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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0344-16T3

DAWN THOMAS,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES,
PUBLIC EMPLOYEES'
RETIREMENT SYSTEM.

Respondent-Respondent.

Submitted November 14, 2017 — Decided December 15, 2017

Before Judges Hoffman and Mayer.

On appeal from the Board of Trustees of the
Public Employees' Retirement System,
Department of Treasury, PERS No. 2-1352911.

William B. Hildebrand, attorney for appellant.

Christopher S. Porrino, Attorney General,
attorney for respondent (Melissa H. Raksa,
Assistant Attorney General, of counsel;
Christina Levecchia, Deputy Attorney General,
on the brief).

PER CURIAM

Dawn Thomas appeals from a final agency decision of the Board of Trustees of the Public Employees' Retirement System (Board) denying her application for accidental disability retirement benefits. We affirm.

Thomas was employed as a human services assistant at Ancora Psychiatric Hospital from 2008 until she resigned in June 2014. On June 14, 2014, Thomas submitted an application for accidental disability retirement benefits claiming that she hurt her back on April 23, 2010 while checking on a combative patient.

The Board denied Thomas' application because the April 2010 incident, which involved lifting and dressing a confrontational patient, was not undesigned and unexpected.¹ While the Board found Thomas was totally and permanently disabled from the performance of her duties, it noted that her pension account lacked the required years of service for receipt of ordinary disability retirement benefits.

Thomas requested a hearing, and the Board referred the matter to the Office of Administrative Law (OAL).

¹ Thomas initially claimed her injury occurred while she was lifting and dressing a patient. When Thomas appealed the Board's denial of her accidental disability retirement benefits, she claimed her injury was the result of slipping on urine in the patient's room and broken wheel locks on the patient's bed.

An administrative law judge (ALJ) heard testimony from Thomas and her co-worker at Ancora Psychiatric Hospital, Noel Garate. The Board did not call any witnesses.

During the OAL hearing, Thomas testified that she injured her back in April 2010 when she was checking on an aggressive patient. According to Thomas, she entered the patient's room and placed her finger under the patient's nose to check his breathing in accordance with hospital protocol. While she was checking the patient, he grabbed her arm and tried to bite her. Thomas testified there was urine on the floor in the patient's room and that she slipped while attempting to pull her arm away from the patient. When Thomas hit the floor, she said she heard and felt a crack in her back. Thomas further testified that the wheels on the patient's bed would not remain in the locked position, so when she pulled her arm away from the patient, the bed moved with her. The incident was witnessed by Garate.

During cross-examination, Thomas admitted that filed incident reports must be accurate. However, Thomas testified that the incident report for her April 2010 accident was wrong because her hourly wage was incorrect and other relevant information, such as urine on the floor and broken wheel locks on the bed, was not set forth in that report. Thomas was questioned regarding her May 2015 answers to interrogatories as well. The April 2010 incident

as described in the interrogatory responses varied significantly from the events as described by Thomas in her 2010 incident report. While Thomas denied that the 2015 interrogatory answers were her responses, she conceded that the signature accompanying the responses was her signature. Similarly, when questioned about her 2014 disability application and the differences between that document and the April 2010 incident report, Thomas denied that the words on the application were her words. She acknowledged that the signature on the disability application was her signature. Thomas testified that the incident report and disability application submitted as evidence at the OAL hearing were inaccurate.² On further cross-examination, when asked about the history that she provided to a medical examiner in September 2014, Thomas acknowledged that there was no mention of urine on the floor in the patient's room or that the patient attempted to bite her.

During the OAL hearing, Garate testified that he witnessed the April 2010 incident. According to Garate, the patient attacked Thomas and attempted to bite her when she checked his breathing. Garate did not see urine on the floor but believed that urine

² Counsel agreed to joint exhibits introduced as evidence at the OAL hearing. The agreed upon exhibits included Thomas' 2010 incident report, 2014 disability application, and September 24, 2014 medical history given to an examining doctor.

could have leaked from the patient's catheter bag. Garate also testified that the brakes on the bed were broken. Garate further stated that he did not know what part of Thomas's body was injured and did not hear a pop or crack. Garate also acknowledged that he was friendly with Thomas and hoped she would be awarded accidental disability retirement benefits.

The ALJ did not find the testimony of Thomas and Garate to be credible. The ALJ noted that Thomas' testimony varied significantly from the incident report, application for accidental disability retirement benefits, and history Thomas provided to a medical doctor. Neither the incident report, made two days after the episode with the patient, nor Thomas' 2014 application for accidental disability benefits, nor the information given by Thomas to an examining doctor in September 2014, made any mention of urine on the floor or broken brakes on the patient's bed. These claims were not raised by Thomas until May 2015, when she answered discovery requests in connection with her efforts to receive accidental disability retirement benefits. The ALJ also found that Thomas was aware she was ineligible to receive ordinary disability retirement benefits because she lacked the required years of service for benefits. The ALJ noted that Thomas disputed the authenticity of three documents jointly admitted as evidence during the OAL hearing – her disability application, the incident

report, and her answers to interrogatories — but admitted the signature on those documents was her signature. Thomas failed to offer any credible explanation during the OAL hearing as to the discrepancies between the documents and her testimony, which the ALJ found "serve[d] to undermine the credibility of her testimony." The ALJ concluded that Thomas had every reason to alter her testimony during the OAL hearing to receive benefits.

The ALJ determined that Thomas was not entitled to accidental disability retirement benefits because she failed to demonstrate by a preponderance of credible evidence that the wheels on the patient's bed were broken or that there was urine on the floor in the patient's room. Moreover, the ALJ found that Thomas' job description included lifting and dressing patients. The ALJ also concluded that Thomas was aware of the combative and unpredictable nature of this patient. Based on these findings, the ALJ found that the incident did not qualify as an unexpected happening for an award of accidental disability retirement benefits.

The Board adopted the ALJ's initial decision and denied Thomas' application for accidental disability retirement benefits. On appeal, Thomas argues: 1) the Board's findings are not supported by substantial credible evidence; and 2) the Board was incorrect in deeming that the patient's attack on Thomas was not undesigned and unexpected.

The standard of appellate review from a final agency decision is deferential. An agency determination should not be reversed "unless it is arbitrary, capricious or unreasonable or it is not supported by substantial credible evidence in the record as a whole." Lavezzi v. State, 219 N.J. 163, 171 (2014) (quoting Prado v. State, 186 N.J. 413, 427 (2006)). However, we review an agency's legal interpretations de novo. Id. at 172. "Generally, courts afford substantial deference to an agency's interpretation of a statute that the agency is charged with enforcing." Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 196 (2007).

A PERS member is eligible for 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" See N.J.S.A. 43:15A-43.

The Richardson Court set forth the following factors a claimant must prove to qualify for accidental disability retirement benefits:

1. [the claimant] 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.

[192 N.J. at 212-13.]

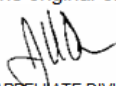
The only issue in this matter is whether the traumatic event experienced by Thomas was "undesigned and unexpected." To answer that question, the ALJ was required to assess the credibility of the witnesses who testified during the OAL hearing. The ALJ had an opportunity to see and hear the testifying witnesses to render credibility determinations. State v. Locurto, 157 N.J. 463, 471 (1999). Having heard the witnesses' testimony, and comparing the testimony to the documentary evidence submitted during the OAL hearing, the ALJ concluded the incident was not undesigned and unexpected because there was no credible evidence that there was urine on the floor or that the bed's wheel locks were broken.

Moreover, the ALJ found that lifting and dressing a patient, as Thomas stated in her April 2010 incident report and 2014 disability benefits application, is not an unexpected event. Thomas routinely performed such duties for all patients at Ancora Psychiatric Hospital, including patients who were "combative." Further, because the job description for a human services assistant, such as Thomas, included "assisting residents with dressing," the ALJ deemed the injury was not undesigned or unexpected.

Having reviewed the record, we conclude there is sufficient credible evidence to support the Board's determination that Thomas' disability was not the result of a traumatic event that was "undesigned and unexpected."

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION