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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-1270-16T1

JOHN ZAJKOWSKI,

Appellant,

v.

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

Respondent.

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Argued November 27, 2017 - Decided January 8, 2018

Before Judges Accurso and O'Connor.

On appeal from the Board of Trustees of the  
Police and Firemen's Retirement System, PFRS  
No. 3-10-38483.

Herbert I. Waldman argued the cause for  
appellant (Javerbaum Wurgaft Hicks Kahn  
Wikstrom & Sinins, PC, attorneys; Herbert I.  
Waldman, on the briefs).

Nicholas L. DePaolo, Deputy Attorney  
General, argued the cause for respondent  
(Christopher S. Porrino, Attorney General,  
attorney; Melissa H. Raksa, Assistant  
Attorney General, of counsel; Nicholas L.  
DePaolo, on the brief).

PER CURIAM

John Zajkowski appeals from a November 16, 2016 final decision of the Board of Trustees, Police and Firemen's Retirement System, denying his application to reopen the Board's determination of June 13, 2011 to deny him deferred retirement benefits under N.J.S.A. 43:16A-11.2. Because Zajkowski's application cannot substitute for a timely appeal from the Board's 2011 determination, we affirm.

The procedural history is easily summarized. Zajkowski, a Newark police officer for nearly sixteen years, pled guilty in 1999 to third-degree theft of a handgun turned in to the police department by a citizen as part of a Gun Amnesty Buy Back Program. He was apprehended in a sting operation designed by the department's Professional Standards Unit to test the integrity of the administration of the Amnesty Program. Zajkowski agreed to forfeit his position as a police officer as part of his plea. He tendered his resignation on September 29, 1999 and was sentenced on October 1. A Final Notice of Disciplinary Action reflects Zajkowski was removed effective October 1, 1999, the date on which he "was sentenced to two years probation and the forfeiture of his position as a Newark Police Officer."

Zajkowski applied for deferred retirement benefits in 2001, and began receiving those benefits in 2009, following his fifty-

fifth birthday. In March 2011, the Board advised Zajkowski it would at a future meeting "consider information from [his] former employer" that he was required to forfeit his former position and "the impact this may have on [his] continued receipt of Deferred retirement benefits in accordance with N.J.S.A. 43:16A-11.2." Zajkowski hired counsel, who submitted a six-page, single-spaced statement to the Board in advance of the meeting in which he argued Zajkowski "resigned his position as Police Sergeant with the Newark Police Department on September 29, 1999." Counsel addressed each of the eleven factors of N.J.S.A. 43:1-3(c), in arguing Zajkowski's offense was singular and isolated and should not detract from his otherwise honorable service or cause the forfeiture or partial forfeiture of his earned retirement benefits.

The Board rejected those arguments and, at its meeting on June 13, 2011, determined that because Zajkowski "was removed for cause on charges of misconduct or delinquency in public office" on October 1, 1999, "he is prohibited under N.J.S.A. 43:16A-11.2 to receive Deferred retirement benefits." The Board wrote to Zajkowski and his counsel the following day, memorializing the decision and advising that any appeal had to be submitted within forty-five days, and in the absence of a timely appeal, "the determination by the Board shall be final."

Zajkowski did not appeal. Instead, nearly five years later on February 8, 2016, new counsel for Zajkowski wrote to the Board asserting its conclusion in June 2011 that "Zajkowski was removed from his position or forfeited his position is incorrect. Mr. Zajkowski resigned his position." Contending that whether Zajkowski resigned or was removed from his position "has a material impact upon the proper analysis of Mr. Zajkowski's eligibility for a pension," counsel asked the Board to consider the matter pursuant to N.J.S.A. 43:15A-54.<sup>1</sup> In a final administrative determination issued November 16, 2016, the Board declined to reopen the matter, finding Zajkowski's request "well beyond the requisite time period permitted to file an appeal" by N.J.A.C. 17:1-1.3.

Zajkowski appeals, arguing the Board "should have referred the matter to the Office of Administrative Law for a hearing in order to make a threshold determination regarding whether it had

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<sup>1</sup> The statute provides in pertinent part:

If any change or error results in an employee or beneficiary receiving from the retirement system more or less than he would have been entitled to receive, then on discovery of the error, the retirement system shall correct it and, so far as practicable, adjust the payments in such a manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

terminated Zajkowski's pension based upon the mistaken belief that he had been removed from his position of employment for cause." He also contends he should have been afforded "a hearing to determine whether he can demonstrate equitable factors bearing upon his pension," including that two former colleagues also charged in the Gun Amnesty Program sting are receiving their full pensions, and that he was deprived the use of his \$52,594.09 in contributions for nearly ten years in reliance on receipt of a deferred retirement benefit. We reject those arguments.

Our role in reviewing the decision of an administrative agency is limited. In re Stallworth, 208 N.J. 182, 194 (2011). We accord a strong presumption of reasonableness to an agency's exercise of its statutorily delegated responsibility, City of Newark v. Nat. Res. Council, 82 N.J. 530, 539, cert. denied, 449 U.S. 983 (1980), and defer to its fact finding, Utley v. Bd. of Review, 194 N.J. 534, 551 (2008). We will not upset the determination of an administrative agency absent a showing that 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 Civil Serv., 39 N.J. 556, 562 (1963).

Applying those standards here, we are satisfied the Board was correct in denying Zajkowski's 2016 application to reopen its 2011 determination to rescind his deferred retirement benefits. The law is clear that decisions by the Board become final unless a request for a hearing is filed within forty-five days. N.J.A.C. 17:1-1.3(b). Zajkowski does not dispute that he and his counsel attended the meeting in 2011 at which the Board determined to terminate his deferred retirement benefits based on information from the City of Newark that Zajkowski was removed for cause following his guilty plea to theft. He also acknowledges he received written notice of that determination and the time limit for requesting a hearing in the event he disagreed with the decision.

The disputed facts he now asserts necessitate a hearing were known to him in 2011, and he provides no explanation for his failure to seek a hearing when provided the opportunity. Moreover, the statute on which Zajkowski relies to assert the Board may "correct an error" at any time, N.J.S.A. 43:15A-54, applies to clerical or mechanical errors, see *Burkhart v. Pub. Emps. Ret. Sys.*, 158 N.J. Super. 414, 420 (App. Div. 1978), not to determinations by the Board that an employee was forced to forfeit his public position because he was removed for cause on charges of misconduct, see N.J.S.A. 43:15A-38.

Because we agree with the Board that Zajkowski's 2016 request to reopen the Board's 2011 determination for a hearing is grossly out of time without good cause, see In re Van Orden, 383 N.J. Super. 410, 419 (App. Div. 2006), we affirm.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION