UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 743

SEPTEMBER TERM, 2015

ALAN G. HINMAN

v.

BOARD OF TRUSTEES FOR THE MARYLAND STATE RETIREMENT AND PENSION SYSTEM

Eyler, Deborah S.,
Wright,
Harrell, Glenn T., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: May 2, 2016

Alan G. Hinman, the appellant, challenges a decision of the Board of Trustees ("Trustees") for the Maryland State Retirement and Pension System ("SRPS"), the appellee, denying his application for accidental disability retirement benefits. The Trustees' decision was upheld by the Circuit Court for Somerset County on judicial review. We have combined Hinman's three questions presented into one:[1]

> Was the SRPS's decision to deny Hinman's application for accidental disability benefits legally correct, supported by substantial evidence in the record, and not arbitrary or capricious?

For the following reasons, we shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

Hinman, born in 1961, worked as a correctional officer at the Eastern Correctional Institution ("ECI") in Westover for 24 years. Correctional officers are "members" of the Correctional Officers' Retirement System and are eligible for disability and retirement benefits through the SRPS.

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[1] The questions as posed by Hinman are:

> 1. Did the [SRPS] misapply Maryland law by requiring a state employee applying for disability benefits to demonstrate that a workplace injury was the sole proximate cause of his incapacity as opposed to simply the natural and proximate cause?
> 2. Was the [SRPS]'s refusal to consider the contents of the report of a physician who examined the Appellant in connection with a workers' compensation proceeding affected by an error of law or arbitrary and capricious?
> 3. Did substantial evidence support the decision of the [SRPS] to deny disability benefits to the Appellant?

Hinman presented a fourth question in his brief, but withdrew it during oral argument.

A. Disability Benefits

There are two tiers of disability benefits available through the SRPS: ordinary disability and accidental disability. The amount of an accidental disability benefit significantly exceeds the amount of an ordinary disability benefit. *Compare* Md. Code (1993, 2004 Repl. Vol., 2011 Supp.), section § 29-108(b) of the State Personnel and Pensions Article ("SPP") *with* SPP § 29-110(b).

To be eligible for ordinary disability benefits, a member must have "at least 5 years of eligibility service" and a certification from the SRPS Medical Board that he is permanently "mentally or physically incapacitated" from performing his job duties and "should be retired." SPP § 29-105. To be eligible for accidental disability benefits, a member must satisfy those requirements *and* show that he is "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) (emphasis added).

B. Hinman's Medical History

Between 2006 and 2012, Hinman was treated by physicians at McCready Foundation, Inc. ("McCready"), a medical office in Crisfield, for hypertension, gout, edema in his legs, and osteoarthritis in his right knee. He was counseled repeatedly to lose weight. At 6-foot-2, his weight fluctuated between 330 lbs. and 427 lbs.

Hinman first began to experience pain in his right knee in 2007. By July of 2008, the right knee pain was so severe that he could not work. That fall, he underwent

arthroscopic surgery on that knee. After recovering from surgery, he returned to work at ECI. He continued to have pain in his right knee, however, and was prescribed pain medication to treat it.

C. Hinman's Accident and Treatment of his Left Knee

On May 27, 2011, Hinman was working a day shift at ECI, in the mental health unit. Near the end of the shift, he left "the cage" to check on an inmate. As he was walking around the side of the cage, he felt a "pop" in his left knee and it gave out a little bit. He completed his shift and went home. He woke up in the very early morning hours with pain in his left knee.

The next day, Hinman reported for work at ECI and told his supervisor about his injury the day before. He filled out a matter of record report and then left work and went to the Emergency Room at Peninsula Regional Medical Center ("PRMC"). An x-ray of his left knee revealed "degenerative changes," but no fracture or dislocation. A physician at PRMC diagnosed Hinman with a "[s]oft tissue injury." He noted that Hinman had "mild to moderate joint pain with movement of the left knee" and the knee was "moderately tender" when palpated. Hinman was able to walk and bear weight on his knee. He was discharged from PRMC about an hour after he arrived, with prescriptions for naproxen and Vicodin.

On May 31, 2011, Hinman was seen by Michael Atkins, M.D., at McCready. Dr. Atkins noted that Hinman reported having "increasing pain in his left knee over time" and that he had recently experienced a "tearing sensation" and heard a "tearing noise."

Hinman also reported swelling in his legs. On examination, Dr. Atkins found that Hinman had "significant bony hypertrophy"[2] in both knees, which was "consistent with osteoarthritis," and "significant crepitus[3] noted on range of motion." Dr. Atkins scheduled an MRI of Hinman's left knee and referred him to an orthopedist for follow-up after the MRI. Dr. Atkins discussed with Hinman the "possibility that he may need arthroscopic surgery on the left knee, as needed previously on the right." Hinman inquired about total knee replacement surgery on both knees. Dr. Atkins advised that he would likely need to lose a significant amount of weight before he would be a candidate for that type of surgery. Dr. Atkins counseled Hinman that he might "become disabled from his usual job duties due to severe osteoarthritis."

The next day, Hinman underwent an MRI of his left knee. It revealed a small "incomplete radial tear" of the medial meniscus, which is part of the cartilage that cushions the knee joint. It also showed "[d]egenerative changes" in all three compartments of the knee.

On June 22, 2011, Hinman was seen by Thomas Brandon, M.D., an orthopedic surgeon at Peninsula Orthopaedic Associates, P.A., in Salisbury. Dr. Brandon noted that Hinman's "chief complaint" was pain in his left knee. Hinman reported that the pain began on May 27, 2011, when he "was coming around the corner and sustained a twisting

[2] "Bony hypertrophy" refers to outgrowths of bone on the knee.

[3] Crepitus" means a grinding noise in the knee joint.

injury to his knee." The pain was "sharp, associated with catching, locking, and giving way" and, in Hinman's view, was a 9 out of 10 on the pain scale. Based on his examination and review of the MRI, Dr. Brandon diagnosed Hinman with a radial tear of the medial meniscus and early arthritis of the left knee. Dr. Brandon recommended arthroscopic surgery to repair the torn meniscus.

On August 12, 2011, Dr. Brandon operated on Hinman's left knee. He found two tears of the medial meniscus: a "radial tear" and a "horizontal cleavage tear." He also found grade III and grade IV chondromalacia, or degenerative cartilage loss, in all three compartments of the knee. Dr. Brandon trimmed the medial meniscus and performed "chondroplasty" to smooth the degenerated areas of cartilage and encourage regrowth.

Hinman continued to be treated by Dr. Brandon post-surgery. On August 30, 2011, Dr. Brandon noted that Hinman was "doing well," but "still [had] some pain." By October 6, 2011, Hinman no longer was experiencing any "catching or locking [in his left knee]." He experienced "arthritic type pain with any kind of prolonged standing" and could not walk more than 50 yards. Dr. Brandon gave Hinman a cortisone injection to treat the knee pain. He noted that Hinman had a "poor prognosis for returning to work as a [correctional] officer."

On October 27, 2011, Dr. Brandon gave Hinman an injection of Orthovisc for "[l]eft [k]nee [o]steoarthritis."[4] Hinman received additional Orthovisc injections on November 4, 2011, and November 15, 2011.

Meanwhile, on November 7, 2011, Hinman returned to see Dr. Atkins at McCready. Dr. Atkins noted that Hinman had "severe osteoarthritis." They again discussed knee replacement surgery and the need for Hinman to lose weight.

On December 23, 2011, in connection with a workers' compensation claim he had filed, Hinman was examined by H.S. Pabla, M.D., an orthopedic surgeon in Bowie. Dr. Pabla found that Hinman had "[i]nternal derangement" of the "left knee joint" "[s]tatus post surgical stage as a result of the incident on May 27, 2011."

Hinman returned to Dr. Brandon on December 27, 2011. Dr. Brandon noted that the "sharp catching pain [had] resolved," but that Hinman was experiencing "progressive pain and stiffness and crepitation." Dr. Brandon advised that Hinman would not be able to return to his job at ECI and that he had reached maximum medical improvement.

D. Application for Disability Benefits

On February 13, 2012, Hinman applied to SRPS for accidental disability benefits, based on an accident at ECI on May 27, 2011. He described his disability as "left knee," specifying that he was unable to "run or walk without limp, can't bend, can't run period.

[4] Orthovisc is the trademark name for a preparation of hyaluronan, a fluid that can be injected into the knee to help lubricate the joint and relieve pain. *Dorland's Illustrated Medical Dictionary,* at 875, 1340 (32nd ed.2012).

I have severe pain, knee locks up." His description of the accident was: "While making rounds on post, my knee popped and began to burn and pain and weakness in knee area." He attached a "Physician's Medical Report" completed by Dr. Brandon. In the "Diagnosis" section, Dr. Brandon wrote:

> Left knee,
> Status post partial medial meniscectomy, chondroplasty of the medial and lateral tibial plateau and patellofemoral joint
> Exacerbation of arthritis of left knee

Dr. Brandon opined in the report that Hinman could not return to his current position and had "permanent restrictions of sedentary work."

On May 9, 2012, the SRPS Medical Board reviewed Hinman's application and referred him for an independent medical evaluation ("IME"). The IME was performed on June 27, 2012, by Gary Pushkin, M.D., an orthopedic surgeon. Dr. Pushkin found that Hinman was totally disabled. He opined that the disability was due to degenerative arthritis of the left knee secondary to morbid obesity, and was not due to the accidental meniscal tear on May 27, 2011. Based on the IME, on August 9, 2012, the Medical Board recommended that the Trustees approve Hinman's application for ordinary disability benefits and deny his application for accidental disability benefits. The Trustees adopted that recommendation on August 21, 2012.

On December 17, 2012, Hinman accepted ordinary disability benefits, but sought reconsideration of the denial of his application for accidental disability benefits. At Hinman's request, Dr. Pushkin reviewed additional medical records. He came to the same conclusion as before. On March 27, 2013, the Medical Board upheld its prior

decision and, on April 16, 2013, the Trustees adopted that recommendation and issued the final denial of Hinman's application for accidental disability benefits.

Hinman promptly requested a contested case hearing in the Office of Administrative Hearings ("OAH").

E. OAH Hearing

On November 18, 2013, a contested case hearing was held before an Administrative Law Judge ("ALJ") with the OAH. Hinman and SRPS introduced a joint exhibit that included all of Hinman's medical records from McCready, PRMC, Dr. Brandon, and Dr. Pabla, as well as the incident report he filed with ECI and documents from his workers' compensation case.

Hinman testified about the May 27, 2011 accident. He was "walking fast" on the mental health unit at ECI and, as he "cut the corner," he "felt something like something was wrong." He didn't know if he "slipped or if [his] knee buckled," but he immediately felt pain. He claimed that he never had had any problems with his left knee before then. Following the surgery by Dr. Brandon, his left knee "never healed up" and his left knee "just stayed aggravated."

Hinman moved into evidence a written report by Dr. Brandon, dated October 14, 2013. In it, Dr. Brandon opined that "the condition of Mr. Hinman's knee was result [sic] of the accident of May 27, 2013 [sic]. Although he had pre-existing arthritis he was able to function prior to the accident and perform the duties of his employment." Dr. Brandon

further opined that "a twisting injury to the knee is a common mechanism that results in a tear of the medial or lateral meniscus."

SRPS called Dr. Pushkin, who explained that osteoarthritis is "wear and tear arthritis" or "degenerative arthritis," specifically "damage to the gristle, the white covering on the end of the bone." It takes between 15 to 30 years for osteoarthritis to develop to the point of causing symptoms. Chondromalacia—which "literally means sick cartilage"—is the classic presentation of osteoarthritis. It is graded on a scale from zero to four, with zero being normal and four being complete cartilage loss. According to Dr. Pushkin, a person's weight plays a "significant" role in developing osteoarthritis of the knees because it increases the force on the knee joints.

Dr. Pushkin opined that Hinman was "disabled from performing his job as a correctional officer," but the disability was "not a result of the accident of . . . May 27, . . . 2011." Rather, the disability resulted from "degenerative arthritis and . . . obesity." In arriving at his opinion, Dr. Pushkin relied heavily on Dr. Brandon's operative report from the August 12, 2011 arthroscopic procedure. That report documented that Hinman had stage III chondromalacia, meaning significant loss of cartilage, in all three compartments of his left knee, in addition to stage IV chondromalacia, meaning areas of complete cartilage loss, in one of those compartments. It also documented two tears of the medial meniscus: the radial tear and the horizontal cleavage tear. Dr. Pushkin explained that the radial tear was an "acute component," which likely occurred on May 27, 2011. By

contrast, the horizontal cleavage tear was "a degenerative tear that's seen in patients with arthritis."

Based on the information in the operative report, Dr. Pushkin opined that Hinman had "at most a very small acute component super imposed on a chronic arthritic knee"; and that the small acute component—the radial meniscal tear—played "[v]irtually [no]" role in Hinman's ultimate disability. He explained that, when a small radial tear is repaired arthroscopically, as happened here, it will not cause "prolonged disability." In Dr. Pushkin's view, this was borne out by the fact that, after his arthroscopic procedure, Hinman reported to Dr. Brandon that the sharp "catching" pain in his left knee had resolved. According to Dr. Pushkin, the cortisone shot and the Orthovisc injections administered by Dr. Brandon were treatments for osteoarthritis, not for the radial tear to the meniscus.

Dr. Pushkin also based his opinion on his own examination of Hinman. Hinman's "range of motion . . . was limited equally in both knees." He had pain in his left knee, but the pain was consistent with arthritis, not with a meniscal tear. Dr. Pushkin testified that the MRI also supported his opinion, as it showed "chronic changes of degenerative arthritis." Dr. Pushkin characterized Dr. Pabla's diagnosis of "internal derangement of the knee" as a "garbage can diagnosis by someone who can't quite figure out what's going on at the time."

On cross-examination, Dr. Pushkin was asked whether Hinman's testimony about the injury he sustained on May 27, 2011, was consistent with a radial meniscal tear. Dr.

Puskkin opined that it was "a type of mechanism that would cause that acute injury." He rejected the suggestion that the radial tear sustained on May 27, 2011, was the cause of Hinman's ongoing symptoms and disability, however. Indeed, Dr. Brandon's notes from his follow-up treatment showed that the surgery had successfully treated that tear. Dr. Pushkin opined that Hinman would have become disabled due to the degenerative arthritis in his left knee regardless of whether he had suffered the acute injury on May 27, 2011.

F. The ALJ's Proposed Decision

On February 10, 2014, the ALJ issued her proposed decision. In relevant part, the ALJ found:

- On May 27, 2011, Hinman was making a security round at ECI when he "felt something pop in his left knee"; and he began "experiencing pain in his left knee" that night.
- Before May 27, 2011, Hinman "had been experiencing increasing pain in his left knee."
- On May 27, 2011, Hinman weighed about 410 pounds.
- The June 1, 2011 MRI revealed "an incomplete radial tear of the knee, mild joint effusion and chronic changes of degenerative arthritis, which were present in all three compartments of the knee."
- Dr. Brandon diagnosed Hinman with a radial meniscus tear and chondromalacia, both of which were confirmed during the August 12, 2011 arthroscopic procedure.
- After that procedure, Hinman "continued to experience arthritic type pain."
- The "softening and loss of cartilage is part of the osteoarthritic process" and weight is "a significant factor in the development of osteoarthritis."

In the "Discussion" section of her proposed decision, the ALJ explained that it was undisputed that Hinman was totally and permanently incapacitated from performing his duties as a correctional officer and that he had had an on-the-job accident on May 27, 2011, that was not the result of willful negligence. The sole issue for decision was "whether [Hinman]'s disability is the natural and proximate result of an on-the-job accident." Quoting *Ahalt v. Montgomery County*, 113 Md. App. 14, 27 (1996), the ALJ stated that it was Hinman's burden to prove that his accident was the "direct cause" of his disability, *i.e.,* that it was the "'sole proximate cause of [his] incapacity.'" Then, citing *Eberle v. Baltimore County*, 103 Md. App. 160, 173 (1995), she further stated that an "accident at work [that] merely exacerbates a preexisting condition, even seriously, with the person subsequently becoming disabled" is not the natural and proximate cause of the disability.

The ALJ was not persuaded by Dr. Brandon's report, which she characterized as "cursory" and lacking "any explanation as to how he reached [his] conclusion." In contrast, Dr. Pushkin's testimony was "detailed and convincing." She found especially compelling his opinion, based on the operative report from the arthroscopic procedure, that Hinman's left knee has significant chondromalacia and a horizontal cleavage tear, both of which are produced by advanced osteoarthritis. She observed that Dr. Brandon's post-operative treatment notes actually supported Dr. Pushkin's opinion that Hinman's continuing pain and disability were caused by degenerative arthritis, not by the radial meniscal tear that was the acute injury sustained on May 27, 2011.

The ALJ rejected Hinman's testimony that he had not had any pain in his left knee before May 27, 2011, calling it "unconvincing" and "self-serving." She noted that Dr. Atkins's notes from May 31, 2011, document that Hinman had reported "increasing pain in his left knee *over time*." (Emphasis added.)

After reviewing all of this testimony and evidence, the ALJ found that Hinman "did not meet his burden of proving that his on the job injury was the sole proximate cause of his disability," and that "the preponderance of the evidence does not point to the accident of May 27, 2011 as the sole, proximate cause." The ALJ determined that the factors contributing to Hinman's "development of the debilitating arthritis" included his morbid obesity, which increased the force on his knee joints, and his having worked for over 20 years in a position that required "constant and extensive walking, running and lifting over one hundred pounds." She concluded:

> In sum, neither [Hinman's] testimony nor any of his medical records prove that the accident of May 27, 2011 was the natural and proximate cause of [his] disability. [Hinman's] disability was the result of a preexisting condition, degenerative arthritis that, at most, was exacerbated by acute or chronic meniscal tear.

On that basis, the ALJ recommended that the SRPS deny Hinman's application for accidental disability benefits.

Hinman noted exceptions to the ALJ's decision, which were denied.

G. Trustees' Final Decision

On June 17, 2014, the Trustees adopted the proposed decision of the ALJ and denied Hinman's application for accidental disability benefits. Hinman was notified of the final agency decision by letter of June 19, 2014.

H. Judicial Review

Hinman filed a timely petition for judicial review of the SRPS decision in the Circuit Court for Somerset County. On April 16, 2015, the circuit court affirmed the agency decision. This timely appeal followed.

We shall include additional facts in our discussion of the issues.

STANDARD OF REVIEW

In an appeal from a judgment entered on judicial review of a final agency decision, we look "through" the decision of the circuit court to review the agency decision itself. *People's Counsel v. Country Ridge Shopping Center, Inc*., 144 Md. App. 580, 591 (2002). Our role "in reviewing [the final] administrative agency adjudicatory decision is narrow." *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 67 (1999) (citing *United Parcel v. People's Counsel*, 336 Md. 569, 576 (1994)). "'[I]t is limited to determining if there is substantial evidence in the record as a whole to support the agency'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*, 336 Md. at 577). "An agency's fact-finding is based on substantial evidence if 'supported by such evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Kim v. Md. State Bd. of Physicians*, 196 Md. App. 362, 370 (2010), *aff'd*

423 Md. 523 (2011) (quoting *People's Counsel v. Surina*, 400 Md. 662, 681 (2007)). "The agency's decision must be reviewed in the light most favorable to it; because it is the agency's province to resolve conflicting evidence and draw inferences from that evidence, its decision carries a presumption of correctness and validity." *State Bd. of Physicians v. Bernstein*, 167 Md. App. 714, 751 (2006). With respect to legal conclusions, although we may "give weight to an agency's experience in interpretation of a statute that it administers, . . . it is always within our prerogative to determine whether an agency's conclusions of law are correct." *Schwartz v. Md. Dep't of Natural Res*., 385 Md. 534, 554 (2005).

DISCUSSION

Hinman contends the SRPS's final decision, adopting the proposed decision of the ALJ, was based on an incorrect legal standard and was not supported by substantial evidence in the record. He asserts, moreover, that the ALJ and the SRPS either erred as a matter of law or acted arbitrarily and capriciously by "ignoring and disregarding" Dr. Pabla's medical opinion in ruling on his application for accidental disability benefits.

The SRPS responds that the ALJ applied the correct legal standard and considered all of the evidence, including Dr. Pabla's medical opinion, in reaching her proposed decision and that the SRPS did not err by adopting it. In addition, the final agency decision was amply supported by the evidence, most notably Dr. Pushkin's expert testimony and Hinman's medical records showing advanced degenerative arthritis in his left knee pre-dating the May 27, 2011 accident.

As discussed, under SPP section 29-109(b), to receive accidental disability benefits, a member must prove by a preponderance standard that he is "totally and permanently incapacitated for duty as *the natural and proximate result of an [on-the-job] accident*." (Emphasis added.) In *Eberle*, 103 Md. App. at 160, we considered the meaning of the "natural and proximate result" language, as used in an identically worded accidental disability benefit section of the Baltimore County Code.[5]

Elmer Eberle worked as a truck driver for Baltimore County. In 1987, he suffered an on-the-job accidental injury to his right knee and, in 1989, he suffered an on-the-job accidental injury to his left knee. After the second accident, he underwent arthroscopic surgery on his left knee. He returned to work, but experienced additional knee problems. In 1991, he underwent a total knee replacement on his right knee. He returned to work again, but by May of 1992, he was unable to perform his job duties.

Eberle filed an application for accidental disability benefits, which was denied. He appealed to the County Board of Appeals ("Board"), which held an evidentiary hearing. Four medical experts offered opinions about the cause of Eberle's disability.

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[5] Baltimore County Code section 23-55 (1991), stated, in relevant part, that an employee is entitled to accidental disability benefits if he or she

> has been totally and permanently incapacitated for duty as *the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place*, without willful negligence on his part.

(Emphasis added.)

Three were of the view that he had pre-existing chronic degenerative arthritis in one of his knees. Of those experts, one opined that the degenerative arthritis was aggravated by the on-the-job accidents and one opined that it was reasonable to think there had been some aggravation, but it was impossible to tell whether the on-the-job accidents had changed any of his underlying pathology. *Id.* at 164–65. A fourth expert agreed that Eberle had had pre-existing knee "problems" that had led him to undergo surgery many years before, but was of the view that he was "asymptomatic" until the 1987 and 1989 accidents. *Id.* at 165.

The Board considered all the evidence and concluded that Eberle "suffered from degenerative arthritis in his knees and thus he did not meet the burden of proving the causal connection between his present disability and the two accidents he sustained at work." *Id*. Specifically, the Board found it was "'unable to reasonably conclude that the present disability of [Eberle was] a direct result of the two accidents[.]'" *Id.* (quoting the Board's opinion). On judicial review, the circuit court upheld the Board's decision.

In this Court, Eberle argued that the Board erred as a matter of law in ruling that the "natural and proximate result of an [on-the-job] accident" causation standard is not satisfied when the disability is an exacerbation of a preexisting condition. We disagreed, emphasizing that, under the County Code, applications for accidental disability are subject to a "more stringent" standard than applications for ordinary disability benefits. *Id*. at 167. We found persuasive a decision of the Superior Court of New Jersey in a consolidated appeal from the denial of accidental disability benefits to two state

employees. *Quigley v. Bd. of Trustees of the Pub. Employees' Retirement System*, 555 A.2d 642 (N.J. App. Div. 1989).

In *Quigley*, Hilsman, one of the employees, was working when he fell off the tailgate of a truck, landing on both knees. Seven months later, he underwent surgery to repair torn cartilage in his right knee. The surgery revealed "'degenerative changes to the internal structure of [his] right knee.'" *Eberle*, 103 Md. App. at 172 (quoting *Quigley*, 555 A.2d at 646) (brackets in *Eberle*). At an administrative hearing, the orthopedic surgeon who operated on Hilsman opined that the fall from the truck at work was the "'direct cause of the injuries to Hilsman's right knee and also caused the aggravation of a preexisting injury to his left knee.'" *Id*. The New Jersey Division of Pensions presented its own expert who opined that Hilsman's knee problems "'were all the result of developmental osteoarthritis and degenerative changes in his knee,'" exacerbated by his excessive weight. *Id*. (quoting *Quigley*, 555 A.2d at 647). Although the fall from the truck might have caused the "'underlying condition'" to "'flare[] up,'" "'the degenerative changes, without the traumatic injury, would themselves have been sufficient to disable [Hilsman.]'" *Id*. Relying on the Division's expert, the New Jersey Board of Trustees denied Hilsman's application for accidental disability benefits. It concluded that the fall from the truck "'merely aggravated'" a preexisting condition and was "'not the substantial contributing cause of his disability.'" *Id*. That decision was affirmed on appeal.

In *Eberle*, we observed that, like Hilsman, Eberle had been diagnosed with degenerative arthritis in both knees, was overweight, had suffered an on-the-job accident (actually two) that exacerbated his pre-existing condition, and had become completely disabled. There was no expert testimony that Eberle would have become disabled absent the accident, as there was in *Quigley,* but there was no expert testimony "that Eberle's disability was caused by injuries at work." *Id.* 174. We held that, "[b]ased on the medical reports that were riddled with references to a preexisting degenerative arthritis problem in addition to hypertension and a chronic overweight problem[,]" the Board did not err in concluding "that Eberle's disability was not the natural and proximate result of the accidental injuries he suffered." *Id*. at 174–75.

The following year, this Court decided *Ahalt*, 113 Md. App. at 14. Frederick Ahalt worked as a firefighter for Montgomery County. After he began to experience stiffness in his joints and was diagnosed with osteoarthritis, he sought a service-related disability retirement (an enhancement from an ordinary disability retirement), under section 33-43(e) (1984) of the Montgomery County Code ("MCC"). That section provided that to obtain a service-related disability retirement the employee had to show that he was "totally incapacitated for duty or partially and permanently incapacitated for duty as *the natural and proximate result* of *an accident occurring*, or an *occupational disease incurred* or *condition aggravated*" while on the job. (Emphasis added.) The Montgomery County Merit System Protection Board ("Merit Board") denied Ahalt's application. It adopted the finding of the Hearing Examiner that Ahalt's

> "condition, osteoarthritis, is the underlying cause of his total incapacity based on uncontradicted medical evidence. The total incapacity was not caused by whatever aggravation [Ahalt's] job may have produced. This aggravation must be the natural and proximate cause of the total incapacity if [Ahalt] is to prevail and the evidence does not remotely suggest this possibility. *It is clear that the Code provision requires an aggravation which is so significant that it has a causal effect on the totality and permanence of the incapacity*."

113 Md. App. at 20 (quoting Hearing Examiner's Report) (emphasis added). The circuit court upheld that decision on judicial review.

This Court affirmed. It was undisputed that Ahalt was permanently incapacitated for duty. Also, there was no allegation of an accident or occupational disease. The issue was whether Ahalt's incapacity was the natural and proximate result of an "aggravation" of his "condition," *i.e.,* osteoarthritis, while on the job. *Id.* at 24. We reasoned that when a pre-existing condition is aggravated by the member's job, but the pre-existing condition is such that it would have resulted in the member's becoming permanently incapacitated for duty in any event, the aggravation is not a service-related disability. We noted, in *dicta*, that in *Eberle* we had "interpreted the phrase 'the natural and proximate result' to mean that a work-place related occurrence must be the sole proximate cause of the incapacity." *Id.* at 27.[6] We held that the Merit Board did not err in ruling that Ahalt's "condition" itself, *i.e.*, osteoarthritis, not an aggravation of that condition brought about by his duties as a firefighter, caused his disability.

[6] The phrase "sole proximate cause" was not used by the Court in *Eberle*, although similar language was used by Baltimore County in its arguments.

We return to the case at bar. Hinman argues that the ALJ erred as a matter of law by applying the "sole proximate cause" language from *Ahalt* in deciding the "natural and proximate cause" issue, and for that reason the SRPS erred by adopting that decision. While acknowledging that *Ahalt* remains the law of Maryland, he nevertheless argues that the *Ahalt* Court misconstrued the holding in *Eberl*e and that "sole proximate cause" is an incorrect legal standard.

As explained above, our holding in *Eberle* was that, in the face of evidence of a member's pre-existing, disabling condition and of on-the-job accidents that may have aggravated that condition, it was not error for the agency to be persuaded that the member did not meet his burden to show that his disability was the natural and proximate result of the accidents. We did not hold that when a member has a pre-existing condition the member's disability *can never* be the "natural and proximate result" of a workplace accident that *aggravates* the pre-existing condition. Using the word "direct," we made clear that the "natural and proximate result" causation standard mandates that there be a link between the accident and the member's total disability. When an accident aggravates an already disabling condition, or when an accident aggravates a pre-existing condition, but the member's disability is not shown to have resulted naturally, *i.e.,* directly and proximately, meaning foreseeably, from the aggravation, the standard is not satisfied.

In *Ahalt*, we were not considering whether an employee's disability was the natural and proximate result of a workplace accident (or any accident). Rather, the issue

was whether the employee's disability was the natural and proximate result of the aggravation of a condition while on the job. If so, the employee was entitled to the service-related disability, under the terms of the controlling Code provision. It was in this context that we characterized the *Eberle* holding about the "natural and proximate result" standard as equivalent to "sole proximate cause."

Although *Eberle* did not apply a "sole proximate cause" standard, in *Ahalt* it made sense to equate the two because, there, service-related benefits were available for the on-the-job aggravation of a pre-existing condition resulting in disability. The Court used the "sole proximate cause" standard to distinguish those employees who would have been disabled by their pre-existing condition, regardless of whether it was aggravated on the job, from those employees who only became disabled because of the on-the-job aggravation of their pre-existing condition.

The causation issue in the case at bar is unlike that in *Ahalt* and is similar to that in *Eberle* and *Quigley*. The burden was on Hinman to show that his incapacity for duty was the natural and proximate result of the May 27, 2011 accident; it was not sufficient for him to show only that the accident aggravated his pre-existing condition when the pre-existing condition was itself disabling.

Given the evidence adduced, it was immaterial that the ALJ equated "natural and proximate result" with "sole proximate cause," even though "sole proximate cause" may have been an unduly restrictive standard. The evidence the ALJ credited established that Hinman had osteoarthritis in both knees that pre-existed the accident; that the

osteoarthritis was brought on by Hinman's obesity and years of demanding physical activity at work; that the osteoarthritis was itself disabling, regardless of the acute tear caused by the May 27, 2011 accident; and that at most the accident exacerbated Hinman's otherwise disabling condition. Under *Eberle*, this evidence did not compel a finding that Hinman's incapacitation for duty was the natural and proximate result of the May 27, 2011 accident.

The ALJ's proposed decision, ultimately adopted by the Trustees, was supported by substantial evidence, in particular, the testimony of Dr. Pushkin, and was not arbitrary and capricious. Finally, Hinman's assertion that the ALJ, and by extension the SRPS, ignored Dr. Pabla's report is without merit. Dr. Pabla's report was in the record before the ALJ. That she did not find it persuasive and did not reference it in her opinion is not evidence that she ignored it because of an argument made by the SRPS in closing.

JUDGMENT OF THE CIRCUIT COURT FOR SOMERSET COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.