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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1869-21**

**JOSEPH WERNER,**

Petitioner-Appellant,

v.

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

Respondent-Respondent.

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Argued May 15, 2023 — Decided June 6, 2023

Before Judges Whipple and Walcott-Henderson.

On appeal from the Board of Trustees of the Police and Firemen's Retirement System, Department of the Treasury, PFRS No. xx3545.

Patrick P. Toscano, Jr., argued the cause for appellant (The Toscano Law Firm, LLC, attorneys; Patrick P. Toscano, Jr., of counsel and on the briefs; Matthew J. Toscano, on the briefs).

Juliana C. DeAngelis, Legal Counsel, argued the cause for respondent (Robert S. Garrison, Jr., Director of

Legal Affairs, attorney; Juliana C. DeAngelis, on the brief).

PER CURIAM

Petitioner Joseph Werner appeals from a January 10, 2022 final agency decision by respondent, Board of Trustees of the Police and Firemen's Retirement System of New Jersey (PFRS), denying his application for accidental disability retirement benefits. We affirm.

Werner was employed by the Belleville Police Department (BPD) as a police officer from 2009 until his retirement in September 2020. He applied for accidental disability retirement benefits<sup>1</sup> citing injuries sustained in the line of duty in 2016. A brief statement of Werner's background and experience as a police officer is instructive on the issue of whether he qualifies for accidental disability retirement benefits. Werner's experience as a police officer included responding to approximately sixty domestic violence calls, some of which involved aggressive suspects who resisted arrest or otherwise physically fought with him. He testified to being spat on, pushed, and punched by said individuals. Werner's application, however, is based on a specific incident,

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<sup>1</sup> "[A]n accidental disability retirement entitles a member to receive a higher level of benefits than those provided under an ordinary disability retirement." Thompson v. Bd. of Trs., Tchrs' Pension & Annuity Fund, 449 N.J. Super. 478, 484 (App. Div. 2017).

which Werner characterized as "beyond anything" he had previously encountered, and involved behavior which he asserts "exceeded anything reasonably expected from ordinary domestic violence calls."

The incident cited by Werner in support of his application occurred on November 16, 2016, when Werner, his partner Officer Michael Lambrugo and Sergeant Edward Zimmerman responded to a disturbance at a Belleville residence. Before arriving, officers were advised via dispatch of a possible domestic dispute with lots of screaming and yelling, which they could hear from outside on arrival. They arrived at the subject's apartment to a partially opened door, and after knocking, were confronted by the male suspect who was "irate, belligerent, highly intoxicated, and refused to allow the officers to enter." The officers then heard a woman crying and screaming in the background and entered the apartment to check on her well-being. The suspect attempted to flee via the kitchen area side door and officers, including Werner followed, commanded him to stop and a physical confrontation ensued. The exact nature of this confrontation was disputed at a hearing before an administrative law judge (ALJ). The suspect was eventually subdued by officers and arrested. It was during this confrontation that Werner suffered a back injury.

At the scene, Werner reported that he was in pain and paramedics transported him to a local hospital where he was treated for various injuries, including back pain. The suspect was charged with aggravated assault on a law-enforcement officer, resisting arrest and obstruction of justice. Werner was placed on leave for approximately three months and treated with an epidural. He then returned to work for one year before taking another leave to undergo a total of three back surgeries. Following those procedures, Werner worked for another eight to nine months until he had a fourth and final back surgery. On August 6, 2020, he applied for accidental disability retirement benefits pursuant to N.J.S.A. 43:16A-7.<sup>2</sup>

On September 15, 2020, PFRS denied Werner's application for accidental disability benefits but granted him ordinary disability retirement. PFRS

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<sup>2</sup> Upon retirement for accidental disability, a member shall receive an accidental disability retirement allowance which shall consist of:

- (a) An annuity which shall be the actuarial equivalent of his aggregate contributions and
- (b) A pension in the amount which, when added to the member's annuity, will provide a total retirement allowance of [two-thirds] of the member's actual annual compensation for which contributions were being made at the time of the occurrence of the accident or at the time of the member's retirement, whichever provides the largest possible benefit to the member.

[N.J.S.A. 43:16A-7(2).]

determined that Werner was: (1) totally and permanently disabled from the performance of his regular and assigned job duties; (2) physically and mentally incapacitated from performance of usual duties; (3) the event which caused this is identifiable to a time and place; (4) the event was caused by an external circumstance; (5) the event was not the result of willful negligence; and (6) the event which caused Werner's disability was not undesigned or unexpected.

Two weeks later, Werner requested PFRS "re-visit and reconsider" his application. In a November 10, 2020 letter, PFRS denied the request for reconsideration but transferred the matter to the Office of Administrative Law for determination as a contested case.

On December 8, 2021, the ALJ submitted a written initial decision affirming PFRS's denial of Werner's application for accidental disability retirement benefits. In a meeting held on January 10, 2022, PFRS voted to adopt the ALJ's decision affirming the denial of Werner's application. On January 12, 2022, Werner received written confirmation of this decision. This appeal followed.

Now, Werner argues the ALJ erred as a matter of law, in affirming the denial of his application. He submits his testimony supports a finding that this

violent encounter was "undesigned and unexpected," and as such, the decision of the ALJ was unreasonable and lacking in fair support based upon the record.

Judicial review of quasi-judicial agency determinations is limited. Allstars Auto. Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (citing Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)). "An administrative agency's final quasi-judicial decision will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Ibid. (quoting 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." A.M. v. Monmouth Cnty. Bd. of Soc. Servs., 466 N.J. Super. 557, 565 (App. Div. 2021) (alterations omitted) (quoting E.S. v. Div. of Med. Assistance & Health Servs., 412 N.J. Super. 340, 349 (App. Div. 2010)). "If substantial credible evidence supports an agency's conclusion, a court may not substitute its own judgment for the agency's even though the court might have reached a different result." Ibid. (citing Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992)).

Our role in reviewing administrative actions is generally limited to three inquiries: (1) "whether the agency's action violates express or implied

legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and" (3) whether "the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors." Allstars Auto. Grp., Inc., 234 N.J. at 157 (quoting In re Stallworth, 208 N.J. 182, 194 (2011)). "When an agency's decision meets those criteria, then a court owes substantial deference to the agency's expertise and superior knowledge of a particular field." In re Hermann, 192 N.J. 19, 28 (2007). We are not bound by an agency's interpretation of a statute or its determination of a strictly legal issue outside its charge. Allstars Auto. Grp., Inc., 234 N.J. at 158. See also Bowser v. Bd. of Trs., Police & Firemen's Ret. Sys., 455 N.J. Super. 165, 171 (App. Div. 2018) ("We owe no deference to an administrative agency's interpretation of judicial precedent.").

Here, Werner relies almost exclusively upon the New Jersey Supreme Court's decision in Richardson v. Bd. of Trs., 192 N.J. 189 (2007). While acknowledging that the ALJ cited to Richardson briefly, Werner states "[the ALJ] failed to compare and/or contrast Richardson's nearly indistinguishable facts to the facts in question for Werner's application."

In Richardson, plaintiff, a corrections officer, was thrown to the floor and injured while subduing an inmate. Id. at 214. The officer hyperextended his wrist, and as a direct result, became permanently disabled. Ibid. The Richardson Court held the officer's injury was the result of an "undesigned or unexpected" event, reversing a denial of his application for accidental disability retirement benefits. Id. at 215. Richardson requires a member to prove an event: "caused [them] to be permanently and totally disabled; that it was identifiable as to time and place; undesigned, unexpected, and external to the member; that it was work[-]related; not self-induced[;] and that the member is unable to perform his usual or any other duty." Russo, 206 N.J. at 32 (citing Richardson, 192 N.J. at 212-13). "The polestar of the inquiry is whether, during the regular performance of [their] job, an unexpected happening, not the result of pre-existing disease alone or in combination with the work, has occurred and directly resulted in the permanent and total disability of the member." Richardson, 192 N.J. at 214.

The Richardson Court discussed several examples of "undesigned or unexpected" events occurring during a member's regular or assigned duties, stating: "A policeman can be shot while pursuing a suspect; a librarian can be hit by a falling bookshelf while re-shelving books; [and] a social worker can



catch [their] hand in [a] car door while transporting a child to court." Ibid. "[A]n employee who experiences a horrific event which falls within [their] job description and for which [they] have been trained will be unlikely to pass the 'undesigned and unexpected' test." Russo, 206 N.J. at 33. "Thus . . . an emergency medical technician who comes upon a terrible accident involving life-threatening injuries or death . . . will not satisfy Richardson's 'undesigned and unexpected' standard because that is exactly what his training has prepared him for." Ibid. "To properly apply the Richardson standard, . . . [PFRS] and a reviewing court must carefully consider not only the member's job responsibilities and training, but all aspects of the event itself. No single factor governs the analysis." Mount v. Bd. of Trs., Police & Firemen's Ret. Sys., 233 N.J. 402, 427 (2018).

In Mount, the New Jersey Supreme Court considered a case where a police officer responded to a serious motor vehicle accident, and after seeing "what 'appeared to be the arm of a human being'" hanging from a window and a group of bystanders screaming "do something," approached the vehicle which then exploded into flames. Id. at 409. The officer had been trained to respond to motor vehicle accidents by "directing traffic, conducting crowd control, and preparing accident reports," but denied having been trained to extract accident

victims from vehicles. Ibid. The ALJ concluded that the traumatic event was not "undesigned and unexpected for [the] purposes of Richardson." Id. at 412. The Appellate Division subsequently concurred with the ALJ's decision because the event was within the officer's job description and contemplated by his training, therefore, the event was neither undesigned nor unexpected. Id. a 413.

The New Jersey Supreme Court reversed, holding whether an event is "undesigned and unexpected" is not "resolved merely by reviewing the member's job description and the scope of his or her training." Id. at 427. Considerations of job duties and trainings "may weigh strongly for or against an award" of accidental disability, but that is an inquiry specific to each case. Ibid. The Court found significant that the officer, while expected to remove victims from damaged vehicles, had not trained to "combat, unassisted, an explosion of such magnitude experienced at such a close range." Ibid. Furthermore, he was without any firefighting equipment or protective gear and was therefore helpless in the face of "a terrible tragedy." Id. at 427-28. It was these "extraordinary circumstances" which rendered the incident undesigned and unexpected, satisfying the Richardson test. Id. at 428.

In another case, Moran v. Bd. of Trs., Police & Firemen's Ret. Sys., we considered an application from a fireman who was forced to break down a

fortified door to save the lives of those inside without the requisite equipment, resulting in injuries as he forced his way in. 438 N.J. Super. 346, 350 (App. Div. 2014). Notably, the appellant was part of an "engine company," whose role was to "take hoses into the burning building . . . and to put out fires," and there was a separate "truck company," who were responsible for forcing entry into a burning building and rescuing occupants, carrying specific equipment for such duties. Id. at 349-51 (alterations omitted). The firetruck, which carries all the special equipment for breaking down doors, was not on the scene and he was forced to use his body to break down the door. Id. at 350.

We concluded: "While this was not a classic 'accident' in the sense that the house did not collapse on [the appellant], nor did he trip while carrying a fire hose, it was clearly an unexpected and undesigned traumatic event that resulted in [his] suffering a disabling injury while performing his job." Id. at 354. Because the appellant was not in a situation he "should have expected to find himself[.]" on account of the lack of equipment used by the truck company and screaming victims inside, the court concluded he was entitled to accidental disability benefits due to his injuries. Id. at 355.

Werner argues that the facts of his case are largely identical to Richardson, therefore, this court should reverse PFRS's decision and approve his application.

By contrast, PFRS asserts that Werner seeks for this court to "re-weigh the testimony and reach a different conclusion." It maintains that the ALJ correctly applied the Richardson standard in finding Werner failed to establish that this event which undoubtedly caused him injury was undesigned and unexpected.

In her decision, the ALJ determined ."at some time during the efforts to handcuff a combative, resisting suspect, Werner sustained an injury to his back." However, she also emphasized the notable differences between the testimony of Werner, the other witnesses and the written incident reports in making credibility findings:

There were no medical records presented at the hearing—thus, any patient history that may be contained in such records could not be reviewed to determine if Werner had ever previously stated that he had been tackled, body slammed to the floor and rendered incapacitated. Given the inconsistent testimony and its conflict with the [i]ncident [r]eports, it is not clear at what point during the arrest Werner's back came to be injured or by what means. A traumatic event can occur during an arrest, but there is no credible evidence in the record of a tackle and body slam to the floor.

Specifically as retold by PFRS, the ALJ questioned the testimony of Werner because:

Lambrugo issued two police reports detailing what occurred. His account of the . . . struggle between Werner and the suspect substantially differs from that

of Werner. Lambrugo wrote that the suspect only "shoved" Werner and that Werner actively assisted the officers in "plac[ing]" the suspect under arrest . . . [by using] compliance holds to get the suspect into handcuffs. Werner acknowledged that Lumbrugo's reports do not say anything about him getting tackled but . . . attribute[d] the omission to the fact that a senior officer did not review the reports. During the pension hearing, Werner admitted that both [of Lambrugo's] reports were approved by a senior officer.

. . . [F]our years after the incident, Zimmerman authored a statement outlining his experience of the incident. . . . Zimmerman's account of the incident is . . . similar to that of Lambrugo—in that there is no mention of Werner being tackled.

"When evidence is testimonial and involves credibility questions, deference is 'especially appropriate' because the trial judge is the one who has observed the witnesses first-hand." In re D.L.B., 468 N.J. Super. 397, 416 (App. Div. 2021) (quoting Cesare v. Cesare, 154 N.J. 394, 412 (1998)); see also State v. Gideon, 244 N.J. 538, 562 (2021) (quoting State v. Nash, 212 N.J. 518, 540 (2013)) ("An appellate court's reading of a cold record is a pale substitute for a trial judge's assessment of the credibility of a witness he has observed firsthand."). We will not disturb a trial court's findings unless they "went so wide of the mark that the judge was clearly mistaken." D.L.B., 468 N.J. Super. at 416 (quoting N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007)).

Critically, the officers' varied accounts of the confrontation did not make clear at what point during the arrest Werner injured his back and by what means the injury occurred. While the ALJ acknowledged a traumatic event can occur during an arrest, she also concluded Werner's testimony was not credible, and failed to establish that he was tackled and body slammed to the floor. Ultimately, the ALJ found that, at some point during the arrest, Werner sustained a back injury, but there was no credible showing of a traumatic event that was undesigned and unexpected.

PFRS correctly argues that "findings of fact as to issues of credibility of lay witness testimony" are rarely rejected or modified and should remain undisturbed. Applying these legal principles, we do not agree that PFRS's adoption of the ALJ's decision is arbitrary, capricious, or unreasonable and lacking in fair support based on this record. Moreover, while the plaintiff in Richardson and Werner were both injured while trying to subdue a combative person, the ALJ's credibility findings call into question Werner's theory of the events that led to his admittedly serious and career-ending injury.

These findings are entitled to deference and were adequately explained in the record. We defer to the ALJ's credibility findings because they are influenced by the opportunity to observe the witnesses and consider the

testimony and evidence. As articulated in the ALJ's decision, Werner was an experienced officer who had been involved in multiple arrests, and handled similarly combative individuals in the past. Therefore, he has not established that this specific event was so unexpected or that it involved "extraordinary circumstances" as contemplated by either Mount, 233 N.J. at 428, or Richardson, 192 N.J. at 214.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION