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**ISABEL NICHOLS, Petitioner-Appellant, v. BOARD OF TRUSTEES, PUBLIC
EMPLOYEES' RETIREMENT SYSTEM, Respondent-Respondent.**

DOCKET NO. A-5615-10T4

SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

2012 N.J. Super. Unpub. LEXIS 1599

May 2, 2012, Submitted

July 3, 2012, Decided

NOTICE: NOT FOR PUBLICATION WITHOUT
THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY *RULE 1:36-3*
FOR CITATION OF UNPUBLISHED OPINIONS.

SUBSEQUENT HISTORY: Certification granted by
Nichols v. Bd. of Trs., 55 A.3d 726, 2012 N.J. LEXIS
1169 (N.J., 2012)

PRIOR HISTORY: [*1]

On appeal from the Board of Trustees of the Public
Employees' Retirement System, Department of the
Treasury, PERS No. 2-1248023.

COUNSEL: Gaylord Popp, LLC, attorneys for appellant
(Samuel M. Gaylord, on the brief).

Jeffrey S. Chiesa, Attorney General, attorney for
respondent (Lewis A. Scheindlin, Assistant Attorney
General, of counsel; Danielle P. Schimmel, Deputy
Attorney General, on the brief).

JUDGES: Before Judges Cuff and Lihotz.

OPINION

PER CURIAM

Petitioner Isabel Nichols appeals from a final

decision of the Board of Trustees of the Public
Employees' Retirement System (PERS), denying her
application for accidental disability retirement benefits.
We affirm.

The facts are undisputed. From March 7, 2005, to
April 20, 2010, Nichols worked as an information
technology specialist for the New Jersey Department of
Treasury, Division of Administration. She was to report
to work at 7:30 a.m.; her workday ended at 3:30 p.m.

On February 22, 2008, there was a heavy snow fall.
Nichols arrived at her workplace at 6:45 a.m. She circled
the building, examining the entrances discovering each
was snow covered. She proceeded to the closest entrance
on the side of the building, which contained an exterior
stairway. Nichols maneuvered [*2] the stairway,
clutching the handrail, and took two steps on the landing,
when she slipped on ice under the snow and fell. Nichols
gathered herself and eventually entered the building. The
clock at the security desk reflected it was approximately
6:57 a.m.

After consulting with Human Resources, Nichols
completed an accident report, identifying she suffered
injury to her "left hand[,] wrist[,] right shoulder [and]
neck[,] left hip and back." She was initially examined by
a physician, who referred her to an orthopedic surgeon.
Nichols was immediately placed on Sick Leave Injury
(SLI), and thereafter pursued workers' compensation

benefits and a civil action for negligence against the landlord and its agents.

On April 14, 2010, Nichols submitted an application to PERS seeking accidental disability retirement benefits. PERS concluded Nichols was permanently disabled as a result of the February 22, 2008 accident and was entitled to service retirement benefits, if she applied, but lacked the requisite service requirements for ordinary disability retirement benefits. Moreover, PERS denied Nichols' request for the higher accidental disability retirement benefits, concluding "the incident did not [*3] occur during and as a result of [her] regular or assigned [work] duties."¹

1 A person retired on a service retirement is provided an allowance of one sixty-fourth of his or her final compensation, *N.J.S.A. 43:15A-48*, whereas one retired on an accidental disability pension is provided an allowance of 72.7% of his or her actual annual compensation at the time of the accident. *N.J.S.A. 43:15A-46*.

Nichols appealed and the matter was transferred to the Office of Administrative Law (OAL) for a hearing, where Nichols was the sole witness. Additionally, the parties agreed to admit various documents into evidence.

The initial decision of the ALJ found the facts surrounding Nichols' injury failed to show she was injured "during and as a result of the performance of h[er] regular and assigned duties." Accordingly, the ALJ denied her claim for accidental disability retirement benefits. Following Nichols' appeal, PERS adopted the ALJ's findings and conclusions.

Judicial review of administrative agency determinations is limited. *Messick v. Bd. of Review*, 420 *N.J. Super.* 321, 324, 21 *A.3d* 631 (*App. Div.* 2011). We accord the agency's exercise of its statutorily delegated responsibilities a "strong presumption of reasonableness," [*4] *City of Newark v. Natural Res. Council*, 82 *N.J.* 530, 539, 414 *A.2d* 1304, *cert. denied*, 449 *U.S.* 983, 101 *S. Ct.* 400, 66 *L. Ed. 2d* 245 (1980), and defer to its findings of fact. *Mazza v. Bd. of Trustees, Police & Firemen's Ret. Sys.*, 143 *N.J.* 22, 29, 667 *A.2d* 1052 (1995). "[T]he test is not whether an appellate court would come to the same conclusion if the original determination was its to make, but rather whether the factfinder could reasonably so conclude upon the proofs." *Charatan v. Bd. of Review*, 200 *N.J. Super.* 74, 79, 490 *A.2d* 352 (*App. Div.* 1985).

Accordingly, we will not upset an agency determination unless it is shown to be arbitrary, capricious or unreasonable, its findings lacked support in the evidence, or that it violated the legislative grant of authority governing the agency. *In re Herrmann*, 192 *N.J.* 19, 27-28, 926 *A.2d* 350 (2007). That said, we are "in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue[.]" *Utley v. Bd. of Review*, 194 *N.J.* 534, 551, 946 *A.2d* 1039 (2008) (quoting *Mayflower Sec. Co. v. Bureau of Sec.*, 64 *N.J.* 85, 93, 312 *A.2d* 497 (1973)).

"[P]ension statutes are 'remedial in character' and 'should be liberally construed and administered in favor of the persons intended to be benefited [*5] thereby.'" *Klumb v. Bd. of Educ.*, 199 *N.J.* 14, 34, 970 *A.2d* 354 (2009) (quoting *Geller v. Dep't of Treas.*, 53 *N.J.* 591, 597-98, 252 *A.2d* 393 (1969)). Nichols sought benefits under *N.J.S.A. 43:15A-43*, which allows an injured public employee to retire and collect accidental disability benefits "if said employee 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[.]" To qualify, the traumatic event must occur "during voluntary performance of regular or assigned duties at a place of employment before or after required hours of employment which is not in violation of any valid work rule of the employer or otherwise prohibited by the employer[.]" *Ibid*.

On appeal, Nichols maintains PERS erred as the facts support she fell while entering the building, an act of employment, during the performance of her regular or assigned duties. She maintains, her early arrival was "not in violation of any valid work rule of the employer or otherwise prohibited by the employer[.]" Further she argues the immediate award of SLI benefits demonstrates her injury occurred "during and as a result of" her regular duties. She argues she [*6] is entitled to receive accidental retirement disability benefits.

We have considered these arguments, which are not persuasive. We conclude Nichols' injury did not occur "during and as a result of" her employment or while she was engaged in work-related conduct, both necessary prerequisites to a benefit award pursuant to *N.J.S.A. 43:15A-43*.

Nichols relies on *Kasper v. Board of Trustees of the Teachers' Pension & Annuity Fund*, 164 *N.J.* 564, 572-73, 754 *A.2d* 525 (2000), which examined a similar

statute governing accidental disability pension benefits for teachers, *N.J.S.A. 18A:66-39*. We conclude the factual distinctions in *Kasper*, resulting in an award of benefits, are absent in this matter, warranting a different result.

In *Kasper, supra, 164 N.J. at 570*, the plaintiff, an education media specialist, was assaulted on the stairway entrance to the school prior to the commencement of the school day. The plaintiff's early arrival resulted because she was tasked with distributing media materials prior to the official start of classes. *Id. at 571*. The Court concluded the plaintiff's injury was "as a result of" her employment since she had "completed her commute . . . [and] was at the school, at the expected [*7] time, to distribute media materials as she was required to do. . . . [S]he was engaged in conduct that was, in every sense, preliminary but necessary to her early workday[.]" *Id. at 588*.

The court noted:

In other words, an employee may qualify for an accidental disability pension as a result of a traumatic injury occurring prior to the start of . . . the formal workday, so long as the employee is at premises owned or controlled by the employer for the purpose of performing his or her regular duties and not for some other purpose. Obviously excluded are employees who arrive at work long before the required hour for a card game in the teachers' lounge, to avoid the traffic, read the paper, pay bills, or socialize[.]

[*Id. at 587.*]

Here, although Nichols had been required to arrive early or stay late to complete work on prior occasions, on the date she suffered her fall she had not arrived early in response to such a request or as a result of a designated

assignment. She voluntarily arrived prior to the start of her assigned workday to accommodate her personal preference, which cannot be considered "as a result of the performance of [her] regular or assigned duties[.]" *N.J.S.A. 43:15A-43*. See [*8] *Kasper, supra, 164 N.J. at 588* (stating an employee's injury must be "causally connected . . . to the work the employer has commissioned").

Finally, Nichols' placement on SLI the day of her injury is not conclusive of whether the injury occurred "during and as a result of" her employment per *N.J.S.A. 43:15A-43*. SLI provides temporary relief by granting a leave of absence with pay. *N.J.A.C. 4A:6-1.6(c)*. To be compensable, the regulation suggests sick leave benefits may be awarded for a work-related injury as a prerequisite of employment, consistently interpreted to include a reasonable time before the start of a work shift or while en route from an adjacent State-provided parking lot into the work area. See *In re Spady, Dep't of Corr.*, DOP 2008-68 (Apr. 24, 2008). Such a liberal construction differs markedly from the Legislative intent evinced by the specific requirements of eligibility for an accidental retirement disability. See *Kasper, supra, 164 N.J. at 580* ("[T]he [*9] Legislature added the caveat that the accident had to take place 'during and as a result of the performance of [the employee's] regular and assigned duties,' -- a standard that could not be satisfied by a commuting accident." (alterations in original)).

Applying the law to the facts of this case, we conclude PERS correctly accepted the factual findings of the ALJ that Nichols had failed to satisfy the requirements for accidental disability. Although permanently disabled as a result of her February 22, 2008 fall, the proofs do not show the injury occurred during and as a result of her regularly assigned duties of employment.

Affirmed.

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