SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1605-22

CHARLES D. BEVINS, JR.,

Petitioner-Appellant,

v.

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

Respondent-Respondent.

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Argued May 22, 2024 – Decided June 10, 2024

Before Judges Susswein and Vanek.

On appeal from the Board of Trustees of the Police and Firemen's Retirement System, Department of the Treasury, PFRS No. xx4880.

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

Juliana C. DeAngelis, Legal Counsel, argued the cause for respondent (Nels J. Lauritzen, Deputy Director, Legal Affairs, attorney; Juliana C. DeAngelis, on the letter brief).

PER CURIAM

Petitioner Charles D. Bevins, Jr., injured his knee when he jumped from a four-foot-high chain link fence while pursuing a fleeing suspect with other Pennsauken Township Police Department (PPD) officers on November 9, 2011. Bevins's application for accidental disability retirement benefits (ADRB), pursuant to N.J.S.A 43:16A-7, was denied in an initial decision by the Board of Trustees (Board), Police and Firemen's Retirement System of New Jersey (PFRSNJ). On further appeal, an Administrative Law Judge (ALJ) concluded Bevins had "not demonstrated anything unusual, traumatic, or uncommon . . . to render [the pursuit that caused his injury] an undesigned and unexpected event, when he was injured jumping down from a fence" and affirmed the denial.

On January 12, 2023, the Board issued a final administrative determination adopting the ALJ's initial decision denying Bevins's application for ADRB. Based on our careful review of the record and prevailing New Jersey law, we affirm.

I.

The parties do not dispute Bevins was rendered totally and permanently disabled as a result of the injury. Instead, the parties disagree on whether the event leading to Bevins's disability was "undesigned and unexpected" as

articulated in Richardson v. Board of Trustees, Police & Firemen's Retirement System, 192 N.J. 189, 212-13 (2007), and required under N.J.S.A 43:16A-7(a)(1) to qualify for ADRB.

We glean the salient facts from the record developed at the Office of Administrative Law (OAL) hearing, at which Bevins was the only witness. Bevins testified he began working for the PPD in 1994. Throughout his career, Bevins attended training at the police academy in Burlington County, followed by six months of field training with a supervisory officer. While in the academy, he learned how to apprehend suspects, among other police skills.

Bevins worked in various positions in the PPD, including as a patrol officer and in the community policing unit, where he received "in-service training" on use-of-force techniques and firearms. Bevins estimated scaling fences or walls in training and during his police duties approximately fifty times, with twenty-five of those occasions requiring him to jump down from a height of four feet or more.

After being a patrol officer for fifteen years, he was selected to be a K-9 officer. Bevins completed four months of intensive "boot camp-style" training, which including practicing "surmounting obstacles, climbing ladders . . . putting the dog on [his] shoulders, criminal apprehension, [and] chasing people" to

become a K-9 officer. After eighteen years with the PPD, Bevins was promoted to a sergeant in the K-9 officer unit.

On November 9, 2011 at approximately 8:00 p.m., Bevins was with his dog, a trained K-9 partner, and heard a call over dispatch advising a suspect was breaking into parked cars. Bevins and the dog proceeded to the suspect's location, which was in the back of a residential area, and joined the foot pursuit of the suspect that was already underway.

Sergeant Steven Warwick joined Bevins in pursuit, and the two saw the suspect scale and go over two successive parallel fences. Bevins felt "extreme" urgency to apprehend the suspect because the area was "a popular spot [where] there were cars all over the street" and he was concerned about someone getting hurt. To regain sight of the suspect, Bevins climbed until he was standing atop the four-foot chain link fence. He saw the suspect run out of the second backyard, so Bevins "turned" back toward the direction he had entered and "at the same time jumped down."

Bevins explained he intended to "hit the ground running" and continue the pursuit. Bevins testified that when he "landed in . . . leaf debris" on "uneven" ground he "immediately" heard a "pop" sound, though he was unsure if the sound had come from "inside [his] body or outside."

When asked to describe the mechanics of his descent from the fence in greater detail, Bevins testified: "When I jumped . . . I turned while still standing on the fence and jumped down, so I was facing the gate I intended to run out of." Bevins testified that he "was twisting, [and he] was turning as [he] was getting ready to land."

When he hit the ground, Bevins "felt immediate pain." Warwick instructed Bevins to "stay down," but Bevins wanted to get up to assess the extent of his injury. As he did so, Bevins said he could "feel [his left] knee was unstable." Bevins was able to "hobble[]" to his patrol car by keeping his "leg stiff" and using his dog for support. After returning to the police station, Bevins went to the hospital.

In the emergency department, an initial x-ray did not show any damage to Bevins's leg, so doctors gave him a leg brace and a referral to an orthopedic surgeon. The surgeon determined Bevins had ruptured the anterior cruciate ligament (ACL) in his left knee. On the advice of the surgeon, Bevins underwent physical therapy to strengthen his leg muscles and then scheduled surgery to repair his ACL.

During surgery, Bevins's ruptured ACL was replaced with a ligament harvested from a cadaver. The cadaver ligament was held in place using

titanium screws. Bevins continued with physical therapy after the surgery. After a few months, Bevins was still unable to fully bend his knee, so the surgeon took additional x-rays which showed that the titanium screws holding the cadaver ligament in place had "migrated" and were "preventing [his] knee from bending fully." The surgeon performed a follow-up procedure to remove the errant screws.

Bevins was out of work for approximately five months. When he returned, he was placed on "light duty" which he "hated" because he wanted to go "back out on the street." He returned to regular duty a month later. However, his knee continued to swell and did not improve.

Several years later, Bevins's knee was still causing him pain, so he underwent an ACL revision surgery. While his knee "felt better" after the revision surgery, it still caused Bevins issues while he was working. The surgeon told him there was nothing more that could be done for his knee.

Before his injury, Bevins had anticipated he would stay with the PPD for at least twenty-seven years and hoped to be promoted to lieutenant. However, the results of a fitness for duty evaluation determined Bevins was not able to work in his full capacity, and PPD did not have an option to serve on light duty

permanently. Bevins felt he had no choice but to retire after more than twenty-five years with the PPD, but short of his employment goal.

On August 9, 2019, Bevins filed for ADRB and set his retirement date as September 1, 2019. On August 12, 2020, the Board notified Bevins that his ADRB application was denied. Although the Board accepted there was a "delayed manifestation" of Bevins's injury which rendered him permanently and totally disabled, it nonetheless concluded that the incident which led to his injury was not "undesigned and unexpected."

Bevins appealed and the matter proceeded to a contested hearing. After the hearing concluded, the ALJ issued an initial written decision concluding Bevins was injured in "a commonly expected and typical event a police officer would expect to encounter, when pursuing a suspect in a residential area, where climbing on, over, or jumping off of a fence might occur while in pursuit." Further, the ALJ explained the standard under ADRB law governing when a fall qualifies as undesigned and unexpected "focus[es] on what is the traumatic event or instance that caused the fall, not the trauma that resulted from the injured person's body striking the ground or surface."

The ALJ explained Bevins had "previously . . . scal[ed] fences and walls in training and during his work duties, and had previously jumped down from

heights of four feet or more." The ALJ concluded: "There was nothing undesigned about jumping off of the fence to change course in pursuit of the subject. There was nothing unexpected which occurred to cause him to fall or be forced unexpectedly from the fence."

Accordingly, the ALJ found Bevins failed "to demonstrate that the November 9, 2011[] incident while he was in pursuit of a suspect and had to jump off of a four-foot-high fence, was an undesigned and unexpected event," and recommended "that the Board's denial" of Bevins's ADRB application be affirmed. The Board accepted the ALJ's determination and adopted the entirety of the initial decision. This appeal follows.

II.

On appeal, Bevins renews his argument that the Board was incorrect in determining his November 9, 2011 jump from the fence was not "undesigned and unexpected." Specifically, he asserts his prior training and experience related to maneuvering obstacles while carrying his dog do not dictate that he could have anticipated his injuries falling from a four-foot-high chain link fence while in pursuit of a fleeing suspect. Further, Bevins contends the Board utilized an impermissibly narrow definition of "undesigned and unexpected" in considering his ADRB application.

Bevins also argues for the first time we should conclude the migration of the titanium screws which held the cadaver ligament in place meets the undesigned and unexpected standard because his ACL surgery was part of the totality of the underlying event which caused his injury. We disagree.

Appellate "review of [an] administrative agency action is limited." Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011). "[A]gencies have 'expertise and superior knowledge . . . in their specialized fields.'" Hemsey v. Bd. of Trs., Police & Firemen's Ret. Sys., 198 N.J. 215, 223 (2009) (alteration in original) (quoting In re Suspension or Revocation of the License Issued to Zahl, 186 N.J. 341, 353 (2006)). "A reviewing court '"may not substitute its own judgment for the agency's, even though the court might have reached a different result."'" In re Stallworth, 208 N.J. 182, 194-95 (2011) (quoting In re Carter, 191 N.J. 474, 483 (2007)).

"[A]n appellate court ordinarily should 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-W. Jersey Hosp. Voorhees for a Certificate of Need,

194 N.J. 413, 422 (2008). However, review of an agency's interpretation of the law is de novo. Russo, 206 N.J. at 27.

III.

A PFRSNJ member is entitled to ADRB 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 regular or assigned duties and that such disability was not the result of the member's willful negligence and that such member is mentally or physically incapacitated for the performance of his usual duty and of any other available duty in the department which his employer is willing to assign to him.
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> [N.J.S.A. 43:16A-7(a)(1).]

The Court clarified the factors to be analyzed in Richardson, 192 N.J. at 212-13, providing new guidance to unify the disparate tests that had previously been applied to ADRB determinations. Under the Richardson standard, in order to qualify for ADRB, an applicant must prove:

> 1. [they are] 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 [their] usual or any other duty.
>
> [Mount v. Bd. of Trs., Police and Firemen's Ret. Sys., 233 N.J. 402, 421 (2018) (quoting Richardson, 192 N.J. at 212-13).]

In Richardson, the Court found the "undesigned and unexpected" prong requires either "an unintended external event" or "an unanticipated consequence" of an intended event that "is extraordinary or unusual in common experience." 192 N.J. at 201 (emphasis omitted) (quoting Russo v. Tchrs' Pension & Annuity Fund, 62 N.J. 142, 154 (1973)). "Injury by ordinary work effort," when "the employee was doing [their] usual work in the usual way" does not qualify. Ibid. (emphasis omitted) (quoting Russo, 62 N.J. at 154). In short, "work effort itself . . . cannot be the traumatic event." Id. at 211 (emphasis omitted).

The Court offered several examples of incidents that might constitute undesigned and unexpected events:

> A policeman can be shot while pursuing a suspect; a librarian can be hit by a falling bookshelf while re-shelving books; a social worker can catch her hand in the car door while transporting a child to court. Each of those examples is identifiable as to time and place; undesigned and unexpected; and not the result of pre-existing disease, aggravated or accelerated by the work. Thus, each meets the traumatic event standard. So long as those members also satisfy the remaining aspects of the statute, including total and permanent disability, they will qualify for accidental disability benefits.
>
> In sum, the fact that a member is injured while performing his ordinary duties does not disqualify him from receiving accidental disability benefits; some injuries sustained during ordinary work effort will pass muster and others will not. The polestar of the inquiry is whether, during the regular performance of his 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.
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> [Id. at 214.]

We are satisfied the ALJ did not err in distinguishing Bevins's circumstances from Richardson and its progeny. Bevins's own testimony established that he had received academy-based and on-the-job training as to "surmounting obstacles, climbing ladders . . . putting the [K-9] on [his]

shoulders, criminal apprehension, [and] chasing people." To become a K-9 officer, Bevins had to learn to help his dog over a six-foot-high fence by first putting the dog on his shoulders, then moving the dog over the fence, and finally "go[ing] over after him." Some of the fences he trained on were chain link. Accordingly, Bevins confirms he was trained on how to ascend and descend fences like the ones he encountered on November 9, 2011, as an expected part of his job.

Undoubtedly, Bevins suffered a traumatic knee injury during the hot pursuit of a suspect when he jumped down from the fence while turning to change directions. However, there was no external event or incident that caused him to fall or be forced from the fence. He did so under his own volition and force as part of his typical law enforcement officer duties, for which he was trained. Accordingly, we conclude Bevins has not demonstrated there was an undesigned or unexpected traumatic event as required and defined under N.J.S.A. 43:16A-7(a)(1) and Richardson.

IV.

We need only briefly address Bevins's argument the ALJ adopted an unduly narrow view of the "undesigned and unexpected" requirement in determining he had been trained to scale fences. Bevins is correct that in Moran

v. Board of Trustees, Police & Firemen's Retirement System, 438 N.J. Super. 346, 353 (App. Div. 2014), we determined the Board had misapplied the holding in Richardson by employing a limited definition of what constitutes an undesigned and unexpected event. However, these circumstances are distinguishable from those in Moran.

In Moran, the petitioner firefighter "suffered disabling injuries" after saving "two victims from a burning building by kicking in the building's front door." Id. at 347. After the Board found that the event causing the petitioner's injuries was not undesigned and unexpected, we reversed. Id. at 348. In that circumstance, we determined "[t]he undesigned and unexpected event . . . was the combination of unusual circumstances that led to [the petitioner's] injury." Id. at 354. Specifically, there were "victims trapped inside a fully engulfed burning building," the team that was supposed to handle such situations was delayed, and the petitioner "did not have available to him the tools that would ordinarily be used to break down the door." Ibid.

Bevins's injury occurred when he intentionally jumped off a fence while in pursuit of a suspect, an act he was trained to do. As stated, unlike the circumstances in Moran, Bevins testified he had scaled and traversed fences more than fifty times since becoming a K-9 officer. Additionally, he stated "[i]n

training [he] went over four[-]foot fences" and "jumped down off of walls while working, twenty-five [or] thirty times . . . through[out] [his] career, maybe more."

We are similarly unpersuaded by Bevins's reliance on Quigley v. Board of Trustees of the Public Employees' Retirement System, 231 N.J. Super. 211, 219 (App. Div. 1989), where we determined that falls from four or five feet were potentially "great enough . . . to be a 'traumatic event.'" Quigley predates the Court's decision in Richardson and its progeny. Furthermore, the denial of ADRB in Quigley was ultimately affirmed because the disabling injury was not a direct result of the petitioner's work-related accident. Id. at 224. We see no reason to find the ALJ, and the Board through adopting the initial decision, applied an unduly narrow interpretation of "undesigned and unexpected" in denying the ADRB application.

For similar reasons, we see no merit in Bevins's argument that this court should be persuaded by the pre-Richardson standard set forth in Kane v. Board of Trustees, Police & Firemen's Retirement System, 100 N.J. 651 (1985). Kane is no longer the prevailing law, as the Mount Court determined its standard "was criticized as impractical and producing inconsistent results." 233 N.J. at 420-21.

Bevins also asserts his training and experience climbing fences are not dispositive of the undesigned and unexpected nature of his injury. We agree. The determination of whether an incident is undesigned and unexpected cannot be "resolved merely by reviewing the member's job description and the scope of his or her training." Id. at 427. However, as stated, the November 9, 2011 incident does not constitute unusual circumstances or anything beyond the normal course of work he was trained for and regularly performed as a police officer, nor did an outside influence force him from the fence while he pursued the suspect.

Although an incident may be "devastating" to the applicant who has been injured, careful review of governing case law makes clear an injury which culminated from a "sequence of events" that were not "undesigned and unexpected" will not suffice to establish an entitlement to ADRB. Id. at 430-31 (finding "based on [an experienced hostage negotiator's] training, [the petitioner] had reason to anticipate that, without prior warning to him, a tactical entry might be made," so he had not experienced an "undesigned and unexpected" event entitling him to ADRB when the suspect was killed by police while on the phone with him).

V.

Finally, we briefly address Bevins's argument that we should expand the timeframe of our analysis of the "traumatic" event which causes a disabling injury to include the subsequent treatment for that injury. Specifically, Bevins asserts that the migration of titanium screws after his ACL surgery was undesigned and unexpected and occurred as a direct result of his November 9, 2011 injury. Bevins raises this argument for the first time on appeal.

"Ordinarily, an issue may not be raised on appeal if not raised in the proceedings below." N.J. Dep't of Env't. Prot. v. Huber, 213 N.J. 338, 372 (2013). However, for the sake of completeness we consider and reject the contention. Under Richardson and its progeny, it is the November 9, 2011 event that must be an undesigned and unexpected traumatic event, rather than the resulting injury. 192 N.J. at 212 (explaining that the inquiry into the "undesigned and unexpected" standard pertains to the "external happening that directly causes injury"); see also Mount, 233 N.J. at 419 (distinguishing the ADRB requirements from ordinary disability, in which the member's disabling injury need not have a work connection).

We are satisfied the Board's adoption of the ALJ's decision denying Bevins's application for ADRB was based on the applicable statute and prevailing law as applied to the credible evidence in the record.

Affirmed.