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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2605-20**

S.L.,

Petitioner-Appellant,

v.

**BOARD OF TRUSTEES,
TEACHERS' PENSION
AND ANNUITY FUND,**

Respondent-Respondent.

Argued January 11, 2023 – Decided January 26, 2023

Before Judges Accurso, Firko and Natali.

On appeal from the Board of Trustees of the Teachers' Pension and Annuity Fund, Department of the Treasury.

Jason E. Sokolowski argued the cause for appellant (Zazzali, Fagella, Nowak, Kleinbaum & Friedman, PC, attorneys; Jason E. Sokolowski, of counsel and on the briefs).

Yi Zhu, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General,

attorney; Sookie Bae-Park, Assistant Attorney General, of counsel; Yi Zhu, on the brief).

PER CURIAM

S.L.¹ appeals from an April 5, 2021 final administrative decision of the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) denying her application for ordinary disability retirement benefits. We affirm.

I.

S.L. worked as a special education teacher for the Paterson Board of Education (PBOE) from 2006 until April 7, 2017, and has been treated by various psychologists and psychiatrists since 1979, when she was twenty-three years old. According to S.L., Dr. Rice² diagnosed her at that time with bipolar disorder and treated her until she married and moved to New Jersey eight years later. She testified she continued to receive treatment in New Jersey, but could

¹ We use initials to protect appellant's privacy as our opinion discusses her psychological and psychiatric history and confidential medical records.

² S.L. did not produce any records from her treatment with Dr. Rice, nor from several other doctors whom she testified to having treated her. Specifically, the record is absent treatment records from Dr. Rice, Dr. Wang, Kamil Atta, M.D., and an unnamed psychiatrist from Wyckoff. Additionally, the record does not include first names and professional designations for Dr. Rice and Dr. Wang.

not remember the name of the psychologist, and both Dr. Rice and the unnamed psychologist prescribed her various medications, including lithium.

In the spring of 2014, S.L. began treatment with John M. Rotondi, Ph.D., a psychologist, and Thomas D'Amato, M.D., a psychiatrist. Dr. Rotondi diagnosed her with major depressive disorder and Dr. D'Amato diagnosed her with depression and anxiety. S.L. took a leave of absence from teaching from May 2014 to October 2014.

Three years later, on April 7, 2017, S.L. again sought medical leave due to her mental health condition. According to S.L.:

[She] was being reviewed the next day. [She] had a copy in advance of the review and it was not terrible, but it wasn't good. [She was] used to getting good evaluations. Something snapped and [she] just couldn't go. [She] knew [she] couldn't talk with them about it and [she] thought if [she] did go, [she]'d be insubordinate. [She] decided to stay home. [She] got really depressed and the length of time [she] was home grew and grew. [She] kept thinking [she]'d snap out of this.

S.L. consulted with Dr. Rotondi that same day, and he submitted a PBOE Human Capital Services form in which he recommended she take three months of medical leave. PBOE granted S.L. a combination of paid and unpaid leave until September 1, 2017, but S.L. did not return to work on that date nor at any point thereafter.

S.L. applied for ordinary disability retirement benefits on May 21, 2017, and subsequently sought psychological treatment from several providers, from whom she received various diagnoses. Between July 31, 2017 and January 6, 2018, S.L. attended eleven psychotherapy sessions with Dawn McDonald, Ph.D., whose records described S.L. as "anxious," "dysphoric," and "depressed." Dr. McDonald also described her functional status as ranging from "variably impaired" to "intact."

S.L. also testified to having received psychiatric treatment from Dr. Wang, a psychiatrist, in spring 2017, as well as Dr. Atta from December 2017 through April 2018. According to S.L., Dr. Wang diagnosed her with depression and Dr. Atta diagnosed her with bipolar disorder.

On June 8, 2017, S.L. met with Sang W. Yoo, M.D., who diagnosed her with bipolar disorder and psychosis. Because S.L. was no longer taking medication at that time, Dr. Yoo prescribed Lamictal (a mood stabilizer used to treat bipolar disorder), Lexapro (an antidepressant), and Ambien (a sleep aid). Dr. Yoo's treatment notes, however, indicate S.L. exhibited poor medication compliance and, on one occasion, took herself "off medications on her own volition, [for an] extended period of time."

S.L. met with Dr. Yoo eighteen times between her initial visit and September 16, 2019. After S.L.'s second visit, Dr. Yoo submitted a medical examination in support of her application for disability retirement in which he certified S.L. was "totally and permanently disabled." Dr. Yoo acted as S.L.'s primary doctor for the purposes of her application.

Additionally, in review of her application, the Board referred S.L. to Richard A. Filippone, Ph.D., a licensed psychologist, for an independent psychological examination in which he administered several tests, including a mental status examination, the Beck Depression Inventory, and the Beck Anxiety Inventory. Based on the results, Dr. Filippone diagnosed S.L. with a dysthymic disorder and a potential personality disorder with self-defeating features, which he described as "an individual who . . . chronically might complain about things, not have—the most optimal mood, may be very critical of self and others, but who functions." In his report, Dr. Filippone stated S.L. was "capable of performing the normal job duties of a schoolteacher and is therefore not totally and permanently disabled."

The Board denied S.L.'s application in a January 11, 2018 letter, wherein it stated S.L. was "not totally and permanently disabled from the performance of [her] regular and assigned duties pursuant to N.J.S.A. 18A:66-39 and relevant

case law." Upon S.L.'s request for reconsideration, the Board accepted additional medical documentation and reviewed her record, but again denied her application. S.L. filed an appeal, and the Board transferred the matter to the Office of Administrative Law as a contested case.

During the two-day hearing before an Administrative Law Judge (ALJ), S.L. testified she struggled with her mental health at work since 2010 and sought a leave of absence in 2017 because she believed "her condition was getting worse." She further explained she experienced confusion at work, struggled to build relationships with students, and became paranoid that other teachers were talking behind her back and administrators were "scapegoating" her. She also stated she worried about acting insubordinate.

With respect to her manic episodes, S.L. described her "highs" as "delusions of grandeur," and provided by way of example people "can tell [her] very good naturedly that [she's] doing something . . . wrong, and [she] won't believe them." She also stated when she's manic she acts inappropriately, speaks quickly, slurs her words, "stay[s] up for hours on end," and can be "[un]intelligible at moments." S.L. further recounted her most recent manic episode, which occurred in the past year, in which she "was cleaning out [her] mom's refrigerator . . . and as part of that [she] could have sworn [she] saw

worms in something that she had in the refrigerator and . . . nobody else verified that."

Gennaro Tortoriello, a special education teacher with PBOE, corroborated S.L.'s testimony and explained she experienced "major issues" during the 2016-2017 school year, was "spiraling . . . downhill," and "really seemed to be struggling." Tortoriello also recounted several occasions in which S.L. failed to submit work product that she believed she handed in and stated "she honestly at that point in time seemed to be a little delusional."

Dr. Yoo also concluded S.L.'s mental health was declining and stated the unfavorable performance review was a significant "trigger." According to Dr. Yoo, S.L.'s inability to concentrate or self-motivate due to her mental illness rendered her permanently incapable of performing her duties as a teacher. Although he acknowledged S.L. had not consistently complied with her medication regimen, he maintained S.L.'s failure to recover from April 2017 demonstrated the permanence of her disability.

Dr. Filippone testified on behalf of the Board and stated S.L. was engaged during his evaluation, interacted with him, was fully functional, calm, and able to concentrate, and did not show signs of anxiety, lethargy, or sadness typical of one suffering from depression. Based on his observations and review of S.L.'s

medical records, Dr. Filippone reiterated his conclusion that she was not permanently disabled from performing her job duties as a teacher. He also disagreed with Dr. Yoo's diagnosis of bipolar disorder, as he found the reports provided by S.L.'s treating doctors lacked any evidence of manic episodes.

After reviewing the documentary evidence and testimony, the ALJ affirmed the Board's denial of S.L.'s application for ordinary disability retirement benefits. The ALJ explained "[t]o qualify for ordinary disability retirement benefits under N.J.S.A. 18A:66-39(b), a teacher must demonstrate [they] are 'physically or mentally incapacitated for the performance of duty and should be retired.'" He further observed "the pivotal issue [here] is whether [S.L.] is incapacitated for the performance of her duty as a special education teacher due to a mental disability."

The ALJ concluded S.L. was able to perform her job duties prior to receiving her performance evaluation, at which point "she diagnosed herself as being unable to work long before a medical professional rendered an opinion that she was unable to work." Citing Bueno v. Board of Trustees, Teachers' Pension & Annuity Fund, 404 N.J. Super. 119, 126 (App. Div. 2008), the ALJ determined S.L.'s own conclusion that she could no longer work was insufficient to satisfy her burden of proof.

The ALJ also explained "there is not enough evidence of manic episodes in the record to justify Dr. Yoo's diagnosis of bipolar disorder," particularly because S.L. testified she did not experience "highs" and "lows" while teaching. Additionally, according to the ALJ, Dr. Yoo's observation that S.L.'s mood, anxiety, and paranoia improved when she complied with her prescribed medication regimen demonstrated her condition was treatable.

The ALJ also "found that most of the psychological [and] psychiatric professionals who treated S.L. diagnosed her with either depression or anxiety or both," and that such diagnoses "are closer to the diagnosis rendered by Dr. Filippone than the diagnosis rendered by Dr. Yoo." Further, the ALJ noted Dr. Filippone's testimony was "detailed, credible, persuasive, and consistent with offered evidence," as it was based "not only on [S.L.]'s subjective complaints, but on his analysis of the facts, his expertise in dissecting the diagnosis offered by Dr. Yoo, diagnostic tests, a thorough examination of [S.L.], and his review of available medical records." The ALJ found Dr. Yoo's opinions regarding S.L.'s teaching ability, however, were "based entirely upon S.L.'s unverified account of her experiences in the classroom."

Similarly, the ALJ determined "Dr. Filippone's opinion about S.L.'s mental disorder . . . is more plausible than Dr. Yoo's," and "Dr. Filippone's

reasons for determining that S.L. is not disabled [were] more persuasive than Dr. Yoo's reasons for determining that S.L. is disabled." Particularly, the ALJ found most significant the absence of manic episodes in S.L.'s medical records. As he explained, evidence of manic episodes was "absent from the records of the . . . medical professionals in this matter," and "S.L. testified on cross-examination that she was 'normal' 5% of the time, 'depressed' 90% of the time, and 'manic' only 5% of the time." The ALJ also credited S.L.'s testimony about her level of activity after she stopped working as indicative of her continued ability to perform teaching functions.

In sum, the ALJ explained S.L. "failed to meet her burden of demonstrating, by a preponderance of the credible evidence, that she is totally and permanently mentally disabled from the performance of the duties of a special education teacher." The ALJ memorialized his factual findings and legal conclusions in an initial decision on February 5, 2021. After its independent review of all exhibits, the initial decision, exceptions and reply to exceptions, the Board adopted the initial decision and affirmed the denial of S.L.'s application for ordinary disability retirement benefits in an April 5, 2021 final decision. This appeal followed.

II.

In her first point, S.L. relies on In re Stallworth, 208 N.J. 182, 194 (2011), and contends the Board's final decision was unreasonable as she "demonstrated by a preponderance of the credible evidence that she is totally and permanently disabled, unemployable in the general area of her employment, and produced expert evidence to sustain this burden," and the ALJ "ignored critical facts in the record." S.L. also claims the ALJ failed to accord sufficient weight to the following evidence: (1) S.L.'s testimony she suffered "highs," including an incident from the past year in which she claimed to have hallucinated; (2) S.L.'s medical record demonstrating her ongoing mental health condition since the age of twenty-three, including a previous diagnosis of bipolar disorder; (3) Dr. Yoo's clinical observations; (4) Dr. Yoo's prescription of medication for bipolar disorder; and (5) Tortoriello's testimony as to S.L.'s teaching struggles. Based on this evidence, S.L. maintains "there was both testimonial and record evidence that provided a foundation for Dr. Yoo's diagnosis of bipolar disorder that the ALJ completely mischaracterized to support his findings"

Additionally, S.L. argues the ALJ "failed to account for Dr. Yoo's objective findings of . . . S.L.'s mental health condition, his consideration of [her] job duties, and that because of her mental health condition, [she] could not

perform her duties as a teacher." On this point, S.L. refers to Dr. Yoo's July 6, 2017 examination certifying she was "totally and permanently disabled and no longer able to perform [her] assigned job duties." S.L. further maintains the ALJ ignored her "overall work performance issues that developed because of her mental health condition," as well as her request for an extended leave of absence, "which was supported by her treating psychologist and granted by Paterson," and her negative performance reviews.

In her second point, S.L. relies on Bialko v. H. Baker Milk Company, 38 N.J. Super. 169, 171 (App. Div. 1955), and contends the ALJ "erred by failing to accord greater weight to Dr. Yoo's testimony over Dr. Filippone's testimony" as Dr. Yoo was her treating physician. S.L. argues Dr. Filippone's testimony was entitled to less weight because he observed S.L. for only one hour and his report lacked a complete picture of her mental health condition. Additionally, S.L. asserts Dr. Filippone's conclusions were contrary to his own report. We have assessed S.L.'s contentions in light of the record and conclude they are without merit.

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)). We defer "to an administrative agency's

exercise of its statutorily delegated responsibilities." Lavezzi v. State, 219 N.J. 163, 171 (2014) (citing City of Newark v. Nat. Res. Council, Dep't of Env't Prot., 82 N.J. 530, 539 (1980)). We "should 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. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008) (citing Herrmann, 192 N.J. at 28). "[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 (1997) (quoting Charatan v. Bd. of Rev., 200 N.J. Super. 74, 79 (App. Div. 1985)).

Pursuant to N.J.S.A. 18A:66-39(b), a TPAF member is eligible for ordinary disability retirement benefits where, upon application, "[t]he physician . . . designated by the [B]oard . . . [conducted] a medical examination of [the member] . . . and . . . certified to the board that the member is physically or mentally incapacitated for the performance of duty and should be retired." See also N.J.A.C. 17:1-6.4. We have interpreted the statute to mean the applicant

must have left their position due to the disability. In re Adoption of N.J.A.C. 17:1-6.4, 17:1-7.5 & 17:1-7.10, 454 N.J. Super. 386, 399 (App. Div. 2018).

An applicant must prove they have "a disabling condition and must produce expert evidence to sustain this burden." Bueno, 404 N.J. Super. at 126; see also Patterson v. Bd. of Trs., State Police Ret. Sys., 194 N.J. 29, 50-51 (2008). "A teacher with a disabling mental condition may qualify for ordinary disability retirement benefits." Bueno, 404 N.J. Super. at 126.

Additionally, "where the medical testimony is in conflict, greater weight should be accorded to the testimony of the treating physician." Bialko, 38 N.J. Super. at 171; see also Conquy v. N.J. Power & Light Co., 23 N.J. Super. 325, 330 (App. Div. 1952). The weight accorded to an expert's testimony depends on several factors, however, such as whether the expert is testifying regarding their specialty, if their conclusions are largely based on the patient's subjective complaints, and if their opinions are supported by objective evidence corroborated by other physicians. Angel v. Rand Express Lines, Inc., 66 N.J. Super. 77, 86 (App. Div. 1961).

Given our limited standard of review, Russo, 206 N.J. at 27, we are satisfied the Board's denial of S.L.'s ordinary disability retirement benefits was not arbitrary, capricious, or unreasonable, and "is supported by substantial

evidence" the ALJ deemed credible, Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. at 422. As detailed above, the ALJ's determination that S.L. failed to prove by a preponderance of the credible evidence she was permanently disabled from performing her duties as a teacher was supported by Dr. Filippone's testimony to that effect. Additionally, the record adequately supported the ALJ's conclusion S.L.'s testimony as to her level of self-sufficiency, as well as Dr. Yoo's medical records documenting her non-compliance with his prescribed medication regimen, undermined her claim that she was totally and permanently disabled.

Although we acknowledge significant weight is owed to the testimony of a treating physician, Bialko, 38 N.J. Super. at 171, the ALJ articulated specific reasons for crediting Dr. Filippone's testimony and diagnosis over Dr. Yoo's. He explained Dr. Filippone testified as an expert based on objective criteria, including diagnostic tests, as opposed to patient self-reporting, and his diagnosis was more consistent with S.L.'s previous diagnoses, particularly those with supporting documentation provided in the record. The ALJ's decision to credit Dr. Filippone's testimony and diagnoses was therefore neither arbitrary, capricious, nor unreasonable.

To the extent we have not specifically addressed any of S.L.'s arguments, it is because we have concluded they lack sufficient 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