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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0823-16T2

AUNDREA MASON,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES,
POLICE AND FIREMEN'S
RETIREMENT SYSTEM,

Respondent-Respondent.

Argued January 17, 2018 - Decided February 5, 2018

Before Judges Hoffman and Mayer.

On appeal from the Board of Trustees, Police
and Firemen's Retirement System, PFRS No.
3-10-050251.

Samuel M. Gaylord argued the cause for
appellant (Gaylord Popp, LLC, attorneys;
Samuel M. Gaylord, of counsel and on the
brief).

Daniel F. Thornton, Deputy Attorney General,
argued the cause for respondent (Gurbir S.
Grewal, Attorney General, attorney; Melissa H.
Raksa, Assistant Attorney General, of counsel;
Daniel F. Thornton, on the brief).

PER CURIAM

Petitioner Aundrea Mason appeals from a final agency decision of the Board of Trustees of the Police and Firemen's Retirement System (Board) denying her application for accidental disability retirement benefits. We affirm.

Mason claims she was injured on January 30, 2013, while qualifying with a firearm for her work as an officer with the Department of Corrections (DOC). On the date of her injury, Mason was qualifying with a shotgun at the firing range under the supervision of an instructor. Mason had qualified on the range each year for the prior eighteen years without injury. While qualifying with a shotgun in 2013, Mason felt a soreness in her shoulder but continued with the qualification process to obtain her firearms certification. After qualifying, Mason reported her injury, filled out paperwork, and went to the emergency room for treatment. Mason subsequently had several shoulder surgeries, did not return to work, and was terminated.

Mason filed an application for accidental disability retirement benefits on July 15, 2014. The Board awarded ordinary retirement benefits to Mason, finding her to be totally and permanently disabled from the performance of her assigned duties. However, the Board determined that the incident was not undesigned and unexpected to qualify for accidental disability retirement

benefits. The Board concluded that Mason was required to qualify with firearms as part of her job duties and was familiar in use of a shotgun. The potential recoil from firing a shotgun was anticipated and expected based on Mason having qualified with a shotgun in each of the eighteen years prior to the incident.

Mason requested a hearing, and the Board referred the matter to the Office of Administrative Law (OAL).

An administrative law judge (ALJ) heard testimony from Mason. The Board did not call any witnesses. At the OAL hearing, Mason testified regarding the firearms qualification process. According to Mason, a range instructor supervised her qualification process. After qualifying with a handgun, Mason was given a shotgun by the range instructor. Mason testified that she fired the shotgun a few times and her shoulder felt sore. Mason explained that she did not stop the qualification process because she required certification to maintain her position with the DOC.

The ALJ found there was "no dispute in the record that the recoil from the shotgun was sufficient to cause the injury which led to petitioner's disability." While Mason argued she had never experienced injury at any time during the eighteen years that she previously qualified with a shotgun, the ALJ concluded that:

Mason was performing a regular duty in which she had received training and which she had successfully completed over the course of her

career. While a shotgun may be difficult to control, there was nothing in the record to show that the gun malfunctioned in some manner or that there was something external to the gun which may have affected its performance.

Based on these findings, the ALJ determined that the incident did not qualify as an unexpected happening for an award of accidental disability retirement benefits.

The Board adopted the ALJ's initial decision and denied Mason's application for accidental disability retirement benefits.

On appeal, Mason argues the Board improperly denied her application because the shotgun incident on the firing range was undesigned and unexpected. Mason, relying on Moran v. Board of Trustees Police and Firemen's Retirement System, 438 N.J. Super. 346 (App. Div. 2014), claims that experiencing shoulder soreness on this occasion, when she had not experienced shoulder soreness in any of the eighteen prior years of qualifying with firearms, was an "unusual" and "extraordinary" circumstance constituting an event that was "undesigned" and "unexpected."

The standard of appellate review from a final agency decision is deferential. An agency determination should not be reversed "unless it is arbitrary, capricious or unreasonable or it is not supported by substantial credible evidence in the record as a whole." Lavezzi v. State, 219 N.J. 163, 171 (2014) (quoting Prado v. State, 186 N.J. 413, 427 (2006)). However, we review an

agency's legal interpretations de novo. Id. at 172. "Generally, courts afford substantial deference to an agency's interpretation of a statute that the agency is charged with enforcing." Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 196 (2007).

A member of the Police and Firemen's Retirement System is eligible for accidental disability retirement benefits if the member is "permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of his [or her] regular or assigned duties" See N.J.S.A. 43:15A-43.

The Richardson Court set forth the following factors a claimant must prove to qualify for accidental disability retirement benefits:

1. [the claimant] is permanently and totally disabled;
2. as a direct result of a traumatic event that is
 - a. identifiable as to time and place,
 - b. undesigned and unexpected, and
 - c. caused by a circumstance external to the member (not the result of pre-existing disease that is aggravated or accelerated by the work);

3. that the traumatic event occurred during and as a result of the member's regular or assigned duties;

4. that the disability was not the result of the member's willful negligence; and

5. that the member is mentally or physically incapacitated from performing his usual or any other duty.

[192 N.J. at 212-13.]

We find that the facts in this case are distinguishable from the facts in Moran. Moran, a firefighter, was injured while performing the heroic act of breaking down a door to enter a burning building and rescuing two people who were trapped inside, a task not within his normal duties.¹ Moran, 438 N.J. Super. at 350. The Moran court found

a combination of unusual circumstances that led to Moran's injury: the failure of the truck unit to arrive, and the discovery of victims trapped inside a fully engulfed burning building, at a point when Moran did not have available to him the tools that would ordinarily be used to break down the door.

[Id. at 354.]

¹ Moran was assigned to the engine company within the fire department, and it was the job of firefighters assigned to the engine company to use hoses to put out fires. Moran, 438 N.J. Super. at 349. It was the job of the firefighters assigned to the truck company to gain entry into a burning building and rescue occupants. Ibid.

It was undisputed that had Moran not kicked down the door, the victims would have died. Ibid.

Here, Mason was at the firing range to obtain her required firearms certification, a situation that she had experienced at least eighteen times previously. This was not an unusual or extraordinary circumstance, because Mason was required to qualify with a shotgun each year to maintain her position as a corrections officer.

Having reviewed the record, we conclude there is sufficient credible evidence to support the Board's determination that Mason's disability was not the result of an event that was "undersigned" and "unexpected."

Affirmed.

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



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