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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0219-21**

PEARL DUCK,

Petitioner-Appellant,

v.

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

Respondent-Respondent.

Argued May 16, 2023 – Decided July 20, 2023

Before Judges Messano and Gummer.

On appeal from the Board of Trustees of the Police and Firemen's Retirement System, Department of the Treasury, PFRS No. xx6995.

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

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

PER CURIAM

Appellant Pearl Duck worked as a senior corrections officer for the Department of Corrections. On June 4, 2014, as she attempted to serve breakfast to an inmate, Duck injured her shoulder while manually opening a food port door (FPD), i.e., a small, locked door within the main cell door through which food trays are passed to prisoners. Duck applied for accidental disability retirement (ADR) benefits pursuant to N.J.S.A. 43:16A-7(1).

On March 12, 2019, the Board of Trustees (Board) of the Police and Firemen's Retirement System (PFRS), granted Duck ordinary disability retirement (ODR) benefits but denied Duck's claim for ADR benefits. The Board concluded the event that resulted in her disability did "not rise to the undesigned and unexpected standard," first articulated in Richardson v. Board of Trustees, Police & Firemen's Retirement System, 192 N.J. 189, 212–13 (2007). Duck appealed, and the Board transferred the matter to the Office of Administrative Law (OAL) as a contested case.

Duck was the only witness to testify at the OAL hearing. On July 2, 2021, the administrative law judge (ALJ) issued an initial written decision accepting as fact Duck's testimony, which we now summarize.

Duck worked as a senior corrections officer at the Edna Mahan Correctional Facility, an all-female thirty-two-member unit, for approximately seven years prior to June 4, 2014. On the day of the incident, Duck worked the first shift, from 6:00 a.m. to 2:00 p.m., in the administrative segregation unit. At approximately 7:00 a.m., she was serving an inmate breakfast through an FPD. This was something Duck routinely did as part of her duties, and she testified opening the FPDs could be "tricky."

Duck followed the same procedure she always followed and as she had been instructed to do since the first day she began working at the facility. The FPD did not open on the first try, and Duck thought it could be because she had not inserted the key all the way into the keyhole. She tried again.

Duck could not remember whether during the first or second attempt she heard a "snap" in her left shoulder as she tried to open the FPD. Duck was unaware of any defect with the FPD, and the ALJ noted there was no testimony that the FPD was subsequently inspected or that it needed repair. Duck did not finish her shift and sought immediate medical attention. She never returned to work as a corrections officer.

In reaching her decision, the ALJ summarized the testimony and surveyed the applicable law. Primarily relying on Richardson, 192 N.J. at 212–13, the

ALJ reasoned that "while attempting to open the [FPD]," Duck "was performing her usual work in her usual way." The incident, "although unexpected, was not unusual or extraordinary." The ALJ affirmed the Board's decision to deny ADR benefits to Duck. On August 10, 2021, the Board adopted the ALJ's decision, and this appeal followed.

Duck argues she is entitled to ADR benefits because her shoulder injury was the direct result of a traumatic event that was undesigned and unexpected pursuant to N.J.S.A. 43:16A-7(1) and applicable case law. Duck characterizes the incident as "simply an unexpected fluke, and . . . undesigned mishap." By contrast, PFRS argues substantial, credible evidence supports the Board's conclusion because Duck's shoulder injury "was a common outcome in ordinary experience after unsuccessfully trying to open [the] FPD."

Having considered these arguments in light of the record and applicable legal standards, we affirm the Board's final decision denying Duck's claim for ADR benefits.

We set some well-known guideposts for our review, which is limited. See, e.g., 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)) (noting, "[o]ur review of administrative agency action is limited"). "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) (quoting Russo, 206 N.J. at 27). "The burden of demonstrating that the agency's action was arbitrary, capricious[,] or unreasonable rests upon the p[arty] challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443–44 (App. Div. 2006) (citing McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002)). "[W]e review de novo the Board's interpretation of N.J.S.A. 43:16A-7(1) and our case law." Mount v. Bd. of Trs., Police & Firemen's Ret. Sys., 233 N.J. 402, 419 (2018) (citing Russo, 206 N.J. at 27).

Like other public retirement systems, the PFRS provides for both ODR benefits, N.J.S.A. 43:16A-6, and ADR benefits, N.J.S.A. 43:16A-7. ODR benefits require the employee demonstrate he or she is permanently "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." N.J.S.A. 43:16A-6(1). Alternatively, ADR benefits, which provide the disabled employee with a higher percentage of their final annual compensation, require that the employee demonstrate they are "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." N.J.S.A. 43:16A-7(a)(1). Our courts have concluded that the words "traumatic event" and "direct result" in the statute reflected the Legislature's intent "to make the granting of an accidental disability pension more difficult." Gerba v. Bd. of Trs., Pub. Emps.' Ret. Sys., 83 N.J. 174, 183 (1980) (citing Cattani v. Bd. of Trs., Police & Firemen's Ret. Sys., 69 N.J. 578, 584 (1976)).¹

In Richardson, the Court determined that an individual seeking ADR benefits under N.J.S.A. 43:16A-7(1) must prove:

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

¹ The Public Employees' Retirement System, N.J.S.A. 43:15A-43, like other public employee pensions systems, "conditions the grant of [ADR] benefits on satisfying identical standards to those in N.J.S.A. 43:16A-7." Richardson, 192 N.J. at 192 n.1.

5. that the member is mentally or physically incapacitated from performing his usual or any other duty.

[Richardson, 192 N.J. at 212–13 (emphasis added).]

The Court defined a "traumatic event" as "an unexpected external happening that directly causes injury and is not the result of pre-existing disease alone or in combination with work effort." Id. at 212. Nevertheless, a traumatic event may "occur during ordinary work effort." Id. at 214.

Here, the sole issue is whether Duck's disability was the direct result of a traumatic event that was undesigned and unexpected. Duck maintains the Board's decision "too narrowly construed the 'undesigned and unexpected' definition" set out in Richardson. She cites two of our prior decisions for support.

In Moran v. Board of Trustees, Police & Firemen's Retirement System, a firefighter was disabled upon saving two people from a burning building by kicking in the front door. 438 N.J. Super. 346, 347 (App. Div. 2014). On the date of the incident, Moran was called to what was expected to be a vacant, boarded-up house. Id. at 350. When he arrived alone, the plan was to keep the fire from spreading to other buildings, but contrary to expectation, Moran heard screams from inside the building. Ibid. Moran's typical unit assignment did not

include breaking into burning buildings, but rather his role was to "take[] the hoses into the [burning] building . . . and put[] out the fire." Id. at 349 (alterations in original). As a result, he did not have the necessary special equipment, nor was he trained in forcing entry with his body. Id. at 349–50. We concluded the undesigned and unexpected event was a combination of unusual circumstances: "the failure of the truck unit to arrive, and the discovery of victims trapped inside a fully engulfed burning building, at a point when Moran did not have available to him the tools that would ordinarily be used to break down the door." Id. at 354.

In this case, Duck was not performing a task for which she lacked training or the proper equipment. She was performing a task she had done every day since she had begun to work at the institution.

In Brooks v. Board of Trustees, Public Employees' Retirement System, a school custodian responded to his principal's direction and arrived at the front of the school, where "a group of teenage boys [were] attempting to carry a large unwieldy weight bench weighing approximately 300 pounds into the school." 425 N.J. Super. 277, 279 (App. Div. 2012). He "had not previously seen this piece of equipment, . . . nor had he ever moved any other weight bench." Ibid. The custodian asked the boys to assist him to lift the bench onto a flatbed truck,

and, as they began to do so, the boys "dropped their side of the bench," while the custodian held on, resulting in injuries to his shoulder. Id. at 280.

In reversing the Board's decision denying ADR benefits, we said "the accident was clearly 'undesignated and unexpected,'" because the custodian "was confronted with the unusual situation of a group of students attempting to carry a 300-pound weight bench into the school, and then, after [the custodian] took charge of this activity, the boys suddenly dropping one side of the weight bench, placing its entire weight on [the custodian]." Id. at 283.

Unlike the firefighter in Moran, or the custodian in Brooks, Duck was not performing an unexpected or unusual task that she had never done before as part of her job duties. Nor was it a task for which she had never received training or was ill-equipped or unprepared to execute, as was the firefighter in Moran. Unlike the custodian in Brooks, Duck was not interrupted in performing one of her routine, daily assignments by the unexpected actions of a third party.

Duck contends she met the Richardson standard because the FPD's failure to open was an undesignated and unexpected event. There was no evidence, however, that the FPD malfunctioned in any way. And, as the ALJ noted, there was no evidence that the door was subsequently reported as needing repair or that it was repaired.

In this case, while attempting to open an FPD as she had been trained to do and had routinely done during her years of working as a senior corrections officer, a procedure that Duck testified was "tricky," she inserted the key into the FPD and, when it did not open, she "gripped tighter" and attempted to "pull the [FPD] open." She injured her shoulder. Richardson makes clear that the "work effort itself or combined with pre-existing disease cannot be the traumatic event" justifying an award of ADR benefits. 192 N.J. at 211.

Affirmed.

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



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