



**JAMES A. KOMPANY**  
*Chairman*

**GREGORY PETZOLD**  
*Executive Director*

June 11, 2024

Sent via email to: [REDACTED]

Stuart J. Alterman, Esq.  
[REDACTED]

RE: Elizabeth Crespo  
PFRS [REDACTED]  
OAL DKT. No. TYP 02885-14

### **FINAL ADMINISTRATIVE DETERMINATION**

Dear Mr. Alterman:

The Board of Trustees (Board) of the Police and Firemen's Retirement System of New Jersey (PFRSNJ) has reviewed the Initial Decision (ID) of Hon. Andrew M. Baron, ALJ, dated March 22, 2024, as well as exceptions on behalf of the Board filed by Thomas R. Hower, Esq., dated April 18, 2024<sup>1</sup>; and a reply to exceptions on behalf of your client, Elizabeth Crespo, filed by John A. Ferner, Esq., dated April 26, 2024.

At its meeting of May 13, 2024, the Board voted to modify the ID issued by the Office of Administrative Law (OAL), which reversed the Board's denial of Ms. Crespo's application for Accidental Disability retirement benefits (AD). It voted to solely accept the finding that Ms. Crespo is totally and permanently disabled and therefore eligible to receive Ordinary Disability retirement benefits (OD). The Board thereafter directed the Division of Pensions and Benefits to process OD benefits retroactive to Ms. Crespo's retirement date, November 1, 2013. However, the Board modified the ID to reject the balance of the ID.

Findings of Fact and Conclusions of Law as outlined below were presented and approved by the Board at its June 10, 2024 meeting.

### **FINDINGS OF FACT**

Elizabeth Crespo began her career with Passaic City (Passaic) on or around April 22, 2002, as a Public Safety Telecommunicator. She was originally enrolled in the Public Employees' Retirement System (PERS). On or around September 6, 2004, she became a Police Officer for Passaic. She was subsequently enrolled in the Police and Firemen's Retirement System (PFRS) and her PERS service credit was transferred to her PFRS account. She accrued a total of nine years, four months of service credit, 19 months of which was leave of absence time as well as prior public service credit she had purchased.

<sup>1</sup> An extension was granted on April 11, 2024, allowing until April 18, 2024 to file exceptions.

In 2012, while employed with Passaic, Ms. Crespo was required to [REDACTED]

Ms. Crespo applied for AD on May 16, 2013. The effective date of the retirement was November 1, 2013<sup>3</sup>. At its meeting of February 11, 2014, the PFRS Board reviewed the application pursuant to N.J.S.A. 43:16A-7, which provides the AD requirements. The Board found that the incident was identifiable to time and place, that the event occurred during and as a result of her regular or assigned duties, and that her reported disability was not the result of her willful negligence. However, the Board denied the application on the grounds that the member was not considered totally and permanently disabled from the performance of her regular or assigned job duties and that she was not physically or mentally incapacitated from the performance of her usual or other duties that her employer was willing to offer. Further, the Board found that the event that caused her disability claim was not undesigned and unexpected. Finally, it was determined that there was no evidence of a direct causation of a total and permanent disability. Because she did not qualify for any retirement benefit, she was only eligible for the return of her accumulated pension contributions.

On March 11, 2014, the matter was transmitted as a contested case to the OAL, based on Ms. Crespo's appeal of the denial. The case had several delays, including those caused by the COVID-19 pandemic. Several hearing dates were held. Near the end, Ms. Crespo moved for summary disposition on July 8, 2022, requesting that the OAL rule that she was totally and permanently disabled at the time she filed her application. The PFRSNJ Board submitted a reply in opposition to the partial summary decision motion. The OAL granted the partial motion on February 2, 2023. The Board requested that the interim relief be reversed and claims for disability retirement be denied in their entirety.

After completing the hearing, the ID declined to reverse the prior interim ruling and instead reversed the Board's denial of AD in its entirety, finding that she carried her burden of proof. Because the ID credits Ms. Crespo's testimony about her symptoms, finding that she is totally and permanently disabled from her job duties, the Board adopted the finding that she is eligible for OD. The Board denied the balance of the decision for the forthcoming legal conclusions.

### **LEGAL CONCLUSIONS**

The ID makes a legal error when it cites N.J.S.A. 43:8B-1(d) in defining "permanent and total disability." ID at 12. This statutory section does not apply to the PFRS. It applies to "County, Municipal and School District Pensions. The Board rejects the legal conclusions based on this incorrect statutory application.

The ID erred in its improper application of case law regarding [REDACTED] ID at 20-22. The ID mistakenly applies Federal case law, citing [REDACTED] ID at 20. Neither of these cases addresses PFRS statutes. The ALJ cites these cases, which are both from the 1980's, and disregards the expert, contemporaneous testimony of [REDACTED], the Independent Medical

<sup>2</sup> In one reference, the ID indicates that there were [REDACTED] ID at 22. In all other instances, the ID states [REDACTED] which corresponds with the record.

<sup>3</sup> The original application requested an effective date of July 1, 2013. Subsequent applications were submitted, with the final effective date requested as November 1, 2013.

Examiner, who testified on behalf of the Board. Consequent to this legal error, the Board rejects the medical conclusion that Ms. Crespo [REDACTED]

There is an incorrect citation to N.J.S.A. 53:5A-10 in reference to the issue of “direct result.” ID at 17. This is a controlling statute of the State Police Retirement System, not the PFRS. The Board therefore rejects this as legal error.

The ID goes on to incorrectly cite N.J.S.A. 43:15A-42, which applies to the Public Employees’ Retirement System and not the PFRS. ID at 18. In reference to this inapplicable statute, the ID incorrectly states that the member “should not be penalized for having 9 years and 1 month of credit for New Jersey service and qualify for ordinary disability benefits.” The member was not denied OD based on her years of service; she was denied because she was not found to be totally and permanently disabled from her job duties.

The ID subsequently cites N.J.S.A. 43:16A-6. ID at 19. This is the PFRS statute regarding the requirements to qualify for OD. The application of the statute is a legal error. The ID states “When the Board determined that Petitioner only qualified for the return of her accumulated pension contributions, due to her age and limited years of service, they did not take into account the statute still allowed to qualify for ordinary disability. Ibid. As previously stated, the Board did not violate the statute when it did not grant OD; until the adoption of this singular portion of the ID, the member did not meet the provisions of the citation in question. Consequently, the Board rejects this as legal error.

Regarding the medical testimony, [REDACTED], the Board’s expert witness and [REDACTED], Ms. Crespo’s treating physician, the Board rejects the ID’s conclusion that [REDACTED] testimony is more credible than that of [REDACTED], who was described in the ID as a respected [REDACTED], but was given “far less weight than the testimony of the petitioner’s treating physicians...”. ID at 7. Expert testimony is not covered by N.J.S.A. 52:14B-10(c). See ZRB LLC v. New Jersey DEP, et als., 403 N.J. Super. 531, 561 (App. Div. 2008).

The Board finds the opposite, that [REDACTED] testimony is more credible. The Board rejects the conclusions that Ms. Crespo had [REDACTED] and that her condition directly caused a total and permanent disability, based on the expert medical opinion of [REDACTED]. Accordingly, the Board rejects the reversal of its finding that Ms. Crespo’s disabling condition is a direct result of the “accident,” which in this case was [REDACTED].

Finally, the Board rejects the ID regarding the “undesigned and unexpected” standard, in accordance with Richardson v. Bd. Of Trustees, Police & Firemen’s Ret. Sys., 192 N.J. 189, 212-13 (2007). The ID quotes the following from Richardson, “[t]he polestar of the inquiry is whether, during the regular performance of his job, an unexpected happening, not the result of pre-existing disease alone or in combination with the work, has occurred and directly resulted in the permanent and total disability of the member.” ID at 15 (citing Richardson, 192 N.J. at 214). The ID concludes that, “...the only **CONCLUSION** that common sense dictates is that by [REDACTED] was undesigned and unexpected.” ID at 15. [Emphasis in original]

The Board does not concur with the ID’s conclusion. In fact, it finds the contrary to be true. Absent some irregularity, [REDACTED] neither undesigned nor unexpected. Based on its rejection of the conclusion that Ms. Crespo’s disabling condition is a direct result of [REDACTED], the Board similarly rejects the conclusion that [REDACTED] be considered undesigned and unexpected. Although the Board allowed the concession that the member is totally and permanently disabled from her job duties based on her symptoms, the Board does not concede that Ms. Crespo [REDACTED], so it cannot logically conclude that “the impact and outcome [REDACTED] was undesigned and unexpected.” Ibid.

The Board does not consider the incident in question to meet the definition of an accident. The case law determines that an accident may be found “in an unanticipated consequence of an intended external event if that consequence is extraordinary or unusual in common experience.” Richardson, 192 N.J. at 201 (citing Russo v. Teachers’ Pension & Annuity Fund, 62 N.J. 142, 154 1973). “We are satisfied that disability or death in such common experiences is not accidental within the meaning of a pension statute when all that appears is that the employee was doing his usual work in the usual way.” Russo, 62 N.J. at 154 (cited in Richardson, 62 N.J. at 201). [REDACTED] is not an unintended external event where the consequence of the event is extraordinary in common experience. While an undesigned and unexpected event can occur during ordinary work effort, such as [REDACTED], the work effort alone cannot be considered an accident. Ms. Crespo’s allegations do not change the fact that the incident itself cannot be considered undesigned and unexpected.

**CONCLUSION**

Based on the legal errors listed, the Board rejects the ID’s conclusions respective to the discussions in which they are applied. For all of the foregoing reasons, Ms. Crespo’s AD application is denied; she will 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-10/sb

c: Elizabeth Crespo  
Thomas R. Hower, Esq., PFRSNJ Staff Attorney (ET)  
Nels J. Lauritzen, Esq., PFRSNJ Deputy Director of Legal Affairs (ET)  
OAL, Attn: Library (ET)