IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 20, 2023 Session

MATTHEW LONG v. CHATTANOOGA FIRE AND POLICE PENSION FUND

Appeal from the Chancery Court for Hamilton County
No. 21-0179 Jeffrey M. Atherton, Chancellor

No. E2022-01151-COA-R3-CV

Petitioner/Appellee Matthew Long ("Long") applied for disability pension benefits due to Post-Traumatic Stress Disorder ("PTSD") caused by various traumatic events he experienced during his time as a firefighter with the Chattanooga Fire Department ("CFD"). The Board of Trustees (the "Board") for Respondent/Appellant Chattanooga Fire and Police Pension Fund (the "Fund") denied Long's application. Long filed a Petition for Writ of Certiorari with the Chancery Court for Hamilton County (the "trial court") seeking a reversal of the Board's decision. Finding that the Board's decision was arbitrary and capricious, the trial court reversed the denial of Long's application. The trial court also denied a motion to alter or amend filed by the Fund. Following thorough review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which D. MICHAEL SWINEY, C.J., and THOMAS R. FRIERSON, II, J., joined.

Christopher A. Crevasse, James T. Williams, Robert F. Parsley, and Jessica M. Wolinsky, Chattanooga, Tennessee, for the appellant, Chattanooga Fire and Police Pension Fund.

Janie Parks Varnell and Logan Davis, Chattanooga, Tennessee, for the appellee, Matthew Long.

OPINION

I. Background

The Fund is a defined-benefit pension plan that provides members of the CFD and the Chattanooga Police Department ("CPD") with certain retirement, disability, and death

benefits. These pension benefits include coverage for a job-related disability when a member is "unable to perform his/her duties as a Firefighter or Police Officer due to an injury or illness that is the result of the performance of sworn duties." The Fund is administered and governed by the Board, made up of three active firefighters, three active police officers, the Mayor of the City of Chattanooga or an appointee of the Mayor, and an appointee of the Chattanooga City Council. The Fund is funded by employer contributions from the City of Chattanooga (the "City"), investment earnings, local taxation, the net proceeds of the sale of any unclaimed personal property that comes into the possession of CFD or CPD, and contributions from CFD and CPD members. These CFD and CPD members contribute through a mandatory payroll deduction of eleven percent of their base salary.

As relevant to this appeal, the Fund's Disability Benefit Policy (the "Policy") requires a member applying for job-related disability pension benefits based on a mental health disorder, including but not limited to PTSD, to provide evidence satisfactory to the Board that shows:

1. that the Applicant is permanently mentally or physically incapacitated from performing his/her usual duties or any other duty in their respective department;
2. that the disability is a direct result of a traumatic event that is
    a. identifiable as to time and place
    b. undesigned and unexpected, and
    c. caused by a circumstance external to the member (not the result of pre-existing disease that is aggravated or accelerated by the work);
3. that traumatic event occurred during and as a result of the Applicant's regular or assigned duties;
4. symptoms that have arisen in response to that traumatic event are aggravated by performing a Participant's regular or assigned duties; [and]
5. that the disability was not the result of the Applicant's willful negligence[.]

Applicants seeking job-related disability benefits for PTSD must also "have obtained sufficient treatment for a minimum of six (6) months prior to application." The Policy states that "[a]n independent medical exam ("IME") should be scheduled for all disability Applicants unless the injury or illness is shown by evidence satisfactory to the Board to be catastrophic and/or the existing medical evidence collected by the [Board staff] clearly shows that the Applicant cannot continue performing the duties of a sworn Firefighter or Police Officer."

Long began working as a firefighter for CFD in 2005 and was promoted to senior firefighter in 2007. As a senior firefighter, in addition to fighting fires, he served as a "relief driver" of emergency vehicles and as an emergency medical technician ("EMT"). To prepare him for these roles, Long completed firefighter training academy, hazardous

materials training, and EMT training. Long was also trained to use tools such as "jaws of life" and hydraulic tools to extract victims from vehicles. Although these trainings included images and videos of car wrecks, house fires, and injured victims on stretchers, Long testified that these images and videos were not so gruesome that you could not show them to your children. Despite that, as a firefighter Long expected to encounter injured and/or burned children and human death.

In late June or early July of 2019, Long reported to his supervisor, Travis Williams, that he needed help with his mental health. Williams emailed a representative of the City on July 2, 2019, requesting approval for Long to receive services through the City's Employee Assistance Program ("EAP"). Long took FMLA leave to address his mental health and ultimately never returned to CFD as a firefighter.

On July 5, 2019, Long saw a medical provider at Marathon Health[1] and reported:

> continuing and worsening depression and anxiety in the past several weeks. He states it has been there for the past 10 years due to the many traumatic things he has seen as a firefighter. He reports not being as compassionate as a person and not enjoying work anymore. Just thinking about going into work makes him feel very anxious. He is tearful at home and has progressively had trouble focusing and remembering things day to day. He feels the need to work non-stop to keep thoughts and images out of his head and works until he collapses then typically only sleeps about 3-4 hours at night.

That provider prescribed him Effexor to address depression with anxiety.

Long began treating with Abby Wallace, a licensed professional counselor at the Transformation Center in Chattanooga, on July 8, 2019, and reported similar symptoms to those he had reported on July 5. Wallace's progress notes from July 8 also reflect that Long "dreams about the kids a lot and thinks about them every day, dreams about what happened," and "has a lot of fireman experiences that plague his thoughts and dreams." Long stated that he was "over-working," "stressed," and "the things I see are similar to a war zone." He reported having a "photographic memory," which resulted in him "see[ing] these things forever," and noted that he had "seen a lot of kids and their injury was the cause of the parent." He said he "used to work with guys [and they] would process together what happened after a bad call, but [he] moved to a different station 5 years ago and that changed." Long reported that he was experiencing "memory/focus side effects" since starting the Effexor. During an appointment with Wallace on July 25, 2019, Long "identified 3 memories that stood out more than the others," including a murder that

[1] The City used Marathon Health as its employee medical clinic during this time.

happened 15 years earlier when Long had been on the job about a month, a car wreck involving children that had occurred 10-12 years earlier, and a fire involving children that happened 10 years earlier. Long continued treating with Wallace until December 4, 2019.

On or about November 6, 2019, Long's FMLA leave expired, and he was called to return to CFD as a firefighter. He reported to Wallace that "immediately his [blood pressure] raised and he did not sleep for several nights." At the City's request, Long underwent a fitness-for-duty examination performed by Dr. Keith Caruso on November 15, 2019. Dr. Caruso did not treat Long, and instead examined him "in order to form opinions about his psychiatric condition, its causation, prognosis and impact upon his capacity to perform his duties as a CFD [firefighter]." During an interview in Dr. Caruso's office, Long reported:

> Trauma included seeing children burned to death and mangled in motor vehicle accidents (MVA's [*sic*]). Particularly troubling exposures began three years into his service with an incident in which a woman had locked her two children in a house and left. The house had caught fire. FF Long and a captain had found one boy, brought him out and resuscitated him. Although the boy survived, much of his skin and hair had sloughed off. The boy's brother had not survived. The boy had visited them subsequently and was grateful for having been saved, but FF Long was troubled by how disfigured the boy was, and FF Long worried that his quality of life must be terrible.
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> Not much later, FF Long came upon a MVA in which a drunken woman had failed to fasten the seat belts of any of her three children. An eight-year-old girl had been thrown out the side window and survived after an extended stay in the intensive care unit (ICU) with a concussion and internal injuries, but her newborn sibling had suffered a crushed skull and her 13-year-old sister had died after being thrown into the back window. FF Long had to pull the 13-year-old out of the back window.
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> FF Long had also come upon scenes of murders, MVA's and other accidents. FF Long was especially troubled by an accident in which a college freshman had been hit by a car crossing the street in front of his girlfriend and friends. Lung tissue had been forced out of the victim's mouth, and he had no chance of survival. FF Long was troubled that his friends and girlfriend were asking about his condition at the scene.
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> * * *

> Matters came to a head on July 4, 2019 when he responded to a call from an intellectually disabled man who had reported that his mother had fallen. When FF Long arrived, he came upon a scene in which the man's mother had fallen out of her chair due to being high on drugs, and the man's father was cutting up drugs on the table nearby with a .357 Magnum next to him. The father looked at him with hostility, and FF Long had responded without police back-up, leaving him feeling very threatened. FF Long remarked that he was in danger of getting killed on a call where no one needed help.

Long also reported the same symptoms he had reported to Wallace and noted that "[w]hile on FMLA, he had begun to sleep somewhat better and was somewhat less anxious, but when contacted about returning to work, his symptoms had recurred full force." Dr. Caruso diagnosed Long with (1) PTSD, chronic, with recent exacerbation, and (2) Major Depressive Disorder ("MDD"), single episode, severe, without psychotic features. Despite Long having "improved somewhat on four months of FMLA with approximately eight treatment sessions," Dr. Caruso opined that Long was "currently unfit for duty," noting that he was "preoccupied with distressing memories and is avoidant, which would interfere with his engaging fully in his duties as a [firefighter]." Dr. Caruso recommended that Long "attend the PTSD treatment program for firefighters at the Center of Excellence in Maryland" and that the dosage of Long's Effexor prescription be increased to the therapeutic range.

In January and February of 2020, Long spent 30 days at the International Association of Fire Fighters Center of Excellence in Maryland (the "Center"), where he received inpatient treatment designed especially for firefighters. Long reported the same symptoms to the providers at the Center that he had reported to Wallace and Dr. Caruso and reported that he had noticed PTSD symptoms since 2008. While at the Center, Long participated in cognitive processing therapy five times per week to "process the trauma and reduce[] impact of events," along with daily group therapy sessions. Long's discharge plan from the Center included Long having follow-up visits with a psychiatrist and therapist, and an appointment was scheduled for Long to see a therapist in Knoxville on February 18, 2020. Long was discharged from the Center on February 15, 2020.

Long ultimately did not attend any treatment with the Knoxville therapist, but he did have a follow-up appointment with his medical provider at Marathon Health on February 19, 2020. He reported that he was still "off work while [the City] gets him set up with an outpatient PTSD counselor." His blood pressure was elevated at the time, and he explained that it was "due to seeing his fellow firefighters here for inservice when he arrived." The provider re-checked his blood pressure during the middle of the visit and it was "much better." Although Long reported that he was "doing significantly better" than when he was seen by the provider in July 2019, he also reported that he was anxious and not sleeping as well since being discharged from the Center just days earlier.

On March 16, 2020, approximately a month after his discharge from the Center, having had no follow-up treatment with a mental health provider, Long presented to the Parkridge Medical Center Adult and Senior Campus in Chattanooga for behavioral health services. A psychiatrist at this facility recommended that Long participate in the Partial Hospitalization Program ("PHP") at Parkridge Valley Hospital ("Parkridge Valley") for intensive group therapy and medication management. Long reported to Parkridge Valley Hospital for his first day of PHP on March 18, 2020, where the staff noted that he had a "sad affect" and was seeking treatment related to "major depression," with primary psychiatric diagnoses of (1) major depressive recurrent severe without psychosis, and (2) post-traumatic stress disorder. Staff also noted that he reported "feeling thankful that he has the opportunity to attend," and participated in group therapy sessions, but "was tearful during process group." Long later reported to Dr. Caruso that he "felt out of place" at Parkridge Valley, "noting that he did not share any experiences with other co-patients." He said that his experience at Parkridge Valley "led to him having a panic attacks [*sic*] and feeling emotionally overwhelmed on his drive home, necessitating pulling over." Long ultimately did not return to Parkridge Valley or further participate in any PHP program.

On June 11, 2020, Long was again evaluated by Dr. Caruso, who noted that Long had "responded relatively well to treatment for PTSD and MDD, although he remains residually vulnerable to retriggering of PTSD symptoms, which likely would also lead to relapse in his depressive symptoms." During this follow-up evaluation, Long "recognized that continued service with CFD was going to repeatedly retrigger his PTSD," as evidenced by the fact that "he would suffer flashbacks, panic attacks and intrusive memories when his CFD colleagues would begin to speak with him about recent incidents." Long noted, "[e]verything is good as long as I'm away from the fire department." He also reported having difficulty finding follow-up care, including psychiatric care, since leaving the Center, but that he had been receiving medications from his provider at Marathon Health. Based on this, Dr. Caruso opined that Long's "symptoms would quickly return if he were to return to work at CFD." Accordingly, Dr. Caruso "[did] not recommend that [Long] return to work as a firefighter" and opined that he was "permanently and totally disabled as a firefighter." Notably, he opined that no "amount of treatment would enable him to regain functional occupational capacity as a firefighter." That said, he did recommend that Long continue receiving "psychopharmacological treatment by a psychiatrist and individual psychotherapy . . . to allow for transitioning to another career" and referred him to Chattanooga Behavioral Alliance. Long had one appointment with a psychiatrist at Chattanooga Behavioral Alliance, who confirmed his diagnosis of chronic post-traumatic stress disorder and wrote orders for him to continue his psychiatric medications. The administrative record considered by the trial court does not reflect that Long obtained any further psychopharmacological treatment or psychotherapy.

On July 8, 2020, the City's Department of Occupational Health sent Long a letter notifying him that the City's "Injury on Duty Program ha[d] received documentation from

[his] authorized treating provider, Dr. Caruso indicating that [he was] no longer able to perform the essential functions of [his] current position as a Firefighter with [CFD]."

On July 27, 2020, Long applied to the Fund for job-related disability pension benefits. Long stated that his disability was "PTSD/Tra[u]ma," and when asked to "describe . . . the accident(s), incident(s), or conditions(s) forming the basis for [his] application," he wrote: "car wreck Bailey/Willow" and "2 kids burnt/Highland Park one lived." The next day, Katrina Abbott, Fund Administrator, drafted a narrative regarding her meeting with Long to complete his application paperwork and included the following details:

> We discussed a call approximately 13 years ago on Highland Park in which a mother had left the residence and locked her kids inside, with burglar bars on entryways. They were able to get both kids out, one did not make it and the other survived only to come by years later to thank him, however he was badly disfigured. Mr. Long stated that was hard because they typically don't know the outcome of survivors and can create whatever they want to deal with it. This provided him with a harsh reality for the child survivor.
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> We discussed another call that involved a MVA in which a mother and her three children were involved in [*sic*]. The mother was using her Budweiser as an armrest, a small infant out of its car seat was bounced around like a ping pong ball inside the car and crushed its skull and died. He said that was hard. It threw the teenager out the back window and killed her. He stated her insides were mush. He stated it threw the 8 year-old a good distance, of which survived. The mother was unharmed and smelled of alcohol. She didn't typically have custody, they just moved in with here [*sic*] to attend a better school and hadn't been with her very long at all.
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> We discussed another call in which he describes a couple that the man pushed the woman out of the way and was hit. He called it thunderstruck. It was hard with the family there upset and screaming, asking if he was going to be ok. He was spitting out pieces of his lungs.

On July 30, 2020, the City's Human Resources Department sent Long a letter "serv[ing] as written confirmation that [he was] not able to perform the essential functions of [his] position of Senior Firefighter" and notifying him that he would be placed on PTO, followed by Administrative Leave Without Pay, until the Fund made a decision regarding Long's application for pension benefits.

On January 21, 2021, the Fund held a hearing on Long's application for pension benefits. At the conclusion of the hearing, the Board members unanimously voted to deny

Long's application. Long asked for an explanation of why his application was being denied and was told only "the way we do this is based on obviously our policy and the legislation, but it's the totality of the circumstances. And then this letter basically gives you a statement to that effect." Long was then provided with a denial letter that had been drafted and printed prior to the hearing. As to the reasoning for the Board's denial of his application, the letter stated only:

> For the reasons which follow, having considered the pension legislation, the pension policies and procedures, all medical records, information provided by the applicant, information gathered by the Pension Board, the application, and other related documents and information, having heard the testimony of **FFS Matthew Long**, and having reasonably considered the merits, opinions, and credibility of all such documents, information, and testimony, the application for **FFS Matthew Long** is **DENIED**.

