SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4564-19

VINCENT TATAREK,

Petitioner-Appellant,

v.

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

Respondent-Respondent.

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Argued October 31, 2022 – Decided November 29, 2022

Before Judges Smith and Marczyk.

On appeal from the Board of Trustees of the Police and Firemen's Retirement System, Department of the Treasury, PFRS No. xx7002.

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

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

PER CURIAM

Petitioner Vincent Tatarek appeals from the final decision of the Police and Firemen's Retirement System of New Jersey Board of Trustees (Board), denying his application for accidental disability retirement benefits (ADRB). On appeal, petitioner argues the Board erred in declaring him ineligible for ADRB and he seeks a reversal of the Board's final decision. We affirm for the reasons that follow.

On April 3, 2017, petitioner suffered a work-related injury while opening a food port[1] at the prison. On March 12, 2019, the Board considered and denied petitioner's application for ADRB based on its determination that his disability was not the result of an "undesigned or unexpected" incident. The Board granted petitioner ordinary disability retirement benefits (ODRB), rather than ADRB.

The Board reviewed petitioner's submissions and concluded: the incident was identifiable as to time and place; it occurred as a result of petitioner's regular and assigned duties; it was not the result of petitioner's willful negligence; the incident was the direct result of the traumatic event; and finally, it did "not rise

[1] A food port is a small rectangular opening leading into a prisoner's cell. There is a door attached to the food port that can be closed and locked. It is located about three feet up from the ground. The port is typically used to transfer food trays in and out of the cell, but in this case, the food port was utilized to allow more airflow into the cell.

to the undesigned and unexpected standard." Petitioner appealed the Board's denial of ADRB, and the matter was transferred to the Office of Administrative Law.

The Administrative Law Judge (ALJ) conducted a hearing and made findings: petitioner had a history of medical challenges, including rotator cuff surgery in 2009 and back surgery in 2016; petitioner was aware that his facility had defective food port doors before the incident; there was no work order previously submitted for the specific door petitioner injured himself attempting to open; petitioner "jerked the portal with some force" causing the injury; petitioner's opening of the food port door was a normal activity within his job description and was done in the usual way; and petitioner elected to try to force the port door open rather than seek safer, alternative means.

The ALJ also found petitioner failed to show the incident was "undesigned and unexpected," and concluded petitioner was not entitled to ADRB. The Board adopted the ALJ's initial decision. Petitioner appeals the Board's final decision, arguing two points: the incident was undesigned and unexpected; and the Board relied on facts not in the record.

Our "review of administrative agency action is limited." Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011) (citing In re

Herrmann, 192 N.J. 19, 27 (2007)). "A reviewing court 'may not substitute its own judgment for the agency's, even though the court might have reached a different result.'" In re Stallworth, 208 N.J. 182, 194 (2011) (quoting In re Carter, 191 N.J. 474, 483 (2007)). We may reverse a decision "if it is arbitrary, capricious, or unreasonable, or if it is not supported by substantial credible evidence in the record as a whole." P.F. ex rel. B.F. v. N.J. Div. of Developmental Disabilities, 139 N.J. 522, 529–30 (1995) (citing Dennery v. Bd. of Educ., 131 N.J. 626, 641 (1993)).

Our role in reviewing administrative actions is generally limited to three inquires:

> (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law;
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> (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and
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> (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 the relevant factors.
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> [Allstars Auto. Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (quoting In re Stallworth, 208 N.J. at 194).]

However, we apply "de novo review to an agency's interpretation of a statute or case law." Russo, 206 N.J. at 27 (citing Toll Bros., Inc. v. Twp. of W. Windsor, 173 N.J. 502, 549 (2002)). See Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992) (agencies have no superior ability to resolve purely legal questions, and a court is not bound by an agency's determination of a legal issue).

Petitioner posits that the Board's decision should be reversed because the incident which caused his injury met the definition of "undesigned and unexpected" set forth in Richardson v. Bd of Tr., Police and Firemen's Ret. Sys., 192 N.J 189, 212-13 (2007). He contends he was unaware of the possibility of injury resulting from him performing a task that he regularly performed in the typical manner he performed it; hence the Richardson standard is met. We are not persuaded.

Accidental disability retirement for police and firemen is governed by N.J.S.A. 43:16A-7. In relevant part, the statute reads:

> [A]ny member may be retired on an accidental disability retirement allowance; provided, that the medical board, after a medical examination of such member, shall certify that 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 and that such disability was not the result of the member's

> willful negligence and that such member is mentally or physically incapacitated for the performance of his usual duty and of any other available duty in the department which his employer is willing to assign to him.
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> [Ibid. (Emphasis added).]

In order for a fact finder to conclude a traumatic event has occurred pursuant N.J.S.A. 43:16A-7, three factors must be present: (1) the event must have been identifiable as to time and place, (2) the event must have been undesigned and unexpected, and (3) the event must have been caused by a circumstance external to the worker (not the result of pre-existing disease that is aggravated or accelerated by the work). Richardson, 192 N.J at 193.

Petitioner did not meet his burden on factor two by proving the incident was "undesigned and unexpected." He claimed the food port door getting stuck was unexpected. The Board rejected this argument, finding petitioner knew the food port doors were sticking, and that several defective port doors had been repaired in the weeks preceding his injury. We find no error here, as the Board's findings are supported by the ample record, and we find the precedent cited by petitioner inapplicable to the facts before us.

Petitioner also contends the Board erred by relying on facts not in the record. Petitioner highlights three findings he contends are unsupported by the

record: (1) the food port doors were sticking and creating problems for users, (2) petitioner could have left to get tools to aid him, and (3) petitioner used more force than warranted to open the food port. We do not agree, as all three findings had support in the record.

Petitioner admitted on cross-examination that he knew some of the food port doors needed repair because they were difficult to open. Additionally, a witness for the petitioner testified the food port doors needed maintenance because the metal door hinges were painted over prior to petitioner's accident. When combined with the remaining ample evidence in the record, the Board had more than sufficient credible evidence to conclude petitioner was aware of the general problem with the food port doors sticking in his work area.

Next, petitioner argues the ALJ's finding that he "could have attempted to obtain other tools to open the food port door, or abandon [the attempt to open the port] until maintenance could address the issue" was unsupported by the record. We disagree. Petitioner's testimony at the hearing demonstrates that he understood the procedure for requesting maintenance for the food port doors.

> PETITIONER: This was the memo printout from the Major about getting all food ports locked on the second shift at 9:00 and making sure that they were all in working order and if they were not in working order then to work -- put a work order in for them and if they weren't fixed immediately to get back to our Sergeant

> or contact him personally, the Major, to let him know that we still had broken food ports at that time if -- if we had.

Petitioner next claims he did not have an opportunity to request maintenance on the door because he injured himself in his initial attempt to open it. The record again contains sufficient credible evidence to support the Board's findings. The petitioner completed an accident report immediately after the incident causing his injury. In it he stated: "[w]hile I was doing my count I was opening the front ports, [the door that caused the injury] was stuck and trying to pull it open I hurt my neck." Petitioner's own written report supports both the Board's inference that petitioner attempted to open the door more than once, and its ultimate finding that he could have waited for maintenance once his initial attempt was unsuccessful.

Finally, petitioner argues the Board's finding that he used more force than warranted to open the port was unsupported by the record. Petitioner's own medical records undermine the argument. Hospital records adduced at the hearing described petitioner's action in attempting to open the food portal door as "jerk[ing] the portal with some force and essentially stress[ing] the upper right trap and neck region."

We conclude that the Board's final decision was not arbitrary and capricious, and that there was more than sufficient credible evidence in the record to support it.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION