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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0938-15T3

CRAIG ROGERS,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES, POLICE
AND FIREMEN'S RETIREMENT
SYSTEM,

Respondent-Respondent.

Submitted April 25, 2017 – Decided June 15, 2017

Before Judges Gilson and Sapp-Peterson.

On appeal from the Board of Trustees, Police
and Firemen's Retirement System, PFRS No.
3-10-046274.

Fusco & Macaluso Partners, LLC, attorneys for appellant
(Amie E. DiCola, on the briefs).

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

PER CURIAM

Petitioner Craig Rogers appeals from the final agency
decision of the Board of Trustees, Police and Firemen's Retirement

System (Board), denying his application for accidental disability and granting him ordinary disability. The Board adopted the findings of the Administrative Law Judge (ALJ), who concluded that petitioner failed to meet "his burden of presenting sufficient competent and credible evidence of facts essential to his claim." We affirm.

Petitioner, a more than eighteen-year veteran of the City of Newark Police Department, sustained an injury during a training course conducted on October 25, 2011. The course was part of a four-day mandatory training program designed to instruct officers in physical combat skills as an alternative to using deadly force. Petitioner was performing his physical exercises on a large one-inch-thick foam mat. The mat consisted of several sections all joined together by duct tape.

Just before his injury, petitioner was training on the mat, along with six of his colleagues. The colleagues were all present at the time petitioner sustained his injury. According to petitioner, he had been seated performing physical exercises, when his instructor directed him to stand. As he stood up the seam of the mat separated, causing the mat to buckle under him, resulting in his fall.

On June 11, 2012, petitioner applied for accidental disability retirement benefits. In the application, petitioner

certified that he became disabled as a result of "injuries sustained during physical combat training, torn meniscus, ligament in the left knee." On January 14, 2013, the Board denied petitioner's application. The Board found that petitioner was totally and permanently disabled from performing his duties as a law enforcement officer as a result of the October 25, 2011 incident, but concluded that the incident causing his injuries was "not undesigned and unexpected." The Board granted petitioner ordinary disability benefits as of October 1, 2012.

Petitioner timely appealed this decision and requested a hearing before the Office of Administrative Law, which was granted. After a series of adjournment requests on the part of both sides, the ALJ conducted a hearing. The sole issue to be resolved was whether the October 25, 2001 incident causing petitioner's injury was an "undesigned and unexpected" traumatic event.

Following the hearing, the ALJ issued a written opinion in which he concluded that petitioner failed to meet "his burden of presenting sufficient competent and credible evidence of facts essential to his claim." The ALJ found that neither in petitioner's application for accidental disability nor in the orthopedist's report, issued two years after the incident, were there any references to a defective or malfunctioning mat. The ALJ noted "petitioner acknowledged that the only report in the

record that mentions the mat in connection with his injury is the Police Investigation Report." The ALJ additionally observed that there were other colleagues present, none of whom sustained any injury, as well as petitioner's instructor, who was not called to testify during the hearing. The ALJ found that petitioner's testimony was not credibly corroborated and that the nature of his injury could not be characterized as "'extraordinary or unusual' because injuring his left knee while exercising is neither extraordinary nor unusual in common experience." The ALJ also noted that the "record shows that the instructor was present at the time of incident; however, he was not called to testify."

On September 25, 2015, the Board adopted this decision, denying accidental disability benefits to petitioner, but awarding ordinary disability benefits to him. This appeal followed.

On appeal petitioner contends he is entitled to accidental disability because his accident met the statutory definition of a "traumatic event" pursuant to N.J.S.A. 43:16A-7, and because he is permanently and totally disabled from his regular and assigned duties as a direct result of the October 25, 2011 incident.

Our scope of review of "administrative agency action is limited. An administrative agency's final quasi-judicial decision will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair

support in the record.'" Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011) (quoting In re Herrmann, 192 N.J. 19,27-28 (2007)).

"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). "Such deference has been specifically extended to state agencies that administer pension statutes[,] because "'a state agency brings experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise.'" Piatt v. Police & Firemen's Ret. Sys., 443 N.J. Super. 80, 99 (App. Div. 2015) (quoting In re Election Law Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010)).

In order to secure the accidental disability benefits, an applicant must prove each of the following 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 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.

[Russo, supra, 206 N.J. at 30 (quoting Richardson, supra, 192 N.J. at 212-13).]

Here, the only disputed issue before the ALJ was whether the injury-producing event was "undesigned and unexpected."

The ALJ explained that "[t]here is no reason to expect that a seam in a mat held together by duct tape, won't give way if one moves from a seated position to a standing position with one foot admittedly on the tape[,]" and as such, no "unexpected happening" occurred. The ALJ further determined that petitioner stood at the point where multiple mats were held together by duct tape, and that the mat "gave in, which was the intended purpose for the mat under increased pressure and weight."

Petitioner did not call any witnesses to corroborate the testimony or provide any evidence of the mat's alleged defects. Petitioner was the only witness who testified about the defective mat, and how the injury sustained was caused by this alleged

defect. While the incident report corroborates petitioner's testimony that the foam mat "gave in" when he stood up, as the ALJ found, that is the intended purpose of a foam mat. Petitioner produced no competent contrary evidence nor did he produce any evidence that the particular mat was otherwise defective.

Furthermore, as correctly stated by the ALJ, petitioner only provided photographs of the mat that were taken "a significant period after the date of the incident." Petitioner's reliance upon Moran v. Bd. Of Trs., Police & Firemen's Ret. Sys., 438 N.J. Super. 346 (App. Div. 2014), and Brooks v. Bd. of Trs., Pub. Emps. Ret. Sys., 425 N.J. Super. 277 (App. Div. 2012), is misplaced. In both cases, the inquiry involved a question of law applied to undisputed facts. Here, by contrast, the inquiry is factual.

Petitioner argues the injury occurred because of a defective foam mat. However, documentary evidence reflected that petitioner never causally linked his injury to a defective mat. Petitioner failed to produce other witnesses to corroborate his contention, although six colleagues and an instructor were present at the time he sustained his injury. Further, petitioner presented no expert testimony establishing that the mat was defective either in form or the manner in which it was connected to other mats with duct tape. The ALJ did not credit petitioner's testimony.

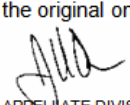
Under the arbitrary, capricious, or unreasonable standard, our scope of review is guided by three major inquiries: (1) whether the agency's decision conforms with relevant law; (2) whether the decision is supported by substantial credible evidence in the record; and (3) whether in applying the law to the facts, the administrative agency clearly erred in reaching its conclusion. In re Stallworth, 208 N.J. 182, 194 (2011).

When an agency decision satisfies such criteria, we accord substantial deference to the agency's fact-finding and legal conclusions, acknowledging "the agency's 'expertise and superior knowledge of a particular field.'" Circus Liquors, Inc. v. Governing Body of Middletown, 199 N.J. 1, 10 (2009) (quoting Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992)). We will not substitute our judgment for the agency's even though we might have reached a different conclusion. Stallworth, supra, 208 N.J. at 194; see also In re Taylor, 158 N.J. 644, 656-57 (1999) (discussing the narrow appellate standard of review for administrative matters).

Applying these principles here, we discern no basis for disturbing the Board's decision rejecting petitioner's claim for accidental disability benefits and awarding ordinary disability benefits.

Affirmed.

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



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