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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-4846-15T3

JOHN O'NEIL,

Petitioner-Appellant,

v.

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

Respondent-Respondent.

Argued September 12, 2017 – Decided October 10, 2017

Before Judges Reisner and Mayer.

On appeal from the Board of Trustees, Police
and Firemen's Retirement System, PFRS No. 3-
99545.

John D. Feeley argued the cause for appellant
(Feeley & LaRocca, LLC, and The Blanco Law
Firm, LLC, attorneys; Mr. Feeley on the brief;
Pablo N. Blanco, of counsel and on the brief).

Cameryn J. Hinton, Deputy Attorney General,
argued the cause for respondent (Christopher
S. Porrino, Attorney General, attorney;
Melissa H. Raksa, Assistant Attorney General,
of counsel; Ms. Hinton, on the brief).

PER CURIAM

John O'Neil appeals from a final agency decision of the Board of Trustees, Police and Firemen's Retirement System (Board) denying his request for accidental disability retirement benefits. The Board concluded that O'Neil's disability was not undesigned and unexpected and that the psychological injury he suffered did not result from a terrifying or horror-inducing event involving actual death or injury. Because we disagree, we reverse and remand to the Board to grant accidental disability retirement benefits to O'Neil.

A dispatcher contacted O'Neil, a police officer, to respond to a call about a man with a gun at a bar. O'Neil responded and recognized a pickup truck that belonged to his brother, Darin O'Neil. O'Neil approached the car and saw his brother with a gaping hole in his chest from a self-inflicted gunshot. O'Neil took his brother's pulse and discovered he had no pulse. O'Neil testified that he then "broke down" and had to be removed from the scene by fellow officers.

Following the event, O'Neil saw several doctors who diagnosed him as suffering from post-traumatic stress disorder (PTSD), anxiety, depression and sleep disorder. He has not returned to work since the incident.

O'Neil applied for accidental disability retirement benefits attributable to the emotional injury suffered when, in performing

his duty as a police officer, he discovered his brother dead by a self-inflicted gunshot wound. The Board denied the application, determining that O'Neil was not totally and permanently disabled. O'Neil requested a hearing, and the Board referred the matter to the Office of Administrative Law.

An administrative law judge (ALJ) heard testimony from O'Neil, Dr. David Pilchman, a psychology expert who evaluated O'Neil twice, Dr. Jakob Steinberg, O'Neil's treating psychologist and traumatic stress expert, and Dr. Richard Filippone, the Board's medical expert.

O'Neil testified that he never expected to handle a matter involving his family. O'Neil, who was not a police officer in the municipality where his brother committed suicide, was asked to respond because the State Police were unable to handle the matter. According to O'Neil, he believed it was the department's policy not to assign officers to situations involving family members, and had the dispatcher known the matter involved his brother, a different police officer would have been dispatched. O'Neil testified that since the incident he cannot return to work and cannot handle a gun.

During the hearing, O'Neil presented the testimony of two medical experts. Dr. Pilchman testified that while police officers are trained to deal with horrific situations, including suicide,

the trauma is heightened when the matter is personal to the officer. Dr. Pilchman also testified that witnessing the suicide of a family member is vastly different from witnessing the suicide of a stranger. According to Dr. Pilchman, as a result of this incident, O'Neil is incapable of returning to work as a police officer. Concurring with Dr. Pilchman, Dr. Steinberg testified that O'Neil is totally and permanently disabled. Contrary to the testimony of O'Neil's medical experts, the Board's expert, Dr. Filippone, testified that O'Neil suffered only a minor impact from the incident and was not disabled.

The ALJ found that the testimony of O'Neil and O'Neil's medical experts was more credible than the testimony of the Board's medical expert. Based on that credible testimony, the ALJ found O'Neil was permanently and totally disabled and awarded him accidental disability retirement benefits.

The Board rejected the ALJ's recommendation and concluded that O'Neil was not eligible for accidental disability retirement benefits. In its decision, the Board adopted the ALJ's fact findings and agreed that O'Neil was totally and permanently disabled. However, the Board concluded that the ALJ misapplied the law and confused the applicable tests requiring that the incident be (1) "undesigned and unexpected" under Richardson v. Board of Trustees, Police & Firemen's Retirement System, 192 N.J.

189 (2007), and (2) satisf[y] the standard for a "mental-mental" claim under Patterson v. Board of Trustees, Police & Firemen's Retirement System, 194 N.J. 29 (2008).

"Generally, courts 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). "An appellate court, however, is 'in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue.'" Id. at 196 (quoting In re Taylor, 158 N.J. 644, 658 (1999)). Courts "apply de novo review to an agency's interpretation of a statute or case law." Russo v. Bd. of Trs., Police & Fireman's Ret. Sys., 206 N.J. 14, 27 (2011).

A service member is eligible for accidental disability retirement benefits 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 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).]

As the Richardson Court explained "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. In Richardson, the Court set forth the following factors a claimant must prove to qualify for accidental disability retirement benefits:

1. [the claimant] is permanently and totally disabled;
2. as a direct result of a traumatic event that is
 - a. identifiable as to time and place,
 - b. undesigned and unexpected, and
 - c. caused by a circumstance external to the member (not the result of pre-existing disease that is aggravated or accelerated by the work);
3. that the traumatic event occurred during and as a result of the member's regular or assigned duties;
4. that the disability was not the result of the member's willful negligence; and
5. that the member is mentally or physically incapacitated from performing his usual or any other duty.

[Id. at 212-13.]

The factor at issue is whether the traumatic event experienced by O'Neil qualified as "undesigned and unexpected." In this case, during the course of his police duties, O'Neil was unexpectedly confronted with his brother's suicide. While O'Neil had responded to other horrific situations in the performance of his duties, he had never been called to a scene involving a family member, and ordinarily would not have been given such an assignment.

Contrary to the Board's position, there is nothing ordinary or expected about responding to the suicide of a family member. There is no evidence in the record establishing that personal tragedies are expected to occur during the performance of police work or that that officers are prepared for the occurrence of personal tragedies. Training that might be provided to a police officer regarding a stranger's suicide would not prepare an officer encountering the suicide of a family member. See e.g. Thompson v. Bd. of Trs., Teachers' Pension & Annuity Fund, 449 N.J. Super. 478, 503 (App. Div. 2017), certif. granted, ___ N.J. ___ (2017) (incident undesigned and unexpected because there was no evidence that the special education teacher was trained to handle violent special needs students).

The Board failed to appreciate the idiosyncratic circumstances in this case. This was not a routine call for an officer to respond to a suicide. The situation involved the

suicide of O'Neil's brother. For the Board to equate the two situations improperly focused on O'Neil's every day duty as a police officer and ignored the reality that O'Neil was unexpectedly dispatched to the scene of his brother's suicide. Because the incident in this case uniquely involved a close family member, the Board erred in determining that O'Neil's discovery of his brother's suicide was not "undesigned and unexpected."

Next, we examine whether O'Neil's injury met the test established in Patterson. Under Patterson, "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. This "assure[s] that the traumatic event . . . is objectively capable of causing a reasonable person in similar circumstances to suffer permanent, disabling mental injury." Ibid. These cases are "so-called mental-mental" cases, "in which a purely mental stimulus results in emotional or nervous injury." Brunell v. Wildwood Crest Police Dep't, 176 N.J. 225, 243 (2003). The Board concluded that O'Neil did not satisfy the Patterson test because he was not subjected to the threat of death or serious injury and did not witness his brother discharge the gun.

We disagree with the Board's determination that O'Neil failed to satisfy the Patterson test. The facts in this case "must be viewed with a wider lens than the one the Board applied." Moran v. Bd. of Trs., Police & Firemen's Ret. Sys., 438 N.J. Super. 346, 354 (App. Div. 2014).

The facts in this case are distinctive. O'Neil reported to the bar's parking lot and discovered his brother had killed himself using a shotgun. O'Neil saw his brother slumped over in the car with a gaping hole in his chest. As such, O'Neil's discovery of his brother's body was a "direct personal experience" under Patterson. In addition, the incident involved the death of O'Neil's brother, not a stranger. The circumstance qualifies as a "horror-inducing event" as described in Patterson.

The Board found that O'Neil did not meet the Patterson test because he witnessed only the aftermath of his brother's suicide. O'Neil suffers from a serious injury, PTSD, directly attributable to the discovery of his brother's death by suicide. The limitation imposed by the Board, that the violence must be threatened or undertaken in the claimant's presence, is nowhere expressed in Patterson. Instead of following Patterson, the Board relied on unpublished decisions that are not on point here.

The Court's holdings in Richardson and Patterson compel an award of accidental disability retirement benefits under the rare

and unique circumstances presented in this case. Accordingly, we reverse the Board's decision and remand to the Board to grant accidental disability retirement benefits to O'Neil.

Reversed and remanded. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION