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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3280-19**

L.P.,<sup>1</sup>

Petitioner-Appellant,

v.

**BOARD OF TRUSTEES,  
PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM,**

Respondent-Respondent.

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Argued November 10, 2021 – Decided April 20, 2022

Before Judges Fuentes, Gilson and Gooden Brown.

On appeal from the Board of Trustees of the Public Employees' Retirement System, Department of Treasury, PERS No. x-xx-xxx142.

Samuel M. Gaylord argued the cause for appellant (Gaylord Popp, LLC, attorneys; Samuel M. Gaylord, on the brief).

Austin J. Edwards, Deputy Attorney General, argued the cause for respondent (Andrew J. Bruck, Acting

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<sup>1</sup> We use initials to protect the confidentiality of petitioner's clinical records.

Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Austin J. Edwards, on the brief).

## PER CURIUM

A member of the Public Employees' Retirement System (PERS) is entitled to accidental disability retirement (ADR) benefits under N.J.S.A. 43:15A-43 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." See also Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 212-13 (2007) (clarifying the meaning of the term "traumatic event" and creating a multi-pronged standard that a pension-system member seeking ADR benefits must prove).

In 2013, after petitioner L.P. was deemed unfit for duty as a Rutgers University police officer, she applied for ADR benefits under PERS. In her application, she stated a June 9, 2008 "traumatic event," involving a young boy who accidentally drowned in a campus pond during the performance of her duties, resulted in her "develop[ing] increased anxiety and depression" that led to her permanent and total disability. Although she was approved for ordinary disability retirement benefits, the PERS Board of Trustees (Board) denied her application for ADR benefits, concluding she failed to meet the Richardson

standard because the disabling event was "not undesigned and unexpected," and the disability was "the result of a pre-existing disease alone or a pre-existing disease that [was] aggravated or accelerated by the work effort." See id. at 214 ("The polestar of the inquiry is whether, during the regular performance of [the member's] 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.").

L.P. filed an administrative appeal, and the Board transferred the matter to the Office of Administrative Law (OAL) for a hearing. Following the hearing, an Administrative Law Judge (ALJ) affirmed the denial of her application for ADR benefits, and, on March 18, 2020, the Board adopted the ALJ's decision. L.P. now appeals from the March 18, 2020 final agency decision, arguing she qualifies for ADR benefits because the June 9, 2008 event was "a horror-inducing event" that was "undesigned and unexpected" and the "substantial cause" of her disability. We affirm.

At the two-day OAL hearing, L.P. testified she began working as a Rutgers University police officer on August 18, 1997. Prior to taking the position, L.P. had completed the police academy, which included "swimming and . . . life[-]saving techniques" training. She maintained her CPR and firearm

certifications after her employment with Rutgers. L.P. stated she "loved" working with the Rutgers Police Department, where her responsibilities included conducting routine campus patrols and motor vehicle stops and responding to emergencies, including "accidents," "rescues," and "bomb scares." Her uniform included a "bulletproof vest" and a "gun belt, which carried [her] firearm, pepper spray, baton, radio, [and] gloves."

On June 9, 2008, L.P. responded to a radio call that "a young boy" had entered "Passion Puddle," a pond on the Rutgers campus, and disappeared. She arrived on the scene in approximately "two to three minutes" and encountered a group of children who pointed her toward the area of the pond where they last saw the boy. L.P. removed her gun belt and boots and waded into the pond. She testified that she reached a depth where there was approximately six inches of water above her head. Because the water was "really dirty[,] "muddy[,] and murky[,] " she could not "see through it." Consequently, she used her feet to feel the bottom of the pond because the weight of her vest prevented her from diving headfirst. As the search continued, it became "more difficult" to surface because she kept feeling "heavier." Nevertheless, she was not afraid of the water or concerned for her safety during the search because she "really thought [she] was going to find him."

L.P. never found the boy. She testified that the New Brunswick Fire Department (NBFD) arrived about twenty minutes into her search and directed her to exit the pond. She complied and exited the pond without assistance. The NBFD then used a rescue boat to search the pond and eventually recovered the child's body. L.P. never saw the body because the NBFD used a sheet to cover the boat as they pulled the remains from the water. She stayed on the scene for fifteen or twenty minutes before her lieutenant told her to return to headquarters, change her uniform, and write a report. L.P. followed orders and "completed [her] shift."

L.P. testified that after the incident, she continued working and had no difficulties. However, about three months later, in September 2008, she noticed changes in her behavior. She said she would get "angry" at "little things" and "impatient" with people, including "loved ones." She stated she had "nightmares," experienced trouble "sleeping" and eating, and felt "guilt" and "shame" over not saving the boy. Although L.P. subsequently received awards for her heroic efforts, she felt she did not "deserve [them] because [she] didn't save the boy." When she had "flashbacks" of the event, she became obsessed with thoughts about what she should have done differently and fear at the realization that she could have drowned. Despite these feelings, L.P. testified

that, at the time, she did not discuss the pond tragedy at length with her psychologist or psychiatrist.

L.P. acknowledged that she had been in treatment since 2003 for anxiety and depression. She also reported having a history of early childhood trauma. In 2007, she began treatment for alcohol and marijuana abuse but relied more heavily on alcohol and marijuana to cope after the 2008 event. Nonetheless, she remained on the job and was given even greater work responsibilities.

Sometime in 2011, L.P. started feeling overwhelmed at work. She feared responding to calls because she "didn't know how to handle them" and was criticized for her report writing. In August 2011, L.P. reported to her psychiatrist that she had attempted suicide following a random workplace drug test she thought she had failed. L.P. also testified that, in 2012, she struggled with a new computer reporting system as well as an increased workload due to understaffing. She stated she sometimes went into "a stairwell" to "cry" and testified she was "just frozen with . . . anxiety."

On February 7, 2013, L.P. experienced "an extreme panic attack" at work, after which she went on sick leave for three months. During that time, L.P. attended an outpatient treatment program and, for the first time, discussed the 2008 event in detail with her psychiatrist. She returned to work in May 2013

and performed light duty pending a psychiatric examination. As a result of the examination, L.P. was deemed unfit for duty. She applied for ADR benefits on June 30, 2013, which application was denied by the Board, leading to her administrative appeal.

L.P. produced Dr. David Yusko as a witness and the State produced Dr. Daniel LoPreto, both of whom were admitted without objection as experts in psychology. Both witnesses examined L.P., reviewed her clinical records, and administered psychological tests. However, they provided conflicting opinions regarding the cause of her permanent disability.

Yusko opined that L.P. "met [the] diagnostic criteria for [post-traumatic stress disorder (PTSD)]" as a direct result of experiencing "the drowning event in 2008." According to Yusko, although L.P. suffered from "[m]ajor depressive disorder[,] . . . generalized anxiety disorder, and substance use disorder" prior to the 2008 event, after the 2008 event, she suffered from "[PTSD] in addition to those three [diagnoses]." In support, Yusko pointed out that L.P.'s mental health issues prior to 2008 did not "affect" her job functioning.

In contrast, LoPreto "did not . . . see any evidence to support a diagnosis of PTSD." LoPreto agreed with the diagnosis of "major depressive disorder," "generalized anxiety disorder," and "alcohol . . . and cannabis abuse" resulting

from "her pre-existing history of childhood [trauma]." LoPreto pointed out that L.P.'s major depressive disorder was reported by her treatment providers as recurrent, rather than a single episode.

LoPreto believed "that as a result of those conditions and the functional impairments associated with those conditions," L.P. "was totally and permanently disabled at the time of her work stoppage" and "unable to perform the safety essential functions of a university police officer." However, he "did not believe" that her disability was "significantly and substantially caused by the [2008] work event." According to LoPreto, "[t]o the extent . . . [the] event played any role, [he] consider[ed] it to be an exacerbation or acceleration of her pre-existing anxiety, depression and substance abuse."

Following the hearing, in a February 11, 2020 initial decision, the ALJ concluded the Board correctly denied L.P.'s application for ADR benefits. Initially, the ALJ determined that although L.P. "appeared to be an honest, and credible witness," "the testimony of the parties' expert witnesses was more determinative." In that regard, the ALJ found "the testimony of Dr. LoPreto . . . more persuasive than that of Dr. Yusko."

Next, the ALJ explained that to qualify for ADR benefits due to "a mental injury arising out of a pure mental stressor with no physical impact," a so-called

mental-mental claim, the member must establish the standards in Richardson as well as Patterson v. Board of Trustees, State Police Retirement System, 194 N.J. 29 (2008). Under Patterson, "[t]he disability must 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." Id. at 34. The ALJ noted that "[a] diagnosis of PTSD does not, in and of itself, meet the requirements under Patterson."

The ALJ concluded that L.P. did not "experience[] the type of qualifying event[]" that satisfied the Patterson standard. The ALJ found L.P. was never "under a serious threat to her physical integrity" during the rescue attempt and had no direct experience with the boy's death because she "never saw him" and "never heard [him]." Further, while L.P. testified that "she felt herself getting heavier" during the rescue attempt, "her fear of drowning came to her gradually after the incident."

The ALJ also agreed with the Board that the June 2008 event was not "undesigned and unexpected." The ALJ observed L.P.'s job responsibilities as a Rutgers police officer included "proficiency in the lifesaving application . . . of CPR[,] "providing first aid and . . . performing rescues in cases of accidents."

He recounted L.P.'s testimony that she responded because it "was [her] responsibility." Additionally, L.P. "acknowledged receiving swim training" and training in lifesaving techniques. Thus, according to the ALJ, while L.P.'s rescue attempt was "heroic," it was also "well within the scope of her duties and training."

Finally, the ALJ concluded "[L.P.]'s disability [was] not a direct result of the June 2008 incident but rather result[ed] from a pre-existing disease that was exacerbated or accelerated by the June 2008 incident." In support, the ALJ credited LoPreto's testimony that L.P. did not suffer from PTSD. Instead,

LoPreto's credible testimony demonstrates that [L.P.] is suffering from pre-existing anxiety, depression and drug and cannabis abuse, which was exacerbated by the June 2008 incident. [L.P.] has a history of childhood trauma which includes sexual abuse by her grandfather, physical abuse by her mother, and her father killing her dogs with a hammer in front of her. She received treatment for her pre-existing condition beginning 2003, and the record reflects that her usage of alcohol and cannabis both continued following . . . the June 2008 incident. . . .

While [L.P.] was able to perform her duties without issue prior to the June 2008 incident, . . . LoPreto testified that the work issues she subsequently experienced were unrelated to the incident. He cited [clinical] notes from August 8, 2011, which detailed [L.P.]'s 2011 suicide attempt, noting that it followed a random drug test the day before and was "not related to any kind of PTSD." He added that . . . "a number of

events exacerbated her disability including the work stress, the new computer system, being criticized by her boss for not getting reports done, [and] the reduction in work force. There are a lot of concurrent psycho[ ]social stressors that exacerbated her pre-existing anxiety."

The Board subsequently adopted the ALJ's initial decision, and this appeal followed.

Our review of administrative agency determinations is limited. In re Stallworth, 208 N.J. 182, 194 (2011). We will not reverse an agency's decision "unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011) (quoting In re Herrmann, 192 N.J. 19, 27-28 (2007)). "We are not, however, 'bound by an agency's interpretation of a statute or its determination of a strictly legal issue,' particularly when 'that interpretation is inaccurate or contrary to legislative objectives.'" Mount v. Bd. of Trs. Police & Firemen's Ret. Sys., 233 N.J. 402, 418-19 (2018) (quoting Russo, 206 N.J. at 27). "Instead, we review de novo the Board's interpretation of [N.J.S.A. 43:15A-43] and our case law." Id. at 419.

In Richardson, our Supreme Court held that an individual seeking ADR benefits through PERS or other government retirement systems must establish:

1. that [the member] 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.

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

In Patterson, the Court clarified that a person who develops a permanent mental disability after experiencing a work-related traumatic event may qualify for ADR benefits, even if the event did not involve "physical impact." 194 N.J. at 33. However, as previously stated, in addition to satisfying the Richardson factors, an individual bringing a mental-mental claim must also show that the disability resulted "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." Id. at 34. Furthermore, the traumatic event must "be objectively capable of causing a permanent, disabling mental injury. Put another way, . . . we limit accidental disability recovery to stressors sufficient to inflict a disabling injury when experienced by a reasonable person in similar circumstances." Id. at 49-50.

The Patterson Court cited examples of members able to "vault the traumatic event threshold" predicated on a mental disability due entirely to mental stressors, including "a permanently mentally disabled policeman who sees his partner shot; a teacher who is held hostage by a student; and a government lawyer used as a shield by a defendant." Id. at 50. Additionally, in Patterson, "an officer subjected to death threats from other officers and an officer whose wife and daughter were threatened by gang members met the threshold determination prescribed by that decision." Mount, 233 N.J. at 424. More recently, the Supreme Court clarified that "[i]f the member meets Patterson's threshold requirement, the court then applies the Richardson test; if he or she fails to do so, the court denies accidental disability benefits without applying the Richardson test." Mount, 233 N.J. at 407.

Cases decided after Patterson offer additional examples of when Patterson's high threshold is met. For instance, in Russo, a police officer who developed PTSD after failing to rescue a man from a burning home satisfied the standard. 206 N.J. at 34-35. During the rescue attempt, the officer, who was neither trained nor equipped to confront a major fire, "could hear [the victim] coughing and crying out for help," and later saw firefighters remove the man's remains from the home. Id. at 19-20. The officer's distress over the victim's death was compounded by family members at the scene blaming him for failing to rescue the victim. Id. at 20. Moreover, "[t]he intensity of the fire terrified and disoriented [the officer], singed his uniform, and sent him to the hospital overnight for smoke inhalation." Id. at 34. On these facts, the Court concluded the officer directly experienced a terrifying event that seriously threatened his own life and the life of another. Id. at 33-34.

Likewise, in Mount, a hostage negotiator diagnosed with PTSD after a hostage-taker he had negotiated with for several hours was killed while the two were speaking on the phone also satisfied Patterson's threshold requirement. 233 N.J. at 429. During the final standoff with police, the negotiator could hear the hostage-taker crying out for his help. Id. at 416. Later, he saw officers remove the hostage-taker's body from the home where the standoff had occurred

and place it outside. Ibid. The Court concluded the negotiator's "experience" of a deadly threat to another was "direct and personal" given: (1) the length of the conversations he had with the hostage-taker; (2) his hearing the cries for help right before the suspect was killed; and (3) his view of the body as it was moved outside. Id. at 429.

These cases demonstrate that satisfying Patterson's high threshold in situations involving the actual or threatened death or serious injury of another person requires the member to have had a sensory experience of the person harmed or in peril. See Mount, 233 N.J. at 425 (emphasizing the decision in Russo was premised, in part, on the officer's "exposure to the victim's cries for help, and the relatives' recriminations in the midst of a family tragedy").

Here, the credible evidence supports the Board's determination that L.P. did not experience a traumatic event that satisfies Patterson's threshold requirement. Thus, the Board's decision was neither arbitrary, capricious, nor unreasonable. L.P. testified that she never saw or heard the boy during the rescue attempt and never saw the body after the Nbfd removed the remains from the pond. Thus, L.P. never had a direct personal experience with the victim. Likewise, L.P.'s testimony that she was not in distress during the search, needed no assistance to get out of the water, and required no immediate medical

attention afterward, supports the Board's determination that L.P. was never at risk of serious harm during the rescue attempt.

Because L.P. did not meet the Patterson standard, we need not address whether her claim satisfies the Richardson test.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION