



# State of New Jersey

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January 29, 2019

Sent Via Email: [REDACTED]

Stuart J. Alterman, Esq.

[REDACTED]  
[REDACTED]  
[REDACTED]

RE: Matthew Ulrie Davis

[REDACTED]  
OAL DKT NO. TYP 05031-2017S

Dear Mr. Alterman:

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

At its meeting on January 14, 2019, the Board of Trustees (Board) of the Police and Firemen's Retirement System (PFRS) reviewed the Initial Decision ("ID") of the Administrative Law Judge Tama B. Hughes (the "ALJ")<sup>1</sup>, dated November 30, 2018, in the above captioned matter, the items submitted into evidence by the parties, exceptions filed by Deputy Attorney General (DAG) Juliana C. DeAngelis and your reply to exceptions<sup>2</sup>. Thereafter, the Board voted to correct certain factual findings of the ALJ and reject the ALJ's legal conclusion that Mr. Davis is entitled to Accidental disability retirement.

Findings of Fact and Conclusions of Law as outlined below were presented and approved by the PFRS Board at its meeting on January 28, 2019, which constitutes the Final Administrative Determination in this matter.

## **FINDINGS OF FACT**

<sup>1</sup> An extension of time for the Board to issue its final administrative determination was requested and granted.

<sup>2</sup> An extension of time was requested and granted to file exceptions.

The Board voted to correct certain factual findings of the ALJ. The Board first found that in the ID, the ALJ found that Dr. Lakin “learned that the ski accident and ACL surgery occurred in 2015/2016 [sic]” and that he did not note “atrophy or wasting of the muscle” during his physical examination of Davis. These factual findings were made in error and are not supported by the record.

The records show Dr. Lakin initially understood that Mr. Davis’s ski injury and ACL reconstructive surgery occurred in 2009; however, he testified that he discovered that they actually occurred in 2005/2006. Further, Dr. Lakin noted in his report, and later testified to the fact that Mr. Davis had two centimeters of atrophy in his right quadriceps upon examination and that atrophy is “the wasting of the muscles” that occurs over a “long term time.” Therefore, the Board voted to correct the following findings of fact in the ID:

- Page 11: “Post-examination and after he rendered his findings, he learned that the ski accident and ACL surgery occurred in 2015/2016.”
- Page 11: “There was a slight decrease in strength; however, no atrophy or wasting of the muscle was noted.”
- Page 13: “Further, the fact that he initially thought that Davis’s ski accident/ACL surgery occurred in the year 2009 and subsequently learned that the correct dates of year(s) 2015/2016, were of little consequence as it did not change his original opinion regarding causation.”

### **CONCLUSIONS OF LAW**

The ALJ’s reliance on Petrucci<sup>3</sup> is misplaced and should be rejected for three reasons. First, this case is much different from Petrucci, where the member worked as an environmental compliance investigator for the Department of Environmental Protection. While conducting an on-

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<sup>3</sup> Petrucci v. Bd. of Trs., Pub. Employees’ Ret. Sys., 211 N.J. Super. 280 (App. Div. 1986)

site inspection of a new treatment facility, Petrucelli was descending a flight of stairs consisting of nine steps. He slipped on the second step, lost his balance, and landed on a loose 4' x 4' piece of timber lying across the third step, which acted like a skateboard. Petrucelli fell face first down the remaining seven steps, hitting the wall at the bottom of the stairs. The issue before the court was whether Petrucelli's disability was the direct result of the accident.

Petrucelli relied on his expert's testimony that he "suffered a disc lesion as a result of the fall and the subsequent scarring involving the nerve root is the cause of his disabling pain." The Board relied on its expert's testimony that "Petrucelli's problem resulted from 'contusions and sprains' suffered in the fall, superimposed on pre-existing marked structural deficiencies, spondylolisthesis and arthritis." The Board's expert opined that the chronic pain related to the pre-existing conditions.

The Appellate Division relied on the following facts to grant AD: (1) there is not a shred of a suggestion in the record that [Petrucelli] had had back pain or back symptoms of any kind before the accident, (2) Petrucelli learned for the first time he had a degenerative condition after his fall down the stairs, and (3) the Board's expert conceded that Petrucelli "could have worked 'his entire life and retired at age 62 . . . and never had any occurrence of a back injury or a back condition. The court ultimately concluded that "if claimant here cannot recover after a severe trauma, superimposed on a nonsymptomatic structural anomaly . . . no claimant could ever recover [AD] . . . where there exists a quiescent underlying condition which had caused no trouble and might never cause any trouble."

Here, unlike in Petrucelli, Mr. Davis had an underlying condition that was traumatically induced by a 2005 skiing accident. He admitted that his right knee was compromised and that he had "a stability issue with [his right] knee" after the 2005 incident. Moreover, the Board's expert,

Dr. Jeffrey Lakin (“Lakin”), reliably explained that the traumatic injury to Mr. Davis’s knee in 2005, which was followed by intense pain and ACL reconstructive surgery in 2006, predisposed him to arthritis “especially . . . [because] the original surgery . . . left less of a cushion in the knee . . . [and] the knee is never the same.”

Second, the record shows that the 2005 injury and 2006 surgery dramatically increased Mr. Davis’s chances of suffering from symptomatic arthritis in the future (independent of the minor aggravating 2015 incident). Dr. Lakin relied on a study by the American Academy of Orthopedic Surgery (“AAOS”) which showed that a year after ACL reconstructive surgery “30% [of patients] will have some arthritis,” after “10 years you will see 50% arthritic changes” and after “20 years well over 60% of the patients have arthritis in the knee.” Perhaps the most relevant aspect of the study was the finding that an individual who undergoes a patella tendon autograft will experience an increased risk of anterior knee pain, kneeling pain, and arthritis – which are exactly the symptoms Mr. Davis suffered after the 2015 incident.

Therefore, the facts on which the Petrucelli court relied to grant Accidental disability are simply not present here. Rather, the facts here show that Mr. Davis had a compromised knee and that the 2005 injury and 2006 surgery dramatically increased his chances of suffering from symptomatic arthritis (independent of the 2015 incident).

Lastly, the New Jersey Supreme Court in Gerba v. Board of Trustees, Public Employees’ Retirement System, 83 N.J. 174 (1980), held that an individual with a pre-existing condition may qualify for AD but, if the disability is caused by an “underlying condition . . . which itself has not been directly caused, but is only aggravated or ignited by the trauma,” then the individual would only qualify for ordinary disability retirement benefits. Here, evidence shows that the 2015 incident merely “aggravated or ignited” Mr. Davis’s long-standing pre-existing arthritis. Therefore,

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the Board correctly determined that Mr. Davis is not entitled to Accidental disability and the ALJ's legal determination to the contrary is rejected.

**CONCLUSION**

For the foregoing reasons, the Board voted to correct certain factual findings of the ALJ and reject the ALJ's legal analysis and ultimate conclusion that Mr. Davis is entitled to Accidental disability retirement benefits.

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 of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey.

Sincerely,



Mary Ellen Rathbun, Secretary  
Board of Trustees  
Police and Firemen's Retirement System

G-1/MER

C: DAG Danielle Schimmel (ET); DAG DeAngelis (ET);  
Matthew U. Davis

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