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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4911-15T1

WILLIAM WESTPHAL,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES, POLICE AND  
FIREMAN'S RETIREMENT SYSTEM,

Respondent-Respondent.

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Argued December 4, 2017 – Decided April 11, 2018

Before Judges Ostrer and Whipple.

On appeal from the Board of Trustees of the  
Police and Fireman's Retirement System.

Stuart J. Alterman argued the cause for  
appellant (Alterman & Associates, LLC,  
attorneys; Stuart J. Alterman and Matthew R.  
Dempsey, on the briefs).

Robert S. Garrison, Jr., Deputy Attorney  
General argued the cause for respondent  
(Gurbir S. Grewal, Attorney General, attorney;  
Melissa H. Raksa, Assistant Attorney General,  
of counsel; Paul E. Davis, Deputy Attorney  
General, on the brief).

PER CURIAM

Petitioner William Westphal (petitioner) appeals from a final determination of the Board of Trustees of the Police and Firemen's Retirement System (Board) denying his application to file for accidental disability benefits. Because petitioner was not adequately notified of the type of benefit being sought on his behalf, we reverse and remand for the Board to permit petitioner to amend his application to seek accidental disability benefits, and decide the application on its merits.

Petitioner was employed as a police officer with the Township of Gloucester (Township) and was enrolled in the Police & Firemen's Retirement System (PFRS) as of October 1, 1992. After a fitness for duty examination in August 2015, the Township found petitioner was unable to perform his assigned duties because he was totally and permanently disabled. Thereafter, it passed a resolution authorizing the filing of an application for involuntary disability retirement benefits on petitioner's behalf.

On November 18, 2015, the Township filed the application as authorized, seeking a retirement date of December 1, 2015, and a retirement type of involuntary ordinary disability. That same day, petitioner received notification the application had been filed.

On November 19, 2015, the Division of Pension and Benefits (Division) wrote a letter to petitioner informing him the Township

had filed an application on his behalf for disability benefits. The letter informed petitioner he could view the application and make changes through the Member Benefits Online System (MBOS), and provided instructions to access the MBOS. The letter further informed petitioner of the thirty-day deadline, provided under N.J.A.C. 17:4-6.10, to "contest the involuntary disability retirement application." Petitioner took no action by December 18, 2015, the expiration of the thirty-day period, and the Division began to process his application.

On January 18, 2016, petitioner filed an application for accidental disability benefits effective as of December 1, 2015. However, because the application submitted by the Township was in process, and the thirty-day window for petitioner to contest that application had passed, the Division did not process petitioner's application.

Thereafter, petitioner sent a letter to the Board inquiring about why his application for accidental disability benefits was rejected, and asking it to consider the application regardless.

In a March 15, 2016 letter, the Board denied petitioner's request to change his application to accidental disability retirement benefits, pursuant to N.J.A.C. 17:4-6.10, because petitioner did not contest the application by December 18, 2015. Further, it found the regulations did not allow for an amendment

of an application once processed by the Division. Lastly, it reasoned petitioner was not a "member in service" at the time he filed his application for accidental disability benefits, and therefore was ineligible to file under N.J.S.A. 43:16A-7. As a result, the Board approved the Township's application for ordinary disability benefits, which set petitioner's benefits pursuant to N.J.S.A. 43:16A-6(3).<sup>1</sup>

In April 2016, petitioner appealed the decision of the Board, requesting reconsideration of its decision to deny his application for accidental disability benefits. In May 2016, the Board reconsidered and reaffirmed its denial of his application.

On June 14, 2016, the Board issued its final administrative decision denying petitioner's request for accidental disability benefits for the same reasons laid out in its March 15, 2016 letter. Additionally, the Board noted that in an application for disability benefits filed by an employer, the employer must submit a written statement detailing the grounds for the disability request, and the Township had no intention of amending the application to provide for accidental disability benefits. The

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<sup>1</sup> Petitioner is currently receiving benefits equal to fifty-nine percent of his final compensation, based on twenty-three years of PFRS service credit. If petitioner had been granted involuntary accidental disability benefits, he would be entitled to two-thirds of his annual compensation pursuant to N.J.S.A. 43:16A-7(2)(b).

Board made its decision without a hearing in the Office of Administrative Law.

This appeal followed. On appeal, petitioner contends that he was not provided with adequate notice of the type of benefits sought by the Township, thus it was a reasonable mistake for petitioner to believe the Township filed for accidental disability benefits, and the failure of the Board to consider this rendered its final determination arbitrary and capricious. We agree.

"It is settled that [a]n administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to our deference." Ciesla v. N.J. Dep't of Health & Sr. Servs., 429 N.J. Super. 127, 148 (App. Div. 2012) (citing Wnuck v. N.J. DMV, 337 N.J. Super. 52, 56 (App. Div. 2001)) (alteration in original). We will not upset the ultimate determination of an agency unless the petitioner meets his burden of showing that the agency action was arbitrary, capricious, or unreasonable, or that it violated legislative policies expressed or implied in the act governing the agency. Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963); see also In re Proposed Quest Academy Charter School, 216 N.J. 370, 385-87 (2013); In re Holy Name Hosp., 301 N.J. Super. 282, 295 (App. Div. 1997). "Arbitrary and capricious action of administrative bodies means willful and unreasoning action,

without consideration and in disregard of circumstances." Worthington v. Fauver, 88 N.J. 183, 204 (1982) (citation omitted).

Ultimately, however, an "agency's statutory obligation must concur with its constitutional obligation." Rivera v. Bd. of Review, 127 N.J. 578, 587 (1992). Under the United States and New Jersey Constitutions, no person may be deprived of property or liberty absent due process of law. Cunningham v. Dep't of Civil Serv., 69 N.J. 13, 19 (1975). Such due process requires the state to provide "notice and an opportunity for hearing appropriate to the nature of the case." Rivera, 127 N.J. at 583 (citing Mullane v. Central Hanover B. & T. Co., 339 U.S. 306, 313 (1950)).

Here, the Township filed its application on petitioner's behalf on November 18, 2015, and informed petitioner by letter that benefits were being sought on his behalf. The letter also directed petitioner to view the application through an online portal system and informed him of a thirty-day window within which he could contest the application. This thirty-day period expired on December 18, 2015; it was not until January 18, 2016, that petitioner filed an application for accidental disability benefits.

Petitioner argues that the information provided in the November 19, 2015 letter was insufficient to put him on notice of the difference between involuntary ordinary disability benefits

and involuntary accidental disability benefits. We agree. Notably, the letter made only one mention of "involuntary ordinary disability benefits" and never made clear that there are different types of benefits, which pay different amounts and have different qualifications. Further, the sentence advising Westphal that he had thirty days<sup>2</sup> to contest the application referred only to the "involuntary disability retirement application" without regard to whether it was ordinary or accidental. Petitioner did not contest his involuntary disability retirement – only the form of it. Thus, the letter was not sufficient to alert petitioner that he should be concerned about the form of benefits being sought on his behalf.

Even if a reasonable person in petitioner's position should have known the kind of benefits sought, Rivera provides that the allowance for good cause exceptions to such rigid application of time limitations, as occurred here, "would . . . go a long way toward protecting due-process rights." 127 N.J. at 590; see Garzon v. Bd. of Review, Dep't of Labor, 370 N.J. Super. 1, 5-6 (App. Div. 2004). While petitioner did not submit his application for accidental disability benefits by the December 18, 2015 deadline, it was submitted before the original application was finalized.

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<sup>2</sup> The regulation providing thirty days to contest also refers only to "involuntary retirement" – not the form of benefits. See N.J.A.C. 17:4-6.10.

It would have caused no prejudice for the Board to permit the change and consider the application as petitioner desired. Thus, regardless of the sufficiency of the November 18, 2015 letter, the Board should have made a good cause exception for petitioner's application.

Lastly, we do not think that the Board was correct in denying petitioner's application because he was not a "member in service" at the time he filed his application for accidental disability benefits. While petitioner did file his application in January of 2016 after a retirement date of December 1, 2015, he was still employed by the Township when the original application was filed and when he received the letter which provided him with the inadequate notice. As such, we do not think that this technicality should bar his application from consideration.

Reversed and remanded for the processing of petitioner's application for involuntary accidental disability benefits and the decision of said application on its merits. We do not retain jurisdiction.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION