IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

BRIAN K. PRICE,	:	
	:	**C.A. No: 08A-11-007 (RBY)**
Appellant,	:	
v.	:	
STATE OF DELAWARE, BOARD OF TRUSTEES,	:	
Appellee.	:	

WAYNE H. WARREN,	:	
	:	**C.A. No: 08A-11-008 (WLW)**
Appellant,	:	
v.	:	
STATE OF DELAWARE, BOARD OF TRUSTEES,	:	
Appellee.	:	

Submitted: December 7, 2009
Decided: March 22, 2010

Upon Consideration of Appellant's Appeal
of the Decision of the Board of Pension Trustees
AFFIRMED

OPINION AND ORDER

Young, J.

Roy S. Sheils, Esq., Brown, Sheils & O'Brien, LLC, Dover, Delaware for Appellant.

Cynthia Collins, Esq., and Thomas H. Ellis, Esq., Department of Justice, Wilmington, Delaware for Appellee.

SUMMARY

_____Appellants Brian K. Price ("Price") and Wayne H. Warren ("Warren") appeal a decision of the Board of Pension Trustees of the State of Delaware (the "Board"). The Board concluded that Appellants' individual letters to the State Pension Office (the "SPO") constituted applications for disability pensions within the contemplation of 11 *Del. C.* § 8376(a), rather than adjustments under 11 *Del. C.* § 8328(a). Because the Board's interpretation of these statutory sections comports with the language of the statute, the decision of the Board is **AFFIRMED**.

FACTS

The appeals of Price and Warren have been consolidated for decision, as they both seek determination of the same legal issue. The individual facts of each case are not in dispute, and will be addressed *seriatim.*

Brian K. Price

Price was employed as a Delaware State Trooper with the Delaware State Police ("DSP") from September 3, 1985 until his retirement on April 7, 2006. At the time of his retirement, Price was receiving Workers' Compensation benefits as a result of his service at the Delaware State Police Firing Range ("Firing Range"). Despite his qualifying injury, Price decided to apply for a service pension rather than a disability pension. He chose the service pension option because it provided for more expeditious and assured income replacement. Price's service pension was approved by the SPO with an effective date of April 7, 2006.

On August 7, 2007, Price submitted a letter to the SPO requesting a "modification" to his service pension. In fact, Price sought a conversion of his service pension to a full disability pension. Price appears to have based his request, at least in part, on the experience of his supervisor at the Firing Range, Christopher Foraker ("Foraker"). On March 27, 2007, Foraker began receiving total duty-connected disability payments for the same disability from which Price suffered. Both men's disabilities arose from their employment at the firing range. Price's August 7, 2007 letter specifically stated that "[he] should be entitled to the same level of pension (disability at 75%) as was rendered to Mr. Foraker [in March of 2007]."

Upon receipt of Price's August 7, 2007 request, the SPO did not ask Price to complete an application form for a disability pension. Instead, in an effort to expedite his request, the SPO had Price submit the required Eligibility Form to begin the process of evaluating Price's application for a duty-connected disability pension. Price submitted the Eligibility Form on September 6, 2007.

On October 14, 2007, the SPO granted Price a partial disability pension with an effective date of June 1, 2007. The SPO fixed that effective date on the basis that 11 *Del. C.* § 8376(a) required that result. Price immediately appealed the partial disability determination, and requested a reconsideration of the SPO's award. At the SPO's behest, Price underwent an evaluation by a vocational expert. The expert's task was to investigate the extent of Price's disability. On January 23, 2008, Price's evaluation was completed. The vocational expert concluded that Price was, because

of duty-connected events, totally disabled from working in "any occupation for which he was reasonably suited by training or experience."

On February 14, 2008, after a review of the vocational expert's report by the Medical Committee of the SPO, the SPO increased Price's disability pension from a 50% partial disability benefit to a 75% full disability benefit. The SPO further advised Price that the full disability benefit would have a retroactive date to June 1, 2007, again pursuant to 11 *Del. C.* § 8376(a).

Price appealed the SPO's decision regarding the June 1, 2007 effective date to the Board.[1] He argued that 11 *Del. C.* § 8328(a) required an effective date of April 7, 2006, the effective date of his original service pension. On July 9, 2008, a hearing officer heard Price's appeal. Upon consideration, the hearing officer recommended that Price's appeal for retroactive disability benefits to the time of his original service pension be denied. On October 31, 2008, the Board voted to approve and adopt the hearing officer's recommendation. The Board upheld the SPO's determination that the effective date was June 1, 2007, because Price's August letter constituted a new pension application rather than a modification of an existing pension. Price now brings the instant appeal.

Wayne H. Warren

The facts of Warren's case are nearly indistinguishable, except for a few chronological distinctions. First, Warren was employed as a Delaware State Trooper

[1] Price did not, however, appeal the increase in his benefit.

with the DSP from January 31, 1983 until his retirement in June of 2006. Second, Warren's original service pension became effective as of July 1, 2006, rather than April 7, 2006. Finally, Warren's initial partial disability pension was granted effective October 15, 2007, rather than October 14, 2007. For all other purposes, the facts of the two cases are identical.

STANDARD OF REVIEW

"On appeal from a decision of an administrative agency[,] the reviewing court must determine whether the agency ruling is supported by substantial evidence and free from legal error."[2] Substantial evidence is that which "a reasonable mind might accept as adequate to support a conclusion."[3] It is also defined as more than a scintilla, but less than a preponderance of the evidence.[4] "Absent an abuse of discretion, the decision of the agency must be affirmed."[5]

The Court's review is plenary, however, where the issue is one of construction

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[2] *Jordan v. Board of Pension Trustees of the State of Delaware*, 2004 WL 2240598, at *2 (Del. Super. Ct. Sept. 21, 2004) (citing *Stoltz Mgmt. Co., Inc. v. Consumer Affairs Board*, 616 A.2d 1205, 1208 (Del. 1992)).

[3] *Olney v. Cooch*, 425 A.2d 610, 614 (Del. Super. 1981) (citing *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966)).

[4] *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988) (citing *DiFilippo v. Beck*, 567 F.Supp 110 (D. Del. 1983)).

[5] *Jordan*, 2004 WL 2240598 at *2. [original citation omitted].

of statutory law and its application to undisputed facts.[6] "A reviewing court may accord due weight, but not defer, to an agency interpretation of a statute administered by it."[7] "A reviewing court will not defer to such an interpretation as correct merely because it is rational or not clearly erroneous."[8]

DISCUSSION

The question before this Court is whether the Board's interpretations of 11 *Del. C.* §§ 8376(a) and 8328(a) were "free from legal error" when the Board determined that Appellants' August letters constituted applications for new benefits, rather than adjustments to existing benefits. This Court now holds that the Board's interpretations of these two statutory provisions were free from legal error, and that the term "adjustment" is intended to cover only calculation and computational errors. Therefore, the Board's decision denying Appellants' request for an extended period of retroactivity for their total disability pension benefits is **AFFIRMED**.

The Board's authority to grant pension, disability, and survivor benefits for members of the DSP is contained in Chapter 83 of Title 11 of the Delaware Code. Specifically, 11 *Del. C.* § 8396 provides that a:

[b]enefit shall be due and payable under this chapter only to the extent

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[6] *Id.*.

[7] *Id.* [original citation omitted].

[8] *Id.* (citing *Public Water Supply Co. v. DiPasquale*, 735 A.2d 378, 383 (Del. 1998)).

> provided in this chapter, and neither the State nor the New State Police Retirement Fund shall be liable for any amount in excess of such sums.

Simply stated, the Board may not award pension benefits without compliance with the statutory requirements of Chapter 83.

One of those statutory requirements is contained in 11 *Del. C.* § 8376(a). That section outlines when and how pension benefits are paid:

> [a] service pension, disability pension, survivor's pension, death benefit[,] or withdrawal benefit shall be paid only upon the filing of an application in a form prescribed by the Board. A monthly benefit shall not be payable for any month earlier than the second month preceding the date on which the application for such benefit is filed.

This statutory language highlights two key points. First, the legislature clearly intended to afford the Board some latitude in the administration of its application procedures, as evidenced by the words "in a form prescribed by the Board." In contrast, the legislature did not intend to afford the same flexibility with regard to the retroactive payment of benefits. The legislature's purposeful use of "shall not" is prohibitive and concrete.

Nonetheless, in recognition of the fact that individual circumstances might dictate modification, the legislature granted the Board, and by extension the SPO, the authority to adjust pension benefits within a proscribed time period. The statute, 11 *Del. C.* § 8328(a) provides that, "on and after July 1, 1972, no pension which has been in effect for 3 years shall be subject to adjustment." This statutory section implies

that, so long as it has not been in effect for more than three years, a pension may be adjusted. Furthermore, 11 *Del. C.* § 8375 mandates the level of liberality with which these adjustments are to be handled.[9]

As emphasized by Appellants, the word "adjustment" is not defined by the statute. Accordingly, since it is not a term of art, it retains its ordinary dictionary meaning.[10] Merriam-Webster's Online Dictionary defines adjustment as "a correction or modification to reflect actual conditions." This definition necessarily means that, in order for there to be an adjustment, there must first be an error or mistake. Furthermore, the Board has conformed its implementation of adjustments with this conventional definition by permitting adjustments only for mathematical and computational errors.

Appellants urge the Court to adopt "two reasonable alternative constructions" of the word adjustment – one limited to adjusting computations and the other expanded for adjusting the basis of pensions. If the Court were to adopt Appellants' interpretation of "adjustment" within 11 *Del. C.* § 8328(a), however, the effect would be, as articulated by one of our contiguous jurisdictions, "tantamount to giving

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[9] 11 *Del. C.* § 8375 states that:

> [a] pension payable under this subchapter shall be adjusted no less liberally than adjustments made under the State Employees' Pension Plan, taking into account adjustments to social security benefits payable to state employees.

[10] *Lehman Bros Bank, FSB v. State Bank Comm'r*, 937 A.2d 95, 103 (Del. 2007).

employee errors the effect of amending the substance of a statute."[11] The Court is unwilling to endorse such a reading of the statute. By including an "adjustment of benefits" section of the statute, the legislature clearly intended to grant the SPO the ability to correct errors and to effectuate required modifications. The Court's review of the evidence presented revealed no "error" in Appellants' initial filing. Appellants filed for service pensions, their applications were processed, and they ultimately began receiving their deserved benefits.

In turn, for a period of time exceeding thirteen months for each applicant, the SPO paid Appellants exactly what they were due under the statute. There was nothing to "modify" because Appellants received what they requested – service pensions. When Appellants finally sent their August 7, 2007 letters, it was proper for the SPO to consider Appellants' correspondence as an application for new benefits. The original service pensions contained no errors or mistakes that needed correction.

The only "error" in this case was arguably committed by Appellants. Appellants now realize that they could have received more money for a different type of pension. While the Court understands the Appellants' desire to maximize their pension compensation, at the time Appellants applied for pension benefits, they were cognizant of their eligibility for disability benefits. They calculatingly chose, based on their assessment of the advantages and disadvantages, to file service pensions, rather than

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[11] *Bittenbender v. State Employees' Ret. Bd.*, 622 A,2d 403, 405 (Pa. Commw. Ct. 1992) (citing *Finnegan v. Public School Employment Ret. Bd.*, 520 A.2d 848, 851 (Pa. Commw. Ct. 1989)).

disability pensions. To allow Appellants to interpret the statutory term "adjustment" in a way that provides a remedy for their mistake is simply unwarranted. They are statutorily entitled to disability pension benefits effective June 1, 2007 – no earlier. Appellants place a substantial amount of emphasis on the fact that, when they finally applied for disability pension benefits, they only filled out an Eligibility Form, rather than a separate application. It is Appellant's contention that, if their August 7, 2007 correspondence were considered a new application for benefits, they should have been required to submit an entirely new application. The Court does not find Appellant's argument persuasive. All parties involved, Appellants as well as the SPO, were aware of the already implemented service pensions. In an attempt to expedite the processing of Appellants' new disability pensions, the SPO simply allowed Appellants to bypass a preliminary portion of the application process. This act of courtesy was within the authority issued by the statute.[12]

CONCLUSION

This Court finds that the legal determination by the Board was free from legal error. The Board's decision fulfilled the legislative intent to recompense Appellants for their service, without compromising the integrity of the overall compensatory system. It would be a contravention of legislative policy for this Court to read Appellants' meaning of the word "adjustment" into the statute. For that reason, the

[12] *See* 11 *Del. C.* § 8376(a) (granting the Board the authority to determine its own application procedures).

decision of the Board is **AFFIRMED**.

SO ORDERED.

/s/ Robert B. Young
J.

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