IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 27, 2018 Session

JULIE A. SLOAN v. EMPLOYEE BENEFIT BOARD OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE

Appeal from the Chancery Court for Davidson County
No. 16-1148-IV Russell T. Perkins, Chancellor

No. M2017-01342-COA-R3-CV

This case stems from an employee benefit board's decision to change a former employee's disability pension from "in-line-of-duty" to "medical." The former employee appealed the board's decision to the trial court. The trial court reversed the board's determination on the ground that the board had misapplied the applicable legal standard. Determining that the board relied on the appropriate legal standard and based its decision on substantial and material medical evidence, we reverse the trial court's decision

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed and Remanded

J. STEVEN STAFFORD, P.J., W.S., delivered the opinion of the court, in which ARNOLD B. GOLDIN and KENNY ARMSTRONG, JJ., joined.

Jon Cooper, J. Brooks Fox, Catherine J. Pham, Nashville, Tennessee, for the appellant, Metropolitan Government of Nashville and Davidson County.

Phillip L. Davidson, Brentwood, Tennessee, for the appellee, Julie A. Sloan.

OPINION

FACTS

Petitioner/Appellant Julie A. Sloan is a former employee of the Nashville Fire Department who receives a disability pension. Ms. Sloan began working at the Nashville Fire Department ("the Department") in 1997. Her most recent position with the

Department was as an Engineer/EMT. The Employee Benefit Board of the Metropolitan Government of Nashville, Davidson County ("the Board") first approved Ms. Sloan for a disability pension on November 4, 2008, following a diagnosis of Posttraumatic Stress Disorder ("PTSD"). At that time the Board classified Ms. Sloan's disability pension as "in-line-of-duty" ("IOD"). Ms. Sloan continued to receive an IOD disability pension until January 6, 2015.

At the Board's January 6, 2015 meeting, Dr. Susan Warner, the Civil Service Medical Examiner ("CSME"), recommended that Ms. Sloan's disability pension be changed from an IOD disability pension to a medical disability pension.[1] Dr. Warner's recommendation was approved by the Board, and the Board scheduled a re-examination date for February 2016. Ms. Sloan, however, timely requested reconsideration of the Board's determination and submitted a letter from her psychologist, Dr. Robin Oatis-Ballew, to support her request. Dr. Warner reviewed Dr. Oatis-Ballew's letter but maintained her recommendation that Ms. Sloan's disability pension be classified as medical rather than IOD. The Board took the matter up again at their February 3, 2015 meeting but ultimately voted to continue Ms. Sloan's medical disability pension, as recommended by Dr. Warner. The Board set another re-examination date for February 2016.

Ms. Sloan's disability pension was subsequently re-examined by the Board at their February 2, 2016 meeting, wherein the Board again voted to continue Ms. Sloan's medical disability pension. The Board, however, also ordered an Independent Psychological Evaluation ("IPE") of Ms. Sloan for May 2016, as recommended by Dr. Deidra Parrish, Interim CSME; the Board scheduled a re-examination at that time. Dr. Parrish indicated that she ordered the IPE to "assess [Ms. Sloan's] current status and to provide recommendations for optimized mental health treatment for returning to work." On July 29, 2016, Dr. Keith A. Caruso performed Ms. Sloan's IPE.[2] Dr. Caruso opined that "Ms. Sloan's PTSD w[ould] preclude her from ever working for any Fire Department again at any time[.]"

Because Ms. Sloan would not be able to return to work at the Department, Dr. Matthew Hine, Interim CSME, reviewed Ms. Sloan's medical records and made his recommendation to the Board. The Board reviewed Dr. Hine's recommendation at their

[1] An IOD pension and a medical pension pay the same amount; however, they have different tax consequences. *See* 26 U.S.C. § 104(a)(1); 26 CFR § 1.104-1(b); ***Stromatt v. Metro Employee Benefit Bd. of Metro. Gov't of Nashville***, No. 01-A-01-9707-CH00354, 1998 WL 557610, at *1 (Tenn. Ct. App. Sept. 2, 1998) *perm. app. denied* (Feb. 1, 1999) ("The Metropolitan Government offers two types of pensions, an IOD pension and a medical disability pension. Though the two pensions are the same in amount, only the medical disability pension is treated as income for federal income tax purposes making it the less desirable of the two.").

[2] From the record, it seems that the Board deferred Ms. Sloan's re-examination date until September 2016, presumably due to the date of Ms. Sloan's IPE.

September 6, 2016 meeting, and voted to accept his recommendation that Ms. Sloan continue on medical disability pension with no scheduled re-examination. Within thirty days of the September 6 decision, Ms. Sloan requested reconsideration of this decision and submitted another letter from Dr. Oatis-Ballew to support this request. Ms. Sloan was notified by email on October 18, 2016, that because there was "no new, relevant or material information [in Dr. Oatis-Ballew's September 26 letter] that was not previously considered by the Board[,]" Ms. Sloan has "no basis for an appeal to the Benefit Board on this matter." At this time, no reconsideration by the Board was scheduled.

Ms. Sloan filed a verified petition for writ of certiorari on October 28, 2016, in the Davidson County Chancery Court ("trial court") appealing the Board's September 6, 2016 decision. The same day, the trial court issued an order granting the writ, but noted a statutory deficiency in Ms. Sloan's petition, and allowed her, until November 25, 2016, to comply with Tennessee Code Annotated section 27-9-102. Ms. Sloan filed her amended verified petition for writ of certiorari on November 22, 2016. Ms. Sloan then filed her brief in support of her petition on February 10, 2017, and the Metropolitan Government of Nashville ("the Metropolitan Government") filed its brief on March 20, 2017.

On June 5, 2017, the trial court entered its memorandum and final order. In its order, the trial court concluded that "[b]ased upon the [c]ourt's review of Ms. Sloan's medical records . . . the Board misapplied applicable legal standards[.]" The trial court therefore reversed the Board's decision and remanded the matter to the Board to reinstate Ms. Sloan's IOD disability pension. The Metropolitan Government filed a timely notice of appeal on June 27, 2017.

ISSUE

Appellant submits one issue on appeal, which we have restated: Whether the trial court erred in reversing the Employee Benefit Board's decision.

STANDARD OF REVIEW

A court's review of decisions made by administrative bodies is obtained by filing a petition for a common law writ of certiorari. *See* Tenn. Code Ann. § 27-8-101; *see also* ***Harding Acad. v. The Metro. Gov't of Nashville and Davidson Cty.***, 222 S.W.3d 359, 363 (Tenn. 2007) (citing ***McCallen v. City of Memphis***, 786 S.W.2d 633, 639 (Tenn. 1990)). "It is well-settled that the scope of judicial review under a common law writ of certiorari is 'quite limited.'" ***Dill v. City of Clarksville***, 511 S.W.3d 1, 9 (Tenn. Ct. App. 2015) *perm. app. denied* (Oct. 15, 2015) (quoting ***Heyne v. Metro. Nashville Bd. of Educ.***, 380 S.W.3d 715, 728 (Tenn. 2012)). As such, judicial review is limited in determining "whether the . . . board exceeded its jurisdiction; followed an unlawful procedure; acted illegally, arbitrarily, or fraudulently; or acted without material evidence

to support its decision." ***Lafferty v. City of Winchester***, 46 S.W.3d 752, 759 (Tenn. Ct. App. 2000) (citations omitted).

When the sufficiency of evidence of the board's decision is challenged using a common law writ of certiorari, "the sufficiency of the evidence is a question of law" that the court must review de novo with no presumption of correctness as to the board's finding. ***Id.*** (citing ***Wilson Cty. Youth Emergency Shelter, Inc. v. Wilson Cty.***, 13 S.W.3d 338, 342 (Tenn. Ct. App. 1999)). Under the limited certiorari standard, "courts may not (1) inquire into the intrinsic correctness of the lower tribunal's decision, (2) reweigh the evidence, or (3) substitute their judgment for that of the lower tribunal." ***State ex rel. Moore & Assocs. v. West***, 246 S.W.3d 569, 574 (Tenn. Ct. App. 2005) (internal citations omitted). The common law writ of certiorari is therefore "not a vehicle which allows the courts to consider the intrinsic correctness of the conclusions of the administrative decision maker." ***Id.*** (citing ***Powell v. Parole Eligibility Rev. Bd.***, 879 S.W.2d 871, 873 (Tenn. Ct. App. 1997); ***Yokley v. State***, 632 S.W.2d 123, 126 (Tenn. Ct. App. 1987)).

This standard "envisions that the court will review the record independently to determine whether it contains 'such relevant evidence that a reasonable mind might accept as adequate to support a rational conclusion." ***Lafferty***, 46 S.W.3d at 759 (quoting ***Hedgepath v. Norton***, 839 S.W.2d 416, 421 (Tenn. Ct. App. 1992)). Said another way, "'the reviewing court is limited to asking whether there was in the record before the fact-finding body *any* evidence of a material or substantial nature from which that body *could* have, *by reasoning from that evidence*, arrived at the conclusion of fact which is being reviewed.'" ***Massey v. Shelby County Retirement Board***, 813 S.W.2d 462, 465 (Tenn. Ct. App. 1991) (quoting Ben Cantrell***,*** *Review of Administrative Decisions by Writ of Certiorari in Tennessee,* 4 Mem. St. U. L. Rev. 19, 29–30 (1973)). If there is such evidence present in the record, the court must affirm the administrative body's decision. ***Id.***

DISCUSSION

According to the Nashville Metro Code, two different types of disability pensions are available for employees that have completed ten years of employment and become disabled. *See Metro. Gov't. of Nashville and Davidson Cty., Tenn. Code of Ordinances* §§ 3.29.030 & 3.29.040 (hereinafter "Metro Code"). The first type of disability pension is granted to employees that have medical disabilities, stating that "[a] member who is covered for a disability pension, who has completed ten years of credited service and who becomes disabled, as defined in Section 3.29.010, shall be eligible to receive a disability pension, subject to all applicable requirements of this chapter." Metro Code § 3.29.030. The second type of disability pension is granted to employees that were injured in the line of duty ("IOD"). The Metro Code describes those eligible for IOD disability pensions as

> A member who is covered for a disability pension, who becomes disabled, as defined in Section 3.29.010, in the line of duty, shall be eligible to receive a disability pension, provided his disability *is a direct result of an act occurring or thing done or risk taken which, as determined in the discretion of the board*, was required of him in the performance of his duty as a metropolitan employee. . . .

Metro Code § 3.29.040 (emphasis added). Therefore, to qualify for an IOD disability pension, a person must show not only that he or she is disabled, but also that the "disability is a direct result of an act occurring or thing done or risk taken[.]" ***Id.*** In other words, the disabled employee must be able to show a specific event occurred while he or she was performing their duty as a metropolitan employee which was the direct cause of their disability.

Here, it is undisputed that Ms. Sloan is disabled as defined under section 3.29.010 in the Metro Code. The central issue in this case is which disability pension Ms. Sloan is entitled to: an IOD disability pension or a medical disability pension. As mentioned above, although Ms. Sloan receives the same amount under each disability pension, the IOD disability pension is the more desirable option because it is not treated as income for federal income tax purposes. *See* 26 U.S.C. § 104(a)(1); 26 CFR § 1.104-1(b); ***Stromatt,*** 1998 WL 557610 , at *1. Seeking to reinstate her IOD disability pension, Ms. Sloan argues that her medical records show that a specific event occurred on February 1, 2006, which caused her PTSD.[3] Conversely, the Board argues that Ms. Sloan's medical records indicate that her PTSD was caused by cumulative stress from years of working in emergency situations.

The Board has traditionally looked to workers' compensation laws for guidance in interpreting the Metro Code. Notably, this Court has specifically approved the usage of workers' compensation law in interpreting IOD disability pension provisions. ***Stromatt v. Metro Employee Benefit Bd.***, No. 01-A-01-9707-CH00354, 1998 WL 557610, at *5–*6 (Tenn. Ct. App. Sept. 2, 1998) ("As such, it is helpful to look to this well-developed workers' compensation law to guide us in the determination of the often difficult question of whether one's stress-related disability resulted from a specific incident."). The ***Stromatt*** court explained:

> [W]hen considering IOD disability applications for stress or post-traumatic stress disorders, the Benefit Board uses analogous legal standards from workers' compensation law. For purposes of workers' compensation

[3] On that day, Ms. Sloan, working as an Engineer/EMT was dispatched to the wrong address. Ms. Sloan was eventually directed to the proper address about ten minutes later, and found the victim in cardiac arrest upon her arrival. Ms. Sloan performed CPR on the victim; however, the victim ultimately died as a result of the cardiac arrest.

> cases, Tennessee Code Annotated, section 50-6-102(a)(4) provides that "'[i]njury' and 'personal injury' means an injury by accident arising out of and in the course of employment which causes either disablement or death of the employee." While the courts have interpreted stress to be a compensable "accidental injury" under this law, there must "be a specific incident of stress which constitutes the accident." ***Sexton v. Scott County,*** 785 S.W.2d 814, 816 (Tenn. 1990).
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> [T]he Benefit Board has interpreted the Metropolitan Code to require that a "specific incident of stress" be shown in order to prove that an injury was in the line of duty when that injury involves stress. Under the worker's compensation body of law, the "specific incident" requirement is based upon the statutory language, "injury by accident." *See* Tenn. Code Ann. § 50-6-102(a)(4) (1991). As stated above, in the case of disability pensions for metropolitan employees, the governing law is the Metropolitan Code which defines an IOD injury as one which is the "result, directly or indirectly, of an act occurring or a thing done or a risk taken which, as determined in the discretion of the Board, was required of him in the performance of his duty as a metropolitan employee." Metro. Code § 3.38.040. We find that the language, "an act occurring or a thing done or a risk taken," contemplates a specific incident much like the term "accident" does in the workers' compensation cases.

Id. at *5–*6. As such, in ***Gatlin v. City of Knoxville***, 822 S.W.2d 587, 591–92 (Tenn. 1991), the supreme court held that in order to have a compensable workers' compensation injury, an employee's mental injuries (1) must "be caused by an identifiable stressful, work-related event producing a sudden mental stimulus" and (2) "must be extraordinary and unusual in comparison to the stress ordinarily expected for an employee in the same type duty." ***Gatlin***, 822 S.W.2d at 591–92.

Case law provides us with guidance in how to apply these factors. In ***Gatlin,*** an undercover police officer experiencing mental disability argued that his disability was compensable as an "injury by accident" because his experience as an undercover police officer caused him "special stress beyond the general stress associated with ordinary employment and also beyond the stress experienced by police officers in less dangerous work." ***Id.*** at 591. The court, however, held that because Mr. Gatlin offered no proof as to "an identifiable, stressful event producing a sudden fright, shock or excessive unexpected anxiety" he did not suffer from an injury arising from employment. ***Id.*** at 592. Further, in ***Splain v. City of Memphis***, No. 02A01-9511-CH-00259, 1996 WL 383297 (Tenn. Ct. App. July 10, 1996), the City of Memphis Pension Board denied a police officer's request for an IOD pension and awarded him with an ordinary pension instead. ***Splain***, 1996 WL 383297, at *2. The officer stated that he was experiencing

"burn out" of his job and suffering from increased disinterest in work, poor concentration, insomnia, and diminished appetite, among other things. ***Id.*** The officer's examining physician diagnosed him as having "major depression chronic, with possible post traumatic stress disorder of slow onset." ***Id.*** Another examining physician noted "twelve specific examples of traumatic events that [the officer] stated he had experienced on the job from November 1979 to February 1991." ***Id.*** The court ultimately upheld the Board's denial of an IOD pension stating:

> Although petitioner identified several instances of job-related, stressful events that he had undergone during a twelve year period, neither petitioner, Dr. Beatus, nor Dr. Buchalter could point to a particular stressful event or "accident" that in their opinion was the direct and proximate result of his condition.

Id. at 3.

In ***Cheslock v. Board of Administration, City of Memphis Retirement System***, No. W2001-00179-COA-R3-CV, 2001 WL 1078263 (Tenn. Ct. App. 2001), a police officer was also denied an IOD pension but was granted a service retirement instead. ***Cheslock***, 2001 WL 1078263, at *1. The officer, a twenty-five year veteran of the Memphis Police Department and member of the Tactical Unit, "encountered a number of stressful situations [during his tenure at the police department], including witnessing the torture and death of a fellow officer and being shot at numerous times." ***Id.*** Two Board appointed psychiatrists determined that the officer was suffering from "job-related PTSD" following incidents in which the officer encountered a severely abused infant that later deceased and a murder scene in which he had to be relieved by another officer. ***Id.*** The court explained that PTSD could be considered a compensable mental injury that arose from an accident; however, "it is not compensable when caused by a gradual build-up of stress over a period of time or by repetitive mental trauma." ***Id.*** at *4 (citing ***Splain,*** 1996 WL 383297, at *3; ***Gatlin,*** 822 S.W.2d at 589; ***Jose v. Equifax, Inc.,*** 556 S.W.2d 82, 84 (Tenn. 1977)). Further, in order to qualify as an injury by accident the accident must "be an event of experience which falls outside of the category of the usual stresses and strains encountered in the course of employment." ***Id***. at *3 (citing ***Beck v. State,*** 779 S.W.2d 367 (Tenn. 1989); ***Henley v. Roadway Express,*** 699 S.W.2d 150 (Tenn. 1985)).

The court noted that the incidents described by the officer could be classified as accidents, as defined by ***Gatlin***, in that they caused excessive and unexpected anxiety. ***Id.*** The court, however, held that due to the ambiguous evaluations given by the officer's physicians, there was material evidence that supported the pension board's decision that the officer's PTSD was caused by a gradual build-up of stress. ***Id.*** at *4–*5. The court further held that because of the high risk nature of being part of the Tactical Unit of a police department, there was "material evidence to support a finding that the otherwise

extreme incidents experienced by [the officer] were not outside the scope of what is encountered by an officer in [the Tactical Unit]." ***Id.*** at *3.

In contrast, the supreme court has awarded injury by accident benefits for mental disability after an employee was diagnosed with PTSD following a sexual assault at her workplace. ***Beck v. State***, 779 S.W.2d 367 (Tenn. 1989) (affirming the workers' compensation claims commission's decision, but using a more broad standard of review). In that case, the court held that the employee (1) "c[ould] point to a specific acute, sudden, and unexpected stressful even precipitating her injury[,]" i.e. the sexual assault, and (2) "[s]uch a sexual assault is not an everyday workplace occurrence and is not within the scope of 'stress or strain of daily living[.]'" ***Id.*** at 370 (quoting ***Jose***, 556 S.W.2d at 84).

In the case at bar, the parties' dispute surrounds the sufficiency of the evidence, i.e. Ms. Sloan's medical records and physician recommendations, presented to the Board upon which it based its decision to cease Ms. Sloan's IOD disability pension and provide her with a medical disability pension. It is important, again, to note that judicial review regarding a common law writ of certiorari is very narrow. *See* ***Demonbreun***, 2011 WL 2416722, at *5. As such, this Court's review does not encompass the intrinsic correctness of the Board's decision, but *only* whether the Board exceeded its jurisdiction or acted illegally, fraudulently, or arbitrarily. *See* ***id.*** Further, the Board's decision is "considered arbitrary only when there is no evidence in the record to support it." ***Lafferty***, 46 S.W.3d at 759 (citing ***Sexton v. Anderson County***, 587 S.W.2d 663, 667 (Tenn. Ct. App. 1979)). Thus, we must examine the evidence presented to the Board.

Ms. Sloan was examined by several medical professionals, all of which submitted their findings to the CSMEs or the interim CSMEs. Two CSMEs also gave recommendations to the Board based on their review of Ms. Sloan's medical records. We will discuss each of their findings in turn.

Dr. Mark Phillips

Dr. Phillips was Ms. Sloan's original psychologist from when she was first placed on medical leave in 2006. He also diagnosed her with PTSD. In her April 2006 intake form, Dr. Phillips specifically referenced "cumulative stress" as one of the problems presented to him to by Ms. Sloan. Additionally, in an October 13, 2008 letter, Dr. Phillips stated "Ms. Sloan consulted me on 4/25/2006 for symptoms related *to work-related stress over the nine years on her job* with the Nashville Fire Department." (emphasis added). Importantly, Dr. Phillips makes no mention of the February 2006 event, which Ms. Sloan claims triggered her PTSD.

Dr. Robin Oatis-Ballew

Ms. Sloan was referred to Dr. Oatis-Ballew in January, 2011, by Dr. Phillips. Dr. Oatis-Ballew has seen Ms. Sloan regularly since that time. Dr. Oatis-Ballew has provided the CSME with two letters regarding Ms. Sloan's diagnosis and treatment. In a January 19, 2015 letter, Dr. Oatis-Ballew stated that "Ms. Sloan was *routinely exposed to traumatic events during her time with the Fire Department (FD)*. Additionally, Ms. Sloan reported a particular event which was notably traumatic in a way that was neither routine nor commonplace for her position." (emphasis added). In September 2016, Dr. Oatis-Ballew submitted another letter to the CSME on behalf of Ms. Sloan, which opined that "[t]he initial signs of PTSD did occur after a single incident involving Fire Department suppression. However, *repeated experiences of and exposure to job related trauma sustained and exacerbated these symptoms*." (emphasis added).

Dr. Susan Warner

Dr. Warner was the CSME that initially recommended changing Ms. Sloan's disability pension from IOD to medical in late 2014. In her recommendation to the Board on January 6, 2015, Dr. Warner noted that the "[t]reatment summary from Dr. Mark Phillips (PhD) 10/08 indicates [Ms. Sloan] *has been under his treatment since 4/06 for work-related stress over the past 9 years on the job*." In the same recommendation, Dr. Warner additionally finds that "[b]ased on [Ms. Sloan's records] from 4/06, which do[] not detail an event which is unusual for paramedics . . . . [Ms. Sloan's] mental health notes indicate she has stress and anxiety related to regular duties."

The Board decided to revisit its determination of Ms. Sloan's disability pension after Ms. Sloan submitted a letter from Dr. Oatis-Ballew. Dr. Warner gave an additional recommendation to the Board in February 2015 following a review of Dr. Oatis-Ballew's letter. The recommendation, in addition to the previously stated language in her January recommendation, stated "Dr. Oatis-Ballew wrote a letter which supports the diagnosis of PTSD but not due to any particular event that would be considered unusual for EMS[,]" and thus, Dr. Warner recommended "change of IOD to Medical Pension."

Dr. Keith A. Caruso

Dr. Caruso examined Ms. Sloan as a result of the Board's IPE order. Dr. Caruso examined Ms. Sloan in late July 2016. In his July 30, 2016 report, Dr. Caruso explained

> Ms. Sloan suffers from Posttraumatic Stress Disorder (PTSD) and Persistent Depressive Disorder with intermittent Major Depressive Episodes, with current episode. *Her PTSD was triggered by exposure to death and serious bodily injury on multiple occasions*, most notably on 02/01/2006. However *she has been exposed to and affected by cumulative traumatic events at work over the years as a firefighter*.

(emphasis added). Further, in Dr. Caruso's evaluation, he notes that Ms. Sloan gave the following relevant history:

> Ms. Sloan described exposure *to multiple traumatic events over the course of her career as a firefighter*. These included the deaths of three children, one in a motor vehicle accident (MVA), two from Sudden Infant Death Syndrome (SIDS). She had encountered numerous individuals who were dead or dying at the scenes of accidents. She noted a particularly troubling MVA in which two individuals were both trapped and needed her assistance in which she was forced to decide which to help first, knowing that the other was likely to die at the scene. This incident had occurred in 2002 or 2003 and troubled her for a long time, although she was able to continue working until she answered a call on 02/01/2006 at the Green Hills Mall [i.e., the February incident].

(emphasis added).

Dr. Matthew Hine

Dr. Matthew Hine presented his recommendation to the Board, which was based on his review of all of the above cited medical records, letters, and recommendations from all of the medical professionals that examined Ms. Sloan. He, too, opined that Ms. Sloan's PTSD arose from cumulative work stress and the events she described were not out of the ordinary compared to the stressors of other Engineers/EMTs. Accordingly, he recommended that the Board approve its prior decision to change Ms. Sloan's IOD disability pension to a medical disability pension with no scheduled review. The recommendation also clearly considered both factors of the *Gatlin* framework:

> -*The Standard for mental injuries in TN: Plaintiff must prove that the accident or occurrence arose out of employment, the injury must be "caused by an identifiable stressful, work-related event producing a sudden mental stimulus such as fright, shock, or excessive unexpected anxiety, and it may not be gradual employment stress building up over a period of time. In addition, the stress produced may not be usual stress, but must be extraordinary and unusual in comparison to the stress ordinarily experienced by an employee in the same type of duty."*
> -There is no evidence in the medical treatment notes, in the IPE, or in providers' letters that [Ms. Sloan's] PTSD arose due to the singular event of 2/1/06. Instead, records indicate symptoms are related to cumulative traumatic work stress that gradually built up over time. Also, the multiple traumatic events described are not extraordinary or unusual compared to the ordinary stressors for Employees in the same type of duty. Therefore, [Ms.

> Sloan's] psychological disorders do not meet the criteria to be considered IOD.

After reviewing these statements, the trial court determined that "the Board misapplied applicable legal standard and that Ms. Sloan's PTSD started as a result of the February 1, 2006 incident[.]" The trial court further reasoned that Ms. Sloan's injury met the ***Gatlin*** requirements stating:

> The material evidence in the record reflects that Ms. Sloan's PTSD originated from the February 1, 2006 misdirected distress call, after which she began having severe depressive, anxiety and PTSD symptoms and could not return to her work. While her post February 1, 2006 work stress and family health stress exacerbates her PTSD, the cause of her PTSD was the February 1, 2006 work-related incident. Further, Dr. Oatis-Ballew opined that the February 1, 2006 incident was "notably traumatic in a way that was neither routine nor commonplace for her position."

The court additionally concluded that Ms. Sloan's "stress associated with the delay in response time due to being misdirected to a distress call and the waiting for ten minutes to be redirected, coupled with the delay in getting services to a man who died of cardiac arrest, is not routine or commonplace for a firefighter/EMT."

From our review of the evidence submitted to the Board, however, we conclude that the Board did not act arbitrarily in its decision to change Ms. Sloan's disability pension because there was certainly more than a scintilla of evidence that supported the Board's finding. ***Leonard Planting Co.***, ***v. Metro. Gov't of Nashville and Davidson Cty.***, 213 S.W.3d 898, 904 (Tenn. Ct. App. 2006) ("The amount of material evidence required to support a board's or agency's decision must exceed a scintilla of evidence[.]"). Here, the treating medical professionals repeatedly noted that Ms. Sloan was exposed to multiple traumatic events and work-stress during her years working at the Department, all of which contributed to her PTSD. Similar to the police officer in ***Cheslock***, Ms. Sloan experienced many stressful events during her tenure working at the Department. *See* ***Cheslock***, 2001 WL 1078263, at *1. Moreover, like the officer in ***Cheslock***, Ms. Sloan may have experienced one event that was more traumatic than others; however, there is material evidence that indicates that Ms. Sloan's PTSD did not stem solely from this one incident, but cumulative work stress and multiple traumatic events during her years with the fire department. *See* ***id.***, at *5 (holding that even though officer pointed to two specific traumatic events that triggered his PTSD diagnosis, there was material evidence that the officer's PTSD "was not the result of an accident occurring at a definite time and place, but rather caused by a gradual buildup of stress."); *see also* ***Kimbro v. Cumis Ins. Society, Inc.***, No. 03S01-9506-CH-00063, 1996 WL 11888 (Tenn. Workers' Comp. Panel 1996) (holding that claimant's "condition developed gradually over a period of time, not as a result of any sudden stimulus," and

claimant's specific, work related traumatic event was simply "the straw that broke the camel's back," after she experienced a great deal of stress at home and in the ordinary course of work). Moreover, at least two independent CSMEs reviewed her medical records and came to the same conclusion that Ms. Sloane did not qualify for an IOD disability pension. Accordingly, there was evidence, both substantial and material, presented to the Board to support the conclusion that Ms. Sloan did not qualify for an IOD disability pension. *See* ***Massey***, 813 S.W.2d at 465 (quoting Ben Cantrell***,*** *Review of Administrative Decisions by Writ of Certiorari in Tennessee,* 4 Mem. St. U. L. Rev. 19, 29–30 (1973)). Although strong countervailing evidence exists, the applicable scope of review does not allow courts to examine the intrinsic correctness of the Board's decisions, reweigh the evidence presented to the Board, or substitute our judgment for that of the Board. *See* ***State ex rel. Moore & Assocs.***, 246 S.W.3d at 574 (internal citations omitted). Here, it appears that the Board relied on the appropriate legal standard and based its decision on substantial and material evidence; as such, there was no basis to overturn the Board's decision in this case. This decision of the trial court is therefore, reversed.

CONCLUSION

The Davidson County Chancery Court's decision is reversed. This cause is remanded for further proceedings consistent with this opinion. The costs of this appeal are taxed to Appellee, Julie A. Sloan, for which execution may issue if necessary.

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J. STEVEN STAFFORD, JUDGE