



State of New Jersey

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DIVISION OF PENSIONS AND BENEFITS
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January 16, 2020

[REDACTED]
Andrew R. Bronsnick, Esq.
MANDELBAUM SALSBURG, P.C.
[REDACTED]
[REDACTED]

RE: Darlene Hyman
[REDACTED]
[REDACTED]

Dear Mr. Bronsnick:

At its meeting on December 11, 2019, the Board of Trustees of the Public Employees' Retirement System (PERS) considered the following documents in your appeal on behalf of your client, Darlene Hyman.¹

- a) All exhibits;
- b) The Initial Decision of Administrative Law Judge (ALJ) Leland S. McGee, dated October 24, 2019;²
- c) The Order (Order)³ issued by the ALJ on September 29, 2016;
- d) Exceptions filed by Deputy Attorney General (DAG) Christopher Meyer, dated November 15, 2019;⁴ and
- e) Your statements at the meeting as well as the statements of DAG Meyer.

The Board noted the exceptions filed by DAG Meyer. Thereafter, the Board adopted the ALJ's Factual Findings and the ALJ's legal conclusion with regard to the issue of direct result. However, the Board rejected the ALJ's legal determination that the incident occurred during and as a result of Ms. Hyman's regular or assigned duties, thereby reaffirming its original decision denying Ms. Hyman's application for Accidental Disability retirement benefits.

Thereafter, the Board directed the Secretary to draft Findings of Fact and Conclusions of Law consistent with its determination, which were presented to and approved by the Board at its meeting of January 15, 2020.

¹ Secretary Ignatowitz recused as he previously represented the Board in this matter.

² The Board requested and was granted an extension of time to issue its final administrative determination.

³ The parties agreed to bifurcate the issues before the Office of Administrative Law. The only issue in the Order was whether the incident occurred "during and as a result of" Hyman's regular or assigned duties.

⁴ DAG Meyer requested and was granted an extension of time to file exceptions.

Briefly summarized, Hyman testified that her Certified Nursing Assistant license, which she needed for work, was scheduled to expire on January 15, 2011. ID at 3. On January 10, 2011, Hyman arrived at her place of employment to pick up her employer's check to bring with her to pay for her license renewal. Ibid. She arrived at her place of employment on January 10, 2011, at 7:00 a.m. Hyman did not sign in or report for duty, and there is no dispute that she received no payment for working a shift while she was there. It is also undisputed that she performed no CNA or any other work duties while she was on her employer's premises. ID at 4.

While Hyman was walking to pick up the check, she slipped and fell on the first floor in front of the coffee shop. She received no medical treatment at that time, and continued to the office located on the third floor. Hyman reported the incident and her employer directed Hyman to go to the personnel office on the first floor to file an incident report. After collecting the check, Hyman then drove to North Brunswick to have her CNA license renewed. She was not compensated for the time spent at the Center, nor was she reimbursed for driving to the renewal center in North Brunswick.

In the Initial Decision, the ALJ's concluded that Hyman's off-duty injury on the morning of January 10, 2011 occurred during and as a result of the performance of her regular or assigned duties, contrary to the well-settled legal precedent set forth by our Supreme Court in Kasper v. Board of Trustees, Teachers' Pension and Annuity Fund, 164 N.J. 564 (2000). For the following reasons, the Board rejected this legal conclusion.

The ALJ based his legal conclusion on the fact that because Hyman "was obtaining the course-credit verification, a necessary part of her licensing, on the Center's premises and at a time dictated by her employer, [the activity was] reasonably causally connected to her employment at the Center" and was "a required preparatory duty that was essential to her actual work." Order at 10. The Board rejects this reasoning as contrary to the plain language of N.J.S.A. 43:15A-43 and well-settled legal precedent defining the statute.

The statute requires that the member's disability be the direct result of an incident which occurred "during and as a result of the performance of member's regular or assigned duties." Ibid. There is no dispute that the incident did not occur during, and therefore not as a result of, her regular or assigned duties, as Hyman was not performing any duties when she was injured. She was not scheduled to work on January 10, 2011. She was not paid for working on that date. She readily concedes, and the ALJ found, that she performed no duties related to her employment. Thus, it is clear that she was not performing any of her "regularly assigned duties" or "actual duties" as those terms are defined in Kasper. 164 N.J. at 586-87 ("Regularly assigned duties include activities such as a teacher teaching. . . . [A]ctual duties [include] all activities engaged in by the employee in connection with his or her work, on the employer's premises, from the formal beginning to the formal end of the workday."). Just because Hyman must renew her CNA license to be a CNA does not make obtaining the license part of her job duties.

The ALJ found that Hyman was engaged in a duty which was "preparatory but essential to the actual duty" she was required to perform. Ibid. Order at 9-10. However, a preparatory duty that occurs outside the normal workday only qualifies a member for AD "so long as the [member] 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." Kasper, 164 N.J. at 587 (emphasis added). Only once this requirement is met may an activity qualify as a preparatory duty that is essential to the actual work. Id. at 588.

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Thus, the Board rejected the ALJ's legal conclusion because Hyman was not on the premises for the purpose of performing her regular duties. The ALJ incorrectly determined that Hyman was completing a preparatory duty when she was injured, "even though [she] did not perform any [of her regular duties] when she went to the Center on the morning of her injury." Order at 10. Indeed, Hyman was not at the Center on January 10, 2011 even to perform her regular duties; she went there in her off-hours. Hyman therefore is not eligible for AD because her injuries did not occur during or as a result of her regular or assigned duties, as required by N.J.S.A. 43:15A-43.

For these reasons, the Board rejected the ALJ's legal conclusion that Hyman was injured by an incident which occurred "during and as a result of her regular or assigned duties." This correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Public Employees' Retirement System.

You have the right to appeal this final 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,



Mary Ellen Rathbun, Acting Secretary
Board of Trustees
Public Employees' Retirement System

G-8/MER

C: D. Lewis (ET); L. Milton (ET); L. Hart (ET); P. Sarti (ET)
DAG Meyer (ET)
OAL, Attn: Library (ET)
Darlene Hyman