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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0380-21**

**LOUIS FREEMAN,**

Petitioner-Appellant,

v.

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

Respondent-Respondent.

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Argued March 20, 2023 – Decided April 14, 2023

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. xx2849.

Christopher A. Gray argued the cause for appellant (Sciarra & Catrambone, LLC, attorneys; Christopher A. Gray, of counsel and on the briefs; Frank C. Cioffi, on the briefs).

Juliana C. DeAngelis, Legal Counsel, argued the cause for respondent (Robert S. Garrison, Jr., Director of

Legal Affairs, attorney; Juliana C. DeAngelis, on the brief).

## PER CURIAM

Petitioner Louis Freeman appeals from a September 14, 2021 final agency decision (FAD) of the Board of Trustees, Police and Firemen's Retirement System (Board), adopting the Administrative Law Judge's (ALJ) initial decision. Freeman was injured following a fall at work and filed for accidental disability retirement benefits. The Board initially denied the request, finding Freeman was not permanently and totally disabled. On appeal, the ALJ found Freeman to be permanently disabled from the performance of his job and entitled to ordinary disability retirement benefits. However, the ALJ determined the accident at issue was not the substantial contributing cause of Freeman's disability and, therefore, he was not entitled to accidental disability retirement benefits. Freeman challenges the Board's decision denying him accidental disability benefits. Based on our review of the record and applicable legal principles, we reverse.

### I.

In December 2002, the Department of Human Services Police Department (HSPD) hired Freeman. He began his career with the HSPD as a patrolman,

later being promoted to detective, and eventually becoming a K-9 officer.<sup>1</sup> In September of 2014, Freeman was promoted to sergeant and became responsible for the midnight shift at the Trenton Psychiatric Facility. As the highest-ranking narcotics K-9 officer, he was also the sergeant for the K-9 unit. He testified working as a K-9 officer required more "activity than a standard police officer" and that one is continuously moving in a "high-paced environment" with the dog.

On March 4, 2015, Freeman testified he walked outside his post to retrieve his canine and slipped on ice. He fell on his right side, landing on his duty weapon holster, and also striking his knee and elbow on the right side. Freeman testified after finishing his shift and returning home, his leg, elbow, and hip were in extreme pain. He was subsequently referred to Dr. P.J. Sandhu, who immediately sent him to Hackettstown Regional Medical Center. At the hospital, Freeman underwent an MRI and received multiple injections of morphine to reduce the pain in his neck and hip. Freeman received medication and was discharged.

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<sup>1</sup> In 2012, Freeman underwent weight loss surgery. Following the surgery, he lost significant weight and reported being in very good shape, attending the gym regularly, and having no physical difficulties attending the physically demanding K-9 training program in 2012.

Following his discharge from the hospital, Freeman continued to treat with Dr. Sandhu. On March 19, 2015, Freeman was sent back to the hospital for MRI studies of his spine. The MRI of his lumbar spine revealed a disc herniation at L4-L5. Following Freeman's second discharge from the hospital, he continued treatment with Dr. Sandhu and also began physical therapy. While receiving treatment at physical therapy, Freeman received an EMG test which showed he had diabetic neuropathy. Freeman expressed he never had any symptoms of neuropathy in his arms or hands prior to the slip and fall.

Following his EMG, Freeman treated with Dr. Behnam Salari. Freeman testified Dr. Salari would not return him to work because of his back injury. However, Dr. Salari attempted to return Freeman to light duty but was unable to do so because there was no light duty available at the HSPD. Freeman testified he attempted to return to work, but the HSPD would not "bring [him] back." Freeman further stated he submitted paperwork seeking modified or adjusted work, but the HSPD never accommodated him.

Dr. Sandhu and Freeman's primary care physician, Dr. Mark Casaia, ultimately concluded Freeman was totally and permanently disabled and unable to complete the functions of a police sergeant. Freeman also completed a

Functional Capacity Evaluation (FCE), which determined he could not return to full duty police work.

On March 29, 2016, Freeman applied for an accidental disability retirement pension to the Board. On July 11, 2017, the Board denied his application for accidental disability. The Board stated Freeman is "not totally and permanently disabled from the performance of [his] regular and assigned job duties." It further noted Freeman is "not physically or mentally incapacitated from the performance of [his] usual or other duties that [his] employer is willing to offer." The Board concluded "there is no evidence in the record of direct causation of total and permanent disability." Freeman subsequently appealed the Board's decision to the Office of Administrative Law.

On September 18, 2017, Dr. David Weiss evaluated Freeman. Dr. Weiss testified Freeman had disc herniations in his lumbar spine at L4-5, and disc bulges at L3-4 and L5-S1 from the slip and fall accident. He also noted Freeman had disc bulges in his cervical spine at C4-5 and C5-6. He further observed disc desiccations at C4-5 and C5-6, which he explained were age-related changes that "we all start going through in our thirties" as the discs lose water content. He stated Freeman suffered an aggravation of the quiescent or asymptomatic age-related degenerative disc disease in his cervical spine. He also testified

plaintiff has chronic post-traumatic greater trochanteric pain syndrome in the right hip along with atrophy in his right thigh. He testified the FCE report confirmed Freeman cannot work as a police officer given his injuries and the physical requirements of his job. After reviewing the MRI films, medical records, and performing his own evaluation, Dr. Weiss opined Freeman suffered an injury to his back, hip, and neck because of the traumatic slip and fall on March 4, 2015. As a result, he can no longer perform the duties of a police officer. Despite a lumbar strain Freeman suffered in 2009, Dr. Weiss noted Freeman had no residuals from that injury and had no restrictions on activities of daily living or his ability to work as a police officer prior to his fall.

Dr. Andrew Hutter, the Board's orthopedist, evaluated Freeman and acknowledged Freeman can no longer work as a police officer. He further agreed the FCE was an objective evaluation, which showed Freeman can no longer perform the duties of a police officer. He also conceded Freeman was able to perform his duties as a police officer prior to the fall. Dr. Hutter testified he did not perform any test or evaluation specific to Freeman's right hip.

Freeman also underwent a neurological evaluation by Dr. Steven Lomazow on May 1, 2017. Dr. Lomazow concluded Freeman did not present

evidence of a totally and permanently neurological disability. However, Dr. Lomazow testified there was an orthopedic problem with Freeman's hip.

On July 9, 2021, the ALJ issued a decision finding Freeman totally and permanently disabled from performing the duties of a police officer. However, the ALJ concluded the March 4, 2015 accident was not the cause of Freeman's condition. Accordingly, the ALJ determined the Board's denial of Freeman's accidental disability was appropriate, but that he satisfied the requirements of ordinary disability. On September 14, 2021, the Board affirmed the ALJ's decision, awarding ordinary disability benefits to Freeman but denying his application for accidental disability retirement benefits.

## II.

Freeman raises the following point on appeal:

### POINT I

THE BOARD ERRED WHEN IT FOUND THAT [FREEMAN'S] SLIP AND FALL ON MARCH 4, 2015[,] WAS NOT THE DIRECT RESULT OF HIS TOTALLY AND PERMANENTLY DISABLING INJURY.

Our role in reviewing a decision of administrative agency action is limited. Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011). Indeed, we presume the validity of the "administrative agency's exercise

of its statutorily delegated responsibilities." Lavezzi v. State, 219 N.J. 163, 171 (2014). For those reasons, we ordinarily do not "disturb an administrative agency's determinations or findings unless there is a clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence." In re Virtua-West Jersey Hosp. for a Certificate of Need, 194 N.J. 413, 422 (2008). "Where . . . the determination is founded upon sufficient credible evidence seen from the totality of the record and on that record findings have been made and conclusions reached involving agency expertise, the agency decision should be sustained." Gerba v. Bd. of Trs. of Pub. Emp. Ret. Sys., 83 N.J. 174, 189 (1980). We review de novo an agency's interpretation of a statute or case law. Russo, 206 N.J. at 27.

"The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the [party] challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006). "[T]he test is not whether an appellate court would come to the same conclusion if the original determination was its to make, but rather whether the factfinder could reasonably so conclude upon the proofs." Brady v. Bd. of Rev., 152 N.J. 197,



210 (1997) (quoting Charatan v. Bd. of Rev., 200 N.J. Super. 74, 79 (App. Div. 1985)).

Our public pension systems are "bound up in the public interest and provide public employees significant rights which are deserving of conscientious protection." Zigmont v. Bd. of Trs., Tchrs.' Pension & Annuity Fund, 91 N.J. 580, 583 (1983). Because pension statutes are remedial in character, they are liberally construed and administered in favor of the persons intended to be benefited thereby. Klumb v. Bd. of Educ. of Manalapan-Englishtown Reg'l High Sch. Dist., Monmouth Cnty., 199 N.J. 14, 34 (2009).<sup>2</sup>

Freeman contends the 2015 incident was the substantial contributing cause of his permanent disability and that the Board erred when it found the slip

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<sup>2</sup> Like all public retirement systems, the Police and Firemen's Retirement System provides for both ordinary and accidental disability benefits. The principal difference between ordinary and accidental disability retirement "is that ordinary disability retirement need not have a work connection." Patterson v. Bd. of Trs., State Police Ret. Sys., 194 N.J. 29, 42 (2008) (citing N.J.S.A. 43:16A-6). Accidental disability retirees receive greater benefits than those provided to ordinary disability retirees. Id. at 43 (citing Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 193 n. 2 (2007)). Ordinary disability retirement benefits entitle a qualified individual to at least forty percent of his final compensation. N.J.S.A. 43:16A-6(2)(b). An award for accidental benefits entitles the recipient to two-thirds of final compensation. N.J.S.A. 43:16A-7(2)(b). The qualifications to be awarded accidental disability retirement benefits under N.J.S.A. 43:16A-7 are therefore more restrictive than ordinary disability benefits.

and fall accident was not the direct cause of his permanent and disabling injury. To establish an entitlement to accidental disability retirement benefits under N.J.S.A. 43:16A-7(a)(1), a claimant must prove:

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 [or her] usual or any other duty.

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

"The polestar of the inquiry is whether, during the regular performance of [petitioner'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 [petitioner]." Id. at 214.

Our Supreme Court clarified the "direct result" language in Gerba, particularly "in cases where . . . the disability may be causally related in some measure to an antecedent or underlying physical condition as well as to the traumatic event." 83 N.J. at 185. There, the Court explained what is now required "is a traumatic event that constitutes the essential significant or the substantial contributing cause of the resultant disability" although "it acts in combination with an underlying physical disease." Id. at 186-87 (emphasis added).

On the same day Gerba was decided, the Supreme Court also issued its opinion in Korelnia v. Board of Trustees of the Public Employees' Retirement System, 83 N.J. 163 (1980). There, the Court clarified that despite the statutory requirement a resulting disability "be 'direct' in terms of its traumatic origins, it does not require that the antecedent trauma be the exclusive or sole cause of the disability." Id. at 170 (citing Gerba, 83 N.J. at 186-87).

We addressed the above Supreme Court holdings in Petrucelli v. Board of Trustees of the Public Employees' Retirement System, 211 N.J. Super. 280 (App. Div. 1986). In Petrucelli, the petitioner's fall caused a non-symptomatic pre-existing spinal condition—spondylolisthesis—to morph into a total disability. Id. at 281-83. We distinguished the case from Gerba, stating "the

claimant in Gerba lost because the undisputed record established that he had symptomatic developmental arthritis for a decade and that the employment event only contributed to the progression of the disease." Id. at 288 (citing Gerba, 83 N.J. at 188-89). We further noted that "[t]he companion case Korelnia, 83 N.J. at 170, also recognized that . . . 'an accidental disability may under certain circumstances involve a combination of both traumatic and pathological origins.'" Id. at 288-89.

We ultimately concluded in Petrucelli that the petitioner satisfied the "direct result" test, despite his pre-existing condition that "triggered a symptom complex resulting in total disability . . . ." Id. at 289. "For all anyone knows," we explained, "without this accident, [petitioner] could have worked to age [sixty-two], as planned, and retired uneventfully . . . . Whether he would have developed low-back symptoms independently of the 1981 fall, and when he would have done so, is entirely speculative on this record." Ibid.

### III.

Here, the Board does not dispute Freeman is permanently disabled. Our inquiry, therefore, is focused on whether Freeman's disability is causally related to a traumatic event thereby qualifying him for accidental disability. We are

satisfied Freeman has met his burden, and we conclude the Board's decision was not supported by the substantial and credible evidence in the record.

After evaluating the credibility of the expert witnesses who testified at the hearing, the ALJ found Dr. Weiss's expert opinion "more persuasive" than the Board's experts, Dr. Hutter and Dr. Lomazo. The ALJ agreed with Dr. Weiss that Freeman was permanently disabled. The ALJ found Freeman was "permanently disabled" from the "cervical, lumbar, and hip conditions, including the aggravation of pre-existing cervical and lumbar conditions, and other cervical and lumbar neuropathy conditions, confirmed through objective testing" which rendered Freeman unable to perform the duties of a police officer.

Ultimately, however, the ALJ disagreed with Dr. Weiss regarding the cause of Freeman's disability and found the slip and fall incident not the direct cause of his disability. Specifically, the ALJ found Freeman's injury was not the direct result of "the traumatic accident of March 4, 2015[, and], was not the substantial contributing cause of [Freeman]'s combined conditions resulting in his disability." However, the ALJ's rationale was not entirely clear.

The ALJ noted, "[i]n general, the presence of a pre-existing condition . . . will result in the denial of accidental disability." Although the ALJ also referenced our decision in Petrucelli, it appears she applied an overly rigid

standard and ruled against Freeman simply because there was evidence of certain pre-existing conditions, even though the only evidence presented demonstrated the conditions were asymptomatic. Moreover, there was no expert testimony suggesting the otherwise quiescent pre-existing conditions were so substantial as to overshadow the impact of the accident on Freeman's injury. In fact, the ALJ acknowledged "[n]either [Freeman's] cervical spine nor lumbar spine issues had disabled him, as [he] was working full duty, without restrictions, at the time of his fall." The ALJ further noted there was "no evidence of a hip condition prior to the accident, and the fall most likely was the cause the L4-L5 herniation."

Nevertheless, the ALJ went on to reference Freeman's "pre-existing . . . lumbar condition[]" despite previously noting Freeman had a prior sprain in his lumbar spine, which resolved.<sup>3</sup> The ALJ further noted "[t]he hip and the L4-L5 herniation from the accident, cannot be looked upon as the only disabling conditions resulting in Freeman's inability to complete his duties as a police officer." The ALJ pointed to the pre-existing cervical issue and neuropathy conditions, which affected Freeman's upper and lower extremities. However,

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<sup>3</sup> The Board's counsel conceded at oral argument that any issues from Freeman's 2009 lumbar strain had resolved and there was no evidence of any degenerative disc disease in his lumbar spine.

the ALJ did not specify how those conditions impacted her analysis of the accidental disability determination. As discussed below, the record does not reflect that Freeman's cervical desiccations or neuropathy were symptomatic or so significant that it was likely to manifest itself in the future in a manner that would have caused Freeman to be disabled, even if there was no accident. There is also no medical evidence Freeman suffered from other "disabling conditions."

There is no indication in the record Freeman's pre-existing cervical degeneration was symptomatic in any way. More importantly, there was no expert testimony the degeneration was so significant that it was more likely than not destined to become symptomatic and disabling, independent of the March 2015 traumatic fall. In fact, Dr. Weiss described the disc desiccations at C4-5 and C5-6 as age-related changes and characterized it as something "we all start going through in our thirties" as the discs lose water content. There is also no indication in the record from the Board's experts the disc desiccations were so profound it was a predominant cause of Freeman's disability. In fact, Dr. Hutter, in reviewing the cervical MRI, noted, "[t]he radiologist did state there were some degenerative changes at two of the discs. I guess I did not appreciate that

as much as the radiologist did . . . ." Dr. Lomazo did not review the MRI films.<sup>4</sup> He commented, based on his review of the radiology reports, "[e]verybody has degenerative changes. And . . . Freeman's MRI findings were entirely consistent with the degenerative changes of anyone else his age walking around . . . ." Furthermore, Dr. Lomazo testified that neuropathy can be caused by trauma. He further stated there is no indication Freeman's diabetes caused him to be disabled. He also did not find any evidence that Freeman's neuropathy was a disabling condition. Additionally, Dr. Weiss did not contend Freeman was disabled because of any neuropathy.

In short, there is no indication Freeman's pre-existing conditions were of any major significance based on the expert testimony from both parties. Similarly, the record is bereft of any testimony Freeman's neuropathy was somehow disabling. The circumstances of this case concerning Freeman's pre-existing conditions are analogous to the petitioner's pre-existing condition in Petrucelli, coupled with the fact that every expert acknowledged that prior to the traumatic fall, Freeman was serving in the rigorous capacity of a K-9 officer

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<sup>4</sup> Dr. Hutter testified Freeman was not disabled orthopedically (which was rejected by the ALJ), but he "may" be disabled due to his neurologic complaints, although he indicated that is beyond his expertise. Dr. Lomazo, who the ALJ also did not find as credible as Dr. Weiss, determined Freeman was not disabled neurologically.




without any limitations. Lastly, like Petrucelli, there was no expert testimony here to suggest Freeman would have become symptomatic from his pre-existing arthritis or other conditions, independent of the accident at issue.

Based on the foregoing, we are satisfied the record amply supports the conclusion the March 4, 2015 accident was the "essential significant or substantial contributing cause" of Freeman's disability, and the Board's decision was not supported by substantial evidence in the record. Accordingly, Freeman is entitled to accidental disability retirement benefits.

To the extent we have not specifically addressed any other arguments, it is because we conclude they are of insufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Reversed. We do not retain jurisdiction.

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

  
CLERK OF THE APPELLATE DIVISION