



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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Lt. Governor

June 3, 2022

AMENDED

Sent via email to: [REDACTED]

BERGMAN & BARRETT
Michael T. Barrett, Esq.

RE: Lisa Gappa
TPAF [REDACTED]
OAL DKT. NO. TYP 08430-20

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Dear Mr. Barrett:

At its meeting on May 5, 2022, the Board of Trustees of the Teachers' Pension and Annuity Fund (TPAF) considered the Initial Decision (ID) of the Honorable Nanci G. Stokes, Administrative Law Judge (ALJ), dated April 5, 2022, together with the evidence submitted by the parties, and the exceptions filed by Deputy Attorney General Payal Y. Ved, dated April 13, 2022. The Board noted the exceptions. After careful consideration, the Board voted to reject the ALJ's decision recommending Accidental Disability (AD) retirement benefits for Ms. Gappa, thereby reaffirming its original decision denying Ms. Gappa's application for AD retirement benefits.

The ALJ found that Ms. Gappa met her burden of proving that her disability is the direct result of the workplace incident that occurred on [REDACTED] and is therefore entitled to AD retirement benefits. ID at 1-2, 20.

For the reasons set forth below, the Board made additional findings, rejected the ALJ's causation finding, and rejected the ALJ's legal conclusion that Ms. Gappa is entitled to AD¹ retirement benefits.² The Board directed the Secretary to prepare the Findings of Fact and Conclusions of Law as outlined below, which were approved by the TPAF Board at its meeting on June 2, 2022.³ This will constitute the Board's Final Administrative Determination in this matter.

FINDINGS OF FACT

The Board notes the ALJ's finding that prior to her resignation Ms. Gappa worked as a full-time teacher for Montgomery Township Board of Education at Orchard Elementary School, where she provided academic support and assistance to students individually or in groups. Ms. Gappa frequently walked to different areas of the school throughout the day. Due to the age of her students, Ms. Gappa regularly had to bend, stoop, or sit on the floor to engage with them. ID at 3.

On [REDACTED], while in the school cafeteria Ms. Gappa [REDACTED]
[REDACTED]. ID at 2.

The Board noted Ms. Gappa acknowledged that prior to the [REDACTED] she had [REDACTED] and that her physicians ordered [REDACTED]
[REDACTED]. ID at 6. The Board noted Ms. Gappa's past medical history included [REDACTED]. Records from that [REDACTED] reveal that on [REDACTED], Ms. Gappa [REDACTED]

¹ The Board corrects the Procedural History to reflect that the Board submitted its post-hearing brief on March 25, 2022 via electronic mail and the court acknowledged receipt of same on March 28, 2022. See ID at 3.

² As the 45-day statutory period for issuing a final decision would have expired, the TPAF Board properly requested and received an extension of time for issuing its final decision.

³ Due to health and safety concerns for the public regarding COVID-19, the May 5, 2022 and June 2, 2022 meetings were conducted via teleconference.

[REDACTED]. ID at 7.

With respect to the [REDACTED], the Board makes the following additional findings of fact consistent with the record. First, Ms. Gappa's expert, Dr. David Weiss, D.O. (Dr. Weiss), agreed that Dr. Elliot Sambol, M.D. (Dr. Sambol) noted "she has a history of [REDACTED] [REDACTED] T81:18-82:4; R-21. Second, Dr. Weiss agreed that Dr. Nirav Shah, M.D. (Dr. Shah), a [REDACTED] n, noted "she does have a previous history of [REDACTED]. She was [REDACTED] and [REDACTED] [REDACTED] at the time" and "she did not have a complete resolution of her [REDACTED] [REDACTED]." T80:8-18; R-18. In addition, Dr. Shah wrote that "[REDACTED] [REDACTED]" T81:2-7; R-18. Moreover, Dr. Weiss conceded during his testimony that he did not review the film or report of the [REDACTED] [REDACTED] P-10; T71:12-18.

As mentioned previously, Ms. Gappa experienced [REDACTED] and was referred by her physician for [REDACTED]. The Board also notes that Dr. Weiss did not review the [REDACTED] [REDACTED].

In 2015, Ms. Gappa sought [REDACTED] by Dr. Cohen. Dr. Cohen ordered the [REDACTED] and [REDACTED]. ID at 6. Ms. Gappa agreed that the records from [REDACTED] show that she described her chief complaints in October 2015 as "[REDACTED] [REDACTED] [REDACTED] [REDACTED]." T34:11-35:4; R-6. Dr. Weiss testified that he reviewed the [REDACTED], but that they were omitted from his report in error. T73:4-19. In his report, Dr. Weiss noted that Ms. Gappa [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]." P-10. However, the October 9, 2015, report from [REDACTED], as stated above, describes Ms. Gappa's

[REDACTED]

[REDACTED].” R-6.

Following the [REDACTED], Ms. Gappa [REDACTED] Dr. Arik Mizrachi, M.D (Dr. Mizrachi) who [REDACTED]

The Board notes Dr. Weiss did not review Dr. Mizrachi’s reports from [REDACTED]

[REDACTED]

[REDACTED]. After several months of [REDACTED], Dr. Mizrachi [REDACTED]

[REDACTED]. The Board also notes Dr. Weiss neglected to review the [REDACTED]

[REDACTED]

[REDACTED]. T78:5-9; P-10.

Ms. Gappa was referred to an [REDACTED] following [REDACTED]

[REDACTED] Dr. Lamb concluded that

the [REDACTED]” Ms. Gappa’s [REDACTED]

[REDACTED]. ID at 4.

Thereafter, Ms. Gappa [REDACTED] with Dr. Shah who ultimately

[REDACTED]. ID at

5. The Board notes Dr. Weiss did not review the [REDACTED]

[REDACTED] (R-20); [REDACTED]

[REDACTED] (R-22); the

report from Dr. Seth Joseffer, M.D. (Dr. Joseffer), [REDACTED] (R-24);

or report from Dr. Paula Sjolund, D.O. (Dr. Sjolund), [REDACTED] (R-29).

P-10.

After reviewing Ms. Gappa’s prior history, some of her medical records and personally conducting a [REDACTED], Dr. Weiss diagnosed her with ‘ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [.]”

T82:8-22; P-10.

The Board notes that Andrew M. Hutter, M.D. (Dr. Hutter)⁴, admitted as an expert in [REDACTED] who testified on behalf of the Board, reviewed the [REDACTED] [REDACTED] [REDACTED]. T133:13-134:8. In line with his initial finding, and upon a review of the [REDACTED] [REDACTED] [REDACTED] T134:3-20.

CONCLUSIONS OF LAW

The Board made the following conclusions of law.

The Board rejects the ALJ’s direct result finding and analysis. First, the Board objects to the ALJ’s conclusion that a preponderance of the credible evidence established that the [REDACTED] [REDACTED] was the “essential significant or substantial contributing cause” to Ms. Gappa’s ultimate disability. Second, the Board rejected the ALJ’s legal conclusion that Ms. Gappa met all the requirements to qualify for AD. ID at 20.

N.J.S.A. 18A:66-39(c), provides that a member of the TPAF is eligible for AD only if she “is permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of h[er] regular or assigned duties.” In Richardson v. Board of Trustees, Police & Firemen’s Retirement System, 192 N.J. 189 (2007), the Supreme Court

⁴ Dr. Hutter testified on behalf of the Board.

determined that the PFRS statute, which is comparable the TPAF statute, sets forth a multi-prong test to determine eligibility.

[A] traumatic event is essentially the same as what we 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. 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.

[Id. at 212-13.]

Accordingly, Ms. Gappa must demonstrate that the [REDACTED] was the “the essential significant or substantial contributing cause” of her disability and not be the result of pre-existing disease alone or in combination with work effort to satisfy the “direct result” requirement. Gerba v. Bd. of Trs., Pub. Emps. Ret. Sys., 83 N.J. 174, 185 (1980); Korelnia v. Bd. of Trs., Pub. Emps. Ret. Sys., 83 N.J. 163, 170 (1980). The burden of proof lies with Ms. Gappa to prove “direct result” by providing credible medical evidence. Gerba, 83 N.J. at 185; Atkinson v. Parsekian, 37 N.J. 43, 149 (1962). After considering all relevant evidence in the record, the Board found that Ms. Gappa failed to carry her burden and prove that her disability was the direct result of [REDACTED]

[REDACTED] Rather, the record shows that her disability was the result of a [REDACTED]
[REDACTED]

In Gerba, the Supreme Court noted that the legislative intent of the “direct result” requirement was to apply a more exacting standard of medical causation and that AD should be denied when there is “an underlying condition such as osteoarthritis which itself has not been directly caused, but is only aggravated or ignited, by the trauma.” Gerba, 83 N.J. at 186. A pre-existing condition that is stable, non-symptomatic and “might never cause any trouble” can combine with a traumatic event to satisfy the “direct result” requirement. Petrucci v. Bd. of Trs., Pub. Emps. Ret. Sys., 211 N.J. Super. 280, 287 (App. Div. 1986). There is no question here that Ms. Gappa’s condition was [REDACTED]

The question of whether a claimant’s alleged disability is the direct result of a traumatic event is one certainly within the scope of expert medical opinion. Korelnia, 83 N.J. at 171. The weight granted to the medical evidence, and expert testimony adduced at the hearing, depends on such factors as whether the expert witness testified in his specialty and whether the expert’s conclusions are based only on the subjective complaints of a patient. Angel v. Rand Express Lines, Inc., 66 N.J. Super. 77, 86 (App. Div. 1961).

The Board notes that the direct-result standard is “far more exacting than [tort law’s] ‘proximate cause’ standard and, as explained in Gerba, was purposely made to be so by the Legislature.” In re Cordero, No. A-2803-10, 2012 N.J. Super. Unpub. LEXIS 1406, at *15 (App. Div. June 19, 2012) ; see also Torres v. Bd. of Trs., Police & Firemen’s Ret. Sys., No. A-2388-15T3, 2018 N.J. Super. Unpub. LEXIS 1858, at *16-17 (App. Div. Aug. 3, 2018) (“The fact that total disability followed the muscle strain chronologically does not necessarily mean that it was ‘as a result’ thereof. To hold otherwise would be to adopt the false logic of ‘Post hoc, ergo propter hoc’.”).

In this matter, in determining whether the [REDACTED] substantially caused Ms. Gappa’s disability, the Board noted the ALJ failed to give proper weight to the medical records

which documented a [REDACTED], yet included multiple references to p [REDACTED] [REDACTED]. ID at 1, 4, 6, 7-10, 12-14, 19-20. Further, the ALJ failed to give proper weight to both Dr. Weiss and Dr. Hutter's⁵ conclusions that the [REDACTED] [REDACTED]. Many of Ms. Gappa's treating physicians commented on her [REDACTED] and her own physician's report that the [REDACTED]. Moreover, Dr. Weiss conceded Ms. Gappa had [REDACTED] [REDACTED]. ID 7-9.

The Board also rejects the substantial weight the ALJ gave to Dr. Weiss, given the fact that he made an opinion without reviewing a large portion of Ms. Gappa's medical records yet admitted that [REDACTED]. The considerable amount of medical records that Dr. Weiss neglected to review all established [REDACTED] [REDACTED]

The Board asserts Dr. Hutter's testimony deserves greater weight because he testified more reliably than Dr. Weiss. The Board notes Dr. Hutter's conclusions were made in harmony with Ms. Gappa's medical history, [REDACTED], and the opinions of her treating physicians. Dr. Hutter also pointed out that [REDACTED] [REDACTED]. In contrast, Dr. Weiss did not view the June 27, 2001 MRI report. Therefore, Dr. Hutter's conclusion about direct result is more consistent with Gappa's treating physicians than Dr. Weiss' conclusion.

In addition, the Board finds that the ALJ incorrectly applied Petrucelli and erroneously applied the "but for" standard for causation. ID at 4, 6, 7-10, 12-14, 17-20. In Petrucelli, the Court

⁵ Subsequent to the Board's approval, an error in the factual findings was discovered where there was an accidental reference to Dr. Berman when it should have been Dr. Hutter.

clearly established that for a pre-existing condition which combines with a traumatic event to satisfy the direct result requirement, the pre-existing condition must be asymptomatic or quiescent. 211 N.J. Super. at 287. Ms. Gappa's records speak directly to the presence of [REDACTED]. Moreover, the [REDACTED] Ms. Gappa to seek medical attention for [REDACTED]. Furthermore, Dr. Hutter's opinion regarding causation deserves greater weight than Dr. Weiss' opinion because he relied on objective medical evidence which he corroborated with specific clinical findings.

The Board also found that Dr. Weiss' conclusion that [REDACTED] caused Ms. Gappa's disability does not fit with the facts in light of his diagnoses, which characterize her current condition as [REDACTED]. Dr. Weiss further attempted to explain that he based his conclusion on guidelines for causation from a medical treatise, however, that is not the appropriate standard for causation in AD cases. All of Ms. Gappa doctors, including Dr. Weiss, agreed that her [REDACTED]. This [REDACTED] in conjunction with [REDACTED] precludes a finding that the incident directly resulted in her disability. Gerba, 83 N.J. at 186.

Finally, the Board noted the ALJ determined that "Gappa would not be disabled from her regular work responsibilities but for the [REDACTED]." ID at 12 (emphasis added). In addition, the ALJ found that [REDACTED], Gappa did not need [REDACTED] ID at 9. The Board rejects these findings as the ALJ applied the incorrect legal standard to determine the issue of direct result.

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For the foregoing reasons, the Board rejected the ALJ's finding that the incident was the direct result of Ms. Gappa disability and found that Ms. Gappa failed to meet her burden of proof and is therefore ineligible for AD retirement benefits.

You have the right to appeal this administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter, in accordance with the Rules Governing the Courts of the State of New Jersey. All appeals should be directed to:

Superior Court of New Jersey
Appellate Division
Attn: Court Clerk
PO Box 006
Trenton, NJ 08625

Sincerely,

A handwritten signature in blue ink, appearing to read "Saretta Dudley", enclosed in a rectangular box.

Saretta Dudley, Secretary
Board of Trustees
Teachers' Pension and Annuity Fund

G-2/SD

c: Lisa Gappa
Dawn Lewis (ET); A. Ginsburg (ET); T. Fleischmann (ET)

Retired Health Benefits Section (ET)

DAG Jeffrey Padgett (ET); DAG Payal Y. Ved (ET)
OAL, Attn: Library (ET)