STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: March 28, 2013)

ALBERT TURCOTTE	:	
	:	
v.	:	**PC-2010-5531**
	:	
THE RETIREMENT BOARD OF THE EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND	:	

DECISION

MCGUIRL, J. Before this Court is a timely appeal by Albert Turcotte ("Turcotte") from a decision of the Retirement Board of the Employees' Retirement System of Rhode Island (the "Retirement Board"). Turcotte seeks reversal of the Retirement Board's decision denying his application for an accidental disability pension. Jurisdiction is pursuant to G.L. 1956 § 45-35-15.

I

Facts and Travel

This case arises out of an alleged on-the-job injury sustained by Turcotte on December 1, 2006. (R., Ex. 5.) At the time, Turcotte was employed by the State of Rhode Island as a carpenter in the Department of Mental Health, Retardation and Hospitals ("MHRH"). (R., Ex. 33 at 3.) Turcotte claims that on that date, he suffered a disabling injury while positioning "Lexan"[1] so as to cover and protect windows on the MHRH compound, in anticipation of an oncoming storm. Id. at 6-10. According to

[1] "Lexan" is a hard plastic-type material. (R., Ex. 33 at 7.)

Turcotte's testimony before the Retirement Board's Disability Subcommittee, the pieces of Lexan were roughly five feet by ten feet tall and three-eighths of an inch thick, weighing eighty to ninety pounds each. Id. at 7. As Turcotte describes it, he and a co-worker were responsible for holding these pieces of Lexan some six feet off the ground while drilling them into place. Id. at 9. Turcotte states that as he and his co-worker were on staging and in the process of manipulating a final piece of Lexan, the piece slipped. Id. at 9-10. Turcotte then acted quickly to prevent the Lexan from falling by attempting to catch it underneath with his left hand. Id. Instead, the piece of Lexan pulled him down to the floor of the staging, causing him, he explained, to feel as if his left arm had been pulled out of its socket. Id. at 9-10. Turcotte claims that this was the event that caused his disability, and that as a result, he is eligible for an accidental disability pension.

Turcotte claims to have notified his acting supervisor of this event immediately after it occurred on December 1, 2006. Id. at 10-11. However, he did not submit an official Injury/Illness Report Form until more than two weeks later, on December 17, 2006. (R., Ex. 5.) The report form describes the nature of Turcotte's injury as "tears in rotator cuff tendon" and briefly describes the Lexan incident of December 1, 2006. Id. The Injury/Illness Report Form is signed by Turcotte's supervisor, who was seemingly absent on December 1, 2006 and states that the supervisor had received notice of Turcotte's situation from a third party on December 15, 2006.[2] Id.

[2] Turcotte testified before the Retirement Board's Disability Subcommittee that his regular supervisor was out on December 1, 2006, and there is no evidence in the record to the contrary. (R., Ex. 33 at 4.)

On November 16, 2008, Turcotte applied to the Employees' Retirement System of Rhode Island ("ERSRI") for disability retirement. (R., Ex. 1 at 5.) The stated medical reason for disability was "torn left rotator cuff." Id. at 2. In connection with his application, Turcotte initially submitted to ERSRI the Injury/Illness Report Form of December 17, 2006, a physician's disability statement completed by Turcotte's own physician, Vincent J. Yakavonis, M.D. ("Dr. Yakavonis"), and other medical records. (R., Ex. 19 at 2-3.) Consistent with the application process, Turcotte also was examined by three independent physicians of ERSRI's choosing, each of whom submitted medical examination forms in connection with Turcotte's application. (R., Exs. 6, 7, 8.) On those forms, all of the physicians, including the three independent physicians, agreed that "to a reasonable degree of medical certainty," Turcotte was "incapacitated such that he/she cannot perform the duties of his/her position." (R., Exs. 2, 6, 7, 8.) Additionally, they all agreed that "to a reasonable degree of medical certainty . . . [Turcotte's] incapacity is the natural and proximate result of an on the job injury and not the result of age or length of service." Id.

The independent physicians also submitted required statements in support of these findings to qualify the foundations on which their medical opinions as to disability and causation were based. Id. All were required to state: (1) "[w]hether it is more likely that the disability was caused by the job related personal injury or whether the disability resulted from age or lack of service"; (2) "[w]hether there is any event or condition in the applicant's medical history, other than the on the job injury or hazard undergone upon which the disability retirement is claimed, that might have contributed to or resulted in the disability claimed"; and (3) "[i]f there is such a contributing event or condition, what

is the likelihood that the applicant's disability or incapacity was the natural and proximate result of that event or condition." Id.

The first independent physician to evaluate Turcotte's injury was Todd E. Handel, M.D. ("Dr. Handel"). (R., Ex. 8.) Dr. Handel stated: "It is felt that this injury that Mr. Turcotte sustained is relate [sic] the lifting injury in December of 2006 and not related to his age or other health conditions." Id. at 5. Additionally, Dr. Handel stated that "[i]t is felt that Mr. Turcotte was injured at work and the injury that he sustained and the surgery he underwent were related to his work injury." Id. Dr. Handel also stated that Turcotte's unsuccessful shoulder surgery, which came after Turcotte's alleged injury at work, may have contributed to the state of Turcotte's disability on his examination date, and that "[Turcotte's] disability and incapacity are related to the poor outcome from surgical repair." Id.

Another independent physician who evaluated Turcotte was Kenneth L. Lambert, M.D. ("Dr. Lambert"). (R., Ex. 7.) Dr. Lambert stated that his evaluation was "based on subjective complaints, history given by [Turcotte], medical examination and medical records and tests as provided, with the assumption that the material is true, correct and complete." Id. at 2. Dr. Lambert further stated that "[i]f more information becomes available at a later date, an additional evaluation may be requested." Id. He added that "[s]uch information may or may not change the opinions rendered in this report." Id. With respect to his required statements, Dr. Lambert stated that there was not any "event or condition in the applicants [sic] medical history, other than the job injury or hazard undergone, upon which the disability retirement is claimed, that might have contributed to or resulted in the disability claimed." Id. at 3.

The third independent physician to evaluate Turcotte was Anthony M. DeLuise, M.D. ("Dr. DeLuise") (R., Ex. 6.) Dr. DeLuise stated that "[a]s per the history of right knee by the patient as well as the medical records that I was able to review today, his current disability is related to his on-the-job injury on December 1, 2006." Id. at 4. Additionally, Dr. DeLuise stated: "I do not appreciate any event or conditioning [sic] that was pre-existing in the patient's medical record other than the work related injury which may have contributed to resulted in [sic] his disability claim." Id.

Despite the physicians' evaluations, the Retirement Board on January 8, 2010 voted to deny Turcotte's application for accidental disability pension. (R., Ex. 19 at 1.) It based the decision on the recommendation of its Disability Subcommittee (the "Subcommittee"). Id. The Subcommittee determined that it could not conclude Turcotte was "disabled as a natural and proximate result of an accident while in the performance of duty as contemplated by R.I.G.L. 36-10-14." Id. The Subcommittee based this determination on several factors. Among them were Turcotte's apparent delay in reporting the allegedly disabling injury to his supervisor, Turcotte's delay in completing an Injury/Illness Report Form, and "evidence of a prior history of problems with [Turcotte's] left shoulder" that did not appear to be reflected in any of the statements submitted by the four physicians associated with Turcotte's application. Id. Specifically, the Subcommittee found it significant that Turcotte had visited a fifth doctor on November 30, 2006, the day before the allegedly disabling injury at work. Id. at 2. The medical records showed that at this visit, Turcotte saw Vaughn G. Gooding, Jr., M.D. ("Dr. Gooding") and complained of left shoulder pain and difficulties moving his arm. Id. The primary purpose of Turcotte's November 30, 2006 visit with Dr. Gooding is not

entirely clear from the medical records, but Turcotte had been having regular consultations with Dr. Gooding because of a problem with his left thumb, and had been considering surgery. Id. at 1-8. The medical records do show that on December 5, 2006, Turcotte had an MRI of his left shoulder performed at Dr. Gooding's request. (R., Ex. 11 at 8-13.) However, the records do not disclose when the MRI was scheduled; Dr. Gooding's report from the November 30, 2006 evaluation states only that "[i]f [Turcotte's] symptoms persist, an MRI would be reasonable." Id. at 8. The medical records also show that on December 6, 2006 Dr. Gooding believed that Turcotte's shoulder injury was a result of Turcotte "pushing a large rock." Id. at 13. Specifically, Dr. Gooding wrote a report in conjunction with an examination of Turcotte on that date. Id. In the report, Dr. Gooding states the following: "When I saw [Turcotte] in late November he complained of left shoulder pain and had difficulty with overhead activities. He states that this occurred when he was pushing a large rock." Id. The evaluation forms of Dr. Yakavonis and the three independent physicians, on the other hand, do not affirmatively disclose any knowledge of this "rock-pushing" incident. (R., Exs. 2, 6, 7, 8.)

Turcotte appealed the decision of the Retirement Board on February 11, 2010. (R., Ex. 20.) As a result, Turcotte was granted a hearing scheduled for May 7, 2010, before the Disability Subcommittee. (R., Ex. 23.) At the hearing, the Subcommittee heard testimony from Turcotte and his counsel, and considered additional evidence submitted by Turcotte. (R., Exs. 32, 33.) At the hearing, Turcotte was not asked whether he had disclosed the Lexan incident to Dr. Gooding. (See R., Ex. 33.) Nor was Turcotte asked whether he had disclosed the rock-pushing incident to any of the four physicians

who had submitted examination forms in support of his application for accidental disability pension. Id. Included in the additional evidence was a medical evaluation of Turcotte's shoulder injury prepared by Dr. Joseph T. Lifrak ("Dr. Lifrak") in connection with Turcotte's contemporaneous workers' compensation claim. (R., Ex. 32 at 4-6.) The evaluation affirmatively indicates that Dr. Lifrak was aware of both the rock-pushing incident and the Lexan incident. Id. at 4. Nevertheless, Dr. Lifrak concluded that "to a reasonable degree of medical certainty, [Turcotte's] rotator cuff tear is the result of his employment on 12/1/06." Id. at 5.

On June 17, 2010, ERSRI notified Turcotte that the Retirement Board had again voted on May 12, 2010 to deny Turcotte's application for a disability pension based on recommendation of the Disability Subcommittee. (R., Ex. 35 at 1.) The Subcommittee reiterated its concerns over Turcotte's delays in officially reporting the disabling injury and Turcotte's history of shoulder-related problems, including the possibility that Turcotte's shoulder had been disabled by pushing a large rock prior to the Lexan incident, unbeknownst to the four doctors who submitted official statements in support of Turcotte's application. Id. at 1-4. As a result, the Subcommittee was unable to conclude that Turcotte was "disabled as a natural and proximate result of an accident while in the performance of duty." Id. at 1.

On June 29, 2010, Turcotte appealed a second time, requesting a hearing before the full Retirement Board. (R., Ex. 36.) A hearing was scheduled for September 8, 2010. (R., Ex. 38.) At the hearing, the Retirement Board heard argument from Turcotte's counsel and discussed the evidence. (R., Ex. 40.) Turcotte was not given the opportunity to present new factual material or evidence. Id. at 2. The board afforded "deference to

the conclusions of the Disability Subcommittee on factual determinations and questions of credibility," refusing to "overturn those determinations or assessments unless they are found to be clearly wrong." Id. At the conclusion of the hearing, the ERSRI Executive Director found that eight votes were cast in favor of upholding the decision of the Disability Subcommittee. (R., Ex. 40 at 6.)

A written notice was sent to Turcotte on September 9, 2010, stating that his application for an accidental disability pension had been denied by the full Retirement Board, formally adopting the findings of fact and the decision of the Disability Subcommittee. (R., Ex. 41 at 1.) Specifically, the Retirement Board made a factual finding regarding Turcotte's official Injury/Illness Report Form of December 18, 2006, stating "[t]he form further notes that Mr. Turcotte did not notify his supervisor of his alleged injury until December 15, 2006." Id. Additionally, the Retirement Board made a specific factual finding that "Turcotte was again seen by Dr. Gooding on December 6, 2006, at which time Dr. Gooding reported that Turcotte stated that his shoulder injury had occurred while 'pushing a large rock.'" Id. at 2. The Retirement Board also adopted as fact certain aspects of the evaluations made by each independent physician. Id. at 1-2. However, neither Dr. Handel's nor Dr. Lambert's findings with respect to proximate causation were adopted. Id. at 1. The Retirement Board did make a factual finding that each independent physician considered Turcotte capable of performing "light duty work." Id. at 1-2. Additionally, the Retirement Board made a factual finding that Dr. DeLuise "opined that Turcotte's current disability is related to the December 1, 2006 injury, and stated that he was not aware of any event preceding the December 1, 2006 incident that would have contributed to Turcotte's disabling condition." Id. at 2.

On September 21, 2010, Turcotte filed suit in Superior Court, appealing the full Retirement Board's decision. (Complaint at 1-2.) Because of a transcription error by the court reporter present at the September 8, 2010 hearing, this Court requested that the Retirement Board recertify the record with the corrected transcript in order to clarify the tally of votes at that hearing. See Turcotte v. Ret. Bd. of the Emps.' Ret. Sys. of Rhode Island, No. PC-10-5531, 2011 WL 3421392 (R.I. Super. Ct. Aug. 1, 2011). An affidavit of the court reporter from the September 8, 2010 hearing has since been added to the record, along with a revised and corrected transcript of the hearing. (See Docket entry dated 11-29-11.) The revised transcript of the hearing confirms that on September 8, 2010, the full Retirement Board, by a vote of eight to seven, decided to deny Turcotte an accidental disability pension. (Revised Tr. at 10-11.)

In the instant appeal, Turcotte argues on several grounds that the Retirement Board's decision to deny him an accidental disability pension should be reversed. Turcotte requests that this Court award him an accidental disability pension and benefits.

II

Standard of Review

The Superior Court's review of a decision of the Retirement Board is governed by the Administrative Procedures Act (the "APA"), §§ 42-35-1 et seq. Iselin v. Ret. Bd. of Emps.' Ret. Sys. of Rhode Island, 943 A.2d 1045, 1048 (R.I. 2008). The applicable standard of review is codified as follows:

> [t]he court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant

> have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Affected by other error of law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Sec. 42-35-15(g).

The Superior Court's review is essentially "an extension of the administrative process." Rhode Island Telecomm. Auth. v. Rhode Island State Labor Relations Bd., 650 A.2d 479, 484 (R.I. 1994). "In essence, if 'competent evidence exists in the record, the Superior Court is required to uphold the agency's conclusions.'" Auto Body Ass'n of Rhode Island v. Dep't of Bus. Regulation, 996 A.2d 91, 95 (R.I. 2010) (quoting Envtl. Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). Accordingly, this Court defers to the administrative agency's factual determinations provided that they are supported by legally competent evidence. Town of Burrillville v. Rhode Island State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007); Arnold v. Rhode Island Dep't of Labor and Training Bd. of Review, 822 A.2d 164, 167 (R.I. 2003). Legally competent evidence is "'some or any evidence supporting the agency's findings.'" Auto Body Ass'n of Rhode Island, 996 A.2d at 95 (quoting Durfee, 621 A.2d at 208).

Thus, in reviewing a decision of an administrative agency, this Court is "limited to 'an examination of the certified record to determine if there is any legally competent evidence therein to support the agency's decision.'" Johnston Ambulatory Surgical Assocs., Ltd. v. Nolan, 755 A.2d 799, 804-05 (R.I. 2000) (quoting Barrington Sch. Comm. v. Rhode Island State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992)). If

a tribunal fails to disclose findings of fact which form the basis for its decision, this Court will neither "search the record for supporting evidence" nor "decide for [itself] what is proper in the circumstances." Cullen v. Town Council of Town of Lincoln, 850 A.2d 900, 904 (R.I. 2004). "The absence of findings by the board makes it impossible [for this Court] to review the board's decision and determine whether it was supported by legally competent evidence or included any errors of law." Pierce v. Providence Ret. Bd., 962 A.2d 1292, 1293 (R.I. 2009).

This Court reviews questions of law de novo. Narragansett Wire Co. v. Norberg, 118 R.I. 596, 607, 376 A.2d 1, 6 (1977). Questions of law decided by an administrative agency are not binding upon this Court and may be reviewed to determine what the law is and its applicability to the facts. Id. at 1. "'When a statute is clear and unambiguous we are bound to ascribe the plain and ordinary meaning of the words of the statute.'" Town of Burrillville v. Pascoag Apartment Assocs., 950 A.2d 435, 445 (R.I. 2008) (quoting Unistrut Corp. v. Rhode Island Dep't of Labor and Training, 922 A.2d 93, 98 (R.I. 2007)). However, the Court will defer to an agency's interpretation of an ambiguous statute "'whose administration and enforcement have been entrusted to the agency . . . even when the agency's interpretation is not the only permissible interpretation that could be applied.'" Auto Body Assn' of Rhode Island, 996 A.2d at 97 (omission in original) (quoting Pawtucket Power Assocs. Ltd. P'ship v. City of Pawtucket, 622 A.2d 452, 456-57 (R.I. 1993)) (redactions in original). The Court will not defer to an agency's statutory interpretation if it is "clearly erroneous or unauthorized." Id. (quoting Unistrut Corp., 922 A.2d at 99).

In this case, ERSRI has used a two-tier review process. This two-tier system has been likened to a funnel. See Durfee, 621 A.2d at 207-08. At the first level of review, the Disability Subcommittee "sits as if at the mouth of the funnel" and analyzes the evidence, issues, and live testimony. See id. At the second level of review, the "discharge end" of the funnel, the full Retirement Board "is not privileged to hear or witness the broad spectrum of information" that the Disability Subcommittee received first-hand. See id. Therefore, the "further away from the mouth of the funnel that an administrative official is . . . the more deference should be owed to the fact finder." Id. Determinations of credibility by the Disability Subcommittee, for example, should not be disturbed unless they are "clearly wrong." Id. at 206.

III

Analysis

A

Estoppel Arguments

Turcotte advances arguments based on theories of estoppel that the Retirement Board improperly rejected the medical evaluation of Dr. Lifrak, which had been performed at the behest of the State in connection with Turcotte's contemporaneous workers' compensation claim. (Appellant's Br. at 10-16.) Essentially, Turcotte argues that the Retirement Board should be judicially and/or equitably estopped from denying the truth of Dr. Lifrak's evaluation. Turcotte emphasizes that there was no mention of Dr. Lifrak's evaluation in the Retirement Board's official decision. The Retirement Board contends that it is not bound by the conclusions of a physician that were generated

in connection with Turcotte's workers' compensation claim, and that Turcotte's claims for estoppel are unsupported by any facts in this matter.

Dr. Lifrak examined Turcotte on January 22, 2007, less than two months after Turcotte's allegedly disabling work injury. Id. at 10-11. Dr. Lifrak's report unequivocally indicates that he was aware of both the "rock-pushing" incident of November 30, 2006 and the Lexan incident of December 1, 2006. (R., Ex. 32 at 4.) In the report, Dr. Lifrak states: "As related to me by the patient, his AC joint arthrosis is an aggravation of a pre-existing condition which has certainly changed after the 12/1/06 work related incident. I believe that he also had an impingement and then sustained a rotator cuff tear at the time of the work related incident on 12/1/06, therefore to a reasonable degree of medical certainty, his rotator cuff tear is the result of his employment on 12/1/06 and his AC joint arthrosis is an aggravation of his pre-existing condition." Id. As a result, Turcotte continues to receive workers' compensation benefits to this day. (Appellant's Br. at 11-12.)

As an initial matter, our Supreme Court has previously ruled that "the standards for receiving [workers' compensation] benefits are less demanding than the requirements for receiving accidental disability." Rossi v. Emps.' Ret. Sys. of Rhode Island, 895 A.2d 106, 112 (R.I. 2006). Indeed, in Rossi, the Court stated that "it is obvious that the Legislature intended the requirements for accidental disability retirement to be stringent." Id. Among other things, the applicant must show that his or her debilitating condition is "the natural and proximate result of a specific, work-related accident, as verified by medical evidence." Id. at 113 (citing § 36-10-14). In contrast, the causation standard for an applicant claiming workers' compensation benefits is less stringent than proximate

cause. Tavares v. Aramark Corp., 841 A.2d 1124, 1128 (R.I. 2004) (stating that the "causal relationship" standard for workers' compensation benefits is "less exacting than what is required for proximate cause).

Dr. Lifrak's evaluation was performed for a purpose other than determining whether Turcotte is eligible for an accidental disability pension and it makes no finding with respect to "natural and proximate" cause. This less exacting evaluation of Turcotte for workers' compensation purposes therefore has no bearing on whether Turcotte meets the eligibility requirements for accidental disability retirement. See Rossi, 895 A.2d at 111-113. As a result, even if this Court were to hold that ERSRI should be estopped to deny the truth of Dr. Lifrak's evaluation, the evaluation itself could not possibly carry dispositive weight as medical evidence with respect to the outcome of Turcotte's application with ERSRI. Thus, in considering Turcotte's application for an accidental disability pension, it was not "clearly erroneous" for the Retirement Board to disregard Dr. Lifrak's evaluation; the Retirement Board had no obligation to consider the evaluation or give it any weight at all.

In the present case, Turcotte argues that it is unfair for the State of Rhode Island to accept Dr. Lifrak's evaluation in the context of Turcotte's workers' compensation agreement and to then ignore that same evaluation in determining whether Turcotte qualifies for an accidental disability pension. Essentially, Turcotte contends that the alleged inconsistency in the State's positions requires that the State be judicially estopped from ignoring Dr. Lifrak's conclusion that it was the Lexan incident that caused Turcotte's disabling injury, and not the rock-pushing incident.

"[J]udicial estoppel focuses on the relationship between the litigant and the judicial system as a whole." D & H Therapy Assocs. v. Murray, 821 A.2d 691, 693 (R.I. 2003). The doctrine is "driven by the important motive of promoting truthfulness and fair dealing in court proceedings." Id. It is "an equitable doctrine invoked by a court at its discretion" that is intended to prevent "the improper use of judicial machinery." New Hampshire v. Maine, 532 U.S. 742, 750 (2001). The Rhode Island Supreme Court has recognized the doctrine of judicial estoppel, but it is considered an extraordinary form of relief that will not be applied unless the equities clearly favor the party seeking relief. Gaumond v. Trinity Repertory Co., 909 A.2d 512, 519 (R.I. 2006). Invoking the doctrine of judicial estoppel "precludes a party from taking a position inconsistent with the position previously taken with respect to the identical party in an earlier suit." Gross v. Glazier, 495 A.2d 672, 675 (R.I. 1985). In determining whether to apply the doctrine of judicial estoppel, "[c]ourts often inquire whether the party who has taken an inconsistent position had 'succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled.'" D & H Therapy Assocs., 821 A.2d at 694.

Here, there has been only one court proceeding involving Turcotte and the ERSRI. Moreover, ERSRI's position has been consistent throughout Turcotte's administrative hearing process and into the present appeal. Therefore, the present circumstances do not call for application of judicial estoppel in any respect. See Gross v. Glazier, 495 A.2d at 675; D & H Therapy Assocs., 821 A.2d at 694. Additionally, even if this Court were to somehow construe Turcotte's workers' compensation agreement

with the State as a prior proceeding between the same parties, there is no inconsistency between accepting Dr. Lifrak's report for purposes of determining Turcotte's workers' compensation eligibility and then rejecting the same report for purposes of determining eligibility for an accidental disability pension. See Gross, 495 A.2d at 675 (discussing preclusion of inconsistent positions). As discussed above, the standards applicable to determining eligibility for workers' compensation benefits are less exacting than the standards associated with eligibility for an accidental disability pension, and therefore, Dr. Lifrak's conclusions as to causation have no bearing in the accidental disability context. See Rossi, 895 A.2d at 111-13.

Turcotte's argument for equitable estoppel similarly conflates the ERSRI Retirement Board and the Division of Workers' Compensation because they are both subdivisions of the State of Rhode Island. Turcotte contends that when the State accepted Dr. Lifrak's evaluation for workers' compensation purposes, the State made an affirmative representation on which it induced Turcotte to rely to his detriment. Turcotte claims that as a result, the State, now acting through the Retirement Board, should be equitably estopped from disregarding Dr. Lifrak's evaluation in the context of Turcotte's accidental disability application.

"Under the doctrine of equitable estoppel, a party may be precluded from enforcing an otherwise legally enforceable right because of previous actions of that party." Ret. Bd. of the Emps.' Ret. Sys. of Rhode Island v. DiPrete, 845 A.2d 270, 284 (R.I. 2004). Like judicial estoppel, equitable estoppel is considered "extraordinary relief" that will not be applied unless the equities are clearly in favor of the party seeking relief. Sturbridge Home Builders, Inc. v. Downing Seaport, Inc., 890 A.2d 58, 67 (R.I. 2005).

Unlike judicial estoppel, equitable estoppel focuses on the relationship between the parties. D & H Therapy Assocs., 821 A.2d at 693. The doctrine of equitable estoppel will apply when there is:

> [A]n affirmative representation or equivalent conduct on the part of the person against whom the estoppel is claimed which is directed to another for the purpose of inducing the other to act or fail to act in reliance thereon . . . and that such representation or conduct in fact did induce the other to act or fail to act to his injury. Sturbridge Home Builders, 890 A.2d at 67 (quoting Southex Exhibitions, Inc. v. Rhode Island Builders Assoc., Inc., 279 F.3d 94, 104 (1st Cir. 2002)).

Turcotte's argument for equitable estoppel is without merit. First, Turcotte's present lawsuit is aimed at the ERSRI Retirement Board and has nothing to do with the actions, in another context, of the Workers' Compensation Division within the Department of Labor and Training. Even if this Court were persuaded by Turcotte's contention—that the Workers' Compensation Division and the Retirement Board should be conflated with one another because both act on behalf of the State—there can be no indication that in accepting Dr. Lifrak's evaluation in the workers' compensation context, the State somehow induced Turcotte to rely on the State's conduct in a manner that caused Turcotte harm when he applied for accidental disability retirement. See Ferrelli v. Dep't of Employ. Sec., 106 R.I. 588, 593, 261 A.2d 906, 909 (1970) (stating that before estoppel can be applied against a government agency, there must be "some positive action on the part of the [agency's] agents which had induced the action of the adverse party").

Here, there has been no evidence to suggest that the State, whether through the Retirement Board or the Workers' Compensation Division, ever performed an action that

would induce reliance in Turcotte such that Dr. Lifrak's opinion would suffice for purposes of his accidental disability application and its more "exacting" standards. Indeed, even if there were some indication to that effect, there would not be convincing grounds for application of equitable estoppel because "government officials must be . . . acting . . . consistently with state statutes . . . before governmental entities can be subject to equitable estoppel based upon their . . . conduct." Romano v. Ret. Bd. of the Emps.' Ret. Sys. of Rhode Island, 767 A.2d 35, 42 (R.I. 2001). Here, state law mandates a more stringent standard for causation in the accidental disability context. See Rossi, 895 A.2d at 111-13. Therefore, any agency conduct that might have induced Turcotte to rely on a contrary principle would not qualify for equitable estoppel because of the prevailing importance of upholding state laws. See Romano, 767 A.2d 35, 43 ("[T]o rule otherwise would undermine the integrity and structure of our state government because it would allow every government official to act as his own mini-legislature, cashiering those laws he or she dislikes, is ignorant of, or misinterprets, and instead molding the law to be whatever the government official claims it to be.").

This Court is mindful that estoppel should be applied against a government agency acting in a public capacity only when there are "peculiar circumstances." Ferrelli, 261 A.2d at 909. A finding made in the context of and for purposes of a workers' compensation determination is not "peculiar," and Turcotte shows no legitimate grounds for application of an estoppel against the Retirement Board. See East Greenwich Yacht Club v. Coastal Resources Mgmt. Council, 118 R.I. 559, 568, 376 A.2d 682, 686 (1977) ("The key element of an estoppel is intentionally induced prejudicial reliance.").

B

Evidence before ERSRI and Findings of Fact

Turcotte further contests the nature of the evidence used by the Retirement Board in denying Turcotte's application for an accidental disability pension. Turcotte contends that because all of the medical evidence supported Turcotte's application, the Retirement Board's decision to deny Turcotte a disability pension was clearly erroneous and/or an abuse of discretion. The Retirement Board responds by listing six pieces of arguably competent evidence that served as a sufficient basis for the Board's factual finding that Turcotte's disability was not the "natural and proximate result" of the December 1, 2006 Lexan incident. The Retirement Board thus claims that its decision to deny Turcotte's application was sufficiently grounded in the record.

The standard for a state employee to receive an accidental disability pension is set forth in G.L. 1956 § 36-10-14(c):

> If a medical examination conducted by three (3) physicians engaged by the retirement board and such investigation as the retirement board may desire to make shall show that the member is physically or mentally incapacitated for the performance of service as a natural and proximate result of an accident, while in the performance of duty, and that the disability is not the result of willful negligence or misconduct on the part of the member, and is not the result of age or length of service, and that the member has not attained the age of sixty-five (65), and that the member should be retired, the physicians who conducted the examination shall so certify to the retirement board stating the time, place, and conditions of service performed by the member resulting in the disability and the retirement board may grant the member an accidental disability benefit.

This Court is mindful that if competent evidence exists in the record to support the agency's factual findings, those conclusions must be upheld. See Auto Body Ass'n of

Rhode Island, 996 A.2d at 95. However, if an administrative tribunal fails to disclose factual findings which form the basis for its decision, this Court will not "search the record for supporting evidence" or "decide for [itself] what is proper in the circumstances." See Cullen, 850 A.2d at 904. In such a situation, the Court will either order a hearing de novo or remand the case to afford the board an opportunity to clarify and complete its decision. See Hooper v. Goldstein, 104 R.I. 32, 44-45, 241 A.2d 809, 815-16 (1968).

The Retirement Board did not conclude that the November 30, 2006 rock-pushing incident was the actual cause of Turcotte's disability. (R., Ex. 41 at 4.) Rather, the record reflects that the Retirement Board denied Turcotte's application for an accidental disability pension because it was "unable to conclude that Turcotte is disabled as a natural and proximate result of an accident while in the performance of duty." Id. The Retirement Board had before it evaluations by three ERSRI physicians, hired pursuant to § 36-10-14(c), all finding that Turcotte's disability was the "natural and proximate result of an on the job injury and not the result of age or length of service," as well as the workers' compensation evaluation performed by Dr. Lifrak. The Retirement Board, however, determined that certain other factors cast sufficient doubt on the physicians' findings to justify denial of Turcotte's accidental disability application. Most important among those factors appears to have been the medical report prepared by Dr. Gooding on December 6, 2006. However, Dr. Gooding's report was prepared in an entirely separate context, not in view of Turcotte's application for an accidental disability pension, which had not yet been made. Dr. Gooding's December 6, 2006 report offered no opinion

whatsoever concerning whether Turcotte should qualify for an accidental disability pension, and Dr. Gooding never offered testimony to the Retirement Board.

The Court notes that the language of § 36-10-14(c) fundamentally limits the Retirement Board's ability to draw independent medical conclusions absent the evidentiary support of conclusive evaluations carried out by licensed medical professionals. See Rossi, 895 A.2d at 113 ("As set forth in the statute, a person's debilitating condition must be the natural and proximate result of a specific, work-related accident, as verified by medical evidence." (emphasis added)). The statute requires that before any applicant can be granted accidental disability benefits, the Retirement Board must hire at least three independent physicians to evaluate the applicant and that those physicians must determine whether or not the applicant suffers from a disability that is the natural and proximate result of an on-the-job accident. Sec. 36-10-14(c); cf. Poudrier v. Brown Univ., 763 A.2d 632, 635 (2000) (finding with respect to workers' compensation claim that Workers' Compensation Court committed reversible error in refusing to appoint an impartial medical examiner).

Therefore, it is this required medical evidence submitted by independent physicians, as well as other "such investigation as the retirement board may desire to make," upon which the Retirement Board is permitted to draw conclusions regarding medical facts such as the extent of the applicant's disability and the disability's "natural and proximate" cause. See § 36-10-14(c) (emphasis added). Importantly, the independent physicians' evaluations are presumed to be fair and unbiased because the Retirement Board has the sole authority to transmit records of the applicant's underlying medical history to the independent physicians. See LaFazia v. Connecticut Seafood

Producers, 538 A.2d 670, 671-72 (R.I. 1988) ("[I]t would thwart the purpose of appointing an impartial examiner if the parties were allowed to furnish information of their own choosing to the physician.").

It is not clear from the record how the three independent physicians in the present case received Turcotte's background medical history. However, since there is uncertainty as to whether or not those physicians had knowledge of the "rock-pushing" incident of December 30, 2006, it appears that the Retirement Board did not furnish the independent physicians with portions of Turcotte's medical history that the Board now considers relevant. The Retirement Board's arguments in Turcotte's present appeal are therefore weakened to the extent that they are premised on underlying inadequacies in the independent physicians' examinations.

Moreover, as our Supreme Court has recently clarified, the question of whether a disabling injury is a "natural and proximate" result of a particular accident "has . . . 'a peculiar and appropriate meaning in law.'" Pierce v. Providence Ret. Bd., 15 A.3d 957, 964 (2011) (quoting Danielsen v. Eickhoff, 159 Neb. 374, 66 N.W.2d 913, 915 (1954)). "[P]roximate cause 'need not be the sole and only cause. It need not be the last or latter cause. It's a proximate cause if it concurs and unites with some other cause which, acting at the same time, produces the injury of which complaint is made.'" Id. at 965 (quoting Hueston v. Narragansett Tennis Club, Inc. 502 A.2d 827, 830 (R.I. 1986)). "The word 'proximate,' in the legal context of 'proximate cause,' requires a factual finding that the 'harm would not have occurred but for the [accident] and that the harm [was a] natural and probable consequence of the [accident].'" Id. at 964 (quoting DiPetrillo v. Dow Chemical Co., 729 A.2d 677, 692-93 (R.I. 1999)). Thus, while the existence of

proximate cause requires certain factual findings, misapplication of proximate cause doctrine is an error of law that may "'infect[] the validity of . . . proceedings,'" and is subject to review by this Court. See id. at 966 (quoting Cullen, 850 A.2d at 903); § 42-35-15(g)(4).

