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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0175-21**

**IN THE MATTER OF S.L.,
CITY OF WILDWOOD.**

Submitted November 29, 2022 – Decided January 19, 2023

Before Judges Summers and Berdote Byrne.

On appeal from the New Jersey Civil Service Commission, Docket No. 2021-655.

The Sampat Law Firm, LLC, attorneys for appellant (Thomas A. Cushane, on the briefs).

Parker McCay, PA, attorneys for respondent City of Wildwood (Alicia D'Anella and Emily A. Schrank, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent New Jersey Civil Service Commission (Pamela N. Ullman, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

Susan Lashley is a former Wildwood police officer who appeals from a final agency decision of the Civil Service Commission (CSC) denying her automatic reinstatement based on the finding she voluntarily resigned her position after submitting an ordinary disability retirement application. We affirm.

In 2003, Lashley began working as a police officer in Wildwood (City). In July 2018, Lashley began an approved extended medical leave, which ultimately lasted until January 2020. Although Lashley initially began her medical leave because of her pregnancy, she continued her medical leave because of chronic pain following the birth of her child. Her chronic pain evaded diagnosis despite her tireless efforts and consultations with various medical specialists. The pain also rendered her unable to return to work.

During her period of extended medical leave, Lashley kept her lieutenant apprised of her condition by email until he suggested she meet personally with him and other supervisors. Lashley met twice with her supervisors, including her police chief, deputy police chief, lieutenant, and the City's employment attorney and human resources director. The meetings occurred in February and October of 2019. The agendas for both meetings included Lashley apprising her supervisors of her current condition and the prospect of her return to work. At

both meetings, the City's supervisors advised Lashley in the event she was unable to return to work after exhausting her leave, she would have to file for ordinary disability retirement, or the City would do so on her behalf.

We note here an unexplained discrepancy in the record. At the February 2019 meeting, the City advised Lashley if she was unable to return to work, she would have to file for ordinary disability retirement by July 1, 2019. Yet July 1, 2019, elapsed without either party filing for Lashley's ordinary disability retirement. The parties met again in October 2019, where Lashley was advised if she had not recovered by January 1, 2020, she would have to file for ordinary disability retirement. At both meetings, the City advised Lashley to seek or retain counsel.

After meeting in October 2019, Lashley retained counsel to assist her with the pension application process. The City did not approve Lashley for medical leave beyond January 1, 2020. On December 18, 2019, Lashley submitted an application for ordinary disability retirement benefits.

The record is devoid of any indicia about the ultimate disposition of her ordinary disability retirement application.¹ There are no challenges to her PFRS

¹ Ordinary disability is available to a police officer under 55 years of age who has four or more years of service and who is permanently mentally or physically

retirement application and its ultimate disposition on this appeal, as Lashley did not preserve or append any final PFRS Board decision in her notice of appeal, case information statement, or appendix. See generally R. 2:5-1. Her PFRS application was still pending when the CSC rendered its final agency determination.

In January 2020, Lashley returned her department issued equipment and was paid out the balance of her accrued leave time. Her healthcare benefits ceased in February 2020. Lashley noticed a sudden improvement in her condition beginning in April 2020. By August 2020, Lashley attempted to schedule a functional capacity exam for her immediate reinstatement to her prior position. The City denied Lashley's requests.

On November 19, 2020, Lashley filed a letter with the CSC claiming she was removed without process and requesting a hearing with the Office of Administrative Law (OAL). The CSC informed the parties it would treat

incapacitated and unable to perform his or her duties. N.J.S.A. 43:16A-6(1). Those applications are decided by the Board of Trustees of the Police & Firemen's Retirement System (PFRS), which is not a party to this appeal. See Klawitter v. City of Trenton, 395 N.J. Super. 302, 318 (App. Div. 2007) ("In particular, retirements under the PFRS are governed by N.J.A.C. 17:4-6.1 to -6.18.").

Lashley's request as one for interim relief but did not schedule a hearing because there were no material controlling facts in dispute.

On August 6, 2021, the CSC denied Lashley's request in a final administrative action. The CSC determined Lashley unequivocally resigned in good standing pursuant to N.J.A.C. 4A:4-7.10(a). In reaching that determination, the CSC cited Lashley applied in the ordinary course for ordinary disability retirement benefits, she received payout of her accrued leave, and returned all department-issued equipment. The CSC further cited the cessation of her benefits and absence of evidence she was approved for leave beyond January 1, 2020. The CSC found Lashley could not be automatically reinstated from the ordinary disability retirement list pursuant to regulation N.J.A.C. 4-7.12(a)-(b), noting her ordinary disability retirement application was still pending, and further noting the text of the regulation provides reinstatement for employees who had already "been placed disability retirement." The CSC therefore found because Lashley had not been placed on disability retirement, N.J.A.C. 4A:4-7.12, and resigned in good standing pursuant to N.J.A.C. 4A:4-7.10(a), she was eligible to be placed only on a police officer list for eventual reinstatement by the appointing authority.

Lashley appealed. She argues the CSC improperly characterized her "retirement" as a "resignation." Lashley also argues she was wrongfully terminated without notice and a hearing, and principles of estoppel mandate her immediate reinstatement.

Our standard of review is limited, and reversal is warranted only if an agency decision is "arbitrary, capricious, or unreasonable, or if it is not supported by substantial credible evidence in the record as a whole." P.F. v. N.J. Div. of Dev. Disabilities, 139 N.J. 522, 529-30 (1995). There is a presumption the agency acted reasonably, which the challenger must rebut. Bergen Pines Cnty. Hosp. v. N.J. Dep't of Human Servs., 96 N.J. 456, 477 (1984).

A reviewing court cannot substitute its own judgment in place of a final agency determination merely because it would have reached a different result. In re Stallworth, 208 N.J. 182, 194, (2011) (citing In re Carter, 191 N.J. 474, 483 (2007)). Rather, when "the Appellate Division is satisfied after its review that the evidence and the inferences to be drawn therefrom support the agency head's decision, then it must affirm even if the court feels that it would have reached a different result itself." Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 588 (1988).

We conclude the final agency determination is supported by substantial credible evidence. The CSC considered the evidentiary record, and many of the same arguments Lashley reprises on appeal, in determining she voluntarily and irrevocably resigned while her retirement application was still pending. We agree substantially for the reasons set forth in the CSC decision. We add only the following comments for issues Lashley raises for the first time on appeal, and note Lashley's summation and characterization of the events is belied by the record.

Lashley contends for the first time on appeal the CSC erred in characterizing her retirement as a resignation and argues alternatively the CSC erred by failing to categorize the events as a wrongful termination. She argues estoppel mandates her reinstatement, and her facts must be construed as true because the City failed to submit a sworn affidavit to the CSC.

We affirm the CSC findings regarding Lashley's resignation. We note employees have statutory and common law redress for wrongful termination, such as the Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1 to -14, and the Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49,² and

² These examples are provided for illustrative purposes, not to suggest merit.

common-law Pierce³ claims. Lashley did not argue or brief any statutory or common law authority, either to the CSC or on appeal, to support her contention she was wrongfully or constructively discharged.

Lashley cites the disciplinary statutes, N.J.S.A. 40A:14-147 to -151, and civil service regulations N.J.S.A. 11A:2-6, to claim she was entitled to notice and a hearing. These arguments are also belied by the record. There is no evidence in this record the City took any disciplinary measure against Lashley.

Lashley's arguments regarding estoppel similarly fail because the uncontroverted evidence demonstrates as early as February 2019, the City cautioned her about the expiration of her leave and advised her to seek counsel.

To the extent we have not addressed them, any further arguments raised on appeal are without sufficient merit to warrant discussion. R. 2:11-3(e)(1)(D).

Affirmed.

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



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³ Pierce v. Ortho Pharm. Corp., 84 N.J. 68 (1980).