

**NOT FOR PUBLICATION WITHOUT THE
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-2755-21**

JOSEPH CASTRACANE,

Petitioner-Appellant,

v.

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

Respondent-Respondent.

Argued June 1, 2023 – Decided October 5, 2023

Before Judges Accurso and Natali.

On appeal from the Board of Trustees of the Police and Firemen's Retirement System, Department of the Treasury, PFRS No. xx8974.

Arthur J. Murray argued the cause for appellant (Alterman & Associates, LLC, attorneys; Arthur J. Murray, on the brief).

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

Joseph Castracane appeals from a final decision of the Board of Trustees of the Police and Firemen's Retirement System, denying his application for accidental disability retirement benefits. The Board determined Castracane did not establish his disabling condition was a direct result of a traumatic event. See N.J.S.A. 43:16A-7(1). We affirm.

The essential facts are undisputed. Castracane was working as a senior correctional police officer at the New Jersey Training School for Boys when he was injured on October 2, 2018. He was nearly forty-eight and had been employed as a corrections officer for the Juvenile Justice Commission for seventeen years.

Castracane was assigned to the kitchen, overseeing the food line, when a fight broke out nearby involving several residents. An emergency "Code 33" was called, requiring all personnel to respond. Castracane estimated he'd responded to 70 to 100 such codes over the course of his seventeen years with the Commission.

As Castracane ran towards the melee, he saw a resident "breaking away" from another officer and made the "split-second decision" to tackle him "headfirst," that is to "strike [his] head into the [resident's] body" to take him

to the floor. In tackling the resident, Castracane suffered injuries to his neck, which eventually required surgery on his cervical spine. He never returned to work.

Castracane applied for accidental disability retirement benefits. The Board determined he was totally and permanently disabled as a direct result of the incident and physically incapacitated from the performance of his usual duties. The Board also determined the incident was identifiable as to time and place; occurred during and as a result of Castracane's regular duties; and was not the result of willful negligence.

Notwithstanding those findings, the Board denied Castracane's application for accidental disability retirement benefits, concluding his scuffle with the resident was not "undesigned and unexpected," and his resulting disability was "the result of a pre-existing disease alone or a pre-existing disease that is aggravated or accelerated by the work effort."¹ The Board instead awarded him ordinary disability retirement benefits. Castracane

¹ The surgeon who operated on Castracane diagnosed him post-operatively as suffering from "herniated nucleus pulposus with spinal stenosis and degenerative disc disease at C4-5, C5-6 and C6-7." Castracane had previously undergone spinal surgery, albeit not to his cervical spine.

appealed, and the matter was transferred to the Office of Administrative Law for a hearing as a contested case.

Based on Castracane's credible testimony that he'd never before suffered neck pain of any note, as well as the opinions of the two dueling orthopedists who testified, the administrative law judge found Castracane demonstrated by a preponderance of the evidence that his disability was as a direct result of his encounter with the resident. But in a thorough and carefully reasoned analysis, ALJ Lieberman concluded the incident was not "undesigned and unexpected," and thus that Castracane was not entitled to accidental disability retirement benefits.

The judge began by reviewing the applicable law, and especially Richardson v. Board of Trustees, Police & Firemen's Retirement System, 192 N.J. 189 (2007) and the more recent case of Mount v. Board of Trustees, Police & Firemen's Retirement System, 233 N.J. 402 (2018), as it relates to the undesigned and unexpected factor of the Richardson test.

Applying the standards the Court established in those cases, the judge found Castracane was engaged at the time of his injury in a routine work activity for which he'd been trained, that is breaking up fights between residents. The judge noted Castracane's testimony that he'd responded to

similar "Code 33" calls 70 to 100 times before. The judge found Castracane "was trained to respond to emergencies and restrain and subdue fighting" residents and that doing so was a part of his routine duties.

ALJ Lieberman distinguished the cases on which Castracane relied that involved a corrections officer being "struck or attacked by an inmate." See e.g. Gable v. Bd. of Trustees, 115 N.J. 212, 223 (1989) (rejecting the violent attacks by inmates suffered by the officers could fairly be characterized as "the sort of minor 'scuffles' that occur regularly in a jail environment"). She noted that none of the cases on which Castracane relied held "the act of restraining and subduing fighting inmates is anything other than a correctional police officer's routine work duty."

Because the injuries to Castracane's neck were incurred in the course of his routine duty to break up fights between residents and not as a result of any violent attack on his person, Judge Lieberman concluded Castracane had not demonstrated the encounter was undesigned and unexpected, and thus a traumatic event, by a preponderance of the credible evidence. The Board adopted ALJ Lieberman's initial decision affirming the Board's denial of Castracane's application for accidental disability retirement benefits.

Castracane appeals, reprising his arguments to the ALJ and the Board that whether "attacked by [a resident] or breaking up an altercation between [residents] and others, the act of going 'hands on' on October 2, 2018, was 'undesigned and unexpected.'" The law is otherwise.

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., Tchrs' 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).

Our role in reviewing a decision of the Board of Trustees in such matters, however, is limited. Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011). We accord a strong presumption of reasonableness to an agency's exercise of its statutorily delegated responsibility, City of Newark v. Nat. Res. Council, Dep't of Env't Prot., 82 N.J. 530, 539 (1980), and defer to its fact finding, Utley v. Bd. of Rev., 194 N.J. 534, 551 (2008). We will not upset the determination of an administrative agency absent a showing that it was arbitrary, capricious, or unreasonable; that

it lacked fair support in the evidence; or that it violated legislative policies. In re Musick, 143 N.J. 206, 216 (1996) (citing Campbell v. Dep't of Civ. Serv., 39 N.J. 556, 562 (1963)).

In Richardson, the Supreme Court determined that an individual seeking accidental disability benefits under N.J.S.A. 43:16A-7(1) must establish:

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 his usual or any other duty.

[Richardson, 192 N.J. at 212-13.]

Here, there is no question as to petitioner having been disabled as a result of his work, as demonstrated by the Board's having granted him ordinary

disability retirement benefits. The sole issue is whether Castracane's disability was the result of a traumatic event. He argues, as he did before the ALJ, that he "suffered an injury that was undesigned and unexpected." Castracane, however, offers no published authority in support of his claim that it is immaterial that he was not violently attacked, or indeed attacked at all, by the resident, because "the act of going 'hands on'" with him was undesigned and unexpected.

The Court in Richardson explained a traumatic event "may be found either in an unintended external event or in an unanticipated consequence of an intended external event if that consequence is extraordinary or unusual in common experience." 192 N.J. at 201 (quoting Russo v. Tchrs' Pension & Annuity Fund, 62 N.J. 142, 154 (1973)). Castracane testified he was "doing his job" when he made the decision "to complete [his] law enforcement objective" to "tackle[] [the resident] to the ground." Thus, there is no dispute over whether Castracane was performing his ordinary duties when he acted to break up the fight; he testified he was.

Of course, a member may suffer an undesigned and unexpected event in the course of his ordinary duties, Moran v. Board of Trustees, Police and Firemen's Retirement System, 438 N.J. Super. 346, 354 (App. Div. 2014).

Indeed, the statute requires "the traumatic event occur 'during and as a result of the performance of [the member's] regular or assigned duties.'" Richardson, 192 N.J. at 213 (alteration in original) (quoting N.J.S.A. 43:16A-7(1)). But Castracane's testimony establishes that his wading into the melee to assist in bringing the residents back under control cannot qualify as the undesigned or unexpected event; Castracane was expected to do just that.

As Castracane did not suffer any unexpected attack on his person, see Gable, 115 N.J. at 223 (finding correction officers who were the victims of violent physical assaults by inmates suffered traumatic events), but instead was injured when he tackled the resident breaking away from another officer, Russo and Richardson instruct that "unanticipated consequence" only qualifies as a traumatic event "if that consequence is extraordinary or unusual in common experience." Richardson, 192 N.J. at 201 (quoting Russo, 62 N.J. at 154). We cannot find the administrative law judge erred in applying Richardson to conclude the injuries Castracane suffered in running down and tackling the resident in response to the code were not "extraordinary or unusual in common experience" but simply the consequence of his ordinary work effort.

Having reviewed the record, we find no basis to suggest the Board's adoption of ALJ Lieberman's findings was arbitrary or capricious. The judge's findings were fully supported by substantial credible evidence in the record and in accord with the controlling statute. Accordingly, there is no basis to reverse the Board's denial of Castracane's application for accidental disability retirement benefits. See In re Young, 202 N.J. 50, 70 (2010).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION