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Court Again Mulls Psychic Trauma As Eligibility for Accident Pension

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New Jersey's Supreme Court is grappling with a trio of cases that will determine whether law enforcement or corrections officers can qualify for enhanced accidental disability pensions based on psychological trauma alone.

The Court heard the cases in October 2006 but came to no decision, and since two members of the Court have retired in the interim and have been replaced, the cases were re-argued on Wednesday.

The issue in all three cases is whether psychic trauma - brought on by verbal abuse or racial harassment, but without physical injury - qualifies as a "traumatic event" that supports pension eligibility.

Joseph Guadagno, a corrections officer who says he was forced to retire due to an inmate's repeated threats to kill his wife and child, was denied accidental disability benefits. *Guadagno v. Police & Firemen's Retirement System*, A-123-05.

Glynn Moore, a state trooper who says he was forced to retire early because of mental strains he sustained suffering years of racial hostility by fellow troopers, was also denied benefits. *Moore v. State Police Retirement System*, A-101-05.

James Patterson, another state trooper, retired early because his supervisor demeaned and tormented him repeatedly in public after he was accused of domestic violence and moved to a desk job. He was denied pension benefits, but the Appellate Division reversed. *Patterson v. State Police Retirement System*, A-199-05.

In Patterson's case, Deputy Attorney General Eileen DenBleyker urged the Court to reinstate the pension board's denial, saying that any decision to expand accidental disability pension benefits to those who suffer psychological trauma is exclusively the Legislature's province.

"His injuries were the result of normal stress, not an accident," she said of Patterson. "There are other avenues of redress, and we must not rule out malingering."

Justice Barry Albin asked whether Patterson could have "become undone" by the verbal abuse - some of it vulgar - inflicted by his supervisor.

"Words will have different effects on different people," DenBleyker replied. "You can't define this as an 'accident' without some measurable criteria."

Albin asked, what if the supervisor threatened to kill him?

"You'd have to examine the circumstances," DenBleyker said.

Patterson's attorney, Trenton solo Jerome Ballarotto, said the verbal abuse - by a visibly infuriated supervisor with a history of fighting in what is, by all measure, a paramilitary organization - was severe enough to make Patterson fear for his physical safety.

"You have to understand the context," said Ballarotto. "The state has demeaned the severity of the assault."

Albin suggested Patterson perhaps should have expected some "ribbing" by other troopers after his arrest on the domestic violence complaint.

Justice Virginia Long interjected. "This was not ribbing," she said.

Ballarotto agreed. "By any definition, this was an assault."

Albin asked whether Marine recruits harassed at Parris Island by drill sergeants would be eligible for accidental disability benefits under the standard Ballarotto suggested should be applied.

Ballarotto said the analogy was inapt. At Parris Island, harassment and verbal abuse are "for the purpose of making them better Marines. That was not what happened here. The intent was to destroy Trooper Patterson," he said.

Next came the case of Glynn Moore, who claims he suffered years of racial harassment from white officers that intensified after he refused to participate in what he said was the cover-up of an assault on a black female motorist.

The Appellate Division denied his appeal from denial of enhanced benefits, finding that a traumatic event must be caused by application of an "external physical force" and that a "purely psychic stimulus" does not qualify.

Albin appeared troubled that Moore apparently did nothing to help the motorist while the other troopers physically assaulted her. "My concern is that your client is a police officer and had an obligation to stop it," he told Moore's lawyer, Mount Holly solo Nancy Griffin.

"Every police officer has a sworn obligation of stopping other police officers from committing crimes," Albins said. "He stood by the side and did nothing [and] now he puts forth an accidental disability claim?"

Griffin said Moore felt outnumbered by the other troopers and believed he could not do anything to stop

the assault. However, she noted that for years, other troopers taunted Moore by constantly aiming racial epithets at him.

DenBleyker, arguing for the state, said Moore's case lacked a traumatic event and that, like Patterson, Moore could have pursued other avenues, such as claiming a civil rights violation, for compensation.

In the third case, that of former senior corrections officer Joseph Guadagno, the question is whether threats to harm one's family can meet the trauma requirement. The Appellate Division said no.

Guadagno's lawyer said there could be no doubt that he suffered a severe psychological trauma that left him physically unable to perform the duties of his job. The inmate who threatened to rape his wife and murder his daughter knew that Guadagno's family owned a pizza restaurant in Hamilton.

"The inmate had specific knowledge of Mr. Guadagno's family life," said Vicki Beyer, of Lawrenceville's Stark & Stark. "He was so taken aback he called his wife and told her where to find a gun and ammunition. There was an imminent threat to himself and his family."

But DenBleyker said dealing with angry inmates "is something you have to do in the course of everyday activities" as a corrections officer and added there was no evidence the inmate could have ever carried out his threats.

When the Court first heard arguments in October 2006, it considered a fourth case, involving another corrections officer, Stewart Richardson. But his case was different in that he suffered a wrist injury during a scuffle that left him unable to physically deal with inmates. The Court unanimously ruled last July that the wrist injury satisfied the "traumatic event" standard to qualify for an accidental disability pension. *Richardson v. Board of Trustees*, 192 N.J. 189 (2007).

Since those first oral arguments, the Court's make-up has changed. Justice Helen Hoens has replaced Deborah Poritz and Chief Justice Stuart Rabner now fills the seat of James Zazzali.