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APPENDIX A

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2658-18

J.M.F.,

Petitioner-Appellant,

v.

DEPARTMENT OF TREASURY, DIVISION OF PENSIONS AND BENEFITS,

Respondent-Respondent.

Submitted September 15, 2021 – Decided September 28, 2021

Before Judges Geiger and Susswein.

On appeal from the Board of Trustees of the Teachers' Pension and Annuity Fund, Department of the Treasury.

J.M.F., appellant pro se.

Andrew J. Buck, Acting Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Connor V. Martin, Deputy Attorney General, on the brief).

PER CURIAM

Appellant J.M.F.,[1] a former teacher, appeals from an October 17, 2018 final decision of respondent Board of Trustees (the Board) of the Teachers' Pension and Annuity Fund (TPAF), within the Department of the Treasury, Division of Pensions and Benefits, denying her application for accidental disability retirement benefits pursuant to N.J.S.A. 18A:66-39(c). She also appeals from a January 24, 2019 TPAF final decision denying her request to unseal the administrative record. We affirm both decisions.

We glean the following pertinent facts from the record, some of which are not in dispute.[2] On November 24, 2012, appellant applied for an accidental disability retirement effective December 1, 2012. Her last day of work was March 26, 2012. In her application, appellant claimed that on September 8, 2010, as she was looking at books in a crate on the floor in her classroom, a custodian, who was behind her, lifted a bucket

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[1] As the court affirms the sealing of the administrative record, we use initials for the appellant. We conclude that, under the under the particular set of facts and circumstances in this matter, appellant's privacy constitutes a compelling interest that outweighs the Judiciary's commitment to transparency.

[2] A Joint Stipulation of Facts is not part of the record on appeal.

causing a metal mop handle to fall out of the bucket and strike the top right side of her head. Appellant claimed she experienced "a host of post-concussive symptoms . . . on a daily basis with enough frequency and intensity" to prevent her from performing her job as a teacher. She alleged that she needed to stay at home to minimize both her suffering and the possibility of being hit again in the head.

On April 4, 2013, the Board denied appellant's application for accidental disability retirement benefits. The Board found that the event that caused appellant's reported disability: (a) was "identifiable as to time and place"; (b) "undesigned and unexpected"; (c) "occurred during and as a result of [appellant's] regular or assigned duties"; and (d) was "not the result of [appellant's] willful negligence." The Board concluded appellant was "not totally and permanently disabled from the performance of [her] regular and assigned job duties" and "not physically or mentally incapacitated from the performance of [her] usual or other duties that [her] employer [was] willing to offer." The Board further determined that "there is no evidence in the record of direct causation of a total and permanent disability." Appellant remained eligible to begin collecting monthly ordinary retirement benefits after she reached normal retirement age as designated in the pension system. Appellant was advised that she could appeal the Board's decision within forty-five days, or the decision would be final.

By letter dated June 18, 2013, and email dated June 26, 2013, appellant submitted additional medical

documentation in support of her application. On July 12, 2013, the Board directed that its independent medical examiner (IME), neuropsychologist Richard A. Filippone, Ph.D., be provided with the additional documentation and requested that he provide an addendum to his January 30, 2013 report "to determine if the new information alters his opinion." Appellant was informed that upon receipt of the addendum and the recommendation of the Medical Review Board (MRB), the Board would issue its final determination.

On October 4, 2013, the Board reconsidered appellant's application after considering the new medical documentation she provided, the previous reports, the IME report addendum, and the recommendations of the MRB. The Board reaffirmed its prior decision denying the application.

On November 13, 2013, appellant appealed the Board's decision, and the matter was transferred to the Office of Administrative Law (OAL) for determination as a contested case and assigned to an Administrative Law Judge (ALJ). The ALJ conducted hearings on August 8, 2017 and December 22, 2017, and closed the record on March 29, 2018, following the submission of briefs. Appellant was represented by counsel before the ALJ. Three witnesses testified: appellant, Dr. Hugo M. Morales, and Dr. Filippone.

The ALJ issued a comprehensive twenty-three-page initial decision, which summarized the testimony of each witness, set forth his factual and credibility findings, and applied the applicable law. Because the

decision rested on whether appellant met her burden of proof given the conflicting testimony, we recount the pertinent testimony and the ALJ's findings in some detail.

Appellant's Testimony

Appellant began teaching in 2001. On September 8, 2010, while at work, she was struck on the top right side of the head by a mop handle. She did not lose consciousness. About thirty minutes later, appellant started to get a headache. Following a faculty meeting, she went to see the school nurse, who referred her to the workers' compensation clinic. Although appellant wanted to have testing done, the doctor declined and advised her to go the emergency room if the symptoms got worse. The doctor prescribed ibuprofen.

About ten days later, appellant went to Concentra Medical Center complaining her symptoms had worsened. The doctor told her she could not have a headache from a blow to the head that long after the accident and said he would refer her to a neurologist. When the referral did not materialize, appellant saw Dr. Jose Soto Perillo, a psychiatrist, twice in 2011.

Appellant had pre-existing conditions. Beginning in 2007, appellant began to have problems with allergies that caused sinus headaches, anxiety, and a choking sensation. She also experienced depression and anxiety due to a disagreement with her supervisor.

After the accident, appellant continued to work with difficulty but reacted to noise at school. She stated she knew something was wrong with her brain and that her brain felt "broken." Her own physician sent her for a CT scan and MRI, which were both normal. Appellant stated she had crying spells, difficulty concentrating, and felt pressure on the top right side of her head that was triggered by noise.

While still working, appellant took leaves as long as three months. Appellant frequently experienced nightmares about getting hit in the head after the accident. While she had difficulty sleeping prior to the accident, her insomnia became more severe. Appellant stated she was unable to perform her duties as a teacher or hold any other job. She claimed she felt pressure in her head and that she could not stop crying.

Appellant saw her other psychiatrist, Dr. Morales, and her clinical neuropsychologist, Sandra L. Hunt, Ph.D., once or twice a year, either in person, by Skype, or telephone. She stopped taking all medication with the approval of her doctors.

Appellant continued to work for approximately eighteen months after the accident. She claimed she had not driven a car since the accident but is able to run errands, cook, and clean.

Dr. Morales' Testimony

Dr. Morales was accepted as an expert in psychiatry. He began treating appellant in March 2012 and

she was still under his care as of 2017. Dr. Morales opined that appellant's complaints indicated she was suffering from post-traumatic stress disorder (PTSD) and mild traumatic brain injury. He reported that Dr. Hunt and Dr. Martinez, a neurologist, agreed with those diagnoses and that appellant was unable to work as a teacher.

Dr. Morales noted that during waking hours, a person with PTSD may be hyper vigilant or be hypersensitive to all noise. They may also experience nightmares and insomnia.

Dr. Morales noted that appellant wore a bicycle helmet to his office to protect her head. She exhibited serious anxiety about walking near tall buildings or through a supermarket with tall shelves. He considered these symptoms to be characteristic of PTSD.

In November 2012, Dr. Morales diagnosed appellant with PTSD, major depressive disorder, anxiety, and traumatic brain injury and opined these conditions resulted from the accident. Appellant was prescribed Silenor for insomnia, Wellbutrin for anxiety and depression, and Naproxen for headaches.

Dr. Morales further opined that the PTSD led to functional disabilities that limited appellant's daily activities and caused difficulty with social events and gatherings, because she was fearful that any movement would aggravate her physical condition. He described appellant as lacking concentration and focus, unable to finish anything she started, and obsessed with being hit on the head again, rendering her unable

to function properly on any level. He stated that appellant needed a quiet, dark place to rest her brain. He described appellant's mental state as being very fragile and dysfunctional, with an inability to control her emotions. She appeared anxious, moody, and depressed.

Appellant was seen by a neuroradiologist, Michael L. Lipton, M.D., who interpreted her MRI films. He found structural damage to her brain's white matter in the area she was struck. Dr. Lipton reported that most patients with mild traumatic brain injury do not experience unconsciousness and recover within months. However, a minority have symptoms and dysfunction that persist indefinitely.

Dr. Morales noted that a person can suffer a concussion without developing a brain lesion or experiencing loss of consciousness. He rejected Dr. Filippone's conclusion that appellant had a histrionic personality and could not have PTSD unless she experienced life-threatening trauma. He further opined that appellant did not have agoraphobia.[3]

On cross-examination, Dr. Morales acknowledged that ninety percent of the information is subjective, and appellant's self-reported complaints are all subjective in nature. Appellant was treated for anxiety, panic attacks, and problems sleeping before the accident.

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[3] Agoraphobia is an anxiety disorder characterized by a marked fear, anxiety, or avoidance of public places, often perceived as being too open, enclosed, crowded, or dangerous. Diagnostic and Statistical Manual of Mental Disorders 217-19 (5th ed. 2013).

In addition, appellant had two MRIs. The first was normal. The second showed microscopic lesions of the white matter on the right side of the brain. The MRI report describes this as "[w]hite matter abnormalities with sequelae of traumatic brain injury." Dr. Morales acknowledged there were other possible causes of such lesions.

