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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1211-16T3

MICHAELNE BOWMAN,

Petitioner-Appellant,

v.

TEACHERS' PENSION AND  
ANNUITY FUND,

Respondent-Respondent.

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Argued November 14, 2017 – Decided December 27, 2017

Before Judges Hoffman and Gilson.

On appeal from the Board of Trustees,  
Teachers' Pension and Annuity Fund, TPAF No.  
1-10-147277.

Daniel J. Zirrith argued the cause for  
appellant (Law Offices of Daniel J. Zirrith,  
LLC, attorneys; Jeffrey J. Berezny, of counsel  
and on the brief; Daniel J. Zirrith, on the  
brief).

Eileen S. Den Bleyker, Senior Deputy Attorney  
General, argued the cause for respondent  
(Christopher S. Porrino, Attorney General,  
attorney; Melissa H. Raksa, Assistant Attorney  
General, of counsel; Christina Lavecchia,  
Deputy Attorney General, on the brief).

PER CURIAM

A school nurse tripped, fell, and severely injured herself on school property during her normal work hours. She applied for accidental disability retirement benefits based on cognitive injuries she suffered as a result of her fall. The Board of Trustees, Teachers' Pension and Annuity Fund (Board) found that she was totally and permanently disabled, but denied her accidental disability retirement benefits, reasoning that the nurse was not on school premises when she fell. The Board, therefore, granted her ordinary disability retirement benefits.

The school nurse, petitioner Michalene Bowman, appeals from the October 11, 2016 final administrative agency decision by the Board. We reverse because an administrative law judge (ALJ) found that Bowman had been injured on school property during her normal work day and, thus, her disability occurred during and as a result of her regular or assigned duties. The Board adopted the ALJ's factual findings, but reached a different legal conclusion. Here, however, the legal conclusion is dependent on the factual findings. Accordingly, we remand with the direction that the Board award Bowman accidental disability retirement benefits.

I.

Bowman was a registered nurse who worked at a school in the City of Orange. Her normal work hours were from 8:15 a.m. to 3:00

p.m., with a lunch break from 1:00 to 1:30 p.m. Bowman was not required to take her lunch on school grounds, and she sometimes took her lunch at different times depending on whether students needed her care.

On April 14, 2010, Bowman took her lunch break at 2:30 p.m. She planned to retrieve her lunch from her car, which was parked on the street in front of the school. As she was walking on the paved walkway on school premises, she tripped and fell. When she fell, she struck her head, and sustained cognitive injuries.

In October 2011, Bowman applied for accidental disability retirement benefits based on her cognitive injuries. The Board denied her application, but granted her ordinary disability retirement benefits. Bowman administratively appealed, and the Board transferred the matter to the Office of Administrative Law for a hearing.

An ALJ conducted a two-day hearing, taking testimony from Bowman and three medical experts. Based on the credited testimony of one of the medical experts, the ALJ found that Bowman's disability was not the result of a pre-existing condition and, thus, was external to Bowman. The ALJ also found that Bowman fell on school property during her normal work hours. In that regard, Bowman testified that she was walking to her car, but was still on school property when she fell. In support of that testimony,

Bowman submitted a photograph showing the school walkway and marked the location of her fall. Based on that undisputed testimony, the ALJ found:

[T]he record reflects that [Bowman] was on her way to retrieve her lunch from her car. Her intent was to return immediately to her office. It is further noted that Bowman needed to retrieve her lunch from her car because she was unable to eat lunch at the scheduled time, which she had not contemplated when she began the school day. She was required to remain at work beyond her expectation in order to complete her assigned duties and had no discretion in the matter. She was, at the time of the incident, 'within the confines of the work day at the work location' and as such, was in the midst of a 'necessary concomitant' of the performance of her assigned task, as contemplated by Kasper [v. Bd. of Trs. of the Teachers' Pension & Annuity Fund], 164 N.J. 564 (2000)]. Under these conditions, I therefore CONCLUDE that the traumatic event of April 14, 2010, which caused [Bowman's] disability, occurred during and as a result of her regular or assigned duties.

In reaching his conclusion, the ALJ relied on the Supreme Court's decision in Kasper. Specifically, he cited the Court's definition of the phrase "occurring during and as a result of the performance of his [or her] regular or assigned duties." In defining that phrase, the Supreme Court stated that the phrase included "on-premises lunch and restroom breaks that are necessary concomitants of an employee's performance of his or her regularly

assigned tasks, so long as they occur within the confines of the workday at the work location." Kasper, 164 N.J. at 586 n.7.

Thus, in an initial decision issued on July 29, 2016, the ALJ recommended that the Board grant Bowman accidental disability retirement benefits. The Board filed exceptions to the ALJ's decision.

On October 11, 2016, the Board issued its final agency decision. The Board "adopt[ed]" the ALJ's findings of fact, but rejected the ALJ's conclusion of law. Specifically, the Board reasoned that the Kasper Court's definition of on-premises lunch breaks was dicta and was not binding precedent. The Board then stated that "Ms. Bowman was not on the premises of the school at the time of the incident." In that regard, the Board reasoned:

[Bowman] had walked out of the school building, down the steps and down the walkway; she fell on the sidewalk while she was approaching the parking lot. Ms. Bowman was not in her office or even in the school building when she tripped and fell. For the foregoing reasons, the Board rejects the ALJ's Conclusion of Law that the incident occurred during and as a result of Ms. Bowman's regular or assigned duties and his determination that Ms. Bowman had satisfied the statutory criteria for an award of accidental disability pursuant to N.J.S.A. 18A:66-39.

The Board, therefore, rejected the ALJ's recommendation and affirmed its initial denial of accidental disability retirement benefits.

Bowman appeals the Board's final decision arguing that the ALJ found that she had fallen on school property during normal school hours. Bowman then contends that those facts established, as a matter of law, that her accident occurred during and as a result of the performance of her regularly assigned duties. We agree and, therefore, we reverse the Board's decision.

## II.

Our review of an agency's final decision is limited. Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 9 (2009); In re Carter, 191 N.J. 474, 482 (2007). 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 factual support in the record. In re Herrmann, 192 N.J. 19, 27-28 (2007). An agency's interpretation of a statute or case law, however, is subject to de novo review. Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011) (citing Toll Bros., Inc. v. Twp. of W. Windsor, 173 N.J. 502, 549 (2002)). Thus, in reviewing an agency's decision, we also examine whether the agency erred in applying the law to the facts. Twp. Pharmacy v. Div. of Med. Assistance & Health Servs., 432 N.J. Super. 273, 283-84 (2013) (citing In re Stallworth, 208 N.J. 182, 194 (2011)).

Moreover, an agency can reject and modify an ALJ's initial decision, but its authority to do so is limited. Specifically, regulations require that when an agency rejects an ALJ's decision, it must clearly state the basis for that rejection and it must cite specific evidence supporting the agency's final decision and interpretation of the law. N.J.A.C. 1:1-18.6(b).

Here, the Board expressly adopted the ALJ's findings of fact. Consequently, the issue presented is a question of law. Specifically, the question on this appeal is whether a school employee suffers a traumatic event occurring "during and as a result of the performance of his [or her] regular or assigned duties" when the accident occurs on a lunch break, on school property, and during normal work hours.

To establish eligibility for accidental disability retirement benefits, the governing statute requires an applicant to be permanently or totally disabled "as a direct result of a traumatic event occurring during or as a result of the performance of his [or her] regular or assigned duties . . . ." N.J.S.A. 18A:66-39(c). In this case, the Board does not dispute that Bowman is permanently and totally disabled by a traumatic event that was caused by circumstances external to her and that did not result from Bowman's willful negligence. The Board also does not dispute that Bowman is mentally or physically incapable of performing her

usual assigned duties. Instead, the only issue on this appeal is whether the traumatic event, here a fall resulting in cognitive injury, occurred during and as a result of Bowman's regular or assigned duties.

In Kasper, our Supreme Court addressed the meaning of the phrase "during and as a result of the performance of his [or her] regular or assigned duties." Kasper, 164 N.J. at 587 (quoting N.J.S.A. 18A:66-39(c)). In that regard, the Court explained:

The organizing principle is that one who is at the employer's premises solely to do his or her duty, and who, while doing what he or she is expected to do, is disabled by a traumatic accident, will qualify for inclusion in the class of those injured 'during and as a result of the performance of his [or her] regular or assigned duties.'

[Ibid.]

The Court then went on to "define more precisely the kinds of functions that will entitle an employee to an accidental disability pension." Id. at 585. Thus, the court held:

We begin with the regular work day that we define as the period during which the employee is required to be on the employer's premises to perform regularly assigned duties. Regularly assigned duties include activities such as a teacher teaching, a police officer policing, and a firefighter fighting fires. However, the concept is broader. Common sense dictates that the performance of an employee's actual duties incorporates all activities engaged in by the employee in connection with his or her work, on the employer's premises,



from the formal beginning to the formal end of the work day.

[Id. at 585-86.]

In a footnote, the Court went on to state that regularly assigned duties "[i]ncluded [] on-premises lunch and restroom breaks that are necessary concomitants of an employee's performance of his or her regularly assigned tasks, so long as they occur within the confines of the workday at the work location." Id. at 586 n.7.

In Kasper, the Court awarded an accidental disability pension to an educational media specialist employed by a public board of education who was assaulted as she was climbing the steps to enter the school building. Id. at 570-71. Although the school day officially began at 8:30 a.m., the specialist arrived early because the school principal required that certain media material be distributed to various classrooms prior to the official start of classes. Id. at 570. The Court concluded that the specialist was engaged in conduct that was necessary to her work and that she qualified for accidental disability pension benefits.

The holding in Kasper controls the outcome in this case. Here, the Board accepted the ALJ's factual findings. The ALJ found that Bowman tripped on school property during normal school hours. The Board, however, rejected the ALJ's conclusion that Bowman's accident entitled her to accidental disability retirement

benefits. The Board reached that conclusion on two different grounds.

First, the Board reasoned that the on-premises lunch break discussion in Kasper was dicta and was not binding precedent. Although not specifically articulating the resulting conclusion, the Board suggested that it could find that Bowman's accident was outside the scope of her normal duties. Such a conclusion would be wrong as a matter of law. The Supreme Court's language in Kasper was not dicta. See State v. Rose, 206 N.J. 141, 183 (2011) (explaining that "an expression of opinion on a point involved in a case . . . deliberately mentioned by the court, although not essential to the disposition of the case . . . becomes authoritative [] when it is expressly declared by the court as a guide for future conduct").

Moreover, to the extent that the language in Kasper could be construed dictum, we hold that the rationale applies to this case and that an on-premises lunch break is a necessary concomitant of an employee's performance of his or her regularly assigned tasks so long as it occurs within the confines of the work day at the work location. See State v. Dabas, 215 N.J. 114, 136-37 (2013) (noting that both appellate and trial courts consider themselves bound by pronouncements of the Supreme Court, whether classified as dictum or not). That work location, moreover, includes the

entire interior and exterior of the school property. See Kasper, 164 N.J. at 590 (Coleman, J., concurring) ("When a single employer occupies an entire structure, that entire structure, including the exterior and interior steps, comprise the place of employment.").

Second, the Board expressly found that Bowman was not on the premises of the school at the time of the incident. That finding is in direct conflict with the ALJ's factual finding. Furthermore, there are no facts in the record that would support that finding. Determinations that are "predicated on unsupported findings [are] the essence of arbitrary and capricious action." In re Certificate of Need of the Visiting Nurse Assoc. of Sussex Cty., 302 N.J. Super. 85, 95 (App. Div. 1997).

In summary, the Board's final decision was based either on an unsupported factual finding or an incorrect interpretation of the law. We, therefore, reverse the Board's decision. Because the Board adopted the factual findings of the ALJ, and because the ALJ found that Bowman's injuries occurred on school property during school hours, Bowman is entitled to accidental disability retirement benefits. Consequently, we remand this matter with the direction that the Board award Bowman accidental disability retirement benefits effective November 1, 2011, the date that she retired.

Reversed and remanded. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION