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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5588-15T2

RONALD SALAHUDDIN,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES, PUBLIC
EMPLOYEES' RETIREMENT SYSTEM,

Respondent-Respondent.

Argued January 17, 2018 – Decided March 1, 2018

Before Judges Hoffman and Gilson.

On appeal from the Board of Trustees, Public
Employees' Retirement System, PERS No. 420993.

Thomas R. Ashley argued the cause for
appellant (Law Offices of Thomas R. Ashley,
attorneys; Thomas R. Ashley, on the brief).

Jeff S. Ignatowitz, Deputy Attorney General,
argued the cause for respondent (Gurbir S.
Grewal, Attorney General, attorney; Melissa H.
Raksa, Assistant Attorney General, of counsel;
Jeff S. Ignatowitz, on the brief).

PER CURIAM

Petitioner, Ronald Salahuddin, appeals from a July 21, 2016
final agency decision of the Board of Trustees, Public Employees'

Retirement System (Board), which reduced his pension benefits by twenty percent due to his dishonorable public service. We affirm because the Board's decision was authorized by the governing statute and was not arbitrary, capricious, or unreasonable.

I.

Petitioner was a New Jersey public employee from March 1, 1976 to July 24, 2009. He began his employment as an assistant municipal tax collector for the City of East Orange. In January 1998, he transferred to the Essex County Sheriff's Office and held the title of Investigator. On July 1, 2006, petitioner became a deputy mayor in Newark. He resigned effective July 24, 2009. In June 2010, petitioner filed with the Board a service retirement application effective July 1, 2010.

In 2010, petitioner was indicted on federal charges arising out of activities he engaged in as deputy mayor. Following a trial in 2011, a jury convicted him of conspiracy to obstruct commerce by extortion under color of official right in violation of 18 U.S.C. § 1951 (the Hobbs Act). Petitioner was sentenced to one year and one day in federal prison and two years of supervised release. He was also fined \$5000.

In January 2014, the State of New Jersey initiated a proceeding against petitioner for forfeiture of the pension benefits he earned while serving as deputy mayor and to permanently

disqualify him from public office, as required under N.J.S.A. 43:1-3.1. That forfeiture action was resolved by a consent order entered in March 2014. Under the consent order, petitioner forfeited all pension and retirement benefits for the period of time he was deputy mayor from 2006 to 2009. Petitioner also agreed that he would never again be allowed to hold public office in New Jersey.

In April 2014, the Board considered petitioner's application for retirement and the impact of the criminal charges against him. The Board determined that in addition to losing his pension for the period of time that he was deputy mayor, petitioner's pension should be further reduced because of the severity of his misconduct. Accordingly, the Board reduced petitioner's retirement benefits by approximately thirty-four percent, which included the period of time that he was deputy mayor.

Petitioner administratively appealed and the matter was transferred to the Office of Administrative Law. Following a hearing, an administrative law judge (ALJ) issued an initial decision affirming the Board's decision to reduce petitioner's pension benefits. The ALJ evaluated and weighed the factors under N.J.S.A. 43:1-3(c), which codified factors previously identified by our Supreme Court in Uricoli v. Bd. of Trs., Police & Firemen's Ret. Sys., 91 N.J. 62, 77 (1982). The ALJ found that the nature

of the misconduct, the relationship between the misconduct and petitioner's public duties, and the moral turpitude weighed heavily against petitioner. The ALJ also found that certain other factors, including that petitioner had no previous misconduct and had engaged in charitable volunteer activities, weighed in his favor. Balancing those factors, the ALJ determined that petitioner should forfeit twenty percent of his pension benefits. The twenty percent forfeiture included the years of service that petitioner previously consented to forfeit.

Thereafter, in a final decision dated July 21, 2016, the Board adopted the ALJ's decision. Accordingly, the Board ordered that petitioner's retirement benefits be recalculated retroactively to his effective date of retirement, July 1, 2010. As petitioner had accrued thirty-three years and five months in public employment, the twenty percent reduction amounted to approximately 6.7 years of petitioner's service credits, which included the three years while he was deputy mayor.

II.

On this appeal, petitioner makes four arguments. First, he contends that the consent order estopped the Board from imposing a pension forfeiture greater than that contained in the consent order. Second, he argues that his federal conviction did not "involve or touch" upon his pre-2006 employment and, therefore,

should not have been used as a basis to reduce his pension benefits for that period of time. Third, he argues that the Board did not properly balance the factors under Uricoli and N.J.S.A. 43:1-3(c). Finally, he contends that he was "factually innocent" of violating the Hobbs Act. We find no merit in any of these arguments and affirm. We will begin our analysis with an overview of the law governing forfeiture of public pension benefits and then we address petitioner's individual arguments.

1. Pension Forfeiture

Pension forfeiture is governed by statute. N.J.S.A. 43:1-3. The receipt of a public pension or retirement benefit is conditioned upon the rendering of honorable service. N.J.S.A. 43:1-3(a). The board of trustees of any state or locally-administered pension fund or retirement system can order the forfeiture of all or part of the earned service credit or pension or retirement benefits of any member for misconduct occurring during the member's public service, which renders that service dishonorable. N.J.S.A. 43:1-3(b). The statute identifies eleven factors the Board must consider and balance in evaluating a member's misconduct to determine whether it renders the member's service dishonorable, and whether full or partial pension forfeiture is appropriate. N.J.S.A. 43:1-3(c)(1) to (11). Those

subsections codified the factors identified by our Supreme Court in Uricoli. 91 N.J. at 77.

The forfeiture statute also mandates that a public employee who is convicted of a certain type of crime that "involves or touches [his or her] office, position or employment," must "forfeit all of the pension or retirement benefit earned as a member of . . . [the] retirement system in which he [or she] participated at the time of the commission of the offense and which covered the office, position or employment involved in the offense." N.J.S.A. 43:1-3.1(a). A crime or offense that "involves or touches such office, position or employment" means that the crime or offense was directly related to the employee's performance of, or circumstances flowing from, the specific public office or employment held by the person. Ibid. The convictions that trigger the mandatory forfeiture under N.J.S.A. 43:1-3.1 include certain indictable crimes in the State of New Jersey or "substantially similar offense[s] under the laws of another state or the United States which would have been such a crime [in New Jersey.]" Ibid.

Nothing in N.J.S.A. 43:1-3.1 precludes the Board from ordering the forfeiture of all or part of the earned service credits, or pension or retirement benefits, of any member of the system for misconduct occurring during the member's public service. In that regard, the statute states:

Nothing in this section shall be deemed to preclude the authority of the board of trustees of any State or locally-administered pension fund or retirement system created under the laws of this State from ordering the forfeiture of all or part of the earned service credit or pension or retirement benefit of any member of the fund or system for misconduct occurring during the member's public service pursuant to the provisions of [N.J.S.A. 43:1-3], including in a case where the court does not enter an order of forfeiture pursuant to this section.

[N.J.S.A. 43:1-3.1(e).]

Accordingly, the Board is permitted to seek pension forfeiture under N.J.S.A. 43:1-3, in addition to the pension forfeiture mandated by N.J.S.A. 43:1-3.1.

2. The Board's Decision

Here, petitioner was convicted of the federal offense of conspiracy to obstruct commerce by extortion under color of official right. It is undisputable that petitioner's conviction is substantially similar to the New Jersey substantive offense of theft by extortion, N.J.S.A. 2C:20-5(b). That offense is enumerated in N.J.S.A. 43:1-3.1(b). Consequently, petitioner's pension benefits that accrued while he was serving as deputy mayor were statutorily mandated to be forfeited.

The Board had the discretion, moreover, to impose an additional forfeiture under N.J.S.A. 43:1-3. In that regard, the Board determined that the forfeiture under N.J.S.A. 43:1-3.1 was

insufficient given the severity of petitioner's misconduct. We hold that the Board acted within its statutory authority.

3. Petitioner's Arguments

Petitioner first contends that the Board is judicially estopped from seeking further pension forfeiture because of the consent order. As this is an issue of law, we review it de novo. Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011) (citing Toll Bros., Inc. v. Twp. of W. Windsor, 173 N.J. 502, 549 (2002)).

The doctrine of judicial estoppel provides that a party who has assumed a particular position in judicial proceedings, and has succeeded in maintaining that position, is estopped from taking an inconsistent position in a subsequent proceeding. Chattin v. Cape May Greene, Inc., 243 N.J. Super. 590, 620 (App. Div. 1990), aff'd, 124 N.J. 520 (1991). The doctrine of judicial estoppel does not apply when the first proceeding has been resolved by way of a settlement. See Kimball Int'l, Inc. v. Northfield Metal Prods., 334 N.J. Super. 596, 607 (App. Div. 2000) (noting that "[a] settlement neither requires nor implies any judicial endorsement of either party's claims or theories, and thus a settlement does not provide the prior success necessary for judicial estoppel.").

Here, judicial estoppel does not apply for two primary reasons. First, there is nothing in the consent order that is inconsistent with the position taken by the Board. The consent order applied to the time that petitioner served as deputy mayor. The consent order does not state that it is an entire resolution of all issues related to petitioner's pension, nor does it expressly preclude a further reduction of petitioner's pension. Second, the Board's decision to impose further pension forfeiture is consistent with its authority under N.J.S.A. 43:1-3, and is not inconsistent with the mandatory forfeiture imposed under N.J.S.A. 43:1-3.1, which is what the consent order addressed.

Next, petitioner contends that it was improper for the Board to impose forfeiture of pension benefits that accrued prior to his tenure as deputy mayor of Newark. Our review of this portion of the Board's decision is limited. Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 587 (1988). We will only reverse a final agency decision if it is "arbitrary, capricious or unreasonable or it is not supported by substantial credible evidence" Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980).

As we have already discussed, N.J.S.A. 43:1-3 left the Board with the discretion to "order the forfeiture of all or part of the earned service credits or pension or retirement benefit of any member of the fund or system for misconduct occurring during the

member's public service which renders the member's service or part thereof dishonorable" N.J.S.A. 43:1-3(b). The Board has implemented rules, which provide that in imposing a forfeiture it may do so by "a percentage of the retirement benefit based on the calculation of the percentage of time which was dishonorable service as compared to the total years and months of service credit." N.J.A.C. 17:1-6.1(c)(7).

Here, the ALJ concluded, and the Board agreed, that given the nature of petitioner's misconduct, his pension service credit of thirty-three years and five months should be reduced by a total of twenty percent, or 6.7 years of service credit. That method of calculating petitioner's pension forfeiture was consistent with and authorized by N.J.S.A. 43:1-3 and its implementing regulations under N.J.A.C. 17:1-6.1(c)(7).


Third, petitioner argues that the Board misapplied the Uricoli factors and, in particular, he contends that his misconduct was not directly related to his office and his misconduct did not involve moral turpitude. Again, our review is limited and, here, we find no grounds for reversal. The ALJ identified the governing factors in N.J.S.A. 43:1-3(c). The ALJ then evaluated and balanced those factors. The ALJ's analysis and balancing of the factors were supported by substantial credible evidence in the record. The Board then adopted the ALJ's findings. Accordingly, we find

nothing arbitrary, capricious, or unreasonable in the Board's determination.

Finally, petitioner contends that he is factually innocent of having violated the Hobbs Act and that imposing a forfeiture is a miscarriage of justice. This argument was not raised before the ALJ or the Board. Consequently, we decline to address the argument. See Zaman v. Felton, 219 N.J. 199, 226-27 (2014) (citing State v. Robinson, 200 N.J. 1, 20 (2009)) ("[O]ur appellate courts will decline to consider questions or issues not properly presented to the trial court [or administrative agency] . . . unless the questions so raised on appeal go to the jurisdiction of the trial court [or agency] or concern matters of great public interest."). Here, petitioner's argument does not go to any jurisdictional issue, nor does it concern a matter of great public interest.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION