SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3723-14T3

ROBIN BAILEY,

Petitioner-Appellant,

v.

POLICE AND FIREMEN'S
RETIREMENT SYSTEM,

Respondent-Respondent.

Submitted March 6, 2017 – Decided March 15, 2017

Before Judges Haas and Currier.

On appeal from the Board of Trustees, Police and Firemen's Retirement System, Department of Treasury, PFRS No. 3-76561.

John Morelli, attorney for appellant.

Christopher S. Porrino, Attorney General, attorney for respondent (Joseph A. Palumbo, Deputy Attorney General, on the brief).

PER CURIAM

Appellant Robin Bailey appeals from the March 10, 2015 final administrative decision of the Board of Trustees of the Police and

Firemen's Retirement System ("the Board") denying her application for ordinary disability retirement benefits. We affirm.

We begin by referencing the essential background facts as set forth in our earlier opinion in Bailey v. Police & Firemen's Ret. Sys., No. A-3484-10 (App. Div. Jan. 2, 2013) (slip op. at 1-10).

Appellant worked as a police officer with the Township of Voorhees ("Township") from January 24, 1995 until December 31, 2005. Id. at 1. On December 30, 2005, appellant filed an application for accidental disability retirement benefits. Ibid. In her application, appellant asserted that she was permanently disabled due to injuries she allegedly sustained on two accident dates, May 31, 1996 and March 11, 2005. Id. at 1-2. Appellant stated in her application that she was retiring from her police officer position on January 1, 2006. After that date, appellant "never returned to work." Id. at 3.

In November 2007, the Board denied appellant's application for accidental disability benefits. Id. at 2. The Board found that appellant was not totally and permanently disabled from the performance of her job duties and that the injuries she allegedly sustained on the two accident dates were not significant contributing factors to her alleged disability. Ibid.

Appellant requested a hearing concerning the Board's determination, and the Board transferred the matter to the Office

of Administrative Law for hearing as a contested case. Ibid. Following a two-day hearing, the Administrative Law Judge ("ALJ") issued an Initial Decision, finding that although appellant was disabled, she was not entitled to accidental disability benefits because her condition "was not due to work-related traumatic events." Id. at 6-7. However, the ALJ also found that appellant was disabled and, therefore, he recommended that she receive ordinary disability retirement benefits. Id. at 7-8.

On February 15, 2011, the Board issued its final decision. Id. at 8. The Board accepted the ALJ's determination that appellant was not entitled to an accidental disability pension. Ibid. However, the Board rejected the ALJ's conclusion that appellant was entitled to ordinary disability benefits. Id. at 8-10. After reviewing the record and the testimony and opinions of the medical experts who testified, the Board determined that appellant was not permanently and totally disabled from the performance of her duties. Ibid.

Appellant appealed. Id. at 10. On January 2, 2013, we concluded that "the Board's finding that [appellant] failed to prove that she qualified for ordinary pension benefits [was] based upon sufficient credible evidence in the record[,]" and affirmed the Board's decision. Id. at 14.

On August 4, 2014, more than 103 months after she retired, appellant filed a new application[1] for ordinary disability retirement benefits, again claiming that she was permanently and totally disabled. On March 10, 2015, the Board denied appellant's application.

The Board first noted that the Appellate Division had previously affirmed its determination that appellant was not entitled to ordinary disability benefits. Therefore, the Board ruled that under the doctrine of res judicata, appellant was "prohibited from reopening a matter that was previously litigated and decided by" this court.

The Board next found that appellant's application was barred by the clear language of N.J.S.A. 43:16A-6(1) which states that only a "member in service" may apply for ordinary disability benefits. N.J.A.C. 17:4-6.7(a)(1) states that the term "member in service"

> means that the member or the employer was making pension contributions to the retirement system at the time of filing the application for a disability retirement allowance. It may also mean that the member was on an approved leave of absence, paid or unpaid, or suspension, paid or unpaid, at the time of filing the application for a disability retirement allowance, and it has not been more

[1] Alternatively, appellant referred to her submission as a "continuation" of her December 30, 2005 application for accidental disability retirement benefits.

> than the time frames permitted by N.J.S.A. 43:16A-9(5)(a) for active membership since the member's last contribution to the retirement system.

The Board noted that it was undisputed that appellant retired from her police officer position with the Township on January 1, 2005. She was not on an approved leave of absence or suspended from her job. Neither appellant or the Township had made any contributions to the retirement system on her behalf for over eight years. Because appellant was clearly not a "member in service," the Board found that she was not entitled to file an application for ordinary disability retirement benefits. This appeal followed.

On appeal, appellant contends that the Board erred in denying her application for ordinary disability retirement benefits without conducting an evidentiary hearing. We disagree.

Established precedents guide our task on appeal. Our scope of review of an administrative agency's final determination is limited. In re Herrmann, 192 N.J. 19, 27 (2007). "[A] strong presumption of reasonableness attaches" to the agency's decision. In re Carroll, 339 N.J. Super. 429, 437 (App. Div.) (quoting In re Vey, 272 N.J. Super. 199, 205 (App. Div. 1993), aff'd, 135 N.J. 306 (1994)), certif. denied, 170 N.J. 85 (2001)). The burden is upon the appellant to demonstrate grounds for reversal. McGowan

v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002); see also Bowden v. Bayside State Prison, 268 N.J. Super. 301, 304 (App. Div. 1993) (holding that "[t]he burden of showing the agency's action was arbitrary, unreasonable[,] or capricious rests upon the appellant"), certif. denied, 135 N.J. 469 (1994). To that end, we will "not disturb an administrative agency's determinations or findings unless there is a clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence." In re Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008).

We have considered appellant's contentions in light of the record and applicable legal principles and conclude that they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(D) and (E). We affirm substantially for the reasons expressed by the Board in its well-reasoned March 10, 2015 written decision. We add the following brief comments.

"[T]he doctrine of res judicata provides that a cause of action between parties that has been finally determined on the merits by a tribunal having jurisdiction cannot be relitigated by those same parties or their privies in a new proceeding." Velasquez v. Franz, 123 N.J. 498, 505 (1991) (citing Roberts v. Goldner, 79 N.J. 82, 85 (1979)). Here, appellant has already

unsuccessfully litigated the issue of whether she was permanently and totally disabled when she retired on January 1, 2006. Bailey, supra, (slip op. at 14). She is not entitled to a second bite of the apple at this late date.

Just as importantly, because appellant has not been a "member in service" since her January 1, 2006 retirement, she was not even eligible to apply for ordinary disability retirement benefits when she submitted her "new" or "continued" application in August 2014. N.J.S.A. 43:16A-6; N.J.A.C. 17:4-6.7(a)(1).

Finally, the facts establishing appellant's ineligibility for retirement benefits were undisputed. Because "[a]n evidentiary hearing is mandated only when the proposed administrative action is based on disputed adjudicatory facts[,]" appellant was not entitled to a hearing on the question of her eligibility to apply for benefits. In re Xanadu Project at Meadowlands Complex, 415 N.J. Super. 179, 203 (App. Div.) (quoting In re Farmers Mut. Fire Assurance Ass'n of N.J., 256 N.J. Super. 607, 618 (App. Div. 1992)), certif. denied, 205 N.J. 96 (2010).

Affirmed.