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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0950-15T2

NATALIE BALISTA,

Petitioner-Appellant,

v.

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

Respondent-Respondent.

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Argued January 24, 2017 – Decided September 5, 2017

Before Judges Espinosa and Guadagno.

On appeal from the Board of Trustees of the  
Police and Firemen's Retirement System,  
Department of Treasury, PFRS No. 3-10-48274.

Christopher A. Gray argued the cause for  
appellant (Sciarra & Catrambone, LLC,  
attorneys; Mr. Gray, on the briefs).

Amy Chung, Assistant Chief Deputy Attorney  
General, argued the cause for respondent  
(Christopher S. Porrino, Attorney General,  
attorney; Melissa H. Raksa, Assistant  
Attorney General, of counsel; Robert E.  
Kelly, Deputy Attorney General, on the  
brief).

PER CURIAM

Petitioner Natalie Balista appeals from the October 26, 2015 decision of the Board of Trustees (Board) of the Police and Firemen's Retirement System (PFRS), adopting the decision of Administrative Law Judge Elia A. Pelios denying petitioner's application for accidental disability retirement benefits. We affirm.

Petitioner testified before Judge Pelios that she became employed as a full-time police officer with the Borough of Pine Beach in 2002. On March 17, 2011, petitioner was dispatched to provide assistance to a woman who had fallen and could not get up. When petitioner arrived at the victim's home, she observed an elderly woman sitting on the ground by herself near the front walkway. The victim showed no signs of distress<sup>1</sup> and told petitioner she was "fine" but just needed help to get up.

Petitioner testified she "walked behind [the victim,] squatted down and put my arms under her arms." Petitioner experienced difficulty in lifting the victim and had to "struggle because [the victim] was not assisting . . . at all." The victim later told petitioner she had undergone double knee

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<sup>1</sup> Petitioner did not know whether emergency medical services (EMS) had been called, and explained that Pine Beach does not have EMS and relies on neighboring towns in the event of a medical emergency.

replacement surgery and could not help with the lift. The entire incident lasted less than one minute. After petitioner made sure the victim got into her house, she left.

After the incident, petitioner began to experience back and shoulder symptoms. An MRI conducted on March 25, 2011, revealed rotator cuff tendonitis. Several steroid injections were followed by arthroscopic surgery of the right shoulder in May 2011. In April 2012, petitioner underwent back surgery. Petitioner attempted to return to work in February 2013, but was unable to fulfill her job requirements. A second back surgery followed in July 2013.

In a comprehensive written decision, Judge Pelios concluded "there was no accident or external event . . . which caused the injury to petitioner." The Board then adopted Judge Pelios' findings and conclusions in the final agency decision under review.

On appeal, petitioner argues the events giving rise to this incident were undesigned and unexpected, and therefore she is entitled to an accidental disability pension.

Our review of administrative agency action is limited, and we generally "afford substantial deference to an agency's interpretation of a statute that the agency is charged with enforcing." Richardson v. Bd. of Trs., Police & Firemen's Ret.

Sys., 192 N.J. 189, 196 (2007). "Such deference has been specifically extended to state agencies that administer pension statutes," because "'a state agency brings experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise.'" Piatt v. Police & Firemen's Ret. Sys., 443 N.J. Super. 80, 99 (App. Div. 2015) (quoting In re Election Law Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010)). We are not "bound by the agency's interpretation of a statute or its determination of a strictly legal issue." Richardson, supra, 192 N.J. at 196 (quoting In re Taylor, 158 N.J. 644, 658 (1999)). We "apply de novo review to an agency's interpretation of a statute or case law." Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011).

The PFRS provides for both ordinary, N.J.S.A. 43:16A-6, and accidental, N.J.S.A. 43:16A-7, disability benefits. "The main difference between the two is that ordinary disability retirement need not have a work connection. . . . [and] an accidental disability retirement entitles a member to receive a higher level of benefits than those provided under an ordinary disability retirement." Patterson v. Bd. of Trs., State Police Ret. Sys., 194 N.J. 29, 42-43 (2008). A PFRS member is eligible to "be retired on an accidental disability retirement allowance"

if "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." N.J.S.A. 43:16A-7(1).

The Court in Richardson held that a claimant for accidental disability retirement benefits 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.

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

The Richardson Court explained:

the fact that a member is injured while performing his ordinary duties does not disqualify him from receiving accidental

disability benefits; some injuries sustained during ordinary work effort will pass muster and others will not. The 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.

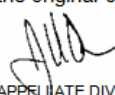
[Id. at 214.]

The main question before Judge Pelios was whether the accident was "undesignated and unexpected," thereby satisfying the traumatic event requirement as set forth in Richardson. Id. at 212-13. Petitioner testified that, during her nine years as a Pine Beach police officer, she had rendered similar assistance "many times" while responding to calls where someone needed to be lifted. Relying on this testimony, Judge Pelios concluded, "Petitioner sustained her injury while and from performing exactly the task she undertook and intended to perform: lifting the woman from the ground."

We agree that petitioner's injury was not "undesignated and unexpected." Although she did not expect to be injured when she lifted the elderly woman, the injury was "not an extraordinary or unusual consequence in common experience." Russo v. Teachers' Pension & Annuity Fund, 62 N.J. 142, 154 (1973).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION