

SUPERIOR COURT OF NEW
JERSEY APPELLATE DIVISION
DOCKET NO.: A-001710-23T4

ORLANDO TORRES,

Civil Action

Appellant,

On Appeal from

V.

BOARD OF TRUSTEES,
PUBLIC EMPLOYEES'
RETIREMENT SYSTEM

Initial Decision dated
December 7, 2023, under OAL
Docket No. TYP-01014-21 and
upheld by The Board of Trustees,
Public Employees' Retirement
System on January 18, 2024

Respondent.

Sat below:

Hon. Tricia M. Caliguire, ALJ

**Brief and Appendix
of Appellant
Orlando Torres**

Szaferman Lakind Blumstein & Blader
120 Sanhican Drive
Trenton, New Jersey 08618
609-771-8611; 609-771-8612 (fax)
sgaylord@gaylordpopp.com

Samuel M. Gaylord, Esquire
ID #024611995
On the Brief

TABLE OF CONTENTS

COVER PAGE.	i
TABLE OF CONTENTS.	ii
TABLE OF AUTHORITIES.	iii
TABLE OF JUDGMENTS, ORDERS AND RULINGS.	v
TABLE OF CONTENTS TO APPENDIX.	vi
TABLE OF CONTENTS TO CONFIDENTIAL APPENDIX.	vii
INDEX TO TRANSCRIPTS.	vii
PRELIMINARY STATEMENT.	1
PROCEDURAL HISTORY.	3
STATEMENT OF FACTS.	4
STANDARD OF REVIEW.	5
LEGAL ARGUMENT – POINT I	
THE PERS BOARD IMPROPERLY DETERMINED THAT ORALNDO TORRES IS NOT ENTITLED TO AN ACCIDENTAL DISABILITY PENSION BECAUSE THE INCIDENT CAUSING HIS DISABILITY WAS UNDESIGNED AND UNEXPECTED (Aa1-Aa3).	8
LEGAL ARGUMENT – POINT II	
<u>THE PERS BOARD IMPROPERLY DENIED MR. TORRES ACCIDENTAL DISABILITY PENSION BENEFITS BECAUSE THE INCIDENT CAUSING HIS DISABILITY WAS UNDESIGNED AND UNEXPECTED (Aa1-Aa3) (Aa46-Aa53)(Aa54-Aa55).</u>	11
CONCLUSION.	19

TABLE OF AUTHORITIES

CASES CITED

<u>Angel v. Rand Express Lines Inc.</u> , 66 N.J. Super 77 (App. Div. 1961).	9, 13
<u>Atkinson v. Parsekian</u> , 37 N.J. 143, 149 (1962).	10
<u>Barnes v. United States</u> , 412 U.S. 837 (1973).	11
<u>Bialko v. H. Baker Milk Co.</u> , 38 N.J. Super. 169 (App. Div. 1955).	12, 13
<u>Brady v. Bd of Review</u> , 152 N.J. 197, 210 (1997) (" <u>Charatm v.</u> <u>Board of Review</u> , 200 N.J. Super. 74, 79 (App. Div. 1985).	5
<u>Brooks v. Bd. of Trs., Pub. Emps.' Ret. Sys.</u> , 425 N.J. Super. 277 (2012).	1, 8
<u>Caminiti v. Bd. of Trs., Police and Firemen's Ret. Sys.</u> , 431 N.J. Super. 1, 14 (App. Div. 2013) (Citing <u>Hemsey v.</u> <u>Bd of Trs., Police and Firemen's Ret. Sys.</u> , 198 N.J. 215, 223-24 2009).	5, 8
<u>Campbell v. Dep't of Civil Serv.</u> , 39 N.J. 556, 562 (1963).	5
<u>Carbo v. United States</u> , 314 F.2d 718, 749 (9th Cir. 1963). 11	
<u>City of Newark v. Natural Res. Council</u> , 82 N.J. 530, 539 cert. denied, 49 U.S. 983, 101 S. Ct. 400, 66 L. Ed. 2d 245 (1980).	4
<u>H.K. v. Department of Human Services</u> , 184 N.J. 367, 386 (2005)	5
<u>In re Musick</u> , 143 N.J. 206, 216 (1996).	5

<u>Klumb v. Bd of Educ. Of Manalapan-Englishtown Reg'l High Sch. Dist.</u> , 199 N.J. 14, 34 (2009).	6
<u>Mayflower Cec. Co. v. Bureau of Sec.</u> , 64 N.J. 85, 93 (1973).	5
<u>Moran v. Board of Trustees, Police and Firemen's Retirement System</u> , 438 N.J. Super. 346 (App. Div. 2014).	1, 6 to 10
<u>Richardson vs. Board of Trustees, Police and Firemen's Retirement System</u> , 192 N.J. 189 (2007).	1, 6 to 10
<u>Russo v. Bd. Of Trs.</u> , 206 N.J. 14, 27 (2011) (citing <u>In re Herrmann</u> , 192 N.J. 19, 27 (2007))	4, 7
<u>Utley v. Bd. Of Review</u> , 194 N.J. 534, 551 (2008).	4
<u>Zigmont v. Bd. Of Trs. Teachers' Pension & Annuity Fund</u> , 91 N.J. 580, 583 (1983).	6

STATUTES CITED

<u>N.J.S.A. 43:15A-43</u>	6
-------------------------------------	---

TABLE OF JUDGMENTS, ORDERS AND RULINGS

October 22, 2020 Initial Board of Trustees, Public Employees’ Retirement System Letter to Orlando Torres	Aa4 -Aa6
December 7, 2023, Initial Decision of Honorable Tricia Caliguire, ALJ	Aa9 -Aa32
January 18, 2024, Board of Trustees, Public Employees’ Retirement System Upholding the Initial Decision.	Aa33-Aa34

TABLE OF APPENDIX

<u>Aa Reference</u>	<u>Description</u>
Aa1-Aa3	March 11, 2020 Application for Accidental Disability Pension
Aa4-Aa5	March 12, 2020 Employer Certification Form
AAa6-Aa8	October 22, 2020, Initial Board Letter to Orlando Torres Denying Accidental Disability Pension Granting Ordinary
Aa9-Aa32	December 7, 2023, Initial Decision of Honorable Tricia Caliguire, ALJ
Aa33-Aa34	January 18, 2024, Board of Trustees, Public Employees' Retirement System Upholding the Initial Decision
Aa35-Aa42	Notice of Appeal and Civil Case Information Statement filed January 18, 2024
Aa43-Aa45	Job Description / Juvenile Detention Officer

TABLE OF CONFIDENTIAL APPENDIX

Aa46-Aa53	Dr. David Weiss April 12, 2022 Report
Aa54-Aa55	Dr. David Bundens February 13, 2020 Medical Examination Form
Aa56-Aa60	South Jersey Radiology
Aa61-Aa62	Inspira Health July 5, 2019 Operative Report

INDEX TO TRANSCRIPTS

- 1T November 4, 2022, testimony of Orlando Torres Before Honorable Tricia Caliguire, A.L.J.
- 2T November 25, 2022, Testimony of Dr. David Weiss Before The Honorable Tricia Caliguire, A.L.J.
- 3T April 13, 2023, Testimony of Dr. Jeffrey Laken Before The Honorable Tricia Caliguire, A.L.J.

PRELIMINARY STATEMENT

Orlando Torres requests this Court reverse the decision of the Board of Trustees, Public Employees Retirement System (the “Board”) denying his application for Accidental Disability Retirement benefits. The Board’s decision does not warrant this Court’s discretion as it fails to rely on reported case law and too narrowly construes what constitutes an Undesigned and Unexpected event, and bases its decision on the wrong standard as to what constitutes disabled. (Aa29).

Mr. Torres established that the incident in question was Undesigned and Unexpected. If this Court follows the Published Opinions of 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), as well as Petrucelli v. Board of Trustees of the Public Employees' Retirement System, 211 N.J. Super. 280 (App. Div. 1986) it will grant Accidental Disability Pension benefits because the April 7, 2019, work injury meets the definition of what constitutes an “undesigned and unexpected” event.

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 established 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 fall which occurred while restraining a juvenile. 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. Torres' April 7, 2019, fall. It is our suspicion that had Officer Richardson been before Judge Caliguire she 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. Torres granted his Accidental Disability Pension.

Furthermore, the heart of the disability inquiry is has the member established a disability condition which is total and permanent and was substantially caused by the work accident. The Board, which didn't revise the Judge's decision, based its medical decision using the wrong standard. The Board' decision required Mr. Torres to prove his disability was directly caused by the work accident. Mr. Torres was only required to prove that the work accident was the "substantial cause of his disability."

PROCEDURAL HISTORY

On March 11, 2020, Orlando Torres submitted an application for accidental disability retirement benefits (“AD”)(Aa1-Aa3). On March 20, 2020, an Employer Certification Form was submitted. (Aa4-Aa5). The AD application set forth: (a) one incident date – April 7, 2019; and (b) the following disability comments:

I sustained an injury at work on my right knee which caused me to have surgery to repair my meniscus. Doctor deemed my injury permanent after therapy session expired. Can’t stand for long periods at a time and the injury will not allow me to complete my daily duties at work as I am a juvenile detention officer in which I have to do restraints regularly to break up fights. I am sadden by this injury because I wanted to continue working.

At its meeting on October 21, 2020, the Board of Trustees (the “Board”) for Public Employees’ Retirement System (“PERS”) considered Petitioner’s AD application and found that Petitioner was totally and permanently disabled from the performance of his regular and assigned duties. (Aa6-Aa8). However, the Board found that the April 7, 2019 incident was not undesigned and unexpected, and that Petitioner’s disability was the result of a pre-existing disease alone or a pre-existing disease that was aggravated or accelerated by the work effort. (Aa6-Aa8). Thus, the Board denied Petitioner’s application for AD. Nevertheless, the Board granted Petitioner for ordinary disability retirement benefits (“OD”) effective April 1, 2020. (Aa6-Aa8). Mr. Torres appealed the Board’s denial of AD, and the Board approved Petitioner’s request for a hearing to appeal the Board’s decision and

transferred this matter to the Office of Administrative Law. Hearing were held and on December 7, 2023, Judge Caliguire rendered an initial decision. (Aa9-Aa32). On January 18, 2024, the Board upheld the initial decision of the Board with no changes. (Aa33-Aa34). On January 18, 2025, a Notice of Appeal and Case Information Statement were filed with this Court. (Aa35-Aa42).

STATEMENT OF FACTS

Orlando Torres was a Juvenile Detention Officer for the City of Camden. (1T9:7-23); (Aa43-Aa46). Mr. Torres testified that he started working at the detention center for 6 to 8 months and then was sent to the Academy. (1T10:1-12). He testified that there were four housing units and other areas of the facility that he would be assigned. He testified that he would receive his assignment at roll call and mostly was working the first shift; 7 am to 7 pm. (1T13:1-7). Mr. Torres testified that (Aa43-Aa45) was an accurate description of the job assignment of Juvenile Detention Officer. (1T13:13-24). He indicated that the 12 years prior to the work accident, the time at the new facility, he was not under the care of any doctor for his right knee, nor was he having any difficulty performing any aspect of his job. He testified that he had no problem responding to codes or standing 7 to 8 hours a shift in order to do his job. (1T16:2-21). Furthermore, Mr. Torres testified that since 2003 when he started he worked overtime at least every other or every

third day. (1T20:1-5). He testified that he had no problem performing any aspect of his job even doing all of this overtime. (1T20:8-20).

On April 7, 2019, Mr. Torres was involved in a work related injury. (Aa1-Aa3). He testified that he was in his unit, and a code went off to which he needed to respond. He followed proper procedures and arrived in the Unit where the fight was occurring. (1T26:5-9). He helped separate the juveniles and while dragging the individual he had towards the door he tripped and fell and finished restraining the juvenile. (1T26:5-9). He testified that on that day the facility was short staffed and there was no posted officers at the posted desk in that unit. (1T27: 3-7). In addition, because this was a quick response situation it was only him and his fellow officer where normally there would be 5 to 6 officers per County Policy. (1T28:8-21). Mr. Torres testified that he followed proper procedure and completed his reports. He eventually comes under the care of Dr. Bundens who performs surgery. (Aa61-Aa62). He testified that he eventually had to apply for his pension because he felt he was unable to perform the job due to the ongoing issues with his right knee. (1T34:11-20).

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 Caliguire’s narrow construction and misinterpretation of the law and find her 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). Furthermore, Judge Caliguire relied on the wrong standard finding that Mr. Torres failed to sustain his burden to show that the disability was directly caused by the work accident. Mr. Torres is only required to show that the disability was “substantially caused by” the work accident. The

Board's failure to address this use of the incorrect standard again allows this Court to reverse the Board's decision and grant Mr. Torres his Accidental Disability Pension Benefits.

LEGAL ARGUMENT

POINT I

THE PERS BOARD IMPROPERLY DENIED ORLANDO TORRES ACCIDENTAL DISABILITY PENSION BENEFITS BECAUSE THE INCIDENT CAUSING HIS DISABILITY WAS UNDESIGNED AND UNEXPECTED (Aa1-Aa3)(Aa46-Aa53)(Aa54-Aa55).

The pivotal legal issue before the Court is whether or not the April 7, 2019 incident was an "undesigned and unexpected" event. This requirement is an element of eligibility as set forth in the Supreme Court's seminal opinion in Richardson v. Board of Trustees, Police and Firemen's Retirement System, 192 N.J. 189, 212-13 (2007), clarifying the meaning of the term "traumatic event" under N.J.S.A. 43:16A-7(1).

As delineated in Richardson, a claimant for accidental disability retirement benefits must establish:

- (1) that he is permanently and totally disabled;
- (2) as a direct result of a traumatic event that is
 - a. identifiable as to time and place,
 - b. undesigned and unexpected, and
 - c. caused by a circumstance external to the member (not the result of pre-existing disease that is aggravated or accelerated by the work).

(3) that the traumatic event occurred during and as a result of the member's regular or assigned duties;

(4) that the disability was not the result of the member's willful negligence; and

(5) that the member is mentally or physically incapacitated from performing his usual or any other duty.

[Ibid. (emphasis added).]

The Court explained, "[t]he polestar of the inquiry is whether, during the regular performance of his job, an unexpected happening, not the result of pre-existing disease alone or in combination with the work, has occurred and directly resulted in the permanent and total disability of the member." *Id.* at 214.

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.*

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. Torres's April 7, 2019 incident. He testified he was trained on the policies and procedures of the institution. He testified that he had responded to other incidents in his 17 years as a JDO. However, he tripped attempting to restrain the inmate. (1T26:5-9). The Legislature did not intend to make it generally more difficult for injured employees to obtain an accidental disability pension; instead it intended to weed out disabilities stemming from a member's pre-existing medical condition, even if the condition was exacerbated by the work incident.

Moreover, the fact that Mr. Torres was 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 key inquiry is whether during the regular performance of his job an unexpected happening-not the result of a pre-existing injury or disease-occurred and resulted in the substantial cause of the disability. It is the unexpected tripping which occurred while in the normal course of his employment that allows this Court to opine that the April 7, 2019 incident meets the “Undesigned and Unexpected” Richardson requirement.

POINT II

MR. TORRES HAS DEMONSTRATED HIS DISABILITY WAS SUBSTANTIALLY CAUSED BY THE APRIL 7, 2019 INCIDENT (Aa1-Aa3)(Aa46-Aa53)(Aa54-Aa55)(Aa61-Aa62).

Mr. Torres has demonstrated that his disability was substantially caused by the April 7, 2019 incident. N.J.S.A. 43:15A-43 governs and sets forth the requirements for members of the Public Employees' Retirement System to receive accidental disability retirement benefits. The statutory language describing the relevant requirement reads as follows. A member must be "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; Richardson v. Board of Trustees, Police and Firemen’s Retirement System, 192 N.J. 189 (2007).

Several examples of conditions that did and did not satisfy the enunciated “traumatic event” standard were provided by the Richardson Court. The Court noted that a gym teacher who develops arthritis from the repetitive effects of his work over the years has not suffered a traumatic event. Such a disability is the result of degenerative disease from repetitive exercises and movements and is not related to an event that is identifiable as to time and place. On the contrary, the same gym teacher who trips over a riser, is injured and becomes permanently and totally disabled as a result of the fall has satisfied the accidental disability standard due to the fact that the accident is identifiable as to time and place. The polestar of the inquiry is whether, during the performance of his or her 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. Richardson, supra, 192 N.J. at 213.

The Supreme Court in Cattani v. Board of Trustees held that accidental retirement benefits can be awarded where a pre-existing disease is combined with a traumatic event. 69 N.J. 578 (1976). The Court found that "a basis for an accidental disability pension would exist if it were shown that the disability directly resulted from the combined effect of a traumatic event and a preexisting disease." Id. at 586. Relevant to that determination, an important distinction exists between (1) a preexisting condition combined with ordinary work or even

extra strenuous work effort that creates disability, and (2) a preexisting condition combined with a traumatic event to create disability. The former is not an accidental disability as described by the statute, while the latter can be if the traumatic event is the substantial contributing factor. Id. at 585-86.

Four years later, in Gerba v. Board of Trustees of the Public Employees' Retirement System, the Supreme Court specified that:

[A]ccidental disability in some circumstances may arise even though an employee is afflicted with an underlying physical disease bearing causally upon the resulting disability. In such cases, the traumatic event need not be the sole or exclusive cause of the disability. As long as the traumatic event is the direct cause, i.e., the essential significant or substantial contributing cause of the disability, it is sufficient to satisfy the statutory standard of an accidental disability even though it acts in combination with an underlying physical disease.

[83 N.J. 174, 186-87 (1980) (emphasis added).]

On the same day Gerba was decided, the Court also issued its opinion in Korelnia v. Board of Trustees of the Public Employees' Retirement System, 83 N.J. 163 (1980). There, again, the Court explained the governing principles as follows:

The Statutory standards for an accidental disability are two-fold and require the disability be the 'direct result' of a traumatic event. They also require that the disability not be the result of a 'cardiovascular, pulmonary or musculoskeletal condition which was not a direct result of a traumatic event.'

N.J.S.A. 43:15A-43. While the statutory definition stresses that the resulting disability must be 'direct' in terms of its traumatic origins, it does not require that the antecedent trauma be the exclusive or sole cause of the disability

[Id. at 169-170 (citing Gerba, supra, 83 N.J. at 186-87).]

Six years later, the above Supreme Court holdings were applied in Petrucelli v. Board of Trustees of the Public Employees' Retirement System, 211 N.J. Super. 280 (App. Div. 1986). Petrucelli was a case involving a fall that caused a non-symptomatic preexisting spinal condition to morph into total disability. There, the Court stated:

The claimant in Gerba lost because the undisputed record established that he had symptomatic developmental arthritis for a decade and that the employment event only contributed to the progression of the disease. Id. at 188. The companion case Korelnia, 83 N.J. at 170, also recognized that in the proper circumstance 'an accidental disability may under certain circumstances involve a combination of both traumatic and pathological origins.'

In the case before us we conclude that the 'direct result' test was legally satisfied. As noted, there was no issue of credibility. Claimant was a very active 49-year-old man performing a strenuous job. He had no prior back problems of any kind. After his severe fall down a nine-step stairway, all concede he is permanently and totally disabled because of his now-symptomatic low-back problem. We are satisfied that if claimant here cannot recover after a severe trauma, superimposed on a non-symptomatic structural anomaly, which triggered a symptom complex resulting in total disability, no claimant could ever recover accidental benefits in any circumstance where there exists a quiescent underlying condition which had caused no trouble and might never cause any trouble. We conclude that such a narrow and crabbed 'directness' test was never intended by the Legislature nor condoned by the Supreme Court in Gerba.

[Petrucelli, supra 211 N.J. Super. at 288- 89.]

In this case, Mr. Torres is not required to prove that the incident was the sole cause of his permanent disability rather he is only required to provide proof that

the incident was the substantial contributing cause of his permanent disability.

Gerba, supra, N.J. 83 at 186-187. We note that Richardson v. Board of Trustees, Police and Firemen's Retirement System, 192 N.J. 189, 199 (2007), which is relied upon by both sides in this appeal, directly reaffirms Cattani, Gerba and Korelina.

In making the instant determination, it is necessary to assess and weigh the credibility of the witnesses for the purpose of making factual findings as to the disputed facts. It requires an overall assessment of the witness' story in light of its rationality, internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963).

"Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," In that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950). A trier of fact may reject testimony as "inherently incredible" and may also reject testimony when "it is inconsistent with other testimony or with common experience" or "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

The outcome of this case turns on the credibility of the medical experts. Dr. David Weiss opined that Mr. Torres's disability was substantially caused by the April 7, 2019 incident. (Aa51-Aa52). Dr. Weiss testified that although there were

pre-existing findings on the diagnostic studies Mr. Torres, prior to the incident, was asymptomatic. He was performing his job without restriction and not having any trouble performing any aspect of his responsibilities. Petrucelli.

Dr. Laken, however, testified that Mr. Torres had pre-existing degenerative changes, even though he was aware that prior to the work accident the degenerative issues were not impacting him in any way at work. Dr. Laken testified that the medical records revealed he had a work accident, an MRI and then surgery. Furthermore, Dr. Laken testified that the complex tears were only due to the degenerative process. (3T33:17-21). He testified that the effusion on the MRI was due to the degenerative process. (3T39:6-12). Dr. Laken was more interested in debating the meaning of simple questions than providing a sound medical opinion which was actually supported by the evidence before the Court.

As a general rule, "where the medical testimony is in conflict, greater weight should be accorded to the testimony of the treating physician" as opposed to the testimony of an evaluating physician, who has only met with the employee on one occasion. Bialko v. H. Baker Milk Co., 38 N.J. Super., 169, 171 (App. Div. 1955), certif. denied, 20 N.J. 535 (1956); However, this guideline is not unwaivable. That a physician has been selected and is paid by the Board is "hardly a basis to discount his testimony" in favor of the treating physician, who is presumably paid by the patient. Reizis v. Bd. of Trs., Teachers Pension and Annuity Fund, 91

N.J.A.R.2d (TYP) 16, 21. It is further well settled that "the weight to which an expert opinion is entitled can rise no higher than the facts and reasoning upon which that opinion is predicated." Johnson v. Salem Corp., 97 N.J. 78, 91 (1984) (citation omitted). In this regard it is within the province of the finder of facts to determine the credibility, weight and probative value of the expert testimony. State v. Frost, 242 N.J. Super. 601, 615 (App. Div.), certif. denied, 127 N.J. 321 (1990). "The testimony and experiential weaknesses of the witness, such as (1) his status as a general practitioner, testifying as to a specialty, or (2) the fact that his conclusions are based largely on the subjective complaints of the patient or on a cursory examination, may be exposed by the usual methods of cross-examination." Angel v. Rand Express Lines Inc., 66 N.J. Super 77, 86 (App. Div. 1961). Other factors to consider include whether the expert's opinion finds support in the records from the other physicians, and the information upon which the expert has based his conclusions. And, the premises upon which the expert's observations are based, coupled with the expert's ultimate conclusions, may be contradicted by rebuttal experts and other evidence of the opposing party. Ibid.

In this case, the evidence is clear. For years, Officer Torres had no problem doing his job. He was a Juvenile Detention Officer. (Aa43-Aa46). Dr. Laken knew what he did for a living and in fact stated him to be disabled because of the possibility of further injury in that environment. Dr. Laken however opined that all

of Mr. Torres' issues with his right knee were degenerative in nature. This despite no medical evidence in the 17 years leading up to the work accident involving his right knee, or any issue performing any aspect of his job, or any consideration to the fact that he was performing hours and hours of overtime every week without incident.

This Court doesn't need to find that the incident in question "caused" his disability, as the Board required Officer Torres to do, but instead he only must show that the incident in question is the "substantial cause of his disability." Dr. Laken's opinion is not supported by the medical evidence. Even if some of Officer Torres disability was due to a pre-existing issue, as in Petrucelli, there was no impact to his daily or working life. He received no prior medical care, had no issue doing his job and was able to work constant overtime. He had a work accident. As a result, he required medical care which prevented him from returning to his job. The Court heard from Dr. Weiss and his opinion but has the medical records from the Board Certified Orthopedic surgeon, Dr. Bundens (Aa54-Aa55)(Aa61-Aa62), which supports Dr. Weiss' opinion. (Aa51-Aa52). As a result of the evidence before the Court, and the Board's use of the wrong standard, this Court can forego any discretion it might owe and reverse the Board's decision as Mr. Torres has established the incident was clearly the substantial cause of his disability.

CONCLUSION

For these reasons, the Board's denial of Mr. Torres's accidental disability pension should be reversed and his benefits granted.

A handwritten signature in black ink, appearing to read 'Samuel M. Gaylord', is written over a horizontal line.

Samuel M. Gaylord, Esq.

cc: Mr. Yi Zhu, D.A.G.

ORLANDO TORRES,	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
Petitioner-Appellant,	:	DOCKET NO. A-1710-23T4
	:	<u>Civil Action</u>
v.	:	
BOARD OF TRUSTEES,	:	ON APPEAL FROM A FINAL
PUBLIC EMPLOYEES'	:	AGENCY DECISION OF THE
RETIREMENT SYSTEM,	:	BOARD OF TRUSTEES, PUBLIC
	:	EMPLOYEES' RETIREMENT
Respondent-Respondent.	:	SYSTEM
	:	
	:	Date of Submission: July 2, 2025

BRIEF OF RESPONDENT BOARD OF TRUSTEES,
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 106
Trenton, NJ 08625-0106
(609) 633-2736
Yi.Zhu@law.njoag.gov
Attorney for Respondent Board of Trustees,
Public Employees' Retirement System

SOOKIE BAE-PARK
Assistant Attorney General
Of Counsel

YI ZHU - 250182017
Deputy Attorney General
On the Brief

TABLE OF CONTENTS

	<u>Page</u>
PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS.....	1
ARGUMENT	15
THE BOARD’S DENIAL OF TORRES’S APPLICATION FOR ACCIDENTAL DISABILITY RETIREMENT BENEFITS IS REASONABLE AND SUPPORTED BY SUBSTANTIAL CREDIBLE EVIDENCE.	15
A. The Board reasonably found Torres failed to carry his burden of proving the 2019 incident was undesigned and unexpected	18
B. The Board reasonably found Torres failed to carry his burden of proving his disability is the direct result of the 2019 incident.....	22
CONCLUSION	29

TABLE OF AUTHORITIES

Page

CASES

<u>Angel v. Rand Express Lines, Inc.,</u> 66 N.J. Super. 77 (App. Div. 1961)	24
<u>Brady v. Bd. of Review,</u> 152 N.J. 197 (1997)	15
<u>Bueno v. Bd. of Trs., Teachers' Pension & Annuity Fund,</u> 404 N.J. Super. 119 (App. Div. 2008)	17
<u>Brooks v. Board of Trustees, Public Employees' Retirement System,</u> 425 N.J. Super. 277 (App. Div. 2012)	21, 22, 23, 29
<u>City of Plainfield v. N.J. Dep't of Health & Senior Servs.,</u> 412 N.J. Super. 466 (App. Div. 2010)	16
<u>Charatan v. Bd. of Rev.,</u> 200 N.J. Super. 74 (App. Div. 1985)	16
<u>Gerba v. Bd. of Trs., Pub. Emps.' Ret. Sys.,</u> 83 N.J. 174 (1980)	15, 23, 29
<u>Korelnia v. Board of Trustees, Public Employees' Retirement System,</u> 83 N.J. 163 (1980)	24
<u>Petrucelli v. Board of Trustees, Public Employees' Retirement System</u> 211 N.J. Super 280 (App. Div. 1986)	26-28
<u>Moran v. Board of Trustees, Police and Firemen's Retirement System,</u> 438 N.J. Super. 346 (App. Div. 2012)	21
<u>Patterson v. Bd. of Trs., State Police Ret. Sys.,</u> 194 N.J. 29 (2008)	16, 17

<u>Richardson v. Bd. of Trs., Police & Firemen’s Ret. Sys.,</u> 192 N.J. 189 (2007)	12, 17, 18, 22, 23
<u>Russo v. Bd. of Trs., Police & Firemen’s Ret. Sys.,</u> 206 N.J. 14 (2011)	15, 18
<u>Self v. Bd. of Rev.,</u> 91 N.J. 453 (1982)	15

STATUTES

N.J.S.A. 43:15A-43(a)	4, 16, 17, 22
-----------------------------	---------------

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

Appellant, Orlando Torres, appeals a January 18, 2024 final agency decision of the Board of Trustees, Public Employees' Retirement System's, which denied his application for accidental disability retirement benefits.

Torres spent roughly seventeen and a half years employed as a juvenile detention officer at the Camden County Juvenile Detention Center before retiring in March 2020. (1T9:3-23)². On April 7, 2019, Torres responded to a fight in one of the housing units. (1T20:18-21:25). When Torres arrived, he witnessed two juvenile residents exchanging punches. (1T25:7-12). Torres and another detention officer attempted to separate of the residents. (1T22:1-24:1; 1T22:8-17, 1T25:7-12).

Ultimately, Torres and the other female detention officer successfully separated and restrained the two residents until additional officers arrived to assist them. (1T26:13-27:21). Then, after the situation was fully under control, Torres explained what happened to the sergeant and wrote an incident report. (1T29:18-30:7; 1T37:23-38:20). While he worked on the incident report, Torres

¹ Because the procedural history and facts are closely related, they are combined for efficiency and the court's convenience.

² "1T" refers to the hearing transcript dated November 4, 2022; "2T" refers to the hearing transcript dated November 25, 2022; "3T" refers to the hearing transcript dated April 13, 2023.

began to feel throbbing sensations in both of his knees. (1T30:10-23). Torres went to see the nurse at the facility who informed him that his knee was swelling. Ibid. The nurse advised Torres to apply ice to the affected area. Ibid.

The following day, Torres visited a doctor at Med Express. (1T30:24-31:11). The doctor provided Torres with an ice pack and assured him that he would recover once the swelling subsided. Ibid. Despite taking a few days off to rest, Torres still experienced discomfort and ongoing issues with his right knee upon returning to work. (1T31:10-21). Thereafter, Torres went to a hospital where they drained fluid from his knee and advised him that he might have a tear in his knee. (1T31:22-32:9).

Eventually, Torres came under the care of David Bundens, M.D. (“Dr. Bundens”), an orthopedic surgeon, who performed a right knee arthroscopy and meniscectomy surgery on Torres in July 2019. (1T32:10-33:7; CRa21-31). However, Torres continued to experience pain in his right knee after the surgery. (1T52:13-22). Dr. Bundens informed Torres the ongoing pain was caused by arthritis in his right knee. (1T53:5-54:3; 1T55:18-56:4; CRa53; CRa65). Dr. Bundens determined Torres would have permanent restrictions on prolonged standing and walking due to his right knee and would be unable to perform his job duties due to the restrictions. (1T56:5-9; CRa59). Dr. Bundens concluded that this permanent restriction stemmed from Torres’s right knee arthritis.

(1T56:19-57:12; CRa62).

Torres stopped working in or around September 2019. (1T40:1-7). He applied for accidental disability retirement benefits on March 11, 2020. (1T33:8-22; Aa1-3). On August 13, 2020, the Division of Pensions and Benefits's independent medical examiner, Jeffrey Lakin, M.D., a board-certified orthopedic surgeon, evaluated Torres. (CRa5-9). Dr. Lakin agreed Torres is not capable of performing his normal duties as a juvenile detention officer due to his right knee symptoms and weakness and is totally and permanently disabled. (CRa8). Nevertheless, Dr. Lakin opined Torres's disability was not a direct result of the 2019 incident, but rather an aggravation of pre-existing arthritis that he developed after undergoing a knee meniscectomy surgery thirty years earlier after injuring his right knee while playing football. (1T49:23-50:19). Torres contended that, before the 2019 incident, he experienced no issues while performing his job duties, and he did not have any previous complaints or symptoms related to his right knee. (1T14:19-17:5).

At its meeting on October 21, 2020, the Board considered and denied Torres's application for accidental disability retirement benefits. (Aa6-9). While the Board found Torres was totally and permanently disabled from the performance of his regular and assigned job duties, it found the 2019 incident was not undesigned and unexpected and therefore not a traumatic event pursuant

to N.J.S.A. 43:15A-43 and relevant case law. Ibid. Further, the Board determined Torres's disability was the result of a pre-existing condition alone or a pre-existing condition that was aggravated by the 2019 incident. Ibid. Accordingly, the Board granted Torres ordinary disability retirement benefits effective April 1, 2020.³ Ibid.

Torres appealed the Board's determination, and this matter was transferred to the Office of Administrative Law for a hearing before an administrative law judge. (Aa10). A hearing took place before ALJ Caliguire, who heard testimony from Torres, his expert witness Dr. Weiss, and the Board's expert witness Dr. Lakin. (Aa9-32).

At the hearing, Torres testified that, to qualify for the role of juvenile detention officer, he underwent training at the Camden County Training Academy. (1T9:24-10:22; 1T36:24-37:9). This training encompassed physical restraints and self-defense techniques, with Torres continuing to receive training in this area throughout his work. (1T48:8-22). Torres's job duties as a juvenile detention officer included transporting, observing, monitoring and supervising the juvenile residents; providing advice to juvenile residents on personal

³ The ordinary disability award entitles Torres to at least 43.6% of his final compensation. N.J.S.A. 43:15A-45. An accidental disability award would entitle him to 72.7% of his final compensation. N.J.S.A. 43:15A-46.

problems they encounter; using appropriate techniques to calm and physically restrain juvenile residents from endangering their safety or others; patrolling the facility and searching the juvenile residents' clothing and possessions; writing incident reports and filling out daily activity logs etc. (1T13:8-14:3; Aa43-45). Moreover, all juvenile detention officers have to respond to emergency codes within the facility. (1T15:7-16:2).

Torres admitted his job frequently involved restraining juvenile residents and breaking up fights. (1T27:22-28:7). Physically restraining juveniles was almost a daily or every-other-day occurrence due to common resident fights. (1T46:20-47:11). Torres witnessed fellow officers getting injured while attempting to physically control residents. (1T49:7-17). Before the 2019 incident, he experienced minor injuries while restraining residents. (1T49:18-22).

During the hearing, Torres claimed he tripped and fell and he slammed his knees to the ground during the 2019 altercation. (1T22:10-12; 1T26:5-12; 1T41:9-23). However, neither the medical records nor the incident report contained any mention of Torres falling during the incident in 2019. (CRa11-15; CRa31-73). Torres told his treating surgeon "he was restraining a resident

when his knee was hit against the wall.” (1T44:8-19; CRa31).⁴ Torres reported to his own medical expert, David Weiss, D.O., during his independent medical evaluation (IME), that “he was restraining a resident when his right knee was struck against a wall.” (1T44:23-45:24; Aa46). During cross-examination, Torres maintained that he fell and landed on his knees but conceded that he might have hit the wall as well. (1T45:25-46:19).

Dr. Weiss testified on behalf of Torres and was admitted as an expert in the field of orthopedics. (2T14:12-14). Like Dr. Lakin, Dr. Weiss was an independent medical examiner not Torres’s treating physician. (2T14:17-23). Dr. Weiss produced a report dated April 12, 2022, in anticipation of this litigation. (Ibid.; Aa46-53).

Dr. Weiss testified that during their meeting, Torres reported injuring his right knee when he restrained a juvenile resident at his workplace. (2T16:18-17:1). Specifically, Torres told Dr. Weiss that his right knee struck the wall. (Ibid.; Aa46). Torres did not mention any trip or fall during the incident. (2T34:15-35:3; Aa46-47). As part of his medical history, Torres told Dr. Weiss he had a previous surgery on his right knee—a partial medial meniscectomy—approximately 30 years earlier after a sports-related injury. (2T22:15-22;

⁴ “Aa” refers to Torres’ appendix; “Ab” refers to his brief; “CRa” refers to the Board’s confidential appendix.

2T35:4-16).

Torres told Dr. Weiss that he continued experiencing pain in his right knee after the July 2019 surgery. (2T64:8-12). When questioned about the persistence of Torres's complaints, Dr. Weiss initially explained that around one third of patients who undergo arthroscopic surgery continue to experience symptoms due to the mechanical issues of the joint post-surgery. (2T64:16-65:16). Dr. Weiss believed Torres fell into this group of patients. Ibid.

Dr. Weiss disagreed with Dr. Bundens's treatment records, which indicated Torres's ongoing pain was attributed to arthritis, and stated that while arthritis played a role, Torres's continued pain could also be attributed to recurring problems with his meniscus. (2T66:12-67:22). Dr. Weiss noted Torres had permanent restriction of avoiding prolonged standing and walking. (2T70:5-71:23). Dr. Weiss opined these restrictions were a result of Torres's meniscus tears and surgical repair, which altered the mechanics of his knee joint. Ibid. Dr. Weiss disagreed with Dr. Bundens's view that those restrictions were due to Torres' arthritis. (2T75:7-11).

Dr. Weiss diagnosed Torres with an aggravation of pre-existing right knee pathology stemming from an injury and surgery he underwent approximately thirty years ago. (2T45:8-46:5). Dr. Weiss acknowledged Torres had a prior medial meniscectomy, which might have either contributed to, if not directly

caused, the recurring meniscus tear. (2T45:12-19). Dr. Weiss also recognized the presence of arthritis in Torres's right knee; however, he termed it "post-traumatic arthropathy of the right knee." (2T50:1-13; Aa50). Dr. Weiss, opined Torres only had minimal arthritis before the 2019 incident, and that his arthritis significantly progressed only after the 2019 incident. (2T50:16-52:5; 2T57:11-58:4). However, when questioned about the arthritis detected and diagnosed by Dr. Bundens in his July 2019 operative report (i.e., less four months after the April 2019 incident), Dr. Weiss conceded Torres's arthritis could not have developed within such a short time after a traumatic injury. (2T58:5-59:24).

Dr. Weiss admitted that both meniscus injuries and meniscectomy surgeries would significantly increase the risk of patients developing arthritis in the joint. (2T75:14-76:2). Additionally, Dr. Weiss acknowledged that arthritis could remain asymptomatic until symptoms emerged after a traumatic injury. (2T76:13-21). Nevertheless, Dr. Weiss found Torres was disabled from doing his job as a juvenile detention officer, and that the substantial cause of his disability was the 2019 incident. (2T32:7-18).

Dr. Lakin testified on behalf of the Board after being accepted as a medical expert in the field of orthopedics and orthopedic surgery. (3T8:8-10:25; CRa1-3). Dr. Lakin conducted an independent medical evaluation on Torres and prepared a report on August 13, 2020. (3T11:21-12:10; CRa5-9). Dr. Lakin

took Torres's history and learned that he had worked as a juvenile detention officer for years, and that he injured his right knee while restraining a juvenile resident to break up a fight. (3T15:21-16:19). Following the 2019 incident, Torres was seen by orthopedic surgeon and eventually underwent a right knee arthroscopy and meniscectomy surgery. Ibid. Torres mentioned he had a similar procedure on his right knee approximately thirty years ago. (3T16:20-17:10).

Dr. Lakin explained that a knee arthroscopy and meniscectomy involve a surgeon using a miniature camera to examine the knee and assess the condition of the meniscus, which acts as a cushion between various knee structures. (3T17:11-22). During the procedure, the surgeon removes the torn or frayed portions of the meniscus while aiming to preserve as much cushioning as possible. Ibid. In Torres's case, parts of his meniscus on both the inner (medial) and outer (lateral) sides were removed. Ibid.

For purpose of the evaluation, Dr. Lakin reviewed Torres's medical records. (3T19:1-11; CRa5-9). Specifically, Dr. Lakin reviewed the actual MRI films of Torres's right knee dated April 30, 2019, which was about three weeks after the 2019 incident. (3T19:12-22; CRa17-19). These films revealed a loss of cartilage in all three compartments of Torres's right knee. (3T20:1-23; CRa17-18). Additionally, there was osteophytes, or boney bridges, which indicated arthritis in Torres's knee. Ibid.

The April 30, 2019 MRI also showed complex tears in Torres's lateral meniscus, both posteriorly and anteriorly, along with a meniscal cyst, and a complex tear in the medial meniscus. Ibid. Dr. Lakin found those complex tears were associated with degenerative issues. Ibid. Dr. Lakin noted significant arthritis in all three compartments Torres's right knee, which could not have developed only twenty-three days after the 2019 incident. (3T20:24-21:11).

Dr. Lakin also reviewed the operative report and treatment notes of Dr. Bundens. (3T21:12-23:4; 3T25:10-28:10; CRa21-73). Consistent with Dr. Bundens's opinion, Dr. Lakin concluded Torres's ongoing pain and complaints after the July 2019 surgery were attributed to his underlying arthritis. (3T26:10-27:20; CRa53; CRa59; CRa62; CRa65). Consequently, the permanent restriction on prolonged standing and walking was deemed necessary due to his right knee arthritis. (3T26:10-27:20; CRa53; CRa59; CRa62; CRa65).

Dr. Lakin found Torres totally and permanently disabled from the normal job duties as a juvenile detention officer. (3T23:10-20). Dr. Lakin concluded the 2019 incident exacerbated Torres's underlying degenerative condition – significant arthritis, which developed due to his prior knee surgery, and that the exacerbation of the underlying degenerative condition was the primary cause Torres's disability. (3T23:21-25:9). Dr. Lakin explained Torres suffered a right knee injury and underwent surgery thirty years ago, which caused damage to his

knee's cartilage and resulted in the removal of a portion of his meniscal tissue. (3T23:21-25:9). Torres's prior injury and surgery led to reduced cushioning in his knee over an extended period, which resulted in increased friction in the cartilage. (Ibid.; 3T28:13-29:8). The ongoing friction eventually led to the development of arthritis due to heightened contact between the femur and tibia bones. (3T23:21-25:9; 3T28:13-29:8).

Dr. Lakin explained the general consensus in the medical community that a prior meniscectomy significantly raises the risk of arthritis development. (3T23:21-25:9; 3T28:24-29:3). Dr. Lakin determined the current limitations in Torres's range of motion, decreased strength, and persistent pain in his right knee were attributed to the arthritis he developed following his previous meniscectomy surgery thirty years earlier. Ibid. Dr. Lakin acknowledged that before the 2019 incident, Torres had not reported any complaints or symptoms, and he was fully capable of fulfilling all job responsibilities. (3T30:22-32:18). However, Dr. Lakin explained that arthritis may not necessarily exhibit symptoms in a patient, even if it is detectable through radiographic imaging. Ibid. Instead, symptoms could manifest after a traumatic injury that exacerbates or triggers the underlying arthritis. (3T29:20-30:7).

On December 7, 2023, ALJ Caliguire issued an initial decision and found Torres failed to meet his burden to prove, by a preponderance of the credible

evidence, that his disability was the direct result of his 2019 incident, and that the 2019 incident was undesigned and unexpected. (Aa29). Thus, ALJ Caliguire concluded Torres failed to prove he is entitled to accidental disability retirement benefits under the standard set forth in Richardson v. Board of Trustees, Police & Firemen's Retirement System, 192 N.J. 189 (2007). Ibid.

ALJ Caliguire's extensive initial decision included a thorough and detailed review and analysis of Torres's medical history; treatment records; testimonies of factual and expert witnesses; comprehensive findings of the material facts; and legal discussion and conclusions. (Aa9-32). The ALJ found that the incident was not undesigned and unexpected because breaking up fights between residents was a regular part of Torres's job as juvenile detention officer, that he was trained for such situations and understood the risks involved. (Aa24). The ALJ also found Torres did not lack preparation, training or equipment to restrain the resident in this matter, nor was he injured as a result of unforeseen action by others. (Aa27). Instead, he was doing exactly what he intended – restraining juvenile residents and breaking up a fight when he injured his knee by hitting the floor or the wall. (Aa24; Aa27). Although Torres claimed, for the first time at the hearing, that he and the resident tripped and fell to the floor during the incident, the ALJ found the was not credible because it contradicted his statements to his treating surgeon and his IME Dr. Weiss, and

unsupported by any records other than his own testimony. (Aa27-28). As such, the ALJ concluded the 2019 incident was not undesigned and unexpected. (Aa27-29).

Concerning the direct result issue, the ALJ found that both expert witnesses provided credible testimony, but noted the difference between the experts' opinions on the cause of Torres's disability. (Aa22-23). The ALJ found Dr. Lakin's conclusion supported by the medical records of Torres's treating physician, Dr. Bundens, while Dr. Weiss disagreed with Dr. Bundens. Ibid. Dr. Weiss ultimately admitted Torres had extensive arthritis in his right knee at the time of the incident (as identified in the operative report and MRI study) which could not have developed in just months after the 2019 incident. He, nevertheless, opined Torres's ongoing pain and permanent limitations were due to unresolved problems with his meniscus. Ibid. The ALJ found the record simply did not support Dr. Weiss's opinion. (Aa24).

In contrast, Dr. Lakin's conclusion – that Torres's pre-existing arthritis, aggravated by the 2019 incident, was the substantial cause of his disability – is supported by Torres's medical history and medical records, as well as the opinion of Dr. Bundens, Torres's treating surgeon. (Aa22-23). Specifically, the MRI of Torres's right knee taken from twenty-three days after the 2019 incident showed a loss of cartilage and significant arthritis in all three compartments of

the knee. (Aa23). The July 2019 operative report detailed medical and lateral meniscus tears and extensive arthritis, likely caused by reduced cushioning in the knee after Torres's previous right knee surgery. Ibid. Further, Dr. Bundens found Torres's ongoing complaints of right knee pain after the July 2019 surgery was due to his arthritis, and Dr. Lakin agreed this underling degenerative condition was exacerbated by the incident and directly caused Torres's current disability. Ibid. As such, the ALJ found Torres failed to meet his burden to prove, by a preponderance of the credible evidence, that his disability was the direct result of his 2019 incident. (Aa27).

On January 18, 2024, the Board issued its final agency decision which adopted ALJ Caliguire's initial decision and denied Torres accidental disability retirement benefits. (Aa33). This appeal followed. (Aa35-38).

ARGUMENT

THE BOARD’S DENIAL OF TORRES’S APPLICATION FOR ACCIDENTAL DISABILITY RETIREMENT BENEFITS IS REASONABLE AND SUPPORTED BY SUBSTANTIAL CREDIBLE EVIDENCE.

The ALJ’s factual findings provided ample support for the Board’s determination that Torres’s disability was not the direct result of his 2019 incident and that the injury was not undesigned and unexpected.

On judicial review of an administrative agency determination, this court has “a limited role to perform.” Gerba v. Bd. of Trs., Pub. Emps.’ Ret. Sys., 83 N.J. 174, 189 (1980). The Board’s “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) (quoting In re Herrmann, 192 N.J. 19, 27-28 (2007)). “The burden of demonstrating that the agency’s action was arbitrary, capricious or unreasonable rests upon the [party] challenging the administrative action.” In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006).

This court is “obliged to accept” factual findings that “are supported ‘by sufficient credible evidence.’” Brady v. Bd. of Rev., 152 N.J. 197, 210 (1997) (quoting Self v. Bd. of Rev., 91 N.J. 453, 459 (1982)). “[T]he test is not whether an appellate court would come to the same conclusion if the original

determination was its to make, but rather whether the factfinder could reasonably so conclude upon the proofs.” Ibid. (quoting Charatan v. Bd. of Rev., 200 N.J. Super. 74, 79 (App. Div. 1985)). Deference is particularly appropriate when the Board has adopted the findings of the ALJ because the ALJ has the opportunity to hear “live testimony” and “judge the witnesses’ credibility.” Clowes v. Terminix Int’l, Inc., 109 N.J. 575, 587 (1988). “When an error in the fact finding of an administrative agency is alleged,” this court’s “review is limited to assessing whether sufficient credible evidence exists in the record below from which the findings made could reasonably have been drawn.” City of Plainfield v. N.J. Dep’t of Health & Senior Servs., 412 N.J. Super. 466, 484 (App. Div. 2010).

Like all public retirement systems, the PERS provides for both ordinary, N.J.S.A. 43:15A-42, and accidental, N.J.S.A. 43:15A-43, disability retirement benefits. The principal difference between ordinary and accidental disability retirement “is that ordinary disability retirement need not have a work connection.” Patterson v. Bd. of Trs., State Police Ret. Sys., 194 N.J. 29, 42 (2008). “Essentially, a qualified member who is permanently disabled for any reason will qualify for ordinary disability.” Ibid. The PERS allows for accidental disability retirement benefits only if “the member is permanently and totally disabled as a direct result of a traumatic event occurring during and as a

result of the performance of his regular or assigned duties.” N.J.S.A. 43:15A-43(a).

A PERS member seeking accidental disability retirement benefits must prove:

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.

The applicant bears the burden of proving each of these prongs. Patterson v. Bd. of Trs., State Police Ret. Sys., 194 N.J. 29, 50-51 (2008); Richardson, 192 N.J. at 212-13 (stating “member must prove” each element); Bueno v. Bd. of Trs., Teachers’ Pension & Annuity Fund, 404 N.J. Super. 119, 126 (App. Div. 2008). Factors 1, 3 to 5 are not in dispute and, therefore, the Board limits its discussion to factor 2.

A. The Board reasonably found Torres failed to carry his burden of proving the 2019 incident was undesigned and unexpected.

An employee who experiences an “event which falls within his job description and for which he has been trained will be unlikely to pass the ‘undesigned and unexpected’ test.” Russo v. Bd. of Trs., Police & Firemen’s Ret. Sys., 206 N.J. 14, 33 (2011). Previously, the Court in Richardson explained:

In ordinary parlance, an accident may be found either in an unintended external event or in an unanticipated consequence of an external event if that consequence is extraordinary or unusual in common experience [and 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.

[Richardson, 192 N.J. at 201 (quoting Russo, 62 N.J. at 154).]

As Richardson pointed out, there are two basic types of “external events”: 1) “an unintended external event” or 2) “an unanticipated consequence of an intended external event if that consequence is extraordinary or unusual in common experience.” Richardson, 192 N.J. at 201. In the first, the occurrence of the event is “undesigned and unexpected” while in the second the consequence of the event is “undesigned and unexpected.” In both cases, the external event must occur during and as a result of the performance of regular or assigned duties.

In the instant matter, Torres did not experience an unintended external event as he was doing exactly what he intended and was expected to do under the circumstances – restraining juvenile resident and breaking up a fight. Torres worked at the center for seventeen years and admitted he restrained residents and break up fights between residents on a near daily basis. (1T46:20-47:11). He received training both from the police academy and at work about conducting physical restraints. (1T48:8-22).

There was no external event that caused him the injury as he did not trip on any foreign objects or step on any slippery liquids or surface. (1T22:10-12). Torres claimed, for the first time at the hearing, that he and the resident tripped on their feet and fell down to the ground (1T22:10-12; 1T26:5-12; 1T41:9-23). But as the ALJ as correctly found, that claim is not supported by the record and contradicts the medical records, which reflect that Torres reported to his treating surgeon “he was restraining a resident when his knee was hit against the wall.” (1T44:8-19; CRa31). Further, Torres told Dr. Weiss that “he was restraining a resident when his right knee was struck against a wall.” (1T44:23-45:24; Aa46). Neither his medical records nor the incident report he wrote contain any mention of Torres falling during the 2019 incident. (CRa11-15; CRa31-73). Those findings amount to credibility findings that are entitled to deference. Cavalieri v. Bd. of Trs. of Pub. Emps. Ret. Sys., 368 N.J. Super 527, 537 (App. Div. 2004).

Because Torres provided no factual basis for either the ALJ or the Board to conclude that he fell, it follows that he cannot show that the 2019 incident was undesigned and unexpected. Torres had restrained residents many times before, and sustaining an injury while restraining a combative resident can hardly be classified as extraordinary or unusual considering he and other officers all had prior injuries while restraining residents. (1T27:22-28:7; 1T46:20-47:111; T49:7-22).

Likewise, the alleged consequences, his knee injury, of the normal intended work activity of physically restraining a juvenile resident would not “extraordinary or unusual.” As a whole, Torres’s work effort, not an unintended external event, caused his disability. Torres injured himself through the effort of restraining a disruptive resident. There is no evidence that the resident used excessive force in resisting or that Torres used extraordinary effort to restrain the resident. There is no evidence that anything unusual or unexpected occurred during the incident.

Simply because the result was unexpected does not mean the event was unexpected. Torres did not lack the training or equipment to respond adequately to the incident. Nor was there an emergent life-threatening situation that required immediate action. This sequence of events is not out of the ordinary or unpredictable and nothing suggests this event was any different from the

hundreds of times Torres and his fellow officers had used physical effort to restrain a disruptive resident. Accordingly, the event was due to Torres's own work effort, without any attending extraordinary unusual circumstances, and is not an unintended external event.

In his brief, Torres again relies on Moran v. Board of Trustees, Police and Firemen's Retirement System, 438 N.J. Super. 346 (App. Div. 2012) and Brooks v. Board of Trustees, Public Employees' Retirement System, 425 N.J. Super. 277 (App. Div. 2012) to argue that the 2019 incident was undesigned and unexpected. (Ab9-10). According to Torres, those decisions establish a less restrictive notion of an "undesigned and unexpected" event as opposed to the Board's decision.

Those cases are distinguishable. (Aa27-28). For example, in Brooks, a school custodian and several students were lifting a 300-pound weight bench into the flatbed of a pickup truck when the students suddenly dropped it. 425 N.J. Super. at 279-80. Brooks suffered a permanently disabling shoulder injury. Id. at 280. The court found Brook's injury was caused by an external force (the weight bench) and an unintended event (the students suddenly dropping it). Id. at 283-84. In Moran, a firefighter had to manually kick the door to rescue fire victims due to the combination of extremely unusual and emergent circumstances, Moran, 438 N.J. Super at 351.

Torres did not lack preparation, training or equipment to intervene in the fight between two residents. Nor was Torres injured as a result of unforeseen action by third parties such as the custodian in Brooks.

Further, contrary to Torres's argument (Ab10-11), the Board does not assert that a traumatic event cannot occur during ordinary work effort or during an incident that is within a member's training or experience. Richardson holds that it can. 192 N.J. at 214. However, an event is not traumatic unless an unexpected or unforeseeable occurrence causes the injury. Here, the injury was the result of Torres's work effort not an unexpected or unforeseeable occurrence.

In contrast, Richardson involved a corrections officer who was subduing an inmate that aggressively jerked up and knocked the officer to the ground. Ibid. No such extreme violence is present in this case. There is no evidence that unexpected force or motion caused Torres's injury. Thus, Torres cannot satisfy his burden of proving that the 2019 incident was undesigned and unexpected, and the Board's decision denying him accidental disability retirement benefits should be affirmed.

B. The Board reasonably found Torres failed to carry his burden of proving his disability is the direct result of the 2019 incident.

N.J.S.A. 43:15A-43(a) states that a member of PERS is eligible for accidental disability retirement benefits only if the member is permanently and totally disabled "as a direct result of a traumatic event." Ibid. In other words,

a PERS member seeking an accidental disability retirement must prove “he or she suffered a total and permanently disabling injury ‘as a direct result of an identifiable, unanticipated mishap.’” Brooks, 425 N.J. Super. at 284-85 (quoting Richardson, 192 N.J. at 213). The inclusion of the “direct result” requirement is intended “to impose a more exacting standard of medical causation” than that used in workers’ compensation law, and to reject, for purposes of awarding accidental disability, the workers’ compensation concept that an “accident” can be found in the impact of ordinary work effort upon a progressive disease. Gerba v. Bd. of Trs., Pub. Emps.’ Ret. Sys., 83 N.J. 174, 185-86 (1980).

“Where there exists an underlying condition such as osteoarthritis which itself has not been directly caused, but is only aggravated or ignited, by the trauma, then the resulting disability is, in statutory parlance, ‘ordinary’ rather than ‘accidental’ and gives rise to “ordinary” pension benefits.” Id. at 186. The “traumatic event” must constitute the essential significant or substantial contributing cause of the applicant’s disability. Ibid. Thus, preexisting conditions that result in, or combine to cause, a disability are intended to be excluded from eligibility for accidental disability retirement benefits. Richardson, 192 N.J. at 211.

The question of whether a claimant's disability is the "direct result" of a traumatic event necessarily relies on expert medical opinions. Korelnia, 83 N.J. at 171. When there is competing and conflicting expert testimony, as in this case, the court should weigh each expert's testimony using such factors as whether the expert witness testified in his specialty and whether the expert's conclusions are based only on subjective, rather than objective, medical evidence. Angel v. Rand Express Lines, Inc., 66 N.J. Super. 77, 86 (App. Div. 1961). Once the court accepts a witness as an expert, "the credibility of the expert and the weight to be accorded his testimony rest in the domain of the trier of fact." Id. at 85-86.

Here, ample evidence supports the ALJ's finding, which the Board adopted, that Dr. Lakin's opinion was more persuasive and entitled to greater weight as it is more in accordance with Torres's medical history, his radiological studies and the opinion of Torres's treating surgeon, and that Torres failed to overcome his burden of proving that his disability was the direct result of the 2019 incident. (Aa22-24; Aa29). Torres previously injured his right knee playing football and underwent arthroscopy and meniscectomy surgery—the same procedure he had again in July 2019 (1T49:23-50:19). Dr. Lakin explained that this procedure involves using a miniature camera to inspect the knee and remove damaged parts of the meniscus, which cushions the joint (3T17:11-22).

Torres's earlier surgery removed part of his meniscus and damaged the cartilage, reducing cushioning and increasing friction over time (3T23:21-25:9; 3T28:13-29:8). This led to significant arthritis after decades of bone-on-bone contact between the femur and tibia. Ibid.

Drs. Lakin and Weiss agreed that a prior meniscectomy greatly increases the risk of arthritis (3T23:21-25:9; 3T28:24-29:3; 2T75:14-76:2). Dr. Lakin attributed Torres's limited motion, decreased strength, and ongoing pain to arthritis resulting from his earlier surgery. Ibid. MRI and operative reports from 2019 confirmed severe cartilage loss and arthritis across all three compartments of the right knee, changes that could not have developed within just a few months (3T20:1-21:11; CRa17-19; CRa21-22).

Dr. Bundens agreed, telling Torres his persistent pain post-surgery was due to arthritis (1T53:5-54:3; 1T55:18-56:4; CRa53; CRa65). He found that Torres had permanent restrictions on prolonged standing and walking and was unable to perform his job, concluding these limitations stemmed from his knee arthritis (1T56:5-9; 1T56:19-57:12; CRa59; CRa62).

In contrast, Dr. Weiss attributed Torres's ongoing pain and restrictions to the meniscus tears and resulting mechanical changes from surgery, rejecting arthritis as the cause (2T70:5-71:23; 2T75:7-11). However, the ALJ correctly

found Dr. Weiss’s opinion unsupported by the record and inconsistent with the treating physician’s findings (Aa24).

In the instant appeal, Torres relies on this court’s holding in Petrucelli v. Board of Trustees, Public Employees’ Retirement System, 211 N.J. Super 280 (App. Div. 1986) to argue that he had no trouble performing his job responsibilities before the 2019 incident as his pre-existing conditions were asymptomatic. (Ab14-15). However, the facts in this matter are readily distinguishable from Petrucelli. In Petrucelli, a compliance investigator was seriously injured while descending a stairwell that was still under construction. Id. at 281-84. Petrucelli “fell face-first down the . . . stairwell in spread-eagle fashion,” slammed his head into the wall at the bottom of the stairwell, and spent two weeks in traction recovering. Id. at 283. After the fall, Petrucelli’s diagnostic imaging disclosed some degenerative change, including “grade I spondylolisthesis at the L-5/S-1 level.” Ibid. The Board, thus, determined Petrucelli was “permanently and totally disabled as a result of ‘pre-existing long-standing arthritis’” and denied his application for accidental disability retirement benefits. Id. at 281.

On appeal, the Petrucelli court noted the medical experts agreed: (1) “Petrucelli’s past medical history was completely negative for any back problems;” (2) Petrucelli “had some quiescent, non-symptomatic arthritic and

structural changes demonstrable on x-ray which were activated into painful symptomatology as a result of the severe fall;” and (3) the fall “initiated” Petrucelli’s pain. Id. at 284-85. Therefore, the only issue on appeal was whether Petrucelli’s disability was the direct result of the traumatic event or the result of a pre-existing condition. Id. at 284.

The court held “the ‘direct result’ test was legally satisfied” because Petrucelli was an active man with a strenuous job and had been asymptomatic before falling and was then permanently and totally disabled after the fall. Ibid. There, the State’s expert conceded, absent the fall, Petrucelli could “have worked to age 62, as planned, and retired uneventfully.” Id. at 289. As such, the court concluded whether or not Petrucelli “would have developed low-back symptoms independently of the 1981 fall, and when he would have done so, [wa]s entirely speculative.” Ibid.

The thrust of Torres’s argument is his right knee arthritis was asymptomatic prior to the accident, and, therefore, the accident was the substantial contributing cause of his total disability, much like the petitioner in Petrucelli. (Ab16-18). However, the facts and credible expert testimony in this case are far afield from those in Petrucelli because, unlike Petrucelli, Torres has extensive pre-existing arthritis which is the sole cause for his current permanent restrictions and inability to continue performing his job responsibilities. Most

notably, both testifying experts agreed Torres had right knee problems (including surgery) for thirty years before the 2019 incident and did so without speculating.

Further, there is no such speculation about whether Torres would have developed right knee symptoms because of his arthritis. The record is replete with such evidence. Specifically, both Dr. Lakin and Torres's treating orthopedic surgeon, Dr. Bundens, determined his ongoing pain after the surgery was solely attributed to the pre-existing arthritis, and that his permanent restrictions – that caused him disabled from working as a juvenile detention officer – was due to his arthritis developed from his prior knee injury and meniscectomy surgery. (3T26:10-27:20; CRa53; CRa59; CRa62; CRa65). Dr. Lakin credibly concluded that the 2019 incident exacerbated Torres's underlying degenerative condition, and that the exacerbation of the underlying degenerative condition was the primary cause that Torres was eventually disabled from doing his job. (3T23:21-25:9). Accordingly, unlike Petrucelli, the ALJ and the Board had sufficient basis for their determination the accident was not the substantial cause of Torres' disability.

The Board does not dispute Torres is permanently disabled from working as a juvenile detention officer. The issue is whether he is totally and permanently disabled as a direct result of an identifiable, unanticipated mishap.

Brooks, 425 N.J. Super. at 284-85. Even if the 2019 incident were undesigned and unexpected, the Board’s final agency decision to deny Torres’s application for accidental disability retirement benefits should still be affirmed because the 2019 incident does not “constitute[] the essential significant or substantial contributing cause of [Torres’s] ultimate permanent disability.” Gerba, 83 N.J. at 188. The ALJ concluded Torres did not satisfy that burden. The testimony the ALJ found reliable and Torres’s medical records serve as adequate, substantial, credible evidence to support the Board’s causation finding. As such, the Board’s denial of Torres’s application for accidental disability retirement benefits should be affirmed.

CONCLUSION

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

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Yi Zhu
Yi Zhu (250182017)
Deputy Attorney General

Dated: July 2, 2025