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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1622-20**

**JEFFREY KOSTOPLIS,**

Petitioner-Appellant,

v.

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

Respondent-Respondent.

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Argued November 1, 2022 – Decided December 30, 2022

Before Judges Gilson and Rose.

On appeal from the Board of Trustees of the Police and Firemen's Retirement System, Department of the Treasury, PFRS No. xx8093.

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

Juliana C. DeAngelis, Staff Attorney, argued the cause for respondent (Robert S. Garrison, Jr., Director of Legal Affairs, attorney; Thomas R. Hower, Staff Attorney, on the brief).

## PER CURIAM

Appellant Jeffrey Kostoplis is a former Camden County regional police officer who retired after he suffered a back injury during the performance of his duties while chasing a suspect. He appeals from a final agency decision by the Board of Trustees, Police and Firemen's Retirement System (Board) denying his application for accidental disability retirement benefits. Discerning no error in the Board's finding that the accident that caused appellant's disability was not undesigned and unexpected, we affirm.

### I.

Following the January 27, 2019 incident, appellant went out on medical leave. On August 14, 2019, after months of treatment and physical therapy, he applied for accidental disability retirement benefits. He then retired on September 1, 2019. The Board granted ordinary disability retirement benefits but denied accidental disability retirement benefits, finding that his injury did not result from an event that was undesigned and unexpected. Appellant administratively appealed and the matter was transferred for an evidentiary hearing before the Office of Administrative Law. An Administrative Law Judge (ALJ) conducted a one-day evidentiary hearing and appellant was the only witness who testified.

Appellant explained that on January 27, 2019, he was working the day shift from 7:00 a.m. to 7:00 p.m. and was patrolling in North Camden. During his shift, appellant received a call directing him to check on a vehicle believed to have been involved in a recent shooting. Appellant proceeded to the location of the vehicle and noted that there was a male occupant. He activated the lights on his patrol car, but the occupant exited the vehicle and began to run away.

Appellant then got out of his patrol car and chased the suspect on foot. While he was running, appellant had to avoid potholes and debris. He also jumped over a median in a parking lot. As he ran, appellant felt severe pain in his back, which he described as feeling like "something popped." He stopped running, made his way back to his patrol car, and laid on the car's hood for a few minutes. Another officer responded to the scene and captured the suspect.

During his testimony, appellant candidly acknowledged that he regularly chased suspects as part of his job. He also admitted that his job description included: "apprehend[ing] and subdu[ing] suspects by chasing them on foot[,] by motor vehicle[,] or other means and by using physical force and applying handcuffs or other restrains, if necessary[,] in order to take the suspect into custody and to prevent injury to the officer or others."

After hearing the testimony, the ALJ found that the incident that caused appellant's disability was not an undesigned and unexpected traumatic event. Instead, relying on the credible testimony of appellant, the ALJ found that foot pursuits were part of appellant's regular job duties and there was no evidence that an unexpected happening occurred during the foot chase.

Consequently, the ALJ concluded that appellant had not met his burden of presenting sufficient competent and credible evidence to establish that his injury resulted from an undesigned and unexpected traumatic event. The ALJ, therefore, affirmed the Board's initial denial of appellant's application for accidental disability retirement benefits.

Appellant filed exceptions with the Board. On January 11, 2021, after reviewing the record, the Board adopted the ALJ's decision. Accordingly, the Board granted appellant ordinary disability retirement benefits but denied him accidental disability retirement benefits. Appellant now appeals from the Board's decision.

## II.

On appeal, appellant argues that the Board erred, contending the incident that caused his disability was undesigned and unexpected. We reject that

argument because there was substantial credible evidence supporting the Board's finding and its legal conclusion was consistent with well-established law.

An appellate court's review of an administrative agency determination is limited. Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011). Appellate courts will sustain an administrative agency's final decision "unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Mount v. Bd. of Trs., Police & Firemen's Ret. Sys., 233 N.J. 402, 418 (2018) (quoting Russo v. Bd. of Trs., 206 N.J. at 27). In determining whether an administrative agency's action is arbitrary, capricious, or unreasonable, we examine: (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) (quoting In re Carter, 191 N.J. 474, 482-83 (2007)).

An appellate court is not, however, bound by an agency's statutory interpretation or other legal determinations, which are reviewed de novo. Mount, 233 N.J. at 418-19. Nevertheless, we generally accord "substantial deference to an agency's interpretation of a statute that the agency is charged

with enforcing.'" Tasca v. Bd. of Trs., Police & Firemen's Ret. Sys., 458 N.J. Super. 47, 55 (App. Div. 2019) (quoting 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 L. Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010)).

Appellant is a member of the Police and Firemen's Retirement System, N.J.S.A. 43:16A-1 to -68. That pension plan grants 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 [or her] regular or assigned duties." N.J.S.A. 43:16A-7(a)(1). A claimant seeking accidental disability retirement benefits must prove five elements:

1. that he [or she] 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 [or her] usual or any other duty.

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

See also N.J.S.A. 43:16A-7(a)(1). To be traumatic, an event must be "undesignated and unexpected." Richardson, 192 N.J. at 212. "The polestar of the inquiry is whether, during the regular performance of his [or her] job, an unexpected happening, not the result of pre-existing disease alone or in combination with the work, has occurred and directly resulted in the permanent and total disability of the member." Id. at 214.

The controlling issue in this case is whether appellant suffered an injury because of an "undesignated and unexpected" event. The Board accepted the factual findings made by the ALJ, who found that there was no evidence of an unexpected happening. Appellant testified that he had routinely engaged in foot

pursuits throughout his career as a police officer; such pursuits were part of his job duties; and there was no such thing as a normal foot pursuit. Appellant was injured doing exactly what he intended to do and there was no evidence that the injury he sustained resulted from an "unanticipated mishap." Id. at 213. Because there was no "unexpected happening," the ALJ concluded appellant's injury was not caused by an undesigned and unexpected traumatic event. All those findings are supported by substantial credible evidence.

Appellant argues the ALJ misapplied the law governing the traumatic event standard. In that regard, appellant contends the ALJ should not have considered whether there was an "unexpected happening;" rather, the ALJ and Board should have recognized that, under Russo v. Teachers' Pension & Annuity Fund (Russo v. TPAF), 62 N.J. 142 (1973), "accident" and "traumatic event" are interchangeable terms and that an accident can be found in an "unintended external event [o]r an intended external event the consequence of which was unusual in common experience." Under that standard, appellant contends the foot chase, an intended external event, was undesigned and unexpected because it resulted in an injury that was "so disabling," making it unusual in common experience.



This argument is unpersuasive for two reasons. First, the ALJ explicitly recognized that "the terms accident and traumatic event are essentially interchangeable." The ALJ then correctly explained that, under Richardson, the critical issue is whether, "during the regular performance of [appellant's] job, an unexpected happening, not the result of pre-existing disease alone or in combination with the work, has occurred." That is the correct legal standard. See Richardson, 192 N.J. at 214.

Second, appellant's argument is refuted by the reasoning in Russo v. TPAF and Richardson. In Russo v. TPAF, the Court recognized that "[i]njury by ordinary work effort or strain to a diseased heart, although unexpected by the individual afflicted, is not an extraordinary or unusual consequence in common experience." 62 N.J. at 154. Similarly, in Richardson the Court noted that an injury caused by work effort alone is not a traumatic event. 192 N.J. at 213. Together, these cases explain that an injury caused by work effort alone, is not unusual in common experience and, accordingly, not a traumatic event. Thus, appellant's injury, stemming from his efforts during the foot chase, was not unusual in common experience.

Appellant also argues that his case is similar to Richardson and Moran v. Board of Trustees, Police & Firemen's Retirement System, 438 N.J. Super. 346

(App. Div. 2014), and that we should therefore reverse the Board's decision. Appellant's reliance on those cases is misplaced because they are distinguishable. In Richardson, a corrections officer was injured while attempting to subdue an inmate. 192 N.J. at 193. The officer had straddled the inmate to hold him down. Ibid. The inmate continued to kick, punch, and throw his body around, and eventually pulled himself loose. Ibid. The inmate then forcefully jerked up from the ground and knocked the officer backward, injuring him. Ibid. The Court concluded the officer's injury was caused by a traumatic event because the event "was (a) identifiable as to time and place; (b) unexpected and undesigned; and (c) not caused by a pre-existing condition . . . alone or in combination with work effort." Id. at 214-15.

In Moran, a firefighter was injured after kicking down a door to a burning building because he heard voices yelling from inside. 438 N.J. Super. at 349-50. The firefighter was part of the "engine company" that brought hoses to burning buildings and not part of the "truck company" that brought equipment used to forcibly enter those buildings. Id. at 349. The "truck company" was running late so the firefighter attempted to rescue the people inside the building despite not having the proper equipment. Id. at 354. We concluded the firefighter's injury was caused by an undesigned and unexpected event because


the firefighter faced unusual circumstances, including the presence of victims inside the burning building, the "truck company's" delay, and the lack of equipment to break down the door. Ibid.

Here, unlike in Richardson and Moran, appellant's injury did not result from an "unexpected happening." He did not face unusual circumstances like in Moran; nor did he suffer from an unintended mishap like in Richardson. Rather, this case is akin to that of a police officer who suffers "a heart attack while chasing a suspect" because of "work effort, alone or in combination with pre-existing disease," which the Supreme Court has recognized does not constitute a traumatic event. Richardson, 192 N.J. at 213.

In summary, appellant's arguments fail because the finding that there was no "unexpected happening" is supported by sufficient credible evidence in the record and the Board and ALJ correctly applied the law governing what constitutes a traumatic event. Consequently, the Board did not act arbitrarily, capriciously, or unreasonably in denying appellant's application for accidental disability retirement benefits.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION