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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3183-20**

**CHRISTOPHER SLIMM,**

Petitioner-Appellant,

v.

**BOARD OF TRUSTEES,  
POLICE AND FIREMEN'S  
RETIREMENT SYSTEM,**

Respondent-Respondent.

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Argued March 20, 2023 – Decided March 23, 2023

Before Judges Haas and Mitterhoff.

On appeal from the Board of Trustees of the Police and Firemen's Retirement System, Department of Treasury, PFRS No. X-XX8363.

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

Juliana C. DeAngelis, Legal Counsel, argued the cause for respondent (Robert S. Garrison, Jr., Director of Legal Affairs, attorney; Juliana C. DeAngelis, on the brief).

## PER CURIAM

Appellant Christopher Slimm appeals from the June 15, 2021 final decision of the Board of Trustees of the Police and Firemen's Retirement System (PFRS or Board) finding that Slimm was not eligible to apply for accidental disability retirement benefits because he left employment due to pending disciplinary charges unrelated to a disability. We affirm.

By way of background, it is well established "that eligibility for disability retirement benefits requires members to make a prima facie showing that they cannot work due to a disability. To that end, voluntary or involuntary termination of employment, for non-disability reasons, generally deems a member ineligible for disability benefits." In re Adoption of N.J.A.C. 17:1-6.4, 454 N.J. Super. 386, 394 (App. Div. 2018). In this regard, N.J.A.C. 17:1-6.4 plainly states:

- (a) Each disability retirement applicant must prove that his or her retirement is due to a total and permanent disability that renders the applicant physically or mentally incapacitated from performing normal or assigned job duties at the time the member left employment; the disability must be the reason the member left employment.
- (b) Members who have involuntarily or voluntarily terminated service for any of the reasons listed below

will not be permitted to apply for a disability retirement:

1. Removal for cause or total forfeiture of public service;
2. Settlement agreements reached due to pending administrative or criminal charges, unless the underlying charges relate to the disability;
3. Loss of licensure or certification required for the performance of the member's specific job duties;
4. Voluntary separation from service for reasons other than a disability; and
5. Job abolishment or reduction in force.

(c) The Division will review all disability retirement applications submitted after a member has terminated service to determine whether the member's application is eligible for processing, pursuant to (a) above.

[(emphasis added).]

"Thus, '[m]embers who leave public service for reasons unrelated to a disability are not entitled to disability retirement benefits in the first instance.'" Rooth v. Bd. of Trs., Pub. Emps.' Ret. Sys., 472 N.J. Super. 357, 367 (App. Div. 2022) (quoting In re Adoption of N.J.A.C. 17:1-6.4, 458 N.J. Super. at 404) (emphasis in original).

In addition, N.J.S.A. 43:16A-8(2) directs that a public employee who retires due to a disability but who then recovers sufficiently to "perform either his former duty or any other available duty in the department which his employer is willing to assign to him, . . . shall report for duty." This statutory requirement provides a way "to return the previously disabled retiree to work as if that individual had never suffered a disability or interruption of service" and strikes a balance between "a worker's interest with those of an employer and the public by requiring PFRS workers – upon rehabilitation – to forego the benefits and return to work." Cardinale v. Bd. of Trs., Police & Firemen's Ret. Sys., 458 N.J. Super. 260, 270 (App. Div. 2019). However, the purpose of N.J.S.A. 43:16A-8(2) is undermined if the Board "cannot statutorily cease paying any approved disability benefits, once they have begun, for an individual who voluntarily resigns from duty to settle disciplinary charges and agrees never to return." Cardinale, 458 N.J. Super. at 272-73.

In 2015, Slimm began working as a police officer in Winslow Township. In October 2018, he applied for accidental disability retirement benefits, alleging he suffered from post-traumatic stress disorder following an incident where a suspect opened fire during a vehicle pursuit. In December 2018, the Township ordered Slimm to return to work and he refused to do so. On

December 18, 2018, the Township served a preliminary notice of disciplinary action on Slimm, charging him with several offenses, including failure to return to work. The Township suspended Slimm without pay pending the outcome of the disciplinary action.

On January 29, 2019, Slimm and the Township entered into a written settlement. The Township agreed to dismiss the pending disciplinary action in return for Slimm "agree[ing] that his employment with the Township is irrevocably severed and that he shall not be eligible for re-hire or reinstatement with the Township regardless of whether his accidental disability pension application is granted or not." The agreement further stated that Slimm intended to pursue his pension application "reflecting a retirement date of February 1, 2019," but the written agreement did not state that his alleged disability was the reason for his resignation.

The Board advised Slimm that it was not going to process his application for accidental disability retirement benefits. The Board explained that because Slimm had left his employment based on his voluntary settlement agreement, he was not eligible for a disability pension under N.J.A.C. 17:1-6.4 or N.J.S.A. 43:16A-8(2). Slimm filed an appeal, and the Board transmitted the matter to the

Office of Administrative Law for consideration by an Administrative Law Judge (ALJ).

The Board filed a motion for summary decision because the facts were not in dispute and the issue presented was solely one of law. In a thorough oral decision, the ALJ granted the Board's motion and held that Slimm was ineligible for disability benefits. The ALJ found that Slimm "severed his employment by negotiated agreement with the employer during the pendency" of his application for benefits and, as a result, was "not eligible to receive disability retirement benefits." On June 15, 2021, the Board adopted the ALJ's decision. This appeal followed.

On appeal, Slimm argues that the Board erred by failing to consider his application for accidental disability retirement benefits. We disagree.

Our role in reviewing an administrative agency's final decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011). Thus, we will only reverse the agency's action if it was "arbitrary, capricious, or unreasonable, or [] not supported by substantial credible evidence in the record as a whole." Ibid. (alteration in original) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)).

Here, the agency resolved the matter by summary decision pursuant to N.J.A.C. 1:1-12.5. "Because an agency's determination on summary decision is a legal determination, our review is de novo." L.A. v. Bd. of Educ. of City of Trenton, 221 N.J. 192, 204 (2015).

Applying these principles, we affirm the Board's decision substantially for the reasons articulated by the ALJ in his Initial Decision that was adopted by the Board. Our holding in Cardinale is dispositive.

In Cardinale, the appellant voluntarily and irrevocably resigned from his position as a police officer under a settlement agreement after he was suspended for a positive drug test. 458 N.J. Super. at 264-65. We held "that when a PFRS member . . . voluntarily irrevocably resigns from active service, such a separation from employment automatically renders the individual ineligible" for disability retirement benefits. Id. at 263. We found that the appellant's claimed disability was "irrelevant to our holding that his irrevocable resignation made him ineligible for benefits in the first place." Id. at 268.

This is so because an officer who irrevocably resigns from his position cannot legally be returned to that position if he ever recovers from his disability. Thus, the officer is not eligible to apply for benefits under N.J.S.A. 43:16A-8(2). Id. at 270-73.

Our holding in Cardinale applies with syllogistic precision here. It is undisputed that Slimm irrevocably resigned from his position as a police officer. That fact alone "automatically" rendered him ineligible for disability retirement benefits. Cardinale, 458 N.J. Super. at 263.

Slimm's claim that he resigned due to his disability does not require a different result for two reasons. First, as we explained in Cardinale, an irrevocable resignation from employment, as occurred here, renders an individual ineligible for retirement benefits. Id. at 269 (finding "the consequence of [an] irrevocable resignation is determinative" of an applicant's eligibility for disability benefits).

Second, even assuming a resignation based on a disability would render Slimm eligible to apply for benefits, Slimm did not sustain his burden of proving his resignation was based on his alleged disability, and the evidence, including the settlement document he signed, establish it was not. Slimm resigned to avoid litigating the pending disciplinary charges. As already noted, N.J.A.C. 17:1-6.4(b)(2) plainly states that members who voluntarily terminate service under a settlement agreement "reached due to pending administrative . . . charges" are not eligible for disability pension benefits. Contrary to Slimm's unsupported contention, the charges did not relate to Slimm's alleged disability. He may have



applied for the benefits prior to the formal imposition of the disciplinary charges, but he gave up his opportunity to continue to pursue his application when he irrevocably resigned from his position in order to settle those charges.

Finally, there is no statutory basis for Slimm's argument, raised for the first time on appeal, that he could satisfy N.J.S.A. 43:16A-8(2) by agreeing to waive his right to disability pension benefits if he were to recover from his disability. Therefore, we reject Slimm's contention on this point. See 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