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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3333-21**

JOHN KAROLINSKI,

Petitioner-Appellant,

v.

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

Respondent-Respondent.

Argued May 3, 2023 - Decided June 30, 2023

Before Judges Currier and Enright.

On appeal from the Board of Trustees of the Public Employees' Retirement System, Department of the Treasury, PERS No. xx9417.

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

Payal Y. Ved, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Sookie Bae-Park, Assistant Attorney General, of counsel; Payal Y. Ved, on the brief).

PER CURIAM

Petitioner appeals from the Board of Trustees (Board) of the Public Employees' Retirement System's (PERS) May 19, 2022 final agency decision denying his application for accidental disability retirement benefits. We affirm.

After petitioner was injured while working as a Firefighter EMT, he applied for accidental disability retirement benefits. The Board denied the application but granted him ordinary disability benefits. Following petitioner's appeal of the decision, the matter was transferred to the Office of Administrative Law (OAL) for a hearing. We derive our facts from the OAL testimony.

Petitioner had been employed as a Firefighter EMT since 2009. The position required him to perform "strenuous physical activities such as . . . lifting and carrying people and equipment for rescue and salvage."

On this particular occasion, petitioner and his partner were dispatched to a call for a cardiac emergency. They drove to the scene in an ambulance and, with other medics, they placed the patient on a stretcher. Petitioner described the patient as a "[h]usky guy" and estimated that it took "at least six" people to move the patient from the floor to the stretcher. Petitioner said the patient was "freaking out" during the ride to the hospital but that was common behavior.

Upon arrival at the hospital, petitioner transported the patient on the stretcher "into the emergency room and right to the cath[eterization] lab." The EMTs and hospital staff were instructing the patient to calm down so they could take the stretcher's straps off him. They were also telling the patient not to move and that they would let him know when they were going to move him.

Petitioner stated that the patient began to move himself from the stretcher to the catheterization table that was several feet away. Petitioner was able to grab the sheet on the stretcher before the patient fell and place the patient on the table. Petitioner said the sheet was doubled which made it easier to move an uncooperative patient.

Immediately after lifting the patient, petitioner felt his shoulder burning. He was later diagnosed with a rotator cuff tear and he underwent surgery. Petitioner did not return to his job.

Petitioner advised he had moved patients from a stretcher to a catheterization table "hundreds of time[s]" before and was trained as to the proper manner to do so. He said he never previously had any difficulty moving a patient. However, petitioner said this incident was different because he and his partner were not "ready to move the patient," and the patient "decided to go on his own."

The Administrative Law Judge (ALJ) adopted petitioner's description of the events surrounding his injury as "no competent credible evidence was introduced disputing petitioner's version of the events." After considering the applicable case law, the ALJ found "there was an unusual circumstance dealing with a patient and that patient's lack of cooperation led to petitioner's injury." However, the ALJ continued, "petitioner had performed th[e] task many times and it can be presumed in a number of circumstances with cooperation (or not) of patients." Therefore, the ALJ concluded petitioner "ha[d] not met his burden of demonstrating" that his disability was caused by an undesigned and unexpected traumatic event.

The ALJ affirmed the Board's denial of petitioner's application for accidental disability retirement benefits. On May 19, 2022, the Board adopted the ALJ's decision affirming the denial of petitioner's application.

On appeal, petitioner contends the Board erred in determining he was not entitled to accidental disability retirements benefits because the incident causing his disability was undesigned and unexpected.

"Our review of [an] administrative agency action is limited." Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011). "We recognize that agencies have 'expertise and superior knowledge . . . in their specialized

fields.'" Hemsey v. Bd. of Trs., Police & Firemen's Ret. Sys., 198 N.J. 215, 223 (2009) (alteration in original) (quoting In re License Issued to Zahl, 186 N.J. 341, 353 (2006)). Therefore, we will not "substitute [our] own judgment for the agency's, even though [we] 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)).

For those reasons, "an appellate court ordinarily 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 the record as a whole. In re Virtua-W. Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008). "The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the person challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006).

The factual "findings of an ALJ 'are considered binding on appeal, when supported by adequate, substantial and credible evidence.'" Oceanside Charter Sch. v. N.J. State Dep't of Educ., 418 N.J. Super. 1, 9 (App. Div. 2011) (quoting

In re Taylor, 158 N.J. 644, 656 (1999)). The review of an agency interpretation of law is de novo. Russo, 206 N.J. at 27.

Under N.J.S.A. 43:15A-43, a PERS member is entitled to accidental disability retirement benefits if they are "permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of [their] regular or assigned duties." In Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 212-13 (2007),¹ our Supreme Court established the requirements a petitioner must prove to qualify for accidental disability benefits:

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;

¹ Although Richardson involved the accidental disability retirement benefits provision of the statute governing the Police and Firemen's Retirement System, N.J.S.A. 43:16A-7, its language is identical to N.J.S.A. 43:15A-43, under which petitioner filed his application.

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 [their] usual or any other duty.

[Ibid.]

The only element in dispute here is whether petitioner suffered an injury from an undesigned and unexpected traumatic event. A traumatic event is one that was "an unexpected external happening that directly causes injury and is not the result of pre-existing disease alone or in combination with work effort." Id. at 212. This requires "a force or cause external to the worker . . . that directly results in injury." Id. at 211. The Richardson Court stated "a traumatic event can occur during usual work effort, but that work effort itself . . . cannot be the traumatic event." Ibid. That is, an event is not undesigned and unexpected "when all that appears is that the employee was doing [their] usual work in the usual way." Id. at 201 (quoting Russo v. Teachers' Pension & Annuity Fund, 62 N.J. 142, 154 (1973)).

"The polestar of the inquiry is whether, during the regular performance of [their] 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; Mount v. Bd. of Trs.,

Police & Firemen's Ret. Sys., 233 N.J. 402, 421 (2018). "To properly apply the Richardson standard, . . . the Board and a reviewing court must carefully consider not only the member's job responsibilities and training, but all aspects of the event itself. No single factor governs the analysis." Mount, 233 N.J. at 427.

Petitioner testified he was injured while transferring a patient from a stretcher to the catheterization table, a job duty he had performed "hundreds of time[s]" and was trained to do. It was petitioner's work effort that caused his disability. He stated it was common for patients to be "freaking out." Therefore, it was not unexpected for a patient to be uncooperative during the transfer process. Moreover, he testified the way in which he transfers a patient—using a double sheet—"makes it a lot easier to move . . . a patient that[] [is] not cooperating." It was not an "unexpected happening" that petitioner would need to help a patient to prevent a fall during a transfer. Petitioner has not demonstrated there was an undesigned or unexpected traumatic event as required and defined under Richardson.

We are satisfied the Board's adoption of the ALJ's decision denying petitioner's application for accidental retirement disability benefits was supported by the substantial credible evidence in the record and a correct

interpretation of the controlling statute and principles of law. Therefore, the Board's final decision 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.



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