



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
P. O. Box 295

TRENTON, NEW JERSEY 08625-0295
Telephone (609) 292-7524 / Facsimile (609) 777-1779
TRS 711 (609) 292-6683
www.nj.gov/treasury/pensions

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

May 12, 2020

[Redacted]

Gina Riley

[Redacted]

RE: [Redacted]
OAL DKT. NO. TYP 18171-2016 N

Dear Ms. Riley:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At its meeting on March 5, 2020, the Board of Trustees of the Teachers' Pension and Annuity Fund ("TPAF") reviewed the Initial Decision ("ID") of the Honorable Danielle Pasquale, Administrative Law Judge ("ALJ"), dated February 10, 2020, together with the evidence submitted by the parties, and the exceptions filed by Deputy Attorney General Juliana C. DeAngelis, dated February 24, 2020.

Thereafter, the Board voted to reject with corrections the ID of ALJ Pasquale reversing the Board's determination denying your application for Ordinary Disability retirement benefits. For the reasons set forth below, the Board rejected: (1) the ALJ's weighing of the experts' testimony, and (2) certain factual findings. As such, 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

1 Due to health and safety concerns for the public regarding COVID-19, the meeting was conducted via teleconference.

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.

3 Received letter dated March 5, 2020 from you that you are no longer represented by Samuel Gaylord, Esq.

4 As an initial matter, the ALJ incorrectly included R-2 (Dr. Richard Rosa's ("Rosa") orthopedic IME report) in the exhibits listed in the ID, see id. at 29 - as she specifically held during the hearing that the exhibit would not be admitted into evidence. 2T225:7.

May 7, 2020. These Findings of Fact and Conclusions of Law constitute the Final Administrative Determination in this matter.

The Board noted your letter to the Office of Administrative Law, dated February 27, 2020, in which you advised the ALJ that you were no longer represented by Mr. Gaylord. In that letter, you also asserted that the regulation, N.J.A.C. 17:1-6.4, which governs disability retirees who did not leave employment due to a disability are not eligible to receive a disability retirement, did not apply to your case because you retired before it was promulgated. On March 18, 2020, after the time for filing exceptions had expired, you also sent correspondence to the Board with respect to the applicability of the regulation to your case. Although your correspondence was sent out of time, the Board agreed to consider your arguments.

The Board noted that although it relied, in part, on the regulation when making its original determination, your matter was heard in the OAL on the merits of your application for disability retirement benefits. Accordingly, the Board no longer relies on the regulation as it agrees it is not applicable to your case. However, the Board also notes that pursuant to N.J.S.A. 18A:66-39, every disability applicant must prove that they were disabled at the time they separated from employment.

I. Dr. LoPreto's Opinion Is More Reliable.

The Board first considered the ALJ's findings with respect to the testimony of the medical experts. The Board noted that the weight granted to the medical evidence and expert's testimony depends on such factors as whether the expert witness testified in his specialty and whether the expert's conclusions are based only on subjective, rather than objective, medical evidence. Angel v. Rand Express Lines, Inc., 66 N.J. Super. 77, 86 (App. Div. 1961). The testimony of an expert who makes "findings based on objective tests performed on [the] petitioner" is more compelling than, and should be credited over, the testimony of an expert who "relies on the petitioner's 'subjective complaints to arrive at his opinion.'" O'Neill v. Bd. of Trs., Pub. Employees' Ret. Sys., 2016 N.J. Super. Unpub. LEXIS 44, at **5-6 (App. Div. Jan. 11, 2016) (per curiam).

In light of the case law as outlined above, the Board rejected the ALJ's finding that the testimony of your expert, Dr. Emmanuel Hriso ("Hriso") - "as to the date of onset of petitioner's total

and permanent disability” - was more persuasive and should be given more weight than the testimony of the Board’s expert, Dr. Daniel LoPreto (“LoPreto”), because Dr. Hriso was your “treating” psychiatrist during the relevant time period (pre and post June 2014 termination); he “review[ed] . . . all relevant records,” and had “conversations with [Ms. Riley’s primary care physician], Dr. Boyd[,] . . . [prior to] mak[ing] his ultimate conclusion.” ID at 25-26.

The Board rejected this finding because Dr. Hriso did not, in fact, review any of your medical records, he did not perform objective tests, and he based his opinion primarily on your self-report of symptoms. 1T67:23-70:14. Indeed, Dr. Hriso admitted that he did not review a single medical record and that all the information he had regarding your psychiatric history and treatment was information he received “directly from . . . [her].” 1T68:2-19. Further, he admitted that he did not perform any objective psychiatric testing on you because “it was pretty much clear [what her] issues were” based on her “present[ation] [of] . . . complaints.” 1T70:9-14. Moreover, his treatment notes from May 2014 (wherein he recommended that you “pursue openings in Woodbridge and Fort Lee as well as possibilities in Jersey City in [your] old school”), directly contradicts his ultimate opinion that you were totally and permanently disabled from being a teacher as of May or June 2014. 2T73:25-74:18; P-2. Moreover, Dr. Hriso failed to adequately explain why he suggested that you continue applying for teaching positions in May 2014 if he truly thought you were totally and permanently disabled from teaching at the time. Further, his testimony revealed that he actually thought that it was possible you would be able to function as a teacher in a different school. See 1T94:12-15 (“could you have changed the setting or immediately put her in Jersey City in a computer class in a private room and could she have been able to function then, it’s very possible.”).

The Board found that Dr. LoPreto’s testimony was more credible because it was based on his review of all of your psychiatric medical records (from before and after her June 2014 termination), and his objective testing and independent medical examination of you. R-2. Dr. LoPreto reviewed Dr. Boyd’s treatment records (dating back to March 30, 2012), Dr. Hriso’s file and expert report, and the psychiatric records from your treatment with Catholic Charities in 2015 and 2016. R-3, R-4. Dr. LoPreto’s review of these records revealed that there is no “objective evidence or objective information

included in the records . . . that definitively show that [Ms. Riley] was totally and permanently disabled as of June 2014” – rather, the records prove that you became disabled in November 2015, seventeen months later, when Catholic Charities diagnosed you with major depression, increased your medication, and your mental “condition became so significant and her functional impairment so severe that . . . she was unable to perform her duties of a teacher.” 2T110:16-21. Further, he noted that Dr. Hriso suggested you apply for teaching positions in May 2014 (one month before your termination) and that such a suggestion “mitigates against the idea that she was totally and permanently disabled at the time she left work.” 2T165:19-24.

Accordingly, the Board rejected the ALJ’s credibility findings with respect to the expert testimony and credited Dr. LoPreto’s opinion that you became totally and permanently disabled after you separated from employment in June 2014 over Dr. Hriso’s internally inconsistent and flawed opinion.

II. The Board Corrected Certain Factual Findings.⁵

After a review of the record evidence, the Board found that the following findings of fact in the ID are incorrect and are corrected as follows:

Correction 1

- In the ID: “Dr. Hriso formally began treating petitioner on April 14, 2014.” ID at 5.
- Correction: Dr. Hriso formally began treating petitioner on April 1, 2014. 1T24:4-22; 1T32:7-9; P-2.

Correction 2

⁵ The Board rejects the ALJ’s finding that you “[were] permanently and totally disabled at the time [you were] employed at Plainfield, and likely for a long time prior.” ID at 26 (emphasis added). It is undisputed that you continued to work and remained employed by Plainfield for the entire 2013-2014 school year. 2T63:3-8. Therefore, you could not have been totally and permanently disabled from your job during the 2013-2014 school year because you were working and continued to perform your job duties until your termination in June 2014. Ibid. Therefore, the Board rejects this finding and any similar findings. See ID at 22, 23, 26.

- In the ID: “Dr. Hriso’s original psychiatric diagnoses were adjustment disorder with anxiety and depression, as well as panic disorder, which continued during his treatment of Ms. Riley in 2013 and 2014, and thus I so find.” ID at 6.
- Correction: Dr. Hriso’s original psychiatric diagnoses were adjustment disorder with anxiety and depression, as well as panic disorder, which continued during his treatment of Ms. Riley, and thus I so find.⁶

Correction 3

- In the ID: “Dr. Hriso noted that he reviewed all relevant records prior to his testimony in court.” ID at 7.
- Correction: Dr. Hriso admitted that he did not review a single medical record and that all the information he had regarding Ms. Riley’s psychiatric history and treatment was information he received “directly from . . . [her].” 1T68:2-19.

Correction 4

- In the ID: “The deputy attorney general highlighted that Dr. LoPreto concedes that petitioner is currently totally and permanently disabled but noted that his Independent Medical Examination (IME) report indicates that the onset of her disability was not until December 31, 2015, which is the date she was denied ordinary disability.” ID at 8.
- Correction: The deputy attorney general highlighted that Dr. LoPreto concedes that petitioner is currently totally and permanently disabled but noted that his Independent Medical Examination (IME) report indicates that the onset of her disability was not until December 31, 2015, which is the date she applied for ordinary disability. J-4.

Correction 5

- In the ID: “Again, three years after her separation from Plainfield, Dr. LoPreto’s evaluation of Ms. Riley consisted of reviewing medical records forwarded from IMX; from Catholic Charities,

⁶ Dr. Hriso began treating you on April 1, 2014. 1T24:4-22; 1T32:7-9; P-2

which she did not treat with until 2015; from orthopedists, which are not relevant in this proceeding; and from Dr. Hriso, which Dr. LoPreto considered for the first time within his addendum.” ID at 16.

- Correction: Again, three years after her separation from Plainfield, Dr. LoPreto’s evaluation of Ms. Riley consisted of reviewing medical records forwarded from IMX (including Dr. Boyd’s treatment notes from 3/30/12 to 5/5/16 and Dr. Hriso’s treatment notes from 4/1/14 to 2/3/15); from Catholic Charities, which she did not treat with until 2015; from orthopedists, which are not relevant in this proceeding; and Dr. Hriso’s narrative report dated January 8, 2018 (which Dr. LoPreto considered for the first time within his second addendum dated March 23, 2018). R-2; R-3; R-4.

Correction 6

- In the ID: “Dr. LoPreto did not speak with Dr. Hriso and did not see his notes or his report until he was preparing his addendum.” ID at 17.
- Correction: Dr. LoPreto did not speak with Dr. Hriso; however, he reviewed Dr. Hriso’s treatment notes before issuing his first narrative report dated June 9, 2016 (R-2) and Dr. Hriso’s expert report before issuing his second addendum dated March 23, 2018 (R-4).

Correction 7

- In the ID: “Further, he noted in his first report that Dr. Rosa’s note that there were no records regarding disability drove his opinion that petitioner could not have been disabled during her time at Plainfield.” ID at 17.
- Correction: Omit entirely. Dr. LoPreto never said that Dr. Rosa’s report “drove his opinion” in this matter.

CONCLUSION

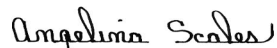
For the foregoing reasons, the Board rejected the ALJ’s Initial Decision with corrections and denied your application for Ordinary Disability retirement benefits.

Gina Riley
May 12, 2020
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You have the right if you wish to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days from 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,



Angelina Scales, Secretary
Board of Trustees
Teachers' Pension and Annuity Fund

G-6/as

c: C. Chianese (ET); D. Lewis (ET)
DAG Juliana DeAngelis (ET); DAG Robert Kelly (ET); DAG Amy Chung (ET)
OAL, Attn: Library (OAL Decisions) (ET)