

SUPERIOR COURT OF NEW
JERSEY APPELLATE DIVISION
DOCKET NO.: A-001054-24 T2

ALBERT ANDERSON,

Civil Action

Appellant,

On Appeal from

V.

POLICE AND FIREMEN'S
RETIREMENT SYSTEM OF
NEW JERSEY

Initial Decision dated
September 23, 2024 under OAL
Docket No. TYP-01775-19
and upheld by The Board of
Trustees of the Police and
Firemen's Retirement System
on November 6, 2024

Respondent.

Sat below:

Hon. Tama B. Hughes, ALJ

**Brief and Appendix
of Appellant
Albert Anderson**

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Dated: October 14, 2025

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PRELIMINARY STATEMENT

Officer Anderson faithfully served the Woodbury City Police Department for 18 years. On April 17, 2018, while subduing a fleeing and violently combative robbery suspect, he experienced sudden chest compression, sharp pain, and was later diagnosed with permanent atrial fibrillation—leading to total disability. The Board granted ordinary disability but denied Accidental Disability Retirement Benefits (ADRB), improperly concluding that the incident was not “undesigned and unexpected” under N.J.S.A. 43:16A-7 and *Richardson v. Board of Trustees, PFRS*, 192 N.J. 189 (2007).

The Administrative Law Judge (ALJ) affirmed, even though the cordial concession by Respondent’s counsel made clear that all other *Richardson* elements were satisfied and only the “undesigned and unexpected” prong remained at issue. Moreover, uncontroverted testimony established that Officer Anderson’s confrontation involved a sudden, unplanned, and extraordinary ground struggle—not routine exertion.

This Court should reverse and declare Officer Anderson entitled to ADRB, consistent with decisions such as *Richardson, Moran v. PFRS*, 438 N.J. Super. 346 (App. Div. 2014), *Brooks v. PERS*, 425 N.J. Super. 277 (App. Div. 2012), and *Caminiti v. PFRS*, 431 N.J. Super. 1 (App. Div. 2013).

PROCEDURAL HISTORY

On May 9, 2018, Officer Anderson filed for ADRB, citing his acute medical condition following the April 17, 2018 incident. (Aa1-Aa3). On June 11, 2018, Woodbury City filed its Employer Certification for Disability Retirement Form stating the accident occurred during the performance of his duties. (Aa4-Aa5). On December 11, 2018, the Board issued its decision granting ordinary disability but denying ADRB, based solely on its view that the incident failed the “undesigned and unexpected” standard (Aa6-Aa8). On January 7, 2019, Officer Anderson appealed the initial decision requesting a hearing on the issue. (Aa9). On January 29, 2019, the Board transferred the matter to the Office of Administrative Law. (OAL); (Aa10). The matter was assigned to ALJ Tama B. Hughes. On May 13, 2024, a hearing was conducted. (1T). At the outset, Respondent’s counsel expressly conceded that only the “undesigned and unexpected” requirement under Richardson remained in dispute, and that the medical causation and permanency elements were satisfied. (1T9:20–11:6).

On September 23, 2024, Tama B. Hughes, ALJ, issued an Initial Decision affirming the Board's denial. (Aa11aa26). On November 6, 2024, the Board upheld the ALJ’s initial decision. (Aa27). Also, on November 6, 2024, this appeal commenced. (Aa28-Aa33).

STATEMENT OF FACTS

Officer Anderson served as a patrolman with Woodbury for approximately 18 years. (1T15:3–11). On April 17, 2018, while working a routine 6 a.m.–6 p.m. shift, he responded to a reported robbery at a gas station and interviewed the victim. (1T18:4–8; 1T19:14–19). After apprehending one suspect nearby, dispatch advised law enforcement that the second suspect was running through backyards. (1T21:21–22:1; 1T22:18–24). Officer Anderson drove to the location, exited his vehicle, and observed the suspect fleeing. He identified himself and ordered the suspect to stop; the suspect did not comply. (1T23:3–5; 1T25:9–26:3).

A struggle ensued, and Officer Anderson tackled and forced the suspect to the ground. During the struggle, he experienced severe chest compression, sharp pain, and lightheadedness—symptoms not present prior to the confrontation. He immediately notified his supervisor, filled in incident reports (Aa34-Aa57), was transported to a hospital, and was diagnosed with atrial fibrillation. (1T28:12–16; 1T28:21–23; 1T44:16–19). He has not returned to duty and remains permanently disabled. (1T32:18–25; R-9).

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 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 APRIL 17, 2018 INCIDENT WAS UNDESIGNED AND UNEXPECTED MEETING ALL OF THE LEGAL REQUIREMENTS FOR OFFICER ANDERSON TO RECEIVE HIS ACCIDENTAL DISABILITY PENSION BENEFITS (Aa1-Aa3);(Aa34-Aa57).

The pertinent question here is whether Officer Anderson, a member of the PFRS, is entitled to Accidental Disability retirement benefits as governed by N.J.S.A. 43:16A-7(1). The statute provides for these benefits if said employee “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 job duties.” An analysis of the undesigned and unexpected issue commences by reviewing Richardson. The sole issue in this matter is whether the incident in question meets the definition of undesigned and unexpected as all of the other Richardson requirements have been satisfied. The satisfaction of the “undesigned and unexpected” factor requires an event “extraordinary OR unusual in common experience” and not “[i]njury by ordinary work effort.” *Id.* 201. The polestar of the inquiry is whether, during the performance of his job, an unexpected happening . . . occurred and directly resulted in the permanent and total disability of the member.” *Id.* At 214.

In Richardson, the corrections Sergeant suffered an injury while attempting to subdue an inmate who had forcefully jerked up from the ground, knocking the Sergeant 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.

In the present matter, the Board's opinion is that Officer Anderson's claim does not satisfy the Richardson standard because the incident was not an unanticipated consequence of a qualifying event and not extraordinary or unusual in common experience, therefore not undesigned or unexpected.

Richardson gives examples of qualifying events: "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." Id. at 214. Also, a gym teacher "who trips over a riser" has satisfied the standard. Id. at 213. Two published Appellate Division decisions provide additional examples:

A janitor whose foot was severely injured when two students dropped their side of a 300-pound weight bench they were carrying qualified, even though he could have foreseen that dropping it was likely. Brooks v. Bd. of Trs., Pub. Emps.' Ret. Sys., 425 N.J. Super. 277 (2012). Also, a sheriff's Sergeant whose finger was pierced by a dirty needle while frisking a suspect had sustained a Richardson qualifying injury, when it led to physically intrusive AIDS prevention treatment, and eventually complete

mental disability due to post-traumatic stress disorder. Caminiti v. Bd. of Trs., Police and Firemen's Ret. Sys., 431 N.J. Super. 1 (App. Div. 2013).

Officer Anderson's case more resembles these decisions as well as Moran v. Board of Trustees Police and Firemen's Retirement System. 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 hose, it was clearly an undersigned and unexpected traumatic event."

We concede that if this were a lifting incident, and not one like in Brooks where the student dropped their side, then accidental disability benefits should not be granted. However, it is clear that this case mirrors Richardson and Moran which supports this Court's reversing the Board's decision and granting Officer Anderson his accidental disability pension benefits. Further, the Undesigned and Unexpected requirement was incorporated to eliminate occupational exposure claims from being eligible for Accidental Disability Pension Benefits. Richardson provides specific examples of these types of cases that would not qualify as Undesigned and Unexpected events.

To reiterate, the court noted in Richardson, “[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.” That is exactly what happened in this instance. As the Court noted in Richardson, “work effort itself . . . cannot be the traumatic event.” Richardson, supra, 192 N.J. at 211. The injury must be the result of the happening, which has, in this matter, been sufficiently identified. The Board's conclusion that there was no “unexpected happening” was too narrow of an interpretation of the legal standard and should be reversed. 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 Sergeants job duties,” because indeed it can and did in this case.

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.” The inquiry is not whether there was an unexpected happening. The inquiry per Russo, supra, 62 N.J. at 152, should be, 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 Anderson chasing a suspect who resisted, became combative and wrestled Officer Anderson which resulted in a consequence unusual in common experience.

He testified he had, as an Officer, restrained and arrested suspects in the past but not one who had let alone rejected his commands but who also became so combative as to wrestle him on the ground. (1T26:1-21). In the course of the performance of his job, it is a common experience to restrain and arrest suspects. However, an injury which occurs as a result of that common experience which is so disabling as to prevent one from returning to their job as a Police Officer is unusual, and in this case, the unexpected happening contrary to the Board’s interpretation. Officer Anderson was trained in foot pursuits and handcuffing techniques. (1T30:8–17; 1T40:24–41:3). However, training does not transform

every challenging arrest into a routine event. Richardson explicitly contemplates that even trained individuals may encounter extraordinary consequences beyond training. *Richardson*, 192 N.J. at 213 (“In ordinary parlance, an accident may be ... an unanticipated consequence of an intended external event if that consequence is extraordinary or unusual in common experience.”). The altercation here was not a planned, controlled arrest—it was unpredictable, violent, and outside of the ordinary pattern.

Pension matters are to be viewed in the light more favorable to that of the applicant, and the Board’s decision to deny Officer Anderson his benefits based on the narrow interpretation of what constitutes an undesigned and unexpected event was inappropriate and should be reversed and Officer Anderson should be granted his Accidental Disability Pension Benefits.

CONCLUSION

Officer Anderson’s injury resulted from a violent, unplanned confrontation that was both “**undesigned**” and “**unexpected**”—not part of his routine duties. That incident qualifies as a **traumatic event** under N.J.S.A. 43:16A-7 and Richardson. Precedents like *Moran*, *Brooks*, and *Caminiti* reinforce the correct outcome. The Board’s refusal to award ADRB should be reversed.

WHEREFORE, Petitioner respectfully requests that the Appellate Division:

1. Reverse the Board’s denial of Accidental Disability Retirement Benefits;
2. Find that the April 17, 2018 incident was “undesigned and unexpected”; and
3. Order that Officer Anderson be awarded ADRB under N.J.S.A. 43:16A-7.

Respectfully submitted,



SAMUEL M. GAYLORD, ESQ.

cc: Juliana DeAngelis, Esq.



JAMES A. KOMPANY
Chairman

GREGORY PETZOLD
Executive Director

March 2, 2026

Via Electronic Filing

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**Re: Albert Anderson v. Police and Firemen's
Retirement System of New Jersey,
Docket Number: A-001054-24T3**

**On Appeal from a Final Agency Decision of the
Board of Trustees, Police and Firemen's
Retirement System of New Jersey, TYP-01775-19S**

Sat Below: Hon. Tama B. Hughes, A.L.J.

Dear Ms. Hanley,

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

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PRELIMINARY STATEMENT

Appellant Albert Anderson (“Appellant” or “Anderson”), formerly a police officer, improperly tries to reverse a final administrative determination (“FAD”) of the Board of Trustees, Police and Firemen’s Retirement System of New Jersey (“Board” or “Respondent”) denying him Accidental Disability retirement benefits (“AD”) through this appeal. Anderson was injured on April 17, 2018, when

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he unsuccessfully tried to restrain and arrest a second fleeing suspect near a crime scene who became violent, taking Anderson down to the ground. Anderson felt sudden chest compression and sharp pain; his symptoms were consistent with an atrial fibrillation (“AFib”) condition. Appellant received an award of Ordinary Disability retirement benefits (“OD”) from the Board, based on his disabling cardiac condition. After a full hearing in the Office of Administrative Law (“OAL”) on May 13, 2024, an Initial Decision dated September 23, 2024 (“ID”), issued finding that Appellant 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). Aa11.¹ Triggering an instance of a heart disease condition during ordinary, albeit strenuous, work effort in this way is not “undesigned and unexpected,” as noted in Richardson. The Board’s Final Administrative Decision (“FAD”), adopting the ID, should be affirmed and this appeal dismissed.

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS²

Appellant began working as a Police Officer for the City of Woodbury Police Department (“CWPD”), eighteen years before this injury. Aa15. He applied for AD on May 9, 2018 and the Board granted him OD in December 11, 2018. Aa16.

¹ “Aa” refer to documents in Appellant’s Appendix, previously filed with the Court.

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

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His AD application was based on an injury he sustained on April 17, 2018. Aa1-Aa3.

On that day, Anderson, while working, responded to a robbery call at a gas station. Aa16. When he arrived at the scene, he apprehended one of two suspect. Aa16. Anderson then chased the second fleeing suspect whom he tackled to the ground (the “incident”). Aa16. The suspect was very impulsive and combative. Aa15. Anderson felt severe chest compression, sharp pain and lightheadedness during the struggle. Aa16. Thereafter, he was transferred to a hospital where his AFib condition was noted. Aa14. The ID noted Anderson previously had cardiac issues, including AFib, which was treated with an ablation procedure before the incident.³ T46⁴; Aa16. This factual finding directly contravenes Anderson’s erroneous claim to the contrary in his brief regarding this point. Ab3.⁵ This assertion – that Anderson did not have AFib before the incident - is not supported in Anderson’s testimony either. T46. Anderson had previously chased suspects as part of his job as well as subduing and restraining suspects. Aa16. Anderson did not return to work after the incident. Aa16.

After a full hearing before the Hon. Tama B. Hughes, A.L.J. on May

³ Anderson did not have a heart attack that day.

⁴ “T” means the transcript of hearing dated May 13, 2024, previously filed with the Court.

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

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13, 2024, at which Anderson was the only witness, an ID issued affirming the Board’s denial of AD to Anderson because the incident was not “undesigned and unexpected.” The “direct result” element under Richardson was not tried at hearing. Aa12 n.1.⁶ Anderson’s job duties, an exhibit at hearing, include “[t]he arrest of violators of the law.” Ra1. The ID found that Anderson did not satisfy the “undesigned and unexpected” requirement because, based on his experience, training and job duties, he was performing his usual job duties in the usual way during the incident. Aa23. The ID affirmed the denial of AD to Anderson on November 8, 2024. Anderson filed no exceptions after the ID issued. Aa27. The Board adopted the ID as its final administrative determination (“FAD”). Aa27.

This appeal followed. Aa28-Aa33.

LEGAL ARGUMENT

POINT I

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

The appellate standard of review for an appeal from the Board’s denial

⁶ The Board originally denied AD to Anderson based on his failure to satisfy two requirements: lack of direct result evidence and a lack of evidence of an “undesigned and unexpected” element. The Board subsequently obtained a medical expert report that found that the “direct result” element was satisfied. For this reason, the “direct result” element was not tried. Aa12 n.2.

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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); Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm’n, 234 N.J. 150, 157 (2018). Case law also accords a strong presumption of reasonableness to an agency’s exercise of its statutorily delegated responsibility, as well as its fact-finding. See Mazza v. Bd. Of Trs., Police & Firemen’s Ret. Sys., 143 N.J. 22, 29 (1995) (Handler, J., dissent). Further, an administrative agency’s determination is presumptively correct and, on review of the facts, a court will not substitute its own judgment for that of an agency where the agency’s findings are supported by substantial credible evidence. See also Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); Campbell v. New Jersey Racing Comm’n, 169 N.J. 579, 587 (2001). If an appellate court “is satisfied after its review that the evidence and the inferences to be drawn therefrom support the agency head's decision, then it must affirm even if the court feels that it would have reached a different result itself.” Clowes v. Terminix Int’l Inc., 109 N.J. 575, 588 (1988); In re Stallworth, 208 N.J. 182, 194 (2011) (citation omitted) (“A reviewing court ‘may not substitute its own judgment for the agency’s, even though the court might have

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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, unreasonable or unsupported by substantial credible evidence in the record, may it be reversed. Saccone v. Bd. of Trs., Police & Firemen’s Ret. Sys., 219 N.J. 369, 380 (2014); 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). Anderson has failed to meet this stringent standard of review for the “undesigned and unexpected” element and therefore, reversal of the FAD, as argued by Anderson, is inappropriate now.

POINT II

THE BOARD CORRECTLY ANALYZED THE LAW AND FACTS AND DETERMINED THAT APPELLANT FAILED TO CARRY HIS BURDEN OF PROOF ON THE UNDESIGNED AND UNEXPECTED REQUIREMENT.

The starting point for the Board’s legal analysis here is whether the incident was a “traumatic event” based on the proper application of the “undesigned and unexpected” standard. Richardson v. Bd. of Trs., Police & Firemen’s Ret. Sys.,

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192 N.J. 189, 212-13 (2007). Appellant argues that the Board's adoption of the ID is erroneous because officers are not punching bags, during an unpredictable and violent incident, and the Board's definition of "undesigned and unexpected" is too narrow. Ab12. Richardson specifies that "traumatic event" is "caused by a circumstance external" to the member. Richardson, 192 N.J. at 212. As 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. Satisfaction of the "undesigned and unexpected" factor requires an event "extraordinary or unusual in common experience" and not "[i]njury by ordinary work effort." Ibid (emphasis omitted) (quoting Russo v. Teacher's Pen. & Annuity Fund, 62 N.J. 142, 154 (1973)). "[W]hen all that appears is that the employee was doing his usual work in the usual way," the "undesigned and unexpected" element is not satisfied. Richardson, 192 N.J. at 201. See also Russo, 62 N.J. at 154. Further, under Richardson, another Appellate Division panel found:

Petitioner's injury was caused by his ordinary, albeit strenuous, work effort, which does not qualify as a traumatic event. See Richardson, supra, 192 N.J. at 213 (explaining that a police officer who has a heart attack while chasing a suspect has not experienced a traumatic event because the work effort, either "alone or in

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combination with pre-existing disease,” was the cause of the injury.)

[Clayton v. Public Emples. Ret. Sys., Dkt. No. A-1098-12T4, 2014 N.J. Super. Unpub. LEXIS 687, *6 (App. Div. Mar. 28, 2014) (Ra3-5).]⁷

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). The reappearance of Anderson’s AFib symptoms after the struggle during this strenuous arrest is neither an unusual nor extraordinary outcome for a police officer who that already had this heart condition.

The ID cites Brooks v. Bd. of Trs., 425 N.J. Super. 277 (App. Div. 2012), answering assertions made by Anderson here. Aa10-11; Ab8. Brooks found that the dropping of the weight bench by the students was an accidental “traumatic event.” Brooks reversed the Board’s final administrative action because the Board

⁷ Pursuant to R. 1:36-3, the undersigned is unaware of any contrary precedent to this unpublished opinion and a copy of the unpublished opinion is in the Respondent’s Appendix, Ra3-Ra5.

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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 while helping students carry a heavy weightlifting bench and avoided same. Id. at 283-284. No foreseeability analysis was applied here by the Board in the FAD. Aa11-Aa26. Brooks does not support reversal of the FAD here.

Similarly, Appellant’s reliance on Moran is inapposite. Moran v. Bd. of Trs., Police & Firemen’s Ret. Sys., 438 N.J. Super. 346, 354 (App. Div. 2014); Ab9-Aa10. Moran involved an “undesigned and unexpected” event, where a hero fireman saved two trapped victims from a burning building under “unusual circumstances.” Ibid. The facts of the arrest here, while strenuous, do not compare with the life-saving heroism described in Moran. Anderson does not detail how the facts here amount to anything like Moran’s “unusual circumstances.” Ab9. Anderson does not explain why or how the facts support his characterization of the incident as “a sudden, unplanned and extraordinary ground struggle-not routine exertion.” Ab1. Comparison between Anderson’s job description and the facts here do not substantiate this contention either. Cf. Ra1 and hearing transcript, previously filed with the Court. Anderson also claims, without explanation, that the Board’s AD denial is based on a too-narrow definition of “undesigned and unexpected.”

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Ab10. The Board’s application of the “undesigned and unexpected” element is not too narrow, nor does it in need widening here. Moran also neither holds nor states that the “undesigned and unexpected” element relates to an “occupational” exposure claim by a member, as Anderson asserts.⁸ Ibid.

Under Richardson, the “undesigned and unexpected” requirement means that the disabling injury must be an unintended consequence that was extraordinary or unusual in common experience. This record demonstrates that this requirement is unsatisfied. There was no “unexpected happening” during the incident, including the fall during the apprehension. Anderson was performing his usual work in the usual way, i.e., apprehending a suspect at a robbery. That Anderson’s cardiac symptoms manifested during the performance of his ordinary, albeit strenuous, work effort, which does not make the incident into an accident. Anderson did not established that anything unanticipated, extraordinary or unusual occurred during the incident.

The Court should affirm the Board’s FAD, which adopted the ID and denied AD to Anderson.

⁸ Anderson incorrectly argues that the “undesigned and unexpected” element exists to foreclose occupational exposure claims. Richardson included the “undesigned and unexpected” element in the AD analysis. “Occupational exposure” claims, a term of art, are not addressed in either Richardson or Moran or in the ID here.

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POINT III

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

The whole record in this matter is clear and undisputed that Appellant's disabling injury was not from "traumatic event" because the incident was not "undesigned and unexpected." Substantial credible evidence supports the Board's conclusion that Appellant failed to carry his burden of proof to satisfy this Richardson element for the "traumatic event" definition. In applying the "undesigned and unexpected" element of the Richardson test, the Court must consider a member's job responsibilities and training as well as all aspects of the event itself. Mount, 233 N.J. at 427. In reviewing all aspects of the incident, the Court must determine whether there was something about the event that was out of the "normal," Richardson, 192 N.J. at 194; "extraordinary," id. at 201 (quoting Russo, 62 N.J. at 154); Mount, 233 N.J. at 428; or "unusual," Brooks, 425 N.J. Super. at 283. 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. The record contains all the information about the incident. In particular, several factual findings contained in the FAD were incorporate into the

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Board's denial decision. Most facts were not disputed. Apprehending the second suspect near the robbery scene was Anderson's job duty. Ra1-Ra2. He was trained and experienced at it, as found in the ID. Aa16. Anderson landing on the ground while struggling with the suspect represents strenuous work effort, but it was nonetheless his job duty and he was prepared for it. Ra1. The appearance of Anderson's additional AFib symptoms during the incident, which symptoms were not new to him, does not change this circumstance. They do not alter the application of the law regarding the "undesigned and unexpected" element, as measured by Richardson and its progeny. "Liberal" application of a pension statute does not compel granting a member AD pension benefits, which "principle" is not applied in the ID. Ab5. Anderson's arguments in his brief do not change the result. For example, the incident was not like the event in Brooks, cited in the ID, where the sudden loss of half of the support for the weight bench was the incident. 425 N.J. Super. 277 (App. Div. 2012); Aa19, Aa20-Aa23. Moran does not alter the outcome either as there are no "unusual circumstances" here. 438 N.J. Super. at 354. This is found in the ID. Aa20-Aa23.

Based on these facts, which form the basis for the Board's FAD, there is adequate, credible evidence in the record supporting the Board's AD denial. The FAD is not arbitrary or capricious or unreasonable, it is supported by adequate (even

