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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4132-15T3

RICHARD BEAGIN,

Petitioner-Appellant,

v.

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

Respondent-Respondent.

Submitted October 26, 2017 – Decided January 19, 2018

Before Judges Simonelli and Rothstadt.

On appeal from the Board of Trustees, Police
and Firemen's Retirement System, PFRS No.
87393.

Fusco & Macaluso Partners, LLC, attorneys for
appellant (Shay S. Deshpande, on the brief).

Christopher S. Porrino, Attorney General,
attorney for respondent (Melissa H. Raksa,
Assistant Attorney General, of counsel; Robert
E. Kelly, Deputy Attorney General, on the
brief).

PER CURIAM

Petitioner Richard Beagin appeals from the April 13, 2016
final agency decision of respondent Board of Trustees (Board),

Police and Fireman's Retirement System (PFRS). The Board adopted with modifications the February 26, 2016 initial decision of an Administrative Law Judge (ALJ) affirming the Board's decision to forfeit Beagin's entire PFRS service and salary credit, making him ineligible for ordinary disability retirement benefits (OD retirement). We affirm.

On February 1, 1999, Beagin began his employment as a police officer with the Borough of West Paterson, now the Borough of Woodland Park (Borough). In May 2003, Beagin was assigned to the Passaic County Narcotics Task Force (PCNTF) and worked with Ringwood Police Officer Paul Kleiber. Beagin was trained on how to handle wiretaps and the concept of minimization, which he described as follows: "[w]hen there's a [wiretap] investigation going on, you're minimizing it and you're not allowed to talk about the investigation or what you hear in the wire." He admitted if a police officer who was working on a wiretap investigation he was not also working on disclosed information about the investigation, he was required to report that disclosure to his superiors.

In July 2004, members of the PCNTF were conducting an ongoing investigation into Robert Post (Robert) and Charles Post (Charles), who were suspected of illegally selling cocaine and anabolic steroids. Robert, a friend of Beagin, contacted Beagin

and asked if he heard anything about an investigation involving him and Charles. Beagin stated, truthfully, that he did not know.

Kleiber knew that Beagin and Robert were friends. On July 28, 2004, Kleiber, who was involved in a wiretap of Robert and Charles, called Beagin and told him that Robert and Charles were being investigated and wiretapped. Kleiber violated the minimization policy by this disclosure, but Beagin did not report it to his superiors. Within minutes after speaking with Kleiber, Beagin called Robert and told him the information he previously asked about was "supposedly . . . true" and Robert should "[w]atch what [he said] to [Charles]" and to "be careful, supposedly there's an ongoing investigation."

The PCNTF was monitoring a wiretap intercept when they heard Robert tell Charles about the investigation and say to Charles, "you're done." Robert told Charles they were being watched, and Charles' phone might be tapped and to throw it away. Upon hearing this, the PCNTF notified the Passaic County Prosecutor's Office (PCPO).

Kleiber called Beagin and told him about the wiretap intercept. Beagin then called Robert and said: "[A]re you an idiot? . . . You know I told you don't call [Charles] on the phone. You know, watch what you say to [Charles] . . . You know they have everything on him. You know they heard everything that [you say]

to him." Post denied calling Charles, but Beagin responded: "I know you called him." In a subsequent call, Robert told Beagin that he called Charles back and made up a story to cover up.

Subsequently, Beagin and Kleiber engaged in covering up their disclosures, agreeing they would deny everything and their "word as . . . police officer[s] would be taken over the word of . . . drug dealers[.]" Beagin also met with Robert on the evening of July 28, 2004, and warned him: "You know, you didn't hear anything from me. . . . Because this can come back to me and you know, I'll end up getting in trouble. As long as you don't say that it was me, I told you, you know, I wouldn't be brought into it."

On August 8 and 9, 2004, Robert and Charles were arrested along with seventeen other suspects involved in the investigation. The arrests were "unexpectedly expedited" because Beagin compromised the investigation by warning Robert in advance. Robert gave the PCPO a statement admitting to his conversations with Beagin about the investigation and wiretap, and told the about Beagin's warning.

On January 31, 2005, the PCPO interviewed Beagin. Beagin told the investigators he did not know anything and refused to cooperate. After the interview, Beagin contacted Kleiber, who said the PCPO called him for an interview. They reminded each other of their pact not to say anything and that it would be their

word against the word of Robert and Charles. Beagin went to Robert's home the evening of January 31, 2005, and asked whether he told the PCPO about their conversations. After Robert denied saying anything to the investigators, Beagin warned him to not mention his name and "don't say that I said anything to you."

Kleiber was arrested on October 27, 2005. On November 3, 2005, Beagin was arrested and suspended without pay. At the time, he had served as a police officer for six years and nine months and was not vested in his pension.

On July 11, 2006, a grand jury indicted Beagin for second-degree conspiracy, N.J.S.A. 2C:5-2; third-degree hindering apprehension or prosecution, N.J.S.A. 2C:29-3; second-degree official misconduct, N.J.S.A. 2C:30-2; third-degree violation of the Wiretap Act, N.J.S.A. 2A:156A-19; and third-degree tampering with a witness, N.J.S.A. 2C:28-5. Four other police officers from various police departments and a Passaic County Sheriff's officer were also indicted. On May 2, 2007, Beagin pled guilty to fourth-degree hindering apprehension or prosecution, and agreed to testify against his co-defendants.¹ On March 20, 2008, Beagin was

¹ Beagin never testified because the four officers pled guilty and received various sentences, and the Sheriff's officer died prior to adjudication of the charges against him.

sentenced to the pre-trial intervention (PTI) program for six months, which he completed on September 20, 2008.

Two weeks after pleading guilty, on July 25, 2007, Beagin applied for OD retirement as of August 1, 2007. He claimed he was unable to perform his duties as a police officer due a permanent and total disabling psychological condition resulting from his arrest. He was nearly thirty years old at the time, and his lifetime benefits were estimated at \$2,550.73 per month. He would also receive \$267,827 in life insurance coverage until age fifty-five, and \$38,261 thereafter.

Beagin was also the subject of an internal affairs investigation by the West Paterson Police Department (WPPD). The internal affairs officer determined Beagin forfeited his right to be a police officer in this State by committing a criminal act by not reporting to Kleiber's disclosures to his superiors, compromising an ongoing drug investigation by calling a target and warning him he was being watched and the phones were monitored, engaging in a cover-up, and pleading guilty to fourth-degree hindering apprehension. On August 14, 2008, the internal affairs officer recommended Beagin's immediate termination.

The Borough served Beagin with a preliminary notice of disciplinary action, charging him with violating ten WPPD rules and regulations and seeking his termination. Following a hearing,

on July 13, 2009, the hearing officer sustained nine of the charges and recommended Beagin's termination. The Borough served Beagin with a final notice of disciplinary action and terminated his employment on August 19, 2009. One month later, Beagin's criminal conviction was expunged.

Beagin appealed his termination to the Civil Service Commission. On February 14, 2011, the parties entered into a settlement in which they agreed the Borough would dismiss all charges and rescind the final notice of disciplinary action, and Beagin would dismiss his appeal, resign in good standing, and not seek another law enforcement position with the Borough.

In the meantime, the Board considered Beagin's application for OD retirement. Beagin qualified for OD retirement based on his age, length of service of over four years, and because he was permanently incapacitated from performing the duties of a police officer. See N.J.S.A. 43:16A-6(1). However, his receipt of OD retirement was conditioned on rendering honorable service. See N.J.S.A. 43:1-3(a). The Board had the exclusive authority to evaluate whether his public service was honorable, and "order the forfeiture of all or part of [his] earned service credit or pension or retirement benefit . . . for misconduct occurring during [his] public service which renders [his] service or part thereof dishonorable[.]" N.J.S.A. 43:1-3(b). In evaluating whether

Beagin's misconduct warranted forfeiture, the Board had to consider and balance the following factors:

- (1) the member's length of service;
- (2) the basis for retirement;
- (3) the extent to which the member's pension has vested;
- (4) the duties of the particular member;
- (5) the member's public employment history and record covered under the retirement system;
- (6) any other public employment or service;
- (7) the nature of the misconduct or crime, including the gravity or substantiality of the offense, whether it was a single or multiple offense and whether it was continuing or isolated;
- (8) the relationship between the misconduct and the member's public duties;
- (9) the quality of moral turpitude or the degree of guilt or culpability, including the member's motives and reasons, personal gain and similar considerations;
- (10) the availability and adequacy of other penal sanctions; and
- (11) other personal circumstances relating to the member which bear upon the justness of forfeiture.

[N.J.S.A. 43:1-3(c).]

See also Uricoli v. Bd. of Trs., 91 N.J. 62, 77-78 (1982).²

The Board considered and balanced the Uricoli factors and found Beagin's misconduct "demonstrated a high degree of moral turpitude[,]" and that

as a law enforcement officer, [Beagin] was responsible to be a role model for the community and held to a higher standard to abide by the laws and policies mandated by the State of New Jersey. As a sworn officer of the law, he violated the public trust by this misconduct and jeopardized the safety of the lives of other police officers by his actions.

On May 15, 2012, the Board voted to forfeit Beagin's entire service and salary credit based on the serious nature of his misconduct and the gravity of the offense, making him no longer qualified for OD retirement.

Beagin appealed, and the matter was transferred to the Office of Administrative Law for a hearing to determine whether the total forfeiture of his service and salary credit was justified. In a February 26, 2016 initial decision, the ALJ considered and balanced the Uricoli factors and concluded factors (1), (2), (3), (5), and (6) had no positive or negative impact. The ALJ found Beagin had six years and nine months of service, was not a long-term employee, and with no forfeiture of service, his years of service were

² We shall hereafter refer to the statutory factors in N.J.S.A. 43:1-3(c) as the Uricoli factors.

sufficient to be considered for OD retirement. The ALJ also found Beagin's pension had not vested, his sole public employment covered six years and nine months, and he had no other public employment or service.

The ALJ found factor (4) weighed against Beagin because he was a police officer, police officers are public servants held to a higher standard both on and off duty twenty-four-hours a day, and the conduct at issue had a direct connection to his employment. The ALJ found factor (7) weighed against Beagin because he failed to report Kleiber's disclosures to his supervisors, called one of the targets of the investigation and warned him he was being investigated and wiretapped, denied his actions when interviewed by the PCPO, sought the target's conspiracy in denying he made the disclosures, and conspired with Kleiber to deny their disclosures.

The ALJ found factor (8) weighed against Beagin because there was a direct relationship between his misconduct and his duties as a police officer. The ALJ found factor (9) weighed against Beagin because although he received no personal gain by the disclosures, he admitted he warned a target of a criminal investigation, his disclosures compromised the investigation, and he lied about his disclosures and conspired with other to cover up his actions.

The ALJ found factor (10) weighed against Beagin because he pled guilty to fourth-degree hindering apprehension/prosecution, had the other charges dismissed, was placed into PTI and never incarcerated or placed on house arrest or parole, and obtained expungement of the conviction. In addition, Beagin settled the disciplinary charges, and his agreement to resign and not seek a law enforcement position did not result in an adverse situation for him. The ALJ noted Beagin testified he was healthy other than his psychological inability to work as a police officer, and thus, was capable of obtaining other full-time employment.

Lastly, the ALJ found factor (11) weighed against Beagin because the amount of monetary benefits he would receive if approved for OD retirement was based on his emotional reaction to being arrested for wrongdoing in connection with his employment.

The ALJ concluded that:

[Beagin] is not a long-term employee. He has six years and nine months of service. His misconduct involved a high degree of moral turpitude and had a direct relationship to his duties as a police officer. His egregious conduct did not involve a single issue of disclosure but continued for many months when he conspired with a fellow officer and with one of the targets of the criminal investigation at issue to deny his disclosure. [Beagin] was hoping that his position as a police officer would be useful to bolster his credibility if the targets of the investigation were to testify truthfully as to [his] disclosure. The disability for which

[Beagin] seeks retirement benefits was caused by his own egregious actions, for which [he] received only minor punishment. In contrast, even if [Beagin] only lives to the age of fifty-four, if he is granted [OD] [r]etirement benefits, he will receive monetary benefits in excess of \$770,000.

The ALJ held that total forfeiture of Beagin's service and salary credit was warranted, and affirmed the Board's decision.

In an April 13, 2016 final agency decision, the Board adopted and affirmed the ALJ's factual findings and legal conclusions with modifications, and agreed with the ALJ's conclusion that total forfeiture was warranted. The Board found Uricoli factors (1), (3), (5), and (6) weighed against Beagin because he was not a long-term employee, and his relatively short length of service that preceded his egregious acts fully supported the ALJ's and Board's determination that his entire service and salary credit should be forfeited.

The Board found factor (2) weighed against Beagin based on the ALJ's findings for factor (11). The Board added that the basis for Beagin's retirement was a disability caused by his own egregious misconduct, which justified the forfeiture.

The Board rejected Beagin's argument as to factor (10) -- that he suffered enough for his criminal behavior and should not be denied OD retirement. The Board stated:

This amounts to an argument that the penal sanctions (six months of [PTI], expungement of his criminal record, and a negotiated loss of his job in West Paterson/Woodland Park) are sufficient punishment for a single ongoing offense on behalf of a friend, even allowing for the serious and dangerous nature of the admitted continuing offense.

The Board took no position as to whether Beagin's criminal punishment fit the crime, and emphasized the issue in this case was

[w]hether to provide a lifetime disability pension to an officer who showed no sign of disability until after the foreseeable consequences of his betrayal of his badge allegedly caused him to become psychologically disabled. Beagin seeks not to mitigate a penalty, but to procure an unwarranted and, under the circumstances, lavish benefit never intended by the Legislature to be bestowed on someone in Beagin's self-created position.

Finally, distinguishing Patterson v. Board of Trustees, State Police Retirement System, 194 N.J. 29 (2008), the Board found that even if Beagin had four years of honorable service credit required to apply for OD retirement, he would nonetheless be ineligible. The Board emphasized that Beagin sought "to retire on the basis of the stress allegedly caused to him solely by the consequences of his own betrayal of his badge after he had stopped working as a police officer." The Board concluded that under the circumstances of this case, public policy

bars Beagin's use of his active misconduct as the basis for OD [retirement]. Beagin's application for lifetime retirement benefits is based exclusively on the consequences of his criminal act and cover-up. It would be an apt example of "reward[ing] dereliction of duty." It is inconceivable that the Legislature would have intended to provide such a benefit under these circumstances.

This appeal followed.

On appeal, Beagin contends he sufficiently met the standards in N.J.S.A. 43:16A-6(1) to qualify for OD retirement because he served over four years and is permanently incapacitated from performing the duties of a police officer. He argues that because he had four years and four months of honorable service prior to his misconduct, his service credit should only be forfeited from the date his misconduct first occurred.³ He also argues that his criminal offense was not so serious as to deprive him of OD retirement because the offense was minor enough to qualify him for PTI and expungement.

³ Beagin cites to the unpublished opinion in Bergen County v. Board of Trustees of Police & Fireman's Retirement System, No. A-5756-11 (App. Div. Oct. 11, 2013) to support this argument. However, unpublished opinions do not constitute precedent or bind us. Trinity Cemetery Ass'n v. Twp. of Wall, 170 N.J. 39, 48 (2001); R. 1:36-3. Nonetheless, the case does not apply. A correction officer's off-duty possession of a controlled dangerous substance for personal use cannot be reasonably equated with Beagin's misconduct, and Beagin had no mitigating circumstances warranting a partial forfeiture.

Our review of the Board's decision is limited. Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011). We will not disturb the Board's decision absent "a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Ibid. (quoting In re Herrmann, 192 N.J. 19, 27-28 (2007)). However, "because questions of law are the province of the judicial branch . . . we are in no way bound by [the Board's] interpretation of a statute or its determination of a strictly legal issue[.]" Ibid. (internal citations omitted).

We have considered Beagin's arguments in light of the record and applicable legal principles and conclude there is ample credible evidence in the record as a whole supporting the Board's decision, and the decision was not arbitrary, capricious, or unreasonable. R. 2:11-3(e)(1)(D). We affirm substantially for the reasons expressed in the Board's and ALJ's thorough decisions. We also conclude that Beagin's arguments to the contrary are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). However, we make the following brief comments.

The date Beagin's misconduct first occurred was the starting point for the Board's analysis of how much service and salary credit should be forfeited. Pursuant to N.J.S.A. 43:1-3(d),


[w]henever [the Board] determines, pursuant to this section, that a partial forfeiture of earned service credit or earned pension or retirement benefits is warranted, it shall order that benefits be calculated as if the accrual of pension rights terminated as of the date the misconduct first occurred or, if termination as of that date would in light of the nature and extent of the misconduct result in an excessive pension or retirement benefit or in an excessive forfeiture, a date reasonably calculated to impose a forfeiture that reflects the nature and extent of the misconduct and the years of honorable service.

[(Emphasis added).]

We are satisfied the Board reasonably determined that the nature and extent of Beagin's deplorable misconduct would result in an excessive retirement benefit, and that total forfeiture of his service and salary credit was warranted.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION