

SUPERIOR COURT OF NEW
JERSEY APPELLATE DIVISION
DOCKET NO.: A-000809-23T4

LOBO ANDREWS,

Civil Action

Appellant,

On Appeal from

V.

BOARD OF TRUSTEES,
PUBLIC EMPLOYEES'
RETIREMENT SYSTEM

Initial Decision dated
August 30, 2023, under OAL
Docket No. TYP-11505-2019S and
upheld by The Board of Trustees,
Public Employees' Retirement
System on October 19, 2023

Respondent.

Sat below:

Hon. Jeffrey N. Rabin, ALJ

**Brief and Appendix
of Appellant
Loba Andrews**

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1T July 30, 2020 testimony of Lobo Andrews Before Honorable
Jeffrey N. Rabin, A.L.J.

PRELIMINARY STATEMENT

If this Court follows the Published Opinions as set forth 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), Lobo Andrews will be granted his Accidental Disability Pension benefits because the February 23, 2017 work assault meets the definition of what constitutes an "undesigned and unexpected" event; Mr. Andrews's being kicked by an especially combative patient. Despite following facility protocol, he was kicked in the left shoulder. The heart of the inquiry is whether, during the regular performance of his regular job, an unexpected happening has occurred and directly resulted in the permanent and total disability of the member. Richardson, Supra, 192 N.J. at 213-14. Brooks v. Board of Trustees, Public Employees' Retirement System, 425 N.J. Super. 277, 279 (App. Div. 2012).

The Undesigned and Unexpected component established by the New Jersey Supreme Court in Richardson was to eliminate occupational claims being able to be considered for Accidental Disability Pension benefits. This work accident is specific and the disability directly attributable to the assault. As such, the Board of Trustees, Public Employee's Retirement System (PERS) erred in applying an unduly restrictive notion of what constitutes an "undesigned and

unexpected" event to Mr. Andrews's February 23, 2017. It is our suspicion that had Officer Richardson been before Judge Rabin he too would have been denied his Accidental Disability Pension. The testimony and evidence before this Court demonstrates the mechanism of the injury meets the "undesigned and unexpected" standard, and therefore, the Board's decision must be overturned and Mr. Andrews granted his Accidental Disability Pension.

PROCEDURAL HISTORY

On February 23, 2017, Mr. Andrews was involved in a specific work-related injury. (Aa30-Aa32). As a result of the permanency of his injury, on August 21, 2018, he applied for his accidental disability pension benefits. (Aa1-Aa3). On April 23, 2019, the Board denied Mr. Andrews his accidental disability pension benefits indicating the accident did not meet the accidental and unexpected requirement. (Aa4-Aa6). On April 30, 2019, request to appeal the Board's decision was sent. (Aa7). On June 20, 2019, the matter was transferred to the office of administrative law. (Aa8). A hearing was held, briefs were submitted, and on August 30, 2023, Judge Rabin rendered his initial decision upholding the Board's denial of accidental disability pension benefits to Mr. Andrews. (Aa9-Aa19). The Board, on October 19, 2023, upheld Judge Rabin's decision. (Aa20-Aa21). On November 15, 2023, a notice of appeal and case information statement was filed with this court. (Aa22-Aa29).

STATEMENT OF FACTS

Mr. Andrews was a Senior Medical Security Officer for Ann Klein Forensic Center. (Aa30-Aa32). He worked first shift but on a regular basis would work overtime. He was in charge of 25 patients on his unit and testified that the job description was inclusive of the majority of his responsibilities throughout his shift. (1T9:9-14). On February 23, 2017, a stat call came in through the loud speaker system in the facility. This meant that a patient was out of control. (1T9:20-25). Mr. Andrews testified that the procedure would be to get three or four officers to get the patient to the bed and in a net restraint. (1T10:1-15). Mr. Andrews testified that the announcements and calls were something he was familiar with as he had been involved in situations like this before but had never injured his left shoulder. Mr. Andrews testified that this incident, however, was different based on the extreme combative nature of the patient. He testified it was like a wrestling match. (1T12:20-25). He also testified that the situation took about 15 to 20 minutes to resolve which is longer than normal. (1T14:8-13). While attempting to restrain his legs he got kicked sustaining an injury to his left shoulder. Prior to receiving any medical attention, he completed an incident report. (Aa33-Aa36); (1T16:5-14).

The description in the incident report (Aa33-Aa36) was exactly as Mr. Andrews had testified indicating that he was injured while restraining a patient

putting him into a net restraint. (1T26:3-23). Further, on March 1, 2017, Mr. Andrews was seen at Hamilton Physical Therapy which stated Mr. Andrews sustained an impact injury to his left shoulder. This mirrored his testimony getting kicked and supports the records in evidence. (Aa33-Aa36); (1T30:1-10).

Respondent, during cross examination, attempted to distinguish being assaulted from restraining a patient. Mr. Andrews testified he was kicked by the patient; that constitutes assault. The medical records noted his injury as being an impact injury which is consistent with his testimony. He testified that in his mind there is no distinction between being assaulted and restraining in this incident as it is exactly what occurred. (1T35:3-9).

The question is whether this assault by this combative patient satisfies the definition of what constitutes an undersigned or unexpected event. Mr. Andrews testified that despite being trained, having restrained many a patient in the past and following facility protocol he was assaulted by this highly combative patient which constitutes an unexpected happening resulting in his injury to his left shoulder.

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 Rabin’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 PERS BOARD IMPROPERLY DETERMINED THAT MR. ANDREWS WAS NOT ENTITLED TO AN ACCIDENTAL DISABILITY PENSION BECAUSE THE INCIDENT CAUSING HIS DISABILITY WAS UNDESIGNED AND UNEXPECTED.
(1T12:20-25); (Aa1-Aa3); (Aa30-33).

The pivotal legal issue before the Court is whether or not the February 23, 2017, 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.

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. 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.

Here, the Board erred in applying an unduly restrictive notion of an "undesigned and unexpected" event to Mr. Andrews's February 23, 2017 incident misconstruing Richardson and reaching a decision at odds with the legislative intent in adopting the "traumatic event" standard. The 1964 amendments to the disability pension statute were not intended to make it generally more difficult for injured employees to obtain an accidental disability pension. Richardson, supra, 192 N.J. at 210-11. Rather, the amendments were intended to weed out disabilities stemming from a member's pre-existing medical condition, even if the condition was exacerbated by a work incident. *Id.* at 211. Thus, a firefighter with a heart condition could not collect an accidental disability pension for a disabling heart attack suffered while fighting a fire, and a custodian likewise is not entitled to such benefits if he suffers a heart attack while performing his janitorial duties. See Cattani v. Bd. of Trs., Police & Firemen's Ret. Sys. 69 N.J. 578, 586-87 (1978); Russo v. Teacher's Pension & Annuity Fund, 62 N.J. 142, 154 (1973).

In Moran the Board determined that his injury did not qualify him for an accidental disability pension because it occurred while he was conducting one of his expected work-related duties, rescuing fire victims. The Board further reasoned that what occurred was not an "accident" because Moran intended to throw his body against the door. The Appellate Division concluded that the Board's decision

misread Richardson, misapplied the statute, and took an unduly narrow view of what constitutes an "unexpected and undesigned" traumatic event.

In Richardson, the Board made a similar error in denying an application from a corrections officer injured during a scuffle with an inmate. The Board contends that because subduing an inmate is part of the anticipated work of a corrections officer and was not unexpected or unintended, Richardson cannot satisfy the traumatic event standard. That is a misreading of the statute, which requires that the traumatic event occur "during and as a result of the performance of [the member's] regular or assigned duties." To be sure, when the "normal stress and strain" of the job combines with a pre-existing disease to cause injury or degeneration over time, a traumatic event has not occurred. See Cattani, *supra*, 69 N.J. at 585; Russo, *supra*, 62 N.J. at 151. That is quite different from saying that a traumatic event cannot occur during ordinary work effort. Indeed, it can. 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. Each of those examples is identifiable as to time and place; undesigned and unexpected; and not the result of pre-existing disease, aggravated or accelerated by the work. Thus, each meets the traumatic event standard. So long as those members also satisfy the remaining aspects of the

statute, including total and permanent disability, they will qualify for accidental disability benefits.

Therefore, the fact that a member is injured while performing his ordinary duties does not disqualify him from receiving accidental disability benefits; some injuries sustained during ordinary work effort will pass muster and others will not. The crux 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 213-14 (alteration in original) (final emphasis added).] The intent was to eliminate the occupational claim from being able to receive Accidental Disability Pension benefits, not eliminate specific work accidents where the disability is directly caused by the work accident because factually someone had prior training to do the thing they were injured doing. IF that were the case then the New Jersey Supreme Court would not have granted benefits to Officer Richardson.

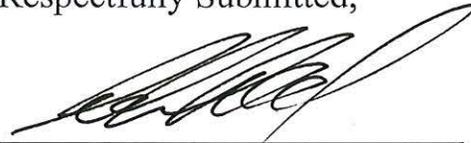
Mr. Andrews testified he was trained on how to restrain patients and had done it many times but never had a patient who was this combative. (1T12:20-25). This case mirrors Moran in that despite being trained and having restrained patients in the past this incident was unique due to the nature of the patient and the

assault and is an unexpected happening which constitutes and undersigned and unexpected event.

CONCLUSION

For the foregoing reasons, the Board's denial of Mr. Andrews' Accidental Disability Pension should be overturned as it misreads Richardson, misapplied Moran, Brooks and the legislative intent, and inappropriately narrowly construed the pension statute. Lobo Andrews has satisfied all of the Richardson requirements by demonstrating that the February 23, 2017, incident was undesigned and unexpected enabling this Court to grant him his Accidental Disability Pension Benefits.

Respectfully Submitted,



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cc: Jakai Jackson, D.A.G.



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Re: Lobo Andrews v. Board of Trustees, Public Employees’
Retirement System
Docket No. A-000809-23

On appeal from a Final Agency Decision of the Board
of Trustees, Public Employees’ Retirement System

Letter Brief of Respondent, Board of Trustees, Public
Employees’ Retirement System on the Merits of the Appeal

Dear Mr. Orlando:

Please accept this letter brief on behalf of Respondent, Board of Trustees,
Public Employees’ Retirement System, on the merits of the appeal.



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MEDICAL EXAMINATION BY PERSONAL OR TREATING PHYSICIAN
FORMRa1

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

Appellant, Lobo Andrews, appeals the Board’s October 19, 2023, denial of his application for accidental disability retirement benefits. (Aa20-21).² The sole issue on appeal is whether the February 23, 2017 incident was undesignated and unexpected.

¹ Since the procedural history and facts are interrelated, they are presented together for efficiency and the court’s convenience.

² “T” refers to the July 30, 2020 hearing transcript. “Aa” refers to Andrews’s appendix; “Ab” refers to his brief. “Ra” refers to the Board’s appendix.

For fifteen years, Andrews was employed as a Senior Medical Security Officer at the Ann Klein Forensic Center for the criminally insane. (Aa11). As part of his role, he was required to physically restrain unruly patients; this is something that he had done hundreds of times throughout his career. Ibid. On February 23, 2017, Andrews injured his shoulder while restraining a patient. (T24:9-10; Aa1).

Immediately after the incident, and before he was sent for medical attention, he completed a First Report of Accident Form that stated: “[w]hile in the process of restraining a patient and putting them in the [sic] net restraint I hurt my left shoulder.” (T16:5-9; T25:7-262; R-1). This form was submitted to, and signed by, his supervisor. (T25:13-25). Andrews also completed an Initial Witness Statement Form which identified the injury as occurring while “restraining and putting [patient] in net restraint.” (T26:1-27:7; R-2.4).

On August 21, 2018, Andrews filed for accidental disability retirement benefits. (Aa1). For the first time, he characterized the 2017 incident as an assault. Ibid. Prior to his application, there is no record of anyone ever referring to the 2017 incident as an assault. (Aa1; Aa12-13).

On April 22, 2019, the Board found that Andrews totally and permanently disabled and granted Andrews ordinary disability retirement benefits. (Aa4-6). The Board denied accidental disability retirement benefits, noting that his

contemporaneous description of the incident on the Employer's First Report of Accidental Injury or Occupational Disease form substantially differed from his subsequent representation of the incident, and finding that the 2017 incident was not undesignated and unexpected. (Aa4)

Andrews appealed the Board's determination and the Board transmitted the matter to the Office of Administrative Law. (Aa8). Andrews was the only witness to testify. (Aa10).

Andrews testified that the Ann Klein Forensic Center has procedures in place for restraining unruly patients, but some patients were more difficult to restrain than others. (Aa11-12, T10:20-11:10). On February 23, 2017, a "stat call," indicating that a patient was out of control, was announced over the loudspeaker. (Aa12). The stat call protocol was to have three or four officers move the patient to the bed in "net restraints." Ibid. Andrews responded and found the patient to be "extremely combative," "thrashing" about, and "flailing." (T36:2-10). Andrews attempted to restrain the patient's leg and testified that he received several "strong kicks" and "knees pressured" [sic] to his shoulder. (T14:12-23). Specifically, Andrews recalls being hit after they got the patient from a standing position to laying position on the bed, but while he was still out of control and resisting being put in the net restraints. (T36:11-37:25). Andrews could not recall how many officers responded, how big the

patient was, or how long it took to restrain the patient but he estimated it took 15-20 minutes. (T10:16-17; T13:1-10).

Andrews acknowledged that the First Report of Accident Form and the Initial Witness Statement Form are important documents and should be accurate. (T34:22-35:2). Further, he was aware that these forms could be modified, if needed, by the supervisor but he never asked for the incident report to be update. (T10:16-17; T13:1-10; T22:5-19).

Dr. Rameck Hunt, Andrews's treating physician, completed the Medical Examination by a Personal or Treating Physician Form, and in it reported that Andrews advised him that he injured his shoulder while restraining a patient at work. (T33:1-25; Ra1).

On August 30, 2023, Administrative Law Judge Jeffrey N. Rabin recommended denying Andrews accidental disability retirement benefits because he was injured occurred while performing "his regular job duties in a normal fashion;" Andrews had performed the task many times before, because it was such a typical occurrence at the facility that there were procedures in place for such situations. (Aa15).

ALJ Rabin rejected Andrews' characterization of the 2017 incident as an assault. Ibid. ALJ Rabin found that none of the kicks were targeted at Andrews; rather he was struck in the shoulder while the patient was flailing about

towards all the officers present. (Aa12). Additionally, ALJ Rabin noted, in terms of credibility, that

Andrews displayed a subjective recollection of the incident and that his testimony essentially confirmed the facts as laid out by respondent: that restraining unruly patients was part of his regular job description, that he had restrained patients hundreds of times, that his injury occurred while restraining an unruly patient, and that nobody referred to the incident as an “assault,” including petitioner, until he submitted his version of the incident when filing his accidental disability application.

[Aa13.]

The ALJ concluded that the 2017 incident was not undesigned and unexpected because “[r]estraining unruly and combative patients at an institution for the criminally insane was part of [Andrews’] usual job duties.” (Aa16). Thus, Andrews was not eligible for accidental disability retirement benefits. Ibid.

At its October 19, 2023 meeting, the Board adopted the initial decision affirming the Board’s denial of Andrews’s application for accidental disability retirement benefits. (Aa8). This appeal followed.

ARGUMENT**THE BOARD'S DENIAL OF ACCIDENTAL
DISABILITY RETIREMENT BENEFITS IS
REASONABLE AND SUPPORTED BY
SUFFICIENT CREDIBLE EVIDENCE.**

Judicial “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) (quotation omitted). Courts defer to agencies’ “expertise and superior knowledge . . . in their specialized fields.” Hemsey v. Bd. of Trs., Police & Fireman’s Ret. Sys., 198 N.J. 215, 223 (2009) (quotation omitted). Courts also afford “a ‘strong presumption of reasonableness’ to an administrative agency’s exercise of its statutorily delegated responsibilities.” Lavezzi v. State, 219 N.J. 163, 171 (2014) (quotation omitted). “A reviewing court ‘may not substitute its own judgment for the agency’s, even though the court might have reached a different result.’” In re Stallworth, 208 N.J. 182, 194 (2011) (quotation omitted).

Under N.J.S.A. 43:15A-43, accidental disability retirement benefits may be conferred when a member of PERS “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 or assigned duties.” Ibid. In Richardson v. Board of Trustees, Police & Firemen’s Retirement System, 192 N.J. 189 (2007), the Supreme Court set forth a five-prong test that an applicant must satisfy to qualify for accidental disability retirement benefits:

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.

[Id. at 212-13.]

A member of PERS is entitled to accidental disability only if he is permanently and totally disabled as a direct result of a “traumatic event.” N.J.S.A. 43:15A-43. To constitute a traumatic event, it must be “undesigned and unexpected.” Richardson, 192 N.J. at 212-13. The “polestar” of the inquiry

is whether an event is an “unexpected external happening” or “unanticipated mishap.” Ibid.

An event is not undesigned and unexpected “when all that appears is that the employee was doing his usual work in the usual way.” Richardson, 192 N.J. at 201 (quotation omitted). Moreover, “work effort alone whether unusual or excessive, cannot be considered a traumatic event.” Cattani v. Bd. of Trs., Police & Firemen’s Ret. Sys., 69 N.J. 578, 586 (1986). Thus, under Richardson, an event is undesigned and unexpected if there is: 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.” Ibid. (quotation and emphases omitted). The applicant bears the burden of proof. See id. at 212.

Here, there is sufficient evidence in the record to support the Board’s decision that Andrews failed to show that his injury was the result of a traumatic event. As ALJ reasonably found, none of the kicks were targeted at Andrews; rather Andrews was struck in the shoulder while the patient was flailing about towards all of the officers present. (Aa12). Andrews was injured while he was performing his regular duties in a normal fashion and the therefore 2017 incident was not an undersigned and unexpected event. (Aa15-16).

The ALJ's credibility findings also support the Board's decision. The ALJ found that Andrews "displayed a subjective recollection of the incident" and that his testimony confirmed the facts as laid out by the Board. (Aa13). Specifically, Andrews testimony corroborated that: restraining unruly patients was part of his regular job duties, that he had restrained patients hundreds of times, that his injury occurred while restraining an unruly patient, and that nobody referred to the incident as an "assault," including Andrews, until he submitted his disability application. Ibid. An obvious consequence of restraining a "extremely combative" "thrashing" and "flailing" patient, where the risk of being hit by a flailing body part is expressly known, is actually being hit. Further, an obvious consequence of being hit by the flailing body part of a "extremely combative" "thrashing" and "flailing" patient is injury. An incident is not unexpected and undesigned when it is a know consequence of the chosen activity.

Andrews's arguments place undue reliance on the examples of undesigned and unexpected incidents provided in Richardson, which include a policeman shot while pursuing a suspect, a librarian hit by a falling bookshelf while re-shelving books, a social worker getting her hand caught in a car door while transporting a child to court, and gym teacher who trips over a riser. 192 N.J. at 213-214. (Ab8). According to Andrews, those examples support his claim for accidental benefits because the Court found them to be examples of accidents

that could occur during ordinary work efforts and would qualify for accidental disability retirement benefits. (Ab8).

Unlike the actors in these scenarios, Andrews was aware of the ongoing risk of being hit inadvertently during his attempt to restrain the patient's legs. The Richardson court did not suggest that the librarian was aware a bookshelf might fall on her (due to a faulty bookshelf), that the gym teacher was aware of the riser prior to tripping, that the policeman knew he would be shot at before engaging in the pursuit, or that the social worker was thinking about how her hand might get caught in the car door before it happened.

Andrews reliance on Moran v. Board of Trustees, Police & Firemen's Retirement System, 438 N.J. Super. 346 (App. Div. 2014), and Brooks v. Board of Trustees, Public Employees' Retirement System, 425 N.J. Super. 277 (App. Div. 2012), are also misplaced. Moran involved a firefighter who belonged to an engine company responsible for using hoses to put out a fire in a burning building, in contrast to a truck company "responsible for forcing entry into a burning structure and rescuing any occupants" with "special equipment specific to those functions." 438 N.J. Super. at 349-50. While fighting "a fire in what was reported to be a vacant, boarded-up house," Moran "unexpectedly heard screams from people trapped inside the structure" and used his body to break down the front door. Id. at 350; see also id. at 347. The court found that the

incident was undesigned and unexpected due to “the combination of unusual circumstances that led to Moran’s injury: the failure of the truck company to arrive, and the discovery of victims trapped inside a fully engulfed burning building, at a point when Moran did not have available to him the tools that would ordinarily be used to break down the door.” Id. at 354. No such unusual circumstances are present here. As mentioned above, Andrews frequently assisted in the restraining of unruly patients. The facility has specific procedures for dealing with unruly patients, and Andrews was aware of these procedures. And, there is no indication that he was missing equipment usually used for the task.

Even further afield is Brooks, where a school custodian “was confronted with the unusual situation of a group of students attempting to carry a 300-pound weight bench into the school.” 425 N.J. Super. at 283. Brooks “took charge of this activity” and injured his shoulder when “the boys suddenly dropp[ed] one side of the weight bench, placing its entire weight on [him].” Ibid. Nothing even comparable happened to Andrews. The 2017 incident was not a traumatic event even considering “that an accident can be ‘undesigned and unexpected’ under the Richardson tests even though it may be concluded in retrospect that the employee could have anticipated the risk of such an accident and taken steps to avoid it.” Id. at 284. Whether Andrews could have anticipated the risk of his

shoulder (or not), the facts remain that he was doing his job responsibilities when he responded to the “stat call,” upon arrival he saw an extremely combative patient thrashing and flailing about, then knowingly undertook the task of restraining the patient’s legs and was injured in the process.

Simply put, Andrews injury was not the result of an assault; rather he was doing his usual work in the usual way while performing his regular duties, which he had performed many times before the 2017 incident. (Aa16). Therefore, the Board reasonably found the 2017 incident was not undesignated and unexpected.

CONCLUSION

For these reasons, the Board’s reasonable denial of Andrews application for accidental disability retirement benefits should be affirmed.

Respectfully submitted,

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