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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0486-21**

**IN THE MATTER OF
JAMES HARTNETT,
PENNSAUKEN.**

Submitted December 20, 2022 – Decided February 13, 2023

Before Judges Berdote Byrne and Fisher.

On appeal from the New Jersey Civil Service Commission, Docket No. 2021-1652.

Attorneys Hartman, Chartered, attorneys for appellant James Hartnett (Katherine D. Hartman and Mark A. Gulbranson, Jr., on the briefs).

Brown & Connery, LLP, attorneys for respondent Township of Pennsauken (Michael J. DiPiero and Jose A. Calves, 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

James Hartnett, a former Pennsauken Township police captain, appeals a final agency decision of the Civil Service Commission (CSC) denying his automatic reinstatement request, claiming, for the first time on appeal, the CSC improperly asserted jurisdiction in finding he voluntarily resigned his position. We disagree and affirm the decision of the CSC.

On April 14, 2021, Hartnett expressed his intent to retire in an email to his police chief. Hartnett stated he had submitted his retirement application, worked his last day, and arranged to return all department-issued equipment. Hartnett also relayed he would be taking a leave of absence until May 1, 2021, at which date his retirement would become effective.

The next day, April 15, 2021, Hartnett sent an email to the municipal administrator, expressing his intent to rescind his retirement application. On April 19, 2021, Hartnett emailed his police chief stating "after taking a few days . . . I have decided to cancel this [retirement] application." That same day, the police chief sent a letter to the public safety director explaining Hartnett intended to rescind his application. In the letter, the police chief explained Hartnett's duties were expansive, and there was no one to fill the position because the announced retirement was sudden, unexpected, and the Department

had not engaged in much succession planning. Hartnett requested a meeting with the public safety director.

On April 26, 2021, the public safety director sent a memorandum indicating the Township viewed his email as a resignation in accordance with Civil Service Regulations and denying his request to rescind it. The memo indicated Hartnett's resignation would become effective April 30, 2021,¹ as originally noticed, and advised Hartnett to engage with the finance office and human resources to complete necessary documentation.

On May 3, 2021, Hartnett filed an application for interim relief with the CSC. On July 2, 2021, the CSC denied his petition. The CSC concluded Hartnett resigned in good standing pursuant to N.J.A.C. 4A:2-6.1(a) upon sending the April 14, 2021, email. On July 8, 2021, Hartnett timely filed a motion to reconsider the CSC final determination, alleging the CSC failed to fully consider arguments he raised in a reply brief. On September 7, 2021, the CSC denied reconsideration, stating it had considered arguments Hartnett raised in reply, but it considered them not relevant to its determination.

¹ Although Hartnett's original April 14, 2021, email stated his retirement would become effective May 1, 2021, he stated he had already worked his last day and was taking a leave of absence until his retirement; the leave of absence would have concluded April 30, 2021.

This appeal followed.

We recognize "[o]ur review of administrative agency action is limited." Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011). Reviewing courts presume the validity of the "administrative agency's exercise of its statutorily delegated responsibilities." Lavezzi v. State, 219 N.J. 163, 171 (2014). For those reasons, we will not overturn an agency decision "unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Stein v. Dep't of Law & Pub. Safety, 458 N.J. Super. 91, 99 (App. Div. 2019) (quoting J.B. v. N.J. State Parole Bd., 229 N.J. 21, 43 (2017)).

A strong presumption of reasonableness attaches to an agency decision. In re Carroll, 339 N.J. Super. 429, 437 (App. Div. 2001). We will not overturn an agency decision merely because we would have come to a different conclusion. In re Stallworth, 208 N.J. 182, 194 (2011). 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 are not, however, bound by the "agency's interpretation of a statute or its determination

of a strictly legal issue," which we review de novo. Richardson v. Bd. of Trs., Police and Firemen's Ret. Sys., 192 N.J. 189, 196 (2007).

Hartnett's sole contention, raised for the first time on appeal, is that the CSC improperly characterized his "retirement" as a "resignation" and improperly asserted jurisdiction over the matter. Hartnett contends he "retired" as defined in the PFRS enabling statute, N.J.S.A. 43:16A-1(16), but did not "resign" pursuant to civil service regulation, N.J.A.C. 4A:2-6.1. Hartnett asserts the CSC has jurisdiction over only "voluntary resignations excluding retirement applications," and the CSC improperly mischaracterized Hartnett's actions as a "resignation in good standing" to foist jurisdiction upon itself. Hartnett also urges this panel to hold N.J.A.C. 17:4-6.3(a), which allows a member to "withdraw[,] cancel[,] or change an application for retirement at any time before the member's retirement allowance becomes due and payable . . ." stands in direct conflict with N.J.A.C. 4A:2-6.1, which allows the appointing authority discretion when accepting or rejecting a resignation.

For purposes of this analysis, we do not address the puzzling procedural posture giving rise to this appeal, namely Hartnett seeking interim relief from the CSC before challenging its jurisdiction when he received an unfavorable

result. Instead, we conclude his arguments and interpretation of the statutory and regulatory scheme fail.

We begin with the plain text of the statutes and regulations which Hartnett argues are in direct conflict. N.J.A.C. 4A:2-6.1(a)-(c) provides in full:

- (a) Any permanent employee in the career service may resign in good standing by giving the appointing authority at least 14 days written or verbal notice, unless the appointing authority consents to a shorter notice.
- (b) The resignation shall be considered accepted by the appointing authority upon receipt of the notice of resignation.
- (c) A request to rescind the resignation prior to its effective date may be consented to by the appointing authority.

Hartnett contends he did not "resign" but rather "retired" pursuant to N.J.S.A. 43:16A-1(16), which provides, "'Retirement' shall mean the termination of the member's active service with a retirement allowance granted and paid under the provisions of this act." Hartnett cites Klawitter v. City of Trenton, 395 N.J. Super. 302 (App. Div. 2007) in support of his proposition the police and firemen's retirement system is at odds with the civil service employment regulations. In so arguing, he misstates the holding of Klawitter.

In Klawitter, we recognized "[t]he Legislature has enacted a comprehensive statutory scheme governing the pension rights of police and fire

persons." Id. at 318 (quoting N. Arlington PBA # 95 v. Borough of N. Arlington, 221 N.J. Super. 520, 521 (App. Div. 1987)). We also noted the following regarding the statutory scheme governing retirements:

That scheme is found at N.J.S.A. 43:16A-1 to -68, under which, pursuant to N.J.S.A. 43:16A-2, the Police and Firemen's Retirement System (PFRS) was established in the Division of Pensions of the Department of the Treasury. In turn, pursuant to N.J.S.A. 43:16A-13(7), the Board of Trustees of the PFRS adopted regulations applicable to the PFRS. See N.J.A.C. 17:4-1.1 to -7.3. In particular, retirements under the PFRS are governed by N.J.A.C. 17:4-6.1 to -6.18.

[Ibid.]

Klawitter recognized and affirmed the distinction between retirements, implicating the pension jurisdiction of the PFRS Board of Trustees, and resignations, implicating the re-employment jurisdiction of the then-existing Department of Personnel. Id. at 319. Specifically, we noted:

[T]he statutory and regulatory schemes governing retirements under PFRS are silent regarding the right to reinstatement or reemployment if an employee cancels his or her retirement. Thus, it would not be inconsistent with the statutory or regulatory scheme for the state or a municipality to limit a police officer's reemployment rights in the context of a canceled retirement.

[Ibid.]

In Klawitter, we interpreted the Civil Service Act, N.J.S.A. 11A:1-1 to 11A:12-6, which then-contained the enabling act for the Department of Personnel, as accomplishing the salutary purpose of delegating employment and reemployment regulation of civil service employees to the agency charged with promulgating rules in N.J.A.C. 4A:1-1.1. Id. at 319-20 (discussing declaration of policy contained in N.J.S.A. 11A:1-2 and implementation of regulations in N.J.A.C. 4A:1-1.1). Klawitter held "although [plaintiff] was entitled to cancel his retirement, his reemployment rights were governed by the Civil Service Act, and the implementing regulations of the Department of Personnel." Id. at 323.

That holding effectuated the purpose of the Civil Service Act "to ensure efficient public service for state, county, and municipal government." Id. at 319-20 (quoting Commc'ns Workers of Am. v. N.J. Dep't of Pers., 154 N.J. 121, 126 (1998)). Moreover, we remarked efficient public service was promoted by the agency, which "provide[d] a fair balance between managerial needs and employee protections for the effective delivery of public services consistent with Title 11A, New Jersey Statutes." Id. at 320 (quoting N.J.A.C. 4A:1-1.1).

We share in the reasoning enunciated by Klawitter, "in general, courts strive to reconcile and harmonize different statutes and avoid finding a direct and irreconcilable conflict between them." Id. at 322 (citing Saint Peter's Univ.

Hosp. v. Lacy, 185 N.J. 1, 14 (2005)). We observe since Klawitter was decided in 2007, the Department of Personnel was dissolved, and the Civil Service Commission took its place. Compare L. 1986, c. 112 (establishing a "Department of Personnel") with L. 2008, c. 29, §1 ("an act abolishing the Department of Personnel . . . and transferring its functions, powers, and duties," to the "Civil Service Commission."). See also N.J.A.C. 4A:1-1.1.

We extend the holding in Klawitter to apply here: although Hartnett undoubtedly had a right to cancel his retirement application for his pension, his actions were consistent with resignation, and his employment and reemployment rights were then subject to CSC regulation. See Klawitter, 395 N.J. Super. at 323. We find the CSC did not abuse discretion in asserting jurisdiction over the petition before it and agree with the agency determination that petitioner resigned.

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.



CLERK OF THE APPELLATE DIVISION