Moving to the evidence, Section 42-35-12 mandates that any final order by an agency "shall include findings of fact and conclusions of law, separately stated." § 42-35-12. Additionally, "[f]indings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings." Id. Before this Court can conduct a meaningful review of the decision before it, a complete record with adequate factual findings must be presented. von Bernuth v. Zoning Bd. of Review of New Shoreham, 770 A.2d 396, 401-02 (R.I. 2001). The requirement that the Retirement Board's decision be accompanied by sufficient factual findings is especially important when evidentiary conflicts abound. Thorpe v. Zoning Bd. of Review of N. Kingstown, 492 A.2d 1236, 1237 (R.I. 1985); see also May-Day Realty Corp. v. Bd. of Appeals of City of Pawtucket, 107 R.I. 235, 239-40, 267 A.2d 400, 403 (1970). "A satisfactory factual record is not an empty requirement." JCM, LLC v. Town of Cumberland Zoning Bd. of Review, 889 A.2d 169, 176 (R.I. 2005). This Court has authority to remand if a significant material issue of fact is not adequately addressed by the agency. Ferrelli, 106 R.I. at 593-94, 261 A.2d at 910.

The Retirement Board argues that six evidentiary factors support its determination that there was insufficient evidence to conclude that Turcotte's disability was the natural and proximate result of the December 1, 2006 Lexan incident. In its memorandum, the Retirement Board states that:

> Turcotte: (1) injured his shoulder moving a rock on his property on November 30, 2006; (2) sought immediate medical attention for that injury wherein he complained of pain sufficient to justify the ordering of an MRI; (3) did not file a report on the claimed 'accident' on December 1, 2006 until December 17, 2006; (4) did not refer to a work related injury when seen by Dr. Gooding on December 6, 2006; (5) failed to bring the November 30, 2006 injury, which precipitated his December 6, 2006 MRI, to the attention of the Independent Medical Examiners; and (6) had objective medical evidence of pre-existing severe degenerative arthritis in his shoulder suggestive of symptomatology that was more likely the result of age or length of service than a work-related accident. (Retirement Bd. Mem. at 6.)

These evidentiary factors, however, are not clear in the Retirement Board's final decision. For example, nowhere in the Retirement Board's decision does the Retirement Board make the straightforward factual finding that "Turcotte injured his shoulder moving a rock on his property on November 30, 2006." Instead, in its "Findings of Fact" section, the Retirement Board's decision states:

> Additional medical records provided to the Disability Subcommittee indicated that on November 30, 2006, the day before the alleged injury, Turcotte had seen Vaughn G. Gooding, Jr. M.D. complaining of left shoulder pain along with difficulty lifting his arm. Turcotte was again seen by Dr. Gooding on December 6, 2006, at which time Dr. Gooding reported that his shoulder injury had occurred while 'pushing a large rock.'[3] (R., Ex. 41 at 3.)

With respect to the MRI issue, the Retirement Board's decision merely mentions that "an MRI conducted on December 6, 2006, appears to have been ordered on November 30, 2006, prior to the allegedly disabling injury." Id. at 4. The Retirement Board's decision

[3] The Court reiterates that Dr. Gooding's December 6, 2006 report preceded Turcotte's application for an accidental disability pension and was prepared in an entirely separate context from that application. In his report, Dr. Gooding offered no opinion as to whether Turcotte should qualify for an accidental disability pension, and he offered no testimony to the Retirement Board at all.

makes no specific finding whatsoever that "Turcotte did not refer to a work related injury when seen by Dr. Gooding on December 6, 2006." Id. at 1-4. Similarly, the decision makes no specific finding that Turcotte "failed to bring the November 30, 2006 injury . . . to the attention of the Independent Medical Examiners." Id. As for the sixth factor, the Retirement Board's decision does state that "the MRI revealed severe degenerative arthritis in Mr. Turcotte's shoulder, which suggests that any disability he may suffer is more likely the result of age or length of service, as opposed to an accident while in the performance of service."[4] Id. at 4.

Looking to the record for competent evidence in support of the Retirement Board's findings, the Court finds that the Retirement Board's conclusions and findings of fact are not so supported. For example, the Court does not find competent evidence for the factual finding that on December 6, 2006, Turcotte related to Dr. Gooding that "his shoulder injury had occurred while 'pushing a large rock.'" Id. at 3. The Disability Subcommittee never received or asked Turcotte for any explanation as to such a statement on December 6th, 2006 in Dr. Gooding's report, and Dr. Gooding was not asked to offer testimony. It appears from the record that the sole basis for this finding is Dr. Gooding's written report from December 6, 2006. Dr. Gooding's December 6th report states: "When I saw [Turcotte] in late November he complained of left shoulder pain and had difficulty with overhead activities. He states that this occurred when he was pushing a large rock." In its full context, the Court finds this statement insufficient to conclude that on December 6, 2006, Turcotte told Dr. Gooding that the disabling injury

[4] The Court assumes that when the Retirement Board's decision refers to Turcotte's "history of shoulder problems," see R., Ex. 41 at 4, it is referring to this claim of "degenerative arthritis." Otherwise, the Court finds no other basis for a "history of shoulder problems" in Turcotte.

he was suffering from on the same date was caused by pushing a large rock. In the report, Dr. Gooding may just as well have been reiterating in written form what Turcotte had previously told him on November 30, 2006. Additionally, the fact that Dr. Gooding appears to be unaware of the allegedly disabling and intervening Lexan incident of December 1, 2006, is not determinative of whether Turcotte, on December 6, 2006, told Dr. Gooding that his injury as it existed on that date was a result of the November 30th rock-pushing incident. While Dr. Gooding's December 6, 2006 report raises a doubt about the consistency of Turcotte's narrative, the report, standing alone, says very little about the context in which it was created. Dr. Gooding's meeting with Turcotte may have been rushed, and Turcotte may not have had any opportunity to supply Dr. Gooding with new information concerning his shoulder. Moreover, given that on December 6, 2006, Turcotte had not even submitted his application for an accidental disability pension, Turcotte may not have realized that there could be negative implications associated with a failure to disclose to Dr. Gooding that there was an intervening accident at work involving Lexan. Dr. Gooding's December 6, 2006 report was written entirely outside the context of Turcotte's application for an accidental disability pension, and without knowledge of that application. Dr. Gooding's report offered no opinion as to whether Turcotte should qualify for an accidental disability pension, nor could have Dr. Gooding been able to offer such an opinion at that time. Moreover, Dr. Gooding at no point offered testimony to the Retirement Board, either concerning the appropriateness of Turcotte's application for an accidental disability pension, or concerning how to interpret his remarks on the December 6, 2006 report.

The Court also does not find competent evidence in support of the factual finding that "an MRI conducted on December 6, 2006" was "ordered on November 30, 2006, prior to the allegedly disabling injury." (R., Ex. 41 at 4.) It appears from the record that the MRI actually occurred on December 5, 2006 not December 6, 2006. (R., Ex. 11 at 9-12.) More importantly, Dr. Gooding's November 30, 2006 report does not indicate that Turcotte's MRI was ordered by Dr. Gooding on that date. Id. at 8. Dr. Gooding's report states only that "[i]f [Turcotte's] symptoms persist, an MRI would be reasonable." Id. The mere fact that Turcotte subsequently had an MRI performed on December 5, 2006 does not lead to a conclusion that the MRI was ordered on November 30, 2006 by Dr. Gooding. Furthermore, there was a major factually uncontested and allegedly disabling injury that intervened between November 30, 2006 and the date of Turcotte's MRI, namely the on-the-job Lexan incident of December 1. Turcotte also testified that immediately after the Lexan incident, on December 1, 2006, he tried to return to see Dr. Gooding about his shoulder, but that he was turned away and an appointment was scheduled for December 6, 2006. (R., Ex. 33 at 6.) Given the state of the record, the conclusion that Dr. Gooding scheduled an MRI for Turcotte on November 30, 2006 is not supported by competent evidence.

