STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0956

City of Waite Park,
Respondent,

vs.

Todd Weeres,
Relator,

Public Employees Retirement Association,
Respondent.

Filed June 12, 2023
Reversed
Larkin, Judge

Office of Administrative Hearings
File No. 22-3600-36451

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Considered and decided by Slieter, Presiding Judge; Connolly, Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

In this certiorari appeal, relator, a former police officer for respondent city, challenges the decision of an administrative-law judge (ALJ) that the city is not required to provide continuing health-insurance coverage to him because he did not suffer a duty disability. We conclude that the ALJ erred by assigning the burden of proof to relator and that the ALJ's decision is unsupported by substantial evidence and is arbitrary and capricious. We therefore reverse.

FACTS

Relator Todd Weeres began working as a police officer in 1992 and worked as a patrol officer for respondent City of Waite Park beginning in 1998. During his employment with the city, Weeres was exposed to many traumatic events. He responded to calls involving death—including child deaths, suicides, deadly motor-vehicle accidents, and the shooting death of a fellow officer. He was also involved in physical altercations that threatened his own life. Among the specific events reflected in the record is an August 2010 incident in which Weeres encountered an armed suspect who was shooting at Weeres and other officers. Weeres shot the suspect in the head with a rifle, but the suspect survived. Also reflected is a June 2015 incident in which Weeres responded to a suicide at a gun range. The victim was still alive, and Weeres slipped on brain matter before witnessing the victim die. In another incident, Weeres fought with a suspect to keep him from accessing knives in an apartment building before other officers were able to gain entry and arrest the suspect.

Weeres suffered mental-health symptoms that he attributed to his on-the-job exposure to trauma. After the 2010 shooting, Weeres began having nightmares in which he had to decide to shoot someone. Not long after the 2010 shooting, Weeres was involved in a physical altercation with a person who looked like the suspect he had shot, and he had a panic attack, hyperventilated, and experienced tunnel vision. When he responded to the gun-range suicide in 2015, he "almost froze" because he kept thinking about the suspect he had shot in 2010. Weeres began "call jumping" by taking risky calls by himself and cancelling requests for backup. And he avoided going into Waite Park or St. Cloud outside of work because of traumatic events that he had experienced there.

Weeres has been diagnosed with post-traumatic stress disorder (PTSD) by multiple mental-health practitioners. Following the 2010 shooting, Weeres saw Dr. Michael Keller, who diagnosed Weeres with PTSD and treated Weeres for several months.[1] Weeres did not seek mental-health treatment between 2011 and 2018 because he was concerned about stigma and job security. But by February 2019, he felt like he was "going down a spiral," and he saw Dr. Susan Powers Olson.[2] Dr. Powers Olson diagnosed Weeres with PTSD and restricted him from working as a police officer. She reported to the city that Weeres's

[1] On February 21, 2011, Dr. Keller reported that Weeres had reached "maximum medical improvement," a defined statutory condition that triggers a 90-day clock on temporary total disability workers' compensation benefits. *See* Minn. Stat. §§ 176.011, subd. 13a, .101, subd. 1(j) (2022). Weeres's entitlement to duty-disability benefits turns on different legal standards, discussed in the analysis section below.

[2] Weeres went on medical leave following Dr. Powers Olson's diagnosis. The city terminated his employment approximately five months later based on his failure to return to duty and the city's anticipation that he would be unable to do so.

condition might be "chronic" but that "further treatment and evaluation can help to determine his capacity for recovery versus chronicity."

In June 2019, Weeres applied to the Public Employees Retirement Association (PERA) for duty-disability benefits. His application was reviewed by Dr. Barry Leshman, a physician medical consultant for PERA. Based on that review, Dr. Leshman recommended that Weeres "be found totally disabled from his job as a Patrol Officer." In August 2019, the city terminated Weeres's employment. Also in August 2019, PERA notified Weeres and the city that Weeres's application for duty-disability benefits had been approved. PERA notified the city of its statutory obligation to provide continuing health-insurance coverage and its right to challenge PERA's determination by requesting a contested-case hearing within 60 days. The city timely requested a contested-case hearing.[3]

In relation to his applications for workers' compensation and duty-disability benefits, Weeres was evaluated by several additional practitioners. In April 2019, Dr. Renee Koronkowski evaluated Weeres and diagnosed him with PTSD and major depressive disorder. Dr. Koronkowski met with Weeres and ascertained details about his experiences and symptoms. She noted that he experienced "nightmares, flashbacks,

[3] PERA is listed as a respondent in the caption for the contested case and, as a result, listed in the caption for this appeal. *See* Minn. R. Civ. App. P. 143.01 ("The title of the action shall not be changed in consequence of the appeal."). The party appealing a decision in a certiorari matter is the relator, and any adverse party is a respondent. *Id.* PERA has not appealed the ALJ's decision and has not taken a position adverse to Weeres in the contested case or on appeal. But no party has raised the issue or requested that PERA's designation on appeal be changed. Accordingly, we need not determine whether PERA is properly characterized as a "respondent" in this matter.

intrusive thoughts of the traumatic events[,] and both physiological and psychological symptoms when exposed to cues that remind him of the traumatic events." Dr. Koronkowski also administered several diagnostic tests, including the PCL-5 PTSD Checklist. She reported that Weeres scored a 58 on that checklist and that any score above 33 is "associated with a diagnosis of PTSD." Dr. Koronkowski recommended that Weeres not return to work as a police officer but did not opine on the expected duration of Weeres's inability to work.

In March 2020, Dr. John Cronin evaluated Weeres and diagnosed him with PTSD. Like Dr. Koronkowski, Dr. Cronin met with Weeres to discuss his symptoms. And like Dr. Koronkowski, Dr. Cronin administered diagnostic tests, including the PCL-5 and LEC-5, which are both used to diagnose PTSD. Dr. Cronin opined that Weeres was suffering from PTSD, generalized anxiety disorder, and major depressive disorder. Dr. Cronin explained:

> From the testing performed on [Weeres] coupled with his own documented history of 25 years as a sworn police officer, it appears rather clear that he is suffering the above documented conditions and that they are directly and causally related to the performance of his duties as a sworn police officer.

Dr. Cronin opined that the prospect of Weeres returning to work as a police officer "would be highly problematic and would be contraindicated given his mental health diagnoses," but Dr. Cronin did not opine on the expected duration of Weeres's inability to work as a police officer.

Dr. Mark Halstrom, Weeres's treating physician, documented his health conditions in connection with his application for duty-disability benefits. Dr. Halstrom indicated that

Weeres suffered from PTSD, that he was unable to perform his duties as a police officer, and that he would be disabled from performing such duties for at least one year.

Weeres was also evaluated by mental-health practitioners retained by the city in connection with his workers' compensation and duty-disability applications. Dr. Jennifer Service evaluated Weeres, but the city did not produce a report from Dr. Service or otherwise disclose her opinions regarding Weeres's condition.

Dr. Paul Arbisi also evaluated Weeres for the city, and his May 8, 2020 report is in the record. Dr. Arbisi reviewed Weeres's medical records and administered diagnostic tests including the LEC-5. Dr. Arbisi opined that, although Weeres had been exposed to traumatic events, he did "not endorse a sufficient number of symptoms to meet criteria for PTSD." He further opined that, although Weeres had suffered from PTSD after the 2010 incident, the PTSD had resolved and was no longer present. He concluded that "Weeres does not meet the criteria for a psychiatric condition at this time."

In February 2022, a two-day contested-case hearing was held regarding the city's obligation to provide continuing health-insurance coverage. The city offered Dr. Arbisi's report as well as a report and testimony from Dr. Chinmoy Gulrajani. Dr. Gulrajani reviewed some of Weeres's medical records and opined that Drs. Powers Olson, Koronkowski, and Halstrom had incorrectly diagnosed Weeres with PTSD. Dr. Gulrajani did not meet with Weeres or review the March 2020 report of Dr. Cronin. Weeres submitted reports from Drs. Cronin and Koronkowski and relied on the diagnosis of Dr. Powers Olson. Weeres also testified on his own behalf, describing his traumatic experiences, mental-health symptoms, and treatment history.

Following the hearing, the ALJ issued a decision determining that Weeres did not have a duty disability and that the city was not required to provide continuing health-insurance coverage to him. The ALJ found that Weeres's mental condition prevented him from performing his duties as a police officer. But the ALJ found that Weeres had not met "his burden" to prove that the condition could be expected to persist for a year or that the condition bore the necessary causal connection to his performance of inherently dangerous duties as a police officer. In so finding, the ALJ relied heavily on Dr. Gulrajani's criticisms of the PTSD diagnoses by Drs. Powers Olson and Koronkowski. The ALJ reasoned that, because of shortcomings in those PTSD diagnoses, the record was insufficient to support an inference that Weeres had a duty disability. The ALJ did not address Dr. Cronin's report.

Weeres appeals the ALJ's decision.

DECISION

In Minnesota, public employers are required to provide continuing health-insurance coverage to police officers whom PERA determines are eligible to receive duty-disability benefits. Minn. Stat. § 299A.465, subd. 1(a)(1), (c), (d) (2022).[4] Duty-disability benefits are available to a police officer who has a physical or psychological condition that (1) is expected to prevent them from performing the normal duties of their position for a period

[4] The requirement also applies to peace officers covered by Minnesota State Retirement System (MSRS) plans (e.g., state troopers) and to firefighters. Minn. Stat. § 299A.465, subd. 1(a)(1), (c), (d); *see also* Minn. Stat. § 299A.465, subd. 5(a), (c) (2022) (defining peace officer and firefighter).

of at least 12 months, and (2) "is the direct result of an injury incurred during, or a disease arising out of, the performance of inherently dangerous duties that are specific to" the duties of a police officer. Minn. Stat. §§ 353.01, subd. 41, .656, subd. 1 (2022). A police officer may apply to PERA for duty-disability benefits. *See generally* Minn. Stat. § 353.031 (2022) (covering the application and decision procedures for a duty-disability-benefits application). If PERA determines that an officer is eligible for duty-disability benefits—and by extension continuing health-insurance coverage—the employer may, within 60 days, request a contested-case hearing before an ALJ to challenge the determination. Minn. Stat. § 299A.465, subd. 1(b)(2)-(3) (2022).[5]

The ALJ's decision following the contested-case hearing is the final administrative decision under Minn. Stat. § 14.62 (2022) and is subject to certiorari review by this court

[5] In *Conaway v. St. Louis County*, we addressed a previous version of the statute governing continuing health-insurance coverage and held that a public employer did not have the right to discovery in a district court action challenging its obligation to provide continuing coverage. 702 N.W.2d 779, 784-85 (Minn. App. 2005) (interpreting Minn. Stat. § 299A.465, subd. 1(a) (2004)). After *Conaway*, the legislature amended the statute to add the contested-case procedure. *See* 2008 Minn. Laws ch. 243, § 1, at 629-31. The discovery-related holding in *Conaway* is thus superseded by statute. We have also decided appeals from decisions of the former Minnesota Public Safety Officers Benefit Eligibility Panel. *See In re Claim for Benefits by Sletten*, 742 N.W.2d 701, 702 (Minn. App. 2007); *In re Claim for Benefits by Hagert*, 730 N.W.2d 546, 548 (Minn. App. 2007); *In re Claim for Benefits by Sloan*, 729 N.W.2d 626, 629 (Minn. App. 2007); *In re Claim for Benefits by Meuleners*, 725 N.W.2d 121, 124 (Minn. App. 2006). The legislative provisions creating the panel expired on July 1, 2008, and the provisions establishing the contested-case right became effective the same day. *See* 2008 Minn. Laws ch. 243, § 1, at 631; 2005 Minn. Laws ch. 136, art. 8, §§ 7-8, at 1007-09. Because of these procedural and other substantive changes to Minn. Stat. § 299A.465 (2022), our decisions addressing appeals from the former panel are not helpful to our decision here.

We note that the legislature again amended the statutes governing duty-disability benefits and continuing health-insurance benefits during the 2023 legislative session. *See* 2023 Minn. Laws ch. 48. Those amendments do not apply here.

under Minn. Stat. §§ 14.63-.68 (2022). *Id.*, subd. 1(b)(3). We may reverse the ALJ's decision if it is, as relevant here, based on legal error, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 14.69(d)-(f) (2022); *In re NorthMet Project Permit to Mine Application*, 959 N.W.2d 731, 749 (Minn. 2021) (*NorthMet*).

In reviewing agency decisions, we apply a "presumption of correctness" and will "affirm agency conclusions even if we may have reached a different conclusion if we were the factfinder." *In re Reichmann Land & Cattle, LLP*, 867 N.W.2d 502, 512 (Minn. 2015) (quotation omitted).[6] We will "intervene if a combination of danger signals suggest the agency has not taken a hard look at the salient problems and has not genuinely engaged in reasoned decision-making." *Id.* (quotations omitted).

Having examined the applicable standards for our review, we turn to the two arguments advanced by Weeres for reversal of the ALJ's decision.[7]

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[6] The "presumption of correctness" is rooted in the principle that "[t]he agency decision-maker is presumed to have the expertise necessary to decide technical matters within the scope of the agency's authority." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001). It is not clear how the presumption should apply in this case, where PERA—the administrative agency with the relevant expertise—issued a decision on duty-disability benefits that is contrary to the ALJ's decision on continuing health-insurance coverage. We assume without deciding that the ALJ's decision is subject to the presumption of correctness.

[7] Weeres also asserts a third argument: that the ALJ's decision must be reversed because the ALJ was bound by the collateral-estoppel effect of a decision by a workers' compensation judge granting Weeres workers' compensation benefits. Weeres argues that the ALJ "erred as a matter of law" by not applying collateral estoppel. But collateral estoppel is a discretionary equitable doctrine, and this court applies an abuse-of-discretion standard of review to a decision whether to apply the doctrine once its prerequisites have been satisfied. *See, e.g.*, *Fain v. Andersen*, 816 N.W.2d 696, 699 (Minn. App. 2012), *rev. denied* (Minn. May 21, 2013); *see also SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 860 (Minn. 2011) (noting that "[a] deferential standard of review might be applicable where, after balancing the equities, the district court

I.

We first address Weeres's argument that the ALJ erred by assigning to him the burden of proving that he has a duty disability. Under administrative rules governing contested cases, "[t]he party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard." Minn. R. 1400.7300, subp. 5 (2021). Here, the applicable substantive statute, Minn. Stat. § 299A.465, does not provide a burden or standard of proof. We therefore conclude that, when a public employer seeks a contested-case hearing to challenge its obligation to provide continuing health-insurance coverage to a former employee under Minn. Stat. § 299A.465, the employer has the burden to prove that the employee did not suffer a duty disability within the meaning of Minn. Stat. § 353.01, subd. 41. The ALJ recognized that the administrative rules place the burden of proof on the party proposing an action to be taken, but the ALJ's decision assigned the burden of proof to Weeres. The ALJ's decision is therefore based on an error of law.

The city agrees that it bore the burden of proof in challenging Weeres's right to continuing health-care coverage, but the city asserts that the ALJ applied the burden correctly. The record refutes that assertion. Despite recognizing the administrative rule governing the burden of proof, the ALJ expressly assigned the burden to Weeres, stating that:

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determines not to award equitable relief"). We therefore reject without further discussion Weeres's argument that the ALJ "erred as a matter of law" by not applying collateral estoppel.

- "Weeres has not met his burden to establish that his condition can be expected to persist for one year."

- "However, Weeres has the burden to establish that his condition is not just work-related but 'the direct result of an injury incurred during, or a disease arising out of, the performance of inherently dangerous duties' as a patrol officer."

The city nevertheless asserts that the ALJ properly applied the burden, relying primarily on the fact that it presented its evidence first at the contested-case hearing. The city also asserts that, read contextually, the statements above did not shift the burden to Weeres. We are not persuaded.

The ALJ's decision repeatedly references insufficiency of record evidence in determining that Weeres did not have a duty disability. For instance, the ALJ found significant "the lack of a medical evaluation clearly supporting a determination about the chronicity or expected duration of Weeres's condition." But it was not Weeres's burden to prove that his condition would last more than a year. It was the city's burden to prove that it would not. Similarly, the ALJ assigned to Weeres the consequence of "insufficient evidence of causation of [his] condition," reasoning that "the record does not support the necessary finding that his condition is the direct result of an injury incurred during, or a disease arising out of, the performance of inherently dangerous duties." But here again, Weeres did not have the burden of proof. Rather than require Weeres to prove that his performance of inherently dangerous duties caused his PTSD, the ALJ should have required the city to prove that it did not.

"Absence of proof on a vital issue loses the case for the party having the burden of proof." *McGerty v. Nortz*, 254 N.W. 601, 602 (Minn. 1934), *cited in State v. Curtis*, 921

N.W.2d 342, 348 (Minn. 2018); *see also Howard v. Marchildon*, 37 N.W.2d 833, 836 (Minn. 1949) ("Where a party having the burden of proof with respect to a particular issue fails to sustain such burden, decision as to such issue must go against him."); *Maher v. Duluth Yellow Cab Co.*, 215 N.W. 678, 679 (Minn. 1927) (explaining that "the burden of proof is with the affirmative" and "[t]he negative prevails automatically without evidence either way"). The city had the burden to prove that Weeres was not eligible for continuing health-insurance coverage by proving that he did not have a duty disability. By placing responsibility for developing the record on Weeres, the ALJ improperly assigned to him the burden of proof. The ALJ's decision is therefore based on a prejudicial error of law and subject to reversal. *See* Minn. Stat. § 14.69(d).

II.

We next address Weeres's argument that the ALJ's decision is unsupported by substantial evidence and arbitrary and capricious. "As the supreme court has explained, the substantial-evidence standard governs judicial review of factual issues requiring agency judgment." *In re PolyMet Mining, Inc.*, 965 N.W.2d 1, 8 (Minn. App. 2021) (*PolyMet*) (citing *In re Application of Minn. Power for Auth. to Increase Rates for Elec. Serv.*, 838 N.W.2d 747, 757 (Minn. 2013) (*Minn. Power*)), *rev. denied* (Minn. Sept. 29, 2021). Under that test, we ask (1) whether the decision-maker has "adequately explained" the decision and (2) whether the decision is "reasonable on the basis of the record." *Id.* at 9 (quotations omitted); *see also NorthMet*, 959 N.W.2d at 749. "[A]n agency decision may fail substantial-evidence review if the agency does not adequately explain the reasons for its decision *or* if the record does not support the agency's reasons for its decision." *PolyMet*,

965 N.W.2d at 9; *see also NorthMet*, 959 N.W.2d at 754 (holding that agency erred by denying contested-case hearing because record was "devoid" of evidence to support agency determination); *Minn. Power & Light Co. v. Minn. Pub. Utils. Comm'n*, 342 N.W.2d 324, 329 (Minn. 1983) (discussing the requirement that an agency explain its decision); *In re City of Cohasset's Decision on Need for an Env't Impact Statement for Proposed Frontier Project*, 985 N.W.2d 370, 386 (Minn. App. 2023) (reversing agency decision as unsupported by substantial evidence where city did not investigate issue or explain basis for rejecting environmental concerns raised by party).

"An agency's decision is arbitrary or capricious when it represents the agency's will and not its judgment." *In re Schmalz*, 945 N.W.2d 46, 54 (Minn. 2020) (quotation omitted). In addition, a finding that lacks the support of substantial evidence may be arbitrary and capricious if the agency "offered an explanation that runs counter to the evidence." *Id.* (quotation omitted). A decision may also be arbitrary and capricious: if the agency "relied on factors not intended by the legislature," if the agency "entirely failed to consider an important aspect of the problem," or if "the decision is so implausible that it could not be explained as a difference in view or the result of the agency's expertise." *Id.* (quotation omitted).

Weeres argues that the ALJ's decision is not supported by substantial evidence and arbitrary and capricious for a number of related reasons. He asserts that the ALJ improperly (1) relied on Dr. Gulrajani's opinion even though Dr. Gulrajani never examined Weeres; (2) admitted into evidence Dr. Arbisi's report although he was not disclosed as an expert; (3) failed to address Dr. Cronin's expert report; and (4) substituted her own diagnosis of

Weeres.[8] Weeres argues that "[t]he record is replete with 'danger signals'" justifying this court's intervention. We agree with Weeres's assessment of the record.

As we explain above, the ALJ relied on the report and testimony of Dr. Gulrajani—who had never examined Weeres[9]—to reject the opinions of Drs. Powers Olson and Koronkowski, who had examined Weeres and diagnosed him with PTSD in February 2019 and April 2019, respectively.[10] And both Dr. Gulrajani and the ALJ entirely failed to address the opinion of Dr. Cronin, who examined Weeres and diagnosed him with PTSD in March 2020. In addition, the ALJ's decision makes no mention of the fact that the city retained an expert—Dr. Jennifer Service—who *did* examine Weeres. But the city never

[8] Weeres also argues that the ALJ added an additional element to the duty-disability determination by noting that "[n]o provider has determined that Weeres's condition is not susceptible to effective treatment." We read this language as part of the ALJ's analysis of the statutory requisite for duty-disability benefits that a condition is expected to prevent an applicant from performing peace-officer duties for at least 12 months. *See* Minn. Stat. § 353.01, subd. 41. We thus reject Weeres's argument in this respect, although we reiterate that it was the city's burden to demonstrate that Weeres did not have a duty disability—not Weeres's burden to prove that he did.

[9] Weeres relies on the Minnesota Rules of Evidence to argue that Dr. Gulrajani's opinion lacks foundation. We note that contested-case hearings are not governed by these rules. Rather, "[i]n contested cases agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs." Minn. Stat. § 14.60, subd. 1 (2022); *see also* Minn. R. 1400.7300, subd. 1 (2021). The fact that Dr. Gulrajani never examined Weeres may nevertheless inform our determination of whether the ALJ's decision is unsupported by substantial evidence or arbitrary or capricious. *See*, *e.g.*, *Smith v. Cont'l Cas. Co.*, 450 F.3d 253, 264 (6th Cir. 2006) (holding that decision to rely on paper review of medical records when independent examination is available supports determination of arbitrariness).

[10] Although we separately analyze whether the ALJ's decision is based on error of law or unsupported by substantial evidence and arbitrary and capricious, we note a possible relationship between the ALJ's legal and evidentiary errors. Had the ALJ properly applied the burden of proof, she may have required more than Dr. Gulrajani's paper review to support a finding that Weeres did not have a duty disability.

disclosed Dr. Service's diagnosis, which Weeres argued supported an inference that Dr. Service determined that Weeres had PTSD.

We will not lightly interfere with administrative decisions, nor will we reweigh evidence. *See Blue Cross*, 624 N.W.2d at 278. But we are persuaded that the ALJ's myopic reliance on Dr. Gulrajani's testimony was unreasonable given the entire record. *See NorthMet*, 959 N.W.2d at 749 (applying substantial-evidence test). And the ALJ's failure to address all of the relevant evidence supports the conclusions that the decision was the product of will rather than judgment. *See Schmalz*, 945 N.W.2d at 54 (applying arbitrary-and-capricious test). We thus conclude that the ALJ's decision was unsupported by substantial evidence and arbitrary and capricious, and that it should be reversed. *See* Minn. Stat. § 14.69(e)-(f).

Conclusion

The ALJ's decision that Weeres did not have a duty disability—and thus that the city was not required to provide continuing health-insurance coverage—is based on an error of law because the ALJ improperly assigned the burden of proof to Weeres. The decision is also unsupported by substantial evidence and arbitrary and capricious. We therefore reverse the ALJ's decision, and the city remains statutorily obligated to provide continuing health-insurance coverage to Weeres by operation of PERA's approval of Weeres's application for duty-disability benefits.

Reversed.