

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1907-14T2

CHRISTOPHER MOUNT,

Appellant,

v.

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

Respondent.

Argued telephonically June 14, 2016 -
Decided June 28, 2016

Before Judges Espinosa and Rothstadt.

On appeal from the Board of Trustees, Police
and Firemen's Retirement System, Docket No.
3-10-042968.

M. Scott Tashjy argued the cause for
appellant (The Tashjy Law Firm, L.L.C.,
attorneys; Mr. Tashjy, of counsel and on the
briefs; Erik K. Yngstrom, on the briefs).

Robert E. Kelly, Deputy Attorney General,
argued the cause for respondent (Robert
Lougy, Acting Attorney General, attorney;
Melissa H. Raksa, Assistant Attorney
General, of counsel; Joseph F. Dorfler,
Deputy Attorney General, on the brief).

PER CURIAM

Petitioner-appellant Christopher Mount appeals from the
final decision of the Board of Trustees, Police & Firemen's

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

I.

We begin with a review of the applicable legal principles. Pursuant to Richardson v. Board of Trustees, Police and Firemen's Retirement System, 192 N.J. 189 (2007), a claimant seeking ADRB 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; and
5. that the member is mentally or physically incapacitated from performing his usual or any other duty.

[Id. at 212-13; see also N.J.S.A. 43:16A-7.]

In Patterson v. Board of Trustees, State Police Retirement System, 194 N.J. 29, 33-34 (2008), the Court refined the test to

be applied when the claimant's injury is a mental disability precipitated by an exclusively mental stressor. For such "mental-mental" cases, the nature of the traumatic event requires more particularized proof that must be satisfied before further inquiry under Richardson is warranted. Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 32 (2011). "The disability must result 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." Patterson, supra, 194 N.J. at 34. Moreover, "the traumatic event [must be] objectively capable of causing a permanent, disabling mental injury." Id. at 50-51 ("[W]e limit accidental disability recovery to stressors sufficient to inflict a disabling injury when experienced by a reasonable person in similar circumstances."). The Court provided examples of qualifying events:

the firing of a weapon or an exchange of gun fire; serious bodily injury to or the death of a juvenile; a terrorist act; a hostage situation; serious bodily injury to or the death of another law enforcement officer . . . ; a personal injury or wound; [and] serious bodily injury received in the performance of the officer's official duties.

[Id. at 45 (quoting N.J.S.A. 40A:14-196).]

II.

Petitioner, a Freehold Township police officer, was on duty on January 7, 2010, when the dispatcher requested all patrol vehicles to respond for a serious motor vehicle collision. He had received training on how to address the scenes of motor vehicle accidents. Based upon this training, his duty as a first responder was to assess and block off traffic, assess any injuries and, as appropriate, call for emergency medical services, the fire department or wreckers. He received no training on how to extract occupants from a vehicle or how to deal with a fire.

Petitioner was one of the first officers on the scene. Upon arrival, he learned the accident involved multiple vehicles. He observed a heavily damaged car with dark, black smoke, and saw an arm hanging out of the driver's side of the vehicle. There was no evidence that the occupants of the vehicle showed any sign of life; petitioner did not hear any screams from the occupants and did not know their condition.

There was, however, a crowd of bystanders urging petitioner to "do something." He tried to control them while he moved toward the car in an effort to help the persons in the vehicle. When he was approximately one to one-and-one-half feet from the vehicle, it exploded into flames, engulfing the vehicle. He was pushed back by the extreme heat and concerned his polyester

uniform would melt on his person. He testified he was unable to get back to the vehicle.

Petitioner did not have any training in firefighting or fire rescue equipment. The only equipment he had was a small extinguisher that he believed would be ineffective.¹ The fire department had been alerted prior to his call. When the fire department arrived, they extinguished the fire within minutes. Petitioner made no attempt to extinguish the fire on his own and was not asked to assist the fire department.

After the fire was extinguished, petitioner returned to his patrol car and put out cones for traffic control. The victims' bodies were extracted from the vehicle without his participation.

Petitioner observed the bodies of the three teenagers who had perished in the vehicle. He described the sight as "the worst I saw," and "ungodly," that the victims looked as if they had melted into the car. The smell of "burnt flesh got into [his] nose, . . . into [his] throat . . . every swallow that [he] took had that smell and that taste from the burning flesh." Although petitioner had observed other traffic fatalities and

¹ Although petitioner had no recollection of it, another officer's report stated a bystander attempted to use one to no avail.

car fires, he had never been called to respond to the scene of a similar motor vehicle accident.

Petitioner described his activities at the accident scene as assessing the damage, calling for emergency personnel and the fire department and controlling the bystanders and traffic.

Petitioner agreed that the written job specifications for a police officer employed by the Township of Freehold include: the control of crowds at emergency scenes, "protect[ing] accident scenes from disturbances by appropriately positioning the police car and by lighting and placing flares at strategic locations," and "remov[ing] or assist[ing] in removing dead or injured from wreckage and overturned vehicles by manually lifting them."

Petitioner returned to work after the accident and did not receive any treatment until 2009, when he was abusing alcohol and sent to a rehabilitation program. He returned to work but was still having problems despite maintaining abstinence from alcohol, and did not know what was wrong with him. He testified, "[t]he PTSD wasn't observed or did not come out until 2010."

In his application for ADRB, petitioner stated he was incapacitated for further service because he suffered from post-traumatic stress and anxiety. The Board found that petitioner satisfied four of the five Richardson criteria: he was totally and permanently disabled and "physically or mentally

incapacitated from the performance of [the] usual or other duties that [his] employer is willing to offer"; that the event occurred during and as a result of his regular or assigned duties; and was not the result of petitioner's willful negligence. The Board found that petitioner failed to satisfy the second prong of the Richardson criteria. Although the Board found the disability was the result of an event identifiable as to time and place, caused by a circumstance external to him and not the result of a pre-existing disease, it also found that the event was "not undesigned and unexpected." The Board also found petitioner's disability did not result from "direct personal experience of a terrifying or horror-inducing event" as required by Patterson.

Petitioner appealed; the Board reconsidered and reaffirmed its denial of ADRB. The matter was then transferred to the Office of Administrative Law. Following a hearing, the administrative law judge (ALJ) rendered an initial decision in which he found petitioner had experienced a "terrifying or horror-inducing" event as defined in Patterson. However, he concluded petitioner was ineligible for ADRB because the traumatic event was not "undesigned or unexpected" as required by Richardson. Petitioner appealed to the Board, which adopted the findings and conclusion of the ALJ.

In his appeal, petitioner argues the Board erred in denying his ADRB application because the event that caused his disability was "undesignated and unexpected" pursuant to N.J.S.A. 43:16A-7.

III.

In determining whether petitioner's ADRB application was properly denied, we defer to the agency's factual findings, but owe no deference to its legal conclusions, "particularly when 'that interpretation is inaccurate or contrary to legislative objectives.'" Russo, supra, 206 N.J. at 27 (quoting G.S. v. Dep't of Human Servs., 157 N.J. 161, 170 (1999)). Because the Board adopted the ALJ's factual findings and conclusion that petitioner experienced a "terrifying or horror-inducing" event as defined in Patterson, the sole issue is whether the Board's conclusion that this event did not qualify as "undesignated and unexpected" was "arbitrary, capricious, or unreasonable, or . . . lacks fair support in the record." In re Herrmann, 192 N.J. 19, 27-28 (2007).

[N]ot 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 "undesignated 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 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 (emphasis added).]

Therefore, we compare the actions taken by petitioner at the concededly horrific event with his training and job specifications. It is undisputed that he is required to respond to motor vehicle accidents that may entail fatalities and car fires. As the ALJ noted, that this was his first experience with an accident that included both does not render the event undesigned and unexpected.

What is more important is that his actions were entirely consistent with what he is trained to do and the tasks it is his duty to perform. He was trained to assess the situation, call for emergency personnel and the fire department as needed and control traffic. That is what he did.

He was not trained to put out fires or extract injured occupants from vehicles. He made no effort to extinguish the fire. Although his specified job duties included assisting in the extraction of dead or injured persons from vehicles, he was not called upon to do so.

Petitioner contends it was his inability to help the occupants that constituted his traumatic event and that his lack

of training and the tools necessary to help them made the event undesigned and unexpected. We disagree.

In Moran v. Board of Trustees, Police & Firemen's Retirement System, 438 N.J. Super. 346 (App. Div. 2014), we disagreed with the Board's application of the "undesigned and unexpected" criterion to deny ADRB benefits to a firefighter who suffered a disabling injury when he rescued two people from a burning building. Id. at 347-48. It was undisputed that firefighting duties were divided between two different units. Id. at 349. Moran was assigned to the "engine company," which was tasked with taking hoses into a burning building and putting out the fire. Ibid. It was the role of the other unit, the "truck company," to force entry into a burning structure and rescue any occupants. Ibid. It was the norm for both units to respond to a fire scene simultaneously. Id. at 349-50.

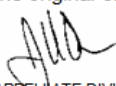
During the event in question, Moran's unit responded to a fire that was reported to be a vacant, boarded-up house. Id. at 350. Because no rescue was anticipated, the truck company did not respond. However, while performing his assigned task of unrolling the hose toward the building, Moran "unexpectedly heard screams from people trapped inside the structure." Ibid. Lacking the tools to force entry that the truck company would have had, he used his body to break through the door, injuring himself in the process. Id. at 347, 350. We observed that both

the presence of the victims and the absence of the truck company were unexpected and that the Board did not rebut Moran's evidence that "he encountered an unexpected life-and-death emergency for which he was carrying no tools." Id. at 351, 354-55.

In contrast, in this case, the presence of dead or injured victims at a serious motor vehicle collision cannot be considered unexpected. Petitioner's actions were consistent with the tasks he was expected to perform at the accident scene. As the Court has stated, "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." Russo, supra, 206 N.J. at 33 (emphasis added). While we are sympathetic to petitioner's frustration that he was unable to help the victims here, the fact remains that he did not assume any role that fell outside his job description or for which he was not trained. Therefore, Moran is distinguishable and the Board's decision to deny him ADRB withstands our scrutiny.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION