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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0449-16T1

SUSAN EDEN,

Petitioner-Appellant,

v.

PUBLIC EMPLOYEES' RETIREMENT
SYSTEM,

Respondent-Respondent.

Argued January 10, 2018 – Decided March 1, 2018

Before Judges Alvarez and Currier.

On appeal from the Board of Trustees, Public
Employees' Retirement System, Docket No.
1002872

Samuel M. Gaylord argued the cause for
appellant (Gaylord Popp, LLC, attorneys;
Samuel M. Gaylord, on the brief).

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

PER CURIAM

Petitioner Susan Eden appeals from the August 18, 2016 final decision of respondent, the Board of Trustees of the Public Employees' Retirement System (PERS), which adopted the June 23, 2016 initial decision of an Administrative Law Judge (ALJ) affirming respondent's denial of petitioner's application for ordinary disability retirement benefits. After a review of petitioner's arguments, in light of the record and applicable principles of law, we affirm.

Petitioner was enrolled in PERS on March 1, 1996, when she became employed by the Camden County Health Services Center (Camden County) as a licensed practical nurse (LPN). She remained employed by Camden County until November 25, 2013, when petitioner was dismissed due to a reduction in the work force.

Petitioner alleges that she suffered injuries due to several work-related incidents between 2011 and 2013. In November 2011, petitioner slipped and fell at work, causing pain in her lower back and leg. She was released to full duty in February 2012. In June 2013, while transferring a "very large patient" into a bed, she felt sharp pain in her back. Petitioner states she attempted to return to work, but was unable to perform her job duties and she began to use her sick time. On November 4, 2013, petitioner was released to full duty with no restrictions.

After returning to full duty in November 2013, petitioner states she had difficulty standing up from a kneeling position. After a Functional Capacity Exam (FCE) was conducted,¹ petitioner was given a twenty-pound weight restriction at work. Nevertheless, she states she continued to physically struggle while performing her job and began to take sick days again.

On January 22, 2014, petitioner filed an application for accidental disability retirement benefits based on the 2011 and 2013 incidents. On June 18, 2014, PERS denied petitioner's application for accidental disability retirement benefits, finding that she was not totally and permanently disabled from the performance of her regular and assigned duties.

Petitioner appealed this denial and the matter was transferred to the Office of Administrative Law (OAL) on August 21, 2014.² Following petitioner's lay-off from her employment due to a reduction in the work force, she accepted a position as an LPN for a private company, Lincoln Specialty Care, where she works two full shifts each weekend because there is "less demand and she can work at her own pace."

¹ The FCE indicated that petitioner "used sub-maximal effort and magnified or exaggerated her symptoms and/or functional limitations."

² With respondent's consent, petitioner amended her application to seek only ordinary disability benefits.

After hearing testimony from petitioner, and orthopedic surgeons on behalf of both parties, the ALJ issued an initial decision on June 23, 2016. The ALJ found that the evidence "indisputably" showed that petitioner could continue to work as an LPN. In denying her application for ordinary disability retirement, the ALJ reasoned:

the fact that [petitioner] is able to perform duties in the general area of her ordinary employment as a practical nurse while working at Lincoln Specialty Care shows that she is not physically incapacitated as a practical nurse and, therefore, not entitled to an ordinary disability retirement. While her current position as a practical nurse may be less physically demanding than her prior public employment, she is able to perform general duties as a practical nurse for full shifts on back-to-back days.

PERS affirmed the ALJ's decision on August 18, 2016. On appeal, petitioner argues that she is totally and permanently disabled from the performance of her regular and assigned job duties.

Our review of an administrative agency's decision is limited. Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011). We will sustain the Board's decision "unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Ibid. (quoting In re Herrmann, 192 N.J. 19, 27-28 (2007)). As the reviewing court,

we "may not substitute [our] own judgment for the agency's, even though [we] might have reached a different result." In re Stallworth, 208 N.J. 182, 194 (2011) (quoting In re Carter, 191 N.J. 474, 483 (2007)).

While we generally "afford substantial deference to an agency's interpretation of [the] statute that the agency is charged with enforcing[,]" we are "in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue." Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 196 (2007) (first citing R&R Mktg., L.L.C. v. Brown-Forman Corp., 158 N.J. 170, 175 (1999), then quoting In re Taylor, 158 N.J. 644, 658 (1999)). We review an agency's interpretation of a statute or case law de novo. Russo, 206 N.J. at 27.

Applying our highly deferential standard of review, we conclude that there is substantial credible evidence in the record to support respondent's finding that petitioner failed to demonstrate an entitlement to ordinary disability retirement benefits.

In order to qualify for ordinary disability retirement benefits under N.J.S.A. 43:15A-42, petitioner must establish by a preponderance of the credible evidence that she is physically or mentally incapacitated from performing her duties. "The applicant


for ordinary disability retirement benefits has the burden to prove that he or she has a disabling condition and must produce expert evidence to sustain this burden." Bueno v. Bd. of Trs., Teachers' Pension & Annuity Fund, 404 N.J. Super. 119, 126 (App. Div. 2008). She "must establish incapacity to perform duties in the general area of [her] ordinary employment[,] rather than merely show[] [an] inability to perform [her] specific job." Id. at 130-31 (quoting Skulski v. Nolan, 68 N.J. 179, 205-06 (1975)).

In applying this standard, we are satisfied that petitioner did not meet her burden. As the ALJ noted, while petitioner "may not be able to perform some of the more physically demanding duties . . . [of] a practical nurse, she has not shown that she cannot physically perform other duties in the general area of the position." The ALJ further found that petitioner's "employment as a practical nurse . . . at Lincoln . . . shows that she is not physically incapacitated from performing duties in the general area of employment as a practical nurse." The ALJ also concluded that the fact that petitioner "only works two days a week does not alter the conclusion that [petitioner] is not physically incapacitated as a practical nurse." Petitioner's own expert even concluded that she was not totally and permanently disabled from nursing.

Having reviewed the record on appeal, we are satisfied that petitioner failed to demonstrate that PERS' affirmance of the ALJ's initial decision is arbitrary, capricious, or unreasonable, or that it was not supported by substantial credible evidence in the record. In finding that petitioner was not physically incapacitated from performing duties in the general area of her ordinary employment as a practical nurse, the ALJ assessed the expert testimony presented by both parties. We must afford appropriate deference to the ALJ's and PERS' findings, where, as here, those findings are based on sufficient credible evidence in the record. See Taylor, 158 N.J. at 658-59. Accordingly, there is no basis to disturb respondent's decision.

Affirmed.

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


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