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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0828-22**

MICHAEL NAPPE,

Petitioner-Appellant,

v.

**BOARD OF TRUSTEES,
TEACHERS' PENSION AND
ANNUITY FUND,**

Respondent-Respondent.

Argued October 3, 2023 – Decided October 23, 2023

Before Judges Whipple, Mayer and Paganelli.

On appeal from the Board of Trustees of the Teachers' Pension and Annuity Fund, Department of the Treasury.

Samuel Wenocur argued the cause for appellant (Oxford Cohen, PC, attorney; Samuel Wenocur, of counsel and on the briefs).

Matthew Melton, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Janet Greenberg Cohen, Assistant

Attorney General, of counsel; Matthew Melton, on the brief).

Zazzali, PC, attorneys for amicus curiae New Jersey Education Association (Jason E. Sokolowski, of counsel and on the brief).

PER CURIAM

In this matter, we previously vacated the dismissal of the petitioner Michael Nappe's accidental disability (AD) claim under N.J.S.A. 18A:66-40(a) and remanded the issue under N.J.A.C. 17:1-6.4 to the Office of Administrative Law for a hearing to resolve the limited factual dispute of whether petitioner "resigned because of his mental disability." Nappe v. Bd. of Trs., Tchrs.' Pension & Annuity Fund, No. A-1173-18 (App. Div. Dec. 31, 2019) (slip op. at 13). The Administrative Law Judge (ALJ) decided for petitioner; however, the Teachers' Pension and Annuity Fund (TPAF) issued a Final Agency Decision (FAD), rejecting the ALJ's determinations and ruled petitioner was ineligible for AD because he left employment due to impending disciplinary actions.

This appeal followed. We reverse.

I.

Petitioner was a teacher with the Linden Board of Education (Linden) from October 1, 2012, until his separation date on June 30, 2018. He began to

have conflicts over his assigned work with his supervisor, Michael Walters, in 2012. In November 2015, petitioner filed a complaint with the Division of Civil Rights (DCR) asserting disparate treatment and retaliation by Walters as well as discrimination due to his diabetes and Crohn's Disease. He alleged that Lanschool — a remote-control computer software used to track students' work—was removed in violation of his accommodation as he lacked mobility in the classroom.

In January 2016, the Linden Schools Superintendent, Danny Robertozzi, sent petitioner a letter reporting that based on the review of the emails and documentation, the discrimination and retaliation claims were unfounded, since the computer software was not part of petitioner's accommodations. Instead, Lanschool was a teaching tool rather than an accommodation "in the first instance." The letter went on to state petitioner and Walters had a personality conflict due to their disagreement over how Walters managed petitioner and the department. In March 2017, petitioner had an altercation with Walters, wherein petitioner alleges Walters flung a chair at petitioner and began to point his finger in petitioner's face. Petitioner filed a criminal complaint against Walters.

In August 2017, petitioner and Linden entered into a Settlement/Separation Agreement and General Release agreeing Linden would not institute any formal disciplinary action against petitioner; petitioner would withdraw any actions against Linden; and petitioner would receive a one-year paid leave of absence. The agreement stipulated that petitioner "shall provide a medical note to support the need for a leave." In September 2017, petitioner withdrew the DCR complaint. As part of the agreement, petitioner also submitted an irrevocable letter of resignation effective June 30, 2018.

Petitioner applied for AD benefits in February of 2018, asserting the March 2017 altercation with Walters was a traumatic event in the classroom entitling him to AD benefits.¹

TPAF denied the application asserting that under the new section of N.J.A.C. 17:1-6.4, disability applicants are required to prove: (1) the retirement was due to a total and permanent disability, and (2) the disability was the reason the member left employment and petitioner was deemed to have resigned voluntarily. Members are not permitted to apply if they have involuntarily or voluntarily terminated employment due to settlement agreements pursuant to pending administrative or criminal charges. Members

¹ We offer no opinion as to this assertion by petitioner and whether it entitles him to AD. The question before us is whether he is eligible to apply.

are also not permitted to apply if they have voluntarily separated for reasons other than a disability. As stated above, petitioner appealed, and we remanded. In addition, with leave granted, New Jersey Education Association appeared as amicus.

The ALJ conducted hearings to determine whether the petitioner left his employment due to a disability or because of impending discipline. During the hearing, the ALJ heard testimony from Nappe himself, his wife Janice Nappe, as well as Emmanuel Hriso, M.D., his psychiatrist, and his therapist Richard Rapkin. Superintendent Robertozzi testified for Linden. The ALJ concluded petitioner's application should be considered and accepted because the separation from employment in August 2017 was a result of his mental health issues and not the threat of discipline or some other reason. After observing the witnesses, the ALJ determined petitioner's testimony about his mental health issues and work-related stress was credible, so too the testimony of his therapist and his psychiatrist. The ALJ rejected Robertozzi's testimony that there would be disciplinary charges against petitioner, finding the testimony not credible or supported by any documentary evidence or any other witness. The ALJ found no discipline or tenure charges against the petitioner and based

on her findings cleared the way for petitioner to apply for AD with the initial decision issued July 21, 2022.

On October 7, 2022, expressing little more than its disagreement with the ALJ's findings, TPAF ruled petitioner was ineligible for AD because he left employment due to impending disciplinary actions. TPAF asserted the ALJ overlooked relevant parts of N.J.A.C. 17:1-6.4, which state that the disability must be the reason the member left the employment and those who voluntarily separated from service for reasons other than disability would not be permitted to apply for the disability retirement.

Additionally, TPAF asserted the ALJ diminished evidence that petitioner "was forced to resign, and that he would face disciplinary action had he chosen not to enter into the Agreement." TPAF chose instead to elevate Robertozzi's testimony based on his knowledge of petitioner's performance and his testimony that Linden was ready to pursue several disciplinary actions against petitioner.

TPAF noted petitioner "express[ed] grief [to his psychiatrist] over his 'forced retirement' and being 'literally forced to accept the leave'", thus demonstrating the end of his employment was not due to disability. TPAF asserts Linden was unaware of petitioner's mental disability, as petitioner

never requested accommodations in relation to a mental condition, but only with regard to his physical health issues as outlined in his DCR complaint.

II.

Our review of administrative agency action is limited. Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011). An agency's decision will be reversed if we find the decision to be "arbitrary, capricious, or unreasonable, or [] not supported by substantial credible evidence in the record as a whole." In re Stallworth, 208 N.J. 182, 194 (2011) (alteration in original) (citing Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980)). In reviewing administrative agency decisions, we are limited to three inquiries:

(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995).]

Furthermore, our review of an agency's legal determination is de novo. SSI Med. Serv. v. HHS, Div. of Med. Assistance & Health Servs., 146 N.J.

614, 621 (1996). The court is not bound by an agency's interpretation of a "strictly legal issue." Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973).

We recognize TPAF also has the authority to "adopt, reject[,] or modify" the ALJ's findings. N.J. Dept of Pub. Advoc. v. N.J. Bd. of Pub. Utils., 189 N.J. Super 491, 507 (App. Div. 1983). However, TPAF is required to provide clear reasons for rejecting the ALJ's findings. N.J.S.A. 52:14B-10(c). Even if the ALJ's findings were arbitrary, capricious, or unreasonable, TPAF must defer to the ALJ on the credibility findings for lay witnesses. In re Adoption of Amends. to Ne., Water Quality Mgmt. Plan, Raritan, Sussex Cnty., 435 N.J. Super. 571, 584 (App. Div. 2014).

The issue before the ALJ was whether there was sufficient evidence to establish petitioner resigned to avoid future disciplinary action. TPAF argues it was appropriate to conclude that petitioner's mental disability was not the reason he left, but instead it was because he was facing discipline and potential charges. Robertozzi's testimony, along with the notes from petitioner's treating physicians show petitioner thought there was a potential for discipline. Additionally, the agreement stated "[Linden] agrees that it will not seek to

institute any formal disciplinary actions" against petitioner, meaning that any potential action would be dropped.

However, there is no record of Linden formally instituting discipline or filing charges against petitioner. Robertozzi's testimony mentioned he wanted to file charges, but his plans were not pursued. Without question, Linden was unhappy with petitioner's poor performance and Robertozzi was planning to recommend an increment withhold of petitioner's annual raise and to pursue tenure charges for the 2016-2017 year, but no discipline was ever forthcoming.

Indeed, both of petitioner's treating physicians included in their notes that petitioner was "worried the superintendent was trying to suspend him without pay" and "[he] ruminates about being literally forced to accept the leave after being harassed and humiliated at workplace for two years." But again, no charges were filed, or disciplinary actions taken.

Linden agreed not to bring any formal disciplinary action against petitioner based upon any allegations or claims which Linden knew about or should have known about prior to the execution of the agreement. But it also agreed that in consideration of the covenants in the agreement, petitioner "shall provide a medical note to support the need for a leave."

Thus, TPAF's findings are not sufficiently supported by the evidence that petitioner left his employment to evade disciplinary action. Moreover, TPAF's interpretation of N.J.A.C. 17:1-6.4 is flawed.

To apply for disability retirement, applicants must prove their disability is the reason the individual left employment. In re Adoption of N.J.A.C. 17:1-6.4, 17:1-7.5 & 17:1-7.10, 454 N.J. Super. 386, 397 (App. Div. 2018). The statutory language pertinent to this case states:

(a) Each disability retirement applicant must prove that his or her retirement is due to a total and permanent disability that renders the applicant physically or mentally incapacitated from performing normal or assigned job duties at the time the member left employment; the disability must be the reason the member left employment.

(b) Members who have involuntarily or voluntarily terminated service for any of the reasons listed below will not be permitted to apply for a disability retirement:

1. Removal for cause or total forfeiture of public service;
2. Settlement agreements reached due to pending administrative or criminal charges, unless the underlying charges relate to the disability;
3. Loss of licensure or certification required for the performance of the member's specific job duties;

4. Voluntary separation from service for reasons other than a disability[.]

[N.J.A.C. 17:1-6.4.]


We look at statutory language as the best indicator of legislative intent. In re Adoption of N.J.C.A. 17:1-6.5, 454 N.J. Super. at 396. TPAF asserts "voluntary separation from service for reasons other than a disability," includes a future potential threat of discipline as a reason to deny petitioner application for disability benefits even when there is no actual pending discipline. TPAF's expanded interpretation is unsupported by any reasonable interpretation of N.J.A.C. 17:1-6.4(b)(4).

We reject the argument N.J.C.A. 17:1-6.4(b)(4) is meant to include threatened uncharged disciplinary action as a "reason other than a disability." TPAF relied upon N.J.A.C. 17:1-6.4(a) that the disability must be the reason the member left employment and N.J.A.C. 17:1-6.4(b)(4), the catch-all provision that "voluntary separation from service for reasons other than a disability" prevented petitioner from applying for a disability retirement. Without evidence of any potential disciplinary action, TPAF concluded petitioner was forced to resign and that he would have faced disciplinary action had he chosen not to enter into an agreement with Linden. TPAF disregarded N.J.A.C. 17:1-6.4(b)(2), which bars members from applying for

disability retirement benefits if they terminated service as a result of a "settlement agreement[] reached due to pending administrative or criminal charges." TPAF tacitly acknowledged there was no pending disciplinary action whatsoever against petitioner at the time of his resignation. Instead, TPAF relied upon the general catch-all provision of N.J.A.C. 17:1-6.4(b)(4) which does not specify any "reason" for a voluntary separation of service other than it is a reason not due to disability to prohibit a member from applying for disability. TPAF concluded a potential threat of discipline as opposed to actual discipline served as a reason to bar petitioner from applying for disability retirement, wrongfully expanding the regulation. We discern no basis to conclude some potential future disciplinary action would apply to the catch-all provision to limit a member from applying for AD. Moreover, TPAF's decision is at odds with (b)(2) of the Rule which would only bar petitioner from applying for disability benefits if his agreement was reached due to "pending" disciplinary action.

Reversed and remanded. Petitioner's application shall be accepted. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION