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State of New Jersey
DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
(609) 292-7524 TDD (609) 292-7718
www.state.nj.us/treasury/pensions

MAILING ADDRESS:
PO Box 295
TRENTON, NJ 08625-0295

LOCATION:
50 WEST STATE STREET
TRENTON, NEW JERSEY

ANDREW P. SIDAMON-ERISTOFF
State Treasurer

FLORENCE J. SHEPPARD
Acting Director

February 10, 2015

Sent Via Electronic Mail info@sciarralaw.com

Charles J. Sciarra, Esquire
Sciarra & Catrambone, LLC
1130 Clinton Avenue
Suite #3
Clifton, NJ 07013

**RE: Lorna Walder
PFRS # 3-10-35984
OAL DKT No. TYP 13376-08**

Dear Mr. Sciarra:

The Board of Trustees of the Police and Firemen's Retirement System (PFRS) at its meeting of February 9, 2015, considered the following in your client's appeal:

- a) All exhibits; and
- b) The Administrative Law Judge's Initial Decision dated January 8, 2015.

The Board voted to adopt the decision of the ALJ approving Ms. Walder's application for Accidental Disability retirement benefits effective November 1, 2007.

Once the Board approves a member for a disability retirement allowance, the member's retirement application shall not be withdrawn or canceled, or amended to a later retirement date than the date specified in the approved retirement allowance.

If a member continues to receive a salary beyond the effective date of retirement, no retirement benefits shall be paid for the period where the member received salary and no salary or service credit shall be provided for the service rendered after the approved effective date of retirement. In addition, the employer shall be required to complete an updated Certification of Service and Final Salary.

The statute permits the Board of Trustees to require a disability retiree to undergo annual medical examinations for the first five years to determine if they continue to be totally and permanently disabled and therefore eligible for continued receipt of a disability retirement allowance.

Charles J. Sciarra, Esq.
Re: Lorna Walder
Board of Trustees — Police and Firemen's Retirement System
February 10, 2015

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Pension laws require re-enrollment of a retiree under certain conditions. Disability retirees needing guidance on returning to employment should visit our website at www.state.nj.us/treasury/pensions and refer to the fact sheets on employment after retirement. Retirees needing additional clarification should contact the Division to determine the impact of a return to employment would have on their disability retirement benefits.

A copy of this letter is being referred to the Retirement Bureau to implement the Board's decision.

The Board of Trustees of the Police and Firemen's Retirement System hereby adopts the findings of fact and conclusions of law of the Administrative Law Judge's Initial and incorporates the same herein by reference.

Sincerely,



Wendy Jamison, Secretary
Board of Trustees
Police and Firemen's Retirement System

Wj/G-2

C: Danielle Schimmel, DAG (ET); Robert Kelly, DAG (ET); OAL Library (ET) Lorna Walder (JNCWalder@Verizon.net) (ET); DEP Attn: Denise Falkenstein (Denise.Falkenstein@DEP.nj.gov) (ET); C. Chianese (ET); V. McManus (ET); J. Decker (ET); L. Williams (ET)



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
33 Washington Street
Newark, NJ 07102
(973) 648-6008

**A copy of the administrative law
judge's decision is enclosed.**

**This decision was mailed to the parties
on JAN - 9 2015**



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. TYP 13376-08

AGENCY DKT. NO. PFRS #3-10-35984

LORNA J. WALDER,

Petitioner,

v.

**POLICE AND FIREMEN'S RETIREMENT
SYSTEM,**

Respondent.

Charles J. Sciarra, Esq., and Deborah Masker Edwards, Esq., for petitioner
(Sciarra & Catrambone, LLC, attorneys)

Robert E. Kelly, Deputy Attorney General, for respondent (John J. Hoffman,
Acting Attorney General of New Jersey, attorney)

Record Closed: May 30, 2014

Decided: January 8, 2015

BEFORE **IMRE KARASZEGI, JR., ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On September 21, 2011, the Board of Trustees of the Police and Firemen's Retirement System (Board or PFRS) denied petitioner Lorna J. Walder's (Walder) application for accidental disability benefits after having reconsidered the application in

light of recent New Jersey Supreme Court decisions. The Board determined that petitioner was totally and permanently disabled from the performance of her regular and assigned duties, that the disability is not the result of petitioner's willful negligence and that the incident occurred in the performance of her duty. However, the Board found that the disabling event is not identifiable as to place and time because the Board determined that petitioner's disability was the result of the culmination of all incidents that occurred over a period of weeks and months after the incident. The Board further determined that the incident is not considered undesigned and unexpected. The Board also determined that the incident was not objectively capable of causing a reasonable person in similar circumstances to suffer a disabling mental injury as required under Patterson v. Board of Trustees, State Police Retirement System, 194 N.J. 29 (2008).

Upon petitioner's December 20, 2007, appeal of the Board's first denial dated November 20, 2007, of her application for accidental disability retirement benefits, the Board transmitted the matter to the Office of Administrative Law (OAL). The OAL filed it for determination as a contested case on November 14, 2008, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. I heard the matter on May 28, 2013, June 20, 2013, and September 24, 2013, and the record closed following the receipt of post-hearing briefs. Orders were entered extending the time for filing this decision.

FINDINGS OF FACT

After carefully considering the testimonial and documentary evidence presented, and having had the opportunity to listen to the testimony and observe the demeanor of the witnesses, I **FIND** the following **FACTS**:

Lorna J. Walder was hired as a park ranger by the State of New Jersey Department of Environmental Protection in February 1999. Prior to completing her probationary period as a park ranger, Walder completed a six-month training program at the New Jersey State Police Academy. Academy training included aspects of law enforcement such as the criminal code, traffic laws, self-defense, firearms training and communication skills. Walder's duties as a ranger consisted of enforcing the rules and regulations of the park, facilitating outreach programs and public education. A majority

of her time as a park ranger was spent at Ringwood State Park in northern New Jersey. On or about December 1, 2005, the title of park ranger was changed to park police officer by the State of New Jersey:

On April 1, 2006, Lorna J. Walder was dispatched from her office-duty responsibilities to a remote location in Ringwood State Park for the purpose of assisting her supervisor in the transport of a prisoner. After completing the assignment, Walder again returned to the park in order to transport several park rangers to their all-terrain vehicles (ATVs). On the road exiting the woods, Lorna J. Walder encountered a red Nissan pickup truck with three female occupants. After questioning the driver, Walder determined that the driver's operator license was suspended. As the vehicle was stopped, other ATVs and vehicles began to surround them on the remote roadway. As Walder was attending to the situation, her lieutenant reported on the radio that two ATVs, which were heading in Walder's direction, had been eluding officers in the woods and the drivers should be arrested. Lorna J. Walder described herself as "freaking out." She recalled the scene as follows:

ATVs, they go way too fast, and if they're eluding, they're going to be driving recklessly, and I was frightened, and I was outnumbered. I've got this one guy yelling at me. I've got these people staring at me at the end of the road, you know, on the driveway, and there's like no other houses in sight. It's a desolate area. It's not a nice area. I'm one person.

At the same time, Walder's husband, also a park ranger, called her by phone and told her that somebody had been shot in the woods and he needed an ambulance. Lorna J. Walder relayed the request for an ambulance to the Mahwah Police Department. She added that chaos was developing around her.

Mahwah police officers Thomas Solimano and Michael Jack soon arrived at the scene. Both Solimano and Jack described being confronted by the local residents, also known as Ramapo Mountain Indians. These residents were agitated and hostile. One of the residents yelled, "It better not be one of ours. We got guns too." Solimano and Jack questioned Lorna J. Walder as to what had happened, and she responded only

that someone had been shot. One of the officers observed that Walder “appeared despondent, you know, a thousand-yard stare I guess is the best way to say it.” While Walder stood next to her vehicle, approximately ten to fifteen feet away from the angry residents, Solimano and Jack, while embracing their rifles in front of them, ordered the mob to retreat. Lorna J. Walder described the scene in her testimony, “Well, they kept forging forward . . . the worst part, they’re practically on top of us. I thought I was dead.” After the police officers’ third or fourth request, the residents retreated. Shortly thereafter, Walder drove with a Mahwah police sergeant further into the woods to assist in the transport of the individual who had been shot to a medical staging area.

Michael Robinson testified on behalf of petitioner. Robinson, a physician who is board certified in the fields of psychiatry and forensic psychiatry, was qualified, without objection, as an expert in the field of psychiatry. Dr. Robinson diagnosed Lorna J. Walder as suffering from post-traumatic stress disorder (PTSD). He concluded that petitioner was in fear for her life because she perceived people who appeared at the scene as being angry and menacing. Robinson found that petitioner’s disability was causally related to her being confronted by a threatening mob and feeling that she was in imminent danger of injury or death, resulting in her PTSD.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

The PFRS provides for retirement benefits for both ordinary and accidental disability. When the Legislature amended the PFRS statute in 1964, it intended to make the granting of an accidental disability retirement benefit more difficult than the granting of an ordinary disability pension, and that the former be reserved for extraordinary circumstances. Cattani v. Bd. of Trs., Police and Firemen’s Ret. Sys., 69 N.J. 578, 584 (1976); Kane v. Bd. of Trs., Police and Firemen’s Ret. Sys., 100 N.J. 651, 663 (1985).

Accordingly, in order for a PFRS member to be eligible for an accidental disability retirement allowance, the member must show that he is

permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties and that such disability was not the result of the member's willful negligence and that such member is mentally or physically incapacitated for the performance of his usual duty and of any other available duty in the department which his employer is willing to assign to him.

[N.J.S.A. 43:16A-7.]

The Supreme Court in Richardson v. Board of Trustees, Police and Firemen's Retirement System, 192 N.J. 189, 212–13 (2007), has set forth the test necessary to meet the statutory requirement for a physical disability as follows:

Thus, to obtain accidental disability benefits, a member must prove:

1. that he is permanently and totally disabled;
2. as a direct result of a traumatic event that is
 - a. identifiable as to time and place,
 - b. undesigned and unexpected, and
 - c. caused by a circumstance external to the member (not the result of pre-existing disease that is aggravated or accelerated by the work);
3. that the traumatic event occurred during and as a result of the member's regular or assigned duties;
4. that the disability was not the result of the member's willful negligence; and
5. that the member is mentally or physically incapacitated from performing his usual or any other duty.

The Richardson Court defined a traumatic event as essentially the same as what it historically understood an accident to be—"an unexpected external happening that directly causes injury and is not the result of pre-existing disease alone or in combination with work effort." Richardson, supra, 192 N.J. at 212.

Where an employee suffers a mental injury as a result of a psychological stimulus rather than from physical trauma, the Supreme Court, in Patterson, supra, 194 N.J. at 34, held that a member seeking an accidental disability pension on a “so-called mental-mental injury” must first satisfy the standard in Richardson. The Court, however, found problematic that, whereas a medical analysis in a physical-disability claim goes beyond the subjective statement by the patient and profits from clinical and laboratory tests by a physician, the medical analysis in a psychiatric-disability claim “to a greater degree is analysis of the subjective statement of the patient.” Patterson, supra, 194 N.J. at 48 (quoting Saunderlin v. E.I. DuPont Co., 102 N.J. 402 (1986)). It recognized legitimate concerns about becoming bogged down in litigation over idiosyncratic responses by members to inconsequential mental stressors. Id. at 48–49. The Court, accordingly, added an objective-standard requirement to the Richardson test in the “mental-mental” injury situation. Specifically, the Court said:

we add a requirement beyond those set forth in Richardson: The disability must result 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 member or another person. By that addition, we achieve the important assurance that the traumatic event posited as the basis for an accidental disability pension is not inconsequential but is objectively capable of causing a reasonable person in similar circumstances to suffer a disabling mental injury.

[Id. at 34.]

The Court further explained that the objective-reasonableness standard better focuses one’s attention on the nature and character of the event rather than on the reaction of the individual member. Id. at 50; see also Lehmann v. Toys ‘R’ Us, 132 N.J. 587, 612 (1993).

Although there is not, and cannot be, a definitive or all-inclusive list of events that can be categorized as terrifying or horror-inducing, the Patterson Court sought guidance from a statute creating county law enforcement crisis-intervention centers (N.J.S.A. 40A:14-195). Again, the purpose was to minimize the pension boards becoming

bogged down in litigation over idiosyncratic responses by members to inconsequential mental stressors. Patterson, supra, 194 N.J. at 48–49. That act uses the term “post trauma stress disorders” and describes the incidents giving rise to the need for debriefing and counseling as including

the firing of a weapon or an exchange of gun fire; serious bodily injury to or the death of a juvenile; a terrorist act; a hostage situation; serious bodily injury to or the death of another law enforcement officer employed in the same agency, when that serious bodily injury or death occurred in the performance of that officer’s official duties; a personal injury or wound; [and] serious bodily injury received in the performance of the officer’s official duties

[N.J.S.A. 40A:14-196(b).]

Although these examples are law-enforcement specific, the Patterson Court used them to suggest the quality of traumatic event that might be expected to result in a mental injury under the various public-sector pension plans. For instance, the Court suggests that, under its enunciated standard, a permanently mentally disabled policeman who sees his partner shot, a teacher who is held hostage by a student, and a government lawyer used as a (human) shield by a defendant all could vault the traumatic-event threshold. Patterson, supra, 194 N.J. at 50.

In this case, the Board conceded that petitioner was totally and permanently disabled from the performance of her regular and assigned duties. The Board also determined that petitioner’s disability is not the result of her willful negligence and that the incident occurred in the performance of her duty. However, the Board also determined that the disabling event is not identifiable as to place and time because the Board believed that petitioner’s disability is the result of the culmination of all the incidents that occurred over a period of weeks and months after the April 1, 2006, incident. The Board also determined that the incident is not considered undesigned and unexpected. Lastly, the Board determined that the incident was not objectively capable of causing a reasonable person in similar circumstances to suffer a disabling mental injury.

It is clear from the testimony and evidence presented that there were multiple events occurring on April 1, 2006. While the Board maintains that Lorna J. Walder's disability was the result of a culmination of all the incidents of April 1, 2006, and thereafter, the evidence affirms that the cause of the disability was the fear that overtook Lorna J. Walder when she was initially confronted by a large and angry crowd as she stood alone in the woods on April 1, 2006. Dr. Robinson stated that the traumatic event was the confrontation that Walder experienced from a threatening mob when she felt that she was in imminent danger of injury or death. Robinson's findings were not contradicted by other expert testimony. Furthermore, testimony provided by Mahwah police officers Solimano and Jack, as well as by Lorna J. Walder, depicts a scene in the woods where Walder was extremely frightened as all three were confronted by an agitated and hostile mob that kept closing in on them, despite the Mahwah police officers holding rifles in front of the mob and repeatedly ordering the angry residents to retreat. Walder clearly described the confrontation as a terrifying personal experience that involved threatened death or serious injury, or a serious threat to her physical integrity or another person.

In addition, the Board's finding that the incident is not considered undesigned and unexpected is problematic for the following reason. Lorna J. Walder was hired as a park ranger in February 1999. She completed her six-month training for the position of park ranger at the New Jersey State Police Academy. Her duties consisted of enforcing park rules and regulations, public education and outreach. On or about December 1, 2005, several months before the April 1, 2006, incident, the title of park ranger was changed to park police officer. The title of park police officer required the completion of a "police training course administered by the Police Training Commission," including the "successful attainment of a level of proficiency in the use of firearms." (R-1.) Unfortunately, respondent was unable to produce the job description for park ranger that was in effect when Walder was hired and trained. But for the last four months of her employment, Lorna J. Walder had been a park ranger. Respondent was unable to present any evidence to establish Walder's level of training in the newly established title of park police officer. Additionally, no evidence was presented as to whether Walder had received any additional law-enforcement-based training after December 1, 2005, or whether her training as a park ranger was identical to that of park police officer. Walder

acknowledged performing a number of activities that were similar to examples of work performed by a park police officer. However, absent evidence to the contrary, I must conclude that Walder's training as a park ranger may not have prepared her for the type of incident that she found herself having to deal with on April 1, 2006. Consequently, her lack of police-officer training resulted in Walder, despite having a weapon, to appear "despondent" with a "thousand-yard stare" when she was confronted in the woods by an angry crowd of residents.

Considering all of the above and the evidence presented, I **CONCLUDE** that Lorna J. Walder has established by a preponderance of the credible evidence that she is entitled to receive accidental disability retirement benefits.

ORDER

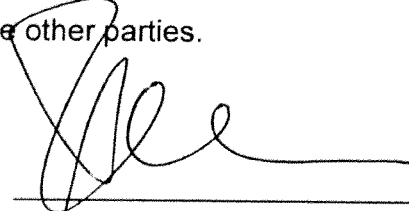
I **ORDER** that the determination of the Board of Trustees of the Police and Firemen's Retirement System denying petitioner's application for accidental disability retirement benefits be **REVERSED**, and petitioner's appeal requesting such benefits be **GRANTED**.

I hereby **FILE** my initial decision with the **BOARD OF TRUSTEES OF THE POLICE AND FIREMEN'S RETIREMENT SYSTEM** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF TRUSTEES OF THE POLICE AND FIREMEN'S RETIREMENT SYSTEM**, which by law is authorized to make a final decision in this matter. If the Board of Trustees of the Police and Firemen's Retirement System does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF PENSIONS, One State Street Square, 50 West State Street, PO Box 295, Trenton, New Jersey 08625-0295**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

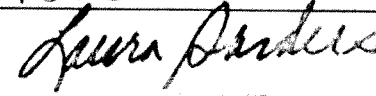
Jan. 8, 2015
DATE


IMRE KARASZEGI, JR., ALJ

Date Received at Agency:

1/8/15

Date Mailed to Parties: **JAN - 9 2015**


DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

id

APPENDIX

LIST OF WITNESSES

For Petitioner

Lorna J. Walder
Thomas Solimano
Michael Jack
Michael Robinson, M.D.

For Respondent

None

LIST OF EXHIBITS IN EVIDENCE

For Petitioner

- P-1 Application for Disability Retirement dated December 20, 2006
- P-2 Eugene M. Stefanelli, M.D., medical examination report dated December 13, 2006
- P-3 Edward Latimer, M.D., medical examination report dated November 18, 2006
- P-4 Ravinder N. Bhalla, M.D., medical examination report dated July 11, 2007
- P-4a Confidential report dated July 25, 2007 (Walder 15)
- P-5 Dr. Bruce Mulder dental report
- P-6 Occupational Medical Associates, Inc., reports
- P-7 Michael Robinson, M.D., expert report dated June 8, 2012
- P-8 Post-incident vaccination record
- P-9 Devendra Kurani, M.D., medical examination report dated September 2, 2008
- P-10 Medical reports as to accidental injury
- P-16 Mahwah Police Department Incident Report of Officer Michael Jack

- P-18 Mahwah Police Department Incident Report of Officer Thomas Solimano
- P-20 Jeffrey Wilbur report to Mahwah Police Department dated April 1, 2006
- P-21 Jeffrey Wilbur statement to Bergen County Prosecutor's Office, April 4, 2006
- P-22 Lewis Demaio report to Mahwah Police Department dated April 1, 2006
- P-23 Lewis Demaio statement to Bergen County Prosecutor's Office, April 4, 2006
- P-24 Grand jury transcript of statements of Jeffrey Wilbur and Lewis Demaio only
- P-39 PFRS denial of accidental disability claim dated November 20, 2007
- P-40 PFRS reconsideration of accidental disability claim dated November 5, 2008
- P-41 PFRS reconsideration of accidental disability claim dated September 21, 2011

For Respondent

- R-1 NJ Department of Personnel Job Specification (02610) for park police officer

The nonsequential numbering of exhibits reflects the fact that numerous pre-marked exhibits were neither identified nor offered into evidence.