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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1176-20**

RANDALL SCHIFFELBEIN,

Petitioner-Appellant,

v.

**BOARD OF TRUSTEES,
PUBLIC EMPLOYEES'
RETIREMENT SYSTEM,**

Respondent-Respondent.

Argued May 26, 2022 – Decided June 7, 2022

Before Judges Haas and Mitterhoff.

On appeal from the Board of Trustees of the Public Employees' Retirement System, Department of Treasury, PERS No. x-xx-xxx280.

Samuel M. Gaylord argued the cause for appellant (Szaferman, Lakind, Blumstein & Blader, PC, attorneys; Samuel M. Gaylord, on the brief).

Alison Keating, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Acting Attorney General, attorney; Sookie Bae-Park, Assistant

Attorney General, of counsel; Austin J. Edwards,
Deputy Attorney General, on the brief).

PER CURIAM

Appellant Randall Schiffelbein appeals from a final determination of the Board of Trustees of the Public Employees' Retirement System (Board) denying his application for accidental disability benefits under N.J.S.A. 43:15A-43. We affirm.

Appellant worked as a facilities manager for a school district. Appellant suffered from neck and back pain since 2005. He occasionally sought chiropractic treatment for this condition.

In September 2015, appellant was involved in an off-duty car accident. He complained of neck and back pain, with pain radiating to his right arm and leg. He began going to the chiropractor twice a week.

Objective medical testing revealed that appellant suffered from pre-existing, age-related changes at C-3, with disc herniations, severe left foraminal stenosis and nerve narrowing. A November 2015 lumbar MRI confirmed the disc herniations in appellant's back, and lumbar radiculopathy attributable to the 2015 accident. Because his symptoms did not subside, appellant's doctors prescribed a course of three epidural injections to his neck between February 3 and 29, 2016.

Less than one month later, on March 18, 2016, appellant was in a second car accident, this time while he was on duty and driving between work assignments. He again complained of neck and back pain, which radiated to his arm and leg. The objective testing showed that appellant aggravated his pre-existing cervical spine pathology from the earlier accident. A May 7, 2016 MRI revealed no changes from the findings of the November 2015 MRI.

In May 2016, a surgeon operated on appellant's neck. Thereafter, appellant applied for accidental disability benefits. The Board denied this application because his disability was not the direct result of the work-related incident in 2016. However, the Board granted appellant ordinary disability retirement benefits. Appellant requested a hearing, and the Board transferred the matter to the Office of Administrative Law as a contested case.

The Board's expert in orthopedic surgery, Dr. Arnold Berman, examined appellant on July 21, 2017. At that time, Berman testified he was not aware appellant had been in a car accident in September 2015. Thus, Berman stated in his initial report that appellant was eligible for accidental disability benefits. However, when Berman discovered the 2015 incident, he prepared an addendum to his report and concluded that appellant's disability was caused by his pre-existing neck and back issues rather than the 2016 accident. Berman stated that

appellant's treatment regimen dramatically increased after the 2015 accident, and he was seeing a chiropractor two times a week prior to the 2016 incident. In addition, the findings of the post-2016 accident MRI were no different than those of the November 2015 MRI.

Appellant's orthopedic expert, Dr. David Weiss, examined appellant in October 2018. He stated that appellant had a strain and sprain in his neck and lower back following the 2015 accident, together with pre-existing age-related degenerative disc disease. However, he opined that the 2016 accident aggravated these conditions and caused his disability.

The Administrative Law Judge (ALJ) issued an initial decision and concluded appellant was totally disabled as the direct result of the 2016 accident. In so ruling, the ALJ found that "[b]oth medical experts proved to be credible, competent witnesses." However, the ALJ found that Weiss' testimony was more persuasive because Berman's initial report reached a different conclusion than his later addendum.

After reviewing the ALJ's initial decision and the entire record, the Board rejected the ALJ's recommendation. In its final decision, the Board credited Berman's testimony that appellant's disability was not the direct result of the 2016 accident. The Board found that appellant "had symptomatic neck and back

issues with radiating pain prior to the incident." Appellant was seeing a chiropractor prior to 2015. In 2015, he had a car accident and complained of neck and back pain, which radiated to his arm and leg. Appellant made these same complaints after the 2016 accident. The conditions revealed in appellant's November 2015 MRI were unchanged following the 2016 accident, as shown in the May 2016 MRI. Under these circumstances, the Board concluded that the 2016 incident merely "aggravated or ignited [appellant's] long-standing, thoroughly documented, pre-existing neck and back issues." Therefore, the Board found that appellant was not entitled to accidental disability retirement benefits.

On appeal, appellant argues the Board erred in denying his application for accidental disability benefits and contends that he "demonstrated his disability was substantially caused by the March 18, 2016 incident." We disagree.

"Our review of administrative agency action is limited." Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011) (citing In re Herrmann, 192 N.J. 19, 27 (2007)). "An administrative agency's final quasi-judicial decision will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record."

Ibid. (quoting Herrmann, 192 N.J. at 27-28). Our review of an agency's decision is limited to considering:

(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp., 216 N.J. 370, 385-86 (2013) (quoting Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995)).]

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

To qualify for an accidental disability retirement, a Public Employees' Retirement System member must be "permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties[.]" N.J.S.A. 43:15A-43 (emphasis

added). While "the traumatic event need not be the sole or exclusive cause of the disability[.]" it must be "the direct cause, i.e, the essential significant or substantial contributing cause of the disability [in order] to satisfy the statutory standard of an accidental disability even though it acts in combination with an underlying physical disease." Gerba v. Bd. of Trs., 83 N.J. 174, 186-87 (1980); See also Petrucelli v. Bd. of Trs., Pub, Emps.' Ret. Sys., 211 N.J. Super. 280, 288-89 (App. Div. 1986) (the appellant qualified for accidental disability retirement because the traumatic event caused symptoms where none previously existed); Titman v. Bd. of Trs., Tchrs.' Pension & Annuity Fund, 107 N.J. Super. 244, 247 (App. Div. 1969) (holding that the word "direct" in the term direct result "connotes a relative freedom from remoteness, whether in terms of time, intervention of other contributive causes or the like, or a combination of such factors.").

Contrary to appellant's argument, the Board was not required to simply accept the ALJ's finding that Weiss' expert testimony was more persuasive than Berman's opinions. Because these were expert witnesses, the Board was able to make its own determination as to the probative value of the testimony. ZRB, LLC. v. N.J. Dep't of Env't. Prot., 403 N.J. Super. 531, 561-62 (App. Div. 2008). In rejecting the ALJ's conclusion that Weiss' opinions warranted greater weight,

the Board stated with particularity its reasons for doing so and it thoroughly explained "why the ALJ's decision was not supported by sufficient credible evidence or was otherwise arbitrary." Cavalieri v. Bd. of Trs., Pub. Emps. Ret. Sys., 368 N.J. Super. 527, 534 (App. Div. 2004).

In crediting Berman's testimony, the Board found that appellant was under active treatment for back, neck, arm, and leg pain before and after the 2015 accident. He received epidural injections for his condition just a month before the 2016 accident. The MRI performed after the 2016 event showed that appellant's condition was unchanged from the results shown in the 2015 MRI.

Under these circumstances, we discern no basis to second-guess the Board's conclusion "that the 2016 incident merely 'aggravated or ignited [appellant's] long-standing, thoroughly documented, pre-existing neck and back issues." Applying our highly deferential standard of review, we are satisfied there is sufficient credible evidence in the record to support the Board's determination that appellant failed to meet his burden of proving he qualified for accidental disability benefits pursuant to N.J.S.A. 43:15A-43. Because the Board's determination was neither arbitrary, capricious, nor unreasonable, we affirm.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION