SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
DOCKET NO.: A-003128-23T4

JACK LAURIE,

Appellant,

V.

BOARD OF TRUSTEES, PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Respondent.

Civil Action

On Appeal from

Initial Decision dated March 25, 2024, under OAL Docket No. TYP-10919-20 and upheld by The Board of Trustees, Public Employees' Retirement System on May 17, 2024

Sat below:

Hon. Susan Olgiati, ALJ
Hon. Sarah G. Crowley, ALJ

Brief and Appendix of Appellant Jack Laurie

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Samuel M. Gaylord, Esquire
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On the Brief

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PRELIMINARY STATEMENT

If this Court follows Published Opinions as set forth in Richardson vs. Board of Trustees, Police and Firemen's Retirement System, 192 N.J. 189 (2007) and Moran v. Board of Trustees, Police and Firemen's Retirement System, 438 N.J. Super. 346 (App. Div. 2014), Jack Laurie will be granted his Accidental Disability Pension benefits because the August 3, 2017, work accident meets the definition of what constitutes an "undesigned and unexpected" event; Mr. Laurie's attempting to catch an employee from flipping over in his wheelchair and preventing him from hitting the floor. The heart of the inquiry is whether, during the regular performance of his regular job, an unexpected happening has occurred and directly resulted in the permanent and total disability of the member. Richardson, Supra, 192 N.J. at 213-14. Brooks v. Board of Trustees, Public Employees' Retirement System, 425 N.J. Super. 277, 279 (App. Div. 2012).

The Undesigned and Unexpected component established by the New Jersey Supreme Court in Richardson was to eliminate occupational claims being able to be considered for Accidental Disability Pension benefits. This work accident is specific, and the disability substantially caused by the incident. As such, the Board of Trustees, Public Employee's Retirement System (PERS) erred in applying an unduly restrictive notion of what constitutes an "Undesigned and Unexpected" event to Mr. Laurie's August 3, 2017, work accident. It is our

suspicion that had Officer Richardson been before Judge Crowley she too would have been denied his Accidental Disability Pension. However, what is clear from her decision, as upheld by the Board, is that she provided no conclusion or analysis on this issue but simply opined it wasn't an undesigned or unexpected event. (Aa20). The testimony and medical evidence before this Court also demonstrates the disability was substantially caused by the work accidents and despite some pre-existing degenerative diagnosis, Mr. Laurie was able to work without any issue until the 2014 MVA. For these reasons, the Board's decision must be overturned and Mr. Laurie granted his Accidental Disability Pension.

PROCEDURAL HISTORY

Mr. Laurie was employed as a Contractor Administrator 3 by the New Jersey Department of Military and Veterans Affairs. (Aa34-Aa37). Mr. Laurie's application for Disability Retirement alleged injuries which occurred on September 11, 2014, and on August 3, 2017. (Aa1-Aa3). On September 10, 2019, Mr. Laurie's job filed an Employers Certification For Disability Retirement. (Aa4-Aa5). On May 21, 2020, the Board determined that Mr. Laurie was totally and permanently disabled from performing his regular and assigned job duties and only granted him Ordinary Disability Retirement Benefits. (Aa6-Aa7). The Board concluded that: 1) Mr. Laurie's disabilities were not a direct result of either work accident; and 2) the August 3, 2017, incident was not undesigned and unexpected.

Mr. Laurie appealed (Aa8), and the matter was transferred to the Office of Administrative Law. (Aa9). Hearings were held on March 28, 2023 (1T) and April 10, 2023 (2T). On March 25, 2024, the Honorable Sarah Crowley rendered an initial decision. (Aa10-Aa23). The Board on May 17, 2024, upheld the decision. (Aa24-Aa25). On June 12, 2024, a Notice of Appeal and Case Information Statement was filed with the Appellate Division. (Aa26-Aa33).

STATEMENT OF FACTS

Mr. Laurie was employed as a Contract Administrator 3 for the Department of Community Affairs. (Aa34-Aa37); (1T53:6-15). His job required him to travel extensively throughout the State and throughout the week. (1T70:24-25). In 2014, Mr. Laurie was involved in a Motor Vehicle accident. (1T54:17-55:8); (Aa41-Aa42). He received authorized workers compensation medical care and returned to work after receiving medical care and being released having reached his maximum medical improvement. (1T56:2-11).

When he returned, Mr. Laurie testified that he had difficulty performing his job due to difficulty sitting and was put on a 20-pound lifting limit. (1T56:18:24). Prior to the 2014 work accident, he had no issues doing his job, and had no need for any accommodation. Mr. Laurie transferred to the Department of Military and Veteran Affairs in January 2015. (Aa34-Aa37); (1T58:12-16). He travelled less at Military and Veteran Affairs. (1T58:17-24). On August 3, 2017, he was involved

in a second work related incident. (Aa43-Aa44); (1T59:19-22). He testified that he attempted to prevent an employee from falling from his wheelchair in the bathroom. (1T60:4-62:8).

He again received workers' compensation medical treatment. (1T62:17-21). He continued working with increased difficulty, however, due to his medical condition he had to apply for Accidental Disability Pension benefits. (1T63:12-18);(Aa1-Aa3).

STANDARD OF REVIEW

The standard of review that applies in an appeal from a state administrative agency's decision is well established and limited. Russo v. Bd. Of Trs., 206 N.J. 14, 27 (2011)(citing In re Herrmann, 192 N.J. 19, 27 (2007)). This Court does grant a strong presumption of reasonableness to an agency's exercise of its statutorily delegated responsibility, City of Newark v. Natural Res. Council, 82 N.J. 530, 539 cert. denied, 49 U.S. 983, 101 S. Ct. 400, 66 L. Ed. 2d 245 (1980), and defer to its fact finding. Utley v. Bd of Review, 194 N.J. 534, 551 (2008). The agency's decision should be upheld unless there is a "clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record or that it violated legislative policies. In re Musick, 143 N.J. 206, 216 (1996); Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963); Caminiti v. Bd. of Trs., Police and Firemen's Ret. Sys., 431 N.J. Super. 1, 14 (App. Div. 2013) (Citing

Hemsey v. Bd of Trs., Police and Firemen's Ret. Sys., 198 N.J. 215, 223-24 2009). On appeal, "the test is not whether an appellate court would come to the same conclusion to the original determination was its to make, but rather whether the fact finder could reasonably so conclude upon the proofs." Brady v. Bd of Review, 152 N.J. 197, 210 (1997) ("Charatam v. Board of Review, 200 N.J. Super. 74, 79 (App. Div. 1985). So long as the "factual findings" are supported by sufficient credible evidence, courts are obliged to accept them. Ibid. Nevertheless, if the Court's review of the record shows that the agency's finding is clearly mistaken, the decision is not entitled to judicial deference, See H.K. v. Department of Human Services, 184 N.J. 367, 386 (2005); L.N. v. State, Div. of Med. Assist. and Health Servs., 140 N.J. 480, 490 (1985) nor is this Court bound by the agency's interpretation of a statute or its determination of a strictly legal issue. Mayflower Cec. Co. v. Bureau of Sec., 64 N.J. 85,93 (1973).

The public pension systems are "bound up in the public interest and provide public employees significant rights which are deserving of conscientious protection." Zigmont v. Bd. Of Trs. Teachers' Pension & Annuity Fund, 91 N.J. 580, 583 (1983). Because pension statutes are remedial in character, they are liberally construed and administered in favor of the persons intended to be benefited thereby. Klumb v. Bd of Educ. Of Manalapan-Englishtown Reg'l High Sch. Dist., 199 N.J. 14, 34 (2009).

In this case, the Board adopted the ALJ's application of the law and the facts. Therefore, it is respectfully requested this Court focus on Judge Crowley's narrow construction and misinterpretation of the law and find her decision, and the Board's determination, not entitled to this Court's deference as it misinterprets the statute and clear legislative intent as well as the case law; specifically Richardson vs. Board of Trustees, Police and Firemen's Retirement System, 192 N.J. 189 (2007) and Moran v. Board of Trustees, Police and Firemen's Retirement System, 438 N.J. Super. 346 (App. Div. 2014).

LEGAL ARGUMENT

POINT I

MR. LAURIE ESTABLISHED THAT THE AUGUST 3, 2017 INCIDENT WAS UNDESIGNED OR UNEXPECTED (Aa1-Aa3)(Aa38-Aa49).

The first legal issue before this Court is whether the August 3, 2017, work accident aiding an employee in distress was an "undesigned and unexpected" event. (Aa42-Aa43). This requirement is an element of eligibility as set forth in the Supreme Court's seminal opinion in Richardson v. Board of Trustees, Police and Firemen's Retirement System, 192 N.J. 189, 212-13 (2007), clarifying the meaning of the term "traumatic event" under N.J.S.A. 43:16A-7(1). As delineated in Richardson, a claimant for accidental disability retirement benefits must establish certain criteria. The Court explained, "[t]he

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

The Court provided in Richardson the following examples of the kinds of accidents occurring during ordinary work efforts that would qualify for accidental disability retirement benefits: "A policeman can be shot while pursuing a suspect; a librarian can be hit by a falling bookshelf while re-shelving books; a social worker can catch her hand in the car door while transporting a child to court." Ibid.

The Court also provided counter-examples of situations that would not qualify for these benefits under a certain set of facts, but would qualify under a different set of facts. For example, a police officer who has a heart attack while chasing a suspect would not qualify because "work effort, alone or in combination with pre-existing disease, was the cause of the injury." Id. at 213.

However, the Court explained that "the same police officer [who was] permanently and totally disabled during the chase because of a fall, has suffered a traumatic event." Ibid. (emphasis added). Likewise, a gym teacher who develops arthritis "from repetitive effects of his work over the years" would not qualify as suffering a traumatic event; however, if the same

gym teacher trips over a riser and is injured, that injury would satisfy the standard. Ibid.

Published decisions have illustratively applied this "undesigned and unexpected" legal standard. For example, in Moran v. Board of Trustees, Police & Firemen's Retirement System, 438 N.J. Super. 346, 348 (App. Div. 2014), the Court reversed the Board's determination and held that a firefighter who suffered a disabling injury while kicking down the door of a burning building – because the tools normally used by firefighters to break down doors had not yet arrived was an "undesigned and unexpected" event. Similarly in Brooks v. Board of Trustees, Public Employees' Retirement System, 425 N.J. Super. 277, 279 (App. Div. 2012), the Court reversed another pension agency's denial of accidental disability retirement benefits to a school custodian who injured his shoulder moving a 300- pound weight bench into the school. This Court found the custodian's accident was clearly "undesigned and unexpected" because he had been confronted with an unusual situation of students attempting to carry the heavy bench into the school, took charge of the activity, and the students suddenly dropped their side of the bench, placing its entire weight on the custodian. Id. at 283.

Here, the Board also erred in applying an unduly restrictive notion of an "undesigned and unexpected" event to Mr. Laurie's August 3, 2017, incident.

Mr. Laurie had no expectation entering the bathroom that an employee would be struggling and as a good citizen he would prevent him from falling from his wheelchair and injure himself. This was simply an unexpected fluke, and clearly an undesigned mishap.

To find that this kind of an incident is not undesigned and unexpected would violate public policy, certainly send the wrong kind of a message to any public employee, and certainly meets the criteria of what would constitute an undesigned and unexpected event meeting the criteria of Richardson.

As a result, Mr. Laurie has demonstrated to this Court that the August 3, 2017, incident meets the Undesigned and Unexpected requirement allowing this Court to grant him his Accidental Disability Pension benefits.

POINT II

MR. LAURIE HAS DEMONSTRATED HIS DISABILITY WAS SUBSTANTIALLY CAUSED BY THE WORK INCIDENTS (Aa62-Aa63)

Mr. Laurie has demonstrated that his disability was substantially caused by the work incidents. N.J.S.A. 43:15A-43 governs and sets forth the requirements for members of the Public Employees' Retirement System to receive accidental disability retirement benefits. The statutory language describing the relevant requirement reads as follows. A member must be "permanently and totally

disabled as a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties [.]" Ibid.

Richardson v. Board of Trustees, Police and Firemen's Retirement System, 192 N.J. 189 (2007), addressed the "traumatic event" standard under N.J.S.A. 43:16A-7(1). The Court held that a PFRS member may be awarded accidental disability retirement benefits if the member establishes:

> 1. that he is permanently and totally disabled;
>
> 2. as a direct result of a traumatic event that is
>
> a. identifiable as to time and place,
> b. undesigned and unexpected, and
>
> c. caused by a circumstance external to the member (not the result of pre-existing disease that is aggravated or accelerated by the work);
>
> 3. that the traumatic event occurred during and as a result of the member's regular or assigned duties;
>
> 4. that the disability was not the result of the member's willful negligence; and
>
> 5. that the member is mentally or physically incapacitated from performing his usual or any other duty.
>
> [Id. at 212-13.]

Several examples of conditions that did and did not satisfy the enunciated "traumatic event" standard were provided by the Richardson Court. The Court noted that a gym teacher who develops arthritis from the repetitive effects of his

work over the years has not suffered a traumatic event. Such a disability is the result of degenerative disease from repetitive exercises and movements and is not related to an event that is identifiable as to time and place. On the contrary, the same gym teacher who trips over a riser, is injured and becomes permanently and totally disabled as a result of the fall has satisfied the accidental disability standard due to the fact that the accident is identifiable as to time and place. The polestar of the inquiry is whether, during the performance of his or her job, an unexpected happening, not the result of pre-existing disease alone or in combination with the work, has occurred and directly resulted in the permanent and total disability of the member. Richardson, supra, 192 N.J. at 213.

The Supreme Court in Cattani v. Board of Trustees held that accidental retirement benefits can be awarded where a pre-existing disease is combined with a traumatic event. 69 N.J. 578 (1976). The Court found that "a basis for an accidental disability pension would exist if it were shown that the disability directly resulted from the combined effect of a traumatic event and a preexisting disease." Id. at 586. Relevant to that determination, an important distinction exists between (1)a preexisting condition combined with ordinary work or even extra strenuous work effort that creates disability, and (2) a preexisting condition combined with a traumatic event to create disability. The former is not an accidental disability as

described by the statute, while the latter can be if the traumatic event is the substantial contributing factor. Id. at 585-86.

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

> [A]ccidental disability in some circumstances may arise even though an employee is afflicted with an underlying physical disease bearing causally upon the resulting disability. In such cases, the traumatic event need not be the sole or exclusive cause of the disability. As long as the traumatic event is the direct cause,i.e., the essential significant or substantial contributing cause of the disability, it is sufficient to satisfy the statutory standard of an accidental disability even though it acts in combination with an underlying physical disease.
>
> [83 N.J. 174, 186-87 (1980) (emphasis added).]

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

> The Statutory standards for an accidental disability are two-fold and require the disability be the 'direct result' of a traumatic event. They also require that the disability not be the result of a 'cardiovascular, pulmonary or musculoskeletal condition which was not a direct result of a traumatic event. '
> N.J.S.A. 43:15A-43. While the statutory definition stresses that the resulting disability must be 'direct' in terms of its traumatic origins, it does not require that the antecedent trauma be the exclusive or sole cause of the disability
>
> [Id. at 169-170 (citing Gerba, supra, 83 N.J. at 186-87).]

Six years later, the above Supreme Court holdings were applied in Petrucelli v. Board of Trustees of the Public Employees' Retirement System, 211

N.J. Super. 280 (App. Div. 1986). Petrucelli was a case involving a fall that caused a non-symptomatic preexisting spinal condition to morph into total disability. There, the Court stated:

> The claimant in Gerba lost because the undisputed record established that he had symptomatic developmental arthritis for a decade and that the employment event only contributed to the progression of the disease. Id. at 188. The companion case Korelnia, 83 N.J. at 170, also recognized that in the proper circumstance 'an accidental disability may under certain circumstances involve a combination of both traumatic and pathological origins.'
>
> In the case before us we conclude that the 'direct result' test was legally satisfied. As noted, there was no issue of credibility. Claimant was a very active 49-year-old man performing a strenuous job. He had no prior back problems of any kind. After his severe fall down a nine-step stairway, all concede he is permanently and totally disabled because of his now-symptomatic low-back problem. We are satisfied that if claimant here cannot recover after a severe trauma, superimposed on a non-symptomatic structural anomaly, which triggered a symptom complex resulting in total disability, no claimant could ever recover accidental benefits in any circumstance where there exists a quiescent underlying condition which had caused no trouble and might never cause any trouble. We conclude that such a narrow and crabbed 'directness' test was never intended by the Legislature nor condoned by the Supreme Court in Gerba.
>
> [Petrucelli, supra 211 N.J. Super. at 288- 89.]

In this case, Mr. Laurie is not required to prove that the incident was the sole cause of his permanent disability rather he is only required to provide proof that the incident was the substantial contributing cause of his permanent disability. Gerba, supra, N.J. 83 at 186-187. It should be noted that Richardson v. Board of Trustees, Police and Firemen's Retirement System, 192 N.J. 189, 199 (2007),which

is relied upon by both sides in this appeal, directly reaffirms Cattani, Gerba and Korelina.

In making the instant determination, it is necessary to assess and weigh the credibility of the witnesses for the purpose of making factual findings as to the disputed facts. Credibility is the value that a finder of facts gives to a witness' testimony. It requires an overall assessment of the witness' story in light of its rationality, internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," In that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950). A trier of fact may reject testimony as "inherently incredible" and may also reject testimony when "it is inconsistent with other testimony or with common experience" or "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

The outcome of this case turns on the credibility of the medical experts. Dr. David Weiss opined that Mr. Laurie's disability was substantially caused by the September 11, 2014, and August 3, 2017,work incidents. (Aa50-Aa63); (1T35:14-25). Dr. Weiss testified that although there were pre-existing findings on the

diagnostic studies Mr. Laurie, prior to the incidents, was asymptomatic. He was performing his job without restriction and not having any trouble performing any aspect of his responsibilities.

Dr. Hutter, the states examining doctor, testified that there was no evidence, in any medical documentation, which suggested prior to the 2014 motor vehicle accident he had any work restrictions. (2T22:3-10); (2T26:2-13). Dr. Hutter testified that the medical records revealed he had a work accident which resulted in restrictions of 20 lbs and he had to change jobs after the Motor Vehicle Accident. (2T23: 1-12). Furthermore, Dr. Hutter testified that after the second work accident he had permanent work restrictions which his job could not accommodate. (2T24: 9-15). Further, Dr. Hutter testified that no medical evidence existed of any problem or treatment from 2006 to the 2014 accident. (2T30: 1-5).

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

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

In this case, the evidence is clear. For years, Mr. Laurie had no problem doing his job. He was a Contractor Administrator 3. (Aa34-Aa37). Dr. Hutter knew what he did for a living, and in fact opined him to be disabled because of the possibility of further injury in that environment. This Court doesn't need to find

that the incidents in question "caused" his disability. Mr. Laurie must show that the incident in question is the "substantial cause of his disability."

There is no doubt that Mr. Laurie had some degenerative process in his lower back and neck. The answer to that statement is . . . so what? The issue before this Court is whether the work accidents were the substantial cause of his disability. Prior to the work accident, Mr. Laurie is performing all aspects of his job. He testified he has no issues. There is no discipline for abuse of sick time, there are no medical records suggesting medical care prior to the work accidents and no issues regarding any aspect of the performance of his job. He has the work accident and then goes on to have medical care and evaluations which determine he is disabled from performing his job; especially that of Dr. Weiss and his treating physician, Dr. Boudwin. (Aa50-Aa62); (Aa90-Aa91).

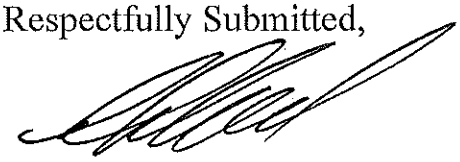
So, the question to the Court is what is more likely? Is it more likely that Mr. Laurie needed this medical care when he did because the problem with his lower back magically developed from a pre-existing condition or is it more likely that he was involved in specific work accidents which result in Mr. Laurie's inability to return to his job due to the permanent restrictions placed on him by his doctors. (Aa88-Aa92);(Aa62-Aa63); (Aa80-Aa87). The medical evidence before the Court inclusive of Dr. Weiss' testimony and report (Aa50-Aa62) more supports the conclusion that the work accidents were the substantial cause of his disability.

This Court can review this because the Board's decision doesn't acknowledge that Judge Crowley failed to provide any analysis as to why in her opinion the accident was an aggravation of a pre-existing condition other than there was medical care in 2006. She fails to address the required analysis as set forth in Petrucelli, and as a result this Court owes the decision no discretion, and must find that Mr. Laurie has met his burden demonstrating that the September 11, 2014, and August 3, 2017, incidents were the substantial cause of his disability. He should receive his Accidental Disability Pension benefits.

CONCLUSION

For the foregoing reasons, the Board's denial of Mr. Laurie's Accidental Disability Pension should be overturned as it misinterprets Richardson, misapplied Moran, and Brooks and the legislative intent, and inappropriately narrowly construed the pension statute. Mr. Laurie satisfied all of the Richardson requirements by demonstrating that the work incidents were the substantial cause of his disability.

Respectfully Submitted,



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Re: J.L. v. Board of Trustees, Public Employees Retirement System
Docket No. A-3128-23T4

On Appeal from a Final Administrative Determination of the Board of Trustees, Public Employees' Retirement System

REDACTED Letter Brief of Respondent, Board of Trustees, Public Employees' Retirement System

Dear Ms. Hanley:

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

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PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS[1]

J.L. appeals the Board's denial of his application for accidental disability ("AD") retirement benefits. (Aa24-25). J.L. was employed as a Contract Administrator III by the New Jersey Department of Community Affairs and transferred to the New Jersey Department of Military and Veterans Affairs as a Contract Administrator in January 2015, a position he held until his retirement on September 1, 2019. (Aa12; 1T53:6-15; 1T58:12-16).[2] On August 28, 2019, J.L. applied for AD based on injuries sustained in two separate incidents on September 11, 2014, and August 13, 2017. Ibid. On May 20, 2020, the Board

[1] The procedural history and facts are closely related and are therefore combined for efficiency and the court's convenience.

[2] Aa refers to J.L.'s appellate appendix. Ab refers to J.L.'s brief. "1T" refers to the transcript from the March 28, 2023 hearing and "2T" refers to the transcript from the April 10, 2023 hearing.

determined J.L. was totally and permanently disabled from performing his regular and assigned job duties and granted him ordinary disability retirement benefits ("OD"). (Aa6-7). However, the Board found that he was not eligible for AD because 1) J.L.'s disability was not a direct result of either the 2014 or the 2017 incidents; and 2) the 2017 incident was not undesigned and unexpected. Ibid. J.L. timely filed a request for a hearing on the denial of his application. (Aa8).

The Board granted his request for a hearing, and this matter was transmitted to the Office of Administrative Law for a hearing and decision by an administrative law judge ("ALJ"). (Aa9). Hearings were held on March 28, 2023, and April 10, 2023, before ALJ Susan Olgiati (Aa11).[3] J.L. testified and called David Weiss, D.O. (Aa14-16). The Board called Robert Gilmartin, an inspector with the New Jersey Department of the Treasury, and Andrew Hutter, M.D. (Aa17).

Dr. Weiss initially examined J.L.'s spine in 2007 when he evaluated him for a workers' compensation claim while J.L. worked for a different employer.[4] (Aa14). When examining J.L. in 2019 for the present AD claim, Dr. Weiss

[3] ALJ Olgiati was appointed to the Superior Court, and the matter was reassigned to ALJ Sarah Crowley.

[4] This injury is not part of J.L.'s AD claim.

reviewed records from injuries in 2006, 2014, and 2017. (Aa14-15). Dr. Weiss diagnosed J.L. with progressive pathology, finding that each subsequent incident worsened the 2006 back injury. (Aa15-16). Dr. Weiss concluded that the 2014 incident worsened his injury from 2006 because J.L. already had some disc bulges, strain, and sprain. (Aa15). However, Dr. Weiss conceded it was possible J.L.'s injury from 2006 could have progressed and developed the herniated discs on its own without a subsequent injury. Ibid.

J.L. testified that he was entitled to AD due to two work-related injuries: first, a car accident in 2014 while working for the Department of Community Affairs, and second, an incident while working for the Department of Veterans Affairs in 2017. (Aa16). J.L. received medical treatment at the hospital after the 2014 incident and missed work for about four months. Ibid. He returned to work after his doctor determined he had reached maximum medical improvement. Ibid. J.L. experienced a second work-related incident on August 3, 2017. Ibid. J.L. claims he strained his back when he tried to assist a colleague who uses a wheelchair from falling in the restroom. Ibid. J.L. stated he was at his workstation when he responded to a disturbance in the handicapped bathroom, where he found a colleague thrashing in his wheelchair. Ibid. J.L. reached out to suspend his colleague's fall and held onto his wheelchair. Ibid. Other employees responded to assist shortly after. Ibid. J.L. received treatment

and workers' compensation. Ibid. J.L. returned to work shortly after and applied for a disability pension because he was taking a lot of pain medication and could not function at work due to the medication that he was on. (Aa16; 1T62:22-24). J.L. worked until he applied for AD on August 28, 2019. (Aa16; 1T63:12-18).

Dr. Hutter found that J.L.'s conditions date back to a 2006 injury. (Aa17). J.L. reported sciatica after the 2014 accident, which continued until 2019. Ibid. Arthritis had been present in J.L.'s spine since at least 2012. Ibid. Dr. Hutter's expert opinion was that the injuries in 2014 and 2017 aggravated a pre-existing medical condition dating back to 2006, for which he received treatment and pain medication before the 2014 and 2017 work-related injuries. Ibid.

In the Initial Decision dated March 25, 2024, ALJ Sarah Crowley affirmed the Board's denial of J.L.'s application for accidental disability retirement benefits. (Aa10-23). The ALJ found J.L. is not permanently and totally disabled from performing his job duties as a direct result of the 2014 or 2017 incidents; rather, she found "sufficient credible evidence that the petitioner's disability was related to a pre-existing condition and not a direct and proximate result of the 2014 and 2017 incidents." (Aa20). In reaching this conclusion, the ALJ found the Board's expert more credible than J.L.'s expert. (Aa18). The ALJ also noted that Dr. Weiss testified it was possible the prior injuries could have progressed,

leading to J.L.'s disability, and reasoned that J.L. had a medical history of issues concerning his back. (Aa18-20).

Based on these findings, the ALJ found that J.L. failed to establish his disability was the direct result of a traumatic event, citing Richardson v. Board of Trustees, Police & Firemen's Retirement System, 192 N.J. 189, 212-13 (2007). The ALJ also concluded that the work incidents were not undesigned and unexpected. (Aa20).

Following the filing of exceptions, at its meeting on May 15, 2024, the Board modified and adopted the Initial Decision, affirming the Board's denial of J.L.'s application for accidental disability retirement benefits. (Aa21-22). However, the Board modified the Initial Decision to find the incidents were undesigned and unexpected. (Aa21). Nevertheless, it agreed with the ALJ that J.L. is not entitled to AD because the incidents did not directly result in his disability. Ibid.

This appeal followed.

ARGUMENT

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

The Board's decision should be affirmed because J.L. failed to establish that his disabilities were the direct result of either or a combination of his 2014 and 2017 work incidents. The record indicates that J.L. had a long history of progressive conditions, and his disability resulted from a decline in his health over many years. In this appeal from a final agency decision, this court has "a limited role to perform." Gerba v. Bd. of Trs., Pub. Emps.' Ret. Sys., 83 N.J. 174, 189 (1980). The Board's "decision will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011) (quoting In re Herrmann, 192 N.J. 19, 27-28 (2007)). "When an error in the factfinding of an administrative agency is alleged, [this court's] review is limited to assessing whether sufficient credible evidence exists in the record below from which the findings made could reasonably have been drawn." City of Plainfield v. N.J. Dep't of Health & Senior Servs., 412 N.J. Super. 466, 484 (App. Div. 2010). As the person challenging the Board's decision, J.L. bears the burden of proving that the decision is unreasonable and unsupported by sufficient credible evidence. McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002). The record supports the Board's decision here and should be affirmed.

N.J.S.A. 43:15A-43 sets forth the criteria governing accidental disability

retirement benefit eligibility for PERS members. The statute directs that a member shall receive accidental disability retirement benefits if the member "is permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties." Ibid. The applicant bears the burden of proof. Patterson v. Bd. of Trs., State Police Retirement Sys., 194 N.J. 29, 50-51 (2008). The Supreme Court's decision in Richardson, 192 N.J. at 212-13, set forth a five-prong test that must be satisfied by an AD applicant:

> 1. that [s]he is permanently and totally disabled;
>
> 2. as a direct result of a traumatic event that is
>
> a. identifiable as to time and place,
>
> b. undesigned and unexpected, and
>
> c. caused by a circumstance external to the member (not the result of pre-existing disease that is aggravated or accelerated by the work);
>
> 3. that the traumatic event occurred during and as a result of the member's regular or assigned duties;
>
> 4. that the disability was not the result of the member's willful negligence; and
>
> 5. that the member is mentally or physically incapacitated from performing her usual or any other duty.

To satisfy the "direct result" requirement, a traumatic event must constitute "the essential significant or the substantial contributing cause" of the applicant's disability and not result from pre-existing disease alone or in combination with work effort. Gerba, 83 N.J. at 186; Korelnia v. Bd. of Trs., Pub. Emps.' Ret. Sys., 83 N.J. 163, 170 (1980). The Supreme Court in Gerba, 83 N.J. at 186, noted that the legislative purpose of the "direct result" requirement was to apply a more exacting standard of medical causation and that AD should be denied when there is "an underlying condition such as osteoarthritis which itself has not been directly caused, but is only aggravated or ignited, by the trauma." A non-symptomatic pre-existing condition can combine with a traumatic event to satisfy the "direct result" requirement, but only where the pre-existing condition is stable and "might never cause any trouble." Petrucelli v. Bd. of Trs., Pub. Emps.' Ret. Sys., 211 N.J. Super. 280, 287 (App. Div. 1986).

The Court's decision in Richardson, 192 N.J. at 202-03, reaffirmed the Gerba and Korelnia decisions. In Richardson, the Court re-emphasized that pre-existing conditions exacerbated by work-related accidents would be excluded from eligibility for accidental disability retirement benefits awards. Id. at 192. By way of example, a police officer who has a heart attack while chasing a suspect has not experienced a traumatic event. Id. at 213. In that case, the work

effort, alone or in combination with pre-existing disease, was the cause of the injury. Ibid. It is the claimant's responsibility to present the competent medical testimony necessary to meet her burden of proof for establishing "direct result." Gerba, 83 N.J. at 185; Atkinson v. Parsekian, 37 N.J. 43, 149 (1962).

Here, the ALJ and Board found the 2014 and 2017 incidents do not constitute "the essential significant or substantial contributing cause" of J.L.'s ultimate permanent disability. Gerba, 83 N.J. at 188. (Aa20). It was undisputed that J.L. had a significant injury history and a pre-existing condition in his spine prior to the 2014 incident. (Aa20). J.L.'s medical history, including a prior back injury, shows that he had suffered from spinal conditions of the sort he now complains of well before the 2014 and 2017 incidents. (Aa14-15; 17). Dr. Weiss, J.L.'s expert, diagnosed him with a progressive pathology, finding that each subsequent incident at worst only worsened the pre-existing 2006 back condition. (Aa15). Dr. Weiss himself examined J.L. in 2006 for back injury and conceded that J.L. could have become disabled even if the 2014 and 2017 incidents never occurred. Ibid. And Dr. Hutter, whom the ALJ found to be more credible and who testified more in line with the record, found unequivocally that J.L.'s disability was not a result of the 2014 and 2017 incidents. He concluded that the disability resulted from a pre-existing disability that needed treatment going back at least as far as 2006. (Aa17).

Based on this evidence, the Board found that the substantial cause of J.L.'s disability were pre-existing conditions that existed long before either incident. Accordingly, J.L. has failed to satisfy the "direct result" requirement, and the court should affirm the Board's denial of AD.

J.L. further argues that the August 3, 2017 incident was undesigned or unexpected. (Ab6-8). While the Board initially found that the 2017 incident was not undesigned and unexpected, and the Initial ID affirmed this finding, the Board, upon reviewing the record, modified this conclusion in its May 17, 2024, Final Administrative Decision. (Aa 6-7; 24-25). So there is no longer any dispute that the incidents were undesigned and unexpected. The only issue on appeal is whether the Board correctly determined that J.L. failed to show that the 2014 or 2017 incident is the substantial or essential cause of his disabling condition. Gerba, 83 N.J. at 170. Because the evidence in the record supports the Board's decision that J.L. failed to satisfy the "direct result" requirement, the Board reasonably found that J.L. was not entitled to Accidental Disability Retirement, and its decision should be affirmed.

CONCLUSION

For the foregoing reasons, the Board's decision denying J.L. AD should be affirmed.

Respectfully submitted,

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