



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
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*Acting Director*

September 8, 2017

George Kooistra  
[REDACTED]

RE: [REDACTED]

Dear Mr. Kooistra:

The Board of Trustees of the Teachers' Pension and Annuity Fund ("Board") has reviewed the Initial Decision ("ID") of the Administrative Law Judge ("ALJ") Joann LaSala Candido dated June 28, 2017, in the above captioned matter, together with the joint stipulation of facts, the items submitted into evidence by the parties, and the exceptions filed by DAG Robert S. Garrison, Jr., dated July 11, 2017. At its meeting of August 3, 2017, the TPAF Board voted to reject the Initial Decision in which the ALJ incorrectly determined that you qualified for Accidental Disability retirement benefits, notwithstanding that you failed to present a medical expert at the hearing, in contravention of the case law. The Board has issued the following Findings of Fact and Conclusions of Law in support of its decision.<sup>1</sup>

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

According to the records of the Division, you were employed as a teacher by the Elizabeth Board of Education. On March 27, 2013, you applied for Accidental Disability retirement benefits based upon four incidents dated December 21, 2007, February 1, 2008, January 18, 2012 and

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<sup>1</sup> The Board timely requested and was granted an extension of time for issuing a final decision in this matter.

March 8, 2013, involving orthopedic injuries and a mental disability. Specifically, on December 5, 2013, the TPAF Board denied your application on the basis that the incidents, although identifiable as to time and place and undesigned and unexpected, did not result in a permanent disability from the performance of your regular and assigned duties. The Board did find that you suffer from major depression, not related to any work incident, which renders you totally and permanently disabled and awarded you Ordinary Disability.

The Board notes that N.J.S.A. 18A:66-39 provides that a member of TPAF is eligible for Accidental Disability retirement benefits if said 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.” Ibid. The New Jersey Supreme Court has held that an applicant for disability retirement benefits carries the burden of proof to establish that his total and permanent disability is a direct result of a work-related traumatic event and “must produce such expert evidence as is required to sustain that burden.” Patterson v. Bd. of Trs., State Police Ret. Sys., 194 N.J. 29, 50-51 (2008). Further, the applicant must introduce expert testimony on the record at hearing. See Tavaglione v. Bd. of Trs., Police & Firemen’s Ret. Sys., 2016 N.J. Super. Unpub. LEXIS 34, at \*\*14-16 (App. Div. Jan. 8, 2016) (applicant failed to show eligibility for disability retirement where expert did not testify at hearing and report was hearsay); N.J.A.C. 1:1-14.7(f)(3) (“[a]ny proposed findings of fact submitted by a party shall not be considered unless they are based on facts proved in the hearing.”). Lay witness testimony cannot test the credibility, appropriate weight, probative value, facts, or reasoning of an expert’s opinion on an alleged disability and therefore cannot provide the residuum of legally competent evidence necessary for a finding of disability or causation.

While the Administrative Procedure Act relaxed the rules of evidence for the admissibility of hearsay evidence in administrative proceedings to allow admission of relevant evidence, subject to the court’s discretion, the requirement for expert medical evidence is a substantive

requirement. N.J.S.A. 52:14B-10(a); Weston v. State, 60 N.J. 36, 51 (1972). Our Supreme Court has held that “[h]earsay may be employed to corroborate competent proof . . . [b]ut in the final analysis . . . there must be a residuum of legal and competent evidence in the record to support it.” Weston, supra, 60 N.J. at 51 (internal citations omitted). Expert testimony is opinion evidence, subject to testing by the parties and the finder of fact, while physician reports standing alone are hearsay. Corcoran v. Sears Roebuck & Co., 312 N.J. Super. 117, 126 (App. Div. 1998).

At the hearing, you presented the testimony of Frank Diakos, a school security guard, Reverend Melton Haymon, a teacher and minister, and Lisa King, a detective in the New Jersey State Police. (ID at 8). You did not produce an expert witness on behalf of your claim of orthopedic disability. You offered medical records into evidence at the hearing, including the reports of Dr. Jose Ibarbia and Dr. Nam Kim, but in the absence of competent medical expert testimony to interpret and corroborate the records, you failed as a matter of law to produce competent evidence to sustain your burden of proof.

The ALJ notes in the initial decision that the Board did not object to the introduction of medical records into the record. (ID at 3). However, while the Board did consent to the medical records to be included in the record, the Board did not waive the requirement of the residuum rule that “some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.” N.J.A.C. 1:1-15.5. The Board filed a motion to dismiss the matter for failure to bring an expert before the hearing date, because you would not affirm that you were bringing an expert.

Pursuant to N.J.A.C. 1:1-15.5 and Weston, supra, you were required to supplement your physician’s notes and records with at least some legally competent evidence to support a finding that your total and permanent disability is a direct result of a work-related injury. Because you had not done so, and the ALJ did not rely upon medical testimony in her finding, there is no

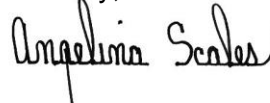
sufficient credible evidence in the record to support a finding of disability or direct result. Because you did not carry your burden of proof, this Board rejects the initial decision and reaffirms its denial of Accidental Disability retirement benefits.

For the foregoing reasons, the Board rejected the ALJ's decision that you are entitled to Accidental Disability retirement benefits and reaffirmed its original decision denying your application for Accidental Disability retirement benefits.

Your letter of August 13, 2017 was placed on the Board's agenda of September 7, 2017 and was duly noted by the Board. However, the Board's decision remains unchanged.

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.

Sincerely,



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

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c: V. McManus (ET); L. Milton (ET) T. Williams (ET); P. Sarti (ET)  
DAG Robert Garrison (ET)  
OAL, Attn: Library (OAL Decisions) (ET)