SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3286-20

SHARON COOPER,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES,
TEACHERS' PENSION AND
ANNUITY FUND,

Respondent-Respondent.

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Argued October 11, 2022 – Decided November 28, 2022

Before Judges Whipple and Mawla.

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

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

Matthew Melton, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Melissa H. Raksa, Assistant

Attorney General, of counsel; Matthew Melton, on the brief).

PER CURIAM

Petitioner Sharon Cooper, appeals from a June 9, 2021 decision of the Board of Trustees of the Teachers' Pension and Annuity Fund (the Board), which denied her application for accidental disability retirement benefits. We affirm.

Petitioner taught social studies at Orange High School for over a decade. On May 5, 2016, while supervising a group of students, she was injured when a student attempted to "dunk" a crumpled paper ball into a nearby trashcan by jumping over her. Petitioner was blindsided when the student ran into her; their heads collided violently. Her mouth filled with blood, and after first aid treatment from the school nurse, she was sent to a nearby urgent care center. She missed the next day of work.

In the days that followed, petitioner developed a painful reaction to light and a sensitivity to loud noises. The continual headaches she suffered made it difficult to perform her job, and on several occasions, she had to leave school to return to the urgent care facility or the hospital emergency room.

The next autumn, petitioner was attempting to teach her class when she suffered an episode of elevated blood pressure, which corresponded with one

of her now-frequent headaches. She was directed to see a neurological specialist, Dr. John Robinton, who reported that petitioner suffered from constant headaches, sensitivity to light and sound, and difficulty sleeping. The doctor prescribed medication to help her sleep and instructed her to wear dark sunglasses indoors. Dr. Robinton further instructed her to refrain from using the computer or reading, as such activities exacerbated her condition. However, these measures proved ineffective, and the Orange Board of Education ultimately suspended her from all duties, citing an inability to perform her role. She has not returned to work since November 2, 2016.

The following day, petitioner applied for accidental disability retirement benefits under N.J.S.A. 18A:66-39(c). The Board denied her application, noting that an independent medical evaluation, performed by Dr. Steven Lomazow, determined that it was premature to conclude that petitioner was "totally and permanently disabled" because of unexplored treatment options, such as an increased dosage of medication to address headaches and the use of a continuous positive airway pressure machine to remedy petitioner's insomnia.

Petitioner then sought review of this decision at the Office of Administrative Law. A hearing was held in which petitioner, Dr. Lomazow,

and petitioner's expert, Dr. Anca Bereanu, testified. The Administrative Law Judge (ALJ) found Dr. Lomazow's testimony outweighed that of the other witnesses. Based largely on his conclusions, the ALJ ultimately agreed with the Board that petitioner had failed to establish that she had been "totally and permanently" disabled. This appeal followed.

I.

N.J.S.A. 18A:66-39(c) provides disability benefits to covered teachers who have been "permanently and totally disabled as a direct result of a traumatic event occurring during . . . the performance of [their] regular or assigned duties . . . ." In Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 212-13 (2007), our Supreme Court established a five-part test to determine when an injury was a direct result of a traumatic event. The burden rests on the applicant to prove, by a preponderance of the evidence:

> (1) that [they are] 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 usual or any other duty.
>
> [Ibid.]

Here, the ALJ only reached the first element—whether the applicant is permanently and totally disabled. Our review, therefore, is confined to that issue, and we do not analyze petitioner's arguments insofar as they address other elements.

II.

Our review of administrative decisions is limited. Allstars Auto. Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018). "An agency's determination on the merits 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." Saccone v. Bd. of Trs., Police & Firemen's Ret. Sys., 219 N.J. 369, 380 (2014) (internal quotation marks and citations omitted).

An agency's factual findings "are considered binding on appeal when supported by adequate, substantial and credible evidence . . . ." In re Taylor,

158 N.J. 644, 656 (1999) (quoting Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)). Assuming such evidence exists, deference controls even if we would have reached a different result in the first instance. In re Herrmann, 192 N.J. 19, 28 (2007). "The precise issue is whether the findings of the agency could have been reached on the credible evidence in the record, considering the proofs as a whole." Bueno v. Bd. of Trs, Tchrs'. Pension & Annuity Fund, Div. of Pensions and Benefits, 404 N.J. Super. 119, 125 (App. Div. 2008).

Here, the ALJ determined that "[Dr.] Lomazow persuasively explained the basis for his conclusion that petitioner was not totally and permanently disabled on a neurologic basis." In support of this conclusion, the judge noted the doctor was board-certified in neurology, held a sub-specialty certification in headache medicine, and based his opinion on his personal examination of petitioner in March 2017. In the court's view, Dr. Lomazow "persuasively explained that additional medical treatment potentially could resolve petitioner's medical issues . . . ."

To undo these conclusions on appeal, we must hold them arbitrary, capricious, or unreasonable; in other words, they must lack support from substantial evidence. Saccone, 219 N.J. at 380; Taylor, 158 N.J. at 656.

To that end, petitioner directs us to a section of Dr. Lomazow's cross examination, during which he was informed that Dr. Robinton previously concluded that petitioner was in fact "totally and permanently" disabled. When asked whether this would change his opinion, Dr. Lomazow initially answered "yes," before continuing:

> I would agree with Dr. Robinton, he's a respectable neuro . . . – I have no bones with Dr. Robinton, if that's what he thinks. I mean, the world isn't perfect and I wouldn't treat – . . . I still stand by my opinion that I think there was – when I saw her a month earlier, there was potential for improvement to the point where she wouldn't – may not have been totally and permanently disabled with ideal treatment, but Dr. Robinton was the assigned physician, he's a very capable neurologist, and this is his opinion, so it has weight.

Contrary to petitioner's assertion that this excerpt serves as a clear admission by the witness that his opinion is flawed, it instead strikes us as a measured response by a witness confronted with unexpected evidence. As an appeals court, we are in a poor position to evaluate the nuances of a witness's behavior, and for this exact reason, an ALJ's credibility determinations are entitled to our deference. Taylor, 158 N.J at 660. We do not find the above excerpt sufficient to invalidate the ALJ's credibility findings or the conclusions she drew from Dr. Lomazow's testimony. We also note that Dr. Lomazow was

subsequently provided the opportunity to review Dr. Robinton's conclusions, and after review, advised the court that "my opinion is unchanged . . . [petitioner] is not totally and permanently disabled." Developing the record in this manner is permissible. N.J.A.C. 1:1-14:6.

We are satisfied that petitioner's other evidentiary arguments are similarly flawed and do not overcome the deference we owe to administrative decisions. They do not warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.