Circuit Court for Anne Arundel County
Case No. C-02-CV-20-000031

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1104

September Term, 2020

FRANKLIN G. HARRIS

v.

MARYLAND STATE RETIREMENT AND PENSION SYSTEM

Fader, C.J.,
Arthur,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: December 6, 2021

The Employees' Retirement System for certain Maryland state employees has two tiers of disability retirement benefits: ordinary disability retirement benefits and accidental disability retirement benefits. Accidental disability retirement benefits are more generous than ordinary disability retirement benefits.

To recover accidental disability retirement benefits, members of the system must show that they are "totally and permanently incapacitated for duty as the natural and proximate result of an accident that occurred in the actual performance of duty at a definite time and place without willful negligence by the member[.]" Maryland Code (1993, 2015 Repl. Vol.), § 29-109(b)(1) of the State Personnel & Pensions Article ("SPP").

In this case, a member contended that he suffered a relapse of his post-traumatic stress disorder ("PTSD") as the result of the cumulative trauma he experienced while performing the requirements of his job. An administrative law judge ("ALJ") ruled that his incapacitation was not the "natural and proximate result of an accident that occurred in the actual performance of duty at a definite time and place." Consequently, the ALJ upheld a decision to deny accidental disability retirement benefits.

The member sought judicial review in the Circuit Court for Anne Arundel County, which affirmed the ALJ. He appealed to this Court. We too affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Mr. Harris's Job Duties and His Disability

Mr. Harris was employed by the State Highway Administration ("SHA") from October 25, 2005, to April 17, 2015. Mr. Harris was initially an Emergency Response Technician ("ERT") on the Coordinated Highway Action Response Team. As an ERT, Mr. Harris's job duties required him to respond to all types of incidents that might disrupt traffic, including motor vehicle, motorcycle, and pedestrian accidents; disabled vehicles; chemical spills; and highway obstructions, such as debris and fallen trees. Nothing limited the number or types of incidents to which Mr. Harris had to respond on any given day.

In 2012, Mr. Harris was promoted to the position of Highway Field Operations Technician IV ("HOT IV"). As a HOT IV, Mr. Franklin supervised ERTs. Although supervisory, the job required Mr. Harris to continue performing all duties of an ERT. The job also required Mr. Harris to be on-call for 24 hours a day under all weather conditions.

The HOT IV job description stated that Mr. Harris could be the first person on the scene of serious and fatal accidents and could be exposed to blood-borne pathogens on a daily basis. The job description also stated that Mr. Harris might develop post-traumatic stress disorder ("PTSD").

In late 2009 Mr. Harris sustained a work-related injury. After he had responded to an accident scene, Mr. Harris and a woman at the scene were struck by a car while they

were standing on the side of the road. The woman died, and Mr. Harris sustained physical injuries and was diagnosed with PTSD. He received medication and counseling.

Mr. Harris filed for workers' compensation benefits for the mental and physical impairments that he sustained as a result of the 2009 incident. A psychiatrist reported that "Mr. Harris developed symptoms consistent with posttraumatic stress disorder . . . [and] will likely continue to have mood and anxiety symptoms attributable to his . . . work injury . . . ."

Mr. Harris eventually returned to work and, as required, continued responding to calls concerning serious motor vehicle accidents. He responded to calls that required him to put a dead motorcyclist (who looked like his son) into a body bag, to remove a dead body from a car, to walk over the remains of a person who had been ejected from a car, and to comply with an order to shovel freezing brain matter into the woods.

In June 2013, Mr. Harris responded to a call that required him to perform CPR on a 34-day-old baby while the mother, who later died, was trapped in a car. In responding to the same call, he was required to keep the woman's nine-year-old child away from the car where her mother was dying.

In October 2014, in responding to a call about a disabled vehicle, Mr. Harris came upon a knife-wielding occupant who was threatening suicide. Mr. Harris disarmed the man and may have saved his life, but was later reprimanded for his actions.[1]

[1] Mr. Harris received a "Memorandum of Concern" for inappropriate action because "SHA does not train employees on the appropriate action to take when disarming

On the evening of April 16, 2015, Mr. Harris learned that one of his subordinates had been seriously injured while responding to a fatal accident. After a sleepless night, he met with his employees to discuss safety. During the meeting, he suffered a panic attack.

Mr. Harris drove himself to an urgent care center for help. In the medical record of that visit, a physician assistant noted that "[Mr. Harris] complains about recurrence of acute stress from recent events at work." He "[h]as experienced multiple deaths and serious highway accidents and is having trouble coping with it."

Mr. Harris began treatment on April 24, 2015. A clinical psychologist's initial report explained that Mr. Harris's job was "to respond to incidents on the highway[,] providing safety and support including lighting of accident scenes and initial support for citizens involved in accidents involving serious injury and fatalities." The report continued:

> He is exposed to frequent instances of mangled bodies, human remains and people at various levels of injury as well as people as they are expiring . . . . Continued exposure to traumatic events including being involved in his own accidents while on the job have left Mr. Harris with little to no resilience.

After a referral from the Injured Workers' Insurance Fund, a psychologist, Steve Curran, Ph.D., evaluated Mr. Harris so that he could obtain authorization for additional treatment. Dr. Curran noted that "[t]he present evaluation identifies numerous indicators

someone with a knife." Mr. Harris had not been trained on law enforcement tactics and was required to call and wait for assistance from emergency personnel.

of posttraumatic stress that are assessed as causally related to the 2009 work injury and now worsened by subsequent work exposures."

Mr. Harris began treatment with a neurologist, Patrick Sheehan, M.D., on May 13, 2015. Dr. Sheehan reported to Mr. Harris's attorney that Mr. Harris had suffered from panic attacks since the 2009 incident. Dr. Sheehan quoted Mr. Harris as telling him that "[he's] constantly dealing with death, destruction on the highway," and "at work, every time [his] phone rings, [he has] to go to a major vehicle crash." Dr. Sheehan recognized that seeing multiple crashes per day was a part of Mr. Harris's job.

On June 22, 2015, Dr. Robert Toney, M.D., performed a "workability evaluation" to assess Mr. Harris's ability to return to work. Dr. Toney recorded Mr. Harris's account of his developing incapacity:

> Mr. Harris states that over time, his anxiety became worse and worse as he has been exposed to multiple traumatic events. He states that things just got worse and worse to the point that from a psychological standpoint, he felt like he was unable to continue to perform his job duties.

Dr. Toney reported that Mr. Harris developed PTSD because of the 2009 incident, but was cleared to returned to work in September 2010. Dr. Toney observed:

> Mr. Harris apparently did fairly well up until mid April [sic] of 2015. At that time, his posttraumatic stress disorder symptoms reemerged, and he has been unable to work since that time. Mr. Harris's recurrence of his posttraumatic stress disorder symptoms seem [sic] to be related to the cumulative effect of multiple traumatic experiences doing his day-to-day job.

2. Application for Accidental Disability Retirement Benefits

In his application to the Maryland State Retirement and Pension System ("the System") on August 23, 2018, Mr. Harris requested accidental disability retirement benefits under SPP § 29-109(b)(1). Accidental disability retirement benefits are awarded if a member had "an accident that occurred in the actual performance of duty at a definite time and place without willful negligence by the member," and "as the natural and proximate result of [the] accident," the member is "totally and permanently incapacitated for duty." *Id.*

Mr. Harris claimed that he had become totally and permanently disabled after an "accident" that occurred on April 17, 2015, the date of his panic attack at work. In his description of the "accident" or "injury," Mr. Harris wrote that as an ERT Field Supervisor he had responded to "repeated accidents" and been exposed to "multiple traumas and deaths." He reported that at some point he had begun taking antidepressants and anti-anxiety medication. He referred to the June 2013 incident, when he rescued the baby whose mother had been killed, and the October 2014 incident, when he disarmed the suicidal driver. He explained that, just before his last day of work in April 2015, he had responded to two, fatal motor vehicle accidents. On his last day of work, he said, he responded to yet another fatal accident and had learned that a co-worker had been injured in a work-related accident in which another person was killed. After a meeting with his employees on his last day of work, he had a panic attack. He did not return to work because, he said, his "anxiety got the best of [him]."

In his description of the "accident" or "injury," Mr. Harris wrote that he "had been having these panic attacks going back awhile" and that he "started developing a considerable amount of guilt following each incident, which was part of the cumulative trauma that led to Post Traumatic Stress Disorder." He asserted that, before the "disabling mental, physical and psychiatric injury" he suffered in 2015, he did not have "any kind of prior mental health issues or any preexisting PTSD, that caused [him] to be unable to perform [his] duties." He claimed that his injury was "a direct result of the duties [he] was required to perform as identified" in his application for benefits.

Dr. Sheehan completed the required medical report that Mr. Harris submitted with his application. Dr. Sheehan's report described the incidents Mr. Harris detailed in his description of the "accident," as well as the incident in 2009, when Mr. Harris was struck by a car and the woman beside him was killed. The doctor opined that Mr. Harris was permanently, totally disabled because of multiple psychiatric diagnoses, which were the proximate result of "the cumulative trauma he experienced while working as an Emergency Response Technician, field supervisor for the State Highway Administration." The diagnoses included PTSD; panic disorder; and persistent depressive disorder with a persistent major depressive episode.

3. The System's Denial of the Request for Accidental Disability Retirement Benefits

In a letter dated September 17, 2018, the System informed Mr. Harris that he was not "eligible for accidental disability retirement benefits for the incident . . . on April 17, 2015." The letter asserted that "***Maryland case law defines an accident as a 'slip, fall,***

twist, or an unusual strain, unusual exertion, or unusual condition of employment,' which occurred in the actual performance of duty at a definite time and place." (Emphasis in original.) It informed Mr. Harris that his application for ordinary (as opposed to accidental) disability benefits would "continue to be processed."

On September 19, 2018, the System's Medical Board ("the Board") determined that the medical reports submitted with Mr. Harris's application supported the conclusion that he was permanently disabled. The Board recommended that Mr. Harris be approved for ordinary (as opposed to accidental) disability retirement benefits due to a psychiatric condition. The Board determined, however, that Mr. Harris's psychiatric condition was "not the result of an accident at a definite time and place as required by § 29-109(b)(1) of Maryland's State Personnel and Pensions Article." Consequently, it recommended that he be denied accidental disability retirement benefits.

On October 16, 2018, the System notified Mr. Harris that it accepted the Board's recommendations. The System granted Mr. Harris ordinary disability benefits and denied him accidental disability benefits.

Mr. Harris requested reconsideration on October 22, 2018. In its letter acknowledging his request, the System echoed Mr. Harris's formulation of the issue for reconsideration, stating that it was:

> **[W]hether [Mr. Harris's] disability due to a psychiatric condition is the natural and proximate result of an accident due to an unusual condition of employment, pursuant to State Personnel and Pensions Article, Section 29-109**[.]

(Emphasis in original.)

After reconsideration, the System again notified Mr. Harris that his claim for accidental disability retirement benefits was denied.

Mr. Harris requested a hearing before an administrative law judge ("ALJ") at the Office of Administrative Hearings. In its letter confirming the date of his hearing, the System framed the issue almost exactly as it had done before: "**Is the claimant's disability due to a psychiatric condition, the natural and proximate result of an accident due to an unusual condition of employment personal to State Personnel and Pensions Article, Section 29-109?**" (Emphasis in original.)

4. The Administrative Appeal

On November 25, 2019, the ALJ conducted a full evidentiary hearing. After hearing evidence of the stressful events and cumulative trauma that Mr. Harris had experienced, the ALJ concluded that he had not met his burden of proof to establish his eligibility for accidental disability retirement benefits. In reaching her decision, the ALJ reasoned that Mr. Harris's disability was not the "natural and proximate result of an accident at a definite time and place," as required for an award of accidental disability retirement benefits under SPP § 29-109(b)(1).

Although the System had framed the issue in terms of whether Mr. Harris's disability was "due to an unusual condition of employment," the ALJ declined to decide that question. She reasoned that that language does not appear in SPP § 29-109(b)(1). The relevant question, according to the ALJ, was whether Mr. Harris's disability was the

"natural and proximate result of an accident at a definite time and place," within the meaning of SPP § 29-109(b)(1).

In resolving that question against Mr. Harris, the ALJ relied prominently on *Burr v. Md. State Retirement & Pension System*, 217 Md. App. 196, 205 (2014), which held that the routine and foreseeable aspects of a person's employment cannot be "accidents," within the meaning of SPP § 29-109(b)(1). The ALJ observed that, in Mr. Harris's formulation, the "accident" consisted of events that fit squarely within his position description, such as responding to serious or fatal motor vehicle accidents, controlling the flow of traffic, assisting disabled motorists, etc. She also observed that Mr. Harris's job description expressly anticipated that he might develop PTSD. Under *Burr*, therefore, the ALJ concluded that Mr. Harris's disability was not the "natural and proximate result of an accident at a definite time and place."[2]

The ALJ noted that in other State pension systems, such as those for certain law enforcement officers and the Maryland State Police, members need not show that their injuries resulted from an "accident" in order to recover enhanced disability benefits. Instead, in those systems, members may qualify for enhanced benefits if, among other

[2] In addition, the ALJ cited SPP § 29-104(e)(2), which prohibits the Board from "accept[ing] an application for accidental disability filed by a member or former member more than 5 years after the date of the claimed accident." The ALJ reasoned that this "five-year lookback" provision prohibited her from considering any incidents that occurred more than five years before Mr. Harris applied for disability retirement benefits on August 23, 2018. Consequently, the ALJ confined her analysis to the incidents that occurred during that five-year period, such as the encounter with the knife-wielding motorist in October 2014 and the fatal accidents in April 2015.

things, they are "totally and permanently incapacitated for duty arising out of or in the course of the actual performance of duty without willful negligence." SPP § 29-109©(1); *see also* SPP § 29-111(b)(1). The ALJ distinguished those statutes, which would have authorized an award of enhanced benefits to Mr. Harris, from the more restrictive statute that governed his case, SPP § 29-109(b)(1). Because SPP § 29-109(b)(1) requires an injury that results from an "accident that occurred in the actual performance of duty at a definite time and place," and not merely incapacitation arising out of or in the course of the actual performance of duty, the ALJ concluded that Mr. Harris had not established his right to accidental disability benefits.

Mr. Harris petitioned for judicial review in the Circuit Court for Anne Arundel County. The circuit court denied his petition and affirmed the denial of accidental disability retirement benefits.

Mr. Harris noted a timely appeal.

QUESTIONS PRESENTED

Mr. Harris raises two questions on appeal, which we have combined and reworded:

> Did the ALJ err in concluding that Mr. Harris was not entitled to accidental disability retirement benefits?[3]

[3] Mr. Harris presented the following questions:

1) Did Administrative Law Judge Delp commit reversible error in not considering that an unusual condition of employment is considered an accident for the purpose of an accidental disability retirement which was the Issue before her as stated by the Appellee?

For the reasons stated below, we affirm.

STANDARD OF REVIEW

In reviewing the final decision of an administrative agency, this Court "looks through" the circuit court's decision and "evaluates the decision of the agency." *People's Counsel for Baltimore Cty. V. Surina*, 400 Md. 662, 681 (2007); *see Bd. Of Trs. For Fire & Police Employees' Ret. Sys. V. Mitchell*, 145 Md. App. 1, 8 (2002) (stating that "[o]ur role" in reviewing an administrative decision "is precisely the same as that of the circuit court"). In other words, this Court reviews the decision of the agency itself, and not the decision of the circuit court. *Mitchell v. Maryland Motor Vehicle Admin.*, 225 Md. App. 529, 543 (2015) (quoting *Howard Cty. Dep't of Soc. Servs. V. Linda J.*, 161 Md. App. 402, 407 (2005)).

The agency's decision is "'presumed valid.'" *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 68 (1999) (quoting *CBS Inc. v. Comptroller*, 319 Md. 687, 698 (1990)). This Court's review of the ALJ's decision is "'limited to determining if there is substantial evidence in the record as a whole to support the [ALJ's] findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.'" *Id.* at 67-68 (quoting *United Parcel Serv., Inc. v. People's*

2) Did Administrative Law Judge Delp ignore competent material and substantial evidence of witnesses who testified in the administrative proceedings, and who established that petitioner's psychiatric condition and permanent disability was from an unusual condition of his employment, which constituted an accident under Maryland Law?

Counsel for Balt. Cty., 336 Md. 569, 577 (1994)). "'We review purely legal decisions *de novo*.'" *Mayor & Council of Rockville v. Pumphrey*, 218 Md. App. 160, 194 (2014) (quoting *People's Ins. Counsel Div. v. State Farm Fire & Cas. Mut. Ins. Co.*, 214 Md. App. 438, 449 (2013)).

DISCUSSION

Mr. Harris principally contends that the ALJ erred in affirming the denial of his request for accidental disability retirement benefits because she did not consider whether his PTSD was "due to an unusual condition of employment." Mr. Harris acknowledges that this language does not appear in SPP § 29-109. Nonetheless, Mr. Harris seems to argue that, because the System used this language to define the term "accident" in its initial correspondence with him, the ALJ was required to apply it to the definition. In a similar vein, Mr. Harris contends that the ALJ ignored evidence that his injury stemmed from "an unusual condition of employment."

Focusing on the language of the applicable statute, the System contends that Mr. Harris's disability is not "the natural and proximate result of an accident that occurred in the actual performance of duty at a definite time and place," but rather is the cumulative effect of continuous and repeated exposure to trauma. The System also contends that because Mr. Harris's disability is attributable to his performance of his standard job responsibilities, it did not result from an "accident," as this Court has construed that term.

1. Statutory Framework

Maryland has a two-tiered structure for disability retirement benefits, consisting of ordinary disability retirement benefits and accidental disability retirement benefits. Accidental disability retirement benefits are more generous than ordinary disability retirement benefits.[4] Consequently, it is more difficult to qualify for accidental disability retirement benefits than it is to qualify for ordinary disability retirement benefits. *See Eberle v. Baltimore Cnty.*, 103 Md. App. 160, 167 (1995) (discussing accidental and ordinary disability benefits under the substantially similar provisions of Baltimore County law).

Before a member may receive ordinary disability retirement benefits, the Board must certify that the member is "mentally or physically incapacitated for the further performance of the normal duties of the member's position" and that "the incapacity is likely to be permanent." SPP § 29-105(a). "[T]he statute requires only a minimal showing of permanent incapacitation for further performance of duty." *See Eberle v.*

[4] If members qualify for accidental disability retirement benefits, they typically receive two-thirds of their "average final compensation," regardless of their age or years of service. SPP § 29-110(b). By contrast, if members qualify only for ordinary disability retirement benefits and are of normal retirement age, they receive 1/55th of their average final compensation, multiplied by their years of service. SPP § 29-108(b)(1); SPP § 22-401(b)(1). If members qualify only for ordinary disability retirement benefits and are not of normal retirement age, they receive 1/55th of what their average final compensation would have been, multiplied by their years of service that they would have had if they retired at a normal retirement age. SPP § 29-108(b)(1); SPP § 22-401(b)(1). While accidental disability retirement benefits are available to qualifying members regardless of their years of service, ordinary disability retirement benefits are available only to members who have five years of service. *See* SPP § 22-105(a)(1).

Baltimore County, 103 Md. App. At 167. The member need not have been incapacitated as the result of an "accident," or incapacitated in the actual performance of duty.

By contrast, before a member may receive accidental disability retirement benefits, the member must establish that he, she, or they are "totally and permanently incapacitated for duty as the natural and proximate result of an accident that occurred in the actual performance of duty at a definite time and place without willful negligence by the member." SPP § 29-109(b)(1). Thus, to receive accidental disability retirement benefits, members must prove more than that they are totally permanently incapacitated for duty (as they would have to do to receive ordinary disability retirement benefits); they must also show that their incapacitation is the natural and proximate result of an "accident" and that the "accident" occurred in the actual performance of duty, at a definite place and time, and without their willful negligence.

2. Mr. Harris's Reliance on an Incorrect Standard

To receive accidental disability benefits, claimants must first prove that an accident took place. "The statute does not define the term 'accident,' but dictionaries tie its meaning consistently to the foreseeability – or, more to the point, the non-foreseeability – of the event in question." *Burr v. Maryland State Ret. & Pension Sys.*, 217 Md. App. 196, 205 (2014). Whether an occurrence is considered an accident is not based on "the victim's *subjective* expectation that it will happen, but its *objective* foreseeability." *Id.* at 206 (emphasis in original). "[A]n accident happens unintentionally

. . . as a result of carelessness or negligence." *Id.* "Finally," an "accident" entails "some physical event" that "precipitates harm." *Id.* at 207.

Mr. Harris does not engage with the statutory term "accident," as this Court interpreted it in *Burr*. Instead, he contends that the traumatizing events listed in his application for accidental disability benefits were "unusual conditions of employment," which he equates with an "accident" under SPP § 29-109(b)(1). To support his approach, Mr. Harris points to the letter in which the System denied his claim for accidental disability retirement benefits by stating that "Maryland case law defines an accident as a 'slip, fall, twist, or an . . . unusual condition of employment.'" He also points to the letter in which the System acknowledged its receipt of his request for reconsideration and the letter in which the System framed the issue before the ALJ. In both, the System framed the issue as whether Mr. Harris's PTSD was the "natural and proximate result of an accident due to an unusual condition of employment, pursuant to [SPP § 29-109(b)(1)]."

The short answer to Mr. Harris's contention is that he bases it on an incorrect statement of the law. At one point in the now-distant past, the Court of Appeals, in a judicial gloss on the workers' compensation statute, engrafted a requirement that a workplace injury must result from an "unusual activity" or an "unusual condition of employment" before it will be compensable as an "accidental injury." *See Harris v. Board of Educ. Of Howard County*, 375 Md. 21, 39-42 (2003). In 2003, however, the Court of Appeals expressly overruled those cases. *Id*. at 59; *accord Burr v. Maryland State Ret. & Pension Sys.*, 217 Md. App. At 289 ("*Harris* overruled cases that required

plaintiffs to prove that the activity begetting their injury was 'unusual'"). Thus, in associating an "accident," within the meaning of SPP § 29-109(b)(1), with an "unusual condition of employment," Mr. Harris relies on an archaic and invalid definition of a term in a completely different statute. The ALJ did not err in declining to employ that definition.[5]

In holding that an "accidental injury," within the meaning of the workers' compensation statute, does not require proof of an "unusual activity" or an "unusual condition in the employment," the Court of Appeals underscored the point that an "accident" (the key term in SPP § 29-109(b)(1)) entails an unforeseeable fortuity. As this Court explained in *Burr*, "*Harris* overruled cases that required plaintiffs to prove that the activity begetting their injury was 'unusual,' a construction that limited workers' recovery in a paradigm that is avowedly remedial and construed as liberally in favor of injured employees as its provisions will permit in order to effectuate its benevolent purposes, and in which [a]ny uncertainty in the law should be resolved in favor of the claimant." *Burr v. Maryland State Ret. & Pension Sys.*, 217 Md. App. At 209 (further quotation marks omitted). Under § 29-109(b)(1), however, "[t]he statutory paradigm . . . requires exactly the opposite: the word 'accident' stands alone in the statute, not as an adjective for 'personal injury,' and defines a circumstance that distinguishes a disability

[5] Because Mr. Harris's right to accidental disability retirement benefits does not depend on whether his incapacitation resulted from "an unusual condition of employment," the ALJ did not err in discounting Mr. Harris's evidence about unusual conditions of employment.

from an 'ordinary' disability retirement." *Id.* "So whereas *Harris* reoriented the workers' compensation cases to *include* injuries suffered in the normal course in the compensatory scheme, it actually reinforces the intentional *difference* between foreseeable and easily anticipated employer-employee interactions and true accidents in the context of disability retirements." *Id.* In short, an accident, within the meaning of § 29-109(b)(1), must be unanticipated and unforeseen.

It is no answer to say that the System referred to "an unusual condition of employment" in denying Mr. Harris's claim and in formulating the issue for the ALJ. The ALJ was required to apply the statute as written, not as it was misconstrued by the System. The ALJ did what she was required to do.[6]

3. Mr. Harris's Disability Did Not Result from an "Accident"

The ALJ followed *Burr*, the case containing the definitive explication of the meaning of the term "accident" in § 29-109(b)(1). In *Burr*, this Court held that an employee was not "totally and permanently incapacitated for duty as the natural and proximate result of an accident" when she claimed to have suffered psychiatric injuries as

[6] Mr. Harris cannot plausibly assert that the System is estopped from arguing that we should interpret the statute as written because an employee misstated what the statute requires. *See, e.g.*, *Agnew v. State*, 51 Md. App. 614, 657 (1982) (stating that estoppel "will not be applied against the State in the performance of its governmental, public, or enforcement capacity"). In any event, to establish estoppel, Mr. Harris would have to show that he reasonably relied to his detriment on the System's misinterpretation of the statute. *See, e.g.*, *Kiley v. First Nat'l Bank of Md.*, 102 Md. App. 317, 337-38 (1994). It is, however, hard to see how Mr. Harris could reasonably rely on a representation that the statute contains an element which is not expressed within its literal terms and which comes from overruled cases that interpret an entirely different enactment.

a result of a stressful personnel meeting. *See id*. at 199. We explained that "a supervisor's personnel decisions, whatever their character and however they were delivered, are a foreseeable part of a person's employment with the State, and, therefore, cannot constitute an 'accident.'" *Id.* at 203. We added that personnel decisions are "not unexpected occurrences (in any objectively determinable way), nor are they physical events or circumstances that can comprise an 'accident.'" *Id.*

Following *Burr*, the ALJ reasoned that the events that precipitated Mr. Harris's disability were foreseeable and expected aspects of his demanding job. Just as it was foreseeable and expected that an employee would hear personnel decisions announced at a meeting, so too was it foreseeable and expected that a HOT IV like Mr. Harris would respond to serious or fatal motor vehicle accidents and assist disabled motorists. Indeed, Mr. Harris's job description expressly anticipated that he might develop PTSD as a result of his experiences at work. On these facts, we agree with the ALJ's legal conclusion that Mr. Harris's incapacitation is not the natural and proximate result of an "accident," as *Burr* interpreted that term. The ALJ did not err in concluding that Mr. Harris failed to meet his burden of proof to establish his eligibility for accidental disability retirement benefits.[7]

[7] It might be a different case if, for example, a HOT IV, like Mr. Harris, suffered an incapacitating back injury while extracting an injured motorist from a vehicle that had been involved in a wreck. Although it is, in some sense, "foreseeable" that a HOT IV might suffer an orthopedic injury of that nature, it is not foreseeable that the HOT IV will suffer such an injury on any given day. An injury of that nature is fortuitous – a matter of happenstance – and is, for that reason, an "accident." By contrast, it was a regular, routine, predictable, and foreseeable aspect of Mr. Harris's job that he would, for

4. Mr. Harris's Disability is the Result of Cumulative Trauma

Even if this Court were to accept Mr. Harris's definition of "accident," the System correctly observes that he still would not meet the requirements of SPP § 29-109(b)(1) because his disability was not the "result of an accident that occurred . . . *at a definite time and place*." (Emphasis added.) This language significantly limits the types of injuries that enable a member to receive accidental disability retirement benefits.

By Mr. Harris's own account – and the account of his treating psychologists and physicians – his PTSD was the culmination of multiple traumatic incidents spanning his career with the SHA. In the "Description of Accident/Injury" that Mr. Harris attached to his application for accidental disability retirement benefits, he addressed several of these traumatic incidents: the June 2013 incident in which he performed CPR on a baby; the October 2014 incident in which he disarmed the knife-wielding man; and the April 2015 incidents in which he responded to fatal motor vehicle accidents. Because of these incidents and others, Mr. Harris stated that he "started developing a considerable amount

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example, encounter the gruesome outcome of serious or fatal motor vehicle accidents. *See Burr v. Maryland State Ret. & Pension Sys.*, 217 Md. App. at 211 (citing *Kesch v. Hevesi*, 813 N.Y.S.2d 275, 276-77 (N.Y. App. Div. 2006), for the proposition that no "accident" took place, within the meaning of an analogous New York statute, when the incident "was not a 'sudden, fortuitous mischance,' but merely an 'inherent and anticipated part of employment'").

On the other hand, unlike the motor vehicle accidents that he could expect to encounter on a regular basis, Mr. Harris's experience with the knife-wielding motorist could fairly be described as a fortuitous and unforeseeable "accident." Mr. Harris, however, does not claim to have been incapacitated as "the natural and proximate result" of that experience. To the contrary, he continued to work for another six months thereafter.

of guilt following each incident, which was part of *the cumulative trauma that led to Post Traumatic Stress Disorder*." (Emphasis added.)

Mr. Harris's treating physicians, likewise, reported that his PTSD was the result of cumulative on-the-job trauma—not the result of any specific incident with a "definite time and place." Mr. Harris's PTSD was described as a result of "[c]ontinued exposure to traumatic events"; "constantly dealing with death, destruction on the highway"; "cumulative trauma he experienced while working as an Emergency Response Technician field supervisor for the State Highway Administration"; and the "cumulative effect of multiple traumatic experiences doing his day-to-day job."

The System argues that an injury that results from cumulative trauma cannot be an injury that results from an "accident that occurred at a definite time and place," within the meaning of SPP § 29-109(b)(1). We agree. By definition, cumulative trauma does not occur "at *a* definite time and place." (Emphasis added.) For this additional reason, the ALJ did not err in concluding that Mr. Harris was not entitled to accidental disability retirement benefits.

Had the legislature intended to allow members to receive accidental disability retirement benefits for injuries that result from cumulative trauma, or continuous exposure to harmful conditions, it could have done so. As the ALJ observed, the legislature has created other pension regimes that allow for enhanced disability retirement benefits for occupational injuries, such as continuous exposure to harmful conditions or cumulative trauma resulting from stressful work-related events. For example, under the

Law Enforcement Officers Pensions System ("LEOPS") and the State Police Retirement System ("SPRS") members may receive enhanced disability retirement benefits without showing that their disability is the natural and proximate result of an accident at a definite time and place. Rather, LEOPS members must establish only that they are "totally and permanently incapacitated for duty arising out of or in the course of the actual performance of duty without willful negligence by the member." SPP § 29-109©(1). Similarly, SPRS members must establish only that they are "totally and permanently incapacitated for duty arising out of or in the course of the actual performance of duty without willful negligence by the member." SPP § 29-111(b)(1). The additional requirement in SPP § 29-109(b)(1) – the requirement that the disability must result from an "accident" that occurred "at a definite time and place" – supports the conclusion that Mr. Harris is not entitled to accidental disability retirement benefits as a result of a disability that is attributable to cumulative trauma.

We, like the ALJ, are sympathetic to Mr. Harris because of the incapacitating psychological injuries that he suffered in the faithful performance of his duties. Nonetheless, we must interpret the statute as written and read its words "to mean what they express." *Sibert v. State*, 301 Md. 141, 153 (1984). We cannot, "under the guise of statutory construction, remedy possible defects in a statute or insert exceptions not made by the Legislature." *Mauzy v. Hornbeck*, 285 Md. 84, 95 (1979). Accordingly, we hold that the ALJ did not err in concluding that Mr. Harris's disability did not result from "an accident that occurred in the actual performance of duty at a definite time and place" and

thus that he is entitled only to ordinary disability retirement benefits, and not to accidental disability retirement benefits.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.