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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3338-20**

S.O.,

Petitioner-Appellant,

v.

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

Respondent-Respondent.

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Argued May 23, 2023 – Decided June 15, 2023

Before Judges Gilson and Rose.

On appeal from the Board of Trustees of the Police and Firemen's Retirement System, Department of the Treasury, PFRS No. xx4775.

Christopher A. Gray argued the cause for appellant (Sciarra & Catrambone, LLC, attorneys; Christopher A. Gray, of counsel and on the briefs; Frank C. Cioffi, on the briefs).

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

Petitioner S.O., a former police officer with the Gloucester City Police Department (GCPD), appeals from a June 15, 2021 final decision of the Board of Trustees (Board) of the Police and Firemen's Retirement System (PFRS), adopting the administrative law judge's (ALJ) initial decision that affirmed the Board's denial of S.O.'s eligibility to apply for ordinary disability retirement benefits (ODRB). Because we conclude the record supports the Board's decision that S.O. separated from service pursuant to an agreement to settle pending administrative charges that were unrelated to his alleged disability, we affirm.

To qualify for ODRB, PFRS members must demonstrate they are permanently "mentally or physically incapacitated for the performance of [their] usual duty and of any other available duty in the department which [their] employer is willing to assign to [them]." N.J.S.A. 43:16A-6(1). Members, however, are required "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). Pertinent to this appeal, N.J.A.C. 17:1-6.4 provides:

(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:

....

2. Settlement agreements reached due to pending administrative or criminal charges, unless the underlying charges relate to the disability;

....

During the one-day hearing before the ALJ, S.O. testified on his own behalf and presented the testimony of GCPD Chief Brian Morrell. The parties moved into evidence a joint stipulation of facts and documents, and S.O. submitted additional documents.

The facts adduced at the hearing are set forth at length in the ALJ's comprehensive written decision and need not be repeated here in the same level of detail. In essence, from March 2013 through September 2019, S.O. was employed as a police officer with the GCPD. S.O. acknowledged a long history of alcohol and substance abuse. Shortly after graduating from the police

academy, S.O. was arrested for driving while intoxicated and suspended from the GCPD for six months. Thereafter, he continued to abuse alcohol and later opioids. Eventually, S.O. sought assistance from the Police Benevolent Association, which facilitated his enrollment in a rehabilitation program. After completing the five-week program, S.O. returned to full duty in August 2015.

In July 2018, S.O. sustained an off-duty injury that required surgery. To treat his pain, S.O. was prescribed several medications, including oxycodone. Nearly one year later in May 2019, S.O. "blacked out" after ingesting oxycodone and fell down a flight of stairs at home. Summoned by S.O.'s girlfriend, paramedics administered Narcan for S.O.'s "accidental overdose of prescription medication." An internal affairs (IA) investigation ensued.

During the investigation, S.O. disclosed "he was taking a number of medications that he had not previously reported to [the] GCPD," notwithstanding the department's reporting requirements. S.O. further disclosed "he was taking a particular medication for anxiety and depression" but later contradicted that account, claiming he was using that medication to treat his attention deficit hyperactivity disorder.

Following the IA investigation, S.O. was referred to Dr. Jennifer Kelly for a fitness-for-duty evaluation. Dr. Kelly concluded S.O.'s "condition [wa]s

considered ongoing with a significant risk of relapse, thus, his lack of fitness should be considered one of permanency." Accordingly, Kelly opined S.O. was not fit for duty.

On August 16, 2019, the GCPD issued a preliminary notice of disciplinary action (PNDA), seeking S.O.'s removal based on the following charges:

- Incompetency, inefficiency[,] or failure to perform duties, N.J.S.A. 4A:2-2.3(a)(1).
- Inability to perform duties, N.J.S.A. 4A:2-2.3(a)(3).
- Conduct unbecoming a public employee, N.J.S.A. 4A:2-2.3(a)(6).
- Other sufficient cause, N.J.S.A. 4A:2-2.3(a)(12).
- Violations of GCPD rules and regulations:
  - o Code of Ethics.
  - o Failure to conduct himself with high ethical standards.
  - o Standards of Conduct.
  - o Physical and Mental Fitness for Duty.
  - o Alcoholic Beverages and Drugs.
  - o Truthfulness.

Three days after the PNDA issued, S.O. applied for ODRB. Thereafter, Dr. Howard Hammer conducted an independent fitness-for-duty evaluation of

S.O. and reached the same conclusion as Dr. Kelly. Pursuant to the terms of the parties' ensuing settlement agreement, S.O. agreed to permanently separate from employment with the GCPD, and the City of Gloucester City agreed to withhold formal charges against S.O. The agreement also required S.O. to resign from his position one day after he resumed employment if he were reinstated under N.J.S.A. 43:16A-8(2).<sup>1</sup>

According to Morrell, the GCPD was aware of S.O.'s struggles with alcohol but was unaware of his prescription for oxycodone and medications for anxiety and depression. Morrell explained S.O. had a duty to disclose his use of those medications to the GCPD but failed to do so before his accidental overdose.

Morrell further testified about the departmental charges against S.O. He explained that had S.O. been truthful about his medications, he would not have been charged with conduct unbecoming a public employee. The charge of untruthfulness, however, was not based solely on S.O.'s failure to disclose his use of medications. Rather, S.O. "lied" about his reasons for taking certain

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<sup>1</sup> Pursuant to N.J.S.A. 43:16A-8(2), public employees who retire due to a disability but who then recover sufficiently to "perform either [their] former duty or any other available duty in the department which [their] employer is willing to assign to [them], . . . shall report for duty."

medications and that lie constituted a separate ground for discipline and termination. Morrell further stated, S.O.'s inconsistent statements to IA raised "Brady<sup>[2]</sup> issues," which "would call into question his credibility" if S.O. were called to testify in his capacity as a police officer.

S.O. claimed he made contradictory statements during the IA investigation because he was questioned soon after he was administered Narcan and, as such, he "was a bit out of it." S.O. acknowledged, however, prior to his accidental overdose he had not formally disclosed to the GCPD that he was taking Wellbutrin, Adderall, and oxycodone.

Pertinent to this appeal, the ALJ determined S.O. was precluded from applying for ODRB under N.J.A.C. 17:1-6.4(b)(2) pursuant to his settlement agreement with the City. The ALJ found S.O.'s failure to disclose his medications and lack of candor during the IA investigation were not related to his purported disability and independently supported some of the charges against him. Thus, the ALJ reasoned the underlying charges "were not all related to [S.O.'s] asserted disability."

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<sup>2</sup> Brady v. Maryland, 373 U.S. 83 (1963).

Citing the terms of the settlement agreement, the ALJ found additional support for his conclusion in the requirement that S.O. "resign his position with the City in the event that he [were] reinstated to his position following the abatement of his disability." The ALJ concluded that "such a term [could] only be interpreted to demonstrate that [S.O.'s] separation from his employment [was] not solely the result of his [asserted] disability." The Board adopted the ALJ's initial decision, and this appeal followed.

On appeal, S.O. contends his disability related to the pending administrative charges and, as such, he qualified for ODRB. S.O. claims the ALJ erroneously determined N.J.A.C. 17:1-6.4(b)(2) prohibits a PFRS member, who leaves work pursuant to the terms of a settlement agreement that resolved administrative or criminal charges from applying for ODRB unless the charges "solely" relate to the member's disability. Stated another way, S.O. contends N.J.A.C. 17:1-6.4(b)(2) permits a member to apply for ODRB provided some of the charges relate to the member's disability.

Having considered S.O.'s contentions in view of the record and applicable legal principles, we conclude they lack sufficient merit to warrant extended discussion in a written opinion. R. 2:11-3(e)(1)(E). Pursuant to our limited standard of review, Russo v. Board of Trustees, Police & Firemen's Retirement



System, 206 N.J. 14, 27 (2011), we affirm, as did the Board, substantially for the reasons expressed in the ALJ's well-reasoned written decision, which "is supported by sufficient credible evidence on the record as a whole," R. 2:11-3(e)(1)(D). In doing so, we determine the Board's decision was not "arbitrary, capricious, or unreasonable." In re Stallworth, 208 N.J. 182, 194 (2011). We add only the following brief comments.

S.O. did not sustain his burden of proving his resignation was based on his alleged disability, and the evidence, including the settlement document he signed, established it was not. S.O. resigned to avoid litigating pending disciplinary charges. 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.


The record evidence supports the ALJ's conclusion that some of the charges against S.O. did not relate to his alleged disability. Morrell testified that S.O.'s truthfulness violation was based on S.O.'s failure to disclose his use of medications and his lack of candor during the IA investigation. According to Morrell, the truthfulness violation was a separate ground for discipline and termination. Indeed, S.O. acknowledged he had not disclosed to the GCPD that

he was taking Wellbutrin, Adderall, and oxycodone, and he gave contradicting statements to the IA investigators regarding his medications.

Moreover, S.O.'s interpretation of N.J.A.C. 17-6.4(b)(2) is misplaced and would render meaningless paragraph (a) of the regulation. Permitting a member, who has left employment under a settlement agreement based on pending charges, to apply for ODRB provided some of the underlying charges related to the member's disability contravenes N.J.A.C. 17-6.4(a)'s mandate that "the disability must be the reason the member left employment." See Rooth v. Bd. of Trs., Pub. Emps.' Ret. Sys., 472 N.J. Super. 357, 367 (App. Div. 2022) (noting members who leave public service for reasons unrelated to a disability are not entitled to disability retirement benefits).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION