



JAMES A. KOMPANY
Chairman

GREGORY PETZOLD
Executive Director

November 6, 2024

Sent via email to: [REDACTED]

SCIARRA, CATRAMBONE, CURRAN & GRAY, LLC
Christopher A. Gray, Esq.

RE: Joseph Grieco
PFRS # [REDACTED]
OAL DKT NO. TYP 03210-23

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Gray:

The Board of Trustees (Board) of the Police and Firemen's Retirement System of New Jersey (PFRSNJ) has reviewed the Initial Decision (ID) of Hon. Andrew M. Baron, ALJ, September 4, 2024, as well as exceptions filed by Leslie A. Parikh, Esq., dated September 17, 2024, and Reply to Exceptions filed by Frank C. Cioffi, Esq., dated September 27, 2024, in the matter of Joseph Grieco

At its meeting on October 7, 2024, the Board voted to reject the Office of Administrative Law's (OAL) ID, which recommended reversal of the Board's denial of Mr. Grieco's application for Accidental Disability (AD) retirement benefits.

Findings of Fact and Conclusions of Law as outlined below were presented and approved by the Board at its November 4, 2024 meeting.

FINDINGS OF FACT

Joseph Grieco began his career as an Emergency Medical Technician with the Borough of Tenafly (Tenafly) in September 2008 and was enrolled in the Public Employees' Retirement System (PERS), accordingly. In February 2009, he was hired as a Police Officer with Tenafly and subsequently transferred his service credit to the Police and Firemen's Retirement System (PFRS). He went on to accrue a total of 14 years of pension credit.

Mr. Grieco filed for AD on June 1, 2022, with an effective date of September 1, 2022. On his Application for Disability Retirement, he indicated that, [REDACTED]

He listed an accident date of February 16, 2020.

Prior to review by the Board, the member was examined by a Board-appointed Independent Medical Examiner (IME), [REDACTED]. In his initial report of October 28, 2022, [REDACTED] noted, [REDACTED]

[REDACTED]

[REDACTED] As per normal protocol for AD cases, the matter was then reviewed by the Medical Review Board (MRB). Dr. Matthews-Brown of the MRB requested further clarification on whether or not it was a direct result of the February 16, 2020 incident or possibly a pre-existing condition. In an addendum dated January 3, 2023, [REDACTED] clarified that, "this does not appear to be a preexisting condition, but rather the direct result of the incident of 2/16/20, though the timeline is a bit confusing." On January 24, 2023, Dr. Matthews-Brown concurred with the IME in her recommendation to the Board.

At its meeting of March 13, 2023, the Board considered and denied Mr. Grieco's application for AD, but granted Ordinary Disability (OD) retirement benefits. They determined that the member was totally and permanently disabled from his job duties, that the disability was the direct result of the incident, and that the incident was undesigned and unexpected. They found that the member's disability was not the result of the member's willful negligence and the member was mentally or physically incapacitated from performing his usual or any other duty. However, the Board found that the incident was not identifiable to time and place and that it did not occur during and as a result of the member's regular or assigned duties. Consequently, the member did not meet the requirements for AD, but qualified for OD.

Mr. Grieco subsequently provided additional information, including a Tenafly Police Department Incident Data Sheet indicating that the member was involved in a call [REDACTED]. [REDACTED] Based on this report, he requested that the Board reconsider its decision. The reconsideration was denied but the Board granted his request for a hearing at its meeting of April 10, 2023. The matter was transmitted to the OAL as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. Subsequent to a hearing in the OAL, the ID was issued on September 4, 2024. The ID concluded that Mr. Grieco met his burden by a preponderance of the evidence and, therefore, the denial of his application for AD should be reversed. The Board rejects this conclusion for the following legal reasons.

LEGAL CONCLUSIONS

The ID refers to Richardson v. PFRS, 192. 189 (2007), as the legal standard when analyzing a member's qualifications for AD, quoting, "...the polestar of the inquiry is whether during the regular performance of an employee's job, an unexpected happening, not the result of a pre-existing condition, has occurred and directly resulted in the permanent and total disability of the member." ID at 7 (citing Richardson, 192 N.J.at 214). However, the ID does not apply the Richardson standard properly.

The ID focuses on the incorrect conclusion that the Board did not accept the medical experts' opinions, which is simply not true. [REDACTED] and Dr. Matthews-Brown found the member totally and permanently disabled from his job duties as a direct result of the incident. The Board's determination reflects that they accepted these consistent expert opinions.

The Board denied the application based on two of the other Richardson elements: whether the incident is unidentifiable to time and place and occurred during and as a result of the performance of his regular or assigned duties. Neither of these standards are based upon medical opinion. Further, the ID fails to provide an analysis of the requirement under Richardson based on either of these standards.

Mr. Grieco provided no credible evidence that he was ever [REDACTED]

[REDACTED] without such proof, he does not satisfy his burden that the traumatic incident occurred at that specific time in that specific place.

Further, without evidence of when and where the incident took place, there is no confirmation that it occurred during his regular and assigned job duties. This element was also not addressed in the ID.

The ID emphasizes that the PFRSNJ's doctors both concluded that the member is totally and permanently disabled. The ID claims that the PFRSNJ Board "rejected officer Grieco'[s] application for accidental disability, speculating **without any medical foundation** that his condition was 'not identifiable as to time and place' and that [REDACTED] was not the 'traumatic event' that caused his condition. Again, this determination **was contrary to the medical opinions of two of the State's own doctors**, and politely seems to be a reckless disregard for the true and uncontroverted and unfortunate experience of an otherwise dedicated public servant who was just doing his job." [ID at 4; emphasis added.] This is a factual error. The issue of whether or not the member was totally and permanently disabled was not in dispute. In its determination, the Board found the member totally and permanently disabled as a direct result of the incident, congruent with the experts' opinions.

The Board's finding that the matter was not identifiable as to time and place is not a medical finding. The determination is made by the Board and is independent and unrelated to the medical evidence. As far as the statement in the ID which reads "not the traumatic event that caused his condition," (ID at 4), the intended meaning is unclear. Again, the Board found that the disability was a direct result of a traumatic event. Likewise, it is true for the issue of whether or not the incident occurred during his regular and assigned job duties; this is not a medical finding.

The ID goes on to conclude that "the denial of Mr. Grieco's application for accidental disability, seems to reject the opinion of his treating physicians, as well as the Board's own doctors, before and after the traumatic incident on February 16, 2020." The Board firmly disagrees with this assertion; it is a factual error.

The Board reviewed the petitioner's reply to exceptions, but was not persuaded by his argument, for essentially the same reasons it rejects the ID. The reply notes that "the Board **utterly** fails to address the Division's refusal to accept the opinions of the Medical Review Board and Independent Medical Evaluation which both found the causation to be sufficient." [Emphasis in original.] This is simply not true, for the reasons previously stated. Similarly to the ID, the reply does not provide a clear rebuttal to the issues in dispute, that is, whether the incident is unidentifiable to time and place and occurred during and as a result of the performance of his regular or assigned duties.

CONCLUSION

For the foregoing reasons, Mr. Grieco's AD application is denied; he will continue to receive Ordinary Disability retirement benefits. This correspondence shall constitute the Final Administrative Determination of the PFRSNJ Board of Trustees.

November 6, 2024
Christopher A Gray, Esq.
RE: Joseph Grieco

You have the right, if you wish, to appeal this final administrative determination 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.

Sincerely,



Lisa Pointer
Board Secretary
Police and Firemen's Retirement System of New Jersey

G-6/sb

c: Joseph Grieco ([REDACTED])
Nels Lauritzen, Esq., PFRSNJ Director of Legal Affairs (ET); Thomas Hower, Esq. PFRSNJ Staff Attorney;
D. Lewis; A. Saco; R. Clark;