

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2378-20

CHERYL ROOTH,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES,
PUBLIC EMPLOYEES'
RETIREMENT SYSTEM,

Respondent-Respondent.

APPROVED FOR PUBLICATION

June 3, 2022

APPELLATE DIVISION

Submitted April 4, 2022 – Decided June 3, 2022

Before Judges Sabatino, Rothstadt, and Bishop-Thompson.

On appeal from the Board of Trustee of the Public Employees' Retirement System, Department of the Treasury, PERS No. x-xxx249.

Chamlin Uliano & Walsh, attorneys for appellant (James J. Uliano, on the brief).

Matthew J. Platkin, Acting Attorney General, attorney for respondent (Sookie Bae-Park, Assistant Attorney General, of counsel; Brian D. Ragunan, Deputy Attorney General, on the brief).

The opinion of the court was delivered by

BISHOP-THOMPSON, J.S.C. (temporarily assigned).

In this appeal, we are asked to decide whether, as a matter of law, a school employee separated from service by irrevocably resigning from employment to resolve a pending grievance, can later obtain disability retirement benefits through the Public Employees' Retirement System (PERS). Under the circumstances presented in this case, a school employee cannot obtain disability retirement benefits where disciplinary charges have not been shown to "relate" to a disability under N.J.A.C. 17:1-6.4.

Appellant Cheryl Rooth, a school employee who agreed to irrevocably resign from the Lacey Township Board of Education (BOE), argues that PERS erred in applying N.J.A.C. 17:1-6.4 when it declared Rooth ineligible to file an accidental disability retirement benefits application. According to Rooth, she is disabled and therefore entitled to disability retirement benefits despite her resignation. She requests that we reverse the PERS's decision and declare this matter a contested case to be transmitted to the Office of Administrative Law (OAL) for a hearing.

We hold that when a PERS member, here a school bus driver, irrevocably resigns from active service based upon a negotiated settlement agreement resolving a pending grievance concerning disciplinary charges that do not "relate to" a disability, such a separation from employment renders the member

ineligible for ordinary or accidental disability retirement benefits. Here, Rooth agreed to not seek any future employment with the BOE because of her irrevocable resignation, not her alleged mental disability. The inability to return to work based upon a settlement agreement and irrevocable resignation precludes the member from filing a disability application under the prevailing regulatory framework and case law.

Rooth was employed as a school bus driver with the BOE for twenty-four years. On April 29, 2019, Rooth's bus rear-ended another school bus in the school parking lot with children on her bus. Toms River police officers responded to the accident. Rooth was subsequently charged with several moving violations: driving while intoxicated, reckless driving, driving while intoxicated in a school zone, driving while intoxicated in a school crosswalk area, and driving while intoxicated with a minor child present, as well as administrative charges.¹ There is no proof that the disciplinary charges concerned an alleged disability that caused her to have the accident.

¹ The police report stated that Rooth had a blood alcohol content of 0.0 but was under the influence of prescription medication. As of the filing date of this appeal, these charges were pending in Toms River Municipal Court and had not been adjudicated.

As a result of the administrative and motor vehicle charges, Rooth was placed on administrative leave and subsequently terminated. The Lacey Township Education Association (LTEA), on behalf of Rooth, filed a grievance challenging her termination. The grievance was resolved through a Confidential Separation Agreement and Full and Final Release (Agreement) dated December 12, 2019. The relevant terms of the Agreement, which are critical to this matter, are Rooth's waiver of "any and all rights to seek future employment with the BOE" and the signed irrevocable resignation letter, referenced and incorporated into the Agreement.²

Rooth applied for accidental disability retirement benefits in March 2020. In the application, Rooth claimed disability due to "extreme depression and anxiety after [her] bus accident." (Emphasis added). She further claimed that she had not driven a school bus since the accident.

The BOE submitted an employer certification stating Rooth's dismissal on June 30, 2019 was "due to the settlement agreement." The BOE thereafter submitted a copy of the Agreement.

² Rooth resigned effective June 30, 2019.

On September 8, 2020, the Bureau of Retirements (Bureau) denied Rooth's application for ordinary disability retirement benefits in a letter (Denial Letter).³ The Bureau declared Rooth ineligible to file for disability benefits and further stated:

Your termination from employment, as stated on the employer certification for disability retirement dated March 16, 2020 and the letter dated August 26, 2020, clearly shows that there would be no position for you should your alleged disability diminish at some time in the future to the point that you could return to employment and thereby comply with the provisions of N.J.S.A. 43:15A-22.

The Bureau cited to N.J.A.C. 17:1-6.4(b), which "requires that disability applicants must prove that the retirement is due to a total and permanent disability and that the disability is the reason the member left employment." In the Denial Letter, the Bureau listed five reasons that precluded a member from filing for disability retirement benefits when the member "involuntarily or voluntarily terminated service."

Rooth appealed the denial to PERS on the basis that "the underlying administrative charges which resulted in her loss of employment related to her disability." Relying on N.J.A.C. 17:1-6.4, PERS similarly found Rooth

³ The Denial Letter does not reference why the accidental disability application was considered as an ordinary disability application.

ineligible to apply for accidental disability retirement benefits and therefore denied her request in a written decision on November 18, 2020.

PERS also relied on N.J.A.C. 17:1-6.4, which states in full:

- (a) Each disability retirement applicant must prove that his or her retirement is due to a total and permanent disability that renders the applicant physically or mentally incapacitated from performing normal or assigned job duties at the time the member left employment; the disability must be the reason the member left employment.
- (b) Members who have involuntarily or voluntarily terminated service for any of the reasons listed below will not be permitted to apply for a disability retirement:
 - 1. Removal for cause or total forfeiture of public service;
 - 2. Settlement agreements reached due to pending administrative or criminal charges, unless the underlying charges relate to the disability;
 - 3. Loss of licensure or certification required for the performance of the member's specific job duties;
 - 4. Voluntary separation from service for reasons other than a disability; and
 - 5. Job abolishment or reduction in force.
- (c) The Division will review all disability retirement applications submitted after a member has terminated service to determine whether the

member's application is eligible for processing, pursuant to (a) above.

PERS's determination was based upon a review of Rooth's filed application, the BOE's certification, and the Agreement. PERS disagreed with Rooth that the underlying administrative charges related to her disability. PERS found, based on N.J.A.C. 17:1-6.4, that Rooth's irrevocable resignation prevented her from applying for disability retirement benefits. PERS also concluded "nothing in the Agreement pertain[ed] to an alleged disability," and based upon the record, her separation was not disability related.

Rooth appealed PERS's initial decision. On January 7, 2021, Rooth requested a hearing with the OAL as a contested case. She also requested to amend her disability application to ordinary disability retirement benefits, "conceding she did not qualify for an accidental disability pension under the relevant facts and case law." In support of the amended application, Rooth submitted letters⁴ from her treating medical providers stating she was attending physical therapy for a lumbar injury, "which may potentially result in poor balance issues," had been treating for over five years for chronic, noncontagious,

⁴ In lieu of certifications, Rooth submitted letters from her various treating medical providers.

blepharitis, dry eye syndrome, diabetes, and taking various prescribed medications.

At its meeting on February 17, 2021, PERS found no genuine issue of material fact in dispute and denied Rooth's request for an administrative hearing.

On March 18, 2021, PERS issued a final agency decision adopting the initial denial of accidental disability retirement benefits. After considering the submissions, PERS determined the "statutes governing PERS and relevant case law did not permit [Rooth] to file for [a]ccidental [d]isability retirement benefits because she did not terminate employment due to a disability." PERS further confirmed "she was terminated from employment and [was] therefore not eligible to file for a disability benefit." PERS explained "pursuant to N.J.S.A. 43:15A-42, [-]43 and the regulation, Ms. Rooth [was] required to establish that she separated from employment due to a disability rather than administrative charges." PERS found Rooth was terminated from employment due to "administrative and motor vehicle charges from a work-related incident on April 29, 2019." This appeal followed.

On appeal, Rooth argues PERS erred in applying N.J.A.C. 17:1-6.4, because her separation of employment was related to her underlying mental disability. She raises substantially the same argument as she did before PERS,

contending that her termination was not premised on the underlying administrative charge. She also contends PERS erred in its application of the "separation of service" rule in N.J.A.C. 17:1-6.4(b)(2) and In re Adoption of N.J.A.C. 17:1-6.4, 454 N.J. Super. 386, 397 (App. Div. 2018) since the court was "silent on the relevant provisions of N.J.A.C. 17:1-6.4(b)(2) concerning separation agreements." Rooth asserts the settlement agreement is silent as to her disability and it is therefore immaterial since she received treatment from various medical providers before April 29, 2019. Lastly, Rooth contends PERS should have ordered an administrative hearing given the contested fact of her disability. We are not persuaded by these contentions.

Our review of a pension board's decision in the fact sensitive matter of disability retirement benefits is limited. Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (citing Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)). "An agency's determination on the merits 'will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record.'" Saccone v. Bd. of Trs., Police & Firemen's Ret. Sys., 219 N.J. 369, 380 (2014) (quoting Russo, 206 N.J. at 27).

It is well established that the agency's factual determinations are presumptively correct and, on review of the facts, a court will not substitute its own judgment over that of an agency where the agency's findings are supported by sufficient credible evidence. Sager v. O.A. Peterson Const., Co., 182 N.J. 156, 164 (2004); Campbell v. N.J. Racing Comm'n, 169 N.J. 579, 587 (2001); In re Carroll, 339 N.J. Super. 429, 437 (App. Div. 2001). PERS and other pension agencies are owed deference in their implementation of the retirement benefits statute. Russo, 206 N.J. at 27. However, we are not "bound by an agency's interpretation of a statute or its determination of a strictly legal issue." Ibid. (quoting Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973)). We review de novo "the [PERS's] interpretation of [N.J.A.C. 17:1-6.4(b)(2)] and case law." Ibid.

PERS is the governing body for the pension fund and provides oversight for the fund's administration and compliance with State and Federal laws and regulations. PERS provides for both ordinary, N.J.S.A. 43:15A-42, and accidental, N.J.S.A. 43:15A-46, disability retirement benefits. The principal difference between ordinary and accidental disability retirement "is that ordinary disability retirement need not have a work connection." Patterson v. Bd. of Trs., State Police Ret. Sys., 194 N.J. 29, 42 (2008). Accidental disability

retirees receive significantly greater benefits than those provided to ordinary disability retirees. Id. at 43 (citing Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 193 (2007)).

An applicant for disability retirement benefits must show that he or she retired "due to a total and permanent disability that renders the applicant physically or mentally incapacitated from performing normal or assigned job duties at the time the member left employment." See N.J.A.C. 17:1-6.4(a); Richardson, 192 N.J. at 212.

Applying these well-established standards to the present case, we conclude PERS's decision rejecting Rooth's disability application is amply supported by substantial credible evidence in the record. Neither the initial decision nor the final administrative determination was arbitrary or capricious. The Bureau determined, and the Board agreed, that Rooth's separation from employment was based on the irrevocable resignation letter and not a disability.

Rooth's claim that she resigned due to her disability is simply unsupported by the record. Even assuming Rooth were disabled, as a matter of law, what is determinative is the consequence of her irrevocable resignation.

Rooth argues that she is entitled to disability retirement benefits because in In re Adoption of N.J.A.C. 17:1-6.4, we were silent on the relevant provisions

of N.J.A.C. 17:1-6.4(b)(2) concerning a separation in connection with a "[s]ettlement agreement . . . reached due to pending administrative or criminal charges, unless the underlying charges relate to the disability." As such, she asserts PERS misapplied the "separation of service" rule.

Rooth's arguments are inextricably linked to her irrevocable resignation. As such, we reject these arguments because they are not supported by In re Adoption of N.J.A.C. 17:1-6.4. Rooth has misconstrued our holding in that opinion. We upheld the validity of N.J.A.C. 17:1-6.4, the separation of service rule, and, in so ruling, expressly stated:

In general, the primary practical effect of our holding – as to the separation of service rule – maintains the longstanding principle that eligibility for disability retirement benefits requires members to make a prima facie showing that they cannot work due to a disability. To that end, voluntary or involuntary termination of employment, for non-disability reasons, generally deems a member ineligible for disability benefits. Such a holding comports with the existing overall framework of the enabling, eligibility, and rehabilitation statutes, and policies application to the various State public retirement systems. To hold otherwise would require us to re-write the text of multiple statutes, which has never been the role of the judiciary.

[Id. at 395]

As we explained in In re Adoption of N.J.A.C. 17:1-6.4, an irrevocable resignation from employment, in and of itself, renders a member ineligible for

ordinary or accidental retirement benefits. Thus, "[m]embers who leave public service for reasons unrelated to a disability are not entitled to disability retirement benefits in the first instance." Id. at 404 (emphasis added).

We applied this holding in Cardinale v. Bd. of Trs., Police & Fire Ret. Syst., 458 N.J. Super. 260 (App. Div. 2019), finding "that when a Police and Firemen's Retirement System member -- [there] a police officer -- voluntarily irrevocably resign[ed] from active service, such a separation from employment automatically renders the individual ineligible for ordinary disability benefits." Id. at 263 (emphasis added). We further held that the police officer's claimed disability was "irrelevant to our holding that his irrevocable resignation made him ineligible for benefits in the first place." Id. at 268.

It is uncontroverted that a grievance was pending contesting Rooth's termination. It is equally uncontroverted that Rooth and the BOE resolved all issues related to her employment. In reaching such a resolution, Rooth agreed to not seek any future employment with the BOE and submitted an irrevocable resignation letter, which was attached to the Agreement. Unlike in Cardinale, even if Rooth could at some point return to work if her disability "vanished or materially diminished," the Agreement incorporating the irrevocable resignation letter renders her return to work at the BOE unattainable. Cardinale, 458 N.J.

Super. at 263. Thus, Rooth's irrevocable resignation, alone, made her ineligible for disability benefits regardless of her claimed inability to work. Id. at 269; In re Adoption of N.J.A.C. 17:1-6.4, 454 N.J. Super. at 397 (quoting N.J.A.C. 17:1-6.4(a)).

Rooth's contention that the Agreement is silent as to her disability is disingenuous. A member cannot apply if he or she separated from employment pursuant to a "[s]ettlement agreement . . . reached due to pending administrative or criminal charges, unless the underlying charges relate to the disability." N.J.A.C. 17:1-6.4(b)(2). Likewise, a member who "voluntar[ily] separat[ed] from service for reasons other than a disability" cannot apply. N.J.A.C. 17:1-6.4(b)(4).

Here, as we noted above, the underlying charges against Rooth concerning her bus accident were not shown to "relate to" a disability. She has not shown the bus accident occurred because of a disability that impeded her ability to drive the bus. No proofs were submitted by Rooth demonstrating an inability to work. Contrary to Rooth's assertions, she was never entitled to disability benefits in the first instance. As we have noted, "disability retirement benefits are intended for members who become disabled while in active service and can no longer

work[.]" In re Adoption of N.J.A.C. 17:1-6.4, 454 N.J. Super. at 398 (quoting 48 N.J.R. 1306(a) (June 20, 2016)).

We therefore accept PERS's determination that Rooth "did not separate from employment due to an alleged disability." See In re Taylor, 158 N.J. 644, 657 (1999) (explaining a reviewing court "must uphold" an agency's findings that are supported by "sufficient credible evidence in the record"). Accordingly, PERS did not err in finding that Rooth was "ineligible to apply for [a]ccidental (or [o]rdinary) [d]isability retirement benefits" based upon her irrevocable resignation letter.

We affirm PERS's decision, which is consistent with the governing law and the public policy that is aimed at protecting "the overall pension scheme." Cardinale, 458 N.J. Super. at 273; In re Adoption of N.J.A.C. 17:1-6.4, 454 N.J. Super. at 404.

In Point II of her brief, Rooth now raises for the first time on appeal, that her case is contested as there exists material disputed facts and PERS erred in denying the transmittal of this matter to the OAL. A hearing is "mandated only when the proposed administrative action is based on disputed adjudicatory facts." In re Farmer's Mut. Fire Assurance Ass'n of N.J., 256 N.J. Super. 607, 618 (App. Div. 1992); see also N.J.A.C. 17:4-1.7(e) (permitting the Board to

retain the matter and issue an administrative determination where an appeal "involves solely a question of law."). We agree that there were no disputed facts requiring adjudication before PERS. The reasons for Rooth's separation from employment were not disputed, as previously addressed, and this matter concerned whether those undisputed facts gave rise to the good cause necessary for relief pursuant to N.J.A.C. 17:4-6.4(a). They did not. Consequently, PERS had no obligation to designate this matter as a contested case and proceed to the OAL because Rooth did not retire on the basis of a disability.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION