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STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
POLICE AND FIREMENS' RETIREMENT SYSTEM
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ELIZABETH MAHER MUOIO
State Treasurer

ED DONNELLY
Chairman, PFRSNJ

September 19, 2023

Sent via email to: [REDACTED]

ALTERMAN & ASSOCIATES, LLC
Arthur J. Murray, Esq.

RE: Durwin Pearson
[REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Murray:

The Board of Trustees (Board) of the Police and Firemen's Retirement System of New Jersey (PFRSNJ) has reviewed the June 29, 2023 Initial Decision of Administrative Law Judge (ALJ) Jeffrey N. Rabin in this matter; exceptions filed on behalf of the PFRSNJ by Thomas R. Hower, Esq., dated July 27, 2023¹; and your reply to exceptions on behalf of Mr. Pearson, dated July 30, 2023.

At its meeting of August 14, 2023, the PFRSNJ Board voted to reject the ALJ's Initial Decision (ID) which recommended approving Mr. Pearson's application for Accidental Disability.

Findings of Fact and Conclusions of Law as outlined below were presented and approved by the PFRSNJ Board at its September 18, 2023 meeting.

FINDINGS OF FACT

Durwin Pearson began his career as a Police Officer with the City of Camden in April 1999 and was enrolled in the Police and Firemen's Retirement System (PFRS) effective May 1, 1999. He later transferred to the Camden County Regional Police Department, which replaced the Camden City Police Department in April 2013; he remained there until his retirement.

Mr. Pearson filed for Accidental Disability retirement benefits on June 29, 2016, requesting an effective date of July 1, 2016. On his application, he indicated an accident date of October 17, 2015, with a comment [REDACTED]

¹ An extension was granted on July 12, 2023, allowing until July 26, 2023 to file exceptions. However, due to a computer outage which affected all State offices, the exceptions were accepted on July 27, 2023 as timely.

[REDACTED]

Records show that Mr. Pearson had previously [REDACTED] while with the Camden City Police Department [REDACTED]

The medical documents also contained references to a report [REDACTED] one of Mr. Pearson's treating physicians. [REDACTED]

[REDACTED], the medical expert testifying on behalf of the PFRS Board, concluded that Mr. Pearson was totally and permanently disabled from his job duties, but that the disability was not a direct result of the incident. He determined that the disability was an acceleration or exacerbation of pre-existing [REDACTED].

[REDACTED], the medical expert testifying on behalf of Mr. Pearson, considered the [REDACTED]. He opined that the 2015 incident was the direct cause of the member's disability.

At its meeting of October 2016, the Board of Trustees voted to deny Accidental Disability (AD) but grant Ordinary Disability (OD), based on the recommendation of [REDACTED]. The Board determined that the member was totally and permanently disabled from his job duties, that the incident was identifiable to time and place, was undesigned and unexpected, and that it occurred during and as a result of the member's regular or assigned duties. 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. The Board found that Mr. Pearson's disability was not the direct result of the 2015 incident, as the event was not caused by a circumstance external to the member. Instead they found that the disability was the result of pre-existing disease alone or pre-existing disease that is aggravated or accelerated by the work effort. Consequently, the member did not qualify for AD, but was eligible for OD.

Mr. Pearson appealed the denial and the matter was transmitted to the Office of Administrative Law (OAL) and filed on January 18, 2018, 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 hearings at the OAL, an Initial Decision (ID) was filed on June 29, 2023. The ID concluded that the direct cause of the injury which prevented petitioner from continuing his career as a law enforcement officer was the 2015 incident. It consequently concluded that Mr. Pearson met his burden in demonstrating that he had met the criteria of eligibility for AD retirement benefits and ordered that the Board's determination was thereby reversed.

LEGAL CONCLUSIONS

In the ID, it was found as fact that there was [REDACTED]. The ID concluded that [REDACTED] report claiming [REDACTED] was likely based on typographical errors. [REDACTED] assented to the suggestion during examination that [REDACTED] "more likely than not" meant to type [REDACTED] instead of [REDACTED] because the [REDACTED] are close together on a keyboard. The Board found that, because [REDACTED] made no mention of the alleged typographical errors in his expert report, his response to

leading questions by Mr. Pearson's counsel does not support the conclusion that he is more credible than [REDACTED]

The PFRSNJ Board was not persuaded by the ID. It was noted that [REDACTED] is noted in [REDACTED] report five times. It is presumed that there was only an incident of [REDACTED] and that [REDACTED] mistakenly typed [REDACTED] by accident. The Board found that the description in testimony of the [REDACTED] incident – [REDACTED] – is substantially different than the incident described as occurring [REDACTED]

The Board does not find credible that the difference between these incidents can be reconciled as a "typo." It determined that the details are too dissimilar to come to the conclusion that they are actually the same incident, differentiated only by typographical error. The Board believed that it is also feasible that Mr. Pearson sustained an injury [REDACTED], but there is no workers' compensation or other employer report because it is possible that he injured himself outside of work. It finds that this theory is at least as plausible as an [REDACTED] making a typographical error five times in the same report and describing the same incident with discernible differences in detail.

For these reasons, the Board rejects the expert fact-finding that Mr. Pearson's disability was not caused by a pre-existing condition or a pre-existing condition accelerated or exacerbated by the work effort. It also rejects the legal conclusion that [REDACTED] provided more reliable testimony than did [REDACTED] at hearing. Finally, the Board reverses the legal conclusion that Mr. Pearson's disability was directly caused by the 2015 incident and rejects the recommendation of the ID to reverse the PFRS Board's decision and grant the member's appeal for AD.

CONCLUSION

For the foregoing reasons, this AD application is denied; [REDACTED] will continue to receive OD benefits. This correspondence shall constitute the Final Administrative Determination of the PFRSNJ Board of Trustees.

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-7/sb

c: Durwin Pearson
Thomas R. Hower, Esq., PFRSNJ Staff Attorney
OAL, Attn: Library (ET)