

## SYLLABUS

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### **Christine Minsavage v. Board of Trustees, Teachers’ Pension and Annuity Fund** **(A-48-18) (081507)**

**Argued September 9, 2019 -- Decided October 24, 2019**

#### **PER CURIAM**

The issue in this appeal is whether a widow can modify the retirement application of her recently deceased husband, who was a member of the Teachers’ Pension and Annuity Fund (Pension Fund), even though his application was never approved because he selected a retirement option for which he was ultimately ineligible.

David and Christine Minsavage were married and had four children. David had served as a math teacher for more than twenty-four years when he was diagnosed with terminal stage IV pancreatic cancer in August 2014. In November 2014, following advice allegedly provided by a New Jersey Education Association representative, David selected the “early retirement” option on his retirement application. Early retirement eligibility requires twenty-five years of teaching service.

On April 9, 2015, David passed away, having accumulated just over twenty-four years and nine months of teaching service over the course of his career. Less than two weeks after David’s death, the Division of Pension and Benefits notified Christine that David’s retirement application would not be approved because he had not completed twenty-five years of teaching service. As a result, Christine was entitled only to reimbursement of David’s pension contributions and a group life insurance benefit. Because David did not live long enough to qualify for early retirement, his family would have been entitled to greater benefits had he selected and qualified for “ordinary disability,” rather than “early retirement,” on his retirement application. Christine sought to modify David’s retirement application to select ordinary disability.

The Board of Trustees of the Pension Fund (the Board) denied Christine’s request on the ground that the Pension Fund’s “administrative regulations do not allow for retroactive disability retirement applications, and become effective only on or after the date of filing.” The Appellate Division affirmed, noting that Christine’s proofs “fell short of establishing incapacitation” and that “[t]he plain language of N.J.A.C. 17:3-6.3 indicates it only applies to a retirement application the Board has already approved.”

**HELD:** Neither membership nor prior approval of a retirement application is required for modification of a retirement selection where good cause, reasonable grounds, and reasonable diligence are shown. The Court remands this matter for further proceedings to allow petitioner Christine Minsavage the opportunity to argue in favor of modification under that standard.

1. Pension statutes should be liberally construed and administered in favor of the persons intended to be benefited thereby. For nearly seven decades the Court has maintained that the power to reopen proceedings may be invoked by administrative agencies to serve the ends of essential justice and the policy of the law. That principle applies equally to the right to amend a retirement application. That a pensioner is not a member of the Pension Fund when attempting to modify a retirement application does not on its own preclude such modification, and beneficiaries have been allowed to change the retirement application of a deceased member of the public pension systems. Additionally, the common law “establishe[s] that the Board may honor a pensioner’s request to reopen her retirement selection” upon “a showing of good cause, reasonable grounds, and reasonable diligence” even “after it is due and payable.” Steinmann v. Dep’t of Treasury, 116 N.J. 564, 573 (1989); Duvin v. Bd. of Trs., PERS, 76 N.J. 203, 207 (1978). Therefore, notwithstanding N.J.A.C. 17:3-6.3(a)’s reference to the period before an allowance “becomes due and payable,” an application for pension benefits may be amended whether or not pension benefits are due and payable upon the proper showing. (pp. 5-8)

2. Here, the Board acted unreasonably by denying Christine’s request to modify David’s retirement application upon its stated grounds. The interests of justice and a liberal reading of the applicable pension laws require that Christine be given an opportunity to prove at a hearing that she exercised reasonable diligence and seeks to modify David’s retirement selection for good cause upon reasonable grounds. (pp. 8-9)

**The judgment of the Appellate Division is REVERSED and the matter is REMANDED to the Board for further proceedings.**

**CHIEF JUSTICE RABNER and JUSTICES LaVECCHIA, ALBIN, PATTERSON, FERNANDEZ-VINA, SOLOMON, and TIMPONE join in this opinion.**

SUPREME COURT OF NEW JERSEY

A-48 September Term 2018

081507

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Christine Minsavage for  
David Minsavage (deceased),

Petitioner-Appellant,

v.

Board of Trustees, Teachers'  
Pension and Annuity Fund,

Respondent-Respondent.

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On certification to the Superior Court,  
Appellate Division.

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Argued  
September 9, 2019

Decided  
October 24, 2019

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John C. Kelly argued the cause for appellant (McCarter & English, attorneys; John C. Kelly, of counsel and on the briefs).

Amy Chung, Deputy Attorney General, argued the cause for respondent (Gurbir S. Grewal, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel, and Christopher Meyer, Deputy Attorney General, on the brief).

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PER CURIAM

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The issue in this appeal is whether a widow can modify the retirement application of her recently deceased husband, who was a member of the Teachers' Pension and Annuity Fund (Pension Fund), even though his application was never approved because he selected a retirement option for which he was ultimately ineligible. We hold that neither membership nor prior approval of a retirement application is required for modification of a retirement selection where good cause, reasonable grounds, and reasonable diligence are shown, and we remand this matter for further proceedings to allow petitioner Christine Minsavage the opportunity to argue in favor of modification under that standard.

## I.

The appellate record reveals that David and Christine Minsavage were married and had four children. David had served as a math teacher at Hanover Park High School for more than twenty-four years when he was diagnosed with terminal stage IV pancreatic cancer in August 2014. In November 2014, following advice allegedly provided by a New Jersey Education Association representative, David selected the "early retirement" option on his retirement application. Early retirement eligibility requires twenty-five years of teaching service. N.J.S.A. 18A:66-113.1.

David's cancer developed rapidly, and he stopped teaching in mid-December 2014. On April 9, 2015, David passed away. Because the school listed his last day of teaching service as the day before he died, David accumulated just over twenty-four years and nine months of teaching service over the course of his career.

Less than two weeks after David's death, the Division of Pension and Benefits notified Christine that David's retirement application would not be approved because he had not completed twenty-five years of teaching service when he died; had he lived to teach until July 1, 2015, David would have been eligible for early retirement. Had David qualified for and chosen early retirement, his beneficiary -- his widow Christine -- would have received \$3,423.06 each month. Because David did not qualify for his retirement selection, Christine was entitled only to reimbursement of David's pension contributions and a group life insurance benefit.

Because David did not live long enough to qualify for early retirement, his family would have been entitled to greater benefits had he selected and qualified for "ordinary disability," rather than "early retirement," on his

retirement application.<sup>1</sup> On June 15, 2015, Christine sought to modify David's retirement application to select ordinary disability rather than early retirement.

The Board of Trustees of the Pension Fund (the Board) denied Christine's request on the ground that the Pension Fund's "administrative regulations do not allow for retroactive disability retirement applications, and become effective only on or after the date of filing." (citing N.J.A.C. 17:3-6.1(f)(5)). The Appellate Division affirmed, holding that it could not "rely on [Christine's] hindsight to permit her to alter or amend [David's] retirement application" because her proofs "fell short of establishing incapacitation" and because "[t]he plain language of N.J.A.C. 17:3-6.3 indicates it only applies to a retirement application the Board has already approved."

The Attorney General asks this Court to affirm the Appellate Division's decision, arguing on behalf of the Board that because David's Pension Fund membership terminated upon his death, he cannot now submit a new or modified retirement application. The Attorney General further asserts that because David's application was never approved and thus never became due and payable, his application cannot be modified.

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<sup>1</sup> Whether David would have qualified for ordinary disability is a question this Court leaves to be resolved on remand. The record does not specify the value of entitlements his family would have received if David had selected and qualified for ordinary disability on his retirement application.

We reject the Attorney General's contention that the right to reopen a retirement application for good cause never extends to those for whom benefits never became due and payable because they selected a retirement option for which they were not yet eligible. Neither membership nor prior approval of a retirement application is necessary to modify an application where good cause, reasonable grounds, and reasonable diligence are shown.

## II.

We begin by recognizing that “[a] primary objective in establishing [pensions] is to induce able persons to enter and remain in public employment, and to render faithful and efficient service.” Geller v. Dep’t of Treasury, 53 N.J. 591, 597 (1969); accord In re Van Orden, 383 N.J. Super. 410, 421 (App. Div. 2006). Thus, pension statutes “should be liberally construed and administered in favor of the persons intended to be benefited thereby.” Steinmann v. Dep’t of Treasury, 116 N.J. 564, 572 (1989) (quoting Geller, 53 N.J. at 597-98); see also Fiola v. Dep’t of Treasury, 193 N.J. Super. 340, 347 (App. Div. 1984) (“It is virtually axiomatic that statutory pension provisions are to be liberally construed in favor of public employees . . .”).

Accordingly, for nearly seven decades this Court has maintained that “[t]he power to reopen proceedings ‘may be invoked by administrative agencies to serve the ends of essential justice and the policy of the law.’” In re

Van Orden, 383 N.J. Super. at 419 (quoting Handlon v. Town of Belleville, 4 N.J. 99, 107 (1950)); accord Duvin v. Bd. of Trs., PERS, 76 N.J. 203, 207 (1978). That principle applies equally to the right to amend a retirement application.

Generally, 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.” N.J.A.C. 17:3-6.3(a) (emphases added). “A member’s retirement allowance shall not become due and payable until 30 days after the date the Board approved the application for retirement . . . .” N.J.A.C. 17:3-6.2.

Although Pension Fund “[m]embership of any person shall cease . . . at death,” N.J.S.A. 18A:66-7(e), this Court has long held that membership is not a necessary condition of the right to modify a retirement application, see Duvin, 76 N.J. at 207 (“While we agree with PERS that respondent’s application for accidental disability benefits was filed at a time when respondent had ceased to be a member of PERS, this is not fully dispositive of the matter.”). Accordingly, that a pensioner is not a member of the Pension Fund when attempting to modify a retirement application does not on its own preclude such modification. Ibid. By the same logic, beneficiaries have been allowed to change the retirement application of a deceased member of the



public pension systems. See Bumbaco v. Bd. of Trs., PERS, 325 N.J. Super. 90 (App. Div. 1999).

Additionally, our common law “establishe[s] that the Board may honor a pensioner’s request to reopen her retirement selection” upon “a showing of good cause, reasonable grounds, and reasonable diligence” even “after it is due and payable.” Steinmann, 116 N.J. at 573; see Duvin, 76 N.J. at 207; see also Harris ex. rel. Harris v. Bd. of Trs., PERS, 378 N.J. Super. 459, 462-66 (App. Div. 2005) (tolling the pension modification period to permit a widower to modify his late wife’s pension in light of her incapacity during that period). Therefore, notwithstanding N.J.A.C. 17:3-6.3(a)’s reference to the period before an allowance “becomes due and payable,” an application for pension benefits may be amended whether or not pension benefits are due and payable upon the proper showing.

Furthermore, although past cases invoking good cause to reopen retirement applications involved approved applications, we have never held that a retirement selection cannot be modified unless the application has been approved. See Steinmann, 116 N.J. at 572-73; Duvin, 76 N.J. at 207. To the contrary, a retirement application, whether approved or not, may be reopened and modified upon a showing of good cause, reasonable grounds, and reasonable diligence.

The pensioners in Steinmann and Duvin selected sub-optimal retirement options. Steinmann, 116 N.J. at 565; Duvin, 76 N.J. at 205-06. This Court held that the Steinmann pensioner had shown good cause for amending her pension designation and should have been permitted to do so, 116 N.J. at 577-78, and that the Duvin pensioner should have the opportunity at further proceedings to show good cause “for reopening his original pension application and allowing him to claim accidental disability retirement in lieu of early retirement allowance,” 76 N.J. at 208.

Here, Christine claims that David was mistaken when he selected the “early retirement” option for which he was ultimately ineligible and that he was incapacitated from amending his selection thereafter. Because of this alleged mistake and incapacity, the Board would have the Minsavages receive only a nominal benefit from the Pension Fund to which David contributed for 297 months.

We conclude the Board acted unreasonably by denying Christine’s request to modify David’s retirement application upon its stated grounds. See In re Stallworth, 208 N.J. 182, 194 (2011) (noting that agency decisions are subject to reversal if they are “arbitrary, capricious, or unreasonable”). In the case at hand, the interests of justice and a liberal reading of the applicable pension laws require that Christine be given an opportunity to present evidence

and prove at a hearing that she exercised reasonable diligence and seeks to modify David's retirement selection for good cause upon reasonable grounds. Such proof must include evidence that David qualified for ordinary disability retirement and that, but for his incapacity, he would have changed his retirement selection to ordinary disability.

### III.

The judgment of the Appellate Division is reversed and the matter remanded to the Board for further proceedings consistent with this opinion.

CHIEF JUSTICE RABNER and JUSTICES LaVECCHIA, ALBIN, PATTERSON, FERNANDEZ-VINA, SOLOMON, and TIMPONE join in this opinion.