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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-5234-15T2

WAYNE BRYANT,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES OF THE PUBLIC
EMPLOYEES' RETIREMENT SYSTEM,

Defendant-Respondent.

Argued January 10, 2018 – Decided March 15, 2018

Before Judges Koblitz, Manahan and Suter.

On appeal from the Board of Trustees of the
Public Employees' Retirement System,
Department of Treasury, PERS No. 539916.

Samuel J. Halpern argued the cause for
appellant.

Nels J. Lauritzen, Deputy Attorney General,
argued the cause for respondent (Gurbir S.
Grewal, Attorney General; Jason W. Rockwell,
Assistant Attorney General, of counsel; Nels
J. Lauritzen, on the brief).

PER CURIAM

Petitioner Wayne Bryant appeals from the June 22, 2016 final agency decision of the Board of Trustees (Board), Public Employees' Retirement System (PERS). The Board adopted the May 12, 2016 initial decision of an Administrative Law Judge (ALJ) affirming the Board's decision to forfeit petitioner's entire PERS service and salary credit, making him ineligible for retirement benefits. We affirm.

On January 1, 1980, petitioner enrolled in the PERS as a Camden County Freeholder. In January 1982, he was elected to the State Assembly and in 1995 became a State Senator, where he served until 2006. From 2002 to 2006, he served as the Chair of the Senate Budget and Appropriations Committee. He also served as a program support coordinator for the University of Medicine and Dentistry of New Jersey's School of Osteopathic Medicine (UMDNJ-SOM) from 2003 to 2006 and a part-time lecturer for Rutgers University from 1997 to 2006. He served as associate counsel to the Gloucester County Board of Social Services (GCBSS) from 1996 through 2006. He also was a partner in a private law firm during most of this time.

At the end of 2001, based on his highest three years' salary in State service, he would have been eligible for an annual pension of approximately \$28,000. Based on his service in four public positions from 2002 to 2006, petitioner increased his pension to

approximately \$81,000. He sought his pension at the end of December 2006, based on his twenty-five years of pension credit.

In November 2008, a federal jury found petitioner guilty of six counts of mail and wire fraud, 18 U.S.C. §§ 1341, 1343, 1346, related to his fictitious and non-bona fide UMDNJ-SOM position between 2003 and 2006; one count of solicitation and acceptance of a corrupt payment or benefit, 18 U.S.C. § 666(a)(1)(B), occurring between 2002 and 2006, when petitioner solicited and received corrupt salary and pension benefits in exchange for his influence as a public official; and five counts of mail fraud, 18 U.S.C. § 1341, related to his fictitious UMDNJ-SOM position and misinformation regarding his GCBSS position between 2003 and 2006. U.S. District Judge Freda Wolfson stated at sentencing that all of petitioner's "good deeds necessarily are now overshadowed by what's happened in the last couple of years" and "individuals have to realize when they enter public service, that they can never abuse the trust of the people." Petitioner was sentenced to forty-eight months in jail as well as fines and restitution. The conviction was affirmed on appeal. United States v. Bryant, 655 F.3d 232 (3d Cir. 2011). Petitioner was statutorily required to forfeit any public position, N.J.S.A. 2C:51-2(a)(1), (2) and - 2(b)(2), and is disqualified from holding any future government office, N.J.S.A. 2C:51-2(d).

The Board determined that total forfeiture of his pension was appropriate under N.J.S.A. 43:1-3 based on petitioner's egregious misconduct. After a hearing, the ALJ agreed.

Petitioner's receipt of retirement benefits 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 petitioner's misconduct warranted forfeiture, the Board and then the ALJ 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); Uricoli v. Bd. of Trs., 91 N.J. 62, 77-78 (1982).]

After a plenary testimonial hearing, the ALJ considered and balanced the eleven factors and held that total forfeiture of petitioner's service and salary credit was warranted, affirming the Board's decision. The ALJ wrote:

The misconduct and conviction were directly related to the petitioner's position as a public official. First, he accrued pension credits while serving as counsel to the GCBSS while associates performed the work. This increased the petitioner's pension credits. Second, a part-time job as program support coordinator was created for him at the UMDNJ-SOM which provided pension credits to him as if for a full-time position. The institution benefited by this appointment by receiving an increase in financial assistance. The conduct was an ongoing enterprise designed to maximize the petitioner's final pension benefit at the expense of the public, either by being paid for work performed by others, or by having a part-time job listed as full-time so that more pension credits could be accumulated.

She also found:

The nature of petitioner's misconduct demonstrates a high degree of moral turpitude. The petitioner's motives were solely for personal gain. The use of others to perform work while he obtained pension credits for that work, and the creation of a part-time position (where an appearance may or may not have been necessary) to provide additional

pension credits, violated the public trust. In addition, the petitioner did not accept responsibility for his conduct, contending that because others were doing the same thing, and because the GCBSS was aware of others performing his duties on his behalf, his conduct was excusable.

The ALJ took into account the "extensive contributions made by the petitioner to his community and his [S]tate." She commented that his character witnesses "knew him to be a fair and honest man who went out of his way to help others. His legislative contributions were extraordinary, and the State benefited from his dedication, particularly to welfare reform." The ALJ considered the aggravating factors to be "the continuing nature of the offense; the relationship between the conduct and the effect it would have on the pension system and the citizens of this [S]tate; and the motivation to provide a substantial financial benefit to" petitioner. The ALJ cited to Corvelli v. Bd. of Trs., Police & Firemen's Ret. Sys., 130 N.J. 539 (1992), where a total forfeiture of thirty years was upheld after Corvelli was sentenced to three years of probation for administratively abusing a subordinate for several years.

On appeal, petitioner contends that the penalty of total forfeiture was "wholly unwarranted" under the applicable eleven factors, arguing that his sterling qualities and many good deeds

as demonstrated by his many character witnesses should have resulted in only 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 petitioner'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 ALJ'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 her thorough decision. We also conclude that petitioner's arguments to the contrary are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

We are satisfied that the evidence supported the ALJ's decision that given the severe criminal nature of the lengthy misconduct, total forfeiture of petitioner's pension was warranted

regardless of his many good deeds. A lesser punishment would not sufficiently "induce people" to "continue faithful and diligent [public] employment." Uricoli, 91 N.J. at 78.

Affirmed.

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



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