

To: Commission
From: Brian Ashnault
Re: Meaning of “traumatic event” in N.J.S. 43:16A-7 (*Moran v. Board of Trustees*)
Date: April 10, 2017

MEMORANDUM

Executive Summary

Commission Staff seeks authorization to conduct further research regarding the “traumatic event” standard in the accidental disability pension statute, N.J.S. 43:16A-7, in light of the Court’s determination in *Moran v. Board of Trustees, Police and Firemen's Retirement System*, 438 NJ Super. 346, 347 (App. Div. 2014). It appears that the statute, in its present form, may not be sufficiently clear as to whether “traumatic event” is meant to reserve pensions for those who are injured through an “undesigned or unexpected” event, or to preclude those with a pre-existing injury from collecting.

Relevant Statutory Language

N.J.S. 43:16A-7 provides, in pertinent part, that

Upon the written application by a member in service, by one acting in his behalf or by his employer any member may be retired on an accidental disability retirement allowance; provided, that the medical board, after a medical examination of such member, *shall certify that 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 regular or assigned duties and that such disability was not the result of the member’s willful negligence and that such member is mentally or physically incapacitated for the performance of his usual duty and of any other available duty in the department which his employer is willing to assign to him.* The application to accomplish such retirement must be filed within five years of the original traumatic event, but the board of trustees may consider an application filed after the five-year period if it can be factually demonstrated to the satisfaction of the board of trustees that the disability is due to the accident and the filing was not accomplished within the five-year period due to a delayed manifestation of the disability or to other circumstances beyond the control of the member.¹ [emphasis added]

Background

In *Moran v. Board of Trustees, Police and Firemen’s Retirement System (Moran)*, firefighter James Moran, saved two victims from a burning building, suffering disabling injuries

¹ N.J. Stat. § 43:16A-7(1) (1997).

in the process.² The evidence regarding the events in question was not disputed. There are two “companies” in Moran’s firefighter unit, one that’s responsible for unfurling the hose and putting out the fire (engine company), and a second that is responsible for breaking into the burning building and saving any occupants (truck company).³ The fire trucks are stocked with equipment corresponding to the unit to which they are assigned.⁴ Moran was part of the engine company.

During the event in which Moran was injured, the engine company arrived at the scene of what was supposed to be an abandoned, boarded-up building.⁵ Moran began unfurling the hose, but then heard screaming from the burning building. In the absence of the truck company – and with it the equipment that would normally be used to rescue individuals from burning buildings - he used his shoulder to break the door in order to save the screaming victims.⁶

Moran testified that “but for the unexpected presence of the victims in the burning building, and the unexpected absence of the truck company, he would not have tried to open the door.”⁷ He also testified that “if he had not opened the door, the people inside would have died.”⁸

The Board of Trustees of the Police and Fireman’s Retirement System (Board) denied Moran’s application for an accidental disability retirement pension.⁹ The Board claimed that he didn’t qualify because “Moran’s disability was not due to a traumatic event within the meaning of N.J.S.A. 42:16A-7 because the incident was not unexpected and undesigned.”¹⁰

Richardson v. Board of Trustees, Police and Firemen’s Retirement System (Richardson) sets forth the factors a policeman or fireman must prove in order to receive the pension benefits. Those factors are:

1. “That 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*
 - 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

² *Moran v. Board of Trustees, Police and Firemen’s Retirement System*, 438 NJ Super. 346, 347 (App. Div. 2014).

³ *Id.* at 350.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 347-348.

5. That the member is mentally or physically incapacitated from performing his usual or any other duty”¹¹

The language at issue in the above requirements is the traumatic event requirement and how it is interpreted by *Richardson*. The *Richardson* decision interpreted “traumatic event” to require an “*unexpected and external* happening that directly causes injury and is not the result of preexisting disease.”¹²

The Board claimed that the incident in *Moran* was not undesigned and unexpected and therefore according to the *Richardson* decision it did not qualify as a traumatic event. Since it didn’t qualify as a traumatic event, the Board asserted that *Moran* should not be entitled to the disability retirement pension.¹³

The Board explained that

“[s]imply kicking in a door or intentionally using one's back to force entry does not constitute an ‘unexpected happening,’ as Mr. Moran's very intent in partaking in these happenings would necessarily render such happenings to be expected.”

The Board also reasoned that, according to the Civil Service job description, a fire fighter's job duties included rescuing people and, hence, Moran “did intentionally perform a duty within the scope and performance of his regular duties for which he had been specifically trained.”

Here, the work activity itself was not undesigned or unexpected. Mr. Moran was disabled as a direct result of performing the work he intentionally set out to do. When he heard screams from inside the building, he intentionally slammed his body against a door in order to force it open. These facts do not lend themselves to any unexpected activity or accident.... Mr. Moran's disabling injury, while unfortunate, was caused by ordinary and intended, if dire, work effort—not by an undesigned and unexpected external mishap.¹⁴

The Court in *Moran* disagreed with the Board’s interpretation of *Richardson* regarding what constitutes an undesigned and unexpected event in order to qualify as a traumatic event.¹⁵ *Moran* held that the traumatic event standard was not intended to make it more difficult for injured employees to obtain their accidental injury pension.¹⁶ Rather, “traumatic event” was simply meant to preclude those who were injured due to a pre-existing medical condition from receiving the pension.¹⁷

¹¹ *Id.* at 349.

¹² *Id.* at 348.

¹³ *Id.*

¹⁴ *Id.* at 351-152

¹⁵ *Id.* at 353.

¹⁶ *Id.*

¹⁷ *Id.*

While the case at hand didn't include an ordinary unexpected accident such as a collapsing house, Moran's situation was due to an unexpected and undesigned traumatic event caused by external factors.¹⁸ The Court said "had Moran become hopelessly trapped by fire on an upper floor of the house, and saved himself by jumping out a window thereby suffering disabling injuries, he would not be disqualified for benefits because he 'intentionally' jumped."¹⁹

Furthermore, the Court found that "the fact that a member is injured while performing his ordinary duties does not disqualify him from receiving accidental disability benefits."²⁰

Conclusion

Staff seeks Commission authorization to engage in additional research and outreach in order to determine whether modification of the statutory language contained in N.J.S. 43:16A-7 would effectuate the intent of the Legislature regarding the "traumatic event" standard.

¹⁸ *Id.* at 354.

¹⁹ *Id.* at 354-355.

²⁰ *Id.* at 354.