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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0640-20**

**SHARON GILES,**

Petitioner-Appellant,

v.

**BOARD OF TRUSTEES,  
TEACHERS' PENSION AND  
ANNUITY FUND,**

Respondent-Respondent.

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Argued on April 25, 2022 – Decided May 19, 2022

Before Judges Sabatino and Mayer.

On appeal from the Board of Trustees of the Teachers' Pension and Annuity Fund, Department of Treasury.

Samuel M. Gaylord argued the cause for appellant (Szaferman, Lakind, Blumstein & Blader, PC, attorneys; Samuel M. Gaylord, on the brief).

Jeffrey D. Padgett, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Acting Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Jeffrey D. Padgett, on the brief).

## PER CURIAM

Petitioner Sharon Giles appeals from an October 6, 2020 final agency decision by the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund denying her application for ordinary disability retirement benefits. We remand to the Board for specific findings of facts and conclusions of law concerning Giles's ability to perform duties in the "general area of [her] ordinary employment . . . ." Skulski v. Nolan, 68 N.J. 179, 206 (1975).

We briefly recite the facts relevant to Giles's application for ordinary disability retirement benefits. Giles worked as a public schoolteacher in East Orange for ten years. She taught economics and entrepreneurship classes to students in grades three through five.

On October 27, 2014, Giles fell off a chair while attempting to hang material in her classroom, injuring her back. Giles was treated for her back injuries and never returned to work after the incident.

On February 4, 2015, Giles applied for ordinary disability retirement benefits. On July 1, 2015, she resigned her teaching position. On August 6, 2015, the Board considered Giles's application and denied her request for ordinary disability retirement benefits. The Board concluded Giles was not totally and permanently disabled from performing her regular and assigned

duties as a teacher. Giles appealed. On October 7, 2015, the Board referred the matter to the Office of Administrative Law (OAL).

The case was assigned to an administrative law judge (ALJ). The ALJ conducted evidentiary hearings on November 2, 2018 and March 5, 2019. The following individuals testified: Giles; her medical expert, Dr. David Weiss; and the Board's medical expert, Dr. Arnold Berman.

Giles testified her condition prevented her from performing the duties identified in the written job description prepared by the East Orange School District (District). According to the District's job description, the general responsibilities for teachers included planning lessons, creating a productive classroom environment, and employing satisfactory educational methods. Giles also described other duties not included in the District's job description that she could no longer perform. Giles testified those additional duties fell under the category in the District's job description entitled "other duties which may be assigned by the administrator." Giles explained her additional duties included supervising in the cafeteria during the morning, overseeing students during lunch recess, and participating in fire and active-shooter drills.

Giles testified she taught a computer lab course located on the second floor of the school. Because there was no elevator in the school, Giles had to

climb stairs several times a day to perform her various job assignments. Additionally, she stood five to six hours throughout the school day and engaged in repetitive bending while teaching students.

Dr. Weiss testified on behalf of Giles. His testimony included a review of Giles's medical history, magnetic resonance imaging (MRI), and electromyography (EMG) studies. A physician who worked with Dr. Weiss performed a physical examination of Giles about three years after her 2014 fall. Based on the results of the physical examination and his review of Giles's medical records, Dr. Weiss diagnosed Giles with a post-traumatic strain and sprain of her lumbar spine, herniated disc at L5/S1, and bulging disc at L4/L5. He also found age-related degenerative disc disease in Giles's lumbar spine.

As a result of these findings, Dr. Weiss concluded Giles could not perform her duties as a teacher. According to Dr. Weiss, Giles was unable to perform any of the teaching duties – not only the duties identified in the District's job description but the other duties Giles identified beyond those enumerated in the District's job description.

The Board's expert, Dr. Berman, reached the opposite conclusion, finding Giles was not totally and permanently disabled from the performance of her teaching job. Dr. Berman performed a physical examination of Giles about eight

months after her fall. According to Dr. Berman, Giles had a full range of motion and normal reflexes based on his examination. Dr. Berman testified Giles's straight leg testing revealed no radiculopathy despite a radicular finding according to her EMG test.

Dr. Berman testified Giles's low back pain was attributable to age-related degenerative changes in her lumbar spine. In reviewing Giles's January 2015 MRI, Dr. Berman concluded the bulging disc and protrusion on the MRI were not traumatically induced but rather the result of age-related degeneration. Dr. Berman explained he favored results based on "objective tests," which are "totally out of the control of the patient," rather than results based on "subjective complaints," which "are totally under the control of the patient." Dr. Berman opined hands-on testing of a person is more objective and conclusive than an MRI or EMG study. Based on his hands-on testing, Dr. Berman found Giles had long-standing degenerative disc disease in her spine. Although he found age-related degeneration, Dr. Berman concluded Giles was not totally and permanently disabled from working as a teacher and remained capable of performing the duties and functions of her job.

After closing the record, the ALJ rendered an initial decision. In reviewing the testimony and evidence, the ALJ reversed the Board's denial of

Giles's application for ordinary retirement benefits. In her July 2, 2020 written decision, the ALJ held "the October 27, 2014, fall resulted in [Giles] injuring her back, which has left her totally and permanently disabled from working as a teacher or in any other capacity." Regarding the experts' testimony, the ALJ concluded Dr. Weiss's testimony was "credible, straightforward, and knowledgeable." She also found Dr. Weiss's testimony and opinions aligned with the medical records and findings provided by Giles's treating physicians. Overall, the ALJ found Dr. Weiss's testimony to be more credible than Dr. Berman's testimony.

Additionally, the ALJ "reject[ed] Dr. Berman's opinion that teaching does not require physical fitness." Specifically, she found the following:

teaching is a demanding position; it requires not only intellect, but physical stamina, to keep up with active young children. . . . it requires one to immediately be able to engage in fire and active-shooter drills. As an elementary teacher, one is constantly bending, stooping, walking, and moving. It is not a job for one who is not physically fit. Thus . . . [Giles] is unable to perform the ordinary functions of sitting, standing, bending, and walking without considerable pain.

After receipt of the ALJ's initial decision, the Board filed exceptions. On September 11, 2020, the Board modified the ALJ's finding of fact related to

Giles's job duties and rejected the ALJ's determination Giles was permanently and totally disabled from employment as a schoolteacher.

In an October 6, 2020 final decision, the Board determined Giles was ineligible for ordinary disability retirement benefits. The Board explained the ALJ's initial decision

conflat[ed] how Ms. Giles subjectively and specifically taught with the general requirements of being a teacher. The proper standard looks to her general employment as a teacher, not to specific self-reported tasks. See Skulski v. Nolan, 68 N.J. 179, 205-06 (1975). Based on the job description, there is no reason someone in Ms. Giles's condition could not perform the general functions of a teacher, which involves planning lessons and verbally communicating with students. This is true even though she might struggle with specific aspects of her actual job, such as standing for long periods of time or walking up and down stairs. These specific problems might have been resolved with a simple accommodation by her employer, but Ms. Giles never requested an accommodation. . . . The majority of the specific duties Ms. Giles stated she could not perform were not in her official job description, but particular to her specific teaching assignment (walking up and down stairs, morning cafeteria duty). . . . Therefore, it cannot be said that Ms. Giles is permanently and totally disabled from her general employment as a teacher.

Giles appealed. On appeal, she argues the Board's decision lacks fair support in the record, amounts to an abuse of discretion, and is arbitrary and capricious.

"Our review of administrative agency action is limited." Russo v. Bd. of Trs., Police & Fireman's Ret. Sys., 206 N.J. 14, 27 (2011) (citing In re Herrmann, 192 N.J. 19, 27 (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 fair support in the record." Ibid. The party challenging the validity of the administrative agency decision must demonstrate it was arbitrary, unreasonable, or capricious. Boyle v. Riti, 175 N.J. Super. 158, 166 (App. Div. 1980).

We accord deference to the Board's interpretation of a statute it is charged with enforcing. Thompson v. Bd. of Trs., Teachers' Pension & Annuity Fund, 449 N.J. Super. 478, 483 (App. Div. 2017), aff'd o.b., 233 N.J. 232 (2018). "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.'" Ibid. (quoting Piatt v. Bd. of Trs., Police and Fireman's Ret. Sys., 443 N.J. Super. 80, 99 (App. Div. 2015) (internal quotation marks omitted)).

Ordinary disability retirement benefits are granted where a member "is physically or mentally incapacitated for the performance of duty and should be



retired." N.J.S.A. 18A:66-39(b). A member is incapacitated if she is permanently and totally disabled at the time of separation from employment. Bueno v. Bd. of Trs., Teachers' Pension & Annuity Fund, 404 N.J. Super. 119, 126 (App. Div. 2008). To be permanently and totally disabled, a member must be unable "to perform duties in the general area of his [or her] ordinary employment rather than merely showing inability to perform the specific job for which he [or she] was hired." Skulski v. Nolan, 68 N.J. 179, 205-06 (1975).

The judicial decisions in Bueno and Skulski hold the inability to perform some aspect of an employment position does not necessarily render an employee incapacitated from performing duties in the general area of an employee's ordinary employment. On this record, there are insufficient fact findings to determine whether Giles's is totally and permanently disabled from generally performing her job as a teacher as opposed to performing specific and discrete teaching tasks.

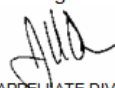
Thus, we remand to the Board to reconcile Giles's inability to perform certain aspects of her teaching job with the responsibilities and general duties of a teacher identified in the District's job description, including the category identified as "other duties which may be assigned by the administrator." After

developing a more complete record on this issue, the Board should explain, in detail, why Giles is or is not entitled to ordinary disability retirement benefits.

On remand, the Board may elect to return the matter to the ALJ for amplification or clarification. Although we do not envision the need for additional testimony or information, we leave that determination to the fact-finder's discretion. See In re Kallen, 92 N.J. 12, 24 (1983) (authorizing a remand to reopen an administrative hearing in certain circumstances). If the Board returns the matter to the ALJ, and the ALJ issues a new decision, the matter may be presented to the Board for further consideration and the issuance of a new final agency decision. In remanding the matter on the identified issue, we express no opinion as to the outcome.

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