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July 24, 2023

VIA eCOURTS

Joseph H. Orlando - Appellate Division Clerk
Appellate Division Clerk's Office
P.O. Box 006
Trenton, New Jersey, 08625
Attention: Denis L. Koury - Case Manager

Re: Keith Isaac v. Board of Trustees, Police and
Firemen's Retirement System of New Jersey
Docket Number: A-003489-21

On Appeal from a Final Agency Decision of the
Board of Trustees, Police and Firemen's
Retirement System of New Jersey

Letter Brief of Respondent, Board of Trustees,
Police and Firemen's Retirement System of New
Jersey

Dear Mr. Orlando,

Please accept this letter brief on behalf of Respondent,
Board of Trustees, Police and Firemen's Retirement System of New
Jersey, on the merits of the appeal.

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PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

Appellant, the Estate of Keith Isaac (the "Estate"), appeals from the Board's decision denying its request to have Keith Isaac's ("Isaac") retroactive retirement benefits ("Retro Funds") paid to the Estate, rather than to Isaac's widow, Roxanne Isaac ("Roxanne"). (Aa225).²

Isaac was a lieutenant in the Newark Police Department. (Aa6). On March 12, 2013, Isaac applied for a special retirement effective April 1, 2013. (Aa36-37). In his retirement application, he identified Roxanne as his spouse in the section titled "Marital/Survivor Information"; he listed his four children as "primary beneficiaries" under the section titled "Life Insurance." Ibid. Isaac and the Newark Police Department

¹ Because the Procedural History and Counterstatement of Facts are closely related, they are combined to avoid repetition and for the court's convenience.

² "Aa" refers to the Estate's appendix; "Ab" refers to its brief.

litigated several aspects of Isaac's "termination of [] employment" - which resulted in a stay of Isaac's special retirement application until 2016. (Aa7-8). On or about September 12, 2016, the Board approved Isaac's special retirement application with a retirement date of August 1, 2014. (Aa8). On September 20, 2016, the Board directed the Division of Pensions and Benefits Retirement Section "to implement its decision." Ibid. Isaac passed away on October 23, 2016 - approximately forty-one days after the Board approved his retirement. (Aa9). At the time of his death, Isaac had yet to be paid his Retro Funds.³ (Aa17).

On March 10, 2017, the Division of Pensions and Benefits paid Roxanne the Retro Funds totaling \$208,950.03. (Aa10). Roxanne, as Isaac's legal widow, also receives a monthly survivor's benefit of \$5,833.33 for the remainder of her life, pursuant to N.J.S.A. 43:16A-12.1.⁴ (Aa26).

Kendrick Isaac ("Kendrick"), Isaac's brother, is the executor of Isaac's Estate. Ibid. Isaac did not name Roxanne as

³ The Retro Funds are the sum total of previous pension payments that were owed to Isaac; they were vested in him during his lifetime. (Aa10; Aa25).

⁴ The survivor's benefit statute reads as follows: "Upon the death after retirement of any member of the retirement system there shall be paid to the member's widow or widower a pension of 50% of final compensation for the use of herself or himself, to continue during her or his widowhood, plus 15% of such compensation payable to one surviving child or an additional 25% of such compensation to two or more children." N.J.S.A. 43:16A-12.1.

a beneficiary of his estate in his last will and testament. Ibid.
According to Kendrick, Roxanne and Isaac were estranged. Ibid.

The Division of Pensions and Benefits did not notify the Estate when it paid Roxanne the Retro Funds. (Aa10). The Estate acknowledges that Roxanne is the appropriate beneficiary of the monthly survivor's benefit; however, it contends that the Estate is the legal beneficiary of the Retro Funds. (Aa14; Ab25).

On November 5, 2018, the Board upheld the Division of Pensions and Benefits decision to pay the Retro Funds to Roxanne. (Aa34-35). The Estate appealed and the Board transmitted the matter to the Office of Administrative Law. (Aa33). Thereafter, the parties (the Board, the Estate, and Roxanne) filed cross-motions for summary disposition. (Aa6). On April 27, 2022, the Administrative Law Judge ("ALJ") issued her initial decision granting the Board's motion and affirming the Board's decision to pay Roxanne the Retro Funds. (Aa5-21). The ALJ succinctly identified the sole issue in this matter as being whether the "Board's [decision] that Isaac's identification of Roxanne as his spouse on his retirement application is an acceptable designation of the spouse as his beneficiary for the unpaid pension benefits [i.e., the Retro Funds]." (Aa17). In affirming the Board's decision, the ALJ held the following:

[T]he Board's [decision] is in harmony with the statutory framework, which provides for future pension benefits to a retired member's spouse and

children after his/her death. The Board's determination is further consistent with the statutory and regulatory scheme, which benefits to an estate only if there is no other eligible survivor or beneficiary available. See N.J.S.A. 43:16A-12.2; N.J.S.A. 43:16A-12.3; N.J.A.C. 17:4-3.6(b), (c), (d).

(Aa20).

The ALJ also rejected the Estate's argument that the holdings in Cureton v. Joma Plumbing & Heating Co., 38 N.J. 326 (1962) and Estate of Kolker, 212 N.J. Super. 247 (Law Div. 1986) compel the payment of the Retro Funds to the Estate simply because those funds had vested in Isaac during his lifetime. (Aa15-17). In rejecting the Estate's argument, the ALJ found that the underlying issues in Cureton and Kolker are distinguishable from the issue here because those "cases did not involve a determination regarding competing claims for the vested funds . . . [a]nd in this case, there is a statute that explicitly addresses the proper distribution of unpaid benefits upon the death of a retirant. See N.J.S.A. 43:16A-12.2." (Aa17).

On June 25, 2022, the Board issued its final agency decision adopting the ALJ's initial decision in its entirety. (Aa225). This appeal followed.

STANDARD OF REVIEW

On judicial review of an administrative agency decision, courts have a limited role to perform. Gerba v. Bd. of Trs., PERS, 83 N.J. 174, 189 (1980) (citations omitted). An administrative

agency's decision is presumptively correct, and on review of the facts, this court will not substitute its own judgment for the agency's where the agency's findings are supported by sufficient credible evidence. Ibid.; see also Campbell v. New Jersey Racing Comm'n, 169 N.J. 579, 587 (2001); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). "If the Appellate Division is satisfied after its review that the evidence and the inferences to be drawn therefrom support the agency head's decision, then it must affirm even if the court feels that it would have reached a different result." Gerba, 83 N.J. at 189 (quotation omitted).

Only where an agency's decision is clearly unreasonable or unsupported by sufficient credible evidence in the record may it be reversed. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980); Atkinson, 37 N.J. at 149. Moreover, the party challenging the validity of the administrative decision bears the burden of showing that it was "arbitrary, unreasonable or capricious." Boyle v. Riti, 175 N.J. Super. 158, 166 (App. Div. 1980) (internal citations omitted).

ARGUMENT

THE GOVERNING STATUTES AND PUBLIC POLICY CONSIDERATIONS SUPPORT THE BOARD'S DECISION TO PAY ROXANNE THE RETRO FUNDS.

The discrete issue on appeal is whether Isaac's special retirement application - identifying Roxanne as his spouse/survivor - constitutes "a duly executed" nomination of

Roxanne as the beneficiary of his Retro Funds. See N.J.S.A. 43:16A-12.2.

The governing beneficiary nomination statutes, N.J.S.A. 43:16A-12.2 and N.J.S.A. 43:16A-12.3, guided the Board in making its decision; those statutes read in relevant part:

Upon the death of a retirant, any unpaid benefits due him shall be paid in one lump sum to such person, if living, as he shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the retirant's estate.

[and]

The designation of beneficiary by a member or retirant shall be made in writing on a form satisfactory to the retirement system, and filed with the retirement system. Any amounts due for which there is no beneficiary at the death of a member, retirant or beneficiary shall be payable to the estate of such member, retirant or beneficiary.

[Ibid.]

There is nothing "plainly unreasonable" about the Board's reliance on the above language to determine that Isaac's special retirement application - wherein Isaac identified Roxanne as his "marital/survivor" - is a "writing on a form satisfactory" to the Board and constitutes a "written designation" of Roxanne as the beneficiary of the Retro Funds. See Merin v. Maglaki, 126 N.J. 430, 436-37 (1992) (holding that courts defer to the interpretation of legislation by the administrative agency to whom its enforcement is entrusted, but only if that interpretation "is not plainly

unreasonable"); see also In re Adoption of N.J.A.C. 17:1-6.4, 454 N.J. Super. 386, 396 (App. Div. 2018).

Further, important public policy considerations and the overall statutory scheme (which is "remedial in character" and "should be liberally construed . . . in favor of the persons intended to be benefited thereby") further supports the Board's decision here. Geller v. Dep't of Treasury, 52 N.J. 591, 597-98 (1969). Indeed, there "is a recognized strong public policy favoring the financial protection of a public employee's family"; accordingly courts have held "that public policy militates in favor of assuring support for financially dependent ex-spouses by permitting equitable distribution of pension funds." Saccone v. Bd. of Trs., PFRS, 219 N.J. 369, 382 (2014). Additionally, there can be no dispute that the "motivating force behind the Legislature's enactment of N.J.S.A. 43:16A-12.1 [(i.e., the survivor's benefit)] . . . [was] the financial well-being of a member's surviving spouse and children." Id. at 381. The Board's decision clearly satisfies the public policy concerns and is in line with the overall statutory scheme of protecting the financial well-being of a deceased member's spouse and children. As such, it should be affirmed.

In its brief, the Estate essentially re-hashes the exact same arguments it made to the ALJ in the Office of Administrative Law (e.g., Ab9-16, vested Retro Funds should be paid to the

Estate). For the reasons stated in the ALJ's initial decision (as adopted by the Board), those arguments lack merit and should be rejected by this court.

CONCLUSION

For the foregoing reasons, the Board's decision to pay the Retro Funds to Roxanne - and not to the Estate - should be affirmed.

Respectfully submitted,

By: /s/ Juliana C. DeAngelis
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Legal Counsel - PFRSNJ

cc: Eric A. Carosia, Esq.