



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
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November 18, 2021

PHILIP D. MURPHY  
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SHEILA Y. OLIVER  
*Lt. Governor*

ELIZABETH MAHER MUOIO  
*State Treasurer*

JOHN D. MEGARIOTIS  
*Acting Director*

Sent via email to: [REDACTED]

GAYLORD POPP, L.L.C.  
Samuel M. Gaylord, Esq.

[REDACTED]

RE: Mary Andresen  
PERS [REDACTED]  
OAL DKT. NO. TYP 15399-19

Dear Mr. Gaylord:

At its meeting on October 20, 2021,<sup>1</sup> the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) considered the Initial Decision (ID) of the Honorable Joseph A. Ascione, ALJ, dated September 13, 2021, all related exhibits, the exceptions filed by Deputy Attorney General (DAG) Yi Zhu, dated September 23, 2021, and DAG Zhu's personal statements to the Board. Thereafter, the Board rejected the ALJ's decision recommending Accidental Disability retirement benefits. Therefore, the Board directed the undersigned to draft findings of fact and conclusions of law consistent with its determination, to be presented to the Board for discussion and review at its meeting of November 17, 2021.<sup>2</sup>

The Board first found that contrary to the ALJ's decision, Dr. Richard Filippone's (Dr. Filippone) opinion is entitled to more weight than Dr. Mack's opinion, with respect to the issue of direct result. It is well-settled that an applicant for pension benefits is the proponent in an eligibility

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

<sup>2</sup> The Board requested and was granted an extension of time to issue its final administrative determination.

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determination and, therefore, must shoulder the burden of proof. Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 212 (2007). With respect to the direct result prong, a member must establish that the alleged traumatic event is the essential significant or substantial contributing cause of the applicant's disability. Quigley v. Bd. of Trs., Pub. Emps.' Ret. Sys., 231 N.J. Super. 211, 223 (App. Div. 1989) ("[T]he word 'direct' connotes relative freedom from remoteness, whether in terms of time, intervention of other contributive causes or the like, or a combination of such factors.")

The question of whether a claimant's alleged disability is the direct result of a traumatic event is one necessarily within the ambit of expert medical opinion. Korelnia v. Bd. of Trs., Pub. Employees' Ret. Sys., 83 N.J. 171 (1980). The weight granted to the medical evidence, and expert testimony adduced at the hearing, depends on such factors as whether the expert witness testified in his specialty and whether the expert's conclusions are based only on the subjective complaints of a patient. Angel v. Rand Express Lines, Inc., 66 N.J. Super. 77, 86 (App. Div. 1961).

The Board rejected the ALJ's conclusion that [REDACTED] directly resulted in Ms. Andresen's disability. The Board based its decision on substantial and sufficient credible evidence in the record, including that Ms. Andresen [REDACTED]

[REDACTED]. First, Ms. Andresen [REDACTED]

[REDACTED]

[REDACTED]. 2T32:1-13. Ms. Andresen also [REDACTED]

[REDACTED]. 1T131:7-11. 1T28:3-23,

1T116:22-117:10; 1T28:3-23. Ms. Andresen had been [REDACTED]

[REDACTED]

[REDACTED]. Ms. Andresen [REDACTED]

[REDACTED]. 2T34:4-36:2, R-18. Ms. Andresen [REDACTED]

[REDACTED]  
[REDACTED]. Ibid. Ms. Andresen [REDACTED]  
[REDACTED]

[REDACTED] 2T32:14-33:18, R-14. See also ID at 7. Notably, Ms. Andresen did not disclose these conditions when Dr. Filippone examined her in person.

The Board found that Dr. Filippone based his expert opinion on the objective medical facts in the record, correctly finding that although [REDACTED] may have [REDACTED] [REDACTED], [REDACTED] did not directly cause her resulting disability. Moreover, Dr. Filippone credibly found that Ms. Andresen's [REDACTED]  
[REDACTED]  
[REDACTED].

In the ID, the ALJ found that the [REDACTED] did not contribute to her [REDACTED]. ID at 10. The ALJ relied upon Ms. Andresen's expert, Dr. Jonathan Mack's ("Dr. Mack") opinion that Ms. Andresen's [REDACTED]  
[REDACTED]  
[REDACTED]. ID at 6.

However, Dr. Mack's contradicted his own opinion during his testimony, and the ALJ nevertheless accepted his opinion over Dr. Filippone's. Specifically, Dr. Mack acknowledged that the patient encounter that occurred in June may have played a part in Ms. Andresen's [REDACTED] even though she did not report any [REDACTED] after it and was able to work without any problem, because "[REDACTED]." 1T102:18-104:1. More than once, Dr. Mack admitted that the diagnosis of [REDACTED] could be [REDACTED]. 1T120:4-7. Nevertheless, when asked if he considered Ms. Andresen's [REDACTED]  
[REDACTED]

[REDACTED] - Dr. Mack stated that that he did not consider [REDACTED] because Ms. Andresen was able to perform the duties of her job. 1T113:16-117:22.

The Board noted that Dr. Mack essentially ignored crucial evidence with respect to Ms. Andresen's [REDACTED] but yet conceded that [REDACTED] might have impacted her diagnosis. As Dr. Filippone pointed out, Ms. Andresen's [REDACTED] [REDACTED] and the fact that Ms. Andresen was able to perform her duties does not establish that she was unaffected by them. R-5, at 3.

The ALJ also rejected Dr. Filippone's questioning of Ms. Andresen's credibility and concluded that Dr. Filippone, as an independent medical examiner, had to defer to Dr. Mack, the treating physician in determining a disability claim based upon [REDACTED]. ID at 8. This is significant in that when Dr. Filippone solicited Ms. Andresen's medical history during his examination, Ms. Andresen denied any significant health issues, either physically or mentally. Dr. Filippone reasonably questioned Ms. Andresen's credibility, as he already knew she had [REDACTED] [REDACTED], and was [REDACTED] which established that she had [REDACTED]. For purpose of the forensic evaluation, Dr. Filippone requested Ms. Andresen's prior medical records after his evaluation on August 17, 2018. Notably, the prior medical records later revealed that Ms. Andresen [REDACTED] [REDACTED] – which she failed to mention to Dr. Filippone when he took her medical history. Therefore, the Board rejects any inference that Dr. Filippone acted inappropriately in questioning Ms. Andresen's credibility when it is clearly established she was not up-front about her [REDACTED], which are the heart of any Accidental Disability matter.

The ALJ also found that as the treating physician, Dr. Mack's opinion should be entitled to more weight than Dr. Filippone's, the independent medical examiner. While it is true that Dr. Mack was Ms. Andresen's [REDACTED], that fact alone is not dispositive. Johnson v. Salem Corp., 97 N.J. 78, 91 (1984) ("The weight to which an expert opinion is entitled can rise no higher than the facts and reasoning upon which that opinion is predicated."). This is significant here, as Dr. Mack simply and admittedly ignored all of Ms. Andresen's [REDACTED] in forming his opinion. The ALJ's reliance on Dr. Mack being [REDACTED] compounds this error.

Finally, by concluding that Andresen's [REDACTED] is the direct result of [REDACTED], the ALJ relied on Dr. Filippone's testimony that [REDACTED] "substantially caused" her diagnosis of [REDACTED]. ID at 8 and 14. While Dr. Filippone answered affirmatively on cross-examination when asked "would you say that these two incidents substantially caused her [REDACTED]," Dr. Filippone is not a legal expert. Dr. Filippone's opinion was consistent throughout his testimony and expert reports; although [REDACTED] may have aggravated Ms. Andresen's [REDACTED], [REDACTED] did not directly cause her resulting disability. 2T36:7-37:12, R-3, R-4 and R-5.

Based on the above, the Board rejected the ALJ's finding that an independent medical examiner must rely upon the treating physician in rendering a formal [REDACTED]. The Board also rejected ALJ's finding that Dr. Filippone could not question Ms. Andresen's credibility. Finally, the Board rejected the ALJ's legal conclusion that Ms. Andresen was totally and permanently disabled from the performance of her duties as a direct result of [REDACTED].

The Board next considered whether the incident met the definition of traumatic event. In order to receive an Accidental Disability retirement benefit based on [REDACTED]

██████████ a member must establish that the disability resulted from a “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.” Patterson, 194 N.J. at 34. The applicant must carry the burden of proof. Id. at 51.

When the member seeks AD for ██████████, the “terrifying or horror-inducing” requirement does not apply. Caminiti v. Bd. of Trs., Police and Firemen’s Ret. Sys., 431 N.J. Super. 1, 20-21 (App. Div. 2013). However, an event simply involving some degree of physical contact does not suffice to disregard the Patterson requirements. See Russo v. Bd. of Trs., Police and Firemen’s Ret. Sys., 206 N.J. 14 (2011).

The Board noted that Ms. Andresen’s ██████████  
██████████ the result of ██████████  
██████████ . J-4. ██████████  
██████████ if any, were temporary. Therefore, the Board finds that the Patterson standard applies.

In the ID, the ALJ found that ██████████ qualified as an event which constitutes a horrific event placing a reasonable person in fear of serious bodily injury. The Board rejected that legal conclusion.

Here, Andresen had been working at the Raycroft Complex of the Hospital since 2002. 1T126:5-23. Raycroft Complex is known as the most dangerous facility because they would have most of the difficult offenders. 1T145:22-146:13. Even Andresen’s own expert, Dr. Mack, was aware of the condition at Raycroft Complex and noted that patients could initiate attacks without warning due to their psychiatric conditions. 1T25:16-26:13.

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Further, Ms. Andresen herself had witnessed frequent physical assaults by patients against other staff members. 1T146:14-147:15. The patient who [REDACTED] had [REDACTED], and Ms. Andresen herself had ordered that the patient always be escorted by two staff members. 1T147:6-15. The record demonstrates that the staff at Raycroft Complex are prepared and trained to handle patients' assaults and other aggressive behaviors. Notably, one of Ms. Andresen's job responsibilities is to calm distraught patients and provide for physical safety of the patients at the facility. J-7.

Based on the evidence adduced at trial, [REDACTED] do not qualify as a terrifying or horror-inducing event(s) that would permanently disable a reasonable person working at that facility. While a member does not assume the risk of being attacked by a patient, the totality of the circumstances, including the frequency of the assaults at the facility and those of this particular patient, and the expected job duties of employees at the facility fail to vault the Patterson threshold. Moreover, [REDACTED] by the two staff members who were escorting him after [REDACTED], and [REDACTED] may have encountered quickly resolved. Accordingly, the Board rejected the ALJ's finding that [REDACTED] constitutes a horrific event placing a reasonable person in fear of serious bodily injury.

You have the right to appeal this final 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

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Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Ignatowitz". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Jeff Ignatowitz, Secretary  
Board of Trustees  
Public Employees' Retirement System

G-7/JSI

C: D. Lewis (ET); A. McCormick (ET); G. Sasileo (ET); K. Ozol (ET); P. Sarti (ET);  
OAL, Attn: Library (ET); DAG Zhu (ET)

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