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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3181-20**

JOEL MESTRE,

Petitioner-Appellant,

v.

**BOARD OF TRUSTEES,
PUBLIC EMPLOYEES'
RETIREMENT SYSTEM,**

Respondent-Respondent.

Argued on February 15, 2023 – Decided April 6, 2023

Before Judges Currier and Enright.

On appeal from the Board of Trustees of the Public Employees' Retirement System, Department of Treasury, PERS No. xx8280.

Samuel M. Gaylord argued the cause for appellant (Szaferman Lakind Blumstein & Blader, PC, attorneys; Samuel M. Gaylord, on the brief).

Yi Zhu, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Sookie Bae-Park, Assistant Attorney General, of counsel; Yi Zhu, on the brief).

PER CURIAM

Joel Mestre appeals from the June 17, 2021 final agency decision of the Board of Trustees (Board) of the Public Employees' Retirement System (PERS), denying his claim for accidental disability retirement benefits under the "Bill Ricci World Trade Center Rescue, Recovery, and Cleanup Operations Act," L. 2019, c. 157 (Chapter 157). We affirm, substantially for the reasons set forth in the Board's June 17 final decision.

I.

Mestre was employed by the City of Hoboken and enrolled in PERS on September 1, 1993. In August 2001, he was appointed First Deputy Coordinator of Emergency Management in Hoboken. Mestre was deployed through Hoboken's Office of Emergency Management to the site of the World Trade Center (WTC) in the days following the September 11, 2001 terrorist attack, where he assisted in the rescue, recovery, and cleanup operations.¹

In September 2019, Mestre applied for accidental disability retirement benefits under Chapter 157. That Chapter allows certain PERS members or retirees who participated in the rescue, recovery, or cleanup operations at the

¹ According to Mestre's application for accidental disability retirement benefits, he was at the WTC site on September 12, 13, 14 and 15, 2001.

WTC site between September 11 and October 11, 2001 to receive accidental disability retirement benefits. In fact, pursuant to N.J.S.A. 43:15A-43(b)(5), which was amended when Chapter 157 was enacted, two types of PERS members and retirees may qualify for accidental disability retirement benefits under Chapter 157, namely: individuals previously or currently enrolled in PERS because they did not meet the age or medical requirements for enrollment in the Police and Fireman's Retirement System (PFRS)²; or emergency medical technicians (EMTs) who are members or retirees of PERS. N.J.S.A. 43:15A-43(b)(5). An EMT is "a person trained in basic life support services as defined in [N.J.S.A. 26:2K-21] and who is certified by the Department of Health to perform these services." N.J.S.A. 43:15A-43(b)(5).

In October 2019, the Disability Review Section (DRS) of the Division of Pensions and Benefits denied Mestre's request for accidental disability retirement benefits, concluding he was not eligible for benefits under Chapter 157 because he was "not barred from enrollment in . . . [PFRS] due to not meeting an age or medical requirement" nor had he "held an [EMT] position." Subsequently, Mestre provided the DRS with additional documentation to show

² Mestre does not dispute he is ineligible for accidental disability retirement benefits under Chapter 157 based on this section of the statute.

he completed various courses and workshops to be qualified as a first responder. In January 2020, the DRS again denied his request for accidental disability retirement benefits. Eight months later, the Board approved Mestre for ordinary disability retirement benefits, effective June 1, 2020.

In October 2020, Mestre appealed from the denial of accidental disability retirement benefits. The Board denied his appeal in March 2021. Two months later, it denied Mestre's request for an administrative hearing, "[f]inding no genuine issue of material fact in dispute." On June 17, 2021, the Board issued its final agency decision, concluding Mestre was "not eligible to receive [a]ccidental [d]isability retirement benefits under Chapter 157 because he [did] not meet the eligibility requirements under this law." The Board explained "Mestre was not barred from enrollment in the PFRS due to age or medical requirements and he was not an [EMT] as defined by the statute."

II.

On appeal, Mestre argues the Board mistakenly denied his request for accidental disability retirement benefits because it "misinterpreted N.J.S.A. 43:15A-43(b)(5) and Chapter 157." He urges us to "view the pension statute in a . . . less restrictive way [than] the Board and reverse the Board's decision" so that he qualifies as an EMT under N.J.S.A. 43:15A-43(b)(5).

Our review of a state administrative agency's decision is limited. Russo v. Bd. of Trs., Police, 206 N.J. 14, 27 (2011) (citation omitted). We will not reverse an agency's decision unless it was arbitrary, capricious, or unreasonable; it violated express or implied legislative policies; it offended the State or Federal Constitution; or the findings on which it was based were not supported by substantial, credible evidence in the record. Univ. Cottage v. Env't Prot., 191 N.J. 38, 48 (2007). Accordingly, "[i]n reviewing the factual findings made in an [agency] proceeding, the test is not whether an appellate court would come to the same conclusion if the original determination was its to make, but rather whether the factfinder could reasonably so conclude upon the proofs." Brady v. Bd. of Rev., 152 N.J. 197, 210 (1997) (quoting Charatan v. Bd. of Rev., 200 N.J. Super. 74, 79 (App. Div. 1985)).

Additionally, where an agency's expertise is a factor, we will defer to that expertise, particularly in cases involving technical matters within the agency's special competence. See Allstars Auto Grp. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 158 (2018). However, we are "in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue." US Bank, N.A. v. Hough, 210 N.J. 187, 200 (2012) (quoting Univ. Cottage, 191 N.J. at 48). Governed by these principles, we perceive no basis to disturb the Board's

June 17 decision.

As discussed, N.J.S.A. 43:15A-43(b)(5) allows PERS members or retirees to receive accidental disability retirement benefits under Chapter 157 if they meet certain conditions. One such condition is that the PERS member or retiree qualify as an EMT, meaning "a person trained in basic life support services as defined in [N.J.S.A. 26:2K-21] and who is certified by the Department of Health to perform these services." N.J.S.A. 43:15A-43(b)(5) (emphasis added).

Mestre concedes he was never certified by the Department of Health as an EMT. Still, he argues that because "pension statutes are . . . liberally construed . . . in favor of the persons intended to be benefitted thereby," he is entitled to accidental disability retirement benefits, considering he was a volunteer firefighter and had completed various courses to qualify as a first responder when he was at the WTC site in September 2001. This argument fails.

Courts must effectuate the Legislature's intent in interpreting a law and "generally, the best indicator of that intent is the statutory language." DiProspero v. Penn, 183 N.J. 477, 492 (2005) (citing Frugis v. Bracigliano, 177 N.J. 250, 280 (2003)). "A court should 'ascribe to the statutory words their ordinary meaning and significance.'" D'Ambrosio v. Dep't of Health & Sr. Servs., 403 N.J. Super. 321, 334 (App. Div. 2008) (quoting DiProspero, 183 N.J.

at 492).

It also is well established that pension eligibility itself "is not to be liberally permitted." Smith v. State, Dep't of Treasury, 390 N.J. Super. 209, 213 (App. Div. 2007). Therefore, "in determining a person's eligibility to a pension, the applicable guidelines must be carefully interpreted so as not to 'obscure or override considerations of . . . a potential adverse impact on the financial integrity of the [f]und.'" Ibid. (citations omitted). See also Francois v. Bd. of Trs., 415 N.J. Super. 335, 350 (App. Div. 2010) ("[W]hile a person 'eligible for benefits' is entitled to a liberal interpretation of the pension statute, 'eligibility [itself] is not to be liberally permitted.'" (second alteration in original) (quoting Krayniak v. Bd. of Trs., 412 N.J. Super. 232, 242 (App. Div. 2010))). Additionally, the burden to establish pension eligibility is properly imposed on the applicant, not the Board. See e.g., Patterson v. Bd. of Trs., 194 N.J. 29, 50-51 (2008) (imposing burden on the applicant to prove eligibility for disability retirement benefits).


Here, N.J.S.A. 43:15A-43(b)(5) explicitly states a PERS member or retiree qualifies as an EMT if both "trained in basic life support services . . . and . . . certified by the Department of Health to perform those services." (emphasis added). Importantly, "[t]he word 'and' connotes 'natural

conjunctive import' while the word 'or' signifies 'natural disjunctive import.'" Beaugard v. Johnson, 281 N.J. Super. 162, 169 (App. Div. 1995) (quoting Pine Belt Chevrolet v. Jersey Cent. Power, 132 N.J. 564, 578 (1993)). Accordingly, based on the plain language of N.J.S.A. 43:15A-43(b)(5), the uncontested facts of this matter, and our deferential standard of review, we are convinced the Board properly determined Mestre did not meet the definition of an EMT under the statute and correctly denied his application for accidental disability retirement benefits.

To the extent we have not addressed any remaining arguments advanced by Mestre, they lack 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