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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2930-20

MARILYN HOLLOWAY,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES, TEACHERS' PENSION AND ANNUITY FUND,

Respondent-Respondent.

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Submitted April 25, 2022 – Decided May 4, 2022

Before Judges Fasciale and Sumners.

On appeal from the Board of Trustees of the Teachers' Pension and Annuity Fund, Department of the Treasury, TPAF No. x-xxx014.

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

Matthew J. Platkin, Acting Attorney General, attorney for respondent (Donna Arons, Assistant Attorney General, of counsel; Yi Zhu, Deputy Attorney General, on the brief).

PER CURIAM

Marilyn Holloway appeals from a May 12, 2021 final agency decision by the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) denying her application for ordinary disability retirement benefits. The Board adopted findings of fact of an administrative law judge (ALJ), including that Holloway is not totally and permanently disabled from performing her job duties as a teacher. She alleges the Board improperly declined to consider her non-orthopedic conditions in its determination. However, the Board could only consider what was in her initial application and it properly denied Holloway ordinary disability. We therefore affirm and add these brief remarks.

Holloway worked as a teacher starting in 1995. In January 2006, she arrived at her high school and slipped on something wet on the floor. Holloway injured both of her knees and needed surgery to repair the damage. She returned to work during the 2007-08 school year and performed her job as a teacher for approximately seven years until the 2013-14 school year, when she received a change in assignment. Thereafter, she contended she was unable to do her job due to shortness of breath and an inability to stand for any significant time.

On February 18, 2016, Holloway filed an application for accidental disability (AD) retirement benefits, contending she was totally and permanently

disabled. Dr. Arnold T. Berman, M.D., evaluated Holloway on behalf of the Board. The Board then denied Holloway's application for AD retirement. Holloway requested an administrative hearing, and the Board referred the matter to the Office of Administrative Law (OAL). Holloway then voluntarily abandoned her application for AD retirement and requested ordinary disability retirement benefits.[1] Holloway also sought to include alleged non-orthopedic conditions in support of her disability claim; however, she ultimately decided not to re-file a new application but instead proceeded with the pending application. The ALJ then conducted a hearing and took testimony from Holloway and two experts.

Holloway produced testimony from a family practitioner (Dr. David F. Porter, D.O.), who opined that Holloway had two knee surgeries with mild degenerative condition that had worsened since the accident, and permanent back pain that rendered her unable to work as a teacher. The Board produced testimony from Dr. Berman, an orthopedic surgeon, who opined Holloway was not disabled on an orthopedic basis as evidenced by the seven years of doing her job without any treatment thereafter.

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[1] The letter advising the OAL of the switch references a medical examination form, which is not contained in the record.

The ALJ found Berman more believable than Porter because Berman, unlike Porter, had performed orthopedic surgeries. Relying on Berman, the ALJ found Holloway was not totally and permanently disabled from performing her job. Holloway also claimed the Board failed to consider her non-orthopedic injuries; however, the ALJ found that they were never presented to the Board and declined to consider them. The Board issued its final agency decision adopting the ALJ's decision and denying Holloway ordinary disability retirement benefits.

On appeal, Holloway raises the following points for this court's consideration:

> <u>POINT I</u>
>
> THE ALJ AND BOARD ERRED BY THE FAILURE TO CONSIDER NON-ORTHOPEDIC CONDITIONS IN THE DETERMINATION OF WHETHER . . . HOLLOWAY WAS TOTALLY AND PERMANENTLY DISABLED FROM HER JOB DUTIES.
>
>> A. The ALJ's Decision To Not Consider The Non-Orthopedic Conditions Alleged By . . . Holloway Was Solely Based On A False Statement Made By The [Deputy Attorney General] In Summation.
>>
>> B. The Determination That . . . Holloway Did Not Comply With N.J.A.C. 17:3-6.1(f)[-](g) And Thus, The Board Was Without Notice Of Her

Non-Orthopedic Conditions Was An Improper Application Of The Pension Statute Requiring Reversal Of The Board's Denial Of Disability Benefits.

C. The Board Had Actual Notice Of . . . Holloway's Intention To Allege All Conditions Referenced In The Medical Records For Consideration Of Total And Permanent Disability And Its[] Reliance On A Procedural Defense Of The Application Rules Requires Reversal Of The Board's Decision.[2]

POINT II

THE ALJ AND BOARD ERRED IN DENYING DISABILITY BENEFITS AS . . . HOLLOWAY SUBSTANTIALLY COMPLIED WITH REQUIREMENTS.

POINT III

THE BOARD'S DEFENSE THAT IN ORDER FOR THE BOARD TO CONSIDER THE NON-ORTHOPEDIC CONDITIONS, . . . HOLLOWAY WAS REQUIRED TO FILE A NEW APPLICATION IS WITHOUT MERIT, ARBITRARY, CAPRICIOUS AND UNREASONABLE AND INCONSISTENT WITH THE INTENT OF DISABILITY STATUTES.

POINT IV

THE BOARD CONSENTED TO ALLOW . . . HOLLOWAY TO "AMEND HER APPLICATION"

[2] We have altered the capitalization of Holloway's Subpoints A through C to comport with our style conventions but have omitted those alterations for readability.

[FOR] ORDINARY DISABILITY AND THUS, ITS[] FAILURE TO EVALUATE THE NON-ORTHOPEDIC CONDITIONS IS ARBITRARY, CAPRICIOUS, AND UNREASONABLE.

POINT V

THE ALJ AND BOARD'S DETERMINATION THAT . . . HOLLOWAY DID NOT PROVE SHE IS TOTALLY AND PERMANENTLY DISABLED FROM HER JOB IS ARBITRARY, CAPRICIOUS, UNREASONABLE, LACKS SUPPORT IN THE RECORD AND MUST BE REVERSED.

POINT VI

THE ALJ'S FINDING (AND BOARD'S ADOPTION) THAT . . . HOLLOWAY'S RETURN TO WORK SHOWED THAT SHE IS NOT TOTALLY AND PERMANENTLY DISABLED IS CONTRARY TO LAW.

I.

Our 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) (internal quotation marks omitted) (quoting Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)). Thus, on appeal, we are limited to the evaluation of three factors:

> (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of relevant factors.
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> [In re Herrmann, 192 N.J. 19, 28 (2007) (quoting Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 25 (1995)).]

Where an agency satisfies those criteria, we cannot substitute our "judgment for the agency's, even though [we] might have reached a different result." Thompson, 449 N.J. Super. at 483.

"Generally, [we] 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). This is because "a state agency brings experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise." Thompson, 449 N.J. Super. at 483 (quoting Piatt v. Bd. of Trs., Police & Firemen's Ret. Sys., 443 N.J. Super. 80, 99 (App. Div. 2015)). But we are "in no way bound by the agency's interpretation of a statue or its determination of a strictly legal issue." Id. at 484 (quoting Richardson, 192 N.J.

at 196). We review "an agency's interpretation of a statute or case law" de novo. Russo, 206 N.J. at 27.

II.

We first address Holloway's non-orthopedic claims. In Holloway's Points I, III, and IV, she contends the Board should have considered her non-orthopedic disability. Holloway asserts the Board had prior knowledge of her non-orthopedic conditions in the application and is using procedural nitpicks to avoid the merits of her application. This argument fails for two reasons. First, the regulation does not allow for consideration of conditions not explicitly plead in the application. Second, Holloway did not indicate non-orthopedic conditions in her application.

A.

N.J.A.C. 17:3-6.1 establishes the requirements for retirement disability applications.

> An application for a physical disability retirement must be supported by at least two reports. One must be provided by the member's personal or attending physician and the other may consist of hospital records supporting the claim of disability or a report from a second physician; the medical condition described on the member's retirement application must correspond to the medical reports submitted in support of the member's disability retirement application. Further, in the case of a member filing for an [AD] retirement, only

> those disabilities associated with the purportedly-disabling event shall be considered. If the member is denied an [AD] retirement application but qualifies for an ordinary disability retirement based on the original [AD] application, no additional application need be filed, pursuant to (h) below.
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> [N.J.A.C. 17:3-6.1(f)(1).]

And a "member's disability retirement application will be processed on the basis of the medical conditions described on the disability retirement application submitted." N.J.A.C. 17:1-7.10(h). "[W]hile the original disability application is pending," an applicant cannot "file a separate application for retirement, including one based on any other allegedly-disabling condition." N.J.A.C. 17:3-6.1(g). "A separate application can be filed only for a date subsequent to withdrawal of the previous application." Ibid.

We generally defer to an agency's interpretation of its own regulations. See In re Thomas Orban/Square Props., LLC, 461 N.J. Super. 57, 72 (App. Div. 2019) (stating that we "extend substantial deference to an agency's interpretation of its own regulations, reasoning that 'the agency that drafted and promulgated the rule should know the meaning of that rule'" (quoting In re Gen. Permit No. 16, 379 N.J. Super. 333, 341-42 (App. Div. 2005))). Applying that standard here makes obvious that the regulation requires an applicant who asserts other alleged medical conditions than what was alleged in the initial application must

withdraw the application and resubmit. In other words, any "application will be processed on the basis of the medical conditions described" in the application. N.J.A.C. 17:1-7.10(h). And "only those disabilities associated with the purportedly-disabling event shall be considered." N.J.A.C. 17:3-6.1(f)(1). Thus, Holloway needed to identify in her initial application the non-orthopedic and orthopedic conditions that caused her alleged disability.

B.

Holloway's contention that her application gave notice of her alleged non-orthopedic ailments is belied by the initial application in the record. It stated in full:

> I AM UNABLE TO STAND FOR ANY SIGNIFICANT PERIOD OF TIME BECAUSE OF SEVERE INJURIES TO BOTH KNEES SO I CAN TEACH CLASS I ALSO CANNOT WALK THROUGH HALLWAYS TO SWITCH CLASSROOMS AND NEED TO TAKE PAIN MEDICINE DAILY WHICH CLOUDS MY THINKING PROCESS[.]

The Board viewed this application as alleging solely orthopedic conditions, as the ALJ indicated. Holloway contends that she provided medical reports accompanying the application, which demonstrated she also had non-orthopedic conditions. But neither the initial application nor the letter to the Board seeking ordinary disability benefits instead of AD benefits contain any medical records.

The medical reports in the record are from when the accident occurred in 2006 or after the application was filed. The only basis, at least from what can be derived from the record, is what was in the initial application—the orthopedic injury to her knees. We thus conclude that Holloway failed to allege non-orthopedic conditions in her initial application. And in deferring to the Board's expertise and its identification of the conditions alleged as orthopedic, the Board declining to consider Holloway's non-orthopedic conditions was reasonable. See Messick v. Bd. of Rev., 420 N.J. Super. 321, 325 (App. Div. 2011) (stating that we defer to an agency's "technical expertise, its superior knowledge of its subject matter area, and its fact-finding role").

III.

We next address the applicability of the substantial compliance doctrine. "The substantial compliance doctrine operates to prevent barring legitimate claims due to technical defects." H.C. Equities, LP v. Cnty. of Union, 247 N.J. 366, 386 (2021) (internal quotation marks omitted) (quoting Cnty. of Hudson v. Dep't of Corr., 208 N.J. 1, 21 (2011)). We have previously found reasonable compliance for a disability retirement applicant before, Bernstein v. Bd. of Trs., Teachers' Pension & Annuity Fund, 151 N.J. Super. 71, 76-77 (App. Div. 1977),

on which Holloway heavily relies. In evaluating the applicability of the doctrine, we considered:

> (1) the lack of prejudice to the defending party; (2) a series of steps taken to comply with the statute involved; (3) a general compliance with the purpose of the statute; (4) a reasonable notice of petitioner's claim[;] and (5) a reasonable explanation why there was not a strict compliance with the statute.
>
> [Ibid.]

There, the applicant failed to perfect her disability retirement application until twenty-six days after her membership expired. Id. at 74. We noted the lack of prejudice to the pension fund, the steps the applicant and her mother took to apply before the expiration of her membership, and that the pension board had notice of the claim before the membership expired. Id. at 77-78. And, most notably, if the doctrine had not applied in Bernstein, the applicant would have been unable to refile her application because of a then-applicable regulation. See id. at 73-74.

However, here, unlike in Bernstein, there is no need to apply the doctrine. Holloway's application can be refiled with the inclusion of her non-orthopedic

conditions.[3] And, further, the elements of the doctrine are not satisfied. The Board's notice of the non-orthopedic conditions came after the initial application. And while Holloway is correct that submitting a new but similar application will be a procedural hurdle, ultimately Holloway provides no reason—beyond what appears to be convenience—why she did not comply with the regulation. Holloway can still submit a new application and more clearly indicate her alleged non-orthopedic conditions.

IV.

Finally, we address whether the Board's adoption of the ALJ decision was arbitrary, capricious, or unreasonable. We conclude the Board's determination was adequately supported by the record and Holloway failed to meet her requisite showing to challenge the Board's determination.

Ordinary disability retirement benefits may be conferred when a TPAF "member is physically or mentally incapacitated for the performance of duty and should be retired." N.J.S.A. 18A:66-39(b). "The applicant for ordinary disability retirement benefits has the burden to prove that he or she has a

[3] In the Board's brief it states that Holloway would need to demonstrate her incapacity for the performance of duty at the time she stopped working and she would need to change her effective retirement date but would be able to file a new application asserting the non-orthopedic conditions.

disabling condition and must produce expert evidence to sustain this burden." Bueno v. Bd. of Trs., Teachers' Pension & Annuity Fund, 404 N.J. Super. 119, 126 (App. Div. 2008). And in cases with medical evidence and expert testimony—like here—once the court accepts the witness as an expert, "the credibility of the expert and the weight accorded his testimony rest in the domain of the trier of fact." Angel v. Rand Express Lines, Inc., 66 N.J. Super. 77, 85-86 (App. Div. 1961).

The ALJ concluded Berman, the Board's expert, was more credible and relied on his testimony in concluding Holloway was not permanently disabled. The ALJ relied on Berman's testimony because Porter, Holloway's expert, is an osteopath and not an expert in orthopedics. Thus, the ALJ gave greater weight to Berman's testimony because Berman "has performed [o]rthopedic surgeries . . . [and] is the more substantial expert in the field."

The ALJ also relied on the medical evidence in the record. The ALJ found that Holloway's initial knee surgery was a success and Holloway was making progress after the surgery. The ALJ also found Holloway's return to work for seven years, where she had few if any complaints about her necessary work duties, showed that she was not permanently disabled. The ALJ also found that there was no evidence in the record that Holloway's degenerative condition had

worsened since her knee surgeries. The Board adopted these determinations and denied Holloway's application.

The Board's decision was not arbitrary, capricious, unreasonable, or contrary to law. First, the Board determining that Berman's testimony was more compelling than Porter's was reasonable considering Berman was the only expert with a background in orthopedics. Given our deference to the trier of fact in evaluating "the credibility of the expert and the weight to be accorded his testimony," there is no reason to question the Board's evaluation the expert testimony. Angel, 66 N.J. Super. at 85-86. Second, the record provides sufficient evidence supporting the Board's determination. Holloway returned to work for seven years and, according to the medical reports relied upon, her condition was improving from her knee surgeries. As far as Holloway's alleged orthopedic disability, it is apparent that the Board's decision that her accident and subsequent surgery to repair her knees did not affect her ability to perform her work duties and she was not permanently disabled was not arbitrary, capricious, or unreasonable. Thus, Holloway failed to meet her requisite showing.

To the extent we have not specifically addressed Holloway's remaining arguments, we note that they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION