

Circuit Court for Somerset County
Case No. C-19-CV-19-000220

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 806

September Term, 2020

ROBERT A. GUNTER, JR.

v.

MARYLAND STATE RETIREMENT &
PENSION SYSTEM

Graeff,
Zic,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: June 11, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On December 12, 2017, Robert Gunter, Jr., appellant, applied to the State Retirement and Pension System (“RPS”), appellee, for disability retirement benefits due to a psychological injury he suffered while employed as a correctional officer at the Eastern Correctional Institute (“ECI”). The RPS Medical Board recommended that Mr. Gunter be approved for ordinary disability, but not accidental disability because “the facts alleged [did] not constitute an accident.” The RPS Board of Trustees (the “Board”) accepted this recommendation and denied his request for reconsideration of the accidental disability claim.

Mr. Gunter appealed to the Office of Administrative Hearings (“OAH”). Both Mr. Gunter and RPS filed motions for summary decision, and an Administrative Law Judge (“ALJ”) held a motions hearing on December 7, 2018. The ALJ granted RPS’s motion for summary decision and affirmed the Board’s decision to deny Mr. Gunter’s claim for accidental disability on the ground that his injury was not the result of a workplace accident. Mr. Gunter filed a petition for judicial review in the Circuit Court for Somerset County, which affirmed the ALJ’s decision.

On appeal, appellant presents the following question for this Court’s review, which we have rephrased slightly, as follows:

Did the ALJ err in finding that Mr. Gunter was ineligible for accidental disability retirement benefits?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Accidental Retirement Disability Claim

Mr. Gunter was employed, beginning in 2004, as a correctional officer for the Maryland Department of Public Safety and Correctional Services (“DPSCS”) at the ECI Annex, a state prison located in Somerset County.¹ In 2010, he was promoted to the position of “Correctional Officer Lieutenant,” which involved additional responsibilities such as shift supervision and assignment of overtime.

In August 2016, DPSCS’s Office of Equal Employment Opportunity (“OEEO”) received several complaints from other officers, alleging that Mr. Gunter and two other supervisors, all of whom were white, were “involved in a conspiracy to deny African-American officers the fair and impartial allocation of overtime opportunities.” The OEEO conducted an investigation and found that there was “sufficient and credible evidence” to establish that Mr. Gunter “knowingly and willfully denied African-American officers a fair opportunity to work overtime.”

On November 3, 2016, Mr. Gunter was served with a Notice of Disciplinary Charges, alleging nine counts, including discrimination, harassment, filing false official reports, and unfair employment practices. The notice recommended that Mr. Gunter be terminated from State service as a result. On November 30, 2016, Mr. Gunter was placed

¹ The ECI Annex is the minimum-security facility at ECI. The “main compound” is a medium/maximum-security facility.

on administrative leave pending the conclusion of the administrative hearing regarding the disciplinary charges. Shortly thereafter, Mr. Gunter's employment was terminated.

Mr. Gunter appealed his termination to the Secretary of DPSCS, who found no violation of Mr. Gunter's substantive or procedural rights as a correctional officer and affirmed his termination. Mr. Gunter then appealed to the OAH.

Meanwhile, on December 5, 2016, an inmate at ECI told Brent Conner, another correctional officer, that Virginia Johnson, an administrator at ECI who had made a complaint against Mr. Gunter, had discussed Mr. Gunter's disciplinary charges with several inmates. The inmate reported that Ms. Johnson told the inmates that "she had [her] shift supervisors fired for racism," and she would be "getting a settlement from them." Because Mr. Conner was concerned for Mr. Gunter's safety, he drafted a "Matter of Record" document describing these events and gave it to Mr. Gunter.

In October 2017, Mr. Gunter entered into a Disciplinary Action Settlement Agreement with DPSCS. The Agreement provided that DPSCS would rescind the Notice of Disciplinary Charges and expunge all references to the charges from his department record in exchange for an agreement by Mr. Gunter to withdraw his appeal, forfeit ten days of annual leave, have no contact with the complainants, and be reassigned.

Mr. Gunter was reassigned to another facility at ECI and scheduled to return to work on October 5, 2017. Mr. Gunter, however, did not return to work because, while he was getting dressed for work on the day he was scheduled to return, he suffered a "severe anxiety attack."

On December 12, 2017, Mr. Gunter applied to RPS for disability retirement benefits, citing an alleged workplace injury occurring on November 3, 2016, at ECI. On his Statement of Disability, where the form provided: “Describe how your disability affected your job performance,” Mr. Gunter stated: “I have been labeled a racist in this environment which triggers severe [a]nxiety [a]ttacks, and I am a prime target.” In the section titled “Describe your disability or medical condition,” he wrote: “Post Traumatic Stress Disorder and Severe Anxiety disorder from being falsely accused of having a conspiracy against African American officers at my workplace.”

In a document attached to the Statement of Disability, Mr. Gunter described his injury in further detail as follows:

On November 3, 2016, approximately 3:00 p.m., I, Lieutenant Robert Gunter, Jr. received “Notice of Disciplinary Charges” brought forth by false allegations from African American Correctional Officers. . . .

* * *

After receiving these charges, at no time was I given an opportunity to have a mitigation conference with the Warden, which is standard policy. The punishment recommended by the appointing authority was termination from State services.

On August 17, 2016, after returning to [ECI] Annex from my first Interrogation interview on this matter, I was approached by Officer Virginia Johnson, one of the accusers, in the Annex lobby where she said to me, “I am sorry you have to go through this[,] Lieutenant Gunter. It was not intended for you.”

On October 14, 2016, I had to face a second interrogation interview conducted by Equal Opportunity representative, Genice Fowler. I later discovered prior to my hearing, which was a year later, that this recorded interrogation interview mysteriously disappeared from their investigation file.

On November 29, 2016, I received a phone call while on vacation from Darryl Webster, the Facility Administrator, advising me that I was being transferred to the main compound which is a medium/maximum security facility. This was a completely different facility than the Annex, a minimum-security facility, where my current post was.

On the next day, November 30, 2016, I received another phone call from the Facility Administrator[.] Mr. Webster stated that per Deputy Secretary Michael Zeigler, I was being placed on Administrative Leave, effective immediately. I was not to access any state files or allowed on the premises of [ECI]. **Within two days, my life took a drastic change; from being moved to a new facility to now being on suspension, pending termination from my career in which I worked very hard to establish. This brought on a tremendous amount of stress (unnecessary) in not only my life, but my family's lives.** I coped with it the best that I could through the holidays, however by January 10, 2017, I sought professional counseling from psychologist, Dr. John Zweig. After meeting with Dr. Zweig, I was prescribed three different medications; Xanax 0.5 mg to be taken twice daily, Wellbutrin 100 mg and Paroxetine 20 mg. Dr. Zweig also provided me with various mind therapy exercises to help cope with the work stressor. I continued through the year seeking help from Dr. Zweig, along with my primary case physician (PCP), Dr. Baral / S. Howard.^[2] . . .

* * *

On September 27, 2017, at the Wicomico County District Court Office of Administrative Hearings all charges were dropped and dismissed due to insufficient evidence.

On October 4, 2017, I received a phone call from Captain Monica Brittingham, advising me that I was to report for duty on the evening shift at the Main Compound. The next day, October 5, 2017, as I attempted to put on my uniform, I suffered a severe anxiety attack. I could not even think about putting on my uniform on [sic] without my heart rate elevating dangerously. How could I be expected to return in this environment after being labeled a racist? Attached is a witness statement from CO II B. Connor, as he heard

² Mr. Gunter attached numerous medical records supporting these assertions. Because the parties do not dispute that Mr. Gunter was permanently disabled, and the ALJ's finding was not based on causation, we need not describe the details of Mr. Gunter's medical history.

inmates discussing the specifics of my case, making comments such as, “CO II / VAC V. Johnson (one of the accusers) was bragging that she had me fired because of racism” and that she was “going to get a settlement” from it. [Emphasis omitted.] Inmates from the Annex are transported daily to the Main Compound for a variety of reasons and word of mouth travels fast in the inmate population. The inmate population is 70% African American with 20% of that being involved in serious gang related activities. **I can no longer report to work and perform my job duties as a Lieutenant after being accused of being a racist (falsely).** Any decisions that I make will be perceived as unfair if they pertain to any disciplinary action for an African American officer and/or inmate. Unfortunately, racism is a serious problem in our country today and people are dying because of it. I have an enormous amount of fear and anxiety about being stabbed to death if I were to return to my position as Lieutenant. I also have severe reservations about returning to my post, because I have a wife and three (3) young children at home that depend on me. I know what these inmates are capable of. I have seen it first hand, from stabbings, attempted murders to hangings, etc. **It is not my fault that an improper investigation was conducted[,] and I had to face these false accusations for over a year.** The first time I would have to discipline an African American officer, the “race” flag would immediately be thrown up against me (again).

* * *

I continue to seek professional psychological help and am still prescribed 3 different medications. **I have had this hanging over my head (and my family’s) for over a year, and it has affected me in so many ways.** I display rages of anger towards my family and friends, I have withdrawn from participating in family functions, and I often find it difficult to even go out in public. I am suffering from Post-Traumatic Stress Disorder, (PTSD), severe anxiety and depression. **I am unable to return to work and perform my job duties as a Correctional Officer Lieutenant due to this event that falsely accused me and labeled me as a “racist.”** It has tremendously impacted my life in a negative way. Because of this incident, and the psychological damages described by Dr. Zweig and Dr. Baral / S Howard, I am requesting to be retired from the State of MD with special / accidental medical disability benefits.

(Emphasis added.)

On January 2, 2018, RPS sent Mr. Gunter a letter acknowledging its receipt of his request for disability retirement benefits. The letter advised that his claim would be reviewed only for ordinary disability benefits. With regard to accidental disability, the letter stated as follows: “The Agency has reviewed your claim. You described an encounter with your employer as an accident. However, personnel decisions and interactions with supervisors do not constitute or qualify as an ‘accident’ under Maryland retirement law.”

In June 2018, the RPS Medical Board recommended that Mr. Gunter be approved for ordinary disability benefits “due to unspecified anxiety and unspecified depression.” It recommended, however, that his request for accidental disability be denied because “the facts alleged d[id] not constitute an accident under retirement law.” On July 17, 2018, the RPS Board of Trustees accepted these recommendations.

In a letter to RPS dated August 7, 2018, Mr. Gunter requested a reconsideration. He stated as follows:

I know this isn’t your normal “slip and fall” claim, however I am suffering from post-traumatic stress disorder (PTSD), severe anxiety and panic attacks as a result of this work-related incident. This incident occurred on November 3rd 2016, approximately 3 p.m. while I was in the workplace and performing my job duties at Eastern Correctional Institution, Annex facility in the Lieutenants Office. It was then that I was officially informed that I was being charged with being involved in a conspiracy against African American employees in regards to hiring overtime. The charging documents from the EEO coordinator, Investigator Genice Fowler, recommended termination from state service.

I displayed NO willful negligence on my behalf and I have a definite time and place that the accident occurred. Furthermore, all of the accusations arose out of and in the ordinary course of my actual performance of duty. As a result of these accusations, I immediately started to experience severe anxiety and depression.

RPS requested that Dr. Leonard Hertzberg conduct an independent medical evaluation (“IME”) of Mr. Gunter. On December 12, 2018, Dr. Hertzberg completed an in-person assessment of Mr. Gunter and reviewed his medical records. In his IME report, Dr. Hertzberg diagnosed Mr. Gunter with “post-traumatic stress disorder, chronic,” stating that “the causality of his symptoms [wa]s his employment at the [EIC] and the subsequent legal charges that were filed against him and were pending for almost 1½ years.”

On February 19, 2019, the Board sent Mr. Gunter a letter informing him that, after considering the IME and other records, his request for reconsideration had been denied because “the evidence submitted does not support a conclusion that an accident at a definite time and place caused [his] permanent disability.”

II.

Administrative Appeal

A.

Motion for Summary Decision

On March 13, 2019, Mr. Gunter appealed the Board’s decision and requested a hearing before an ALJ. The OAH scheduled the hearing for October 21, 2019.

On September 30, 2019, RPS filed a Motion for Summary Decision.³ RPS argued that Mr. Gunter was not entitled to accidental disability because the receipt of disciplinary

³ “A ‘summary decision’ plays the same procedural role in the disability application and review context as a motion for summary judgment in a circuit court civil action.” *Burr v. Md. State Ret. & Pen. Sys. of Md.*, 217 Md. App. 196, 201 n.1 (2014).

charges was not an “accident” pursuant to Md. Code Ann., St. Pers. & Pens. Article (“SPP”) § 29-109(b)(1) (2015 Repl. Vol.). It argued that this case was akin to *Burr v. Md. State Ret. & Pen. Sys. of Md.*, 217 Md. App. 196, *cert. denied*, 440 Md. 115 (2014), where this Court held that a personnel decision was not an “accident” pursuant to SPP § 29-109(b)(1).

Mr. Gunter filed an opposition motion, arguing that RPS’s motion should be denied because his “disabling psychiatric condition was the natural and proximate result of being accused of racism, and having such accusations improperly disseminated to the largely African-American prison population.” He further asserted that the facts of his case were distinguishable from those in *Burr*, and pursuant to *Courtney v. Bd. of Trustees of Md. State Ret. Sys.*, 285 Md. 356, 363 (1979), his claim was compensable because it resulted from an “unusual condition in the employment,” i.e., the unfounded accusations against him and Ms. Johnson’s improper actions in disclosing the complaint to the inmates. As a result, he argued that the accident in this case was “in no way analogous to a mere personnel decision.”

Mr. Gunter attached two affidavits to his opposition motion, one written by himself and another by Mr. Conner. In his affidavit, he stated that, in October 2016, Ms. Johnson had made an “unfounded” complaint against him and two other officers, alleging discrimination. He further stated that, while he was on administrative leave, Mr. Conner advised that he had overheard Ms. Johnson discussing the complaint with inmates. Subsequently, during a “routine visit” to ECI’s Human Resource Office prior to his

reinstatement, he “was informed by a Human Resource Officer, Dina Revell, that, ‘around here, once you are labeled a racist, you are always labeled a racist.’”

In the second affidavit, Mr. Connor stated that he was employed as a correctional officer at ECI, and that he previously had been supervised by Mr. Gunter. He continued:

3. At some point, I became aware that Virginia Johnson, an administrator at [ECI], had made a complaint of racial discrimination against Lieutenant Gunter. Ms. Johnson’s office was in my unit. While Lieutenant Gunter was on administrative leave, I overheard several inmates discussing the complaint with Ms. Johnson, telling her that they “wanted to know where things stood with Gunter,” talking about the allegations made in the complaint and assuring her they had heard she “was going to get a lot of money” from the complaint. Ms. Johnson discussed the complaint with them.

4. On multiple occasions, inmates asked me about the complaint, telling me they had heard all about it and were under the impression Ms. Johnson was going to “get a lot of money” as a result of the complaint. Eventually, it became common knowledge throughout the prison population that Lieutenant Gunter had been accused by Ms. Johnson of being a White Supremist and engaging in racist practices that discriminated against African-Americans.

5. Because the great majority of our prison population is African-American, I became concerned about Lieutenant Gunter’s safety and warned him that he was at risk. I wrote up a “Matter of Record” confirming what I had learned, and provided it to Lieutenant Gunter.

On October 2, 2019, Mr. Gunter filed his own Motion for Summary Decision. He made the same arguments as he did in his opposition motion, and he requested judgment in his favor as a matter of law.⁴

⁴ RPS filed an opposition to both of Mr. Gunter’s motions, reiterating its argument that Mr. Gunter could not establish a compensable “accident” as a matter of law pursuant to SPP § 29-109(b)(1).

On October 21, 2019, Mr. Gunter, represented by counsel, and an assistant attorney general representing RPS appeared at the motions hearing before the ALJ. Counsel for RPS argued, as she did in her motion, that Mr. Gunter's claim was precluded by *Burr* because disciplinary investigations are personnel actions, not "accidents" pursuant to the statute. In addition, she argued that, because SPP § 29-109(b)(1) requires that the accident take place at a definite time and place, the legislature clearly intended to limit the term "accident" to a specific point in time.

Counsel for RPS further argued that Ms. Johnson's disclosure of her complaint to the inmates, even if improper, was not an accident pursuant to SPP § 29-109(b)(1). She noted that Mr. Gunter had not identified a specific date or time when those conversations took place, and she asserted that, "at best, it constitute[d] some sort of ongoing generalized job stress." Counsel argued that a mental injury warranting accidental disability must be precipitated by a specific accident, not a "general condition of employment" or "an incident occurring over an extended period of time."

Counsel for Mr. Gunter argued that Mr. Gunter's PTSD did not result from a personnel decision or the unfounded complaint of discrimination. Instead, the psychological injury was the result of the wrongful and improper "dissemination of that information to the general prison population," and that was the "accident" in question. He further asserted that Ms. Johnson's actions were *per se* unforeseeable because they were in violation of workplace policy.

In response, counsel for RPS reiterated that Mr. Gunter was required to identify a specific accident, and the fact that he identified the date of the charges, November 3, 2016, as that date on numerous occasions (including on his initial application for benefits) precluded his argument that the accident was Ms. Johnson's disclosures.⁵ Counsel proffered that COMAR 22.06.02.02(b) required Mr. Gunter to specifically identify "every work[-]related accident" in his application.

B.

Administrative Decision

On October 31, 2019, the ALJ issued a written opinion granting RPS's Motion for Summary Decision and affirming the Board's denial of Mr. Gunter's request for accidental disability. The ALJ stated that the existence of an accident in accordance with SPP § 29-109(b)(1) was "[a] threshold requirement for proving eligibility for accidental retirement benefits." The ALJ noted that Mr. Gunter's application "clearly identified November 3, 2016 at approximately 3:00 p.m. at [ECI] Annex as the time and location of the accident." She continued:

Whether characterized as a personnel action or rumors about a personnel action, the *Burr* court noted that it had not found "any cases supporting the proposition that an accident can be caused by a conversation, even an unpleasant one, without some tangible physical occurrence." *Burr*, 217 Md. App. at 207. I find the *Burr* decision to be controlling authority in this matter. There is no genuine issue as to any material fact and RPS is entitled to prevail as a matter of law because [Mr. Gunter's] self-described, work-related accident does not constitute an accident pursuant to [SPP § 29-109(b)(1)].

⁵ Moreover, counsel noted that Dr. Hertzberg's IME stated that Mr. Gunter's symptoms were caused by the discrimination charges filed against him.

The ALJ concluded that RPS was entitled to summary decision as a matter of law “because the undisputed facts demonstrate[d] that [his] disability did not occur as the natural and proximate result of an accident that occurred in the actual performance of duty at a definite time and place.” Accordingly, the ALJ ordered that the Board deny his application for accidental disability benefits.

C.

Judicial Review

On November 8, 2019, Mr. Gunter filed a Petition for Judicial Review in the Circuit Court for Somerset County. On September 18, 2020, the circuit court held a remote hearing.

Counsel for Mr. Gunter argued that the ALJ erred in affirming the Board’s denial of the application for accidental disability because Mr. Gunter was disabled as the result of the “illegal disclosure” of his disciplinary charges, which was an accident arising from “an unusual circumstance or condition in the workplace.” Counsel proffered that this disclosure was unforeseeable as a matter of law because it was illegal and contrary to prison policy. Moreover, he argued that the disclosure occurred “at a definite place and at a definite time,” and it was a “tangible” and “discrete event.” As a result, the disclosure that caused Mr. Gunter’s psychological injury fell within the statutory definition of “accident” pursuant to SPP § 29-109(b)(1).

RPS’s counsel acknowledged that Mr. Gunter was disabled due to his psychiatric condition, but she maintained that Ms. Johnson’s disclosure was not an accident pursuant

to the statute. In particular, she highlighted that Mr. Gunter was unable to identify when the disclosure occurred. In any event, Mr. Gunter had listed November 3, 2016, on his application, i.e., the date that he received notice of the disciplinary charges, not the unknown date on which the disclosure occurred. She argued that the ALJ correctly found that *Burr* applied to the case and properly denied Mr. Gunter's request.

At the conclusion of the hearing, the circuit court issued an oral ruling. The court began by noting that Mr. Gunter had proffered on numerous occasions that the date of the accident was November 3, 2016, at 3:00 p.m., "the same date he received the disciplinary action against him alleging racism, among other things." The court stated, as the ALJ had, that the existence of an "accident" pursuant to the statute was a "threshold requirement" for accidental disability.

The court found that *Burr* was controlling, and "[d]isciplinary charges are not unexpected occurrences, nor are they physical events or circumstances that can comprise an accident." It explained as follows:

The [c]ourt finds that there's no tangible physical occurrence here. An accident can't be by a conversation, no matter how unpleasant that conversation might be. The [c]ourt finds that there's really no genuine issue as to any material fact, and [RPS] is entitled to prevail in this case as a matter of law. [Mr. Gunter] is not entitled to summary decision. [RPS] is entitled to summary decision by the undisputed facts demonstrated that [Mr. Gunter's] disability did not occur as a result of natural, proximate result of an accident that occurred in the actual performance of duty at a definite time and place. No date or time for Virginia Johnson's alleged discussion with inmates is stated. [Mr. Gunter] was on administrative leave when the co-employee, Brett Conner, told him about Virginia Johnson in December of 2016.

So under all these facts and circumstances before the [c]ourt, the [c]ourt will deny summary judgment decision on behalf of [Mr. Gunter] and grant it on behalf of [RPS]. Affirm the decision of the Administrative Law Judge.

The circuit court entered a written order affirming the ALJ’s decision that same day.

This appeal followed.

STANDARD OF REVIEW

The Court of Appeals has explained the standard of review applicable to an administrative agency’s final decision:

On review, we look “through the circuit court’s . . . decision [], although applying the same standard of review, and evaluate[] the decision of the agency.” *People’s Counsel for Baltimore County v. Loyola College in Md.*, 406 Md. 54, 66, 956 A.2d 166, 173 (2008) (citations omitted). Our role is thus “limited to determining if there is substantial evidence in the record as a whole to support the [ALJ’s] findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.” *Board of Physician Quality Assur. v. Banks*, 354 Md. 59, 67–68, 729 A.2d 376, 380 (1999). In applying the substantial evidence test to the ALJ’s factual findings, we ask “whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Id.* at 68, 729 A.2d at 380. We treat the ALJ’s decision as prima facie correct and presumed valid, as “it is the agency’s province to resolve conflicting evidence and to draw inferences from that evidence.” *Id.* at 68, 729 A.2d at 381 (citations omitted). With respect to an ALJ’s conclusions of law, however, “we have often stated that a court reviews *de novo* for correctness. . . . [I]t is always within our prerogative to determine whether an agency’s conclusions of law are correct, and to remedy them if wrong.” *Schwartz v. Maryland Dep’t of Natural Resources*, 385 Md. 534, 554, 870 A.2d 168, 180 (2005) (citations omitted).

Lawson v. Bowie State Univ., 421 Md. 245, 256 (2011). *Accord McDonnell v. Harford Cty. Hous. Agency*, 462 Md. 586, 619–20 (2019). “If the agency decision under review was in the form of a summary disposition, we must determine whether that disposition was legally correct, *i.e.*, whether there is no genuine dispute of material fact

and the moving party was entitled to that disposition as a matter of law.” *Md. State Highway Admin. v. Brawner Builders, Inc.*, 248 Md. App. 646, 657 (2020), *cert. granted*, 2021 WL 1256713 (March 5, 2021).

DISCUSSION

Before addressing the merits of appellant’s claim, we provide a brief explanation of the statutory framework that guides our analysis. Qualifying employees of the Maryland State Retirement and Pension System are potentially eligible for both ordinary disability benefits and accidental disability benefits. SPP §§ 29-105 and 29-109. To be eligible for ordinary disability retirement benefits, a member who has five years of eligibility service needs to obtain a certification from the RPS Medical Board stating that they are “mentally or physically incapacitated” from performing their job duties, that the “incapacity is likely to be permanent,” and the member “should be retired.” SPP § 29-105(a). To be eligible for accidental disability retirement benefits, a member must additionally show that they are “totally and permanently incapacitated for duty as the natural and proximate result of an accident that occurred in the actual performance of duty at a definite time and place without willful negligence by the member.” SPP § 29-109(b)(1). In both cases, the burden of proof to show eligibility for these benefits is on the member. COMAR 22.06.06.02E(1).

Mr. Gunter contends that the ALJ erred in affirming the Board’s denial of his request for accidental disability benefits. He argues that Ms. Johnson’s disclosure of the complaint made against him was an “accident” that occurred “at a definite time and place” within the meaning of SPP § 29-109(b)(1). He asserts that Ms. Johnson’s disclosure was

unforeseeable because no one would expect that a state official would make an illegal disclosure.

RPS argues that the ALJ properly affirmed the Board's decision denying Mr. Gunter's request for accidental disability. RPS notes that Mr. Gunter's original claim to the agency stated that the date of his "accident" was November 3, 2016, the day he received the Notification of Charges, and he stated that his claim arose from being falsely accused of discrimination. It posits that Mr. Gunter's current claim, that the disabling accident was Ms. Johnson's dissemination of the charges against him, was made to avoid this Court's holding in *Burr*. Regardless, RPS contends that personnel actions and disciplinary charges, "even if improperly disseminated to the inmate population," do not constitute an "accident" pursuant to SPP § 29-109(b)(1).

We note, initially, that there is no dispute that Mr. Gunter is totally and permanently incapacitated due to his psychiatric condition, and he is unable to return to his job as a result. The only issue before this Court is whether Mr. Gunter's disability was due to an "accident" pursuant to SPP § 29-109(b)(1).

As RPS notes, Mr. Gunter's original claim for relief in his Statement of Disability was for an accident occurring on November 3, 2016, at approximately 3:00 p.m., i.e., when he received the Notice of Disciplinary Charges. On multiple occasions throughout his Statement, Mr. Gunter pointed to the "false accusations" and the "improper investigation" against him as the cause of his stress and psychological injuries. He reiterated this basis in his request to the Board for reconsideration, where he specifically stated that the "work-

related incident” that caused his PTSD and related illnesses was the receipt of the Notification of Disciplinary Charges on November 3, 2016.

COMAR 22.06.02.02(B)(1) provides that a claimant must identify every work-related accident that they claim entitles them to accidental disability. COMAR 22.06.02.02(C) provides that, if an applicant fails to identify a work-related accident that took place before the applicant submitted the Statement of Disability, the applicant is precluded from making a claim for that event. For this reason alone, Mr. Gunter’s claim could be rejected because he did not claim initially, as he does on appeal, that Ms. Johnson’s disclosure of the complaint against him was the “accident” that caused his illness.

Nevertheless, Mr. Gunter did raise the claim before the ALJ, and the ALJ considered it. (“Whether characterized as a personnel action or rumors about a personnel action...”). We will, therefore, consider the claim even though it was not raised in the initial Statement of Disability.

In *Burr*, we addressed whether psychological trauma from words spoken qualified as a disability arising from an accident. In that case, Ms. Burr, an employee of the Maryland Judiciary’s Administrative Office of the Courts, had been teleworking while she underwent treatment for breast cancer. 217 Md. App. at 198. On August 27, 2007, she went in the office to discuss her future work schedule and assignments, and her supervisor unexpectedly informed her that the teleworking agreement had been retroactively revoked, she had exhausted all her leave time, and she had to return to work full-time and in-person.

Id. at 200. Ms. Burr stated that, after this meeting, she suffered a “memory blackout” and began having suicidal thoughts, so she admitted herself for psychiatric care at Sheppard Pratt. *Id.* at 200–01, 204.

Ms. Burr filed a claim for ordinary and accidental disability retirement benefits with RPS. *Id.* at 201. The RPS Medical Board recommended that she be approved for ordinary disability “due to a psychiatric condition,” but it denied her claim for accidental disability, and the Board of Trustees adopted that recommendation. *Id.*

Ms. Burr filed an administrative appeal, and RPS filed a motion for a summary decision on the basis “that the events of August 27, 2007, did not constitute an ‘accident’ under SP § 29-109(b)(1).” *Id.* The ALJ agreed and found that “the events of the meeting were ‘general conditions of employment and [did] not fit within any common sense meaning of the term accident.’” *Id.* at 202. This decision was affirmed by the circuit court and this Court. *Id.*

This Court held that “a supervisor’s personnel decisions cannot constitute an ‘accident’ for purposes of determining an employee’s right to accidental disability benefits.” *Id.* at 202–03. We noted that our decision did not “turn on whether Ms. Burr was surprised by or foresaw the decisions her supervisors conveyed to her in the August 27, 2007 meeting.” *Id.* We assumed, for purposes of the appeal, that “she was totally ambushed” and her supervisors’ actions were wrongful. *Id.* at 203. We explained, however, that

a supervisor’s personnel decisions, whatever their character and however they were delivered, are a foreseeable part of a person’s employment with

the State, and, therefore, cannot constitute an “accident.” Personnel decisions also are not unexpected occurrences (in any objectively determinable way), nor are they physical events or circumstances that can comprise an “accident.”

Id.

We further noted that the definitions of accident in various dictionaries “all include some physical event that takes place that precipitates harm,” although that event “need not necessarily involve violence.” *Id.* at 207. We explained that an accident cannot “be caused by conversation, even an unpleasant one, without some tangible physical occurrence.” *Id.*

Applying the definition of accident to the case, we held that the personnel decisions that the supervisor conveyed to Mr. Burr during their meeting did not constitute an accident because the decisions were intentional personnel actions by a supervisor, were the kind of decisions an employee can “objectively expect” in the workplace, and “did not involve any sort of physical and tangible force.” *Id.* at 208. As a result, those events did not “qualify as an ‘accident’ that entitle[d] her to an accidental disability retirement allowance.” *Id.*

Here, even assuming, as Mr. Gunter now argues on appeal, that the event causing the disability was Ms. Johnson’s disclosure to the inmates of the complaint against him, that event was not an accident.⁶ A personnel action, or rumors regarding such an action,

⁶ At oral argument, counsel for Mr. Gunter conceded that he did not know the date(s) when such disclosure(s) occurred. See Md. Code Ann., St. Pers. & Pens. Article § 29-109(b)(1) (2015 Repl. Vol.) (“Board of Trustees shall grant an accidental disability retirement allowance to a member if . . . the member is totally and permanently incapacitated for duty as the natural and proximate result of an accident that occurred in the actual performance of duty *at a definite time and place* without willful negligence by the member[.]” (emphasis added)).

do not constitute an “accident.” As this Court made clear in *Burr*, 217 Md. App. at 207, an accident cannot be “caused by a conversation, even an unpleasant one, without some tangible physical occurrence.” It is undisputed that, in this case, there was no “tangible physical occurrence” connected to Mr. Johnson’s conversations with the inmates (and their ensuing conversations with other inmates in the general prison population). *Id.*

The events in question did not constitute an “accident” pursuant to SPP § 29-109(b)(1). Accordingly, we affirm the judgment of the circuit court.

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