STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: December 13, 2013)

LILLIAN RIVERA	:	
	:	
v.	:	**C.A. No. PC 08-4409**
	:	
EMPLOYEES RETIREMENT SYSTEM OF RHODE ISLAND	:	

DECISION

CARNES, J. This case is on remand from the Supreme Court to this Court to consider the merits of the appeal. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

This case first came before this Court on Lillian Rivera's (Appellant) appeal from a decision of the Employees' Retirement System of Rhode Island (ERSRI), denying her application for accidental disability pension. ERSRI's Disability Subcommittee (Subcommittee) denied the Appellant's application for an accidental disability pension that was based on Appellant's post-traumatic stress disorder and anxiety, and, thereafter, the agency's full board (Board) upheld the denial. On appeal, the Superior Court, in an earlier decision, found that it lacked jurisdiction because the statute of limitations had run. The Supreme Court, however, held that, under the doctrine of equitable tolling, the case should have been decided on the merits. The Supreme Court then quashed the judgment of the Superior Court and remanded the case with directions to consider the appeal as timely pursuant to the doctrine of equitable tolling and decide the case on the merits. After reviewing the record, this Court incorporates the full

recitation of facts provided in Rivera v. Emps.' Ret. Sys. of R.I., 2011 WL 997150 (R.I. Super. Mar. 16, 2011). Further salient facts are discussed more fully within. Decision on remand is herein rendered.

II

Standard of Review

The Superior Court's review of the decision of an administrative agency is governed by the Administrative Procedures Act (APA), § 42-35-1, et seq. Iselin v. Ret. Bd. of Emps.' Ret. Sys. of R.I., 943 A.2d 1045, 1048 (R.I. 2008) (citing Rossi v. Emps.' Ret. Sys. of R.I., 895 A.2d 106, 109 (R.I. 2006)). Section 42-35-15(g) of the APA states:

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

When reviewing an agency decision, this Court is limited to an examination of the record in deciding whether the agency's decision is supported by substantial evidence. Ctr. for Behavioral Health, R.I., Inc. v. Barros, 710 A.2d 680, 684 (R.I. 1998) (citations omitted). Substantial evidence is "such relevant evidence that a reasonable mind might accept as adequate to support a conclusion and means an amount more than a scintilla but less than a preponderance." Caswell v. George Sherman Sand & Gravel Co., Inc., 424 A.2d 646, 647 (R.I. 1981) (citing Apostolou v. Genovesi, 120 R.I. 501, 508, 388 A.2d 821, 824-25 (1978)). This

Court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. Interstate Navigation Co. v. Div. of Pub. Utilis. & Carriers of R.I., 824 A.2d 1282, 1286 (R.I. 2003). "[I]f 'competent evidence exists in the record, the Superior Court is required to uphold the agency's conclusions.'" Auto Body Ass'n of R.I. v. R.I. Dep't of Bus. Regulation, et al., 996 A.2d 91, 95 (R.I. 2010) (quoting R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd., 650 A.2d 479, 485 (R.I. 1994)).

III

Analysis

A

Accidental Disability Standard

1

Statutory Construction

The Appellant first argues that the Board incorrectly interpreted the accidental disability retirement statute as requiring the examining physicians to identify a single, specific work-related event that caused the disability. The Appellant contends the Supreme Court, in Pierce v. Providence Ret. Bd., 15 A.3d 957, 966 (R.I. 2011), invalidated the "single specific incident" standard. The Supreme Court in that case, the Appellant alleges, allowed a claimant to obtain benefits based on her disability that resulted from the "cumulative effect of all work-related accidents." In response, ERSRI contends that Pierce is inapplicable because that case interpreted the accidental disability retirement provision of the Providence Code of Ordinances (Providence Code) § 17-189, not G.L. 1956 § 45-21.2-9, at issue in this case. ERSRI argues that the Pierce Court's interpretation of the Providence ordinance does not eliminate the alleged requirement of § 45-21.9-9 that a disability applicant demonstrate a specific work-related incident that caused

the disabling injury. ERSRI further claims that even if Pierce is applicable, the statute still requires an applicant to show a "qualifying accident." According to ERSRI, the Appellant did not suffer specific incidents of trauma that could constitute an injury.

Pierce involved a firefighter's application for Providence's accidental disability retirement benefits under Providence Code § 17-189. The Supreme Court concluded that "the board misinterpreted [its own] ordinance when it determined that a single, work-related accident must proximately cause a retirement-system member's disability." Pierce, 15 A.3d at 967-68. According to the Supreme Court, the terms "proximate cause" and "disability" could refer to multiple accidents, and, therefore, the agency should have permitted a member to qualify for benefits even if the disability was caused by multiple, work-related events. Pierce, 15 A.3d at 966.

Unlike the Providence ordinance at issue in Pierce, this case deals with the requirements of Rhode Island's accidental disability statute. The accidental retirement disability statute at issue in this case states:

> "(a) Any member in active service, regardless of length of service, is entitled to an accidental disability retirement allowance. Application for the allowance is made by the member or on the member's behalf, stating that the member is physically or mentally incapacitated for further service as the result of an injury sustained while in the performance of duty and certifying to the time, place, and conditions of the duty performed by the member which resulted in the alleged disability and that the alleged disability was not the result of the willful negligence or misconduct on the part of the member, and was not the result of age or length of service, and that the member has not attained the age of sixty-five (65). The application shall be made within eighteen (18) months of the alleged accident from which the injury has resulted in the member's present disability and shall be accompanied by an accident report and a physician's report certifying to the disability. If the member was able to return to his or her employment and subsequently reinjures or aggravates the same injury, the member shall make another application within eighteen (18) months of the

reinjury or aggravation which shall be accompanied by a physician's report certifying to the reinjury or aggravation causing the disability. If a medical examination made by three (3) physicians engaged by the retirement board, and other investigations as the board may make, confirms the statements made by the member, the board may grant the member an accidental disability retirement allowance.

"(b) For the purposes of subsection (a), "aggravation" shall mean an intervening work-related trauma that independently contributes to a member's original injury that amounts to more than the natural progression of the preexisting disease or condition and is not the result of age or length of service. The intervening independent trauma causing the aggravation must be an identifiable event or series of work-related events that are the proximate cause of the member's present condition of disability.

. . . .

"(d) For purposes of subsection (a), "reinjury" shall mean a recurrence of the original work-related injury from a specific ascertainable event. The specific event must be the proximate cause of the member's present condition of disability." See § 45-21.2-9 (emphasis added).

Similarly, Providence's accidental disability retirement ordinance states:

"Medical examination of a member for accidental disability and investigation of all statements and certifications by him or in his behalf in connection therewith shall be made upon the application of the head of the department in which such member is employed, or upon the application of the member, or of a person acting in his behalf, stating that such member is physically or mentally incapacitated for the performance of the duties the member was performing at the time of the accident, as a natural and proximate result of an accident while in the performance of duty, and certifying the definite time, place and conditions of such duty performed by said member resulting in such alleged disability and that such alleged disability is not the result of willful negligence or misconduct on the part of said member and is not the result of age or length of service and that said member should, therefore, be retired. If a medical examination conducted by three (3) physicians engaged by the director of personnel and such investigation as the director of personnel may desire to make shall show that said member is physically or mentally incapacitated for the performance of service as a natural and proximate result of an accident, while in the performance of duty, and that such disability

> is not the result of willful negligence or misconduct on the part of said member and is not the result of age or length of service, and that such member should be retired, and the physicians who conducted the examination shall so certify to the retirement board stating the time, place and conditions of such service performed by said member resulting in such disability, the retirement board shall retire the said member for accidental disability. The application to accomplish such retirement must be filed within eighteen (18) months of the date of the accident." See Providence Code § 17–189(5) (emphasis added).

Both the state statute and the Providence ordinance relate to accidental disability benefits. There is nothing contained in the respective provisions of either that indicates they are inconsistent with one another, or that one contains material elements that the other does not. To the contrary, the language of both laws mirrors one another. Both require that an application for disability be made within eighteen months of the accident. Both allow benefits for physical and mental disabilities. Both essentially state that the disability cannot be the "result of the willful negligence or misconduct on the part of the member, and was not the result of age or length of service." See § 45-21.2-9; Providence Code § 17–189(5). The state statute examines whether a member is "physically or mentally incapacitated for further service as the result of an injury sustained while in the performance of duty and certifying to the time, place, and conditions of the duty performed by the member which resulted in the alleged disability." Sec. 45-21.2-9 (emphasis added). The Providence ordinance examines whether a member is "physically or mentally incapacitated for the performance of the duties the member was performing at the time of the accident, as a natural and proximate result of an accident while in the performance of duty." Providence Code § 17–189(5) (emphasis added).

Finally, under the state statute, "If a medical examination made by three (3) physicians engaged by the retirement board, and other investigations as the board may make, confirms the statements made by the member, the board may grant the member an accidental disability

retirement allowance"; while under the Providence ordinance, "If a medical examination conducted by three (3) physicians engaged by the director of personnel and such investigation as the director of personnel may desire to make shall show that said member is physically or mentally incapacitated for the performance of service as a natural and proximate result of an accident, while in the performance of duty, and that such disability is not the result of willful negligence or misconduct on the part of said member and is not the result of age or length of service, and that such member should be retired, and the physicians who conducted the examination shall so certify to the retirement board stating the time, place and conditions of such service performed by said member resulting in such disability, the retirement board shall retire the said member for accidental disability." (emphasis added).

When determining whether a reviewing court should defer to an agency's interpretation of a regulation, the United States Supreme Court has stated that a court should not consider the statutory provision in isolation, but consider it in context. Food & Drug Admin. v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 132-33 (2000); see Stein, Administrative Law § 51.01(1) (explaining that "[t]he Supreme Court clarified some of the ways to determine the meaning of a statutory provision and whether a court should refrain from deferring to an agency's interpretation of a statute it is charged with administrating"). A reviewing court should consider (1) the provision within the overall statutory scheme; (2) other statutes that may affect the meaning of the provision; and (3) the manner in which the legislature is likely to delegate a policy decision to an administrative agency. Id. at 133 (declining to defer to the FDA's interpretation of the Food, Drug, and Cosmetic Act). Mindful of the deference owed to agencies' interpretations of their own regulations, this Court gives substantial weight to the Supreme Court's interpretation of "disability" in Pierce because of the similarity of the two laws. See

Gallison v. Bristol Sch. Comm., 493 A.2d 164, 166 (R.I. 1985) (stating that the "court is vested with final responsibility for statutory construction" even though an agency's interpretation is entitled weight and deference if not clearly erroneous or unauthorized). Given that these laws address the same subject matter and have nearly identical requirements for applying for accidental disability benefits, and given the Supreme Court's ruling in Pierce relating to a member's ability to demonstrate that the terms "proximate cause" and "disability" could refer to multiple accidents, this Court will apply the result in Pierce to its own statutory construction of the state statute in the instant case. See Brown & Williamson Tobacco Corp., 529 U.S. at 133. This Court interprets the Rhode Island statute to allow a showing of multiple accidents to establish an accidental disability, just as the Supreme Court in Pierce allowed a showing of multiple accidents under the Providence ordinance. See Pierce, 15 A.3d at 966.

In this case, ERSRI required the Appellant to point to a single, work-related accident that caused her injury rather than allow a showing of multiple accidents. The transcripts of the Board's May 14, 2008 hearing and the Subcommittee's decision, which the Board upheld, indicate that the agency required a showing of one specific accident that caused the disability. For example, one Board member stated: ". . . I didn't see any evidence in here that there was one specific event that . . . would cause the accidental disability . . . [W]e've always gone by the fact that there's got to be one event, or one incident that causes it." (Hr'g Tr. 24:10-17, May 14, 2008). The Board also affirmed the decision of the subcommittee, which stated:

> "None of the five doctors who examined [the Appellant] was able to identify a single, specific work-related event that caused [the Appellant] to be disabled from service. The [Appellant] herself identified the cause of her disability in her Supplemental IOD report as 'multiple stressors at work' that included ongoing conditions of employment as opposed to a specific and identifiable event causing a work-related injury, as is required by R.I.G.L. § 45-21.2-9."

This Court finds that here, the Board committed error of law when it required the Appellant to point to a specific injury that caused her disability. See § 42-35-15(g); Pierce, 15 A.3d at 967-68 (concluding that the "board misinterpreted the ordinance when it determined that a single, work-related accident must proximately cause a retirement-system member's disability").

2

The Nature of Harassment

A word on the nature of harassment is in order here. "Harassment" is generally used to define multiple or repeated instances of disturbing or troubling conduct. See The Random House Dictionary (2013) ("the act or instance of harassing or disturbing, pestering or troubling repeatedly; persecution"). The verb "harass" means "to trouble, torment or confuse by continual persistent attacks, questions, etc." See Collins English Dictionary (10th ed. 2009). Furthermore, the Rhode Island Supreme Court has held that it was error to deny a person Workers' Compensation disability benefits if he or she is subject to a "concerted campaign of harassment." See Martin v. R.I Pub. Transit Auth., 506 A.2d 1365, 1368 (R.I. 1986). In such cases, courts look at whether that employee's treatment by his fellow co-workers exceeds the "level of stress encountered by people in the workplace everyday." Id. For example, in Martin, an employee suffered "constant intense harassment" during the last three months of his employment. As a result, he suffered "psychic injury" and dramatic weight loss. The Court found that the "constant harassment and abuse he suffered exceeded the intensity of stress normally encountered in the workplace." Id. Therefore, as a result of the "concerted campaign of harassment," this employee was entitled to Workers' Compensation disability benefits as a matter of law. Id.

Furthermore, in the context of a Title VII action,[1] the First Circuit Court of Appeals noted: "By its nature, a hostile work environment often means that there are a series of events which mount over time to create such a poisonous atmosphere as to violate the law. In the leading Supreme Court cases, the evidence of harassment covered a period of years . . . " See O'Rourke v. City of Providence, 235 F.3d 713, 727 (1st Cir. 2001) (emphasis added) (internal citations omitted).

In this case, the Board denied the Appellant disability benefits even though she suffered from a concerted campaign of sexual harassment for multiple years. Her co-workers took hairs off her body and insinuated that she was having a relationship with her supervisor. See Dr. Paolino's Psychiatric Evaluation, Ex. 13. They also made comments about the Appellant's body, teased her about spending time with them outside of work, and implied that she was "'giving them blowjobs.'" Id. Clearly, such harassment exceeded the normal stresses encountered in the workplace. See Martin, 506 A.2d at 1368. As a result of the intentional and malicious harassment, she suffered psychiatric injuries and was ultimately hospitalized for psychiatric treatment. See Dr. Sullivan's Psychiatric Evaluation, Ex. 11. For these reasons, the Board committed error of law when it denied the Appellant accidental disability benefits on the grounds that she did not identify a single, specific work-related event that caused the disability. See O'Rourke, 235 F.3d at 727; Martin, 506 A.2d at 1368.

[1] This Court is aware that the instant matter is not a Title VII action wherein an employee brings a direct action against an employer. However, this Court finds that the discussion about the nature of the harassment is entirely appropriate in the context of this administrative appeal.

3

Reliable, Probative, and Substantial Evidence on the Whole Record

Furthermore, the agency's decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. See § 42-35-15(g); Barros, 710 A.2d at 684. Specifically, the Board ruled against the Appellant despite the fact that all of the examining physicians, including ERSRI's own medical examiners, concluded that, in their opinion, the Appellant's disability was the natural and proximate result of an on the job injury. (Emphasis added). See Applicant's Physician's Statement for Disability, Dr. DelSesto, Ex. 3; Applicant's Physician's Statement for Disability, Dr. Kroessler, Ex. 4; ERSRI Independent Medical Examination, Dr. Sullivan, Ex. 11; ERSRI Independent Medical Examination, Dr. Stewart, Ex. 12; ERSRI Independent Medical Examination, Dr. Paolino, Ex. 13.

Courts have routinely held that although hearing officers may make credibility determinations, they may not ignore uncontroverted medical reports. See Cruz v. Astrue, 2013 WL 795063 (D.R.I. Feb. 12, 2013) (aff'd, 2013 WL 802986 (D.R.I. Mar. 4, 2013)); Suarez v. Sec'y of Health and Human Servs., 740 F.2d 1, 1 (1st Cir. 1984). With regard to treating physicians, "[s]ubstantial weight should be given to the opinion, diagnosis and medical evidence of a treating physician unless there are good reasons to do otherwise." Velazquez v. Astrue, 2013 WL 1415657 (D.R.I. Feb. 22, 2013). If the treating physician's opinion is well supported by medically acceptable evidence and is not inconsistent with other evidence, the hearing officer must give it controlling weight. See id. If a hearing officer rejects an expert opinion, he or she must explain the reasons for rejecting that opinion. See Koch, Administrative Law § 5:64(3)(c) (explaining that hearing officers must "give sound reasons for rejecting expert opinion").

Here, both the Appellant's treating physicians and independent medical examiners concluded that the Appellant was disabled due to a work-related injury. Dr. DelSesto, the Appellant's physician since May 2000, explained that the Appellant's job caused her anxiety, depression, and panic attacks and prohibited her from performing the duties of a police officer. (Applicant's Physician's Statement for Disability, Dr. DelSesto, Ex. 3.) Specifically, he stated: "It is my opinion, which has been corroborated with her psychiatrist, that her anxiety, depression, and panic attacks are directly related to and caused by her job . . . [D]espite optimal treatment, including medications and therapy[,] her symptoms have increased in severity." Id. Dr. Kroessler, the Appellant's psychiatrist, also stated that her anxiety disorder, major depressive disorder, adjustment reaction with depressed mood, and post-traumatic stress disorder were work related and that she could not continue working for the police department. (Applicant's Physician's Statement for Disability, Dr. Kroessler, Ex. 4.) His report also stated that the Appellant's "problems began approximately 1-2 years prior to admission [for suicidal ideation in May 2006], when she began to be harassed at work, causing anxiety which led to panic attacks . . . She found herself unable to return to work due to anxiety concerning the harassment." Id.

All of the independent medical examiners also concluded that the Appellant was disabled from a job-related injury. Dr. Sullivan stated that the Appellant "tearfully discusse[d] elements of harassment on the job which led to anxiety, panic and significant symptoms of depression." (Dr. Sullivan's Psychiatric Evaluation, Ex. 11.) He further stated: "The [Appellant] is totally disabled regarding her ability to perform the duties associated with any type of full-time employment." Id. In his professional opinion, "there [was] no event other than work related events that have contributed to the [Appellant's] current disability." Id. Dr. Stewart, a consultant in psychiatry, also concluded that the Appellant's injuries were job related and that

she could pose a danger to herself, her co-workers, and members of the community if she returned to work. (ERSRI Independent Medical Examination, Dr. Stewart, Ex. 12.) Finally, Dr. Paolino concluded that the Appellant's disability "is directly related to her history of sexual discrimination, harassment and abuse on the job as a police officer for more than five years by co-workers, supervisors and others in the job setting . . ." (Dr. Paolino's Psychiatric Evaluation, Ex. 13.) His psychiatric evaluation report also detailed specific instances of verbal and sexual harassment, including being sent pornographic emails at work. Id.

The Subcommittee's decision, which the Board upheld, discredited all of these experts merely by stating that "none of the five doctors who examined [the Appellant] was able to identify a single, specific work-related event that caused [the Appellant] to be disabled from service." The decision did not provide any reasons for rejecting the experts' opinions. See Koch, Administrative Law § 5:64(3)(c). Moreover, both the Board and the Subcommittee disregarded the sections of the reports that identified specific work-related events that caused the Appellant's anxiety and ultimate disability. For example, Dr. Paolino's report states:

> "[The Appellant] cites as examples of sexual harassment: 'taking hairs off my body, smirking, and insinuating that I was having a relationship with my supervisor, married and two kids!' The other examples she recalls are comments made by co-workers and the Captain referring to her body, other's 'hearts, blowing kisses, teasing me about spending time with any of them outside of work, which I would never be interested in,' even implying that she was 'giving them blow jobs.'" (ERSRI Independent Medical Examination, Dr. Paolino, Ex. 13.)

Other evidence in the record also documents specific instances of the Appellant's harassment that led to her disability. One employee report regarding injuries on duty, dated August 1, 2005, stated: "[The Appellant] continues to suffer from the condition caused by stress in the workplace including previous harassment from Capt. Robert Brown. Due to the severity

of her symptoms, she is unable to return to work under the supervision of Captain Brown." (Employee Report, Ex. 7, Aug. 1, 2005.) The report, containing a supervisor's signature, indicates September 18, 2003 as the initial date of the incident and May 30, 2005 as the date of the recurring events. The Appellant also tendered a typewritten, signed supplemental report to the August 1, 2005 employee report, where she stated that she experienced severe chest pains and shortness of breath from multiple stressors at work, including "ongoing harassment, demeaning actions and comments by, Captain Brown, and unresolved or inadequately addressed disciplinary issues." (Supplemental Report, Ex. 7, Aug. 1, 2005.)[2] The record also contains sexually explicit cartoon images sent to the Appellant and her co-workers in March 2003. (Ex. 18.)[3] Finally, the Appellant submitted a "Verified Chronology of Events" to the agency, signed by the Appellant and notarized, stating that her superior officers referred to her immediate supervisor, Captain Blackmar, as her "boyfriend" in front of other personnel; picked hairs off of Appellant's uniform and implied they were from Captain Blackmar; referred to doughnuts Captain Blackmar had bought for the office as doughnuts from Appellant's boyfriend; blew kisses behind Captain Blackmar in front of the Appellant; and paged the Appellant to report to

[2] Other evidence in the record also documents the Appellant's physical condition. For example, an employee report, dated June 11, 2004 and signed by the Appellant's supervisors, states that the Appellant contacted her supervisor that "she was not feeling well and . . . that she was at a Medical Facility and that her blood pressure reading was high (184/111) and was currently receiving treatment for this problem." (Employee Report, Ex. 8, June 11, 2004.) Additionally, a police report from the Cranston Police Department, dated May 5, 2000, states that the Appellant "while working her patrol shift on this date . . . began to experience pain on the center of chest, and this pain also went down her right arm . . . [Appellant] was transported to RI Hospital for examination due to the complaints of pain in her chest." (Cranston Police Department Case Reports, Ex. 9, May 5, 2005.)

[3] The Court is aware that such images were allegedly sent to Appellant's co-workers in addition to Appellant. Nonetheless, this evidence is still a part of the record before ERSRI and should be considered for its cumulative effect. See O'Rourke, 235 F.3d at 727 and n.1, supra.

Captain Blackmar's office when he was not in the office. (Ex. 20.) In this chronology of events, Appellant stated that the behavior was incessant and occurred on a near-daily basis for years. Id.

It is evident from the record that both the Appellant and her doctors identified specific events that led to her anxiety, post-traumatic stress, and ultimate disability. For these reasons, this Court holds that the Board's decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. See § 42-35-15(g); Barros, 710 A.2d at 684.

Mindful of the due deference owed to administrative agencies, this Court believes that a remand would not serve the interests of justice. See Champlin's Realty Assocs. v. Tikoian, 989 A.2d 427, 437 (R.I. 2010) (explaining that reviewing courts should give deference to an agency's fact findings); Easton's Point Ass'n, Inc. v. Coastal Res. Mgmt. Council, 559 A.2d 633, 636 (R.I. 1989) (declining to remand the case to the Superior Court because the facts and issues had been fully developed and because it would not serve the interests of justice). Allowing ERSRI to reconsider the Appellant's application would prejudice her right to a final adjudication within a reasonable amount of time. See Easton's Point Ass'n, Inc., 559 A.2d at 636. This case has already been pending for nearly six years, it has been appealed three times, and remanded by the Supreme Court. Because this Court found that the Board's decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, this Court reverses ERSRI's decision. See id.

B

Aggravation of a Prior Injury

Additionally, the Appellant argues that ERSRI failed to consider whether she qualified for an accidental disability pension based on aggravation of previous job injuries. Because the

record allegedly shows that the Appellant suffered from post-traumatic stress disorder and anxiety from the harassment at work and that these conditions were "aggravated" by subsequent harassment, she contends that she qualifies for disability benefits based on aggravation of previous job-related injuries. In response, ERSRI argues that the Appellant's application did not indicate that she was seeking a disability pension based on an aggravation of a prior injury. Since it is not ERSRI's responsibility to advocate for alternative theories of relief for the Appellant, ERSRI claims that it did not need to evaluate the application as an aggravation of a pre-existing injury.

The accidental disability pension statute states:

> "If the member was able to return to his or her employment and subsequently reinjures or aggravates the same injury, the member shall make another application within eighteen (18) months of the reinjury or aggravation which shall be accompanied by a physician's report certifying to the reinjury or aggravation causing the disability." Sec. 42-21.9-9 (emphasis added).

To obtain accidental disability benefits for a reinjury or aggravation of an injury, the applicant must submit "another application." By implication, the applicant is required to make an initial application for an accidental disability retirement allowance before applying for benefits for a reinjury or aggravation of an injury. See Auto Body Ass'n of R.I., 996 A.2d at 96 (explaining that courts should attempt to give meaning to every word in a statute); State v. Bryant, 670 A.2d 776, 779 (R.I. 1996) (stating "that the Legislature is presumed to have intended each word or provision of a statute to express a significant meaning, and the court will give effect to every word, clause, or sentence, whenever possible . . ."). Here, there is no evidence in the record that the Appellant applied for disability benefits prior to the instant application. Accordingly, the agency's considering and denying her disability pension based on an aggravation of a prior injury was not in violation of statutory provisions. See § 42-21.9-9.

The Appellant's reliance on Rossi in arguing that the Board should have considered "aggravation" of an injury is misplaced. In Rossi, a Rhode Island state employee applied for Rhode Island's accidental disability pension for public officers and employees under G.L. 1956 § 36-10-14(b). The Supreme Court considered whether the employee qualified for relief under the "aggravation" theory and held that the Employees' Retirement System incorrectly required a showing of a specific event to establish "aggravation" of an injury. Rossi v. Employees' Retirement System, 895 A.2d 106, 113 (R.I. 2006). The statute in Rossi, however, unlike the statute here, did not require an initial application. That statute stated:

> "The application shall be made within five (5) years of the alleged accident from which the injury has resulted in the members present disability and shall be accompanied by an accident report and a physicians report certifying to the disability; provided that if the member was able to return to his or her employment and subsequently reinjures or aggravates the same injury, the application shall be made within the later of five (5) years of the alleged accident or three (3) years of the reinjury or aggravation. The application may also state the member is permanently and totally disabled from any employment." Sec. 36-10-14.

Notwithstanding the Court's ruling in favor of the Appellant in Part A hereof, it was not an abuse of discretion for the Board not to consider the "aggravation of an injury" as an alternate form of relief under the applicable statute in this case. See Barros, 710 A.2d at 684.

C

Application Requirements

Finally, the Appellant argues that ERSRI improperly required the Appellant, her employer, or a physician who completed ERSRI's disability evaluation form to identify a specific work-related event that caused the disability. The Appellant alleges that none of the criteria on ERSRI's Independent Medical Examination form requires identification of a specific work-related event that caused the applicant to be disabled from service. In response, ERSRI

states that the Appellant's application was denied because she failed to provide evidence of a qualifying injury, not because her examining physicians failed to identify a work-related event that caused her disability.

ERSRI's disability evaluation form asks a physician to state:

> "(1) the diagnosis of the applicant's condition and nature of incapacity or impairment and the medical basis for the conclusions; (2) the duties and activities required by the applicant's job which render the applicant substantially unable to perform his or 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; (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; and (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."

The form does not require a physician to identify a single, specific work-related event that caused the disability. However, other evidence, in the form of employee reports, discussed supra in Part A, was before the Board. It is the responsibility of the Board to consider all of the evidence in determining if the elements of the statute have been demonstrated. This Court cannot fathom a situation wherein a physician would be required to supply certain components of his or her findings and opinions which were not referenced or otherwise inquired about on the official form required by the agency. Therefore, it was error of law for the agency to impose this requirement upon the Appellant. See § 42-35-15(g).

IV

Conclusion

After reviewing the entire record, this Court finds that ERSRI's decision that the Appellant was not disabled due to a work-related injury is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Furthermore, this Court finds that ERSRI committed error of law when it required the Appellant to point to a specific, work-related injury that caused her disability. ERSRI's decision was in violation of statutory provisions, and substantial rights of the Appellant have been prejudiced. Accordingly, this Court reverses ERSRI's decision. Counsel shall submit an appropriate order and judgment for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Lillian Rivera v. Employees Retirement System of Rhode Island**
CASE NO:	**C.A. No. PC 08-4409**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**December 13, 2013**
JUSTICE/MAGISTRATE:	**Carnes, J.**
ATTORNEYS:	
For Plaintiff:	**Elizabeth A. Wiens, Esq.**
For Defendant:	**Michael P. Robinson, Esq.** **John H. McCann, Esq.**