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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1340-20**

KEITH DEVAN,

Petitioner-Appellant,

v.

**BOARD OF TRUSTEES,
PUBLIC EMPLOYEES'
RETIREMENT SYSTEM,**

Respondent-Respondent.

Argued December 6, 2022 - Decided January 4, 2023

Before Judges Gilson and Paganelli.

On appeal from the Board of Trustees of the Public Employees' Retirement System, Department of the Treasury, PERS No. xx8605.

Samuel M. Gaylord argued the cause for appellant (Szaferman Lakind Blumstein & Blader, PC, attorneys; Samuel M. Gaylord, on the brief).

Robert E. Kelly, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Sookie Bae-Park, Assistant Attorney General, of counsel; Robert E. Kelly, on the brief).

PER CURIAM

Keith DeVan appeals the final administrative determination of the Board of Trustees, Public Employee's Retirement System (Board), upholding the Division of Pensions and Benefits' calculation of his salary (Division), for purposes of accidental disability, as of the date he sustained a work-related injury. Because we determine the Board correctly applied N.J.S.A. 43:15A-46(b), we affirm.

I.

On January 20, 2015, DeVan, a Camden County juvenile detention officer, was injured during the course of his employment. At the time of the injury, DeVan's salary was \$64,556. DeVan received workers' compensation benefits from August 2015 until January 28, 2016, and retired effective March 1, 2016. He applied for accidental disability retirement benefits. On May 19, 2016, the Board granted ordinary disability, finding he was totally and permanently disabled effective March 1, 2016. However, the Board postponed action on the application for accidental disability pending further administrative review.

In 2016, the union, representing DeVan, and the County signed a contract that awarded salary increases retroactive to January 1, 2013. DeVan

and the Division communicated regarding the salary increases and how they would affect the salary calculations for his ordinary disability benefit. On March 15, 2018, the Division explained that "when a retroactive salary adjustment is awarded due to union contract agreement, the Division will only adjust salary up to the commencement of the Worker's Compensation Benefits period and/or after it has ended."

On June 19, 2019, the Board granted DeVan's application for accidental disability retirement benefits. On December 6, 2019, the Division advised that the accidental disability retirement benefit would be calculated based on DeVan's salary at the time of the accident. DeVan filed an administrative appeal, which was denied. In denying the appeal, the Board reiterated the explanation provided in the May 15 letter. The Board also denied DeVan's request for an administrative hearing. On December 10, 2020, the Board rendered a final administrative decision. The Board cited N.J.S.A. 43:15A-46, which provides that the salary for calculating the accidental disability retirement benefit will be the salary "at the time of the occurrence of the accident." In addition, the Board noted its reliance on the workers' compensation statute.

II.

"An appellate court's review of an administrative determination is limited." Russo v. Bd. of Trs., Police and Firemen's Ret. Sys., 206 N.J. 14, 27 (2011) (citing In re Herrmann, 192 N.J. 19, 27 (2007)). Appellate courts will sustain an administrative agency's final decision "unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Mount v. Bd. of Trs., Police & Firemen's Ret. Sys., 233 N.J. 402, 418 (2018) (quoting Russo, 206 N.J. at 27). "In determining whether agency action is arbitrary, capricious, or unreasonable, an appellate court must examine":

(1) whether the agency's action violates express or implied legislative polices, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support findings on which the agency based its action; and (3) whether in applying the legislative polices 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.

[In re Stallworth, 208 N.J. 182, 194 (2011) (quoting In re Carter, 191 N.J. 474, 482-83(2007)).]

We have explained that

[W]e afford substantial deference to an agency's interpretation of a statute that the agency is charged with enforcing. Such deference has been specifically

extended to state agencies that administer pension statutes because a state agency brings experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise. Nevertheless, we are in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue.

[Tasca v. Bd. of Trs. Police & Firemen's Ret. Sys., 458 N.J. Super. 47, 56 (App. Div. 2019) (internal citations and quotations omitted).]

"Construction of any statute begins with consideration of its plain language."

Bd. of Educ. v. Neptune Twp. Educ. Ass'n., 144 N.J. 16, 25 (1996) (quoting Merin v. Maglaki, 126 N.J. 430, 434 (1992)). "A statute should be interpreted in accordance with its plain meaning if it is 'clear and unambiguous on its face and admits of only one interpretation.'" Ibid. (quoting State v. Butler, 89 N.J. 220, 226 (1982)).

III.

This appeal involves the straightforward application of N.J.S.A. 43:15A-46(b). The statute, in relevant part, provides:

A member under 65 years of age upon retirement for accidental disability shall receive a retirement allowance which shall consist of:

.....

A pension, in the amount which, when added to the member's annuity, will provide a total retirement

allowance of 72.7% of his actual annual compensation for which contributions were being made at the time of the occurrence of the accident.

For purposes of calculating the amount of DeVan's "accidental disability," the focus is on the salary "at the time of the occurrence of the accident," January 20, 2015. N.J.S.A. 43:15A-46(b). Included within the salary calculation are the retroactive raises until January 20, 2015. DeVan's salary, including the retroactive increases, was calculated to be \$68,508. In its final determination, the Board correctly explained this calculation. DeVan has not shown that the Board's calculation was incorrect.

Apparently, DeVan was confused by the Board reference to his workers' compensation. The cite to the workers' compensation statute was relevant while DeVan was on "ordinary disability." The ordinary disability benefit is based on "final compensation," which is defined as "the average annual compensation . . . during any three fiscal years . . . providing the largest possible benefit" N.J.S.A. 43:15A-6(h)(1). Therefore, in calculating DeVan's "final compensation," the Division credited him with a reduced rate for the time he received workers' compensation benefits in lieu of salary. However, the "ordinary disability" analysis was rendered inapplicable once the Board granted "accidental disability." Thereafter, the analysis simply became

the salary "at the time of the occurrence of the accident." N.J.S.A. 43:15A-46(b).

Given the plain language of the accidental disability statute, DeVan's analysis of the workers' compensation statute and related caselaw are inapposite. Moreover, any attempt by DeVan to include salary increases, negotiated for the time after the date of his injury, are not permitted under N.J.S.A. 43:15A-46(b).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION