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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1008-21**

JULIO CAMACHO,

Petitioner-Appellant,

v.

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

Respondent-Respondent.

Submitted March 27, 2023 – Decided April 17, 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. xx4608.

Limsy Mitolo, attorneys for appellant (Marcia J. Mitolo, of counsel and on the briefs).

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

PER CURIAM

Petitioner Julio Camacho appeals from a November 9, 2021 final agency decision of the Board of Trustees, Police and Firemen's Retirement System (Board), adopting the Administrative Law Judge's (ALJ) initial decision. Based on our review of the record and applicable legal principles, we affirm.

I.

Camacho was hired as a County Corrections Officer with the Hudson County Department of Corrections on October 6, 1997. On March 19, 2013, Camacho was a passenger in a corrections van in Jersey City when a bus impacted the van in a head-on collision. Camacho struck his head and shoulder, resulting in a right shoulder fracture and neck fracture. He complained of limited range of motion and severe pain in his cervical spine, lumbar spine, and right hip.

Camacho filed for accidental disability on March 30, 2017 and the Board granted him ordinary disability retirement benefits, effective April 1, 2017. The Board, however, denied him accidental benefits. The Board found Camacho's "reported disability [was] not the direct result of a traumatic event, as the event [was] not caused by a circumstance external to the member. [Camacho's] disability claim is the result of a pre-existing disease alone or a pre-existing disease that [was] aggravated or accelerated by the work effort."

On November 14, 2017, the Board denied Camacho's request for reconsideration and granted a request for a hearing. An appeal before the Office of Administrative Law ensued. Camacho testified he was eventually cleared for work based on his neck injury but could not return to work based on his shoulder complaints because there were no positions available for modified duty. Camacho stated he was physically active before the accident and had no prior injuries or complaints concerning his shoulder.

Dr. Andrew Willis, an orthopedic surgeon, testified on behalf of Camacho. Dr. Willis reviewed medical records, MRIs, and examined Camacho on March 24, 2014. He noted Camacho had "demonstrated arthritis that was characterized by bone spurring and deformity" and a "rotator cuff with advanced degenerative changes in the [shoulder] joint." He concluded Camacho's complaints were the "result of a traumatic exacerbation of underlying, previously asymptomatic pre-existing arthritis of the shoulder." He noted arthritis takes "a significant period of time" to develop, and the incident caused the pre-existing condition to become worse. Camacho initially underwent an injection, which did not provide symptomatic relief. Accordingly, Dr. Willis performed a right shoulder replacement. He conceded Camacho "may" have needed the surgery even without the accident. He opined the accident "accelerated the time frame" for

the surgery. Ultimately, he opined the need for surgery was "directly causally related" to the accident.

Dr. Andrew Hutter, an orthopedic surgeon, testified on behalf of the Board. Dr. Hutter acknowledged Camacho had no prior shoulder complaints. He noted Camacho's pre-operative and post-operative diagnosis was "degenerative joint disease and osteoarthritis of the right shoulder." He observed significant degenerative changes take years to develop. He stated although Camacho was permanently disabled from his full duties as a corrections officer, the March 19, 2013 accident "was not the primary cause of his disability." Rather, the cause of Camacho's disability was the underlying degenerative arthritis. Additionally, Dr. Hutter testified the incident contributed to, but was not the "causative factor" of Camacho's symptoms. Dr. Hutter opined because of the amount of arthritis in his shoulder, Camacho would have likely become symptomatic and needed surgery even in the absence of the accident.

On October 13, 2021, the ALJ issued a decision, discussed more fully below, affirming the Board's decision to deny Camacho's application for accidental disability benefits. On November 8, 2021, the Board adopted the ALJ's decision.

Camacho raises the following points on appeal:

POINT I

THE [ALJ] AND THE BOARD FAILED TO PROPERLY APPLY THE RELEVANT CASE LAW RELATING TO THIS APPEAL.

POINT II

THE BOARD OF TRUSTEES ADOPTED A DECISION THAT WAS UNREASONABLE AS IT IGNORED THE CREDIBLE EVIDENCE THAT [CAMACHO]'S PRE-EXISTING ARTHRITIS WAS ASYMPTOMATIC PRIOR TO THE WORK INCURRED INJURY.

II.

"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 Denney v. Bd. of Educ., 131 N.J. 626, 641 (1993)). "In reviewing a final agency decision, such

as that of the Board . . . , we defer to factfindings that are supported by sufficient credible evidence in the record." McClain v. Bd. of Rev., Dep't of Lab., 237 N.J. 445, 456 (2019) (citing Brady v. Bd. of Rev., 152 N.J. 197, 210 (1997)). "[I]f substantial evidence supports the agency's decision, 'a court may not substitute its own judgment for [that of] the agency's even though the court might have reached a different result'" In re Carter, 191 N.J. 474, 483 (2007) (quoting Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992)). We generally "defer to an agency's expertise and superior knowledge of a particular field." Ibid. (quoting Greenwood, 127 N.J. at 513).

"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) (citing McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002)). "[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, 152 N.J. at 210 (quoting Charatan v. Bd. of Rev., 200 N.J. Super. 74, 79 (App. Div. 1985)).

Camacho contends the 2013 auto accident was the substantial contributing cause of his permanent disability. 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 v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 212-13 (2007).]

"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 v. Board of Trustees of the Public Employees Retirement System, 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. 174, 185 (1980). 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). Additionally, in Gerba, the Court stated "[w]here there exists an underlying condition such as osteoarthritis which itself has not been directly caused, but is only aggravated or ignited, by the trauma, then the resulting disability is, in statutory parlance, 'ordinary' rather than 'accidental' and gives rise to 'ordinary' pension benefits." Id. at 186.

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.

The Board does not dispute Camacho is disabled and entitled to an ordinary disability pension. Our focus, therefore, is whether Camacho's disability was caused by the accident, thereby entitling him to accidental disability. For the reasons discussed below, we are satisfied the Board's decision was not arbitrary, capricious or unreasonable.

The thrust of Camacho's argument is his shoulder arthritis was asymptomatic prior to the accident, and therefore, the accident was the substantial contributing cause of his total disability, much like the petitioner in Petrucelli. Camacho further contends the ALJ's decision that his arthritis was the primary cause of his disability was speculative. He argues the "mere existence of pre-existent arthritis" is not a basis for the Board to deny accidental disability when the condition is quiescent, and there is no evidence it would become symptomatic. We are unpersuaded by Camacho's arguments.

The ALJ did not find Dr. Willis to be a credible witness, despite his background and experience.¹ The ALJ noted his "general lack of familiarity with [Camacho]." The ALJ observed that Dr. Willis conceded Camacho may

¹ The ALJ noted, Dr. Willis "was not offered as an expert in any field, and was not accepted as an expert in any field." Despite this determination, the ALJ summarized Dr. Willis' testimony and made credibility findings.

have needed surgery even if he was not involved in the accident. The court was unpersuaded by Dr. Willis' testimony the accident was the cause of Camacho's disability.

Conversely, the ALJ found Dr. Hutter to be "deeply knowledgeable and highly credible." The ALJ determined Dr. Hutter's testimony was credible that Camacho's "significant degenerative changes" in his right shoulder took years to develop and was the cause of the disability, not the accident. Stated differently, the ALJ determined the accident was not the essential significant or substantial cause of Camacho's disability. Rather, the accident exacerbated Camacho's arthritis.

We affirm substantially for the reasons set forth in the ALJ's decision as adopted by the Board. We add the following. We agree the mere presence of pre-existing arthritis is not, in itself, a basis for the Board to deny an application for accidental disability. Likewise, the fact that an individual's pre-existing condition is asymptomatic is not dispositive in determining whether an accident is the cause of a disability. In that regard, Camacho's reliance on Petrucelli is misplaced. The facts and credible expert testimony in this case are far afield from those in Petrucelli. In Petrucelli we noted, "[w]hether [petitioner] would have developed low-back symptoms independently of the [accident], . . . is

entirely speculative on this record." 211 N.J. Super. at 289. Here, there was no such speculation by the ALJ. The record is replete with such evidence. Specifically, the ALJ found credible Dr. Hutter's testimony wherein he determined Camacho had significant "degenerative joint disease and osteoarthritis of the right shoulder." Moreover, although he determined Camacho was disabled, he opined the March 19, 2013 accident "was not the primary cause of his disability." Rather, Dr. Hutter testified the incident contributed to, but was not the primary cause of appellant's symptoms. Lastly, Dr. Hutter opined because of the amount of arthritis in his shoulder, Camacho would have likely become symptomatic, independent of the accident. Accordingly, unlike Petrucelli, the ALJ had a basis for his determination the accident was not the substantial cause of Camacho's disability.

We therefore determine Camacho failed to satisfy his burden in proving the Board's final decision was arbitrary, capricious, or unreasonable. The Board's conclusions were amply supported by sufficient and credible evidence in the record. Because we conclude there was substantial credible evidence to support its final decision, we will not substitute our judgment for the Board, and we defer to its expertise. In re Carter, 191 N.J. at 483.

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

Affirmed.

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



CLERK OF THE APPELLATE DIVISION