SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4099-15T2

CHRISTINE FARRINGTON,

Appellant,

v.

STATE OF NEW JERSEY,
DEPARTMENT OF THE TREASURY,
DIVISION OF PENSIONS AND
BENEFITS,

Respondent.

Submitted October 18, 2017 – Decided January 26, 2018

Before Judges Nugent, Currier and Geiger.

On appeal from the State of New Jersey, Department of the Treasury, Division of Pensions and Benefits.

Galantucci, Patuto, De Vencentes, Potter & Doyle, LLC, attorneys for appellant (Philip De Vencentes, on the brief).

Christopher S. Porrino, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Danielle P. Schimmel, Deputy Attorney General, on the brief).

PER CURIAM

This appeal involves the interplay between the Public Employees' Retirement System (PERS) and the Judicial Retirement System (JRS). According to the notice of appeal, appellant Christine Farrington is challenging the final administrative determinations of the PERS Board of Trustees (the Board or PERS Board). In her appellate brief, however, she seeks review of a JRS employee's decision that she does not meet the eligibility requirements for retirement under a JRS statute. This issue is pending final administrative action by the State House Commission (SHC) on appellant's administrative appeal.[1] We thus address only the Board's determinations. Finding these determinations to be neither arbitrary nor capricious, we affirm them. We dismiss appellant's appeal of the JRS issue as she has not exhausted her administrative remedies.

This action's factual background and procedural history are mostly undisputed. Between July 1, 1986 and June 30, 2007, as the result of her employment in the public sector with participating employers, appellant's PERS account was credited with twenty-two

[1] According to respondent Department of the Treasury, Division of Pensions and Benefits' brief, the issues decided by the Board in its Final Administrative Determination "must be answered with finality before the [SHC] can consider [appellant's] JRS retirement options."

years and nine months of service credit. From July 22, 2002, through July 5, 2011, appellant held the position of Deputy General Counsel for the Port Authority of New York and New Jersey. The Port Authority was not a participating PERS employer.[2] On June 21, 2011, nearly four years after she earned her last service credit for PERS on June 30, 2007, appellant was appointed a Judge of the Superior Court and was enrolled in JRS.

Between March 2009 — three months before the two-year anniversary of appellant's last PERS service credit — and August 2014, the Department of the Treasury, Division of Pensions and Benefits (the Division), wrote to appellant concerning options she could exercise with respect to her PERS account. The correspondence included a letter sent to appellant within a month of her 2011 appointment as a Superior Court Judge, which, among other matters, informed appellant that because her PERS account had been inactive for more than two years, she could not inter-fund transfer that service into her JRS account.

In 2015, appellant began considering retirement options. In response to an inquiry made on her behalf, a JRS employee wrote to appellant and informed her she was ineligible to inter-fund

[2] Following her acceptance of the position with the Port Authority, appellant earned PERS service credits until 2007 as the result of a position she held as an adjunct professor.

transfer service credits she had accumulated in PERS to her JRS account, because her PERS membership had become inactive before she became a judge. The JRS employee also explained appellant's pre-judicial employment at the Port Authority of New York and New Jersey did not qualify for PERS service credits because the Port Authority was not a participating PERS employer. Last, the JRS employee informed appellant she did not qualify for early retirement under the JRS statute referenced in the inquiries because she could not meet one of its requirements.

The letter informed appellant of her right to file an administrative appeal of the first two determinations to the PERS Board and the third determination to the SHC.[3] Appellant did both. She pursued her administrative appeals to the PERS Board, which rendered a final administration determination on March 17, 2016. She also filed an administrative appeal to the SHC, which, as previously noted, has yet to render a final determination.

In its final administrative determination, the Board denied appellant's "request to inter-fund transfer [her] inactive PERS into [her] active membership account in the [JRS]." In doing so, the Board decided two issues. First, the Board found appellant

[3] The SHC has jurisdiction over matters of the JRS, as "[t]he Commission acts as the Board of Trustees for the Judicial Retirement System." N.J.A.C. 17:10-1.1.

was not eligible to inter-fund transfer her inactive PERS membership into her current JRS membership, which had been established June 21, 2011. The Board cited N.J.S.A. 43:15A-7(e), which expressly states, "[m]embership of any person in the retirement system shall cease if he shall discontinue his service for more than two consecutive years." The Board explained that appellant's enrollment in JRS

> occurred almost four years after the last date of contribution in [her] PERS account, and nearly two years after [her] PERS membership was inactive. As N.J.S.A. 43:15A-7(e), stipulates membership in the retirement system shall "cease" after more than two years of inactivity, [she] no longer had the option to resume contributions to [her] inactive PERS membership or inter-fund the account into a different state administered retirement system.

The second issue the Board decided was whether appellant's "employment with the Port Authority . . . from July 22, 2002 through July 5, 2011 is eligible for participation or continued employment in the PERS." The Board cited N.J.S.A. 43:15A-73, which states in pertinent part:

> In addition to those agencies named in paragraph (1) of this subsection, [PERS] is hereby authorized and directed to enroll an eligible . . . employee . . . of a bi-state or multi-state agency established pursuant to an interstate compact to which this State is a party, if the . . . employee is a resident of this State at the time of appointment or employment with the agency and the governing

> body of the agency has adopted a resolution, and filed a certified copy of the resolution with the board of the retirement system, that permits such . . . employee to enroll.
>
> [N.J.S.A. 43:15A-73(a)(2).]

The Port Authority's Board had neither adopted such a resolution nor made contributions to PERS on appellant's behalf.[4] Accordingly, the PERS Board concluded appellant was "not entitled to PERS pension credit for any part of the period between July 22, 2002 and July 5, 2011."

Significantly, the PERS Board did not interpret any statutes concerning JRS. Nor did the PERS Board address appellant's retirement eligibility or ineligibility under JRS.

Appellant filed an appeal from the Board's final administrative determinations. On appeal, she first argues "the final administrative decision below which interpreted [N.J.S.A. 43:6A-9(b)]" violated the statute's plain language and was arbitrary and capricious. This statute concerns eligibility for retirement in the JRS. The PERS Board did not address this issue. The JRS employee who initially determined appellant was ineligible

[4] In another case we noted, "[t]he Port Authority has elected to be part of the New York State pension system rather than New Jersey's PERS 'as a matter of convenience.'" Francois v. Bd. of Trs., Pub. Emps.' Ret. Sys., 415 N.J. Super. 335, 350 (App. Div. 2010) (quoting Bunk v. Port Auth. of N.Y. & N.J., 144 N.J. 176, 189 (1996)).

to retire under the JRS statute informed appellant of her right to appeal the determination to the SHC, which appellant did.[5] Appellant filed the appeal, which, we are told, is pending. We decline to consider the issue before the SHC renders a final administrative determination.

In her second and final argument, appellant contends the PERS Board "erred in its interpretation of the provisions of PERS statutes relating to PERS 'members' membership status and in applying these statutes to 'members' of the JRS, and its application to appellant's matter was arbitrary, capricious and unreasonable." Appellant appears to again fault the PERS Board for its erroneous interpretation of JRS statutes. Yet, she does not appear to be seeking an inter-fund transfer of her PERS credits to her JRS account. She asserts in the concluding paragraph of her brief:

> In short, [a]ppellant was not seeking to have her PERS account transferred to the JRS. She was seeking simply to have her many years of pre-judicial public service, as set forth in N.J.S.A. 43:6A-9(b)[,] to be counted toward her eligibility to retire from the judiciary, should she choose to do so.

[5] The JRS employee actually made her determination in response to appellant's inquiry of eligibility for retirement under N.J.S.A. 43:6A-10, not N.J.S.A. 43:6A-9(b) as appellant now argues. Appellant appears to have clarified this discrepancy in her administrative appeal to the SHC.

It is now clear the PERS Board did not, as appellant suggests, interpret, let alone misinterpret, a JRS statute. To the extent appellant contends the Board erred in either of the two determinations it did make, we disagree.

Our scope of review of an administrative agency's final determination is limited. In re Carter, 191 N.J. 474, 482 (2007). We accord a "strong presumption of reasonableness" to the agency's exercise of its statutorily delegated responsibilities. City of Newark v. Nat. Res. Council, 82 N.J. 530, 539 (1980). Further, "[i]t is settled that '[a]n administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to our deference.'" Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001) (second alteration original) (quoting In re Appeal by Progressive Cas. Ins. Co., 307 N.J. Super. 93, 102 (App. Div. 1997)). Absent arbitrary, unreasonable, or capricious action, or a lack of support in the record, "[a]n administrative agency's final quasi-judicial decision will be sustained." In re Herrmann, 192 N.J. 19, 27-28 (2007). The burden of showing the agency's action was arbitrary, unreasonable, or capricious rests upon the appellant. Barone v. Dep't of Human Servs., 210 N.J. Super. 276, 285 (App. Div. 1986).

Here, appellant has failed to demonstrate the Board's determinations were arbitrary, capricious, or unreasonable. The plain meaning of relevant statutes supported both the Board's determinations that: (1) appellant's PERS membership had become inactive and therefore ineligible for transfer, and (2) her employment with the Port Authority was ineligible for PERS service credits. The Board's determination that appellant could not inter-fund transfer her inactive PERS membership into her active JRS account is entitled to the deference we give to an administrative agency's interpretation of statutes and regulations within its implementing responsibility. Wnuck, 337 N.J. Super. at 56. This is particularly so in the absence of any showing by appellant that the Board has ever rendered an inconsistent or contrary decision, or otherwise acted in an arbitrary, capricious, or unreasonable manner.

We have considered appellant's remaining arguments and found them to be without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only this. N.J.S.A. 43:6A-9(b) permits a judge to retire if the judge:

> shall have served at least [five] years successively as such judge and shall have attained the age of [sixty] years or more while serving in such office and shall have served at least [twenty] years in the aggregate, including such service as a judge, or in office, position, or employment of this

> State or of a county, municipality, board of education or public agency . . . .

Appellant's argument, distilled to its essence, is that the phrase "service . . . in office, position, or employment of this State or of a county, municipality, board of education or public agency of this State" means public employment regardless of whether such employment qualifies for service credits in JRS. Whether or not this assertion is indicative of a misunderstanding of the State's retirement systems is a question the administrative agencies responsible for the regulatory and financial administration of the retirement systems should answer in the first instance.

For the foregoing reasons, we affirm the PERS Board's final administrative determination and remand to the SHC to conclude appellant's administrative appeal concerning her eligibility for retirement under the JRS.

Affirmed in part, remanded in part. We do not retain jurisdiction.