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State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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September 2, 2022

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

Sent via email to: [REDACTED]

ALTERMAN & ASSOCIATES, LLC
Timothy Prol, Esq.
[REDACTED]

RE: Laurena Staub
TPAF [REDACTED]
OAL DKT. NO. TYP 11525-18

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Dear Mr. Prol:

At its meeting on August 9, 2022, the Board of Trustees of the Teachers' Pension and Annuity Fund (TPAF) considered the Initial Decision (ID) of the Honorable Jeffrey N. Rabin, Administrative Law Judge (ALJ), dated May 27, 2022, together with the evidence submitted by the parties, the exceptions filed by Deputy Attorney Jeffrey D. Padgett, dated June 16, 2022,¹ and the reply to exceptions filed by attorney Timothy Prol Esq., dated June 17, 2022. The Board noted the exceptions and the reply to exceptions. After careful consideration, the Board voted to reject the ALJ's decision recommending Accidental Disability (AD) retirement benefits for Ms. Staub, thereby reaffirming its original decision denying Ms. Staub's application for AD retirement benefits.

The ALJ found that Ms. Staub's disability is the direct result of [REDACTED] in which [REDACTED] [REDACTED] ID at 5. The ALJ also found the incident was identifiable to time

¹ The exceptions were timely submitted under a granted extension.

and place, undesigned and unexpected, and was objectively terrifying and horror inducing. ID at 16-17.

For the reasons set forth below, the Board modified the ALJ's finding of fact and rejected the ALJ's legal conclusions that: Ms. Staub's disability was the result of [REDACTED]; [REDACTED] was undesigned and unexpected; and [REDACTED] was objectively terrifying or horror inducing. The Board directed the Secretary to prepare the Findings of Fact and Conclusions of Law as outlined below, which were approved by the TPAF Board at its meeting on September 1, 2022.² This will constitute the Board's Final Administrative Determination in this matter.

FINDINGS OF FACT

The Board notes the ALJ's finding that prior to her resignation Ms. Staub worked as a school psychologist for Brick public schools, where her responsibilities consisted of creating Individualized Educational Plans (IEPs), performing psychological testing and assessments of students referred for Child Study Team (CST) evaluations, interpreting the results of psychological assessments for parents, teachers and administrators, participating in planning programs for students with special needs, implementing IEPs, serving as a resource consultant in areas dealing with learning problems, behavior management, and mental health, IQ evaluations, and meeting with students and parents and the community. ID at 4.

The Board rejects the ALJ's finding that "Respondent offered no evidence that these other matters were the primary cause of her [REDACTED] ID at 15. The Board noted Dr. LoPreto testified that prior to [REDACTED] Ms. Staub was [REDACTED]. The Board noted Ms. Staub's past medical history included [REDACTED] for which she received accommodations from her employer for a period of time. The termination of

² As the 45-day statutory period for issuing a final decision would have expired, the TPAF Board properly requested and received an extension of time for issuing its final decision.

the accommodations contributed to her hardships at work. Dr. LoPreto also testified that Ms. Staub [REDACTED]” Ms. Staub also related to Dr. LoPreto that she was also [REDACTED] ID at 7. Therefore, the Board finds that there was [REDACTED] which contributed to Ms. Staub’s

[REDACTED] ID at 8.

CONCLUSIONS OF LAW

As set forth more fully below, the Board rejects the ALJ’s recommendation Ms. Staub is entitled to AD. First, the Board rejects the ALJ’s finding [REDACTED] was a Patterson event. Second, the Board similarly rejects the ALJ’s finding [REDACTED] was a traumatic event under Richardson. Finally, the Board rejects the ALJ’s finding Ms. Staub’s disability is a direct result of [REDACTED] because the ALJ did not apply the correct causation standard.

A TPAF member seeking AD must prove:

1. that [s]he 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 preexisting 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 [or her] usual or any other duty.

[Richardson v. Board of Trustees, Police and Firemen’s Retirement System, 192 N.J. 189, 212-13 (2007).]

In other words, the member must prove “she suffered a total and permanently disabling injury ‘as a direct result of an identifiable, unanticipated mishap.’” Brooks v. Bd. of Trs., Pub. Emps. Ret. Sys., 425 N.J. Super. 277, 284-85 (App. Div. 2012) (quoting Richardson, 192 N.J. at 213).

A TPAF member “who has suffered a permanent mental disability as a result of a mental stressor, without any physical impact,” “a so-called mental-mental injury,” may also qualify for AD. Patterson v. Bd. of Trs., State Police Ret. Sys., 194 N.J. 29, 33 (2008). However, the member must satisfy the following additional “requirement beyond those set forth in Richardson: The disability must result from direct personal experience of a terrifying or horror-inducing event that involves actual or threatened death or serious injury, or a similarly serious threat to the physical integrity of the member or another person.” Id. at 34. The additional requirement for a mental-mental claim is intended to ensure “the traumatic event posited as the basis for an accidental disability pension is not inconsequential but is objectively capable of causing a reasonable person in similar circumstances to suffer a disabling mental injury.” Ibid. Notably, the additional requirement was a direct response to “legitimate concerns about becoming bogged down in litigation over idiosyncratic responses by members to inconsequential mental stressors.” Mount v. Bd. of Trs., Police & Firemen’s Ret. Sys., 233 N.J. 402, 423 (2018) (quoting Patterson, 194 N.J. at 48-49).

The “jurisprudence construing . . . [the] ‘traumatic event’ language mandates a two-step analysis in cases in which a member claims permanent mental incapacity as a result of an exclusively psychological trauma.” Mount, 233 N.J. at 426. As such, “[i]n a mental-mental case, Patterson is the threshold that must be met for further inquiry to be warranted.” Russo v. Bd. of Trs., Police & Firemen’s Ret. Sys., 206 N.J. 14, 32 (2011). “If the member meets Patterson’s threshold requirement, the court then applies the Richardson test; if he or she fails to do so, the

court denies accidental disability benefits without applying the Richardson test.” Mount, 233 N.J. at 407 (citing Patterson, 194 N.J. at 34).

In Patterson, the Court considered the consolidated appeals of Patterson, a New Jersey State Police Officer, and Guadagno, a Corrections Officer. Id. at 34-40. Patterson predicated his application for accidental disability retirement benefits on the verbal abuse he received from a superior officer. Id. at 34-36. Guadagno’s application for accidental disability retirement benefits was predicated on death threats he received from an inmate. Id. at 38-39. The inmate, who knew where Guadagno lived and about the Guadagno family’s pizza parlor, also threatened to rape and murder Guadagno’s wife and daughter. Ibid.

The Court held Patterson did not qualify for mental-mental accidental disability retirement benefits. Id. at 51. The Court reasoned that while “the conduct of his superiors was cruel, it simply did not involve actual or threatened death or serious injury to Patterson’s physical integrity and thus failed to vault the traumatic event threshold.” Ibid. As to Guadagno, however, the Court found “the credible threat of rape and murder against Guadagno’s wife and daughter by a presumed gang member who knew where Guadagno lived and worked could satisfy the traumatic event element of the statute.” Id. at 53.

First, the Board finds [REDACTED] was not a Patterson event. Ms. Staub cannot carry her burden under Patterson because [REDACTED].” Patterson, 194 N.J. at 48. The evidence is inadequate in showing that Ms. Staub [REDACTED] it was not terrifying or horror-inducing. A supervisor [REDACTED] [REDACTED]” 1T43:24-25, does not rise to the level of a terrifying or horror-inducing event within the context of Patterson.

The ALJ found that “[REDACTED].” ID at 15. However, Ms. Staub’s [REDACTED]. Whether Ms. Staub subjectively believed the statement [REDACTED] is irrelevant. The standard under Patterson is whether [REDACTED] was “objectively capable of causing a reasonable person in similar circumstances to suffer a [REDACTED].” 194 N.J. at 34 (emphasis added). Ms. Staub’s [REDACTED]. Ms. Staub was not faced with [REDACTED].” Patterson, 194 N.J. at 33. Here, as with Patterson, the conduct of [REDACTED].” Id. at 51. Accordingly, she cannot meet her burden and is not entitled to AD.

Second, the Board similarly finds [REDACTED] was not a traumatic event under Richardson. Satisfaction of the “undesigned and unexpected” prong requires an event “extraordinary or unusual in common experience” and not “injury by ordinary work effort.” Richardson, 192 N.J. at 201 (quoting Russo, 62 N.J. at 154). “The polestar of the inquiry is whether, during the regular performance of [the member’s] job, an unexpected happening . . . occurred and directly resulted in the permanent and total disability of the member. Id. at 214.

Ms. Staub testified that her job description included performing evaluations on students and having meetings with teachers, administrators, and parents. 1T58:19-62:2.³ It is not uncommon for parties affected by Ms. Staub’s decisions [REDACTED], especially when their child’s education is being decided. As a licensed school psychologist, Ms. Staub has the requisite training, credentials, and preparation [REDACTED]; as she

³ “1T” refers to the transcript of the October 16, 2020 hearing; “2T” refers to the transcript of the January 12, 2021 hearing.

serves as a resource and provides consults on behavior management, learning problems and mental health. [REDACTED].

The Board finds [REDACTED] was not “undesigned and unexpected” because a [REDACTED], is not “extraordinary or unusual in common experience.” Russo, 62 N.J. at 154. [REDACTED] occurred well within the scope of Ms. Staub’s job duties as a licensed school psychologist. [REDACTED], therefore, does not meet the criteria to be considered undesigned or unexpected [REDACTED].

Finally, the Board finds Ms. Staub’s disability is not a direct result of [REDACTED]. The Board notes the applicable standard and analysis for direct result was set forth by the Court in Gerba v. Board of Trustees, Public Employees’ Retirement System, 83 N.J. 174 (1980) and Korelnia v. Board of Trustees, Public Employees’ Retirement System, 83 N.J. 163 (1980). Under Gerba, Ms. Staub must prove [REDACTED] was “the essential significant or substantial contributing cause” of her disability. 83 N.J. at 186. Gerba made clear the legislative intent of the amendment imposing the “direct result” requirement was to apply a more exacting standard of medical causation. Id. at 185-86.

The Board finds the ALJ used unsound reasoning in finding that Ms. Staub proved her burden because he determined that [REDACTED] [REDACTED].” ID at 17. The ALJ deemed [REDACTED], yet it is clear that Ms. Staub was experiencing [REDACTED]. Thus, the ALJ was required to consider whether she met her burden of proving that [REDACTED] was “the essential significant or substantial contributing cause” of her disability, or, whether [REDACTED] caused her disability. Gerba, 83 N.J. at 186.

Both Dr. Rasin and Dr. LoPreto diagnosed Ms. Staub with: [REDACTED]
[REDACTED]. ID at 2-3. Most notably, neither of the [REDACTED] require
a “traumatic event” and can arise solely from an individual’s [REDACTED]
[REDACTED]. ID at 3. For that reason, Ms. Staub must identify [REDACTED] in the record to
support her finding that [REDACTED] directly resulted in her disability. The Board finds the
ALJ incorrectly found that Ms. Staub proved causation and met her burden of proof.

The record is well-supported in showing that [REDACTED] did not directly result in Ms.
Staub’s disability. Dr. LoPreto found that Ms. Staub experienced [REDACTED]
[REDACTED], [REDACTED] ID at 7-8. In fact, Ms. Staub’s own
expert, Dr. Rasin testified to [REDACTED]
[REDACTED]. ID at 3-4. Dr. Rasin described [REDACTED]
[REDACTED]
[REDACTED] r.” P-2. This shows [REDACTED]
[REDACTED]. Further, Ms. Staub by her own
testimony, [REDACTED] had on her during the
more than three years she continued to work for Brick public schools [REDACTED].
ID at 4-6. Specifically, she recounted [REDACTED]
[REDACTED]
[REDACTED]. ID at 5. Additionally, Dr. Rasin did not
attribute her disability specifically to [REDACTED] until he completed an addendum report, for
which he only reviewed Dr. Kay’s [REDACTED] and Dr. LoPreto’s [REDACTED]. The
Board finds that Ms. Staub did not meet her burden of proof, as both Dr. LoPreto and Dr. Rasin
[REDACTED] For the foregoing reasons, the Board rejected the
ALJ’s finding that [REDACTED] was the direct result of Ms. Staub’s disability, and found that Ms.
Staub failed to meet her burden of proof and is therefore ineligible for AD retirement benefits.

Timothy Prol, Esq.
Re: Laurena Staub
September 2, 2022
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You have the right to appeal this administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter, in accordance with the Rules Governing the Courts of the State of New Jersey. All appeals should be directed to:

Superior Court of New Jersey
Appellate Division
Attn: Court Clerk
PO Box 006
Trenton, NJ 08625

Sincerely,



Saretta Dudley, Secretary
Board of Trustees
Teachers' Pension and Annuity Fund

G-7/SD

c: Laurena Staub
Dawn Lewis (ET); A. Ginsburg (ET); S. Siracusa (ET); T. Fleischmann (ET)

Retired Health Benefits Section (ET)

DAG Jeffrey Padgett (ET)
OAL, Attn: Library (ET)