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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0987-16T4

B.H.,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES, PUBLIC
EMPLOYEES' RETIREMENT SYSTEM,

Respondent-Respondent.

Submitted November 30, 2017 — Decided February 1, 2018

Before Judges Haas and Rothstadt.

On appeal from the Board of Trustees, Public
Employees' Retirement System, PERS No.
2-877490.

Michael J. Muller, attorney for appellant.

Christopher S. Porrino, Attorney General,
attorney for respondent (Melissa H. Raksa,
Assistant Attorney General, of counsel; John
A. Lo Forese, Deputy Attorney General, on the
brief).

PER CURIAM

B.H. appeals from a final agency decision of the Board of
Trustees (Board) of the Public Employees' Retirement System (PERS)

denying her application for accidental disability retirement benefits. We affirm.

B.H. was employed by the Bergen County Prosecutor's Office (BCPO) for over thirty years. During her tenure, she held different titles, including her last position as Senior Data Processing Programmer. B.H. left her job in 2012.

After leaving the BCPO, B.H. applied in 2013 to PERS for accidental disability retirement benefits. Her application relied upon events that occurred in September 2012 relating to a text message she accidentally sent to her boyfriend's children and her employer's response to that event.

As B.H. explained, she sent the text from her boyfriend's cell phone by using the phone's voice-to-text application, which resulted in her message unintentionally stating that the boyfriend had been injured in an accident. B.H. immediately realized the error, sent a new message correcting the first one, and telephoned the children to let them know their father was not in an accident and was fine.

B.H.'s boyfriend, with whom she lived, also worked for the BCPO. The BCPO became aware of the text message from the children's mother, and notified B.H. that local police would be coming to the house to check on the boyfriend's welfare. The police followed up and found the boyfriend to be fine.

The incident led to the BCPO requiring B.H. and her boyfriend to attend a meeting with their superiors at the BCPO. At the meeting, B.H. was told that she was to be subjected to an immediate psychiatric evaluation and to a suspension from her employment pending the results of that evaluation and possibly a fitness for duty evaluation. B.H. was brought by a BCPO detective from the meeting to a regional hospital where she was evaluated, found not to be a danger to herself or others and, four hours after her arrival, she was released. After the incident, B.H. did not return to work.

Prior to the incident, B.H. had been treated for various mental health issues from which she suffered since 1985. In 2009, those issues led to her having to complete a fitness for duty evaluation. At the time of the incident in 2012, B.H. was being treated by a psychiatrist that she had been seeing since 2006.

After considering B.H.'s submissions, the Board rejected her application for accidental disability retirement benefits, finding that the cause of her disability did not meet the criteria for those benefits.¹ The Board found that the incident that caused

¹ An accidental disability pension provides approximately two-thirds of a member's annual compensation in benefits. N.J.S.A. 43:16A-7(2)(b). An ordinary disability retirement allowance awards up to forty percent of the member's final compensation. N.J.S.A. 43:16A-6(2)(b).

her disability was "not identifiable as to time and place[,]" nor was it "undesignated and unexpected" or "the direct result of a traumatic event, as the event [was] not caused by a circumstance external to" B.H. Moreover, the event "did not occur during and as a result of [her] regular . . . assigned duties." The Board approved her application for ordinary disability retirement benefits after determining she was "totally and permanently disabled[.]"

B.H. appealed the Board's determination and requested a hearing. The Board deemed the matter contested and referred it to the Office of Administrative Law (OAL) for a hearing before an administrative law judge (ALJ). At the hearing, B.H. and her treating psychiatrist testified on her behalf. The Board presented testimony only from its expert psychologist, who had conducted an independent medical evaluation of B.H. on behalf of the Board.

B.H. testified about the text message and her ensuing treatment by the BCPO that she claimed led to her disability. She spoke in detail about how that treatment, which she described as aggressive and shocking, impacted her daily life, and caused her to feel stigmatized, scared and helpless.

B.H.'s psychiatrist testified as to his involvement in the September 2012 incident, when the regional hospital where B.H. was evaluated, contacted him and inquired as to whether she was a

danger to herself or others. The doctor denied that she was a danger to herself or others. He also testified to his later treatment of B.H. for what he diagnosed as post-traumatic stress disorder (PTSD) that she suffered as a result of being aggressively confronted by her superiors and involuntarily taken to the hospital, where B.H. felt she would be involuntarily committed.

The Board's expert testified that B.H. could not work due to her suffering from anxiety, which was not caused by the incident in 2012. He disagreed with the diagnosis of PTSD because there was no evidence that B.H. was exposed to actual or threatened physical injury.

After considering the evidence adduced at the hearing, the ALJ issued an Initial Decision on August 2, 2016, recommending that the Board deny B.H.'s application for accidental disability retirement benefits. In her twelve-page written decision, the ALJ found B.H. and her psychiatrist to be credible witnesses. She found the Board's expert's testimony to be less credible than B.H.'s psychiatrist and explained the reasons for her credibility findings in detail.

The ALJ also found B.H.'s version of the September 2012 incident to be undisputed. The judge set forth those facts in detail. As to B.H.'s treatment by her employer, the judge found that the "incidents were causal circumstances external to [B.H.],

were undesigned and unexpected, and were traumatic to [her] causing her to suffer PTSD and/or anxiety disorder and to be disabled from work."

Citing Kasper v. Board of Trustees, Teachers' Pension and Annuity Fund, 164 N.J. 564, 585 (2000), the ALJ also found that B.H.'s "disability [was] not a result of her regular or assigned duties." Quoting Patterson v. Board of Trustees, State Police Retirement System, 194 N.J. 29, 34 (2008), the ALJ concluded that while B.H. "experienced a traumatic event,^[2] . . . she did not experience a 'terrifying or horror inducing[-]event that['] involved [']actual or threatened death or serious injury, or a similarly serious threat to the physical integrity of [B.H.] or another person.[']" According to the ALJ, because B.H.'s proofs did not satisfy these two criteria, she was not entitled to accidental disability benefits.

After the Board considered the ALJ's Initial Decision, the exhibits from the hearing and exceptions filed on behalf of the Board, it voted to accept the recommendation in the Initial

² The ALJ described B.H.'s experience as a "traumatic event" but, in light of her conclusions, we read those words to mean that B.H. had a traumatic experience and not a "traumatic event" as contemplated by the applicable case law, including the case cited by the ALJ.

Decision, subject to a modification. In its September 22, 2016 written final agency decision, the Board stated:

[T]he Board voted to adopt the recommendations of [the] ALJ . . . with the clarification that . . . [B.H.] did not experience a traumatic event as the incident was not undesigned and unexpected and was not the type of event that would cause [PTSD] for the purpose of an accidental disability retirement benefit. The Board therefore rejected the language in the Initial Decision that erroneously states, "while petitioner experienced a traumatic event." The Board reaffirmed its decision which denied . . . [B.H.]'s application for Accidental Disability retirement benefits.

This appeal followed.

On appeal, B.H. argues that the substantial credible evidence at the hearing did not support the Board's conclusion that her "disability [was] not the result of her regular or assigned duties[,]" and that she "did not experience a ter[r]ifying or horror-inducing event that involved a serious threat to [her] physical integrity[.]" She also contends that the Board improperly rejected the ALJ's finding that she experienced a traumatic event because the "finding was supported by substantial credible evidence." We disagree.

"We must hew to our standard of review. Judicial '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.'" Thompson v. Bd. of Trs., Teachers' Pension & Annuity Fund, 449 N.J. Super. 478, 483 (App. Div. 2017) (quoting Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)); see also Lavezzi v. State, 219 N.J. 163, 171 (2014).

In reviewing an administrative decision, we ordinarily recognize the agency's expertise in its particular field. Thompson, 449 N.J. Super. at 483. "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) (citing R & R Mktg., LLC v. Brown-Forman Corp., 158 N.J. 170, 175 (1999)). However, we review an agency's legal interpretations de novo. Lavezzi, 219 N.J. at 172; see also Russo, 206 N.J. at 27.

In our review, we accord deference to the credibility determinations of the ALJ, who had the opportunity to hear the testimony of the witnesses and consider the exhibits. Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 587 (1988). We may not "engage in an independent assessment of the evidence as if [we] were the court of first instance." In re Taylor, 158 N.J. 644, 656 (1999) (quoting State v. Locurto, 157 N.J. 463, 471 (1999)).

After reviewing the record in light of the applicable standard of review, we find no basis to disturb the Board's decision. See

Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 25 (1995). We affirm substantially for the reasons expressed by the Board. We add only the following comments.

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" N.J.S.A. 43:15A-43. The burden is on the claimant to prove:

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 [claimant] is mentally or physically incapacitated from performing his usual or any other duty.

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

In addition, "an applicant who has suffered a permanent mental disability as a result of a mental stressor, without any physical impact, can be considered to have experienced a 'traumatic event[,]' " Patterson, 194 N.J. at 33, if "[t]he disability [was the] result from direct personal experience of a terrifying or horror-inducing event that involves actual or threatened death or serious injury, or a similarly serious threat to the physical integrity of the member or another person." Thompson, 449 N.J. Super. at 485 (first alteration in original) (quoting Patterson, 194 N.J. at 33-34). "Recovery for accidental disability is limited to stressors that are 'sufficient to inflict a disabling injury when experienced by a reasonable person in similar circumstances.'" Caminiti v. Bd. of Trs., Police & Firemen's Ret. Sys., 431 N.J. Super. 1, 16 (App. Div. 2013) (quoting Patterson, 194 N.J. at 50); see also Thompson, 449 N.J. Super. at 494 (stating that where a "[p]etitioner contends the incidents were terrifying and horror-inducing for her. . . ., her subjective views do not satisfy 'the objective reasonableness standard'" (quoting Russo, 206 N.J. at 33)).

B.H. contends she satisfied her burden by relying upon the treatment to which her employer subjected her and it causing her to suffer from PTSD. We can understand why B.H. may have viewed

her employer's treatment as shocking and outrageous and we have no reason to believe that she does not suffer from PTSD. We similarly understand why the ALJ described B.H.'s experience as being traumatic to her, especially considering B.H.'s preexisting mental health issues. But, the circumstances did not give rise to a "traumatic event" as contemplated by Patterson. See Patterson, 194 N.J. at 33-34. "[T]he incident[] here [was not] 'a terrifying or horror-inducing event that involve[d] actual or threatened death or serious injury, or a similarly serious threat to the physical integrity of the member or another person.'" Thompson, 449 N.J. Super. at 494 (quoting Patterson, 194 N.J. at 50). Without proof of a "traumatic event," B.H.'s application was properly denied for that reason alone.

Because we are satisfied that B.H. did not prove her disability was the result of a "traumatic event," we need not address her remaining arguments.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION