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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1049-20**

JENNIFER GILES,

Petitioner-Appellant,

v.

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

Respondent-Respondent.

Argued November 1, 2022 – Decided March 7, 2023

Before Judges Rose and Gummer.

On appeal from the Board of Trustees of the Police and Firemen's Retirement System, Department of the Treasury, PFRS No. xx6095.

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

Juliana C. DeAngelis, Staff Attorney, argued the cause for respondent (Robert S. Garrison, Jr., Director of Legal Affairs, attorney; Juliana C. DeAngelis, on the brief).

PER CURIAM

Petitioner Jennifer Giles appeals from a final agency decision of the Board of Trustees, Police and Firemen's Retirement System of New Jersey (the Board), denying her application for accidental disability retirement benefits. Petitioner contends the Board erred in finding the incident on which she had based her claim was not a traumatic event in that it was not "undesigned and unexpected." See Richardson v. Bd. of Trs., 192 N.J. 189, 212 (2007). Discerning no error in that finding, we affirm.

I.

In November 2006, petitioner was employed by the Department of Corrections as a senior corrections officer at the Central Reception Assignment Facility (CRAF) in West Trenton. She had worked at CRAF for two to three years. As a senior corrections officer, petitioner was responsible for "the care and custody of the inmates to make sure they got in and out of the cells safely to doctor's appointments, transit appointments, just the regular runs of the institution."

One of petitioner's job duties was to control the shift mechanism that opened and closed the cell doors. The mechanism had two levers. The first lever was utilized to "set the doors" of the cell "that you want to open." The

second lever operated the selected cell door, "lift[ing] it up to open it." To operate the mechanism, petitioner would press the first lever into the corresponding cell number and then lift the second lever over her head to open the cell's door.

On November 25, 2006, petitioner was assigned to work the 6:00 a.m. to 2:00 p.m. shift in the South II section of CRAF. Because she had worked on that side of the building "quite often," petitioner was "familiar" with that section of CRAF. The inmates in South II "do a lot of moving during the course of the day" and are "in and out [of] those cells constantly all day." Consequently, corrections officers were "up and down controlling the shift mechanism and letting the inmates out during the course of the day." The shift mechanism was "constantly being opened all through the course of an eight[-]hour shift." The guard whom petitioner relieved on November 25, 2006, gave no indication he had experienced any issues with the cell doors or the shift mechanism and had not entered in the officers' logbook anything about having a problem with the mechanism.

In an "Employer's First Report of Accidental Injury," which petitioner completed on November 25, 2006, petitioner stated that at 6:35 a.m. that day, she was "letting out my runners[;] the lever got stuck and [she] got a pain in her

lower back and in the right side leg."¹ She also gave a statement that day, which was recorded in a "witness report" as follows: petitioner "was opening the cells to let the runners out. When [she] went to let the third [r]unner [out,] the lever got stuck. [She] felt a [p]ain in [her] back that went to [her r]ight leg." Petitioner's supervisor "investigated [the] scene, checked levers in box[,] and described the accident site as being "normal."

Eleven years later, on November 29, 2017, petitioner applied for accidental disability retirement benefits. In her application, she made the following statement:

AS A RESULT OF TWO LEVERS JAMMING AND THE FORCE OF THE KICK BACK I SUSTAINED AN INJURY TO MY LOWER BACK WHICH RESULTED IN A TWO LEVEL LOW BACK FUSION AND IMPLANTING AND REMOVING A SPINAL CORD STIMULATOR WHICH PREVENTS ME FROM PERFORMING THE REGULAR AND ASSIGNED JOB DUTIES OF A SENIOR CORRECTIONS OFFICER.

In a September 25, 2018 letter, the Secretary of the Board informed petitioner's attorney the Board had determined petitioner was "permanently and totally disabled from the performance of her regular and assigned duties" but

¹ A "runner" is an inmate "assigned to interact with the inmates down the tier" and who can communicate with the corrections officer about any problems in opening cell doors.

was postponing action on her application for accidental disability retirement benefits because it had insufficient information to render a decision on her application. The Board asked petitioner's counsel to provide records regarding a 2015 automobile accident and a 2017 fall petitioner had experienced. Petitioner began to collect ordinary disability retirement benefits effective December 1, 2017.

In a December 11, 2018 letter, the Board's Secretary advised petitioner's counsel the Board had denied petitioner's application for accidental disability retirement benefits. The Board reaffirmed its prior determination that petitioner was "totally and permanently disabled from the performance of her regular and assigned duties." It also found her "disability [wa]s a direct result of the incident of November 25, 2006," and that "the incident is identifiable as to place and time, occurred during and as a result of her regular assigned duties and is not the result of her willful negligence." The Board deemed the application timely due to the "delayed manifestation" of her injuries. The Board denied her application for accidental disability retirement benefits because it found "the incident . . . did not meet the undesigned and unexpected standard."

On February 1, 2019, petitioner filed an administrative appeal, which was transferred to the Office of Administrative Law as a contested case. An

administrative law judge (ALJ) conducted a hearing on January 10, 2020. The sole issue before the ALJ was whether the November 25, 2006 incident was undesigned and unexpected. Petitioner testified on her own behalf and presented the testimony of Sherry Leaks, a former sergeant at CRAF, regarding her familiarity with the policies and procedures in place at the facility in 2006.

During her direct examination, petitioner described the November 25, 2006 incident.

[PETITIONER]: At 6:35, I get up to let the inmates out, I unlock my shift mechanism, open up the lever and as I set it to let my runners out, I pull it and it got jammed and that's when I injured my back.

[PETITIONER'S ATTORNEY]: When you say, "it got jammed," which lever got jammed, the one that you use your right hand with?

[PETITIONER]: The one that I use my -- my yeah - my left hand -

[PETITIONER'S ATTORNEY]: Okay.

[PETITIONER]: -- right hand, it's the (out of microphone range).

[PETITIONER'S ATTORNEY]: So, the second lever?

[PETITIONER]: Yes, to open up the cell. One is to set the door and the other is to open it.

[PETITIONER'S ATTORNEY]: Okay. So, were you able to set the door?

[PETITIONER]: I was able to set the door, I was able to -

[PETITIONER'S ATTORNEY]: With no incident?

[PETITIONER]: With no incident.

[PETITIONER'S ATTORNEY]: Okay. Now, the door is set.

[PETITIONER]: Right.

[PETITIONER'S ATTORNEY]: What happens?

[PETITIONER]: I go to use the lever to open it, and it jams, it locks up, and that's when I injured my back.

Petitioner testified that levers in the shift mechanism had gotten stuck in a similar manner multiple times before the November 25, 2006 incident. She referenced levers getting stuck on other floors in South II and in the South III section of CRAF.

[PETITIONER'S ATTORNEY]: Okay. And, the levers, the way that you describe that it got stuck, had that ever happened to you before?

[PETITIONER]: Yeah, it happens multiple times by the institutions, it has happened, it's got stuck, but never --

[PETITIONER'S ATTORNEY]: In other places?

[PETITIONER]: On other floors, yes, South II, if you were on South III, yes-

Petitioner was unaware of any issues with the shift mechanism on that date and had used it without incident earlier in her shift. She testified that after she was injured, her supervisor "came, [and] he verified that it was a problem with the levers"

During cross-examination, the deputy attorney general (DAG) asked petitioner about the November 25, 2006 reports regarding the incident and how they did not include a description of "any kind of a kick back or push back or anything like that" Petitioner responded:

It's no - it's really no - when you say, "kick back," I'm thinking that you're referring to the kick back of a gun.

. . . .

Those levers don't have that type of kick back. Once they have jammed, they're not going nowhere, you're going - you're someplace before those levers do. If those levers are locked, they're locked, it's not - it's not a kick back like a jerk or anything like that.

The DAG asked petitioner about her use of the phrase "kick back" in her accidental disability retirement benefits application.

[DAG]: In this document under the "Disability Comments," it reads "As a result of two levers jamming and the force of the kick back," you see that there, correct?

[PETITIONER]: Yes.

[DAG]: Okay. Now, we just stated - you just stated that the lever didn't have any type of kick back.

[PETITIONER]: Right. So, when I say, "kick back," I guess I might have been talking about from the way it just got so hard and it - so, in other words, when I'm opening up that - that lever, so I've already had this one set, I open up this one, so when it locked, I probably was referring to my body as the jerking that I felt from that as a kick back, because this locked - this locked. So, when my body did that, because I'm opening this up with force, and all of a sudden now it was locked, so my body's like uhh, so when I say, "kick back," I'm sure the kick back was with my own body not with this, because this locks. This right here, it's not going anywhere, but once I had this set and I'm pulling it and when it locked like that, my body jerked. When my body jerked, that's when I felt that snap and that pain down my leg.

Leaks testified about the logbook. According to Leaks, although any "incident" was supposed to be documented in the logbook, the absence of documentation did not mean an incident had not occurred. She also testified that CRAF was "a very old jail," which "always ha[d] mechanical issues," including mechanical issues regarding "doors, all lock[s], gates, all kinds of stuff" and the levers. Leaks testified she had witnessed problems with "mechanisms" and that the jail has "a lot of different issues."

In an initial decision issued after the record had closed, the ALJ found petitioner's testimony "regarding her previous difficulty in using the levers at

CRAF as well as her knowledge of others having difficulty with the levers and of the levers getting stuck 'multiple' times before" credible and consistent with Leaks's testimony. However, the ALJ found petitioner's testimony on the "key issue" of "the lever jamming on the date of the incident" to be "less than fully reliable or credible" because it was "not fully consistent with the other evidence in the record." The ALJ noted that in her application, petitioner had attributed her injury to the "two levers jamming and the force of the kick back. . . ." At the hearing, petitioner testified she had had no difficulty setting the first lever and that only the second lever had jammed. During her direct examination, petitioner said nothing about a "kick back," but during cross-examination, petitioner, as the ALJ found, "attempted to explain that the kick back referred to her own body and not the levers." The ALJ also found petitioner's testimony that her supervisor had "verified that it was a problem with the levers" was "not supported by any evidence in the record" and was contradicted by her supervisor's report, in which he stated he had checked the levers and had described the accident scene as "normal."

The ALJ concluded petitioner's injury did not result from an "undesigned or unexpected event. [Petitioner] denie[d] that the lever recoiled. Rather, she claim[ed] it simply stopped moving as she attempted to push it up – her ordinary

work effort." The ALJ also found petitioner had failed to prove "the unanticipated consequence of her ordinary work activity" – "[a] lower back injury resulting from pushing over her head a 'fairly heavy' metal lever with 'force'" – was "not extraordinary or unusual in common experience." Thus, the ALJ concluded petitioner had not established that the November 25, 2006 incident was undesigned or unexpected or that her injury was the result of a "traumatic event" and affirmed the Board's denial of petitioner's application for accidental disability retirement benefits.

In a November 10, 2020 letter, the Board Secretary advised petitioner's counsel the Board had adopted the ALJ's initial decision. Petitioner now appeals, contending the Board erred and the incident that caused her disability was undesigned and unexpected. We reject that argument because substantial credible evidence supports the Board's finding and the Board's legal conclusion was consistent with well-established law.

II.

Our review of an administrative agency determination is limited. Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018). We will sustain a board's decision "unless there is a clear showing that it is arbitrary,

capricious, or unreasonable, or that it lacks fair support in the record." Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011) (quoting In re Herrmann, 192 N.J. 19, 27-28 (2007)); see also J.K. v. N.J. State Parole Bd., 247 N.J. 120, 135 (2021). We defer to an agency's "[r]easonable credibility determinations." In re Pontoriero, 439 N.J. Super. 24, 35 (App. Div. 2015); see also Oceanside Charter Sch. v. Dep't of Educ., 418 N.J. Super. 1, 9 (App. Div. 2011) (finding "[t]he choice of accepting or rejecting testimony of witnesses rests with the administrative agency, and where such choice is reasonably made, it is conclusive on appeal"). Under that standard, our review is guided by three inquiries: "(1) whether the agency's decision conforms with relevant law; (2) whether the decision is supported by substantial credible evidence in the record; and (3) whether, in applying the law to the facts, the administrative agency clearly erred in reaching its conclusion." Conley v. N.J. Dep't of Corr., 452 N.J. Super. 605, 613 (App. Div. 2018). "[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." Charatan v. Bd. of Rev., 200 N.J. Super. 74, 79 (App. Div. 1985); see also Sager v. O.A. Peterson Constr., Co., 182 N.J. 156, 164 (2004).

We are not bound by an agency's statutory interpretation or other legal determinations, which we review de novo. Mount v. Bd. of Trs., Police & Firemen's Ret. Sys., 233 N.J. 402, 418-19 (2018). Nevertheless, we generally accord "substantial deference to an agency's interpretation of a statute that the agency is charged with enforcing." Tasca v. Bd. of Trs., Police & Firemen's Ret. Sys., 458 N.J. Super. 47, 55 (App. Div. 2019) (quoting Richardson, 192 N.J. at 196). "Such deference has been specifically extended to state agencies that administer pension statutes" because "a state agency brings experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise." Piatt v. Police & Firemen's Ret. Sys., 443 N.J. Super. 80, 99 (App. Div. 2015) (quoting In re Election L. Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010)).

Petitioner is a member of the Police and Firemen's Retirement System. See N.J.S.A. 43:16A-1 to -68. That pension plan grants accidental disability retirement benefits if "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 [or her] regular or assigned duties." N.J.S.A. 43:16A-7(a)(1). Accordingly, a claimant seeking accidental disability retirement benefits must prove five factors:

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; an[d]
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.]

See also N.J.S.A. 43:16A-7(a)(1); Mount, 233 N.J. at 421. If the Board finds a claimant "is not eligible for accidental disability since the incapacity is not a direct result of a traumatic event occurring during and as a result of the performance of the [claimant's] regular or assigned duties," the claimant "will be retired on an ordinary disability retirement allowance." Mount, 233 N.J. at 419 n.4 (quoting N.J.A.C. 17:4-6.7).

To be traumatic, an event must be "undesigned and unexpected." Richardson, 192 N.J. at 212. "The polestar of the inquiry is whether, during the regular performance of his [or her] 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 member." Id. at 214; see also Mount, 233 N.J. at 421 (same). "[A] traumatic event can occur during usual work effort, but that work effort itself . . . cannot be the traumatic event." Richardson, 192 N.J. at 211 (emphasis in the original); see also Russo v. Tchrs.' Pension & Annuity Fund, 62 N.J. 142, 154 (1973) (recognizing "[i]njury by ordinary work effort . . . , although unexpected by the individual afflicted, is not an extraordinary or unusual consequence in common experience").

The controlling issue in this case is whether petitioner suffered an injury because of an "undesigned and unexpected" event. We considered the "undesigned and unexpected" standard in Moran v. Board of Trustees, Police & Firemen's Retirement System, 438 N.J. Super. 346, 350 (App. Div. 2014), which involved a firefighter who had suffered a disabling injury when he used his body to break down a door to rescue people trapped in a burning building. The firefighter had to use his body because the tools firefighters normally use to

break down doors were on a firetruck, which had not yet arrived on the scene. Ibid. Although rescuing fire victims is an expected work-related duty of a firefighter, we held the firefighter had been injured in an unexpected and undesigned traumatic event. Having to save people without his usual tools, the firefighter was not in a situation in which he "should have expected to find himself." Id. at 354-55.

We also considered the "undesigned and unexpected" standard in Brooks v. Board of Trustees, Public Employees' Retirement System, 425 N.J. Super. 277, 279-80 (App. Div. 2012), in which a school custodian, who had taken charge when confronted with a group of students attempting to carry a 300-pound weight bench into the school, was injured when the students suddenly dropped their side of the bench. Characterizing those circumstances as an "unusual situation," we held the custodian had been injured in an accident that "was clearly 'undesigned and unexpected.'" Id. at 283.

The Board adopted the ALJ's finding that the incident causing petitioner's injury was not an undesigned or unexpected event. Petitioner argues the Board erred in adopting that finding because the evidence "clearly reflects that the incident . . . was unusual and extraordinary" We disagree.

Petitioner's job duties on November 25, 2006, included using the shift mechanism to open and close cell doors. Petitioner testified levers in the shift mechanism had gotten stuck in a similar manner multiple times before the November 25, 2006 incident. Leaks testified CRAF "always ha[d] mechanical issues," including mechanical issues with the levers. Given petitioner's and Leaks's testimony regarding prior malfunctions, which the ALJ found to be consistent and credible, petitioner had reason to anticipate the shift mechanism could jam or malfunction. Unlike the firefighter in Moran or the custodian in Brooks, petitioner was not facing an unusual or unexpected situation. Using the faulty shift mechanism to open cell doors was part of her ordinary work effort. Her inconsistent and incredible statements regarding exactly how the levers malfunctioned on November 25, 2006, were insufficient to demonstrate that an undesigned and unexpected event had caused her injury. As the ALJ found, a lower back injury from operating the shift mechanism "is not extraordinary or unusual in the common experience."

The finding that petitioner's injury was not caused by an undesigned or unexpected event was supported by sufficient credible evidence in the record. The Board and the ALJ correctly applied the governing law. Thus, the Board's decision to adopt the ALJ's findings and to deny petitioner's application for

accidental disability retirement benefits was not arbitrary, capricious, or unreasonable.

Affirmed.

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

A handwritten signature in black ink, appearing to be the initials 'JWA'.

CLERK OF THE APPELLATE DIVISION