On March 17, 2021, Long filed a "First Application for Petition for Writ of Certiorari" in the trial court. The trial court ordered the parties to file a brief in support of their respective positions. In its brief, the Fund explained for the first time that the Board denied Long's application because: (1) "Long's disability could probably be successfully corrected by competent medical treatment, and he refuses to be so treated in violation of the City Code[,[2]]" and (2) "Long's disability is not a direct result of a traumatic event that was 'undesigned and unexpected' as required by the Benefit Policy." Specifically, the Fund argued that the events at issue "are expected in [Long's] line of work as a firefighter because they are inside the realm of normal duties that firefighters routinely face and are expected to handle." Long argued in response that the Fund erroneously asserted that he refused treatment, when he had in fact searched for but had not been able to find a treatment provider during the time period at issue. He also argued that the Fund's "standard for what is classified as refusing to seek or participate in proper treatment is ambiguous at best." As to whether the events at issue were "undesigned and unexpected," Long argued that "the training that Long received to prepare him for the tasks of his job, in no way can prepare someone for how they will neurologically respond and process the actual scenes they will experience within the line of duty." Accordingly, Long argued that the Board's denial of his application was arbitrary and capricious.

On January 25, 2022, the trial court entered an order finding that the Board's decision was arbitrary or capricious under Tennessee Code Annotated section 4-5-322(h)(4) and unsupported by sufficient and material evidence as required by section 4-5-322(h)(5)(A)(i). Accordingly, the trial court reversed the Board's denial of Long's

[2] Section 2-410(f)(4) of the Chattanooga City Code prohibits a CFD or CPD member from receiving disability pension benefits from the Fund "if the Board finds that said disability could probably be successfully corrected by competent medical treatment, and said member refuses to cooperate or otherwise fails or refuses to be so treated."

application and ordered that Long be paid pension benefits retroactively from the date of such denial and prospectively in accordance with the Chattanooga City Code (the "City Code") and Policy provisions governing such benefits. As to the issue of whether Long's disability could be successfully corrected, the trial court found

> notwithstanding [Long]'s progress in the *management* of his disability, there is nothing in the [administrative record], particularly with regard to [Long]'s PTSD diagnosis, that could reasonably support the conclusion that [Long]'s disability "could probably be successfully corrected," and certainly not to the point of returning to work as a firefighter.

The trial court noted that "[a]bsent an independent medical examination" or some other expert testimony or evidence, "neither the Board nor [the trial court] may ignore the findings of Dr. Caruso," who opined that Long "is permanently and totally disabled as a firefighter." The trial court held "[f]or the Board to conclude, in spite of Dr. Caruso's report and absent any countervailing evidence, that [Long]'s disability is not permanent, is [] arbitrary and capricious." Regarding whether the events at issue were "unexpected," the trial court held that

> procedural or mechanical training for an event like a building fire does not necessarily prepare one for the psychological effects of witnessing a child's skin "sloughing off" from burns. Furthermore, though Respondent focuses on the expectation of certain *types* of events, this is misguided, as the Policy itself does not warrant such a reading. The Policy states that the disability must be the direct result of "a traumatic event that is . . . undesigned and unexpected." Under the specific language of the Policy, the issue, then, is whether *the event*, not the *type* of event, was unexpected, and there is no evidence that either of the events giving rise to Petitioner's PTSD were expected in any sense.

(Internal citations to administrative record omitted).

On February 24, 2022, the Fund filed a motion asking the trial court to alter or amend its January 25 Order because the Fund "ha[d] become aware of information previously unknown to it," specifically that Long had been receiving Injury on Duty ("IOD") benefits from the City[3] since December 2021. In support of this motion, the Fund argued that this was "previously unavailable information . . . that impacts the substance of the judgment." The Fund argued that the judgment as entered would result in injustice if not altered or amended because it "would result in a windfall in disability benefits and IOD benefits to Mr. Long." Furthermore, the Fund asked the trial court to hold its motion in

[3] The City and the Fund are distinct and unrelated legal entities.

abeyance until Long submitted to an examination requested by the City to determine if Long had reached maximum medical improvement ("MMI").[4]

On June 27, 2022, the Fund filed a supplemental brief in support of its motion to alter or amend. Therein, the Fund argued that the trial court should alter or amend its January 25 Order because the IME performed by Dr. J. Sidney Alexander, at the request of the City, concluded that Long "is not disabled and . . . was never disabled." Instead, Dr. Alexander concluded that Long was "malingering" and "does not fit the criteria for Posttraumatic Stress Disorder." Alternatively, the Fund requested that the trial court grant the motion to alter or amend and remand the case for further proceedings before the Board "so that it may consider Dr. Alexander's IME report and how it impacts Mr. Long's entitlement to disability benefits, if any, and also consider how Mr. Long's receipt of [IOD] Benefits impacts when his pension disability benefits should begin, if at all."

In response, Long argued that the Fund's supplemental brief in support of its motion to alter or amend was the first time the Fund argued that Long was not actually disabled and that the trial court should not consider the IME that was not a part of the administrative record and was instead offered in support of a "new, previously untried or unasserted theor[y] or legal argument[]." Long also produced correspondence from Dr. Caruso and the Behavioral Health Counselor for Marathon Health, with whom Long had been recently treating, both of whom expressed serious concerns about the validity of the opinions expressed by Dr. Alexander in the IME and the methodology employed by Dr. Alexander in formulating those opinions. Finally, as to the double payment issue, Long argued that this issue was not relevant to the question before the trial court of whether the Board's denial of Long's application was arbitrary or capricious. Long also argued that, to the extent the City believed that Long should not have received IOD benefits during the same time period for which he was ultimately awarded disability pension benefits, the City could seek subrogation from Long, but it was not an issue that impacted whether he qualified to receive the pension benefits in the first place.

On July 25, 2022, the trial court entered an Order denying the Fund's motion to alter or amend. With respect to the IME, the trial court found that it was not "previously unavailable evidence" because the Fund could have requested that Long submit to an IME prior to the Board's hearing on Long's application but failed to do so. Accordingly, the trial court held that the newly produced IME "is not a basis for altering or amending the [earlier] order." As to the double payment issue, the trial court did not find that an injustice would result from the earlier order because there is nothing in the Policy that prohibits a member from receiving pension benefits while receiving IOD payments from the City.

[4] Whether Long had reached MMI was relevant to his ability to continue receiving IOD benefits from the City.

This timely appeal followed.

II. Issues Presented on Appeal

The Fund raises the following issues for our review, which we have restated slightly:

1. Whether the trial court had subject matter jurisdiction over the case in light of *Phillips v. Chattanooga Fire & Police Pension Fund*, No. E2022-00296-COA-R3-CV, 2022 WL 16579684 (Tenn. Ct. App. Nov. 2, 2022).

2. Whether the trial court erred by overturning the Board's decision to deny Long's disability benefits.

3. Whether the trial court erred by denying the Motion to Alter or Amend the judgment.

III. Analysis

A. Subject Matter Jurisdiction

The issue of subject matter jurisdiction was not litigated before the trial court. Instead, in its principal brief filed with this Court, the Fund raises a threshold issue concerning whether the trial court had, and this Court has, subject matter jurisdiction with regard to this dispute in light of *Phillips*, 2022 WL 16579684. Specifically, the Fund argues that the Board's denial of Long's application "did not constitute a final, appealable order sufficient to trigger judicial review under the [Uniform Administrative Procedures Act ("UAPA"), Tennessee Code Annotated section 4-5-101, *et seq.*]" because the denial did not "include conclusions of law, the policy reasons therefor, and findings of fact for all aspects of the order," as required by section 4-5-314(c). Notably, section 4-5-314 only applies to "contested cases," as defined by the UAPA.

However, the Fund concedes in its reply brief to this Court that "[b]ecause the administrative proceeding at issue does not appear to meet the UAPA's definition of a contested case, as required by [Tennessee Code Annotated] § 27-9-114(a)(1), this Court may validly conclude – contrary to *Phillips* – that the UAPA's contested-case procedures don't apply to the Board's proceedings, even though judicial review remains governed by the UAPA under § 27-9-114(b)(1)." We agree and conclude that the trial court had, and this Court has, subject matter jurisdiction over this dispute pursuant to section 27-9-114(b). *See Davis v. Shelby Cnty. Sheriff's Dept.*, 278 S.W.3d 256, 263–64 (Tenn. 2009) (holding that a civil service board's decision that "affects the employment status of a . . . city civil service employee" shall be subject to judicial review in accordance with section

27-9-114(b)(1), even when the board is exempted from the UAPA's contested case hearing procedures).

B. Propriety of the January 25 Order

i.

As established above, this dispute is subject to judicial review in accordance with Tennessee Code Annotated section 27-9-114(b)(1), which provides that "[j]udicial review of decisions by civil service boards of a . . . municipality which affect[] the employment status of a [] city civil service employee shall be in conformity with the judicial review standards under the Uniform Administrative Procedures Act, § 4-5-322." "Unlike the 'broad standard of review used in other civil appeals,' the UAPA provides a more narrowly circumscribed standard." *Moss v. Shelby Cnty. Civ. Serv. Merit Bd.*, 665 S.W.3d 433, 440 (Tenn. 2023) (quoting *Tenn. Dep't of Corr. v. Pressley*, 528 S.W.3d 506, 512 (Tenn. 2017)). Under that standard of review:

> The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
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> (1) In violation of constitutional or statutory provisions;
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> (2) In excess of the statutory authority of the agency;
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> (3) Made upon unlawful procedure;
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> (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
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> (5)(A) Unsupported by evidence that is both substantial and material in the light of the entire record.
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> (B) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

Tenn. Code Ann. § 4-5-322(h) (2019).[5] In his petition filed in the trial court, Long averred that the Board's denial of his application for job-related disability pension benefits was (1)

[5] "The General Assembly amended [Tennessee Code Annotated section] 4-5-322(h)(5), with the amendment applicable 'to disciplinary actions taken or information first received on or after the effective date of' May 18, 2021." *Taylor v. Bd. of Admin., City of Memphis Ret. Sys.*, No. W2022-00896-COA-R3-CV, 2023 WL 3243506, at *6 (Tenn. Ct. App. May 4, 2023), *perm. app. filed* (citing Tenn. Pub. Acts, Ch. 461, § 6). The Board's denial of Long's application and Long's filing of the Petition for Writ of Certiorari

arbitrary and capricious; (2) characterized by an abuse of discretion; (3) characterized by a clearly unwarranted exercise of discretion; and (4) unsupported by evidence which is both substantial and material in light of the entire record. As set forth by the Tennessee Supreme Court:

> "A decision of an administrative agency is arbitrary or capricious when there is no substantial and material evidence supporting the decision." *StarLink Logistics* [*Inc. v. ACC, LLC*], 494 S.W.3d [659,] 669 [(Tenn. 2016)] (citing *Pittman v. City of Memphis*, 360 S.W.3d 382, 389 (Tenn. Ct. App. 2011); *Jackson Mobilphone Co. v. Tenn. Pub. Serv. Comm'n*, 876 S.W.2d 106, 110 (Tenn. Ct. App. 1993)); *see also Watts v. Civ. Serv. Bd. for Columbia*, 606 S.W.2d 274, 277 (Tenn. 1980) ("Whether or not there is any material evidence to support the action of the agency is a question of law to be decided by the reviewing court upon an examination of the evidence introduced before the agency."). "[S]ubstantial and material evidence" is "less than a preponderance of the evidence and more than a 'scintilla or glimmer' of evidence." *StarLink Logistics*, 494 S.W.3d at 669 (citation omitted) (quoting *Wayne Cnty.* [*v. Tenn. Solid Waste Disposal Control Bd.*], 756 S.W.2d [274,] 280 [(Tenn. Ct. App. 1988)]). "A decision with evidentiary support can be arbitrary or capricious if it amounts to a clear error in judgment," *id.* at 669 (citing *City of Memphis v. Civ. Serv. Comm'n of Memphis*, 216 S.W.3d 311, 316 (Tenn. 2007)), and "is not based on any course of reasoning or exercise of judgment, or . . . disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion," *id.* at 669–70 (alteration in original) (quoting *Civ. Serv. Comm'n of Memphis*, 216 S.W.3d at 316).

Moss, 665 S.W.3d at 441. Although this more limited scope of review "reflects the general principle that courts should defer to decisions of administrative agencies when they are acting within their area of specialized knowledge, experience, and expertise," *id.* at 441 (quoting *StarLink Logistics*, 494 S.W.3d at 669), "pension and retirement plans are liberally construed in favor of the employee, it being the general rule that pension plans formulated by the employer are to be construed most strongly against the employer." *Simmons v. Hitt*, 546 S.W.2d 587, 591–92 (Tenn. Ct. App. 1976) (citing 60 Am. Jur. 2d Pensions and Retirement Funds, p. 952). *See Faust v. Metro. Gov't of Nashville*, 206 S.W.3d 475, 489 (Tenn. Ct. App. 2006) (noting "as a general rule, pension plans are construed in favor of applicants for pensions" (citing *Collins v. City of Knoxville*, 176 S.W.2d 808, 811 (Tenn. 1944))).

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in the trial court preceded the 2021 amendment. The Fund argues that the version of the statute in effect prior to the 2021 amendment applies, and Long does not dispute this. We agree with the Fund that the version of the statute in effect at the time the Board denied Long's application applies. Accordingly, we apply the version of the statute effective April 11, 2019 to May 17, 2021.

The Fund argues that the trial court erred in reversing the Board's denial of Long's application for two reasons. First, the Fund argues that the traumatic events at issue were not "unexpected" for a firefighter. Second, the Fund argues that Long's PTSD could have been improved had he not quit his recommended treatment.

ii.

The Policy provides that an applicant can only obtain benefits for a job-related disability based on PTSD if the disability "is a direct result of a traumatic event that is . . . b. undesigned and unexpected[.]" However, the Policy makes no effort to define the term "unexpected," nor is that term defined in any controlling legal authority or caselaw. As a result, this portion of the Policy is ambiguous. The Fund argues that an event is only "unexpected" if it is "outside the realm of normal duties that firefighters routinely face and are expected to handle." In making this argument, the Fund relies upon caselaw from the State of New Jersey and Tennessee workers' compensation cases. We deem these cases to be inapposite.

First, the Fund cites to a number of cases from the state of New Jersey, where a body of caselaw has developed based on the interpretation by that state's appellate courts of what constitutes a "traumatic event" for purposes of that state's statutes controlling its police and fire retirement system. The Supreme Court of New Jersey held in *Richardson v. Bd. of Trustees, Police & Firemen's Ret. Sys.*, 927 A.2d 543 (N.J. 2007):

> a traumatic event is essentially the same as what we historically understood an accident to be—an unexpected external happening that directly causes injury and is not the result of pre-existing disease alone or in combination with work effort. Thus, to obtain accidental disability benefits, a member must prove:
>
> 1. that he is permanently and totally disabled;
>
> 2. as a direct result of a traumatic event that is
>
> a. identifiable as to time and place,
>
> b. undesigned and unexpected, and
>
> c. caused by a circumstance external to the member (not the result of pre-existing disease that is aggravated or accelerated by the work);
>
> 3. that the traumatic event occurred during and as a result of the member's regular or assigned duties;
>
> 4. that the disability was not the result of the member's willful negligence; and
>
> 5. that the member is mentally or physically incapacitated from performing his usual or any other duty.

927 A.2d at 558. A number of opinions further analyzing the "unexpected" requirement have followed. However, despite the fact that the language of the Policy is similar to the language used in *Richardson* and its progeny, we are not obligated to follow that line of cases. Indeed, New Jersey's definition of "unexpected" in this context does not answer the narrow question before us, which is whether the Board acted arbitrarily and capriciously when it decided that the traumatic events giving rise to Long's disability were "unexpected." Here, "unexpected" is not defined in the Plan, and there is no binding Tennessee caselaw construing a similar plan provision. Yet, the Fund essentially argues that the term "unexpected" should be construed to mean that the event giving rise to benefits is entirely unforeseeable. The problem with this proposed construction is that it is narrow and militates heavily in favor of the Fund. We are required, however, to construe the Plan language strictly in favor of the employee. *See Simmons*, 546 S.W.2d at 591–92 ("pension and retirement plans are liberally construed in favor of the employee, it being the general rule that pension plans formulated by the employer are to be construed most strongly against the employer" (citing 60 Am. Jur. 2d Pensions and Retirement Funds, p. 952)); *see also Faust*, 206 S.W.3d at 489 (noting "as a general rule, pension plans are construed in favor of applicants for pensions" (citing *Collins*, 176 S.W.2d at 811)). To the extent the Fund wanted to incorporate New Jersey's definitions and requirements into its Plan, it had the opportunity to do so. Moreover, despite the Fund's position that this case hinges on the construction of "unexpected," the Board did not explain in its denial letter to Long how the Board was interpreting that term. There is no indication that Fund members should have expected or gleaned from the Plan that their rights under the Plan would be governed by a body of caselaw from New Jersey. Accordingly, the Board relied on an undefined, ambiguous term in the Plan to deny Long's benefits and then offered no explanation as to its reasoning. Inasmuch as the Board construed the Plan's terms in favor of the Fund, instead of in favor of Long, its decision was arbitrary, capricious, and contrary to Tennessee law.

