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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3914-16T3

BRENDA WILLIAMS,

Petitioner-Appellant,

v.

TEACHERS' PENSION AND ANNUITY FUND,

Respondent-Respondent.

Submitted May 1, 2018 – Decided May 16, 2018

Before Judges Hoffman and Mayer.

On appeal from the Board of Trustees of the
Teachers' Pension and Annuity Fund, Department
of Treasury, TPAF No. 1-10-153187.

Law Offices of Robert L. Utsey, Jr., LLC,
attorneys for appellant (Robert L. Utsey, on
the brief).

Gurbir S. Grewal, Attorney General, attorney
for respondent (Melissa H. Raksa, Assistant
Attorney General, of counsel; Robert S.
Garrison, Jr., Deputy Attorney General, on the
brief).

PER CURIAM

Brenda Williams appeals from a final agency decision of the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) denying her application for accidental disability retirement benefits. We affirm.

On January 28, 2010, Williams, a sixth grade teacher, was injured attempting to break up a fight between two female students. One of the students, who weighed between eighty and ninety pounds, pushed Williams, causing Williams to fall and injure her back. At the time, Williams weighed approximately one-hundred eighty pounds.

Williams continued to work as a teacher following the incident. She received conservative treatment, including pain medication, physical therapy, and epidural injections. Despite treatment, her back pain continued. In May 2012, Williams had spinal surgery, after which she was bedridden for three months. In August 2012, Williams learned that a screw placed in her back during the spinal fusion surgery broke, necessitating additional surgeries. Williams' last day of work was in February 2013. In March 2013, Williams had three corrective surgeries to her back.

In December 2013, Williams filed for accidental disability retirement benefits. The TPAF awarded ordinary retirement benefits after denying her request for accidental disability retirement benefits. Williams argued she was entitled to

accidental disability retirement benefits because she is totally and permanently disabled as a direct result of the traumatic event in January 2010, and requested a hearing. The matter was referred to an administrative law judge (ALJ) in the Office of Administrative Law (OAL) as a contested case.

The ALJ conducted hearings on Williams' request for accidental disability retirement benefits. On behalf of petitioner, the ALJ heard testimony from Williams and David Weiss, D.O., an expert in orthopedic impairment and disability, who performed an independent medical examination of Williams.

Williams testified she never had back complaints prior to the January 2010 incident. She also described the treatment she received after the incident. Because Williams did not receive pain relief as a result of her initial treatment, she had epidural injections. When the epidural injections failed to relieve her back pain, Williams saw a doctor to discuss surgical options. The Workers' Compensation insurance carrier referred Williams to two other doctors for second opinions related to potential surgery. These doctors recommended against surgery. Williams testified that she decided to forgo surgery, but the pain became unbearable, so she elected to undergo fusion surgery.

After the fusion surgery, Williams stated she experienced increased back pain. About three months later, Williams returned

to her doctor and learned that a screw used in the surgery had broken and was compressing a nerve. Williams went to another surgeon and had three independent reparative surgeries to her spine in March 2013. The surgeon who performed the repair surgeries told Williams she would not be able to work again.

Dr. Weiss testified that he physically examined Williams in March 2015. In addition, Dr. Weiss took Williams' medical history and reviewed her medical records. Dr. Weiss also read a 2010 MRI of Williams' spine and observed age-related changes indicated by disc desiccation and a herniation at the L5-S1 level. He reviewed Williams' flexion extension studies, which revealed a Grade I spondylolisthesis of L4 over L5. Dr. Weiss diagnosed Williams with musculoskeletal trauma to her lumbar spine due to a traumatically-induced work-related injury occurring on January 28, 2010, requiring Williams to undergo complex surgical procedures to her lumbar spine. Dr. Weiss noted Williams had no prior record of back problems and developed spinal instability as a result of the incident in January 2010.

On behalf of the Board, the ALJ heard testimony from Richard A. Rosa, M.D., an expert in orthopedics and orthopedic surgery. Dr. Rosa conducted an independent medical examination of Williams on April 2, 2014. As part of his examination, Dr. Rosa reviewed Williams' medical history and medical records. In reviewing the

2010 MRI of Williams' spine, Dr. Rosa opined that she had a partial fusion of her low back since birth, leading to progressive arthritis in her spine. According to Dr. Rosa, this pre-existing condition led to severe spinal stenosis and caused the need for surgery. Dr. Rosa concluded that degeneration, rather than trauma, rendered Williams permanently and totally disabled.

After considering the testimony, the ALJ found that Williams continued to work for three years after the incident and concluded that she was not immediately disabled as of January 28, 2010. He determined that Williams' "disability was fairly remote in time relative to the incident on January 28, 2010, and there were intervening events which impacted petitioner's condition," including the subsequent corrective surgeries. The ALJ also concluded it was "unlikely that an eighty to ninety-pound girl would be able to push a 180-pound woman hard enough to cause a disabling injury." The ALJ deemed the Board's expert more credible than Williams' expert regarding the impact of the degenerative conditions in Williams' lumbar spine. The ALJ concluded Williams failed to prove her disability was a direct result of the incident on January 28, 2010 to be entitled to accidental disability retirement benefits.

The Board adopted the AJL's decision and denied Williams' application for accidental disability retirement benefits. On

appeal, Williams argues the Board erred in finding that she was not totally and permanently disabled as a direct result of a traumatic event on January 28, 2010.

Our review of an agency's decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011); Messick v. Bd. of Review, 420 N.J. Super. 321, 324 (App. Div. 2011). An agency determination should not be reversed "unless it is arbitrary, capricious or unreasonable or it is not supported by substantial credible evidence in the record as a whole." Lavezzi v. State, 219 N.J. 163, 171 (2014) (quoting Prado v. State, 186 N.J. 413, 427 (2006)). However, we review an agency's legal interpretations de novo. Id. at 172. "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).

Under the Teachers' Pension and Annuity Fund Law, N.J.S.A. 18A:66-1 to -93, an education professional, upon becoming permanently incapacitated, can receive either ordinary disability or accidental disability retirement benefits. Kasper v. Bd. of Trs. of Teachers' Pension & Annuity Fund, 164 N.J. 564, 573 (2000). A TPAF 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 [or her] regular or assigned duties." N.J.S.A. 18A:66-39(c). An applicant for 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).

To satisfy the "direct result" component of the statute, the "traumatic event" must "constitute[] the essential significant or the substantial contributing cause of the resultant disability." Gerba v. Bd. of Trs., Pub. Emps.' Ret. Sys., 83 N.J. 174, 186 (1980) (finding the medical evidence demonstrated the incident aggravated the progression of an arthritic condition but failed to establish the claimant's disability was a direct result of the injury for an award of accidental disability benefits).

In this case, there was ample evidence in the record that Williams had extensive pre-existing degenerative conditions in her lumbar spine. Among the pre-existing conditions in Williams' spine was spondylolisthesis, a degenerative condition, that led to instability in her lumbar spine necessitating the surgery. We conclude there is sufficient credible evidence to support the Board's determination that Williams' disability was not the direct result of a traumatic event to be entitled to accidental disability retirement benefits.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION