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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2811-04T2

STEWART RICHARDSON,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES,  
POLICE AND FIREMEN'S  
RETIREMENT SYSTEM,

Respondent-Respondent.

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Submitted November 16, 2005 – Decided December 2, 2005

Before Judges Conley and Winkelstein.

On appeal from final decision of the Board of Trustees of the Police and Firemen's Retirement System, TYP-169-04.

Michael L. Testa, Jr., attorney for appellant (Basile & Testa, attorneys; Michael L. Testa, on the brief).

Peter C. Harvey, Attorney General, attorney for respondent (Jean Reilly, Deputy Attorney General, of counsel; Christine Lucarelli, Deputy Attorney General, on the brief).

PER CURIAM

Petitioner, a retired Corrections Officer at the South Woods State Prison, appeals a denial of his application for

accidental disability benefits by the Board of Trustees, Police and Fireman's Retirement System (Board). Although there was no dispute that petitioner was totally and permanently disabled from his duties as a Corrections Officer, and that his disability was a direct result of a January 7, 2003, incident at the prison, the Administrative Law Judge, following a hearing, concluded that the incident was not a traumatic event within the meaning of N.J.S.A. 43:16A-7, as interpreted by Cattani v. Bd. of Trs., Police & Firemen's Ret. Sys., 69 N.J. 578 (1976), and its progeny. The Board agreed and, instead, granted petitioner an ordinary disability pension.<sup>1</sup> We affirm.

The underlying incident is easily described. On January 7, 2003, petitioner responded to an emergency code and found two other corrections officers struggling with an inmate. They were trying to place handcuffs and leg shackles on him and had him on the ground, such that he was on his stomach with his arms under his chest. He was resisting vigorously. Petitioner jumped on top of the inmate, "straddle[ing] him like a horse." He attempted to reach under the inmate's right arm while he reached for handcuffs with his right hand. The inmate, however, in the

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<sup>1</sup> Ordinary disability benefits provide forty percent of final average salary, N.J.S.A. 43:16A-6. Accidental disability benefits provide slightly more than sixty-six percent of final average salary. N.J.S.A. 43:16A-7.

struggle, thrust the upper part of his body upward, causing petitioner to fall backward. He reached with his left hand to gain stability. He maintained contact with the inmate and did not fall completely off of him. While still on top of the inmate, he handcuffed him. The inmate was then escorted to a holding cell, although he continued to be resistant and continued to "thrash[] his body about." In the process of steadying himself on the inmate, petitioner severed ligaments in his left wrist. That was the disabling injury.

A number of corrections officers, all of who had responded to the code or were involved in the incident, testified at the hearing. They all agreed that encountering inmate resistance to orders of corrections officers was not unusual. As explained by one officer, South Wood State Prison housed "a lot of inmates who are 85% group . . . they are three time losers." "Those inmates are a little bit hard[er] to deal with than others" because "[w]hen they come in they're going to do most of their time . . . so they really don't have anything to lose or to gain . . . ." The facility housed approximately 992 inmates with a staff of only 35 corrections officers. And, as explained by Officer Palau, for example, a corrections officer's duties at the facility often involve dangerous activities. Although the type of incident that occurred here "doesn't happen every

shift," the officer agreed that it "does happen . . . possibly once, twice a week. Maybe once, twice, three times every two weeks . . . it does happen often." Officer Riker acknowledged that resistance by the inmates to orders "happens several times a shift" and that in fifty percent of the instances requiring handcuffing, there is resistance, with passive resistance more frequent than violent resistance. Yet another officer, Officer Dice, depicted the resistance that occurred here as "happens often." Officer Woods concurred that inmates often resist being cuffed and shackled. Even petitioner agreed that "[y]ou do encounter inmates that are aggressive . . . every once in a while you run across one that acts like this . . . basically, they see blue, they don't care about you."

N.J.S.A. 43:16A-7(1) provides, in pertinent part, that in order to be eligible for accidental disability retirement, a member of the Police and Firemen's Retirement System must be disabled as a result of a "traumatic event." See Cattani v. Bd. of Trs., Police & Firemen's Ret. Sys., supra, 69 N.J. at 583. Kane v. Bd. of Trs., Police & Firemen's Ret. Sys., 100 N.J. 651, 663 (1985), long ago held that for a traumatic event to have occurred: (1) the petitioner's injuries must not have been induced by the stress or strain of the normal work effort; (2) the petitioner must have met involuntarily with the object or

matter that was the source of the harm; and (3) the source of the injury itself must have been a great rush or uncontrollable power.

It is the first prong that is the primary focus here as that is what formed the basis for the ALJ's initial determination and the Board's acceptance thereof. In concluding that petitioner failed to establish that what occurred was beyond the stress and strain of a corrections officer's normal work effort, the ALJ wrote:

Petitioner relies upon Gable [v. Bd. of Trs., Pub. Employees' Ret. Sys., 115 N.J. 212 (1989)] and Darryl Martin v. Police & Firemen's Ret. Sys., TYP 2333-03, Initial Decision (February 20, 2004), adopted, Bd. of Trustees (March 23, 2004) <<http://lawlibrary.rutgers.edu/oal/search.html>>, decided by the Honorable Richard Wells, ALJ. In Martin a Correction Officer was violently attacked by an inmate from the mental ward of the institution. He was awarded accidental disability. Judge Wells observed and reasoned that:

In Gable v. Bd. of Trs., Public Employees Ret. Sys., [supra,] 115 N.J. [at] 212, the New Jersey Supreme Court recognized that in some instances a correction officer injured while performing his or her duty to restrain, control, and physically manage an inmate may experience an event consistent with its definition of a traumatic event as expressed in Kane, 100 N.J. [at] 651. In Gable, the Court found that Officer Gable was the victim

of a violent physical assault. The Court concluded that although a correction officer may in fact realize that there is a "potential that he or she will be called upon to subdue an inmate, an officer does not expect his or her daily routine will normally involve being struck by an aggressive or escaping inmate." Gable, supra, 115 N.J. at 223-34 (quoting Gable v. Bd. of Trs., PERS, 224 N.J. Super. 417, 423 (1988)). The Court in Gable made a clear distinction between minor "scuffles" that occur regularly in a jail environment, and violent physical attacks perpetrated by inmates. The Court found that the latter violent incidents are clearly distinguishable from the sort of commonplace happenings that were determined in Kane to be part of the stress or strain of the normal work effort. The Court characterized such violent incidents, like the one that occurred in Gable, as more akin to a fireman being blown off a roof or being struck by a falling beam. Id. at 223. The Court concluded that "[m]erely by performing their jobs, correction officers do not 'voluntarily' assume the risk of being assaulted by an unruly inmate." Id. at 224. The Supreme Court of New Jersey stressed the important public policy consideration by noting, "We do not want correction officers to shy away from subduing unruly inmates. Nor do we want to discourage police officers from chasing criminal suspects. If law-enforcement officers act cautiously, they will not get

injured - but they will also not be doing their jobs properly, and the public will not be as well protected." Id. at 224 (emphasis added).

The Court held that an attack on a correction officer by an unruly inmate satisfies the three-prong Kane test and so constitutes a traumatic event. Id. at 224-25.

Injuries sustained by Correction Officers are difficult to decipher as to whether they occur in the ordinary course of ones duties or are a "traumatic event" as envisioned by the [L]egislature and subsequent decisional law. In analyzing Correction Officer injuries, attention must be directed on whether the officer sustained injuries from an inmate who was "offensive" or "defensive" as understood in a correctional environment. Winfield v. Bd. of Trs., Police & Firemen's Ret. Sys., TYP 8487-02, Initial Decision (April 3, 2003), adopted, Bd. of Trustees (May 30, 2003) <http://lawlibrary.rutgers.edu/oal/search.html>. In Winfield the Correction Officer was involved in an altercation with an inmate. The inmate punched both Winfield and one of his colleagues, but ultimately the inmate was brought under control and handcuffed. Judge Wells relying on Winfield discussed the nature of "offensive" verses "defensive" in the context of corrections work and stated:

that important factors were who the "aggressor" was and whether the actions were "defensive" or "offensive." Additionally, the underlying circumstances in Winfield presented an "unusual situation," as opposed to the more usual situation of a police officer pursuing and ultimately

apprehending and handcuffing a suspect.

The import from Gable, Martin and Winfield is that a traumatic event arises when a Correction Officer is violently attacked, in an offensive manner, during an unprovoked event. A traumatic event does not arise from situations where an officer pursues and ultimately apprehends and handcuffs a suspect. It is the extreme and unusual circumstances that are reserve[d] for accidental disability. Kane and Gable, supra. The Court in Gable noted that commonplace happenings for the particular environment must be distinguished. For instance, a firefighter who lifts a ladder must be separated from a firefighter who is blown off a roof. [Gable v. Bd. of Trs., Pub. Employee's Ret. Sys., supra, 115 N.J. at 223-24].

I FIND the events described by all of the witnesses are more closely aligned with commonplace duties of a correction officer. This is not to suggest that a serious altercation with an inmate is anything but routine. But, petitioner knew a code 33 call was an emergency. It generally signaled an inmate altercation. The job title requires officers to respond as quickly as possible. Petitioner was the third or fourth officer on the scene. His duty was to assist those offices who were already engaged in restraining an unruly and aggressive inmate. The officers are trained on techniques to restrain combative inmates. The inmate was partially restrained when petitioner arrived. He was lying face down on his stomach. He was being held by at least two other officers. While the situation was still somewhat volatile, it was not as extreme or as unusual as the fact in Gable, Martin or Winfield. Petitioner sat on the inmate, "like he was riding a horse," in order to use his weight and



leverage to increase the level of restraint. The inmate thrust upward. Petitioner was thrown backward. He reached his left hand backward to the ground in order to regain his position on top of the inmate. In doing so, his left hand was hyper-extended causing ligaments to be completely torn.

Although we, of course, are not bound by the ALJ's and Board's legal conclusions, we think those conclusions are consistent with the Supreme Court's decision in Gable v. Bd. of Trs., Pub. Employees' Ret. Sys., supra, 115 N.J. at 212, and are entitled to our deference. See Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 25 (1995) (ALJ and Board's application of the facts to the law was not "so unreasonable as to constitute an arbitrary and capricious abuse of discretion."). Gable involved consolidated cases. One of the issues was whether certain injury-producing incidents between corrections officers and inmates were beyond the accepted stress and strain of the corrections officers' duties. In one of the consolidated cases, a corrections officer was disabled as a result of three different incidents. During the first incident, the officer broke up a fight between two inmates. While returning one of the inmates to his cell, the inmate suddenly threw baby powder in the officer's face, significantly interfering with the office's vision. The inmate then struck the officer in the middle of his back with a chair. During the

second incident, the officer was attempting to arouse a drunken, sleeping inmate. The inmate kicked him in the chest, propelling him against a concrete wall. The third incident occurred when the officer attempted to catch an inmate escaping from the shower area. A struggle ensued, and other officers arrived on the scene. He was wrestled to the floor by the inmate, and four other officers and the inmate collapsed on top of him.

The second case addressed in Gable involved a corrections officer who was escorting an unruly inmate, described as "a very large woman, weighing in excess of 185 pounds." The inmate dragged the officer down a flight of stairs, causing the officer's back, legs, and upper body to bang against the wall, metal railing, and edge of the stairs. The Court found that all of these incidents were beyond the pale of normal stress and strain of the job. Id. at 222. In doing so, the Court distinguished "scuffles" between inmates and corrections officers occurring regularly in a jail environment from violent physical assaults on a corrections officer. Id. at 222-24. In finding that the all the Gable incidents were violent assaults and beyond the normal stress and strain of the officers' duties, the Court observed:

We recognize that a corrections officer's job is dangerous. There is always the possibility that he or she will be attacked violently by an inmate. Likewise, a

firefighter might be struck by a falling beam, blown off a roof, or fall from a tall ladder. These occurrences, however, while occupational hazards, do not occur frequently enough to constitute normal stress or strain. Although a corrections officer . . . may realize that there is a "potential that he or she will be called upon to subdue an inmate, an officer does not expect his or her daily routine will normally involve being struck by an aggressive or escaping inmate."

[Id. at 223-24 (citations omitted).]

Here we cannot say the ALJ and Board's conclusion that the injury-producing incident was not comparable to the violent assaults and attacks by the inmates involved in Gable is so unreasonable as to constitute an arbitrary and capricious abuse of discretion. The inmate did not attack petitioner. Rather, when petitioner arrived on the scene, the inmate was already partially restrained by two other officers, lying face down on his stomach with his arms underneath his chest. Unfortunately for petitioner, while straddling the inmate to assist in cuffing him, he was pushed backward when the inmate raised his upper body. The injury occurred when petitioner put out his hand to steady himself. That is not comparable to what occurred in Gable.

Finally, although not discussed by either the ALJ or the Board, we question whether petitioner met the third prong of the test, i.e., that the injury was the direct result of a "great

rush of force" or an "uncontrollable power." See Kane v. Bd. of Trs., Police & Firemen's Ret. Sys., supra, 100 N.J. at 663. In this respect, the lifting of the inmate's upper torso seems to us to have been even less of "a great rush of force" or "uncontrollable power" than was the bucking and twisting of the Essex County Park police officer's horse in Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., supra, 143 N.J. 23-24 (Officer, who was injured when his 1000 pounds, sixteen hands horse bucked and reared, lifting and twisting officer's body in the saddle, did not sustain an injury as a result of a "great rush of force" or "uncontrollable power.").

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

  
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