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APPROVAL OF THE APPELLATE DIVISION**

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-5440-15T4

DONALD A. HAMMOND,

Petitioner-Appellant,

v.

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

Respondent-Respondent.

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Argued November 13, 2017 – Decided January 10, 2018

Before Judges Messano and Accurso.

On appeal from the Board of Trustees, Police  
and Firemen's Retirement System, PFRS No.  
3-10-49036.

Craig S. Gumpel argued the cause for  
appellant.

John A. Lo Forese, Deputy Attorney General,  
argued the cause for respondent (Christopher  
S. Porrino, Attorney General, attorney; John  
A. Lo Forese, on the brief).

PER CURIAM

Donald A. Hammond, a firefighter in the Town of Dover, appeals  
from the final decision of the Board of Trustees (the Board) of

the Police and Firemen's Retirement System (PFRS) reversing the Administrative Law Judge's (ALJ's) initial decision that Hammond was eligible for accidental disability benefits.

Hammond's duties included providing emergency medical treatment and transport. On August 13, 2013, he responded to a call for medical assistance. At the scene, Hammond found a semi-conscious male, approximately 400 pounds, in a reclining chair in the corner of a bedroom. Hammond made two calls for assistance from the fire department but only two paramedics and a patrol officer arrived to assist. Lifting the man from the chair to a medical transportation device took several attempts, during which Hammond injured his back.

Hammond filed for accidental disability retirement with PFRS. The Medical Review Board found that Hammond was "totally and permanently disabled" and could "no longer perform the full duties of a firefighter." The Board granted Hammond ordinary disability retirement benefits but denied him accidental disability retirement benefits. Hammond appealed, and the Board transferred the matter to the Office of Administrative Law.

Following a hearing at which Hammond and the two paramedics testified, the ALJ issued an initial decision reversing the determination of the Board and granting Hammond accidental disability retirement benefits. The ALJ found "the circumstances

encountered by [Hammond] . . . were not a usual or common situation," because there were only "two known obese individuals residing in the town," and, members of the fire department knew whenever dispatched to those addresses that additional manpower was needed. However, the individual in distress in this case was not one of those two people. The ALJ also found that it took "three independent lifts to move the patient" out of his reclining chair, and it was an urgent situation because the man "had no control of his breathing."

The Board adopted the ALJ's findings of fact with modification and rejected her conclusions of law. The Board noted that Hammond,

admitted [that] as a first responder[,] he could have been called to a scene involving an overweight person he did not know about, because the Dover EMS responds to not only residents of the town, but also visitors, shoppers, pedestrians and people hit by a car, who come in all shapes and sizes; as part of their work, first responders come upon scenes that present challenges they have not encountered before.

The Board did not agree that the totality of the circumstances amounted to anything unexpected, as "the combination of a large patient and a need for urgency to provide care to a patient at an EMS call isa [sic] regular part of the job." The Board also emphasized "it is not unusual for the Paramedics to arrive at a

first aid call and find only two people, including the police officer present."

The Board determined the facts "[did] not support the conclusion that finding a very heavy person, even in an awkward position requiring 'multiple lifts' is either unusual or unexpected based on experience . . . and therefore would not be undesignated and unexpected." Further, it determined that "the criteria of what is 'undesignated and unexpected' is not met simply based upon what a member perceives to be an undesignated and unexpected event or what he personally has encountered up to that point in time."

Hammond argues the Board's decision was arbitrary, capricious and unreasonable because the ALJ's findings of fact and conclusions of law were supported by sufficient, credible evidence in the record. He contends he met the criteria for accidental disability benefits as defined by the Court in Richardson v. Board of Trustees, 192 N.J. 189 (2007), and the situation he faced was similar to the firefighter in Moran v. Board of Trustees, Police & Firemen's Ret. Sys., 438 N.J. Super. 346, 347-48 (App. Div. 2014), in which we held the applicant was entitled to accidental disability benefits. We reject these arguments and affirm.

Our review of the Board'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)). However, we are not bound by the Board's interpretation of a statute or its determination of a strictly legal issue. Ibid.

In Richardson, 192 N.J. at 212-13, the Court clarified that to be eligible for accidental disability retirement benefits, a member must be permanently disabled "as a direct result of a traumatic event that is . . . identifiable as to time and place, . . . undesigned and unexpected, and . . . caused by a circumstance external to the member (not the result of pre-existing disease that is aggravated or accelerated by the work)." The Court defined a "traumatic event" as "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." Id. at 212.

In Moran, 438 N.J. Super. at 347, a firefighter was disabled upon saving two people from a burning building by kicking in the front door. On the date of the incident, Moran was called to what was expected to be a vacant, boarded-up house. Id. at 350. When he arrived alone, the plan was to keep the fire from spreading to

other buildings, but contrary to expectation, Moran heard screams from inside the building. Ibid. Moran's typical unit assignment did not include breaking into burning buildings, but rather his role was to "take[ ] the hoses into the [burning] building . . . and put[ ] out the fire." Id. at 349 (alterations in original). As a result, he did not have the necessary special equipment, nor was he trained in forcing entry with his body. Ibid. We found that the undesigned and unexpected event was a combination of unusual circumstances: "the failure of the truck unit to arrive, and the discovery of victims trapped inside a fully engulfed burning building, at a point when Moran did not have available to him the tools that would ordinarily be used to break down the door." Id. at 354.

In this case, Hammond was injured while trying to lift a patient with the assistance of at least two other people. The act of transferring the obese individual was not "undesigned and unexpected" because it was a recognized part of Hammond's duties as a firefighter, duties which he had performed on other occasions. It is hardly unexpected that the process of lifting an obese, semi-conscious or unconscious person would be difficult, require the exertion of physical force and likely take multiple attempts before there was a successful transfer. The testimony of the paramedics supported these conclusions.

The Board's conclusion that Hammond's permanent disability was not the result of an undesigned and unexpected traumatic event was not arbitrary, capricious or unreasonable, as it was supported by sufficient, competent and credible evidence in the record.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION