

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Rosemarie Walker,	:	
Appellant	:	
	:	
v.	:	No. 373 C.D. 2009
	:	SUBMITTED: December 31, 2009
Board of Pensions and Retirement	:	
of the City of Philadelphia	:	

BEFORE: **HONORABLE BONNIE BRIGANCE LEADBETTER**, President Judge
 HONORABLE BERNARD L. McGINLEY, Judge
 HONORABLE MARY HANNAH LEAVITT, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: February 17, 2010

Rosemarie Walker appeals from the order of the Court of Common Pleas of Philadelphia County that denied her motion to enforce an order entered in 2002 and compel the Board of Pensions and Retirement to pay her Ordinary Death Benefits following the death of her police officer husband. After review, we affirm.

The procedural history of this case is extensive, but important to the resolution of this appeal. The Board first denied Walker’s claim for pension benefits in January of 2002, prompting an appeal to the Court of Common Pleas.¹ The basis for Walker’s appeal and the relief requested are not clear. In a

¹ Apparently, Walker’s claim for benefits was denied by letter without affording a hearing.

subsequent filing, entitled “Memorandum of Law,” however, Walker set forth a variety of statutory and local code and ordinance provisions believed applicable to her claim, including Section 553 of the Local Agency Law, 2 Pa. C.S. § 553, which provides that no agency adjudication is valid unless the parties receive reasonable notice and an opportunity to be heard.² On October 2, 2002, Judge Sylvester issued the following order:

AND NOW, this 2[nd] day [of] Oct[ober] of 2002, upon consideration of the appeal of Rosemarie Walker from the denial of Ordinary Death Benefits stemming from the death of her husband Police Officer Michael A. Walker by the Board of Pensions & Retirement, the appeal is sustained, and the decision of the Board of Pensions & Retirement to deny benefits is VACATED.

IT IS HEREBY ORDERED that the application for Ordinary Death Benefits of Rosemarie Walker be remanded to the Board of Pensions & Retirement for a hearing in accordance with Section 553 of the Local Agency Law (2 Pa. C.S. §553).

Reproduced Record (R.R.) at 15. Before the Board could hear the remanded case, however, Walker filed a motion with the Court of Common Pleas “to preclude and bar defenses litigated on appeal before the court.” R.R. at 16. In this motion, Walker argued that because the remand order had included the phrase “the appeal is sustained,” it constituted a final judgment on the merits of the case, and the Board was therefore precluded from reasserting any of the defenses asserted in the first denial of benefits.

² While the memorandum is contained in the certified record to this court, it does not appear to have been docketed. Notations on the docket suggest Walker was requesting a remand to the Board.

During argument on the motion, Judge Sylvester made it very clear that her earlier order was not intended to rule on the merits of the case, but to remand for a hearing *de novo*. Counsel for Walker then stated, “[i]f it’s your intent that an original hearing be done, then we’ll do that,” and agreed to withdraw the motion. R.R. at 76. The Board held a *de novo* hearing regarding Walker’s claim in 2003 and again denied Walker benefits. On appeal, common pleas affirmed. No additional appeals followed.

After common pleas affirmed the Board’s decision denying benefits, Walker allowed the case to languish for more than three years. Then, in 2007, she filed her “motion to enforce the order of October 2, 2002 that sustained the appeal Rosemarie Walker [sic].” R.R. at 50. Walker’s argument in this motion was very similar to the argument she made in her 2003 motion to preclude. She argued that the phrase “the appeal is sustained” in the 2002 order meant that she prevailed on the merits, and that therefore she was entitled to the pension benefits she had been seeking. Judge Sylvester took a dim view of this second attempt to reinterpret her own order, calling it a “disingenuous attempt to misinterpret this Court’s October 2, 2002 Order” that “lacks merit.” Common pleas opinion at 2. An appeal to this court followed.

On appeal, Walker again contends that the October 2002 order constituted a final order on the merits, arguing that common pleas was without jurisdiction to clarify, modify or rescind this order. While it is not altogether clear, she appears to believe the 2002 remand was solely for the purpose of calculating the amount of benefits due.

The Board argues correctly that Walker is estopped from asserting her argument, and that the appeal lacks merit.

Walker is estopped from asserting this argument on appeal because she accepted, for years, an alternate interpretation of the 2002 order. In the hearing on the motion to preclude, Judge Sylvester made it clear her only intent in signing the 2002 order was to remand the case for a *de novo* hearing before the Board. Walker's counsel agreed to a remand for a *de novo* hearing, saying "[i]f it's your intent that an original hearing be done, then we'll do that," and withdrew the motion.

If Walker was under the impression that the remand to the Board was only to compute benefits, it was her duty to object to the Board's hearing on the merits, and to raise this issue in the appeal to the court of common pleas, and, if necessary, to this court. By instead allowing the Board's decision on the merits of this case to become final, Walker has waived all right to challenge the Board's holding a *de novo* hearing on remand. *See Malone v. W. Marlborough Twp. Bd. of Supervisors*, 603 A.2d 708 n. 4 (Pa. Cmwlth. 1992).

Even if Walker were not estopped from asserting her argument, she would still not prevail. Aside from the fact that Judge Sylvester made her intentions quite clear during the 2003 hearing, the plain language of the 2002 order makes it evident that it is not a ruling on the merits. The order vacates the decision below and remands the case to the Board for a hearing. Walker clings to the use of the phrase "the appeal is sustained" as establishing that she won all issues on the merits, but can give no legal authority nor any logical reason why those four words should have a meaning that overrides the context in which they appear. In fact, considering that Walker's 2002 appeal was at least partially based on the failure of the board to give her a hearing, and that it is likely that a hearing is at least part of the relief Walker requested, the use of the phrase "the appeal is sustained" is

entirely consistent with an order remanding for a *de novo* hearing. It is impossible to square Walker's interpretation of the phrase with the main purpose of the order, to remand the case to the Board.

Accordingly, the order of the court of common pleas is affirmed.

BONNIE BRIGANCE LEADBETTER,
President Judge

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Board of Pensions and Retirement	:	
of the City of Philadelphia	:	

ORDER

AND NOW, this 17th day of February, 2010, the order of the Court of Common Pleas of Philadelphia County, in the above-captioned matter, is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge