

**Herbert J. Stayton, Jr., Esquire**  
**Attorney ID #: 000961974**  
**STAYTON Law, L.L.C.**  
811 Church Road, Suite 105  
Cherry Hill, New Jersey 08002-1465  
Telephone No.: 609-320-6892  
Fax No.: 862-298-4625  
Email Address: [hstayton@staytonllc.com](mailto:hstayton@staytonllc.com)  
Attorneys for Petitioner/Appellant, Gregory R. Tantum

**SUPERIOR COURT OF NEW JERSEY**  
**APPELLATE DIVISION**  
**DOCKET NO.: A-001105-24 Team 04**

**GREGORY R. TANTUM,**

**CIVIL ACTION**

**Petitioner/Appellant,**

**ON APPEAL FROM A FINAL**  
**ADMINISTRATIVE DETERMINATION**  
**OF THE BOARD OF TRUSTEES OF**  
**THE POLICE AND FIREMEN'S**  
**RETIREMENT SYSTEM**

**vs.**

**POLICE & FIREMEN'S**  
**RETIREMENT SYSTEM,**

**OAL DOCKET NO.: TYP 03838-2022**  
**AGENCY REF NO.: 3-10-62126**

**Respondent/Respondent.**

**BEFORE THE HONORABLE CARL V.**  
**BUCK, III, A.L.J.**

**BRIEF FOR PETITIONER/APPELLANT, GREGORY R. TANTUM**

**STAYTON LAW, L.L.C.**  
**811 Church Road, Suite 105**  
**Cherry Hill, New Jersey 08002-1465**

**ON THE BRIEF:**

**Herbert J. Stayton, Jr., Esquire**

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## PROCEDURAL HISTORY

At all relevant times herein the Petitioner/Appellant, Gregory R. Tantum (hereinafter “Tantum”), was employed by the Mount Laurel Township (hereinafter “Mt. Laurel”) as a Police Officer and was enrolled in the Police and Firemen’s of New Jersey Retirement System (hereinafter “PFRSNJ”). **(P-1, Pa0001)**

On 04/29/2021 Tantum filed an Application for Accidental Disability Retirement (hereinafter “ADR”) benefits, with a retirement date effective 05/01/2021, based upon two work related accidents which occurred on 06/16/2018 and 10/18/2019 while he was performing his job duties as a Police Officer for Mt. Laurel. **(P-5, Pa0004 & P-6, Pa 0005; 1T8-19 through 1T9-2, 10/18/2022)**

On 05/03/2021 Tantum’s employer, Mt. Laurel, submitted an Employer Certification for Disability Retirement indicating that the accident date was 10/18/2019 and certifying that: (1) “The accident occurred during the performance of the employee’s duties.”; (2) a record of the accident was on file; (3) the accident was not due to the employee’s negligence; and, (4) there was not another job/position available to Tantum. **(P-6, Pa0005)**

On 02/14/2022\* the Board of Trustees of the Police and Firemen's Retirement System (PFRS) (hereinafter "the Board") considered and denied Tantum's application for ADR benefits. In so doing the Board determined, in regard to Tantum's 10/18/2019 work related accident/injury(ies), that:

- (1) Tantum was considered to be totally and permanently disabled from the performance of his regular and assigned job duties in accordance with N.J.S.A. 43:16A-7, and relevant case law, as a direct result of the 10/18/2019 accident/incident; and,
- (2) Tantum's 10/18/2010 accident/incident was identifiable as to place and time; and,
- (3) Tantum's accident/incident occurred as a result of Tantum's regular and assigned duties and was not the result of his willful negligence; and,
- (4) The basis for the Board's denial of ADR benefits was that the accident/incident was not considered by the Board to be "undesigned and unexpected".

Based upon the Board's determination that Tantum was considered to be totally and permanently disabled the Board granted Tantum Ordinary Disability Retirement benefits effective 05/01/2021. (P-7, Pa0006)

\* Board Determination letter was dated 02/15/2022.

On 03/25/2022 Tantum appealed the Board's denial of his application for ADR benefits. **(P-8, Pa0008)** On 05/10/2022 the Board referred the matter to the Office of Administrative Law (hereinafter "OAL"), as a contested case, for further proceedings pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et. seq., N.J.S.A. 52:14F-1 et. seq. and N.J.S.A. 52: 14F-8. **(P-9, Pa0010)**

The Honorable Elia A. Pelios, A.L.J. was originally assigned to hear the matter in the OAL. A.L.J. Pelios was subsequently elevated to a judicial assignment in the New Jersey Superior Court. As a result, the matter was re-assigned to the Honorable Carl V. Buck, III, A.L.J. for hearing and disposition.

On 10/18/2023 a virtual hearing was held in the New Jersey Office of Administrative Law before the Honorable Carl V. Buck, III, A.L.J. at which time Tantum testified. **(1T, 10/18/2022)** On 05/28/2024 the record was closed. On 10/15/2024 the ALJ issued an Initial Decision affirming the Board's denial of Tantum's application for ADR benefits. **(Pa0011)** On 10/28/2024 Exceptions to the Initial Decision were filed with the Board on behalf of the Petitioner. **(Pa0022)** On 10/31/2024 a Reply to the Exceptions was filed with the Board on behalf of the

Respondent. (**Pa0026**) On 11/04/2024\* the Board adopted the ALJ's decision affirming the denial of Tantum's application for ADR benefits. (**Pa0030**)

Tantum filed a timely Notice of Appeal and Case Information Statement with the Superior Court of New Jersey, Appellate Division. (**Pa0031 & Pa0036**)

This is an appeal from the 11/04/2024 final agency Determination by the Board denying Tantum's application for ADR benefits based upon the Board's Determination that Tantum's 10/18/2019 incident was not "undesigned and unexpected".

**1T – Transcript of proceedings on 10/18/2023**

\* The Board's Final Administrative Determination letter was dated 11/06/2024.

## STATEMENT OF FACTS

At the beginning of his employment with Mt. Laurel Tantom underwent training at the Police Academy. **(1T9-3 through 1T9-9, 10/18/2023)** Prior to his employment for Mt. Laurel, Tantom had previously been employed as a Police Officer for Chesterfield Township, the Burlington County Bridge Commission and the Borough of Pemberton. Through the time of his employment with Mt. Laurel Tantom had been employed in law enforcement for approximately 15 years. **(1T9-10 through 1T9-18, 10/18/2023; P-2, Pa0069)**

On 10/18/2019 Tantom was working as a Police Officer for Mt. Laurel and received a dispatch call in reference to a dead deer near 5039 Church Road which was the location of a bank. Upon arrival, Tantom saw the dead deer directly in the lane of travel on the inbound side of the entrance to the bank, off of Church Road. **(1T9-19 through 1T10-15, 10/18/2023)** The dead deer was in the actual bank driveway. It wasn't near the curb. **(1T12-23 through 1T13-7 & 1T28-24 through 1T29-15, 10/18/2023; referred to the location of the dead deer in picture P-4C, Pa0052)**. After seeing the location of the dead deer, walking up to the carcass, looking at the deer and noting that decomposition had already started, Tantom went to his vehicle to get an animal snare. **(1T13-8 through 1T13-13,**

**10/18/2023; P-4C, Pa0052)** Based upon his observations, the dead deer was average in size. The size of the deer was such that it would cause significant damage to a motor vehicle if struck. Tantum could not recall whether the deer was a buck or doe. **(1T13-18 through 1T13-24, 10/18/2023; P-4C, Pa0052 )**

The animal snare was described by Tantum as a metal tube with a wire running from the far tip inside the tube out the back end. **(1T13-14 through 1T13-17, 10/18/2023)** After Tantum got the animal snare out of his patrol vehicle he attached the animal snare to the dead deer by placing the wire on the end of the snare over one of the front legs of the deer. He then tightened the wire up over the front leg of the deer by pulling out the back of the wire at the rear end of the animal snare. Tantum initially used both hands and arms on the animal snare; and, when he began attempting to pull the dead deer felt significant pain, a pop and crunch in his right elbow which caused him to immediately stop what he was doing. He recalled making faces and wincing with the pain. The dead deer did not move on Tantum's initial attempt to move the dead deer with the animal snare when the significant, pain, pop and crunch in his right elbow occurred. Tantum is right hand dominant. **(1T13-25 through 1T14-17, 1T32-8 through 1T32-12, 1T30-3 through 1T30-4 & 1T42-17 through 1T42-25, 10/18/2023; P-10,**

**Pa0061; P-3A through P-3F, Pa0062 through Pa0068)**

After the first failed attempt at moving the dead deer Tatum took time to recompose himself. Then he again attempted to move the dead deer with the animal snare by placing the metal pole of the snare in his left hand alone and under his left armpit. Using his body weight to start pulling the dead deer he was able to move the dead deer several yards from the entrance way, the private property of the bank, to the curb line on the county road (so the handicapped walkway was not blocked; and, a car could make an unobstructed turn into the bank driveway/entrance roadway). **(1T14-18 through 1T16-16 & 1T28-11 through 1T28-14, 10/18/2023; P-4C, Pa0052 & P-4E, Pa0054)**

Animal Control was responsible for dealing with live and injured or sick animals. The county Highway Department was responsible for removal of dead animals on county highways. The entrance driveway to the bank in which the dead deer was located was on a county road. It was not Tatum's job or responsibility to remove dead animal carcasses from private property. Tatum's job or responsibility in regard to dead animal carcasses on county roads was to contact dispatch and request that dispatch contact the Highway Department to remove the dead animal carcass from the county roadway; and, after a couple of days, if he

saw the animal carcass was still on the county roadway, he would contact dispatch and request that they contact the Highway Department again. **(1T16-17 through 1T17-6, 1T17-25 through 1T19-13, 1T25-21 through 1T26-6 & 1T28-15 through 1T28-23, 10/18/2023; P-4C, Pa0052 & P-4E, Pa0054)**

The bank on whose property the dead deer was located had a working business relationship with Mt. Laurel. Tantom, prior to 10/18/2019, had taken documentation to the bank related to Mt. Laurel banking business. On 10/18/2019 Tantom's concern was that, if he told representatives of the bank that he could not resolve the problem with the dead deer on its property (that it was their responsibility being on their private property and the Highway Department would not take the deer carcass because it was not on a county roadway), he definitely would have been called in to one of his supervisors' offices and criticized. **(1T17-7 through 1T17-24, 1T35-16 through 1T36-24, 10/18/2023)**

At no time during Tantom's training at the police academy or his employment with Mt. Laurel was he given any training, or talked to a representative of the Mount Laurel Police Department, with regard to when and how to use a snare in dragging a dead deer carcass or otherwise. **(1T27-10**

**through 1T28-10 & 1T45-22 through 1T45-25, 10/18/2023)** Prior to 10/18/2019 Tantom had not used a snare, or seen a snare used, to move, remove or relocate a dead deer carcass. **(1T19-19 through 1T20-2, 1T21-24 through 1T22-1, 1T34-19 through 1T35-7 & 1T35-8 through 1T35-22, 10/18/2023)** Also prior to 10/18/2019 Tantom, and at least two other officers/people, had moved an animal carcass. On these occasions, a snare was not used. **(1T43-8 through 1T44-7, 10/18/2023)** Tantom had used a snare, not more than three (3) times, previous to 10/18/2019 on live, very aggressive dogs. **(1T20-9 through 1T21-1, 10/18/2023)** Prior to 10/18/2019 Tantom, on a couple of occasions, had put down deer that had been injured in an accident. On those occasions, the injured deer were off of the roadway in the grass and Tantom did not have to move them, either before or after, he put them down. **(1T41-7 through 1T42-16 & 1T46-15 through 1T47-3, 10/18/2023)**

On 10/18/2019 Tantom used the animal snare to move/relocate the dead deer carcass because the carcass had already started to decompose and he didn't want to grab it with his hand(s). **(1T22-11 through 1T22-18, 10/18/2023)** Prior to attempting to move the deer carcass Tantom put gloves on because he "didn't know how (he) was going to be doing it" and he "just naturally put gloves on".

**(1T25-13 through 1T25-20, 10/18/2023)**

On 10/18/2019 Tantem had no access to and/or assistance in regard to his activities in removing or relocating the deer carcass from the bank property.

**(1T34-6 through 1T34-9, 10/18/2023)** Tantum had no patrol vehicle partner, the availability of personnel was extremely short and every other police officer on duty was involved with other dispatched calls. **(1T21-2 through 1T21-11 & 1T46-6 through 1T46-14, 10/18/2023)**

The Mount Laurel Police Department General Order GO-96-8, Revision #3, Police Officer Essential Functions, dated 07/17/1996, detailed police officer activities of: (1) “L. Push objects, vehicles or persons”; (2) “M. Pull objects or persons”; (3) “O. Drag objects or persons”; and, (4) “QQQ. Investigate animal complaints, including the humane disposition of severely injured animals”. **(1T23-21 through 1T25-12, 10/18/2023; P-2, Pa0069)**

Tantum’s understanding was that he could not attach the deer carcass to his patrol car and drag it out that way. Mount Laurel did not want its patrol officers using their patrol vehicles for anything. Patrol officers were not allowed to use

their patrol vehicles to push other vehicles out of the highway. (1T29-16 through 1T29-25, 10/18/2023)

### **Legal Argument**

#### **I. THE PETITIONER, TANTUM, HAS THE BURDEN OF PROOF (issue not raised below)**

The party challenging an administrative decision bears the burden of proof to show that the administrative decision was arbitrary, unreasonable or capricious.

Boyle v. Riti, 175 N.J. Super. 158, 166 (App. Div. 1980); In re Commuter Operating Agency's Determination, 166 N.J. Super. 430, 435 (App. Div. 1979), certif. den. 81 N.J. 261 (1979), cross-petition for certif. den. 81 N.J. 262 (1979); In re Matter of Public Hearings, 142 N.J. Super. 136, 156 (App. Div. 1976), certif. den. 72 N.J. 457 (1976). The Petitioner has the burden of proving all of the elements necessary to show eligibility for an ADR allowance. This must be shown by a fair preponderance of the legally competent evidence. In re Polk License Revocation, 90 N.J. 550, 560 (1982); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).,

In this matter, Tantum has shown by a preponderance of all of the credible

evidence that an undesigned, unexpected and unanticipated happening occurred and directly resulted in his permanent and total disability. Richardson v. Brd of Trustees, PFRS, 192 N.J. 189, 213, 214 (2007). The evidence in the record consists of: (1) the Petitioner's Exhibits, **P-1 through P-10**; and, (2) the testimony of Tantom on 10/18//2023. No witnesses were called by the Respondent to support the Board's determination that the event that caused Tantom's disability claim was not undesigned and unexpected.

**II. PENSION STATUTES ARE REMEDIAL AND SHOULD BE LIBERALLY CONSTRUED IN FAVOR OF THE PUBLIC EMPLOYEES THEY ARE DESIGNED TO BENEFIT.  
(issue not raised below)**

Our Courts have held that it is important to construe the statutes and regulations relating to pensions with due regard to the significant interest of public employees. Steinmann v. State, 116 N.J. 564, 572 (1989) Pension laws are remedial social legislation and should be interpreted broadly and liberally construed in favor of beneficiaries/employees. Bumbaco v. Board of Trustees of the Public Employee's Retirement System, 325 N.J. Super. 90, 94 (App. Div. 1999), cert. denied, 163 N.J. 75 (2000) (quoting Steinmann, supra., 116 N.J. 564, 572 (1989); Smith v. Consol. Police & Fireman's Pension Fund Comm'n, 149 N.J. Super. 229, 232 (App. Div. 1977). As the court in In re Van Orden, 383 N.J. Super. at 442,

stated:

“[a]lthough an employee’s rights are to be construed within the framework of the statutory language, Grieco v. Employees’ Re. Sys. Of Newark, 173 N.J. Super. 474, 478 (App. Div. 1980), the court shall keep in mind that pension statutes are designed to benefit the public employee, the “primary objective in establishing pensions for public employees [being] to induce able persons to enter and remain in public employment, and to render faithful and efficient services while so employed.”” Outland v. Board of Trustees, 326 N.J. Super. at 401 (quoting Geller v. Dep’t of the Treasury, 53 N.J. 591, 597-598 (1969).

In Minsavage v. Board of Trustees, Teachers’ Pension and Annuity Fund, 236 N.J. 598 (2019) the Supreme Court reiterated that Pension laws should be interpreted broadly and liberally construed in favor of beneficiaries/employees.

### **III. “UNDESIGNED AND UNEXPECTED”. (issue not raised below)**

This appeal involves a determination by the Board that Tantum’s 10/18/2019 incident was not considered by the Board to be “undesigned and unexpected”.

“Undesigned” is defined as: not planned beforehand, unintentional or unpremeditated. The Employer Certification for Disability Retirement submitted by Mount Laurel on 05/03/2021 certified that Tantum’s 10/18/2019 accident was not due to Tantum’s negligence (**Pa0005**); and, the Board determined that Tantum’s accident/incident was not the result of his willful negligence. (**Pa0006**)

There is nothing in the record to support a finding of fact, or conclusion of law, that Tantum planned or intended for his 10/18/2019 accident/incident to happen. Whether Tantum's 10/18/2019 incident was "undesigned" is not in issue in this appeal. The term "unexpected" is defined as unforeseen, unanticipated and unpredicted. This appeal involves the issue of whether Tantum's 10/18/2019 incident should be considered a traumatic event and "unexpected".

**IV. THE RECORD SUPPORTS THE CONCLUSION THAT TANTUM HAS ESTABLISHED BY A PREPONDERANCE OF THE CREDIBLE EVIDENCE THAT: (1) HE HAS SATISFIED ALL OF THE RICHARDSON STANDARDS FOR ADR BENEFITS; AND, (2) THE BOARD'S DETERMINATION DENYING HIM ADR BENEFITS WAS ARBITRARY, UNREASONABLE AND/OR CAPRICIOUS. (Pa0011 to Pa0018)**

In Richardson v. Board of Trustees, Police and Firemen's Retirement System, 192 N.J. 189 (2007) our Supreme Court reviewed the legislative and case law history as related to the requirements necessary for the grant of an accidental disability pension. The Petitioner in Richardson, a corrections officer, was thrown to the floor and injured while subduing an inmate. Id. at 214. The officer hyperextended his wrist, and as a direct result, became permanently disabled. Ibid. The Richardson Court held the officer's injury was the result of an "undesigned or unexpected" event, reversing a denial of the Petitioner's application for accidental disability retirement benefits. Id. at 215. Richardson requires a member to prove

an event:

1. that caused [them] to be permanently and totally disabled;
2. that directly resulted from 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.

In discussing the issue of “undesigned and unexpected” the Richardson Court stated as follows:

“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, 355 A. 2d 625; Russo, supra, 62 N.J. at 151, 299 A.

2d 697. 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.

In sum, 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 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.*

In this case, the Board conceded from the beginning that Richardson was permanently and totally disabled as the direct result of a work-related incident. The only contested issue was whether that incident constituted a traumatic event. Given the clarified test for traumatic event expressed above and our discussion of work effort, Richardson satisfied the accidental disability statute. While performing the regular tasks of his job as a corrections officer, subduing an inmate, Richardson was thrown to

the floor and hyperextended his wrist. As a direct result, he became permanently and totally disabled. The occurrence was (a) identifiable as to time and place; (b) unexpected and undesigned; and (c) not caused by a pre-existing condition of Richardson, alone or in combination with work effort. In short, Richardson suffered a traumatic event.

By our interpretation of traumatic event, we return to the roots of the accidental disability statute, carry out the Legislative's intent, and provide decision makers with a standard they can apply consistently and uniformly. It goes without saying that the remaining constraints of the accidental disability statute (permanent and total disability from the performance of any available job; work-relatedness; and non-willful negligence) will continue to strictly circumscribe entitlement to accidental disability benefits." Richardson, 192 N.J. at 214 & 215.

In Tantum's matter, the Board determined that all of the Richardson standards were met except the "undesigned and unexpected" standard i.e.: (1) Tantum was determined to be totally and permanently disabled from the performance of his regular and assigned duties in accordance with N.J.S.A. 43:16A-7, and relevant case law; (2) the Board determined that Tantum's total and permanent disability was a direct result of the 10/18/2019 incident; (3) Tantum's 10/18/2019 incident was determined by the Board to be identifiable as to place and time; (4) it was determined by the Board that the 10/18/2019 incident occurred as a

result of Tantum's regular and assigned duties; and, (5) it was determined by the Board that the 10/18/2019 incident resulting in Tantum's total and permanent disability was not the result of Tantum's willful negligence. (Pa0006)

The testimony of Tantum was unrebutted and the record is clear with respect to the facts that:

A. At no time during Tantum's training at the police academy, or his employment with Mt. Laurel, was he given any training, or talked to a representative of the Mount Laurel Police Department, with regard to when and how to use a snare in dragging a deer carcass or otherwise move a deer carcass. (1T27-10 through 1T28-10 & 1T45-22 through 1T45-25, 10/18/2023) Prior to 10/18/2019 Tantum had not used a snare, or seen a snare used, to move, remove or relocate a dead deer carcass. (1T19-19 through 1T20-2, 1T21-24 through 1T22-1, 1T34-19 through 1T35-7 & 1T35-8 through 1T35-22, 10/18/2023) Also prior to 10/18/2019, Tantum and at least two other officers/people, had had to move an animal carcass. On these occasions, a snare was not used. (1T43-8 through 1T44-7, 10/18/2023) Tantum had used a snare, not more than three (3) times, previous to 10/18/2019 on live, very aggressive dogs. (1T20-9 through 1T21-1, 10/18/2023) Prior to 10/18/2019 Tantum, on a couple of occasions, had put down deer that had been injured in an accident. On those occasions, the injured deer were off of the roadway in the grass and Tantum did not have to move them, either

before or after, he put them down. **(1T41-7 through 1T42-16 & 1T46-15 through 1T47-3, 10/18/2023)**

B. Animal Control was responsible for dealing with live and injured or sick animals. The county Highway Department was responsible for removal of dead animals on county highways. The entrance driveway to the bank in which the dead deer was located was on a county road. It was not Tatum's job or responsibility to remove animal carcasses from private property. Tatum's job or responsibility in regard to animal carcasses on county roads was to contact dispatch and request that dispatch contact the Highway Department to remove the animal carcass from the county roadway; and, after a couple of days, if he saw the animal carcass was still on the county roadway, he would contact dispatch and request that they contact the Highway Department again. **(1T16-17 through 1T17-6, 1T17-25 through 1T19-13, 1T25-21 through 1T26-6 & 1T28-15 through 1T28-23, 10/18/2023; P-4C & P-4E)** The Employer Certification for Disability Retirement submitted by Mount Laurel on 05/03/2021 certified that Tatum's 10/18/2019 accident occurred during the performance of Tatum's duties **(Pa0005)**; and, the Board determined that Tatum's incident occurred as a result of Tatum's regular and assigned duties. **(Pa0006)**

The Petitioner in Richardson, a corrections officer, was thrown to the floor and injured while subduing an inmate. Id. at 214. The officer hyperextended his wrist,

and as a direct result, became permanently disabled. Ibid. The Richardson Court held the officer's injury was the result of an "undesigned or unexpected" event. In this matter, Tantum, a police officer, was attempting to pull a deer carcass that did not move when Tantum first pulled on the deer carcass. Tantum felt significant pain, a pop and crunch in his right elbow when he began and first attempted to pull the deer carcass, and as a direct result, became permanently disabled. One can not distinguish, with any intellectual honesty, between what happened to Tantum on 10/18/2019 and the incidents involving the: (1) Petitioner in Richardson; and, (2) the examples given in Richardson of an "undesigned or unexpected" event [i.e., a librarian hit by a falling bookshelf while re-shelving books; and, a social worker catching their hand in a car door while transporting a child to court. Richardson, Ibid.

In Mount v. Bd. of Trs., Police & Firemen's Ret. Sys., 233 N.J. 402 (2018), the New Jersey Supreme Court considered a case where a police officer responded to a serious motor vehicle accident, and after seeing "what 'appeared to be the arm of a human being'" hanging from a window and a group of bystanders screaming "do something," approached the vehicle which then exploded into flames. Id. at 409. The officer had been trained to respond to motor vehicle accidents by

“directing traffic, conducting crowd control, and preparing accident reports,” but denied having been trained to extract accident victims from vehicles. Ibid. The ALJ concluded that the traumatic event was not “undesigned and unexpected for [the] purposes of Richardson.” Id. at 412. The Appellate Division subsequently concurred with the ALJ’s decision because the event was within the officer’s job description and contemplated by his training, therefore, the event was neither undesigned or unexpected. Id. at 413.

The New Jersey Supreme Court reversed, holding whether an event is “undesigned and unexpected” is not “resolved merely by reviewing the member’s job description and the scope of his or her training.” Id. at 427. Considerations of job duties and trainings “may weigh strongly for or against an award” of accidental disability, but that is an inquiry specific to each case. Ibid. The Court found significant that the officer, while expected to remove victims from damaged vehicles, had not been trained to “combat, unassisted, an explosion of such magnitude experienced at such a close range.” Ibid. Furthermore, he was without any firefighting equipment or protective gear and was therefore helpless in the face of “a terrible tragedy.” Id. at 427-28. It was these “extraordinary circumstances” which rendered the incident undesigned and unexpected, satisfying the Richardson

test. Id. at 428.

Richardson did/does not require any “extraordinary circumstances” to meet the “undesigned and unexpected” standard. The Mount case represents an expansion of the “undesigned and unexpected” standard and stands for the proposition that whether an event is “undesigned and unexpected” is not “resolved merely by reviewing the member’s job description and the scope of his or her training.” Id. at 427. Considerations of job duties and training(s) “may weigh strongly for or against an award” of accidental disability, but that is an inquiry specific to each case. Ibid.

#### **IV. CITATION AND REFERENCE TO DISTINGUISHABLE UNPUBLISHED OPINIONS. (Pa0017)**

Unpublished decisions are never binding and some courts prohibit citing them even as persuasive. N.J. Ct. R. 1:36 provides that no unpublished opinion(s) shall be cited by counsel unless the court and all other parties are served with a copy of the opinion and all of the contrary unpublished opinions known to counsel.

This matter has been briefed and decided (Initial Decision) with references and reliance upon unpublished decisions. The following unpublished opinions are

referred to because of their distinguishable factual scenarios and analysis in regard to the issue of undesigned and unexpected. In Carmichael v. Board of Trustees, Police & Firemen's Retirement System, 2014 N.J. Super. Unpub. LEXIS 693 (App. Div. March 28, 2019), the Court ruled that the incident was not undesigned and unexpected where the member was disabled *as she continued to apply upward force* against the lever of a prison-cell door that had jammed and stopped moving. In Gambatese v. Board of Trustees, 2018 N.J. Super. Unpub. LEXIS 1133 (App. Div. May 15, 2018) the Court ruled that the incident was not undesigned and unexpected where the member sustained a disabling shoulder injury *after he continuously pulled on a 500 pound steel door*. In both cases the courts focused on the continuous actions of the members to apply force against a door lever (Carmichael) and a steel door (Gambatese). Both cases are clearly distinguishable from the Tantum matter in that Tantum was the object of, and subject to, a defined traumatic event, an unexpected happening, that did not involve the continuous efforts of Tantum that eventually resulted in his disabling injuries.

## V. CONCLUSION

In the examples given in Richardson, the Court indicated that: (1) the police

officer did *not expect* to be shot; (2) the librarian did *not expect* to be hit by a falling bookshelf; and, (3) the social worker did *not expect* his/her hand catching in a car door. Tantum did not expect the deer carcass, because of its weight and/or condition, not moving when he attempted to relocate the carcass. *Given Tantum's experience and training, is it reasonable to conclude that Tantum would have attempted to move the deer carcass if he expected it not to move?* Tantum: (1) had not received any training on the use of the snare as well as any limitations on its use; (2) used a snare to relocate/move a deer carcass; and, (3) generally, received any training in the relocation/movement of a deer carcass. Any issues concerning what Tantum expected, or should have expected, should be resolved in Tantum's favor pursuant to case law precedent. **See Point II.**

For the foregoing reasons it is respectfully submitted that the record created below supports the finding that during the regular performance of his job duties on 10/18/2019 a traumatic accident which was unexpected occurred directly resulting in Tantum's permanent and total disability. Richardson v. Board of Trustees, Police and Firemen's Retirement System, 192 N.J. 189, 213, 214 (2007).

Therefore, it is respectfully requested that the final administrative determination of the Board of Trustees of the Police and Firemen's Retirement System (PERS) be

reversed; and, that Tantum be awarded Accidental Disability Retirement benefits.

Respectfully yours,

Dated: 08/10/2025

By: *Herbert J. Stayton, Jr.*  
Herbert J. Stayton, Jr., Esquire



**JAMES A. KOMPANY**  
*Chairman*

**GREGORY PETZOLD**  
*Executive Director*

October 27, 2025

**Via Electronic Filing**

Marie C. Hanley – Appellate Division Clerk  
Appellate Division Clerk's Office  
P.O. Box 006  
Trenton, New Jersey 08625

Attention: Sara Felicia, Case Manager

**Re: Gregory R. Tantom v. Police and Firemen's  
Retirement System,  
Docket Number: A-001105-24T2**

**On Appeal from a Final Agency Decision of the  
Board of Trustees, Police and Firemen's  
Retirement System of New Jersey, TYP-03838-2022S**

**Sat Below: Hon. Carl V. Buck, III, A.L.J.**

Dear Ms. Hanley,

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

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**PRELIMINARY STATEMENT**

Appellant Gregory R. Tantum (“Appellant” or “Tantum”), formerly a police officer for Mount Laurel Township (“MLT”), improperly tries through this appeal to reverse a final administrative determination (“FAD”) of the Board of Trustees, Police and Firemen’s Retirement System (“Board” or “Respondent”) denying him Accidental Disability retirement benefits (“AD”). Appellant’s right arm was injured on October 18, 2019 when he was moving an animal carcass to the

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side of a county road using an animal snare device. Appellant received an award of Ordinary Disability retirement benefits (“OD”) from the Board. After a full hearing in the Office of Administrative Law (“OAL”) on October 18, 2023, an Initial Decision dated October 15, 2024 (“ID”), issued a finding that Appellant 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, following exceptions and replies, concluding that the incident was not “undesigned and unexpected” and denying Tantum AD. The Board’s denial decision should now be affirmed and the appeal dismissed.

**PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS**<sup>1</sup>

Appellant began working as a Police Officer for the MLT in March 7, 2008. Pa02.<sup>2</sup> His AD applications listed two incidents, specifically October 18, 2019 and June 16, 2018.<sup>3</sup> Pa016. Tantum was the only witness to testify at hearing. Pa020. He started receiving OD benefits effective May 1, 2021 from the Board. Pa06.

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

<sup>2</sup> “Pa” citations refer to documents in Appellant’s Appendix, previously filed with the Court.

<sup>3</sup> The Board found that Tantum was not disabled as a result of the June 16, 2018 event and testimony was not taken regarding that date, medical or otherwise, and no findings were made about it in the ID.

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On October 18, 2019, Appellant was dispatched to a call to remove a dead deer located near a business (a bank) located at 5039 Church Road in MLT. He was to remove the carcass from the travel surface of the road. “The carcass was located in the lane of travel on the inbound side of the entrance to the bank, off of Church Road.” Pa013. At the scene, Tantum donned gloves and chose an animal snare from the trunk of his vehicle. Pa015. Tantum is right-handed. He did not use his bare hands because the animal was decomposing. *Id.* He put the wire loop of the animal snare around the carcass’s fore leg and pulled, but the carcass did not move on his first attempt. As he continued pulling during his first attempt, he felt “significant pain, a pop and crunch in his right elbow.” Pa013. He stopped immediately because of the pain and he had to compose himself before pulling again and eventually moving the carcass to the edge of the road. Pa014 (together, hereafter, the “incident”). He next pulled the carcass with his left hand with the animal snare under his left arm. Tantum said that he should not have been assigned this task. *Ibid.* Removing an animal carcass was typically a function performed by the county road department. *Id.* Tantum moved the animal carcass alone. *Id.*

The ID acknowledged that the MLT Police Department General Order GO-96-8, Revision #3, Police Officer Essential Functions, dated 07/17/1996, detailed police officer activities of (1) “L Push objects, vehicles or persons; (2) “M

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Pull objects or persons;” (3) “O. Drag objects or persons;” and (4) “QQQ Investigate animal complaints, including humane disposition of severely injured animals.”

Pa0015. Tantum would be criticized by superiors if he did not complete this assigned task. Pa0014. Though he was trained at the police academy, Tantum said he was not trained either in moving carcasses or in using an animal snare at all. Ibid. He said that the county highway department was responsible for moving animal carcasses. Id.

Tantum had performed similar duties previously. He had put down wounded deer off the road surface, and had used an animal snare to restrain aggressive dogs. Pa0015. He had moved an animal carcass with other people, though not with an animal snare. Ibid.

The ID found that Tantum had not proved his entitlement to AD because the incident was not “undesigned and unexpected.” Pa018. “Put simply, there was nothing about the activity of removing an animal carcass that Tantum was engaged in at the time of his injury that was “undesigned” or “unexpected” under the law.” Pa017. This appeal followed. Pa033-Pa035.

## ARGUMENT

### POINT I

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

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The appellate standard of review for an appeal from the Board's denial decision by this Court is stringent. Case law provides that, "review of administrative agency action is limited. 'An administrative agency's final quasi-judicial decision will be sustained unless there is a clear showing that it is arbitrary, capricious or unreasonable, or that it lacks fair support in the record.'" Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)(citations omitted); Gerba v. Bd. of Trs., Pub. Employees' Ret. Sys., 83 N.J. 174, 189 (1980)("On judicial review of an administrative agency determination, courts have but a limited role to perform."). Case law also accords a strong presumption of reasonableness to an agency's exercise of its statutorily delegated responsibility, as well as its fact-finding. See Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 29 (1995) (Handler, J., dissent). Further, an administrative agency's determination is presumptively correct and, on review of the facts, a court will not substitute its own judgment for that of an agency where the agency's findings are supported by substantial credible evidence. See also Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); Campbell v. New Jersey Racing Comm'n, 169 N.J. 579, 587 (2001). If an appellate court "is satisfied after its review that the evidence and the inferences to be drawn therefrom support the agency head's decision, then it must affirm even if the court feels that it would have reached a different result itself." Clowes v. Terminix Int'l Inc., 109 N.J.

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575, 588 (1988); In re Stallworth, 208 N.J. 182, 194 (2011) (citation omitted) (“A reviewing court ‘may not substitute its own judgment for the agency’s, even though the court might have reached a different result.’”); Kasper v. Bd. of Trs., Teacher’s Pension & Annuity Fund, 164 N.J. 564, 580-81 (2000).

Only where an agency's decision (the FAD here) is arbitrary or capricious, or unsupported by substantial credible evidence in the record, may it be reversed. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980); Atkinson, 37 N.J. at 149. Moreover, the party who challenges the validity of the administrative decision bears the burden of showing that it was “arbitrary, unreasonable or capricious.” Boyle v. Riti, 175 N.J. Super. 158, 166 (App. Div. 1980) (internal citations omitted). Appellant has failed to meet this stringent standard of review for the FAD and vacatur/reversal is not appropriate here.

## POINT II

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

The starting point for the Board’s legal analysis of the issue of whether the incident was a “traumatic event” is the proper application of the “undesigned and unexpected” standard. Richardson v. Bd. of Trs., Police & Firemen’s Ret. Sys., 192

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N.J. 189, 212-13 (2007). Appellant argues that the Board’s decision to adopt the ID was improper because the Board incorrectly found that removal of a deer carcass from a county road that caused him injury was not a traumatic event. Ab06, Ab08-09. Richardson specifies a “traumatic event” to be “caused by a circumstance external” to the member. Richardson, 192 N.J. at 212. As applied by the Board and analyzed in the ID, this requirement means that the disabling injury must be either: (1) an unintended external event, or (2) an unanticipated consequence of normal work activity (an intended external event), where the consequence was extraordinary or unusual in common experience. Id. at 201. This element is not satisfied when the member performs his usual work done in the usual way. See Russo v. Teacher’s Pen. & Annuity Fund, 62 N.J. 142, 154 (1973). The petitioner must establish that the disabling injury was the result of an external force triggering an unanticipated consequence of the 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). Nothing like this has happened here.

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Appellant argues that the incident is “undesigned,” which is inaccurate.

Ab14. The ID states that the nothing in the activity established that the incident was “undesigned” or “unexpected.” Pa017. Under the ID as adopted by the Board, neither requirement is met. Ibid. That the deer carcass did not move on Tantum’s first effort does not make the incident “undesigned and unexpected.” There is no specific testimony about a defect or condition or circumstance on the road that makes that situation into an accident.

The fact that moving an animal carcass is not a specifically listed work duty for Tantum is irrelevant. That Tantum was not specifically trained to move dead animals from a road surface is also irrelevant. Tantum’s testimony that the county highway department should remove a deer carcass does not negate these facts. The dispatch assignment was proper. The general activities that make up this assigned task (pushing, pulling, and dragging) are specified duties for Tantum. Pa0069-Pa0073. This supports the Board’s conclusion. Listing the specific work task as well has no bearing on the Board’s not “undesigned and unexpected” conclusion.

As applied by the Board in its FAD, the “undesigned and unexpected” requirement means that the disabling injury must be an unintended consequence that was extraordinary or unusual in common experience. Aa07. It strains credulity to

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believe that the specific instance of moving a deer carcass, using particular methods selected by the police officer on the scene, to the side of a county road, constitutes an accident only because it caused injury to him. Injury to Tantum's right arm here is neither unusual nor extraordinary. The member's expectation about not being injured during his work is not the appropriate standard and does not make an "traumatic event." Further, there are no "extraordinary circumstances" in this incident that make the case like Mount v. Bd. of Trs., Police & Firemen's Ret. Sys., 233 N.J. 402, 428 (2018), as argued by Tantum. He did not establish that extraordinary or unusual circumstances occurred during the incident. Mount does not support reversal of the Board's decision regarding this element.

In his brief, Tantum incorrectly tries to distinguish two unpublished Appellate Division cases. Ab22-23. These cases, rather, demonstrate that the "undesigned and unexpected element is not satisfied here either. Carmichael v. Bd. of Trs., Police and Firemen's Ret. Sys., No. A-2955-12T3, 2014 N.J. Super. Unpub. LEXIS 693, \*3 (App. Div. March 28, 2014)<sup>4</sup>("She testified that she injured her shoulder when the door lever jammed midway through its travel as she was pushing up on it.")(Central Reception and Assignment Facility) (Ra1-Ra4).<sup>5</sup> The Appellate

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<sup>4</sup> 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 attached to Respondent's Appendix, filed herewith.

<sup>5</sup> "Ra" refers to the documents in the Respondent's Appendix, filed herewith.

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Division found that the door mechanism stopped working though Carmichael continued to apply upward force against it. Ibid. “As a rotator cuff injury from pushing against a large lever can hardly be classified as extraordinary or unusual in our common experience, the ALJ was correct that Carmichael did not carry her burden. As the ALJ concluded, Carmichael’s injury was caused by her ordinary work effort, which does not qualify as a traumatic event.” Ra6-Ra7.

In Gambatese, the member “tore his rotator cuff while pulling on a door. He realized that the door was not going to open as soon as he pulled it but continued nonetheless. The door did not slam into him or abruptly close on him, it simply did not open as the continued to apply force against it. The Appellate Division panel affirmed that the event was not undesigned and unexpected.” Gambatese v. Bd. of Trs., No. A-0879-16T4, 2018 N.J. Super. Unpub. LEXIS 1133, \*12 (App. Div. May 15, 2018)<sup>6</sup>(Passaic County Jail)(“He realized that the door was not going to open ‘[a]s soon as [he] pulled it.’ Nonetheless, he continuously pulled the door and felt something ‘pull’ or ‘pop’ in his right arm and ‘a sharp pain’ shoot down to his elbow.”)(Ra5-Ra9). In each case, where a jail door mechanism failed to operate, the corrections officers filed for AD claiming that that the failure was

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<sup>6</sup> 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 attached to Respondent’s Appendix, filed herewith.

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“undesigned and unexpected.” No traumatic event occurred, however, because these events were not “undesigned and unexpected.” Tantum’s anticipatory attempt to distinguish these two cases is unsuccessful.

These two cases are applicable here, rather than being distinguishable, as argued by Tantum. In these cases, generally, the Appellate Division found that a body part that sustains injury during regular work activity, even work effort that is excessive, is NOT undesigned and unexpected. These cases are applicable in understanding the Board’s disposition herein by adopting the ID. The excessive work effort alone does not make the incident “undesigned and unexpected.”

Further, it cannot be argued that case law stating that pension statutes are remedial in nature means that applications under N.J.S.A. 43:16A-7 should be granted where the facts do not support that conclusion. This observation about the AD statute can have no bearing on the Board’s disposition of an individual application like this one. Successful applications must satisfy all elements.

### **POINT III**

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

The whole record in this matter is clear and undisputed that Appellant’s disabling injury from “traumatic event” because it was not “undesigned and

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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. The Board was not arbitrary and capricious in denying AD and adopting the ID.

The Board gave weighty consideration to the facts before it in determining the FAD. In particular, several factual findings contained in the ID were incorporated into the Board’s denial decision. Most facts were not disputed. Tantum had been a police officer for many years. Pa0013. The force that Appellant applied to move the deer carcass was all his own effort, using a method that he selected. Pa0013, Pa0015. Tantum had used the animal snare previously, if not for this specific activity. Pa0015. Tantum initially used both hands to pull on the animal snare during the incident. Pa0014. Tantum accomplished the task alone. Ibid.

The Board relied on various facts denying AD. The dispatch direction to move the deer carcass was proper. Tantum selected the tools that he needed from his patrol vehicle: gloves and animal snare. Nothing here suggested an “accident,” there was nothing about the road surface, or the deer carcass itself, his gloves, or the condition of the animal snare that contributed to the “incident.” Pa0013. Tantum’s job duties, as individually described, demonstrate that his acts to accomplish this task were each part of his job. Pa0015. He used gloves because the deer carcass had

