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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3669-20**

ROBERT SUY HO GO,

Petitioner-Appellant,

v.

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

Respondent-Respondent.

Submitted September 14, 2022 – Decided January 31, 2023

Before Judges Haas and DeAlmeida.

On appeal from the Board of Trustees of the Public Employees' Retirement System, PERS No. xx2606.

Chamlin Uliano & Walsh, attorneys for appellant (James J. Uliano, of counsel; Andrew T. Walsh, on the briefs).

Matthew J. Platkin, Acting Attorney General, attorney for respondent (Sookie Bae-Park, Assistant Attorney General, of counsel; Porter Strickler, Deputy Attorney General, on the brief).

PER CURIAM

Petitioner Robert Suy Ho Go appeals from the July 22, 2021 final agency decision of the Board of Trustees of the Public Employees' Retirement System (Board), denying his application for accidental disability retirement benefits. We affirm.

I.

This matter returns to us after a remand. It is undisputed that Suy Ho Go was twice injured while working as an electrician for the City of Asbury Park. The central issue before us is whether there is sufficient support in the record for the Board's determination that he was not rendered disabled from the performance of his duties as a direct result of one of the incidents.

In 2003, Suy Ho Go's dominant, right hand was injured when he was repairing a traffic light in an elevated bucket of a truck that was struck by another vehicle. He received medical treatment, including an operation in 2004. An MRI taken before the surgery showed existing osteoarthritis and no significant acute injuries.

About eight weeks after the operation, Suy Ho Go returned to work with restrictions ordered by his physician. He was not allowed to lift objects weighing more than fifty pounds or to use power tools. Because Suy Ho Go

could not perform all of his previously assigned duties, the city accommodated him with a helper who operated the power tools, twisted wires together when needed, and lifted equipment that exceeded fifty pounds.

In 2010, Suy Ho Go injured his right thumb while hanging a banner at work. He received medical treatment, including a second surgery, which further reduced his ability to use his right thumb.

Suy Ho Go attempted to return to work, subject to additional restrictions ordered by his physician, including a prohibition on his use of a jackhammer. His supervisor told him that he was required to use a jackhammer in order to return to work and would not be accommodated with an assistant to perform that task.

In 2011, Suy Ho Go filed an application for accidental disability benefits based on injuries he alleged to have sustained in the 2003 incident. He did not mention the 2010 incident in his application.

The Board denied Suy Ho Go's application. It concluded he was not totally and permanently disabled from the performance of his duties, there was no evidence in the record that his injuries were directly caused by the 2003 incident, and he filed his application beyond the five-year time for doing so established in N.J.S.A. 43:15A-43(a).

At a subsequent hearing before an Administrative Law Judge (ALJ), two experts in orthopedic surgery offered opinions with respect to Suy Ho Go's right hand. Suy Ho Go's expert, Dr. Cary Skolnick, testified that it was his opinion that Suy Ho Go was permanently and totally disabled as a result of the 2003 and 2010 incidents,¹ which left him with a nonfunctional, unstable joint in this right thumb. This injury, according to Dr. Skolnick, left Suy Ho Go with difficulty grasping objects.

He opined that when Suy Ho Go jammed his right hand and thumb against the traffic light in 2003 the cartilage in his carpometacarpal joint, at the base of the thumb where it come out of the wrist, was destroyed. When conservative treatment failed, Suy Ho Go underwent the 2004 surgery, during which the surgeon removed half of Suy Ho Go's trapezium bone and reconstructed a ligament in the thumb using a tendon from another part of his body.

Dr. Skolnick testified that Suy Ho Go's second injury in 2010 caused him to lose stability and strength in the joint, requiring him to undergo the second surgery. During the second procedure, the surgeon transferred a muscle tendon into the joint to prevent the remaining bones from hitting together and causing

¹ Although Suy Ho Go listed only the 2003 incident in his accidental disability retirement application, Dr. Skolnick relied, in part, on the 2010 incident.

Suy Ho Go pain. According to Dr. Skolnick, after the second operation, Suy Ho Go lost all strength in the joint and could no longer use power tools, crimpers, wrenches, and other equipment he needed to perform his duties as an electrician. The doctor acknowledged that Suy Ho Go had existing carpometacarpal joint arthritis in his right hand, but discounted that as the cause of his disability.

The Board's expert, Dr. Arnold Berman, offered his opinion that Suy Ho Go suffered only a contusion or bruise of his right thumb in the 2003 incident. He opined that the pain Suy Ho Go was experiencing in his thumb was caused by arthritis in the joint, not an injury. He testified that his opinion is confirmed by a 2004 surgical pathology report that stated degenerative changes consistent with osteoarthritis were found in the portion of trapezium bone and cartilage removed from Suy Ho Go during his first operation. Dr. Berman opined that Suy Ho Go had severe arthritis at the base of his thumb for at least ten years prior to the 2004 operation. He further opined that there was no evidence that the 2003 event aggravated the existing arthritis.

Dr. Berman discounted the 2010 event, opining that the pain Suy Ho Go experienced after that incident was caused by the arthritic condition of his thumb. The doctor testified that the 2010 surgery, to readjust the repairs made in 2004, was successful and that, despite continuing to experience pain, Suy Ho

Go had a full range of motion in his thumb with no deficit. He opined that Suy Ho Go was not disabled and could perform all of his duties as an electrician without limitation.

In 2014, the ALJ issued an initial decision adopting Dr. Skolnick's opinion that Suy Ho Go was physically unable to perform the duties of an electrician. However, the ALJ concluded that Suy Ho Go failed to prove that his disability was the direct result of the 2003 and 2010 incidents rather than the result of ordinary work effort and a progressive disease such as arthritis. Accordingly, the ALJ recommended that although Suy Ho Go's total and permanent disability entitled him to ordinary disability retirement benefits, he did not qualify for accidental disability benefits. The ALJ also found that Suy Ho Go did not establish either a delayed manifestation of his disability or good cause to depart from the five-year filing deadline for retirement benefits.

The Board adopted the ALJ's initial decision. Suy Ho Go appealed. We concluded that the ALJ did not identify the legal standards she applied when she determined whether Suy Ho Go's disability was the direct result of the 2003 incident, or whether he had filed a timely application for benefits. Suy Ho Go v. Pub. Emps. Ret. Sys., No. A-2726-14 (App. Div. Apr. 18, 2016). We,

therefore, vacated the Board's decision and remanded for reconsideration of Suy Ho Go's application under the appropriate standards. Ibid.

On remand, a new ALJ heard additional testimony and reviewed the transcripts of the first hearing. In an initial decision, the ALJ concluded that there was a delayed manifestation of Suy Ho Go's disability justifying the late filing of his application for disability retirement benefits. The ALJ reasoned that after the 2003 incident the restrictions placed on Suy Ho Go by his physician rendered him unable to perform the functions of an electrician. However, because his employer provided him with a helper who performed the restricted tasks for him, Suy Ho Go's disability was not manifest until he attempted to return to work in 2011 and was denied an accommodation. Thus, the ALJ recommended that the Board find that Suy Ho Go's application was timely filed.

With respect to the cause of Suy Ho Go's disability, the ALJ found Dr. Skolnick provided the more credible opinion. The ALJ concluded that the 2003 incident aggravated the existing arthritis in Suy Ho Go's joint and contributed to further deterioration of its stability. In addition, the ALJ concluded that the 2003 incident resulted in the 2004 surgery, not the preexisting arthritis in the joint. He found no evidence in the record that the arthritis diminished Suy Ho

Go's ability to perform his duties prior to the 2003 incident. The ALJ, therefore, recommended Suy Ho Go be awarded accidental disability retirement benefits.

On July 22, 2021, the Board issued a final decision denying Suy Ho Go's application. While the Board adopted the ALJ's determination regarding delayed manifestation, it rejected his finding that the disability was the direct result of the 2003 incident. The Board found that the ALJ's conclusion, and Dr. Skolnick's opinion on which it relied, were contradicted by the MRI of Suy Ho Go's hand prior to the 2004 surgery, which revealed existing arthritis, but had no note of an injury to the cartilage in the joint. The Board concluded that Dr. Skolnick's opinion, which did not account for the absence of an injury in the MRI, was not credible.

In addition, the Board found that Dr. Skolnick applied a proximate cause standard when he opined that the 2003 incident may have caused instability in the joint over time, when the accidental disability retirement statute employs the more exacting direct result standard. The Board concluded that Suy Ho Go's "severe pre-existing osteoarthritis was the substantial significant cause of his disability and not the 2003 incident."²

² Suy Ho Go remains eligible for ordinary disability retirement benefits.

This appeal follows. Suy Ho Go argues, among other things, the Board erred when it rejected Dr. Skolnick's testimony and applied too narrow a view of the legal precedents interpreting the direct cause prong of the statute.³

II.

Our review of decisions by administrative agencies is limited, with petitioners carrying a substantial burden of persuasion. In re Stallworth, 208 N.J. 182, 194 (2011). An agency's determination must be sustained "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)). "[I]f substantial evidence supports the agency's decision, 'a court may not substitute its own judgment for 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)).

While we are not bound by an agency's interpretation of legal issues, which we review de novo, Russo, 206 N.J. at 27, "[w]e must give great deference

³ Suy Ho Go also argues that his application for benefits was timely because he established a delayed manifestation of his disability. The Board, however, adopted the ALJ's finding that the application was timely filed. We do not, therefore, address the question of delayed manifestation.

to an agency's interpretation and implementation of its rules enforcing the statutes for which it is responsible." Piatt v. Bd. of Trs., Police & Firemen's Ret. Sys., 443 N.J. Super. 80, 99 (App. Div. 2015) (quoting Saint Peter's Univ. Hosp. v. Lacy, 185 N.J. 1, 13 (2005)). "Such deference has been specifically extended to state agencies that administer pension statutes." Id. at 99.

To qualify for accidental disability benefits an employee must demonstrate that he or she "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). "[A]n accidental disability retirement entitles a member to receive a higher level of benefits than those provided under an ordinary disability retirement." Patterson v. Bd. of Trs., State Police Ret. Sys., 194 N.J. 29, 43 (2008).

"[A] traumatic event is . . . an unexpected external happening that directly causes injury and is not the result of pre-existing disease alone or in combination with work effort." Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 212 (2007).

[T]o obtain accidental disability benefits, a member must prove:

1. that he 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 usual or any other duty.

[Id. at 212-13.]

We have carefully reviewed the record and find no basis on which to reverse the Board's determination. We are guided in our analysis by the holding in Gerba v. Bd. of Trs., Pub. Emps. Ret. Sys., 83 N.J. 174 (1980). There, the Court explained that "[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 give rise to 'ordinary' [disability] pension benefits." Id. at 186. The Court recognized, however, that

an accidental disability in some circumstances may arise even though an employee is afflicted with an underlying physical disease bearing casually upon the resulting disability. In such cases, the traumatic event need not be the sole or exclusive cause of the disability. As long as the traumatic event is the direct cause, i.e., the essential significant or substantial or contributing cause of the disability, it is sufficient to satisfy the statutory standard of an accidental disability even though it acts in combination with an underlying physical disease.

[Id. at 187.]

Here, the Board, applying its expertise, found that the expert opinion adopted by the ALJ, that the 2003 incident was the direct cause of Suy Ho Go's disability, was not credible. The Board based its decision on the absence of medical evidence establishing an injury to Suy Ho Go's hand, rather than the long-standing arthritis in his joint, was the direct cause of his disability. The Board exercised its expertise when reaching its conclusion, which is supported by evidence in record, and is, therefore, entitled to deference from this court.

To the extent we have not specifically addressed any of Suy Ho Go's remaining contentions, we conclude 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