SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0123-15T1

ROGER HODGE,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES, STATE POLICE RETIREMENT SYSTEM,

Respondent-Respondent.

Submitted December 7, 2016 - Decided January 11, 2017

Before Judges Fuentes and Carroll.

On appeal from the Department of the Treasury, Division of Pensions and Benefits, SPRS No. 8-10-3761.

DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C., attorneys for appellant (Dayna R. Katz, on the briefs).

Christopher S. Porrino, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Danielle P. Schimmel, Deputy Attorney General, on the brief).

PER CURIAM

Petitioner Roger Hodge appeals from the August 25, 2015 final decision of the Board of Trustees of the State Police Retirement

System (Board) denying his application for accidental disability retirement benefits. For the reasons that follow, we affirm.

Hodge began his employment as a member of the New Jersey State Police in 1987. A state trooper's job description requires that he or she perform various tasks "during all hours, in all weather conditions[,] and in adverse and physically hazardous locations." Among such tasks is "Traffic Enforcement," which includes investigating motor vehicle accidents, directing traffic around accident scenes, and assisting disabled motorists. Additionally, state troopers are required to "[w]ithstand and deal appropriately with high levels of stress inherent in police work without presenting any risk to oneself or others."

On August 28, 2009, Hodge applied for accidental disability benefits. In his application, Hodge described the events leading up to his injury as follows:

> [O]n October 27, 2007[,] at 3:00 p.m., I responded to an accident in a dangerous location on [Interstate]-80 in the left lane, in a blinding rain storm. I believed my vehicle would be hit at any moment by oncoming traffic who could not see me before coming around a curve. It was necessary for me to park my vehicle to block the lane in order to shield a family whose mini-van [had] crashed as a result of the heavy rains. I had no flares[,] having used my supply in response to prior accidents. I asked for immediate assistance closing lanes and securing the situation. Sgt. Checkur was less than [three] miles away, and was the only Trooper

> available. He never responded. It took [thirty] minutes to be assisted, and that was by a tow truck from [twenty] miles away. During that time, I feared for my safety. When other Troopers arrived [thirty] minutes later, the situation was over.

Hodge also listed in his application several incidents of harassment allegedly committed by his supervisor, Checkur, during the preceding two-month period. Hodge did not return to work following the October 27, 2007 incident and was later diagnosed as suffering from post-traumatic stress disorder (PTSD) and depression.

On May 25, 2010, the Board found that Hodge was totally and permanently disabled from performing his regular and assigned duties. However, the Board found his disability was caused by a series of events and not just one specific incident that could be identified as the substantial contributing cause of his disability; the October 27, 2007 incident was not "undesigned and unexpected;" and "the disability did not result from direct personal experience of a terrifying or horror-inducing event that involved actual or threatened death or serious injury, or a similarly serious threat to the physical integrity of [himself] or another person." Consequently, the Board denied Hodge accidental disability retirement benefits, but granted him ordinary disability retirement benefits.

Hodge appealed the Board's determination and the matter was transferred to the Office of Administrative Law as a contested case. The administrative law judge (ALJ) assigned to the case held an evidentiary hearing on February 26, 2014. Hodge testified at the hearing consistent with the information contained in his application. He also presented the testimony of Martin Mayer, M.D., a psychiatrist who conducted an independent medical examination of Hodge in January 2010. In his report and testimony at the hearing, Dr. Mayer opined that Hodge suffered from PTSD and related mental disorders as a result of the October 27, 2007 incident.

In a comprehensive written opinion, the ALJ found Hodge to be a credible witness. The ALJ found it undisputed that Hodge suffered from a disabling permanent mental injury, and that the record supported Dr. Mayer's conclusion that his disabling condition was the direct result of the October 27, 2007 incident.

The ALJ concluded that Hodge met the "mental-mental" injury test set forth in Patterson v. Board of Trustees, State Police Retirement System, 194 N.J. 29 (2008), as well as the requirements outlined in Richardson v. Board of Trustees, Police and Fireman's Retirement System, 192 N.J. 189 (2007). The ALJ found that the October 27, 2007 incident "was out of the ordinary range of traffic stops, and was both undesigned and unexpected[,]" given the

location of the accident, the weather conditions, the lack of flares, and "the amount of time it took for backup to arrive." The ALJ further reasoned:

> The facts of the October 27, 2007 event come within the parameters of a "terrifying or horror-inducing event" involving actual or threatened death or serious injury. Hodge witnessed the possibility of death or serious harm to either himself or the stranded family while on that dangerous stretch of roadway. Both he and the family were in a dangerous and vulnerable situation given their location. Aside from the location, the weather was extreme making the situation all the more terrifying as large trucks and other vehicles attempted to avoid collision with them over the course of a half hour. Hodge and the family had to endure such physically close and terrifying danger while waiting for assistance. Additionally, the horror of the incident was made worse for Hodge by the thought that backup simply might not come in time. Given all these factors, the October 27, 2007 event comes within the . . . criteria of a terrifying event that could objectively cause a reasonable person to suffer a disabling mental injury.

In its final decision, the Board modified the ALJ's findings of fact and rejected her legal conclusions. The Board reasoned that on October 27, 2007, Hodge was "performing the usual work of his job description in the usual way and did not encounter a traumatic event that was undesigned and unexpected." It elaborated:

> Tending to disabled motor vehicles on the highway, including in extreme weather, is

> expressly required of members of the [] State Police. The relevant section of the Critical Tasks and Fitness Standards Form states, "[Police officers] must be able to assist disabled motorists which minimally includes changing a flat tire and push[ing] a disabled vehicle." The Form continues, "[Police officers] must be capable of withstanding exposure to extreme weather conditions," but it does not mention that an officer should expect backup in such situations. [Hodge] testified that he had received this manual. He had been trained pursuant to the manual. He had rendered assistance to motorists pursuant to the manual in the rain earlier that day. He did not find himself in a life or death situation that he was not trained for. While the rain and lack of flares may have made the traffic stop "strenuous" or "inconvenient" it was still within [Hodge's] usual work. Unlike Moran,[1] the motorists Hodge was with did not have an actual and immediate threat of certain death, dependent only upon Hodge's actions for survival. In fact, they had already made it safely to the side of the road. There was no unintended mishap that happened to [Hodge] on October 27, 2007. Thus, the event was not undersigned and unexpected.
>
> [(Internal citations omitted.)]

The Board also determined that Hodge did not qualify for accidental disability benefits because the October 27, 2007 event was not a "terrifying or horror-inducing event that involv[ed] actual or threatened harm or serious injury" within the meaning of Patterson, supra, 194 N.J. at 50. It explained:

[1] Moran v. Bd. of Trs., Police & Firemen's Ret. Sys., 438 N.J. Super. 346 (App. Div. 2014).

> The October 27th event does not satisfy the standard for a traumatic event. The incident did not involve death or serious injuries to any persons. While it may be stressful to assist motorists disabled along a highway in bad weather, unlike the examples set forth by the Supreme Court, there was no actual harm. At best, there may have been a slight risk of harm as all roadside duties may be hazardous, no harm materialized and the fear arose due to Hodge's personal belief, unsupported by independent objective evidence, that most Trooper fatalities that he was aware of occurred during traffic situations. Hodge's belief was not corroborated by any factual evidence of officer fatalities. The possibility of an accident, regardless of how remote or likely it may be, does not render a situation as involving a serious threat of death. Providing general assistance along a busy roadway is a circumstance that Troopers encounter regularly, and even under poor weather conditions, these circumstances[,] while stressful, do not rise to the level of a terrifying or horror inducing event.

Finally, the Board determined that the October 27, 2007 event "was not the essential significant or substantial contributing cause of [Hodge's] injury." Rather, the Board noted Hodge's report of "several work incidents over a period of more than two months where he felt like he was being mistreated by his superior" and concluded that his disability was "the result of a continuous string of events as opposed to one specific incident that can be identified as the substantial contributing cause." Accordingly, the Board rejected the ALJ's initial decision finding Hodge

eligible for accidental disability benefits, and instead determined he was "properly retired on an ordinary disability." The present appeal followed.

Before us, Hodge argues that the Board improperly rejected the ALJ's decision. Hodge maintains that the ALJ correctly determined that he was qualified for accidental disability benefits because he satisfied the standards set forth in Richardson and Patterson.

We begin with basic principles. "Our scope of review of an administrative agency's final determination is limited." Capital Health Sys. v. N.J. Dep't of Banking & Ins., 445 N.J. Super. 522, 535 (App. Div.) (citing In re Stallworth, 208 N.J. 182, 194 (2011)), certif. denied, ___ N.J. ___ (2016). A "strong presumption of reasonableness attaches" to the agency's decision. In re Carroll, 339 N.J. Super. 429, 437 (App. Div.) (quoting In re Vey, 272 N.J. Super. 199, 205 (App. Div. 1993), aff'd, 135 N.J. 306 (1994)), certif. denied, 170 N.J. 85 (2001). The burden is upon the appellant to demonstrate grounds for reversal. McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002); see also Bowden v. Bayside State Prison, 268 N.J. Super. 301, 304 (App. Div. 1993) (holding that "[t]he burden of showing the agency's action was arbitrary, unreasonable[,] or capricious rests upon the appellant"), certif. denied, 135 N.J. 469 (1994).

To that end, we will "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 Application of Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008); see also Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 9-10 (2009). We are not, however, in any way "bound by the agency's interpretation of a statute or its determination of a strictly legal issue." Capital Health Sys., supra, 445 N.J. Super. at 536 (quoting Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973)).

When a head of an administrative body rejects or modifies any findings of fact or conclusions of law made by an ALJ, it must clearly state its reasons for doing so. Div. of Youth & Family Servs. v. C.H., 414 N.J. Super. 472, 480 (App. Div. 2010) (citing N.J.S.A. 52:14B-10(c)), certif. denied, 207 N.J. 188 (2011); S.D. v. Div. of Med. Assistance & Health Servs., 349 N.J. Super. 480, 485 (2002). The new or modified findings must be supported by "sufficient, competent, and credible evidence in the record . . . ." Ibid. In this context, we are required to "ensure that the agency head applied the appropriate standard of review when

modifying or reversing credibility findings of lay witnesses." S.D., supra, 349 N.J. Super. at 485 (citation omitted).

The Supreme Court has clarified and refined a claimant's eligibility to receive accidental disability benefits in a trilogy of cases. Consideration of these opinions guides our review of Hodge's arguments.

In Richardson, the Supreme Court explained that eligibility to collect accidental disability benefits requires a claimant to show each of the following five elements:

> 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 preexisting 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.
>
> [Richardson, supra, 192 N.J. at 212-13.]

In Patterson, the Court considered whether an award of accidental disability retirement benefits could be based on a "permanent mental disability as a result of a mental stressor, without any physical impact," described as a "mental-mental injury[.]" Patterson, supra, 194 N.J. at 33. The Court examined whether such a condition could satisfy the "traumatic event" requirement of the statute, recognizing a mental-mental permanent disability "presents a unique set of challenges" as "'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.'" Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 31 (2011) (quoting Patterson, supra, 194 N.J. at 48).

The Court "established a high threshold for the award of accidental disability benefits based on a mental injury arising out of a pure mental stressor with no physical impact[,]" ibid. (citing Patterson, supra, 194 N.J. at 50), concluding a member must also prove

> [t]he disability [] result[ed] 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. By that addition, we achieve the important assurance that the traumatic event posited as the basis for an accidental disability pension

> is not inconsequential but is objectively capable of causing a reasonable person in similar circumstances to suffer a disabling mental injury.
>
> [Patterson, supra, 194 N.J. at 34.]

In Russo, the Court revisited the application of the standards enunciated in Richardson and Patterson, clarifying that, when analyzing a mental-mental application, the threshold showing must be a Patterson-type traumatic event that is "'not inconsequential but is objectively capable of causing a reasonable person in similar circumstances to suffer a disabling mental injury.'" Russo, supra, 206 N.J. at 18 (quoting Patterson, supra, 194 N.J. at 34). "[W]here a qualifying horrific event is experienced, Patterson is satisfied with no further analysis." Id. at 32. Thus, in a mental-mental case, the member must first meet the prongs delineated in Patterson, showing events "of sufficient gravity to objectively cause a permanent, disabling mental injury to a reasonable person[.]" Ibid. (citing Patterson, supra, 194 N.J. at 49-50). "It is then that Richardson comes into play." Ibid.

Turning to the facts at hand, it is not disputed that Hodge is permanently and totally disabled. Having reviewed the record, we part company with the Board's conclusion that the October 27, 2007 event was not the essential significant or substantial

contributing cause of Hodge's injury. The ALJ found Hodge "credible in his assertion that up until October 27, 2007, he had functioned fully in his job" and "had never sought medical help or been diagnosed with any condition." The ALJ further found this assertion by Hodge was "corroborated by the testimony of Dr. Mayer and his review of the relevant medical records." We agree with the ALJ that Dr. Mayer's independent expert opinion provided the requisite medical evidence that the October 27, 2007 event was the substantial contributing cause of Hodge's disability.

Nonetheless, given our standard of review, and consistent with the factual record and applicable law, we conclude the Board's modified findings of fact and conclusions of law are otherwise supported by sufficient, competent and credible evidence in the record. For the reasons stated by the Board, we agree that the October 27, 2007 incident failed to meet the "terrifying or horror-inducing event" standard, objectively "sufficient to inflict a disabling injury when experienced by a reasonable person in similar circumstances[.]" Patterson, supra, 194 N.J. at 34, 50.

Even if Hodge met the Patterson test, he must also show that the October 27, 2007 incident leading to his disability satisfies each prong identified in Richardson. Patterson, supra, 194 N.J. at 50. Following our review, we conclude his proofs fail to satisfy the "undesigned and unexpected" prong. The discussion in

Russo guides our analysis of this prong. In Russo, the Court stated:

> It is under Richardson that the member who has experienced a qualifying traumatic event must prove that the event, in fact, caused him to be permanently and totally disabled; that it was identifiable as to time and place; undesigned, unexpected, and external to the member; that it was work related; not self-induced, and that the member is unable to perform his usual or any other duty. Richardson, supra, 192 N.J. at 212-13. That is important because it underscores that not every person who experiences a Patterson-type horrific event will automatically qualify for a mental-mental accidental disability benefit. . . . [A]n employee who experiences a horrific event which falls within his job description and for which he has been trained will be unlikely to pass the "undesigned and unexpected" test. Thus, for example, an emergency medical technician who comes upon a terrible accident involving life-threatening injuries or death, will have experienced a Patterson-type horrific event, but will not satisfy Richardson's "undesigned and unexpected" standard because that is exactly what his training has prepared him for.
>
> [Russo, supra, 206 N.J. at 32-33.]

We thus consider the nature of the traumatic event presented here within the context of Hodge's training and experience. We conclude that while responding to an accident scene on the bend of a highway in poor weather conditions was potentially dangerous and stressful, it was an event falling within the crises Hodge as a police officer was prepared to likely encounter, and in fact had

already encountered that day, in the course of employment. See Hayes v. Bd. of Trs. of Police & Firemen's Ret. Sys., 421 N.J. Super. 43, 46-47 (App. Div. 2011) ("The event must be horrific, one which falls outside the employee's job description, and for which he or she is not trained."). Consequently, we agree with the Board's determination that the incident attributed to triggering Hodge's PTSD was not one that was undesigned or unexpected.

We reject Hodge's inapposite analogy to the facts in Moran, where we concluded it was "undesigned and unexpected" for a firefighter to suffer disabling physical injuries while heroically forcing down a front door with his body to save two people. Moran, supra, 438 N.J. Super. at 354-55. Moran, a firefighter, responded with his engine company to a fire in what was reported to be a vacant house. Id. at 350. Moran unexpectedly heard screams from people trapped inside the fully-engulfed house. Ibid. A fire truck company, which had special tools to break down the well-fortified door, had not yet arrived. Ibid. Because he heard the people screaming, Moran used his body to break down the door, saving two lives, but sustaining injuries. Ibid. We found that Moran was injured as the result of an undesigned and unexpected combination of unusual circumstances, and that these events, or series of events, were external to him. Id. at 354.

To the contrary, the circumstances here are similar to the paramedic illustration discussed in Russo: Hodge was trained, had earlier encountered motor vehicle accidents in dangerous conditions, and carried tools to address such situations. See Russo, supra, 206 N.J. at 33. Rendering assistance to the crashed minivan was something Hodge expected to perform in the course of his duties, and his training was designed to address. Although Hodge had exhausted his supply of flares, his police car was equipped with lights and a siren that could be utilized to provide similar warning to approaching motorists. With a proliferation of other accidents reported in the area due to the poor weather conditions, Hodge could not count on back up help arriving quickly, even in the absence of his superior's alleged hostility. Also, unlike Moran, neither Hodge nor the family he was assisting sustained any injuries. We are therefore satisfied that the October 27, 2007 incident was not an unexpected and undesigned traumatic event that would qualify Hodge to receive accidental disability retirement benefits.

Affirmed.