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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0879-16T4

CHARLES GAMBATESE,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES, PUBLIC
EMPLOYEES' RETIREMENT
SYSTEM,

Respondent-Respondent.

Submitted April 12, 2018 – Decided May 15, 2018

Before Judges Rothstadt and Gooden Brown.

On appeal from the Board of Trustees of the
Public Employees' Retirement System,
Department of the Treasury, PERS No. 2-10-
297235.

Ricci, Fava & Bagley, LLC, attorneys for
appellant (Ronald J. Ricci, of counsel; Brooke
Bagley, on the brief).

Gurbir S. Grewal, Attorney General, attorney
for respondent (Melissa H. Raksa, Assistant
Attorney General, of counsel; Robert S.
Garrison, Jr., Deputy Attorney General, on the
brief).

PER CURIAM

Charles Gambatese appeals from a final decision of the Board of Trustees of the Public Employees' Retirement System (Board), denying his application for accidental disability retirement benefits. The Board determined that Gambatese did not establish that his disabling condition was a direct result of a traumatic event. We affirm.

The record reflects that Gambatese was a civilian maintenance repairer for the Passaic County Jail. On April 17, 2012, on his way to a job in the jail, Gambatese injured himself while attempting to open an approximately 500-pound steel door inside the jail. Ordinarily, to open the door, a nearby officer located in a control room called the cage would unlock the door, a buzzing sound would occur, and the door would be released. However, on this occasion, although Gambatese heard the buzzing sound indicating that the door was open, when he pulled the door handle with his right hand, the door did not open, and while continuously pulling the door, Gambatese injured his right arm. He immediately sought medical attention and was later diagnosed with a tear to his rotator cuff, ligament damage, a pinched nerve and carpal tunnel syndrome.

After the injury, Gambatese returned to work but the pain worsened. Despite several months of therapy and two surgeries, his doctors determined that he would no longer be able to perform

his job. As a result, on September 26, 2014, Gambatese applied for accidental disability retirement benefits. On April 16, 2015, the Board determined that, as a direct result of the April 17, 2012 incident, Gambatese was "totally and permanently disabled from the performance of [his] regular and assigned job duties" and "physically or mentally incapacitated from the performance of . . . other duties that [his] employer [was] willing to offer." The Board also determined that the incident was "identifiable as to time and place[;]" was "not the result of a pre-existing disease[;]" "occurred during and as a result of [his] regular or assigned duties[;]" and was "not the result of [his] willful negligence." Nonetheless, the Board denied his application for accidental disability retirement benefits and instead awarded him ordinary disability retirement benefits. To support its decision, the Board found that "the basis for [Gambatese's] disability claim [did] not qualify as a traumatic event . . . as there was no actual accident or external happening." Thus, the Board concluded there could be "no finding on the issue of undesigned and unexpected"

Gambatese appealed, and the matter was transferred to the Office of Administrative Law (OAL) for a hearing as a contested case. Gambatese testified at the hearing that he "pulled" the door because "it buzzed to indicate it was unlocked" and "[he]

thought [it had] unlocked" but "it didn't." He "couldn't tell if it was opened or unlocked just from the buzzing." He realized that the door was not going to open "[a]s soon as [he] pulled it." Nonetheless, he continuously pulled the door and felt something "pull" or "pop" in his right arm and "a sharp pain" shoot down to his elbow. Gambatese explained that he did not perform maintenance on those doors and did not "know if [the door] malfunctioned, broke, [or] something let loose, and it locked again[.]" However, when the officer in the cage witnessed the incident, he attempted to reopen the door by "hitting the buzzer" a "couple times" before "it finally unlocked."

James Sesak was the cage officer on duty at the time of the incident and confirmed Gambatese's account. Sesak testified that he "hit the switch" but "for some reason[,] the door didn't open." Sesak saw Gambatese "grab the handle" then "flinch and continue to stand there" and "[hold] his arm" when "the door didn't open" Sesak "had to hit that switch probably 10, 15, 20 times maybe" until the lock eventually disengaged and Gambatese exited and complained to Sesak that he had hurt his arm pulling the door to open it.

Sesak explained that the door was "electronic with a . . . key backup." It had a small lever on a control panel which Sesak would move upwards to unlock the door. He "would flick the

switch," and "hear . . . a clicking noise." Then an indicator light would be "green if the door was locked," and "red if the door was open." Sesak recalled hearing the click indicating that the lock was disengaged and seeing the red indicator light "show[ing] that the door was open." However, when Gambatese pulled the door, it did not open. Sesak explained that, in the past, they had "occasionally" experienced problems with these locks because "they're used hundreds of times a day" and "the jail was built in the 1940's." However, "[m]ost of the problems . . . with these locks" arose from them not locking. Sesak testified that the particular malfunction that occurred with Gambatese was "unusual[.]"

On July 25, 2016, the administrative law judge (ALJ) issued an initial decision reversing the Board's denial of accidental disability retirement benefits. Relying on Richardson v. Board of Trustees, Police & Firemen's Retirement System, 192 N.J. 189 (2007), the ALJ disagreed with the Board's determination that "because Gambatese's job require[d] that he open the door many times per day[,]" Gambatese's injury "was caused by strenuous work effort," and "there was no actual accident or external happening . . . which was not undesigned and unexpected" The ALJ rejected the Board's arguments as "unpersuasive and inconsistent with applicable case law."

Finding Gambatese's and Sesak's testimony "consistent, credible and corroborated by other evidence[,]" the ALJ explained:

It is undisputed that for years Gambatese was daily buzzed in and out of various areas of the jail, requiring that he open the cell doors. It is likewise undisputed that Gambatese's normal job duties require that he physically pull the cell door open. However, Gambatese had previously done so for years without incident and Sesak described the lock malfunction on April 17, 2012, as "unusual." In fact, Sesak testified that while there were occasional problems with locks, the majority of the time the problem was that the doors failed to lock. Further, it is not as though the injury was caused by Gambatese's repetitive opening of the cell door or his normal strenuous work effort in opening the cell door. Rather, the injury was the result of an unintended mishap or external event—the lock malfunction. The cell door is designed and expected to unlock when the switch is flipped by the guard, but that is precisely what did not happen. In this matter, the switch was flipped by Sesak, the door buzzed and the "unlocked" light was lit, but the door had not unlocked. Certainly, it was undesigned and unexpected that the cell door did not unlock when it had buzzed and the "unlocked" light was lit on Sesak's panel. Given that the door is several hundred pounds, a considerable degree of force is ordinarily required to pull the door open. Applying that force to a door that malfunctioned and remained locked, despite both auditory and visual signals to the contrary, is what caused the disabling injury.

The ALJ determined that "the incident satisfie[d] the 'undesigned and unexpected' prong of the Richardson test," in that "Gambatese's injury was caused by a circumstance external to [him], and was not

the result of pre-existing disease aggravated or accelerated by the work." Accordingly, the ALJ concluded that "Gambatese was permanently and totally disabled as a direct result of a traumatic event," and "therefore met all the requirements to qualify for accidental disability retirement benefits."

On September 22, 2016, the Board accepted the ALJ's findings of fact but rejected the ALJ's conclusions of law and affirmed its original decision denying Gambatese accidental disability retirement benefits and continuing his ordinary disability pension. The Board adopted the reasoning we employed in our unpublished decision in Carmichael v. Board of Trustees, Police & Firemen's Retirement System, A-2955-12 (App. Div. Mar. 28, 2014), in which we affirmed the denial of accidental disability retirement benefits where Carmichael tore her rotator cuff while pushing up on the lever of a prison cell door that had jammed and stopped moving as she continued to apply upward force against it. In Carmichael, we concluded that because Carmichael's operation of the cell lever was not undesigned and unexpected, the unanticipated consequence of that normal intended work activity was not extraordinary or unusual and therefore did not qualify as a traumatic event. Slip op. at 8. The Board reasoned:

This matter is indistinguishable from the facts that were presented in Carmichael. The same type of injury -- a rotator cuff injury

-- was presented, and the method of the injury was the same, [i.e.], a malfunctioning lock. In this case there was no evidence that the door recoiled or in any way slammed []Gambatese's body. Instead, the door lock did not disengage, and []Gambatese injured himself as a result of his strenuous effort pulling at the door.

This appeal followed.

Gambatese argues on appeal that "[d]e novo review is appropriate as the applicable law was misinterpreted and erroneously applied" Specifically, Gambatese argues that the Board erred in determining "that no external happening occurred" because "the malfunctioning of the lock" and "[t]he act of pulling on a door whose lock had engaged" were events external to Gambatese that were undesigned and unexpected. Alternatively, Gambatese asserts that "the Board's decision to reject the ALJ's decision is arbitrary [and] capricious" We disagree.

Our role in reviewing the decision of an administrative agency is limited. In re Carter, 191 N.J. 474, 482 (2007). We accord a strong presumption of reasonableness to an agency's exercise of its statutorily delegated responsibility, City of Newark v. Natural Res. Council in Dep't of Env'tl. Prot., 82 N.J. 530, 539 (1980), and defer to its fact finding. Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 29 (1995). We will not upset the determination of an administrative agency absent a

showing that it was arbitrary, capricious, or unreasonable; that it lacked fair support in the evidence; 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).

Although we are not bound by an agency's decision on purely legal questions, courts ordinarily give "substantial deference" to an agency's interpretation of those statutes that the agency is responsible for enforcing. Richardson, 192 N.J. at 196. If the statute is ambiguous or silent on a particular point, we may not substitute our judgment for that of the agency so long as the agency's determination is based on a permissible construction of the statute it is enforcing. Kasper v. Bd. of Trs. of the Teachers' Pension & Annuity Fund, 164 N.J. 564, 580-81 (2000).

In Richardson, the Supreme Court determined that an individual seeking accidental disability benefits under N.J.S.A. 43:16A-7(1) must establish:

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.

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

Here, there is no question that Gambatese was disabled as a result of his work, as demonstrated by the Board granting him ordinary disability retirement benefits. The sole issue was whether his disability was the result of a traumatic event. In this regard, Gambatese argues that the door lock's sudden and unusual malfunction qualifies as an undesigned and unexpected external event under Richardson. While we agree that a traumatic event can occur during usual work effort, Richardson makes clear that the "work effort itself . . . cannot be the traumatic event." Richardson, 192 N.J. at 211. "A policeman . . . shot while pursuing a suspect; a librarian . . . hit by a falling bookshelf while re-shelving books; a social worker catch[ing] her hand in the car door while transporting a child to court" all exemplify

"undesigned and unexpected" and meet "the traumatic event standard." Id. at 214.

On the other hand, here, Gambatese tore his rotator cuff while pulling the door. He realized that the door was not going to open as soon as he pulled it but continued nonetheless. The door did not slam into him or abruptly close on him, it simply did not open as he continued to apply force against it. Accordingly, Gambatese suffered "an unanticipated consequence of an intended external event" that was neither undesigned nor unexpected. Id. at 201 (emphasis omitted) (quoting Russo v. Teachers' Pension & Annuity Fund, 62 N.J. 142, 154 (1973)).

Gambatese's reliance on Moran v. Board of Trustees, Police & Firemen's Retirement System, 438 N.J. Super. 346 (App. Div. 2014) to support his argument is misplaced. In Moran, we reversed the Board's denial of an accidental disability pension where Moran, a firefighter, suffered a disabling injury when he manually kicked in the door to a burning building in order to carry out his paramount duty to rescue fire victims. 438 N.J. Super. at 354. Had he not responded immediately to break down the door, the victims would have died. Ibid. We determined that

the undesigned and unexpected event here was the combination of unusual circumstances that led to Moran's injury: the failure of the truck unit [that provided access and performed rescue operations] to arrive, and the

discovery of victims trapped inside a fully engulfed burning building, at a point when Moran did not have available to him the tools that would ordinarily be used to break down the door.

[Ibid.]

Here, because Gambatese's opening of the door was not undesigned and unexpected, he had to prove that the unanticipated consequence of that normal intended work activity was "extraordinary or unusual in common experience." Richardson, 192 N.J. at 201 (quoting Russo, 62 N.J. at 154). As a rotator cuff injury from continuously pulling a heavy steel door can hardly be classified as extraordinary or unusual, the Board was correct in concluding that Gambatese did not carry his burden.

We find no basis to conclude that the Board's rejection of the ALJ's legal conclusions was arbitrary or capricious. The Board's findings were fully supported by substantial credible evidence in the record and in accord with the controlling statute. Accordingly, there is no reason to alter the Board's denial of Gambatese's application for accidental disability retirement benefits. In re Young, 202 N.J. 50, 70 (2010).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION