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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the 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-2308-19**

**ERIC STRAUB,**

Petitioner-Appellant,

v.

**BOARD OF TRUSTEES,  
POLICE AND FIREMEN'S  
RETIREMENT SYSTEM,**

Respondent-Respondent.

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Argued January 31, 2022 – Decided April 12, 2022

Before Judges Fasciale and Sumners.

On appeal from the Board of Trustees of the Police and Firemen's Retirement System, Department of the Treasury, PFRS No. x-xx-xx766.

Herbert J. Stayton, Jr., argued for appellant.

Thomas R. Hower, Staff Attorney, argued for respondent (Robert Seymour Garrison, Jr., Director of Legal Affairs, PFRSNJ, attorney; Thomas R. Hower, on the brief).

**PER CURAIM**

The dispute over petitioner Eric Straub's disability benefits returns to us following our affirmance of the respondent Board of Trustees of the Police and Firemen's Retirement System's (Board) November 13, 2017 final agency decision. The Board held that Straub was not entitled to accidental disability retirement benefits under N.J.S.A. 43:16A-7, but instead granted him ordinary disability retirement benefits under N.J.S.A. 43:15A-42. Straub v. Board of Treasury, Police & Firemen's Ret. Sys., No. A-1888-17 (App. Div. August 8, 2019) (slip op. 8-9), certif. denied, 240 N.J. 550 (2020).

About two months after our unpublished decision, Straub sent a letter to the Board requesting "to appeal" its decision granting him ordinary disability benefits and to grant him involuntary disability retirement benefits instead. In an October 23, 2019 letter, the Board's secretary, Lisa Pointer, advised Straub that he was not eligible to receive involuntary disability retirement benefits because his former employer, Township of Monroe (Township), did not submit an involuntary disability retirement application on his behalf and "a resolution . . . indicating that [he was] totally and permanently disabled from fulfilling [his] job duties." She further advised his request was deficient because he did not appeal the Board's November 13, 2017 final agency decision to this court within

forty-five days of the November 15, 2017 notice of the decision and that an extension of time to appeal could only be granted by this court.

In response to Pointer's letter, Straub's counsel got involved by writing to Pointer demanding the Board take formal action on Straub's request for reconsideration of his benefits. Counsel also asked that the Township be authorized to apply for involuntary disability retirement benefits for Straub, stating reconsideration was based on the "Supreme Court['s] decision in [Minsavage for] Minsavage v. Board of Trustees, Teachers' Pension and Annuity Fund, [240 N.J. 103 (2019)]." After not receiving a response to his letter, counsel sent an almost identical "SECOND REQUEST" letter to Pointer restating Straub's demands.

Pointer emailed a reply to counsel reiterating that the Township never filed an involuntary disability retirement application for Straub. She further pointed out that the Township "never adopted a resolution specifically proposing to seek [i]nvoluntary . . . [d]isability [retirement] benefits on behalf of [ ]Straub." She explained, "[t]he resolution by the Township dated August 6, 2014[,] was for entering into a settlement agreement [with Straub], not the processing of an [i]nvoluntary . . . [d]isability retirement benefit." Pointer, again, advised that the proper recourse for Straub to seek involuntary disability retirement benefits

was to have timely appealed the Board's November 13, 2017 final agency decision granting him ordinary disability benefits to this court.

Straub now appeals the Board's decision denying his request to reconsider its previous decision granting him ordinary disability retirement benefits by granting him involuntary disability retirement benefits.<sup>1</sup>

There is no merit to Straub's request that the Board reclassify his ordinary disability retirement benefits to involuntary disability retirement benefits. He has not demonstrated grounds for reversal by showing "the agency's action was arbitrary, unreasonable or capricious." Bowden v. Bayside State Prison, 268 N.J. Super. 301, 304 (App. Div. 1993).

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<sup>1</sup> In granting Straub's motion to file his notice of appeal as within time, we determined "[t]he appeal shall proceed as to the Board[] [Secretary's] October 23, 2019 letter, but without prejudice to the Board challenging the applicability of the October 23, 2019 letter, because it is not a final agency decision that is applicable as of right." The Board, however, did not subsequently contend in its merits brief that the October 23, 2019 letter was not a final agency decision. Although we have some concerns whether the letter constitutes a final agency decision, we do not address the issue because the Board has not raised the issue in opposition to this appeal. See e.g. De Nike v. Bd. of Trs., Emps. Ret. Sys. of N.J., 34 N.J. 430, 436 (1961) (finding a Board secretary's letter stating that the Board of Trustees held a meeting and voted that it was "impossible" to accede to petitioner's request to change her husband's retirement allowance was not a final agency decision).

As a member of the Police and Firemen's Retirement System (PFRS), Straub's eligibility for involuntary disability retirement benefits is governed by statute and regulation. N.J.S.A. 43:16A-6(3) defines who is eligible, providing:

Notwithstanding the provisions of subsection (2) of this section, a member who has more than 20 but less than 25 years of creditable service and who is required to retire upon application by the employer . . . shall receive an ordinary disability retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of the member's aggregate contributions; and

(b) A pension in the amount which, when added to the member's annuity, will provide a total retirement allowance of 50% of final compensation plus 3% of final compensation multiplied by the number of years of creditable service over 20 but not over 25.

[(Emphasis added.)]

N.J.A.C. 17:1-7.8(a) details the process for a PFRS member to obtain involuntary disability retirement, stating, in pertinent part: "Applications for the involuntary disability retirement of an employee of a local employer must be accompanied by a resolution of the governing body, . . . certifying that the employee is disabled and unable to perform the employee's regular or assigned duties."

Furthermore, N.J.A.C. 17:4-6.10 specifies the additional requirements for applications:

(a) If an application for an accidental disability retirement benefit or for an ordinary disability retirement benefit is filed by an employer for an employee, the member will be promptly notified by letter that:

1. The member's employer has properly initiated a disability application signed by the Certifying Officer or other designated officer of the employer, on the member's behalf;
2. The member's employer has submitted a written statement as to the grounds for the employer's request for the member's involuntary disability retirement and all available medical documentation; and, if appropriate;
3. The member's employer has certified that the member should be retired as a direct result of a traumatic event occurring during and as a result of the performance of the member's regular or assigned duties;
4. The member has a period of 30 days to contest the involuntary retirement before the Board acts on the employer's application;
5. The member will be required to appear for an examination before a physician designated to conduct such an examination for the retirement system; and
6. In the event the Board finds that the member is totally and permanently incapacitated for the

performance of duty, the member shall be granted a retirement allowance; and

7. In the event the Board finds that the member is not totally and permanently incapacitated for the performance of duty, the employer's application shall be disallowed and the employer shall be informed that the member should be returned to duty.

Moreover, potential retirees are advised through the Board's Fact Sheet #16, which states, in relevant part:

[An] employer has the right to apply for an Involuntary Disability Retirement on [the employee's] behalf provided that [the employee] meet the qualifications for a Disability Retirement. Along with the retirement application . . . local employers must provide a copy of a resolution adopted by the governing body stating that, in the employing authority's opinion, the employee is totally and permanently disabled from fulfilling his or her job duties (include any pertinent medical records).

The plain language of these controlling guidelines is clear and unambiguous: only the Township, Straub's employer, can apply for involuntary disability retirement benefits for him through the passing of a resolution stating he "is disabled and unable to perform the employee's regular or assigned duties." N.J.A.C. 17:1-7.8. The Board properly interpreted and applied the relevant regulations as set forth in its secretary's October 23, 2019 letter to Straub and the follow-up email to his counsel denying his unilateral request to change his

retirement benefits from ordinary disability to involuntary disability. The Township never passed the required resolution<sup>2</sup> and applied for Straub to receive involuntary disability benefits. Therefore, Straub had no standing to request the change in disability retirement benefits.

In addition, the Board correctly decided that Straub's reconsideration request was procedurally deficient. His request was in essence an appeal of the Board's November 13, 2017 final agency decision awarding him ordinary disability retirement benefits and denying him the accidental disability retirement benefits he sought; thus, he should have appealed that decision and requested reclassification within forty-five days. See N.J.A.C. 17:1-1.3(b) and (d). Although Straub appealed that decision, his challenge was limited to his effort to obtain accidental disability retirement benefits, which, as noted, we denied.

Straub's reliance on Minsavage for Minsavage is misplaced. There, our Supreme Court held that neither membership nor prior approval of a retirement

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<sup>2</sup> The Township only approved a resolution pertaining to its settlement with Straub, which acknowledged he "is disabled and will not be able to return to his duties." The resolution, however, did not state that Straub was totally and permanently disabled, and it even allowed for his possible return to work, providing, "[i]n the event [he is denied disability] pension, [he] will be reinstated."



application is required for a widow seeking modification of her deceased husband's retirement application where good cause, reasonable grounds, and reasonable diligence are shown. 240 N.J. at 105. That is distinct from the situation here where Straub sought to change his retirement benefits from ordinary disability to involuntary disability benefits, which his employer did not apply for as required by law.

In sum, Straub has not shown that the Board violated express or implied legislative policies, or acted arbitrarily, capriciously, or unreasonably. See Saccone v. Bd. of Trs., PFRS, 219 N.J. 369, 380 (2014).

Any arguments made by Straub that we have not expressly addressed are without sufficient merit to warrant discussion in this opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION