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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0417-23**

**ESTATE OF
DURWIN PEARSON,**

Petitioner-Appellant,

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

Defendant-Respondent.

Argued November 14, 2024 – Decided January 3, 2025

Before Judges Mawla and Natali.

On appeal from the Board of Trustees of the Police and Firemen's Retirement System, Department of the Treasury, PFRS No. xx4759.

Wayne S. Browne argued the cause for appellant (Alterman & Associates, LLC, attorneys; Arthur J. Murray and Stuart J. Alterman, on the briefs).

Robert J. Papazian argued the cause for respondent (Gebhardt & Kiefer, PC, attorneys; Leslie A. Parikh and Susan M. Kennedy, on the brief).

PER CURIAM

Appellant, the Estate of Durwin Pearson, challenges a September 19, 2023 final administrative determination of the Board of Trustees (the Board) of the Police and Firemen's Retirement System (PFRS).¹ The Board found Pearson was qualified for ordinary disability benefits, not accidental, because his disability was not the direct result of a traumatic event. We affirm.

I.

We detail the relevant facts from the administrative record. Pearson began his career in law enforcement in 1989 with the Camden County Sheriff's Department, working at the Camden County jail. In 1999, Pearson became a police officer for the Camden City Police Department, which became the Camden County Police Department on May 1, 2013.

In 2000, Pearson filed his first workers' compensation claim involving back and neck injuries, related to an August 25, 2000 incident when, while on bicycle patrol, he injured his left knee, lower back, and neck after tackling a

¹ Durwin Pearson passed away following the filing of this appeal.

suspect attempting to steal a police bicycle. Pearson's medical records reveal the incident caused him to be "out of work . . . for two and one-half months."²

After the 2000 incident, Pearson underwent an MRI, which revealed a disc herniation at the C6-C7 levels and an annular bulge at the C5-C6 levels. Pearson testified the 2000 incident did not require surgery, and his workers' compensation doctors cleared him to return to work without restrictions.

Pearson's second work-related incident occurred on March 25, 2004, when he injured his back and neck while lifting heavy boxes. He was "taken by ambulance to Virtua Emergency Room . . . where x-rays of his [cervical] and lumbar spine were performed." Pearson was prescribed muscle relaxers and pain medications and discharged.

On April 30, 2004, Dr. Stuart Dubowitch, D.O., continued Pearson's prescriptions for "pain medications and muscle relaxers and [also] ordered a lumbar and cervical spine MRI . . . [which] revealed a small, herniated disc at C6-[C]7 and . . . a small central herniation at L5-S1 along with some degenerative disc disease." After comparing the 2004 cervical MRIs to the 2000 MRIs, Dr. Dubowitch concluded Pearson's herniated disc at the C6-C7 level had

² An April 9, 2004 medical report in the record incorrectly states the 2000 incident occurred in 2002.

increased in size, and the annular bulge at C5-C6 remained unchanged. Dr. Dubowitch further found Pearson's "neck [was] basically where it was prior to the [incident] on March 25, 2004"

Pearson "lost a total of approximately fifty . . . days from work due to his injury." He claimed, however, from the date he returned to work following the 2004 incident, until October 16, 2015, he never sought further treatment for any injury related to his previous workers' compensation matters.

Pearson's medical records reveal, however, that on April 4, 2006, he visited Dr. Henry S. David, D.O., an orthopedic surgeon, and complained of pain "referable to his neck into his arms and legs." Dr. David completed a physical examination and compared the MRIs of Pearson's cervical and lumbar spine taken in 2000 and 2004. Dr. David diagnosed Pearson with: (1) "[a]cute and chronic cervical strain and sprain"; (2) "[a]ggravation and super imposed upon pre-existing cervical degenerative arthritis and cervical disc herniation C6-[C]7 with increase in the disc herniation C6-[C]7"; (3) "[a]cute and chronic lumbosacral strain and strain"; and (4) "[p]ost[-]injury disc herniation L5-S1."

In addition, on July 17, 2006, Pearson met with Dr. Gregory McClure, M.D., and Dr. Anton Kemps, M.D., where he complained of "constant pain" and stiffness in his neck. The doctors completed a physical examination that

revealed both the cervical spine and lumbar spine showed a restriction in range of motion. After reviewing Pearson's medical history, the doctors concluded there was a "seven and one-half percent . . . partial total disability of the cervical spine" "This represent[ed] a one percent . . . increase from what was previously offered in [the doctor's] report dated July 20, 2001." The doctors also concluded "[w]ith respect to the lumbosacral spine, [they] . . . now find . . . a six percent . . . partial total disability of the lumbar spine, noting a restricted range of motion in the lumbar spine with a small disc herniation at the L5-S1 level on MRI."

The parties dispute whether Pearson sustained another work-related injury in 2009. The only evidence of the 2009 injury appears in the records of Pearson's orthopedic surgeon, Steven B. Kirshner, M.D., who evaluated him in connection with the 2015 traumatic event at issue in this appeal detailed below.

In a medical report dated November 6, 2015, Dr. Kirshner stated Pearson had a previous history of neck and back pain related to a 2009 work incident. Dr. Kirshner referred to the 2009 incident five times in the four-page report and described the incident as follows:

[Pearson] was in a fight as a police officer. He tackled a man to the ground. He hit the back of his head on a car as he fell. He lost consciousness for [ten to fifteen] seconds. He reports neck injury and back injury. He

had PT. He was out of work for [three] months. He denies any injections or surgeries.

The traumatic event underlying Pearson's application for accidental disability benefits occurred on October 17, 2015, while responding to a shooting. Once he identified the shooter's position, Pearson stationed his vehicle in the middle of an intersection with the lights and siren on. As Pearson opened the driver's side door of his patrol vehicle to engage the shooter, a car negligently ran a stop sign and struck his car on the rear driver's side.

The collision propelled Pearson from the driver's side of his vehicle to the passenger side, and he "blacked out" from the impact. After regaining consciousness approximately a minute later, Pearson further engaged the shooter until he eventually collapsed. Pearson's fellow officers drove him to Cooper Hospital, where he was evaluated and released the same day.

As noted, Dr. Kirshner subsequently evaluated Pearson on November 6, 2015. Dr. Kirshner reviewed a CT scan and MRI examination of Pearson's cervical spine, which were completed on October 17 and October 18, 2015, respectively. He concluded the CT scan showed "degenerative disc disease" and revealed "C5-[C]6 and C6-[C]7 . . . disc herniations with stenosis and narrowing of the spinal canal." Dr. Kirshner also concluded the MRI examination showed:

degenerative disc disease, specifically at C5-[C]6 and C6-[C]7 . . . C4-[C]5 shows a small central herniated disc . . . causing mild stenosis. C5-[C]6 shows a central disc herniation . . . causing moderate to severe spinal stenosis. C6-[C]7 shows a broad central herniated disc . . . causing moderate stenosis.

On November 23, 2015, Dr. Kirshner performed surgery on Pearson, including an "anterior cervical discectomy with decompression" and "insertion of artificial discs at C5-C6 and C6-C7"

On July 29, 2016, Pearson applied for accidental disability retirement benefits. On October 17, 2017, the Board denied Pearson's application and awarded him an ordinary disability retirement. The Board explained: "[Pearson's] reported disability [was] not the result of a traumatic event, as the event [was] not caused by a circumstance external to the member. [Pearson's] disability claim [was] the result of a pre-existing disease alone or a pre-existing disease that [was] aggravated or accelerated by the work effort."

Pearson subsequently filed an appeal of the Board's decision and the matter was transferred to the Office of Administrative Law (OAL), where it proceeded as a contested case. The Administrative Law Judge (ALJ) held hearings on September 6 and 11, 2019, and September 21, 2020.

On September 20, 2016, Dr. David Weiss, D.O., who is board certified in orthopedics, examined Pearson and authored an expert report on his behalf. Dr.

Weiss determined Pearson sustained "significant musculoskeletal pathology to the cervical spine" from the incident on October 17, 2015. He also found Pearson's orthopedic injuries included "herniated discs at C4-C5, C5-C6, and C6-C7[,] " which necessitated a "two level total artificial disc replacement" and "impacted . . . his abilities to perform his job-related functions as a police officer." Thus, Dr. Weiss concluded Pearson was "totally and permanently disabled as a police officer . . . with the competent producing factor being the traumatic induced work-related motor vehicle accident occurring on October 17, 2015."

Dr. Weiss reviewed the following medical records: (1) Dr. Kirshner's reports, including the operative report dated November 23, 2015; (2) images taken of Pearson's left knee, lumbar spine, and cervical spine at Cooper University Hospital on October 17, 2015; (3) "the reports of Worknet Occupational Health"; (4) "the x-ray report of the cervical spine dated December 17, 2015; January 16, 2016; [and] February 16, 2016 . . ."; (5) the reports of Pearson's rehabilitation provider; and (7) Pearson's "[f]unctional [c]apacity [e]valuation dated April 12, 2016" Notably, Dr. Weiss did not review Pearson's workers' compensation medical records from 2000 and 2004.

Dr. Weiss testified before the ALJ and explained Pearson's pre-existing injuries, age-related degenerative disc disease, and osteoarthritis. However, he explained age-related degenerative disc disease and osteoarthritis "are normal architectural changes that [people] are all going to go through in life[,] and neither age-related degenerative disc disease nor osteoarthritis are "an automatic disqualifier for getting an accidental disability pension"

As the following colloquy details, Dr. Weiss testified Pearson's pre-existing back and neck injuries from 2000 and 2004 did not disqualify him from receiving accidental disability retirement benefits, and the 2015 incident caused his permanent and total disability:

Q: Is there a difference in the pathology post [October 17, 2015] as it relates to those discs and other discs in the cervical spine?

A: Well[,] the bulge . . . at C5-[C]6 is now herniated, whereas before it was a small bulge. The herniation at C6-C7 has become more pronounced to the point that [Pearson] needed the surgery. . . . He has an [eleven-]year span of never being treated . . . up until the defined traumatic injury. So . . . you can[not] say with any degree of reasonable certainty here . . . that he would have needed a two-level fusion at some point in his life. . . . What you do know is . . . he has the pre-existing 2000[and] 2004[] [incidents in which] . . . he[was] asymptomatic, no work restrictions at all, he [was] not on any limited duty as a police officer . . . and doing this on a day-to-day basis up until the [2015 incident].

On cross-examination, Dr. Weiss conceded he did not review Pearson's medical records from 2000 and 2004 in drafting his expert report nor did he prepare an addendum once they were provided to him. Further, he stated the 2009 incident referenced in Dr. Kirshner's report may have been a typographical error, as he could have incorrectly been referencing Pearson's 2000 incident. Dr. Weiss admitted, however, if the 2009 incident did occur, it would present an issue.

Jeffrey F. Lakin, M.D., a board certified orthopedic surgeon, examined Pearson and authored an expert report on behalf of the Board. Dr. Lakin concluded:

[Pearson] had a pre[-]existing history of a prior neck injury in 2009 followed by treatment with physical therapy. X-ray reports revealed degenerative changes. The operative report revealed findings of spinal stenosis at C5-C6 and C6-C7, which was a significant previous condition.

Based upon this examination and review of [Pearson's] job description as a [p]olice [o]fficer . . . he is totally and permanently disabled from the performance of the normal duties of his job.

. . . .

The total and permanent disability was not a direct result of the accident of [October 17, 2015], but was an aggravation of a preexisting condition.

After he was provided Pearson's prior medical records from 2000 through 2006, Dr. Lakin produced an addendum report, in which he found:

In view of the additional records, there clearly was a prior injury to the neck that occurred on [March 25, 2004]. . . . It also should be noted that the notes of Dr. Dubowitch from [April 9, 2004] revealed neck and upper back symptomology from a previous accident while steering a police bicycle in . . . 200[0], at which time [Pearson] was out of work for two and one-half months.

. . . .

Clearly, there were significant preexisting conditions with a prior accident causing an injury to the neck on [March 25, 2004,] as well as an accident documented in 200[0]. Therefore, the pathology noted on the previous MRI studies of the cervical spine in 2000 and 2004 clearly were preexisting conditions with prior treatment of the cervical spine.

At the OAL hearing, Dr. Lakin testified Pearson's disability was not the result of the 2015 incident but "an aggravation of pre-existing conditions." With respect to Pearson's prior injuries, Dr. Lakin explained:

[I]n this case[,] [Pearson] had a pre-existing disc herniation and disc bulging at C5-C6 and C6-C7. He also had stenosis . . . at C5-C6 and C6-C7.

And that[is] . . . the pre-existing pathology that was aggravated by this accident that caused him to be disabled. It was[not] anything new that happened from this accident that caused him to be disabled.

Stenosis takes a long time to develop. The pathology was already there at C5-C6, C7. His surgery was done for problems that pre-dated the accident and was[not] caused by this accident.

On cross-examination, Dr. Lakin disagreed that there was no active treatment for any neck issues between 2006 and 2015, referencing Dr. Kirshner's record referring to a work-related incident in 2009. On cross-examination, Dr. Lakin conceded he was never "supplied with any accident/injury report for the calendar year 2009"

On June 29, 2023, the ALJ issued an initial decision. The ALJ "found Dr. Weiss's testimony to be more reliable . . . [as] Dr. Lakin relied on information in Dr. Kirshner's report as to a 2009 injury, but there was no independent report indicating back or neck injuries in 2009 and Dr. Kirshner did not testify." Moreover, because "[n]either doctor had full documentation to review for the years 2004 through 2015, . . . Dr. Lakin's conclusions as to pre-existing spinal issues were not fully supported." Additionally, the ALJ found because "there was no injury report from an incident in 2009," and "Dr. Weiss suggested that Dr. Kirshner's reference to a 2009 injury was a typographical error, and that he meant to write '2000,'" the ALJ determined "there was no incident from that year."

After the ALJ found the 2015 incident to be a traumatic event, he proceeded to address the sole remaining issue: "whether [Pearson's] disability was the result of a pre-existing disease alone or a pre-existing disease that was aggravated or accelerated by the [i]ncident." The ALJ found "the direct cause of the injury . . . prevent[ing Pearson] from continuing his career as a law enforcement officer was the [i]ncident on October 17, 2015[.]" and Pearson was entitled to accidental disability retirement benefits.

The Board filed exceptions to the ALJ's initial decision, and Pearson responded shortly thereafter. By letter dated August 18, 2023, the Board indicated at its meeting of August 14, 2023, it voted to reject the ALJ's initial decision and provided its final administrative determination regarding Pearson's application on September 19, 2023.

In its final administrative determination, the Board rejected the ALJ's credibility determination. Specifically, the Board noted Dr. Kirshner's report referred to the 2009 incident five times and further explained the details of the 2009 incident "are too dissimilar [from the 2000 incident] to come to the conclusion that they are actually the same incident, differentiated only by [a] typographical error." The Board also concluded:

For these reasons, the Board rejects the expert fact-finding that . . . Pearson's disability was not caused by

a pre-existing condition accelerated or exacerbated by the work effort. It also rejects the legal conclusion that Dr. Weiss provided more reliable testimony than did Dr. Lakin at [the] hearing. Finally, the Board reverses the legal conclusion that . . . Pearson's disability was directly caused by the 2015 incident and rejects the recommendation of the [initial decision] to reverse the . . . Board's decision and grant the member's appeal for [accidental disability retirement benefits].

II.

Appellant argues the Board erred in rejecting the ALJ's initial decision and denying Pearson's application for accidental disability retirement benefits. First, appellant contends the Board "did not have a good faith basis to allege that Pearson was involved in an incident or an accident in 2009." Citing the fact the only evidence of a 2009 incident appears in a single record, appellant contends "[t]o allow [the Board] to reverse [the ALJ's initial decision] in the absence of evidence that substantiates a 2009 incident or accident would be the quintessential example of letting a completely arbitrary and capricious decision stand."

Next, relying on Cattani v. Board of Trustees of the Police & Firemen's Retirement System, 69 N.J. 578, 588 (1976), appellant argues "a basis for an accidental disability pension . . . exist[s] if it [is] shown that the disability directly resulted from the combined effect of a traumatic event and a pre-

existing disease." Citing our decision in In re Sigafos, 143 N.J. Super. 469 (App. Div. 1976), appellant further contends "[t]he accidental workplace injury of October 17, 2015, generated external forces on Pearson's neck[,] which rendered him disabled. That 'combined effect of a traumatic event and a pre-existing disease' satisfies the traumatic event standard and requires a grant of [accidental disability retirement] benefits []regardless of pre-existing pathology." We are unpersuaded by these arguments.

"Our review of administrative agency action is limited." Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011) (citing In re Herrmann, 192 N.J. 19, 27 (2007)). "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 Herrmann, 192 N.J. at 27-28). Our review of an agency's decision is limited to considering:

- (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 in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp., 216 N.J. 370, 385 (2013) (quoting Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995)).]

We are required to affirm an agency's findings of fact if "supported by adequate, substantial[,] and credible evidence." In re Taylor, 158 N.J. 644, 656-57 (1999) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). Moreover, "[i]f [we are] satisfied after [our] review that the evidence and the inferences to be drawn therefrom support the agency head's decision, then [we] must affirm even if [we] feel[] that [we] would have reached a different result" Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 588 (1988).

In order to qualify for accidental disability retirement benefits, a PFRS member must establish they are "permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of [their] regular or assigned duties" N.J.S.A. 43:15A-43(a).

In Richardson v. Board of Trustees, Police & Firemen's Retirement System, 192 N.J. 189, 212-13 (2007), the Court explained to obtain accidental disability retirement benefits, a PFRS member must show:

1. that [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; an[d]
 5. that the member is mentally or physically incapacitated from performing [their] usual or any other duty.

Here, the only disputed issue is whether Pearson's injury as a result of the October 17, 2015, traumatic event was "the essential significant or substantial contributing cause of the disability," Gerba v. Board of Trustees of the Public Employees' Retirement System, 83 N.J. 174, 187 (1980), or whether the disability "was related to . . . pre-existing conditions" Petrucelli v. Bd. of Trs. of the Pub. Emps.' Ret. Sys., 211 N.J. Super. 280, 285 (App. Div. 1986).

We find Pearson's reliance on Cattani and Sigafoos unconvincing. As appellant correctly notes, in Cattani, our Supreme Court observed "a basis for an accidental disability pension would exist if it were shown that the disability directly resulted from the combined effect of a traumatic event and a preexisting disease." 69 N.J. at 586. In Sigafoos, the appellant injured his back while

carrying a television set. 143 N.J. at 470 n.1. The Board determined the appellant's injury was not a direct result of the traumatic event because he had long suffered from a musculoskeletal condition and "[t]he incident . . . was no more than one of a series of episodes producing permanent and total disability." Id. at 472-73. Relying on Cattani, we reversed the Board's determination because "[t]he preponderant medical evidence [showed] that the incident aggravated petitioner's condition." Id. at 473.

Critically, however, those decisions predated Gerba, in which our Supreme Court clarified Cattani's observation and formulated the following test:

[Cattani's] observation was intended simply to underscore the point that an 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 such cases, the traumatic event need not be the sole or exclusive cause of the disability. As long as the traumatic event is the direct cause, i.e., the essential significant or substantial contributing cause of the disability, it is sufficient to satisfy the statutory standard of an accidental disability even though it acts in combination with an underlying physical disease.

[Gerba, 83 N.J. at 187 (emphasis omitted).]

The Gerba Court further ruled "[w]here there exists an underlying condition such as osteoarthritis[,] which itself has not been directly caused, but is only aggravated or ignited, by the trauma, then the resulting disability is, in statutory

parlance, 'ordinary' rather than 'accidental' and gives rise to 'ordinary' pension benefits." Id. at 186.³

Based upon his review of Pearson's available medical records, Dr. Lakin testified Pearson "had a pre-existing . . . disc herniation and disc bulging at C5-C6 and C6-C7 [and] . . . stenosis at . . . C5-C6 and C6-C7." Due to this pre-existing pathology, Dr. Lakin expressly found Pearson's "surgery was done for problems that pre-dated the accident" Consistent with this finding, Dr. Lakin concluded Pearson's "total and permanent disability was not a direct result of the accident of [October 17, 2015], but was an aggravation of a preexisting condition."

Based upon Dr. Lakin's testimony, as well as other evidence in the record demonstrating Pearson's significant pre-existing pathology in his neck, the

³ Appellant cites, but does not discuss, our opinion in Petrucci v. Board of Trustees of the Public Employees' Retirement System, 211 N.J. Super. 280 (App. Div. 1986). In Petrucci, we found the appellant was entitled to accidental disability retirement benefits, id. at 281, despite "some quiescent, non-symptomatic arthritic and structural changes" in his back. Id. at 285. In reaching that decision, we repeatedly emphasized "[t]he doctors all agreed that Petrucci's past medical history was completely negative for any back problems. There is not a shred of a suggestion in the record that he had had back pain or back symptoms of any kind before the accident." The facts in Petrucci are distinguishable from the record before us as Pearson was not asymptomatic. As we have detailed, Pearson had significant symptoms related to his prior neck injuries and had complained of "constant pain" and stiffness in his neck in 2006.

Board was well within its discretion to accept Dr. Lakin's opinions and reject Dr. Weiss' and conclude the 2015 traumatic event was not "the essential significant or substantial contributing cause of" Pearson's disability as it was fully supported by the record. Id. at 187. On this point, it is well settled an agency's decision to accept or reject an expert's testimony is conclusive on appeal so long as that decision is reasonably made. See Oceanside Charter Sch. v. N.J. State Dep't of Educ., 418 N.J. Super. 1, 9 (App. Div. 2011); see also ZRB, LLC v. N.J. Dep't of Env't Prot., 403 N.J. Super. 531, 561 (App. Div. 2008) (explaining the constraints of N.J.S.A. 52:14B-10(c) do not apply to expert testimony).

Appellant further contends the Board erred in rejecting the ALJ's determination that Pearson did not sustain a work-related injury in 2009. When rejecting or modifying an ALJ's findings of fact, "the agency head must explain why the ALJ's decision was not supported by sufficient credible evidence or was otherwise arbitrary." Cavalieri v. Bd. of Trs. of Pub. Emps. Ret. Sys., 368 N.J. Super. 527, 534 (App. Div. 2004) (first citing N.J.S.A. 52:14B-10(c);⁴ and then

⁴ Pursuant to N.J.S.A. 52:14B-10(c):

In reviewing the decision of an [ALJ], the agency head may reject or modify findings of fact, conclusions of

citing S.D. v. Div. of Med. Assistance & Health Servs., 349 N.J. Super. 480, 485 (App. Div. 2002)).

Here, the Board reasonably determined, from its review of the record, that Dr. Lakin provided more credible testimony than Dr. Weiss, a finding authorized by N.J.S.A. 52:14B-10(c), and fully supported by the record. For example, unlike Dr. Lakin who produced an addendum to his initial expert report when he received Pearson's medical records from 2000 through 2006, Dr. Weiss failed to do so. Additionally, Dr. Weiss's testimony that Pearson was asymptomatic from 2004 until the traumatic event in 2015 is inconsistent with the record.

Indeed, even if we were to accept appellant's argument Pearson did not sustain an injury in 2009, his medical records, upon which Dr. Lakin relied, reveal he sought treatment in 2006 due to "constant pain" and stiffness in his

law or interpretations of agency policy in the decision, but shall state clearly the reasons for doing so. The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. In rejecting or modifying any findings of fact, the agency head shall state with particularity the reasons for rejecting the findings and shall make new or modified findings supported by sufficient, competent, and credible evidence in the record.

neck. The Board was well within its discretion to reject the ALJ's credibility determination on this basis alone because, in preparing his expert report, Dr. Weiss failed to consider all the relevant medical records, as well as Pearson's history of symptomology in his neck.⁵

Further, the Board explained the ALJ's factual finding was not supported by sufficient credible evidence because the 2009 incident was referenced in Dr. Kirshner's report five times. Additionally, the Board noted Dr. Kirshner's references to the 2009 incident could not be reconciled as a "typo," as the ALJ found, because the details of the 2000 and 2009 incidents were "too dissimilar to come to the conclusion that they are actually the same incident, differentiated only by [a] typographical error." As such, we reject appellant's argument as the Board explained why the ALJ's findings were not supported by sufficient credible evidence and why it rejected the ALJ's findings. Cavalieri, 368 N.J. Super. at 534.

In sum, we are satisfied the Board's decision rejecting the ALJ's determination and denying Pearson accidental disability retirement benefits was

⁵ We also note Pearson did not specifically deny the 2009 incident occurred. Instead, when questioned if he could recall any incident in 2009 where he hit his head or injured his back and neck, Pearson responded "[n]ot off the top of my head," and "[n]ot that I can recall."

not arbitrary, capricious, or unreasonable. Russo, 206 N.J. at 27 (quoting Herrmann, 192 N.J. at 27-28). As noted, the Board found Dr. Lakin more credible than Dr. Weiss, accepted Dr. Lakin's opinion that Pearson's "surgery was done for problems that pre-dated the accident[,]" and therefore concluded his disability was not a direct result of the traumatic event. These findings and legal conclusions are fully supported by sufficient credible evidence on the record as a whole, and we decline to substitute our judgment for the judgment of the Board. R. 2:11-3(e)(1)(D).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION