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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-3538-16T1

GARY L. MCWHORTER,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES, STATE
POLICE RETIREMENT SYSTEM,

Respondent-Respondent.

Submitted March 8, 2018 — Decided May 24, 2018

Before Judges Simonelli, Haas and Gooden
Brown.

On appeal from the Board of Trustees of the
State Police Retirement System, SPRS No. 8-
10-1863.

Benedict and Altman, attorneys for appellant
(Steven D. Altman, of counsel and on the
briefs; Joshua D. Altman, on the briefs).

Gurbir S. Grewal, Attorney General, attorney
for respondent (Melissa H. Raksa, Assistant
Attorney General, of counsel; John A. Lo
Forese, Deputy Attorney General, on the
brief).

PER CURIAM

Petitioner Gary L. McWhorter, a retired New Jersey State Trooper, appeals from the March 29, 2017 final decision of respondent Board of Trustees (Board), State Police Retirement System (SPRS) denying his request to change his service retirement to accidental disability retirement. We affirm.

On October 15, 1987, McWhorter filed an application for retirement, requesting a service retirement effective January 1, 1988. On January 15, 1988, the Division of Pension and Benefits (Division) notified him that he qualified for service retirement, effective January 1, 1988. McWhorter began receiving service retirement benefits on January 1, 1988.

Twenty-eight years later, on January 26, 2016, McWhorter submitted a request to the Division to change his retirement type from service retirement to accidental disability retirement. He claimed he was diagnosed with the delayed manifestation of post-traumatic stress disorder (PTSD) resulting from being shot in 1971 during the performance of his regular or assigned duties and from the 1972 death of two fellow Troopers who had encountered JoAnn Chesimard after they relieved him following the completion of his shift. The Division denied the request under N.J.A.C. 17:5-5.3(a), which provides as follows:

Except as provided by N.J.A.C. 17:5-5.7, a member shall have the right to withdraw, cancel or change an application for retirement

at any time before the member's retirement allowance becomes due and payable by sending a written request signed by the member. Thereafter, the retirement shall stand as approved by the Board.

[(Emphasis added).]

McWhorter appealed to the Board, requested a hearing, and submitted medical documentation confirming the diagnosis of delayed manifestation of PTSD. On November 17, 2016, the Board denied McWhorter's appeal without a hearing, finding the matter was governed by the State Police Retirement System Act (the SPRS Act), N.J.S.A. 53:5A-1 to -47, and its corresponding regulations, N.J.A.C. 17:5-5.1 to -5.17, not the Police and Fireman's Retirement System Act (the PFRS Act), N.J.S.A. 43:16-1 to -68. The Board determined it lacked legal authority to change McWhorter's retirement type under N.J.A.C. 17:5-5.3(a) and N.J.A.C. 17:5-5.2(a)¹ because McWhorter began receiving his retirement benefits on January 1, 1988.

McWhorter further appealed to the Board, contending he was entitled to accidental disability benefits under N.J.S.A. 53:5A-10(a), which provides as follows:

Upon the written application by a member in service, by one acting in his behalf or by the

¹ N.J.A.C. 17:5-5.2(a) provides that "[a] member's retirement allowance shall not become due and payable until [thirty] days after the date the Board approved the application for retirement or one month after the date of the retirement, whichever is later."

State, any member may be retired, not less than 1 month next following the date of filing such application, on an accidental disability retirement allowance, provided, that the medical board, after a medical examination of such member, shall certify that the member is permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties and that such disability was not the result of the member's willful negligence and that such member is mentally or physically incapacitated for the performance of his usual duties in the Division of State Police which the Superintendent of State Police is willing to assign to him. The application to accomplish such retirement must be filed within 5 years of the original traumatic event, but the board of trustees may consider an application filed after the 5-year period if it can be factually demonstrated to the satisfaction of the board of trustees that the disability is due to the accident and the filing was not accomplished within the 5-year period due to a delayed manifestation of the disability or to the member's continued employment in a restricted capacity consistent with the nature of his disability in the Division of the State Police upon and at the written request of the superintendent, with the concurrence of the Attorney General, or to other circumstances beyond the control of the member.

[(Emphasis added).]

McWhorter argued he satisfied the criteria for accidental disability retirement set forth in Richardson v. Bd. of Trs., Police & Fireman's Ret. Sys., 192 N.J. 189 (2007) and Patterson v. Bd. of Trs., Police & Fireman's Ret. Sys., 194 N.J. 29 (2008), and could not apply within the five-year time period set forth in

N.J.S.A. 53:5A-10 due to the delayed manifestation of PTSD. He maintained he was entitled to a hearing to present proof of the delayed manifestation of PTSD, including when it occurred, why he delayed filing for accidental disability retirement benefits, any prejudice that would result from the delay, and if the delay was reasonable.

The Board denied McWhorter's request for a hearing, finding there were no questions of fact in dispute, only questions of law. On March 29, 2017, the Board issued a final decision, finding as follows, in pertinent part:

The sole issue before the SPRS Board is a legal question as to whether . . . McWhorter can reopen his [s]ervice retirement twenty-eight years after it has become due and payable, so that he may amend it to apply for an [a]ccidental disability retirement. [McWhorter] assert[ed] that the Board ignored the medical evidence and that the Board made an error factually and legally as it did not consider any medical evidence establishing the delayed manifestation of PTSD and did not perform the Richardson analysis. . . . Instead, the Board determined there is no legal authority to permit a change in . . . McWhorter's retirement benefit; therefore it need not consider the medical issues that are raised by McWhorter.

. . . .

Because [McWhorter's] request to make a change was received well beyond the regulatory timeframe permitted to make a change as set forth . . . in N.J.A.C. 17:5-5.2[(a)] and N.J.A.C. 17:5-5.3(a), the Board has denied

[his] request to permit an application for accidental disability and . . . McWhorter's [s]ervice retirement remains unchanged.

[T]his matter does not entail any disputed questions of fact, and the SPRS Board was therefore able to reach its findings of fact and conclusions of law on the basis of the retirement system's enabling statutes and regulations and without the need for an administrative hearing.

On appeal, McWhorter argues the Board's reliance on N.J.A.C. 17:5-5.2(a) and N.J.A.C. 17:5-5.3(a) was legal error and contrary to the Richardson/Patterson criteria and the provisions of N.J.S.A. 53:5A-10, which permitted him to amend his retirement type outside the five-year limitation period based on the delayed manifestation of a disability. He also argues he is eligible for accidental disability retirement benefits because he established the Richardson/Patterson criteria and presented evidence of a delayed manifestation of PTSD, which the Board ignored.

Our review of the Board's decision is limited. Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011). We will not disturb the Board's decision absent "a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Ibid. (quoting In re Herrmann, 192 N.J. 19, 27-28 (2007)). However, "because 'questions of law are the province of the judicial branch,' we are 'in no way bound by [the Board's] interpretation of a statute or its determination of

a strictly legal issue[.]'" Ibid. (citations omitted). Applying these standards, we discern no reason to disturb the Board's decision.

When discerning the meaning of a statute, our role "is to discern and effectuate the intent of the Legislature." Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012). Toward that end, the plain language of the statute provides the starting point for the analysis. In re Kollman, 210 N.J. 557, 568 (2012). The language of the statute must be construed in accordance with its ordinary and common sense meaning. State ex rel. K.O., 217 N.J. 83, 91 (2014). However, if a statute's seemingly clear language nonetheless creates ambiguity in its concrete application, extrinsic evidence may help guide the construction of the statute. See Kollman, 210 N.J. at 568. Extrinsic guides may also be of use "if a literal reading of the statute would yield an absurd result, particularly one at odds with the overall statutory scheme." Wilson ex rel. Manzano v. City of Jersey City, 209 N.J. 558, 572 (2012).

"'Regulations are subject to the same rules of construction as a statute,' and 'should be construed in accordance with the plain meaning of [their] language' 'and in a manner that makes sense when read in the context of the entire regulation.'" Seigel v. N.J. Dep't of Env'tl. Prot., 395 N.J. Super. 604, 618 (App. Div.

2007) (quoting Medford Convalescent & Nursing Ctr. v. Div. of Med. Assistance & Health Servs., 218 N.J. Super. 1, 5, (App. Div. 1985)).

The Board's reliance on N.J.A.C. 17:5-5.2(a) and N.J.A.C. 17:5-5.3(a) was not legal error. The plain language of N.J.A.C. 17:5-5.3(a) expressly provides that a SPRS member must submit a written request to change an application for retirement "before the member's retirement allowance becomes due and payable[,]" and if no written request is made, "the retirement shall stand as approved by the Board." (Emphasis added). McWhorter did not request a change in his retirement application before his retirement benefits became due and payable on January 1, 1988. Accordingly, the Board correctly relied on the regulation to deny McWhorter's request to change his retirement type twenty-eight years after his retirement allowance became due and payable.


Contrary to McWhorter's argument, the Board's reliance on N.J.A.C. 17:5-5.2(a) and N.J.A.C. 17:5-5.3(a) was not contrary to the provisions of N.J.S.A. 53:5A-10(a). The plain language of N.J.S.A. 53:5A-10(a) expressly provides that a SPRS member applying for disability retirement benefits must be "a member in service" at the time of the application. N.J.S.A. 53:5A-3(m) defines "member" as "any full-time, commissioned officer, non-commissioned officer or trooper of the Division of State Police

of the Department of Law and Public Safety of the State of New Jersey enrolled in the retirement system[.]" N.J.A.C. 17:5-5.7(a)(1) defines a "member in service" as one who "was making pension contributions to the retirement system at the time of filing the application for a disability retirement allowance." Further, N.J.S.A. 53:5A-7 provides that membership in the SPRS "cease[s] upon retirement, withdrawal or death or if service is discontinued for more than [two] consecutive years."

McWhorter was not a "member in service" at the time he requested an accidental disability retirement. He was not a full-time State Trooper enrolled in the SPRS, was not making pension contributions to the SPRS, and his membership in the SPRS ceased twenty-eight years earlier upon his retirement. Thus, even if he established the Richardson/Patterson criteria and proved a delayed manifestation of a disability, he was not eligible for an accidental disability retirement under N.J.S.A. 52:5A-10(a).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION