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Jason Rodriguez	) Superior Court of New Jersey
Appellant	) APPELLATE DIVISION
	) Docket No.: A-001827-24
	)
v.	) <u>ON APPEAL FROM</u>
	)
Police and Firemen's Retirement	) Final Administrative Decision
System of New Jersey	) Decision by the Board of Trustees,
	) Police and Firemen's
Respondent	) Retirement System
	)
	) <u>SAT BELOW:</u>
	) The Hon. Susana Guerrero, ALJ

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#### APPELLANT'S BRIEF

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Steven J. Kossup, Esq.  
on the Brief and Appendix on  
Behalf of Appellant Jason  
Rodriguez

Dated: May 1, 2025

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## PROCEDURAL HISTORY

This case concerns Respondent's wrongful denial of Accidental Disability benefits per N.J.S.A 43:16A-7 to Appellant.

On February 14, 2022, Appellant Jason Rodriguez, while on duty as a Corrections Officer, was subject to violent assault while performing his regular or assigned duties as an officer –a violent Inmate named Henry Carter kicked and disabled Appellant.

On December 22, 2022, Appellant filed an application for Accidental Disability benefits under N.J.S.A.43:16A -7 with the New Jersey Division of Pensions and Benefits (Pa36-Pa37) (hereinafter Respondent). On August 14, 2023, the Respondent denied Appellant's Accidental Disability application (N.J.S.A.43:16A-7) and instead awarded Ordinary Disability retirement benefits (N.J.S.A.43:16A-6) (Pa45-46). Respondent requested additional information and Appellant submitted additional material as demanded. Thereafter, on September 18, 2023, Respondent affirmed their earlier determination that the incident that disabled Appellant was not “undesigned and unexpected” (Pa45-46).

Appellant filed a timely Notice of Appeal and requested a hearing before an Administrative Law Judge. The matter was transmitted to the Office of Administrative Law as a contested case on November 14, 2023 (Pa47). The

Court conducted its administrative hearing on July 15, 2024. The Administrative Law Judge issued its initial decision on December 27, 2024 (Pa8-Pa26) and Respondent Board of Trustees, PFRS NJ affirmed the ALJ's decision on February 10, 2025 (Pa1-Pa6). This timely appeal to the Appellate Division followed.

### **PRELIMINARY STATEMENT**

The issue on appeal is noted in Respondent Board's letter of September 21, 2023 (Pa45-46), specifically whether the February 14, 2022 violent line-of-duty assault on Appellant was a normal designed and expected part of his duties, or, whether the incident was to be considered *not* "undesigned and unexpected."

The ALJ's determination that the inmate's assault on Appellant was normal work effort – ordinary work effort – is against public policy. The ALJ ultimately determined that officers should just expect to be beaten up if they go to work and deal with unruly inmates and should not be heard to complain that they were disabled in the line of duty as a result of the assault.

Reversal by the Appellate Division is appropriate and need only follow longstanding and pre-existing Supreme Court precedent.

The guiding principle in these cases concerns whether the mechanism of injury in which Appellant was permanently and totally disabled was undesigned and unexpected. The use of force on this date was unplanned, and incidents of

this type constitute an identifiable, unanticipated mishap such that Appellant has satisfied the traumatic event standard of Richardson v. Bd. of Trustees, Police & Firemen's Ret. Sys., 192 N.J. 189, 212-13, 927 A.2d 543, 558 (2007). The facts of this case are on point with well-established precedent and Appellant should have been granted Accidental Disability<sup>1</sup>.

### **STANDARD OF REVIEW**

#### **Scope of Appeal**

#### **N.J.S.A. 43:16A-7 Accidental Disability Factors Applicable to this Case**

This fact pattern presents a qualifying case under the Accidental Disability Statute, N.J.S.A. 43:16A-7 for the orthopedic disability to Appellant's right upper extremity from hand to right shoulder (Pa36, Pa45-Pa46). The only issue on appeal is whether the incident was "undesigned and unexpected." Respondent conceded all other criteria (Pa45-Pa46).

The Supreme Court established the following criteria (hereinafter Richardson Factors) that would satisfy the traumatic event standard of N.J.S.A. 43:16A-7 – to do so, a member must prove:

1. that he is permanently and totally disabled; (*Resolved in Appellant's favor*).

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<sup>1</sup> See: Andrews v. Bd. of Trs., 2025 N.J. Super. Unpub. LEXIS 58 (Pa199–Pa204), Class v. Bd. of Trs., 2007 N.J. Super. Unpub. LEXIS 3452, \*12–13(Pa211–Pa217), Mount v. Board of Trustees, 233 N.J. 402 (2018), Sharp v. Bd. of Trs., 2024 N.J. Super. Unpub. LEXIS 2336, \*15 (Pa205– Pa210).

2. as a direct result of a traumatic event that is (*Resolved in Appellant's favor*).
  - a. identifiable as to time and place; (*Resolved in Appellant's favor*).
  - b. **undesigned and unexpected; (In Dispute)**
  - c. caused by a circumstance external to the member, not the result of pre-existing disease that is aggravated or accelerated by the work; (*Resolved in Appellant's favor*).
3. that the traumatic event occurred during and as a result of the member's regular or assigned duties; (*Resolved in Appellant's favor*).
4. that the disability was not the result of the member's willful negligence; (*Resolved in Appellant's favor*).
5. that the member is mentally or physically incapacitated from performing his usual or any other duty. Richardson v. Board of Trustees, Police & Firemen's Retirement System, 192 N.J. 189, 212-13, 927 A.2d 543 (2007) (*Resolved in Appellant's favor*).

The Respondent denied the case on Richardson Factor 2(b) alone. Respondent ruled in favor of Appellant on all other elements of the Richardson test (Pa30-Pa31) (Pa45-Pa46) including the question of external force on his body.<sup>2</sup>

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<sup>2</sup> NOTE: Appellant appeals the ALJ's determination as well as the Respondent's adoption of that legally and factually flawed decision. Reference to the ALJ's determination herein includes by reference the Respondent's subsequent lockstep adoption of that decision.

The Richardson decision "underscores that what is required is a force or cause external to the worker that directly results in injury and identifies ordinary mishaps, including lacerations, trips, and falls, as traumatic events." Richardson v. Bd. of Trustees, Police & Firemen's Ret. Sys., 192 N.J. 189, 211,927 A.2d 543, 557 (2007). Appellant meets this standard<sup>3</sup>.

The violence and unanticipated nature of the incident is established on this record - therefore, the standard is met here:

" .... a traumatic event is essentially the same as what we historically understood an accident to be - an unexpected external happening that directly causes injury." Richardson v. Bd. of Trustees, Police & Firemen's Ret. Sys., 192 N.J. 189,212, 927A.2d 543, 558 (2007).

This denial also rejects an earlier case with the same principle where the Supreme Court held:

We ... recognized the "actions of an unruly inmate" as the necessary qualifying **external force** distinct from an employee's "own conduct." Id. At 222, 557 A.2d 1012 - Gable v. Board of Trustees, Public Employees' Retirement System. 115 N.J. 212,557 A.2d 1012 (1989) (also cited in Richardson v. Bd. of Trustees, Police & Firemen's Ret. Sys., 192 N.J. 189, 208, 927 A.2d 543, 555 (2007))

The ALJ's ruling also violated a public policy in its denial of Accidental Disability Benefits (Pa30-Pa31):

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<sup>3</sup> Respondent conceded external force (Pa45-P46).

"Policy reasons further support our conclusion ... (.) We do not want corrections officers to shy away from subduing unruly inmates. Nor do we want to discourage police officers from chasing criminal suspects. If law-enforcement officers act cautiously, they will not get injured-but they will also not be doing their jobs properly, and the public will not be as well protected. Gable v. Bd. of Trustees of the Pub. Employees' Ret. Sys., 115 N.J. 212,224, 557 A.2d 1012, 1018 (1989).

Appellant is the person tasked, by law, with the duty to quell such violence and assist other officers if they are trying to do so – the ALJ decided that such injuries should be expected as a consequence of anticipated work effort, but the law states otherwise:

(I)n Richardson, our Supreme Court rejected the similar argument in the strongest of terms:

(Respondent argued) "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." *Id.* at 213, 927 A.2d 543. "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.'" Richardson v. Board of Trs., 192 N.J. 189, 213

The Richardson Court noted that, under prior statutes, the Court's long "defined 'accident' in accordance with its ordinary meaning — *as 'an unlooked for mishap or untoward event which is not expected or designed.'*" *Id.* at 197, 927 A.2d 543 (citations omitted). The Richardson Court ruled that under the current statutes "a traumatic event is essentially the same as what we historically

understood an accident to be — an **unexpected** external happening that directly causes injury and is not the result of pre-existing disease alone or in combination with work effort." *Id.* at 212, 927 A.2d 543; *see id.* at 214, 927 A.2d 543. (...)

There is no relevant difference between Richardson and the case sub judice – This case is on point with Richardson:

"In Richardson v. Board of Trustees, PFRS, 192 N.J. 189, 927 A.2d 543 (2007), an inmate knocked a corrections officer to the ground, causing a complete tear of his wrist ligament which left him physically disabled. The Court ruled his physical disability was the direct result of a traumatic event. The Court held "the traumatic event standard will . . . be met by a work-connected 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)." *Id.* at 192, 927 A.2d 543. (449 N.J. Super. at 484-85, 158 A.3d 1195.") Thompson v. Board of Trs., 233 N.J. 232, 232

Likewise, in Thompson, the Court noted:

(...) Being assaulted was not part of Appellant's job description or training. Therefore, the Board erred in concluding the incidents were not undesigned and unexpected. Thompson v. Board of Trs., 233 N.J. 232, 232

In addition, the NJ Attorney General Guideline on Use of Force in effect on the date of the incident (Pa187) direct that use of force needed to restrain the violent inmate, including the nature of the mechanical force in the subsequent use of the restraint chair (Pa188-Pa189), should never be considered "routine" or as used here, ordinary.

The inmate was required to follow institutional directives and comply with the restraint; the inmate did not and was subject to Institutional Charges and Maximum Sentence. The inmate was institutionally charged with two charges – these carried the maximum available sentence on each charge for the case (N.J.A.C 10A:31-16.6 - Major violations and sanctions) with note of Appellant's injury during the event (N.J.A.C. 10A:31-17.1, Pa110-119 in toto, T35:24 to T37:8, N.J.A.C.10A:31-16.10 - Prehearing Detention, N.J.A.C.10A:31-16.9 – Investigation, N.J.A.C. 10A:31-16.1(f), N.J.A.C. 10A:31-16.14).

Finally, the Legislative Intention is that Appellant was to be free from assault while performing his duty [N.J.S.A. 2C:12-1b(5)(h)]. The Inmate violated this law at the time of the injury: later, under oath at conviction/plea, the inmate admitted to the assault on Appellant and his intent to harm Appellant or any other person at the time of the assault.

### **STATEMENT OF FACTS**

The following persons testified at the July 15, 2024 one day trial:

- A. Appellant Jason Rodriguez
- B. Witness Sgt. Khalid Abdellatif
- C. Witness Sgt. Sam Constant
- D. Witness Corporal Daniel Smith

#### **A. TESTIMONY OF JASON RODRIGUEZ (STARTS AT (T9)**

Appellant first described the February 14, 2022 incident first in a summary manner as follows:

“On that date I was assaulted by an inmate in the jail while in the course of trying to restrain him from his aggressive behavior. He kicked me in the back of the wrist, like, with sudden force; it jerked my arm back and sent what I describe as like a shockwave all the way up my arm to the point that it rendered my arm, like, kind of my right arm, not useful during the rest of the situation” (T12:11-18).

The injury and disability was immediate. The inmate did not injure Appellant in any other way, nor was Appellant injured in any other way that day (T12:22-T13:1).

There is no argument on this record that the injury also occurred within the scope of his duties.<sup>4</sup>

No provision in Appellant’s job description requires Appellant to accept, or withstand, assault and injury from an inmate but there is a provision that says, “we physically restrain the inmates when necessary to *prevent* injuries and maintain security.” (1T14:2-7). Appellant and all witnesses testified that the subject incident was not normal restraint as noted below and as generally noted in this brief.

## **1. The incident of February 14, 2022**

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<sup>4</sup> Appellant described his duties as a correctional officer consistent with Pa38-Pa44 (T13:2 - T14:1). He explained that the job description of a Sergeant (Pa38-Pa40) refers back to Exhibit J-6(b) (Pa41-Pa44) and states that a Sergeant may perform all duties of a county correctional officer as required (T14:8-19). Sgt. Abdellatif also (at T 180 27 -11) confirmed that Rodriguez was doing his job when he came into assist Sgt. Abdellatif with restraint of the inmate.

On February 14, 2022, Sgt. Khalid Abdellatif radioed that he was bringing an inmate (Henry Carter) to be seen by medical after acting in a disorderly fashion, so Appellant responded over to the medical unit to see if he needed any assistance (T18:14-20). Appellant had never met Inmate Carter before and at that point did not have any reason to think he would get aggressive (T19:11-23, T22:6-24, Pa50 explained at T50:7-19, Pa51 explained at T50:23 to T51:11, (Pa233, explained at T22:21-24). The inmate, later identified as Henry Carter, was placed in handcuffs secured behind his back. (Pa48-Pa51). Appellant observed that Inmate Carter was approximately 5'7"-5'8", stocky for his size (T20:1-5). He was in handcuffs and the officers were holding him by the arms. He was not wearing leg shackles at the time (T19:11-23). Inmate Carter was to be placed in solitary confinement for his earlier infraction and had to be medically/psychiatrically cleared first as per standard procedures (T20:7-25, N.J.A.C.10A:31-16.1). So far, at this point, the procedure was normal routine prior to an inmate being placed into pre-hearing detention (T21:2-7).

**Questions from the Bench** focused on Appellant's knowledge of Inmate Carter and the conditions under which Inmate Carter was brought to medical. This questioning starts at T135:13 et sequitur and confirmed that this was Appellant's first ever interaction with the inmate (T136:12); that he didn't know anything about the inmate (T136:16, also noted at T19:2-9, Pa 49 – *marked at*

T48); that he typically assists in situations where an inmate is taken to medical because he was actually the *intake release supervisor* that day and would have to generate paperwork for them to be taken out of the hospital or cared for (T137:6-21); that Sergeant Abdellatif was the lead in the arrival at medical (T138:5-19); that the inmate was shouting but was not physically violent (T13:20-23, T21:10-20); however, upon trying to place him in a chair, Inmate Carter kicked it away. The officers brought the chair back; the Inmate attempted to lunge out of the chair by thrusting his hips out of the chair instead of sitting down (Pa48-Pa68, Pa233-Pa234)<sup>5</sup>. At this point, Appellant approached to grab the inmate's right leg (*T138-T140, Pa49 explained at T47:19-T48:8 and effort at “de-escalation by Sgt. Abdellatif explained using Pa49 at T49:12-T50:6*).

The ALJ further confirmed that the reason Appellant grabbed Inmate Carter's right leg was to force him to sit in the chair and that was when he kicked Appellant with the other leg (T140:14-25). The ALJ also confirmed that Appellant, by grabbing one leg (the inmate's the right leg), acted consistent with Appellant's training in restraining in that each officer “goes for one limb.”

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<sup>5</sup> The videos at Pa233-Pa234 are referenced in the ALJ's opinion at Pa17 and Pa24. Pa48-Pa68 are a series of still photographs that track the chronology of the video in Pa233. The video at Pa234 is the video of the procedure to place the inmate in the restraint chair.

(T145:4-14)<sup>6</sup>.

The incident clearly involved a sudden and unexpected escalation of violent force by Inmate Carter - He refused Sergeant Abdellatif's advisement to be seated in a chair so that the nurses could take his blood pressure and vitals (T24:1-5); he became aggressive (T23:6-24); Inmate Carter suddenly resisted by pulling away from the officers as they attempted to have him sit in the plastic chair in medical for evaluation. The officers tried to gain control of him by holding onto his arms (Pa233, Pa48-Pa68); Inmate Carter kicked the chair out from behind him and started pulling away from officers. The inmate violently escalated the situation from this point. (Pa233, Pa48-Pa68, the chair and nurses' station is shown in Pa233, Pa 52 explained at T51:13-21).

Sergeant Abdellatif tried to get Inmate Carter to sit down, but he "ripped" backwards; he also kicked the chair back "and it happened so fast that I didn't even react right away (Appellant explained - indicating that his reaction was evident in photos at Pa48-Pa68):

"I'm still standing in the same position, that's how fast it happened. It was like a snap, he, you know started fighting the officers from holding on to him." (T24:17-22) (T24:23 – T25:21).

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<sup>6</sup> Sgt. Abdellatif [*and others*] confirmed that it is "absolutely not" part of Petitioner's duties as a corrections officer to accept injury from an inmate, inmates are "absolutely not" allowed to touch officers, and restraint techniques do not always work (T56:1-15).

Appellant was disabled when he intervened upon Carter's "attempt to lunge out of the seat, out, you know, towards the officers is when I went in and tried to gain control of his right leg to prevent him from lunging out." (T121:5-10). Appellant stepped in and that is within his job duties (T24:23-T25:21, *Pa52, explained at T51:13-21, Pa53 explained at T51:22-T52:3, Pa54 explained at T50:25-8 as additional view of quickly emerging situation*).

## 2. Sudden and Unexpected Injury

At this point Inmate Carter kicked and injured and disabled Appellant. The disability from his assault, viewed in retrospect, was immediate. Appellant, (using Pa55 and Pa56) explained:

"When I stepped in I attempted to gain control of inmate Carter's right leg and, as you can see, I grab his right leg and I have a hold of his right leg and then suddenly he kicks out his left leg and it catches me in the back of the hand and wrist. It jerked my arm backwards suddenly and it was like, it was really hard and I felt immediate pain to my wrist but more importantly I felt what I consider like a shockwave that went up my entire right side and I'm sorry your honor for the language but I yelled *Motherfucker!* (also noted at T56:5 in discussion of Pa58) really loud and that was just an initial response like to the pain, you know, so as soon as that happened I kind of held on with my left hand as best I could to try and maintain restraint of Inmate Carter and when additional personnel ended up showing up I was able to finally break away and step back" (T25:22 to T26:16) long enough to recover from this initial shock "to regather myself" because he had just been hurt. (T59:2-12) The exhibit shows it was a short period of time" (Pa61, Pa233-Pa234).

The sudden and unexpected external force is explained in testimony and at Pa54 – this shows Appellant in the forefront of the picture slightly bent over in front of Inmate Carter wearing the orange jumpsuit (also, Pa55 with the location of other officers marked as indicated at T52:9-T54:14). Appellant, in discussion of Pa56-Pa57 explained:

**“in less than a second** while I have control of his right leg he kicks his left leg out, as you can see in (Pa57) with such, like, sudden and fast force that it literally knocked me back onto the heels of my feet and you could see in exhibit P-3J that his left leg comes out and that's when he kicked me and it knocked me back on my heels. (T55:1- 8) *(This exhibit also notes the location and names of officers present.)*

Appellant described the speed at which the injury occurred as “fast, fast and sudden. ... I felt like a baseball player swung a baseball bat, full force into my hand.” (T28:12-19). Appellant’s arm immediately stopped working after this kick: “... It’s probably a second, if that, you know maybe 2 seconds after I had been just gotten kicked in my right wrist you can actually see has kind of gone like limp (on the video). I basically lost like use of my right arm for the rest of the incident (...) (T57:12-17 in discussion of Pa59).

### **3. Corporal Danny Smith arrives**

Appellant explained that, once he was kicked, the photos show “another officer come running in and that officer is actually officer Danny Smith.” Appellant marked the exhibit to show (Smith’s) position. Corporal Smith “ran

into assist with us and gained control of inmate Carter... after I got kicked.” (T56:8-24, Pa58) Appellant did not walk away from the incident but stayed there even though he got hurt:

“And I was hurt... I knew I needed to stay there to supervise the incident.” (T28:1-11, Pa58 *explained at* T56:1-10). “I saw that ...the responding officers had him - they had brought him to the ground successfully and they were maintaining control of him.” (T26:17-T27:6, Pa59 *explained at* T57:17.) “At that point I stepped back and I went into my supervisor role ... moving around and continually monitoring the situation to ensure the safety of not only the officers, but also inmate Carter, to make sure there's no excessive force being used and to make sure that you know all proper channels and appropriate actions were being conducted.” (Pa61 *explained at* T58:19-T59:12).

The type of incident and type of restraint required was rare. Appellant’s call of Level 3 (*inmate on officer altercation*)<sup>7</sup> and demand for the specialized restraint equipment was due to Inmate Carter’s unexpected outburst and violent behavior – he was unexpectedly out of control and more manpower had to respond to the unit (T60:21-T61:19, confirmed at T127:13)<sup>8</sup>. These officers are seen in Pa64 as discussed on the record at T61:7-12. Appellant also radioed for leg shackles and the restraint chair to be brought in and this was because:

“Mr. Carter's behavior went from, you know, agitated to aggressive to abnormal. He started, you know, he was

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<sup>7</sup> Appellant called for the emergency code – the ALJ did not make that clear in the initial decision.

<sup>8</sup> Conversely, the inmate would have been placed in the restraint chair if his outburst was expected.

flailing while he was on the ground and for someone to be placed in leg shackles within the confines of the actual facility is extremely rare. We don't do it all the time and the reason I called for the leg shackles is because he was kicking, he kicked me once, and that was the initial kick and he was kicking while he was on the ground so I called for leg shackles to be brought down to the medical department in addition to the restraint chair because of his abnormal behavior" (T27:7-25, Pa62 explained at T59:13-T60:16).

The call for additional manpower and restraints arose because of the inmate's violence, not before. Appellant was on the immediate scene, present at the inmate's initial outburst, and the situation presented was neither expected nor common. Appellant (and witnesses) testified that violent situations which require a restraint chair are not frequent and "probably occurs about two to three times a year." (Pa234). He distinguished this experience with Inmate Carter as "different" from others:

"because it was so abnormal and unexpected [emphasis provided] that it just happened so sudden, you know, where we went from a behavior of, you know, agitated to just complete aggression and it escalated so quickly that it was just something I never expected - I never expected to get hurt that day." (T98:1-11, again on cross at T133:22-T134:3).

The use of force is never to be considered routine (NJOAG Guidelines at Pa187). Note that the N.J.A.C states: "*(a) The use of non-deadly force against persons is justified only under the following circumstances: 1. To protect self or others against the use of unlawful force; 2. To protect self or others against*

*death or serious bodily harm;*" N.J.A.C 10A:31-8.18 (Consistent with the NJOAG Guidelines at Pa187-Pa196).

#### **4. Initial Medical Aid at time of event**

Appellant sought initial and immediate first aid/medical aid from the nurse's station for the injuries described – she administered ice packs and advised that Appellant should report to the hospital ER for immediate treatment (T29:20-T31:4, Pa65 explained at T62:6-14). Appellant received 2 ice packs from the nurse that he could apply to the injured area (Pa66) following the inmate's placement in the restraint chair (Pa234). The ice packets are seen at Pa67 *explained* at T63:5-T64:4. Following placement, the nurse again advised him to go to the hospital. (Pa233 and still photos at Pa64 discussed at T61:7-19).

The timing of when Appellant submitted his report becomes important because the Use of Force report was submitted before Appellant returned from the Emergency Room. Appellant's report was not included for that reason. Appellant's report of the incident was not completed until after he was released from the ER - Appellant waited a brief time after the assault for transport to the ER. Meanwhile he initiated injury reports but was transported to the hospital at approximately 5:15pm, arriving 5-10 minutes later (T31:11-T32:24, *timing*: T33:14-18). He advised intake persons at Hackensack University Hospital (for

purpose of diagnosis and treatment) that he was kicked by an inmate in the back of the wrist and that he was feeling pain from the wrist, elbow, and shoulder area due to the assault (Pa70, T33:1-10).

Appellant also immediately reported to his Commander about the incident and injury. The Standard Operating Procedure on Reporting at Bergen County Sheriff follows Rule 803(6) - reports are written under Bergen County Policy consistent with Rule 803(6) so they can be considered self-authenticating under Evidence Rule 902. The timing of when Appellant submitted his report becomes important because Appellant's report of the incident was not completed until after he was released from the ER – it also did not get submitted until the next day after the assault. The other officers had, by that point, already submitted “Use of Force” reports on the matter. Appellant explained:

‘All officers confirm that they are to write their own personal knowledge of the incident- they write what they did ... (and do not) presume to write something he didn't necessarily see (...) they submit them to the supervisors, the supervisors will review the reports and they will comprise a master report of the individual officers accounts of the incident, documenting everything in totality. ... That is the policy of the Bergen County Sheriff's Office.” (T82:10-T83:18)

Consequently, the report of Corporal Daniel Smith (Pa107) follows this procedure mandate. Contrary to the ALJ's critique of this mandate, it describes *his* actions, not others, and likewise reports from other officers (Pa108, Pa109)

follow this procedure. Corporal Smith confirmed "I put in my report what I've done. That is standard operating procedure." (T209:16- T210:10, T89:9-T90:8). This policy is further evident in the Use of Force reports (Pa89-Pa106 *noted at* T85:17) - Appellant was not named as a participant in the use of force report at Pa87-Pa88 "because I did not place the inmate into the restraint chair. These (*as named*) are officers that actually had a physical hand in placing him into the restraint chair." (T89:2-8) As noted, Appellant had already been assaulted and injured before the restraint chair arrived.

Sgt. Abdellatif submitted his Operations report at Pa87-Pa88 on February 14, 2022 (T82:11). Sgt. Abdellatif did not have Appellant's report at the time he wrote that document and submitted his report within his tour of duty (3PM-11PM). That report was generated due to the restraint chair placement and shows how the actions of each officer are reflected in that report. (Described generally at T86-T88). Abdellatif further explained this reporting procedure to the Court at (T143:10-T144:5).

Appellant left the hospital a little after 11:00 PM and arrived back at the jail at approximately 11:30 PM. Appellant, before going home, finished all reports of the incident his medical discharge paperwork, injury forms, and operation report (Pa78-Pa86 with reports explained at T80:17-T81:19, T35:8-

21). Appellant's operations report at Pa78 was submitted "sometime after midnight." (T34:19-T35:8)

*Use of Force* reports, per Bergen County practices, are to be submitted before the end of the tour of duty. (N.J.A.C 10A:31-9.3 – Use of Force). The timing is relevant because Sgt. Abdellatif, as explained below, did not have Appellant's report when he submitted the Use of Force reports prior to the end of his 3:00 PM-11:00 PM tour (Pa87-Pa106).

The ALJ stated that the Inmate was not charged with assault at an institutional hearing (Pa110-Pa119). The assault, however, was noted in those records. The Adjudicatory Panel at Bergen County Corrections did, in investigation and its sentencing considerations, note Appellant's injury during the disruptive nature of this event (N.J.A.C. 10A:31-17.1 - Placement in Disciplinary Detention). No other officer had gotten injured that day. (Pa110-119, T35:24-T37:8, N.J.A.C. 10A:31-16.10 Prehearing detention, N.J.A.C 10A:31-16.9 Investigation, N.J.A.C. 10A:31-16.1(f), N.J.A.C. 10A:31-16.14).

Inmate Carter was charged with Institutional charges - N.J.A.C. 10A:4-4.1 - Prohibited acts, (with) Maximum Sentence with Injury to Officer Noted. The next day, following the ER treatment, Appellant returned and learned the inmate was institutionally charged with two charges – these carried the

maximum available sentence on each charge for the case (N.J.A.C 10A:31-16.6 - Major violations and sanctions).

The Inmate was also indicted and pleaded Guilty to Aggravated Assault on a Law Enforcement officer (Pa120-Pa125). The ALJ rejected that any of this was relevant – the Inmate under oath admitted to trying to injure Appellant or any other person and specifically admitted that he kicked Appellant.

Appellant had surgery for the subject injury on August 9, 2022 and the course of recovery, he realized “... something wasn't right and ... it just wasn't getting better.” (on cross at T128:23-T129:5). It was at that point he decided to pursue criminal charges against Inmate Carter through the Bergen County Corrections facility (N.J.A.C. 10A:31-16.13 - Referral to the prosecutor). Sgt. Constant helped Appellant file the criminal complaint in his role as a records Sergeant which was then handled through the Bergen County Prosecutor's office (T193:16-21, Pa197/ *Witness Sam Constant's* handwriting confirmed on those documents, T194:3-10, Pa120-P125).

Defendant Inmate Carter was convicted of the assault and specifically admitted that he kicked Sheriff's Officer Jason Rodriguez with intent to cause injury (Pa135-Pa136). A grand jury indicted Inmate Carter - now Defendant Carter – the indictment itself specifically named Appellant as the victim of Inmate Carter's aggravated assault (Pa126). Inmate Carter pleaded guilty

(Pa127-Pa132, Pa133-Pa137). Defendant Inmate Carter received a sentence of 12 months in State Prison for this assault (Pa138-Pa143).

The ALJ failed to realize that Corrections Officers are NEVER to be kicked or assaulted in the line of duty, nor is their continued employment conditioned on acceptance of such physical abuse and injury. Appellant did not expect to suffer assault in the incident – it's against the law and against public policy.

Restraint of Mr. Carter on that date was not what should be considered normal restraint (T142:12-21)<sup>9</sup>. Appellant, upon question by the Court, testified that while he had experienced restraining inmates who may become agitated there were different levels of restraint and what occurred in the subject event was “absolutely” more than what Appellant typically handled day-to-day with inmates brought into medical (T142:5-11).

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<sup>9</sup> Note: Per regulations, "(a) Restraining equipment may be used only in the following instances: 1. As a precaution against escape during transit;2. For medical reasons by direction of appropriately authorized medical staff; 3. To prevent inmate injury or injury to others; or 4. To prevent property damage." N.J.A.C. 10A:31-9.3. Appellant accurately testified: "we physically restrain the inmates when necessary to *prevent* injuries and maintain security." (T14:2-7). In addition, the NJ Attorney General Guideline on Use of Force in effect on the date of the incident (Pa187) directs that use of force, including the mechanical force in the restraint chair (Pa188-Pa189), should never be considered "routine." (Pa234).

Appellant, in over 13 years, had “never once” suffered assault at work (T39:5-12, T39:13-15). He was also never subject to that level of aggression on his person as herein described (T97:3-14.) He confirmed that he is not supposed to be beaten up at work or assaulted as part of his job (T39:19 to 24, also T39:25-T40:2) and he did not expect he would be kicked when he approached Mr. Carter “I never expected that I would get hurt that day.” (T40:3-5).

#### **B. TESTIMONY OF SERGEANT KHALID ABDELLATIF**

Sgt. Khalid Abdellatif was present at the event of February 14, 2022. His tour of duty was 3:00 PM to 11:00 PM (T150:1-4). He was familiar with Henry Carter, and, as far as he knew him Carter had not previously been violent or acted out of line with Sgt. Abdellatif himself (T150:23 – T151:1) despite Inmate Carter’s classification status in the high security unit (T150:8-22).

Sgt. Abdellatif explained that the whole incident started when Inmate Carter was coming back to his housing unit. An officer instructed Inmate Carter to conform with institutional dress codes (in accord with N.J.A.C. 10A:4, Inmate Discipline). Mr. Carter told the officer to “go fuck (him)self” – Sgt. Abdellatif gave Mr. Carter an order to surrender his hands, they handcuffed him and took him to the medical unit (Medical) as SOP prior to solitary confinement. He was not in leg restraints at that point (T151:2-25). Sgt. Abdellatif talked to Inmate Carter – he was initially just verbal, but became uncooperative, refused to sit in

the chair, refused to talk to the officers, “and that's when the incident began.” Abdellatif ordered Carter to sit down, he started struggling, “we attempted to guide him into the chair, he continued to resist, that's when I noticed more officers started coming into medical. Appellant heard the commotion, came in and now we have ourselves an actual assault where the inmate is resisting control is resisting everything and not complying with my orders. We had three, four officers, possibly more at that point, and at this time Mr. Carter kicked Sergeant Rodriguez and I heard (Rodriguez yell) like mother fucker or something like that” (T152:2-20).

Sgt. Abdellatif also (at T180:27-11) confirmed that Appellant was doing his job when he came into assist Sgt. Abdellatif.

Sgt Abdellatif confirmed through testimony that the incident, despite training, was undesigned and unexpected:

“Instead of a routine simple bring you to the institute you know for pre-hearing detention now we're bringing a bunch of people to place you in a restraint chair for the safety of the officers, for the safety of the facility, for the safety of inmate Carter. Now he's become extremely violent ... and he don't care about police, he don't care about rules. He only cares about doing what he wanted to do and he just exploded that night.” (T154:1-10)

Sgt. Abdellatif considered that Inmate Carter might become aggressive because he saw a coding red wrist band that indicated his inmate coding, but Sgt. Abdellatif did not see behavior consistent with that type of inmate coding

until after the Inmate kicked Appellant (T155:5-8). Abdellatif explained that Carter, "when he 'went off', this occurred quickly" and "no absolutely not" he didn't expect that to happen at that moment. (T157:12-T158)<sup>10</sup>. Abdellatif testified that the inmate was:

"extremely combative and he was trying to hurt somebody that night, that he was out to not listen to our orders and he successfully completed it by hurting one of us. ... He hits Sergeant Rodriguez and thankfully that's all that you know no one else got injured but this inmate did not care about safety, he did not care about us, he wanted to hurt us that night by pulling this charade." (T168:3-T169:3).

Sgt. Abdellatif stated it is "absolutely not" part of your duties to accept injury from an inmate. And inmates are "absolutely not" allowed to touch officers. Also, restraint techniques do not always work (T156:1-15).

Sgt. Abdellatif was the supervisor for 2 years at the time of the incident and did not see an incident of this nature (including the chair and the restraints) very rarely - maybe once a month (T160:1-12).

### **C. TESTIMONY OF SERGEANT SAM CONSTANT**

Sergeant Sam Constant started as a corrections officer on May 1, 2008 and is currently serving as rank of Sergeant. He was in service on February 14, 2022 during the incident involving Inmate Carter (T182:20-T183:5). Sgt. Constant

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<sup>10</sup> Assaultive/ combative explained as "going off" (T158:1-20).

didn't write a report on the incident (T196:11-16).

Sergeant Constant worked in the records unit adjacent to the medical unit (Pa198, Pa48, T184-T185). The back door of the medical unit is a clear view from his window so typically when inmates get escorted down the hallway in the West corridor you could hear kind of what was going on (T183:18-25). Sgt. Constant also did not know anything about Inmate Carter prior to the event of February 14, 2022 except that he was an inmate in the Bergen County Jail (T183:13-17). He did not get directly involved but was present outside of medical in the West corridor and was 25 or 20 feet away from where the inmate Carter was at this time (T188:5-17).

Sgt. Constant observed Inmate Carter being loud and abusive in a way "which is typical sometimes how inmates get so we were trying to de-escalate the situation. There's really no need for anything to go further. He was not violent at that time. The officers were trying to deescalate him and calm him down and that's when the incident happened." (T189:9-21). He testified that the next actions of Inmate Carter, in kicking Appellant, was unexpected - "no one was expecting it, it was out of, you know out of context, I guess, usually things like that does not happen, so." (T191:10-15).

He witnessed Inmate Carter kick Sgt. Rodriguez's right hand.

"... I heard it, it wasn't just I saw it, but I heard it and it was like loud pop, snap, and I was ready to jump in myself

but at that time all the officers had gained control of him and I didn't feel it necessary to jump in. (T189:22-T190:3)

Thereafter Appellant was in pain and Constant suggested he may want to get his injury "checked out because it didn't look good and it didn't even sound right." (T192:3-10).

Sergeant Constant confirmed that inmates are not allowed to kick officers nor are they allowed to touch officers nor are corrections officers made in any way to understand that they're supposed to accept assault, or expect assault, from an inmate during efforts to restrain them (T191:20-192:2, T193:4-12). Sgt. Constant later helped Appellant file the criminal complaint in his role as a records Sergeant (T193:16-21, Pa197, T194:3-10, Pa120-Pa125).

#### **D. OFFICER DANIEL SMITH**

Corporal Daniel Scott Smith, a Senior Correctional Police Officer, was in his 27<sup>th</sup> year at the Bergen County Sheriff's Office at the time of the subject incident. (T201:17-20, T202:19-10). He became involved with the incident having heard a radio call for a Level 3 – "that's an officer on inmate involved physical altercation." He responded to the back of medical and assisted with taking the inmate down to control him to put him in the restraint chair." (T203:17-T204:2).

Cpl. Smith confirmed that that there came a point where he actually physically got involved with the incident (T204:20-T205:1). Smith saw

Appellant get kicked in the hand/wrist hand area by the inmate with his left leg such that it moved Appellant's hand up and back (T205:6-19). He heard Appellant, upon impact, curse in a response to pain, and recalled "it was either Fuck, or Motherfucker. It was one of the two." (T205:21-T206). Cpl. Smith explain that "my Sergeant getting assaulted and I went in to take control of the inmates, I believe, leg at that point." (T205:2-5). Appellant, once he had been kicked, then "backed out of the incident at least a couple of feet that's when I came in and took over. I assisted taking him to the ground and then assisted putting him in a restraint chair." (T206:11-18).

Smith testified that these types of incidents were not a frequent event – "I would say once a month, personally that I've been involved with, once a month maybe even less than that (T206:19- T207:2). Corporal Smith stated that this specific type of incident where an officer is assaulted like here is "not that common." (T207:14-20).

**LEGAL ARGUMENT**  
**POINT ONE**

**The Appellant was disabled as the direct result of a traumatic event that was undesigned and unexpected. ALJ's denial is contrary to controlling statute and decisional law**

*(Raised below in Exceptions submitted to Respondent)*

The ALJ's findings in the initial decision support this award of Accidental Disability:

- a) At Pa22, the ALJ concludes that Appellant was kicked by an inmate while restraining him;
- b) At Pa22, the ALJ concludes that the inmate kicked out and injured Appellant while Appellant pulled on his leg;
- c) The ALJ concludes that Appellant received injury while restraining the inmate (Pa22);
- d) At Pa22, the ALJ finds as the inmate continued to struggle and resist officer control. The Inmate kicked Appellant's wrist while Appellant held the inmate's other leg;
- e) The ALJ concludes that the inmate was in fact aggressive, and Appellant had to assist them in restraining him (Pa21);
- f) At Pa21, the ALJ concludes that the inmate was using his feet combatively and aggressively resisting the officers in flailing and attempting to lunge out of the chair;
- g) At Pa21, the ALJ concludes that the inmate was in fact kicking while Appellant stepped in and grabbed the inmate's right leg while the other officers attempted to restrain his upper body and hold him in a chair.

The ALJ found that Appellant had in fact (1) been performing his duties as a Sergeant at the time he was injured, and (2) that he did in fact grab the inmate by one leg whereupon the inmate kicked him and the upper extremity during that incident (Pa16-Pa17).

Appellant pleaded and proved his case on Accidental Disability.

Richardson is instructive:

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.* [Id. at 213-14, 927 A.2d 543 (alteration in original) (final emphasis added).]

Appellant, in response to the emergency presented, did not voluntarily assume the risk of injury by performing his duties:

"Merely by performing their jobs, corrections officers do not "voluntarily" assume the risk of being assaulted by an unruly inmate such that their disability should be considered designed and expected. (Emphasis provided) *Gable*, supra, 224 N.J. Super. at 423, 540 A.2d 908 (1989).

Wherefore, the ALJ's denial of Accidental Disability benefits, and Respondent's affirmation of the denial is contrary to established caselaw and should be overturned.

## POINT TWO

**The ALJ incorrectly determined that, since the assault and injury occurred during Appellant's regular or assigned duties, the work effort was "ordinary" and was not "undesigned or unexpected" such that disability directly caused by the assault is an ordinary part of an officer's job**

*(Raised below at Pa30-Pa31, Pa45-46)*

In error, the ALJ stated:

"The satisfaction of the "undesigned and unexpected" factor requires an event "extraordinary or unusual in common experience" and not "[i]njury by ordinary work effort." Id. at 201 (Pa20)

As noted, this incident was not ordinary work effort. However, the ALJ's use of that section of the decision at (*Ibid* 201) speaks to a different area of the Richardson 5 factor test - (Factor 2c). Factor 2c is not at issue here – moreover, Respondent previously conceded Richardson Factor 2c at (Pa45). The full quote at 201-202 (in Richardson) shows that the section the ALJ relied upon concerns Factor 2c of the Richardson test (already conceded below at Pa45-Pa46), not Factor 2b (undesigned and unexpected) presently at issue. Richardson, at that section (2c), states:

"Ultimately, we ruled against the Appellant in *Russo* because her husband's heart attack was the result of "doing his usual work in the usual way." In effect, it was essentially caused by his heart condition, not by an external traumatic event. Richardson v. Board of Trs., 192 N.J. 189, 201.

This is not what happened in the case sub judice. Appellant was subject to external force as noted on this record (Pa45). Appellant also didn't suffer injury from a previous condition (Pa30-Pa31) doing normal work. The analysis presented by the ALJ is not applicable nor relevant. The Richardson decision continued beyond the ALJ's citation on to page 202 wherein it further aligned this principle with another longstanding principle from Cattani decision (cited therein), stating<sup>11</sup>:

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<sup>11</sup> Cattani v. Board of Trustees PFRS, 69 N.J. at 581 (1976)

Thus, in *Cattani*, we reiterated *Russo's* determination that the statute requires a happening external to the worker (not pre-existing disease alone or in combination with work) to warrant accidental disability benefits. Richardson v. Board of Trs., 192 N.J. 189, 202

The Respondent admitted that the Appellant had an external force present in the assault. The ALJ improperly rejected these facts, already established below (Pa45-46). The full quote of the Richardson decision the ALJ cited at this section reveals that the ALJ bypassed that fact as well. This deals with prior conditions, not what happened in the case sub judice.

*"In ordinary parlance, an accident may be found either in an unintended external event or in an unanticipated consequence of an intended external event if that consequence is extraordinary or unusual in common experience. Injury by ordinary work effort or strain to a diseased heart, although unexpected by the individual afflicted, is not an extraordinary or unusual consequence in common experience. We are satisfied that disability or death in such circumstances is not accidental within the meaning of a pension statute when all that appears is that the employee was doing his usual work in the usual way. Richardson v. Board of Trs., 192 N.J. 189, 201*

The record does not support the ALJ's conclusion that this was ordinary work effort, and the Richardson decision doesn't go that far - Richardson concludes:

We ... recognized the "actions of an unruly inmate" as the necessary qualifying **external force** distinct from an employee's "own conduct." Id. At 222, 557 A.2d 1012 (citing Gable as found in Richardson v. Bd. of Trustees, Police &

Firemen's Ret. Sys., 192 N.J. 189, 208, 927 A.2d 543, 555 (2007))

Wherefore, injury from assault is not an ordinary part of an officer's job.

The ALJ incorrectly determined that the assault on Appellant was not undesigned and unexpected, contrary to the Richardson holding, and reversal by the Appellate Court is appropriate.

**Subpoint 1:**

**The ALJ's analysis using Richardson's Ibid 201 reference to Hillman and Russo is error and exceeds the scope of appeal**  
*(Raised below at Pa45)*

The ALJ notes that Appellant met all Richardson factors except Factor 2(b) – undesigned and unexpected. The ALJ's reference to Richardson's Ibid 201 dicta (Pa20) [with reliance on Russo v. Teachers' Pension & Annuity Fund, 62 N.J. 142 (1973) and Hillman v. Board of Trustees, 109 N.J. Super. 449 (1970)] was not appropriate on this record and constitutes analysis under error of fact and law.

The ALJ, here, bypassed Respondent's concession of external force and instead focused her analysis as if Appellant already had some prior injury and was only doing some normal or ordinary work effort. The ALJ is wrong on all counts. The ALJ's analysis applied the incorrect Richardson Factor.<sup>12</sup> Appellant

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<sup>12</sup> "In reversing, the Appellate Division declared that the purpose of the amendments was to limit accidental disability benefits in pre-existing disease

was deemed to have already *met* Factor 2(c) on the Respondent's earlier admissions of Direct Result and External Force (Pa45).

Richardson's Factor 2(c) standard is used to rule out disability that results from a mix of pre-existing disease and normal work effort. No such allegation was raised by Respondent, and there is no basis on the record for the ALJ's prejudicial analysis where a different issue is under review.

Richardson's Factor 2c requires disability from prior injury which arises as the result of a normal workday. The issue was not presented by Respondent within the scope of appeal, and this finding constitutes a prejudicial and legally flawed application of the facts to the prevailing law.

“... where the disability arises out of a combination of pre-existing disease and work effort, a traumatic event has not occurred; [this] *underscores that what is required is a force or cause external to the worker (not pre-existing disease) that directly results in injury*; (emphasis added) and identifies ordinary mishaps, including lacerations, trips, and falls, as traumatic events. That strand reaffirms that a traumatic event can occur during usual work effort, but that work effort itself or combined with pre-existing disease cannot be the traumatic event. (Richardson v. Board of Trs., 192 N.J. 189, 211)

To illustrate, a painter with a bad shoulder who wears out what is left of the shoulder simply painting a wall is not entitled to Accidental Disability as his

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cases to those situations where unusual or excessive work effort aggravated or accelerated the disease. *Id.* at 459, 263 A.2d 789 (citing Hillman) Richardson v. Board of Trs., 192 N.J. 189, 200

disabling injury was not the direct result of a traumatic event. That type of analogous situation was not in the scope of appeal, nor was it alleged by anyone on this record.

Richardson is further instructive:

“... N.J.S.A. § 43:16A-7 requires that the traumatic event occur during and as a result of the performance of the member's regular or assigned duties. *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. (Emphasis added).* That is quite different from saying that a traumatic event cannot occur during ordinary work effort. 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.* (Emphasis added). 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. Richardson v. Board of Trs., 1929, 192

The injury suffered in each qualifying example argues where the disability is “not the result of pre-existing disease, aggravated or accelerated by the work” but was instead caused by the external force.

The ALJ acknowledged that the Respondent made, *inter alia*, the earlier ruling on external force and direct result in her analysis (Pa20). The Respondent also noted that the injury was *identifiable as to time and place*, (Richardson

Factor 2a) so there is no suggestion on this record that Appellant's "normal stress and strain of the job combined with a pre-existing disease to cause injury or degeneration over time." Such cases are not identifiable as to time and place.

Wherefore, Respondent's admission of direct result and external force, on a time and date certain (Pa45-Pa46) means that Richardson Factor 2(c) favored Appellant as a matter of law and should not have been realigned by the ALJ outside of the scope of appeal.

### **POINT THREE**

**The ALJ determined that Appellant was working and injured performing work within his job description, so he was not eligible for Accidental Disability. This is contrary to decisional law**

*(Raised below at T6:17-T9:1)*

Initially, an applicant must be at work performing his regular or assigned duties to qualify for Accidental Disability benefits (N.J.S.A. 43:16A-7). The ALJ rests this conclusion in error of law, stating: "the Rodriguez incident does not contain any extraordinary circumstances as illustrated by Richardson."

(Pa21) This is error of fact and law.

"We recognize that a corrections officer's job is dangerous. There is always the possibility that he or she will be attacked violently by an inmate ....These occurrences, however, while occupational hazards, do not occur frequently enough to constitute normal stress or strain<sup>13</sup>. Although a corrections officer, such as (Appellant), may

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<sup>13</sup> Witnesses in the present matter testified that these incidents were infrequent.

realize that there is a "potential that he or she will be called upon to subdue an inmate, an officer does not expect his or her daily routine will normally involve being struck by an aggressive or escaping inmate." (*Gable*, *supra*, at 423)

The ALJ's analysis of this case acknowledged that Appellant was attacked violently by the inmate. The ALJ cannot demand "something more" nor is there a legal basis for her to do so.

Wherefore the ALJ's interpretation that Appellant's incident was not extraordinary enough to merit award of Accidental Disability benefits is contrary to facts and established caselaw, such that Appellant demands reversal by the Appellate Court.

#### **POINT FOUR**

**The ALJ erred in her demand that Appellant meet a subjective undefined determination on what constitutes enough force to meet "undesigned and unexpected" element of Richardson Factor 2(b)**

*(Raised below at Pa45-Pa46, T28:12-19, T52:9-T54:14, T55:1-8, T157:12 – T158, T168:3- T169:3, T191:10-15, T192:3-10, T204:20-T205:1, T205:2-5, T205:21-T206)*

The ALJ, in finding that the inmate did not exert exceptional force when he assaulted Appellant (Pa22) deemed that the inmate didn't kick Appellant hard enough to vault the "undesigned and unexpected" threshold.

The violent inmate kicked the Appellant with the intent to injure him. He was successful. He had to be restrained by several officers. The Respondent Board found his injuries were the direct result of this external force (Pa45-Pa46).

The Respondent's earlier determination (Pa45-Pa46) and the ALJ's analysis concurs that the assault from the inmate caused the disability. The external force in the assault was the direct result of the disability. The ALJ didn't think the Inmate kicked Appellant hard enough, that use of leg shackles and a restraint chair did not make the event unusual (contrary to the testimony of officers involved in the incident) and denied the case (Pa22).

Again, Richardson is instructive:

"Force was meant simply as an external influence or cause outside the member himself. It was not an affirmative requirement of extreme violence; the member did not have to be struck by lightning or hit by a truck..." Richardson, *Ibid* at 212.

The ALJ committed error of law in her analysis. There is no specific level of force required except external force, all of which was found by Respondent and was not within the scope of appeal for this case.

Wherefore, the ALJ erred in her requirement for a subjective level of exceptional force before Accidental Disability benefits could be awarded. Reversal by the Appellate Division is appropriate.

#### **POINT FIVE**

**The testimony and record show that the Inmate's attack on the officers was sudden, unexpected, and of an uncommon nature**

(Raised below at Pa54-Pa57, T28:12-19, T52:9-T54:14, T55:1-8, T157:12 – T158, T168:3- T169:3, T191:10-15, T192:3-10, T204:20-T205:1, T205:2-5, T205:21-T206)

The sudden and unexpected external force is explained in testimony and Pa54-Pa56— the photos show Appellant in the forefront of the picture slightly bent over in front of Inmate Carter wearing the orange jumpsuit (explained at T52:9-T54:14). Appellant, in discussion of Pa56-Pa57 explained:

“In less than a second while I have control of his right leg he kicks his left leg out, as you can see in P-3J with such like sudden and fast force that it literally knocked me back onto the heels of my feet and you could see in P-3J that his left leg comes out and that’s when he kicked me and it knocked me back onto my heels.” (T55:1-8, Pa57) (*This exhibit also notes the location and names of officers present.*)

If harm was expected, would anyone have remained in harm’s way?

Appellant described the speed at which the injury occurred as “fast, fast and sudden. ... I felt like a baseball player swung a baseball bat, full force into my hand.” (T28:12-19). His arm immediately stopped working at all -

“... It's probably a second, if that, you know maybe 2 seconds after I had been just gotten kicked in my right wrist you can actually see has kind of gone like limp (on the video). I basically lost like use of my right arm for the rest of the incident ... my left arm is still holding on to inmate corridor and maintain contact with him because I was still trying to render assistance and help restrain inmate Carter.” (T57:12-17) *in discussion of Pa59).*

The witnesses testified at length regarding the severity of the assault (Sgt. Abdellatif at T157:12-T158, T168:3-T169:3, Sgt. Constant at T191:10-15, T192:3-10). Cpl. Smith confirmed that he actually physically got involved with the unexpected incident and testified at length as to the severity of the assault

(T204:20-T205:1, T205:21-T206).<sup>14</sup> Cpl. Smith explain that “my Sergeant getting assaulted and I went in to take control of the inmates, I believe, leg at that point.” (T205:2-5).

Wherefore, the ALJ’s denial was improper and should be reversed.

### **POINT SIX**

#### **The ALJ’s demand that Appellant should have grabbed both of the inmate’s legs was unwarranted speculation and exceeded the scope of appeal**

*(Raised below at Pa56-Pa59, T25:25-T26:3, T:54-17-20, T58:21-T59:1, T122:7-11, T122:20-25, T145:6-11, T213:12-21, T213:21-25, T215:11 to T216:3)*

The evidence shows that ALJ’s suggestion that Appellant should have grabbed both legs (Pa-21-Pa22) was unwarranted, contrary to training, contrary to the amount of persons in the incident, and contrary to the physical evidence which showed another officer was in between the legs of the violently resisting inmate when Appellant grabbed one leg (Pa56); Appellant could not have

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<sup>14</sup> Corporal Smith identified the kick and his entry into the situation using photographs. Smith explained where he was when he responded to assist - he identified Pa58 as when he first appeared (T213:12-21). He marked the exhibit to show that that he was the first person in front of the camera (T213:21-25). Corporal Smith also identified that the kick occurred during the sequence (Pa57-Pa58). He explained “(Appellant) is right here on the right side. He actually has his, I believe, left hand on the cuff of inmate Carter’s right lower leg by his foot.” Corporal Smith explained he “I believe I was already en route just before this particular picture happened, but I wasn’t physically in there yet” with reference to Pa59) (T215:11 to T216:3.)

reached two legs in less than 3 seconds prior to being suddenly kicked anyway, nor was he trained to put himself in this “grab two legs” position (Pa56-Pa59). The ALJ should not have made these wild speculations. Respondent had already admitted that Appellant was not willfully negligent in any way and he was subject to external force in the incident of which his disability directly therefrom resulted (Pa45-Pa46).

Wherefore, the ALJ exceeded the scope of appeal in her prejudicial finding that Appellant should have acted outside of his training and if he had, he could have avoided injury. This is an error of fact and law, and reversal by the Appellate Court is necessary and warranted.

#### POINT SEVEN

**The ALJ erred in her legal determination that Appellant’s injury was caused by ordinary work effort and not undesigned and unexpected**

*(Raised below at: Pa62, Pa135-Pa136, T27:7-25, T59:13-T60:16, T97:18-21, T98:1-11, T133:22-T134:3, T156:1-15, T157:12-T158, T160:1-12, T168:3-T169:3)*

Under the ALJ’s opinion (Pa22), no applicant for Accidental Disability will qualify for Accidental Disability if they are disabled while doing their job. This is error of law.

The Supreme Court has found otherwise:

“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." ... 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; (emphasis added) 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 ... 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." Richardson v. Bd. of Trustees, Police & Firemen's Ret. Sys., 192 N.J. 189, 213-14, 927 A.2d 543, 558-59 (2007).

Uncontroverted witness testimony established that inmates are not permitted to touch or kick officers, and the subject event was sudden and unexpected. (Abdellatif at T156:1-15, T157:12-T158, T160:1-12, T168:3-T169:3). Appellant approximated that over the course of his entire career he assisted in placement of an inmate and a restraint chair perhaps six or seven times. Appellant (and witnesses) testified that that restraint chair situations are not frequent and thereby not usual work effort. Appellant stated: "I would say

that the restraint chair placement in generally probably occurs about two to three times a year" (T97:18-21).

He distinguished this incident with inmate Carter as "different" from others:

"because it was so abnormal and unexpected [emphasis provided] that it just happened so sudden, you know, where we went from a behavior of, you know, agitated to just complete aggression and it escalated so quickly that it was just something I never expected – I never expected to get hurt that day." (T98:1-11, again on cross at T133:22 to T134:3).

Appellant likewise testified as to the unusual, unexpected, and sudden nature of the assault:

"Mr. Carter's behavior went from you know agitated to aggressive to abnormal. He started you know he was flailing while he was on the ground and for someone to be placed in leg shackles within the confines of the actual facility is extremely rare. We don't do it all the time and the reason I called for the leg shackles is because he was kicking, he kicked me once, and that was the initial kick and he was kicking while he was on the ground so I called for leg shackles to be brought down to the medical department in addition to the restraint chair because of his abnormal behavior" (T27:7-25, Pa62 explained at T59:13 to T60:16).

Wherefore, the ALJ erred in finding the assault on Appellant constituted normal work effort and the testimony and record are sufficient for a reversal of the ALJ's opinion.

## **POINT EIGHT**

**The ALJ's assertion that Appellant's case falls outside of Richardson and constitutes "normal work effort" is reversible legal error**

*(Raised below at Pa120-Pa125, Pa138-Pa143, Pa188-Pa189 T42:5-10, T160:6-10, T207:14-16, T221:12-15)*

The ALJ, at Pa21-Pa22 found that Appellant's prior training to restrain inmates place this case within ordinary work effort and outside of the Richardson holding. This is reversible error. Training, though conducted, does not always work, and no one expected that the Inmate would have kicked Petitioner under the circumstances presented:

"Merely by performing their jobs, corrections officers do not "voluntarily" assume the risk of being assaulted by an unruly inmate such that their disability should be considered designed and expected. (Emphasis provided) Gable, supra, 224 N.J. Super. at 423, 540 A.2d 908 (1989).

The Legislative intent in the New Jersey Criminal Code makes it clear that a corrections officer is not to be subject to aggravated assault from an inmate. The ALJ's ruling contradicts the legislative intention. Further, the ALJ failed to take into consideration the charges against the Inmate. The Inmate in this case was indicted and convicted of aggravated assault on Appellant as a corrections officer and served 12 months in prison (Pa120-Pa126, Pa138-Pa142).

The testimony shows that Appellant did not shy away from his job in this incident – he did his job properly but was injured and disabled as a result. The testimonial and document/video record (Pa233, photos at Pa48-Pa68) now

before this Court also demonstrates that the February 14, 2022 incident required used of use of force on the inmate. This was not expected, was unplanned, and is never to be considered a routine or normal occurrence (Pa187-Pa189).

"We recognize that a corrections officer's job is dangerous. There is always the possibility that he or she will be attacked violently by an inmate ....These occurrences, however, while occupational hazards, do not occur frequently enough to constitute normal stress or strain. Although a corrections officer, such as (Petitioner), may realize that there is a "potential that he or she will be called upon to subdue an inmate, an officer does not expect his or her daily routine will normally involve being struck by an aggressive or escaping inmate." (*Gable*, *supra*, at 423)

This incident, as a matter of policy, is also on an institutional level viewed an unexpected and abnormal situation. This concerned a use of force with mechanical and physical restraints - per regulations:

"(a) Restraining equipment may be used only in the following instances: 1. As a precaution against escape during transit;2. For medical reasons by direction of appropriately authorized medical staff; 3. To prevent inmate injury or injury to others; or 4. To prevent property damage." N.J.A.C. 10A:31-9.3.

The inmate's attack was sudden and unexpected – the unexpected attack and injury on Petitioner, as described on this record, served as the first notice that required a sudden and heightened use of force/restraint moving forward. In addition, the NJ Attorney General Guideline on Use of Force in effect on the date of the incident (Pa187)) direct that use of force, including the nature of the

mechanical force in the restraint chair (Pa188-Pa189), should never be considered “routine.”

In Vetrano v Board, PFRS, the ALJ, in reversal of the Board’s denial under similar facts, held:

“The sole issue before this tribunal is whether the traumatic event that brought forth the injury that caused the petitioner’s disability was undesigned and unexpected. (...). Vetrano argues that the actions of the combative and assaultive suspect provide the necessary qualifying external force distinct from the employee’s “own conduct.” Richardson, 192 N.J. at 208 (quoting Gable v. Bd. of Trs. of the Pub. Emps’ Ret. Sys., 115 N.J. 212 (1989)). I agree. The Supreme Court has stated, “We find that it is not part of the stress or strain of the ‘normal’ work effort of a (police) officer to be violently assaulted by (a suspect). (Police) officers are not hired to be punching bags.” Gable, 115 N.J. at 224. In the instant matter, the suspect grabbed Vetrano’s hand and slammed it against a wooden bench. Anthony J. Vetrano , Petitioner, v. Police and Firemen’s Retirement System of New Jersey, Respondent. November 6, 2023, Decided OAL DKT. NO. TYP 04831-22 (Pa218–Pa227)

Unpublished caselaw demonstrates the guiding principles noted above:

In Angelo Reyes vs. Board of Trustees PFRS, Appellate Division Docket A-2018-22 (Decided June 11, 2024) (Pa228-Pa232), the Court reviewed an incident where Petitioner Reyes, in trying to restrain a kicking and thrashing suspect, was injured when he fell backwards and onto his right side injuring his right shoulder and wrist when the suspect forcibly pushed himself up with Appellant still on his back. The Appellate Division held that the facts of the case

did not materially differ from the facts of Richardson in which the Supreme Court granted Accidental Disability benefits to a corrections officer who had been injured when he was likewise attempting to handcuff a violent individual in the course of his duties.

Likewise in Andrews v. Bd of Trs, the Appellate Court reversed the ALJ's decision and found "Whether described as an assault or being forcefully kicked while attempting to restrain a patient, petitioner's version of the incident was analogous to the facts in Richardson". Andrews v. Bd. of Trs., 2025 N.J. Super. Unpub. LEXIS 58, \*14 (Pa203). "We conclude the facts here are closely aligned with the facts in Richardson, where the Supreme Court granted accidental disability benefits to a corrections officer injured while attempting to handcuff a violent individual in the course of his duties. 192 N.J. at 214-15". *Id* 14 (Pa203).

Similarly, Appellant, sub judice, was suddenly and unexpectedly kicked and disabled. He had never been assaulted at work before. That assault was not supposed to happen, and it was not expected in this situation as noted in the testimony and despite training (T218:2-T229:18). His injury, as made clear on this record, is the direct result of the external force of being kicked; he stepped immediately away from the inmate – at that moment he was injured and permanently disabled for further service as a Sergeant/Corrections officer.

Wherefore, Appellant's case is on point with Richardson as proved that the incident in which he was injured was undesigned and unexpected and reversal is appropriate.

**POINT NINE**

**The ALJ's statement that "the record is inconclusive as to whether the inmate intended to kick Rodriguez" is factually incorrect and not drawn from the whole of the record**

*(Raised below at: Pa119, Pa126, Pa127, Pa135-Pa137, T26:1-16, T189:23-25, T191:10-15, T193:1-3, T227:3-5)*

There is no requirement in the law that the intent of the assailant is required to determine award of Accidental Disability pursuant to N.J.S.A 43:16A-7.

Nevertheless , the record is clear that the inmate intended to kick and harm Appellant contrary to the ALJ's speculation that his intention was not clear. The Inmate admitted his intent at the criminal proceeding and admitted his general wrongdoing in the administrative charges (Pa119, Pa126, Pa127, Pa135-Pa136). The ALJ did not draw that finding from the whole of the record.

The ALJ further made error of fact in her determination concerning these two items (Pa18):

1. That the kick is not visible on the surveillance video, and
2. The record is inconclusive as to whether the inmate intended to kick Rodriguez.

However, the ALJ immediately conceded at this section that Appellant stepped away after he was struck and called for a restraint chair and leg shackles."(Pa18).

Initially, as a matter of record, the kick is seen on the video (Pa233) – the Inmate's leg strikes out at Appellant (Photo sequence at Pa48-Pa68). It is difficult to see the impact because of the intermittent nature of the photos but the inmate's one leg is seen kicking at Appellant's restraint of the other leg. Next, upon impact, all witnesses testified to Appellant's reactions – one, to curse aloud in pain, and two, to step away and recover from the pain. Next, Appellant had to stop assisting because of the injury from the kick.

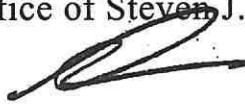
Next, the ALJ's statement that "the record is inconclusive as to whether the inmate intended to kick Rodriguez" (Pa18) is factually incorrect and not immediately relevant to whether Appellant was kicked – to the contrary, Inmate Carter was ~~indicted and pleaded guilty to aggravated assault on a corrections~~ officer (Pa126, Pa127-137). Defendant Inmate Carter specifically admitted that he kicked Appellant with intent to cause injury (Pa135-136). The State, unlike the ALJ, did not consider Inmate Carter's actions to be "ordinary" abuse of officers. There is no such legal category. Defendant Inmate Carter received a sentence of 12 months in State Prison for this assault (Pa138-Pa143).

Wherefore, the ALJ exceeded the scope of appeal in requiring that that Appellant prove the intent to assault in order to meet the ‘undesigned and unexpected’ element of Richardson Factor 2b. Reversal by the Appellate Court is warranted and necessary.

### CONCLUSION

Appellant has met his burden – he met with an undesigned and unexpected mishap in the subject aggravated assault while on duty. “Correctional officers are not hired to be punching bags.” Gable, 115 N.J. at 224. This case should have been granted below at the Agency level.

Wherefore, Appellant most respectfully demands that this Panel should reverse the ALJ’s initial decision and order Respondent to grant an award of Accidental Disability benefits pursuant to N.J.S.A. 43:16A-7.

Law Office of Steven J. Kossup, PC  
By: 

Steven J. Kossup, Esq. on behalf of  
Appellant Jason Rodriguez

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JASON RODRIGUEZ,

v.

Appellant,

BOARD OF TRUSTEES,  
POLICE AND FIREMAN'S  
RETIREMENT SYSTEM OF  
NEW JERSEY,

Respondent.

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: SUPERIOR COURT OF NEW  
: JERSEY:  
: APPELLATE DIVISION  
:  
: APPEAL OF ADMINISTRATIVE  
: FINAL DECISION  
:  
: DOCKET NO. **A-001827-24**  
:  
: PFRS Docket No: 3-10-65260  
:  
: SAT BELOW:  
: The Hon. Susana Guerrero, ALJ  
: OAL Docket No: TYP 12754-23  
:  
:

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**AMENDED**

**BRIEF ON BEHALF OF RESPONDENT - BOARD OF TRUSTEES,  
POLICE AND FIREMAN'S RETIREMENT SYSTEM OF NEW JERSEY**

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Dated: June 6, 2025

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## **PRELIMINARY STATEMENT**

Respondent, Board of Trustees of the Police and Firemen's Retirement System of New Jersey ("Board"), submits this brief in opposition to the Appeal and Brief of Appellant Jason Rodriguez's ("Petitioner") denial of Accidental Disability retirement benefits. The Board determined that Petitioner, a former Correctional Officer Sergeant with the Bergen County Department of Corrections ("Bergen County DOC") failed to meet his threshold burden of demonstrating that his disability was the "direct result of a traumatic event" that is "undesigned and unexpected." Richardson v. Board of Trustees, Police and Firemen's Retirement System, 192 N.J. at 212-13 (2007).

The Administrative Law Judge's ("ALJ") Initial Decision affirmed the decision of the Board based on sufficient and credible evidence. The Board in turn adopted the ALJ's Initial Decision in its Final Administrative Determination to deny Accidental Disability retirement benefits.

The only issue of relevance is whether the Board's finding that Petitioner failed to prove that his disability was caused by a traumatic event that is "undesigned and unexpected" was arbitrary, capricious or unreasonable. For the reasons discussed below, the Board's decision that Petitioner's incident was not an "undesigned and unexpected" traumatic event is supported by sufficient credible evidence, was not arbitrary, capricious or unreasonable, and Petitioner

has failed to meet his burden. Accordingly, the Board respectfully requests that this Court affirm the Board's Final Administrative Determination denying Petitioner's Accidental Disability retirement benefits.

### **PROCEDURAL HISTORY**

On April 7, 2023, Petitioner filed for Accidental Disability benefits, attributing his disability to the February 14, 2022 incident (PA36a). (PA7a).<sup>1</sup> By letter dated September 21, 2023, the Board granted Petitioner Ordinary Disability retirement benefits effective June 1, 2023 but denied his application for Accidental Disability (PA10a; PA45a-Pa46a).<sup>2</sup> The Board found that the February 14, 2022 incident was not "undesigned and unexpected," and Petitioner was not entitled to Accidental Disability benefits in accordance with applicable law (Ibid.).

Petitioner appealed the Board's denial, and the matter was transmitted to the Office of Administrative Law ("OAL") as a contested case by letter dated November 14, 2023. (PA47a). Administrative Law Judge Susana E. Guerrero ("ALJ Guerrero") conducted a hearing on July 15, 2024 and received post

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<sup>1</sup> "PA" refers to the Petitioner's Appendix; "RA" refers to Respondent's Appendix.

<sup>2</sup> The award of ordinary Disability Retirement Benefits entitles Petitioner to at least forty percent (40%) of his final compensation. N.J.S.A. 43:16A-6(2)(b). An award of AD would entitle him to at least 2/3 of his final compensation. N.J.S.A. 43:16A-7(2)(b).

summation filings by both parties. (PA9a; T4:1-6).<sup>3</sup>

On December 27, 2024, ALJ Guerrero issued an Initial Decision finding that Petitioner failed to prove by a preponderance of competent and credible evidence that the incident was “undesigned and unexpected,” and therefore he was not entitled to Accidental Disability benefits. (PA15a-26a.). On February 10, 2025, the Board reviewed the ALJ’s Initial Decision and Exceptions filed by the Petitioner. (PA7a). The Board voted to adopt Judge Guerrero’s Initial Decision affirming the denial of Petitioner’s application for Accidental Disability retirement benefits. (Ibid.). Petitioner filed a Notice of Appeal on February 25, 2025. (PA1a).

### **COUNTER-STATEMENT OF FACTS**

#### **A. Petitioner’s Career as a Correctional Officer**

Petitioner began his career as a Corrections Officer with the Bergen County DOC in November 2008 and was elevated to Sergeant approximately 1.5 years before the incident on February 14, 2022. (PA9a; T12:2-5). At the time of the incident, Petitioner was in the process of completing his fourteenth (14<sup>th</sup>) year working at the Bergen County Jail. (PA9a). He completed 17 weeks of extensive academy training that featured self-defensive tactics within the jail

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<sup>3</sup> “T” refers to the (Revised) Transcript of the July 15, 2024 OAL Hearing before the Honorable Susana E. Guerrero, ALJ.

environment. In both the Correctional Officer and Sergeant positions, Petitioner was responsible for the care, custody and control of inmates. (PA9a; PA38a-44a).

The inmates entrusted to the Petitioner's custody, control and care included those known to be dangerous and who were designated by the Bergen County Jail as "high security." (PA14a). To ensure all "high security" inmates are readily apparent to all Corrections Officers, they are required to wear orange prison jumpers and a red wristband, whereas general population prisoners wear "striped jumpers and a white wristband." (PA16a-PA17a; T179:22 - T180:1-4) (PA6a; T179:18-25; T180:1-6).

The Petitioner consistently testified that restraining inmates is a routine and necessary part of maintaining safety and order in corrections. (PA10a; T16:17 -25; T17:9-23). Drawing on his extensive experience in corrections, Petitioner verified that officers utilize shackles and restraint chairs when necessary and in response to inmates' aggression. (PA10a; T97:8-10, 15-21; T133:22-25; T142:12-15). He also specified that his Correctional Officer Sergeant position required him to be prepared to "address any kind of situation or inmate." (T221:9-15). While the Petitioner testified that he did not 'expect' to sustain an injury, an analysis of the circumstances he alleges render him

eligible for Accidental Disability benefits verifies that the “undesigned and unexpected” legal criteria cannot be met.

**B. The February 14, 2022 Incident**

Inmate Carter was a high security inmate and wore the required orange jumper and red wristband identifying him as such on the date of the incident. (T180:13-21). “Extreme measures” are taken with high security inmates because, as Sergeant Abdellatif (“Sgt. Abdellatif”) a Correctional Officer fact witness explained, “there’s a high security risk that this guy could possibly escape, could possibly hurt other people, hurt staff, hurt civilians.” (T154:22-25; T158:22-23).

On the date of the incident, the Petitioner overheard a general radio announcement that Inmate Carter was being escorted to the medical unit for an evaluation, in accordance with the jail’s pre-solitary confinement procedures. (PA11a; T18:9-13). The high security inmate had just been ordered to solitary confinement for violating jail disciplinary rules and was required to undergo a routine medical evaluation prior to placement in solitary confinement. (PA13a).

Sgt. Abdellatif was managing this process with the inmate and made the announcement for purposes of protocol but was not requesting assistance from Petitioner or any other staff member (T115:12-16; T178:4-6). Nevertheless, this announcement prompted the Petitioner to head over to the medical unit, where

he stood observing the interaction. (PA11a). The Petitioner observed the inmate, who was handcuffed and surrounded by Sgt. Abdellatif and a few assisting officers, demonstrate agitation at having to undergo a medical evaluation. (PA17a; T25:2-5). The inmate yelled, cursed and repeatedly requested to skip the medical evaluation and instead be sent directly to solitary confinement. (PA17a-18a).

While the Petitioner stood nearby and observed, Sgt. Abdellatif attempted to calm the inmate's agitation by explaining why the evaluation was necessary and encouraged him to sit in the designated chair for the medical evaluation. (PA18a). After the inmate consistently refused to cooperate, Sgt. Abdellatif along with two other officers began to physically guide Inmate Carter into the chair. (PA18a; T19:1-6, T19:18-19).

Inmate Carter's defiance and aggression escalated in response, and he angrily kicked the chair. (PA18a). One officer then grabbed the chair and brought it back, and the group of officers again attempted to sit the inmate into the chair (Ibid.). The inmate aggressively flailed his arms and legs at the officers in resistance, and a 'Level Three' code was called, notifying staff of an inmate and officer altercation. (PA18a; T177:17-25). The officers eventually managed to seat the inmate holding him in place, as he continued to violently flail his arms and legs in resistance. (PA18a).

The Petitioner, who had been observing the situation and the inmate's increasingly violent leg movements, chose to intervene without being asked. (PA18a). He crouched down in front of the inmate's feet with the intent to grab onto the inmate's right leg. (PA18a; T53:3-15). The Petitioner grabbed the inmate's right leg between the knee and ankle, while the inmate remained seated in the chair flailing his legs with only the upper portion of his body restrained by the officers. (PA18a).

While the Petitioner grabbed hold of the inmate's right leg only, the left leg remained unsecured. (PA18a). He testified that he did not seek to obtain shackles or assistance from any officer nearby to secure the flailing left leg, as he grabbed onto the right leg. (PA18a; T140:21-25; T1412-6). As a result, the inmate's flailing, unsecured left leg kicked the Petitioner's wrist, while the wrist grasped the inmate's right leg and was positioned in close proximity to the left leg. (PA18a; T128:17-20).

After feeling pain on his wrist, the Petitioner took a step away from the scene, while the group of surrounding officers proceeded to fully subdue the inmate on the ground. (PA18a; T26:17-25.) The Petitioner then personally requested shackles and a restraint chair, and Inmate Carter was then restrained by both pieces of equipment. (PA18a; T27:7-12; T29:2-5).

### **C. Fact Witness Testimony**

Petitioner and three correctional officers testified at the hearing. (PA10a-PA17a). The witnesses included Sgt. Abdellatif, the main handler of the inmate; Sgt. Constant, a witness located outside the medical unit but nearby the incident; and Senior Officer Daniel Smith, a correctional officer who responded to a ‘Level Three’ alert and assisted in fully restraining the inmate into the restraint chair. (PA12a-PA15a).

Although Petitioner had worked at the Bergen County Jail for over thirteen years at the time of the incident, he testified that he knew nothing about Inmate Carter, was not aware of his “high security” designation and was surprised by his behavior. (PA10a, PA16a). Sgt. Abdellatif’s testimony directly contradicted Petitioner’s claim. Sgt. Abdellatif explained that the Petitioner would have known about the high security classification due to the inmate’s visible “high security” identifiers and overall jail information. (PA13a; T179:18- T180:6.) Sgt. Abdellatif testified that the inmate’s actions during the incident were “expected,” due to staff’s familiarity with this particular inmate, his previous offenses and obvious ‘high security’ designation. (PA12a-PA13a). Sgt. Abdellatif explained:

**“This is the Mr. Carter that I was expecting to see. He don’t care about police, he don’t care about rules. He only cares about doing what he wanted to do and he just**

exploded that night.” (T154:1-10).<sup>4</sup>

Sgt. Abdellatif continued to explain:

Q: Okay. So you say the Mr. Carter I expected to see.  
A: Finally came out, yes.  
Q: What time did you expect – did you expect to see that before he kicked Sergeant Rodriguez or after? I’m not clear what you mean.  
A: What I mean was Mr. Carter was in the high security Unit for his charges, he’s had prior run ins with law enforcement, I believe aggravated assault on police officers, so based on his charges it’s past history and everything we have on the guy, he was classified as high security, which means there’s a high security risk that this guy could possibly escape, could possibly hurt other people, hurt staff, hurt civilians. He’s not a normal, okay, where we could trust him as a jail worker, he could walk around the jail, no, this inmate is in lock 21 hours a day for his past conduct and like I say his violent behavior. (T154:11-25 – T155:1-4).

Despite Petitioner’s contention that the inmate was institutionally charged, Sergeant Abdellatif testified that the inmate was *never* institutionally charged with assaulting an officer, even though he admitted that those charges could have been brought against the inmate at any time after the incident. (PA14a; T174:10-15).

Sgt. Abdellatif testified that he declined to report the kick in his incident report because “we weren’t sure if it was just a stinger” and indicated that it did not

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<sup>4</sup> Text in Boldface indicates portion of testimony omitted by Petitioner in Petitioner’s reference to identical testimony section.

appear that the Petitioner was seriously injured. (PA13a; T173:18-20).

Sergeant Sam Constant (“Sgt. Constant”), testified as a fact witness. (PA14a). He worked in the records department, which is located nearby the medial unit but outside it. (PA14a). He was first alerted when he overheard an escorted irate inmate using abusive and vulgar language, which he described as “typical sometimes.” (PA14a; T189:9-11). He then exited his office and stood in a corridor outside the medical unit to assess the situation. (PA14a). He observed correctional staff actively working to calm the inmate’s frustration and encourage compliance. (PA14a).

His description of the kick differs significantly from the description provided by the Petitioner and other witnesses as he described an unprovoked and deliberate assault. (PA14a; T:197:7-24). Sgt. Constant did not submit an internal incident report regarding the incident, but he later guided the Petitioner through the process of filing a formal criminal complaint against the inmate, more than ten (10) months after the incident. (PA14a; PA18a; T37:9-15).

Senior Officer Smith responded to the medical unit following the “Level Three” jail alert reporting an officer and inmate altercation. (PA14a). The Level Three announcement was made prior to the Petitioner’s intervening with the inmate, (PA18a; T212:9-19). Senior Officer Smith testified that he helped restrain Inmate Carter and place him into the restraint chair after the incident.

(PA15a).

Officer Smith testified that this type of incident occurs approximately once a month. (PA15a; T206:19 – T207:1). He admitted to submitting an incident report after the incident, but only reported that the inmate kicked the chair in defiance, and he neglected to report that the petitioner was kicked or injured. (PA15a; PA107a-PA109a).

#### **D. Post-Incident Events**

Immediately after the incident, the Petitioner applied ice to his wrist area, visited the Emergency Room and was discharged a few hours later. (PA19a). He had shoulder surgery approximately six months after the incident and applied for disability thereafter. (PA19a; T99:23). His colleague, Sgt. Constant, guided the Petitioner to file criminal charges more than ten months after the incident occurred, and the inmate eventually plead guilty to a fourth- degree assault charge. (PA19a). The Petitioner testified that, in response to his guilty plea, the inmate received a sentence he was permitted to serve concurrently with a sentence from a prior offense. T38:13-21.

## **LEGAL ARGUMENT**

### **I. THE ALJ'S PROPER CREDIBILITY ASSESSMENT OVERWHELMINGLY SUPPORTS THE BOARD'S DENIAL OF PETITIONER'S APPLICATION.**

#### **A. The Judicial Standard of Review of the Board's Final Administrative Determination**

On judicial review of an administrative agency determination, courts have a limited role to perform. Gerba v. Board of Trustees, Public Employees Retirement System, 83 N.J. 174, 189 (1980) (citations omitted). “[A]gencies have ‘expertise and superior knowledge...in their specialized fields.’” Hemsey v. Bd. of Trs., Police & Firemen’s Rey. Sys., 198 N.J. 215 (2009). An administrative agency’s determination is presumptively correct, and on review of the facts, this Court will not substitute its own judgment for the agency’s where the agency’s findings are supported by *sufficient credible evidence*. Ibid. (emphasis added); see also Campbell v. New Jersey Racing Comm’n, 169 N.J. 579, 587 (2001); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). If the Appellate Division 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. See Campbell, 169 N.J. at 587 (emphasis added).

Thus, 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. Board of Trustees, Police & Firemen’s Retirement System, 206 N.J. 14, 27 (2011). Moreover, the party challenging 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).

Further, although a person eligible for benefits is entitled to a liberal interpretation of a pension statute, “eligibility [itself] is not to be liberally permitted.” Smith v. Dep’t of Treasury, Div. of Pensions & Benefits, 390 N.J. Super. 209, 213 (App. Div. 2007). Our courts have long been cognizant that the pension boards “are fiduciaries and therefore have a duty to protect the [pension] fund[s] and the interests of all beneficiaries thereof and not just the individual member seeking a retirement allowance.” Mount v. Board of Trustees, PFRS, 133 N.J. Super. At 86 (2018). “Where, as here, the determination is founded upon sufficient credible evidence seen from the totality of the record and on that record, findings have been made and conclusions reached involving agency expertise, the decision should be sustained.” Gerba v. Board of Trustees, *supra*, 83 N.J. at 189.

## **B. The Judicial Standard of Review of the ALJ's Credibility Findings**

“When evidence is testimonial and involves credibility questions, deference is ‘especially appropriate’ because the trial judge is the one who has observed the witnesses first- hand.” Matter of D.L.B., 468 N.J. Super. 397 at 416 (App. Div. 2021), *citing*, Cesare v. Cesare, 154 N.J. 394 at 412. “An appellate court will not disturb a trial court’s findings unless they went so wide of the mark that the judge was clearly mistaken.” See Matter of D.L.B., *supra*. 468 N.J. Super. At 416, *citing*, N.J. Div. of Youth & Family Servs. V. G.L., 191 N.J. 596 at 605 (2007).

In Werner v. Bd. of Trs., PFRS, 2023 N.J. Super. Unpub. LEXIS 876 \*14 (App. Div. June 6, 2023),<sup>5</sup> the Petitioner brought an appeal due to an ALJ’s finding that the “undesigned and unexpected” standard could not be met in connection with injuries sustained during a police officer and criminal suspect’s physical altercation, and the Board’s subsequent adoption of that decision. Id. at \*3.

In its review of the record, the Appellate Division noted that an ALJ’s “finding of fact as to issues of credibility of lay witness testimony are rarely

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<sup>5</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 as RA1- RA6, Exhibit A, hereto.

rejected or modified.” In Werner, the “ALJ’s credibility findings call[ed] into question Werner’s theory of events.” Id. at \*14. The ALJ noted that the written incident reports of witnessing officers did not mention that Officer Werner was tackled as he claimed, and the ALJ pointed to inconsistent witness testimony at the hearing. Id. at \*12.

Ultimately the ALJ could not find “a credible showing of a traumatic event that was undesigned and unexpected.” Id. at \*14. The Appellate Division affirmed the ALJ’s decision, upholding the factual credibility findings, noting that the record was “adequately explained.” Id. “We defer to the ALJ’s credibility findings because they are influenced by the opportunity to observe the witnesses and consider the testimony and evidence.” Id. at \*15. “PFRS correctly argues that “findings of fact as to issues of credibility of lay witness testimony are rarely rejected or modified and should remain undisturbed.” Werner v. Bd. of Trs., 2023 N.J. Super. Unpub. LEXIS 876 \* 14 (App. Div. June 6, 2023).

### **C. The ALJ’s Credibility Findings Are Set forth in Detail in the Initial Decision**

The Petitioner has the burden of proving the elements necessary to show eligibility for Accidental Disability by a fair preponderance of legally competent evidence. In re Polk License Revocation, 90 N.J. 550 at 560 (1982); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). “An ALJ is charged with issuing a

decision that contains recommended findings of fact and conclusions of law that are ‘based upon sufficient, competent and credible evidence.’” See ZRB, LLC v. New Jersey Dep’t of Environmental Protection, Land Use Regulation, 403 N.J. Super. 531 at 561 (App. Div. 2008), (*citing*, N.J.S.A. 52:14B-10(c)).

Here, the Initial Decision’s conclusions logically derive from the credible evidence, deducted from recognized credibility determinations. (PA8a-PA26a). The ALJ relied on the following legal standard in order to make credibility findings on the facts and overall evidence:

“For testimony to be believed...it must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination 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)... A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or common experience, or because it is overborne by other testimony.” Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

(PA15a).

The ALJ found the Petitioner’s testimony to be partially credible but rejected other aspects of his testimony. (PA15a-17a). Specifically, she believed the Petitioner’s testimony when he said the inmate’s loose left leg was flailing

and the left foot made contact with his wrist, while he held onto the inmate's right leg only. (PA16a).

However, the ALJ was unpersuaded by the Petitioner's statement that he "had no reason to expect or anticipate that the inmate would become aggressive or that he would kick out his feet when he was being restrained." (PA16a). In support of this finding, the ALJ referenced numerous inconsistencies within the extensive evidentiary record, which included video surveillance footage, photographic evidence, and testimony from multiple fact witnesses present at or near the scene of the incident. (PA15a-17a).

Among the salient factors considered was the Petitioner's observation of the inmate's increasingly combative conduct, which included his forceful kicking of a plastic chair, the issuance of a 'Level Three' inmate altercation alert, and the violent flailing of his legs while he was seated in the chair. (PA16a-17a). Notably, the Petitioner directly observed Inmate Carter engaged in all of this aggressive conduct prior to his own intervention with the inmate. (PA16a; PA18a; T43:20-22). As additional justification for her findings, the ALJ stated she was persuaded by the glaring inconsistencies between the Petitioner's testimony and the evidentiary record and stated that the Petitioner had *no reason* to assume that Inmate Carter *wouldn't* continue to act aggressively and use his

legs combatively. (PA16a-PA17a). She also found his claim that he was ‘unaware’ of the inmate’s high security designation unpersuasive. (PA16a).

The ALJ found that Sgt. Abdellatif, who directly handled the inmate, gave credible and corroborating testimony about the inmate. (PA16a). She found that the testimony claiming that the inmate’s combative behavior was anticipated and expected was credible due to the combative behavior the inmate consistently displayed on the day in question, and his visible identifiers indicating that he was designated as a “high security” inmate. (PA16a). Sgt. Abdellatif testified that the inmate wore the high security identifiers of a red wristband and orange jumpsuit, as opposed to the general inmates who wear “striped jumpers and a white wristband.” (PA16a-PA17a; T179:22 - T180:1-4). The ALJ specified that Sgt. Abdellatif’s testimony discredited the Petitioner’s insistence that he lacked knowledge of the inmate’s “high security” status. (PA16a-PA17a; T179:18- T180:1-4).

In addition, Sgt. Abdellatif confirmed that the jail staff takes “extreme measures with these [high security] inmates”...“because of stuff that they may or may not do.” T158:21 – T:159:2. The ALJ found his “testimony concerning the identification and handling of inmates as credible and unrefuted.” (PA16a-PA17a). However, Sgt. Abdellatif’s testimony that the inmate kicked the

Petitioner in the shoulder area was deemed incredible because this was not alleged anywhere else, and the ALJ duly noted this. (PA16a).

Sgt. Constant's testimony was deemed credible with regard to his account of the inmate's aggressive behavior, and the "Level Three" inmate officer altercation, which all occurred prior to Petitioner's intervention with the inmate. (PA15a). Nevertheless, the ALJ disregarded Sgt. Constant's testimony concerning the inmate's interaction with the Petitioner since it is "entirely inconsistent with the other testimony" and the rest of the record. (PA16a).

The ALJ found Officer Smith's testimony to be credible. (PA17a). Officer Smith testified that he was aware of Inmate Carter's high security designation, and that he becomes involved with similar "types of occurrences" approximately once a month. (T206:19- T207:2).

#### **D. The ALJ's Factual Findings Are Set Forth in Detail in the Initial Decision**

The ALJ then made factual findings consistent with her methodical credibility assessment. (PA17a-19a). She determined that the Petitioner was present in the medical unit during a physical altercation involving an uncooperative inmate. (PA17a-PA18a). As the situation escalated, the inmate began using his body and his legs forcefully against officers, prompting a "Level Three" inmate altercation alert. (PA18a). Eventually, the officers were able to

seat the inmate into a chair, restraining his upper body while he continued to kick his legs. (PA18a).

Despite the Petitioner never being asked to assist, he chose to crouch down in front of the inmate while he kicked his legs out combatively and grabbed the inmate's flailing right leg only, leaving the flailing left leg completely unsecured. (PA18a, PA21a – PA22a; T145:6-11). The ALJ found the evidence surrounding Petitioner's claim about a deliberate "attack" inconclusive and was not persuaded that the evidence supported this allegation. (PA18a).

In support of her findings, she referenced the voluminous evidentiary record. (PA17a-PA26a). The ALJ noted that the surveillance video did not depict the kick, and none of the officers shown on the video appeared to notice the Petitioner being kicked. (PA16a). No witnessing officers ever mentioned that the Petitioner was kicked in their written report submitted in response to the 'Level Three' altercation. (PA18a). Yet, multiple witnessing officers referenced that the inmate "kicked the plastic chair" in defiance, without specifying that the Petitioner was kicked. (PA16a-PA18a; PA107a-PA109a). The ALJ deemed the absence of any witness's reference to Petitioner being kicked as persuading her finding that the evidence failed to conclusively establish a deliberate attack on Petitioner. (PA19a-26a).

The ALJ did not find Petitioner's documents associated with the criminal complaint, plea and concurrent sentencing of the inmate for fourth-degree assault to be persuasive of a deliberate attack. (PA120a-PA143a; T38:13-21). Nevertheless, all documents concerning the inmate's criminal case submitted by Petitioner exceed the scope of this matter and are irrelevant within the purview of N.J. R. Evid. 401; N.J. R. Evid. 403; and N.J. R. Evid. 410. (PA120a-PA143a).

The ALJ was also influenced that institutional charges for assault on an officer were never brought by an officer, in spite of testimony admitting that the charges could have been brought at any time. (PA22a; T174:10-15). Ultimately, her meticulous review of four witness's testimony, two surveillance videos, multiple photographs and numerous documents, determined that the credible evidence does not support that the Petitioner was injured by circumstances consistent with the legal "undesigned and unexpected" standard. (PA17a-PA23a). To the contrary, the ALJ concluded that the Petitioner was injured by the "consequence of his ordinary work effort." (PA22a).

**E. The ALJ's Findings and the Board's Adoption of those Findings Should Be Sustained**

Applying the aforementioned legal standards to this matter, the ALJ's findings as to Petitioner's claim should remain undisturbed. Deference to the ALJ's findings is especially appropriate in that they involved testimony and credibility questions, and the ALJ "is the one who observed the witnesses first-

hand.” Matter of D.L.B., 468 N.J. Super. 397 at 416 (App. Div. 2021), *citing*, Cesare v. Cesare, 154 N.J. 394 at 412. It cannot be said that the ALJ’s findings “went so wide of the mark that the judge was clearly mistaken” Matter of D.L.B., *supra*. 468 N.J. Super. At 416, *citing*, N.J. Div. of Youth & Family Servs. V. G.L., 191 N.J. 596 at 605 (2007).

To the contrary, as in Werner v. Bd. of Trs., PFRS, the ALJ’s “first-hand observations and detailed analysis of the record”, including inconsistent witness testimony, “called into question [the Petitioner’s] theory of events.” See Werner v. Bd. of Trs., PFRS, *supra*., 2023 N.J. Super. Unpub. LEXIS at \*14. Here the record was “adequately explained” and, respectfully, this Court should “defer to the ALJ’s credibility findings because they are influenced by the opportunity to observe the witnesses and consider the testimony and evidence.” Id. at \*14-15.

The Petitioner has failed to demonstrate that the ALJ applied improper legal standards in rendering her decision, or that her detailed findings and conclusions contain any errors or are lacking adequate explanation. The Petitioner’s inability to demonstrate the Initial Decision lacked credibility also renders him unable to meet his burden of showing the Board’s decision to adopt the ALJ’s decision was “arbitrary, unreasonable or capricious.” Boyle v. Riti, 175 N.J. Super. 158, 166 (App. Div. 1980).

## **II. THE CREDIBLE EVIDENCE AFFIRMS THAT THE “UNDESIGNED AND UNEXPECTED” LEGAL STANDARD CANNOT BE FULFILLED.**

N.J.S.A. 43:16A-7 sets forth the eligibility criteria for members of the Police and Firemen’s Retirement System. The statute states in pertinent part:

“Any member may be retired on an accidental disability retirement allowance; provided, that the medical board, after a medical examination of such member, shall certify that 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 and that such disability was not the result of the member’s willful negligence and that such member is mentally or physically incapacitated for the performance of his usual duty and of any other available duty in the department which his employer is willing to assign to him.”

N.J.S.A. 43:16A-7(1) (emphasis added).

The question of what constitutes a traumatic event is guided by the New Jersey Supreme Court’s decision in Richardson v. Board of Trustees, Police & Firemen’s Retirement System, 192 N.J. 189, 212-13 (2007), which requires an applicant for AD to show each of the following five elements:

- “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 preexisting 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 member is mentally or physically incapacitated from performing his usual or any other; and
5. That the member is mentally or physically incapacitated from performing his usual or any other duty." Ibid. (emphasis added).

At issue here is prong 2 (b) of Richardson, that the traumatic event is "undesigned and unexpected." The "undesigned and unexpected" prong requires either (1) "an unintended external event," or (2) if the external event was intended, "an unanticipated consequence" that "is extraordinary or unusual in common experience." Id. at 201, *citing, Russo v. Teachers' Pension & Annuity Fund*, 62 N.J. 142 at 154 (1973).

The Richardson Court acknowledged that given the circumstances, some injuries that occur while performing job duties will qualify for accidental disability, while others will not. Id. at 214. The Richardson Court clarified that an event is 'undesigned and unexpected' when it is not *anticipated*. Id. at 213, (emphasis added). "Thus, a member who is injured as a direct result of an identifiable, unanticipated mishap has satisfied the traumatic event standard." Id. "The polestar of the inquiry is whether, during the regular performance of

his job, an *unexpected happening*... has occurred and directly resulted in the permanent and total disability of the member.” Id. at 214, (emphasis added).

“Under Richardson, an undesigned and unexpected event must either be “an unintended external event or... an unanticipated consequence of an unintended external event if that consequence is extraordinary or unusual in common experience.” Id. at \* 13-14, *citing Richardson supra.* 192 N.J. at 201, (quoting Russo v. Teachers’ Pension & Annuity Fund, 62 N.J. 142 at 154). “Injury by ordinary work effort...although unexpected by the individual afflicted, is not an extraordinary or unusual consequence in common experience.” Id. at \*14, *citing, Russo v. Teachers’ Pension & Annuity Fund, supra.*, 62 N.J. at 154.

Following the Richardson case, our Supreme Court clarified how to properly apply the Richardson standard in the case Mount v. Bd. of Trs., PFRS, 233 N.J. 402 (2018). The Mount Court stated that in order “to properly apply the Richardson standard, the Board and a reviewing court must carefully consider not only the member’s job responsibilities and training, but *all aspects* of the event itself,” as “*no single factor governs the analysis.*” See Mount, supra., 233 N.J. at 427, (emphasis added). Therefore, a comprehensive and thorough analysis of all contributing factors of the incident is required to

appropriately assess whether an event's occurrence was truly an unanticipated mishap and meets the 'undesigned and unexpected legal standard.'

In the Initial Decision, The ALJ thoroughly and logically explained how the "undesigned and unexpected" legal standard has not been met by the credible facts of the record. (PA22a). The ALJ stated in pertinent part:

"After witnessing the inmate's combative behavior escalate, and after the inmate had exhibited the use of physical force, in part by kicking, Rodriguez stepped in and grabbed the inmate's right leg while the officers attempted to restrain the upper body and hold him in the chair. Rodriguez was aware that the inmate's left leg was left unsecured while he held on to and lifted the right leg. The record is unclear why the left leg was left unsecured, but given the inmate's behavior, one would reasonably expect that he would continue to kick out, even, or more so, when his leg was grabbed. As the inmate continued to struggle and resist officer control, Rodriguez's wrist was kicked while he held the inmate's other leg."

Like Officer Richardson, Rodriguez was injured while subduing an inmate. However, while the inmate in Richardson exerted exceptional force against the officer and acted in an unexpected manner when he "pulled his arm loose and forcefully jerked up from the ground, knocking Richardson backward," **I CANNOT FIND** that the inmate here exerted exceptional force nor that his behavior, i.e., kicking out and injuring Rodriguez's hand while Rodriguez pulled up the other leg, was unexpected.

Here, the surveillance video does not depict the kick, and it is worth noting that the other officers involved in subduing the inmate at the time did not appear to have noticed the kick. Aside from Rodriguez, not one officer made any reference to the kick in their reports, and institutional charges were never filed against the inmate

for having kicked Rodriguez. While the inmate was aggressive in resisting the officers, there is insufficient competent and credible evidence that the nature and extent of the resistance exhibited by the inmate were extraordinary or beyond the normal course of the officer's duties.

**I CONCLUDE** that the injuries suffered by Rodriguez while restraining the inmate were the consequence of his ordinary work effort. The fact that leg shackles and a restraint chair were ordered by Rodriguez after he was kicked does not establish that the event itself was rare, extraordinary, undesigned or unexpected. Moreover, the fact that Rodriguez filed criminal charges against the inmate ten months later and that the inmate pleaded guilty to an aggravated assault charge does not bolster his position that the event was undesigned and unexpected.

(PA22a).

Petitioner argues that ALJ Guerrero's Initial Decision violates public policy and endorses assault of correctional officers. This claim distorts the conclusions which are reasonably based on the legal standard's application to the credible facts. (PA19a-PA23a). The ALJ properly conducted a thorough and well-reasoned evaluation of the credible evidence, logically concluding that the incident fails to meet the legal standard established in Richardson v. Board of Trustees, Police and Firemen's Retirement System, 192 N.J. 189, at 214 (2007).

(PA22a)

As the ALJ explained in detail, the specific factors do not support the occurrence of an 'unexpected happening' or 'an unanticipated consequence that

is extraordinary or unusual in common experience'. (PA19a-PA22a). She referenced the significant factors that led to this determination which are reasonably based on credible evidence and common- sense experience. (Ibid.).

The ALJ's conclusion as to the Petitioner is supported by the Appellate Division's decision in Perez v. Bd. of Trs., 2024 N.J. Super. Unpub. LEXIS 877 \*16 (App. Div. May 15, 2024).<sup>6</sup> In Perez, the Appellate Division upheld the ALJ's determination, finding that that the altercation between the police officer and the criminal suspect did not meet the legal standard of being "undesigned and unexpected." Id. at \*15-16.

Perez testified that when he apprehended a criminal suspect, the suspect engaged in a prolonged physical struggle with him. Id. at \*5. Perez testified that the suspect had "the strength of a bull" as "he was throwing his torso, his upper body towards [Perez] to put weight and avoid being pinned down. Id. During this intense altercation, the suspect used his full body strength, attempting to physically dominate Perez, causing Perez to sustain "a full thickness tear of the medial collateral ligament of the first MTP joint, and a very prominent partial thickness tear of the lateral collateral ligament," disabling him. Id. at \*6.

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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 as RA7-RA13, Exhibit B hereto.

The ALJ determined that Perez failed to establish any unusual or extraordinary circumstances that arose during the altercation. Id. at \*7. Perez appealed the decision and argued that “the ALJ adopted an unduly narrow view of the ‘undesigned and unexpected’ requirement,” relying on Gable v. Board of Trustees, 115 N.J. 212 (1989). Id. at \*14.

The Perez Court reviewed the record and based its conclusions on the law set forth in Richardson and Mount. Id. at \*10-16. It upheld the ALJ’s decision concluding that the altercation “was the work of force or work effort by Perez himself.” Id. at 8. The Court explained, “he does not proffer any specifics as to how the September 11, 2016 incident constitutes unusual circumstances or anything beyond the typical course of work.” Id. at \* 15. Moreover, the Court stated, “although an incident may be ‘devastating’ to the applicant who has been injured, careful review of governing case law sets forth an inquiry which culminated from a ‘sequence of events’ that was not ‘undesigned and unexpected’ will not suffice to establish an entitlement to ADRB.” Id. at 15-16, *citing*, Mount v. Bd. of Trs., PFRS, supra. 233 N.J. 402, 430-31 (2018). Based on the legal application to the credible facts, the Appellate Court affirmed the ALJ’s Initial Decision. Id. at \*15.

Like the Petitioner in the current matter, Officer Perez also alleged that the opinion in Gable v Board of Trustees supported his claim. Id. at \*14.

However, the Appellate Division determined that “Perez’s reliance on Gable v. Board of Trustees “is misplaced,” stating that it “predates the guidance set forth in Richardson and its progeny.” In addition, the Court noted the starkly distinguishable factors concerning multiple correctional officer attacks from the fact pattern of Officer Perez’s incident. Id. at 14.

The incidents at issue in Gable involve incidents that would likely meet the “unexpected happening[s]” or “unanticipated consequence[s] that [are] extraordinary or unusual in common experience” standard of Richardson. See Richardson v. Board of Trustees, *supra*, 192 N.J. at 215-17. These unusual incidents consist of an inmate dragging an officer down a stairwell during an escape attempt; an inmate temporarily blinding an officer and then striking the officer with a heavy wooden chair; and a violent prolonged struggle during which a group of officers and inmates landed on an officer, severely injuring the officer’s back. Id. at 215-17. As in Perez v. Bd. of Trs., the Gable v. Board of Trustees, 115 N.J. 212 (1989) case is both factually and legally irrelevant to the current matter.

Petitioner’s reference to Class v. Bd. of Trs., 2007 N.J. Super. Unpub. LEXIS 3452 \* (App. Div. June 18, 2007) is another example of case law that predates the applicable standard established in Richardson v. Board of Trustees. (PA211a-PA217a). Moreover, the Class case concerns a credible fact finding of

an unprovoked and deliberate violent assault, which varies significantly from the underlying facts of the current matter. Id. at \*19-20. (PA216a).

Furthermore, Andrews v. Bd. of Trs., 2025 N.J. Super. Unpub. LEXIS 58 \* 2025 (App. Div. January 10, 2025) is entirely distinguishable from the current matter. In this “undesigned and unexpected” review, the petitioner endured a “fifteen-to-twenty-minute struggle while being repeatedly kicked in the shoulder.” Id. at \*14-15. (PA199a-PA204a). The Court specified that the ‘unexpected happening’ or “uniqueness of this altercation for petitioner stemmed from the ‘extended period’ of time’ needed to restrain the patient and the ‘tenacity’ with which the patient was fighting.” Id. at 15. (PA203a).

Likewise, Petitioner’s reference of Reyes v. Board of Trustees, 2024 N.J. Super. Unpub. LEXIS 113 \* (App. Div. June 10, 2024) in support of his argument is misplaced. (PA228a-PA232a). The Appellate Division in Reyes addressed the issue of whether a police officer’s injury, sustained during the subdual of a violent suspect, constituted an “undesigned and unexpected” traumatic event for purposes of accidental disability eligibility. Id. at \*3. (PA229a).

During the course of restraint, Reyes sat atop the suspect’s back while he laid flat on the ground. Id. (PA229a). The inmate demonstrated extraordinary strength and while pinned to the ground, he unexpectedly forced himself

upward, causing Reyes to fall and suffer injuries to his shoulder and wrist. Id. at \*3-4. (PA229a). Noting the striking similar fact pattern to the case Richardson v. Board of Trustees, the Court analogized that in both cases the officers were injured while subduing an exceptionally combative individual who “forcefully jerked up from the ground,” resulting in the officer being thrown backward and disabled. Id. at \*12, *citing* Richardson v. Board of Trustees, 192 N.J. 189 at 191. (PA232a).

Similarly, Sharp v. Board of Trs., 2024 N.J. Super. Unpub. LEXIS 2336 \* (App. Div. October 7, 2024) has notable factual consistencies as the facts of Reyes and similarly cannot support the Petitioner’s argument. (PA205a-PA210a). Like the inmates in Richardson and Reyes, the inmate in the Sharp case was pinned to the ground, when he suddenly “jerked up,” and the restraining officer suffered a shoulder injury. Id. at \*14. (PA209a-PA210a). The Court referenced the significant factual similarities between Sharp and Richardson as justification for its remanding decision. Id. at \* 14-15. (PA209a-PA210a).

The facts of Petitioner’s case are materially distinguishable from those in Richardson, Gable, Class, Andrews, Reyes, and Sharp and thus do not support a similar outcome here. Here, the Petitioner, “does not proffer any specifics as to how the [February 14, 2022] incident constitutes unusual circumstances or

anything beyond the typical course of work.” See Perez v. Bd. of Trs., *supra*. 2024 Super. Unpub. LEXIS 877\* at \*15.

The ALJ’s Initial Decision demonstrates proper credibility assessments of the voluminous record, and a comprehensive review “of all aspects” of the incident with legal conclusions drawn therefrom. The legal conclusions were reached in a methodical and logical manner, reflecting fidelity to the standards articulated by the Supreme Court in Richardson v. Board of Trs., 192 N.J. 189 (2007) and Mount v. Board of Trustees, Police and Firemen’s Retirement System, 233 N.J. 402 (2018).

There is simply no basis in this record for finding that the incident at issue constitutes an “undesigned and unexpected” traumatic event as is required for accidental disability eligibility. To the contrary, the ALJ’s findings are supported by sufficient, credible evidence, and neither the Initial Decision nor the Board’s adoption of that Decision in its Final Administrative Determination are “arbitrary, unreasonable or capricious” and must be upheld.

## CONCLUSION

For the foregoing reasons discussed and based on the substantial credible evidence in the record, the Respondent, Board of Trustees of the Police and Firemen's Retirement System of New Jersey, respectfully requests that its Final Administrative Determination be affirmed.

Respectfully submitted,

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Dated: June 6, 2025

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Jason Rodriguez	)Superior Court of New Jersey
Appellant	)APPELLATE DIVISION
	)Docket No.: A-001827-24
v.	)
Police and Firemen's Retirement System of New Jersey	) <u>ON APPEAL FROM</u>
	)
Respondent	)Final Administrative Decision
	)Decision by the Board of Trustees,
	)Police and Firemen's
	) Retirement System
	)
	) <u>SAT BELOW:</u>
	)The Hon. Susana Guerrero, ALJ

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#### APPELLANT'S REPLY BRIEF

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Steven J. Kossup, Esq.  
on the Reply Brief on behalf  
of Appellant Jason Rodriguez

Dated: June 20, 2025

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**PRELIMINARY STATEMENT**  
**Reason Agency decision should be reversed**

The parties have now established margins of this case and submit the matter for the Appellate Panel's determination. Appellant met with an undesigned and unexpected event in this subject incident. Appellant's brief and reply demonstrate that the ALJ's determination and the Agency's adoption thereof should be reversed, with entry of the Panel's order to compel Respondent to grant Accidental Disability benefits.

**PROCEDURAL HISTORY AND COUNTER STATEMENT OF FACTS**

For Judicial economy, Appellant incorporates the Procedural History and Statement of Facts filed with Appellant's brief as if contained herein. Respondent's Procedural History and Counter Statement of Facts contain inaccuracies and misrepresentations of the record as a whole.

**LEGAL ANALYSIS**  
**POINT ONE**

**Respondent's prayer at Db13 that the Appellate panel should uphold ALJ Agency rulings requests that the Panel affirm an unreasonable decision which must be reversed, as it is arbitrary and capricious with conclusions not drawn from the whole of the record**

Respondent's argument in support of the ALJs ruling that the incident involved "normal work effort" for which Appellant was trained is without merit. That principal argument is rejected by the Richardson decision:

"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." Richardson v. Board of Trs., 192 N.J. 189, 213 (2007)

Richardson makes it clear that that a traumatic event is found when there is the presence of external force on the Appellant's body which causes injury. Respondent's use of the holding in the Perez v. Bd. of Trs., 2024 N.J. Super. Unpub. LEXIS 877 at Db28 supports Appellant's cause; that opinion, at page 14 states:

"Perez did not testify to a specific external event or identifiable action by the suspect that caused his injury. We conclude Perez has not demonstrated there was an undesigned or unexpected traumatic event as required and defined under N.J.S.A. 43:16A-7(a)(1) and Richardson."

Perez v. Bd. of Trs., 2024 N.J. Super. Unpub. LEXIS 877, 14

To the contrary, on this record, Appellant suffered a specific external event and identifiable action by the inmate that caused his injury. (Pb9, all witness testimony, Pb29, Pa7, Pa20, Pa45,Pa141-Pa143).

The ALJ's conclusion that the assault on Appellant involved only normal work effort actually focused on Factor 2(c) of the Richardson 5 prong test – the ALJ's finding of 'normal work factor' was outside of the scope of the hearing (Pa22) as that factor had already been conceded below (Pa45). Respondent had admitted all prongs *except* Richardson's Factor 2(b) "undesigned and

unexpected" (Pa45). The Richardson Factor 2(c) concerns a disability caused by a pre-existing condition, either alone or in combination of the normal work effort.<sup>1</sup> Appellant had no pre-existing condition and Factor 2(c) was not an issue on appeal. Appellant actually met that test at Factor 2(b) once the Respondent admitted the injury was a direct result of a kick as a circumstance external to the member.

What does that mean, and why is it important?

The ALJ's analysis of normal work effort under Richardson's Factor 2(c), (*normal work effort/prior injury*) standard is not applicable to these facts – moreover, it exceeds the scope of appeal (Pb34, Pb45-Pb48).

The difference between normal work effort (Factor 2c) and the undesigned and unexpected effort (Factor 2b) is the force exhibited on the worker- force removes the matter from consideration of a "normal workday."

"... where the disability arises out of a combination of pre-existing disease and work effort, a traumatic event has not occurred; [this] *underscores that what is required is a force or cause external to the worker (not pre-existing disease) that directly results in injury*; (emphasis added) and identifies ordinary mishaps, including lacerations, trips, and falls, as traumatic events. That strand reaffirms that a traumatic event can occur during usual work effort, but that work effort itself or combined with pre-existing disease

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<sup>1</sup> "not caused by a pre-existing condition of Richardson, alone or in combination with work effort." Richardson v. Board of Trs., 192 N.J. 189, 215

cannot be the traumatic event. Richardson v. Board of Trs., 192 N.J. 189, 211

The ALJ determination of “normal” contradicts her finding that he was in fact kicked and suffered the disabling injury as noted in Appellant’s brief at Point 1 (Pb29, Pa22, T43:4-7).

The ALJ determined that the Appellant should have known he was going to be injured so he should have expected to be kicked (Pa22). This also exceeded the scope of the case - Respondent conceded that Appellant was not willfully negligent (Pa45) but the ALJ’s determination is to the contrary - that “given the inmate’s behavior, one would reasonably expect that he would continue to kick out, even, or more so, when his leg was grabbed” (Pa22).

“I cannot find that the inmate here exerted exceptional force nor that his behavior, i.e., kicking out and injuring Rodriguez’s hand while Rodriguez pulled up the other leg, was unexpected.... While the inmate was aggressive in resisting the officer, there is insufficient competent and credible evidence that the nature and extent of the resistance exhibited by the inmate were extraordinary or beyond the normal course of the officer’s duties.” (Pa22)

As to the leg, this speculation contradicts the record and exceeds the scope of appeal. Respondent’s assertions at Db7 also deviate from the law and facts: the ALJ’s determination about whether Appellant should have grabbed one or two legs is contrary to the record as noted in Point 6 at Pb40-Pb41. Appellant testified that he was trained to grab one leg and not both (T145:6-14).

Respondent's argument and the ALJ's finding is both contrary to the physical evidence which showed another officer was actually in between the legs of the violently resisting inmate when Appellant grabbed one leg (Pa57). Officer Dixon is marked with a "D" on that photo and is clearly shown between the inmate's right and left leg near the thighs. The ALJ's opinion that Appellant should have grabbed both legs of a violent suspect would have been impossible and would have trapped Officer Dixon within the inmate's legs, causing other problems. Appellant testified that he was trained to grab one limb, which he did (T145:12-14). The photographs as Pa55-Pa57 show that all other officers are doing the same and grabbing one limb, and the reports of the incident confirm the officers each grabbing one limb.<sup>2</sup> The inmate's athletic ability to immediately adjust and kick/disable Appellant once he got hold of his leg does not suggest error on his part; restraint techniques do not always work as noted by Sgt. Abdellatif at T156:14-15.

Further, Cpl. Smith explain that he arrived to the Level 3 altercation to see "my Sergeant getting assaulted and I went in to take control of the inmate's, I believe, leg at that point." (T205:2-5) (*emphasis added*). He used the singular

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<sup>2</sup> Pa78 – Appellant grabbed the right leg, Pa108- Officer Casinelli grabbed the left leg, Pa109 Officer Dixon grabbed the left arm, NJ Use of Force reports show where each officer grabbed one limb: Pa90-91 Sgt. Abdellatif, Pa92-Pa93 Officer Dixon, Pa94-Pa95 Officer Casinelli, Pa96-Pa97 Officer Murray, Pa98-Pa99 Officer Kislenko, Pa100-102 Officer Smith, Pa 103-105 Officer Chavasta.

term “leg” in his explanation. The testimony shows that Corporal Smith, too, grabbed one leg the same way that Appellant did (Pa55-Pa58). Finally, the ALJ failed to consider that the Respondent had already determined that Appellant was not willfully negligent anyway. The ALJ further found Cpl. Smith to be credible (Pa17). The ALJ’s analysis of the event was not drawn from the whole of the record. Nevertheless, the Respondent has at Db7 admits, and the ALJ found (Pb 29) that Appellant was in fact kicked and disabled.

All witnesses testified that what happened in the subject event was not normal, routine, or expected (Pb24, Pb27-Pb28, Point Two at Pb30, also Point Five at Pb38, T43:4-7). The AG guidelines explain that the use of force required to restrain this individual is never to be considered as “routine” (Pa187, T127:13-23). The Legislative intention is that corrections officers should not be subject to assault as noted in Point Eight of Appellant’s brief (Pb44). Respondent concedes that Gable v. Board of Trustees, Public Employees' Retirement System, 115 N.J. 212 (1989) is good law, and the experiences of the appellants in that case would satisfy the necessary standard for accidental disability. (Db30). Appellant herein does as well. The Supreme Court holding in Gable contradicts the ALJ’s determination that the event was “normal work effort”:

"We recognize that a corrections officer's job is dangerous. There is always the possibility that he or she will be attacked violently by an inmate ....These occurrences, however, while occupational hazards, do not occur frequently enough to

constitute normal stress or strain. (*emphasis added*) Although a corrections officer, such as (Petitioner), may realize that there is a "potential that he or she will be called upon to subdue an inmate, an officer does not expect his or her daily routine will normally involve being struck by an aggressive or escaping inmate." (Gable, *supra*, at 423).

The Court also should have determined that the inmate's admission and conviction for aggravated assault were relevant in this decision – the crime of aggravated assault is a serious offense, and the Legislative intention is that this is not to be permitted. Defendant Inmate Carter was convicted of the assault and specifically admitted that he kicked Sheriff's Officer Jason Rodriguez with intent to cause injury (Pa135-Pa136). Appellant submits these admissions are part of the subject event. "The error in the ALJ's approach was to break up this continuum into a series of "incidents," with the last incident being Angiola's reflexive reaction". Angiola v. Board of Trustees, 359 N.J. Super. 552, 560. A grand jury indicted Inmate Carter - now Defendant Carter – the indictment itself specifically named Appellant as the victim of Inmate Carter's aggravated assault (Pa126). Inmate Carter, with counsel, pleaded guilty (Pa127-Pa132, Pa133-Pa137). Defendant Inmate Carter received a sentence of 12 months in State Prison for this criminal aggravated assault (Pa138-Pa143). This constitutes a trial and conviction under our law, even if entered by plea. The ALJ was not free to disregard this Order, and her basis is not disclosed. A Court is not free to disregard a conviction because of some (undisclosed) reasoning. "It is the

judgment of conviction that establishes the gravity of an offense". In re Hoerst, 135 N.J. 98, 99 In re Iulo, 115 N.J. 498, 510, 559 A.2d 1349 (1989), also Hoerst, *Ibid* at 103. It is the Legislative intention that assault on a corrections officer is not tolerated. The reasoning behind the ALJ's disregard of that order remains unidentified in the ALJ's opinion. There is no basis - the criminal are guided by independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all that observe them. State ex rel. S.G., 175 N.J. 132, 134, N.J. Const., Art. I, Para. 22. Conversely, the ALJ would not be free to reject a judgement of conviction if it arose against an officer in an "honorable service" type / eligibility case under N.J.S.A. 43:1-3 – the ALJ does not have the license to reject the Judgement of Conviction in these proceedings where the question concerns Appellant, subject to disability from aggravated assault in the line of duty.

Wherefore, Appellant respectfully demands that this holding be reversed, as arbitrary, capricious, or unreasonable, or not support by substantial credible credible evidence in the record as a whole.

### POINT TWO

**The holding in Mount concerns a purely psychiatric analysis and terms from that case are not applicable to these facts**

Respondent's recitation of this caselaw does not support the ALJ's determination and Respondent's reference to Mount v. Bd. of Trs., PFRS, 233 N.J. 402 (2018) (Db 25) does not raise the bar for Appellant. Appellant is not

required under Richardson to prove that an event involving such impact on the body (as here) had to be “extraordinary” or “exceptional” (Pa22) in order to meet the standard for an award of Accidental Disability benefits.

Mount arose in an exclusively mental stress claim. The case sub judice involves physical contact and physical injury. The ALJ’s use of that “extraordinary” standard from the psychiatric Mount decision is inappropriate for analysis under Richardson.

Mount faced an exclusively psychological stress situation beyond his training and emotional control; the term extraordinary under those facts defined the degree of exclusive psychic force. The Appellant has no mandate to prove that the external force suffered in the kick was “extraordinary” or that the event itself was “extraordinary” in this case, nor is there an objective measure under the law of how to quantify those terms. The presence of a disabling external force was sufficient. Richardson instructs:

“..., [A] traumatic event is essentially the same as what we historically understood an accident to be—an unexpected external happening that directly causes injury and is not the result of pre-existing disease alone or in combination with work effort”. Richardson v. Board of Trs., 192 N.J. 189, 212

Terms gleaned from psychological cases do not readily translate to a case involving external force and physical disability. The Supreme Court also ruled that there is a distinction between exclusively psychological (no impact) trauma

and cases which involve physical force - in Caminiti, (Caminiti v. Board of Trustees, 431 N.J. Super. 1 (2013) an officer suffered physical trauma of a needle stick – the medical effect of the event was noted to be serious and disabling. The Respondent analyzed the case under a Patterson v. Board of Trustees, State Police Ret. Sys., 194 N.J. 29 (2008) (exclusively mental stress claim) standard despite its physical nature and denied that the incident was a traumatic event. The Court disagreed – it held:

“Here, the Board misinterpreted and misapplied the Court's decisions in *Richardson* and *Patterson*. Appellant's disability was not precipitated by "an exclusively mental stressor." *Patterson*, *supra*, 194 N.J. at 50, 942 A.2d 782. (...) The Board's analysis should have ended with an application of the *Richardson* factors (...).Caminiti v. Board of Trustees, 431 N.J. Super. 1, 21-22

It was error of law for the ALJ to add an “extraordinary event” to the Richardson criteria. Wherefore, Appellant respectfully demands that this holding be reversed, as arbitrary, capricious, or unreasonable, or not supported by substantial credible evidence in the record as a whole.

### POINT THREE

**Respondent's reliance on Smith v. Dep't of Treasury, Div. of Pensions & Benefits is without merit**

Respondent incorrectly applies the principle in Smith v. Dep't of Treasury, Div. of Pensions & Benefits, 390 N.J. Super 209, 213 (App. Div. 2007) in support of her position (Db13). Smith speaks to eligibility to apply for disability

benefits. In that case, Petitioner Smith was ineligible to apply for accidental disability benefits because she was not a member of the pension system at the time of her injury. Reliance on Smith in the present case is misplaced.

#### POINT FOUR

**The ALJ's demand that Appellant meet an "exceptional force" standard is an arbitrary and capricious demand in violation of the statute and prevailing caselaw and not drawn from facts in the whole of the record**

Respondent at Db26 (quoting the ALJ at Pa22) notes the ALJ's requirement that in order to meet the 'undesigned and unexpected' legal standard, Appellant also had to prove that the inmate exerted "exceptional force" against him when he kicked Appellant (Pa22). This is contrary to established caselaw.

The ALJ's demand for an undeterminable and unquantifiable level of force is a capricious principle which lead to legal chaos in past decades and had been criticized at length in the Richardson opinion of 2007 – the ALJ's analysis is a callback to early caselaw and mandates:

"...(c) that the source of the injury itself was (must be)"a great rush of force or uncontrollable power." *Kane v. Bd. of Trs., Police & Firemen's Ret. Sys.*, 100 N.J. 651, 663, 498 A.2d 1252 (1985). Application of that standard has resulted in confusion and created a body of law with no rational core, thereby compelling this re-evaluation...Richardson v. Board of Trs., 192 N.J. 189, 212

The Richardson Court explained that past introduction of new words and phrases created standards that departed from the decisional law “resulting in veritable jurisprudential chaos both from the perspective of outcome and rationale.” Richardson v. Board of Trs., 192 N.J. 189, 206-207. The ALJ’s flawed analysis further violates the holding in Richardson:

“When *Cattani* used the phrase “some kind of external force,” the focus was on “external” as it had been in *Russo*. “Force” was meant simply as an external influence or cause outside the member himself. It was not an affirmative requirement of extreme violence; the member did not have to be struck by lightning (*sic*) or hit by a truck. (...). *Ibid* at 212

Wherefore, Appellant respectfully demands that this holding be reversed, as arbitrary, capricious, or unreasonable, or not supported by substantial credible evidence in the record as a whole.

#### **POINT FIVE**

**The ALJ’s comments on credibility are directed to the weight she gave certain testimony and do not act to discredit any witness.**

Respondent’s application of the unpublished opinion in Werner v. Bd. of Trs., PFRS, 2023 N.J. Super. Unpub. LEXIS 876 \*14 (App. Div. June 6, 2023) is not applicable to present case. The ALJ did not allege dishonesty in the case sub judice. In Werner, the Petitioner’s testimony differed from the witnesses presented – contrary to Werner, Appellant presented a direct and clear sequence of events in this case. With respect to Sgt. Sam Constant, the ALJ had issue with

the timing on how he saw the actual kick, so the ALJ bypassed that element of his testimony and determined that other aspects were credible (Sgt. Constant's testimony appears at Pb25-27). All witnesses testified as to what they recalled and were not coached to line up their testimony to present a fabricated story (T144:6-12). We submit that the ALJ used the term "credibility" where she might have more properly used the term "weight" as noted in the New Jersey Administrative Code. The ALJ did not discredit any of the witnesses. The ALJ concluded facts that support Appellant's case in toto as noted in Point 1 at Pb29 but failed to draw conclusions from the whole of the record in her opinion as noted hereinabove and below.

**Subpoint: The ALJ erroneously disregarded the evidence of Appellant's claim about a deliberate attack, deemed it to be inconclusive and yet evidence of record clearly supported this allegation (contrary to Db20)**

The ALJ did not draw this conclusion from the whole of the record – in fact, it is contrary to the record. The Inmate admitted under oath that he intended to kick and hurt Appellant (Pa126, Pa135-Pa136) and was convicted of that intentional action (Pb21, Pb44) Corporal Smith testified that he saw the inmate assault Appellant as noted hereinabove. AG Guidelines – video - Appellant's testimony, the testimony of the witnesses, the institutional charges, the Superior Court conviction, and the need to secure the witness in a restraint chair (Pa234, Pa89-Pa106) to prevent another injury to others and the inmate's threat where,

once restrained, he promised the officers, “we’re going to be at it again” (T72:15-17). The Inmate intended the kick assault upon Appellant. The ALJ’s ruling also conflicts with Corporal Smith’s testimony – the ALJ’s ruling found Corporal Smith to be credible (Pa18), yet bypassed his testimony concerning the kick/assault on Appellant:

- 1) Corporal Smith saw Appellant get kicked in the hand/wrist hand area by the inmate with his left leg such that it moved Appellant’s hand up and back (T205:6-19).
- 2) He heard Appellant, upon impact, curse in a response to pain, and recalled “it was either Fuck, or Motherfucker. It was one of the two” (T205:21-T206).
- 3) Cpl. Smith explain that “my Sergeant getting assaulted and I went in to take control of the inmates, I believe, leg at that point” (T205:2-5). Appellant, once he had been kicked, then “backed out of the incident at least a couple of feet that’s when I came in and took over. I assisted taking him to the ground and then assisted putting him in a restraint chair.” (T206:11-18).

“Assault” is an intentional action, but Appellant still isn’t required to prove the actual “intent” of his assailant in order to be eligible for Accidental Disability benefits.

It is, however, well established that Appellant sub judice was injured and immediately disabled upon impact once kicked by the inmate (Pb5, Pb9, Pb10, and generally on this record). This external force is well established on the record in video, witness testimony, Appellant’s statement for medical treatment,

and the admission by the Defendant Inmate that he specifically kicked Appellant with the intent to cause injury.

Wherefore Appellant respectfully demands that this holding be reversed, and an order should be presented that compels entry of an award for Accidental Disability.

### CONCLUSION

It is established that "In order to reverse an agency's judgment, an appellate court must find the agency's decision to be arbitrary, capricious, or unreasonable, or not supported by substantial credible evidence in the record as a whole." Henry v. Rahway State Prison 81 N.J. at 579-80, 410 A.2d 686) Matter of Restrepo Dept. of Corrections, 449 N.J. Super. 409, 417 Each decisive term is noted in the alternative form – Appellant need only prove one, but we submit that the Appellant has proven that the ALJ's decision violated each of these alternative terms in our submission to the Panel.

Wherefore Appellant respectfully demands that this decision should be reversed with entry of an order from the Appellate Division to direct Respondent to grant award of Accidental Disability.

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