STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: August 28, 2017)

EMILE E. ZIADEH, *Plaintiff,*	:	
v.	:	**C.A. No. PC-2016-4629**
EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND BOARD, *Defendant.*	:	

DECISION

LICHT, J. Plaintiff Emile E. Ziadeh (Plaintiff or Ziadeh) appeals from a decision of the Employees' Retirement System of Rhode Island Board (ERSRI or the Board) denying him an accidental disability pension. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

Ziadeh was employed with the Rhode Island Department of Transportation (RIDOT) as a civil engineer for over twenty-five years. On July 3, 2009, Plaintiff suffered a work-related back injury. He returned to work in September 2010 to what Plaintiff describes as "chaos" and "a very stressful job environment." Pl.'s Mem. 2-3. On November 19, 2010, Ziadeh, while at work, experienced upper body pains and went home. His wife then took him to receive medical care, and it was determined he had suffered a heart attack. Ziadeh has not worked since.

On September 12, 2012, Plaintiff was granted an ordinary disability pension. However, he had also applied for accidental disability retirement benefits on April 7, 2011.[1] Three

[1] In Rhode Island, there are two forms of disability retirement: ordinary disability and accidental disability. "When an injury is not work-related or if it is not the result of a specific accident, an

independent medical examiners (IMEs) examined Ziadeh during July 2014 in connection with the accidental disability application pursuant to G.L. 1956 § 36-10-14(c): Dr. Arnoldas Giedrimas on July 9, 2014; Dr. Alberto R. Savoretti on July 22, 2014; and Dr. A. Louis Mariorenzi on July 29, 2014. After reviewing Plaintiff's case, the ERSRI Disability Subcommittee (Subcommittee) recommended denial of Ziadeh's application on November 7, 2014. The Board adopted the Subcommittee's recommendation on November 12, 2014. Plaintiff subsequently moved for reconsideration before the Subcommittee, and such a hearing was conducted on December 4, 2015. The Subcommittee again recommended denial, which the Board adopted on December 9, 2015. ERSRI 00960.[2] Ziadeh moved to remand the matter; the Subcommittee heard argument on June 3, 2016, but declined to rule on the motion. The Board again accepted the Subcommittee's recommendation, this time on June 8, 2016. ERSRI 001015. The full Board denied Ziadeh's application a third time after hearing argument on September 14, 2016. ERSRI 001036. Plaintiff commenced this action shortly thereafter, on October 3, 2016.

II

Standard of Review

Appeals from ERSRI are governed by the Administrative Procedures Act, §§ 42-35-1 et seq. According to § 42-35-15(g):

> "The 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;

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employee may nevertheless qualify for an ordinary disability pension. Although the conditions for this form of disability pension are less onerous, the payout is typically less." Rossi v. Emps.' Ret. Sys., 895 A.2d 106, 111 (R.I. 2006).

[2] Instead of referring to specific exhibits in the record, the Court will refer to the Bates-stamped page numbers.

"(2) In excess of the statutory authority of the agency;
"(3) Made upon unlawful procedure;
"(4) Affected by other error or 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."

"In the event competent evidence exists in the record, the Superior Court is required to uphold the agency's conclusions." R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd., 650 A.2d 479, 485 (R.I. 1994).

III

Analysis

Plaintiff contests the Board's decision on three grounds. First, Ziadeh argues that the Board erred by not engaging three cardiologists as IMEs for his accidental disability application. This lack of appropriate specialists leads in part to Plaintiff's second criticism—that the Board analyzed the evidence in front of them incorrectly. Specifically, Ziadeh avers that the Board should have given more weight to the reports of the cardiologists that did exist, and that the Board incorrectly focused on Ziadeh's initial back injury and not his cardiac event. Finally, Ziadeh argues that the Board incorrectly concluded that his heart attack was not caused by an accident at work.

A

Statutory Obligations

Plaintiff has been examined by at least a dozen physicians in a variety of contexts since his heart attack. As part of his personal medical care, Ziadeh has been seeing Dr. Kenneth J. Morrissey for his back and, among others, Dr. Jack P. Mourad and Dr. Joseph A. Wyllie for cardiac monitoring and treatment. When Ziadeh applied for ordinary disability benefits, he

included statements from Dr. Thomas K. Dudenhoeffer, an internist, and Dr. Daniel J. Levine, a cardiologist. The Board, pursuant to § 36-10-12(b), then engaged three IMEs, who examined Ziadeh for the ordinary disability application. These doctors, Dr. Kenneth S. Korr, Dr. Albert S. Most, and Dr. Heather M. Hurlburt, were all cardiologists. For his subsequent accidental disability application, Plaintiff included statements from Dr. Levine and Dr. Morrissey. For the accidental disability application, the Board also engaged three IMEs pursuant to § 36-10-14(c) to examine Ziadeh. These physicians were Dr. Arnoldas Giedrimas, a cardiologist; Dr. Alberto R. Savoretti, an internist; and Dr. Michael P. Mariorenzi, an orthopedic surgeon. Ziadeh was also examined by Dr. Jeffrey B. Sack, a cardiologist, in spring 2015. Dr. Sack wrote an opinion letter dated August 21, 2015, which Ziadeh provided to the Board three days later.

Ziadeh first argues that he is entitled to three IMEs specifically related to his disability. Because Ziadeh's disability is related to his heart attack, he argues the three IMEs who examined him should all have been cardiologists. The procedure for procuring accidental disability benefits is governed by statute and departmental regulations. As such, the Court turns to that body of law to see if Ziadeh's assertion that he must be examined by three cardiologists is correct.

The IME requirement is dictated by § 36-10-14(c), which states:

> "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."

The statute merely requires that three physicians investigate the member's disability. It is uncontested that the IMEs here were physicians. There is no requirement that they be specialists. The Board's regulations also do not require any specialty from IMEs. See ERSRI Regulations § 1.9(C)(6)-(7), (D)(3).

Thus, with regard to § 36-10-14(c), there is no requirement that Ziadeh be examined by three IMEs who are experts in any particular field—they need only be licensed physicians. Of course, this is not the only law at issue. The Court will reverse an administrative agency's decision where there is no legally competent evidence in the record. See, e.g., Town of Burrillville v. R.I. State Labor Relations Bd., 921 A.2d 113, 121 (R.I. 2007). Were Ziadeh examined, for instance, by three dermatologists, their knowledge might be so far afield from the underlying injuries he sustained—first the back injury and later the disabling heart attack—to warrant reversal for lack of legally competent evidence. However, the IMEs that examined Ziadeh were a cardiologist, an orthopedic surgeon, and an internist. The cardiologist was able to attest to Plaintiff's heart condition in the context of his specialty, just as the orthopedic surgeon could assess Plaintiff's back injury. Given that the initial application for accidental disability benefits mentioned both the back injury and the ultimately disabling heart attack, it was eminently sensible for the Board to procure a specialist in each area. Thus, the Court finds no error in the selection of IMEs for Ziadeh's accidental disability application.

B

Weight of the Evidence

Ziadeh next argues that the Board erred in that they "totally mishandled, misconstrued[,] and misunderstood the medical evidence" before it. Pl.'s Mem. 20. According to Plaintiff, the Board inappropriately disregarded the opinions of examining cardiologists and gave too much

weight to the reports of the non-specialists. The Board further erred, Plaintiff argues, by emphasizing his back injury when the critical disability was cardiac in nature.

This Court's inquiry on appeal is limited. "[T]he Superior Court may not, on questions of fact, substitute its judgment for that of the agency whose action is under review." R.I. Pub. Telecomms. Auth., 650 A.2d at 485. "It is well settled that the Superior Court must uphold an agency decision that is supported by competent evidence in the certified record." Nickerson v. Reitsma, 853 A.2d 1202, 1206 (R.I. 2004). "Substantial evidence . . . means [an] amount more than a scintilla but less than a preponderance." Caswell v. George Sherman Sand & Gravel Co., 424 A.2d 646, 647 (R.I. 1981).

The Plaintiff argues that the Board wrongly weighed the various medical records. For instance, Plaintiff argues that Dr. Mariorenzi, the orthopedic surgeon, "is incompetent to render any opinion on the relationship between Mr. Ziadeh's job and his heart attack." Pl.'s Mem. 21. However, Dr. Mariorenzi also made no opinion as to the "causal relationship" between the heart attack and Plaintiff's job. ERSRI 00170. Dr. Mariorenzi simply observed that Ziadeh had preexisting risk factors for a heart attack, something that he knew "to a reasonable degree of medical certainty." Id. Furthermore, the Board did not rely on Dr. Mariorenzi's limited assessment of Plaintiff's heart condition in its written decision.

Next, Ziadeh argues that the Board improperly interpreted the other two IMEs' reports by reading them to imply that his heart attack was not primarily caused by stress at work. He states that the IME reports, in fact, support his case. However, this Court cannot reweigh the evidence. Dr. Savoretti's report indicates that the relationship between Ziadeh's injury and disability was "indirect, and not complete." ERSRI 00161. In fact, Dr. Savoretti found that "[t]he job[-]related element is the back injury." Id. Furthermore, Dr. Savoretti noted that "[o]ne will never know, but

I would say both work and non[-]work related factors are present." Id. Dr. Giedrimas's report observes that "[t]here is no way to fully know the proximate cause of his heart attack, and while he had some mild preexistent risks [sic] factors, I believe it has to be assumed that the stress related to work on the day of presentation contributed to his heart attack." ERSRI 00153 (emphasis added). The Board cited these factors in its decision when analyzing the IME reports. Given that the Board's analysis is based on competent evidence, this Court finds no error in the Board's consideration of the IME reports.

Finally, Ziadeh argues that the Board erred by disregarding the analyses he submitted from two cardiologists, Drs. Levine and Sack. However, the Board addressed Dr. Levine's opinions in its written decision. The Board observed that Dr. Levine acknowledged that "[c]ausality of course is difficult if not impossible to prove." ERSRI 0028. Furthermore, Dr. Levine based his opinion that the heart attack was work-related on the fact that Plaintiff's "symptoms occurred at work and began at work." Id. The Board discounted Dr. Levine's analysis in this regard because it was conclusory—just because a heart attack occurs at work does not mean it is work-related.[3] This Court finds that the Board was within its discretion to make such a determination. Ziadeh makes much of the fact that Dr. Sack is not mentioned in the Board's written decision. However, this Court is "not permitted to substitute [its] judgment for that of the [Board] concerning the weight of the evidence on a question of fact." Rocha v. State Pub. Utils. Comm'n, 694 A.2d 722, 727 (R.I. 1997). "[I]f the Board did not find [Dr. Sack's] opinion worthy of review," Pl.'s Mem. 24, then that was their decision to make.

[3] Dr. Levine's follow-up letter, which Plaintiff mentions in his brief, was not explicitly tackled in the Board's written decision. Despite Plaintiff's protestations, however, this letter is no less conclusory than Dr. Levine's prior statement. Dr. Levine's basis for calling Plaintiff's disability work-related is that his "symptoms began while he was at work." ERSRI 00900. Indeed, Dr. Levine seems to indicate that where Ziadeh was during the onset of symptoms is dispositive—"[h]ad it occurred while he was at home working in his garden we would have to conclude otherwise." Id.

C

Accident at Work

The parties finally clash over the meaning of the word "accident" and whether it applies to Ziadeh. Preliminarily, the Plaintiff construes the Board's decision as holding that his application was "denied because his disability was not caused by a single accident." Pl.'s Mem. 20. This contention is incorrect. ERSRI specifically found that there was "insufficient evidence to conclude that an accident or series of accidents constituted a proximate cause of the cardiac event." ERSRI 001041 (emphasis added). The Board did not "den[y] accidental disability benefits solely because [Plaintiff] became disabled as a cumulative effect of numerous work[-]created stressors." Pl.'s Mem. 18. Instead, the Board "[could not] find that Ziadeh's claimed disability would not have existed but[ ]for a work[-]related injury, or that his condition is the natural and probable result of a claimed accident." ERSRI 001041-42.

There are two facets to this finding. First, the Board found that Ziadeh had failed to carry his burden of proof in demonstrating "a causal relationship between work and a heart attack." ERSRI 001041. This finding was a question of fact, to which this Court must give deference. Cases from the workers' compensation sphere illuminate this issue. In Gartner v. Jackson's Inc., 95 R.I. 489, 188 A.2d 85 (1963), the Workmen's Compensation Commission had to evaluate conflicting testimony as to "whether there [wa]s a causal connection between the employee's work and the heart attack." Gartner, 95 R.I. at 495, 188 A.2d at 88. The Supreme Court held that "[t]he issue of causal connection is an issue of fact," and because there was evidence supporting that finding, the worker's appeal was denied. Id. Similarly, in Gaines v. Senior Citizens Transp. Inc., 471 A.2d 1357 (R.I. 1984), the Worker's Compensation Commission "was presented with the conflicting testimony of two medical experts concerning the cause of the employee's heart

attack." Gaines, 471 A.2d at 1359. The Court held "that the appellate commission's decision was based upon legally competent evidence," noting that "[w]hether the medical testimony advanced by the employee was stronger or weaker, more credible or less credible, than that presented by the employer was a matter for the commission to decide." Id. As described supra, all testimony of causation was repeatedly qualified and was further undercut by the admitted existence of non-work risk factors. Given that there was competent evidence before the Board when they made their finding of fact regarding causation, the Court finds no grounds for reversal.

The Board's conclusion that the medical examinations did not show that there was a causal connection between the performance of duty and the disability—i.e., that the injury was work-related—provides sufficient grounds for ERSRI to deny Plaintiff's application. However, the Board also concluded that Ziadeh's heart attack was not the result of an "accident" as contemplated by the statute. The Court will address this argument in the interest of making its analysis complete.

Section 36-10-14(c) requires that the applicant's incapacity be "a natural and proximate result of an accident." ERSRI contends that "the term 'accident,' as contemplated by § 36-10-14, does not encompass the alleged instances of stress described by Ziadeh." Def.'s Mem. 10; see also ERSRI 001042. Plaintiff seemingly concedes that "this case does not involve an 'accident' in the most literal or strict sense of the term." Pl.'s Mem. 15. Assuming without deciding that the term "accident" is ambiguous, and thus is subject to statutory interpretation, see, e.g., Iselin v. Ret. Bd. of Emps.' Ret. Sys. of R.I., 943 A.2d 1045, 1049 (R.I. 2008), "deference will be accorded to an administrative agency when it interprets a statute whose administration and enforcement have been entrusted to the agency." Pawtucket Power Assocs. Ltd. P'ship v. City of Pawtucket, 622 A.2d 452, 456 (R.I. 1993). Deference is accorded even when the agency's

interpretation is not the only permissible interpretation that could be applied." Id. at 456-57. The Board has chosen to interpret this word strictly, finding that stress—at least of the intensity tormenting Ziadeh that fateful day—is not an "accident."

Given that "it is obvious that the Legislature intended the requirements for accidental disability retirement to be stringent," this Court finds no error in ERSRI's interpretation of the statute. Rossi, 895 A.2d at 112. The Court observes in passing that this interpretation appears to be consistent with the Supreme Court's previous[4] interpretation of the word "accident" in the context of the Workers Compensation Act:

> "We have repeatedly held that the word 'accident' in our workmen's compensation act is used in its popular sense and means an unlooked-for mishap or an untoward event which is not expected or designed. Generally speaking, there is an accident within that definition if the injury results from unusual environmental conditions, such as excessive cold or heat, or where the injury is caused by an unintentional or fortuitous external event, as a fall or the application of external force, or where an employee, working under unusual or extraordinary conditions, suffers injury to the physical structure of the body from overexertion." Parente v. Apponaug Co., 73 R.I. 441, 443-44, 57 A.2d 168, 170 (1948) (citations omitted).

IV

Conclusion

Based on a review of the record, this Court concludes that ERSRI's decision to deny Plaintiff accidental disability benefits was not clearly erroneous, was not based on improper procedure, and was neither arbitrary nor capricious. Substantial rights of the Plaintiff have not been prejudiced. Thus, this Court affirms the decision of the Board. Counsel shall prepare an appropriate order for entry.

[4] In 1949, the General Assembly removed the words "by accident" from the Workers Compensation Act. Shoren v. U.S. Rubber Co., 87 R.I. 319, 324-25, 140 A.2d 768, 771 (1958).

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

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CASE NO:	**PC-2016-4629**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**August 28, 2017**
JUSTICE/MAGISTRATE:	**Licht, J.**
ATTORNEYS:	
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For Defendant:	**Michael P. Robinson, Esq.**