With respect to the finding that Turcotte did not act hastily enough in reporting his alleged on-the-job injury, the Retirement Board's decision notes with concern "the apparent delay as reflected in the records, in Mr. Turcotte reporting the matter to his supervisor." (R., Ex. 41 at 4.) The Retirement Board's decision notes that Turcotte did not submit an official report form until December 18, 2006, more than two weeks after the Lexan incident. Id. at 2. Additionally, the Retirement Board made a factual finding

that the official report form of December 18, 2006 "notes that Mr. Turcotte did not notify his supervisor of his alleged injury until December 15, 2006." Id. The Court again does not find competent evidence in the record for this latter factual finding.

Turcotte's official December 18, 2006 "Injury/Illness Report Form" contains a "Supervisor's Section," which requests a "detailed description" of what the supervisor understands to have happened, including the date and time of the supervisor's notification. (R., Ex. 5.) In that section of the form, Turcotte's supervisor wrote only that "On 15 Dec 06 at 10:23 I received a call from Ms Kathi Sherman on this injuryee (sic)." Id. That statement alone is insufficient to conclude that Turcotte did not inform a supervisor of the on-the-job incident involving Lexan until December 15, 2006. Moreover, Turcotte's uncontroverted testimony suggests that the supervisor who completed the "Injury/Illness Report Form" was not at work on December 1, 2006, when Turcotte's alleged on-the-job injury occurred. (R., Ex. 33 at 4.) Further, Turcotte testified, apparently without contradiction, that on December 1, 2006, he reported the Lexan incident to Don Perry, his "acting assistant supervisor," because the ordinary supervisor was out that day. Id. As such, the only factual finding with respect to a delay in Turcotte's reporting of the injury that is supported by reliable evidence of record is that Turcotte's "Injury/Illness Report Form" was not completed until December 18, 2006, more than two weeks after the allegedly disabling Lexan incident of December 1, 2006.

Finally, the Retirement Board's decision does not make any factual finding either that Turcotte failed to refer to a work related injury when seen by Dr. Gooding on December 6, 2006, or that Turcotte failed to bring the November 30th rock-pushing incident to the attention of the three independent medical examiners. (R., Ex. 41.) Nor

could the Retirement Board have made such factual findings in view of the evidence on the record. On these factual matters, the Disability Subcommittee took no testimony from Turcotte, Dr. Gooding, or the three independent physicians, and the Retirement Board's decision is entirely silent. (R., Exs. 33, 41.)

At Turcotte's hearing before the full Retirement Board on September 8, 2010, counsel for Turcotte argued that the three independent physicians may have simply felt it was unnecessary to disclose knowledge of the "rock-pushing" incident in their reports. (R., Ex. 40 at 4-5.) Moreover, Turcotte's alleged reporting failures are of questionable relevance given that the Retirement Board has the authority and right to furnish the independent medical examiners with Turcotte's background medical history. See LaFazia, 538 A.2d at 671-72. Similarly, the Retirement Board's factual finding that there was "objective medical evidence" that Turcotte's disabling injury was "more likely the result of age or length of service than a work-related accident" is not supported by the substantial evidence of record because the integrity of Turcotte's MRI is not in dispute, and the three independent physicians, whose evaluations are presumed to be fair and unbiased, reached the contrary conclusion. Id. Moreover, it is not within the Retirement Board's statutory authority to make medical diagnoses or draw independent medical conclusions that are not present in the conclusive evaluations of medical professionals. See Rossi, 895 A.2d at 113; § 36-10-14(c).

As a result, the Retirement Board is left with two supporting reasons for why, in the face of three presumably fair and unbiased evaluations by independent physicians to the contrary, it was unable to conclude that Turcotte's disabling injury was the "natural and proximate result of an accident in the performance of duty." First, Turcotte visited a

doctor on November 30, 2006, complaining of left shoulder pain from pushing a rock. Second, Turcotte's official "Injury/Illness Report Form" was not completed until December 18, 2006, more than two weeks after the allegedly disabling on-the-job injury. (Retirement Bd. Mem. at 6.) The Court finds that these factual determinations, in light of the record as a whole, do not meet the competent evidence threshold that is necessary to support the Retirement Board's conclusion that Turcotte was not disabled as a natural and proximate result of an on-the-job accident. See Buffonge v. Prudential Ins. Co. of Am., 426 F.3d 20, 30-32 (1st Cir. 2005) (reversing denial of long-term disability benefits for lack of substantial evidence); N.L.R.B. v. Crafts Precision Indus., Inc., 16 F.3d 24, 27 (1st Cir. 1994) ("[A] reviewing court is not barred from setting aside a Board decision when it cannot conscientiously find that the evidence supporting the decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's view."); Knipe v. Heckler, 755 F.2d 141, 148-49 (1st Cir. 1985) (reversing denial of social security disability insurance benefits for lack of substantial evidence); Rocha v. State, 705 A.2d 965, 967-69 (R.I. 1998) (upholding reversal of trial judge who denied benefits in a workers' compensation case when medical testimony in support of benefits was uncontroverted); Spampinato v. Miller Elec. Co., 622 A.2d 1003, 1003-04 (R.I. 1993) (reversing trial judge's denial of workers' compensation benefits "[o]n the basis of the uncontradicted evidence presented").

On remand, the Retirement Board must produce findings of fact that are supported by competent evidence of record to determine whether or not Turcotte's disabling injury was a proximate and natural result of an on-the-job accident. The fact that Turcotte may have had some kind of pre-existing shoulder injury does not

necessarily disqualify him for an accidental disability pension. See Pierce, 15 A.3d at 65 ("It's a proximate cause if it concurs and unites with some other cause which, acting at the same time, produces the injury of which complaint is made."). Before making its proximate cause determination, the Retirement Board must ensure that the independent physicians, whose evaluations the Board may rely on for medical conclusions, are provided with all aspects of Turcotte's medical history that the Board now considers relevant. The Retirement Board may not rely solely on Dr. Gooding's December 6, 2006 written report in reaching a determination that it must deny Turcotte's application for an accidental disability pension. The Retirement Board may, however, elicit Dr. Gooding's actual medical opinion as to whether Turcotte qualifies for an accidental disability pension and to invite his testimony as to interpretation of the December 6, 2006 report.

C

Uniform Eligibility Standards

Turcotte further argues that the Retirement Board never promulgated statutorily-mandated uniform eligibility requirements, citing § 36-10-14(d).[5] (Appellant's Br. at 16-17.) As a result, Turcotte contends that the Retirement Board acted outside its statutory authority and, therefore, that any decision it rendered is invalid. Id. Turcotte contends that despite the statutory mandate, the Retirement Board provided him with no rules or regulations that could guide him through the accidental disability application process. Id.

The Retirement Board argues that on August 26, 2010, it explicitly amended the regulations then governing the procedure to apply for ordinary disability retirement so as

[5] Section 36-10-14(d) states: "The retirement board shall establish uniform eligibility requirements, standards, and criteria for accidental disability which shall apply to all members who make application for accidental disability benefits."

to include applications for accidental disability. (Retirement Bd. Mem. at 9-10.) Additionally, the Retirement Board argues that the procedures set forth in that regulation "have been followed for both accidental and ordinary applications at all times relevant to this matter." Id.

With respect to the promulgation of uniform eligibility standards for accidental disability retirement benefits, Section 36-10-14(d) states that "[t]he Retirement Board shall establish uniform eligibility requirements, standards and criteria for accidental disability which shall apply to all members who make application for accidental disability benefits." Courts have held that when a government agency fails to promulgate statutorily mandated standards and instead applies informal standards on a case-by-case basis, the agency actions may be stricken as arbitrary, capricious, or not in accordance with the law. See Ethyl Corp. v. EPA, 306 F.3d 1144, 1149-50 (D.C. Cir. 2002) (remanding because EPA's failure to promulgate regulations was "not in accordance with law"); MST Express v. Dep't of Transp., 108 F.3d 401, 405-06 (D.C. Cir. 1997) (remanding to agency for "failure to carry out . . . statutory obligation to establish" regulations); Hallmark Cards, Inc. v. Kansas Dep't of Commerce and Hous., 88 P.3d 250, 259 (Kan. 2004) (finding agency's failure to promulgate regulations was a "failure to follow prescribed procedure" and that agency's actions were "arbitrary, capricious, and unreasonable").

Similarly, when there is a clear legislative mandate requiring publication of rules and regulations to implement a statute, agencies should be held to a high level of scrutiny in determining "whether its internal and unwritten standards have been consistently and uniformly applied." Hallmark Cards, 88 P.3d at 258. Due process requires an agency to

"demonstrate that its internal and written standards of eligibility for statutory benefits are objective and ascertainable and that they are applied consistently and uniformly." Id. at 257 (citing White v. Roughton, 530 F.2d 750, 753-54 (7th Cir. 1976); Holmes v. New York City Housing Authority, 398 F.2d 262, 265 (2d Cir. 1968); Baker-Chaput v. Cammett, 406 F. Supp. 1134, 1139-40 (D.N.H. 1976)).

In the present case, Turcotte claims to have sustained a disabling on-the-job injury on December 1, 2006, and he submitted his application for an accidental disability pension to ERSRI on November 16, 2008. (R., Ex. 1 at 5.) The Retirement Board admits that at no time prior to August 2010 had it published regulations governing the application procedures for an accidental disability pension. (Retirement Bd. Mem. at 9-10). Moreover, the record reveals that in March and April of 2010, Turcotte's attorney engaged in repeated correspondence with ERSRI prior to Turcotte's hearing before the Disability Subcommittee, reiterating his request for a copy of the accidental disability eligibility requirements. (R., Exs. 27-32.) In response, ERSRI appears to have sent Turcotte's attorney a copy of Regulation No. 9, which at that time applied on its face only to applications for ordinary disability retirement. (R., Ex. 29.) Turcotte's lawyer was unsatisfied, and some of his questions appear to have been addressed by ERSRI over the telephone. (R., Ex. 30.) On April 15, 2010, ERSRI also sent written answers to Turcotte's attorney answering specific procedural questions regarding Turcotte's hearing. (R., Ex. 31.) Then, after Turcotte's hearing before the Disability Subcommittee but before his hearing in front of the full Retirement Board, ERSRI appears to have amended Rule No. 9 to make it apply explicitly to applications for an accidental disability pension. (Retirement Bd. Mem. at 10.)

The Court finds that the Retirement Board's denial of Turcotte's application for an accidental disability pension was made upon unlawful procedure and that a remand is therefore appropriate on that separate ground. See § 42-35-15(g). The Retirement Board claims that it has satisfied § 36-10-14(d) because it issued a regulation specifically governing application procedures for an accidental disability pension after the applicant in this case submitted his application, and after the applicant's initial appeal was heard by the Retirement Board's Disability Subcommittee. Regulations promulgated after the fact clearly cannot satisfy the due process requirements that statutorily-mandated agency regulations are designed to secure, and they certainly could not have guided Turcotte in navigating the application process for an accidental disability pension. See White, 530 F.2d at 753-54; Holmes, 398 F.2d at 265; Baker-Chaput, 406 F. Supp. at 1139-40; Hallmark Cards, 88 P.3d at 257.

The Retirement Board's contention that it satisfied § 36-10-14(d) because "at all times relevant to this matter," it followed the procedures set forth in Regulation No. 9 is similarly unavailing. Section 36-10-14(d) clearly mandates that ERSRI establish uniform regulations governing eligibility for accidental disability retirement benefits. Therefore, ERSRI should be held to a "higher level of scrutiny" when it fails to establish such regulations and proceeds through informal, ad hoc borrowing of regulations that on their face govern different application processes. See Hallmark Cards, 88 P.3d at 258. It would be nearly impossible for this Court to determine whether the procedures afforded Turcotte in the present case have been "consistently and uniformly applied," or whether they were the same procedures that were "objective and ascertainable" to numerous other parties not before this Court who also have applied for accidental disability benefits. Id.

In its memorandum, the Retirement Board, for authority, merely cites to three Superior Court decisions over the last nine years where the same application procedures ostensibly were followed, to support its practice of failing to promulgate specific rules for accidental disability applications. The Retirement Board's argument does not meet the requisite "higher level of scrutiny," and is thus unavailing. Id. It is well settled that the Retirement Board's reliance on Superior Court cases for precedent is misplaced, as the Rhode Island Supreme Court is responsible for creating mandatory precedent. See McCann v. McCann, 121 R.I. 173, 176, 396 A.2d 942, 944 (1977). Given that there is now a regulation in place explicitly governing the application process for an accidental disability pension, on remand, the Retirement Board shall proceed in conformity with its own regulation, so long as doing so does not substantially prejudice Turcotte's due process rights.

IV

Conclusion

After review of the entire record, this Court finds that the decision to deny Turcotte's application for an accidental disability pension was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. That decision failed to make adequate findings of fact and conclusions of law regarding the denial of Turcotte's application. Additionally, the Retirement Board's decision was made in violation of statutory provisions and upon unlawful procedure. Accordingly, the matter is remanded for findings of fact and conclusions of law consistent with this Decision, and for further hearing if necessary. Counsel shall submit the appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Albert Turcotte v. The Retirement Board Of The Employee's Retirement System Of The State Of Rhode Island.
CASE NO:	PC 10-5531
COURT:	Providence Superior Court
DATE DECISION FILED:	March 28, 2013
JUSTICE/MAGISTRATE:	McGuirl, J.
ATTORNEYS:	
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