STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: November 4, 2021)

RHODE ISLAND TROOPERS ASSOCIATION and JAMES DONNELLY-TAYLOR,	:	
Plaintiffs,	:	
v.	:	**C.A. No. PC-2019-11054**
STATE OF RHODE ISLAND, DIVISION OF THE STATE POLICE, JAMES MANNI, COLONEL OF THE STATE POLICE, GOVERNOR GINA RAIMONDO, EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND, by and through the GENERAL TREASURER, SETH MAGAZINER, and the RETIREMENT BOARD,	:	
***Defendants*.**	:	

DECISION

MCGUIRL, J. Before this Court are cross-motions for summary judgment by the Rhode Island Troopers Association and Trooper James Donnelly-Taylor (collectively, Plaintiffs), the State of Rhode Island, Division of the State Police, James Manni, in his official capacity as Colonel of the Rhode Island State Police, and former Governor Gina Raimondo,[1] in her official capacity (collectively, State Defendants), as well as the Employees' Retirement System of Rhode Island, by and through General Treasurer Seth Magaziner, and the Retirement Board (collectively, ERSRI). (Pls.' Mot. Summ. J., Aug. 12, 2020 (Pls.' Mot.); State Defs.' Mot. Summ. J., July 9, 2020 (State Defs.' Mot.); ERSRI Mot. Summ. J., Sept. 8, 2020 (ERSRI Mot.).) These cross-motions relate to a state trooper's appeal from the denial of disability pension benefits to which he

[1] Current Governor Daniel McKee has not been substituted in this action.

and his union believe he is entitled. Jurisdiction is pursuant to Rule 56 of the Superior Court Rules of Civil Procedure and G.L. 1956 §§ 8-2-17, 9-30-1, 28-8-2, and 42-28-21.

For the reasons provided herein, the Court grants summary judgment to the State Defendants and ERSRI with regard to Count I of the Complaint and remands the decision of the Superintendent for further findings of fact and law consistent with this Decision.

I

Facts and Travel

The underlying facts related to the injury of former State Trooper James Donnelly-Taylor (Mr. Donnelly-Taylor) were set forth in part by the Rhode Island Supreme Court in *State ex rel. Kilmartin v. Rhode Island Troopers Association*, 187 A.3d 1090 (R.I. 2018). *Rhode Island Troopers Association*, 187 A.3d at 1093-94. In January 2014, Mr. Donnelly-Taylor was involved in an incident during which he fired his service weapon at a "suspect vehicle" which was driving "directly at [him]." (Admin. Ex., Div. 6, at 2.) Then, in February 2014, Mr. Donnelly-Taylor was involved in the arrest and transport of Lionel Monsanto (Mr. Monsanto), who had been speeding in Pawtucket, Rhode Island. *Rhode Island Troopers Association*, 187 A.3d at 1093. After Mr. Monsanto was processed and escorted to a cellblock, Mr. Donnelly-Taylor entered the cellblock and physically assaulted him, which assault was captured on video. *Id.* at 1093-94.

In March and April 2014, Mr. Donnelly-Taylor reported that he had been injured by "work related incidents" and "work related stress" and submitted a doctor's report recommending a month of sick leave because Mr. Donnelly-Taylor was "under significant stress due to multiple personal and work-related issues." (Admin. Ex., Div. 1, at 600-01, 606.) Mr. Donnelly-Taylor was then placed on injured-on-duty (IOD) status for the first time relevant to this case and remained out of work "due to a job related injury" until early August 2014. *Id.* at 605, 230; *see* Admin. Ex.,

Div. 11, at 6 ¶¶ 5-7. During this time, Mr. Donnelly-Taylor was indicted by a grand jury on a charge of assault related to the February incident and subsequently pled nolo contendere to misdemeanor assault in the Sixth Division District Court. *Rhode Island Troopers Association*, 187 A.3d at 1094; *see* Admin. Ex., Div. 11, at 4. As a result of his plea, Mr. Donnelly-Taylor was ordered to perform twenty-five hours of community service, and his criminal disposition was expunged from his record. *Rhode Island Troopers Association*, 187 A.3d at 1094; *see* Admin. Ex., Div. 11, at 4.

After a meeting on August 5, 2014, during which Mr. Donnelly-Taylor admitted that his actions in February 2014 constituted violations of the Division Rules and Regulations, he was suspended without pay for a full calendar month. (Admin. Ex., Div. 11, at 4.) On his return, he underwent an independent psychiatric evaluation at the request of the Rhode Island State Police. *Id.* The evaluation stated that he was not ready to return to full time duty that "require[s] the use of a firearm" and needed to address his "lack of insight" into his culpability in the February 2014 incident. *Id.* at 18. In October 2014, Mr. Donnelly-Taylor was put on light duty status for a three-month period due to "the need for further treatment," during which time he was required to and did receive treatment. (Admin. Ex., Div. 1, at 333-35; Admin. Ex., Div. 11, at 19.) In December 2014, Mr. Donnelly-Taylor's treating physician recommended he be returned to full duty status. (Admin. Ex., Div. 11, at 2.) He was subsequently authorized to return to full duty status in January 2015. (Admin. Ex., Div. 1, at 611-12.)

In March 2016, Mr. Monsanto brought civil charges against Mr. Donnelly-Taylor, in both his official and personal capacities, related to the assault and, in May 2016, the Department of the Attorney General declined to represent Mr. Donnelly-Taylor in his individual capacity, stating that his behavior fell outside of the scope of his employment and amounted to willful misconduct. *See*

Admin. Ex., Div. 3, at 34-35; *Rhode Island Troopers Association*, 187 A.3d at 1094-95.[2] Nine months later, on the evening of February 15, 2017, Mr. Donnelly-Taylor sent out a division-wide e-mail from his phone in which he asked the other troopers to watch a video purportedly recorded by Mr. Monsanto "several hours before we arrested him" that he claimed would give them "a glimpse of what [we] had to deal with the night in question."[3] (Admin. Ex., Div. 7, at 1.) He ended the e-mail by saying that, "with no one able to make public comments as to the ACTUAL facts of this case, I am left to defend myself[,]" and thanked the recipients for their time. *Id.* As a result, Colonel Ann C. Assumpico (Col. Assumpico) requested that the Professional Standards Unit (PSU) investigate Mr. Donnelly-Taylor's "unauthorized use of the Division email system[.]" *Id.* at 2. In the subsequent report on the incident, the PSU stated that the "civil suit has taken a mental toll on Trooper Donnelly-Taylor which has resulted in concern by his immediate supervisors and members of the Command Staff that [he] is not fit for duty and should be placed on sick leave and referred to Dr. Pickett for evaluation." *Id.* at 3. Consequently, Mr. Donnelly-Taylor was put on sick leave and his status was changed to IOD for a second time on February 16, 2017. *Id.* at 4.

[2] The Supreme Court ultimately determined that the Attorney General had the authority to decline to defend Mr. Donnelly-Taylor under G.L. 1956 §§ 9-31-8 and 9-31-9, an issue that was not arbitrable. *Rhode Island Troopers Association*, 187 A.3d at 1101-02.

[3] The video in question is a recording from February 25, 2014, the night prior to the arrest and assault, showing several radio hosts of "3rd Society Radio" discussing an incident in which one of the hosts was told by a police officer he would receive a ticket for parking his car on the street during a city parking ban for snow removal. *See 3rd Society Radio 2.25.2014*, Vimeo (Feb. 25, 2014, 8:04 PM), https://vimeo.com/87628073/. The hosts' commentary contains frequent profanity and evidences significant skepticism regarding local law enforcement's discretion to ticket, claiming that the city does not provide equal provision of municipal snow removal services to black neighborhoods and complaining of the ubiquity of Rhode Island potholes. *See id.* Plaintiffs characterize this video as one in which "Monsanto essentially brags about his negative interactions with police officers (including statements about assaulting police officers) and his belief that they are racist." (Pls.' Mem. Supp. Obj. Defs.' Mot. Summ. J. (Pls.' Mem.) 7.)

For the next two years, Mr. Donnelly-Taylor remained on IOD status and received treatment for his trauma and stress, which was paid for by the Rhode Island State Police (RISP). *See* Admin. Ex., Div. 1, at 501-80 (treatment and progress notes from Dr. Kaufmann), 628 (critical expense request form, for payment of Mr. Donnelly-Taylor's medical treatment from Dr. Kaufmann); Admin. Ex., Trooper 1, at 9. In February 2018, his treating physician stated that Mr. Donnelly-Taylor "continue[d] to exhibit symptoms of post-traumatic stress disorder" and characterized his condition as having been "recent[ly] exacerbat[ed.]" Admin. Ex., Div. 1, at 625. In November 2018, his doctor stated that "[g]iven the chronicity of his symptoms, I consider him to be medically disabled from his prior work capacity." *Id.* at 627.

In December 2018, Mr. Donnelly-Taylor sent an e-mail to the Superintendent of the State Police, Col. Assumpico, stating that, after reaching out to ERSRI and notifying them of his intention to apply for a work-related disability pension, he was told to submit his request to the Superintendent. (Admin. Ex., Trooper 1, at 11.) Consequently, Mr. Donnelly-Taylor stated that he was "respectfully asking you to review all pertinent information involved in my Injured on Duty (IOD) status and award me a full disability pension" as well as "all the benefits which have been granted to past recipients." *Id.* In March 2019, Colonel James Manni (Col. Manni) was sworn in as the new Superintendent of the State Police. (Compl. ¶ 20; State Defs.' Answer ¶ 20.) In June 2019, Col. Manni notified Mr. Donnelly-Taylor that a hearing would be held "[i]n order to afford [him] a full and fair opportunity to state and support [his] claim to a disability pension from the Rhode Island State Police, and in order to facilitate the proper exercise of [Col. Manni's] discretion as superintendent[.]" (Admin. Ex., Joint 1.)

The hearing was held on August 8, 2019. *See* Compl., App. A (Decision), at 1. On October 17, 2019, Col. Manni issued his decision as Superintendent (Decision), denying Mr. Donnelly-

Taylor's application for disability pension benefits. (Decision at 1, 27.) In his Decision, the Superintendent listed excerpts from the treatment notes and assessments submitted to the RISP by Mr. Donnelly-Taylor's treating psychiatrist as evidence supporting his determination. *Id.* at 6-10. The Superintendent then found that Mr. Donnelly-Taylor had suffered injury causing disability, because "he has been diagnosed by a duly qualified psychiatrist with 'major depressive disorder and post-traumatic stress disorder (PTSD)[,]'" and that such disability is permanent, because "his psychiatrist found that '[g]iven the chronicity of his symptoms, I consider him to be medically disabled from his prior work capacity.'" *Id.* at 12.

However, the Superintendent distinguished between "injuries suffered 'as a direct consequence to experiences while employed as a Rhode Island State Trooper'" and those "suffered 'in the course of performance of [his] . . . duties[,]'" based on his "informed judgment acquired over the course of his long career in law enforcement, including over 25 years as a Rhode Island State Trooper," and relying on the reasoning used by the Rhode Island Supreme Court in *Canario v. Culhane*, 752 A.2d 476 (R.I. 2000). *Id.* at 12-13 (citing *Canario*, 752 A.2d at 479).

The Decision went on to locate the "impetus for Trooper Donnelly-Taylor's disability-pension request" as the February 2014 arrest and assault of Mr. Monsanto. *Id.* at 13. Referencing the decision in *Rhode Island Troopers Association*, cited *supra*, the Superintendent went on to find that Mr. Donnelly-Taylor's assault of Mr. Monsanto "was not within the scope of his duties as a Rhode Island State Trooper." *Id.* at 14 (citing *Rhode Island Troopers Association*, 187 A.3d at 1103-04). The Superintendent then found that Mr. Donnelly-Taylor's "disabling stress resulted not from his arrest of Mr. Monsanto but from his assault of Mr. Monsanto and its consequent fallout." *Id.* at 15. In doing so, the Superintendent referenced the progress notes of the psychiatrist, citing incidents related to the assault and litigation as experiences that affected Mr. Donnelly-Taylor and

caused him stress. *Id.* The Superintendent emphasized that these events occurred when Mr. Donnelly-Taylor was on IOD status, not "performing any duties for the Rhode Island State Police[.]" *Id.* at 16. Therefore, the Superintendent found that the "disabling injury . . . is not duty-related and not properly the basis for a disability pension." *Id.*

The Superintendent also rejected several arguments made by Mr. Donnelly-Taylor that his discretion was constrained by expert testimony and the plain language of § 42-28-21(a), stating that the limits on his discretion "do not extend to reducing his role to that of a rubber stamp." *Id.* at 18-20. The Superintendent also addressed Mr. Donnelly-Taylor's argument that the RISP, by granting him IOD status, should be estopped from denying that he had "PTSD caused by events that occurred in the performance of his duty[,]" given the "parallel legal standards in [G.L. 1956] § 45-19-1 and § 42-28-21(a)[.]" *Id.* at 22. In doing so, the Superintendent distinguished the two statutes, citing the Supreme Court's statement that "§ 45-19-1 is not a retirement act," and extrapolating that a decision under that statute thus "does not have life-long implications." *Id.* at 23 (quoting *Webster v. Perrotta*, 774 A.2d 68, 80 (R.I. 2001)).

Mr. Donnelly-Taylor filed his Complaint, seeking declaratory judgment and appealing the Decision, on November 15, 2019. *See* Compl. He claimed jurisdiction under both the Administrative Procedures Act (APA) and Uniform Declaratory Judgments Act (UDJA). *Id.* ¶ 2. He was joined in Count I (Declaratory Judgment) by Plaintiff Rhode Island Trooper's Association (RITA). *Id.* ¶¶ 3, 25-26. Effective December 14, 2019, Mr. Donnelly-Taylor was removed from service by the Superintendent for non-disciplinary reasons under § 42-28-10. (State Defs.' Answer ¶ 8; State Defs.' Mem. Supp. Mot. Summ. J. (State Defs.' Mem.) 4 n.5.) State Defendants filed their Answer on December 16, 2019, and ERSRI filed its Answer on February 6, 2020. The parties

filed motions for summary judgment on the following dates: State Defendants on July 9, 2020, the Plaintiffs on August 11, 2020, and ERSRI on September 8, 2020.

II

Standards of Review

A

Summary and Declaratory Judgment

Summary judgment shall issue when the evidence demonstrates that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as matter of law." Super. R. Civ. P. 56(c). The moving party "bears the initial burden of establishing the absence of a genuine issue of fact." *McGovern v. Bank of America, N.A.*, 91 A.3d 853, 858 (R.I. 2014) (citation omitted). The Court "views the evidence in the light most favorable to the nonmoving party[,]" *Mruk v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 532 (R.I. 2013), and "does not pass upon the weight or the credibility of the evidence." *Palmisciano v. Burrillville Racing Association*, 603 A.2d 317, 320 (R.I. 1992). Thereafter, "the nonmoving party bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions." *Mruk*, 82 A.3d at 532 (quoting *Daniels v. Fluette*, 64 A.3d 302, 304 (R.I. 2013)) (internal quotations removed).

A party may request summary judgment when seeking a declaratory judgment "upon all or any part thereof." Super. R. Civ. P. 56(a). Furthermore, under the UDJA, the Superior Court possesses the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Section 9-30-1; *see also P.J.C. Realty, Inc. v. Barry*, 811 A.2d 1202, 1207 (R.I. 2002) (quoting § 9-30-1). Thus, "the Superior Court has jurisdiction to construe the rights

and responsibilities of any party arising from a statute pursuant to the powers conferred upon [it] by G.L. 1956 chapter 30 of title 9, the [UDJA]." *Canario*, 752 A.2d at 478-79. Section 9-30-2 of the UDJA provides as follows:

> "Any person interested under a deed, will, written contract, or other writings constituting a contract, or *whose rights, status, or other legal relations are affected by a statute*, municipal ordinance, contract, or franchise, *may have determined any question of construction or validity arising under the* instrument, *statute*, ordinance, contract, or franchise *and obtain a declaration of rights, status, or other legal relations thereunder*." Section 9-30-2 (emphasis added).

A trial court's "decision to grant or to deny declaratory relief under the [UDJA] is purely discretionary." *Sullivan v. Chafee*, 703 A.2d 748, 751 (R.I. 1997). The purpose of the UDJA is "to allow the trial justice to 'facilitate the termination of controversies,'" *Bradford Associates v. R.I. Division of Purchases*, 772 A.2d 485, 489 (R.I. 2001) (citations omitted), because "[i]t is the policy of this state to encourage the settlement of controversies in lieu of litigation." *Skaling v. Aetna Insurance Co.*, 799 A.2d 997, 1012 (R.I. 2002). *See also Arruda v. Sears, Roebuck & Co.*, 273 B.R. 332, 345 (D.R.I. 2002) ("[I]n Rhode Island, courts favor the settlement of litigation disputes.").

B

Final Judgment

As a general rule, an appeal may be taken only from a "final judgment, decree, or order of the superior court[.]" G.L. 1956 § 9-24-1. However, Rule 54(b) creates an exception, providing in pertinent part:

> "When more than one (1) claim for relief is presented in an action . . . or when multiple parties are involved, the court may direct the entry of a final judgment as to one (1) or more but fewer than all of the claims or parties only upon an express determination that there

> is no just reason for delay and upon an express direction for the entry of judgment."

Rule 54(b)'s objective is to "avoid the possible injustice of a delay in entering judgment on a distinctly separate claim . . . until the final adjudication of the entire case by making an immediate appeal available." 10 Wright & Miller, *Federal Practice and Procedure*, Civil 3d § 2654 at 33 (1998); *see also Astro-Med, Inc. v. R. Moroz, Ltd.*, 811 A.2d 1154, 1156 (R.I. 2002) (finding that, due to the substantial similarity between our Rule 54(b) and Federal Rule of Civil Procedure 54(b), "this Court may properly look to a federal court interpretation of the analogous federal rule for guidance in applying our own state's rule"). The rule achieves this by balancing two factors: (1) "the undesirability of more than one appeal in a single action" and (2) "the need for making review available in multiple-party or multiple-claim situations at a time that best serves the needs of the litigants." Wright & Miller, cited *supra*, at 35.

III

Analysis

In their Complaint,[4] Plaintiffs challenge the denial of Mr. Donnelly-Taylor's application for a disability pension, but they also challenge the prevailing understanding in Rhode Island of

[4] The State Defendants argue that it is procedurally inappropriate for Plaintiffs to include both their declaratory judgment action and Mr. Donnelly-Taylor's appeal in one complaint. (State Defs.' Mem. 4-5.) The Court notes that in *Ferreira v. Culhane*, 736 A.2d 96 (R.I. 1999), the Rhode Island Supreme Court found no fault with a Superior Court justice's decision to consolidate two similar claims to facilitate their consideration. *Id.* at 97 (noting that "plaintiff filed two actions . . . a complaint for declaratory relief and an administrative appeal" and that "[t]he two matters were consolidated"). Additionally, under § 8-2-17, this Court has jurisdiction over "such appeals and statutory proceedings as may be provided by law[.]" As detailed herein, the caselaw in Rhode Island interpreting § 42-28-21 makes it clear that this Court has an established appellate review function relative to decisions of the Superintendent regarding disability pensions for state troopers. Consequently, this Court will consider both the propriety of summary judgment for the declaratory judgment claims and the merits of Mr. Donnelly-Taylor's appeal herein, in the interest of judicial economy.

who has the authority to determine these matters and what standard the Court should utilize in reviewing these determinations. *See* Compl. ¶¶ 25-26; *Canario,* 752 A.2d at 478-79. In doing so, the Plaintiffs request that this Court utilize its jurisdiction under the UDJA to declare that ERSRI, not the Superintendent, has this authority, and that consequently the standard utilized in the review of ERSRI decisions should apply here. *See* Compl. ¶¶ 26D & 26E; Pls.' Consolidated Mem. 7-9. Mr. Donnelly-Taylor also appeals the Decision of the Superintendent, alleging that the hearing provided to him violated his due process rights and that the RISP's earlier grant of IOD benefits means the Superintendent was estopped from denying his claim for a disability pension due to parallel legal standards in the two governing statutes. *See* Compl. ¶¶ 27-34; Pls.' Mem. 19-24, 41-44. All parties having requested summary judgment, the Court will address each of these questions in turn before taking up the claims for final judgment under Rule 54(b) by the State Defendants and ERSRI.

A

Declaratory Judgment: The Authority of the Superintendent

1

Arguments

In Count I of the Complaint, Plaintiffs request that the Court declare that the Superintendent of the RISP is not a fiduciary of the State Police Retirement Benefits Trust (SPRBT) and thus has no authority to determine eligibility for pension benefits under either state law or the collective bargaining agreement (CBA). (Compl. ¶¶ 26A, 26B; *see* State Defs.' Answer ¶ 11.) Plaintiffs further request that the Court declare that ERSRI has either the statutory authority to make such eligibility determinations or has been delegated by the Governor to have such authority, which determinations should be resolved under the grievance and arbitration provisions of the CBA.

(Compl. ¶¶ 26C, 26D, 26E.) Additionally, Plaintiffs seek a declaration that such determinations, whether by the Superintendent or ERSRI, should be subject to the review of the Superior Court, either *de novo* or under an arbitrary and capricious standard. *Id.* ¶¶ 26F, 26G. Finally, Plaintiffs seek a declaration that Mr. Donnelly-Taylor is entitled to either the disability pension benefits he was denied or the continuing receipt of IOD benefits until he retires or leaves his employment with the RISP. *Id.* ¶¶ 26H, 26I.

The State Defendants argue that it was the Superintendent's statutory duty to decide Mr. Donnelly-Taylor's application for a disability pension, referencing the legislative history of the statute and multiple decisions from the Rhode Island courts. (State Defs.' Mem. 6-11; State Defs.' Reply Mem. 6.) The State Defendants also contend that the appropriate standard of review for this Court when evaluating the Superintendent's Decision is whether that Decision was arbitrary and capricious. (State Defs.' Mem. 11-16.) Plaintiffs, however, question whether the Superintendent has the authority to decide pension applications, based on ERSRI's administrative duties related to the state police pension system, an inter-agency letter agreement, and what they argue are deficiencies in the statutory language of § 42-28-21. (Pls.' Mem. 17-19.)

The State Defendants argue that this is an invalid basis for ERSRI's purported authority, i.e., based on an inter-agency letter agreement, and cite caselaw to support the argument that statutory responsibilities cannot be lost in the manner Plaintiffs seem to argue has happened here. (State Defs.' Reply Mem. 7-8.) ERSRI likewise argues that the relevant statutes neither require nor authorize ERSRI to administer trooper disability pensions. (ERSRI's Mem. Supp. Mot. Summ. J. (ERSRI's Mem.) 6-10.) ERSRI also maintains that the Rhode Island Supreme Court has traditionally afforded great deference to disability determinations made by the Superintendent. *Id.*

at 10. Additionally, ERSRI argues that the inter-agency letter agreement cited to by the Plaintiffs also does not authorize or require ERSRI to administer trooper disability pensions. *Id.* at 10-12.

Plaintiffs claim that ERSRI has ignored state law dictating that it enact rules and regulations relative to the pension fund. (Pls.' Consolidated Mem. 2-7.) Plaintiffs then explicitly dispute the standard of review provided by the State Defendants and provide one relative to the review an ERSRI decision. *Id.* at 7-9.

2

Analysis

Section 42-28-21(a) governs state police disability pensions and provides that:

> "If any member of the division whose service is terminated on or after January 1, 1960, shall have in the course of performance of his or her duties suffered injury causing disability or causing death, that member or his or her surviving dependent relatives, whose dependence shall be determined from time to time by the superintendent subject to confirmation by the governor, shall be entitled to an annual pension of seventy-five percent (75%) of the annual salary paid to that member at the time of his or her termination of service by reason of injury or death."

The Rhode Island Supreme Court has interpreted this statute as "provid[ing] that a member of the State Police who has suffered injury causing disability or death in the performance of his or her duties shall be entitled to a disability pension." *Ferreira*, 736 A.2d at 97.

Discussing this provision in *Canario*, cited *supra*, our Supreme Court also implicitly held that it confers authority onto the Superintendent to decide police disability pension eligibility. The Supreme Court noted that "[s]ection 42-28-21 does not provide any specific method of review of a determination by the superintendent in respect to a disability pension" and "approved . . . as a matter of law that the superintendent had great discretion in determining an officer's eligibility for a disability pension, and that plaintiff had failed to establish any abuse of discretion by the

superintendent." *Canario*, 752 A.2d at 478-79. The prior year, the Supreme Court upheld a decision by the Superintendent to deny a state police officer's request for a disability pension. *Ferreira*, 736 A.2d at 97; *see also Culhane v. DeRobbio*, 649 A.2d 507, 508 (R.I. 1994) (noting that the disability pension application under § 42-28-21 was "denied by the [superintendent] on the ground that the disability . . . had not been shown to have been incurred in the course of performance of his duty" but noting that the question of entitlement to such pension was not then before the Rhode Island Supreme Court).

Plaintiffs provide an inter-agency letter agreement from 2012 as part of their argument, in which United States Secretary of Commerce Gina Raimondo—then the General Treasurer of Rhode Island—wrote to the Superintendent that "[e]ffective November 1, 2012, retirement eligibility and benefits administration will be addressed by ERSRI staff." (Pls.' Mem., Ex. B, at 1.) However, the letter in question states only that this delegation was done in the name of "efficienc[y]" and "oversight of contributions received by and benefits paid from the Trust[,]" *see id.*, never expressing an intention to remove the Superintendent's statutory authority to determine disability pensions or operate in contradiction to previous Rhode Island Supreme Court decisions upholding such determinations.[5]

Moreover, to the extent that the General Treasury contracted with the RISP as to pension administration, "state law will trump contrary contract provisions when the statute provides for nondelegable or nonmodifiable duties and responsibilities in connection with the functions of state government." *State v. Rhode Island Council 94*, 925 A.2d 939, 945 (R.I. 2007) (citations omitted). Here, the statute as it has been interpreted by the courts clearly provides for such duties and

[5] Plaintiffs also argue that the Superintendent cannot make pension determinations because he is not a fiduciary of the police pension fund. *See* Compl. ¶ 26A; Pls.' Mem. 19. However, it is unclear how such a status or lack thereof would affect the Superintendent's authority under § 42-28-21.

responsibilities. Therefore, while the Superintendent may not be the exclusive decision maker as to police disability pensions, there is no evidence that the General Assembly or the courts have removed such authority as has been previously confirmed in our caselaw. Consequently, the power to alter or remove this established authority remains with the Legislature.

Furthermore, in each of the cases cited above where the Rhode Island Supreme Court reviewed decisions to deny disability pensions to state troopers, the standard of review utilized was the arbitrary and capricious standard. *Ferreira*, 736 A.2d at 97 (finding that the Superintendent's "decision not to reclassify plaintiff's pension status was neither arbitrary nor capricious" and there was "no abuse of discretion whatsoever in his decision"); *Canario*, 752 A.2d at 479 (clarifying that, in *Ferreira*, "we specifically approved of the application by the Superior Court of a standard of review based upon a determination that the superintendent's decision was neither arbitrary nor capricious" and "see[ing] no reason to depart from the standard of review applied . . . because it was identical to the standard of review that we specifically approved in *Ferreira*"). The principle of *stare decisis* thus dictates that the appropriate standard of review remains the arbitrary and capricious standard. *See State v. Hampton-Boyd*, 253 A.3d 418, 423 (R.I. 2021) ("'Under the principle of *stare decisis*, this Court always makes a concerted effort to adhere to existing legal precedent.'") (quoting *Pastore v. Samson*, 900 A.2d 1067, 1077 (R.I. 2006)).

Consequently, the Court grants summary judgment to the State Defendants and ERSRI with respect to Count I of the Complaint, declaring that it is clear that the Superintendent has the statutory authority to decide disability pension eligibility for state troopers and that the standard of review for such decisions is the arbitrary and capricious standard.

B

Mr. Donnelly-Taylor's Appeal

Under both the APA and the common law of the State of Rhode Island, Mr. Donnelly-Taylor also appeals the Decision of the Superintendent, contending that the Decision was in violation of constitutional or statutory provisions, in excess of the statutory authority of the agency, made upon unlawful procedure, affected by other errors of law, clearly erroneous in view of the reliable, probative, and substantial evidence contained in the record, or arbitrary, capricious, or characterized by an abuse or clearly unwarranted exercise of discretion. (Compl. ¶¶ 29, 31, 33.) Mr. Donnelly-Taylor is seeking a reversal of the Decision in light of these contentions. *Id.* ¶¶ 29A, 34A.

As an initial matter, it appears that the APA is inapplicable here, as this matter concerns the state police. There is a long legal and statutory history across jurisdictions that illustrates that the state treats its administrative and police divisions differently, due to the paramilitary nature of the police. *See generally* § 45:10. Status, organization and powers, 16A McQuillin Mun. Corp. § 45:10 (3d ed.) (noting that "[t]he police force of a community has been described as resembling, in many respects, a military force"); § 45:11. Police boards and commissions, 16A McQuillin Mun. Corp. § 45:11 (3d ed.) (describing the "separate and independent" nature of police leadership, as distinct from that of other municipal or local employees); § 45:13. Police boards and commissions—Powers and duties, 16A McQuillin Mun. Corp. § 45:13 (3d ed.) (describing the statutory origin of police powers and the large measure of discretion accorded to police leadership). This distinction is also apparent in Rhode Island law, given the history of police officers' exclusion from the state workers' compensation statute and the subsequent enactment of § 45-19-1, with its

greater protection and benefits for injured police officers and firefighters. *See Webster*, 774 A.2d at 79-80 (describing such history).

Consequently, the Court will review Mr. Donnelly-Taylor's appeal from the Decision of the Superintendent under the appropriate arbitrary and capricious standard after first addressing his due process and estoppel arguments.

1

Due Process

(i)

Arguments

Mr. Donnelly-Taylor alleges that the process utilized with regard to his application violated his due process rights under the state and federal constitutions. (Pls.' Mem. 19-24.) He also contends that this Court should reverse the Decision because the record of the hearing indicates there were violations of Rule 408 of the Rhode Island Rules of Evidence related to the admission of mediation-related communications and materials. *Id.* at 24-26.

The State Defendants argue that Mr. Donnelly-Taylor's due process arguments are without merit given the non-adversarial nature of the hearing provided at the Superintendent's discretion. (State Defs.' Reply 8-9.) Furthermore, the State Defendants contend that the notice received and the hearing itself provided sufficient due process. *Id.* at 9-12. The State Defendants then argue that Mr. Donnelly-Taylor's claims regarding Rule 408 and G.L. 1956 § 42-35-10 do not apply to the hearing, which was not a "contested case" under the APA, and that any argument under Rule 408 was waived as the only objections made at the hearing were with regard to relevance. *Id.* at 12-13. In reply, Mr. Donnelly-Taylor argues that the lack of rules or procedure rendered the hearing he was given a violation of due process. (Pls.' Consolidated Mem. 14.) He also disputes

the State Defendants' characterization of the documents admitted as part of the hearing record as merely containing his personnel file and medical file, arguing that there were many additional documents included. *Id.* at 16.

(ii)

Analysis

To begin with, the Rhode Island Rules of Evidence did not apply at the hearing under appeal for two reasons. First, the Superintendent explicitly notified the parties, on the record, that the Rules of Evidence would not apply. (Hr'g Tr. at 7:25-8:4.) Second, the Rules themselves address when they are applicable, stating as follows: "To the extent and with the exceptions stated below, these rules govern proceedings *in the courts of this state* and *to the extent provided by the Administrative Procedure Act to contested administrative actions and proceedings*." R.I. R. Evid. 101(a) (emphasis added). The hearing in question was neither a proceeding in a court nor a contested administrative action under the APA, as explained above. Furthermore, Mr. Donnelly-Taylor has failed to allege how such evidence prejudiced his claim or resulted in an unfair ruling. *See Thibaudeau v. Thibaudeau*, 947 A.2d 243, 247 (R.I. 2008) (holding consideration of improperly admitted evidence "harmless error" where "hearing justice relied on sufficient evidence independent of the [improper evidence]"). Therefore, Mr. Donnelly-Taylor's argument regarding Rule 408 is without merit.

Both the Fourteenth Amendment to the United States Constitution and the Rhode Island Constitution prohibit state actors from depriving a person "of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV, §1; *see* R.I. Const. art. I, § 2 ("No person shall be deprived of life, liberty or property without due process of law[.]"). Due process claims "are examined in two steps": "First, a plaintiff must have a protected liberty or property interest[,]" and

"[o]nly then do we inquire whether the procedures afforded were 'constitutionally sufficient.'" *DiCiantis v. Wall*, 795 A.2d 1121, 1126 (R.I. 2002) (citation omitted). "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it" and "more than a unilateral expectation of it" but "must, instead, have a legitimate claim of entitlement to it." *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972). Such state benefit property interests are "created and defined by statutory terms[.]" *Id.* at 578.

Here, the statute in question, § 42-28-21(a), "provides that a member of the State Police who has suffered injury causing disability or death in the performance of his or her duties *shall* be entitled to a disability pension." *Ferreira*, 736 A.2d at 97 (emphasis added). While the Superintendent's discretion in these matters is broad, the statute does constrain it somewhat through its use of mandatory language. *See Quality Court Condominium Association v. Quality Hill Development Corp.*, 641 A.2d 746, 751 (R.I. 1994) (approving as a "general rule of statutory construction regarding the words 'may' and 'shall[]'" the distinction between "a discretionary rather than a mandatory provision") (citing *Carlson v. McLyman*, 77 R.I. 177, 74 A.2d 853 (1950)). Therefore, subject to the resolution of whether Mr. Donnelly-Taylor "in the course of performance of his . . . duties suffered injury causing disability[,]" he had a statutorily protected property interest in his disability pension. Sec. 42-28-21(a); *see Board of Pardons v. Allen*, 482 U.S. 369, 381 (1987); *Lynch v. Gontarz*, 120 R.I. 149, 156-57, 386 A.2d 184, 188 (1978).

Nevertheless, it is clear to this Court that state troopers applying for disability pensions under § 42-28-21(a) are not necessarily entitled to a hearing under the statute. *See Canario*, 752 A.2d at 478, 480 (affirming a Superior Court decision determining that the Superintendent's denial of a disability pension *without holding a hearing* was neither arbitrary nor capricious). Having granted one, however, the Superintendent is obligated to meet the requirements of due process.

See Hr'g Tr. at 7:6-7 (Superintendent acknowledging his "quasi-judicial role in this matter"); *cf. Town of Richmond v. Wawaloam Reservation, Inc.*, 850 A.2d 924, 933 (R.I. 2004) ("An administrative tribunal acts in a quasi-judicial capacity when it affords the parties substantially the same rights as those available in a court of law, such as the opportunity to present evidence, to assert legal claims and defenses, and to appeal from an adverse decision.").

It is instructive to note that, although our Supreme Court has found that "the due-process requirements of a fair trial apply to the procedures of administrative agencies[,]" it has held that such requirements merely entitle an individual to "an opportunity to be heard at a meaningful time and in a meaningful manner."[6] *Bourque v. Dettore*, 589 A.2d 815, 823 (R.I. 1991); *see also Boyer v. Bedrosian*, 57 A.3d 259, 273 (R.I. 2012) ("[T]he fundamental requisite of due process is the opportunity to be heard at a meaningful time and in a meaningful manner; this certainly requires one to be forewarned about the subject matter of the hearing with sufficient detail so an intelligent explanation or rebuttal can be formulated."). It is only common sense that where, as here, there is

[6] The Rhode Island Supreme Court has stated that another part of the procedural due process analysis is asking whether an individual was afforded an "'opportunity to respond adequately before a governmental agency may effectively deprive [that] individual of life, liberty, or property.'" *East Bay Community Development Corp. v. Zoning Board of Review of Town of Barrington*, 901 A.2d 1136, 1153 (R.I. 2006) (quoting *State v. Manocchio*, 448 A.2d 761, 764 n.3 (R.I. 1982)). In the context of other types of appeals, our courts have consequently required that individuals be provided with an adequate rationale that will allow them to make such an adequate response. *See, e.g., Akebia Therapeutics, Inc. v. Azar*, 976 F.3d 86, 100 (1st Cir. 2020) (noting, in context of administrative appeal, that "to avoid arbitrary and capricious outcomes," a given "agency cannot significantly depart from its own prior precedent without adequately explaining its rationale"); *Environmental Scientific Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993) (interpreting a statute to require an administrative agency to provide "an adequate rationale" when rejecting a hearing officer's findings). Likewise, in the context of its review of a trial court's denial of a motion for a new trial, the Rhode Island Supreme Court has required that the trial justice "'compl[y] with the requisite procedure and articulate[] an adequate rationale . . . .'" *State v. Golembewski*, 808 A.2d 622, 625 (R.I. 2002) (quoting *State v. Otero*, 788 A.2d 469, 472 (R.I. 2002)). The question of whether the Decision in this matter contained an adequate rationale is afforded extensive review below, as part of this Court's consideration of Mr. Donnelly-Taylor's appeal.

no entitlement to a hearing under the statute, the requirements of due process cannot reasonably exceed those that apply in contested cases under the APA.

Mr. Donnelly-Taylor was provided with a letter notifying him that he would be granted a hearing, "non-adversarial in conduct and informal in tone," at which he would have the "burden to present such evidence as [he] deem[ed] material and relevant to support [his] request." (Admin. Ex., Joint 1.) The letter also made clear that it would be appropriate to submit "medical records and to testify as to how 'in the course of performance of [your] duties . . . [you] suffered injury causing disability[.]" *Id.* Finally, the letter stated that Mr. Donnelly-Taylor could "bring legal counsel and any witnesses" and that, if he had questions, he should direct them to the RISP's counsel. *Id.* This letter provided adequate notice under the due process standard articulated above, as Mr. Donnelly-Taylor was "forewarned about the subject matter of the hearing with sufficient detail so an intelligent explanation or rebuttal [could] be formulated." *Boyer*, 57 A.3d at 273.

Furthermore, the Court's examination of the hearing transcript shows that it provided Mr. Donnelly-Taylor with an adequate opportunity to be heard. *See* Hr'g Tr. at 10:1-12:8 (containing argument by Mr. Donnelly-Taylor's attorney regarding several procedural matters); 28:12-29:1 (containing argument by Mr. Donnelly-Taylor's attorney objecting to "a large pile of documents" in the context that "I understand that over my objection the stuff is coming in anyway"); 51:10-60:20 (containing statement by Mr. Donnelly-Taylor's attorney reserving legal argument for written submission before proceeding to argue at length regarding the various points to be made in that submission). Consequently, the Court finds that the hearing provided to Mr. Donnelly-Taylor met the requirements of due process by giving him "an opportunity to be heard at a meaningful time and in a meaningful manner." *Bourque*, 589 A.2d at 823.

2

Estoppel

(i)

Arguments

Mr. Donnelly-Taylor also contends that the Superintendent was estopped from denying his application based on the RISP's prior determination to grant him IOD status, which he argues is a parallel legal standard. (Pls.' Mem. 41-44.) The State Defendants adopt the Decision's analysis of the estoppel argument raised by Mr. Donnelly-Taylor and also argue that the RISP should not be penalized for granting IOD status to an employee for policy reasons. (State Defs.' Reply Mem. 16-17.) In reply, Mr. Donnelly-Taylor disputes the applicability of a Superior Court case cited by the State Defendants relevant to his estoppel argument, arguing that the case does not address estoppel except in dicta. (Pls.' Consolidated Mem. 17-19.)

(ii)

Analysis

In *Webster v. Perrotta*, cited *supra*, our Supreme Court has held that § 45-19-1, "often referred to as the [IOD] provision[,]" "is not a retirement act" and is only intended to apply to an officer entitled to compensation and benefits "*while he or she remains a member of the department*." *Webster*, 774 A.2d at 71, 80 (emphasis in original). It is true that the IOD provision is remedial legislation and, as such, should be liberally construed. *See McCain v. Town of North Providence ex rel. Lombardi*, 41 A.3d 239, 244 (R.I. 2012). However, *Webster* made clear that the statute "is a substitute for workers' compensation" and does not regulate retirement benefits or compensation for those who leave the police department. *Webster*, 774 A.2d at 80. Likewise, in his Decision, the Superintendent found that while both statutes "speak in terms of injuries received

in the performance of duties," they serve different functions and a determination under one should not be binding on the other. (Decision at 26.)

Mr. Donnelly-Taylor does not specify in his argument which form of estoppel he believes should apply to the RISP's IOD determination. However, both judicial and equitable estoppel "[are] extraordinary relief, which will not be applied unless the equities clearly are balanced in favor of the party seeking relief." *See State v. Parrillo*, 158 A.3d 283, 292 (R.I. 2017) (quotation omitted); *Gaumond v. Trinity Repertory Co.*, 909 A.2d 512, 519 (R.I. 2006).

"A trial justice has the discretion to invoke judicial estoppel 'when he or she finds that a party's inconsistent positions would create an unfair advantage.'" *Iadevaia v. Town of Scituate Zoning Board of Review*, 80 A.3d 864, 870 (R.I. 2013) (quoting *State v. Lead Industries Association, Inc.*, 69 A.3d 1304, 1310 (R.I. 2013)). The Rhode Island Supreme Court has stated that the "[invocation] [of] judicial estoppel [is] . . . driven by the important motive of promoting truthfulness and fair dealing in court proceedings." *D & H Therapy Associates v. Murray*, 821 A.2d 691, 693 (R.I. 2003). "'Unlike equitable estoppel, which focuses on the relationship between the parties, judicial estoppel focuses on the relationship between the litigant and the judicial system as a whole.'" *Iadevaia*, 80 A.3d at 870-71 (quoting *D & H Therapy Associates*, 821 A.2d at 693). Moreover, "'the rule is intended to prevent improper use of judicial machinery,'" which is why "'judicial estoppel is an equitable doctrine invoked by a court at its discretion.'" *Gaumond*, 909 A.2d at 519 (quoting *New Hampshire v. Maine*, 532 U.S. 742, 750 (2001)).

"'One of the primary factors courts typically look to[,] in determining whether to invoke the doctrine in a particular case[,] is whether the party seeking to assert an inconsistent position would derive an unfair advantage . . . if not estopped.'" *Iadevaia*, 80 A.3d at 871 (quoting *Lead Industries Association, Inc.*, 69 A.3d at 1310). As such, this Court will "'inquire whether the party

who has taken an inconsistent position had succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled.'" *Id.* (quoting *Lead Industries Association, Inc.*, 69 A.3d at 1310).

Here, there has been only one court proceeding involving Mr. Donnelly-Taylor and the Superintendent's Decision: the present one. Moreover, "[e]ven '[a]ssuming without deciding that the [doctrine] of . . . estoppel . . . can properly be invoked by [Mr. Donnelly-Taylor] in the circumstances presently before us, we cannot agree that on this record the only inference which may be reached . . . must be resolved in favor of [Mr. Donnelly-Taylor].'" *Faella v. Chiodo*, 111 A.3d 351, 358 (R.I. 2015) (quoting *Lichtenstein v. Parness*, 81 R.I. 135, 138, 99 A.2d 3, 5 (1953)). In fact, just as "the standards for receiving [workers' compensation] benefits are less demanding than the requirements for accidental disability" because "workers' compensation is not intended as a substitute for retirement," it is perfectly reasonable that the standards for the receipt of IOD benefits may be less exacting than those applied by the Superintendent to determine eligibility for a disability pension. *Rossi v. Employees' Retirement System*, 895 A.2d 106, 112 (R.I. 2006). Consequently, Mr. Donnelly-Taylor has not demonstrated that his previous award of IOD benefits should warrant estoppel, nor has he provided evidence that the State Defendants "would derive an unfair advantage . . . if not estopped" by asserting "an inconsistent position." *Gaumond*, 909 A.2d at 519.

Accordingly, the Court finds that the determination to place a state trooper such as Mr. Donnelly-Taylor on IOD status is not dispositive as to their entitlement to a disability pension and declines to exercise its discretion to invoke judicial estoppel under these circumstances. Nevertheless, the inconsistencies here—between the RISP's factual determination that Mr.

Donnelly-Taylor was eligible for IOD status *based on his injury in the performance of his duties* and the Superintendent's later determination that Mr. Donnelly-Taylor's disabling injury is distinct from this prior injury—should be addressed on remand. In particular, the Decision claims that Mr. Donnelly-Taylor's disabling injury occurred while he was already on IOD status, *see* Decision at 16, seeming to reject the medical opinion that later events "exacerbat[ed]" Mr. Donnelly-Taylor's pre-existing PTSD, *see* Admin. Ex., Div. 1, at 625. On remand, the Superintendent must address this inconsistency and distinguish this case from the circumstances described in *Webster*, cited *supra*. *Webster*, 774 A.2d at 80 ("Although [officers that suffer career-ending injuries or illnesses] may never return to active duty, as long as they are receiving benefits in accordance with § 45-19-1, . . . they remain employed by the department . . . .").

3

Arbitrary and Capricious

(i)

Arguments

The State Defendants argue that the Superintendent's denial of Mr. Donnelly-Taylor's application for a disability pension was neither arbitrary nor capricious and therefore should be affirmed. (State Defs.' Mem. 16-23.) In contrast, Mr. Donnelly-Taylor argues that the Decision was wrong on the merits, affected by legal error, and not supported by substantial evidence.[7] (Pls.' Mem. 26-40; Pls.' Consolidated Mem. 10-14.) Specifically, Mr. Donnelly-Taylor claims the

[7] The Court notes that Mr. Donnelly-Taylor is referencing the standard for its review under the APA. *See Turcotte v. Retirement Board of the Employees' Retirement System of Rhode Island*, No. PC-2010-5531, 2013 WL 1364018, at *4 (R.I. Super. Mar. 28, 2013). As discussed *supra*, this standard is inapplicable here. Therefore, the Court will instead confine its review of the Decision to the arbitrary and capricious standard, assessing the rationality of the legal conclusions of the Superintendent and the reasonableness of his Decision.

undisputed medical evidence supports a determination that his disability was directly caused by experiences that occurred while he was employed as a Rhode Island State Trooper, and that the Superintendent was constrained by the lack of an opposing expert opinion to make findings in keeping with the medical evidence. (Pls.' Mem. 26-32.) He also claims that the Superintendent's statutory authority under these circumstances is constrained by the mandatory language used in the statute. *Id.* at 33-35.

Mr. Donnelly-Taylor then argues that, to the extent that he engaged in an impermissible use of force related to the Monsanto arrest, it nevertheless cannot be a factor in the Superintendent's review of his pension application, citing the Rhode Island Public Employee Pension Revocation and Reduction Act (Pension Revocation Act). *Id.* at 35-41. He argues that if a given crime, such as simple assault, "does not provide a basis to revoke a pension, it cannot justify denying the benefit in the first place." (Pls.' Consolidated Mem. 15.)

The State Defendants argue in reply that the expert opinions referenced by Mr. Donnelly-Taylor and attached as an exhibit to his memorandum are not part of the record. (State Defs.' Reply Mem. 5.) The State Defendants also dispute the applicability of the Pension Revocation Act to the case at bar. *Id.* at 14-16.

(ii)

Analysis

Under the UDJA, "the Superior Court [has] jurisdiction to determine whether plaintiff[s] [are] entitled to a disability pension under [§ 42-28-21.]" *Canario*, 752 A.2d at 479. The Court applies an "arbitrary and capricious" standard of review when examining findings made by the Superintendent of the State Police, as in the case of appeals made under § 42-35-15. *See id.* at 478; *see also Ferreira*, 736 A.2d at 97. Under "the deferential standard of review . . . approved" by the

Supreme Court, Rhode Island courts "have given great deference to the discretionary authority of the superintendent" when reviewing findings made under § 42-28-21. *Canario*, 752 A.2d at 479, 480. This review has been described as asking whether, "in the light of the facts of the case[,] the superintendent's decision constituted a rational determination." *Id.* at 478.

In another context, our Supreme Court has held that "[u]se of the arbitrary and capricious standard means that reviewing courts will uphold . . . decisions interpreting the plan as long as the . . . interpreters have acted within their authority to make such decisions and their decisions were rational, logical, and supported by substantial evidence." *Goncalves v. NMU Pension Trust*, 818 A.2d 678, 682-83 (R.I. 2003). Furthermore, in that context, "the rationality of the . . . interpretation of the plan is deemed to be a question of law." *Id.* at 684.

Initially, this is not a case where the fact that Mr. Donnelly-Taylor "suffered [an] injury causing disability" is in dispute. Sec. 42-28-21(a). Nor is this a case where the extent of the injury is in dispute. *Contra Ferreira*, 736 A.2d at 97 ("Although plaintiff may have been diagnosed with hypertension while he was a member of the police force, there is no evidence at all that he was disabled because of that condition."); *Frost v. City of Newport*, 706 A.2d 1354, 1354-55 (R.I. 1998) (affirming the decision of a Superior Court justice in declining to vacate an arbitration award, where a plaintiff was denied IOD status and benefits because he failed to prove his workplace stress exceeded the typical "day-to-day emotional strain and tension which all employees experience").

Instead, while the Superintendent found that Mr. Donnelly-Taylor suffered injury causing permanent disability, i.e., PTSD and major depressive disorder, he went on to find that Mr. Donnelly-Taylor's disabling injury was caused by his assault of Mr. Monsanto, identifying the assault, attendant court cases, and subsequent publicity as the events "from which his injuries

arose." (Decision at 12, 13.) As a result, the Superintendent's Decision to deny Mr. Donnelly-Taylor's disability pension application was based on the determination that his disabling injury did not occur "in the course of performance of his . . . duties[.]" Sec. 42-28-21(a); Decision at 16 (finding that the "disabling injury . . . is not duty-related and not properly the basis for a disability pension"). Consequently, it is this determination that the Court must now examine for arbitrariness, capriciousness, or abuse of discretion.

In *Kaya v. Partington*, 681 A.2d 256 (R.I. 1996), our Supreme Court noted that the remedy provided to police officers by the IOD provision

> "allows a recovery without showing of fault and is not subject to the various tort defenses (contributory negligence, assumption of the risk, lack of foreseeability, lack of a duty or breach of a duty, lack of notice, and intervening causes) that would be available to any alleged tortfeasor, including a municipality, to defeat the claims of a police officer seeking damages under the State Tort Claims Act." *Kaya*, 681 A.2d at 260.

"Functionally tied though the doctrine [of respondeat superior] is to tort law, it has long been classified as an element of agency doctrine." Restatement (Third) *Agency* § 2.04 (2006). Rhode Island courts have also made prior determinations as to whether an incident occurs within the "scope of employment" under the Workers' Compensation Act and §§ 42-28-21 and 45-19-1. *See, e.g., McGloin v. Trammellcrow Services, Inc.*, 987 A.2d 881, 886 (R.I. 2010); *Canario*, 752 A.2d at 480; *Cruz v. Town of North Providence*, 833 A.2d 1237, 1240 (R.I. 2003). Notably, in *Cruz*, the Rhode Island Supreme Court stated that "[a]n employer, such as a municipality, can be held liable for an employee's intentional tort committed against a third party only if the misconduct falls within the scope of employment" and that "[a]cts of police brutality, . . . whether committed by one or more police officers, do not generally fall within the scope of their employment." *Cruz*, 833 A.2d at 1240 (further citation omitted).

Additionally, in *Aversa v. United States*, 99 F.3d 1200 (1st Cir. 1996), the First Circuit clarified that, within the context of federal law, an intentional tort might fall within the scope of employment under certain circumstances. *Aversa*, 99 F.3d at 1209. In *Aversa*, the court noted that, under New Hampshire law related to assault and Restatement (Second) *Agency*,

> "[a]n act is within the scope of employment . . . if it was authorized by the employer or incidental to authorized duties; if it was done within the time and space limits of the employment; and if it was actuated at least in part by a purpose to serve an objective of the employer." *Aversa*, 99 F.3d at 1210 (citing *Daigle v. City of Portsmouth*, 534 A.2d 689, 698-700, 701-02 (N.H. 1987); Restatement (Second) *Agency* § 228(1) (1958)).

The court also noted that, even when "an employee's intentionally tortious act was not authorized," an assault could fall within the scope of employment where it was "incidental to authorized duties," citing three requirements:

> "(1) the employer authorized or could foresee that the employee would use a reasonable degree of force as a means of carrying out an authorized duty; (2) the employee used excessive force, although wrongly, as a means of accomplishing an authorized duty; and (3) the employee's purpose was, at least in part, to carry out an authorized duty." *Id.* at 1211.

Here, in making his determination, the Superintendent relied on the legal analysis of the "scope of employment" from several notable Rhode Island cases, including *Rhode Island Troopers Association* and *Canario*, both cited *supra*. *See* Decision at 13-17. Preliminarily, while it is true that our Supreme Court held that Mr. Donnelly-Taylor's assault of Mr. Monsanto "fell outside the scope of his employment as a Rhode Island State Trooper and that a jury could conclude that he acted willfully[,]" this holding was within the context of whether the Attorney General had discretion to refuse to defend him under § 9-31-9. *Rhode Island Troopers Association*, 187 A.3d at 1104. The Superintendent gave no explanation in his Decision as to why the standard applied by the Supreme Court in making this representation related to the Attorney General's discretion

would be applicable in the context of whether Mr. Donnelly-Taylor's disabling injury obligated his employer to provide him with a disability pension.

In fact, the Rhode Island Supreme Court, in making its decision in *Rhode Island Troopers Association*, specifically addressed the narrow nature of its holding, stating as follows:

> "We begin by noting that the declaratory judgment that was requested by the state, and issued by the Superior Court, is unnecessarily broad because it extends beyond the question of the statutory authority of the Attorney General set forth in the Governmental Tort Liability Act. Therefore, we deem it appropriate to narrow the issues raised on appeal to: . . . whether . . . the Attorney General is vested with the statutory authority to determine whether a state employee is entitled to legal representation when sued in his or her individual capacity 'on account of an act or omission that occurred within the scope of his or her employment with the state' . . . ." *Rhode Island Troopers Association*, 187 A.3d at 1098-99.

Rhode Island Troopers Association went on to engage in statutory construction related to "§ 9-31-9, titled 'Refusal to defend—Attorney general,'" as well as outlining the judicial and legislative history relevant to its consideration of the Governmental Tort Liability Act. *Id.* at 1100, 1102-03. The narrow and explicitly limited holding was premised upon the Attorney General's "independen[ce] from other branches of government, including the judiciary." *Id.* at 1103 (quoting *Mottola v. Cirello*, 789 A.2d 421, 424 (R.I. 2002)).

The Superintendent may be arguing that his statutory discretion is similar to that accorded to the Attorney General by the Legislature and the Rhode Island Supreme Court. *But see Mottola*, 789 A.2d at 424 ("The Attorney General of the State of Rhode Island holds a constitutional office with specific and significant responsibilities to the people of Rhode Island."). However, it is not clear to this Court how a decision by the Attorney General not to represent a state employee in his individual capacity, based on a determination that certain conduct was outside the scope of

employment, should provide a legally preclusive justification for or binding precedent supporting the Superintendent's refusal to grant a disability pension.

Additionally, the holding in *Canario*, also relied upon by the Superintendent, was based on findings that a state police officer was not injured during the performance of his duties when he had a car accident while driving home "on his privately owned motorcycle" after having completed his "cursory assignment" to check the flags at the police barracks. *Canario*, 752 A.2d at 480 (holding that "he was performing no duty related to his office as a lieutenant of the state police"). However, unlike the plaintiff in *Canario*, Mr. Donnelly-Taylor's injuries are not obviously the result of an incident that occurred when he was off duty. *See Canario*, 752 A.2d at 477, 480.

The Superintendent also cites to several other opinions from the courts of other states wherein a police officer's stress from disciplinary action against him was not an injury in the line of duty. *See* Decision at 16-17; *see, e.g.*, *Youngs v. Village of Penn Yan*, 737 N.Y.S.2d 186, 187 (N.Y. App. Div. 2002) (holding that because the "frustration" and "disciplinary action" that officer experienced at work involved dispute with superior officer, it did not relate to the performance of duties as police officer) (overruled on other grounds by *Gallante v. Reilly*, 778 N.Y.S.2d 179 (N.Y. App. Div. 2004)); *Woldrich v. Vancouver Police Pension Board*, 928 P.2d 423, 426 (Wash. App. 1996) (holding that officer's mental disability was caused by his merit-based demotion, which did not qualify as an injury in the line of duty). All of the cases cited by the Superintendent stand for the proposition that there is a reasonable legal distinction between injuries caused in the line of duty and those caused by incidents that are unrelated to the performance of a police officer's duties.

However, the Rhode Island Supreme Court has long "recognized that a judge or one acting in a quasi-judicial function may not reject uncontradicted testimony arbitrarily." *Hughes v. Saco Casting Company, Inc.*, 443 A.2d 1264, 1266 (R.I. 1982) (citations omitted). Here, Mr. Donnelly-

Taylor cites to medical statements that his disability was incurred due to his work as a state trooper. Dr. Kaufmann, a psychiatrist who treated Mr. Donnelly-Taylor, wrote to the RISP that he "developed PTSD and trauma-related symptoms as a direct consequence to experiences while employed as a Rhode Island State Trooper." (Trooper Ex. 1 at 9.) Moreover, as Mr. Donnelly-Taylor argues, the remaining medical evidence on the record does not contradict this finding. Yet, in his Decision, the Superintendent used his discretion to distinguish between Dr. Kaufmann's findings of causal "experiences" that occurred while working as a trooper and the actual *performance of duties* as a trooper. (Decision at 12-13.) The Superintendent also found that the medical evidence showed "no other conclusion" other than that Mr. Donnelly-Taylor's disability was caused by his ongoing legal issues, including the litigation filed against him by Mr. Monsanto, the decision by the State not to defend him, and the increased public scrutiny. *Id.* at 15. It is not at all clear to this Court what evidence the Superintendent relied on in coming to this conclusion.

To the extent that the Superintendent relied on his own experience and personal knowledge as a police officer in making his Decision, this is not *per se* inappropriate. After all, as the United States Supreme Court said in *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999), "there are many different kinds of experts, and many different kinds of expertise." *Kumho Tire Co., Ltd.*, 526 U.S. at 150.

However, the Superintendent's Decision does not adequately explain its causation determination. In the context of determining eligibility for workers' compensation benefits, the Rhode Island Supreme Court has stated that "an employee must demonstrate that an incapacitating injury is causally related to his or her job-related *duties*." *Tavares v. Aramark Corp.*, 841 A.2d 1124, 1128 (R.I. 2004) (emphasis added). This "causal relationship" standard is different from the requirement of "proximate cause in negligence actions" because it is "less exacting": where

proximate cause requires a "showing that but for the negligence of the tortfeasor, injury to the plaintiff would not have occurred[,]" a causal relationship requires that "the conditions and nature of the employment merely contribute to the injury." *Tavares*, 841 A.2d at 1128 (citing *Mulcahey v. New England Newspapers, Inc.*, 488 A.2d 681, 684 (R.I. 1985); *Skaling v. Aetna Insurance Co.*, 742 A.2d 282, 288 (R.I. 1999)). Again, in discussing the history of Rhode Island police officers' exclusion from the state workers' compensation statute and the subsequent enactment of § 45-19-1, our Supreme Court has noted that the injured *on duty* provision provides greater protection and benefits for injured police officers and firefighters than that provided to other employees by the workers' compensation statute. *See Webster*, 774 A.2d at 79-80.

Here, Mr. Donnelly-Taylor was first granted IOD (injured *on duty*) status based on his report, in March and April 2014, that he had been injured by "work related incidents" and "work related stress"—supported by a doctor's report recommending a month of sick leave because Mr. Donnelly-Taylor was "under significant stress due to multiple personal and work-related issues." (Admin. Ex., Div. 1, at 600-01, 606.) Mr. Donnelly-Taylor was then placed on IOD status and remained out of work until early August 2014. *Id.* at 605, 230; *see* Admin. Ex., Div. 11, at 6 ¶¶ 5-7. This Court's review of the record shows that Mr. Donnelly-Taylor received a second grant of IOD status in February 2017, after the onset of the federal litigation related to the Monsanto case and the Attorney General's refusal to represent him individually, instigated based on a PSU determination that the "civil suit has taken a mental toll on Trooper Donnelly-Taylor which has resulted in concern by his immediate supervisors and members of the Command Staff that [he] is not fit for duty and should be placed on sick leave and referred to Dr. Pickett for evaluation." (Admin. Ex., Div. 7, at 3, 4.)

Mr. Donnelly-Taylor remained on injured *on duty* status for two years before applying for a disability pension, receiving treatment for his trauma and stress, which was paid for by the RISP without any question. *See* Admin. Ex., Div. 1, at 501-80, 628; Admin. Ex., Trooper 1, at 9. In 2018, Dr. Kaufmann described the "recent exacerbation" of Mr. Donnelly-Taylor's post-traumatic stress disorder in his February report and, by November, was reporting that "[g]iven the chronicity of his symptoms, I consider him to be medically disabled from his prior work capacity." (Admin. Ex., Div. 1, at 625, 627.)

The Superintendent does not adequately explain how, without relevant medical expertise himself or a contradictory medical opinion from another expert, his opinion regarding the causation of a medical condition or the relation of the condition to the job may prevail over the uncontradicted testimony of a medical expert. *See Rocha v. State*, 705 A.2d 965, 967-69 (R.I. 1998) (upholding reversal of trial judge's denial of benefits in a workers' compensation case when medical testimony in support of benefits was uncontroverted). Statements in the Decision such as the one that "because Trooper Donnelly-Taylor was cleared for full duty by a psychologist in December 2014 and by a psychiatrist in January 2015 the superintendent does not find that the January 2014 shooting incident contributed to Trooper Donnelly-Taylor's stress-related injury in 2017" require more legal and factual explanation in order to be appropriately reviewable by this Court. (Decision at 14, n.6.)

The Superintendent also never indicated that he questioned the credibility of the expert relied upon by Mr. Donnelly-Taylor in his Decision. This creates another unexplained inconsistency because the Superintendent references and relies on Dr. Kaufmann's progress notes and periodic assessments, without distinguishing statements such as the one from February 13, 2018, that Mr. Donnelly-Taylor suffered "a recent exacerbation of his condition[.]" *See* Decision

at 6-10 (quote at 9); *see also Black's Law Dictionary* (11th ed. 2019) (defining "exacerbate" as "[t]o make worse; specif., to render more violent, severe, or seriously upsetting"); *Stedman's Medical Dictionary* (Nov. 2014 update) (defining "exacerbation" as "[i]ncreased severity of a disease or any of its signs or symptoms"). Consequently, the Court finds that the causation finding of the Superintendent here is unclear. The Decision therefore provides an insufficient explanation of its rationale, which renders it unreasonable and irrational under the relevant arbitrary and capricious standard of review.

In other areas where this Court has a right of review for an appeal, it typically has a right to remand the matter for further consideration. *See, e.g.*, § 42-35-15(g) (providing that the Superior Court may "remand [a] case for further proceedings" under the APA); G.L. 1956 § 45-24-69(d) (providing that the Superior Court may "remand [a zoning] case for further proceedings"). Here, this Court has no doubt that the Superintendent has been granted broad discretion under the relevant statute and caselaw to make determinations regarding the eligibility of a state trooper for a disability pension. Nevertheless, having utilized that discretion to provide Mr. Donnelly-Taylor with both a hearing and a written decision, the Superintendent must also provide an adequate explanation in that Decision. Therefore, because the Court has found that the Decision in this matter contained insufficient explanation of its rationale, and mindful of the Superintendent's authority to make such determinations under our law, this Court remands this matter to the Superintendent.

On remand, the Superintendent must produce findings of fact and law that support his Decision. Specifically, the Superintendent must provide: (1) a sufficient rationale supporting his conclusions regarding what activities are within a state trooper's scope of employment; (2) a sufficient rationale supporting his conclusions as to what standard of medical causation applies in

such cases; and (3) sufficient findings of fact, either drawn from the medical testimony in evidence or explaining and justifying his disregard for such evidence, to support his determination of medical causation with respect to Mr. Donnelly-Taylor's disabling injury.

C

Rule 54(b)

Having determined that summary judgment in favor of State Defendants and ERSRI is appropriate on Count I, the Court now turns to whether final judgment should be granted under Rule 54(b).

"Pursuant to Rule 54(b), a motion justice may certify an interlocutory disposition as a final judgment if two considerations provided for in the rule are met." *Metro Properties, Inc. v. National Union Fire Insurance Co. of Pittsburgh, Pa.*, 934 A.2d 204, 207 (R.I. 2007). First, the Court must "'determine[] that the action . . . involve[s] either multiple parties or multiple claims'" and that the requested disposition would "'adjudicate[] one or more but fewer than all of the claims before it.'" *See Cathay Cathay, Inc. v. Vindalu, LLC*, 136 A.3d 1113, 1118-19 (R.I. 2016) (quoting *Metro Properties, Inc.*, 934 A.2d at 207). Second, this Court must use its discretion to determine whether there is "no just reason for delay." Rule 54(b); *see also Cathay Cathay, Inc.*, 136 A.3d at 1119.

It is clear to this Court that this case involves multiple Defendants and multiple claims, in that it contains both an action seeking declaratory judgment and an appeal. Furthermore, this Court's grant of summary judgment to the State Defendants and ERSRI on Count I will clearly "'adjudicate[] one or more but fewer than all of the claims before it.'" *See Cathay Cathay, Inc.*, 136 A.3d at 1118-19 (quoting *Metro Properties, Inc.*, 934 A.2d at 207). Consequently, the Court will use its discretion to determine whether there is any just cause for delay. *Id.* at 1119.

In exercising this discretion, the Court "'must take into account judicial administrative interests as well as the equities involved.'" *Astro-Med, Inc.*, 811 A.2d at 1156 (quoting *Curtiss-Wright Corp. v. General Electric Co.*, 446 U.S. 1, 8 (1980)). Given Rhode Island's interest in the economic and efficient use of judicial resources, "if the claims in an action are closely related and there is a risk of repetitive appeals, the [trial] court may decide that this is a reason for delaying review and refuse to make the determination required by Rule 54(b)." Wright & Miller, cited *supra*, at 36; *see also Spiegel v. Trustees of Tufts College*, 843 F.2d 38, 44 (1st Cir. 1988) (holding that federal Rule 54(b) certification is rarely appropriate where "the contestants on appeal remain, simultaneously, contestants below").

The Court has remanded Mr. Donnelly-Taylor's appeal to the Superintendent. As a result, it is possible that Mr. Donnelly-Taylor will again receive a ruling from the Superintendent with which he takes issue. The Court notes that Mr. Donnelly-Taylor has not requested final judgment under Rule 54(b). Consequently, because the claims here are closely related and our Supreme Court has made clear its "strong preference for 'avoid[ing] piecemeal appellate review by delaying entry of judgment until all claims involving all parties are ripe for disposition and entering judgment as to all only when that time arrives[,]'" this Court will decline to enter final judgment in this case. *Cathay Cathay, Inc.*, 136 A.3d at 1121 (quoting *Metro Properties, Inc.*, 934 A.2d at 207).

IV

Conclusion

For the reasons stated herein, this Court grants summary judgment to the State Defendants and ERSRI with respect to Count I.

This Court also finds that the Superintendent's Decision in this matter is not supported by the facts or law and therefore was arbitrary and capricious. The Superintendent has broad authority regarding these matters, but due process requires an adequate basis for and explanation of his Decision. The current Decision fails in that regard. Accordingly, the matter is remanded for findings of fact and conclusions of law consistent with this Decision and for further hearing if necessary. Counsel shall submit the appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Rhode Island Troopers Association, et al. v. State of Rhode Island, Division of the State Police, et al.**
CASE NO:	**PC-2019-11054**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**November 4, 2021**
JUSTICE/MAGISTRATE:	**McGuirl, J.**
ATTORNEYS:	
For Plaintiff:	**Carly B. Iafrate, Esq.**
For Defendant:	**Michael P. Robinson, Esq.; Chrisanne E. Wyrzykowski, Esq.; Adam Sholes, Esq.; D. Peter DeSimone, Esq.; Vincent F. Ragosta, Jr., Esq.**