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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2018-22**

ANGELO S. REYES,

Petitioner-Appellant,

v.

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

Respondent-Respondent.

Argued May 28, 2024 – Decided June 10, 2024

Before Judges Sabatino and Chase.

On appeal from the Board of Trustees of the Police and Firemen's Retirement System, Department of the Treasury, PFRS No. xx0479.

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

Thomas R. Hower, Staff Attorney, argued the cause for respondent (Nels J. Lauritzen, Director, Legal Affairs, attorney; Thomas R. Hower, on the brief).

PER CURIAM

Petitioner Angelo Reyes appeals from a February 13, 2023 determination by the Board of Trustees of the Police and Firemen's Retirement System of New Jersey ("PFRS"), denying his application for accidental disability retirement benefits under N.J.S.A. 43:16A-7(1). His claim stems from a permanently disabling shoulder injury he sustained when attempting to restrain a violently resisting individual in the course of his duties as a police officer.

The Board denied appellant's claim upon concluding his injury was not "undesigned and unexpected" as required for accidental disability retirement benefits under the criteria construing N.J.S.A. 43:16A-7(1) set forth in Richardson v. Board of Trustees, Police & Firemen's Retirement System, 192 N.J. 189 (2007).

We reverse, because the facts of this case do not materially differ from the facts of Richardson, in which the Supreme Court granted accidental disability benefits to a corrections officer who had been injured while he was likewise attempting to handcuff a violent individual in the course of his duties.

I.

We derive the pertinent facts from the testimony of appellant and the other evidence presented at the hearing before the administrative law judge ("ALJ").

Appellant has been employed by the Camden County Police Department since March 2013. On June 15, 2019, the date of the incident, appellant was working as a sergeant and what is known as a "street shift supervisor."

At the start of his shift that evening, appellant heard a radio dispatch from another officer requesting assistance with arresting a suspect about a block away in the City of Camden. Appellant responded to the call. When he arrived on the scene, appellant observed the requesting officer in a physical struggle with the suspect.

Appellant saw the suspect acting violently and swinging at the other officer. Based on past experience as a narcotics officer, appellant believed the suspect was under the influence of drugs due to his behavior, heavy breathing, muttering, and groaning. The other officer was struggling to take the suspect to the ground. Appellant intervened to assist the officer.

When appellant attempted to grab the suspect's hands to handcuff and place him under arrest, all three men fell to the ground. At that point, the suspect was flat on his stomach and appellant was on the suspect's back. As the suspect laid on his stomach, appellant sat on top of him and attempted to grab his hands, wrists, and arms to handcuff him. However, the suspect moved his hands

beneath his body to prevent appellant from doing so. The suspect was kicking and thrashing about.

As appellant was on top of the suspect, the suspect attempted twice to get off the ground by forcibly pushing himself up with appellant still on his back. As the suspect pushed up, appellant fell backwards and onto his right side, injuring his right shoulder and wrist.

In his testimony, appellant described this violent burst of force as follows:

So . . . I just happened to land on his back, he [the suspect] was flat on the ground on his stomach, and as I was trying to grab his wrist . . . from underneath him, . . . possibly he ha[d] a weapon underneath or whatever, so I was trying to secure . . . his arm, pull it so I could put a handcuff on him and a couple of times at least, he attempted to get up by pushing himself off the ground and—he violently pushed himself from the ground—like doing a pushup, except harder and I was on his back and with him doing that, I fell off to my side on right side and fell backwards. It took several tries to get his arm, but he was just overpowering at that point.

According to appellant, in his six previous years as a police officer, he had never dealt with an individual as violent as the suspect. After three or four other officers quickly arrived as backup, appellant successfully placed handcuffs on the suspect and the officers were able to get him into a police car.

After the incident, appellant first went to the police administration building to prepare the necessary reports. He notified his watch commander that

he had sustained an injury, and then went to a local hospital for evaluation. The hospital staff X-rayed appellant's right shoulder but performed no other treatment before releasing him. Appellant also injured his wrist, but he did not receive medical treatment for it that day.

Following the incident, appellant experienced lingering pain in his shoulder and wrist. He took aspirin and underwent physical therapy. Eventually a contrast MRI revealed a tear in appellant's right shoulder, an injury not initially identified by the hospital staff.

Appellant returned to full duty approximately three days after the incident. He worked until October 2019, at which point he left his position due to his persisting injuries.

In his testimony, appellant estimated that he has arrested over a hundred persons during his time in the Camden County Police Department, and that he had successfully handcuffed numerous others before the incident on June 15, 2019. He was trained on handcuffing techniques while attending the police academy in 2012.

The record shows that appellant's job duties as street shift supervisor included apprehending individuals. However, that task occurred less frequently when working as a supervisor than as a regular officer.

Because of his persisting injuries, appellant applied for accidental disability retirement benefits. In his application, appellant stated that he had become unable to perform his job duties "due to a[n] unusually combative suspect" when he was "thrown by the suspect [thereby] falling and sustaining injuries to my right shoulder."

After reviewing appellant's medical information, the Board agreed that appellant had been permanently and totally disabled as the result of events within the course of his regular and assigned duties, and that his injuries were not caused by preexisting disease. The Board consequently approved appellant for regular disability retirement benefits. However, the Board concluded from its initial review of the circumstances that the event that caused appellant's injuries was not "undesigned and unexpected." Hence, the Board denied appellant's claim for accidental disability retirement benefits.

The contested matter was referred for a hearing before the ALJ. Appellant was the sole witness who testified, and his account of the events was unrefuted. The ALJ found his testimony was credible. The Board presented to the ALJ the job description of a police street supervisor.

In her written findings, the ALJ found appellant's testimony credible. After a discussion of the facts and the applicable law, the ALJ concluded:

[Appellant's] position as a Camden County Police Sergeant required him to exercise all powers and rights of police officers in criminal and civil matters, and function as a law enforcement officer for the detection, apprehension, arrest, and prosecution of offenders against the law.

. . . .

[Appellant] has not met prong 2(b) of the Richardson^[1] criteria for eligibility that is, the incident that caused his disability was not undesigned and unexpected. On the date of the incident, he was performing his usual duties as a Camden County police sergeant and assisting in the arrest of an individual who was resisting arrest. [Appellant] was injured while assisting another officer in attempting to subdue the suspect to place him under arrest. This was not undesigned and unexpected because the incident was not extraordinary or unusual in common experience, but rather a regular, usual, and ordinary part of the job for a police sergeant.

On February 13, 2023, the Board upheld the ALJ's denial of appellant's application. This appeal followed.

II.

We are cognizant that appellate review of an administrative agency's final determination is limited. Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011) (citation omitted). Our courts generally "recognize that agencies have 'expertise and superior knowledge . . . in their specialized fields.'"

¹ 192 N.J. at 212.

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)).

"[A]n appellate court ordinarily should not disturb an administrative agency's determinations or findings unless there was 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-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) (citations omitted).

Even so, "in reviewing agency actions, an appellate court is 'in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue.'" Hemsey, 198 N.J. at 224 (quoting In re Carter, 191 N.J. 474, 483 (2007) (citations omitted)). "While we must defer to the agency's expertise, we need not surrender to it." N.J. Chapter of Nat'l. Ass'n of Indus. & Office Parks v. N.J. Dep't of Env't Prot., 241 N.J. Super. 145, 165 (App. Div. 1990). We do not automatically accept an agency's interpretation of a statute or a regulation,

and we review strictly legal questions de novo. Bowser v. Bd. of Trs., Police & Firemen's Ret. Sys., 455 N.J. Super. 165, 170-71 (App. Div. 2018).

The pertinent question here of whether a member of PFRS is entitled to accidental disability retirement benefits is governed by N.J.S.A. 43:16A-7(1). That statute provides for these benefits if said employee "is permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties."

In Richardson, the claimant, a corrections officer, was injured while attempting with other officers to handcuff an inmate, hyperextending his wrist and becoming permanently disabled as a result. 192 N.J. at 214. The Court held the officer's injury was the result of an "undesigned or unexpected" event, reversing the PFRS's denial of his application for accidental disability retirement benefits. Id. at 215.

The Court in Richardson clarified the phrase "result of a traumatic event," providing a list of five elements a claimant seeking accidental disability retirement benefits must satisfy. This list includes:

1. that [the member 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.

[Id. at 212-13.]

The satisfaction of the "undesigned and unexpected" factor requires an event "extraordinary or unusual in common experience" and not "[i]njury by ordinary work effort." Id. at 201 (citation omitted). "The polestar of the inquiry is whether, during the regular performance of his job, an unexpected happening . . . occurred and directly resulted in the permanent and total disability of the member." Id. at 214.

The Richardson Court recognized that "an injury generated by a great rush of force is one example that will satisfy the traumatic event standard, but not the only example." Id. at 192. It presented several other examples of "undesigned or unexpected" events occurring during a member's regular or assigned duties,

stating: "A policeman can be shot while pursuing a suspect; a librarian can be hit by a falling bookshelf while re-shelving books; [and] a social worker can catch [their] hand in [a] car door while transporting a child to court." Ibid.

By contrast, "an employee who experiences a horrific event which falls within [their] job description and for which [they] have been trained will be unlikely to pass the 'undesigned and unexpected' test." Russo, 206 N.J. at 33. "Thus . . . an emergency medical technician who comes upon a terrible accident involving life-threatening injuries or death . . . will not satisfy Richardson's 'undesigned and unexpected' standard because that is exactly what his training has prepared him for." Ibid.

The Board stresses here that appellant's civil service job description as a street supervisor required him to be able, at times, to perform or assist in the arrest of suspects. Yet while that job description is relevant, it is not necessarily dispositive of the question of whether the situation encountered by the officer was "undesigned and unexpected." Our case law has instructed that a member "who experiences a horrific event which falls within his [or her] job description and for which he [or she] has been trained will be unlikely to pass the 'undesigned and unexpected' test." Russo, 206 N.J. at 33. Nonetheless,

Russo should not be construed to mean that the inquiry regarding whether an event is "undesigned and

unexpected" is resolved merely by reviewing the member's job description and the scope of his or her training. In a given case, those considerations may weigh strongly for or against an award of accidental disability benefits. To properly apply the Richardson standard, however, 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 v. Bd. of Trs., Police and Firemen's Ret. Sys., 233 N.J. 402, 427 (2018) (emphasis added).]

Applying these principles, we part company with the legal analysis of the ALJ and the Board in this case. The circumstances here are very comparable factually to those in Richardson, and the differences between the cases are not materially significant.

In both Richardson and the present case, the officer was injured in the course of subduing an exceptionally violent individual. Each of those violent persons was strenuously resisting the officer's attempts to apprehend him. Both were kicking and pushing back and behaving erratically. In both cases, the individual "forcefully jerked up from the ground, knocking [the claimant] backward." Id. at 193. The claimants in each case suffered injuries "generated by a great rush of force." Id. at 191.

As we have noted above, in the present case, appellant, who the ALJ acknowledged was credible, testified he had never before encountered such a

violent attempt to resist arrest in more than a hundred instances. Only after three or four more backup officers arrived was the suspect finally subdued.

We are unpersuaded by the Board's attempts to distinguish the facts in Richardson. It is of little import that Richardson was a corrections officer and appellant was a police officer; both are responsible to keep the peace and at times apprehend a wrongdoer. The exceptional force exerted against the officer was not, in either case, merely part of the "'normal stress and strain' of the job." Id. at 213. We cannot logically reconcile why Richardson was eligible for accidental disability benefits but appellant would not be.

Given these similarities to Richardson, we are constrained to reverse the Board's final agency decision and direct the award of accidental disability pension benefits.

Reversed.

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


CLERK OF THE APPELLATE DIVISION