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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2976-19**

**WESLEY LITTLE,**

Petitioner-Appellant,

v.

**BOARD OF TRUSTEES,  
TEACHERS' PENSION AND  
ANNUITY FUND,**

Respondent-Respondent.

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Argued February 14, 2022 – Decided April 6, 2022

Before Judges Sabatino and Natali.

On appeal from the Board of Trustees of the Teachers' Pension and Annuity Fund, Department of the Treasury.

Herbert J. Stayton, Jr., argued the cause for appellant.

Porter R. Strickler, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Acting Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Connor V. Martin, Deputy Attorney General, on the brief).

## PER CURIAM

Petitioner Wesley Little appeals from a February 13, 2020 final agency decision of the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF), adopting an Administrative Law Judge's (ALJ) initial decision. After sustaining injuries following an assault by a student, Little filed for ordinary and accidental disability retirement benefits. The Board denied both requests on the basis that Little was not permanently and totally disabled. On appeal, the ALJ disagreed with that determination, in part, and awarded Little ordinary disability benefits, but denied his application for accidental disability benefits. The Board adopted the ALJ's decision.

Before us, Little challenges the Board's decision to deny him accidental disability benefits. We agree with Little that the Board's decision to deny him accidental disability retirement benefits was unsupported by the administrative record and, accordingly, reverse.

### I.

By way of background, a TPAF "member, under [sixty-five] years of age," is eligible for an accidental disability retirement pension 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). Before considering such an application, a physician designated by the Board must certify:

that [the member] is physically or mentally incapacitated for the performance of duty, and should be retired, and the employer shall have certified to the [B]oard that 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 and assigned duties, the time and place where the duty causing the disability was performed, that the disability was not the result of his willful negligence[,] and that the member should be retired.

[Ibid. (emphasis added)]

In Richardson v. Board of Trustees, Police and Firemen's Retirement System, 192 N.J. 189 (2007), our Supreme Court clarified the meaning of the term "traumatic event," and set forth a five-pronged test, requiring a pension system member seeking accidental disability benefits to 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 [the member's] usual or any other duty.

[Id. at 212-13 (emphasis added).]

Our Supreme Court clarified the "direct result" language in Gerba v. Board of Trustees, Public Employees' Retirement System, 83 N.J. 174, 185 (1980), particularly "in cases where . . . the disability may be causally related in some measure to an antecedent or underlying physical condition as well as to the traumatic event." There, the Court explained that what is now required "is a traumatic event that constitutes the essential significant or the substantial contributing cause of the resultant disability . . . even though it acts in combination with an underlying physical disease." Gerba, 83 N.J. at 186-87 (emphasis added).

As noted, the Board does not dispute that petitioner is permanently disabled. The primary issue in this case is whether Little's disability is causally related to a traumatic event. We therefore begin with a factual background to provide context for Little's injuries.

## II.

Little is a former special education teacher at Trenton High School. On October 17, 2012, he was assaulted by a student after he told him to turn his music down. The student grabbed Little by the collar of his shirt, "smacked" him, and then proceeded to punch him in the side of the face. At that point, "paraprofessionals and other teacher[s]" attempted to break up the fight while the student continued to punch and kick Little.

Little then returned to his office to fill out a disciplinary form. At some point thereafter, the student entered Little's office and again "started punching [him]." Little was able to push the student into the hallway and restrain him by grabbing his arms. While restrained, the student headbutted Little in the mouth and caused him to blackout.

Once Little regained consciousness he walked outside and called the student's grandmother, principal, and vice principal to inform them about the incident. The vice principal instructed Little to go to the school nurse's office where he was told to go to the hospital. Little had a swollen lip, "cuts underneath both parts of [his] lip [and] on the side," and several of his teeth were loose.

At the hospital, while waiting in the emergency room, Little saw the student who assaulted him, his mother, and another man. At that point, the

student and his mother stood up and threatened Little, stating that "[y]ou going to get yours, we going to [fuck] you up." Nurses immediately quelled the situation and brought Little to a room for treatment. Little underwent x-rays, was given "something for [his] headache," and sent home. An October 17, 2012, medical report, not contained in the record, purportedly stated that Little was diagnosed with a head contusion and lip laceration.

Little did not immediately return to work. Instead, five days later, he met with Francisco Villota, M.D., at Robert Wood Johnson University Hospital. Dr. Villota's report stated that Little self-reported concussions he suffered in college, and indicated he had a history of migraines seven to eight years ago. Dr. Villota noted that Little presented with "severe dizziness" and lacerations on his lower lip, and stated that he was having difficulty "finding words to communicate . . . difficulty concentrating . . . [a]nd difficulty with bright lights." Dr. Villota also diagnosed Little with double vision and vertigo. Dr. Villota referred Little to a neurologist, and an MRI taken a few weeks later, showed Little's brain to be "unremarkable" for his age.

Immediately after the incident, Little testified that he was depressed, afraid, and felt that he was in "a very bad place." He explained that his two brothers were murdered by members of the Bloods street gang, and he feared

that gang would retaliate against him, insinuating that the student who assaulted him was also a member of the Bloods. Little stated that he "constantly replayed [the incident] over and over again" in his head and explained he "was mad at everybody."

Because of his noticeable depression, Little's attorney at the time referred him to Eugene J. Gadson, Psy.D. Following a consultation three weeks after the incident, Dr. Gadson diagnosed Little with post-traumatic stress disorder (PTSD) and moderate depression. Dr. Gadson also recommended that Little undergo psychotherapy and attain neurological assessment. Dr. Gadson found that "returning [Little] to work would be contra-indicated" because "[h]is emotional controls are poor and he has considerable pent-up hostility, with strong paranoid feelings related to his overall treatment by the authorities and his traumatic situation."

Shortly thereafter, Dr. Gadson sent a letter to the Trenton Board of Education explaining that he diagnosed Little with PTSD and that the "precipitating event of his disorder was" the October 17, 2012 incident. He further noted that Little was "depressed, overly anxious, had appetite problems, sleep problems and presented evidence of mental confusion."

The next month, Dr. Gadson sent a letter to an employee of Qualcare, the school's workers' compensation insurance intermediary, stating that "it is difficult, at this time, to prognosticate when [Little] will be able to return to work." He further noted that Little had an "inordinate fear of returning to school" and that "[m]aybe another month of therapy [would] make his symptoms remit."

In February 2013, Little applied for accidental disability retirement benefits. In the corresponding form, Little explained that he was "brutally assaulted" by a student on October 17, 2012. Little described the assault as "physical, allowing the student to strike [him] a total of [nine] times with his fist to [his] face, along with a devastating [headbutt] to [his] mouth."

The Trenton Board of Education submitted a certification for disability retirement acknowledging that Little "resigned from this organization on February 28, 2013." That same day, the Executive Director of Human Resources for Trenton Public Schools sent a letter to the New Jersey Division of Pensions and Benefits explaining that "there [was] no alternate position or light duty available for [Little]."

In April 2013, Qualcare referred Little to David Scasta, M.D., a psychiatrist. Dr. Scasta concluded he "did not find any evidence that the patient



has other factors in his life which may be contributing or causing psychological dysfunction other than the residuals from his assault." Dr. Scasta's report "referred to the presence of a posttraumatic stress disorder," but noted that "no true cognitive problems were detected."

Qualcare then referred Little to Joseph I. Tracy, Ph.D., for a neuropsychological evaluation in July 2013. In his accompanying report, Dr. Tracy concluded that Little showed "clinically significant levels of depression and anxiety, involving physiologic symptoms, rumination/preoccupation with the incident, suspiciousness, interpersonal difficulties and fears, as well as mood changes and negative thinking."

Dr. Tracy also found that "[t]here is a very rich and complex set of psychiatric symptoms present that meet [the] criteria for [PTSD]." Dr. Tracy further determined that "the level of chronic depression is sufficient to also diagnose a Dysthymia Disorder," noting Little "displayed a sense of disengagement and withdrawal" and "remain[ed] ruminative about the incident."

In addition, Dr. Tracy concluded that Little's PTSD, Dysthymia Disorder, and psychiatric symptoms were "not malingered and represent a bona fide effect of the assault [Little] experienced in October 2012." Dr. Tracy recommended that Little begin intense psychotherapy and consult with a psychiatrist. Finally,

Dr. Tracy did not believe Little would be able to return to work and found that his psychiatric disorders "preclude[d] his ability to return to his previous level of responsibility as a teacher."

On August 13, 2013, Little was involved in an automobile accident on his way to an appointment with Dr. Gadson. Little was sent to the hospital but was released after approximately twenty minutes "because he kept telling [the hospital employees he was] fine." Little acknowledged, however, that he suffered injuries to his elbow, arm, neck, and back, had lost consciousness after the accident, and noted that his head "almost went through the windshield," such that he was taking pieces of glass out of his hair.

Little further testified that he was given injections for his neck, but he no longer had any neck-related complaints. He also stated that he was diagnosed with nerve damage in his lower back and had been experiencing chronic back pain since the accident. He testified that this pain has interfered with his daily life and made him more irritable. Little further testified that his "depression, short-term memory loss . . . [and] cognitive dysfunctions" did not change after the August 2013 accident, however. His wife testified consistent with Little, and stated he was "not the same person" since the 2012 assault, but noted that he "didn't get worse after the car accident."

After the car accident, Little began to receive psychiatric treatment from Joel B. Glass, M.D. In a 2015 report, prepared after nearly two years of treating Little, Dr. Glass stated that he found Little to be "highly anxious," "intensely depressed and withdrawn." Over the course of treatment, Dr. Glass noted Little's anxiety improved "somewhat" with the use of "medication and supportive psychotherapy." Ultimately, Dr. Glass ascribed "[seventy-five percent] of [Little's] difficulties to be related to the assault and [twenty-five percent] to be related to the motor vehicle accident." He further concluded that Little had "become permanently vocationally disabled in regard to teaching as the direct result of the assault he experienced in the course of his work as a teacher on October 17, 2012."

On July 10, 2014, the Board denied Little's application for accidental disability retirement benefits related to the October 17, 2012 incident. The Board stated that there was "no evidence in the record of direct causation of a total and permanent disability." The Board further explained that Little was not "totally and permanently disabled from the performance" of his "usual or other duties that [his] employer [was] willing to offer."

Little filed a timely appeal of the Board's decision, and the matter was transferred to the Office of Administrative Law (OAL) as a contested case

pursuant to N.J.S.A. 52:14B-1 to -15. An Administrative Law Judge (ALJ) presided over five days of hearings which spanned over a period of two years, beginning on May 9, 2016.

At the hearing, Dr. Glass confirmed that Little was totally and permanently disabled and testified that it would be "impossible for [Little] to be in a classroom setting" because Little would be "fearful of assaults" and "wouldn't be able to communicate with students." Dr. Glass also initially testified consistent with his report, and stated that "[seventy-five] percent of [Little's] . . . difficulties were related to the assault and [twenty-five] percent were related to the motor vehicle accident." On redirect, however, Dr. Glass amended his opinion because "the fact that he was delusional before the car accident makes me inclined to increase the amount [of Little's difficulties] that [are] related to the assault, and stated that "maybe" eighty percent were attributed to the assault and only twenty percent to the motor vehicle accident.

Dr. Glass also explained that Little had informed him of two or three football related concussions he had suffered prior to the 2012 assault, but confirmed that those concussions did not preclude him from continuing to play football. Dr. Glass acknowledged that Little's history of concussions "would . . . be relevant to [his] inquiry as to the causation of [Little's] current issues,

symptoms, and diagnosis." He explained that in general, successive concussions can cause micro changes in the brain that may result in headaches, but "if they resolve, then any subsequent headaches are not related" to those events. Dr. Glass further noted that subsequent head injuries can have a "cumulative effect," but stated that Little "functioned well enough to get himself professionally where he was." Little testified that he did not recall telling doctors about high school or college concussions, stating that he remembered "it was just a little daze, and I was right back in the game."

At some point thereafter, Little "parted ways" with his attorney, and the hearings were postponed to enable him to retain new counsel. In August 2017, Little's new counsel filed "an amended accidental disability application with the Division of Pension and Benefits to include as an additional bases for accidental disability benefits" the August 8, 2013 automobile accident, which the Board refused to accept. Consequently, on November 15, 2017, Little filed a motion to amend his application, which the ALJ denied.

Richard Filippone, Ph.D., testified on behalf of the Board that he evaluated Little on June 27, 2013 and prepared an accompanying report.<sup>1</sup> He stated that "the question put to me at the evaluation . . . is, is this person totally

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<sup>1</sup> Dr. Filippone's report is not included in the record on appeal.

and permanently disabled from performing their normal job duties in their job description which is a school teacher." Dr. Filippone concluded that Little had a "specific phobia . . . of Trenton High School, in fear of being assaulted," and his fear was "logical." He further determined that Little was not disabled and could work at another high school.

Dr. Filippone disagreed that Little suffered from PTSD, and concluded that he was "at best mildly sad." On this point, Dr. Filippone stated "[s]ome people do turn very negative after an assault or a traumatic event. There was none of this in [Little], so I found there is really no credibility for [PTSD] . . . there was no generalized incapacity."

A few days later, the ALJ "advised the parties that Little's expert, Dr. Glass, had lost his license to practice medicine." In light of this event, Little was permitted to present another expert witness, Dr. Tracy, but Dr. Glass's report and testimony were never stricken from the record and were considered by the ALJ.

Accordingly, Dr. Tracy testified on behalf of Little in May 2018. He testified that he had reevaluated Little on December 15, 2017 and explained that he believed Little's overall psychiatric status had worsened, and there were still "very compelling" PTSD symptoms. He stated that the symptoms "were of the

same nature that I'd seen previously. [Little] actually ascribed to a few more symptoms on one symptom rating scale." Further, with respect to the August 8, 2013 accident, Dr. Tracy stated he "did not feel that the accident was at cause or . . . exacerbating the PTSD in any significant way."

Dr. Tracy further testified that "Little's financial problems, his marital problems, his self[-]esteem problems . . . [were] directly linked to the [October 17, 2012] assault." Finally, and in direct rebuttal to Dr. Filippone's testimony, Dr. Tracy opined that "the psychiatric symptoms and the disorders I diagnosed at this point are disabling and would remove and preclude [Little's] ability to return to work as a teacher, not just in any particular setting but in . . . any teaching setting."

On December 12, 2019, the ALJ issued a written decision finding Little to be "totally and permanently disabled," and granted him ordinary disability benefits but denied his request for accidental disability benefits. In reaching this conclusion, the ALJ stated that she found the testifying doctors to be equally qualified, "so their credentials did not impact [her] credibility determination." She found persuasive, however, that Dr. Tracy performed a "battery of psychological tests for depression and PTSD," and noted that Dr. Filippone performed no such tests to refute those findings. She further characterized Dr.

Filippone's testimony denying any disability as "less credible as he did not conduct any psychological testing on Little [and that] Dr. Filippone's unwillingness to diagnose PTSD when every other doctor . . . diagnosed PTSD was suspect."

In support of her decision, the judge made extensive factual findings based on the evidentiary and testimonial record. Specifically, the judge found:

- 1) [T]hat Little suffers from PTSD and major depression. His symptoms have worsened over time;
- 2) [T]hat Little's treating doctors support the diagnoses of PTSD and major depression and they attribute those diagnoses to the assault on October 17, 2012;
- 3) [T]hat Little was totally and permanently incapable of performing the duties of a teacher. Regarding the cause of Little's total and permanent disability, Little testified and informed Dr. Glass that he had a history of concussions that he sustained as a football player in college;
- 4) Dr. Villota, the worker's compensation doctor, noted on October 23, 2012, that Little had previous concussions while playing football in college. He complained of dizziness and having difficulty finding his words, which the doctors agree can come from concussions;



- 5) Based on the testimony of Dr. Glass . . . [that] concussions can also cause headaches and depression, which could be relevant to causation;
- 6) Based on the testimony and records of Dr. Glass, that Little had a history of depression prior to the assault;
- 7) [T]hat Dr. Glass did not see Little until after the car accident, so he decided that the accident was [twenty-five] percent of the cause of Little's symptoms based on his reading of medical records after the assault;
- 8) Dr. Tracy noted . . . other factors affected Little's depression such as marital problems, financial difficulties and lack of self-esteem, which flow from the initial assault, but hurt his claim that the work-related assault was the substantial cause of the disability for which he is seeking accidental disability benefits; and
- 9) [T]hat Little had a few factors contributing to his total and permanent disability including concussions prior to the assault, depression prior to the assault as well as personal challenges.

