[he] got shot in the arm" and he couldn't lift his arm above his head. (Id.).

Officer Dombrowski notified Lieutenant Gary Edwards of his injury, and Lieutenant Edwards completed a workman's compensation form on Officer Dombrowski's behalf. (T1 15:7-21; Pa033-Pa037). Other than verbally informing Lieutenant Edwards of his personal identifiers and a brief synopsis of the accident, Officer Dombrowski did not have any involvement in completing the form and was not present when it was completed. (T1 15:22-25; 16:1-5). Officer Dombrowski was not shown the report prior to its submission. (T1 16:6-8).

On Question number thirteen on the form (Pa037), Lieutenant Edwards indicated that "item being unloaded became stuck, extra force required to remove said item, officer pulled muscle in left shoulder." (T1 18:9-19). Officer Dombrowski did not give Lieutenant Edwards that language and never told Lieutenant Edwards that he had to use extra force to remove the item. (T1 18:20-24). Officer Dombrowski authored two reports approximately two months after the incident and provided the reports to Lieutenant Edwards. (T1 22:5-16). Lieutenant Edwards had these reports in his possession prior to when he completed the workman's compensation form on Officer Dombrowski's behalf. (T1 22:17-24). Neither report references "using extra effort" to remove the box of carpentry tools. (T1 22:25; 23:1-4).

LEGAL ARGUMENT

POINT I. THE BOARD DECISION REJECTING THE ADMINISTRATIVE LAW JUDGE'S FINDINGS AND RECOMMENDATION WAS ARBITRARY, CAPRICIOUS, UNREASONABLE, AND/OR CONTRARY TO LAW. (Pa005-Pa007)

Courts will reverse the decision of an administrative agency if that decision is arbitrary, capricious, or unreasonable or not supported by substantial credible evidence. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980); St. Vincent's Hospital v. Finley, 154 N.J. Super. 24, 29-30 (App. Div. 1977). The role of appellate review of an administrative agency includes a survey of the record to determine whether there is sufficient competent, credible evidence to support the agency decision, as a whole. See Clowes v. Terminex Inter. Inc. 109 N.J. 575, 587 (1988) and Jamison v. Rockaway Township Board of Education, 242 N.J. Super. 436, 448 (App. Div. 1990). The Court is further empowered to reverse a final decision by an administrative agency if it is arbitrary, capricious and unreasonable. Burris v. Police Department, 338 N.J. Super. 493, 496 (App. Div. 2001).

Because Police and Firemen's Retirement System ("PFRS") Board of Trustees' ("Board") decision was not supported by the record and ignored the standards set forth in this State's laws and jurisprudence as outlined below, its reasoning was arbitrary, capricious, unreasonable, and/or contrary to law.

POINT II. OFFICER DOMBROWSKI'S NOVEMBER 2020 ACCIDENT WAS UNDESIGNED AND UNEXPECTED BECAUSE IT WAS AN ON-DUTY, UNEXEPCTED HAPPENING THAT DIRECTLY CAUSED HIS INJURY. (Pa005-Pa007)

Pursuant to N.J.S.A. 43:16A-7 a police officer seeking accidental disability retirement must show that:

the member is permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of his regular assigned duties and that such disability was not the result of the member's willful negligence and that such member is mentally or physically incapacitated for the performance of his usual duty and of any other available duty in the department which his employer is willing to assign him.

The New Jersey Supreme Court further defined the prongs needed to be met for accidental disability in Richardson v. Board of Trs. 192 N.J. 189 212-13 (2007).

Pursuant to Richardson, the member must show:

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 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.

Id. at 212-13. The Board denied Officer Dombrowski's application for accidental disability retirement based upon its finding that Officer Dombrowski did not meet 2(b) of the above requirements. Thus, the sole issue in this matter is whether Officer Dombrowski's 2020 accident was "undesigned and unexpected." For the reasons set forth below, it was.

The Board contends, in its decision, that "the force of attempting to lift the box was the petitioner's deliberate action" and "it was his decision to continue to attempt to move the box, despite the fact that he found it was stuck." (Pa006). In addition, the Board opined that Mr. Dombrowski "was doing his assigned duty in the usual way" and that using extra effort to do his job should disqualify him from receiving accidental disability benefits. Id. However, this is contrary to N.J.S.A. 43:15A-43 which explicitly states that accidental disability retirement benefits should be granted related to "a traumatic event occurring during voluntary performance of regular or assigned duties." The Board erred when it rejected the Office of Administrative Law ("OAL") findings based upon this reasoning.

As the OAL court correctly found, when the box that Mr. Dombrowski was unloading became stuck, that provided the necessary external force outside of Mr. Dombrowski's own conduct which makes the accident "undesigned and unexpected." (Pa011). The OAL court also correctly found that Mr. Dombrowski did not expect or anticipate the box becoming stuck and, therefore, his accident was neither designed nor expected. Id. The Board thus erred when it determined that Mr. Dombrowski's accident was not a traumatic event because Mr. Dombrowski intended to dislodge the box. (Pa007)

Indeed, the Richardson Court stated 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 a pre-existing disease alone or in combination with work effort." Id. at 212. To illustrate what constitutes a qualifying undesigned and unexpected traumatic event the Court provided examples. "A policeman can be shot while pursuing a suspect; a librarian can be hit by a falling bookshelf while resheling books; a social worker can catch her hand in the car door while transporting a child to court." Id. at 214. If each of these instances illustrate traumatic, undesigned, and unexpected events entitling their claimants to accidental disability benefits, then a law enforcement officer who permanently injures his shoulder while unloading government surplus supplies certainly meets the standard.

In Brooks, a school custodian was injured when he attempted to lift a three-hundred pound machine onto a truck with the assistance of students. Brooks v. Board of Trustees, 425 N.J. Super. 277, 283 (App. Div. 2012). The students lost their grip on their end of the machine, causing the custodian to be injured. Id. The court held that this was “clearly undesigned and unexpected,” and therefore a traumatic event entitling the custodian to accidental disability benefits. Id.

In the present matter, Mr. Dombrowski was unloading heavy military surplus supplies on a very cold, dark night. He injured his shoulder while removing a box of carpentry tools. As in Brooks, Mr. Dombrowski was injured while unloading heavy items. Id. Pursuant to Richardson, no other “x factor” or special circumstances are needed for this type of injury to qualify for accidental disability retirement. 192 N.J. at 212. It just needs to be an “external happening that directly causes an injury.” Id.

The Board’s attempt to distinguish Brooks by opining that while students accidentally dropping one end of a heavy object is outside a member’s control, a box becoming stuck is within a member’s control is completely without merit. Mr. Dombrowski had no way of knowing the box would become stuck, and how and why it became stuck was outside his control. For the Board to suggest that Mr. Dombrowski should have abandoned his job at that point is ludicrous. As

the OAL court correctly found, both students losing their grip on an object and a box becoming stuck qualify as unexpected outside forces for purposes of establishing a traumatic event. (Pa12).

Given the binding case law above, the November, 2020 accident was undesigned and unexpected. As such, the Board's decision was arbitrary, capricious, unreasonable and/or contrary to law and should be reversed.

POINT III. MR. DOMBROWSKI DID NOT INDICATE TO ANYONE THAT HE USED "EXTRA FORCE" TO REMOVE THE BOX, AND THE BOARD'S FINDINGS IN THIS REGARD WERE NONETHELESS IRRELEVANT BECAUSE MR. DOMBROWSKI WOULD STILL QUALIFY FOR ACCIDENTAL DISABILITY RETIREMENT EVEN IF HE DID USE EXTRA FORCE TO DO HIS JOB. (Pa005-Pa007)

After becoming injured, Mr. Dombrowski reported his injury to a superior, Lieutenant Edwards. (T1 18:9-19). Mr. Dombrowski did not tell Lieutenant Edwards that he had used extra effort to remove the box. (T1 18:20-24). Despite this, Lt. Edwards indicated on the form that Mr. Dombrowski had used extra force. (T1 18:9-19). In addition, the two reports authored by Mr. Dombrowski on the subject made no mention of using any extra force to remove the box. (Pa016-Pa017; T1 22:25; 23:1-4). Mr. Dombrowski was not present when the form was completed and did not give any input into the completion of the form. (T1 15:22-25; 16:1-5). Mr. Dombrowski was not shown the form prior to it being submitted. (T1 15:22-25; 16:1-5). Thus, the main reasoning for the

Board's denial of Mr. Dombrowski's application was proven to be untrue at the OAL hearing. Regardless of this, the Board continues to opine that Mr. Dombrowski used "extra force" to remove the box even though the record indicates that he made no mention of using "extra force. (Pa007).

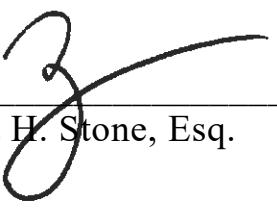
However, even if Mr. Dombrowski had used extra effort to move the box in question, the accident still would have qualified under the Richardson standard. 192 N.J. at 212. Police officers risk being shot while pursuing suspects. Librarians risk injuries surrounding improperly anchored bookshelves. It would negate the purpose of N.J.S.A. 43:15A-43 for the Board to be allowed to deny accidental disability applications simply because an accident was within the scope of job duties. If designed and expected job duties cannot be the subject of accidental disability and doing activities outside the scope of designed and expected job duties makes the accident "off duty," then no one would ever be able to successfully apply for accidental disability retirement, and the purpose of N.J.S.A. 43:15A-43 would be contravened. Richardson is clear on the subject. Designed and expected activities (such as a police officer pursuing a suspect and a librarian reshelfing books) do qualify as potential undesigned and unexpected accidents if accidents surrounding these activities occur. 192 N.J. at 212-13.

It should be also be noted that, even if Officer Dombrowski was using “extra effort” to do his job, that should not be a reason to penalize him and deny him a disability pension for an on-duty injury. Every day, police officers go above and beyond the scope of their duties as first responders. For the pension board to deny Officer Dombrowski accidental disability retirement because he used extra effort to serve his department and the people it protects is not only contrary to law, it is against public policy.

Conclusion

For the foregoing reasons, this Court should reverse the Board’s decision and grant Mr. Dombrowski’s accidental disability retirement application.

Respectfully submitted,
CARUSO SMITH PICINI, P.C.
Attorneys for David Dombrowski



Zinovia H. Stone, Esq.

April 14, 2025



JAMES A. KOMPANY
Chairman

GREGORY PETZOLD
Executive Director

September 16, 2025

Via Electronic Filing

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**Re: David Dombrowski v. Police and Firemen's
Retirement System,
Docket Number: A-00292-24T3**

**On Appeal from a Final Agency Decision of the
Board of Trustees, Police and Firemen's
Retirement System of New Jersey, TYP-05739-22N**

Sat Below: Hon. Jude-Anthony Tiscornia, A.L.J.

Dear Ms. Hanley,

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

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PRELIMINARY STATEMENT

Appellant David Dombrowski (“Appellant” or “Dombrowski”), formerly a police officer for North Arlington Police Department (“NAPD”), improperly tries to reverse a final administrative determination (“FAD”) of the Board of Trustees, Police and Firemen’s Retirement System (“Board” or “Respondent”) denying him Accidental Disability retirement benefits (“AD”) through this appeal. Appellant was injured on November 17, 2021 when he

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unsuccessfully tried to remove a heavy box of tools from the bed of a pick-up truck on a cold dark evening behind the NAPD Headquarters. Appellant received an award of Ordinary Disability retirement benefits (“OD”) from the Board for his left shoulder disability. After a full hearing in the Office of Administrative Law (“OAL”) on March 27, 2023, an Initial Decision dated July 3, 2024 (“ID”), issued finding that Appellant had carried his 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). The Board rejected the ID and adopted an FAD concluding that the incident was not undesigned and unexpected and denying him AD. The Board’s decision should now be affirmed and the appeal dismissed.

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

Appellant began working as a Police Officer for Bergen County in July 2014. (Pa05).² He retired in December 2021, the same date as the start of his OD benefits. Ibid.

About the incident, Dombrowski’s wrote:

On Tuesday, November 17, 2020 at approximately 1730 hours while I was off loading equipment from the back of a pickup truck for the North

¹ Because the Procedural History and Counterstatement of Facts are closely related, they are combined to avoid repetition and for the Court’s convenience.

² “Pa” citations refer to documents in Appellant’s Appendix, previously filed with the Court. Though this pagination does not comply with Court rules, the incorrect pagination in the Appellant’s Appendix is used for the Court’s convenience.

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Arlington Police Department I injured my left shoulder. One of the larger green boxes which contained various carpenter tools became stuck between other large items placed in the back of the truck. As I attempted to pull the large green box I felt a pop in my shoulder blade but did not initially feel pain.³

(Pa017)(the “incident”).

There was a plastic bed liner in the Ford F-150 pickup. (T26:12).⁴ On November 17, 2020, Dombrowski and his partner Police Officer Patrick Fiume drove out and back to the Susquehanna Government Procurement site to pick up surplus for NAPD use. (Pa09). Dombrowski had made prior trips to move equipment with the Ford pickup truck. (T30:9-16).

The ID found that the box was “stuck” when the pickup was being unloaded behind the NAPD headquarters and that the situation constituted a “traumatic event” under Richardson. (Pa012-Pa013). The ID noted that the event in Brooks happened because of the same “unexpected outside force” as this incident. Ibid. The ID recommended that Dombrowski was entitled to AD benefits. Id. The Board rejected the ID and adopted an FAD, based on the full record that was

³ Dombrowski makes no argument that the condition of the bed of the truck contributed to an inability to move the case of tools or to his left shoulder disability. The NAPD was not responsible for and did not control the condition of the bed of the pickup truck because the pickup truck belonged to Dombrowski’s father and was loaned to the NAPD for use that day.

⁴ “T” means the transcript of proceedings in this case dated March 27, 2023.

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available to support the ID. (Pa05-Pa07). The Board found that the incident was unlike the event in the Brooks case. (Pa06). The Board found that the incident was not “undesigned and unexpected” and rejected the ID. (Pa039).

Appellant was performing his ordinary work activities including unloading surplus equipment from a pickup truck at NAPD Headquarters under dark condition in cold weather and Appellant was not injured during a “traumatic event.” (Pa06).

The Board noted that moving the box required “extra force.” Ibid. Lt. Edwards wrote in his incident report “extra force needed to remove said item,” after speaking with Dombrowski. (T18:17-:19). Dombrowski testified he never told Lt. Edwards to write that specific phrase. (T18:22). No evidence about the manner of Lt. Edwards’ preparation of incident reports is in the record, nor did Lt. Edwards testify. Dombrowski argues that it does not matter to the result whether he used “extra force” or not. (Ab10-11).⁵

This appeal followed. (Pa01-Pa04).

ARGUMENT

POINT I

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

⁵ “Ab” means the Appellant’s brief in this matter, previously filed with the Court.

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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.

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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 (the FAD here) 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). Appellant has failed to meet this stringent standard for review of the FAD and reversal of same is not appropriate.

POINT II

THE BOARD CORRECTLY ANALYZED THE LAW AND FACTS AND DETERMINED THAT APPELLANT FAILED TO SATISFY HIS 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 proper application of the “undesigned and

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unexpected" standard. Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 212-13 (2007). Appellant argues that the Board's decision to adopt the FAD was improper because the Board improperly rejected the ID and improperly found that the green box becoming stuck in the pickup truck bed was not a traumatic event." (Ab06, Ab08-09). Richardson specifies a "traumatic event" to be "caused by a circumstance external" to the member. Richardson, 192 N.J. 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. 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). 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).

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The ID cites Brooks v. Bd. of Trs., 425 N.J. Super. 277 (App. Div. 2012) in support of its conclusions. (Pa012). Brooks found that the dropping of the weight bench by the students was an accidental “traumatic event.” Brooks reversed the Board’s final action because the Board adopted a foreseeability analysis to find that the event was not “undesigned and unexpected.” Brooks, 425 N.J. Super. at 284. Specifically, petitioner could have anticipated the dangers involved helping students carry a heavy weightlifting bench and avoided same. Id. at 283-284. No foreseeability analysis was applied here at all. Brooks v. Bd. of Trs., does not support reversal of the FAD. (Pa06-Pa07).

As applied by the Board in its FAD, the “undesigned and unexpected” requirement means that the disabling injury must be an unintended consequence that was extraordinary or unusual in common experience. (Pa07). This record demonstrates that this requirement is unsatisfied here. (Pa06). The Appellant’s left shoulder condition following the incident was a common outcome, an ordinary experience after unloading heavy equipment from the bed of a Ford F-15, XLT model the in cold weather, so it is not “undesigned and unexpected.” Ibid. Appellant’s work – unloading the bed of the Ford pickup truck at the direction of his superior - is his “usual work in the usual way” and does not constitute a “traumatic event.” Id. It strains credulity to believe that a specific instance of moving a box

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that had become stuck, constitutes an accident. He did not establish that anything unanticipated, extraordinary or unusual flowed from the incident.

Dombrowski's case is akin to cases where the mechanism for opening cell doors at a jail facility failed to operate when triggered, causing injury to the corrections officers trying to operate them. Carmichael v. Bd. of Trs., Police and Firemen's Ret. Sys., No. A-2955-12T3, 2014 N.J. Super. Unpub. LEXIS 693, *7-*8 (App. Div. March 28, 2014)(“She testified that she injured her shoulder when the door lever jammed midway through its travel as she was pushing up on it.”)(Central Reception and Assignment Facility)(Ra4-Ra7).⁶ The Appellate Division found that the door mechanism stopped working though Carmichael continued to apply upward force against it. Ibid. “As a rotator cuff injury from pushing against a large lever can hardly be classified as extraordinary or unusual in our common experience, the ALJ was correct that Carmichael did not carry her burden. As the ALJ concluded, Carmichael’s injury was caused by her ordinary work effort, which does not qualify as a traumatic event.” (Ra6-Ra7). No traumatic event occurred.

In Gambatese, the member “tore his rotator cuff while pulling on a door. He realized that the door was not going to open as soon as he pulled it but continued nonetheless. The door did not slam into him or abruptly close on him, it

⁶ “Ra” refers to the documents in the Respondent’s Appendix, filed herewith.

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simply did not open as he continued to apply force against it. The Appellate Division panel affirmed that the event was not undesigned and unexpected.” Gambatese v. Bd. of Trs., No. A-0879-16T4, 2018 N.J. Super. Unpub. LEXIS 1133, *12 (App. Div. May 15, 2018)(Passaic County Jail)(“As a rotator cuff injury from continuously pulling on a heavy steel door can hardly be classified as extraordinary or unusual, the Board was correct in concluding that Gambatese did not carry his burden.”)(Ra12). In each case, where a jail door mechanism failed to operate, the corrections officers filed for AD claiming that that the failure was “undesigned and unexpected.” No traumatic event occurred, however, because the incidents were not “undesigned and unexpected.”

Finally, this appeal is also similar to Van Meter v. Bd. of Trs., No. A-0919-13T4, 2014 N.J. Super. Unpub. LEXIS 2851*5-*6 (App. Div. Dec. 10, 2014)(Ra13-Ra15) in which a correction officer was running in response to an emergency code when he felt a “pop” in his left knee. Id. at *2. The event was not unexpected as the member responded to such emergency calls routinely. (Ra15). In this unreported opinion, the Appellate Division panel affirmed that there was no “traumatic event” and no AD was appropriate. (Ra14-Ra15).

The Court should affirm the Board’s conclusion that it rejected the ID and support the FAD denying AD to Dombrowski.

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POINT III

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

The whole record in this matter is clear and undisputed that Appellant's disabling injury from "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 FAD. In particular, several factual findings contained in the FAD were incorporate into the Board's denial decision. Most facts were not disputed. The box on the bed of the pickup was stuck. Appellant was injured when he attempted to move it. The Board rejected that the stuck box in the pickup was an "unexpected external force" to Appellant, as concluded in the ID. Dombrowski had used the Ford pickup to move equipment previously as part of his job. The incident was not like the event in the Brooks case, cited in the ID, where the sudden loss of half of the support for the weight bench caused the injury to Brooks. To the contrary, the force that Appellant applied to dislodge the box that was all his own. These facts

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provide a clear and reasonable basis for the Board's determination that Appellant did not qualify for AD.

The Board relied on Clayton v. Pub. Employers' Ret. Sys., in which "Petitioner's injury was caused by his ordinary, albeit strenuous, work effort, which does not qualify as a traumatic event." No. A-1098-12T4, 2014 N.J. Super. Unpub. LEXIS 687 (App. Div. Mar. 28, 2014)("While shoveling, petitioner felt a severe pain in his back and legs, which affected his feet.")(Ra1-Ra3). The "undesigned and unexpected" element was not satisfied, as the Appellate Division affirmed in this case. Id. at *8.

Based on these facts, which form the basis for the Board's FAD, there is substantial, credible evidence in the record supporting the Board's AD denial. The decision is not arbitrary or capricious or unreasonable, it is supported by adequate (even ample) evidence, it should be sustained now and this appeal should be dismissed.

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CONCLUSION

For these reasons, the Board's FAD denying AD to Dombrowski should be affirmed and his appeal should be dismissed.

Respectfully submitted,

By: _____ /s/
Thomas R. Hower
Staff Attorney, Police and Firemen's
Retirement System of New Jersey

Respondent's Appendix

c: Lisa Pointer, Board Secretary (via email)
Susan Barrett, Assistant Board Secretary (via email)
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October 1, 2025

Via eCourts

Erica Bliszc, Case Manager
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Richard J. Hughes Justice Complex
P.O. Box 006
25 Market Street
Trenton, New Jersey 08625

Re: David Dombrowski v. Police and Firemen's Retirement System
Docket No.: A-000292-24

Dear Ms. Bliszc:

Please accept this letter brief in lieu of a more formal brief on behalf of the appellant in the above captioned matter in reply to the opposition submitted by the State and the Police and Firemen's Retirement System ("PFRS"). Appellant relies on his procedural history and statement of facts that he submitted in his original brief and appendix.

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LEGAL ARGUMENT

POINT I. A POLICE OFFICER SHOULD NOT BE PUNISHED FOR MAKING EXTRA EFFORT TO FULFIL HIS DUTIES, AND WHILE THE BOARD OPINES EXTENSIVELY ON MR. DOMBROWSKI'S DETERMINATION TO DO HIS JOB, IT FAILS TO INTERPRET THE HOLDINGS IN RICHARDSON AND BROOKS. (Pa 005-007).

Finding no legal basis to support the Board's decision to reject the Office of Administrative Law court's correct conclusion that Mr. Dombrowski was entitled to accidental disability retirement, the Board instead ignores the holdings in Richardson, which explicitly state 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 a pre-existing disease alone or in combination with work effort," and instead inserts its own novel reasoning that Mr. Dombrowski's decision to do his job automatically disqualified him from receiving accidental disability retirement benefits. 192 N.J. at 212. Indeed, pursuant to N.J.S.A. 43:15A-43, accidental disability retirement benefits should be granted related to "a traumatic event occurring during voluntary performance of regular or assigned duties." Thus, the plain language of the statute governing accidental disability retirement benefits requires that such benefits be granted if an accident occurs during the member's "voluntary" duties.

For these reasons, the Board's opinion stating that Mr. Dombrowski should be denied accidental disability retirement benefits simply because he voluntarily unloaded tools from a truck is arbitrary, capricious, and contrary to law. Indeed, under the Board's reasoning, any voluntary action taken by a police officer in the performance of his duties was "designed" and therefore could not be the basis for accidental disability retirement. This is contrary to law.

This Court may owe deference to the Board's factual findings, but it owes no such deference to its legal conclusions, particularly when they are inaccurate. Moran v. Board of Trustees, Police and Firemen's Retirement System, 438 N.J. Super. 346, 352 (App. Div. 2014). In Moran, a firefighter was injured when he heard screams in a building and used his body to force the door open. Id. Based upon this, the Board rejected the Administrative Law Court's recommendation to grant accidental disability retirement benefits and instead opined that the appellant had "intentionally slammed his body against a door to force it open" and that the injury was caused by "ordinary and intended, if dire, work effort." Id.

However, this Court disagreed with the Board and instead held that the Board "misread Richardson, misapplied the statute, and took an unduly narrow view of what constitutes an 'unexpected and undesigned' traumatic event." Id.

at 353. Under these circumstances, the Court held that the Board should have applied the Richardson standard under the “wider lens” used by the Administrative Law Judge. Id. at 354. As this Court correctly found in Moran, a firefighter should not be denied accidental disability retirement benefits because he intentionally broke down a door any more than he should be denied them for intentionally jumping out a window to save himself from a fire. Id. at 354-55. There is thus no basis to deny Mr. Dombrowski accidental disability benefits just because he intentionally attempted to move a heavy box of tools that became stuck.

“The Board, having adopted the ALJ’s factual findings, was obligated to render its legal conclusions based on those findings.” Id. at 355. The only aspect of the record in dispute is the Board’s unsupported notion that Mr. Dombrowski used extra effort to remove the box. While Mr. Dombrowski asserts that the only mention of this was in a form completed by another officer, who did not witness the event, and without Mr. Dombrowski’s input, the fact remains that Mr. Dombrowski became totally and permanently disabled while performing his duties whether he made extra effort to remove the box or not. The event was unexpected and undesigned under every legal definition of that terminology. Thus, the Board’s reasoning in this regard is unsound. The Board is denying Mr. Dombrowski benefits because he

attempted to complete his duty. Even if he did use extra effort to remove the box of tools, that should not be a basis to deny him benefits. Every day first responders go above and beyond their duties to serve our State, and it would be against public policy to deny them accidental disability retirement benefits for doing so.

In addition, the Board's reliance on Russo v. Teachers' Pension and Annuity Fund is misplaced. The appellant in that matter was a janitor who died of a heart attack while performing light janitorial duties. 62 N.J. 142, 145 (1973). The appellant had suffered two prior, serious heart attacks and was only able to perform sedentary work due to his heart disease. Id. Based upon this, the Court found that the appellant's work did not contribute significantly to his death. Id. The holding in Russo was based entirely upon cases where an applicant has died on duty due to some form of heart problem. Id. at 154.

Indeed, the entire holding, which the Board conveniently left out of its brief is that “[i]njury by ordinary work effort or strain to a ***diseased heart***, although unexpected by the individual inflicted, 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.” Id. Thus, the holding in Russo was about the

petitioner having preexisting disease, and not about whether the accident was undesigned and unexpected. Id. It should be noted that the definitions of “accidental” for pension purposes were later superseded by Richardson and other related cases.

The Board also gave a misleading interpretation of the Richardson definition of what constitutes a qualifying accident. The quotation given by the Board at page 201 of the decision was the Court quoting the Supreme Court decision in Russo which the Richardson Court ultimately overturned. (See Page 8 of Respondent Brief). Indeed, the Richardson Court held that an ordinary accident occurring in the ordinary way could be “undesigned and unexpected” for purposes of an accidental disability retirement application as long as it was “an unexpected external happening that directly causes injury and is not the result of a pre-existing disease alone or in combination with work effort.” 192 N.J. at 212. Thus, the Board’s argument that Richardson supports the notion that the accident had to be extraordinary or unusual in some way is completely without merit as is its reliance on cases that were overturned by Richardson and subsequent case law. Again, the Board’s arguments that the accident had to have been “an unintended consequence that was extraordinary or unusual in common experience” and that doing “usual

work in the usual way does not constitute a traumatic event” are unsupported by law and were taken from cases that were overturned, not relevant, or both.

Additionally, while the Board complains that Brooks v. Bd. of Trs. does not apply because the Board purportedly did not apply a “foreseeability” standard to the decision on appeal, the Court in Brooks also held that “the fact that an employee’s simple negligence may have been a contributing cause of an accident is not disqualifying.” 425 N.J. Super. 277, 284 (App. Div. 2012). While the Board did not apply a foreseeability standard to this application, it did opine that Mr. Dombrowski should have walked away from the box and thus alleged that he was negligent in attempting to remove the box from the truck. (Pa 006). This is despite the fact that it had previously found that Mr. Dombrowski was not negligent in his actions. Id. However, all that Mr. Dombrowski had to show was that he “suffered a total and permanent disabling injury ‘as a direct result of an identifiable, unanticipated mishap’” regardless of whether “the employee’s conduct may have contributed to that mishap.” Brooks, 425 N.J. Super. at 284-85. Because Mr. Dombrowski has shown that he was injured in an identifiable, unanticipated mishap (he injured his shoulder while moving a box that was stuck), his accident was undesigned and unexpected. Id.

With respect to the unpublished cases cited by the Board as to its notion that ordinary work done in the usual way cannot be deemed to be undesigned and unexpected for accidental disability retirement purposes, it should be noted that each of these cases can be distinguished. Clayton v. Public Emples. Ret. Sys. involved an employee who was injured while shoveling snow. 2014 N.J. Super. Unpub. LEXIS 1 (App. Div. 2014). While this Court denied accidental disability retirement benefits in that case, the employee there did not experience an accident. Instead, the general act of shoveling snow caused him to be injured. Id.; (Ra 1-2). This was also the case in Vanmeter v. Bd. of Trs. in which the appellant was hurt during the general act of running. 2014 N.J. Super. Unpub. 1, 5-6 (App. Div. 2014); (Ra 14-15). Conversely, Mr. Dombrowski experienced an accident when the box he was attempting to move became stuck.

In Carmichael v. Bd. of Trs., Police and Firemen's Ret. Sys., this Court specifically found that a traumatic event can result from ordinary work being done. 2014 N.J. Super. Unpub. 1, 7 (App. Div. 2014); (Ra 6). Regardless, the petitioner in that case continued to push up on a lever after it was clear that the lever had stopped moving. Id. Conversely, Mr. Dombrowski made a single effort to dislodge a box of tools that was stuck. Nothing within the record shows that Mr. Dombrowski continued to pull on the box of tools after his

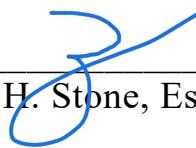
initial attempt. It was also reasonable for him to make a single attempt to determine whether the box was moveable. Thus, the present matter is distinguishable from Carmichael. This is also the case in Gambatese v. Bd. of Trs. in which the appellant hurt himself repeatedly pulling on a door that was already open. 2018 N.J. Super. Unpub. 1, 11 (App. Div. 2018). The Gambatese Court also held that a traumatic event can result from ordinary work being done. Id.; (Ra 12). Unlike the appellant in Gambatese, Mr. Dombrowski made a single attempt to move the stuck box of tools and was injured doing so.

Finally, with respect to the Board's contention that the Board gave "weighty" consideration to the cases in the initial decision, the Board baldly stated that the cases cited were distinguishable without actually explaining how in any significant way. This Court should reverse an agency decision when it is not based on credible evidence and reasoning. Clowes v. Terminex Inter. Inc. 109 N.J. 575, 587 (1988); Jamison v. Rockaway Township Board of Education, 242 N.J. Super. 436, 448 (App. Div. 1990). Because the Board failed to do so, its decision to deny Mr. Dombrowski accidental retirement benefits should be reversed.

Conclusion

For the foregoing reasons, this Court should reverse the Board's decision and grant Mr. Dombrowski's accidental disability retirement application.

Respectfully submitted,
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Attorneys for David Dombrowski


Zinovia H. Stone, Esq.

October 1, 2025