We reach the same conclusion with regard to the Fund's reliance on Tennessee workers' compensation cases. *See Gatlin v. City of Knoxville*, 822 S.W.2d 587 (Tenn. 1991); *see also Goodloe v. State of Tennessee*, 36 S.W.3d 62 (Tenn. 2001). However, those cases concerned whether an employee's injury arose out of their employment, as required by Tennessee statutes. There is no question in this case that Long's disability arose out of his employment. Instead, the issue before this Court is exceedingly narrow: Is there substantial and material evidence that the traumatic events that caused Long's disability were not "unexpected"? Because the central issues presented in those cases differ in both context and application, we decline the Fund's invitation to apply them in this case.

Next, the Fund argues that this Court should look not at the specific events at issue, but instead the "type" of events at issue. Specifically, it argues that the events experienced by Long "are expected in his line of work as a firefighter because they are inside the realm of normal duties that firefighters routinely face and are expected to handle." In support of this position, the Fund notes that Long "was trained and received certifications as part of

his job" and "was shown what types of events and injuries he could expect to encounter as a firefighter and that he participated in discussions or classes about that information." However, Long argues that this general training that included watching videos of "patients" being transported on stretchers did not cause him to expect the actual details of the traumatic events he experienced, including seeing children's hair and skin sloughing off their bodies, an infant with a crushed skull, and a young man spitting out pieces of his own lungs before he died.

We are not persuaded by the Fund's argument. The specific language of the Policy at issue does not provide benefits for a disability caused by a certain "type" of traumatic event, but instead anticipates that the member's disability will be caused by a specific traumatic event. The ambiguity at issue is a result of the Policy adopted by the Fund, and this Court cannot construe that ambiguity in the Fund's favor. *See Simmons*, 546 S.W.2d at 591–92 ("pension and retirement plans are liberally construed in favor of the employee, it being the general rule that pension plans formulated by the employer are to be construed most strongly against the employer" (citing 60 Am. Jur. 2d Pensions and Retirement Funds, p. 952)); *see also Faust*, 206 S.W.3d at 489 (noting "as a general rule, pension plans are construed in favor of applicants for pensions" (citing *Collins*, 176 S.W.2d at 811)).

Furthermore, adopting the Fund's argument that a member should not be entitled to disability pension benefits when the member's disability is caused by the "type" of event at issue – e.g., a house fire or motor vehicle accident – would mean that these members could never meet the Policy requirements. In addition to the "unexpected" requirement, the Policy requires that the event have occurred "during and as a result of the [member]'s regular or assigned duties[.]" Assuming, as the Fund has done in this case, that CFD trains all of its firefighters to deal with the type of events they would encounter while performing their regular or assigned duties, the broad construction of "unexpected" advanced by the Fund would result in no member being able to satisfy these requirements.

In summary, the Fund's proposed construction creates a nearly insurmountable burden on employees suffering from mental injuries caused by traumatic events that occur during and as a result of the member's regular or assigned duties. We agree with the trial court's decision that the Board's denial of Long's application is arbitrary and capricious.

iii.

The Fund also argues that the Board's denial of Long's application was appropriate because "Long's PTSD could have improved had he not abandoned his prescribed treatment." Section 2-410(f)(4) of the City Code prohibits a CFD or CPD member from receiving disability pension benefits from the Fund "if the Board finds that said disability could probably be successfully corrected by competent medical treatment, and said member refuses to cooperate or otherwise fails or refuses to be so treated."

First, we note that Long received significant treatment, beginning in July 2019, which included therapy, medication, and an inpatient stay at a facility designed to treat

firefighters for mental injuries. Despite this lengthy treatment, Long did not show significant improvement, and more importantly, he never reached the point where he could return to work at CFD. The Fund correctly asserts that between Long's completion of his treatment at the Center in February 2020 and the hearing on his application for disability pension benefits on January 21, 2021, he did not regularly participate in mental health treatment. Instead, he continued treating with his provider at Marathon Health to manage his medications, and he attended a single day of PHP at Parkridge Valley before determining that program was not a good fit for him. However, the only evidence in the administrative record touching on whether Long's PTSD "could probably be successfully corrected by competent medical treatment" was Dr. Caruso's June 2020 report, wherein he specifically opined that no "amount of treatment would enable [Long] to regain functional occupational capacity as a firefighter." Although Dr. Caruso recommended that Long continue receiving "psychopharmacological treatment by a psychiatrist and individual psychotherapy," this recommendation was "to allow for [Long] transitioning to another career."

In support of its argument, the Fund points to the Center's discharge plan for Long, which included him receiving continued treatment from a psychiatrist and a therapist. However, there is nothing in Long's treatment records from the Center – or anywhere else in the administrative record – that indicates that such continued treatment would have "successfully corrected" Long's PTSD. Because there is no substantial or material evidence in the administrative record that Long's PTSD "could probably be successfully corrected by competent medical treatment" and that Long refused to participate in such treatment, the Board's denial of his application for that reason is arbitrary and capricious, and the order of the trial court reversing this decision is affirmed.

C. Propriety of the July 25 Order

i.

Finally, the Fund argues that the trial court erred in denying its motion to alter or amend the January 25 Order. "The purpose of a motion to alter or amend a judgment 'is to provide the trial court with an opportunity to correct errors before the judgment becomes final.'" *Stricklin v. Stricklin*, 490 S.W.3d 8, 11 (Tenn. Ct. App. 2015) (quoting *In re M.L.D.*, 182 S.W.3d 890, 895 (Tenn. Ct. App. 2005)). A motion to alter or amend "should only be granted 'when controlling law changes before the judgment becomes final; when previously unavailable evidence becomes available; or to correct a clear error of law or to prevent injustice' and 'should not be used to raise or present new, previously untried or unasserted theories or legal arguments.'" *In re Lawton*, 384 S.W.3d 754, 764 (Tenn. Ct. App. 2012) (quoting *In re M.L.D.*, 182 S.W.3d at 895). "This Court reviews the denial of a [motion to alter or amend] under an abuse of discretion standard." *Id.* (citing *Stovall v. Clarke*, 113 S.W.3d 715, 721 (Tenn. 2003)).

"A trial court abuses its discretion when it causes an injustice by applying an incorrect legal standard, reaching an illogical decision, or by resolving the case 'on a clearly erroneous assessment of the evidence.'" *Henderson v. SAIA, Inc.*, 318 S.W.3d 328, 335 (Tenn. 2010) (quoting *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 524 (Tenn. 2010)). "The abuse of discretion standard does not permit the appellate court to substitute its judgment for that of the trial court." *Id.* (citing *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001)). "Indeed, when reviewing a discretionary decision by the trial court, the 'appellate courts should begin with the presumption that the decision is correct and should review the evidence in the light most favorable to the decision.'" *Id.* (quoting *Overstreet v. Shoney's, Inc.*, 4 S.W.3d 694, 709 (Tenn. Ct. App. 1999)).

ii.

The Fund's first basis for its motion to alter or amend was that it had become aware that Long had separately been receiving temporary IOD benefits from the City during the proceedings related to his application for disability pension benefits from the Fund. The Fund argued that to prevent injustice, the January 25 Order should be amended to remand the case to the Board for further proceedings due to "the risk of inconsistent adjudications and that Long might be seeking double recovery for the same injury." The City and the Fund are two separate and distinct legal entities, and the Fund has pointed to no authority that indicates that Long's receipt of temporary IOD benefits from the City would in any way impact his initial eligibility to receive disability pension benefits from the Fund, which is what was at issue in the January 25 Order. Accordingly, the trial court did not abuse its discretion when it denied the Fund's motion to alter or amend the January 25 Order.

iii.

While the Fund's motion to alter or amend the January 25 Order was pending, the Fund learned that the City was sending Long for an IME to determine whether Long had achieved MMI, which would impact his ability to continue receiving IOD benefits from the City. The provider who completed the IME opined that Long was not disabled by PTSD and in fact did not even have PTSD, but was instead malingering. On June 27, 2022, the Fund filed a supplemental brief in support of its motion to alter or amend, wherein it relied on the IME to argue that the trial court should alter or amend its January 25 Order because Long "is not disabled and . . . was never disabled." The Fund argued that the IME was previously unavailable evidence.

When analyzing a motion to alter or amend based upon previously unavailable evidence that has become available, a trial court should consider "the moving party's effort to obtain the evidence . . .; the importance of the new evidence to the moving party's case; the moving party's explanation for failing to offer the evidence . . .; the unfair prejudice to the non-moving party; and any other relevant consideration." *Stovall*, 113 S.W.3d at 721 (citing *Harris v. Chern*, 33 S.W.3d 741, 744 (Tenn. 2000)).

In this case, the IME was only "previously unavailable" because the Fund had made no attempt to obtain it. The Fund's own Policy provides that "[a]n independent medical exam ("IME") ***should be scheduled for all disability Applicants*** unless the injury or illness is shown by evidence satisfactory to the Board to be catastrophic and/or the existing medical evidence collected by the [Board staff] clearly shows that the Applicant cannot continue performing the duties of a sworn Firefighter or Police Officer." (Emphasis added). However, the Fund never asked Long to submit to an IME as part of his application for disability pension benefits and has offered no explanation for such failure. In fact, the Fund has still never asked Long to submit to an IME; instead, it now seeks to rely on an IME obtained by the City for a wholly unrelated purpose.

Furthermore, the trial court's consideration of the IME and/or remanding the case back to the Board for it to consider the IME would clearly be prejudicial to Long, as the Fund makes clear that the Board would likely rely on the IME to deny Long's application for disability pension benefits based on the Fund's new theory that Long was in fact never disabled.

The Fund cannot rely now on an IME that it could have requested in the first place to raise or present a new, previously untried or unasserted theory. Accordingly, the trial court did not abuse its discretion when it denied the Fund's motion to alter or amend the January 25 Order based upon the newly available IME.

CONCLUSION

The judgment of the trial court is affirmed. Costs on appeal are assessed to the Appellant, Chattanooga Fire and Police Pension Fund, for which execution may issue if necessary.

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KRISTI M. DAVIS, JUDGE