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DEPARTMENT OF THE TREASURY DIVISION OF PENSIONS AND BENEFITS P. O. Box 295

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October 10, 2025

ELIZABETH MAHER MUOIO
State Treasurer

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Acting Director

## Sent via email and regular mail

Law Office of Michael K. Kalmus Michael Kalmus, Esq.

RE: Kathryn Ratner

**TPAF** 

OAL DKT. NO. TYP 01644-24

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Dear Mr. Kalmus:

At its meeting of September 4, 2025, the Board of Trustees ("Board") of the Teachers' Pension and Annuity Fund ("TPAF") considered the July 29, 2025 Initial Decision ("ID") of the Honorable Ernest M. Bongiovanni, ALJ, with exhibits; the exceptions filed by Kseniia I. Michkodan, dated August 11, 2025, your reply to exceptions, dated August 15, 2025, and your statements to the Board and those of DAG Matthew Melton. The Board noted the exceptions and the reply thereto. Thereafter, the Board voted to reject the ALJ's decision recommending Accidental Disability retirement benefits ("AD"), thereby reaffirming the Board's original determination. For the reasons set forth below, the Board rejected the ALJ's finding that the "the November 2, 2022 [incident] was at the very least an essential significant or substantial contributing cause of petitioner's disability" and as a result Kathryn Ratner ("Ratner") is entitled to AD. (ID at 22). The Board herein expands the ALJ's Findings of Fact and Conclusions of Law and issues this Final Administrative Determination.

<sup>&</sup>lt;sup>1</sup> The Board requested and was granted an extension of time to issue its final administrative determination

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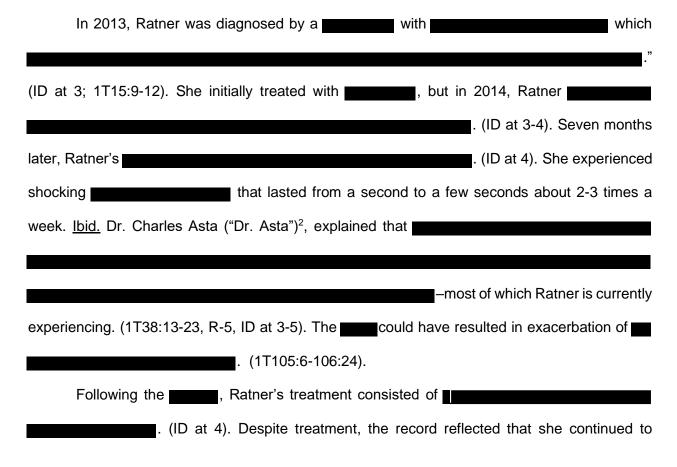
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## PROCEDURAL HISTORY AND FACTUAL FINDINGS

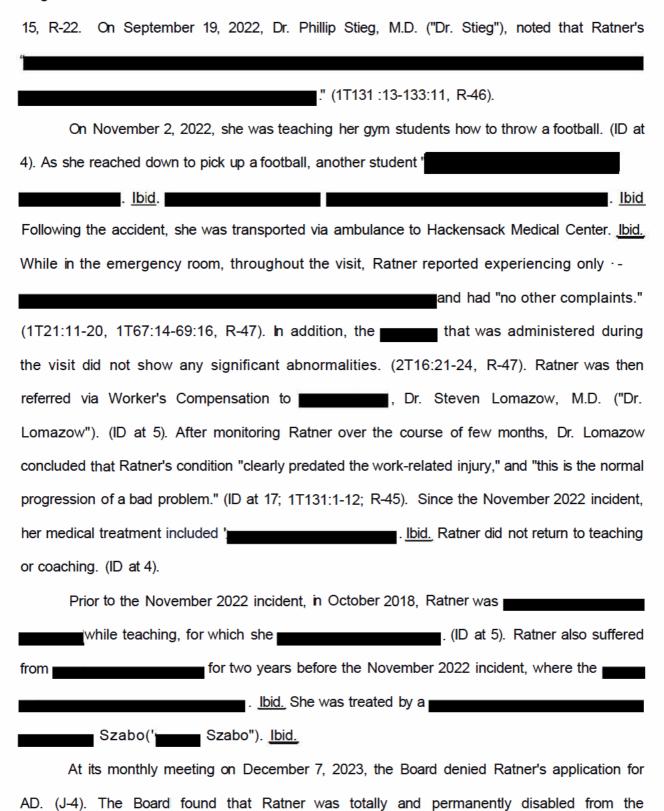
The Board corrects and changes the reference from "Simpson" to "Ratner" (ID at 3) and corrects the reference from "Dr. Mark's" to "Dr. Marx's" (ID at 12). The Board also corrects the ALJ's reference to pain on the right side of Ratner's face to the left side. (1T15:9-12).

On December 8, 2022, Ratner applied for an AD retirement benefit based upon an incident that occurred on November 2, 2022. Ratner began working as a Physical Education and Health Teacher in September 2007 as a result of her employment with Hillside Board of Education ("Hillside"). (ID at 3). In addition to her teaching duties, Ratner also coached, and was responsible for attending hall and lunch duty and instructing students in various sports techniques. (ID at 3).



<sup>&</sup>lt;sup>2</sup> Dr. Asta is Ratner's treating physician and testified on her behalf.

: "Pt presents with	n,"
(1T35:21-36:2, R-6); "she und	erstands that that has
failed to respond to medical mana	agement," (1T36:15-20, R-7); "Pt has worked with her
to	," (1T37:4-10, R-8); "For the past 2
months patient has had	as well as
	," (T38:6-12; R-14).
Furthermore, Dr. Asta's	own records showed that various medical regimens, such as
	. (1T116:17-117:5,
R-15; 1T117:18-118:4, R-16; 1T	118:20-25, R-17; 1T119:19-120:5, R-18; 1T120:24-122:3, R-19;
1T122:14-123:4, R-20). Dr. Asta	a's records, starting from 2017, stated that Ratner was
." (1T108:14-110:8,	R-9). He also noted Ratner was experiencing constant
	without adequate benefit." (1T110:9-112:10, R-10; 1T112:16-
113:5, R-11; 1T115:17-116:3, R	2-14). The frequency of Ratner's "progressive" "
started to "creep up" prior to t	he 2022 incident, leading Ratner to the "susp[icion] that the
is	not under full control," (1T90:13-22, 1T124:17-125:15, R-22).
Dr. Asta's records also re	evealed that Ratner's "condition [was] not under full control" and
almost a year before the Nove	ember 2022 incident she was "not been able to
	." (ID at 8; 1T95:24-96:19; P-1; 1T142:4-15, R-21; 1T125:3-



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performance of duty, that the November 2, 2022 incident (2022 incident) was identifiable as to

time and place, undesigned and unexpected, occurred during and as a result of the performance

of Ratner's regular or assigned duties and was not the result of her willful negligence. Ibid.

However, the Board found that Ratner's disability is not a direct result of the November 2022

incident. Ibid. Rather, Ratner's disability is associated with a symptomatic, pre-existing condition.

Ibid. Thereafter at its February 1, 2024, meeting the Board transmitted this matter to the OAL. (J-

6).

On July 29, 2025, The ALJ issued an Initial Decision finding that the testimony of Dr. Asta

credibly established that the November 2022 incident was "the essential significant or substantial

contributing cause' of Petitioner's disability." (ID at 21). As a result, the ALJ found that Ratner

met her burden of establishing she is eligible for AD. (ID at 22).

**CONCLUSIONS OF LAW** 

The Board rejected the ALJ's conclusion that Ratner established that her disability was

the direct result of the November 2022 incident. (ID at 21-22). A TPAF member seeking AD must

prove:

1. that [s]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, and

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

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5. that the member is mentally or physically incapacitated from

performing his usual or any other duty.

[Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J.

189, 212-13 (2007).]

In other words, the member must prove "he or she suffered a total and permanently disabling

injury 'as a direct result of an identifiable, unanticipated mishap." Brooks v. Bd. of Trs., Pub.

Emps. Ret. Sys., 425 N.J. Super. 277, 284-85 (App. Div. 2012) (quoting Richardson, 192 N.J. at

213).

To satisfy the "direct result" requirement, a traumatic event must constitute "the essential

significant or substantial contributing cause" of the applicant's disability and not be the result of

pre-existing disease alone or in combination with work effort. Gerba v. Bd. of Trs., Pub. Emps.'

Ret. Sys., 83 N.J. 174, 185 (1980); Korelnia v. Bd. of Trs., Pub. Emps.' Ret. Sys., 83 N.J. 163,

170 (1980). The burden of proof lies with Ratner to prove "direct result" by providing credible

medical evidence. Gerba, 83 N.J. at 185; Atkinson v. Parsekian, 37 N.J. 43, 149 (1962). After

considering all the relevant evidence in the record, the Board found that Ratner failed to carry her

burden and prove that November 2022 incident was the "essential significant or substantial

contributing cause" of her disability. Rather, the record shows that her disability was the result of

symptomatic, pre-existing condition.

In Gerba, the Supreme Court noted that the legislative purpose of the "direct result"

requirement was to apply a more exacting standard of medical causation and that AD should be

denied when there is "an underlying condition such as osteoarthritis which itself has not been

directly caused, but is only aggravated or ignited, by the trauma." 83 N.J. at 186. A non-

symptomatic pre-existing condition can combine with a traumatic event to satisfy the "direct result"

requirement, but only where the pre-existing condition is stable and "might never cause any

trouble." Petrucelli v. Bd. of Trs., Pub. Emps.' Ret. Sys., 211 N.J. Super. 280, 287 (App. Div.

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1986). 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, 83 N.J. at 171. The

weight granted to expert testimony 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 determined that the ALJ incorrectly gave greater weight to Dr. Asta's opinion.

Dr. Tatyana Marx's ("Dr. Marx")<sup>3</sup> opinion more reliably accounts for Ratner's medical history and

, and was aligned with Ratner's treating doctors, such as Dr. Scott Gottlieb

("Dr. Gottlieb"), Dr. Lomazow, Dr. Stieg, and Szabo regarding the causation of

Ratner's disability. Dr. Marx reviewed more than

in 2013 and found that the records document the presence and progression of pre-existing

degenerative changes. By contrast, Dr. Asta did not review any records aside from his own

prior to testifying and agreed that even his own records overwhelmingly supported that prior

to the November 2022 accident, Ratner experienced

which lasted for months at a time. Dr. Asta also primarily relied on Ratner's subjective

complaints.

Contrary to the ALJ's findings, the record shows that prior to the November 2022

1T37:4-10, R-8; 1T38:6-12; R-14). In fact, Dr. Asta's own records starting from 2017 that Ratner

was

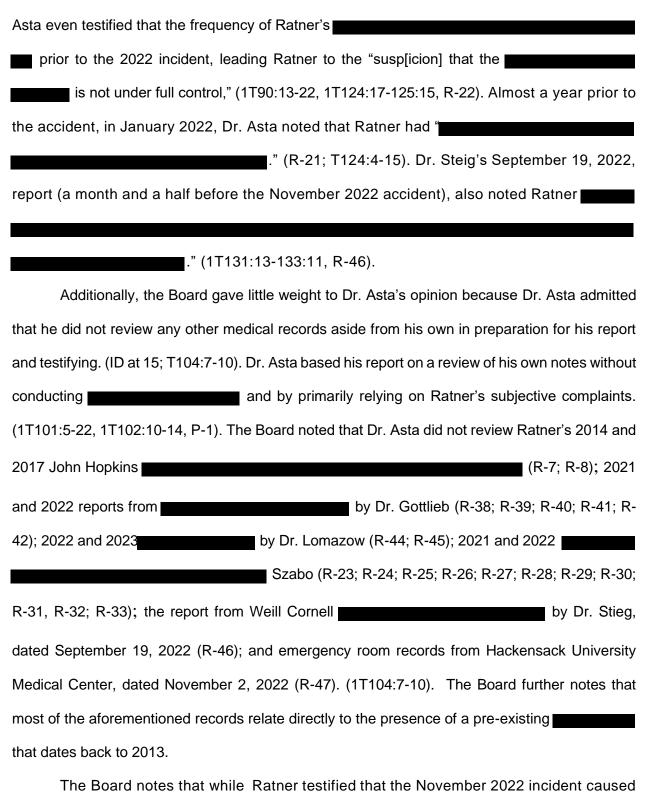
(1T108:14-110:8, R-9; 1T110:9-112:10, R-10; 1T112:16-113:5, R-11; 1T115:17-116:3, R-14). Dr.

<sup>3</sup> Dr. Marx testified on behalf of the Board.

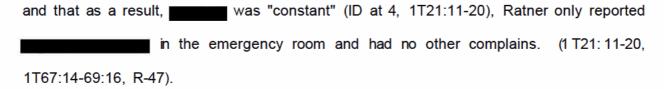
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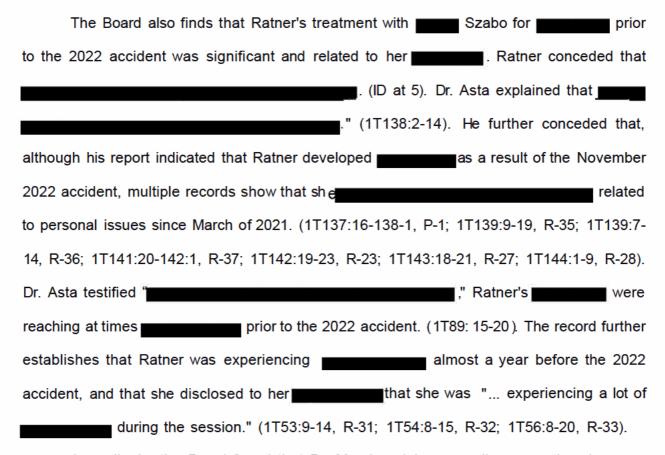
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her to experience ," that she had to be





Accordingly, the Board found that Dr. Marx's opinion regarding causation deserves greater weight than Dr. Asta's because she based her analysis on medical evidence connected to specific clinical findings more consistent with Ratner's treating physicians' conclusion. Ratner's treating physicians' records support the finding that her pre-existing condition was the substantial contributing cause of her disability and, in fact, the symptoms practically did not change after the incident of 2022. Gerba, 83 N.J. at 186. Moreover, unlike Petrucelli, Ratner's pre-existing condition was not quiescent, as the record

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demonstrates that she had longstanding and chronic issues with her , which was confirmed by Ratner's expert - Dr. Asta.

Finally, the Board rejects the ALJ's conclusion that November 2022 incident was the essential significant or substantial contributing cause of Ratner's disability because she was able to work before the incident. (ID at 21-22). This conclusion regarding causation is contrary to Gerba and Petrucelli. Based on the record and Dr. Asta's testimony, Ratner had pre-existing that caused was not fully treated, and affected her ability to perform her activities of daily living. The November 2022 incident, which exacerbated Ratner's condition cannot be the "essential significant or substantial contributing cause" of Ratner's disability because she was already experiencing that was not treatable. The record does not establish that the November 2022 incident worsened her condition in a "significant" or "substantial" manner and was "essential" in worsening her condition to such a degree that she could no longer perform her job functions. Laurie v. Bd. of Trs., Pub. Emps. Ret. Sys., No. A-3128-23, (App. Div. Sept.18, 2025) (slip op. at 9). Moreover, the ALJ's temporal analysis for causation has been expressly rejected by the Appellate Division in Torres v. Board of Trustees, Police & Firemen's Retirement System, No. A-2388-15T3 (App. Div. Aug. 3, 2018) (slip op. at 16).

Therefore, the Board rejects the ALJ's determination that Dr. Asta's opinion deserves greater weight. The Board also rejects the ALJ's finding that Ratner satisfied the "direct result" requirement, as the overwhelming records prove that she had a chronic, highly symptomatic, and degenerative pre-existing condition. Accordingly, the Board rejects the ALJ's conclusion that Ratner is entitled to AD, as she failed to prove that her disability was the essential significant or substantial contributing direct result of her disability.

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

Sincerely,

Saretta Dudley, Secretary

**Board of Trustees** 

Teachers' Pension and Annuity Fund

G-1/wt/sd

C: D. Lewis (ET); R. Clark (ET); A. Saco (ET); C. Law (ET)

OAL, Attn: Library (ET)

DAG Kseniia I. Michkodan (ET) Kathryn Ratner (regular mail)