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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-173**

In the Matter of
the Appeal of Brian Buria
to the Minnesota State Retirement
Board of Directors

**Filed November 23, 2010
Affirmed
Hudson, Judge**

Minnesota State Retirement System

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Considered and decided by Larkin, Presiding Judge; Peterson, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Relator Brian Buria challenges the Minnesota State Retirement System Board's denial of his application for duty-related disability benefits. Because the board's decision is supported by substantial evidence, we affirm.

FACTS

Brian Buria is a former conservation officer for the Minnesota Department of Natural Resources (DNR) who suffers from depression. In December 2008, Buria

applied for disability benefits under Minn. Stat. § 352B.101 (2008). The Minnesota State Retirement System (MSRS) approved Buria for non-duty disability benefits but denied him duty-related disability benefits. Buria appealed the decision. An administrative law judge (ALJ) held a fact-finding conference at which Buria and the MSRS presented evidence about Buria's employment background, stressors in his life, and medical opinions regarding his disability.

Buria worked as a conservation officer for 22 years. During that time, Buria was twice discharged for misconduct related to substance abuse. In February 2003, Buria was discharged for alcohol-related misconduct, but after completing treatment, Buria was permitted to return to work so long as he did not "engage[] in alcohol or drug-related misconduct or ha[ve] a positive test result while on or off duty." In August 2008, Buria's former girlfriend reported that he had engaged in drug-related misconduct and violated other DNR policies. Buria initially was placed on administrative leave, but he was permanently discharged in February 2009 after being arrested and charged with possession of controlled substances and drug paraphernalia.

Buria testified that he became disabled as a result of four work-related incidents. First, early in his career, Buria was involved in a case in which he entered private property to examine a deer camp. While he was there, Buria issued a citation for possession of a loaded firearm. According to Buria, the individual he cited was a friend of the county attorney, who threatened Buria with prosecution for trespass and forced

Buria to prosecute the case himself.¹ Second, in 2002 or 2003, a co-worker accused Buria of sexual misconduct. Buria was placed on leave for three months, but he was ultimately cleared and permitted to return to work. Third, in November 2005, Buria issued a citation to a lawful permanent resident for transporting a loaded firearm during deer season. According to Buria, the individual had terrorist ties and was therefore deported from the United States. Buria testified that he assisted with the deportation case and that he received threats from the individual's family for doing so.² Fourth, in the few years before his discharge, Buria developed a proposal for public-service announcements to teach snowmobilers to "water skip" in the event they encountered open water. Buria testified that he presented the idea to his supervisor, but his supervisor rejected it within minutes.

Buria testified that as a result of these incidents, he became depressed and anxious. Buria also stated that he "complained constantly" to his supervisors that his duties were affecting his mental health. But Buria's supervisors testified that Buria never told them that he was experiencing any psychological difficulties as a result of his work. Instead, Buria's supervisors testified that Buria told them that he was fearful of his former girlfriend, who he claimed had threatened suicide and broken into his home. Buria

¹ The underlying case was *State v. Sorenson*, in which the Minnesota Supreme Court held that Buria's warrantless entry onto the property was constitutional pursuant to the open-fields doctrine. *State v. Sorenson*, 441 N.W.2d 455, 458 (Minn. 1989). There is no indication in the opinion that Buria, a non-attorney, prosecuted this case.

² The underlying deportation case was *Awad v. Gonzales*, in which the United States Court of Appeals for the Eighth Circuit upheld Awad's deportation for a firearms offense. *Awad v. Gonzales*, 494 F.3d 723 (8th Cir. 2007). There is no indication from this opinion that Awad was involved in any terrorist activities.

acknowledged that he was having problems with his ex-girlfriend, but he described it as only one of many problems—most of which involved stress at work—that contributed to his depression and anxiety.

The medical reports were inconsistent as to whether Buria was disabled and, if so, whether Buria’s disability was work-related. Dr. John Hung, who examined Buria at the request of the DNR, opined that Buria exhibited strong indications of maladaptive personality features, but that they did not rise to the level of a disabling impairment. Drs. Heidi Korstad and George Rounds, Buria’s treating physicians, diagnosed Buria with depression and opined that his depression was caused by work-related stress. Dr. Jared Frazin, who reviewed Buria’s medical records, including the reports of Drs. Korstad and Rounds at the request of the MSRS, agreed that Buria was disabled but offered no opinion as to whether the disability was duty-related.³

The ALJ found that Buria was disabled, but concluded that his disability was not a “direct result of an injury, sickness, or other disability that incurred or arose out of any act of duty as a conservation officer.” The ALJ therefore recommended that the board affirm the denial of duty-related disability benefits. The board adopted the ALJ’s recommendation. This certiorari appeal follows.

D E C I S I O N

The Minnesota Supreme Court has compared a public retirement fund board to an administrative agency. *See Axelson v. Minneapolis Teachers’ Ret. Fund Ass’n*, 544 N.W.2d 297, 299 (Minn. 1996). Thus, this court will reverse the decision of the board

³ It is unclear whether Dr. Frazin reviewed Dr. Hung’s report.

only if it is ““fraudulent, arbitrary, unreasonable, unsupported by substantial evidence, not within its jurisdiction, or based on an error of law.”” *Id.* (quoting *Dokmo v. Indep. Sch. Dist. No. 11*, 459 N.W.2d 671, 675 (Minn. 1990)). The burden is on the party seeking review of the board’s decision “to establish that the findings of the agency either are not supported by the evidence in the record, considered in its entirety, or are arbitrary and capricious.” *In re Application of Allers*, 533 N.W.2d 646, 652 (Minn. App. 1995), *review denied* (Minn. Aug. 30, 1995).

A conservation officer is entitled to duty-related disability benefits if he becomes disabled; he is expected to be “physically or mentally unfit to perform [his] duties for at least one year as a direct result of an injury, sickness, or other disability that incurred in or arose out of any act of duty.” Minn. Stat. § 352B.10, subd. 1 (2008).⁴ The conservation officer bears the burden of producing evidence to support his application for duty-related disability benefits. Minn. Stat. § 352B.10, subd. 4 (2008). The parties agree that Buria is disabled and that his disability is expected to last for at least one year. The parties also do not dispute that the work-related stress suffered by Buria was “incurred in or arose out of [an] act of duty.” Therefore, the only issue before this court is whether substantial evidence supports the ALJ’s finding that Buria’s work-related stress did not directly result in his disability.

⁴ The MSRS board cites the 2008 version of the statute, and Buria cites the current version, but neither party explains which version is applicable. We apply the 2008 version because Buria submitted his application for disability benefits, and the MSRS made its initial decision, prior to July 1, 2009, the effective date of the current version. *See* 2009 Minn. Laws ch. 169, art. 2, § 15, at 2316.

This court addressed whether an applicant's disability was a "direct result" of an act of duty in *In re Hildebrandt*, 701 N.W.2d 293 (Minn. App. 2005). In *Hildebrandt*, the applicant, a 911 dispatcher, applied for disability benefits under a statute with language virtually identical to that of Minn. Stat. § 352B.10. *See id.* at 295 (citing Minn. Stat. § 353E.06 (2004)). The applicant developed a panic disorder that she claimed was a direct result of handling 911 calls, but the Public Employees Retirement Association Board concluded that it was a direct result of personality conflicts with co-workers. *Id.* at 296. This court reversed, concluding that substantial evidence established that applicant's panic attacks were a direct result of responding to 911 calls. *Id.* at 301.

Buria contends that the facts here are analogous to those in *Hildebrandt*. As such, Buria argues that substantial evidence establishes that Buria's disability was a direct result of work-related stress. We disagree.

Initially, Buria argues that the medical evidence proves that his disability was caused by work-related stress. The medical evidence presented at the fact-finding conference, however, was inconsistent. Dr. Hung determined that Buria was not disabled. Dr. Frazin found that Buria was disabled, but did not comment on the cause of Buria's disability. Only Drs. Korstad and Rounds opined that Buria had a disability and that it was work-related. But the ALJ discounted their opinions because Buria failed to inform them of alternative causes for his depression, including recurrent problems with his former girlfriend and a then-pending investigation into his alleged drug and alcohol abuse. Therefore, unlike the applicant in *Hildebrandt*, whose physicians credibly opined that the applicant was suffering panic attacks as a result of handling 911 calls, Buria has

failed to present credible medical opinions indicating that his depression was caused by work-related stress. *See id.* at 300–01.

Additionally, Buria contends that his disability must be work-related because he was first prescribed antidepressants while he was working on the deportation case. In support of his argument, Buria points to a 2009 psychological-testing report in which he stated that the deportation case caused him a great deal of stress and that he became depressed as a consequence. This report, however, is simply a recitation of Buria’s own statements; it does not constitute medical evidence regarding the cause of his depression. At most, this report establishes a correlation between Buria’s work on the deportation case and his need for antidepressants. Thus, unlike the applicant in *Hildebrandt*—who not only established a correlation between her work-related stress and her panic attacks, but also produced medical evidence of the causal relationship between the two—Buria has produced no credible medical opinions indicating that his depression was a direct result of his work on the deportation case, let alone any other work duties. *See id.*

In his reply brief, Buria also argues that the medical evidence in this case was not accurately presented to the board at the time that it decided to adopt the ALJ’s recommendation. Issues not raised or argued in the appellant’s brief cannot be revived in a reply brief. *McIntire v. State*, 458 N.W.2d 714, 717 n.2 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990). Because Buria raised this argument for the first time in his reply brief, he has waived this issue.

In effect, Buria asks this court to reweigh the evidence and reassess witness credibility. But “[e]videntiary weight and witness credibility are within the province of

the fact-finder.” *Melius v. Melius*, 765 N.W.2d 411, 417 (Minn. App. 2009). We conclude that substantial evidence, including the reports of Dr. Hung and the testimony of Buria’s supervisors, supports the board’s determination that Buria’s depression was not duty-related.

Affirmed.