SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3057-15T2

BERNARD SHALKOWSKI,

Petitioner-Appellant,

v.

STATE POLICE RETIREMENT SYSTEM,

Respondent-Respondent.

Argued June 1, 2017 - Decided June 30, 2017

Before Judges Whipple and Mawla.

On appeal from the Board of Trustees, State Police Retirement System, PFRS No. 8-10-3975.

Lauren Sandy argued the cause for appellant (Loccke, Correia & Bukosky, attorneys; Ms. Sandy, of counsel and on the briefs).

Robert E. Kelly, Deputy Attorney General, argued the cause for respondent (Christopher S. Porrino, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Mr. Kelly, on the brief).

PER CURIAM

Appellant Bernard Shalkowski appeals from a March 23, 2016 determination by the Board of Trustees of the State Police

Retirement System (Board) affirming a January 8, 2016 decision by the Office of Administrative Law (OAL) finding he was not entitled to an additional three percent of final compensation on his pension. Having considered appellant's claims, we affirm the Board's decision.

The following facts are taken from the record. Appellant, born June 12, 1956, joined the New Jersey State Police on January 15, 1987. He served for twenty-four years and six months before mandatorily retiring at the age of fifty-five. Upon retirement, appellant made a written request for an administrative review and final determination of his final pension compensation. Appellant sought the request because he was "under the mistaken impression that he would receive a pension of fifty percent compensation plus three percent for each year over twenty, up to twenty-four years, eleven months service credit." The Division of Pension and Benefits (Division) informed appellant he was not entitled to receive the additional three percent upon retirement because he was not a member of the State Police Retirement System (SPRS) as of August 29, 1985, the date on which the Legislature conferred the additional retirement benefit pursuant to N.J.S.A. 53:5A-8.

Appellant sought review of the Division's determination and argued the Board was equitably estopped from applying the statute to him because during his recruitment, training and employment

with the State Police he had reasonably relied upon representations contained in correspondence, handbooks and newsletters issued by SPRS promising he (and others similarly situated) would receive the additional three percent benefit. Appellant also claimed he turned down more lucrative employment with municipal law enforcement agencies in detrimental reliance upon the representations contained in State Police literature.

As noted above, both the OAL and the Board agreed with the Division's application of the statute. The Board adopted the OAL's findings and concluded the plain language of N.J.S.A. 53:5A-8 made clear it did not apply to appellant. It also accepted the OAL's findings appellant did not prove the elements of equitable estoppel and did not establish the decision was arbitrary, capricious, or unreasonable. The Board also found persuasive the reasoning of a Law Division decision dismissing a separate class action age discrimination lawsuit filed by appellant, and thus denied appellant's claim.

Appellant now appeals the Board's determination asserting the same arguments, namely, the Board improperly denied his equitable estoppel claims and its decision was arbitrary, capricious and unreasonable. For the following reasons, we affirm.

Our scope of review in the case of an administrative agency's final decision is limited. In re Hermann, 192 N.J. 19, 27 (2007).

"An agency's determination on the merits 'will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record.'" Saccone v. Bd. of Trs. of Police & Firemen's Ret. Sys., 219 N.J. 369, 380 (2014) (quoting Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)). To determine whether agency actions are arbitrary, capricious, or unreasonable, we must consider:

> (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.
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> [In re Stallworth, 208 N.J. 182, 194 (2011) (quoting In re Carter, 191 N.J. 474, 482-83 (2007)).]

However, we are not bound by an agency's determination of purely legal issues. Pinelands Pres. All. v. State, Dept. of Env't Prot., 436 N.J. Super. 510, 524 (App. Div.) certif. denied, 220 N.J. 40 (2014).

The statute at issue here states:

> Any member of the retirement system may retire on a service retirement allowance upon the completion of at least 20 years of creditable service as a State policeman, which includes

> the creditable service of those members appointed to the Division of State Police under section 3 of P.L. 1983, c. 403 (C. 39:2-9.3) and the creditable service of those members appointed to the Division of State Police under section 1 of P.L. 1997, c. 19 (C. 53:1-8.2). Upon the filing of a written and duly executed application with the retirement system, setting forth at what time, not less than one month subsequent to the filing thereof, he desires to be retired, any such member retiring for service shall receive a service retirement allowance which shall consist of:
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> > (1) An annuity which shall be the actuarial equivalent of his aggregate contributions; and
> >
> > (2) A pension in the amount which, when added to the member's annuity, will provide a total retirement allowance of 50% of his final compensation.
>
> [N.J.S.A. 53:5A-8(b).]

Also, N.J.S.A. 53:5A-8(f) states:

> Any member of the retirement system as of the effective date of P.L. 1985, c. 175 who is required to retire pursuant to subsection c. of this section and who has more than 20 but less than 25 years of creditable service at the time of retirement shall be entitled to the retirement allowance provided for by subsection b. of this section plus 3% of his final compensation multiplied by the number of years of creditable service over 20 but not over 25.

The three percent benefit was increased from two percent in 1993. Ibid. The statute provides those enrolled in the SPRS on

or before the enactment of the statute in 1985 are entitled to a three percent annual benefit after twenty years of service. N.J.S.A. 53:5A-8(f).

Neither party disputes the meaning of the statute, only whether it applies to appellant. He argues equitable estoppel applies and he should receive the benefit of the statute's three percent increase to his pension because he reasonably relied upon written representations he would receive the additional sums to his detriment.

"Equitable estoppel is rarely invoked against a governmental entity, . . . particularly when estoppel would 'interfere with essential governmental functions.'" In re Johnson, 215 N.J. 366, 378 (citation omitted) (quoting Vogt v. Borough of Belmar, 14 N.J. 195, 205 (1954)). "Nonetheless, equitable considerations are relevant to assessing governmental conduct, . . . and may be invoked to prevent manifest injustice[.]" Id. at 379 (citation omitted).

"The essential elements of equitable estoppel are a knowing and intentional misrepresentation by the party sought to be estopped under circumstances in which the misrepresentation would probably induce reliance, and reliance by the party seeking estoppel to his or her detriment." Ibid. (citing Horsemen's

Benevolent & Protective Ass'n v. Atlantic City Racing Ass'n, 98 N.J. 445 (1985).

In this matter, we lack a basis to second guess the Board and the OAL's reasoning. As noted by the Board, no evidence was presented demonstrating SPRS knowingly or intentionally misrepresented the retirement benefits to appellant. As the Board noted, the errors contained in the handbooks and literature appellant received do not prove these representations were made with the requisite knowledge or intent necessary to invoke equitable estoppel. The record, particularly the testimony of Division personnel, establishes the errors, while overt, were just errors, not a willful misrepresentation. Moreover, as the Board noted, it was not reasonable for appellant to rely upon the mistaken representations contained in the pension literature where he had ready access to the clearly worded statute at all times.

Appellant likens this matter to Vogt and Middletown Policeman's Benevolent Association Local No. 124 v. Township of Middletown, 162 N.J. 361 (2000). However, these cases are dissimilar to the facts presented here.

In Vogt, supra, 14 N.J. at 197, 203-04, the Supreme Court applied the doctrine of estoppel to a municipality, which sought to deny workers' compensation to a junior firefighter who had been injured returning from a fire call. The municipality claimed it

did not have to pay workers' compensation because the firefighter was a minor (seventeen years old) and by ordinance only firefighters twenty-one years or older were considered active firefighters entitled to the workers' compensation benefit. Id. at 202. The Vogt Court found estoppel applied because the municipality had routinely waived the limitation of the ordinance to only active firefighters and applied it to junior members. Id. at 204. Here, there was no evidence the SPRS had actually waived the applicability of N.J.S.A. 53:5A-8(f) by applying it to members hired after August 29, 1985.

Middletown Policemen's Benevolent Association Local No. 124 is also distinguishable. There, the Supreme Court applied equitable estoppel where a municipality not only made representations to an employee offering him post-retirement medical benefits thereby inducing him to retire, but also had granted the benefits to the employee for a decade after retirement before suddenly terminating them. Middletown Policemen's Benevolent Association Local No. 124, supra, 162 N.J. at 372. As a result, the Court stated:

> When weighing "the reliance factor," we find that equitable considerations prohibit the Township from terminating [the former employee's] post-retirement health benefits. But for the Township's representations to [the employee] that his health benefits would be continued after retirement, [he] could have

> waited and retired two and a half years later to guarantee those benefits.
>
> [Ibid.]

Here, SPRS extended no benefits to appellant under N.J.S.A. 53:5A-8(f) and did not pay him the additional three percent of his pension. As we discuss below, appellant did not meet his burden of proof to establish detrimental reliance as well.

Appellant expresses disagreement with the Board's conclusion he did not prove detrimental reliance. He argues he remained employed as a trooper for an "extra 4 years and 4 months" longer than necessary, believing it would secure him the additional three percent pension benefit. He asserts the loss of the three percent equates to a loss of $16,000 per year in pension receipts. He also asserts he declined other offers of employment with municipal law enforcement agencies, which would have allowed him to remain employed longer and provided pensions payable at a rate of sixty-five and seventy percent of salary.

These arguments were presented to the OAL, which considered and rejected them, and the Board by adopting the OAL's findings similarly found them unpersuasive. The OAL stated:

> I cannot conclude that the petitioner turned down other job offers based upon his belief that he would receive a 63% pension at the age of 55. The petitioner himself noted that he had always wanted to be a trooper, to be one of the best in the country. He knew that he

> would also be eligible to retire at the age of 55, and would not have had to work until he was 65.

On appeal, appellant repeats the claims already considered and rejected by two tribunals. We find no basis to overturn the Board's findings, especially in light of the deference we accord to the Board's findings of fact.

Lastly, appellant asserts the Board's determination was arbitrary, capricious and unreasonable because it referenced a trial judge's findings relating to collateral estoppel in appellant's class action litigation in the Law Division, whereas the State had agreed the issue would be adjudicated before the OAL. Appellant also faults the Board's findings as unsupported by substantial evidence because: it concluded the handbooks were only accurate for troopers near retirement and thus not intended for all troopers, the Board found a lack of evidence of detrimental reliance where in fact there was such evidence, and it adopted the OAL's findings appellant relied on third parties for information regarding the pension benefits when in fact the information came from SPRS.

Appellant's claim the Board improperly engrafted the Law Division findings from the class action suit onto its findings here is unavailing. The Board's determination states:

In dismissing that claim on the merits, Judge Andrew Smithson notes:

Appellants maintain that, despite the statutory codification in the Pension Act to the contrary, appellants detrimentally relied on a newsletter from 1999 and two handbooks granting entitlement benefits to a pension benefit.

This position is unsupportable. "The terms and conditions of public service in office or employment rest in legislative policy rather than contractual obligation." Spina v. Consolidated Police & Fireman's Pension Fund Commission, 41 N.J. 391, 400 (1964)[.] Defendants maintain that officers were fully informed of the statutory pension provisions that showed they were not eligible for the pension benefit in question.

The aforementioned not to the contrary, "It is a well settled and fundamental principle that ignorance of the law excuses no man." In re Wittreich, 5 N.J. 79, 87 (1950). Parties dealing with the state are bound by statutory language (even if they have received incorrect information and rely on it, to their detriment). Mitchell v. Harris 496 F. Supp. 230, 232 (D.N.J. 1980). Specifically on point, New Jersey courts have held that "one accepting a public office or position is presumed to do so with full knowledge of the law as to salary, compensation and fees . . . all limitations prescribed must be strictly observed. Shalita v. Township of Washington, 270 N.J. Super. 84, 91 (App. Div. 1994). "The statute trumps whatever implied contract may have existed between the parties." Golden v. Union, 163 N.J. 420, 431 (2000).

Pursuant to Spina and as appellants' employment rights are controlled by statute, appellants cannot maintain a supportable contract claim against the state.

The Board's reliance on the Law Division judge's findings were merely noted as persuasive. They were not, as appellant implies, res judicata of appellant's claims, which were considered in full. Notwithstanding, the law relied upon by the Law Division judge is compelling. He cited Golden v. County of Union, 163 N.J. 420 (2000), which is applicable here. In Golden, the Supreme Court held an employee handbook requiring a disciplinary hearing did not supersede a prosecutor's statutory at will right to retain or terminate assistant prosecutors serving at the prosecutor's pleasure. Id. at 433-35. Thus, appellant's claim the handbook created rights superior to the plain language of the statutes governing his pension is squarely rebutted by law the Board found persuasive. Finally, the holding in Golden demonstrates even if the Board incorrectly found the handbooks were only accurate for troopers near retirement and there was error in finding appellant relied on third parties for information regarding the pension benefits, it would not affect the outcome.

Affirmed.