

PHILIP D. MURPHY

Governor

SHEILA Y. OLIVER

Lt. Governor

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

TRENTON, NEW JERSEY 08625-0295
Telephone (609) 292-7524 / Facsimile (609) 777-1779
TRS 711 (609) 292-6683
www.ni.gov/treasury/pensions

www.nj.gov/treasury/pensions November 23, 2020 ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS

Acting Director

Sent via email to:

GAYLORD POPP, L.L.C. Samuel M. Gaylord, Esq.

RE: Randall Schiffelbein

PERS

OAL DKT. NO. TYP 18704-17

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Dear Mr. Gaylord:

At its meeting on October 21, 2020,¹ the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) considered the September 1, 2020² Initial Decision (ID) of the Honorable John S. Kennedy, ALJ, and voted to adopt the ALJ's factual findings but rejected the ALJ's recommendation that your client, Mr. Schiffelbein, is eligible to receive Accidental Disability retirements. The Board directed the undersigned to draft findings of fact and conclusions of law consistent with its determinations for its review at its meeting of November 18, 2020. The following was presented to the Board at its meeting of November 18, 2020. After careful consideration, including consideration of your statements and the statements of Deputy Attorney General Jakai Jackson at the meeting,³ the Board adopted these findings of fact and conclusions of law.

¹ Due to health and safety concerns for the public regarding COVID-19, the meeting was conducted via teleconference.

² The Board requested and was granted an extension of time to issue its final administrative determination.

³ The Board considered the exceptions of DAG Austin Edwards at its October 21, 2020 meeting.

Page 2

FINDINGS OF FACT

The Board voted to adopt the ALJ's findings of fact in the ID, and to make additional
findings of fact based on the record. The Board determined that additional findings of fact are
necessary concerning Mr. Schifflebein's condition at issue
before the court. The Board first noted that Mr. Schiffelbein was
which was not the result of any work-related duty. This
. ID at 3. The Board
noted that Mr. Schiffelbein was
. The record shows that during the ten years prior to
treated with about four times in total. After the
. <u>Ibid.</u> Moreover, Mr. Schiffelbein experienced
(ID at 4). These
(ID at 4).
Objective medical testing illustrated Mr. Schiffelbein's
. <u>Ibid.</u>
The November 24, 2015
. <u>Ibid.</u>
The objective testing shows that Mr. Schiffelbein
. Additionally,
reveal no changes. ID at 5; R-8.

CONCLUSIONS OF LAW

GAYLORD POPP, L.L.C.

Samuel M. Gaylord, Esq.

Re: Randall Schiffelbein November 23, 2020

Page 3

The Board thereafter rejected the ALJ's conclusion that Mr. Schiffelbein is eligible for

Accidental Disability retirement benefits (AD). The Board first considered the legal standard set

forth in N.J.S.A. 43:15A-43, which mandates that members of PERS are eligible for AD only if

they are permanently and totally disabled "as a direct result of a traumatic event." Ibid. The "direct

result" requirement was to apply a more exacting standard of medical causation than that used in

workers' compensation law, and to reject, for purposes of awarding AD, the workers'

compensation concept that an "accident" can be found in the impact of ordinary work effort upon

a progressive disease. Gerba v. Bd. of Trs., Pub. Emps.' Ret. Sys., 83 N.J. 174, 185-86 (1980).

The Court stated that:

Where there exists an underlying condition such as osteoarthritis which itself has not been directly caused, but is only aggravated or ignited, by the trauma, then the resulting disability is, in statutory

parlance, "ordinary" rather than "accidental" and gives rise to

"ordinary" pension benefits.

[ld. at 186.]

The Court concluded that what is now required is a "traumatic event" that constitutes the essential

significant or substantial contributing cause of the applicant's disability. <u>Ibid.</u> The Supreme Court's

decision in Richardson v. Board of Trustees, Police & Firemen's Retirement System, 192 N.J.

189 (2007), reaffirmed Gerba. In Richardson, the Court re-emphasized that pre-existing

conditions that result or combine to cause a disability are intended to be excluded from eligibility

for AD. 192 N.J. at 189.

The burden of proving "direct result" by competent medical testimony rests solely upon

the claimant. Gerba, 83 N.J. at 185; see also Atkinson v. Parsekian, 37 N.J. 43, 149 (1962). The

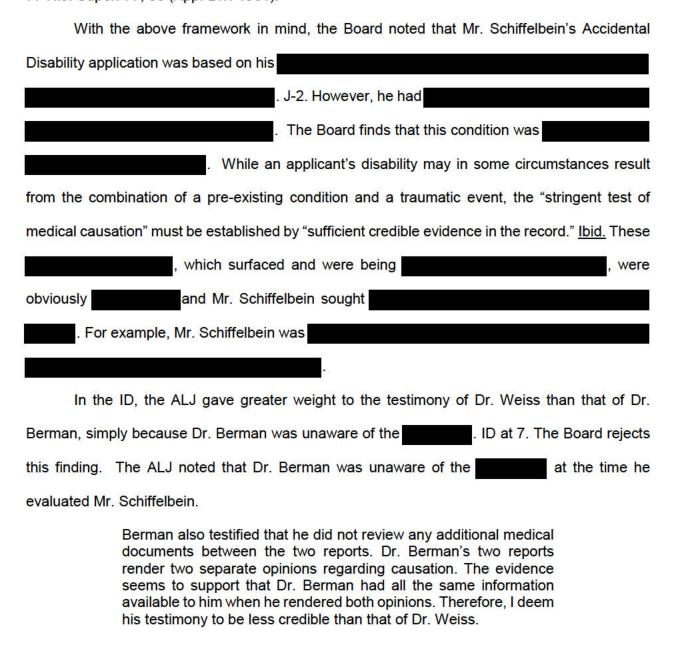
question of whether a claimant's alleged disability is the direct result of a traumatic event is one

necessarily within the ambit of expert medical opinion. Korelnia v. Bd. of Trs., Pub. Emps.' Ret.

Sys., 83 N.J. 163, 171 (1980). The weight granted to expert testimony depends on such factors

Page 4

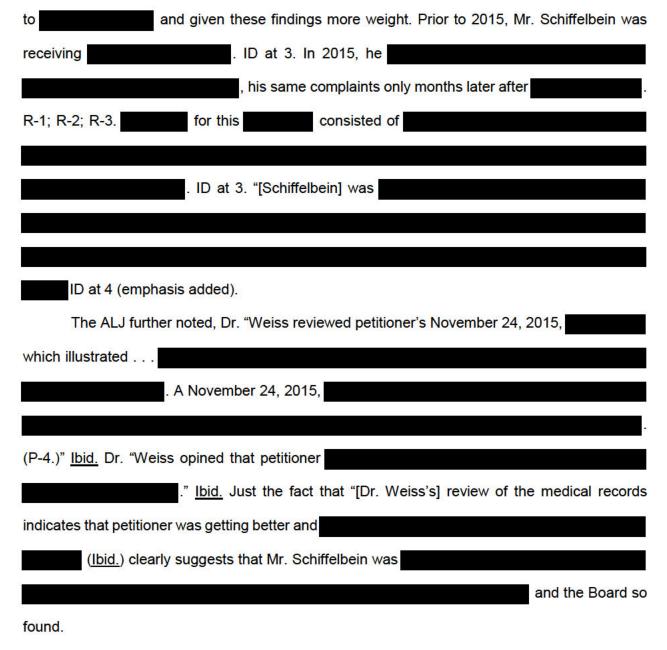
as whether there is evidence to support the medical testimony. <u>Angel v. Rand Express Lines, Inc.</u>, 77 N.J. Super. 77, 86 (App. Div. 1961).



[lbid.]

The Board finds that the ALJ should have considered the findings of Mr. Schiffelbein's expert, Dr. Weiss, as to Mr. Schiffelbein's immediately prior

Page 5



The Board also rejected the ALJ's reliance on <u>Petrucelli v. Board of Trustees</u>, <u>Public Employees' Retirement System</u>, 211 N.J. Super. 280 (App. Div. 1986). In <u>Petrucelli</u>, the member was awarded AD after he fell descending a flight of stairs, which triggered a previously asymptomatic condition. <u>Id.</u> at 281-83. The Appellate Division found that because the member was symptomatic prior to the incident, was wholly unaware that he had a degenerative condition

Page 6

until the incident, and could have continued working until retirement age even with that preexisting condition, that the member was eligible for AD. Id. at 284, 286, 288-289. Here, unlike in Petrucelli, the Board finds that Mr. Schiffelbein Mr. Schiffelbein was . Therefore, the Board finds this case distinguishable from the facts on which the Petrucelli court relied to grant AD. Rather, the facts here show that Mr. Schiffelbein had . 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 only qualifies for ordinary disability retirement benefits. Gerba, 83 N.J. at 186. Here, record evidence shows -- and Dr. Weiss agreed -- that merely . Therefore, the Board rejected the ALJ's legal conclusion that Mr. Schiffelbein is entitled to AD. For these reasons, the Board rejected the ALJ's legal conclusion that Mr. Schiffelbein's

For these reasons, the Board rejected the ALJ's legal conclusion that Mr. Schiffelbein's disability directly resulted . This correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Public Employees' Retirement System.

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,

Jeff Ignatowitz, Secretary Board of Trustees

flo S. Sport

Public Employees' Retirement System

G-3/JSI

C: D. Lewis (ET); L. Milton (ET); S. Glynn (ET); K. Ozol (ET); L. Hart (ET); P. Sarti (ET) DAG Austin Edwards (ET); DAG Jakai Jackson (ET); OAL, Attn: Library (ET) Randall Schiffelbein (Sent via email to: