SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
DOCKET NO.: A-000585-22 T4

ROBERTO VILLAREAL-RIOS,

Appellant,

V.

BOARD OF TRUSTEES, POLICE AND FIREMAN'S RETIREMENT SYSTEM

Respondent.

Civil Action

On Appeal from

Initial Decision dated August 15, 2022, under OAL Docket No. TYP-17442-19 and upheld by The Department of The Treasury, Police and Fireman's Retirement System on September 16, 2022

Sat below:

Hon. Julio C. Morejon, ALJ

Brief and Appendix of Appellant Roberto Villareal-Rios

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES CITED

STATUTES CITED

TABLE OF JUDGMENTS, ORDERS AND RULINGS

TABLE OF APPENDIX

INDEX TO TRANSCRIPTS

PRELIMINARY STATEMENT

Appellant, Roberto Villareal-Rios, should be granted his Accidental Disability Pension Benefits because the incident which occurred on September 22, 2017 was "undersigned and unexpected" meeting all the requirements as set forth in Richardson vs. Board of Trustees, Police and Firemen's Retirement System, 192 N.J. 189 (2007) and reinstated in Moran v. Board of Trustees, Police and Firemen's Retirement System, 438 N.J. Super. 346 (App. Div. 2014). While perhaps not a "classic" accident in the sense that he didn't trip over something or fall because of something on the ground, it was an undesigned and unexpected traumatic event that resulted in Mr. Willareal-Rios's suffering a disabling injury while performing his job. Viewed in context, the injury was caused by an event "external" to Officer Villareal-Rios, Richardson, supra, 192 N.J. at 212-13, qualifying him to receive his Accidental Disability pension. This Court on this legal issue isn't required to afford the determining agency its normal discretion and as such may overturn the decision of the Administrative Law Judge ("ALJ") as affirmed by the Pension Board and grant Officer Villareal-Rios his Accidental Disability Pension Benefits.

PROCEDURAL HISOTRY

On October 31, 2018, the Appellant applied for his Accidental Disability Pension Benefits. (Aa1-Aa3). On October 7, 2019, the Board of Trustees, Police and Firemen's Retirement System ("The Board") considered and denied Appellant's application for Accidental Disability Retirement Benefits. (ADRB) (Aa4-Aa6). An appeal request was made on October 15, 2019. (Aa7). On December 10, 2019, the Board transferred the matter to the Office of Administrative law. A hearing was held on November 16, 2020. On August 15, 2022, Judge Morejon rendered an initial decision. (Aa9-Aa22). On September 16, 2022, the Board upheld the ALJ's decision. (Aa23). A Notice of Appeal and Case Information Statement were filed on October 27, 2022, and an amended Notice of Appeal and Case Information Statement were filed on November 22, 2022.

STATEMENT OF FACTS

On September 22, 2017, Mr. Villarreal-Rios was employed by Milburn Township Fire Department. (Aa32-Aa36). He had been with Millburn for approximately seven (7) years and some months. (1T11:13-18). On the date in question, Mr. Villarreal-Rios was a first respondent from Station 2 and identified that there was an electrical fire coming from an electrical box in the basement. (1T16: 11-20). He entered the basement, and it was determined that extra hose was needed. (1T18: 14-16). Captain Felix Reyes told him to grab an extra 100 feet

of hose. (1T18: 17-19). Mr. Villarreal-Rios with Eighty-Five (85) pounds of equipment is told to get the extra hose from the truck which was about a hundred (100) feet from the house. (1T17-23). He gets to the truck, grabs the extra hose, which weighs between forty (40) to fifty (50) pounds, and starts to walk up the driveway towards the house. (1T22: 1-10). He testified that as he was going up the driveway he twisted his ankle on something on the driveway. (1T22: 21-25). He testified that the only reason he needed to go back to get the additional hose was because there was a bookcase blocking the basement door. (1T40: 21-25). This fact is what required him to return to the truck and what lead to his having to come back up the driveway sustaining the injury to his left ankle. (1T41:1-11). After the authorized workers compensation medical treatment, Mr. Villarreal-Rios was unable to function and perform the tasks of a firefighter which prompted the filing of his application for Accidental Disability Pension benefits. (Aa1-Aa3).

STANDARD OF REVIEW

The standard of review that applies in an appeal from a state administrative agency's decision is well established and limited. Russo v. Bd. Of Trs., 206 N.J. 14, 27 (2011)(citing In re Herrmann, 192 N.J. 19, 27 (2007)). This Court does grant a strong presumption of reasonableness to an agency's exercise of its statutorily delegated responsibility, City of Newark v. Natural Res. Council, 82 N.J. 530, 539 cert. denied, 49 U.S. 983, 101 S. Ct. 400, 66 L. Ed. 2d 245 (1980),

and defer to its fact finding. Utley v. Bd of Review, 194 N.J. 534, 551 (2008). The agency's decision should be upheld unless there is a "clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record or that it violated legislative policies. In re Musick, 143 N.J. 206, 216 (1996); Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963); Caminiti v. Bd. of Trs., Police and Firemen's Ret. Sys., 431 N.J. Super. 1, 14 (App. Div. 2013) (Citing Hemsey v. Bd of Trs., Police and Firemen's Ret. Sys., 198 N.J. 215, 223-24 2009). On appeal, "the test is not whether an appellate court would come to the same conclusion to the original determination was its to make, but rather whether the fact finder could reasonably so conclude upon the proofs." Brady v. Bd of Review, 152 N.J. 197, 210 (1997) ("Charatam v. Board of Review, 200 N.J. Super. 74, 79 (App. Div. 1985). So long as the "factual findings" are supported by sufficient credible evidence, courts are obliged to accept them. Ibid. Nevertheless, if the Court's review of the record shows that the agency's finding is clearly mistaken, the decision is not entitled to judicial deference, See H.K. v. Department of Human Services, 184 N.J. 367, 386 (2005); L.N. v. State, Div. of Med. Assist. and Health Servs., 140 N.J. 480, 490 (1985) nor is this Court bound by the agency's interpretation of a statute or its determination of a strictly legal issue. Mayflower Cec. Co. v. Bureau of Sec., 64 N.J. 85,93 (1973).

The public pension systems are "bound up in the public interest and provide public employees significant rights which are deserving of conscientious protection." Zigmont v. Bd. Of Trs. Teachers' Pension & Annuity Fund, 91 N.J. 580, 583 (1983). Because pension statutes are remedial in character, they are liberally construed and administered in favor of the persons intended to be benefited thereby. Klumb v. Bd of Educ. Of Manalapan-Englishtown Reg'l High Sch. Dist., 199 N.J. 14, 34 (2009).

In this case, the Board adopted the ALJ's application of the law and the facts. Therefore, it is respectfully requested this court focus on Judge Ascione's misapplication of the law, for a second time, [1] (Aa 14) and find Judge Ascione's decision and hence the Board's determination not entitled to this court's deference as it once again misinterprets the statute and clear meaning of Richardson.

POINT I

THE PFRS BOARD IMPROPERLY DETERMINED THAT MR. DURAN IS NOT ENTITLED TO AN ACCIDENTAL DISABILITY PENSION BECAUSE THE INCIDENT CAUSING HIS DISABILITY WAS UNDESIGNED AND UNEXPECTED(Aa1-Aa3)(1T22: 12-25)(1T41:1-11)

An analysis of the undesigned and unexpected issue should commence with a review of the pension statute as outlined in Richardson. In order to be eligible

[1] Judge Ascione in his Initial Decision references his opinion being overturned by this Court on the same exact issue in Ebony Brown v. PFRS, 2019 N.J. Super Unpub. Lexis 337 (App. Div. February 11, 2019).

for an accidental disability retirement the pension member must show that [s]he is "permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of h[er] regular or assigned duties and that such disability was not the result of the member's willful negligence." N.J.S.A. 43:16A-7(1). The Court found that in using the term "traumatic event," the Legislature did not mean generally to raise the bar for injured employees to qualify for accidental disability pensions. Id. at 210-11. Rather, the Legislature intended to "excise disabilities that result from pre-existing disease alone or in combination with work effort from the sweep of the accidental disability statutes and to continue to allow recovery for the kinds of unexpected injurious events that had long been called 'accidents.'" Id. at 192. The Court went on to note that "some of our cases failed to recognize that critical limitation in purpose and persisted in the entirely wrong notion that the term traumatic event was intended, in itself, to more significantly narrow the meaning of accident." Id. at 210-211.

In Richardson, the corrections officer suffered an injury while attempting to subdue an inmate who had forcefully jerked up from the ground, knocking the officer backward and causing him to fall back onto his left hand, injuring his wrist. Id. at 193. The Board denied his accidental disability finding the incident was not a traumatic event. The Court reversed stating that "a traumatic event is essentially the same as what we historically understood an accident to be 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, supra, 192 N.J. at 212.

As Chief Justice Weintraub explained and was quoted in Richardson, supra, at 201, in referencing Russo v. Teachers' Pension and Annuity Fund, 62 N.J. 142, at 152 (1973):

> "In ordinary parlance, an accident may be found either in an unintended external event or in an unanticipated consequence of an intended external event if that consequence is extraordinary or unusual in common experience. Injury by ordinary work effort or strain to a diseased heart, although unexpected by the individual afflicted, is not an extraordinary or unusual consequence in common experience. We are satisfied that disability or death in such circumstances is not accidental within the meaning of a pension statute when all that appears is that the employee was doing his usual work in the usual way."

As a consequence, there are two basic types of external events, either an unintended external event or an unanticipated consequence of an unintended external event if that consequence is extraordinary or unusual in common experience. In the former case, the happening of the event is undesigned and unexpected, while in the latter case, it is the consequence of the event or circumstance, which is undesigned and unexpected. In either case, however, the external event or circumstance must occur during and as a result of the performance of regular or assigned duties.

In the present matter, respondent argues that petitioner's claim does not satisfy the Richardson standard because the incident was not an unanticipated consequence of

qualifying and not extraordinary or unusual in common experience, therefore not undesigned or unexpected. It is not in dispute that all other criteria have been met.

Richardson gives examples of qualifying events: "A policeman can be shot while pursuing a suspect; a librarian can be hit by a falling bookshelf while re-shelving books; a social worker can catch her hand in the car door while transporting a child to court." Id. at 214. Also, a gym teacher "who trips over a riser" has satisfied the standard. Id. at 213. Two published Appellate Division decisions provide additional examples:

A janitor whose foot was severely injured when two students dropped their side of a 300-pound weight bench they were carrying qualified, even though he could have foreseen that dropping it was likely. Brooks v. Bd. of Trs., Pub. Emps.' Ret. Sys., 425 N.J. Super. 277 (2012). Also, a sheriff's officer whose finger was pierced by a dirty needle while frisking a suspect had sustained a Richardson qualifying injury, when it led to physically intrusive AIDS prevention treatment, and eventually complete mental disability due to post-traumatic stress disorder. Caminiti v. Bd. of Trs., Police and Firemen's Ret. Sys., 431 N.J. Super. 1 (App. Div. 2013).

Mr. Villarreal-Rios's case more resembles these decisions as well as Moran v. Board of Trustees Police and Firemen's Retirement System. Mr. Moran was a firefighter who but for the sudden and emergent circumstance of having to enter a

burning building which was initially thought to be vacant but wasn't sustained injuries when he was forced to break in a door as part of his job duties.

The Board in Moran held that the kicking in a door or intentionally using one's back to gain entry did not constitute an unexpected happening and that the job duties included rescuing people and hence Moran performed "a duty within the scope and performance of his regular duties for which he had been specifically trained." The Moran Court held that the Board misconstrued Richardson and reached a result at odds with the legislative intent in adopting the "traumatic event" standard. The Court upheld the ALJ stating "the traumatic event must be viewed with a wider lens than the one the Board applied. The undesigned and unexpected event here was the combination of unusual circumstances that led to Moran's injury. Had he not responded immediately to break down the door, the victims would have died." "While this was not the classic "accident" in the sense that the house did not collapse on Moran, nor did he trip while carrying a fire house, it was clearly an undersigned and unexpected traumatic event."

As the court noted in Richardson, "[t]he polestar of the inquiry is whether, during the regular performance of his 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." That is exactly what happened in this instance. As the Court noted in Richardson, "work effort itself . . .

cannot be the traumatic event." Richardson, supra, 192 N.J. at 211. The injury must be the result of the happening, which has, in this matter, been sufficiently identified.

The evidence in the record clearly reflects that the incident resulting in Mr. Villarreal-Rios becoming disabled was unusual and extraordinary given the attendant circumstances and meets the Richardson standard. As in Moran, Mr. Villarreal-Rios was trained to perform his job and the tasks he described, however, the circumstances of this injury were unusual. As Mr. Villarreal-Rios testified, the reason for having to get the hose, was that a bookcase was blocking the basement door. (1T41: 1-11). But for having to get the additional hose, and twisting his ankle on something on the driveway, Mr. Villarreal-Rios would still be working as a FireFighter.

As a result of this unusual "external" event occurring at the time he was working he meets the definition of undesigned and unexpected. He was unaware of the possibility of this kind of result when performing an activity he had been trained for and was taught how to perform and as in Moran an unexpected situation occurred while Mr. Villarreal-Rios was performing his job resulting in a medical situation unanticipated by his experience. To be sure, if the "normal stress and strain" of the job had combined with a pre-existing disease then a traumatic event would not have happened. This is very different from saying that a traumatic event can't occur during ordinary work effort because indeed it can, did, and therefore, Roberto Villarreal-

Rios's undisputed basis for his injury mirrors Moran allowing this Court to reverse the Board's decision and grant Officer Duran his accidental disability pension benefits.

CONCLUSION

For the foregoing reasons, the Board's denial of Officer Duran's Accidental Disability Pension Benefits isn't owed this Court's discretion and should be overturned as Officer Duran has satisfied all of the requirements as set forth in the Statute and Richardson.

Respectfully Submitted,

Samuel M. Gaylord, Esq.

Dated: January 4, 2024

ROBERTO VILLARREAL-RIOS, Appellant, V. BOARD OF TRUSTEES, POLICE AND FIREMEN'S RETIREMENT SYSTEM OF NEW JERSEY, Respondent.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION APPEAL OF ADMINISTRATIVE FINAL DECISION Docket No. **A-000585-22**

AMENDED

BRIEF OF RESPONDENT - BOARD OF TRUSTEES, POLICE AND FIREMEN'S RETIREMENT SYSTEM OF NEW JERSEY

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TABLE OF CONTENTS

TABLE OF APPENDIX

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS[1]

Appellant Roberto Villarreal-Rios ("Petitioner"), a former firefighter for the Township of Milburn, appeals from the denial by Respondent Board of Trustees, Police and Firemen's Retirement System of New Jersey ("the Board") of Petitioner's application for accidental disability retirement benefits ("AD") (Aa23-Aa31).[2]

The pertinent facts are set forth in the Initial Decision of Administrative Law Judge (ALJ) Julio C. Morejon dated August 15, 2022 (Aa9-Aa22), which was adopted by the Board (Aa23). On October 8, 2019, the Board denied Petitioner's application for AD based on its finding that Petitioner failed to meet his burden of proving that the September 22, 2017 incident was undesigned and unexpected (Aa4-Aa6; Aa11). The Board granted him ordinary Disability Retirement Benefits (Aa4; Aa11; IT46:20-24).[3]

Petitioner appealed the Board's denial of AD (Aa7; Aa11). At its meeting on December 9, 2019, the Board approved Petitioner's request for a hearing to appeal

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[1] Because the Procedural History and Counterstatement of Facts are closely related, they are combined to avoid repetition and for the Court's convenience.

[2] "Aa" refers to Petitioner's Appendix. "IT" refers to the transcript of the hearing before ALJ Morejon on November 16, 2020.

[3] The award of ordinary disability retirement benefits entitles Petitioner to at least forty percent of his final compensation. N.J.S.A. 43:16A-6(2)(b). An award of AD would entitle him to at least 2/3 of his final compensation. N.J.S.A. 43:16A-7(2)(b).

the Board's decision and transferred this matter to the Office of Administrative Law (Aa8; Aa11).

A hearing was held before ALJ Morejon on November 16, 2020 (Aa11; IT1-IT48). At the hearing, Petitioner testified that as of the incident date of September 22, 2017, he had been a full-time firefighter with the Township of Millburn for approximately seven years (Aa12; IT11:13-21; IT12:14-16). He was required to undergo training to become a firefighter, and he confirmed that his job duties were as stated in the Job Description for a Firefighter (Aa12; Aa32-Aa36; IT12:3-25; IT13:1-6). He testified that he had responded to many fire calls in his seven-year career (Aa12; IT11:25; IT12:1-13).

On September 22, 2017, Petitioner along with Captain in Charge Felix Reyes and another firefighter responded to a call regarding an electrical fire in a basement in a home in Short Hills (Aa12; IT13:7-25; IT14:1, 22-24; IT16:18-20). Upon arriving at the scene, they put on their equipment and oxygen tanks, totaling "eighty-five pounds" of equipment, over their uniforms (Aa12; IT16:18-24). Petitioner testified that he "stretched" the fire hose from the fire truck to the house (Aa12; IT17:8-18; IT18:20-25; IT19:1-3; IT27:21-25; IT28:1-4). Captain Reyes and the other firefighter entered the house and went to the basement with the fire hose (Aa12; IT19:4-6). Petitioner was stationed at the fire truck to "work the pump" (Aa12-Aa13; IT19:6-10).

When Captain Reyes realized that a bookcase was blocking the entrance into the basement, he told Petitioner to get the one-hundred-foot hose ("long hose") from the fire truck and bring it to the basement (Aa12-Aa13; IT17:1-7; IT18:14-19; IT19:14-25). Petitioner testified that as he was carrying the long hose from the truck up the driveway, which was on an upward incline, he twisted his ankle and fell (Aa13; IT20:4-6; IT22:1-17; IT23:1-4).[4] Petitioner stood up, brought the long hose to the firefighters in the basement, and returned to the fire truck (Aa13; IT23:7-14).

Another fire truck arrived at the scene (Aa13; IT:24:1-6). Petitioner and his crew were called to a fire in Maplewood, but the call was cancelled before they arrived (Aa13; IT:24:6-16; IT42:3-6).

Petitioner claimed that he was diagnosed with a "navicular fracture" of his left ankle, and that he received Workers Compensation for one year (Aa13; IT25:12-19; IT40:5-15). When Petitioner was questioned regarding the Intake Information and

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[4] Respectfully, while ALJ Morejon's decision states that Petitioner testified that "he fell down to the left, and twisted his ankle in the process" (Aa13), in point of fact, Petitioner testified that he first twisted his ankle and then fell down (IT20:4-6; IT22:1-17; IT23:1-4). As ALJ Morejon noted in his decision, Petitioner admitted at the hearing that he did not know the reason why he twisted his ankle and fell down (Aa18; IT22:12-25). Although ALJ Morejon states elsewhere in his decision that Petitioner's left ankle was caught up in the long hose (Aa13) and that he became "entangled in a fire hose" (Aa19), Petitioner did not so testify but only speculated that he might have twisted his ankle on something on the driveway while carrying the hose (IT20:4-6; IT22:1-25; IT23:1-4). When asked, "What did you twist your ankle on?", Petitioner responded, "I don't recall, I don't remember on what I twisted it." (IT22:12-23).

Incident Report ("Incident Report"; Aa37-Aa43), Petitioner testified that a Captain prepared it, with information that Petitioner provided (Aa13; IT25:24-25; IT26:1-11; IT27:1-18). The Incident Report was incorrect in describing his injury as having occurred when he "tripped over the hose" (Aa13; Aa37; IT27:10-14). He did not trip over the hose (IT27:13-14). As he was going up the incline of the driveway with the long hose, he twisted his ankle (IT28:9-13). The Incident Report was also incorrect in stating that the injury was to his right ankle, as he injured his left ankle (Aa13; Aa40; IT28:25; IT29:1-3).

Petitioner testified that his legal counsel prepared the information contained in his application for disability retirement dated October 31, 2018 (Aa1-Aa3; Aa13-Aa14; IT30:19-25; IT31:3-9). The description of the incident provided in the disability application was incorrect (Aa13-Aa14; IT:31:14-19). The disability application stated that Petitioner sustained his injury "while carrying hose to the basement," and that Petitioner twisted his ankle on the steps (Aa1; Aa14; IT31:14-19). Petitioner testified at the hearing that he fell as he was carrying hose up the driveway (Aa14; IT31:18-25).

On cross-examination, Petitioner confirmed that the New Jersey Civil Service Commission job description accurately described his duties as a firefighter (Aa14; Aa32-Aa36; IT32:22-25; IT33:1-24). Petitioner confirmed that as a firefighter he is trained to and has performed the following duties, among others: "loads and unloads

equipment," "lays and connects hose to hydrants, standpipes and intake and discharge valves," "performs preparatory operations for the delivery of water" and transports tools and equipment (Aa14; Aa32-Aa33; IT34:3-25; IT35:1-9). He confirmed that he had training and prior experience in handling these types of fires, and that he was trained to and had previously traversed uneven inclines and declines when carrying equipment and fire hoses (Aa14; IT32:5-12; IT35:17-22; IT36:9-16).

The ALJ asked Petitioner why he believed that the bookcase in the doorway to the basement was significant (Aa14; IT40:21-25). Petitioner responded that the bookcase was the only reason he returned to the fire truck to get the long hose, so that the other firefighters could go to another entrance and extinguish the fire (Aa14; IT40:21-25; IT41:1-8).

In his decision issued on August 15, 2022 (Aa9-Aa22), the ALJ found Petitioner's testimony to be credible and found the version of the incident provided in his hearing testimony to be fact (Aa14). The ALJ stated that in order to qualify for AD, the Petitioner must show among other things that he 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 (Aa15; citing N.J.S.A. 43:16A-7[1]). The New Jersey Supreme Court has held that the "traumatic event" must be "undesigned and unexpected" (Aa15-Aa16, citing Richardson v. Board of Trustees, Police and Firemen's Retirement System, 192 N.J. 189, 212-213 [2007]).

The ALJ rejected Petitioner's argument that the circumstance of Petitioner having to go back to the truck to retrieve the long hose because the bookcase was blocking the basement doorway qualified as an undesigned and unexpected event (Aa18). The ALJ stated in pertinent part:

> "Here, there is no doubt that petitioner's service at the scene were laudable and consistent with his training to save lives and property. However, Villarreal's disability did not result from an 'unexpected external happening.' Rather petitioner became totally and permanently disabled while performing his usual and ordinary duties. Moreover, petitioner's argument fails because he has the burden to prove that he is totally and permanently disabled as a direct result of a traumatic event which is undesigned and unexpected." (Aa17).

ALJ Morejon found that the alleged traumatic event was Petitioner's accident as he was carrying the long hose to the basement (Aa19). The issue was whether the traumatic event was undesigned and unexpected, and not the bookcase blocking the basement door (Aa19). The ALJ stated:

> "There is no evidence presented in this matter that 'during the regular performance of [petitioner's] job, an *unexpected happening*, not the result of pre-existing disease alone or in combination with the work, occurred.' Richardson, 192 N.J. at 214 (emphasis added). Simply put, there was no 'unexpected happening.' Petitioner stated that he was performing his job duties when he took out the long hose and fell while he was bringing the same to the fire fighters in the basement. Villarreal admitted that this is part of his job duties and expected of a fire fighter at the scene (J-7). Furthermore, Villarreal testified that as a fire fighter, he received training in the Academy, and

> later while a fire fighter, regarding the very same duties which he testified he performed on the date of the incident.
>
> "While Richardson is clear that 'the fact that a member is injured while performing his ordinary duties does not disqualify him from receiving accidental disability benefits,' it is equally clear that some 'unexpected happening' must occur to meet the elements of the Richardson test. Ibid. Specifically, an 'unexpected happening' must occur to show that the incident that caused the injury was a traumatic event that is, among other things, undesigned and unexpected.
>
> "For these reasons and as stated herein, **I CONCLUDE** that there is no evidence of 'unexpected happening' here. Petitioner was employed as a fire fighter performing his required duties on September 22, 2017, when he twisted his left ankle while carrying a fire hose up a driveway.
>
> "I agree with the Board's finding that the event that caused petitioner's disability was not undesigned and unexpected, and accordingly, **I CONCLUDE** that petitioner has failed to meet his burden of presenting sufficient, competent, and credible evidence of facts essential to his claim to prove all the elements necessary to show eligibility for an accidental disability retirement allowance by a fair preponderance of the evidence." (Aa19-Aa20)

ALJ Morejon affirmed the Board's determination to deny Petitioner's application for AD (Aa21). On September 16, 2022, the Board adopted the ALJ's initial decision in its entirety (Aa23). This appeal followed.

STANDARD OF REVIEW

On judicial review of an administrative agency determination, courts have a limited role to perform. Gerba v. Board of Trustees, Public Employees Retirement

System, 83 N.J. 174, 189 (1980) (citations omitted). An administrative agency's determination is presumptively correct, and on review of the facts, this Court will not substitute its own judgment for the agency's where the agency's findings are supported by sufficient credible evidence. Ibid.; see also Campbell v. New Jersey Racing Comm'n, 169 N.J. 579, 587 (2001); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). If the Appellate Division is satisfied after its review that the evidence and the inferences to be drawn therefrom support the agency head's decision, then it must affirm even if the court feels that it would have reached a different result. Campbell, 169 N.J. at 587.

Only where an agency's decision is clearly arbitrary, capricious or unreasonable or unsupported by sufficient credible evidence in the record may it be reversed. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980); Atkinson, 37 N.J. at 149. Moreover, the party challenging the validity of the administrative decision bears the burden of showing that it was "arbitrary, unreasonable or capricious." Boyle v. Riti, 175 N.J. Super. 158, 166 (App. Div. 1980) (internal citations omitted).

Further, although a person eligible for benefits is entitled to a liberal interpretation of a pension statute, "eligibility [itself] is not to be liberally permitted." Smith v. Dep't of Treasury, Div. of Pensions & Benefits, 390 N.J. Super. 209, 213 (App. Div. 2007).

ARGUMENT

THE BOARD'S DECISION THAT PETITIONER IS NOT ENTITLED TO AN ACCIDENTAL DISABILITY RETIREMENT IS SUPPORTED BY SUFFICIENT, CREDIBLE EVIDENCE IN THE RECORD AND SHOULD BE AFFIRMED.

N.J.S.A. 43:16A-7 sets forth the criteria governing eligibility for AD for members of the Police and Firemen's Retirement System. The statute states in pertinent part that

> "Upon the written application by a member in service…any member may be retired on an accidental disability retirement allowance; provided, that the medical board, after a medical examination of such member, shall certify that the member 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 and that such disability was not the result of the member's willful negligence and that such member is mentally or physically incapacitated for the performance of his usual duty and of any other available duty in the department which his employer is willing to assign to him."
>
> N.J.S.A. 43:16A-7(1) (emphasis added).

The Petitioner has the burden of proving the elements necessary to show eligibility for AD by a fair preponderance of the legally competent evidence. In re Polk License Revocation, 90 N.J. 550, 560 (1982); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

The question of what constitutes a traumatic event is guided by the New Jersey Supreme Court's decision in Richardson v. Board of Trustees, Police & Firemen's Retirement System, 192 N.J. 189, 212-13 (2007), which requires an applicant for AD 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." *Ibid*. (emphasis added)

At issue here is prong 2 of Richardson, that the traumatic event be "undesigned and unexpected." The "undesigned and unexpected" prong requires either (1) "an unintended external event," or (2) if the external event was intended, "an unanticipated consequence" that "is extraordinary or unusual in common

experience." Richardson, 192 N.J. 189, 201 (internal quotation marks omitted).[5] An "[i]njury by ordinary work effort," when "the employee was doing his usual work in the usual way," does not qualify. Ibid. In other words, "work effort itself…cannot be the traumatic event." Id. at 211.

Further, our Supreme Court has held that a member's job description and the scope of his or her training are relevant factors for the Court to consider in determining whether an event is "undesigned and unexpected." In a given case, those considerations can weigh strongly against an award of AD. Mount v. Board of Trustees, Police & Firemen's Retirement System, 233 N.J. 402, 427 (2018); Russo v. Board of Trustees, Police & Firemen's Retirement System, 206 N.J. 14, 33 (2011) (the Court pointed out that if the event is one that falls within the member's job description and training, it is not likely to satisfy the criterion of "undesigned and unexpected" as required by Richardson). However, the Board and the reviewing court must carefully consider the member's job responsibilities and training, and all aspects of the event itself. No single factor governs the analysis. Mount v. Board of Trustees, Police & Firemen's Retirement System, 233 N.J. at 427.

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[5] Petitioner asserts that "In the present matter, respondent argues that petitioner's claim does not satisfy the Richardson standard because the incident was not an unanticipated consequence of qualifying [sic] and not extraordinary or unusual in common experience, therefore not undesigned or unexpected" (Resp. Br., pp. 7-8). Petitioner provides no reference to the Appendix to support his attempt to restrict Respondent's position, and in fact, Respondent's arguments below were not so restricted (IT43-IT44).

The ALJ correctly applied those principles here to find that Petitioner failed to meet the undesigned and unexpected prong of Richardson. Petitioner's own testimony shows that he was performing his "usual work in the usual way" on the date of the incident. Richardson, 192 N.J. 189, 201. Petitioner was responding to a fire and in the course of responding to that fire he twisted his ankle (IT16:1-20; IT28:9-13). Petitioner did not know why he twisted his ankle, but thought there might have been "something" on the driveway (IT22:12-23).

Petitioner, a full-time firefighter with seven years of experience and training, testified at the hearing that it was among his job duties to unload equipment, lay and connect fire hoses, perform preparatory operations for the delivery of water and transport tools and equipment (Aa32-Aa36; IT11:13-25; IT12:1-25; IT13:1-6; IT34:3-25; IT35:1-9). He testified that he had responded to many fire calls in his seven-year career, and had previous experience in "stretching" fire hoses to burning buildings (IT11:25; IT12:1-13; IT16:7-25; IT17:1-20). He had training and prior experience in handling these types of fires, and was trained to and had previously traversed uneven inclines when carrying equipment and fire hoses (IT32:5-12; IT35:17-22; IT36:9-16).

As noted by the ALJ, given Petitioner's prior experience in performing his usual work as he admitted in his testimony, it was not undesigned and unexpected that Petitioner would have to deal with a situation as occurred on the date of the

incident (Aa17; Aa19-Aa20). The simple act of having to go back to the fire truck to retrieve a longer hose because a bookcase was blocking the basement doorway cannot qualify as an undesigned and unexpected event. Indeed, the presence of the longer hose on the fire truck demonstrates that similar situations, where the shorter hose does not suffice and a longer hose is needed, were expected.

Petitioner's reliance on Moran v. Board of Trustees, Police & Firemen's Retirement System, 438 N.J. Super. 346 (App. Div. 2014), is unavailing. As the ALJ noted in his decision, Moran is factually distinguishable on multiple grounds (Aa18-Aa19). Moran involved a firefighter who was injured when he kicked down the door to a burning building to save two occupants. Id. at 347. The pension board denied Moran's AD application based on its finding that the incident was not undesigned and unexpected. Id. at 347-348.

The Appellate Division reversed because there was a vital "combination of unusual circumstances that led to Moran's injury" (Id., at 354). The Appellate Division noted that breaking into burning buildings was not Moran's normal unit assignment as he was assigned to a unit which carried hoses to burning buildings and put out fires. Another unit was responsible for forcing entry into a burning structure and rescuing occupants. Id., at 349. The two units were supposed to arrive at the fire scene at the same time, and each carried special equipment specific to their functions. Ibid. Moran had received training in using special tools to break down

doors, not in forcing entry with his body. Id., at 350. The "unusual circumstances" involved in Moran's injury were the failure to arrive of the unit whose duty it was to force entry into burning buildings to save occupants, and "the discovery of victims trapped inside a fully engulfed burning building" that was previously believed to be vacant, all "at a point when Moran did not have available to him the tools that would ordinarily be used to break down the door." Id., at 349. Moran's training had not prepared him to break into burning buildings without specialized equipment, and this was not a situation in which Moran should have expected to find himself. Id., at 355.

None of the factors mentioned by the Court in Moran are present here. Petitioner testified that it was among his job duties to unload equipment, lay and connect fire hoses, and perform preparatory operations for the delivery of water. Petitioner responded to many fire calls in his seven-year career and had training and experience in handling these types of fires. He had previous experience in "stretching" fire hoses to burning buildings and was trained to and had previously traversed uneven inclines when carrying fire hoses. Petitioner did not claim that he lacked any necessary equipment, as was the case in Moran.

Petitioner notes that in Richardson, the Court gave examples of possible qualifying events, including a gym teacher "who trips over a riser," a policeman shot while pursuing a suspect, a librarian hit by a falling bookshelf while reshelving

books, and a social worker catching her hand in a car door while transporting a child to court (Petitioner's Br., p. 8, citing Richardson at 213-214). However, the factual scenarios posited by the Court in Richardson were not then before the Court for its decision and were not necessary to the decision then being made. See e.g., Bandler v. Melillo, 443 N.J. Super. 203, 210-211 (App. Div. 2015).

What is more, none of the scenarios proffered by Petitioner bear any resemblance to the incident involving Petitioner. With specific reference to the hypothetical gym teacher who trips over a riser, Petitioner admitted below, and admits on this appeal, that he did not trip and he does not know what caused him to twist his ankle. See Petitioner's Br., p. 1 ("…he [Petitioner] didn't trip over something or fall because of something on the ground"); IT22:17-23 ("I don't recall, I don't remember on what I twisted it"). Indeed, ALJ Morejon noted in his decision that Petitioner admitted at the hearing that he did not know why he fell (Aa18). Thus, none of the scenarios posited by Petitioner have any relevance to the facts of this case.

The ALJ found Toops v. Board of Trustees, Police & Firemen's Retirement System, No. A-1611-16T1, 2018 N.J. Super. Unpub. LEXIS 1721 (App. Div. July 18, 2018) [RA - Exhibit A] to be analogous to the instant case. There, the police officer was disabled as a result of his "strenuous work" in foot pursuit of suspects. There was no evidence that this search was unusual or outside the scope of his

employment as a police officer except that he was dressed in courtroom attire rather than tactical clothing, and there was no evidence that the injury occurred due to some external event other than strenuous work effort. Id., at 16.

The ALJ's decision also cited Matthews v. Board of Trustees, Police & Firemen's Retirement System, 2022 N.J. Super. Unpub. LEXIS 1198 (App. Div. July 1, 2022). [RA - Exhibit "B"] Dispatched to an emergency medical call, police officer Matthews entered a trailer home and found a 250-pound man slumped over in a wheelchair, unconscious and in respiratory distress from an overdose. The wheelchair was situated in a narrow room that was cramped with furniture. Id., at 1.

Matthews, another police officer and two EMTS worked together to move the man from the wheelchair to a stretcher. The design of the wheelchair and the man's need for immediate medical attention made it impossible to slide him from the wheelchair onto the stretcher. The crew determined that the man had to be lifted over the wheelchair's arm and carried to the stretcher. Matthews helped the crew lift the patient and bring him to the stretcher, and was injured in the process. Id., at 1-2.

Matthews' application for AD was referred to an ALJ for a hearing. The ALJ's initial decision recommended that Matthews' application be denied because Matthews' injuries were not the result of an undesigned and unexpected event, but

were incurred when he was performing an ordinary and expected aspect of his employment: lifting a patient in need of emergency medical care. Id., at 2-3. The ALJ found that the Civil Service Commission job description for a police officer includes treating ill people, administering first aid, the "[a]bility to maintain a high level of muscular exertion for some minimum period of time," and using "a degree of muscular force exerted against a fairly immovable, or heavy object in order to lift, push, or pull that object." Id., at 3. The ALJ concluded that Matthews did not demonstrate "anything unique, unusual, traumatic, or uncommon about this event, to deem it an undesigned or unexpected incident." Instead, the ALJ found that Matthews "was doing what he was trained to do. He was doing a task ordinarily required of a police officer…." Id., at 3-4. The Board adopted the ALJ's initial decision, and the Appellate Division affirmed, stating that "We cannot quarrel with the Board's determination that his [Matthews] unfortunate injuries were the result of the performance of his ordinary responsibilities in response to an expected event." Id., at 6.

Bevins v. Board of Trustees, Police & Firemen's Retirement System, 2024 N.J. Super. Unpub. LEXIS 1128 (App. Div., June 10, 2024) [RA - Exhibit "C"] is highly analogous to the instant case. Bevins, a police officer, injured his knee when he jumped from a four-foot-high chain link fence while pursuing a fleeing suspect. Id., at 1. Bevin's application for AD was denied by the Board. Ibid. On appeal, the

ALJ concluded that Bevins had not demonstrated anything unusual, traumatic or uncommon to render the pursuit an undesigned and unexpected event, and affirmed the denial. Ibid. The Board adopted the ALJ's decision, and the Appellate Division affirmed. Id., at 2.

The Appellate Division noted that Bevins testified at the hearing before the ALJ that throughout his career as a police officer, he received training and had actual experience in chasing and apprehending suspects, scaling fences and walls and surmounting obstacles. During his police duties there were at least twenty-five occasions where he was required to jump down from a height of four feet or more. Id., at 2-3.

The Appellate Division stated that the incident which caused Bevins' injury "does not constitute unusual circumstances or anything beyond the normal course of the work he [Bevins] was trained for and regularly performed as a police officer, nor did an outside influence force him from the fence while he pursued the suspect. Although an incident may be 'devastating' to the applicant who has been injured, careful review of the governing case law makes clear an injury which culminated from a 'sequence of events' that were not "undesigned and unexpected' will not suffice to establish an entitlement" to AD. Id., at 15.

Brooks v. Board of Trustees, Public Employees Retirement System, 425 N.J. Super. 277 (App. Div. 2012), cited by Petitioner, is not on point. Brooks was a school

custodian whose duties included moving furniture and equipment around the school. On the day of the incident, Brooks observed a group of teenage boys attempting to carry a large unwieldly weight bench weighing approximately 300 pounds into the school. 425 N.J. at 279. Brooks had not previously seen this piece of equipment, which had been donated to the school, nor had he ever moved any other weight bench. Brooks directed the boys to put down the bench, and then told two of them to help him tip the bench on its end and lift it onto a flatbed truck so it could be brought into the gym. The boys dropped their side of the bench and Brooks heard his shoulder "snap" as the bench fell to the floor.

The Appellate Division held that the accident constituted a traumatic event that was undesigned and unexpected. Brooks was confronted with the "unusual situation" of a group of students attempting to carry a 300-pound weight bench into the school, and then, after Brooks took charge of this activity, the boys suddenly dropped one side of the bench, placing its entire weight on Brooks. Id., at 284.

Petitioner's situation is completely unlike the situation in Brooks. Here, Petitioner was performing an activity which he had previously performed and for which he was hired and trained to do, i.e., carrying a hose from the fire truck to the fire scene. Unlike the custodian in Brooks, Petitioner has admitted that he does not know why he fell.

Nor does Caminiti v. Board of Trustees, Police and Firemen's Retirement System, 431 N.J. Super. 1 (App. Div. 2013), cited by Petitioner, bear any resemblance to the instant case. In that case, a police officer who was struggling to frisk a raging and violent drug addict for weapons was pierced by a needle in the addict's pocket. This caused the officer to fear that he would acquire AIDS and necessitated a prolonged period of painful treatment with medications to prevent transmission of the disease. Id., at 7-9. The Appellate Division held that the incident involving the "potentially lethal needle prick" satisfied the Richardson factors, as it was a "singular event that occurred at a specific time and place by an external force…." Id., at 21. Here, Petitioner's assertion that while performing his usual duty in the usual way of carrying a fire hose to a fire scene, he twisted his ankle but does not know the reason why, bears no likeness whatsoever to the "singular" and violent external force which led to Officer Caminiti's injuries.

Much more comparable to the instant case is Mendez v. Board of Trustees, Police & Firemen's Retirement System, 2024 N.J. Super. Unpub. LEXIS 164 (App. Div., February 2, 2024). [RA - Exhibit "D"] Mendez was a firefighter who claimed that his left shoulder was injured while he was responding to a fire. As he was unloading or "stretching" a supply line from the fire truck to connect it to a hydrant, he got jerked back and felt pain in his arm (Id., at 1-2). When asked what caused him to be jerked back, Mendez responded that "apparently" the accident was caused

by a lump sum of the supply line, "guess[ed]" that "one of the couplings got caught or something" and "believe[d]" that the supply line must have been stored incorrectly (Id., at 2). Mendez testified that he received much training on loading and unloading hose beds, hooking up hydrants and stretching hose lines, and that in his years as a firefighter he had responded to hundreds of fires (Id., at 2-3).

The Board denied Mendez's application for AD and after a hearing, the ALJ affirmed. The ALJ noted that Mendez could not articulate what occurred on the accident date as evidenced by his use of the terms "apparently," "guess[ed]" and "believe[d]" (Id., p. 4). The ALJ determined that there was no evidence of a traumatic event that was undesigned and unexpected, and the Board adopted the ALJ's decision. Ibid. The Appellate Division affirmed, finding that the ALJ's decision was based on ample findings supported by substantial credible evidence in the record and was not arbitrary, capricious or unreasonable. Id., at 7. So too should the ALJ's and the Board's decision to deny AD to Petitioner here be affirmed, as Petitioner admitted he does not know why he fell (Aa18), and his testimony further shows that at the time of the incident he was performing job duties for which he was trained and which had performed on previous occasions.

As the incident involving Petitioner was not undesigned and unexpected, as required by Richardson, the Board's decision to deny AD should be affirmed.

CONCLUSION

For the foregoing reasons, the Board's denial of Petitioner's AD application should be affirmed.

Respectfully submitted,

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