In evaluating Little's application for accidental disability, the ALJ concluded Little failed to satisfy all prongs of the Richardson test. The judge explained that Richardson requires "pre-existing conditions that result in or combine to cause a disability . . . to be excluded from eligibility for accidental disability retirement benefits." She concluded that "Little cannot prove that the assault was the 'essential significant or substantial contributing cause' of his

disability" and therefore that Little was unable to "sustain his burden of proving by a preponderance of the credible evidence that he met the 'direct result' prong of the Richardson test, and N.J.S.A. 18A:66-39(c)."

In support of this conclusion, the ALJ relied upon Dr. Glass's testimony with respect to Little's concussions and Little's testimony that "his head went through the windshield when he had a car accident in August 2013." She also highlighted other factors affecting Little's depression that Dr. Tracy had noted, including his "marital problems, financial difficulties[,] and lack of self-esteem," which she determined "flow from the initial assault but cannot be the cause of the disability to prove entitlement to accidental disability benefits." She also based her conclusion on Dr. Glass's testimony "that Little had a history of depression prior to the assault."

On February 13, 2020, the TPAF Board adopted the ALJ's December 12, 2019 decision and "approved [Little] for [only] [o]rdinary [d]isability retirement benefits effective December 1, 2016." This appeal followed.

### III.

Little contends that the ALJ erred in denying him accidental disability benefits and raises several arguments on appeal, which we combine for purposes of clarity of our discussion. First, Little contends that pension statutes are

remedial and should be construed liberally "in favor of the public employees they are designed to benefit." Little further argues that he has met his burden of proof under the Richardson test, and his total and permanent disability is the "essential and substantial contributing cause" of the October 2012 assault. On this point, Little maintains the ALJ improperly applied the standards delineated in Gerba and Petrucelli.<sup>2</sup> In addition, Little argues that the ALJ's decision is not supported by the medical testimony in the record and deference should have been given to his multiple treating physicians. We agree with these arguments and reverse.

Our public pension systems are "bound up in the public interest and provide public employees significant rights which are deserving of conscientious protection." Zigmont v. Bd. of Trs., Teachers' Pension & Annuity Fund, 91 N.J. 580, 583 (1983). Because pension statutes are remedial in character, they are liberally construed and administered in favor of the persons intended to be benefited thereby. Klumb v. Bd. of Educ. of Manalapan-Englishtown Reg'l High Sch. Dist., Monmouth Cnty., 199 N.J. 14, 34 (2009).

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<sup>2</sup> Petrucelli v. Bd. of Trustees of Pub. Employees' Ret. Sys., 211 N.J. Super. 280, 288 (App. Div. 1986).

Like all public retirement systems, the TPAF provides for both ordinary, N.J.S.A. 18A:66-39(b), and accidental, N.J.S.A. 18A:66-39(c), disability benefits. The principal difference between ordinary and accidental disability retirement "is that ordinary disability retirement need not have a work connection." Patterson v. Bd. of Trs., State Police Ret. Sys., 194 N.J. 29, 42 (2008). Accidental disability retirees receive significantly greater benefits than those provided to ordinary disability retirees. Id. at 43 (citing Richardson, 192 N.J. at 193). The qualifications to be awarded accidental disability retirement benefits under N.J.S.A. 18A:66-39(c) are therefore more restrictive than ordinary disability benefits.

Our role in reviewing a decision of administrative agency action, however, is limited. Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011). Indeed, we presume the validity of the "administrative agency's exercise of its statutorily delegated responsibilities." Lavezzi v. State, 219 N.J. 163, 171 (2014). For those reasons, we ordinarily do not "disturb an administrative agency's determinations or findings unless there is a clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence." In re Application of Virtua-West Jersey Hosp. for a Certificate of Need, 194 N.J.

413, 422 (2008). "Where . . . the determination is founded upon sufficient credible evidence seen from the totality of the record and on that record findings have been made and conclusions reached involving agency expertise, the agency decision should be sustained." Gerba, 83 N.J. 174, 189 (1980). We review de novo an agency's interpretation of a statute or case law. Russo, 206 N.J. at 27.

"The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the [party] challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006). "[T]he test is not whether an appellate court would come to the same conclusion if the original determination was its to make, but rather whether the factfinder could reasonably so conclude upon the proofs." Brady v. Bd. of Review, 152 N.J. 197, 210 (1997) (quoting Charatan v. Bd. of Review, 200 N.J. Super. 74, 79 (App. Div. 1985)).

As noted, the pivotal, and sole, legal issue before us is whether Little's disability is the "direct result" of the October 2012 assault, which we review de novo. See Saccone v. Bd. of Trs., Police & Firemen's Ret. Sys., 219 N.J. 369, 380 (2014). We are satisfied that Little has met his burden, and we conclude, after a thorough review of the record, that the Board's decision was arbitrary and

capricious, as it was untethered to the substantial and credible evidence in the record.

As our Supreme Court explained in Gerba, 83 N.J. at 187, "accidental disability in some circumstances may arise even though an employee is afflicted with an underlying physical disease bearing causally upon the resulting disability." In that case, our Supreme Court defined "direct cause" as "the essential significant or substantial contributing cause of the disability," and emphasized that the traumatic event need not be the "sole or exclusive cause of the disability." Ibid.

On the same day Gerba was decided, the Supreme Court also issued its opinion in Korelnia v. Board of Trustees of the Public Employees' Retirement System, 83 N.J. 163 (1980). There, the Court clarified that despite the statutory requirement that a resulting disability "be 'direct' in terms of its traumatic origins, "it does not require that the antecedent trauma be the exclusive or sole cause of the disability." Id. at 169-70 (citing Gerba, 83 N.J. at 186-87).

We applied the above Supreme Court holdings in Petruccelli, 211 N.J. Super. at 280. In Petruccelli, petitioner's fall caused a non-symptomatic pre-existing spinal condition, spondylolisthesis, to morph into a total disability. Id. at 281-83. There, we distinguished the case from Gerba, stating that "the

claimant in Gerba lost because the undisputed record established that he had symptomatic developmental arthritis for a decade and that the employment event only contributed to the progression of the disease." Id. at 288 (citing Gerba, 83 N.J. at 188). We further noted that "[t]he companion case Korelnia, 83 N.J. at 170, also recognized that in the proper circumstance 'an accidental disability may under certain circumstances involve a combination of both traumatic and pathological origins.'" Id. at 288-89.

We ultimately concluded that the petitioner satisfied the "direct result" test, despite his pre-existing condition that "triggered a symptom complex resulting in total disability." Id. at 289. "For all anyone knows," we explained, "without this accident, [petitioner] could have worked to age [sixty-two], as planned, and retired uneventfully . . . Whether he would have developed low-back symptoms independently of the 1981 fall, and when he would have done so, is entirely speculative on this record." Ibid.

As noted, we conclude the Board's decision was arbitrary and capricious, as it was contrary to settled law and unsupported by substantial credible evidence. Despite Little's prior concussions and subsequent car accident, the medical evidence indisputably supports the conclusion that the October 17, 2012 assault was the "essential significant or substantial cause" of Little's disability.

First, neither the reports referenced by the ALJ nor the medical testimony attributed Little's disability to his self-reported and asymptomatic concussions, which Little himself minimized. Rather, three weeks after the assault, Dr. Gadson diagnosed Little with PTSD and moderate depression, and in December 2012, noted that Little's "symptom picture ha[d] not improved." Dr. Scasta, a psychiatrist retained by Qualcare, also reported that he "did not find any evidence that [Little] has other factors in his life which may be contributing or causing psychological dysfunction other than the residuals from his assault." In addition, Dr. Tracy's neuropsychological evaluation, which was admitted into evidence, explicitly stated that Little's PTSD, Dysthymia Disorder, and psychiatric symptoms were "not malingered and represent a bona fide effect of the assault [Little] experienced in October 2012."

We further note that those concussions had no effect on Little's ability to graduate college, complete a Master's degree, get hired by Trenton High School, or perform admirably while working at the school. As Dr. Glass testified, Little "functioned well enough to get himself professionally where he was." Further, Dr. Glass noted in his February 2015 report, Little "was a teacher who took considerable pride in his work and the success of his students, as well as the accolades and thanks they offered him in subsequent years."



Further, it appears the ALJ based her decision in part on Dr. Glass's testimony that "concussions can cause headaches and depression," which she stated "could be relevant to causation." However, Dr. Glass's statement that concussions suffered by football players may cause headaches and depression was general in nature, and not tied to Little specifically. He did not offer an opinion that Little's concussions were the cause of his disabling PTSD.

Nor does the evidence in the record related to the August 2013 car accident support the ALJ's or the Board's decision. On this point, Dr. Tracy specifically testified that he "did not feel that the [August] accident was at cause or in any way exacerbating the PTSD in any significant way." Dr. Tracy also concluded that the "car accident does not seem to have exacerbated his ongoing PTSD symptoms, with the latter clearly and directly related to the assault in 2012."

Even if the car accident had some relation to Little's symptomology, Dr. Glass testified that "[seventy-five] percent of [Little's] . . . difficulties were related to the assault and [twenty-five] percent were related to the motor vehicle accident," which he later increased to eighty percent. Dr. Glass further stated that he "believed that the injuries [Little] received in the assault were more traumatic and also more damaging to his brain than the single impact that he'd had in the car accident."

Moreover, in reaching the conclusion that Little's PTSD and depression were not the direct result of the October 17, 2012 assault, the ALJ relied upon the fact that Dr. Glass had testified regarding Little's "history of depression prior to the assault." When asked on cross-examination, however, whether Little had reported telling his primary care doctor in 2011 that he was "depressed," Dr. Glass responded that he did not "recall hearing that."

In addition, the ALJ's reliance on Little's previous concussions and subsequent car accident is also in direct conflict with her credibility findings. Indeed, the ALJ found Dr. Filippone to be the least credible expert, given he did not conduct any psychological testing on Little, and she specifically rejected Dr. Filippone's opinion that Little was able to teach at another high school by granting Little ordinary disability benefits. Finally, contrary to the ALJ's suggestion in her factual findings, Dr. Filippone never testified specifically as to the cause of Little's PTSD and depression. Rather, the thrust of his testimony related to whether Little was totally and permanently disabled.


The circumstances presented by this matter are similar to those in Petrucelli, as any concussions or pre-existing head trauma that Little may have endured were "nonsymptomatic," like the petitioner's pre-existing spondylolisthesis in Petrucelli. Indeed, there is no evidence in the record to

support a finding that Little's concussions caused him any pain, discomfort or impairment in his personal or professional life. Further, his MRI taken only a few weeks after the assault reported an "unremarkable" image, suggesting the concussions he sustained nearly a decade earlier caused no permanent head trauma. As in Petrucelli, whether and when Little would have developed PTSD and depression, independently of the 2012 assault, "is entirely speculative on this record."

In sum, we are satisfied that the record supports but one conclusion: the October 17, 2012 assault was the "essential significant or substantial contributing cause" of Little's disability. "[I]f claimant here cannot recover after a severe trauma, superimposed on a nonsymptomatic [condition] . . . no claimant could ever recover accidental benefits in any circumstance where there exists a quiescent underlying condition which had caused no trouble and might never cause any trouble." Petrucelli, 211 N.J. Super. at 289.

To the extent we have not specifically addressed any of the Board's arguments, it is because we conclude they are of insufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Reversed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.  
  
CLERK OF THE APPELLATE DIVISION