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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2692-20**

ELIZABETH BUDAY,

Petitioner-Appellant,

v.

**BOARD OF TRUSTEES,
PUBLIC EMPLOYEES'
RETIREMENT SYSTEM,**

Respondent-Respondent.

Argued March 1, 2023 – Decided March 15, 2023

Before Judges Mitterhoff and Fisher.

On appeal from the Board of Trustees of the Public Employees' Retirement System, Department of the Treasury, PERS No. xx1737.

Herbert J. Stayton, Jr., argued the cause for appellant (Stayton Law, LLC, attorney; Herbert J. Stayton, Jr., on the brief).

Brian D. Ragunan, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Donna Arons, Assistant Attorney General, of counsel; Brian D. Ragunan, on the brief).

PER CURIAM

Appellant Elizabeth Buday seeks our review of the April 21, 2021, final agency decision of the Board of Trustees, Public Employees' Retirement System (hereinafter, the "Board") denying her claim for accidental disability retirement benefits. We affirm.

Buday worked as a supervisor of education at an alternative high school where most of the students have some sort of mental health condition. In that capacity, she had training and experience physically restraining students in crisis. On August 26, 2016, Buday received a call from a staff member in another classroom requesting help with a non-compliant student. When Buday arrived in the classroom, she encountered a female student, T.M., who was refusing to leave the room and arguing with another student. As Buday attempted to intervene, T.M. pushed her, allegedly causing her to "fly through the air" approximately "six or eight feet." When Buday landed on the floor, she reported having pain in her right hip and knee. She was transported to the hospital, where she was evaluated and released that same day.

Following the incident, Buday suffered from lingering emotional distress and pain; flashbacks to the incident; feelings of paranoia; and sporadic crying fits. She sought treatment for these complaints, and her treating psychiatrist

diagnosed her with Post Traumatic Stress Disorder (PTSD). She also sought treatment for injury to her right hip and knee, both of which had been previously operated on.

On March 13, 2017, Buday applied for accidental disability retirement based on PTSD and permanent orthopedic injuries resulting from the August 2016 incident. On August 17, 2017, the Board denied her application. Buday appealed the denial, and the matter was transferred to the Office of Administrative Law (OAL) as a contested case. The matter was tried before an Administrative Law Judge (ALJ) on January 10, 2019, and June 16, 2020.

At trial, Buday and the Board each presented psychiatric/psychological and orthopedic experts who offered differing opinions on the extent, cause, and permanency of Buday's injuries. An investigator from the Pension Fraud Abuse Unit (PFAU) testified as to the contents of a video that captured the incident, which largely refuted Buday's recounting of the incident. Buday testified about the assault and her residual complaints.

At the end of the two-day trial, the ALJ concluded that Buday failed to carry her burden of proof and she was entitled to disability benefits. The judge observed that the outcome hinged on the credibility of the experts. Weighing the expert testimony, the ALJ found the Board's experts more credible, primarily

because they relied on objective tests and factors beyond Buday's subjective complaints. The judge also found Buday "marginally credible" and her account of the incident highly exaggerated.

On April 23, 2021, the Board adopted the ALJ's decision. This appeal followed. On appeal, Buday presents the following arguments for our consideration:

POINT I

BUDAY HAS THE BURDEN OF PROOF.

POINT II

PENSION STATUTES ARE REMEDIAL AND SHOULD BE LIBERALLY CONSTRUED IN FAVOR OF THE PUBLIC EMPLOYEES THEY ARE DESIGNED TO BENEFIT.

POINT III

BUDAY'S DISABILITY RESULTED FROM A "DIRECT PERSONAL EXPERIENCE OF A TERRI[F]YING OR HORROR-INDUCING EVENT THAT INVOLVED ACTUAL OR THREATENED DEATH OR SERIOUS INJURY, OR A SIMILARLY SERIOUS THREAT TO THE PHYSICAL INTEGRITY OF BUDAY AND OTHERS"; AND THE EVENT WAS OBJECTIVELY CAPABLE OF CAUSING A REASONABLE PERSON IN SIMILAR CIRCUMSTANCES TO SUFFER A DISABLING MENTAL INJURY.

A. The Record Below Supports the Finding that Buday's 08/26/2016 Assault Satisfies the Patterson Test.

B. The Record Below Supports the Finding that Buday's 08/26/2016 Assault Satisfies the Richardson Direct Result/Direct Causation Factors.

C. Deference Should Be Given to Buday's Treating Physicians on the Issue of Direct Result/Direct Causation.

POINT IV

THE ALJ'S FINDINGS OF FACT AND CONCLUSIONS OF LAW ON THE MATERIAL ISSUES ARE NOT SUPPORTED BY THE RECORD.

A. Findings of Fact

B. Credibility, Expert Medical Witness.

C. Patterson Qualifying Event.

D. ALJ's Conclusions of Law.

The scope of our review of an administrative agency's final determination is strictly limited. Brady v. Bd. of Rev., 152 N.J. 197, 210 (1997). The agency's decision may not be disturbed unless shown to be arbitrary, capricious, or unreasonable or inconsistent with the applicable law. Ibid.; In re Warren, 117 N.J. 295, 296 (1989). "If the Board's factual findings are supported 'by sufficient credible evidence, courts are obliged to accept them.'" Brady, 152 N.J. at 210

(quoting Self v. Bd. of Rev., 91 N.J. 453, 459 (1982)). Accordingly, "in reviewing the factual findings made in an [agency] proceeding, the 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." Ibid. (quoting Charatan v. Board of Review, 200 N.J. Super. 74, 79 (App. Div. 1985)).

We also give "due regard to . . . the agency's expertise where such expertise is a pertinent factor." Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 587 (1988) (quoting Close v. Kordulak Bros., 44 N.J. 589, 599 (1965)). "[I]n an appeal from a final agency decision, an appellate court is 'in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue.'" Melnyk v. Bd. of Educ. of Delsea Reg'l High Sch. Dist., 241 N.J. 31, 40 (2020) (quoting Ardan v. Bd. of Rev., 231 N.J. 589, 604 (2018)).

N.J.S.A. 43:15A-43 affords ADR benefits, in the form of an additional monthly allowance, to state workers who become "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" In Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189 (2007), our Supreme Court devised a five-part test to determine whether an injury is a direct result of

a traumatic event. Id. at 212-13. The Court held that, to qualify for accidental disability benefits, a member must prove all five of the following elements:

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

[Ibid.]

The burden of establishing direct causation between total disability and a traumatic event rests with the petitioner, who must make the requisite causal showing by a preponderance of the evidence. See Atkinson v. Parsekian, 37 N.J. 143, 156 (1962).

In Patterson v. Board of Trustees, State Police Retirement System, 194 N.J. 29 (2005), the Supreme Court affirmed that "permanent mental injury caused by a mental stressor without any physical impact can satisfy the [accidental disability] standard." Id. at 48. In its ruling, the Court recognized that the so-called mental-mental category presents a unique set of challenges:

In most physical disability claims, medical analysis quickly goes beyond the subjective statement by the patient to clinical and laboratory tests by the physician In psychiatric disability claims, by contrast, medical analysis to a greater degree is analysis of the subjective statement of the patient. Thus, in the context of psychological injuries, the proofs related to the traumatic nature of an event and the causal relationship between event and injury may be more problematic than in the case of a physical event. As a result[,] the boards have expressed legitimate concerns about becoming bogged down in litigation over idiosyncratic responses by members to inconsequential mental stressors.

[Id. at 48-49 (Internal quotation omitted).]

In response to these challenges, the Patterson Court "established a high threshold for the award of accidental disability benefits based on a mental injury arising out a pure mental stressor with no physical impact." Russo v. Board of Trustees, Police and Firemen's Retirement System, 206 N.J. 14, 31 (2010) (citing Patterson, 194 N.J. at 50). The Court required that the member's disability "must result from direct personal experience of a terrifying or horror-

inducing event that involves actual or threatened death or serious injury, or a similarly serious threat to the physical integrity of the member or another person." Ibid. (quoting Patterson, 194 N.J. at 50). The Court explained that it "adopted that standard to assure the bona fides of claimed mental injuries and to ameliorate the problem of subjectivity inherent in mental claims." Ibid.

By adding these requirements to the existing Richardson framework, the Court sought to "assure that the traumatic event is objectively capable of causing permanent, disabling mental injury to a reasonable person under similar circumstances." Ibid. (quoting Patterson, 194 N.J. at 50). Although the Patterson standard is most often applied to cases of pure mental disability with no physical impact, it also applies where a person has suffered a temporary or minor bodily injury. Thompson v. Bd. of Trs., Teachers' Pension & Annuity Fund, 449 N.J. Super. 478, 480-81 (App. Div. 2017), aff'd, 223 N.J. 232 (2018).

Here, the record amply supports the ALJ's determination that plaintiff failed to carry her burden under Patterson. The judge's decision was primarily supported by his resolution of the experts' credibility. That resolution was firmly grounded by other evidence in the record establishing: that plaintiff's injuries were not severe enough to threaten death or serious injury; surveillance video disabusing Buday's account of the incident; Buday's "marginally credible"

and "clearly exaggerated" testimony; and Buday's training and experience managing and physically restraining students in crisis. We discern no reasoned basis to second-guess the judge's credibility findings or to interfere with his sound legal analysis that the subject incident did not satisfy the "terrifying or horror inducing event" standard under Patterson.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION