SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4067-13T3

IN THE MATTER OF MIOSHA SOREY, POLICE OFFICER (S9999M), CITY OF EAST ORANGE.

Argued December 6, 2016 – Decided April 6, 2017

Before Judges Fasciale and Kennedy.

On appeal from the New Jersey Civil Service Commission, Docket No. 2014-635.

Samuel J. Halpern argued the cause for appellant.

Marlin G. Townes, III, Assistant Corporation Counsel, argued the cause for respondent City of East Orange (Khalifah Shabazz, Corporation Counsel for the City of East Orange, attorney; Mr. Townes, on the brief).

Christopher S. Porrino, Attorney General, attorney for respondent The New Jersey Civil Service Commission (Todd A. Wigder, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

Miosha Sorey appeals from a March 26, 2014 final agency decision by the Civil Service Commission (CSC) removing her name from the eligibility list for police officer (S9999M) in the City

of East Orange because she had failed to meet an age requirement. We affirm.

Sorey applied to sit for a law enforcement examination, which had a closing date of August 31, 2010. The examination announcement contained a requirement that applicants must not reach the age of thirty-five years old by the closing date. Sorey's name appeared on a list of eligible candidates because she took and passed the examination. However, Sorey was born on October 20, 1974, and therefore she reached the age of thirty-five on October 20, 2009. As a result, the City removed her name from the eligibility list. The CSC upheld the City's determination that Sorey was ineligible relying on N.J.S.A. 40A:14-127 (imposing the thirty-five-year-old age requirement). Although the City did not offer Sorey a job as a police officer, she remained employed as a security guard.

On appeal, Sorey argues that her name should be restored to the eligibility list for the position of police officer relying on equitable grounds based on the holdings in Sellers v. Board of Trustees of The Police and Firemen's Retirement System, 399 N.J. Super. 51 (App. Div. 2008) and Kyer v. City of East Orange, 315 N.J. Super. 524 (App. Div. 1998). We conclude, however, that such reliance is misplaced.

Our role in reviewing the Commission's decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011). "[A] 'strong presumption of reasonableness attaches to [an agency 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). We "may not substitute [our] own judgment for the agency's, even though [we] might have reached a different result." Stallworth, supra, 208 N.J. at 194 (quoting In Re Carter, 191 N.J. 474, 483 (2007)). "This is particularly true when the issue under review is directed to the agency's special 'expertise and superior knowledge of a particular field.'" Id. at 195 (quoting In re Herrmann, 192 N.J. 19, 28 (2007)).

"[T]o reverse an agency's judgment, [we] must find the agency's decision to be 'arbitrary, capricious, or unreasonable, or [] not supported by substantial credible evidence in the record as a whole.'" Id. at 194 (third alteration in original) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)). To determine whether an agency action is arbitrary, capricious, or unreasonable, we must examine

> (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.
>
> [Ibid. (quoting Carter, supra, 191 N.J. at 482-83).]

The findings of fact made by an administrative agency are binding on appeal if they are supported by "sufficient credible evidence." In re Taylor, 158 N.J. 644, 656 (1999) (quoting Close v. Kordulak Bros., 44 N.J. 589, 599 (1965)). We are not, however, bound by the agency's legal conclusions, which we review de novo. A.B. v. Div. of Med. Assistance & Health Servs., 407 N.J. Super. 330, 340 (App. Div.), certif. denied, 200 N.J. 210 (2009).

In Kyer, the plaintiff, Kyer, filed a wrongful termination lawsuit against the City for summarily dismissing her after seven years of exemplary employment. Kyer v. City of E. Orange, supra, 315 N.J. Super. at 525-26. Under the unique facts of Kyer, which do not exist here, we concluded that the City "badly used" Kyer, whose seven-year provisional status as a full-time municipal court mediator was due to the City's failure to forward her new hiring forms to the CSC. Id. at 528-29, 534. Kyer operated under the mistaken belief that her position was permanent. Id. at 527-28. There is no such failure or neglect under the facts of this case.

In Sellers, a municipal fire department hired Sellers, who was over the age of thirty-five, as a firefighter. Sellers v. Bd. of Trs. of The Police and Firemen's Ret. Sys., supra, 399 N.J. Super. at 53. Both Sellers and the town believed his age would be reduced because of his prior police and military service, bringing him under age thirty-five. Id. at 54. We concluded that, under the applicable statutory provisions, Sellers was entitled to some age reduction, but not enough to bring him under thirty-five. Ibid. We noted that Sellers's and the town's belief was based on a mistaken reading of the statute, and that the Board itself had initially approved Sellers's enrollment, also believing "he met the age criteria." Id. at 54, 61-62. Only after further review did the Board determine that applying the deductions did not bring Sellers under age thirty-five. Id. at 62. The Board therefore denied Sellers enrollment in Police and Firemen's Retirement System (PFRS), after he had been working as a firefighter for over a year. Id. at 52-53.

We remanded to the Board to determine "whether the facts warrant application of equitable principles here." Id. at 63. We took care to define the "relevant public and private interests" in that case that would inform the Board's analysis:

> [The Board] should look at the equities from Sellers' point of view, considering whether the government failed to "turn square corners"

> with him, whether he acted in good faith and reasonably, the degree of harm he will sustain if the age requirement is strictly enforced, and other factors that go to the fairness of applying the age restriction to him after he was hired and left a previous job to take the position. The Board must then consider the purposes of the age restrictions from the perspective of the municipal firefighter position and the pension system and determine whether or to what extent those purposes will be thwarted if relief is provided to Mr. Sellers, taking into account the extent to which he fails to meet the age criteria and the overall pension scheme.
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> [Id. at 62-63.]

We did not compel the Board to conclude that Sellers was entitled to equitable relief. Nor did we hold that the Board is required to undertake this balancing analysis in every case where a municipality hires a police officer or firefighter whose age exceeds the statutory maximum. We stressed that the Board's equitable power is to be used "rarely and sparingly." Id. at 62.

We acknowledged that granting equitable relief in such cases did not follow neatly from application of principles of equitable estoppel, because Sellers was "seeking to bind the Board, a State entity, for action taken by a municipality." Id. at 59; see also Bridgewater-Raritan Educ. Ass'n v. Bd. of Educ. of Bridgewater-Raritan Sch. Dist., 221 N.J. 349, 364-65 (2015) (refusing to bind a school board to the superintendent's representations regarding tenure eligibility, stating, "[i]n an application of estoppel 'the

focus must be on the conduct of the person or entity who had the authority to act,'" which was the school board (quoting Maltese v. Township of North Brunswick, 353 N.J. Super. 226, 245 (App. Div. 2002))).

Here, the CSC reasonably concluded that Sorey's situation was distinguishable from Sellers and Kyer. There is no evidence that the City made any material mistakes, misrepresentations, or had been neglectful in any way. The City did not make Sorey an offer of employment. Instead, the City explained to Sorey the pre-screening process and informed Sorey that her candidacy was being processed. And the CSC correctly determined that Sorey did not quit her security-guard position before or after applying for the position of police officer, thus no detrimental reliance. We therefore conclude that the CSC's decision was not arbitrary, capricious, or unreasonable.

Affirmed.