

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: June 5, 2013)

JENNIFER LEYDEN

V.

EMPLOYEES' RETIREMENT
SYSTEM OF THE STATE OF RHODE
ISLAND

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PC No. 12-1867

DECISION

LANPHEAR, J. In this administrative appeal, Appellant Jennifer Leyden (Ms. Leyden) challenges a decision by the Retirement Board of the Employees' Retirement System of the State of Rhode Island (ERSRI) to adopt the Disability Subcommittee's recommendation to deny her application for an accidental disability pension. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts

Jennifer Leyden was initially hired as an English teacher in the Providence School Department in 1990. See Rec. Ex. 1.¹ Over the course of her teaching career, Ms. Leyden was subjected to multiple instances of violence. The first incident occurred in 1994, when Ms. Leyden was employed as a teacher at Nathan Bishop Middle School. (Tr. 9-10, Apr. 8, 2011, Rec. Ex. 32.) A male student "body-slammed"² her after she ordered the student to follow her to the principal's office. Id. At the time, Ms. Leyden was six months pregnant with her first child.

¹ All citations to the Administrative Record are to the amended version, filed with this Court on October 31, 2012.

² Ms. Leyden stated that the male student "bumped into me when I turned around, and then pulled his shoulders back and squared off and body-slammed me." (Tr. 9-10, Apr. 8, 2011, Rec. Ex. 32.)

Id. She left work early that day to seek medical attention. Id. at 10. At the hospital, she was informed that fetal blood cells had mixed with her own blood, suggesting that the fetus sustained trauma during the assault. See id. In 1995, Ms. Leyden's daughter was born one month premature with jaundice and a heart murmur. See Report of Dr. King at 4, Rec. Ex. 9; Tr. 9, Mar. 14, 2012, Rec. Ex. 47. Her daughter remained in the hospital for the first week following delivery and continued to experience health issues for the first six months of her life. See Tr. 10, Apr. 8, 2011, Rec. Ex. 32; Report of Dr. Harrop at 2, Rec. Ex. 10.

After the 1994 assault, Ms. Leyden sought psychiatric treatment for the first time in her life. See Report of Dr. King at 4, Rec. Ex. 9; Report of Dr. Harrop at 2, Rec. Ex. 10. Specifically, three physicians treated her for Posttraumatic Stress Disorder (PTSD). See Statement in Supp. of Appeal at 3, Rec. Ex. 29; Report of Dr. Pogacar, Rec. Ex. 13, Item No. 6. Sometime around 1994 or 1995, Ms. Leyden began receiving psychiatric counseling and taking medication for anxiety and depression. See Report of Dr. Braden at 1, Rec. Ex. 6; Report of Dr. King at 4, Rec. Ex. 9. In between the birth of her daughter in 1995 and the birth of her son in 1998, Ms. Leyden suffered a series of miscarriages. See Tr. 9, Mar. 14, 2012, Rec. Ex. 47. Following her third miscarriage in or around 1996, she received psychiatric treatment as an inpatient at Butler Hospital for approximately one and one-half weeks. See Report of Dr. Braden at 1, Rec. Ex. 6; Report of Dr. King at 4, Rec. Ex. 9. Ms. Leyden continued to receive therapy and medication until sometime in or around 2000. See Report of Dr. King at 4, Rec. Ex. 9; Report of Dr. Pogacar at 2, Rec. Ex. 13, Item No. 6.

From 1994 to 2000, Ms. Leyden remained out of work. (Report of Dr. Pogacar at 2, Rec. Ex. 13, Item No. 6.) In addition to raising her two small children, Ms. Leyden completed a Master's degree in counseling at Providence College during those six years. (Tr. 11, Apr. 8,

2011, Rec. Ex. 32; Tr. 9, Mar. 14, 2012, Rec. Ex. 47.) Ms. Leyden hoped that when she returned to the work force, she could secure a position as a guidance counselor and avoid returning to classroom teaching. Tr. 11, Apr. 8, 2011, Rec. Ex. 32. When she could not find employment as a guidance counselor, she began teaching again in September 2000 at a different school.³ Id.

A second violent incident occurred sometime in 2004.⁴ Three female students, with whom Ms. Leyden was unfamiliar, entered her classroom. (Tr. 11, Apr. 8, 2011, Rec. Ex. 32.) One of the girls overturned several desks and then began to physically assault one of the female students in Ms. Leyden's class by banging the student's head against the classroom's concrete wall. Id. at 12. Although Ms. Leyden had directed one of her students to phone the school administration for assistance, no one came to her classroom to help stop the attack. Id. Ms. Leyden attempted to pull the aggressor away from her student and in so doing, injured her neck and shoulder. Id. at 11-12. As a result, she was out of work immediately following the incident. Id.

While Ms. Leyden was at home recovering from her neck and shoulder injuries, she received a telephone call from a co-worker. See id. at 12. The co-worker informed Ms. Leyden that the mother of the student who committed the 2004 attack had come to the school in search of Ms. Leyden. See id. According to the co-worker, the student's mother entered the school and proceeded to Ms. Leyden's classroom. See id. When the teacher covering Ms. Leyden's class opened the door, the mother asked for Ms. Leyden and threatened to beat her "to a bloody pulp[.]" Id. Ms. Leyden was distressed that the school administration had not informed her or

³ In May 2002, Ms. Leyden was employed as a teacher when she sustained a severe whiplash injury in a car accident that left her out of work for approximately two years. See Report of Dr. Pogacar at 2, Rec. Ex. 13, Item No. 6.

⁴ In her memorandum, Appellant states that this incident occurred in 2007. See Appellant's Mem. in Supp. at 3. Ms. Leyden's testimony at the Subcommittee's April 8, 2011 hearing, however, indicates that the incident took place in 2004. See Tr. 11, Apr. 8, 2011, Rec. Ex. 32.

the police of these threats. Id. at 13. Following this second incident, she sought further psychiatric treatment and was again diagnosed with PTSD. See Report of Dr. Pogacar at 2, Rec. Ex. 13, Item No. 6. Ms. Leyden remained out of work for the rest of that school year. Tr. 13, Apr. 8, 2011, Rec. Ex. 32. At the start of the following school year, she returned to teaching at a different school.⁵ See id.

The most recent incident occurred on May 20, 2009,⁶ when Ms. Leyden was working at the Hanley Vocational School. See Accident Report Form, Rec. Ex. 8. The school administration had instructed teachers to lock their doors once class started and to send any students who arrived late to the principal's office. See Tr. 14, Apr. 8, 2011, Rec. Ex. 32. After Ms. Leyden locked the door to her classroom, one of her female students, who was chronically tardy, came running down the hallway, yelling, "I'm not late; I'm not late." Id. Ms. Leyden opened the classroom door to instruct the student to report to the principal's office. Id. The student refused and attempted to push Ms. Leyden out of the doorway. Id. When Ms. Leyden did not yield, the student "head-butted" Ms. Leyden in her right shoulder, causing Ms. Leyden to stumble backwards. Id. The student then entered the classroom and sat down at a desk. Id. Ms. Leyden telephoned the vice-principal who came to the classroom and removed the student. Id.

⁵ The record also indicates that sometime in or around 2008, one of Ms. Leyden's students committed suicide in connection with a shooting that occurred outside a different school. See Report of Dr. Pogacar, Rec. Ex. 13, Item No. 6; Tr. 13, Apr. 8, 2011, Rec. Ex. 32. In addition, both Ms. Leyden's Memorandum and one of the psychiatrist's reports reference an incident in which a student was overheard making threats against Ms. Leyden's life. See Appellant's Mem. in Supp. at 3; Report of Dr. King at 1, Rec. Ex. 9.

⁶ On her application for an accidental disability retirement, Ms. Leyden gave the date of the incident as May 19, 2009. See Application for Disability Retirement, Rec. Ex. 2. This appears to be a mistake. The accident reports filed with the Providence School Department and the Providence Police Department, as well as Ms. Leyden's testimony at the Subcommittee's hearing, indicate that the most recent assault occurred on May 20, 2009. See Providence School Dep't Accident Report, Rec. Ex. 8; Providence Police Dep't Incident Report, Rec. Ex. 8; Tr. 13, Apr. 8, 2011, Rec. Ex. 32.

Ms. Leyden finished teaching the remainder of her classes that day but has not returned to work since then.⁷ Id. at 15.

The day after the 2009 assault, Ms. Leyden visited her chiropractor for treatment of neck and shoulder pain. See Report of Dr. Vizzacco-Smith, Rec. Ex. 13, Item No. 1. On June 1, 2009, eleven days after the assault, Ms. Leyden sought treatment from psychiatric nurse-practitioner, Cynthia Mahoney. See Evaluation of Cynthia Mahoney, MSN PCNS, Rec. Ex. 13, Item No. 2. Nurse Mahoney diagnosed Ms. Leyden with PTSD and depression, and prescribed medication. See id. Later that summer, on July 14, 2009, Ms. Leyden saw her primary care physician, complaining of neck pain, insomnia, trouble concentrating, and nightmares. See Records of Dr. Burchenal, Rec. Ex. 13, Item No. 3. Her primary care physician noted that she had a history of PTSD stemming from her previous assaults. See id.

In August 2009, Ms. Leyden underwent a physical therapy evaluation at the John E. Donley Rehabilitation Center (Donley Center) for her neck and shoulder.⁸ See Report of Christopher Carter, PT, Rec. Ex. 13, Item No. 4. Her patient care coordinator at the Donley Center noted that her PTSD was a potential barrier to her ability to return to teaching and referred her for a psychological consult. See Initial Rehabilitation Plan, Rec. Ex. 13, Item No. 4. The clinical social worker who performed the psychological consult reported that Ms. Leyden had suffered a series of threats and assaults during her teaching career and that “the most recent assault on 05/20/2009 triggered post-traumatic stress symptoms including nightmares and intrusive thoughts.” (Rehabilitation Psychology Summary, Sept. 16, 2009, Rec. Ex. 13, Item No.

⁷ On May 25, 2009, Ms. Leyden reported the assault to the Providence Police Department. See Providence Incident Report, Rec. Ex. 8.

⁸ Ms. Leyden underwent the physical therapy assessment in connection with a claim she had filed for worker’s compensation benefits. See Letter to Hon. Janette Bertness from Robin Boelter, RN BSN, Dec. 29, 2009, Rec. Ex. 13, Item No. 4.

4.) The social worker concluded that Ms. Leyden’s “history of work-related assaults, her perception of an adversarial relationship with her employer and . . . high level of distress and fear of re-injury may prove barriers to the patient’s recovery and return to work[.]” Id. The social worker recommended that Ms. Leyden undergo Rehabilitation Psychology Counseling at the Donley Center.⁹ Id.

With the approval of her treatment team at the Donley Center, Ms. Leyden chose to attend a day-program at Butler Hospital. See id. Ms. Leyden was admitted to the Women’s Day Program at Butler Hospital on September 16, 2009 and discharged on September 25, 2009. See Report of Dr. Braden at 1, Rec. Ex. 6. While at Butler Hospital, Ms. Leyden attended dialectical behavior therapy sessions and was given a trial of medication to treat her flashbacks and nightmares. See id. at 2. Ms. Leyden’s diagnoses at the time of discharge were PTSD and moderate major depressive disorder. See id. at 3. William Braden, M.D., Ms. Leyden’s treating psychiatrist at Butler Hospital, prescribed additional medication and agreed to continue seeing Ms. Leyden on an outpatient basis to monitor her medications. See id. at 4; Report of Dr. King at 4, Rec. Ex. 9. Dr. Braden and the treatment team at the Donley Center recommended that Ms. Leyden continue to receive therapy, but Ms. Leyden had difficulty finding a psychiatrist who would accept her worker’s compensation insurance. See Letter to Dr. Burchenal from Julie Grand-Landeau, Sept. 16, 2009, Rec. Ex. 13, Item No. 4; Letter to Hon. Janette Bertness from Robin Boetler RN BSN, Dec. 29, 2009, Rec. Ex. 13, Item No. 4. As of this time, no medical provider suggests her injuries are less than she alleges or result from anything other than the assaults at her employment.

⁹ According to the social worker, Ms. Leyden had attended several rehabilitation sessions at the Donley Center focusing on cognitive-behavioral strategies and relaxation. See id.

II

Travel

On September 30, 2009, five days after leaving Butler Hospital, Ms. Leyden filed an application with ERSRI for an Accidental Disability Retirement. See Application for Disability Retirement, Rec. Ex. 2. On the application, Ms. Leyden indicated that the medical reason for her disability was PTSD and explained that “[o]ver the past [fifteen] years, [she had] been assaulted [four times] by students at [four] different schools.” Id. As required for an accidental disability retirement under G.L. 1956 § 16-16-16(b) and R.I. Admin. Code 29-1-1:9-3.4, Ms. Leyden submitted a disability statement from her physician, a job description, all of her medical records from the previous three years, all accident reports connected with her disability, and a record of her attendance at work for the three years prior to the incident. See Rec. Exs. 6-8, 12, 13.

Dr. Braden, Ms. Leyden’s psychiatrist from Butler Hospital, filled out the required physician’s statement on December 24, 2009. See Report of Dr. Braden, Rec. Ex. 6. In his statement, Dr. Braden certified that Ms. Leyden is no longer able to continue working as a teacher. See id. He further certified that Ms. Leyden’s disability is “such as might be the natural and proximate result of an accident sustained in the performance of [her] duties” as a teacher. See id. Accompanying Dr. Braden’s statement was Ms. Leyden’s discharge summary from the Butler Day Program.¹⁰ See Discharge Summary, Sept. 25, 2009, Rec. Ex. 6.

As required under R.I. Admin. Code 29-1-4:9-3.6, ERSRI engaged three independent physicians to examine Ms. Leyden: Drs. Diane King, Daniel Harrop, and Ronald Stewart. See Reports of Drs. King, Harrop and Stewart, Rec. Exs. 9, 10, 11. All three of the independent physicians indicated that in their opinion to a reasonable degree of medical certainty, Ms. Leyden

¹⁰ A more detailed discussion of Dr. Braden’s report, as well as the reports of Drs. King, Harrop, Stewart, and Pogacar, are contained in part III-B of this Decision.

is incapacitated such that she cannot perform the duties of her position.¹¹ See id. Drs. King and Stewart also indicated that in their opinions, Ms. Leyden’s disability is the natural and proximate result of the May 20, 2009 assault. See Report of Dr. King, Rec. Ex. 9; Report of Dr. Stewart, Rec. Ex. 11. Dr. Harrop, however, indicated that in his opinion, the May 20, 2009 assault was not a proximate cause of Ms. Leyden’s incapacity. See Report of Dr. Harrop, Rec. Ex. 11. Instead, Dr. Harrop concluded that the May 20, 2009 assault was “incidental to the worsening of [Ms. Leyden’s] depression.” Id. at 3. Drs. King and Stewart diagnosed Ms. Leyden with PTSD, while Dr. Harrop diagnosed Ms. Leyden with major depressive disorder. See Reports of Drs. King, Harrop, and Stewart, Rec. Exs. 9, 10, 11.

In connection with her claim for worker’s compensation benefits, Ms. Leyden had also undergone an independent psychiatric examination with Srecko Pogacar, M.D. See Report of Dr. Pogacar, Rec. Ex. 13, Item No. 6. Based on his examination, Dr. Pogacar had prepared a seven-page report, dated October 29, 2009, for the Worker’s Compensation Medical Advisory Board. See id. Ms. Leyden submitted Dr. Pogacar’s report to ERSRI as part of her medical records from the previous three years. See id. In his report, Dr. Pogacar diagnosed Ms. Leyden with PTSD, major recurrent depression, and panic disorder. Id. at 5. Under the section of his report entitled “Causal Relationship,” Dr. Pogacar stated that Ms. Leyden “had a history of major depression Additionally however she has a history of multiple confrontations, traumas, dealing with students, followed again and again with threats of death[.]” Id. at 6. He further explained that Ms. Leyden “has characteristic symptoms and signs of Posttraumatic Stress Disorder such as flashbacks, nightmares, intrusive thoughts, hypervigilance, avoidance,

¹¹ In its “Employer’s Disability Statement,” the Providence School Department indicated that it does not offer “light duty” and that it was unable to make any “modifications or accommodations” to facilitate Ms. Leyden’s return to work. See Employer’s Disability Statement, Rec. Ex. 6, Item No. 2.

emotional numbness, impoverished social interaction, and exacerbation of her depressions and anxieties.” Id. Based on his examination, Dr. Pogacar concluded “with a great degree of medical probability that [Ms. Leyden] is totally disabled to work as a high school teacher, and she is not able to return to work to her usual job forever.” Id.

After reviewing the documentary evidence, the Disability Subcommittee for ERSRI (Subcommittee) issued a written decision, dated April 9, 2010, recommending denial of Ms. Leyden’s application for an accidental disability retirement.¹² See Subcommittee decision, Apr. 9, 2010, Rec. Ex. 14. In its written decision, the Subcommittee indicated it “finds persuasive the opinion of Dr. Harrop, and in light of Leyden’s lengthy history of depression, anxiety and emotional issues, cannot conclude that Leyden should be retired as the natural and proximate result of an accident.” Id. at 3. On April 14, 2010, the Retirement Board voted to adopt the Subcommittee’s recommendation to deny Ms. Leyden’s application.¹³ See Minutes of Apr. 14, 2010 Retirement Board Meeting at 6-7, Rec. Ex. 15.

¹² In its findings of fact, the Subcommittee stated that Drs. King and Stewart found Ms. Leyden’s PTSD rendered her unable to perform her duties as a teacher. See Subcommittee decision at 1-2, Apr. 9, 2010, Rec. Ex. 14. The Subcommittee also quoted Dr. Harrop’s conclusion that Ms. Leyden was suffering from depression unrelated to the May 2009 assault. See id. at 2. The Subcommittee stated that Dr. Braden’s report indicated that Ms. Leyden suffered from depression but did not state that Dr. Braden also diagnosed Ms. Leyden with PTSD. See id. at 1. In its written decision, the Subcommittee did not explicitly state that it disagreed with, or was rejecting, the opinions of Drs. King, Stewart, Pogacar, or Braden.

¹³ ERSRI employs a two-tiered system for review of applications for accidental disability pensions. The Disability Subcommittee, which performs the first level of review, takes documentary evidence and may interview the applicant. See R.I. Admin. Code 29-1-4:9-5.00 and 29-1-4:9-6.00. On appeal from a final decision of the Disability Subcommittee, the Retirement Board hears oral arguments and will consider legal memoranda, but does not accept new factual evidence or documentation. See R.I. Admin. Code 29-1-4:9-11.00. The Retirement Board “affords deference to the conclusions of [the] Disability Subcommittee on factual determinations and questions of credibility and will not overturn those determinations and assessments unless they are found to be clearly wrong.” Id.

After receiving notice of the Retirement Board's decision in a letter dated May 25, 2010, Ms. Leyden exercised her right under R.I. Admin. Code 29-1-4:9-6.1 to request that the Subcommittee reconsider her application. See Letter from Attorney Fanning to Anne Perry, June 24, 2010, Rec. Ex. 16. As permitted under R.I. Admin. Code 29-1-4:9-8, Ms. Leyden submitted additional documentation in support of her request for reconsideration, including additional medical records and a memorandum.¹⁴ See Statement in Supp. of Appeal, Rec. Ex. 29. On April 8, 2011,¹⁵ the Subcommittee held a hearing to reconsider Ms. Leyden's application. See Tr. Apr. 8, 2011, Rec. Ex. 32. Ms. Leyden testified at the hearing about the 1994, 2004, and 2009 assaults. Id. at 9-15. When asked if she believed that she might be able to return to teaching sometime in the future, Ms. Leyden responded that after multiple assaults, at multiple schools, under multiple administrations, she no longer felt safe working as a teacher. Id. at 15-16.

Attorney Stephen Fanning represented Ms. Leyden at the hearing. Id. at 5-6. Attorney Fanning emphasized that Ms. Leyden had proved herself to be a resilient teacher, returning to the classroom after both the 1994 assault and the threats in 2004. Id. at 16-17, 22. Attorney Fanning suggested that Dr. Harrop had an incomplete or inaccurate factual basis for his report. See id. at 17-19. Attorney Fanning further argued that Dr. Harrop's opinions on causation were inconclusive. See id. at 21.

¹⁴ The documents included additional records from Ms. Leyden's chiropractor, her primary care physician, her September 2009 inpatient treatment at Butler Hospital, and several assessments performed at the Donley Center during December 2009. See Rec. Ex. 29.

¹⁵ The nearly one year lapse of time in between the Subcommittee's initial decision and the reconsideration hearing appears to be due to multiple continuances that ERSRI granted Ms. Leyden. See Rec. Exs. 16-28.

In its written decision upon reconsideration, the Subcommittee again recommended denial of Ms. Leyden's application for an accidental disability retirement.¹⁶ See Subcommittee decision, Apr. 2011, Rec. Ex. 31. The Subcommittee reiterated that it was "unable to find a causal relationship between [Ms. Leyden's] symptoms and the cited accident on May 20, 2009, or any other identifiable accident." Id. at 3. The Subcommittee concluded that

there are many non-work related instances that may have contributed to Leyden's lengthy history of depression, anxiety and emotional issues, which preclude the necessary causal findings to support an accidental disability retirement. Therefore, there is insufficient evidence to demonstrate that Leyden's allegedly disabling symptoms are a natural and proximate result of a work related accident.

Id. In support of its conclusion, the Subcommittee stated that it found "most persuasive the medical opinion of Dr. Harrop[.]" Id. On April 13, 2011, the Retirement Board voted to adopt the Subcommittee's decision to deny Ms. Leyden's application for an accidental disability retirement. See Letter to Attorney Fanning from Melissa Malone, May 19, 2011, Rec. Ex. 34.

Ms. Leyden exercised her right under R.I. Admin. Code 29-1-4-9-10 to appeal to the Retirement Board. See Letter to ERSRI from Stephen Fanning, June 15, 2011, Rec. Ex. 35. The Retirement Board considered Ms. Leyden's appeal at its February 8, 2012 meeting. See Tr. Feb. 8, 2012, Rec. Ex. 44. At the meeting, Ms. Leyden appeared pro se.¹⁷ Id. at 4. Ms. Leyden testified about the assaults and threats that she endured during her teaching career as a teacher in the Providence School Department. See id. at 7-11. She explained to the Retirement Board that

¹⁶ The date indicated on the Subcommittee's second written decision is April 1, 2011, seven days before the reconsideration hearing. See Subcommittee decision, April 2011, Rec. Ex. 31. In its memorandum, ERSRI states that this date is incorrect but does not give the correct date for the second written decision.

¹⁷ In a letter dated December 16, 2011, Mr. Fanning notified Ms. Leyden that he would no longer be representing her in connection with this matter. See Letter to Jennifer Leyden from Stephen Fanning, Dec. 16, 2011, Rec. Ex. 40.

the “last time I was assaulted . . . it was just cemented in my head that there was nothing that could be done at all to keep me safe I can’t go back into a situation like that. . . .” Id. at 8. The February 8, 2012 meeting ended in a tie-vote, with seven members of the Retirement Board voting to overturn the Subcommittee’s decision, and seven members voting to uphold the decision.¹⁸ Id. at 17. In accordance with the procedure prescribed in R.I. Admin. Code 29-1-4:4-10.2 in the event of a tie-vote, the Retirement Board placed Ms. Leyden’s appeal on the agenda for its next monthly meeting. See id. at 28-29.

On March 14, 2012, Ms. Leyden once again appeared before the Retirement Board. See Tr. Mar. 14, 2012, 4, Rec. Ex. 47. Ms. Leyden did not testify at this hearing but was represented by Attorney John DeSimone, who made oral argument to the Retirement Board on her behalf. See id. Attorney DeSimone emphasized that Drs. Braden, King, and Stewart had all diagnosed Ms. Leyden with PTSD, identified specific symptoms of PTSD, and indicated a causal relationship between her PTSD and the on-the-job assaults. See id. at 12-14. He further suggested that Dr. Harrop’s opinion was based on a vague and inconsistent understanding of the relevant facts. See id. at 13-16. At the close of Mr. DeSimone’s argument, the Retirement Board voted seven-to-six¹⁹ to adopt the decision of the Subcommittee to deny Ms. Leyden’s application for an accidental disability pension. See id. at 19.

¹⁸ Pursuant to R.I. Admin. Code 29-1-4:1-B, a decision of the Retirement Board requires a majority vote. The full Retirement Board is comprised of fifteen members. See R.I. Admin. Code 29-1-4:1-A. One Retirement Board member, however, recused himself from consideration of Ms. Leyden’s appeal.

¹⁹ Two members of the Retirement Board who took part in the tie-vote at the February 8, 2012 meeting were not present at the March 14, 2012 meeting. One Board member who took part in the vote on March 14, 2012 was not present at the February 8, 2012 meeting.

In a letter dated March 16, 2012, ERSRI notified Ms. Leyden of the Retirement Board's decision. See Letter to Jennifer Leyden from Frank Karpinski, March 16, 2012, Rec. Ex. 48. On April 1, 2012, Ms. Leyden timely filed an appeal to this Court for review.

III

Standard of Review

The Rhode Island Administrative Procedures Act, §§ 42-35-1, et seq. governs this Court's review on appeal from a decision of the Retirement Board. See Rossi v. Employees' Retirement System of R.I., 895 A.2d 106, 109 (R.I. 2006). Pursuant to § 42-35-15, "[a]ny person, . . . who has exhausted all administrative remedies available to him or her within [an] agency, and who is aggrieved by a final order in a contested case is entitled to judicial review" by this Court. Sec. 42-35-15. This Court "may affirm the decision of the agency or remand the case for further proceedings." Sec. 42-35-15(g). This Court may reverse or modify an agency's decision if:

[S]ubstantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error or law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Sec. 42-35-15(g). This Court's review of an agency decision is, in essence, "an extension of the administrative process." R.I. Public Telecommunications Authority v. R.I. State Labor Relations Bd., 650 A.2d 479, 484 (R.I. 1994).

When this Court reviews the Retirement Board's decision, it "shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Sec. 42-35-15(g). This Court will defer to an agency's factual determinations so long as they are supported by legally competent evidence of record. Town of Burrillville v. R.I. State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007). Legally competent evidence is "such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance." R.I. Temps, Inc. v. Dep't of Labor and Training, Bd. of Review, 749 A.2d 1121, 1125 (R.I. 2000) (quoting Center for Behavioral Health, R.I., Inc. v. Barros, 710 A.2d 680, 684 (R.I. 1998)).

In contrast to an agency's findings of facts, an agency's determinations of law "are not binding on the reviewing court." Pawtucket Transfer Operations, L.L.C. v. City of Pawtucket, 944 A.2d 855, 859 (R.I. 2008). Instead, this Court reviews the agency's interpretation de novo "to determine what the law is and to determine its applicability to the facts." Id. This Court will afford deference to an agency's reasonable construction of an ambiguous statute whose administration and enforcement have been entrusted to the agency. Labor Ready Northeast, Inc. v. McConaghy, 849 A.2d 340, 345-46 (R.I. 2004). No deference is warranted, however, when the statute is not susceptible to multiple reasonable meanings. See Unitrust Corp. v. State Department of Labor and Training, 922 A.2d 93, 101 (R.I. 2007). Likewise, an agency's interpretation "will not be considered controlling by reviewing courts if the construction is clearly erroneous or unauthorized." See Flather v. Norberg, 119 R.I. 276, 283 n.3, 377 A.2d 225, 229 (1977).

IV

Analysis

On appeal, Ms. Leyden requests that this Court overturn the Retirement Board's decision adopting the Subcommittee's recommendation to deny her application for an accidental disability retirement. She argues that the Retirement Board's decision was (1) affected by error of law and/or (2) clearly erroneous in light of the reliable, probative, and substantial evidence of record. The Court will address each alleged error in seriatim.

A

Legal Error

As members of the Employees' Retirement System of the State of Rhode Island, public school teachers may be eligible for either a service retirement or a disability retirement. See §§ 16-16-1, 16-16-12, 16-16-14, and 16-16-16. The Legislature has provided for two categories of disability retirements: accidental and ordinary. See §§ 16-16-14 and 16-16-16. Both accidental and ordinary disability pensions provide benefits to teachers who are no longer physically or mentally able to perform their teaching duties. See §§ 16-16-14 and 16-16-16. While an applicant for an ordinary disability retirement need not show any particular cause of his or her disability, see § 16-16-14, an applicant for an accidental disability retirement must have been disabled as "a natural and proximate result of an accident, while in the performance of duty[.]" Sec. 16-16-16; see Waterman v. Caprio, 893 A.2d 841, 843 n.3 (R.I. 2009). As compared to the requirements for an ordinary disability retirement, "the Legislature intended the

requirements for accidental disability retirement to be stringent.”²⁰ Rossi v. Employees’ Retirement System of the State of R.I., 895 A.2d 106, 112 (R.I. 2006).

²⁰Section 16-16-16 of the Rhode Island General Laws specifies the requirements for granting a teacher an accidental disability retirement. That provision states, in pertinent part:

(a) Medical examination of an active teacher for accidental disability, and investigation of all statements and certificates by him or her or in his or her behalf in connection with the accidental disability, shall be made upon the application of . . . the teacher . . . stating that the teacher is physically or mentally incapacitated as a natural and proximate result of an accident, while in the performance of duty, and certify the definite time, place, and conditions of the duty performed by the teacher resulting in the alleged disability, and that the alleged disability is not the result of willful negligence or misconduct on the part of the teacher, and is not the result of age or length of service, and that the teacher should, therefore, be retired.

(b) The application shall be made within five (5) years of the alleged accident from which the injury has resulted in the teacher's present disability, and shall be accompanied by an accident report and a physician's report certifying to the disability; provided, that, if the teacher was able to return to his or her employment and subsequently reinjures or aggravates the same injury, the application shall be made within the later of five (5) years of the alleged accident or three (3) years of the reinjury or aggravation. . . .

(c) If a medical examination conducted by three (3) physicians engaged by the retirement board, and any investigation that the retirement board may desire to make, shall show that the teacher is physically or mentally incapacitated for the performance of service as a natural and proximate result of an accident, while in the performance of duty, and that the disability is not the result of willful negligence or misconduct on the part of the teacher, and is not the result of age or length of service, and that the teacher has not attained the age of sixty-five (65) years, and that the teacher should be retired, the physicians who conducted the examination shall so certify to the retirement board stating the time, place, and conditions of

In support of her appeal, Ms. Leyden argues that the Retirement Board’s decision, denying her request for an accidental disability retirement, is affected by error of law. In particular, she asserts that the Retirement Board’s finding that the May 20, 2009 assault was not a proximate cause of her disability is inconsistent with the principles of causation that our Supreme Court articulated in Pierce v. Providence Retirement Bd., 15 A.3d 957 (R.I. 2011).²¹ In Pierce, our Supreme Court interpreted the phrase, “natural and proximate result of an accident,” as it appeared in a municipal ordinance governing accidental disability benefits.²² See 15 A.3d at 963. Looking to principles of tort law, the court held that proximate cause “requires a factual finding that the ‘harm would not have occurred but for the [accident] and that the harm [was a]

service performed by the teacher resulting in the disability,
and the retirement board may grant the teacher an
accidental disability benefit.

Sec. 16-16-16 (emphasis added). The Legislature has expressly authorized the Retirement Board to establish eligibility requirements, standards, and criteria for accidental disability benefits. See Sec. 16-16-16(d). The Retirement Board established a regulatory standard that applies to accidental disability retirements under §§ 16-16-16, 36-10-14, 45-21-21 and 45-21.2-9. See R.I. Admin. Code 29-1-4:9-4.00.

²¹ ERSRI suggests that Pierce does not govern the instant matter because the court in Pierce was interpreting a municipal ordinance, not § 16-16-16. Our Supreme Court has repeatedly stated, however, that it applies the same rules of construction when interpreting ordinances as it does when interpreting statutes. See, e.g., Pierce, 15 A.3d at 963, Murphy v. Zoning Board of Review of South Kingstown, 959 A.2d 535, 541 (R.I. 2008); Ruggiero v. City of Providence, 893 A.2d 235, 237 (R.I. 2006). The language concerning causation in § 16-16-16(a) is nearly identical to that in the ordinance at issue in Pierce: both provisions require an applicant’s disability to be “a natural and proximate result of an accident while in the performance of duty.” See Sec. 16-16-16(a); Providence Ordinance § 17-189(5). Further, the court specifically noted in Pierce that proximate cause is a legal concept with a particular meaning in law. See 15 A.3d at 964. Given the similarity of language and the recognized meaning of proximate cause, this Court concludes that the principles of causation articulated in Pierce are applicable to this matter.

²²In Pierce, a firefighter for the City of Providence had suffered multiple traumas to his right ankle. See 15 A.3d at 958. The most recent injury caused his ankle to surgically fuse and rendered him unable to perform the duties of his job. Id. The firefighter applied to the City of Providence Retirement System for an accidental disability retirement pursuant to § 17-189(5) of the Providence Code of Ordinances. Id. at 959. The City Retirement Board denied the application because Pierce’s disability was the cumulative result of multiple injuries. Id. at 960-61.

natural and probable consequence of the [accident].” Id. at 964 (quoting DiPetrillo v. Dow Chemical Co., 729 A.2d 677, 692-93 (R.I. 1999)) (alterations in original). The court elaborated that “proximate cause need not be the sole and only cause. . . . It’s a proximate cause if it concurs and unites with some other cause which, acting at the same time, produces the injury of which complaint is made.”²³ Id. at 966 (internal quotation omitted).

In this case, the Subcommittee concluded in its written decision that “the records provided suggest . . . there are many non-work related instances that may have contributed to Leyden’s lengthy history of depression, anxiety and emotional issues, which preclude the necessary causal findings to support an accidental disability retirement.” (Subcommittee decision at 4, Apr. 2011, Rec. Ex. 31.) The Retirement Board’s discussion from its February 8, 2012 meeting sheds further light on its analysis of causation. At that meeting, one member of the Retirement Board, who was also a member of the Subcommittee, explained that

[y]ou have to look at all the surrounding circumstances. The allegation here is PTSD. I don’t doubt that it was a traumatic incident. But, you know, a student pushed²⁴ by her [] . . . she didn’t go to an emergency room. . . . She did see her chiropractor, subsequently. But when we look at PTSD . . . we do look at the severity of the incident, whether that’s something that is likely to trigger that. . . . I think, in this case, it is the decision of the disability subcommittee that . . . it didn’t rise to the level of an accidental disability.

²³ As an example of proximate cause in the disability context, our Supreme Court discussed the Maryland Court of Appeal’s decision in Hersl v. Fire & Police Employees’ Ret. Sys., 981 A.2d 747, 758 (Md. 2009). In Hersl, the Maryland Court of Appeals held that an employee’s on-the-job injury was a proximate cause of his inability to perform the duties of his job, despite the fact that the employee had previously suffered two non-work related injuries that had also contributed to his disability. See id. at 758. In so holding, the Maryland Court noted that the employee was not disabled by the prior injuries because he “was on active duty and performing the duties of [his job] when” the most recent injury occurred. Id.

²⁴ Although the quoted member describes the May 20, 2009 incident as a “push,” Ms. Leyden had testified that the student “headbutted” her, in addition to pushing her. See Tr. 8, Feb. 8, 2012, Rec. Ex. 44.

(Tr. 12, Feb. 8, 2012, Rec. Ex. 44.) Retirement Board member Daniel Beardsley, also a member of the Subcommittee, agreed that Ms. Leyden's assault did not meet the threshold for an accidental disability retirement:

The . . . extreme difficulty the disability subcommittee has in cases like this is to take a look at the specific incident or incidents. . . . In this particular case, with all due respect to the applicant, the prior medical history, if one delves into the record, as the disability subcommittee does . . . prior medical history indicates that, indeed, while these assaults or these incidents did take place . . . I don't believe it meets the threshold of . . . a debilitating accident on the job. This Post Traumatic Stress Disorder is a very difficult thing to weigh. . . . And nine times out of ten, we deny[.] [O]ne can . . . allege to be traumatized by just about anything in this life. We've had . . . numerous applicants that are hanging their hat on the fact that they were traumatized . . . to the degree that they cannot return to the job. . . . There's no reason why an ordinary disability could not be applied in this instance, but to rise to the threshold of an accident is something that I don't believe this application gives rise to.

Id. at 16.²⁵ This exchange from the February 8, 2012 meeting demonstrates that the Retirement Board did not believe that the nature or severity of the May 20, 2009 assault was such as would be likely to cause a person to experience a posttraumatic reaction.

²⁵ Retirement Board member Michael Boyce disagreed with the quoted member analysis. See Tr. 14, Feb. 8, 2012, Rec. Ex. 44. According to Mr. Boyce,

[the Retirement Board's] job is to look at, one, was there an incident? Well there was. . . . And two, what happened as a result of the incident? We sent the applicant to the [Independent Medical Examinations], and two of them stated that . . . in their opinion, the incident did contribute to the applicant's disability.

Id. Mr. Boyce indicated that his position did not prevail at the Subcommittee's hearing. See id. at 15.

The Retirement Board's analysis of proximate cause is inconsistent with Pierce. In Pierce, a firefighter was disabled after hitting his ankle on a step. 15 A.3d at 960. The Supreme Court noted that "[a]lthough hitting an ankle against a stair arguably may not cause another firefighter to become permanently disabled, that Pierce endured this outcome does not preclude our determination that the 2006 injury was one of the proximate causes resulting in Pierce's disability." Id. at 966 n.13. In support of this statement, the Court quoted with approbation the words of the D.C. Court of Appeals in Stoner v. D.C. Police and Firemen's Retirement and Relief Bd., 368 A.2d 524 (D.C. 1977) that "[t]he mere fact that one officer may be more susceptible to disabling injury than another cannot be treated as dispositive without careful analysis of the circumstances or events which caused the asserted propensity to manifest itself in a disabling condition."²⁶ Id. at 529.

Here, the Retirement Board erred when it concluded that the May 20, 2009 incident could not be a natural and proximate cause of Ms. Leyden's disability because it was not the type of

²⁶ While the applicant in Pierce was disabled as a result of physical injuries, the applicant in Stoner was suffering from psychological trauma. In Stoner, a police officer was diagnosed with "post-traumatic neurosis" following a severe on-duty traffic accident. See Stoner, 368 A.2d at 527 n.3. The retirement board denied the officer's request for retirement benefits based on its finding that the officer's disability was "the manifestation of a pre-existing condition." Id. at 527. In reviewing the board's decision, the D.C. Court of Appeals concluded that the mere fact that an officer was peculiarly susceptible to a particular injury could not preclude a finding of causation. Id. Highlighting the fact that the officer was able to perform the duties of his profession immediately prior to the accident, the Court noted a "demonstrable service-related trauma which clearly marked the beginning of the officer's inability to fulfill his duties." Id. at 530; see also Morgan v. D.C. Police and Firemen's Retirement and Relief Bd., 370 A.2d 1322, 1326 (D.C. Ct. App. 1977) (noting the court has "rejected the notion that . . . the [b]oard may deny statutory relief upon a bare finding that the claimant had a preexisting potential for psycholological [sic] disability."). At least two other jurisdictions that have grappled with the difficult task of assessing the proximate causes of a psychological disability have likewise held that a pre-existing condition must be taken into account when determining causation, but does not preclude a finding that an on-the-job accident was a natural and proximate cause of the disability. See Tobin v. Steisel, 475 N.E.2d 101 (N.Y. 1985); Gurule v. Bd. of Pension Commissioners for the City of L.A., 178 Cal. Rptr. 778 (Cal. Ct. App. 1981).

incident likely to cause someone to suffer a posttraumatic reaction. See Pierce, 15 A.3d at 966 n.13 (the fact that a particular accident would not have disabled another employee does not preclude a finding of proximate cause). The Retirement Board further erred when it concluded that Ms. Leyden’s pre-existing depression and anxiety precluded a finding of proximate cause. See id. (citing Stoner, 368 A.2d at 529 for the proposition that an applicant’s susceptibility to disability cannot be treated as dispositive without consideration of the circumstances and events that caused the pre-existing condition to turn into a disability). The Court therefore finds that the Retirement Board’s decision was affected by error of law.

B

Substantial Evidence

Ms. Leyden contends the Retirement Board’s conclusion that her disability is not the natural and proximate result of the May 20, 2009 assault, or any other on-the-job assault, was arbitrary and capricious and clearly erroneous in light of the substantial evidence of record. Ordinarily, the determination of proximate cause is a question of fact. See Martin v. Marciano, 871 A.2d 911, 918 (R.I. 2005). This Court will defer to an agency’s factual determinations so long as they are supported by legally competent evidence of record. Town of Burrillville, 921 A.2d at 118. Legally competent evidence is “such relevant evidence that a reasonable mind might accept as adequate to support a conclusion[.]” R.I. Temps, Inc., 749 A.2d at 1125 (internal quotation omitted). An agency’s “finding is not supported by substantial evidence if it [] is overwhelmed by other evidence in the record or constitutes mere conclusion.” Charles H. Koch, 3 Administrative Law and Practice § 9:24 (3rd ed. 2013) (internal quotation omitted).

While this Court must be deferential to the agency’s fact-finding, the findings must be supported by the evidence presented. Here, a thorough analysis of the record is helpful.

Reports of Drs. Braden, King, Stewart, and Pogacar

In this case, the record contains evidence from at least five psychiatrists: the three independent medical evaluations, the report of Ms. Leyden’s treating physician, and the independent examination performed in connection with Ms. Leyden’s worker’s compensation case. The record also contains testimony from Ms. Leyden.

On ERSRI’s “Independent Medical Evaluation Form,” each of the three physicians performing an independent examination was required to check “yes” or “no” in response to the following two statements:

- (1) Based on my medical examination, it is my opinion to a reasonable degree of medical certainty that the applicant is physically or mentally incapacitated such that he/she cannot perform the duties of his/her position.
- (2) It is my opinion to a reasonable degree of medical certainty that the applicant’s incapacity is the natural and proximate result of an on the job injury and not the result of age or length of service.

Independent Medical Examination Form, Rec. Exs. 9, 10, 11. ERSRI also required the three independent physicians to submit a report setting forth the basis for their opinions, and addressing the following topics:

- 1. The diagnosis of the applicant’s condition and the nature of incapacity . . . and the medical basis for your conclusions.

- 4. Whether it is more likely that the disability was caused by the job related personal injury or whether the disability resulted from age or length of service.

5. Whether there is any event or condition in the applicant's medical history, other than the on the job injury . . . that might have contributed to or resulted in the disability claimed.
6. If there is such a contributing event or condition, what is the likelihood that the applicant's disability or incapacity was the natural and proximate result of that event or condition?

Id.

Psychiatrist Diane King, M.D. performed the first of the three independent examinations. Dr. King indicated that in her opinion, Ms. Leyden was unable to perform her duties as a teacher and Ms. Leyden's incapacity was the natural and proximate result of her on-the-job injury. See Report of Dr. King, Rec. Ex. 9. In a six-page report appended to the evaluation form, Dr. King summarized Ms. Leyden's relevant work history, including the 1994 assault, the 2004 attack that took place in her classroom, and the resulting threat from the attacker's mother. See id. at 2-3. In addition, Dr. King gave a synopsis of the May 20, 2009 assault and the psychiatric treatment that Ms. Leyden received in the wake of that incident. See id. at 4. In describing her examination of Ms. Leyden, Dr. King noted that "[i]t was very difficult for [Ms. Leyden] to report the details of the accident of May 20, 2009 and the previous history of [] assaults in the school department as it would trigger symptoms of anxiety, shortness of breath and tearfulness and 'shutting down.'" Id. Dr. King's report also recounted some of Ms. Leyden's medical history. In particular, Dr. King noted that Ms. Leyden first required psychiatric treatment after the 1994 assault that preceded the premature birth of her daughter. See id. at 5. Dr. King also indicated that she was aware that Ms. Leyden had received treatment for depression following her third miscarriage sometime in or around 1996. See id.

In her report, Dr. King diagnosed Ms. Leyden with PTSD. Id. at 6. As the basis for this diagnosis, Dr. King stated that Ms. Leyden was suffering from nightmares, intrusive

recollections, hyper-vigilance, flashbacks, and panic attacks when reminded of a school environment. Id. Dr. King opined that Ms. Leyden would be capable of some kind of future employment but would not be able to return to a teaching environment or be around students, due to her PTSD. Id. at 7. According to Dr. King, Ms. Leyden’s inability to return to work “was directly related to her accident o[n] May 20, 2009” and “no event or condition in [Ms. Leyden’s] medical history . . . contributed or resulted in [her] disability[.]” Id.

In the second of the three independent evaluations, psychiatrist Ronald Stewart, M.D., also indicated that in his opinion, Ms. Leyden was unable to perform her duties as a teacher as a natural and proximate result of an on-the-job injury. See Report of Dr. Stewart, Rec. Ex. 11. In his report, Dr. Stewart briefly recounted the previous assault in 1994, the May 20, 2009 assault, and Ms. Leyden’s psychiatric treatment following the May 20, 2009 incident. See id. at 2. Dr. Stewart diagnosed Ms. Leyden with PTSD. See id. at 3. As the basis for his diagnosis, he noted that Ms. Leyden was experiencing

recurrent distressing recollections of the [May 20, 2009 incident], recurring distressing dreams of the event, intense psychological distress at exposure to internal or external cues that resemble an aspect of the traumatic event She avoids places, people, and activities that arouse recollections of the trauma. She has difficulty falling or staying asleep, difficulty concentrating, hypervigilance, and an exaggerated startle response.

Id. at 1-2. Dr. Stewart concluded that Ms. Leyden’s PTSD rendered her unable to work as a teacher, or in a classroom setting. See id. at 2. In his opinion, Ms. Leyden’s “disability was caused by the injury at work on 5/20/09” and her “symptoms of PTSD are related to the injury at work and not another event in her medical history.” Id.

Ms. Leyden’s treating physician from Butler Hospital, William Braden, M.D., also certified that Ms. Leyden is no longer able to continue working as a teacher. See Report of Dr.

Braden, Rec. Ex. 6. He further certified that Ms. Leyden's disability is "such as might be the natural and proximate result of an accident sustained in the performance of [her] duties" as a teacher. See id. In his discharge summary, submitted to ERSRI as part of his report, Dr. Braden noted that Ms. Leyden

had depression before the events in May [2009], but was able to function with treatment. Since then, she is unable to contemplate going back to work without feeling "terror," "shut down" (unable to think clearly), "cornered," "can't escape." . . . She has flashbacks a couple times a week about the assault in 1994 and the latest one. [She] [h]as nightmares 5 out of 7 nights, some about the assaults, some are not but she feels "constantly under attack[.]"

Discharge Summary at 1, Sept. 25, 2009, Rec. Ex. 6. Dr. Braden's discharge diagnoses were moderate major depressive disorder and PTSD. See id. at 3.

The record also contains a report from Srecko Pogacar, M.D., the independent psychiatrist who examined Ms. Leyden in connection with her claim for worker's compensation benefits. See Report of Dr. Pogacar, Rec. Ex. 13, Item No. 6. In his report, Dr. Pogacar recounted in detail Ms. Leyden's medical history, personal history, and work history, including the prior assaults and threats. See id. at 2-3. His report also indicates that in preparation for his evaluation, Dr. Pogacar reviewed Ms. Leyden's medical records from the past several years. See id. at 3. Dr. Pogacar noted that since the May 20, 2009 assault, Ms. Leyden had been receiving treatment for PTSD from Nurse Mahoney, as well as attending therapy sessions at the Donley Center. See id. at 1. During his examination of Ms. Leyden, Dr. Pogacar observed that Ms. Leyden displayed anger and irritability when discussing the school administration. Id. at 2.

Dr. Pogacar diagnosed Ms. Leyden with PTSD, major recurrent depression, and panic disorder. Id. at 5. Under the section of his report entitled “Causal Relationship,”²⁷ Dr. Pogacar reported that Ms. Leyden

had a history of major depression Additionally however she has a history of multiple confrontations, traumas, dealing with students, followed again and again with threats of death. . . . [T]he patient has characteristic symptoms and signs of Posttraumatic Stress Disorder such as flashbacks, nightmares, intrusive thoughts, hypervigilance, avoidance, emotional numbness, impoverished social interaction, and exacerbation of her depressions and anxieties.

Id. at 6. Dr. Pogacar concluded “with a great degree of medical probability that [Ms. Leyden] is totally disabled to work as a high school teacher, and she is not able to return to work to her usual job forever.” Id.

In addition to these four physicians’ opinions, the record also contains testimony from Ms. Leyden about the effect the assaults and threats had on her ability to work as a teacher. At the Subcommittee’s reconsideration hearing on April 8, 2011, Ms. Leyden testified that after the 1994 assault that endangered her unborn daughter, she was “virtually comatose” and did not leave her house for a significant period of time. (Tr. 10-11, Apr. 8, 2011, Rec. Ex. 32.) She

²⁷ Although Dr. Pogacar’s report discusses the causal connection between the most recent assault and Ms. Leyden’s disability, it does not specifically indicate whether he considers Ms. Leyden’s disability to be a “natural and proximate” result of the May 20, 2009 assault. The statutory requirements for worker’s compensation benefits differ from those for an accidental disability retirement. While § 16-16-16 requires the employee’s injury to be a “natural and proximate result of an accident, while in the performance of duty,” the worker’s compensation statute, § 28-33-1, requires an “injury arising out of and in the course of [] employment, connected and referable to the employment[.]” Our Supreme Court has indicated that the principles of proximate causation from tort law do not apply to questions of causation under § 28-33-1. See Boullier v. Samsan Co., 100 R.I. 676, 680, 219 A.2d 133, 135-36 (R.I. 1966) (“[I]n workmen’s compensation cases[,] we do not equate the term ‘causal connection’ with the term ‘proximate cause’ as found in negligence actions.”).

explained that as a result of the May 20, 2009 assault, “I suffer from nightmares[.] I have flashbacks[.] . . . I have a lot of anxiety[.] . . . I even have trouble going into my children’s school which is nowhere near Providence.” Id. at 15. When asked if she believed she would ever be able to return to teaching, Ms. Leyden responded, “I can’t do it anymore. . . . [I]t was four different schools[;] it was four different students[;] it was four different administrators. . . . I’m not safe.” Id. at 15-16.

Despite the opinions of Drs. Braden, King, Stewart, and Pogacar, and Ms. Leyden’s testimony, the Subcommittee concluded, and the Retirement Board agreed, that the May 20, 2009 assault was not a natural and proximate cause of Ms. Leyden’s inability to return to the classroom.²⁸ See Subcommittee decision at 4, Apr. 2011, Rec. Ex. 31. It is exclusively the role of the Subcommittee to weigh evidence and determine the credibility of witnesses. See R.I. Admin. Codes 29-1-4:9-5.00 and 29-1-4:9-6.00. The Retirement Board will not overturn the Subcommittee’s findings of fact or assessments of credibility unless they are clearly wrong. See R.I. Admin. Code 29-1-4:9-11.00. On appeal, this Court may not substitute its judgment for that of the agency on questions of weight or credibility. See Sec. 42-35-15(g). Nonetheless, when an agency decides to reject an expert’s opinion or not to credit a witness’ testimony, it must do so based on competent evidence, and not on mere surmise or disbelief. See Restivo v. Lynch, 707 A.2d 663, 671 (R.I. 1998); Office of the Secretary of State v. R.I. State Labor Relations Bd., 694 A.2d 24, 28 (R.I. 1997).

In its written decision, the Subcommittee does not explain why it rejected the concurring opinions of Drs. King, Stewart, and Braden that the May 20, 2009 assault was a proximate cause

²⁸ It also appears that the Retirement Board did not believe that Ms. Leyden was suffering from PTSD or did not believe PTSD was a significant affliction. See Tr. 11-17, Feb. 8, 2012, Rec. Ex. 44.

of Ms. Leyden’s disability. Instead, the Subcommittee relies almost exclusively on the report of Dr. Harrop. See Subcommittee decision at 3-4, Apr. 2011, Rec. Ex. 31. In its written decision, the Subcommittee states that it

finds most persuasive the medical opinion of Dr. Harrop, who could not find that Leyden was disabled as a result of the May 2009 incident, or that that incident contributed significantly to her current condition. Dr. Harrop noted that Leyden “has a long psychiatric history” and that she “developed major depressive disorder” and has been consistently in psychiatric care or on psychiatric medications since she suffered a series of miscarriages years ago.

Id. at 3-4. The Subcommittee did not explain why it found Dr. Harrop’s opinion more persuasive than the opinions of Drs. King, Stewart, and Braden. See Thorpe v. Zoning Bd. of Review of Town of N. Kingstown, 492 A.2d 1236, 1236 (R.I. 1985) (agency should indicate “the manner in which evidentiary conflicts have been resolved. . .”).

2

Report of Dr. Harrop

Psychiatrist Daniel Harrop, M.D. agreed with Drs. Braden, King, and Stewart that Ms. Leyden is unable to perform her duties as a teacher. See Report of Dr. Harrop, Rec. Ex. 10. In contrast to the other psychiatrists, however, Dr. Harrop indicated that in his opinion, Ms. Leyden’s incapacity was not the result of the May 20, 2009 assault. See id.

In his report, Dr. Harrop discussed in detail Ms. Leyden’s anger and resentment towards the school administration and the police. He also summarized some of Ms. Leyden’s medical history, but indicated he did not have access to all of Ms. Leyden’s medical records, commenting she had a long history of psychiatric treatment. Id. at 2. He noted that Ms. Leyden was first prompted to seek psychiatric treatment after the 1994 assault; “[h]owever, she has been

consistently in psychiatric care or on psychiatric medications since about two years after that incident when she underwent a series of miscarriages. She developed major depressive disorder.” Id. Nonetheless, Dr. Harrop reported that in the years leading up to the May 20, 2009 assault, Ms. Leyden “slowly stabilized.” Id. According to Dr. Harrop, immediately after the May 20, 2009 assault, Ms. Leyden sought treatment for her neck injury but did not need psychiatric treatment. See id.

In his report, Dr. Harrop diagnosed Ms. Leyden with “major depressive disorder, recurrent, moderate to severe, without psychosis.” Id. at 3. In connection with his diagnosis, Dr. Harrop observed that Ms. Leyden displayed “emotional lability”²⁹ during the examination, alternatively crying while discussing the assaults and miscarriages, and displaying anger while discussing the school administration. Id. He did not diagnose Ms. Leyden with PTSD. Nor did his report mention flashbacks, nightmares, insomnia, trouble concentrating, or hyper-vigilance.

On the question of causation, Dr. Harrop wrote:

It is likely that [Ms. Leyden’s] current status is a worsening of the depressive disorder that she has had persistently since a series of miscarriages in the mid to late 1990’s. . . . It is difficult for me to draw a correlation between the assault that occurred in May of 2009 . . . and her depressive and anxious symptoms. Rather this incident appears to be incidental to the worsening depression she suffered in August and September of 2009 which led to her hospitalization at Butler.

. . . Therefore, I find that there are significant conditions and events in her medical history that are more likely to cause her current condition

. . . I do not feel that the assault in May of 2009 contributed significantly to her condition.

²⁹ The adjective “labile” describes something or someone who is “open to change,” “readily changeable or unstable.” American Heritage Dictionary 981 (5th ed. 2011).

(Report of Dr. Harrop at 4, Rec. Ex. 10.) (Emphasis added).

Ms. Leyden argues that Dr. Harrop's conclusions on the question of causation are too ambivalent to provide evidentiary support for the Retirement Board's decision. In general, for a medical expert's opinion to be considered competent evidence on the issue of causation, the expert must state with the "requisite degree of certainty" that a given state of affairs is the result of a given cause. See Morra v. Harrop, 791 A.2d 472, 477 (R.I. 2002); Parillo v. F.W. Woolworth Co., 518 A.2d 354 (R.I. 1986). While absolute certainty is not required and an expert need not use any particular terminology, the expert must give his opinion on causation with "some degree of positiveness." Id. (quoting Sweet v. Hemingway Transport, Inc., 114 R.I. 348, 355, 333 A.2d 411, 415 (1975)). Where a medical expert's opinion on causation is equivocal, it lacks the requisite degree of precision. See Simon v. Health-Tex, Inc. 490 A.2d 50, 51-52 (R.I. 1985).

While Dr. Harrop states that there are "more likely" causes, he does not positively state that the May 20, 2009 assault was not "a" cause of Ms. Leyden's inability to return to the classroom. See Pierce, 15 A.3d at 966 ("There can be multiple proximate causes [P]roximate cause requires only that [an event] be 'a' proximate cause, that is, one of the proximate causes.") (internal quotation omitted). Instead, Dr. Harrop states that he does "not feel" that the May 2009 assault "contributed significantly" and that it is "difficult" for him to find a correlation between that assault and the disability. See Lovitt Foods, Inc. v. Veiga, 492 A.2d 1237, 1238 (R.I. 1985) (expert testimony about causation expressed in terms of "feelings" lacks requisite degree of precision). Such equivocal statements provide little, if any, evidentiary support for the Retirement Board's conclusion that the May 20, 2009 assault was not one of the proximate causes of Ms. Leyden's disability. See Daskawisz v. Bd. of Trustees of the N.Y.C.

Police Pension Fund, 399 N.Y.S.2d 81, 83 (N.Y. Sup. Ct. 1977) (doctor’s opinion that “he knows of no evidence or authority to suggest that petitioner’s psychosis arises out of his line of duty injuries” was not competent evidence to deny accidental disability benefits).

Furthermore, Dr. Harrop’s conclusion that the May 20, 2009 assault “appears to be incidental” to Ms. Leyden’s disability is based on his assumption that she has been suffering from a persistently worsening, depressive disorder that originated with her miscarriages in the 1990s. See Hicks v. Vennerback & Chase Co., 525 A.2d 37, 42-43 (R.I. 1987) (physician who spoke only of “seeming relationship” based on presumption of pre-existing disease did not testify with necessary degree of certainty). As the record indicates, and as Dr. Harrop acknowledges, it was the 1994 assault that prompted Ms. Leyden to seek psychiatric treatment for the first time in her life. See Tr. 10-11, Apr. 8, 2011, Rec. Ex. 32; Report of Dr. King at 4, Rec. Ex. 9. While Dr. Harrop briefly mentions the 1994 and 2004 assaults, he inexplicably ignores their causal significance and instead, fixates on Ms. Leyden’s miscarriages. Undoubtedly, the miscarriages contributed to Ms. Leyden’s emotional struggles. Nevertheless, whatever cumulative effect the 1994 assault and the miscarriages may have had upon Ms. Leyden’s mental health, there is no evidence of record to suggest that she has been consistently deteriorating since the 1990s. Instead, the record shows that after the miscarriages, she gave birth to her second child, and then spent the next six years raising two small children while completing a Master’s degree. See Tr. 9, Mar. 14, 2012, Rec. Ex. 47; Tr. 11, Apr. 8, 2011, Rec. Ex. 32; Report of Dr. King at 1, 4, Rec. Ex. 9. By 2000, she was able to return to the classroom. See Tr. 11, Apr. 8, 2011, Rec. Ex. 32. In spite of all of the previous challenges and without being offered any alternative employment, she pressed on to teach again.

Dr. Harrop's conclusion that Ms. Leyden's disability was primarily caused by "the worsening depression she suffered in August and September of 2009 which led to her hospitalization at Butler[,] is based, at least in part, on an inaccurate belief that "[i]mmediately after the assault in May [Ms. Leyden] did not need any psychiatric treatment but continued to deteriorate until September 2009[.]"³⁰ (Report of Dr. Harrop at 2, Rec. Ex. 10.); see Mills v. State, 824 A.2d 461, 472 (R.I. 2003) (expert's conclusions based on misinterpretation of facts were invalid); Moreno v. NULCO Mfg. Corp., 591 A.2d 788, 790 (R.I. 1991) (rejecting medical opinion based on inaccurate history of employee's injury). The record clearly evidences that Ms. Leyden sought help from psychiatric nurse practitioner Cynthia Mahoney on June 1, 2009, only eleven days after the May 20, 2009 assault. See Evaluation of Cynthia Mahoney, Rec. Ex. 13, Item No. 2. Nurse Mahoney diagnosed Ms. Leyden with PTSD and depression, and prescribed medication. See id. On July 14, 2009, when Ms. Leyden saw her primary care physician, she complained of insomnia, trouble concentrating, and nightmares. See Records of Dr. Burchenal, Rec. Ex. 13, Item No. 3. In August 2009, Ms. Leyden's physical therapist and patient care coordinator at the Donley Center both expressed concerns about Ms. Leyden's PTSD symptoms and sent her for a psychology consult that took place on August 26, 2009. See Initial Rehabilitation Plan, Rec. Ex. 13, Item No. 4. During this consultation, the clinical social worker noted that "the most recent assault on 05/20/2009 triggered post-traumatic stress symptoms

³⁰ Even if Dr. Harrop's conclusion had an accurate factual basis, his conclusion that the May 2009 assault appears to be incidental to Ms. Leyden's worsening depression would not necessarily preclude a finding of proximate cause. In Pierce, the Supreme Court noted that one of the applicant's examining physicians concluded that the applicant "would have been rendered disabled by . . . degenerative arthritis [from a previous accident] regardless of [the most recent on-the-job accident]." 15 A.3d at 965 n.12. The court nonetheless found that the most recent accident was a proximate cause of the applicant's disability. See id. at 965. In so holding, the court pointed out that the applicant was able to work at full capacity immediately prior to the accident and completely unable to work immediately thereafter. See id.

including nightmares and intrusive thoughts.” (Rehabilitation Psychology Summary, Sept. 16, 2009, Rec. Ex. 13, Item No. 4.) The clinician also indicated that Ms. Leyden had been attending rehabilitation sessions at the Donley Center. See id. It was after this consultation that Ms. Leyden chose to attend the Women’s Day Program at Butler Hospital. See id. Thus, the record clearly evidences that the May 20, 2009 assault and the resulting PTSD symptoms prompted the chain of psychiatric care that led to Ms. Leyden’s treatment at Butler Hospital in September 2009.³¹ In light of the equivocal nature of Dr. Harrop’s conclusions and the uncertain factual basis for those conclusions, the Court finds that his report does not constitute such relevant evidence that a reasonable mind would accept as adequate to support the Retirement Board’s conclusion that the May 20, 2009 assault was not a natural and proximate cause of Ms. Leyden’s inability to return to the classroom. See Pawtucket Transfer Operations, 944 A.2d at 859 (legally competent evidence is such relevant evidence as a reasonable mind would accept as adequate to support a conclusion).

³¹ Dr. Harrop also appears to ignore the extent and severity of Ms. Leyden’s symptoms. Unlike every other psychiatrist’s report contained in the record, Dr. Harrop’s report makes no mention of flashbacks, nightmares, insomnia, or hyper-vigilance. See Report of Dr. King at 5-6, Rec. Ex. 9; Report of Dr. Braden at 1-2, Rec. Ex. 6; Report of Dr. Stewart at 1-2, Rec. Ex. 11; Report of Dr. Pogacar at 4, 6, Rec. Ex. 13, Item No. 6. Additionally, Dr. Harrop indicates that after Ms. Leyden’s discharge from Butler Hospital she “only needed to see the psychiatrist every two months for maintenance of her antidepressant and antianxiety medication[.]” (Report of Dr. Harrop at 2, Rec. Ex. 10.) The record indicates, however, that Ms. Leyden needed further therapy after her discharge from Butler Hospital but was having difficulty finding a psychiatrist who would accept her worker’s compensation insurance. See Letter from Patient Care Coordinator, Dec. 29, 2009, Rec. Ex. 13, Item No. 4; Report of Dr. King at 3, Rec. Ex. 9. The record also indicates that upon her discharge from Butler Hospital, Ms. Leyden was prescribed Propranolol for her nightmares and flashbacks, in addition to medication for anxiety and depression. See Report of Dr. Braden at 4, Rec. Ex. 6; Report of Dr. King at 3, Rec. Ex. 9; Report of Dr. Pogacar at 5-6, Rec. Ex. 13, Item No. 6. Moreover, Dr. Harrow appears to have misunderstood the nature and severity of the May 20, 2009 assault. Dr. Harrow states that Ms. Leyden was “pushed” by a student, whereas Ms. Leyden repeatedly indicated that in addition to pushing her, the student “headbutted” her in her right shoulder. See Tr. 14, Apr. 8, 2011, Rec. Ex. 32; Tr. 8, Feb. 8, 2012, Rec. Ex. 44.

Other Evidence Offered in Support of the Retirement Board's Decision

In its written decision, the Subcommittee asserts that “Dr. Harrop’s conclusions are supported by the medical opinion of Dr. Braden who diagnosed Leyden with ‘Major Depressive Disorder, Recurrent, Moderate,’ noting ‘a history of emotional, physical and sexual abuse.’” (Subcommittee decision at 4, Apr. 2011, Rec. Ex. 31.) As discussed previously, however, Dr. Braden clearly indicated that in his opinion, Ms. Leyden’s inability to return to work was the “natural and proximate result” of the May 20, 2009 assault. (Report of Dr. Braden at 2, Rec. Ex. 6.) In the same paragraph of Dr. Braden’s report from which the Subcommittee quotes, Dr. Braden states that Ms. Leyden “had a history of depression before the events in May, but was able to function with treatment. Since then, she is unable to contemplate going back to work without feeling ‘terror[.]’” Id. at 3. Dr. Braden diagnosed Ms. Leyden with PTSD, in addition to depression. Id. at 5. Thus, Dr. Braden’s opinion refutes, rather than supports, the Subcommittee’s conclusion that the May 20, 2009 assault was not a proximate cause of Ms. Leyden’s disability.

On appeal, ERSRI suggests that the Retirement Board’s decision is supported by the opinion of Dr. Gallo. The record, however, does not contain an opinion or any records from Dr. Gallo. See Sec. 42-35-15(f) (this Court’s review “shall be confined to the record[.]”). The only reference to Dr. Gallo appears in Dr. Pogacar’s report. Dr. Pogacar indicated that he had reviewed Ms. Leyden’s medical records, including a psychiatric examination performed by James A. Gallo, M.D. (Report of Dr. Pogacar at 3, Rec. Ex. 13.) Dr. Pogacar writes that Dr. Gallo “mention[s] that [Ms. Leyden] does have Posttraumatic Disorder symptoms, but doesn’t fulfill the criteria for Posttraumatic Stress Disorder.” Id. Later in his report, Dr. Pogacar states,

“I don’t agree with psychiatrist James Gallo, that [Ms. Leyden’s] case doesn’t meet the [] criteria for Posttraumatic Stress Disorder.” Id. at 6. Dr. Pogacar does not indicate when Dr. Gallo examined Ms. Leyden or whether Dr. Gallo had an opinion about the causes of Ms. Leyden’s symptoms.³²

ERSRI stresses in its memorandum that Ms. Leyden has had mental health issues since she was a child. In support of this argument, ERSRI points to Dr. Pogacar’s report.³³ Dr. Pogacar indicates in his report that there were several traumatic events in Ms. Leyden’s childhood that caused her to experience episodic depression. (Report of Dr. Pogacar at 5-6, Rec. Ex. 13, Item No. 6.) Dr. Pogacar goes on to conclude, however, that there is a causal relationship between the on-the-job assaults and Ms. Leyden’s current disability because the violent incidents at work exacerbated her depression and panic attacks. Id. at 6.

Regardless of what may have occurred in Ms. Leyden’s childhood, the Providence School Department saw fit to hire her as a teacher in 1990, placing her in a classroom after each incident. See Rec. Ex. 1. In the nearly two decades since she started her career, Ms. Leyden has

³² Even if Dr. Gallo’s report were contained in the record, the fact that he, or any other doctor, concluded that Ms. Leyden did not meet the criteria for PTSD does not necessarily provide support for the Retirement Board’s denial of Ms. Leyden’s application. There is nothing in § 16-16-16 that states that PTSD is the only psychological disability that qualifies for an accidental disability retirement. See Wydra v. City of Rochester, 87 A.D.3d 1379, 1380-81 (N.Y. App. Div. 2011) (expert testimony that applicant suffered from depression and anxiety, but not from PTSD, was not substantial evidence in support of denial of accidental disability benefits where statute did not distinguish between categories of mental illness). Indeed, in many cases, it may be nearly impossible to draw a bright line distinction between the symptoms of PTSD and depression and anxiety. As Dr. Pogacar noted in his report, the “symptoms and signs of Posttraumatic Stress Disorder” include “exacerbation of [] depression and anxieties.” (Report of Dr. Pogacar at 6, Rec. Ex. 13, Item No. 6.)

³³ The Subcommittee also stated in its “Findings of Fact,” that Ms. Leyden testified at the April 8, 2011 hearing that she believed that issues from her childhood had contributed to her current disability. See Decision, Apr. 2011 at 2, Rec. Ex. 31. This Court’s review of the transcript from that hearing, however, has not revealed any testimony from Ms. Leyden that touched upon her childhood.

experienced multiple assaults, threats of death and bodily harm, and the suicide of a student. See Tr. 9-15, Apr. 8, 2011, Rec. Ex. 32. The school administration has repeatedly demonstrated it is unable or unwilling to keep her and her students safe. See Tr. 8, Feb. 8, 2012, Rec. Ex. 44. Nonetheless, Ms. Leyden returned to the classroom after both the 1994 and 2004 assaults. Cf. Morgan, 370 A.2d at 1326 (finding that the “catalytic effect of the on-duty accidents is greatly outweighed by . . . the petitioner’s pre-existing psychological deficiencies” where the applicant had a relatively brief career). The most recent assault on May 20, 2009 proved to be too much for Ms. Leyden to overcome. Ms. Leyden testified, and at least four experts agreed, that the May 20, 2009 assault caused her to suffer debilitating flashbacks, nightmares, insomnia, and panic attacks. See Tr. 15, Feb. 8, 2012, Rec. Ex. 44; Report of Dr. King at 5-6, Rec. Ex. 9; Report of Dr. Braden at 1-2, Rec. Ex. 6; Report of Dr. Stewart at 1-2; Record Ex. 11; Report of Dr. Pogacar at 4, 6, Rec. Ex. 13. The record indicates that the possibility of returning to the classroom fills her with “terror” to the point where she “shuts down” and cannot function. See Report of Dr. Braden at 1, Rec. Ex. 6; Report of Dr. King at 5, Rec. Ex. 9. Thus, even when taking into account the non-work related traumas that may have contributed to Ms. Leyden’s current mental state, the overwhelming evidence of record clearly establishes that the May 20, 2009 assault is a ‘cause in fact’ and a precipitating proximate cause of her disability. See Pierce, 15 A.3d 957 (finding cause in fact where applicant was able to work at full capacity prior to, but not after his most recent on the job accident); Tobin, 475 N.E.2d at 104 (noting that an on-the-job accident that precipitates a psychological disability by acting on a pre-existing condition is a proximate cause). Moreover, given her history of work-related traumas, it is not surprising that after the latest assault, Ms. Leyden is convinced that no one can protect her from the inevitable violence. See Pierce, 15 A.3d at 965 (“‘natural’ requires that the consequences of the accident

are not extraordinary, [and] not surprising in the light of ordinary experience”) (internal quotation omitted) (alteration in original). Accordingly, the Court finds that the Retirement Board’s conclusion that Ms. Leyden’s disability was not the natural and proximate result of an on-the-job accident was clearly erroneous in light of the reliable, probative, and substantial evidence of record.

While the Retirement Board’s decision might also be characterized as arbitrary and capricious, this Court need not decide, since its previous findings that the decision was clearly erroneous and affected by error of law justify relief. The Court does not find the Retirement Board’s decision to be made upon unlawful procedure, in excess of its statutory authority, or in violation of constitutional or statutory provisions.

V

Conclusion

After carefully reviewing the record and considering the Parties’ arguments, the Court finds that Ms. Leyden’s substantial rights have been prejudiced because the Retirement Board’s decision was affected by error of law and clearly erroneous in light of the reliable, probative, and substantial evidence of record. Accordingly, the Retirement Board’s decision denying Ms. Leyden’s application for an accidental disability retirement is vacated. The Retirement Board is directed to reconsider the awarding of accidental disability payments to Ms. Leyden effective September 30, 2009.³⁴

³⁴ Ms. Leyden’s application was dated September 30, 2009. As R.I. Gen. Laws § 36-10-12(b) appears to afford reasonable discretion to the Retirement Board in granting disability pensions, a remand is most appropriate.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Jennifer Leyden v. Employees' Retirement System of the State of Rhode Island

CASE NO: PC 12-1867

COURT: Providence Superior Court

DATE DECISION FILED: June 5, 2013

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

For Plaintiff: Robyn K. Factor, Esq.

For Defendant: Michael P. Robinson, Esq.; John H. McCann III, Esq.