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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-5271-14T1

DANNY GLENN,

Appellant,

v.

BOARD OF TRUSTEES,
PUBLIC EMPLOYEES'
RETIREMENT SYSTEM,

Respondent.

Submitted February 28, 2017 — Decided July 21, 2017

Before Judges Messano and Espinosa.

On appeal from the Board of Trustees of the
Public Employees' Retirement System,
Department of Treasury.

Danny Glenn, appellant pro se.

Christopher S. Porrino, Attorney General,
attorney for respondent (Melissa Dutton
Schaffer, Assistant Attorney General, of
counsel; Robert E. Kelly, Deputy Attorney
General, on the brief).

PER CURIAM

For the period from May 1, 1985 until October 12, 2006,
petitioner Danny Glenn was employed as a Public Works Inspector

for the Township of Irvington (Irvington) and was a member of the Public Employees' Retirement System (PERS). Pursuant to N.J.S.A. 43:15A-38, an employee who has completed ten years of service but separates from employment before reaching retirement age may receive retirement benefits, provided the employee's separation is "not by removal for cause on charges of misconduct or delinquency." Petitioner's application for deferred retirement was denied on that ground and he now appeals from that decision. We affirm.

I.

In July 2006, Irvington issued a preliminary notice of disciplinary action seeking petitioner's removal on charges of incompetency, inefficiency or failure to perform duties, N.J.A.C. 4A:2-2.3(a)(1); insubordination, N.J.A.C. 4A:2-2.3(a)(2); inability to perform duties, N.J.A.C. 4A:2-2.3(a)(3); conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6); neglect of duty, N.J.A.C. 4A:2-2.3(a)(7); and other sufficient cause: false swearing related to the issuance of summonses and feigning sickness, N.J.A.C. 4A:2-2.3(a)(11).

The charges were based on allegations that petitioner "issued improper summonses and was not truthful about his actions; failed to answer a summons to appear in court; refused to complete and submit reports; called out sick in order to meet with a contractor

at his house; was untruthful to his supervisor; and was guilty of false swearing of summonses."

The hearing officer found all of Irvington's factual assertions were sustained and recommended petitioner be terminated from his position as housing inspector. Petitioner appealed to the Office of Administrative Law (OAL). Following a plenary hearing, the Administrative Law Judge (ALJ) issued an opinion sustaining all of Irvington's allegations except the charges of false swearing and feigning sickness and sustained petitioner's removal. Although its findings varied somewhat from the ALJ's, the Civil Service Commission (CSC) adopted the ALJ's recommendation to uphold petitioner's removal, effective October 12, 2006.¹

In February 2014, petitioner filed an application for deferred retirement. The Board of Trustees of PERS (Board) denied the application, finding petitioner had been removed "for cause on charges of misconduct or delinquency," rendering him ineligible for retirement benefits under N.J.S.A. 43:15A-38.

Petitioner appealed the Board's decision, thereby requesting a hearing before the OAL. Finding there were no disputed issues

¹ Petitioner's appeal from the CSC's determination, Docket No. A-3094-09T1, was dismissed for failure to prosecute the appeal and his motion to vacate the dismissal was also dismissed.

of fact and that the issue was a purely legal question, the Board denied petitioner's request for a hearing in the OAL and again concluded N.J.S.A. 43:15A-38 prohibited deferred retirement benefits to petitioner.

II.

In his appeal, petitioner argues the Board erred in interpreting N.J.S.A. 43:15A-38 because he "did not commit an act of 'misconduct' or 'delinquency.'" He contends the behavior that led to his removal was not criminal, and therefore does not constitute "misconduct or delinquency" under N.J.S.A. 43:15A-38. We disagree.

N.J.S.A. 43:15A-38 provides:

Should a member of [PERS], after having completed 10 years of service, be separated voluntarily or involuntarily from the service, before reaching service retirement age, and not by removal for cause on charges of misconduct or delinquency, such person may elect to receive [deferred retirement benefits.]

[(Emphasis added).]

The plain language of this statute leaves no room for discretion by the Board: any member removed as a public employee for charges of misconduct or delinquency is ineligible to receive benefits from PERS as a matter of law. The terms "misconduct" or "delinquency" are not defined. There is, however, no support in

the statute for the interpretation urged by petitioner that the "charges" must involve acts of criminality, misconduct in office or egregious conduct.

Significantly, N.J.S.A. 43:15A-17(a) authorizes the Board to interpret and implement N.J.S.A. 43:15A-38. Courts generally give deference "to the interpretation of statutory language by the agency charged with the expertise and responsibility to administer the scheme . . . 'unless the interpretation is "plainly unreasonable.'" Acoli v. N.J. State Parole Bd., 224 N.J. 213, 229, 230 (quoting In re Election Law Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010)), cert. denied, ___ U.S. ___, 137 S. Ct. 85, 196 L. Ed. 2d 37 (2016). "If there is any fair argument in support of the course taken [by the agency] or any reasonable ground for difference of opinion among intelligent and conscientious officials, the decision" should not be disturbed. Lisowski v. Borough of Avalon, 442 N.J. Super. 304, 330 (App. Div. 2015) (alteration in original) (emphasis omitted) (quoting City of Newark v. Nat. Res. Council in Dep't of Env'tl. Prot., 82 N.J. 530, 539, cert. denied, 449 U.S. 983, 101 S. Ct. 400, 66 L. Ed. 2d 245 (1980)), certif. denied, 227 N.J. 374, and certif. denied and appeal dismissed, 227 N.J. 380 (2016).

In this case, the CSC relied on recommendations by the OAL and the CSC's independent evaluation to determine petitioner had

violated numerous subsections of N.J.A.C. 4A:2-2.3(a) that are general causes for which an employee is subject to discipline, including removal. N.J.A.C. 4A:2-2.2(a)(1). The Board concluded that petitioner's persistent violations of the Administrative Code constituted "misconduct or delinquency." The Board's interpretation of those words to include the grounds for which petitioner was removed is not "plainly unreasonable," and as a consequence, is entitled to our deference. Petitioner was therefore properly denied retirement benefits pursuant to N.J.S.A. 43:15A-38.

III.


Petitioner also argues: the final agency decision is premature, imposes an unduly harsh penalty and subjects him to double jeopardy; the Board violated his due process rights by denying him a plenary hearing before the OAL; and his removal in 2006 violated his constitutional rights and the Conscientious Employees' Protection Act, N.J.S.A. 34:19-1 to -14. These arguments lack sufficient merit to warrant discussion in a written opinion, R. 2:11-3(e)(1)(E), beyond the following brief comments.

Petitioner's challenge to his 2006 removal, which would, in any event, be untimely, is not properly before this court. Because his appeal from that decision was dismissed, petitioner's argument that the final agency decision is premature lacks merit. Although

petitioner presents a legal argument that his conduct did not constitute "misconduct" or "delinquency" under N.J.S.A. 43:15A-38, there is no dispute of material fact that the grounds relied upon for his dismissal were job-related misconduct and delinquency. As a result, his argument regarding the denial of a plenary hearing before the OAL also lacks merit.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION