SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2607-20

SUSAN SEAGO,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES,
TEACHERS' PENSION AND
ANNUITY FUND,

Respondent-Respondent.

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Argued November 28, 2022 – Decided December 20, 2022

Before Judges Smith and Marczyk.

On appeal from the Board of Trustees of the Teachers' Pension and Annuity Fund, Department of the Treasury, TPAF No. 648138.

Kathleen Naprstek Cerisano argued the cause for appellant (Zazzali, Fagella, Nowak, Kleinbaum & Friedman, PC, attorneys; Kathleen Naprstek Cerisano, of counsel and on the briefs).

Robert E. Kelly, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney

General, attorney; Donna Arons, Assistant Attorney General, of counsel; Robert E. Kelly, on the brief).

PER CURIAM

Petitioner Susan Seago appeals from the April 6, 2021 final administrative decision (FAD) of the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF), which denied her request to process an untimely interfund transfer from a Public Employees' Retirement System (PERS) account. We affirm.

I.

Seago was first employed in 2004 for the Edison Township Board of Education (Edison) as a paraprofessional, and Edison enrolled her in PERS. After furthering her education, Seago resigned from her paraprofessional position and began working as a teacher for Edison in September 2017. Edison enrolled petitioner in TPAF. On July 6, 2017, she completed her portion of an application for an interfund transfer of her service credits from PERS to TPAF. To complete the application, Seago gave Edison the paperwork so that it could fill out the "previous employer" section, since it was her employer when she was a paraprofessional.

Petitioner received a letter dated March 5, 2019, from the Division of Pension and Benefits (Division). The letter stated petitioner had not made a

contribution to her PERS account since June 30, 2017. It also explained to petitioner the process for applying for retirement allowance. Finally, the letter provided petitioner with a website address she could visit to obtain more information regarding retirement benefits or withdrawal of her contributions. The Division sent another letter dated September 17, 2019. The second letter stated:

> As a result of your New Jersey public employment, you qualify for the withdrawal of your total pension contributions of $20,086.49 in a lump sum from the [PERS] or you may elect a transfer to an Individual Retirement Account (IRA) or an employer's retirement plan through a rollover or you may qualify for a lifetime retirement benefit.

The letter further provided Seago a number of options and websites she could visit for more information. She claims she spoke with employees of Edison's human resources unit after she received the two letters, who assured her she had done her part—filling out the employee-member portion of the interfund transfer application—and Edison had completed and filed the application.

In August 2020, Edison's payroll supervisor, Sunita Malhotra, realized Edison had not sent petitioner's application to the Division. Malhotra emailed the Division explaining petitioner filled out her interfund transfer application, but due to Edison's error, the application was not submitted within the two-year

deadline. An employee of the Division responded to Malhotra's email, advising the Division's Enrollments Bureau handled such transfer requests. The Division's employee recommended Malhotra submit petitioner's application to that department. Malhotra and Edison's business administrator thereafter forwarded correspondence to the Division's Enrollment Bureau explaining the delay in the interfund transfer application was Edison's fault, not Seago's.

On September 23, 2020, the Division denied Seago's application because her PERS account had become inactive and could no longer be transferred. Edison sent two subsequent letters, dated October 2 and October 8, 2020, appealing the denial of petitioner's application and reiterating the delay was due to its own negligence and was not the fault of Seago. Relying on N.J.S.A. 43:15A-7(e),[1] the Division again maintained petitioner's request could not be granted because she missed the two-year deadline to submit the interfund transfer application. Since petitioner's last contribution was on June 30, 2017, her option to transfer ended on June 30, 2019. Furthermore, the Division noted it sent petitioner a letter on March 5, 2019, three months before her option to

[1] "Membership of any person in the retirement system shall cease if he shall discontinue his service for more than two consecutive years." N.J.S.A. 43:15A-7(e).

transfer ended, yet she did not contact the Division regarding the letter. Seago appealed the Division's decision to the Board.

On December 3, 2020, the Board considered petitioner's statements, along with Edison's letters regarding the delay in submitting petitioner's application. The Board affirmed the Division's determination and denied petitioner's request. In addition to relying on N.J.S.A. 43:15A-7(e), the Board also cited to N.J.A.C. 17:3-7.1.[2] While the Board considered the reasons for the delay in submitting the application, it determined it did not have the authority to grant petitioner's request.

Petitioner appealed the Board's determination and requested an administrative hearing. She further argued the Board, in denying her request, disregarded the TPAF Member Handbook, which provides that an interfund transfer should be submitted by the employer, not the employee. In its FAD, the Board maintained its prior determination. In response to petitioner's assertion that it was Edison's role to submit the application, the Board added:

> [W]hile some employers may assist a member in matters such as these, as noted above, an interfund

[2] N.J.A.C. 17:3-7.1 provides, in pertinent part, a member is eligible to transfer membership from another State-administered retirement system, provided the membership has not expired and that all service eligible for participation has ceased.

> transfer is optional, and is not a mandatory transaction, like enrollment. Therefore, if an employee chooses to exercise the option, the responsibility to timely file the required application lies with the member, not the employer.

The Board also denied petitioner's request for an administrative hearing because there is no dispute concerning material facts. Thereafter Seago filed this appeal.

II.

Petitioner raises the following points on appeal:

> POINT I
>
> THE TPAF BOARD'S DENIAL OF SEAGO'S INTERFUND TRANSFER REQUEST CONSTITUTES AN ARBITRARY AND CAPRICIOUS AGENCY DECISION.
>
> > A. STANDARD OF REVIEW (not raised below).
> >
> > B. THE TPAF BOARD INCORRECTLY REFUSED TO RECOGNIZE THAT SEAGO ACTED IN GOOD FAITH AND IT WAS HER EMPLOYER WHO ADMITTEDLY FAILED TO TIMELY FILE HER INTERFUND TRANSFER APPLICATION.
>
> POINT II
>
> THE TPAF BOARD DENIED SEAGO DUE PROCESS BY REFUSING TO AFFORD HER A HEARING ON DISPUTED ISSUES OF FACT

BEFORE THE OFFICE OF ADMINISTRATIVE LAW TO SUBSTANTIATE THAT SHE TOOK TIMELY ACTION TO FILE HER APPLICATION FOR INTERFUND TRANSFER.

More particularly, petitioner argues "[m]embers do not file their own . . . [a]pplication for interfund transfer—it is their employer that files the application with [the Division]." Petitioner asserts Edison was responsible to file the interfund transfer application with the Division based on the language in the TPAF Member Guidebook. She also claims the Division never notified her that her account would become inactive two years after June 30, 2017.

The Board counters membership in PERS ceases after more than two years of inactivity consistent with N.J.S.A. 43:15A-7(e). Moreover, the member is responsible for filing an application for interfund transfer pursuant to N.J.A.C. 17:3-7.1. The Board submits there is no equitable basis to reopen petitioner's application because the Division did not misrepresent or conceal a material fact or induce her to rely on its statements to her detriment. Finally, the Board asserts there are no disputed facts in this case and, therefore, it did not require a fact-finding hearing in the Office of Administrative Law.

III.

Our role in reviewing the decision of an administrative agency is limited. In re Stallworth, 208 N.J. 182, 194 (2011) (citing Henry v. Rahway State Prison,

81 N.J. 571, 579 (1980)). We accord a strong presumption of reasonableness to an agency's exercise of its statutorily delegated responsibility and defer to its fact-finding. City of Newark v. Nat. Res. Council in Dep't of Env't Prot., 82 N.J. 530, 539 (1980); Utley v. Bd. of Rev., Dep't of Lab., 194 N.J. 534, 551 (2008). We will not upset the determination of an administrative agency absent a showing that it was arbitrary, capricious, or unreasonable; that it lacked fair support in the evidence; or that it violated legislative policies. Lavezzi v. State, 219 N.J. 163, 171 (2014); Campbell v. Dep't of Civ. Serv., 39 N.J. 556, 562 (1963).

On questions of law, our review is de novo. In re N.J. Dep't of Env't Prot. Conditional Highlands Applicability Determination, Program Int. No. 435434, 433 N.J. Super. 223, 235 (App. Div. 2013) (citing Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011)). We are "in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue." Mayflower Sec. Co. v. Bureau of Sec. in Div. of Consumer Affs. of Dep't of L. & Pub. Safety, 64 N.J. 85, 93 (1973).

In determining whether agency action is arbitrary, capricious, or unreasonable, a reviewing court must examine:

> (1) whether the agency's action violates express or implied legislative policies, that is, did the agency

> follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.
>
> [In re Stallworth, 208 N.J. at 194 (quoting In re Carter, 191 N.J. 474, 482-83 (2007)).]

"The party challenging the agency action has the burden to show that the administrative determination is arbitrary, capricious or unreasonable." In re Renewal TEAM Acad. Charter Sch., 247 N.J. 46, 73-74 (2021) (citing In re Att'y Gen. L. Enf't Nos. 2020-5 and 2020-6, 246 N.J. 462 (2021)).

IV.

PERS is governed by statutes, N.J.S.A. 43:15A-1 to -161, and regulations, N.J.A.C. 17:2-2.1 to -8.16. Under the statutes, "[m]embership of any person in the retirement system shall cease if he shall discontinue his service for more than two consecutive years." N.J.S.A. 43:15A-7(e); see also N.J.S.A. 43:15A-41(a) (a member "shall cease to be a member two years from the date he discontinued service as an eligible employee"). Under this statute, petitioner's membership in PERS expired June 30, 2019, two years after she stopped her State employment and PERS contributions.

Although petitioner contends Edison was responsible for the interfund transfer, the regulations indicate she is responsible for filing the application. N.J.AC. 17:3-7.1 governs interfund transfer application from one State-administered retirement system to another. It specifically provides, "[a] member desiring to transfer service credit and contributions from one State-administered defined benefit retirement system to another, must file an 'Application for Interfund Transfer.'" N.J.A.C. 17:3-7.1(b)(1) (emphasis added). N.J.A.C. 17:3-7.1(b) provides that a member is eligible to transfer membership provided the membership has not expired. Moreover, "[t]he member must apply to transfer this service no more than two years from the date of the last contribution in the PERS . . . ." N.J.A.C. 17:3-7.1(b)(5)(ii).

The regulations are unambiguous and clearly state a member (not employer) desiring to make an interfund transfer must apply within two years of their last contribution and is not eligible for an interfund transfer once their account is inactive. While petitioner filled out her application on July 6, 2017, the Division did not receive it until September 2020. Because three years had passed since petitioner's last contribution on June 30, 2017, her account had become inactive, and she could no longer transfer her PERS service credit to TPAF.

Petitioner's argument she was unaware of these requirements because the Division did not advise her that her PERS account would expire after two years from her last contribution is unpersuasive. First, petitioner has failed to identify any legal authority that required the Division to notify her regarding her pension options, and we decline to read a notice requirement into the statute.[3] "[P]ension statutes should be liberally construed and administered in favor of the persons intended to be benefited." Francois v. Bd. of Trs., 415 N.J. Super. 335, 349 (App. Div. 2010) (quoting Klumb v. Bd. of Educ. of Manalapan-Englishtown Reg'l High Sch. Dist., 199 N.J. 14, 34 (2009)). However, "an employee has only such rights and benefits as are based upon and within the scope of the provisions of the statute." Ibid. (quoting Casale v. Pension Comm'n of the Emps. Ret. Sys. of Newark, 78 N.J. Super. 38, 40 (Law Div. 1963)). Furthermore, unawareness of the statute governing regulations is not a valid explanation. "As New Jersey courts have long recognized, '[i]gnorance of the law furnishes no excuse to a

[3] The Legislature and the Division are well aware of how to require notice, and created such requirements elsewhere in PERS, but did not create a notice requirement in this situation. See N.J.S.A. 43:15A-50(a) (requiring the Division to give notice to a member's spouses if the member identifies their spouse in filling out paperwork that leaves the spouse with no refund benefit at the member's death); N.J.A.C. 17:2-3.1 (requiring the Division to send members an initial written notice advising the member to prove insurability for purposes of contributory insurance).

person either for a breach or for an omission of a duty[.]'" Kalogeras v. 239 Broad Ave., L.L.C., 202 N.J. 349, 367 (2010) (alterations in original) (quoting Bowen v. Pursel, 109 N.J. Eq. 67, 73 (E. & A. 1931)).

Petitioner also references the TPAF Member Guidebook in support of her argument that employers are responsible for filing the applications with the Division. The Guidebook, in pertinent part, reads:

> [i]f you are eligible and interested in transferring your membership account, an online Enrollment Application for the new retirement system and an Application for Interfund Transfer should be submitted by your employer to the NJDPB. Applications must be received within [thirty] days of the date you meet the eligibility requirements of the new retirement system.

Petitioner's argument is unavailing for two reasons. First, the TPAF Member Guidebook does not supersede the language of an unambiguous statute. In fact, the foreword of the Guidebook explicitly states, "if there is a conflict with the statutes governing the plan or regulations implementing the statutes, the statutes and regulations will take precedence." The statute here is very clear in stating, "[a] member desiring to transfer service credit and contributions from one State-administered defined benefit retirement system to another must file an 'Application for Interfund Transfer.'" N.J.A.C. 17:3-7.1(b)(1) (emphasis added). Therefore, pursuant to this governing statute, it is the member, not the employer,

who is ultimately responsible for ensuring the application is filed with the Division.

Second, the TPAF Member Guidebook would not be controlling on this issue in any event. Two paragraphs above the paragraph petitioner relies on for her argument is language stating, "a TPAF member who meets the criteria listed above and transfers to a position covered by the PERS is eligible to maintain his/her original TPAF membership tier status under the PERS account." Petitioner's transfer was from PERS to TPAF, not the other way around. Therefore, the Guidebook petitioner relies on does not apply here.

Petitioner also argues the Board's application of the two-year limitation is inequitable under the circumstances, because Edison was negligent in its handling of her application. She relies on Steinmann v. New Jersey Department of Treasury, Division of Pensions, Teachers' Pension and Annuity Fund, contending the statute should be relaxed in this situation. 116 N.J. 564 (1989). Petitioner's reliance on Steinmann is unavailing. Steinmann involved a teacher who applied for retirement benefits after twenty-five years of service. 116 N.J. at 566. She fell while teaching a class and suffered injuries, which prompted her to apply for retirement. Ibid. Accordingly, Steinmann was eligible for early or deferred retirement based on her twenty-five years of service. Id. at 568. In

addition, she could have applied for accidental-disability benefits, and if rejected, she could have qualified for ordinary-disability benefits. Ibid. Her options were further complicated by the fact that a workers' compensation award reduced accidental and ordinary-disability benefits and, therefore, the calculation had to await an adjudication of the workers' compensation claim. Ibid.

Importantly, the Court determined the Board did not inform Steinmann that ordinary-disability benefits would be subject to an offset by a workers' compensation award or that she could convert to early retirement and thereby avoid any offset. Id. at 570. The Court therefore reversed the Board's decision denying Steinmann's conversion request. Id. at 578. The Court determined Steinmann could not have made an informed choice about her retirement until she knew the amount of her workers' compensation award. Id. at 575. Specifically, the Court noted, "it was the Board's regulation, combined with its failure to provide . . . Steinmann with information material to her decision, that prevented the petitioner from selecting her retirement option with adequate knowledge of the relevant facts." Id. at 576.

The facts in Steinmann are distinguishable from petitioner's case. The plaintiff in Steinmann had a pending workers' compensation claim at the time

she applied for her pension and the Board did not advise her this impacted her selection. Id. at 570. Here, petitioner had no contact with the Division, and there is no allegation the Division made any representations—let alone misrepresentations—that caused her not to file the interfund transfer request in a timely manner. Steinmann was bottomed on the inherent power of an administrative agency, in the absence of legislative restriction, to reopen or to modify and to rehear orders previously entered by it. Here, petitioner does not seek to reopen a decision by the Division. Instead, she seeks to avoid the legislative restriction that PERS membership expires two years after an employee leaves State service and the regulatory restriction on interfund transfers after the expiration of that two-year period.

Petitioner relies on Zigmont v. Board of Trustees, Teachers' Pension & Annuity Fund, for the proposition the Board should relax statutory and administrative deadlines pursuant to equitable considerations. 91 N.J. 580 (1983). In Zigmont, our Supreme Court interpreted N.J.S.A. 18A:66-8 as permitting a teacher to purchase pension credit beyond one year after her return to employment from maternity leave, even though the statute required teachers in such positions to make the purchase within one year of returning to service. The Court noted the "interpretive difficulties" of the statutory provision

governing Zigmont' s application and ultimately remanded the matter for further proceedings to determine if the petitioner was entitled to a waiver. Id. at 583-84.

Petitioner further relies on Handelson v. Board of Trustees, Public Employees' Retirement System, which involved the Board rejecting a petitioner's application to purchase credit for prior temporary service. 193 N.J. Super. 223 (App. Div. 1984). There, we addressed whether the PERS had the power to relax N.J.S.A. 43:15A-11 to allow the petitioner to purchase credit when it was filed out of time. Notably, we noted the PERS "itself [did] not strictly construe" the statute. Id. at 226. Moreover, we observed the "nonliteral" interpretation of the statute had been codified in the regulations. Id. at 227.

Zigmont and Handelson are distinguishable from the facts here. Unlike Zigmont, the Board was not addressing an ambiguous statute. Moreover, unlike Handelson, there is no indication the Board had not strictly construed N.J.S.A. 43:15A-7(e) or that its nonliteral interpretations of the statute had been adopted into the regulations. In Handelson we noted, "we do not intend to imply that the time limitations of [the statute] may be freely ignored." 193 N.J. Super. at 228. N.J.S.A. 43:15A-7(e) and N.J.A.C. 17:3-7.1 both clearly express the time limitations and eligibility requirements for interfund transfers. Zigmont and

Handelson addressed facts that were not analogous to the petitioner's circumstances in the case at bar.

Petitioner contends the Board denied her due process by rejecting her request for a hearing before an administrative law judge. We are not persuaded.

> The fact that a proposed administrative rule or regulation will have a substantial impact on a particular entity does not, standing alone, require a trial type hearing as a matter of due process. Only where the proposed administrative action is based on disputed adjudicative facts is an evidentiary hearing mandated.
>
> [Bally Mfg. Corp. v. N.J. Casino Control Comm'n, 85 N.J. 325, 334 (1981) (citing Cunningham v. Dep't of Civ. Serv., 69 N.J. 13, 24-25 (1975)).]

Here, there are no disputed facts that require a hearing. The Board acknowledged petitioner's argument she filled out her portion of the application in 2017 and handed it over to Edison. It also accepted as a fact Edison's employees assured petitioner she had done everything she needed to do for the process. Petitioner requested a hearing to address these facts. Given the Board accepted these allegations as true, there are no material facts in dispute that would make this a contested case. Accordingly, the Board did not deny petitioner her due process rights by denying her request for a hearing.

To the extent we have not otherwise addressed petitioner's arguments, they are without sufficient merit to warrant discussion in a written 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