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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1746-20**

EDLYN E. SMITH, as
executor of the estate of
DR. EMERSON E. SMITH,
JR.,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES,
TEACHERS' PENSION AND
ANNUITY FUND,¹

Respondent-Respondent.

Argued January 10, 2023 – Decided January 27, 2023

Before Judges Whipple, Smith, and Marczyk.

On appeal from the Board of Trustees of the Teachers'
Pension and Annuity Fund, Department of the
Treasury.

¹ Improperly pled in appellate documents as Edlyn E. Smith v. Department of the Treasury, Division of Pension and Benefits.

Keri Reid McNally argued the cause for appellant (Mason, Griffin & Pierson, PC, attorneys; Robert J. Davidow, on the briefs).

Jeffrey D. Padgett, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Jeffrey D. Padgett, on the brief).

PER CURIAM

Petitioner Edlyn E. Smith appeals from a January 21, 2021 final administrative determination (FAD) of the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF). The FAD denied petitioner's request to reopen his father, Dr. Emerson E. Smith, Jr.'s retirement application to remove his father's ex-wife, Peggy Smith,² as the pension survivor beneficiary. We affirm.

I.

Petitioner's father, Emerson, retired from the Trenton City Board of Education in 1988. At the time of his retirement, he applied for pension benefits

² We use the family members' first names for the balance of this decision for ease of reference. We also refer to Edlyn as "petitioner." We intend no disrespect.

and indicated his then-wife, Peggy, would be his survivor beneficiary designee.³ The Board approved Emerson's retirement on January 5, 1989, and notified him the "beneficiary could not be changed or replaced" after thirty days pursuant to N.J.A.C. 17:3-6.2 and -6.3.

On November 14, 1997—nearly eight years after Emerson filed his beneficiary designation—he wrote to the Division of Pension and Benefits (Division) indicating he would like to change the beneficiary for his pension and group life insurance policy because he and Peggy were getting divorced. On December 12, 1997, the Division advised Emerson he was able to change his group life insurance beneficiary, but he was not able to change his monthly pension survivor beneficiary. Emerson then completed a Designation of Beneficiary form electing Edlyn as the sole group life insurance beneficiary on December 18, 1997.

Emerson and Peggy entered into a property settlement agreement on January 30, 1999, whereby Peggy agreed to waive and release "any interest she may have in any of [Emerson's] retirement plans." She further agreed to

³ Emerson chose the "Option Three" payment plan, which provided that, upon his death, his beneficiary would receive one-half of his retirement allowance each month for the course of her life, pursuant to N.J.S.A. 18A-66:47. Emerson also designated Edlyn and Peggy as co-primary beneficiaries of his TPAF group life insurance benefit.

"permanently and irrevocably assign and direct the benefit and payment of this survivor annuity directly to the parties' son, Edlyn." Additionally, Peggy executed a power of attorney appointing Edlyn as an "irrevocable attorney-in-fact . . . to . . . perform all acts . . . in the course of the . . . collection of [pension] benefits . . . [so benefits] that should otherwise inure to [Peggy] shall irrevocably belong to . . . Edlyn . . . as his sole property."

On October 17, 2014, Emerson again wrote to the Division requesting a change in the pension beneficiary. The Division responded on October 21, 2014, advising:

As previously stated, at the time of your retirement you chose an option that allowed you to designate Peggy Smith to receive a monthly pension allowance equal to [fifty percent] of your monthly pension allowance upon your passing. No one other than Peggy Smith is entitled to receive this monthly pension allowance. If she wishes to waive her right to it, she may do so during the claims process (after [you] ha[ve] passed away and the monthly benefit is quoted to her by the Division). However, if she does waive her right to the monthly pension allowance, no one else is entitled to receive it as the benefit is non-transferable.

Edlyn notified the Division Emerson died on June 27, 2019,⁴ and the Division sent forms to both Edlyn and Peggy so they could receive their benefits.

⁴ Emerson actually died on April 25, 2019.

On July 8, 2019, Edlyn contested Peggy's entitlement to the pension funds, and forwarded the 1999 Virginia divorce agreement to the Division. On July 25, 2019, the Division notified petitioner that Peggy would continue to receive the pension payments, and the designation Emerson made had been irrevocable since the pension was due and payable in 1999.

On August 9, 2019, petitioner yet again wrote to the Division contesting the beneficiary designation. On August 12, the Division denied petitioner's request. Petitioner subsequently appealed to the Board in August 2019. On November 14, 2019, the Board denied petitioner's request to change Emerson's beneficiary.

At its January 14, 2021 meeting, the Board noted petitioner's additional personal statements. The Board issued its FAD on January 21, 2021. The Board, relying on N.J.S.A. 18A:66-47, N.J.A.C. 17:3-6.2, and N.J.A.C. 17:3-6.3, noted there was a thirty-day deadline to change the beneficiary designation, and the time period expired more than thirty years ago. The Board further commented, regardless of the Virginia property settlement agreement, the Board "has no authority to amend [decedent's] retirement option after his [s]ervice retirement became due and payable in February 1989." Lastly, the Board determined there was no good cause to change the designation because decedent never raised this

issue during his lifetime, and equitable concerns did not require such changes to be made thirty years later.

Thereafter, petitioner filed this appeal.

Petitioner raises the following points on appeal:

POINT ONE:

THE BOARD'S DECISION SHOULD BE REVERSED AS IT FAILED TO ADHERE TO THE GOOD CAUSE STANDARD THAT HAS BEEN MET DUE TO THE TPAF'S LONGSTANDING FAILURE TO FULLY INFORM DR. SMITH OR HIS COUNSEL OF THE ADMINISTRATIVE PROCESS AVAILABLE TO HIM TO REOPEN HIS RETIREMENT APPLICATION.

POINT TWO:

THE BOARD'S DECISION SHOULD BE REVERSED AS IT IGNORES SEVERAL SIGNIFICANT RELEVANT FACTORS AND THE RECORD DOES NOT CONTAIN SUBSTANTIAL EVIDENCE TO SUPPORT THE FINDINGS UPON WHICH THEIR DECISION WAS BASED.

More particularly, petitioner relies on In re Van Orden for the proposition the Board has the inherent power upon a showing of good cause to reopen its proceedings to approve a change in beneficiary designation when necessary to serve the ends of essential justice and the policy of the law. 383 N.J. Super. 410, 419 (App. Div. 2006). Petitioner further relies on Steinmann v. State,

Department of Treasury, Division of Pensions, Teachers' Pension & Annuity Fund, contending the good cause standard should be sufficiently flexible to accommodate the legislative purpose of affording public employees the right to make informed choices among statutorily authorized retirement options. 116 N.J. 564, 576-77 (1989). Petitioner further argues the TPAF had an obligation to advise Emerson regarding the process to change his beneficiary. Petitioner asserts Emerson, despite his efforts to change his pension designation prior to his death, was not given the opportunity to establish the equities weighed in favor of him being permitted to change his designation to name Edlyn. Finally, petitioner asserts the Board did not give any weight to the Property Settlement Agreement and Power of Attorney from Virginia.

II.

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, City of Newark v. National Resource Council in Department of Environmental Protection, 82 N.J. 530, 539 (1980), and defer to its fact-finding. 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 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 Law & Pub. Safety, 64 N.J. 85, 93 (1973).

III.

Under N.J.S.A. 18A:66-47, Emerson had nine options from which to choose how to receive his pension payments, and whether (and how) his beneficiary should receive the payments upon his death. He chose "Option Three."⁵

⁵ The statute reads:

At the time of retirement a member shall receive
benefits in a retirement allowance payable throughout

The TPAF has adopted regulations to implement the pension and retirement system in accordance with N.J.S.A. 18A:66-47. See N.J.A.C. 17:3-1.1 to 17:3-7.2. N.J.A.C. 17:3-6.1 provides:

(d) A member shall, on the retirement application, select one of nine ways (options) to receive retirement benefits. Each option provides the member with a lifetime monthly retirement benefit. Once a retirement benefit becomes due and payable as defined by N.J.A.C. 17:3-6.2, the option cannot be changed. Except under the Maximum Option and Option 1, once a member designates a pension beneficiary, that beneficiary cannot be changed.⁶

[N.J.A.C. 17:3-6.1 (emphasis added).]

life, or the member may on retirement elect to receive the actuarial equivalent of the member's retirement allowance, in a lesser retirement allowance payable throughout life, with the provision that:

. . . .

Option 3. Upon the member's death, one-half of the member's retirement allowance shall be continued throughout the life of and paid to such person as the member shall nominate by written designation duly acknowledged and filed with the retirement system at the time of retirement.

[N.J.S.A. 18A:66-47 (emphasis added).]

⁶ Option 1 is not applicable in this case.

Under N.J.A.C. 17:3-6.2, a retirement benefit becomes "due and payable . . . [thirty] days after the date the Board approved the application for retirement or [thirty] days after the date of retirement, whichever is later." N.J.A.C. 17:3-6.3 states:

(a) Except as provided by N.J.A.C. 17:3-6.1 and 6.7, a member shall have the right to withdraw, cancel, or change an application for retirement at any time before the member's retirement allowance becomes due and payable by sending a written request signed by the member. Thereafter, the retirement shall stand as approved by the Board.

[(Emphasis added).]

Petitioner's application to amend the pension beneficiary thirty years after Emerson's original selection clearly runs afoul of the regulations. Petitioner contends, however, the Board may honor a request to reopen a pension selection if a member demonstrated good cause.⁷ While we agree the Board has the power to reopen proceedings in certain limited circumstances, petitioner has not

⁷ Petitioner at times tries to frame the issue as simply being a request for the Board to change the address where the pension check is sent as opposed to a request to change the actual pension beneficiary. This argument is unavailing. It is not simply changing an address as the Board would also have to change the name of the individual to whom the check is addressed. That is, it would fundamentally result in a change in the pension beneficiary contrary to N.J.A.C. 17:3-6.1.

established good cause, and the cases relied upon by petitioner are distinguishable.

In Van Orden, the petitioner filed his application for retirement on April 10, 2003, seeking a retirement allowance based on an anticipated retirement from service as of July 1, 2003. 383 N.J. Super. at 413. Significantly, however, at the time he applied for retirement, he was engaged in matrimonial litigation. Ibid. In his initial application, he selected a payment option that would provide him with the maximum benefits during his life, but no payments to his wife in the event of his death. Id. at 413-14. The petitioner's wife filed a motion in the Family Part arguing the petitioner improperly changed his pension designation, and the Family Part judge agreed. Ibid. The court ordered the petitioner to file an amended application and to name his wife as a beneficiary. Id. at 415. The petitioner complied with the court order and filed an amended application.

The final judgment of divorce was entered on February 3, 2004, wherein the petitioner's wife relinquished all interest in the petitioner's pension. Ibid. The petitioner sought to revive his original pension selection on February 10, 2004, which would have provided him with the maximum benefit along with no death benefit being provided to his beneficiary. Ibid. The Board denied the

petitioner's application because he did not request the change within the requisite time period pursuant to N.J.A.C. 17:2-6.3. Id. at 416.

We reversed and noted the Board was mistaken when it concluded it was powerless to consider the petitioner's unique circumstances to determine whether there was good cause to reopen or modify the petitioner's pension option. Id. at 418. Moreover, because the Board did not consider the equities presented by the petitioner's unique circumstances, we determined the Board erred as a matter of law. Id. at 419. We noted the petitioner in Van Orden presented a compelling argument for reopening the proceedings because he was ordered by a judge to change his pension selection during the course of the divorce proceeding. Id. at 421. "[Petitioner] dutifully followed the court's command and made the change, protecting his wife's potential interest." Ibid. When the petitioner's wife later relinquished her interest, the petitioner was unable to undo the "court-mandated selection" to reinstate his original pension choice. Id. at 422.

The facts before us here are far afield from Van Orden. The TPAF provided Emerson documents concerning the irrevocability of his pension beneficiary selection. Although Emerson's divorce subsequent to his pension selection is unfortunate, it is not the type of compelling or unique circumstance

we contemplated in Van Orden. The petitioner in Van Orden was forced by the court to change his pension selection from his original choice. Emerson was not compelled in any manner to change his pension selection, and when he attempted to do so, it was many years after he received he pension. Accordingly, we find no merit in petitioner's reliance on that case.

Similarly, 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 a workers' compensation award reduced the accidental- and ordinary-disability benefits and, therefore, the calculation had to await an adjudication of the workers' compensation claim. Ibid.

Notably, the Court determined the Board did not inform Steinmann that any ordinary-disability benefits she received would be subject to an offset by a workers' compensation award or that she could avoid this offset by simply

converting to early retirement. 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 petitioner from selecting her retirement option with adequate knowledge of the relevant facts." Id. at 576.

The facts in Steinmann are also distinguishable from the case before us. The petitioner in Steinmann had a pending workers' compensation claim at the time she applied for her pension, and the Board did not tell her this impacted her selection. Here, decedent did not receive inaccurate information from the Board and only sought to change his pension options because of life circumstances occurring long after his pension selection.

The cases discussed above, in which our courts have directed the Board to allow a petitioner to change their pension options, concerned unusual circumstances involving the initial pension selection. Petitioner's claims here do not implicate the same principles articulated in those cases so as to establish good cause. The "unique and individual circumstances" contemplated by Van

Orden and Steinmann, where the Board was required to reopen the pension option selection, involved issues surrounding the pension selection process itself. However, they did not include personal circumstances or hardships, no matter how unfortunate, that occurred years after the pension selection and that had nothing to do with the original selection of the pension beneficiary. That is, the distinguishing factor in these cases is that they all involved issues the petitioners encountered at or around the time of their initial pension selection, unlike Emerson here.⁸

Lastly, Edlyn is involved in litigation with Peggy in Virginia seeking to enforce the Property Settlement Agreement and Power of Attorney discussed above. We have been advised that case is on appeal. Virginia is the proper forum for that issue to be addressed. If petitioner is successful in enforcing the agreement, the Virginia courts will be in a position to ensure Peggy's compliance without changing Emerson's pension beneficiary selection in New Jersey.

For the reasons noted above, we conclude the Board's decision was not arbitrary, capricious, or unreasonable and was supported by the record. To the

⁸ In Van Orden, we noted the circumstances there were "unique and, therefore, unlikely to frequently reoccur." 383 N.J. Super. at 422 n.7. Divorces, like Emerson's, years after a pension beneficiary has been selected, are not nearly so unique or uncommon.

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