Dr. Morales explained that a concussion can take weeks or months to develop symptomatology, such as soft tissue swelling or tenderness. It can also take weeks or months for the psychopathology to become clinical. When asked whether he would expect someone with no swelling, no tenderness, no cuts, no scrapes, and no contusions at the time of the accident to have pain in the scalp four years later, Dr. Morales stated that it could happen.

On redirect, Dr. Morales stated the accident was a substantial cause of appellant's disability and that she did not have PTSD before the accident.

Dr. Filippone's Testimony

Dr. Filippone was accepted as an expert in neuropsychology and psychology. He prepared a January 30, 2013 report and three addenda.

As to appellant's credibility, Dr. Filippone found many of her claims related to her cognitive status were untrue. Although she claimed she cannot think, concentrate, or remember, neuropsychological testing performed by Dr. Hunt showed appellant's results were

almost entirely in the average to superior range. Although appellant claimed she could not function, do anything, or teach, she continued to work as a teacher for eighteen months after the accident.

Dr. Filippone found appellant had significant anxiety or histrionic behaviors. She came to his office wearing a bicycle helmet, explaining that she did so for safety because people throw things out of windows and she did not want another severe traumatic brain injury. Appellant made religious references throughout the evaluation.

Dr. Filippone opined that appellant did not even suffer a concussion. He concluded that appellant exaggerated her symptoms. He noted appellant had no bruise, bump, or laceration from the accident. Initially, her only complaints were headaches, which are subjective. He viewed appellant's behavior during Dr. Hunt's evaluation, which included sobbing, as very exaggerated some two years after the accident. He noted that appellant scored in the average to superior range on most aspects of the test and that several low scores did not demonstrate functional behavioral problems. Her full-scale IQ and working memory index were both in the average range. Her processing speed was at the top of the low average range.

Dr. Filippone found appellant had pre-existing conditions including panic disorder with mild agoraphobia, vocationally oriented stress, and chronic sleep disorder. He noted that she may have generalized anxiety disorder, undifferentiated somatoform disorder,

and personality disorder with histrionic features. Dr. Filippone opined that none of appellant's symptoms were directly related to the accident. He disputed the diagnosis of post-concussive syndrome because there was no mechanism of injury, and the pattern of symptoms was inconsistent with that diagnosis but consistent with her other diagnoses.

Dr. Filippone also disputed the diagnosis of mild traumatic brain injury, noting that the first MRI showed no evidence of brain injury and the white matter abnormalities disclosed by the second MRI were not in an area that would affect cognition. He concluded that appellant was not permanently and totally disabled from performing the duties of a teacher.

On cross-examination, Dr. Filippone acknowledged that a person could have mild traumatic brain injury without losing consciousness, having bleeding on the brain, abnormal diagnostic tests, or gross signs of physical damage. He further acknowledged that a mild traumatic brain injury can affect a person's cognitive, emotional, behavioral abilities, and personality functioning. In addition, the symptoms of traumatic brain injury are largely subjective; headaches are a symptom of post-concussive syndrome, and dizziness, anxiety, and memory loss can also be symptoms of post-concussive syndrome.

On redirect, Dr. Filippone opined that appellant exhibited the behavior of a person who is exaggerating her symptoms and described appellant's presentation

as the most exaggerated, histrionic, and incredible he ever heard.

The ALJ's Analysis of the Evidence

The ALJ found Dr. Filippone's opinion that appellant did not suffer a mild traumatic brain injury was not persuasive and his conclusion that there was no mechanism of injury was inaccurate. The ALJ noted "Dr. Hunt described the object that struck [appellant] as a heavy mop handle, and [appellant] said that it was solid metal." The ALJ concluded that "[a]n institutional-type mop can have a heavy metal handle that could readily cause an injury[,]" and did not accept "Dr. Filippone's assertion that there was no mechanism of injury. . . ."

The ALJ recounted that Dr. Filippone acknowledged that that a person suffering a mild traumatic brain injury does not necessarily lose consciousness or have external injuries. In addition, the second MRI was more detailed. The fact that appellant's psychological testing showed that her cognitive functioning was intact did not mean she did not sustain a mild brain injury. The ALJ further noted that Dr. Morales' opinion was supported by the reports of Dr. Hunt and Dr. Lipton. The ALJ found that appellant suffered a mild traumatic brain injury from the September 8, 2010 accident.

The ALJ next considered whether appellant exaggerated her symptoms. He concluded that "[a]ll of [appellant's] complaints related to her physical, cognitive,

and emotional condition [were] subjective in nature . . . and not subject to verification by objective means. Nonetheless, [appellant's] complaints of cognitive impairment . . . can be compared to the results of the psychological testing." The test results showed appellant's cognitive functioning was "in the average to superior range in most areas." The ALJ concluded that appellant "exaggerated her symptoms in regard to cognitive functioning." He found appellant's complaints regarding physical and emotional functioning were not credible.

The ALJ found appellant did not satisfy the requirements for accidental disability retirement benefits. He explained that while appellant had suffered a mild traumatic brain injury,

> Dr. Lipton noted in his report, most patients who suffer a mild traumatic brain injury recover over a period of time. While some patients with mild traumatic brain injury have symptoms that persist indefinitely, [appellant] has not presented credible evidence that she falls into this category. It follows that [appellant] has not established that she is permanently and totally disabled as a result of mild traumatic brain injury. Under the circumstances, I [conclude] that [appellant] has failed to prove by a preponderance of the believable evidence that she is permanently, and totally disabled. In view of this conclusion, it is unnecessary to reach the issue of direct result.

Despite being granted an extension to do so, appellant did not file any exceptions to the ALJ's initial decision. On October 17, 2018, the Board issued a revised final administrative decision adopting the ALJ's initial decision which affirmed the Board's determination denying appellant's application for accidental disability retirement benefits. Appellant was advised that she had forty-five days to appeal the decision.

Thereafter, appellant's unopposed request to seal the record was granted by the Board. Appellant subsequently requested that the record be unsealed. The Board declined to do so.

This appeal followed. Appellant filed her initial notice of appeal on February 25, 2019, some 131 days after the Board rendered its final decision. Appellant raises the following points for our consideration:

POINT I

THE BOARD'S DECISION TO DENY [APPELLANT ACCIDENTAL DISABILITY RETIREMENT BENEFITS] WAS ARBITRARY AND CAPRICIOUS, UNSUPPORTED BY SUBSTANTIAL EVIDENCE.

POINT II

[THE] ALJ . . . MADE AN ERROR THAT LED HIM TO DENY [APPELLANT'S ACCIDENTAL] DISABILITY [RETIREMENT BENEFITS].

POINT III

THE SEALING OF [THE] RECORD ROBBED [APPELLANT] OF [HER] RIGHT TO DISCUSS [HER] PENSION CASE.

We are guided by the following well-established principles. "Our review of administrative agency action is limited." Russo v. Bd. of Trs., Police & Fireman's Ret. Sys., 206 N.J. 14, 27 (2011) (citing In re Herrmann, 192 N.J. 19, 27 (2007)). The agency's decision should be upheld "unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Ibid. (quoting Herrmann, 192 N.J. at 27-28). "The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the [party] challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006) (citations omitted).

"[A]gencies have 'expertise and superior knowledge . . . in their specialized fields." Hemsey v. Bd. of Trs., Police & Fireman's Ret. Sys., 198 N.J. 215, 223 (2009) (alteration in original) (quoting In re License Issued to Zahl, 186 N.J. 341, 353 (2006)). We therefore accord deference to the "agency's interpretation of a statute" it is charged with enforcing. Thompson v. Bd. of Trs., Teachers' Pension & Annuity Fund, 449 N.J. Super. 478, 483 (App. Div. 2017) (quoting Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 196 (2007)), aff'd o.b., 233 N.J. 232 (2018). "'Such deference has been specifically extended to state agencies that administer pension statutes,' because 'a state agency

brings experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise.'" Id. at 483 (quoting Piatt v. Police & Firemen's Ret. Sys., 443 N.J. Super. 80, 99 (App. Div. 2015)).

The factual "findings of an All 'are considered binding on appeal, when supported by adequate, substantial and credible evidence.'" Oceanside Charter Sch. v. Dept of Educ., 418 N.J. Super. 1, 9 (App. Div. 2011) (quoting In re Taylor, 158 N.J. 644, 656 (1999)). "The choice of accepting or rejecting testimony of witnesses rests with the administrative agency, and where such choice is reasonably made, it is conclusive on appeal." Ibid. (quoting In re Howard Say. Bank, 143 N.J. Super. 1, 9 (App. Div. 1976)). Deference is "especially appropriate when the evidence is largely testimonial and involves questions of credibility." In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997) (citing Bonnco Petrol, Inc. v. Epstein, 115 N.J. 599, 607 (1989)).

"A reviewing court 'may not substitute its own judgment for the agency's, even though the court might have reached a different result.'" In re Stallworth, 208 N.J. 182, 194 (2011) (quoting In re Carter, 191 N.J. 474, 483 (2007)). "This is particularly true when the issue under review is directed to the agency's special 'expertise and superior knowledge of a particular field.'" Id. at 195 (quoting Herrmann, 192 N.J. at 28).

That said, when the facts are undisputed, whether an injury occurred "'during and as a result of the

performance of regular or assigned duties' is a legal question of statutory interpretation, which we review de novo." Bowser v. Bd. of Trs., Police & Firemen's Ret. Sys., 455 N.J. Super. 165, 170-71 (App. Div. 2018). Conversely, when controlling facts are disputed, we afford deference to the Board's factual findings. Oceanside Charter Sch., 418 N.J. Super. at 9.

Like all public retirement systems, the TPAF provides for both ordinary and accidental retirement benefits. N.J.S.A. 18A:66-39. The principal difference between ordinary and accidental disability retirement "is that ordinary disability retirement need not have a work connection." Patterson v. Bd. of Trs., State Police Ret. Sys., 194 N.J. 29, 42 (2008). A TPAF member may be retired on an accidental disability pension if the 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. . . ." N.J.S.A. 18A:66-39(c); accord Kasper v. Bd. of Trs., Teachers' Pension & Annuity Fund, 164 N.J. 564, 573 (2000). Appellant must demonstrate the accident "constitutes the essential significant or the substantial contributing cause of the resultant disability." Gerba v. Bd. of Trs., Pub. Emps.' Ret. Sys., 83 N.J. 174, 188 (1980).

With these principles in mind, we consider whether the Board's decision was arbitrary, capricious, unreasonable, or unsupported by substantial credible evidence in the record.

We first note that an ALJ's factual findings of lay-witness credibility generally receive deference. See N.J.S.A. 52:14B-10(c) ("The [Board] may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless . . . the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record."). In considering that evidence, we "give 'due regard to the opportunity of the one who heard the witnesses to judge of their credibility. . . .'" Clowes v. Terminix Inn, Inc., 109 N.J. 575, 587 (1988) (quoting Close v. Kordulak Bros., 44 N.J. 589, 599 (1965)). "[I]t is not for us or the agency head to disturb that credibility determination, made after due consideration of the witnesses' testimony and demeanor during the hearing." H.K. v. State, Dept Hum. Servs., 184 N.J. 367, 384 (2005). Our deference to an ALJ's findings "extends to credibility determinations that are not explicitly enunciated if the record as a whole makes these findings clear." In re Snellbaker, 414 N.J. Super. 26, 36 (App. Div. 2010) (citations omitted).

Generally, "where the medical testimony is in conflict, greater weight should be accorded to the testimony of the treating physician" as opposed to an evaluating physician who has examined the employee on only one occasion. Bialko v. H. Baker Milk Co., 38 N.J. Super. 169, 171-72 (App. Div. 1955); accord Mernick v. Div. of Motor Vehicles, 328 N.J. Super. 512, 522 (App. Div. 2000). "Nevertheless, expert testimony need not be given greater weight than other evidence nor more weight than it would otherwise deserve in light of

common sense and experience." Torres v. Schripps, Inc., 342 N.J. Super. 419, 430 (App. Div. 2001) (citing In re Yaccarino, 117 N.J. 175, 196 (1989)). Accordingly, "[t]he factfinder may accept some of the expert's testimony and reject the rest." Id. at 430 (citing Todd v. Sheridan, 268 N.J. Super. 387, 401 (App. Div. 1993)). Moreover, "a factfinder is not bound to accept the testimony of an expert witness, even if it is unrebutted by any other evidence." Id. at 431 (citing Johnson v. Am. Homestead Mortg. Corp., 306 N.J. Super. 429, 438 (App. Div. 1997)). "Indeed, a judge is not obligated to accept an expert's opinion, even if the expert was 'impressive.'" State v. M.J.K., 369 N.J. Super. 532, 549 (App. Div. 2004) (quoting State v. Carpenter, 268 N.J. Super. 378, 383 (App. Div. 1993)).

The factfinder determines the weight accorded to expert testimony. LaBracio Family P'ship v. 1239 Roosevelt Ave., Inc., 340 N.J. Super. 155, 165 (App. Div. 2001). The factfinder is free "accept some of the expert's testimony and reject the rest." M.J.K., 369 N.J. Super. at 549; see also In re Civ. Commitment of R.F., 217 N.J. 152, 174-77 (2014).

"[T]he weight to which an expert opinion is entitled can rise no higher than the facts and reasoning upon which that opinion is predicated." State v. Jenewicz, 193 N.J. 440, 466 (2008) (quoting Johnson v. Salem Corp., 97 N.J. 78, 91 (1984)). "This is particularly true when, as here, the factfinder is confronted with directly divergent opinions expressed by the experts." M.J.K., 369 N.J. Super. at 549. The weight given to expert testimony also depends on whether the

expert's "conclusions are based largely on the subjective complaints of the patient. . . ." Angel v. Rand Express Lines, Inc., 66 N.J. Super. 77, 86 (App. Div. 1961).

The factfinder, rather than a reviewing court, "is better positioned to evaluate the witness' credibility, qualifications, and the weight to be accorded her testimony." In re Guardianship of D.M.H., 161 N.J. 365, 382 (1999) (citing Bonnco, 115 N.J. at 607). Ultimately, "[t]he choice of accepting or rejecting testimony of witnesses rests with the administrative agency, and where such choice is reasonably made, it is conclusive on appeal." Oceanside Charter Sch., 418 N.J. Super. at 9 (quoting Howard Say. Bank, 143 N.J. Super. at 9). Deference is "especially appropriate when the evidence is largely testimonial and involves questions of credibility." J.W.D., 149 N.J. at 117. Here, the evidence largely consisted of conflicting expert testimony and appellant's subjective symptoms, which required the factfinder to determine the credibility of the witnesses and the weight to accord to their testimony.

Our careful review of the record reveals that the ALJ's findings and conclusions, which the Board adopted, are supported by substantial credible evidence in the record and that the Board's decision was not arbitrary, capricious, or unreasonable. Accordingly, we discern no basis to overturn the Board's determination that appellant was ineligible for accidental disability retirement benefits. See In re Young, 202 N.J. 50, 71 (2010) (upholding an agency decision where

substantial credible evidence in the record supported the agency's findings.).

Appellant's remaining arguments lack sufficient merit to warrant extended discussion in this opinion. R. 2:11-3(e)(1)(E). Appeals from final decisions of state administrative agencies must be filed "within [forty-five] days from the date of service of the decision or notice of the action taken." R. 2:4-1(b). The request to seal the record and order granting same did not extend the forty-five-day period to file this appeal from the Board's final decision denying her application for accidental disability retirement benefits. Appellant did not move to file the appeal as within time. Thus, her appeal was untimely and was vulnerable to dismissal on that basis. We have nevertheless addressed the merits of her appeal as the Board did not move to dismiss the appeal as untimely.

Appellant argues that sealing the administrative record deprives her of her First Amendment right to discuss her pension case. We reiterate that appellant initially requested that the administrative record be sealed. The sealing order, it bears noting, prevents public disclosure of the evidence in the record to protect appellant's privacy interests. It does not preclude her from discussing the case.

The administrative record is replete with testimony and reports discussing appellant's psychiatric symptoms and diagnoses, neuropsychological test results, and related facts. N.J.A.C. 1:1-14.1(b) recognizes

"the need to . . . protect parties and witnesses from undue embarrassment or deprivation of privacy. . . ." We discern no abuse of discretion by the ALJ or the Board.

Affirmed.

APPENDIX B

FILED, Clerk of the Supreme Court, 13 Sep 2022, 086353

SUPREME COURT OF
NEW JERSEY
C-10 September Term 2022
086353

J.M.F.,

Petitioner-Petitioner,

v. ORDER

Department of Treasury,
Division of Pensions and
Benefits,

Respondent-Respondent.

A petition for certification of the judgment in A-002658-18 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 7th day of September, 2022.

/s/ Heather J. Baker
CLERK OF THE
SUPREME COURT

APPENDIX C

FILED, Clerk of the Supreme Court, 13 Jan 2023, **086353**

SUPREME COURT OF NEW JERSEY
M-350 September Term 2022
086353

J.M.F.,

Petitioner-Movant,

v. ORDER

Department of Treasury, Division of Pensions and Benefits,

Respondent.

It is ORDERED that the motion for reconsideration of the Court's order denying the petition for certification is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 10th day of January, 2023.

/s/ Heather Baker
CLERK OF THE
SUPREME COURT

APPENDIX D

<table>
<tr><td>[SEAL]</td><td colspan="5">New Jersey Judiciary
Superior Court – Appellate Division
Notice of Appeal</td></tr>
<tr><td colspan="6">Type or clearly print all information. Attach additional sheets if necessary.</td></tr>
<tr><td colspan="2" rowspan="4">(1) Title in Full (As Captioned Below)

Julia M. Fernandez vs. TPAF</td><td colspan="4">(2) Attorney/Law Firm/Pro Se Litigant
Name
Julia M. Fernandez</td></tr>
<tr><td colspan="4">Street Address
146 B Ferry Street # 1172</td></tr>
<tr><td>City
Newark</td><td>State
NJ</td><td>Zip
07105</td><td>Telephone Number
(201) 558-0443</td></tr>
<tr><td colspan="4">Email Address:
julinadejesus@yahoo.com</td></tr>
<tr><td colspan="6">On Appeal from</td></tr>
<tr><td colspan="2">(3) Trial Court Judge</td><td colspan="2">[(4)] Trial Court or State Agency
✓</td><td colspan="2">(5) Trial Court or Agency Number</td></tr>
<tr><td colspan="6">Notice is hereby given that (6) Julia M. Fernandez, appeals to the Appellate Division from a (7) ☐ Judgment or ☐ Order entered on _____, in the (select one) ☐ Civil, ☐ Criminal, or ☐ Family Part of the Superior Court ☐ Tax Court or from a ☑ State Agency decision entered on January 24, 2019.

(8) If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.

(9) Have all issues, as to all parties in this action, before the trial court or ☑ Yes ☐ No</td></tr>
</table>

agency been disposed of?
(In consolidated actions, all issues as to all parties in all actions must have been disposed of.)

If not, has the order been properly certified as final pursuant to *R.* 4:42-2? ☐ Yes ☐ No

For criminal, quasi-criminal and juvenile actions only:

(10A) Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

(10B) This appeal is from a ☐ conviction ☐ post judgment motion ☐ post-conviction relief.

If post-conviction relief, is it the ☐ 1st ☐ 2nd ☐ other _____
specify

(10C) Is defendant incarcerated? ☐ Yes ☐ No

Was bail granted or the sentence or disposition stayed? ☐ Yes ☐ No

(10D) If in custody, name the place of confinement:

Defendant was represented below by:
☐ Public Defender ☐ self
☐ private counsel _____
specify

FILED, Clerk of the Appellate Division. February 11, 2020. **A-002658-18, M-004018-19**

ORDER ON MOTION

JULIA FERANDEZ V. DEPARTMENT OF THE TREASURY, DIVISION OF PENSION AND BENEFITS	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-002658-18T1 MOTION NO. M-004018-19
	BEFORE JUDGE(S): PART F CLARKSON S. FISHER JR. LISA ROSE
MOTION FILED: 01/27/2020	BY: JULIA FERNANDEZ
ANSWER(S) FILED:	

SUBMITTED TO COURT: February 10, 2020

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS 10th day of February, 2020, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION FOR RECONSIDERATION DENIED AND OTHER

SUPPLEMENTAL:

The earlier motion sought documents outside the administrative record because this appeal is limited to the Board's 2019 denial of appellant's request to unseal the record of the 2018 disability proceeding.

FOR THE COURT:

/s/ Clarkson S. Fisher Jr.
CLARKSON S. FISHER JR.,
P.J.A.D.

TPAF # 1-500160 STATEWIDE
ORDER – REGULAR MOTION
JAG

FILED, Clerk of the Appellate Division. March 30, 2020. **A-002658-18, M-004968-19**

ORDER ON MOTION

JULIA FERANDEZ V. DEPARTMENT OF THE TREASURY, DIVISION OF PENSION AND BENEFITS	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-002658-18T2 MOTION NO. M-004968-19 BEFORE JUDGE(S): PART F CLARKSON S. FISHER JR. LISA ROSE
MOTION FILED: 02/28/2020	BY: JULIA FERNANDEZ
ANSWER(S) FILED:	

SUBMITTED TO COURT: March 19, 2020

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS 28th day of March, 2020, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION FOR CLARIFICATION	GRANTED AND OTHER

SUPPLEMENTAL:

The motion for clarification is granted.

Having considered appellant's arguments and upon further review of our prior orders, we grant the following relief. First, we observe that the February 10, 2020 order denied reconsideration of an earlier order – entered on January 14, 2020 – that denied appellant's motion to settle the record. In denying reconsideration, we stated in our February 10, 2020 order that the motion to settle the record was denied because appellant sought documents "outside the administrative record" and "this appeal is limited to the Board's 2019 denial of appellant's request to unseal the record of the 2018 disability proceeding." Upon further reflection, we vacate the February 10, 2020 order because the scope and timeliness of any attempt by appellant to seek relief of the decision emanating from this 2018 disability proceeding is not so clear to be amenable to disposition by motion. Appellant may present in her merits brief any arguments she may have about the 2018 disability proceeding and the decision rendered at that time; such arguments, however, may be presented without prejudice to respondent's right to argue that appellant's appeal of that decision is untimely or otherwise without merit. The ultimate disposition of any arguments about the appeal of the 2018 decision, including its timelines, are to be decided by the merits panel.

In light of this determination, we not only vacate the February 10, 2020 order but also vacate that part of the January 14, 2020 order that denied appellant's

motion to settle the record. Appellant may move again for such relief.

SO ORDERED.

FOR THE COURT:

/s/ Clarkson S. Fisher Jr.
CLARKSON S. FISHER JR.,
P.J.A.D.

TPAF # 1-500160 STATEWIDE
ORDER – REGULAR MOTION
JAG

ORDER ON MOTION

JULIA FERANDEZ V. DEPARTMENT OF THE TREASURY, DIVISION OF PENSION AND BENEFITS	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-002658-18T2 MOTION NO. M-004968-19 BEFORE JUDGE(S): PART F CLARKSON S. FISHER JR. SCOTT J. MOYNIHAN
MOTION FILED: 04/29/2020	BY: JULIA FERNANDEZ
ANSWER(S) FILED: 08/26/2020	BY: DEPARTMENT OF THE TREASURY, DIVISION OF PENSIONS AND BENEFITS

SUBMITTED TO COURT: October 01, 2020

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS 2nd day of October, 2020, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION TO SUPPLEMENT THE RECORD	DENIED
MOTION TO EXTEND TIME TO FILE	

APPELLANT'S BRIEF GRANTED AND OTHER

SUPPLEMENTAL:

The brief must be filed no later than 30 days from today's date.

FOR THE COURT:

/s/ Clarkson S. Fisher Jr.
CLARKSON S. FISHER JR.,
P.J.A.D.

TPAF # 1-500160 STATEWIDE
ORDER – REGULAR MOTION
JAG

FILED, Clerk of the Appellate Division. December 01, 2020. **A-002658-18, M-001225-20**

ORDER ON MOTION

JULIA FERANDEZ V. DEPARTMENT OF THE TREASURY, DIVISION OF PENSION AND BENEFITS	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-002658-18T2 MOTION NO. M-001225-20 BEFORE JUDGE(S): PART E CARMEN MESSANO
MOTION FILED: 10/29/2020	BY: JULIA FERNANDEZ
ANSWER(S) FILED:	

SUBMITTED TO COURT: November 25, 2020

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS 1st day of December, 2020, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION TO EXTEND TIME TO FILE APPELLANT'S BRIEF FOR A MONTH OR TWO GRANTED

SUPPLEMENTAL:

The brief shall be filed by January 4, 2021. If a conforming brief is not filed by that date, the appeal shall be dismissed on the court's motion and without further notice.

FOR THE COURT:

/s/ Carmen Messano
CARMEN MESSANO, P.J.A.D.

TPAF # 1-500160 STATEWIDE
ORDER – REGULAR MOTION
JAG

APPENDIX E

Julia Maria Fernandez
Newark, NJ 07105
Email: juliamaria@mail.com
(201) 558-0443

Chief Justice Stuart Rabner
R.J. Hughes Justice Complex
Supreme Court Clerk's Office
P.O. Box 970
Trenton, NJ 08625

March 16, 2020

RE: Possible Case of Obstruction of Justice by the Board of Trustees, TPAF at the Appellate Court. Pro se Appellant/Docket NO. A-2658-18 T2

Dear Chief Justice Rabner and Justices of the Supreme Court,

Because I have heard that you deeply care about justice, and specifically about justice for pro se appellants, I am writing to ask for your help with the grave problems I am having at the Appellate Division, where I am being denied my right to appeal my disability pension matter and where I have reason to believe that my case manager and others are doing things prejudicial to my case in collaboration with the Board of Trustees, TPAF.

Before I explain that situation, Your Honors, I will give you important background information concerning the Board.

Julia Maria Fernandez
146B Ferry Street, #1172
Newark, NJ 07105
Email: juliamaria@mail.com
(201) 558-0443

Chief Justice Stuart Rabner
R.J. Hughes Justice Complex
Supreme Court Clerk's Office
P.O. Box 970
Trenton, NJ 08625

January 20, 2021

RE: Docket NO. A-2658-18 T2
Possible Obstruction of Justice at the Appellate Court.

Dear Chief Justice Rabner and Supreme Court Justices,

I am a pro se appellant and my disability pension appeal is presently being decided by the Appellate Court.

Last March I wrote you a letter making you aware of the fact that obstruction of justice had taken place at my OAL trial and that I had reason to believe it continued at the Appellate Court. Since then, other things have happened which have reinforced this belief.

Firstly, my Motion to Supplement the Record was denied despite my having explained in my motion brief how my due process rights had

* * *

SUPREME COURT OF NEW JERSEY

HEATHER JOY BAKER
CLERK
GAIL GRUNDITZ HANEY
DEPUTY CLERK

[SEAL]

OFFICE OF THE CLERK
PO BOX 970
TRENTON, NEW JERSEY
08625-0970

October 27, 2020

Julia Maria Fernandez
146B Ferry Street, #1172
Newark, NJ 07105

RE: Letter(s) sent to the Supreme Court

Dear Ms. Fernandez:

This is in response to your correspondence sent to the Supreme Court on 3/18/20 & 3/23/20. Please be advised that members of the Supreme Court and Judiciary staff cannot intercede in a matter on a litigant's behalf and cannot provide legal advice to litigants.

Judiciary records indicate that you currently have a pending matter in the Superior Court, Appellate Division: **JULIA FERNANDEZ V. DEPARTMENT OF THE TREASURY, DIVISION OF PENSION AND BENEFITS, A-2658-18.**

Rule 2:12-3(a) provides for petitions to the Supreme Court from final judgments of the Appellate Division. Because final judgment has not been entered by the Appellate Division, there is no basis to petition the Supreme Court at this time. After an appeal is concluded and depending on the outcome, you may then seek review by the Supreme Court by filing the appropriate application. Information on filing papers with

the Court is contained in the enclosed *Guide to Filing for Litigants without Lawyers.*

Finally, if you have not already done so, you may wish to contact a lawyer. If you cannot afford an attorney, you may contact Legal Services of New Jersey at 1-888-576-5529 (www.lsnj.org) to determine your eligibility for possible representation by that organization.

Thank you,
Supreme Court Clerk's Office

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON JUDICIAL CONDUCT

[SEAL]

MAILING ADDRESS
THE ACJC
PO BOX 037
TRENTON, NEW JERSEY
08625-0037

PRINCIPAL OFFICE:
RICHARD J. HUGHES
JUSTICE COMPLEX
TRENTON, NEW JERSEY
(609) 815-2900
EXT. 51910
CANDACE MOODY,
EXECUTIVE DIRECTOR/
COUNSEL
DANIEL BURNS,
ASSISTANT COUNSEL
LOUIS H. TARANTO,
CHIEF INVESTIGATOR

Confidential

February 22, 2023

Julia M. Fernandez
442 5th Avenue, #1596
Manhattan, N.Y. 10018

Re: ACJC 2022-311
(Chief Justice Stuart Rabner)

Dear Julia Fernandez:

The Advisory Committee on Judicial Conduct (the "Committee") has completed its review of this matter, which was re-initiated in response to your signed

complaint letter received by our office on November 9, 2022, and has directed me to inform you of its decision.

Based on the information you provided, including your prior submission, the Committee has found no basis for a charge of improper judicial conduct and will not be instituting formal disciplinary proceedings in this matter.

Under the circumstances, the Committee has closed its file in this matter.

Very truly yours,

Daniel J. Burns

APPENDIX F

[SEAL]

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO BOX 106
TRENTON, NJ 08625-0106

PHILIP D. MURPHY
Governor

GURBIR S. GREWAL
Attorney General

SHEILA Y. OLIVER
Lt. Governor

MICHELLE L. MILLER
Director

March 3, 2021

BY HAND
Joseph H. Orlando, Clerk
Superior Court of New Jersey – Appellate Division
R.J. Hughes Justice Complex
PO Box 006
Trenton, NJ 08625-0006

Re: Julia Maria Fernandez v. Department of the Treasury, Division of Pensions and Benefits
Docket No. A-002658-18T2

On Appeal from a Final Administrative Determination of the Board of Trustees, Teachers' Pension & Annuity Fund

Letter Brief of Respondent, Board of Trustees, Teachers' Pension & Annuity Fund on the Merits of the Appeal

Dear Mr. Orlando:

Please accept this letter brief on behalf of Respondent, Board of Trustees, Teachers' Pension & Annuity Fund (improperly captioned as Department of the Treasury, Division of Pensions and Benefits) in this appeal.

[2] **TABLE OF CONTENTS**

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS[1]

Appellant Julia Fernandez, a former teacher in the West New York School District, appeals the Board's 2019 denial of her request to unseal her administrative record; she also is attempting to pursue an untimely appeal of the Board's 2018 denial of accidental disability retirement benefits.

[3] Fernandez applied for accidental disability retirement benefits on November 24, 2012; on her appeal of the Board's denial, the case was transmitted to the Office of Administrative Law (where it was filed under Docket No. TYP 01684-14), hearings were held, and the record was closed on March 29, 2018. Pa73-97.[2] On August 9, 2018, Administrative Law Judge Richard McGill (retired, on recall) issued an initial decision recommending denial of Fernandez's application for accidental disability retirement benefits. Pa73-97. ALJ McGill found that (1) Fernandez "exaggerated her complaints in regard to her cognitive functioning," (2) Dr. Richard Filippone, the Board's expert, "gave credible testimony to the effect that [Fernandez] exaggerated her complaints," and (3) Fernandez's "testimony and demeanor gave the impression that she was exaggerating her symptoms." Pa93. On October 12, 2018, Fernandez requested that the Board Secretary "remand

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[1] Because the procedural history and facts are closely related, they are combined for efficiency and the court's convenience.

[2] "Pa" refers to Fernandez's appendix; "Pb" refers to her brief.

[her] case to the [OAL] so that [her] record can be closed and no longer be a public record that people can access." Pa98. On October 17, 2018, the Board adopted ALJ McGill's initial decision. Pa72. The Board's denial letter specified that it was a "final administrative determination" and that Fernandez had 45 days (or until December 3, 2018) to appeal. Pa72.

[4] On November 16, 2018, Fernandez noted in an email to the Board Secretary that the deadline to appeal [the denial of accidental disability retirement benefits] is fast approaching"; the Board Secretary promptly informed Fernandez that "the only issue which remains outstanding before the Board" was Fernandez's sealing request and that she would have 45 days after the Board issued a final administrative determination following the issuance of "a second Initial Decision" to appeal this determination. Pa126.

On November 27, 2018, the OAL notified Fernandez that the sealing request had been filed under Docket No. TYP 16888-2018 N. Pa99. On November 30, 2018, Administrative Law Judge JoAnn LaSala Candido issued an initial decision granting Fernandez's sealing request. Pa103-06. Fernandez then requested that the sealing order, which she understood to "prohibit [her] from talking about [the] pension denial whenever [she] felt it was necessary or helpful to [her]," be reversed. Pa107-08.[3] On January 24, 2019, [5]

[3] The ALJ's order does not prohibit Fernandez from talking about the Board's denial of accidental disability retirement benefits; it instead sealed "the entire record in this matter including all evidence, the stenographic notes or audiotape, and the Initial

the Board denied this request in a second final administrative determination. Pa109.

On February 25, 2019, Fernandez appealed the 2019 final administrative determination, which she characterized as an adoption of "A.L.J. Richard McGill's [2018] decision to deny [her] disability pension and A.L.J. LaSala Candido's [2018] order to seal [her] record." Pa111-12. The Board's statement of items comprising the record on appeal listed six documents relating to Fernandez's requests to seal and then unseal the record of the 2018 disability retirement proceeding. Pa72; Pa98; Pa100; Pa103; Pa107; Pa109. Fernandez then moved to "settle the record" in this appeal with documents related to the 2018 disability proceeding. Pa139. This motion was denied on February 10, 2020. Pa157.

Fernandez followed by filing a motion for clarification, which was granted on March 28, 2020. Pa142; Pa158. In doing so, this court vacated its order of February 10, 2020, which allowed Fernandez to file a motion to supplement the record with documents concerning her alleged mental disability on April 28, 2020. Pa143; Pa158.[4] However, this motion was denied

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Decision" and prohibits her from "disclos[ing] or permit[ting] access to the record or any portion thereof, the evidence or any information contained within the evidence, or the Initial Decision." Pa101. In other words, the documents in the record are sealed, but the information contained within those documents is not.

[4] This court noted that "the scope and timeliness of any attempt by [Fernandez] to seek relief of the decision emanating

on October 2, 2020. Pa160. [6] Another motion for clarification filed by Fernandez on October 20, 2020 was denied as well. Pa154.

ARGUMENT

POINT I

THE BOARD'S DENIAL OF FERNANDEZ'S REQUEST TO UNSEAL HER ADMINISTRATIVE RECORD IS REASONABLE AND SHOULD BE AFFIRMED.

On judicial review of an administrative agency's determination, courts have but a limited role to perform. Gerba v. Bd. of Trs., Pub. Emps.' Ret. Sys., 83 N.J. 174, 189 (1980) (citations omitted). An administrative agency's determination is presumptively correct, and on review of the facts, a court will not substitute its own judgment for that of an agency where the agency's findings are supported by sufficient credible evidence. Ibid.; see also Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). "If the Appellate Division is satisfied after its review that the evidence and the inferences to be drawn therefrom support the agency head's decision, then it must affirm even if the court feels that it would have reached a different result." Ibid. (quotation omitted).

Only where an agency's decision is clearly unreasonable or unsupported by sufficient credible evidence

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from the 2018 disability proceeding is not so clear as to be amenable to disposition by motion." Pa158-59.

in the record may it be reversed. Henry v. Rahway State Prison, 81 N.J. 571, 57980 (1980); Atkinson, 37 N.J. at 149. Moreover, the party [7] challenging the validity of the administrative decision bears the burden of showing that it was "arbitrary, unreasonable or capricious." Boyle v. Riti, 175 N.J. Super. 158, 166 (App. Div. 1980) (internal citations omitted).

The sole issue before this court is whether the Board reasonably denied Fernandez's request to unseal her administrative record. Fernandez acknowledges that she originally requested the sealing of her administrative record in October 2018, stating that she followed "the Board's advice" but was "unaware that it would forever prohibit [her] from discussing [her] pension case." Pa71-72; Pa98; Pb52-53. Fernandez's contentions are both irrelevant and incorrect. It is not the Board's function to provide legal "advice" to applicants such as Fernandez.[5] The Board provided no such advice here and was simply being helpful when it "noted [Fernandez's] concern regarding public access to the record in this matter." Pa71-72. The Board informed (not advised) Fernandez that she "may request in writing to remand the matter to the Office of Administrative Law so that [her] record can be closed." Ibid. Informing Fernandez that she "may" request that her record be closed cannot possibly he construed as legal "advice."

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[5] Fernandez's brief is filled with instances where she feels that she was entitled to legal advice. See Pb53; Pb55. This has contributed to Fernandez's unilateral misunderstandings and misgivings throughout the appeal process.

[8] Once Fernandez's administrative record was sealed, at her request, she backtracked and requested that the sealing order be reversed. Pa98-108. This was because she mistakenly understood, and still understands, the order to forever prohibit her from discussing her pension case. Pa107-08; Pb52-53. The sealing order does not prohibit Fernandez from talking about the Board's denial of accidental disability retirement benefits; it instead sealed the documentary record. Pa101. Given that backdrop, and seeking finality in this matter, the Board reasonably denied Fernandez's request in its 2019 final administrative determination, which should be affirmed.

POINT II

FERNANDEZ'S PURPORTED APPEAL OF THE BOARD'S 2018 DENIAL OF ACCIDENTAL DISABILITY RETIREMENT BENEFITS WAS UNTIMELY.

Rule 2:4-1(b) requires that appeals from final decisions of state administrative agencies be taken within 45 days from the date of service of the decision or notice of the action taken. Ibid. In this case, Fernandez filed her notice of appeal on February 25, 2019. Pa111-12; Pbl. The Board's final administrative determination regarding her application for accidental disability retirement benefits was dated October 17, 2018, or 131 days prior to Fernandez's notice of appeal. Pa72. The final administrative determination even specified that she had [9] 45 days (or until December 3, 2018) to

appeal. Ibid. Fernandez thus did not timely appeal the Board's 2018 denial.

Fernandez contends that she "was told by the Board's secretary that the 45 days to appeal [the 2018 denial of accidental disability retirement benefits] decision would NOT start running until the matter of the sealing of [her] record had been decided." Pb1. This is legally and factually wrong. The Board Secretary lacks the authority to extend the appeal deadline, which is specified in Rule 2:4-1. Moreover, Fernandez conflates two OAL cases (the accidental disability retirement denial and the sealing request, which were separately docketed) and misrepresents what was stated to her. The emails make perfectly clear that the only issue remaining before the Board, as of November 2018, was whether or not the administrative record should be sealed. Pa126. The email went on to specify that "[o]nce the OAL issues a second Initial Decision, the Board will issue a final administrative determination, from which you will have 45 days to appeal." Ibid. Thus, the only potential appeal at issue in this correspondence was concerning the sealing of the administrative record. As promised in the email, the Board issued its final administrative determination on January 24, 2019. Pa109. Fernandez filed her notice of appeal on February 25, 2019, which was timely, but only as it pertained to the sealing of her record. Pa111-12; Pb1. The [10] Board's 2018 denial of accidental disability retirement benefits thus is not before this court.

POINT III

EVEN IF FERNANDEZ HAD TIMELY APPEALED THE BOARD'S 2018 DENIAL OF ACCIDENTAL DISABILITY RETIREMENT BENEFITS, THE DENIAL IS REASONABLE AND SUPPORTED BY SUFFICIENT CREDIBLE EVIDENCE.

Under N.J.S.A. 18A:66-39, a member of TPAF is eligible for accidental disability retirement benefits only if the member is permanently and totally disabled as a direct result of a traumatic event. Ibid. The burden is on the applicant to show, via expert evidence, that the disabling condition is total and permanent, and occurred as a direct result of a traumatic event. Patterson v. Bd. of Trs., State Police Ret. Sys., 194 N.J. 29, 42 (2008); Atkinson v. Parsekian, 37 N.J. 43, 49 (1962).

This court is "obliged to accept" factual findings that "are supported by sufficient credible evidence." Brady v. Bd. of Review, 152 N.J. 197, 210 (1997) (quotation omitted). "[T]he test is not whether [this] 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." Ibid. (quotation omitted). As the person challenging the Board's decision, Fernandez would bear the burden of proving – in a timely appeal – that the decision is unreasonable and unsupported by [11] sufficient credible evidence. McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002).

The Board's 2018 denial is supported by the evidence and the law. The Board reasonably adopted ALJ McGill's initial decision finding the Board's expert, Dr. Filippone, to be credible in his testimony that Fernandez "exaggerated her complaints." Pa93. After two days of live hearings, the ALJ made note that Fernandez's "testimony and demeanor gave the impression that she was exaggerating her symptoms." Ibid. These factual findings should not be disturbed simply because Fernandez is unsatisfied with the result; rather, this court should defer to the Board's expertise and finding, based on Dr. Filippone's reliable opinion, that Fernandez is not permanently and totally disabled.

To the extent that Fernandez relies upon documents that are outside the record on appeal, see Pal-63; Pa133-37; Pa165, the court should disregard them. The Board's statement of items comprising the record on appeal lists six documents, none of which are related to the 2018 final administrative determination concerning Fernandez's accidental disability retirement. Pa122- 23. Furthermore, on October 2, 2020, this court denied Fernandez's motion to supplement the record with documents concerning her alleged mental disability. Pa143; Pa160. Instead of adhering to the order, Fernandez has crafted a 40-page argument re-litigating [12] her accidental disability matter based upon these records. Pb11-51. Ihis court should disregard both Fernandez's briefing and the underlying documents.

CONCLUSION

For these reasons, the Board's denial of Fernandez's request to unseal her administrative record should be affirmed, and Fernandez's appeal of the Board's denial of accidental disability retirement benefits should be deemed untimely.

Respectfully submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL
OF NEW JERSEY

By: /s/ Connor V. Martin
Connor V. Martin
Deputy Attorney General
NJ ID: 279792019

Melissa H. Raksa
Assistant Attorney General
Of Counsel

cc: Julia Fernandez, Pro Se (via overnight mail)

APPENDIX G

RE: [EXTERNAL] Filing a Motion to Stay

From: Scales, Angelina (Angelina.Scales@treas.nj.gov)
To: julinadejesus@yahoo.com
Cc: Sharon.Barnes@treas.nj.gov
Date: Friday, November 16, 2018, 03:22 PM EST

Dear Ms. Fernandez:

In response to your question regarding your time to appeal, please note that, at your request, the Board remanded this matter to the OAL to determine whether to seal the record pursuant to N.J.A.C. 1:1-14.1. This is the only issue which remains outstanding before the Board. Accordingly, the Board has not yet made a final determination on your matter. Once the OAL issues a second Initial Decision, the Board will issue a final administrative determination, from which you will have 45 days to day appeal.

Angelina Scales

Division of Pensions and Benefits

Office of Board and Trustee Administration

RE: [EXTERNAL] VERY URGENT QUESTION

From: Barnes, Sharon (Sharon.Barnes@treas.nj.gov)

To: julinadejesus@yahoo.com

Date: Thursday, January 24, 2019, 0220 PM EST

Ms. Fernandez:

I will try to help you best I can.

Please send your appeal letter on your disability and any other issues pertaining to your case to:

The Appellate Court – You only have 45 days.

They need to receive it as soon as possible. Not us.

The address is Superior Court of NJ-Appellate Division

FW: [EXTERNAL] Deadline to Appeal

From: Barnes, Sharon (Sharon.Barnes@treas.nj.gov)
To: julinadejesus@yahoo.com
Cc: Angelina.Scales@treas.nj.gov
Date: Tuesday, November 20, 2018, 02:40 PM EST

Ms. Fernandez:

Here is the response to your questions below. If you have any other questions Angie will be back in the office on Monday.

You are correct you can appeal after we get the decision back from the OAL.

Thank you.

Sharon Barnes
Assistant Board Secretary

From: Ignatowitz, Jeff
Sent: Tuesday, November 20, 2018 2:34 PM
To: Barnes, Sharon <Sharon.Barnes@treas.nj.gov>
Cc: Scales, Angelina <Angelina.Scales@treas.nj.gov>
Subject: RE: [EXTERNAL] Deadline to Appeal

You can confirm that she is correct in all respects. Her time to appeal will not run until we get the decision back from the OAL. We will advise her in writing when we receive the decision as well as her time frame to appeal.

RE: [EXTERNAL] Question About October 2018 Oral Arguments

From: Scales, Angelina (Angelina.Scales@treas.nj.gov)

To: julinadejesus@yahoo.com; Sharon.Barnes@treas.nj.gov

Date: Tuesday, April 2, 2019, 09:37 AM EDT

Ms. Fernandez:

In response to your question regarding the transcripts of the oral arguments presented by Deputy Attorney General Juliana DeAngelis and yourself last October before the Board of Trustees. There are no recordings or transcriptions of the meetings. The basis of the Board's determination is noted in the Board decision letter of October 4, 2018.

The reason the attendees were asked to leave the room – When necessary, the Board shall adopt Resolution A to go into closed session to consider individuals' disability applications, which states:

In accordance with the provisions of the Open Public Meetings Act, N.J.S.A. 10:4-13, be it resolved that the Board of Trustees go into closed session for purposes of discussing matters pertaining to disability retirement which involves material involving personal medical and health records, data, reports and recommendations

relating to specific individuals, pursuant to N.J.S.A. 10:4-12(3). Those matters are confidential unless expressly waived by the individual involved.

You may request a copy of your public record by completing an Open Public Records Act (OPRA) request. The link can be found on the Division of Pensions and Benefits homepage at https://www.state.nj.us/treasury/pensions/

On the bottom left of the web page, click on the OPRA/Open Public Records Act.

Lastly, I will forward a copy of your email to Ms. McManus' to address your inquiry dated February 21, 2019.

Thank you.

Angelina Scales

Division of Pensions and Benefits

Office of Board and Trustee Administration

PO Box 295

Trenton, NJ 08625-0295

Phone: 609-292-2865

Angelina.Scales@treas.nj.gov

From: Julia Fernandez [mailto:julinadejesus@yahoo.com]
Sent: Sunday, March 31, 2019 1:09 PM
To: Scales, Angelina <Angelina.Scales@treas.nj.gov>; Barnes, Sharon <Sharon.Barnes@treas.nj.gov>
Subject: [EXTERNAL] Question About October 2018 Oral Arguments

Hello again Ms Scales,

I would also appreciate it if you could please explain to me the reason why last October during my oral arguments to the Board the people sitting in the back were ordered out of the room after I started talking.

This will help me better understand my pension appeal. Thank you!

Sincerely,

Julia Maria Fernandez

APPENDIX H

Sent: Monday, October 22, 2018 at 2:39 PM
From: "Psenicska, Megan" <Megan.Psenicska@imxmed.com>
To: "'juliamaria@mail.com'" <juliamaria@mail.com>
Subject: RE: Richard A. Filippone

Good Morning Julia,

We have received this complaint as well as your previous documentation. This information has been to your claim adjuster with the State of NJ – Pension and Benefits, Valerie McManus who has advised that they will be handling this within their office. Please feel free to contact their office with any further information.

----- Forwarded Message -----

From: McManus, Valerie <Valerie.McManus@treas.nj.gov>
To: Scales, Angelina <Angelina.Scales@treas.nj.gov>; julinadejesus@yahoo.com <julinadejesus@yahoo.com>
Sent: Friday, April 5, 2019 05:05:28 PM CEST
Subject: RE: [EXTERNAL] Ms McManus

Ms. Fernandez,

I contacted our vendor; IMX and they have not nor plan to conduct an investigation.

Sincerely,

Val McManus

Sent: Monday, April 08, 2019 at 9:18 PM
From: "McManus, Valerie" <Valerie.McManus@treas.nj.gov>
To: "Julia Maria Fernandez" <juliamaria@mail.com>
Cc: "Psenicska, Megan" <Megan.Psenicska@imxmed.com>, "Gerlach, Virginia (Virginia.Gerlach@imxmed.com)" <Virginia.Gerlach@imxmed.com>, "Scales, Angelina" <Angelina.Scales@treas.nj.gov>, "Barnes, Sharon" <Sharon.Barnes@treas.nj.gov>
Subject: RE: [EXTERNAL] Email Sent to IMX Medical Management Services

Ms. Fernandez, when a complaint is received, is has always been our procedure to have IMX consult with the doctor with whom the complaint is about. That was done to my understanding some time ago.

An investigation was not ever called for and therefore not initiated.

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MAIL.COM

RE: [EXTERNAL] Your Silence

From: "Applegate, Clair" <Clair.Applegate@oal.nj.gov>

To: "Julia Maria Fernandez" <juliamaria@mail.com>

Date: May 29, 2019 12:18:28 PM

Good Morning Ms. Fernandez,

Our office no longer has jurisdiction in this matter.

There will be no further response on any future emails sent to this agency.

From: Julia Maria Fernandez <juliamaria@mail.com>
Sent: Wednesday, May 29, 2019 12:30 AM
To: Applegate, Clair <Clair.Applegate@oal.nj.gov>
Subject: [EXTERNAL] Your Silence

Dear Ms Applegate,

I have written you several times in the last few weeks with questions regarding the sealing of records and have not heard back from you.

Since you had always responded to my earlier messages, I have to wonder what has happened to cause you to no longer reply to me.

I would appreciate it if you could let me know. Assuming, of course, that is something you can share with me. Thank you!

Sincerely,

Julia Maria Fernandez

APPENDIX I

PRELIMINARY STATEMENT

To the Appellate Judges assigned to my case,

In this appeal you will need to decide three related matters. First, whether or not I filed my NOA late on my disability pension denial, as the Board of Trustees, TPAF wrongly claims. Secondly, whether such pension denial by the Board was in accordance with the law and the evidence. And thirdly, whether to grant my request to unseal my record.

In this brief I will prove that I did file my NOA on time on the issue of my pension and that I, therefore, have a right to such appeal. I will prove that the Board's decision to deny my pension was arbitrary and capricious and unsupported by the evidence. And finally, I will lay out the reasons why my record should be unsealed.

As for the first matter, the filing of my NOA, I will say this: Following the Board's October 4, 2018 Denial of my disability pension, I was told by the Board's secretary that the 45 days to appeal such decision would NOT start running until the matter of the sealing of my record had been decided. Such decision was made on January 29, 2019 and I filed my NOA on February 25. Therefore, I filed my NOA in a timely manner and have a right to my pension appeal.

LEGAL POINTS

I. THE BOARD'S DECISION TO DENY MY PENSION WAS ARBITRARY AND CAPRICIOUS, UNSUPPORTED BY SUBSTANTIAL EVIDENCE. (Raised Below: Pa66-Pa72)

According to case law, the Appellate Court will reverse an agency's decision if it is arbitrary and capricious or unreasonable: Brady Vs. Bd of Review 152 N.J 197 210-211 (1997; Henry V Rathway State Prison 81 NJ 571, 579-80 (1980); Greenwood v Sate Police Training Ctr 127, NJ 500, 513 (1992.)

The Board's decision will be reversed if "there is a clear showing that (1) the agency did not follow the law;(2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence." In re Application of Virtua-West Jersey Hosp. for a Certificate of Need, 194 N.J. 413, 422 (2008); Close v. Kordulak Bros., 44 N.J. 589, 599, 210 A.2d 753 (1965) A.2d 192 (App.Div.2001) 126 (citing G.S. v. Dep't of Human Servs., 157 N.J. 161, 170, 723 A.2d 612 (1999)).

The Paterson Court stated: "we are not bound by the agency's legal opinions." Levine v. State, Dep't of Transp., 338 N.J. Super. 28, 32, 768.

According to N.J.S.A. 18A:66-39(c) a member of TPAF is eligible for AD if she is permanently and totally disabled as a direct result of a traumatic event. The requirements for what constitutes such event were set forth by the NJ Supreme Court in Richardson

v. Board of Trustees, Police and Firemen's Retirement System, 192 N.J. 189 (2007).

The Board of Trustees, TPAF asserts that I have failed to prove I am totally and permanently disabled from teaching and that my "alleged" disabling condition was caused by the 2010 blow to my head (Pa66-Pa72). The Board is wrong on both counts. I have proven both by a Preponderance of the Evidence.

The Board's 2013 original decisions to deny my disability pension before my appeal was transferred to the OAL were based on the numerous lies their expert, neuropsychologist Richard A. Filippone, wrote in his written reports (Pa44-Pa62). I will explain both arguments in detail.

I have proven my disability by a Preponderance of the Evidence.

I have expert evidence: several doctors who support my disability and the fact that it was caused by the mild Traumatic Brain Injury I suffered as a consequence of the September 8, 2010 blow to my head. Dr. Hugo Morales (psychiatrist) Dr. Sandra Hunt (neuropsychologist), Dr. Musaid Khan (neurologist), and renowned Traumatic Brain Injury expert Dr. Michael Lipton believe that my symptoms are consistent with the mTBI I suffered as a consequence of the 2008 blow to my head (Pa19-Pa24; Pa28-Pa32; Pa40-Pa42;

* * *

II. ALJ RICHARD MCGILL MADE AN ERROR THAT LED HIM TO DENY MY PENSION (Raised Below: Pa91-Pa95)

According to case law, credibility decisions must be upheld unless they are "inherently or patently unreasonable," Retlaw Broad. Co. v. NLRB, 53 F.3d 1002, 1006 (9th Cir. 1995) (internal quotation omitted), or not supported by specific, cogent reasons, Manimbao v. Ashcroft, 329 F.3d 655, 658 (9th Cir. 2003); Reddick v. Chater, 157 F.3d 715, 722 (9th Cir. 1998); DeLeon-Barrios v. INS, 116, F.3d 391, 393 (9th Cir. 1997); Morgan v. Mukasey, 529 F.3d 1202, 1210 (9th Cir. 2008).

An appellate court will not affirm the trial court's fact determinations if, based on a review of the entire record, it is "left with the definite and firm conviction that a mistake has been committed." Pullman-Standard v. Swint, 456 U.S. 273, 284-85 n.14 (1982).

Judge McGill erred in accepting the Board's expert's opinion that I was exaggerating my symptoms. This led him to deny my disability pension on credibility grounds, even though he had found I had in fact suffered a brain injury. (Pa93). His decision to deny my pension is not supported by the record or cogent reasons, and in making it, Judge McGill failed to follow the law. I contend it was caused by the obstruction of justice carried out by the Board's expert's false accusations of malingering (2T24:13-19) and, especially, of

having abandoned my "poor, sick, and elderly parents*" (2T27:18-19; 2T28:1-5) which had to necessarily kill my credibility in the judge's eyes, rendering him incapable of judging my case objectively.

Would you not agree that a disability claimant's testimony regarding her symptoms could never be trusted if the judge believed such claimant to be a despicable human being? And would you not agree that abandoning one's parents when they are "old, poor and sick" is one of the worst things a human being can do, and that such person's testimony could never possibly be found trustworthy? I believe this is what happened in my case and what led Judge McGill to deny my pension on credibility grounds without real evidence that my testimony was not trustworthy.

Judge McGill failed to follow the law by: 1. failing to give more weight to my doctors' opinions; 2. by failing to explain his opinions; 3. by applying the wrong definition of "subjective" symptoms to my case, and 4. by holding me to a stricter standard of proof than the law requires. An explanation follows.

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* My father passed away 30 years ago and my mom was always in good health, has never been poor and has always had my sister (a nurse) nearby. Prior to my injury, I always went to Spain once or twice a year. Further, the IME's own original report states that my father was a school teacher and was deceased (Pa45.) Dr. Hunt also mentions it in her report of my evaluation and writes that my mom and sister are in good health (Pa34.) Also, during testimony I said I went to Spain for Christmas in 2007((1T116:3) and I mentioned my father's death as a time when I didn't sleep well for a while (1T119:1618.)

There were probably other reasons that contributed to the judge's decision, such as: 1. His own admission of having difficulty understanding mental disabilities (1T66:10-12); 2. The unrelenting falsehoods repeated ad nauseum by Mr. Filippone, which are what the ALJ mostly heard (it is said that "a repeated lie becomes the truth.") 3. The previous point coupled with the lack of a real challenge by my attorney* to Mr. Filippone's false claims; 4. The judge's apparent belief that another job could perhaps be offered to me outside of the classroom (1T66:23-25) but which was not (Pa18); 5. A general lack of understanding about my condition by the general public due to a person's normal appearance (lack of understanding about which I had expressed distress to Dr. Hunt (Pa35) and which exists even amongst physicians, as mentioned by Dr. Lipton in his report (Pa29); and possibly, 6. An understandable reluctance on the judge's part to rule against, not simply his employer, but an all-powerful state.

I believe the above reasons, and especially the killing of my credibility mercilessly carried out by Mr.

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* my attorney's questioning focused on emphasizing that my doctors' accounts were based on what I TOLD THEM, implying therefore that I had no objective proof of injury. (1T14:13-15;1T22:10-14;1T39:17-25;1T40:1-22;1T45:22-25;1T46:1-2; 1T46:23-24) ;(1T89:21-24; 1T99:16-22; 1T103:9-12; 1T103:14-19; 1T103:21-23; 1T104:1-10; 1T105:1-22). He didn't ask about the MRI as objective evidence of injury or Dr. Lipton's letter, nor did he challenge the IME' false claims and contradictions regarding such objective evidence. The little said about this was brought up by Dr. Morales (1T38:8-17; 1T42:23-25; 1T43:1-15).

Filippone, caused Judge Mc Gill to deny my pension on credibility grounds and ignore the evidence, logic and the law.

* * *

person, something very far from the truth.)But I made such request unaware that it would forever prohibit me from discussing my pension case, as neither the Board nor ALJ Lasala ever informed me of this. Had I been made aware of it, I would have NEVER requested the sealing, for I highly value my freedom of speech, much more than saving myself a little undeserved shame.

The Board failed to follow the law by advising me to seal my record in the first place, for, unlike me, they had to know that my reason for wanting it sealed was not good enough to overcome the strong presumption of public access that exists in the law.

NJ Court Rule 1:2-1 requires that records be sealed ONLY for good cause, and good cause is governed by a good cause standard decided by the NJ Supreme Court in 1995 in Hammock v. Hoffmann-LaRoche, Inc., 142 N.J. 356 (1995). This standard has the following requirements, none of which I could have possible met:

1. There is a very strong presumption in favor of public access to court documents and such right exists under the Common Law (Hammock, supra, 142 N.J. at 375, 386 662, A.2d 546) as well as the First Amendment. Lederman Vs Prudential Life Ins., 385 N.J. Super. 307,

316, 897, A.2d, 362 (App. Div. 2006)) (Quoting Spinks v. Township of Clinton, 402 N.J. Super. 454 (2008))

The person who seeks to overcome this strong presumption of public access must prove by a preponderance of the evidence that the interest in secrecy outweighs the presumption. Unsubstantiated claims of harm will be insufficient. (Hammock, Supra. 142, N.J. at 375-76, 381-82, 662 A.2d 546.) (Quoting Spinks v. Township of Clinton, 402 N.J. Super. 454 (2008)) The party seeking to seal bears "heavy burden." Miller v. Indiana Hosp., 16 F.3d 549, 551 (3d Cir. 1994).

2. There is also a need to show a "clearly defined and serious injury, sufficient to override the public right of access to the courts." Id at 492, 1071. (Quoting Lederman Vs Prudential Life Ins., 385 N.J. Super. 307, 316, 897, A.2d, 362 (App. Div. 2006))

3. Harm to the parties' reputation does not justify sealing the record. See R.M. v. Supreme Court of New Jersey, 185 N.J. 208, 216, 227, 883, A.2d 369 (2005). If embarrassment were the yardstick, sealing court records would be the rule, not the exception. (Quoting Lederman Vs Prudential Life Ins., 385 N.J. Super. 307, 316, 897, A.2d, 362 (App. Div. 2006))

The sealing of my record (Pa100-Pa106) failed to meet all these requirements. My reason for wanting it sealed was far from the "clearly defined and serious injury" required to overcome the very strong presumption of public access. And my three-line note requesting such sealing (Pa98) did not even explain, not even briefly, why I wished my record sealed. It only said I

wanted it sealed. In addition, I was never asked to attend the hearing to prove my need for the sealing. I did receive a Notice of Filing according to which I would be notified of the upcoming hearing

* * *

REASONS WHY THIS COURT SHOULD GRANT CERTIFICATION

Does this Court believe it possible that in the land of the free and the home of the brave a disabled teacher with a history of hard work and sacrifice could be denied her rightful disability pension despite having objective proof of brain injury and the support of several doctors? And that her record could be sealed against the law and her own wishes?

I do not know whether this is possible in the land of the free and the home of the brave. But I know it is in New Jersey.

In his dissenting opinion in Gerba v. Public Employees' Retirem. Sys. Trustees, Justice Pashman detailed how the Board had abused its power by denying Mr. Gerba his Accidental Disability Pension without Substantial Credible Evidence and solely based on the Board's expert's self-contradictory testimony. He described his fellow Justices' deference to the Board as an "*unwholesome development in the administrative law of this State*" which would allow agencies to "*ignore inconvenient conflicts in evidence without fear of reversal.*"

Now, more than forty years later, the Board of Trustees, TPAF feels so confident that its decisions will be obeyed that it dares to blatantly lie in its briefs and motions and to ask judges to dismiss my appeal and to keep my record sealed. And judges find a way to comply. One way or another.

First, Judges Clarkson Fisher Jr. and Lisa Rose deny me the right to my pension appeal by accepting the Board's blatant lie that I had filed my NOA late on such matter, even though I had proven it false.

Then, Appellate Judges Geigner and Susswein's infamous J.M.F v. Department of the Treasury effectively dismisses my appeal by affirming the denial of my disability pension without addressing any of the many legal points I had made in my Merits Brief showing such denial was unlawful. And by so doing, they have robbed me of my livelihood and what is normally a claimant's last opportunity for justice.

So now my case is in the hands of this Court.

Does this Court believe in the rule of law and, if so, will this Court allow a government agency and members of the Judiciary to rob a deserving claimant of the pension she is entitled to and needs to live for reasons other than the facts and the law?

Does this Court believe in the right to due process of the law for disability pension claimants and, if so, will this Court ensure justice to a claimant who was denied such right throughout her entire appeal and, specifically, at the Appellate Court?

Does this Court believe in the strong presumption of public access to court records and, if so, will this Court unseal a record which was sealed against the law and adopted by the Board against the law and the claimant's own wishes?

APPENDIX J

The Fourteenth Amendment

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Article VI of the Constitution

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound

thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.