

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christopher R. Woronchuk,	:	
Petitioner	:	
	:	
v.	:	No. 607 C.D. 2010
	:	
State Employees' Retirement	:	Submitted: February 25, 2011
Board,	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE KELLEY

FILED: July 8, 2011

Christopher R. Woronchuk (Claimant) petitions for review of an order of the State Employees' Retirement Board (Board) that denied Claimant's request to be allowed to remain a disability annuitant pursuant to the State Employees' Retirement Code (Retirement Code)<sup>1</sup> following his return to State service in a different position than that from which he had previously retired as disabled. The Board's order additionally granted Claimant permission to apply for another disability annuity from his subsequent State service position, based upon his medical condition in relation to the subsequent State position. We affirm.

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<sup>1</sup> 71 Pa.C.S. §§5101-5956.

Claimant initially worked for the Department of Corrections (DOC), and thereby became a member of the State Employees' Retirement System (SERS) as of May 23, 1993. Claimant thereafter became disabled from that position, took a leave without pay from his DOC job, and then executed an application for disability retirement on May 11, 1999. At that time, Claimant had 5.28 years of credited State service. On May 11, 1999, Claimant met with a Retirement Counselor and completed therewith a SERS Retirement Checklist that indicated, *inter alia*, the effect that a return to active State service would have upon his disability retirement benefits. That effect included the fact that if Claimant returned to active State service, his disability annuity would stop pursuant to the Retirement Code's clear terms. Claimant signed the SERS Retirement Checklist, indicating that he was counseled to his satisfaction, and that he was fully aware of all of the benefits to which he was entitled.

By letter dated June 10, 1999, SERS informed Claimant that he had been granted a temporary disability annuity for a one-year period, with an effective date of disability of November 1, 1998. Claimant's temporary disability benefits were continued for additional one-year periods for the years 2000 and 2001, and on July 11, 2002, SERS informed Claimant that he had been granted a permanent disability retirement benefit.

On April 9, 2007, Claimant returned to active State employment with the Department of Public Welfare (DPW). Claimant received his April 2007

disability annuity payment on April 30, 2007.<sup>2</sup> SERS discontinued Claimant's annuity payment effective May 2007 due to his April 9, 2007, return to active State service with DPW. Claimant terminated his DPW employment on July 9, 2007.

By letter dated July 27, 2007, SERS directly informed Claimant that his disability retirement benefits were stopped due to his return to State service, and further informed him that his account had been overpaid in the amount of \$566.65 for the period from April 9, 2007 to April 30, 2007, due to Claimant's return to State service with DPW. Claimant requested that his disability retirement benefits be reinstated, noting that he had resigned from his DPW position. SERS then requested further information from Claimant to enable it to respond to his request, which Claimant timely provided. By letter dated August 27, 2007, SERS denied Claimant's request to have his disability retirement benefit reinstated. Claimant appealed to the SERS Appeals Committee, which denied his appeal. Claimant then requested an administrative appeal and adjudication by the Board.

A hearing ensued before a Hearing Examiner, at which both parties participated. By opinion and recommendation dated April 1, 2009, the Hearing Examiner recommended that Claimant's disability annuity be reinstated as of the date of his termination of his position with DPW, namely July 9, 2007. The Hearing Examiner further recommended that Claimant should not have received his disability annuity for the entire period of his active service with DPW. SERS

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<sup>2</sup> SERS annuity payments are made, via direct deposit to SERS annuitants, on the last day of each calendar month.

thereafter filed a timely administrative appeal of the Hearing Examiner's opinion and recommendation with the Board.

The Board reviewed the record to the matter and received the parties' arguments, and subsequently issued its findings of fact and conclusions of law. The Board applied the relevant portions of the Retirement Code, and reasoned that Claimant's initial determination of disability, and concomitant eligibility for the receipt of benefits in the form of his disability retirement annuity, was based upon his prior State position job description in his work with DOC. The Board reasoned that Claimant's determination as permanently disabled from his DOC corrections officer position did not mean that Claimant was also permanently disabled from all gainful employment, and did not mean that Claimant was permanently disabled from his DPW position. Additionally, the Board noted that under the Retirement Code's clear provisions, a party cannot simultaneously be a disability annuitant and an active member of SERS. Further, the Board reasoned that Claimant was, or should have been, aware of the effect that returning to active State service would have upon his disability retirement benefits eligibility.

As such, by opinion and order dated March 11, 2010, the Board denied Claimant's request to remain a disability annuitant following his return to State service in, and subsequent resignation from, the DPW position. Additionally, and notwithstanding the time elapsed, the Board granted Claimant a 30-day period in which to apply for another disability annuity based upon his DPW termination date of July 9, 2007, and based upon Claimant's medical condition on that date in

relation to his DPW job description. Claimant now petitions for review of the Board's order.

Our scope of review of a Board decision is limited to determining whether there was a violation of constitutional rights or an error of law, and whether any finding of fact is unsupported by substantial evidence. Perry v. State Employees' Retirement System, 872 A.2d 273 (Pa. Cmwlth. 2005).

In the instant appeal, Claimant presents one question for review: whether the Board erred in determining that upon his resignation from his DPW position, Claimant was not entitled to a reinstatement of his prior DOC disability retirement annuity, but was limited to applying for a disability retirement annuity from the DPW position.

To be eligible for a disability annuity under Section 5308 of the Retirement Code, 71 Pa.C.S. §5308, a State employee must satisfy three criteria: (1) status as an active member or an inactive member on leave without pay, who has five years of service credit; (2) physical or mental incapacity before retirement age, which prevents continued job performance, and (3) qualification under Section 5905(c)(1) of the Retirement Code, 71 Pa.C.S. §5905(c)(1). Dingel v. State Employees' Retirement System, 435 A.2d 664 (Pa. Cmwlth. 1981). Section 5905(c)(1) of the Retirement Code states, in relevant part, that “where the [B]oard has received an application for a disability annuity ..., the [B]oard shall ... have the applicant examined and ... make a finding of disability and whether or not the disability is service connected or nondisability[.]” 71 Pa.C.S. §5905(c)(1). Thus, an employee's application for a disability annuity activates the Retirement System

administrative process.<sup>3</sup> Dingel. There is no dispute in the instant matter that Claimant properly qualified for, and received, a disability retirement annuity in relation to his DOC position.

As the Board cogently summarized in its opinion:

[The] Board is an independent administrative board of the Commonwealth and is charged with the administration of SERS and the interpretation of the Retirement Code, subject to judicial review. [Section 702 of the Administrative Agency Law,] 2 Pa.C.S. §702; [Sections 5901(a), 5902, and 5931(a) of the Retirement Code,] 71 Pa.C.S. §§5901(a), 5902, 5931(a). SERS is the administrative arm of this Board. A SERS member has only those rights created under the Retirement Code and none beyond them. Bittenbender v. State Employees' Retirement Board, 622 A.2d 403, 405 (Pa. Cmwlth. 1992). Claimant's eligibility for a disability annuity in 1999 arose from the provisions of the Retirement Code, and thus any eligibility that he may have to further disability benefits must be based on provisions of the Retirement Code as well.

At all times relevant to this appeal, Claimant was a member of SERS. The Retirement Code defines "Member" as any "active member, inactive member, annuitant, vestee or special vestee." [Section 5102 of the Retirement Code,] 71 Pa.C.S. §5102. Claimant was an active member of SERS during his periods of active State employment, including his employment with the [DOC] and his employment with the DPW. The term "Active Member" is defined in pertinent part as "[a] State employee, or a member on leave without pay, for whom pickup contributions are being made to the fund..."

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<sup>3</sup> The triggering function of the employee's application is also expressed in Section 5704(a) of the Code, 71 Pa.C.S. §5704(a): "A member who has made application for a disability and has been found to be eligible in accordance with the provisions of section 5905(c)(1) ... shall receive a disability annuity[.]"

[Section 5102 of the Retirement Code,] 71 Pa.C.S. §5102.

Claimant became a disability annuitant effective November 1, 1998, as a result of the approval of his disability retirement application filed May 11, 1999. The Retirement Code defines “Disability Annuitant” as “a member on or after the effective date of disability until his annuity or the portion of his annuity payments in excess of any annuity to which he may otherwise be entitled is terminated.” [Section 5102 of the Retirement Code,] 71 Pa.C.S. §5102. In other words, a disability annuitant is a disability annuitant only as long as he or she is collecting a disability annuity. Further, the Retirement Code defines “Annuitant” as “any member on or after the effective date of retirement until his annuity is terminated.” [Section 5102 of the Retirement Code,] 71 Pa.C.S. §5102. Under the Retirement Code it is clear that all “disability annuitants” are “annuitants” as those terms are defined therein.

**With the exception of limited circumstances not applicable here, the Retirement Code requires that a SERS annuitant’s annuity be stopped if that SERS annuitant returns to active State service after retiring. [Section 5706 of the Retirement Code,] 71 Pa.C.S. §5706. Section 5706(a) states: “General rule.-If the annuitant returns to State service ... any annuity payable to him under this part shall cease effective upon the date of his return to State service...” 71 Pa.C.S. §5706(a). Under the terms of the Retirement Code, it is impossible for a member of SERS to simultaneously be an active member and an annuitant. Claimant was an active member of SERS when he began his employment with the [DOC] on May 23, 1993. Claimant became a disability annuitant when SERS first approved his disability retirement application. Claimant continued to be a disability annuitant until April 9, 2007. At the time Claimant returned to active State service on April 9, 2007, Claimant’s status as a disability annuitant for purposes of the Retirement Code ended. Section 5706(a) mandates that once Claimant returned to active State service on April 9, 2007, his disability annuity was to cease. We therefore conclude that, by operation of law, Claimant ceased being a**

disability annuitant on April 9, 2007, upon his employment by DPW and his resulting status as an active member of SERS.

Board Opinion at 7-9 (emphasis added).

Claimant argues that he continues to be, and has at all times been, disabled from his DOC position, and is thusly entitled to a continuation of his disability benefits. As initial support for his argument of ongoing eligibility, Claimant cites to the following language of Section 5704(a) of the Retirement Code:

Disability annuities

(a) Amount of annuity.--A member who has made application for a disability annuity and has been found to be eligible in accordance with the provisions of section 5905(c)(1) (relating to duties of the board regarding applications and elections of members) shall receive a disability annuity payable from the effective date of disability as determined by the board and **continued until a subsequent determination by the board that the annuitant is no longer entitled to a disability annuity.**

71 Pa.C.S. §5704(a) (emphasis added). Claimant asserts that prior to the Board's issuance of its opinion under review herein, the Board made no determination that Claimant was no longer entitled to a disability annuity, as required in Section 5704(a), and therefore he remains entitled to the annuity payments. We disagree.

First, we emphasize that Claimant's own voluntary return to active State service, in taking a position with DPW, ended his status as a disability annuitant by operation of law, namely, the express provision of Section 5706(a) of



the Retirement Code.<sup>4</sup> The application of Section 5706(a) as of the date of

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<sup>4</sup> Section 5706(a) of the Retirement Code states, in its entirety:

Termination of annuities

(a) General rule.--**If the annuitant returns to State service or enters or has entered school service and elects multiple service membership, any annuity payable to him under this part shall cease effective upon the date of his return to State service** or entering school service and in the case of an annuity other than a disability annuity the present value of such annuity, adjusted for full coverage in the case of a joint coverage member who makes the appropriate back contributions for full coverage, shall be frozen as of the date such annuity ceases. An annuitant who is credited with an additional 10% of Class A and Class C service as provided in section 5302(c) (relating to credited State service) and who returns to State service shall forfeit such credited service and shall have his frozen present value adjusted as if his 10% retirement incentive had not been applied to his account. In the event that the cost-of-living increase enacted December 18, 1979 occurred during the period of such State or school employment, the frozen present value shall be increased, on or after the member attains superannuation age, by the percent applicable had he not returned to service. This subsection shall not apply in the case of any annuitant who may render services to the Commonwealth in the capacity of an independent contractor or as a member of an independent board or commission or as a member of a departmental administrative or advisory board or commission when such members of independent or departmental boards or commissions are compensated on a per diem basis for not more than 150 days per calendar year or as a member of an independent board or commission requiring appointment by the Governor, with advice and consent of the Senate, where the annual salary payable to the member does not exceed \$35,000 and where the member has been an annuitant for at least six months immediately preceding the appointment. Such service shall not be subject to member contributions or be eligible for qualification as creditable State service.

71 Pa.C.S. §5706(a) (emphasis added).

Claimant's return to active State service was a consequence of Claimant's own volitional choice to return to State service, and was not a function of any Board action or decision.<sup>5</sup> We note that an additional provision within the Retirement Code recognizes the automatic cessation of a disability annuity by operation of law. The Retirement Code's express language anticipates the automatic cessation of a disability annuity by operation of Section 5706(a) in advance of SERS' recognition of that cessation and concomitant notification to a former annuitant:

(a.2) Return of benefits.--In the event an annuitant whose annuity ceases pursuant to this section receives any annuity payment, ... on or after the date of his return to State service ... , the annuitant shall return to the board the amount so received plus statutory interest.

Section 5706(a.2) of the Retirement Code, 71 Pa.C.S. §5706(a.2).

Secondly, Claimant was subsequently informed by the Board that he was no longer entitled to a disability annuity by letter dated July 27, 2007. Reproduced Record (R.R.) at 98a. To the extent that Section 5704(a) of the Retirement Code requires a "subsequent determination by the [B]oard that the annuitant is no longer entitled to a disability annuity," the Board's letter informing Claimant of the consequences of his choice to return to active State service fulfills that requirement under the unique facts of this case.

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<sup>5</sup> Claimant does not challenge the evidence supporting the Board's finding that Claimant was, or should have been, aware that if he returned to active State service his disability annuity would cease. See Board Opinion at 2. Thus, that finding is conclusive.

Further, to the extent that the Retirement Code's general requirement of a subsequent Board determination pursuant to Section 5704(a) can be read to conflict with the specific mandate of Section 5706(a) that Claimant's disability annuity cease upon his return to active State service, it is axiomatic that where there is a conflict between two statutory provisions, the specific provision controls over the general provision. Section 1933 of the Statutory Construction Act of 1972, 1 Pa.C.S. §1933. Thus, Claimant's reliance upon the Board determination requirement of Section 5704(a) under the instant facts, given his actions in voluntarily returning to active State service and the operation by law of Section 5706(a), is misplaced.<sup>6</sup>

Claimant next argues that Section 5706(a), relied upon by the Board as authority for the cessation of Claimant's disability annuity due to his return to State service in his DPW position, contains no language that indicates a forfeiture of all future disability retirement benefits. Claimant emphasizes that the General Assembly has elsewhere made clear its intention to apply forfeiture in connection with disability retirement benefits in Sections 5908(b) and (c) of the Retirement Code (providing that a claimant's disability annuity payments shall be forfeited where a disability annuitant refuses to provide required earnings information, or refuses to undergo a required medical exam, respectively), 71 Pa.C.S. §5908(b)-(c). The lack of any language specifically referencing forfeiture within Section

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<sup>6</sup> Claimant's implicit reliance upon the gap in time between his return to active State service with DPW on April 9, 2007, and SERS' cessation of his disability annuity payments as of April 30, 2007, is similarly misplaced. See Section 5706(a.2) of the Retirement Code, 71

*(Continued....)*

5706(a), Claimant reasons, indicates that the General Assembly did not intend that a permanent disability annuitant forfeit his right to a permanent disability retirement in the future upon a return to active State service. In essence, Claimant argues that the choice of the word “cease” implies an intent by the General Assembly to merely suspend a disability annuitant’s benefits subject to reinstatement, and that the word “cease” precludes a forfeiture of those benefits in the face of a return to active State service. We disagree.

Black's Law Dictionary defines the word “cease” with reference to both the term “forfeit” and the term “suspend.” Black’s Law Dictionary 237 (8th Ed. 2004). However, which of those two synonyms to “cease” applies in relation to the matter *sub judice* need not be decided by our review. The Board argues, and Claimant does not dispute, that the Retirement Code makes no express provision for the mere suspension (and implied potential subsequent reinstatement) of an annuitant’s disability benefits upon a return to active State service. As noted above, the Retirement Code provides for, solely, a cessation of those benefits upon such a return. Section 5706(a) of the Retirement Code, 71 Pa.C.S. §5706(a). The lack of the term forfeiture cannot be read – by the Board or by this Court – as an implicit endorsement of a benefit suspension/reinstatement scheme, as proposed by Claimant.

Although the Board must liberally administer the retirement system in favor of its members, “a liberal administration of the retirement system does not

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Pa.C.S. §5706(a.2).

permit the board to circumvent the express language of the [Retirement] Code . . .” Dowler v. Public School Employes’ Retirement Board, 620 A.2d 639, 644 (Pa. Cmwlt. 1993). The Board has no authority to grant equitable relief in contravention of the statutory mandates of the Retirement Code. Rowan v. Pennsylvania State Employes’ Retirement Board, 685 A.2d 238 (Pa. Cmwlt. 1996). As such, the Board did not err in concluding that Claimant was not entitled to a reinstatement of his original disability retirement annuity after his return to active State service, under the express terms of the Retirement Code mandating cessation thereof, and in light of the complete absence of any reference to suspension and/or reinstatement of a disability annuity. Additionally, the Board did not err in limiting Claimant’s relief to a new application for a disability retirement benefit from his DPW position.

In the absence of any express provisions by the General Assembly within the Retirement Code for a suspension/reinstatement scheme as advocated by Claimant herein, this Court is also without the authority to craft such a scheme, notwithstanding the equitable merits thereof either generally, or under the specific facts *sub judice*. As noted above by the Board, Claimant has only those rights expressly created by the Retirement Code, and none beyond it. Bittenbender. “The Retirement Code cannot be revised by the courts to achieve equitable results.” Jones v. State Employees’ Retirement Board, 830 A.2d 607, 609 (Pa. Cmwlt. 2003), petition for allowance of appeal denied, 577 Pa. 728, 847 A.2d 1289 (2004). Thus, it is for the General Assembly, and not the Judiciary, to revise and/or amend the Retirement Code to address the unique circumstances of

Claimant's situation, notwithstanding the equitable merits<sup>7</sup> of his argument for reinstatement. Mager v. State Employees' Retirement Board, 849 A.2d 287 (Pa. Cmwlth.), petition for allowance of appeal denied, 580 Pa. 691, 859 A.2d 770 (2004).

Accordingly, we affirm.

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JAMES R. KELLEY, Senior Judge

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<sup>7</sup> Claimant also argues that the Director of the Bureau of Member Services of SERS, Joseph Torta, testified as to a SERS and/or Commonwealth management directive under which a return to State service of less than 14 days in duration will not be treated as a return to service in relation to an employee unsuccessfully attempting to return from a disability. See R.R. at 29a. Claimant argues that this directive evidences that SERS does not treat a return to State service as an automatic forfeiture of the right to resume disability benefits. Notwithstanding the absence of the purported directive within the record to this matter, and notwithstanding Claimant's failure to challenge the existence or validity thereof in his Petition for Review to this Court, we find Claimant's reliance upon the purported directive unpersuasive. Even assuming the directive's application *arguendo*, for the reasons set forth above the absence of any suspension and/or reinstatement provisions within the Retirement Code regarding a return to active State service is dispositive, in light of the unambiguous language of Section 5706(a) of the Retirement Code. To the extent that Claimant argues that the directive supports his equitable interpretation of the Retirement Code, we find it unpersuasive. Claimant does not argue that the purported directive affected his return to active State service in this matter, and/or his termination from that return to State service, and/or the application of Section 5706(a) to the facts herein.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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Petitioner	:	
	:	
v.	:	No. 607 C.D. 2010
	:	
State Employees' Retirement	:	
Board,	:	
Respondent	:	

**ORDER**

AND NOW, this 8th day of July, 2011, the order of the State Employees' Retirement Board dated March 11, 2010, at Docket No. 2007-13, is affirmed.

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JAMES R. KELLEY, Senior Judge