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Governor

State of New Jersey
DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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JOHN D. MEGARIOTIS
Acting Director

February 26, 2019

[REDACTED]
The Hon. James E. Robertson, J.W.C.
[REDACTED]
[REDACTED]

RE: [REDACTED]

Dear Judge Robertson:

I am writing in reference to the decision of the Board of Trustees (Board) of the Public Employees' Retirement System (PERS), regarding your appeal of the Board's decision of September 19, 2018, in which it found that you were ineligible to participate in the PERS in accord with N.J.S.A. 43:15A-142 et seq. and N.J.S.A. 43:15C-1 et seq., after your appointment as a Judge of Worker's Compensation (JWC). At its meeting on February 26, 2019,¹ the Board determined that there are no material facts in dispute, denied your request for a hearing and directed the Board Secretary in conjunction with the Attorney General's Office to prepare Findings of Fact and Conclusions of Law, which were presented and approved by the PERS Board at its February 26, 2019 meeting.

The PERS Board has reviewed your written submissions and the relevant documentation, and finds that the statutes, regulations and relevant case law governing the PERS do not permit you to participate in the PERS after your appointment as a JWC in July 2013.

¹ The Board was prepared to consider your appeal at its December 12, 2018 meeting. However, you requested, and the Board granted, a postponement of your matter until the January 16, 2019 meeting.

FINDINGS OF FACT

The facts in this matter are essentially undisputed. The Board finds that you were enrolled in the PERS on August 1, 2012, as a result of your employment with the New Jersey Housing and Mortgage Finance Agency (HMFA). You were appointed a JWC in the Department of Labor and Workforce Development (DOLWD) on or about July 14, 2017. On or about July 21, 2017, the DOLWD filed a Report of Transfer form with the Division, seeking the transfer of your PERS enrollment from HMFA to the DOLWD. On October 19, 2017, the DOLWD's Certifying Officer, Samantha Lanza, contacted Luann Barnett, Chief of the Division's Enrollment, Purchase and Adjustments Bureau, in order to inquire as to your eligibility to transfer your pension membership. The Division ultimately determined that you were not eligible to participate in the PERS because you were not enrolled in the PERS as of July 1, 2007. Rather, the Division found that, as a result of your appointment, you are required to enroll in the DCRP.

In December 2001, the Legislature enacted L. 2001, c. 259, which created the Worker's Compensation Judges Part of PERS (Judges Part). N.J.S.A. 43:15A-142 et seq. In 2007, the Legislature enacted L. 2007, c. 92 (Chapter 92), effectively closing the Judges Part to any newly appointed JWC, with the exception of those individuals appointed as JWC who were an active member of PERS prior to June 8, 2007, the effective date of Chapter 92. N.J.S.A. 43:15A-143 reads, in pertinent part:

Notwithstanding the provisions of any other law, workers compensation judges shall be members of the Workers Compensation Judges Part, established pursuant to this act, P.L.2001, c.259 (C.43:15A-142 et seq.), of the Public Employees' Retirement System, established pursuant to P.L.1954, c.84 (C.43:15A-1 et seq.), if enrolled in the part prior to the effective date of P.L.2007, c.92 (C.43:15C-1 et al.)

A workers compensation judge who becomes a member of the retirement system on or after the effective date of P.L.2007, c.92 (C.43:15C-1 et al.) shall not be a member of the Workers Compensation Judges Part and the provisions of P.L.2001, c.259 (C.43:15A-142 et seq.) shall not apply to such judge or the judge's survivors.

Individuals enrolled in the PERS prior to June 8, 2007, who were subsequently appointed as JWC were allowed to remain in the PERS. Individuals appointed as JWC after that date but not enrolled in the PERS as of July 1, 2007, are required to enroll in the Defined Contribution Retirement Program (DCRP). See N.J.S.A. 43:15C-1 et seq.

Although you advised the Board at the September 19, 2018 meeting that you consulted the statutes concerning your PERS eligibility prior to accepting your appointment, you argue that the Board is nevertheless estopped from denying your participation in the PERS. Specifically, you alleged that you relied upon the advice of your employer(s) and the language contained in the Division's 2016 version² of the PERS "Workers' Compensation Judges Addendum" handbook. The handbook stated, in pertinent part, that a "member who is enrolled in the regular PERS, and who is appointed as a Workers' Compensation Judge on or after June 8, 2007, will remain a regular PERS member while a Workers' Compensation Judge."³ The handbook also advises that JWCs who are appointed after July 1, 2007, but who have an active PERS account may remain in the PERS while a JWC. The handbook states, in pertinent part:

MEMBERSHIP

Closed to New Members

- Workers' Compensation Judges who were enrolled in the WCJ Part *prior* to its closure remain members of the WCJ Part.
- A member who is enrolled in the regular PERS, and who is appointed as a Workers' Compensation Judge on or after June 8, 2007, will remain a regular PERS member while a Workers' Compensation Judge.
- Workers' Compensation Judges who are appointed *on or after* July 1, 2007, and do not have an existing PERS membership may only be enrolled in the Defined Contribution Retirement Program (DCRP). See the DCRP for Elected and Appointed Officials, for more information. (emphases in original)

² The Board noted that the Division updated this section of the May 2018 handbook.

³ The handbook was updated in 2018 to include the requirement that a JWC appointed after June 8, 2007, must have had an active PERS account prior to the effective date prior to the amendment in order to remain in the PERS.

CONCLUSIONS OF LAW

The Board finds that this matter is controlled by N.J.S.A. 43:15A-142 et seq. and N.J.S.A. 43:15C-1 et seq. The Board first relied on the language in N.J.S.A. 34:15-49, which requires that a JWC “be appointed on a bipartisan basis by the Governor, with the advice and consent of the Senate...” Thus, as a matter of law, your JWC appointment falls under the language in the DCRP statute which requires that the following individuals “shall participate” in the DCRP:

person(s) who commences service on or after the effective date [July 1, 2007] of this section in an employment, office or position of the State or of a political subdivision thereof, or an agency, board, commission, authority or instrumentality of the State or of a subdivision, pursuant to an appointment by the Governor that requires the advice and consent of the Senate, or pursuant to an appointment by the Governor to serve at the pleasure of the Governor only during his or her term of office.

[(emphasis supplied).]

Thus, the Board finds that the plain language of the applicable statutes require you to enroll in the DCRP as of July 2017 when you were appointed as a JWC.

While the Board noted that you do not dispute this interpretation of the applicable statutes, you argue the Board is estopped from denying your continued participation in the PERS because you relied upon the advice of your employer as well as the JWC handbook. The Board found no equitable basis to allow your continued enrollment in PERS, particularly where the statutory scheme undergirding the PERS does not allow such enrollment.

The Board first notes that “[E]quitable estoppel is rarely invoked against a governmental entity, particularly when estoppel would ‘interfere with essential governmental functions.’” In re Johnson, 215 N.J. 366, 378 (citation omitted) (quoting Vogt v. Borough of Belmar, 14 N.J. 195, 205 (1954)). While the Board is mindful of the liberal approach to interpreting pension statutes “in favor of the persons intended to be benefited thereby,” Steinmann v. State, Dep’t of Treasury, 116 N.J. 564, 572 (1989), “eligibility [itself] is not to be liberally permitted.” Francois v. Bd. of Trs. Pub. Employees’ Ret. Sys., 415 N.J. Super. 335, 351 (App. Div. 2010) (internal citations omitted).

Moreover, “[A]n administrative agency may not under guise of interpretation extend a statute to include persons not intended, nor may it give the statute any greater effect than its language allows.” *Kingsley v. Hawthorne Fabrics, Inc.*, 43 N.J. 521, 528 (1964).

The Board finds that although the JWC handbook was not updated until May 2018, “[T]he terms and conditions of public service in office or employment rest in legislative policy rather than contractual obligation.” *Spina v. Consolidated Police & Fireman’s Pension Fund Commission*, 41 N.J. 391, 400 (1964). Our courts have held that “one accepting a public office or position is presumed to do so with full knowledge of the law as to salary, compensation and fees. . . all limitations prescribed must be strictly observed. *Shalita v. Township of Washington*, 270 N.J. Super. 84, 91 (App. Div. 1994). “The statute trumps whatever implied contract may have existed between the parties.” *Golden v. Union*, 163 N.J. 420, 431 (2000). Thus, the Board finds that, based on the factual circumstances here, the principles of equitable estoppel do not apply, and the plain language of the statute clearly precludes your continued participation in the PERS after his JWC appointment.

Further, the Board finds that any reliance on the JWC handbook language was misplaced, as it specifically advised the individual to refer to the statutes and regulations governing the PERS.

The handbook includes the following disclaimer:

Benefits and provisions of the Public Employees’ Retirement System are subject to changes by the legislature, courts and other officials. While this booklet outlines the benefit and contribution schedules of the Public Employees’ Retirement System, it is not a final statement. Complete terms governing any employment benefit program are set forth in the New Jersey Statutes Annotated. Regulations, new or amended, are published in the New Jersey Register by the State Office of Administrative Law supplementing the New Jersey Administrative Code.

The Board also found that no record that you contacted the Division for guidance prior to accepting your appointment. Accordingly, the Board denied your request to participate in the PERS on the basis of your appointment as a JWC.

As noted above, the Board has determined that this matter does not entail any disputed questions of fact, and the Board was able to reach its findings of fact and conclusions of law in this matter on the basis of the statutory language without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Public Employees' Retirement System.

You have the right, if you wish, to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter, in accordance with the Rules Governing the Courts of the State of New Jersey. All appeals should be directed to:

Superior Court of New Jersey
Appellate Division
Attn: Court Clerk
PO Box 006
Trenton, NJ 08625

Sincerely,



Jeff S. Ignatowitz, Secretary
Board of Trustees
Public Employees' Retirement System

G-12/JSI

c: L. Barnett (ET); E. Wade(ET)

NJ DOLWD
Samantha Lanza, Certifying Officer (ET)

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