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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-4112-15T1

PATRICIA SANTANGELO,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES, TEACHERS'
PENSION AND ANNUITY FUND,

Respondent-Respondent.

Submitted February 13, 2018 – Decided February 28, 2018

Before Judges Fasciale and Summers.

On appeal from the Board of Trustees of the
Teachers' Pension and Annuity Fund, Department
of Treasury, TPAF No. 398307.

Bergman & Barrett, attorneys for appellant
(Michael T. Barrett, of counsel and on the
brief).

Gurbir S. Grewal, Attorney General, attorney
for respondent (Melissa H. Raksa, Assistant
Attorney General, of counsel; Thomas R. Hower,
Deputy Attorney General, on the brief).

PER CURIAM

Patricia Santangelo (petitioner) appeals from an April 11,
2016 final decision from the Board of Trustees of the Teachers'

Pension and Annuity Fund (Board) decision denying her request to file a second ordinary disability retirement application, or to relax N.J.S.A. 18A:66-36 permitting her to receive early deferred retirement benefits. We affirm.

Petitioner applied to the Board for ordinary disability retirement benefits in May 2010. On October 7, 2010, the Board denied petitioner's application. Petitioner appealed to the Office of Administrative Law (OAL). Petitioner testified before an administrative law judge (ALJ) that numerous medical issues prevented her from performing her teaching duties. On November 12, 2012, the ALJ rendered an initial decision finding petitioner was not incapacitated from performing her teaching duties and denied her application.

Petitioner filed exceptions to the ALJ's initial decision, explaining she was recently diagnosed with cancer and began treatment. On December 7, 2012, the Board adopted the ALJ's initial decision denying petitioner's application for disability retirement benefits. Petitioner appealed the Board's final decision to this court.

While petitioner's appeal was pending in this court, petitioner requested permission from the Board for leave to file a new application for disability retirement benefits. The Board denied petitioner's request on December 9, 2013. In June 2014,

this court affirmed the Board's denial of petitioner's disability retirement benefits. Santangelo v. N.J. Teachers' Pension & Annuity Fund, No. A-2184-12 (App. Div. June 9, 2014).

Following this court's decision, petitioner's counsel sent a letter to the Board referencing for the first time a December 23, 2013 letter requesting an appeal of the Board's December 9, 2013 denial. The Board reviewed its files and indicated that it had no record of petitioner's request. On July 22, 2014, petitioner requested the Board consider her appeal of its December 9, 2013 decision. The Board reviewed her appeal in August 2014 and denied her leave to file a late appeal; her request to file a second application for disability retirement benefits; and her request to relax the deferred retirement benefits rules.

Petitioner appealed the Board's August 2014 denial to this court. This court found the record contained unresolved issues of fact regarding whether petitioner timely appealed, and remanded the matter for proceedings in the OAL. Santangelo v. N.J. Teachers' Pension & Annuity Fund, No. A-0839-14 (App. Div. Feb. 5, 2016) (slip op. at 4-5). On March 4, 2016, the Board alerted petitioner that it would consider her appeal timely, terminating the need for hearings in the OAL.

On April 11, 2016, the Board rendered a final decision denying petitioner's request to file a new application for disability

retirement benefits. The Board also found that it lacked the authority to relax the retirement benefits rules to allow petitioner to collect her benefits at age fifty-seven rather than age sixty.

Petitioner argues that the Board acted arbitrarily in denying her request for an additional hearing to consider her pre-existing diagnosis of cancer in connection with her application for ordinary disability retirement benefits, and that the Board failed to apply the pension statute liberally as intended.

This court's review of an agency's decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011). "A strong presumption of reasonableness attaches to [an agency decision]." In re Vey, 272 N.J. Super. 199, 205 (App. Div. 1993), aff'd, 135 N.J. 306 (1994). Reversal is appropriate when an agency's decision is arbitrary, capricious, unreasonable or unsupported by credible evidence in the record. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980).

Ordinary disability retirement benefits may be conferred when a teacher "is physically or mentally incapacitated for the performance of duty and should be retired." N.J.S.A. 18A:66-39(b). Fund members who have discontinued service for more than two consecutive years may apply for disability retirement benefits if:

i. The applicant demonstrates to the satisfaction of the Board that the applicant was physically or mentally incapacitated for the performance of duty at the time service was discontinued, and continues to be so incapacitated, with the same disability or disabilities, at the time of filing; and

ii. The applicant factually demonstrates to the satisfaction of the Board that service was discontinued because of the disability or disabilities.

[N.J.A.C. 17:3-6.1(f)(4).]

Although courts have determined that pension statutes should be construed liberally "in favor of the persons intended to be benefitted thereby," Bumbaco v. Bd. of Trs., Pub. Emps.' Ret. Sys., 325 N.J. Super. 90, 94 (App. Div. 1999), "eligibility is not to be liberally permitted," Smith v. Dep't of Treasury, Div. of Pensions & Benefits, 390 N.J. Super. 209, 213 (App. Div. 2007). This court has stated that "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. (alterations in original) (quoting Chaleff v. Teachers' Pension & Annuity Fund Trs., 188 N.J. Super. 194, 197 (App. Div. 1983)).

When petitioner first applied in May 2010, she was not yet diagnosed with cancer and only learned of her diagnosis following

the OAL hearing. She asserts that her cancer diagnosis meets the burden of incapacity pursuant to N.J.S.A. 18A:66-39(b). Pursuant to N.J.A.C. 17:3-6.1(f)(4)(i), petitioner was required to demonstrate that her cancer diagnosis in 2012 resulted in "incapacitat[ion] for the performance of duty at the time service was discontinued." Thus, petitioner was required to show her 2012 cancer diagnosis met the burden of incapacitation in 2010, when she retired from teaching.

Although it is clear from the facts and undisputed by either party on appeal that petitioner's health unfortunately worsened since she filed her application in May 2010, she does not meet the requirement of disability occurring "at the time service was discontinued." Ibid. The Board, the ALJ and this court all found that petitioner was not "incapacitated for the performance of [her] duty and should be retired." N.J.S.A. 18A:66-39(b). Petitioner cannot claim that her cancer diagnosis and treatment in 2012 resulted in incapacitation in May 2010. Petitioner's second application for ordinary disability retirement benefits would be futile and was correctly denied.


Petitioner also requested the Board permit her to collect deferred retirement benefits at age fifty-seven due to hardship relating to her medical conditions. Petitioner's argument is

without sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E). We add the following brief remarks.

The Board found that it did not have the statutory power to permit an early deferment of petitioner's retirement benefits. Deferred retirement benefits are determined by N.J.S.A. 18A:66-36(b), which permits a "deferred retirement allowance beginning at age 60." Petitioner was only fifty-seven when she made her request. The Board abided by the plain language of N.J.S.A. 18A:66-36, and properly denied petitioner's hardship request.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION