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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3619-21**

VIKTOR DIAZ,

Petitioner-Appellant,

v.

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

Respondent-Respondent.

Argued October 16, 2023 – Decided November 2, 2023

Before Judges Chase and Vinci.

On appeal from the Board of Trustees of the Police and Firemen's Retirement System, Department of the Treasury, PFRS No. xx0218.

Donald C. Barbati argued the cause for appellant (Crivelli, Barbati & DeRose, LLC, attorneys; Donald C. Barbati, 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 Viktor Diaz appeals from a July 13, 2022 final agency decision of the Board of Trustees, Police and Firemen's Retirement System (the "Board") denying his claim for accidental disability benefits under N.J.S.A. 43:16:A-7(1). Because the undisputed facts demonstrate petitioner is legally entitled to such benefits, we reverse.

Diaz was employed as a police officer for the Camden County Police Department Metro Division beginning in October 2013. On June 24, 2015, Diaz was on foot patrol in North Camden when he observed what he believed was a drug transaction between two individuals. As Diaz approached, the suspects fled in opposite directions and Diaz pursued the individual he believed to be the buyer.

Diaz caught up to the suspect. Consistent with his training, Diaz wrapped his hands around the suspect's waist and attempted to tackle him. Diaz testified that, while tackling a suspect, he was "supposed to be square with the suspect, which [he] did" and "[t]he suspect's supposed to be directly beneath [him] and it's a way that both of [them] would have less injury." However, according to Diaz, "as soon as [he] wrapped [his] hands around [the suspect's] waist he did a twist and a spin where [Diaz's] entire momentum was shifted from what [he]

expected . . . so now it was [Diaz] going to the ground, basically first, at almost full speed, and [the suspect] fell beside [him]." Diaz felt what he described as his shoulder popping out and then back into place.

Prior to this incident, Diaz completed as many as twenty arrests that required tackling suspects and never experienced a suspect twisting and causing his momentum to "send [him] into the ground." After the incident, Diaz completed as many as fifty such arrests and never experienced a similar event.

Diaz returned to work, but eventually was unable to continue working as a police officer because of the injuries he suffered during the incident on June 24, 2015.

Diaz filed an application for accidental disability retirement benefits. On January 13, 2021, the Board denied Diaz's application and awarded ordinary disability benefits based on its determination that the June 24, 2015 injury was not caused by an "incident . . . considered to be undesigned and unexpected." The Board also determined Diaz was totally and permanently disabled as a direct result of the June 24, 2015 incident.

After Diaz contested the Board's initial denial, a fact-finding hearing was conducted in the Office of Administrative Law. Diaz was the only witness who testified. The administrative law judge accepted Diaz's description of the June

24, 2015 incident. The ALJ found, "[w]hen Diaz wrapped his arms around the suspect's waist, the suspect was supposed to fall directly beneath Diaz but instead, the suspect twisted and spun his body shifting Diaz's momentum," causing the suspect to "land[] beside Diaz instead of underneath him."

The ALJ, however, agreed with the Board that the incident was not "undesigned and unexpected." The ALJ reasoned that "[b]y virtue of his job description, prior training and experience, Diaz could anticipate having to take into custody a suspect attempting to evade apprehension and it can be expected that a suspect will do his/her utmost to try and foil even the best-laid plans for capture by law enforcement." Based on that, the ALJ found "it is not unreasonable to anticipate that [Diaz] may encounter a suspect who may use any tactic necessary to evade apprehension."

Diaz filed exceptions to the ALJ's decisions with the Board. After considering those exceptions, the Board again concluded that Diaz is ineligible for accidental disability retirement benefits. This appeal followed.

On appeal, Diaz argues the Board improperly denied his application for accidental disability pension benefits because his disability was the direct result of a traumatic event that was undesigned and unexpected. We agree.

We review the Board's decision with a due degree of deference, recognizing its role as an administrative agency acting within the scope of its responsibilities. Ordinarily, we will sustain the Board's ruling "unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011) (quoting In re Herrmann, 192 N.J. 19, 27-28 (2007)).

"We are not, however, 'bound by an agency's interpretation of a statute or its determination of a strictly legal issue,' particularly when 'that interpretation is inaccurate or contrary to legislative objectives.'" Mount v. Bd. of Trs., Police & Firemen's Ret. Sys., 233 N.J. 402, 418-19 (2018) (citing Russo, 206 N.J. at 27). Instead, "we review de novo the Board's interpretation of N.J.S.A. 43:16A-7(1) and our case law." Id. at 419.

N.J.S.A. 43:16A-7(1) authorizes an award of an accidental disability pension provided:

the medical board, after a medical examination of such member, [certifies] 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 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.

[N.J.S.A. 43:16A-7(1).]

In Richardson v. Board of Trustees, Police & Firemen's Retirement System, 192 N.J. 189 (2007), the Supreme Court clarified the meaning of the term "traumatic event" under N.J.S.A. 43:16A-7(1). As delineated in Richardson, a claimant for accidental disability retirement benefits 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.

[Id. at 212-13.]

As the Court explained in Richardson, "[t]he 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." Id. at 214.

The Court provided the following examples of the kinds of incidents occurring during ordinary work efforts that would qualify for accidental disability retirement benefits: "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." Ibid.

Applying the test enunciated in Richardson, the Court explained that a police officer who has a heart attack while chasing a suspect would not qualify because "work effort, alone or in combination with pre-existing disease, was the cause of the injury." Id. at 213. However, "the same police officer [who was] permanently and totally disabled during the chase because of a fall, has suffered a traumatic event." Ibid.

We conclude the Board erred in applying an unduly restrictive interpretation of an "undesigned and unexpected" event and reached a determination that is inconsistent with Richardson.

In Richardson, a corrections officer was injured while attempting to subdue an inmate who resisted being handcuffed. Id. at 193. As the officer reached for his handcuffs, the inmate "forcefully jerked up from the ground, knocking [the officer] backward," causing the officer "to fall back onto his left hand and hyper-extend his wrist." Ibid.

The facts of this case are not distinguishable from Richardson in any meaningful way. The ALJ determined Diaz was injured because the suspect who Diaz was attempting to subdue "twisted and spun his body shifting Diaz's momentum," causing Diaz to hit the ground with his shoulder instead of landing on top of the suspect. Like the officer in Richardson Diaz was propelled to the ground shoulder-first when the suspect "twisted and spun his body shifting Diaz's momentum."

The Board adopted the ALJ's finding that the traumatic event that resulted in Diaz's disability was not undesigned and unexpected because "it is not unreasonable to anticipate that [Diaz] may encounter a suspect who may use any tactic necessary to evade apprehension."

In Richardson, the Board relied on the same reasoning employed by the ALJ here, and the Court rejected it. See id. at 213-15. The Court explained "some injuries sustained during ordinary work effort will pass muster and others will not." Id. at 214. The determinative "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." Ibid. "To properly apply the Richardson standard, . . . the Board 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, 233 N.J. at 427.

The officer in Richardson could certainly have anticipated that an inmate being subdued may use any tactic necessary to avoid being handcuffed, including "forcefully jerk[ing] up from the ground." Yet, the Court nevertheless held the traumatic event was undesigned and unexpected. Like the officer in Richardson who was injured because the inmate "forcefully jerk[ed] up" to avoid being handcuffed causing the officer to fall, Diaz was injured because the suspect "twisted and spun his body shifting Diaz's momentum" to evade apprehension propelling Diaz to the ground. Applying the standard set forth in

Richardson to the facts of this case, Diaz was disabled as a direct result of a traumatic event that was undesigned and unexpected.

In this case, the Board reached an incorrect legal conclusion in applying the applicable legal standard to the record facts. We therefore reverse the Board's final decision denying Diaz's application for accidental disability retirement benefits.

Reversed.

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



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