

SUPERIOR COURT OF NEW  
JERSEY APPELLATE DIVISION  
DOCKET NO.: A-000643-22 T2

JASON SHARP,

Civil Action

Appellant,

On Appeal from

V.

DEPARTMENT OF THE TREASURY,  
POLICE AND FIREMEN'S  
RETIREMENT SYSTEM

Initial Decision dated  
July 20, 2022 under OAL  
Docket No. TYP-05927-21  
and upheld by The Board of  
Trustees of the Police and  
Firemen's Retirement System  
on September 16, 2022

Respondent.

Sat below:

Hon. Edward J. Delanoy, ALJ

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**Brief and Appendix  
of Appellant  
Jason Sharp**

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              Before Honorable Edward J. Delanoy, Jr., A.L.J.

### PRELIMINARY STATEMENT

Officer Jason Sharp should be granted his Accidental Disability Pension Benefits because the incident which occurred on May 25, 2019 was “undesigned and unexpected” satisfying all of 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). Officer Sharp’s disability was caused as a result of a series of unanticipated events.

The heart of the inquiry is whether, during the regular performance of his job, an unexpected happening has occurred which directly resulted in the permanent and total disability of the member. Richardson, Supra, 192 N.J. at 213-14. Here, the Board of Trustees, Police and Firemen’s Retirement System (PFRS) decision misinterpreted the law, misapplied the legislative intent, and too narrowly construed the “undesigned and unexpected” definition, and therefore, this Court owes no discretion to the Administrative Agency and must overturn the Board’s decision and grant Officer Sharp his Accidental Disability Pension.



### **PROCEDURAL HISTORY**

On April 30, 2020, Officer Sharp applied for Accidental Disability Pension benefits as a result of a May 25, 2019 work related injury. (Aa1-Aa3). The Board denied Officer Sharp's application for accidental disability retirement benefits at its meeting on May 10, 2021, predicated on its determination that the incident described as occurring on May 25, 2019, was not undesigned and unexpected. (Aa4-Aa6). The Board did determine that the incident was identifiable as to time and place, was not a result of Officer Sharp's willful negligence, and that Officer Sharp was totally and permanently disabled from the performance of his regular and assigned job duties. Accordingly, the Board granted Officer Sharp ordinary disability retirement benefits. (Aa4-Aa6). Officer Sharp filed an appeal, and the Board transmitted the matter to the Office of Administrative Law (OAL), where it was heard on June 7, 2022. On July 20, 2022, Judge Delanoy, Jr. denied Officer Sharp his Accidental Disability Pension benefits opining that the incident in question was not Undesigned and Unexpected. (Aa7-Aa17). On September 16, 2022, the Board upheld the judge's decision. (Aa18). A Notice to Appeal and Case Information Statement were filed on September 16, 2022 (Aa19-Aa25) and this appeal commenced.

### STATEMENT OF FACTS

Officer Sharp was hired by the Camden County Department of Corrections as a Corrections Officer in 2003. (Aa26-Aa30). Officer Sharp was employed at Camden County Correctional Facility. (1T10:11-16). He worked at the Facility his entire seventeen-year career, until May 1, 2020, his retirement date. (Aa4-Aa6.)

Officer Sharp went to the Corrections Academy before he commenced employment. (1T27:1-2). There, he received the appropriate training in defensive skills, communications, firearms, and fitness. (1T27:5-11). At the Academy, defensive tactics were taught, including self-defense, arm bars and defensive holds. (1T27:15-20). He approximated that he had restrained hundreds of prisoners over the course of his career. Officer Sharp agreed that part of his work-related duties included physically restraining inmates when necessary to prevent injuries and maintain security. (Aa26-Aa30).

On May 25, 2019, Officer Sharp was performing his regularly assigned duties on his shift at the Facility. He was working in the special-needs area of the Facility. (1T12:7-16). At the time, his assignment was to serve meals to the prisoners. Officer Sharp was working with two other officers, including his sergeant. (Aa31-Aa37).

The officers arrived at one cell where they noticed that the inmate was aggravated. (1T17:21-25). Because the prisoner was in an aggravated state, they attempted to pass the prisoner's food through the small pass-through door of the cell door. However, the pass-through door wouldn't open. (1T20:17-21). Officer Sharp was holding ten Styrofoam trays of food, five in each hand, at the time. Officer Sharp's sergeant had the keys to the pass-through door. She tried to open the pass-through door, but it would not open. The sergeant decided to open the cell

door to deliver the food to the prisoner. Officer Sharp testified that proper protocol would have been to call for a back-up or reaction team to assist in the procedure. The back-up team would typically consist of four to five additional officers who are prepared and protected with the necessary proper equipment to go into a cell. On that day, the sergeant did not call for the reaction team, she opened the cell door, and the inmate came charging out of the cell. (1T21:11-19). The three officers tried to push the inmate back into the cell. As they attempted to close the cell door, the cell door was in the locked open position, so that when they attempted to close the door, it bounced open, and the inmate charged back out of the cell a second time. (1T21:20-25). Officer Sharp dropped his food trays and a struggle with the inmate ensued outside the cell. (1T22:5-8). The prisoner was brought to the ground, and Officer Sharp attempted to pin one of his arms. In attempting to restrain the prisoner, the sergeant sprayed the prisoner, and the prisoner jerked and tensed up, attempting to pull his hands up to cover his face. (1T22:13-25). At that time, Officer Sharp heard and felt a pop in his left shoulder. He held onto the prisoner until responding officers arrived. Officer Sharp received treatment for his shoulder, but never returned to work.

Officer Sharp believed that his disability was caused by the pass-through door malfunction, as well as by the latching issue with the cell door. He also believed the sergeant was responsible for not calling for back-up prior to entering the cell.



## 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. Uteley 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 Delanoy’s narrow construction and misinterpretation 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 clear legislative intent as well as the case law specifically 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 SHARP IS NOT ENTITLED TO AN ACCIDENTAL DISABILITY PENSION BECAUSE THE INCIDENT CAUSING HIS DISABILITY WAS UNDESIGNED AND UNEXPECTED. (Aa1-Aa3); (Aa31-Aa37)**

The pivotal legal issue before the Court is whether or not the May 25, 2019 incident was an "undesigned and unexpected" event. This requirement is an element of eligibility as set forth in the Supreme Court's seminal opinion in 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). 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 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.

In Richardson, the corrections officer 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."

As a consequence, there are two basic types of external events, either an unintended external event or an unanticipated consequence of an intended external event if that consequence is extraordinary or unusual in common experience. In the former, the happening of the event is undesigned and unexpected, while in the latter, it is the consequence of the event which is undesigned and unexpected. In either case, however, the external event must occur during and as a result of the performance of the regular or assigned duties.

The Court provided in Richardson the following examples of the kinds of accidents occurring during ordinary work efforts that would qualify for accidental disability retirement benefits: "A policeman can be shot while pursuing a suspect; a librarian can be hit by a falling bookshelf while re-shelving books; a social worker can catch her hand in the car door while transporting a child to court." Ibid.

The Court also provided counter-examples of situations that would not qualify for these benefits under a certain set of facts but would qualify under a different set of facts. For example, a police officer who has a heart attack while chasing a suspect would not qualify because "work effort, alone or in combination with pre-existing disease, was the cause of the injury." *Id.* at 213.

However, the Court explained that "the same police officer [who was] permanently and totally disabled during the chase because of a fall, has suffered a traumatic event." *Ibid.* (emphasis added). Likewise, a gym teacher who develops arthritis "from repetitive effects of his work over the years" would not qualify as suffering a traumatic event; however, if the same gym teacher trips over a riser and is injured, that injury would satisfy the standard. *Ibid.* Published decisions have illustratively applied this "undesigned and unexpected" legal standard. For example, in Moran v. Board of Trustees, Police & Firemen's Retirement System, 438 N.J. Super. 346, 348 (App. Div. 2014), the Court reversed the Board's determination and held that a firefighter who suffered a disabling injury while kicking down the door of a burning building because the tools normally used by firefighters to break down doors had not yet arrived was an "undesigned and unexpected" event.

Mr. Moran was a firefighter who but for the sudden and emergent circumstance of having to enter a burning building which was initially thought to be vacant but was



not sustained injuries when he was forced to break in a door as part of his job duties.

The Board in Moran held that the kicking in a door or intentionally using one's back to gain entry did not constitute an unexpected happening and that the job duties included rescuing people and hence Moran performed "a duty within the scope and performance of his regular duties for which he had been specifically trained." The Moran Court held that the Board misconstrued Richardson and reached a result at odds with the legislative intent in adopting the "traumatic event" standard. The Court upheld the ALJ stating "the traumatic event must be viewed with a wider lens than the one the Board applied. The undesigned and unexpected event here was the combination of unusual circumstances that led to Moran's injury. Had he not responded immediately to break down the door, the victims would have died." "While this was not the classic "accident" in the sense that the house did not collapse on Moran, nor did he trip while carrying a fire house, it was clearly an undersigned and unexpected traumatic event."

Similarly, in Brooks v. Board of Trustees, Public Employees' Retirement System, 425 N.J. Super. 277, 279 (App. Div. 2012), the Court reversed another pension agency's denial of accidental disability retirement benefits to a school custodian who injured his shoulder moving a 300 pound weight bench into the school. The Court found the custodian's accident was clearly "undesigned and unexpected" because he had been confronted with an unusual situation of students

attempting to carry the heavy bench into the school, took charge of the activity, and the students suddenly dropped their side of the bench, placing its entire weight on the custodian. Id. at 283.

Judge Delanoy's decision and the Board's upholding that decision, was based on a conclusion that Officer Sharp was performing his usual work in the usual way. (Aa15). 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 cannot occur during "normal activity of the corrections officers job duties," (Aa14) because indeed it can and did here.

In Russo, the Court held "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." Judge Delanoy opined that the incident was not undesigned and unexpected because "Interactions with unruly inmates do occur in prison settings and can reasonably be expected. The determinative factor should be that an inmate attack occurred, and according to Officer Sharp's own experience and testimony, such an occurrence is not undesigned and unexpected in a prison setting. The possibility of engaging with an unruly inmate should and could have been considered to be an event that might occur." (Aa15).

Judge Delanoy and the Board completely miss two very important factors which create the undesigned and unexpected situation. First, the sergeant didn't follow proper protocol. There is no reason for Officer Sharp to have believed that his superior would not follow proper procedure, and as a consequence the inmate was able to get out causing the incident to occur. Second, the food port door didn't work. There was no reason for Officer Sharp to think it was broken or needed repair, and if it had worked the altercation wouldn't have happened.

If Judge Delanoy's analysis is accepted than no Corrections Officer need apply for Accidental Disability Pension benefits as every scenario should be anticipated inside a jail facility, and no one would be eligible for Accidental Disability Pension benefits.

This Court only need look to the plain language in Richardson. I suspect if Officer Richardson's case had been before Judge Delanoy he would have been denied his benefits. However, the New Jersey Supreme Court opined that the altercation with the inmate inside a facility was sufficient to establish an unexpected event. This case mirrors both Richardson and Moran.

The inquiry is not whether there was an unexpected happening. The inquiry per Russo, supra, 62 N.J. at 152, should have been, was there an unintended external event or an intended external event the consequence of which was unusual in common experience. In this case, there was an intended external event, Officer



Sharp having been injured in an altercation which if proper protocols were followed or the equipment had worked never would have happened shouldn't be punished by the restrictive interpretation of Judge Delanoy finding that the altercation should be anticipated, and therefore, it cant be undesigned or unexpected. Absent evidence of known prior malfunctions, employees reasonably should be able to expect that equipment supplied to them in the workplace will operate properly and not injure them. That should be especially true in a jail or prison environment where safety and security concerns are elevated. The circumstances here meet the eligibility requirements of Richardson, and therefore the Board's decision should be overturned.

### CONCLUSION

For the foregoing reasons, the Board's denial of Officer Sharp's Accidental Disability Pension benefits should be overturned as it misinterprets Richardson, misapplied the legislative intent, and inappropriately narrowly construed the pension statute. Officer Sharp satisfied all of the Richardson requirements by demonstrating that the May 25, 2019, incident was undesigned and unexpected enabling this Court to overturn the Board's decision and grant him Accidental Disability Pension Benefits.

Respectfully Submitted,

  
Samuel M. Gaylord, Esq.

Dated: October 12, 2023



PHILIP D. MURPHY  
*Governor*

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March 27, 2024

**Via Electronic Filing**

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Attention: Jill Costigan – Case Manager

**Re: Jason Sharp v. Board of Trustees,  
Police and Firemen's Retirement System of NJ,  
Docket Number: A-00643-22T02**

**On appeal from the Final Agency Decision of the  
Board of Trustees of the Police and Firemen's  
Retirement System of New Jersey**

**Sat Below: Hon. Edward J. Delanoy, A.L.J.**

Dear Mr. Orlando,

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.

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**PRELIMINARY STATEMENT**

Appellant Jason Sharp (“Sharp” or “Appellant”), former employee of the Camden County Department of Corrections (“CCDOC”), improperly tries to reverse a decision of the Board of Trustees, Police and Firemen’s Retirement System of New Jersey (the “Board” or “Respondent”) denying him Accidental Disability retirement benefits (“AD”) on appeal. While working in the Camden County Correctional Facility (“CCCF”), Sharp was injured during an assault by an aggressive inmate who got out of his cell. Sharp applied for AD as a result of his injury and he received an award of Ordinary Disability retirement benefits (“OD”). After a full hearing in the Office of Administrative Law (“OAL”) on June 7, 2022.

An Initial Decision, dated July 20, 2022 (“ID”), found that Sharp had failed to carry 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 adopted the ID and denied AD to Sharp. (Aa18).<sup>1</sup> This appeal followed.

The full record, developed at hearing, contains sufficient and substantial credible evidence to support the Board’s decision to deny AD to Sharp and to adopt the ID.<sup>2</sup> Sharp was injured performing his usual job duties in the usual way and the disability was not a result of an “unexpected happening” during that work. Sharp’s attempt to expand the facts of his incident to include facts regarding his sergeant’s actions are misplaced. Respondent’s denial decision, based on the ID, should be affirmed and this appeal dismissed.

### **PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS**<sup>3</sup>

Sharp worked as a county correctional police officer with the CCDOC for 17 and about one-half years, until he retired in 2020. (Aa26). Sharp filed for AD after a May 25, 2019 injury, alleging a left shoulder injury resulting from the

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<sup>1</sup> “Aa” citations refer to documents in Sharp’s Appendix, previously filed with the court.

<sup>2</sup> John Monahan, Esq. represented PFRSNJ during the hearing on this case.

<sup>3</sup> Because the Procedural History and Counterstatement of Facts are closely related, they are combined to avoid repetition and for the Court’s convenience.

incident and on May 10, 2021, the Board granted him OD. (Aa4-6). A hearing was held on June 7, 2022. (T<sup>4</sup> Aa8).

On May 25, 2019, Sharp and his sergeant were feeding inmates in the CCCF and they were outside the cell of an aggravated inmate. (Aa9). Sharp was carrying several Styrofoam trays of food when the food pass-through door for that cell would not open. Ibid. The sergeant had the keys to the pass-through door and she tried to open the pass-through door, but it would not open. Id. The sergeant then decided to open the cell door itself, permitting the aggravated inmate to come through the cell door and attack Sharp, resulting in injury to his left shoulder. Id. The sergeant did not call for a back-up team before doing so. Id. The sergeant opened the cell door and the aggravated inmate charged out of the cell. Id. Three other officers attempted to push the inmate back into his cell but the cell door was locked while it was in the open position. Id. The inmate came out of the cell again. Id. Sharp dropped the food trays and struggled with the inmate, bringing him to the ground. Sharp was on the inmate's right side with his left hand on the inmate right wrist and the inmate was lying on the ground with his hands underneath him. (T30:9-31:13). The sergeant sprayed the inmate with OC spray, causing the inmate to jerk and tense up, attempting to cover his face with his hands. (Aa9-10). At that

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<sup>4</sup> "T" refers to transcript of hearing in this case dated June 7, 2022, previously filed with the Court.

point, Sharp felt a “pop” in his left shoulder (the “incident”). (Aa10). He was medically treated and never returned to work. Ibid.

The record states that Sharp’s job duties for the CCDOC stated he must “[m]aintain care, custody and control of inmates in accordance with established policies, rules, regulations and procedures.” (Aa26-27). Job duties also require that he “[p]hysically restrain[] inmates when necessary, to prevent injuries and maintain security.” Ibid. Sharp credibly testified as the only witness and his testimony supported the fact-findings. (Aa8, T).

In the ID, Sharp was denied AD because he failed to carry his burden of proof, i.e., he was not injured as a result of a “traumatic event” because the incident was not “undesigned and unexpected.” (Aa15). The ID applied the “undesigned and unexpected” element of the “traumatic event” definition developed after Richardson v. Police and Firemen’s Ret. Sys. Bd. of Trs., 192 N.J. 189, 212, 214 (2007) and Brooks v. Bd. of Trs., Pub. Employees’ Ret. Sys., 425 N.J. Super. 277 (App. Div. 2012) from these facts. (Aa11-13). The ID distinguished the facts that are part of the application from the “unusual situation” described in Brooks. (Aa13). The ID found that the incident was not an “unexpected happening” as defined in Richardson, 192 N.J. at 214, because it was specified in Sharp’s job duties, the incident occurred during the performance of those duties and there was no evidence that an “unexpected happening” occurred. (Aa15). The ID separated the



three unexpected issues raised by Sharp: (1) the pass-through door, (2) the cell door bouncing back because it was in the lock position, and (3) the sergeant's failure to follow protocol and call for back-up prior to entering the cell at all from the assault itself. (Aa13). "They [the three events] were simply events that led up to the interactions with the attacking inmate." (Aa14). The ID concluded "[Sharp] was employed at a corrections facility, and it is reasonable to believe that an inmate would lash out, be involved in altercations, and that [Sharp] would have to intervene." Ibid. By adopting the ID, the Board adopted these facts. (Aa17).

This appeal followed, Aa19-24, and Sharp takes issue with the Board's decision that he failed to satisfy the "undesigned and unexpected" element of Richardson. (Aa18).

## **ARGUMENT**

### **POINT I**

#### **SHARP HAS FAILED TO SATISFY THE STRIDENT REVIEW STANDARD FOR APPEALING THE BOARD'S DENIAL DECISION.**

The appellate standard of review from the Board's denial decision by this court is very 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 (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 whole 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). There is no issue of strictly legal interpretation in this case. Sharp has failed to meet this stringent review standard.

## POINT II

### **THE BOARD CORRECTLY ANALYZED THE LAW AND FACTS AND DETERMINED THAT SHARP FAILED TO SATISFY HIS BURDEN OF PROOF THAT THE INCIDENT WAS UNDESIGNED AND UNEXPECTED.**

The Board’s legal analysis starts by answering whether the incident was a “traumatic event” by applying the “undesigned and unexpected” definition. Richardson v. Bd. of Trs., Police & Firemen’s Ret. Sys., 192 N.J. 189, 212-13 (2007). To establish whether the incident that caused the disabling injury was a “traumatic event,” a member like Sharp must show that the incident is, among other things, “undesigned and unexpected.” Ibid. The ID noted the Richardson argument that to be “undesigned and unexpected” facts must be found that “during the regular performance of [appellant’s] job, an unexpected happening, not the result of pre-existing disease alone or in combination with the work, has occurred . . . .” Id. at 214. Because the incident occurred during the performance of Sharp’s job duties,

which were regularly (if not frequently) performed by him, this record amply supports that there was no “unexpected happening” and it was not “undesigned and unexpected.” (Aa11).

Appellant also makes another argument, Ab9,<sup>5</sup> based in Richardson, citing Russo v. Teacher’s Pension & Annuity Fund, 62 N.J. 142 (1973), that explains there are two types of “accidents”: 1) “an unintended external event” or 2) “an unanticipated consequence of an intended external event if that consequence is extraordinary or unusual in common experience.” Richardson, 192 N.J. at 201.<sup>6</sup> In the first class of accidents, the happening of the event is “undesigned and unexpected.” In the second class of accidents, the consequence of the event is “undesigned and unexpected.” Ibid. In both cases, the external event must occur during and as a result of the performance of regular or assigned duties. Id.

In the second class of accidents, one looks to the consequence of the intended event and whether that consequence is unusual or extraordinary or not. Id. Under Russo, 62 N.J. at 154 and Cattani v. Bd. of Trs., Police & Firemen’s Ret. Sys., 69 N.J. 578, 581 (1976), as reaffirmed by Richardson, a heart attack after heavy or light work effort, is an example of a consequence of an intended external event that is excluded because its occurrence is not an extraordinary or unusual consequence

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<sup>5</sup> “Ab” citations refer to Sharp’s merits brief, previously filed with the Court.

<sup>6</sup> While this analysis was not applied in the ID, it is argued in Appellant’s brief, Ab9, and is addressed here therefore.

in common experience. Cattani v. Bd. of Trs., Police & Firemen's Ret. Sys., 69 N.J. 578, 581 (1976); Richardson, 192 N.J. at 201-203. A fireman's strenuous work effort in dragging heavy hoses without adequate manpower to assist, was not a traumatic event. Cattani, 69 N.J. at 586. In Russo, a school custodian with advanced heart disease suffered a heart attack at work. 62 N.J. at 145. He was doing "his usual work in the usual way" and no traumatic event occurred. 62 N.J. at 154.

This requirement means that the disabling injury must be an unintended consequence that was extraordinary or unusual in common experience. The petitioner must establish that the disabling injury must be an unanticipated consequence that was extraordinary or unusual in common experience. Sharp's disabling shoulder injury, after restraining an aggressive inmate, was not unusual in common experience.

Richardson is dissimilar and does not dictate a reversal here, despite Sharp's argument. (Ab8). Nothing in this record amounts to "kicking, punching and throwing his body around" regarding the aggressive inmate. 192 N.J. at 193. In Richardson, Corrections Officer Richardson "straddled" the inmate while the inmate continued kicking, punching and throwing his body around. Ibid. Richardson was knocked backward onto his left hand, which hyper-extended his wrist on the facility's floor. Id. Nothing in the ID can be described or imagined to resemble the Richardson facts. Richardson is distinguishable because there was no aspect of the

altercation between Sharp and the inmate where Sharp was bucked backwards to the prison floor onto his left shoulder. Id. There is no automatic equation of a disabling injury and a “traumatic event” that entitles a member to AD. Here, Sharp was performing his job duties, and nothing external, i.e., some aspect of the facility or another person, intervened to cause his disability.

There is no basis to join or engraft the sergeant’s actions regarding the keys for the food port door or the cell door itself, onto the aggressive inmate’s actions being restrained by Sharp, to satisfy the case law requirements under N.J.S.A. 43:15A-7. Under the ID, Sharp’s AD claim relates only to the shoulder injury that he sustained as part of restraining the inmate. There is no basis at law to add the actions of other officers to create a “unexpected happening” like a patchwork quilt. Practically, once started, there is no way to limit such “logical” fact-extensions, in an attempt to meet the standard. This is the conclusion in the ID and is supported by the record and should be affirmed. (Aa13-15) (“They were simply events that led up to the interaction with the attacking inmate.”).

Sharp’s argument that the ID is actually based on the foreseeability of all the conduct inside a facility is also misplaced. (Ab13). Sharp’s suggestion that no corrections officer need apply for AD in light of the ID is incorrect. Ibid. The logic of the denial decision is not based on the foreseeability of an inmate attack.



The line drawn in the ID between the facts of the incident, excluding the extraneous acts and actions, was properly supported.

The law and the evidence in the record as a whole do not support that any line-of-duty accident automatically entitles the victim to AD. N.J.S.A. 43:16A-7 cannot be interpreted to mean that participating in any incident with a resulting disabling injury produces AD. The opposite is the applicable interpretation, *i.e.*, that N.J.S.A. 43:16A-7 was intended to narrow the universe of circumstances resulting in AD benefits. *See Cattani*, 69 N.J. at 584 (quoting *Russo v. Teachers' Pen. & Annuity Fund*, 62 N.J. 142, 151 (1973)); N.J.S.A. 43:16A-7 (purpose of amendment at L.1964, c.242, §2 in 1964 was to make the granting of AD more difficult).

Neither *Moran* nor *Brooks* support the conclusion that this incident was “undesigned and unexpected.” As with *Richardson*, the factual dissimilarities prevent them from controlling this result. In *Moran v. Bd. of Trs., Police & Firemen's Ret. Sys.*, a firefighter's case was found undesigned and unexpected, where a firefighter was confronted by a 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. 346, 354 (App. Div. 2014).<sup>7</sup> *Moran* injured himself by manually breaking into the building to save them. *Id.* Similarly, *Brooks* was found to be undesigned and

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<sup>7</sup> *Moran v. Bd. of Trs., Police and Firemen's Ret. Sys.*, 438 N.J. Super. 346, 354 (App. Div. 2014) was not utilized in the ID, but is argued in Sharp's brief so it is addressed herein.

unexpected because a maintenance worker, moving a 300 pound weight bench with a group of students, became disabled when the students suddenly dropped their end of the weight bench, leaving Brooks alone to hold it. Brooks v. Bd. of Trs., Public Employees. Ret. Sys., 425 N.J. Super. 227, 283-84 (App. Div. 2012). (Aa13). Neither case illustrates anything about the incident here and does not support reversal.

### **POINT III**

#### **SUBSTANTIAL, CREDIBLE EVIDENCE IN THE WHOLE RECORD SUPPORTS THE BOARD'S DENIAL DECISION, SO IT IS NEITHER ARBITRARY NOR CAPRICIOUS.**

The whole record in this matter is clear and undisputed that Sharp's disabling injury resulted from restraining an inmate in the CCCF did not result from a "traumatic event" because it was not "undesigned and unexpected." Substantial, credible evidence supports the Board's conclusion that Sharp failed to carry his burden of proof to satisfy the Richardson element for the "traumatic event" definition. The Board was neither arbitrary nor capricious in denying AD, and adopting the ID.

The Board gave weighty consideration to the facts before it in determining the outcome of this case. In particular, several factual findings contained in the ID were incorporate into the Board's denial decision, adopting the

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

First, the record indicates that Sharp had extensive experience in altercations with aggressive inmates. He was academy-trained in restraint. (Aa14). Sharp worked for many years for the CCDOC. Ibid. He estimated that he had hundreds of encounters with inmates over his many years of service. Id. He also had much subsequent employment training and on the job experience. Id. Second, it was clear that Sharp's restraining of the inmate was a part of his normal work duties. Id. The county correctional police officer job duties clearly dictate such work. (Aa26). Maintaining care custody and control of the inmates, is also an express feature of the police officers' job duties. Ibid. The record also supports that an injury following retraining an inmate is not an unusual occurrence in common experience for a county correctional police officer.

The ID does not apply an overly-narrow statutory interpretation of the "undesigned and unexpected" requirement either. Rather, the ID properly separates and evaluates the proximate facts of the incident from other facts regarding irrelevant acts and actors. The undesigned and unexpected requirement is not satisfied; there was no "unexpected happening." Sharp was not punished by the ID, which is based on Sharp's own testimony. (Ab14). The Board's adoption of the ID is proper.

Because of 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 denial. The record supports that the consequences of the incident, i.e., Sharp's shoulder injury, was not extraordinary in common experience. It supports the Board's finding that Sharp's shoulder injury was not the result of an "unexpected happening". It is neither arbitrary nor capricious, there is no basis for reversal and the Board's denial decision should be sustained and this appeal dismissed.

### **CONCLUSION**

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

Respectfully submitted,

Police and Firemen's Retirement  
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