STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: April 23, 2013)

ANNE L. MELVIN	:	
	:	
v.	:	**C.A. No. PC-2011-4147**
	:	
FRANK J. KARPINSKI, in his Individual Capacity as Executive Director of the EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND	:	

DECISION

TAFT-CARTER, J. Before this Court is a timely appeal by Anne L. Melvin (Melvin) from a decision of the Retirement Board of the Employees' Retirement System of Rhode Island (the "Retirement Board"). Melvin seeks reversal of the Retirement Board's decision denying her application for an accidental disability pension. Jurisdiction is pursuant to G.L. 1956 § 45-35-15.

I

Facts and Travel

For more than eleven years, Melvin was employed by the State of Rhode Island as a Juvenile Program Worker (JPW) at the Rhode Island Training School (the "Training School"), a sub-unit of the Department of Children, Youth and Families (DCYF). (R., Ex. 1 at 001; Ex. 2 at 009.) As a JPW, Melvin provided for the custody, supervision, and security of youths detained in the Training School, including assistance in the rehabilitation, treatment, and control of Training School residents. (R., Ex. 2 at 019.) This case arises out of a series of workplace incidents beginning on May 21, 2006, and

ending on April 25, 2007, which Melvin promptly reported to her supervisors on designated Unusual Incident Report/Physical Restraint Report (UI Report) forms. (R., Exs. 5-8; Pl.'s Mem. at 2-8.) Melvin contends that these incidents at the Training School gave rise to an anxiety disorder from which she continues to suffer and which has rendered her incapable of returning to work in the Training School environment. (Pl.'s Mem. at 12-13.) Melvin claims to have submitted a UI Report on seven occasions in connection with her present accidental disability claim. See Pl.'s Mem. at 2-8. However, only four of these reports appear in the record. See R., Exs. 5-8. None of the reports in the record indicate that Melvin complained of any kind of disabling injury when the reports were submitted.

Melvin submitted her first UI Report on May 21, 2006. (R., Ex. 5.) The report related to an incident in which Melvin allegedly witnessed a fellow JPW physically abusing a Training School resident. (Pl.'s Mem. at 2; R., Ex. 5 at 193-195.) Melvin states that when she tried to intervene, a third JPW "placed her in a chokehold and forcibly removed her from the room." (Pl.'s Mem. at 2.) The UI Report itself recounts a hostile argument between Melvin and the allegedly abusive JPW, but states only that when Melvin refused to leave the scene of the incident, a third JPW "had to come and take [her] out." (R., Ex. 5 at 195.) Melvin also claims that she filed a UI Report on this incident with the Child Abuse and Neglect Tracking System (CANTS), which she describes as "an outside investigative administrative agency." (Pl.'s Mem. at 2.)

Soon thereafter, on June 6, 2006, Melvin crushed her ankle in a motor scooter accident, and she took medical leave until December 18, 2006. Id. Upon her return to work, Melvin encountered a typewritten sign welcoming her back to work, but which

also contained the word "RAT" handwritten under her name. Id. at 3. Melvin considered this statement an obvious reference to her actions in completing the UI Report dated May 21, 2006, and claims that she prepared a second UI Report on December 19, 2006, requesting an investigation into the incident involving the "welcome back" sign. Id. Melvin says that she submitted the December 19, 2006 UI Report Form, along with the sign, in a sealed envelope. Id. Subsequently, Melvin claims that the Training School Administration (the "Administration") "refused or failed to take any meaningful investigation into [the] matter." Id. at 4. She states that she was denied security-tape evidence disclosing the identity of the individual who wrote the word "RAT" on the welcome back sign. Id. Thereafter, the Administration's investigation into the December 18, 2006 incident ended when the Administration concluded that determining the identity of the alleged culprit was not possible from viewing the security tape. Id. Melvin claims she was eventually notified that the Administration had "either lost, misplaced or accidentally destroyed" the December 19, 2006 UI Report, the "welcome back" sign, and the December 18, 2006 security tape. Id. at 5.

The next UI Report that appears on the record was submitted by Melvin on February 26, 2007. (R., Ex. 6.) The subject of the February 26, 2007 UI Report was the disappearance of the above documentation surrounding the alleged incident of December 18, 2006. Id.

On February 27, 2007, Melvin submitted another UI Report. (R, Ex. 7.) The subject of the February 27, 2007 UI Report was an incident that allegedly occurred on December 26, 2006. (Pl.'s Mem. at 5.) In the alleged incident of December 26, 2006, Melvin claims that she was accosted in an aggressive and threatening manner by the JPW

that she believes was responsible for writing the word "RAT" on her "welcome back" sign (the "Alleged Tormentor"). Id. Melvin claims that the Alleged Tormentor became so enraged at her that a co-worker had to restrain him. Id.

The final UI Report that appears on the record was submitted by Melvin on March 27, 2007. (R., Ex. 8.) The UI Report itself refers to a written statement by a Training School resident that was attached to the report. The attached statement by the Training School resident does not appear in any administrative record. See id. In her Memorandum, Melvin states that the basis for the March 27, 2007 UI Report was an alleged incident at the Training School, allegedly occurring on March 26, 2007. (Pl.'s Mem. at 6.) On March 26th, the Alleged Tormentor referred to Melvin as a "bitch" and a "rat" in the Training School cafeteria. Id. In addition, two male JPWs allegedly made obscene gestures at Melvin while her back was turned. Id. From this point forward, Melvin claims that her anxiety was heightened because no other JPWs were willing to work an overtime post with her, and this deprived her of valuable compensation. Id.

At some point in March 2007, Melvin also claims that she was assigned to work alone with the Alleged Tormentor. Id. at 7. She states that based on her concerns of personal safety, she had previously made requests to the Administration that she never be scheduled to work either with the Alleged Tormentor or the JPW who had placed her in a restraint on May 21, 2006. Id. Melvin claims that her shift coordinator initially refused to accommodate her request; however, the Deputy Superintendent of the Training School later granted it. Id. According to Melvin, on April 21, 2007, the Deputy Superintendent then restricted her from working in the building where she had worked for the previous

twelve years, without any explanation.[1] Id. Nevertheless, on April 23, 2007, Melvin states that she was scheduled to work with the Alleged Tormentor in the same building where she had been restricted from working. Id.

Melvin states that she submitted a final UI Report on April 25, 2007, notwithstanding that the report does not appear in the record. See Pl.'s Mem. at 7; R., Exs. 5-8. Melvin claims that the basis of the April 25, 2007 UI Report was the Administration's alleged refusal to grant her request to bar her from working with the allegedly harassing JPWs, in conjunction with the Administration's restriction on her working in her usual building. (Pl.'s Mem. at 7.) Melvin also claims that the April 25, 2007 UI Report referred to an incident where the Administration allegedly subjected her to disparate treatment on February 26, 2007. Id. at 6. On that date, the Administration allegedly required Melvin to submit a UI Report regarding a mistake Melvin had made in taking keys home with her after her shift. Id. Melvin claims that subsequent infractions by other JPWs, which were similar but more severe, were not dealt with in the same manner. Id. Also on April 25, 2007, Melvin states that she telephoned a DCYF attorney in order to relate her predicament about working in her usual building. Id. at 8. Melvin claims that the DCYF attorney told her that another JPW had submitted a UI Report accusing Melvin of unethical conduct because Melvin had allegedly called the JPW a racist. Id. The DCYF attorney also allegedly told Melvin that an investigation would be conducted concerning Melvin's accusations of unethical conduct. Id.

As a result of these incidents, Melvin claims that she "became so mentally distraught that she could no longer perform the duties of a JPW and became incapacitated

[1] While unclear from the record, Melvin's memorandum suggests that another JPW had requested that Melvin be restricted from working in the building. (Pl.'s Mem. at 7.)

from service as of April 25, 2007." Id. Thereafter, on August 4, 2009, Melvin applied to the Employees' Retirement System of Rhode Island (ERSRI) for accidental disability retirement. (R., Ex. 2 at 009.) Melvin stated the medical reason for her disability was "Post-traumatic Stress Disorder suffered as a result of unlawful conduct at the RI Training School." Id.

In connection with her application, Melvin filed various materials with the ERSRI. On August 20, 2009, she filed a required "Applicant's Physician's Statement for Disability." (R., Ex. 2 at 125.) On August 21, 2009, Melvin filed the four UI Reports underlying her claim with the ERSRI, discussed above. (R., Exs. 5-8.) The "Applicant's Physician's Statement for Disability" itself does not appear to have been completed or signed by a medical doctor, but contains a handwritten note along the bottom of the first page stating, "Please see attached IME from Dr. James Gallo to address the questions in Sections A + B." Id. Presumably, the reference to "the questions in Sections A + B" concerns two sets of "required statements" from the physician tasked with filling out the form.[2] See id. at 125-127. Among other things, the physician filling out the form is thus

[2] The first set of "required statements" requests the following information:

1. The diagnosis of the applicant's condition and nature of incapacity or impairment and the medical basis for your conclusion.
2. The duties and activities required by the applicant's job which render the applicant substantially unable to perform his/her job.
3. The type of gainful occupation that the applicant is able to perform in light of his/her current mental/physical condition, training and qualification.

The second set of "required statements" requests the following information:

1. The medical basis for your conclusion.
2. Whether there is any event or condition in the applicant's medical history, other than the work-related accident or hazard undergone upon which the disability retirement is claimed, that might have contributed to or resulted in the disability claimed.

required to state "[t]he diagnosis of the applicant's condition and nature of incapacity or impairment and the medical basis for [his] conclusion." Id. at 125. The record indicates that a typed "Independent Psychiatric Evaluation" was signed by Dr. James A. Gallo, M.D. (Dr. Gallo) and submitted to the ERSRI on the same date, August 20, 2009. (R., Ex. 3 at 133-137.) However, Dr. Gallo's statement does not clearly reflect an attempt to respond to the "required statements" portion of Melvin's "Applicant's Physician's Statement for Disability" form. See id. Instead, it appears from the record that Melvin filed a second "Applicant's Physician's Statement for Disability" form with the ERSRI on March 10, 2010. Id. at 129-131. That form identified "Brian Hickey RN, MSN, CS," of Westbay Psychiatric Associates, as the "Name of the Doctor," although Dr. Gallo also appears to have signed the form. Id. at 131. The March 10, 2010 form contains handwritten answers to the "required statements" portion of the form, presumably made by Brian Hickey, who does not appear to be a medical doctor. Id. at 129-131. The form states that the medical basis for the evaluator's conclusion was that Melvin "has PTSD and [the] Workmans Comp Courts confirmed this disability." Id. at 131.

On October 8, 2009, Melvin also filed a "Notice of Decision" from the Social Security Administration (SSA), informing her that her claim for a period of disability and disability insurance benefits had been granted on the basis of post-traumatic stress disorder (PTSD). (R, Ex. 4.) On October 29, 2009, Melvin filed a copy of a Decision of

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3. If there is such a contributing condition or event, what is the likelihood that the applicant's disability or incapacity was the natural and proximate result of that event or condition?
4. Whether it is more likely that the disability was caused by the job related personal injury or hazard undergone, which is the basis for the disability claim, than the condition or event described in (2) and the basis for your conclusion.

the State of Rhode Island Workers' Compensation Court, finding that Melvin had "proven by a fair preponderance of the credible evidence that she suffered an occupational disease, specifically, mental stress, arising out of and in the course of her employment," and that she was entitled to compensation for her partial disability. (R., Ex. 2, 015-123.)

Consistent with the application process, Melvin also was examined by three independent physicians of ERSRI's choosing, each of whom submitted medical examination forms in connection with Melvin's application. (R., Exs. 9, 10, 11.) The three independent physicians agreed that "to a reasonable degree of medical certainty," Melvin was "physically or mentally incapacitated such that he/she cannot perform the duties of his/her position." Id. Additionally, they all agreed that "to a reasonable degree of medical certainty . . . [Melvin's] incapacity is the natural and proximate result of an on the job injury and not the result of age or length of service." Id. The independent physicians were also required to submit a number of required statements in support of their findings to qualify the foundations on which their medical opinions as to disability and causation were based.[3] Id. Among other things, the independent physicians were

[3] Specifically, the three independent physicians were required to make the following statements if they agreed to a reasonable degree of medical certainty that the applicant was physically or mentally incapacitated:

1. The diagnosis of the applicant's condition and the nature of incapacity or impairment and the medical basis for your conclusions.
2. The duties and activities required by the applicant's job which render the applicant substantially unable to perform his/her job.
3. The type of gainful occupation that the applicant is able to perform in light of his/her current mental/physical condition, training and qualifications.
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.

required to state the nature of the applicant's condition, the nature of the applicant's incapacity or impairment, and the medical basis for their conclusions. Id. They were also required to state "the duties and activities required by the applicant's job which render the applicant substantially unable to perform his/her job" and the type of gainful employment that the applicant would alternatively be capable of performing given the applicant's background and condition. Id. In addition, the independent physicians were required to state whether there were any alternative events or conditions other than a job-related injury, including age or length of service, that might have contributed to or resulted in the applicant's disability. Id.

The first independent physician to evaluate Melvin was Ronald M. Stewart, M.D. (Dr. Stewart). (R., Ex. 9.) Dr. Stewart stated that because Melvin "does not fulfill the criteria for post traumatic stress disorder, her diagnosis is Anxiety Disorder NOS." Id. at 213. In addition, Dr. Stewart stated that Melvin "probably could perform some other type of work, but she could not perform the duties of a correctional officer." Id. at 215.

The second independent physician to evaluate Melvin was Daniel S. Harrop, M.D. (Dr. Harrop). (R., Ex. 10.) With regard to a diagnosis of Melvin's condition, Dr. Harrop stated that he first considered PTSD. Id. at 223. However, Dr. Harrop maintained that Melvin "really does not have any of those symptoms at the present time, excluding the sleep and nightmares." Id. Dr. Harrop stated that Melvin "functions well

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5. Whether there is any event or condition in the applicant's medical history, other than the on the job injury or hazard undergone upon which the disability retirement is claimed, 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?

[and] has good future orientation and planning." Id. Dr. Harrop's diagnosis of Melvin's condition was also "Anxiety Disorder, NOS." Id. With respect to Melvin's future capacity for employment, Dr. Harrop stated that Melvin "has skills (such as running a restaurant) and interests (such as crafts, from which she could earn a living) and enough stamina (having already returned to some part-time work in a different field)." Id. As a result, even though Dr. Harrop stated that Melvin "would be unable to return to her regular and gainful employment since it would worsen anxiety and depressive symptoms," he nevertheless believed that Melvin "should not be considered permanently disabled from any occupation." Id.

The third independent physician to evaluate Melvin was Thomas J. Paolino, Jr., M.D. (Dr. Paolino). (R., Ex. 11.) Dr. Paolino diagnosed Melvin with three disorders, one of which was "Posttraumatic Stress Disorder."[4] Id. at 233. Dr. Harrop stated that Melvin's "psychological disability appears to be total and permanent and renders her completely unable to perform her job duties and responsibilities as a correctional officer for the RI Training School for Youth." Id. In contrast to the opinions of Drs. Stewart and Harrop, Dr. Paolino's opinion regarding Melvin's capacity for employment was that, at the present time, Melvin was "unable to perform the functions and duties of any job classification, at either a full- or part-time level." Id.

On April 14, 2010, the Retirement Board voted to deny Melvin's application for accidental disability pension. (R., Ex. 13 at 305.) It based the decision on the recommendation of its Disability Subcommittee (the "Subcommittee"). Id. In its denial

[4] The other disorders that appear under "Axis I" of the "Diagnosis" portion of Dr. Paolino's evaluation are "Major Depressive Disorder, Single Episode, Severe with possible Psychotic Features" and "Generalized Anxiety Disorder." (R., Ex. 11 at 233.)

letter dated May 25, 2010, the Retirement Board informed Melvin that the Subcommittee was "unable to conclude that [Melvin was] physically or mentally disabled from the performance of duties as required by the Rhode Island General Law." Id. In addition, the Retirement Board stated that Melvin had not "provided evidence of an accident as contemplated by statute." Id. As a result, the Subcommittee was "unable to find that [Melvin was] disabled as a natural and proximate result of an accident as the statute requires." Id. In its written decision, the Subcommittee also noted that Drs. Stewart and Harrop had both ruled out a diagnosis of PTSD, in apparent conflict with Melvin's stated reason for disability in her application for accidental disability benefits. Id. at 313.

Melvin appealed the decision of the Retirement Board on June 25, 2010. (R., Ex. 14.) As a result, Melvin was granted a reconsideration hearing before the Subcommittee scheduled for May 6, 2011. (R., Ex. 25.) At the hearing, the Subcommittee considered additional evidence submitted by Melvin and heard testimony from Melvin, Dr. Gallo, and Melvin's counsel. (R., Ex. 27.) Melvin's counsel argued that the multiple incidents cited by Melvin that allegedly gave rise to her disability "constitute an 'accident' within the meaning of R.I. Gen. Laws 36-10-14(c)." (R., Ex. 28 at 493.) Dr. Gallo testified that the symptoms described by Doctors Stewart and Harrop were consistent with a diagnosis of PTSD, and maintained that those doctors made a more general diagnosis of "Anxiety Disorder, NOS" because they did not "spend enough time with [Melvin] to go through every symptom that she had." (R., Ex. 27 at 463.)

On June 20, 2011, ERSRI notified Melvin that the Retirement Board had again voted, on May 11, 2011, to deny Melvin's application for accidental disability pension based on the recommendation of the Subcommittee. (R., Ex. 28 at 489.) The

Subcommittee reiterated its concern that the incidents described by Melvin as resulting in her disability did not constitute an "accident" within the meaning of the accidental disability statute. Id. at 497. Moreover, the Subcommittee noted that the decisions of the Workers' Compensation Court and the Social Security Administration hold no definite bearing on an application for accidental disability pension because an application for accidental disability pension exacts more demanding standards. Id. The Subcommittee was also unable to find "that any of the incidents identified by Melvin, alone or in combination, constitute[d] 'a specific incident that caused the disabling injury.'" Id. Additionally, the Subcommittee noted that two of the independent physicians had ruled out PTSD and had also indicated that Melvin had the capacity to continue working, albeit not in the Training School environment. Id. Also, the Subcommittee expressed concern about Dr. Gallo's testimony and his "Independent Psychiatric Evaluation" because at no point had Dr. Gallo indicated that "any of the incidents identified by Melvin were the natural and proximate cause of her asserted disability." Id.

On July 20, 2011, Melvin appealed the Retirement Board's decision of May 11, 2011, affirming the denial of Melvin's application for accidental disability pension. (R., Ex. 29.) As a result, a hearing was scheduled for December 14, 2011, in front of the full Retirement Board. (R., Ex. 31.) At the hearing, the full Retirement Board heard arguments from Melvin's counsel and discussed the evidence. (R., Ex. 32.) Melvin was not given an opportunity to present new factual material or evidence. Id. at 515. The Retirement Board afforded "deference to the conclusions of its Disability Subcommittee on factual determinations and questions of credibility," refusing to "overturn those determinations or assessments unless they [were] found to be clearly wrong." Id. At the

conclusion of the December 14, 2011 hearing, the full Retirement Board voted to uphold the recommendation of the Disability Subcommittee to deny Melvin's application for accidental disability pension. Id. at 547. A written notice was sent to Melvin on December 16, 2011, stating that her application for accidental disability pension had been denied by the full Retirement Board, formally adopting the findings of fact and the decision of the Subcommittee. (R., Ex. 33.) The Subcommittee's decision following Melvin's May 6, 2011 hearing thus became the final decision of the ERSRI. Id. at 563.

On July 20, 2011, while awaiting her hearing before the full Retirement Board for the ERSRI's final decision, Melvin also filed an appeal prematurely in Superior Court. (R., Ex. 35; Administrative Complaint at 1.) On September 2, 2011, the parties filed a stipulation, agreeing that Melvin's appeal would be held in abeyance until she had exhausted all administrative remedies. On April 17, 2012, the ERSRI accepted service of Melvin's Amended Administrative Complaint pursuant to another stipulation between the parties. The instant suit follows.

II

Standard of Review

The Superior Court's review of a decision of the Retirement Board is governed by the Administrative Procedures Act (the "APA"), §§ 42-35-1 et seq. Iselin v. Ret. Bd. of Emps.' Ret. Sys. of Rhode Island, 943 A.2d 1045, 1048 (R.I. 2008). The applicable standard of review is codified as follows:

> [t]he court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant

> have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (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 of 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).

The Superior Court's review is essentially "an extension of the administrative process." Rhode Island Telecomm. Auth. v. Rhode Island State Labor Relations Bd., 650 A.2d 479, 484 (R.I. 1994). "In essence, if 'competent evidence exists in the record, the Superior Court is required to uphold the agency's conclusions.'" Auto Body Ass'n of Rhode Island v. Dep't of Bus. Regulation, 996 A.2d 91, 95 (R.I. 2010) (quoting Envtl. Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). Accordingly, this Court defers to the administrative agency's factual determinations provided that they are supported by legally competent evidence. Town of Burrillville v. Rhode Island State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007); Arnold v. Rhode Island Dep't of Labor and Training Bd. of Review, 822 A.2d 164, 167 (R.I. 2003). Legally competent evidence is "'some or any evidence supporting the agency's findings.'" Auto Body Ass'n of Rhode Island, 996 A.2d at 95 (quoting Durfee, 621 A.2d at 208).

This Court reviews questions of law de novo. Narragansett Wire Co. v. Norberg, 118 R.I. 596, 607, 376 A.2d 1, 6 (1977). Questions of law decided by an administrative agency are not binding upon this Court and may be reviewed to determine what the law is and its applicability to the facts. Id. at 1. "'When a statute is clear and unambiguous we are bound to ascribe the plain and ordinary meaning of the words of the statute.'" Town

of Burrillville v. Pascoag Apartment Assocs., 950 A.2d 435, 445 (R.I. 2008) (quoting Unistrut Corp. v. Rhode Island Dep't of Labor and Training, 922 A.2d 93, 98 (R.I. 2007)). However, the Court will defer to an agency's interpretation of an ambiguous statute "'whose administration and enforcement have been entrusted to the agency . . . even when the agency's interpretation is not the only permissible interpretation that could be applied.'" Auto Body Assn' of Rhode Island, 996 A.2d at 97 (omission in original) (quoting Pawtucket Power Assocs. Ltd. P'ship v. City of Pawtucket, 622 A.2d 452, 456-57 (R.I. 1993)) (redactions in original). The Court will not defer to an agency's statutory interpretation if it is "clearly erroneous or unauthorized." Id. (quoting Unistrut Corp., 922 A.2d at 99).

In this case, ERSRI has utilized a two-tier review process. This two-tier system has been likened to a funnel. See Durfee, 621 A.2d at 207-08. At the first level of review, the Disability Subcommittee "sits as if at the mouth of the funnel" and analyzes the evidence, issues, and live testimony. See id. At the second level of review, the "discharge end" of the funnel, the full Retirement Board "is not privileged to hear or witness the broad spectrum of information" that the Disability Subcommittee received first-hand. See id. Therefore, the "further away from the mouth of the funnel that an administrative official is . . . the more deference should be owed to the fact finder." Id. Determinations of credibility by the Disability Subcommittee, for example, should not be disturbed unless they are "clearly wrong." Id. at 206.

III

Arguments

Melvin argues that the Retirement Board committed an error of law by applying an erroneous definition of the word "accident" when it denied Melvin's application for accidental disability benefits. Melvin claims that Rhode Island precedent requires the definition of "accident" in §36-10-14 to include the multiple incidents of alleged harassment that Melvin claims gave rise to her allegedly disabling injury in this case. As such, Melvin contends that the record evidence clearly establishes the requisite causal link that is necessary for an award of accidental disability benefits between the alleged harassment and her incapacity from service. In addition, Melvin argues that the Retirement Board's decision was clearly erroneous because the three independent physicians who examined Melvin on ERSRI's behalf all agreed that she should be eligible for accidental disability benefits. Moreover, Melvin contends that the Retirement Board erroneously considered the opinions of the two independent physicians who did not diagnose Melvin with PTSD in denying Melvin accidental disability benefits. Finally, Melvin argues that the Retirement Board committed an error of law by considering Melvin's unrelated scooter accident in its decision to deny her application.

In response, ERSRI argues that its decision to deny Melvin's application for accidental disability benefits should be upheld because the Retirement Board's definition of "accident" was permissible under § 36-10-14. ERSRI maintains that its decision to deny Melvin accidental disability benefits was properly based on an appropriate weighing of the evidence.

IV

Analysis

The standards governing an eligible state employee's application for accidental disability pension benefits are set forth in § 36-10-14. In relevant part, § 36-10-14(a) requires the applicant to state that he or she 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 certify the definite time, place, and conditions of the duty performed by the [applicant] resulting in the alleged disability." (Emphasis added.) In addition, § 36-10-14(b) requires that the application for accidental disability benefits "shall be accompanied by an accident report and a physicians report certifying to the disability." (Emphasis added.) Finally, § 36-10-14(c) requires the Retirement Board to engage three independent physicians and conduct related investigation to determine whether the applicant 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."[5] (Emphasis added.)

Although the phrase itself is not defined in the accidental disability statute, our Supreme Court has discussed the definition of "an accident" in the context of accidental retirement benefits systems on at least two occasions.[6] First, in Rossi v. Employees'

[5] Section 36-10-14(c) also requires the three independent physicians engaged by the Retirement Board to certify their examinations to the Retirement Board, "stating the time, place, and conditions of service performed by the [applicant] resulting in the disability."

[6] In Rossi v. Employees' Retirement System, 895 A.2d 106, 110 (R.I. 2006), the Supreme Court was analyzing § 36-10-14, as this Court does today. However, in Pierce v. Providence Retirement Board, 15 A.3d 957, 961-62 (R.I. 2011), the Supreme Court was analyzing analogous provisions within the Providence Code governing the retirement system for Providence city employees. Because the language in the two systems is

Retirement System, 895 A.2d 106, 111 (R.I. 2006), the Supreme Court discussed § 36-10-14(a) and ruled that "by requiring 'an accident' and a 'definite time, place, and condition,' it is beyond question that an employee claiming entitlement to an accidental disability pension must identify a specific incident that caused the disabling injury." In that case, the Supreme Court nevertheless remanded the denial of a Training School employee's application because an applicant is not required to provide "proof of a specific incident causing aggravation of a work-related injury." Id. at 113 (emphasis added). The Court added that "a person's debilitating condition must be the natural and proximate result of a specific, work-related accident, as verified by medical evidence," clarifying that there must still be evidence of a specific accident underlying the injury which is allegedly aggravated. Id.

Thereafter, in Pierce v. Providence Retirement Board, 15 A.3d 957, 966 (R.I. 2011), the Supreme Court held that in the context of an employee retirement benefits system, the phrase, "'an accident[,]' must be read to include multiple accidents." The applicant in Pierce sustained a disabling physical injury to his ankle as a result of numerous discrete incidents over the course of his career as a firefighter. Id. at 958-61. In that case, the Supreme Court remanded denial of the application for accidental disability because the Providence Retirement Board had "erroneously limited the phrase 'of an accident' to mean one and only one accident." Id. Likewise, the Court disagreed that the applicant in Pierce should be ineligible for accidental disability retirement benefits "simply because he experienced more than one work-related accident." Id. As long as an accident "was one of the proximate causes of [an applicant's] disability, [and

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virtually identical with respect to what constitutes "an accident" in the context of an accidental disability pension, this Court hews closely to the analysis in Pierce.

it] occurred within the required eighteen months of [the] application for accidental-disability retirement," the fact that there were other accidents contributing to the disability does not disqualify the applicant from receiving accidental disability benefits. See id. at 966-968. There is thus no apparent conflict between the holding in Rossi that an accident must refer back to some kind of specific incident, and the holding in Pierce that the term "an accident" must be interpreted to encompass the possibility of multiple specific incidents.

Melvin contends that ERSRI erred in denying her accidental disability benefits based on an incorrect interpretation of "accident" that is in direct conflict with Pierce. In its final decision, the ERSRI stated that it was "unable to find that Melvin is incapacitated for the performance of service as a natural and proximate result of a specific and identifiable accident while in the performance of duty, as is required by R.I. Gen. Laws § 36-10-14." (R., Ex. 33 at 573.) In addition, the ERSRI could not "find that any of the incidents identified by Melvin, alone or in combination, constitute 'a specific incident that caused the disabling injury,'" as required by Rossi. Id.

Here, Melvin has not argued that she suffered "aggravation" of an original work-related injury. A prerequisite to qualify for accidental disability benefits is to establish a "specific, work-related accident, as verified by medical evidence." Rossi, 895 A.2d at 113. Melvin correctly argues that under Pierce, the phrase, "'an accident[,]' must be read to include multiple accidents." Pierce, 15 A.3d at 966. However, Melvin has not shown that the ERSRI denied her application on account of the fact that the alleged instances of harassment in her case were numerous. Unlike the retirement board in Pierce, it is apparent from the ERSRI final decision that the Retirement Board did not deny Melvin's

application merely because Melvin claimed that multiple incidents at the workplace constituted the "accident" giving rise to a disabling injury in her case. Cf. Pierce, 15 A.3d at 960-61 (noting that the retirement board in that case automatically considered "numerous repeated injuries to [the applicant's] ankle" to require denial of accidental disability benefits). On the contrary, the final decision stated that the ERSRI could not "find that any of the incidents identified by Melvin, alone or in combination, constitute a specific incident that caused the disabling injury." (R., Ex. 33 at 573.) It is clear, then, that the ERSRI did not place dispositive weight on the fact that Melvin alleged multiple "accidents" when it denied her application for accidental disability benefits. See Pierce, 15 A.3d at 966-68. Rather, the ERSRI determined that the events described by Melvin as giving rise to her disability did not substantively qualify as "accidents" within the parameters of § 36-10-14, whether considered individually or in the aggregate. (R., Ex. 33 at 573.)

Although this Court reviews questions of law de novo, see Narragansett Wire Co., 118 R.I. at 607, 376 A.2d at 6, an administrative agency's interpretation of an ambiguous statute will be afforded deference if administration and enforcement of the statute "have been entrusted to the agency . . . even when the agency's interpretation is not the only permissible interpretation that could be applied." Auto Body Assn' of Rhode Island, 996 A.2d at 97. There is no obligation to defer to the agency if its interpretation of the statute is "clearly erroneous or unauthorized." Id.

Here, the ERSRI determined that various instances of workplace harassment alleged by Melvin did not constitute an "accident" within the parameters of § 36-10-14, whether considered as discrete, individual incidents or in the aggregate. The Court finds

that the ERSRI's interpretation of the statute in this regard is within the ERSRI's discretion. The ERSRI's interpretation of § 36-10-14 is entitled to deference because it administers the statute in question. See Lyman v. Emps.' Ret. Sys. of Rhode Island, 693 A.2d 1030, 1031 (R.I. 1997); see also Perotti v. Solomon, 657 A.2d 1045, 1047-48 (R.I. 1995) (recognizing that the Retirement Board has been endowed by the Legislature with a broad grant of authority over the state retirement system).

There is a reasonable difference of opinion as to what may constitute an "accident" in the context of a mental injury. For example, in Louisiana, the term "accident" is defined broadly as "an unexpected and sudden employment incident" Sparks v. Tulane Med. Ctr. Hosp. and Clinic, 546 So.2d 138 (La. 1989) (allowing recovery without "any apparent signs of physical trauma"). In New Jersey, eligible public employees may apply for accidental disability retirement based on disability arising from a "traumatic event," as opposed to an "accident." See Patterson v. Bd. of Tr., State Police Ret. Sys., 942 A.2d 782, 784-85 (N.J. 2008) (denying accidental disability retirement because verbal harassment did not amount to a "traumatic event"). Under New Jersey law, an underlying physical trauma is not required in order for an applicant to obtain accidental disability benefits on the basis of mental injury. Id. Nevertheless, the applicant for accidental disability benefits must show that his or her mental disability resulted from "direct personal experience of a terrifying or horror-inducing event that involves actual or threatened death or serious injury, or a similarly serious threat to the physical integrity of the [applicant] or another person." Id.

In contrast, courts in other jurisdictions have determined that even in the less stringent context of workers' compensation claims, an "employee's disabling mental

condition resulting from work-related stress" is not compensable because the term "accident" necessarily implies "injury to the physical structure of the body." Lockwood v. Indep. Sch. Dist. No. 877, 312 N.W.2d 924, 926-27 (Minn. 1981); see also Rambaldo v. Accurate Die Casting, 603 N.E.2d 975, 977 (Ohio 1992) (holding that a mental disorder occasioned solely by job-related stress is not compensable); Lather v. Huron College, 413 N.W.2d 369, 372 (S.D. 1987) (holding that mental disabilities produced solely by gradual mental stress are not compensable "injuries"). In the past, our Supreme Court has placed emphasis on some "injury to the physical structure of the body" when determining whether or not an "accident" has occurred for purposes of the workers' compensation laws. See Morel v. E. Turgeon Const. Co., 76 R.I. 25, 28, 68 A.2d 23, 25 (1949). Moreover, in contrast to the standards for receiving workers' compensation benefits, in Rhode Island "the Legislature intended the requirements for accidental disability retirement to be stringent." Rossi, 895 A.2d at 112; cf. Murphy v. Contributory Ret. Appeal Bd., 974 N.E.2d 46, 57-61 (Mass. 2012) (denying accidental disability retirement benefits to Superior Court judge claiming mental disability). Therefore, based upon the facts presented, whether or not Melvin qualified for workers' compensation benefits under Rhode Island law, or whether or not Melvin qualified for benefits from the Social Security Administration, does not determine whether Melvin suffered an "accident" within the meaning of § 36-10-14. See id. at 111-12; Pierce, 15 A.3d at 961-62.

The text of § 36-10-14 is ambiguous as to whether the Legislature intended to allow recovery of accidental disability benefits when a disabling mental injury is caused by work-related stress without physical trauma. Cf. Lockwood, 312 N.W.2d at 926. The

ERSRI's determination that the term "accident," as contemplated by § 36-10-14, does not encompass the alleged instances of harassment described by Melvin, is therefore entitled to deference. See Auto Body Assn' of Rhode Island, 996 A.2d at 97. The ERSRI made appropriate findings of fact and conclusions of law as required by § 42-35-12 of the Administrative Procedures Act. The ERSRI's final decision did not make a factual finding that Melvin suffered any physical trauma to give rise to her application for accidental disability benefits. Additionally, the record on the whole discloses no such relevant physical trauma, the "UI Reports" submitted by Melvin contain no indication that Melvin complained of any contemporaneous injury, and Melvin herself contends on appeal that the "accident" giving rise to her disability was not any form of physical trauma but instead "retaliatory harassment [that she] was forced to endure." (Melvin's Mem. at 20.) Given that a § 36-10-14 definition of "accident" that requires some form of physical trauma is not "clearly erroneous or unauthorized," Auto Body Assn' of Rhode Island, 996 A.2d at 97, this Court defers to the ERSRI's legal conclusion that Melvin was not "incapacitated for the performance of service as a natural and proximate result of a specific and identifiable accident while in the performance of duty as is required by . . . § 36-10-14." (R., Ex. 33 at 573.) (Emphasis added).

Because the ERSRI has determined that the alleged instances of workplace harassment described by Melvin do not fall within the definition of "an accident" as required by § 36-10-14, Melvin's remaining arguments are unavailing. The three independent physicians, hired at the ERSRI's behest, all agreed that Melvin meets the medical criteria necessary for receiving accidental disability benefits; however, the meaning of an "accident" as it appears in § 36-10-14 is not in their purview. See Auto

Body Assn' of Rhode Island, 996 A.2d at 97. The ERSRI's interpretation of an ambiguous statute that it has been entrusted to administer and enforce is entitled to deference so long as its interpretation is not "clearly erroneous or unauthorized." See id. Moreover, the UI Reports which Melvin submitted to the Training School Administration, and which she claims serve as "accident reports" as required by § 36-10-14(b), do not disclose any injury to Melvin whatsoever, whether physical or mental. Additionally, whether or not Melvin's incapacitating disability was the "natural and proximate result" of the alleged harassment described by Melvin is not relevant if the alleged harassment itself does not constitute an "accident" within the context of § 36-10-14.

Melvin also argues that the ERSRI improperly drew unfavorable inferences from the fact that two of the independent physicians, Drs. Stewart and Harrop, did not diagnose Melvin with PTSD, but instead with a related anxiety disorder. Contrary to Melvin's assertions, the ERSRI's final decision did not assign these facts dispositive weight but merely referred to them as some evidence in support of the ERSRI's conclusion. Although the ERSRI's final decision was premised on its interpretation of a particular statutory term, the ERSRI may also assign weight to certain aspects of factual evidence as it deems appropriate. See § 42-35-15(g) (stating that the Superior Court must "not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact").

Finally, the fact that the ERSRI mentioned Melvin's non-work-related scooter injury in its final decision is irrelevant. The ERSRI's decision to deny Melvin's application for accidental disability benefits clearly acknowledged that the scooter

accident did not play a role in her decision to apply for accidental disability benefits. In addition, the decision was not premised on that fact. It appears that the ERSRI merely wished to clarify that the scooter accident itself in no way resulted in the incapacitating disability for which Melvin sought accidental disability benefits.

IV

Conclusion

After review of the entire record, this Court finds that the decision of the ERSRI is not in violation of statutory provisions, affected by error of law, or clearly erroneous. Substantial rights of the Appellant have not been prejudiced. Accordingly, the decision of the ERSRI is affirmed. Counsel shall submit the appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Anne L. Melvin v. Frank J. Karpinski, in his Individual Capacity as Executive Director of the Employees' Retirement System of Rhode Island
CASE NO:	PC-2011-4147
COURT:	Providence Superior Court
DATE DECISION FILED:	April 23, 2013
JUSTICE/MAGISTRATE:	Taft-Carter, J.
ATTORNEYS:	
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