STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC **SUPERIOR COURT**

(Filed: April 5, 2012)

BRIAN CASTRO	:	
	:	
v.	:	**C.A. No. PC 08-7573**
	:	
EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND	:	

DECISION

Rubine, J. Appellant Brian Castro ("Castro") appeals from a decision of the Board of the Employees' Retirement System of Rhode Island ("Board" or "ERSRI"). The Board's decision affirmed the Disability Subcommittee's ("Subcommittee") recommendation denying Castro's application for an accidental pension. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts & Travel

Castro was employed as a deputy sheriff with the Rhode Island Sheriff's Department. Castro had served in that capacity for over twenty years. Castro originally applied for accidental disability retirement on April 8, 2005. (ERSRI Record, Ex. 33.) Castro listed a "neck fusion with a bad result" as the reason for his disability. Id.

In support of Castro's application, Castro submitted to ERSRI an incident report dated August 30, 2002. The incident report stated that on August 30, 2002, while Castro was at work, Castro slipped on a wet floor in the bathroom at the State House. Id. As a result, Castro sustained injuries to his neck and head. Castro later underwent surgery to alleviate these injuries.

In further support of his application, Castro submitted a report from Dr. Daniella Turacova. In her report, Dr. Turacova stated that Castro could no longer perform his duties as a

sheriff. Id. Additionally, Dr. Turacova estimated that Castro's fall in the bathroom was the proximate cause of his injuries. Id. Castro was examined by Dr. Kenneth Morrissey, and Dr. Morrissey also submitted a report to ERSRI. Dr. Morrissey stated that Castro had undergone surgery to have a cervical fusion done to alleviate a cervical disc injury. Dr. Morrissey determined that Castro was totally disabled and incapable of performing his job functions as a result of the bathroom fall. Id.

Castro was examined by a third doctor, Dr. William Garrahan. Dr. Garrahan submitted a report stating that Castro was suffering from weakness in his upper left extremity. Similarly, Dr. Garrahan concluded that Castro was disabled and incapable of working as a sheriff because of the fall in the bathroom. Id. Finally, Castro was examined by Dr. W. Lloyd Barnard. Dr. Barnard diagnosed Castro with cervical radiculopathy, which was a direct result from the fall. Dr. Barnard concluded that Castro was totally disabled and could not perform his duties as a sheriff. Id.

Thereafter, on November 17, 2007, the Subcommittee requested additional medical records relating to Castro's surgery and updated treatment records. Castro complied with the Subcommittee's request. The records revealed that Castro underwent surgery in December 2002, just four months after the bathroom fall. The records also revealed that prior to the fall, Castro complained of numbness in his left hand and had a herniated disc. A surgeon's report also stated that Castro had a "long history of neck pain."

The Subcommittee ultimately determined that Castro's fall in the bathroom was not a proximate cause of Castro's injuries. The Subcommittee determined that Castro's injuries were pre-existing conditions. Id. The Subcommittee found it significant that Castro had been suffering the exact symptoms complained of in his application at least one year prior to his fall in

the bathroom. Also, prior to his fall at work, Castro had gone for an MRI for numbness and tingling in his left hand. The MRI revealed that Castro was suffering from a herniated disc in his back. The Subcommittee determined that a report provided by Dr. Stern indicated that Castro was already considering "the very surgery that he now contends was made necessary by his fall at work." Id. The Subcommittee recommended that Castro's application for an accidental disability retirement be denied. In December 7, 2007, the Subcommittee wrote a decision outlining the aforementioned facts, reasoning, and conclusions.

Shortly after receiving notice of the denial, Castro, through counsel, requested a reconsideration hearing. The reconsideration hearing was scheduled for February 8, 2008. (ERSRI Record, Ex. 25.) Sometime later, Castro's counsel requested the matter be continued from the February meeting to the Subcommittee's March meeting. Castro's reconsideration hearing was then continued at his request each successive month through August 2008.

In July 2008, the Assistant Director of Member Services of ERSRI wrote to Castro's counsel, warning him that failure to appear at the August hearing could result in a default being entered against Castro. (ERSRI Record, Ex. 29.) On August 7, 2008, the day before the hearing was scheduled, Castro's counsel sent a facsimile to the Assistant Director, stating that he would not attend the hearing the following day. (ERSRI Record, Ex. 30.) Castro's counsel did not seek further continuance of the matter; instead, he stated that he "must decline from moving forward on the appeal. . . . As the legal issues have not yet been resolved if I withdraw, until I reach a conclusion on the legal issues, the appeal simply cannot take place." Id.

The following day, at the hearing, the Subcommittee determined that Castro's declining to "mov[e] forward on the appeal"—and not appearing at the reconsideration hearing he had requested and continued many times—constituted a default. See ERSRI Reg. § 9.7(b)(2). A

member of the Subcommittee then made a motion to affirm the Subcommittee's prior decision. (ERSRI Record, Ex. 31.) Based on the original material submitted, the Subcommittee affirmed its prior recommendation denying Castro's application. The motion was ultimately approved by a majority vote of the Subcommittee. Id.

On September 10, 2008, the Board adopted the Subcommittee's recommendation. (ERSRI Record, Ex. 33.) Castro was mailed notice of the Board's decision by certified mail on September 16, 2008. Id. The certified letter was returned to the Board on October 4, 2008 after going unclaimed at the Post Office; however, Castro's counsel received notice of the decision. (ERSRI Record, Exs. 33, 36.) Castro filed this administrative appeal on November 28, 2008.

II

Standard of Review

Pursuant to § 42-35-15, the Superior Court is granted appellate jurisdiction to review final orders as well as certain interlocutory orders of state administrative agencies not exempted from the Rhode Island Administrative Procedures Act. In undertaking that review, the Superior Court "shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Sec. 42-35-15(g); Barrington School Committee v. Rhode Island State Labor Relations Board, 608 A.2d 1126, 1138 (R.I. 1992). Section 42-35-15(g) of the APA states:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Affected by other error or law;

> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

In reviewing an agency decision, this Court is limited to an examination of the certified record in deciding whether the agency's decision is supported by substantial evidence. Center for Behavioral Health, R.I., Inc. v. Barros, 710 A.2d 680, 684 (R.I. 1998) (citations omitted). Substantial evidence has been defined as "such relevant evidence that a reasonable mind might accept as adequate to support a conclusion and means more than a scintilla but less than a preponderance." Wayne Distrib. Co. v. Rhode Island Comm'n for Human Rights, 673 A.2d 457, 459 (R.I. 1996) (citing Newport Shipyard Inc. v. Rhode Island Comm'n for Human Rights, 484 A.2d 893, 896 (R.I. 1994)). "[I]f 'competent evidence exists in the record, the Superior Court is required to uphold the agency's conclusions.'" Autobody Ass'n of R.I. v. Rhode Island Dep't of Bus. Regulation, et al., 996 A.2d 91, 95 (R.I. 2010) (quoting Rhode Island Pub. Telecommunications Auth. v. Rhode Island State Labor Relations Bd., 650 A.2d 479, 485 (R.I. 1994)).

ERSRI uses a two-tier review process in which a hearing officer hears grievances and then issues a written decision that is submitted to the Retirement Board. The Board considers the decision, as well as any further briefs, and subsequently renders its own decision. ERSRI Reg. § 10.00(a). This two-tier system is similar to a funnel. Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 207 (R.I. 1993). At the first level of review, the hearing officer "sits as if at the mouth of the funnel" and analyzes the evidence, issues, and live testimony. Id. At the second level of review, the "discharge end" of the funnel, the Board generally considers evidence that the hearing officer received first-hand. Id. Our Supreme Court has held, therefore, that the

"further away from the mouth of the funnel that an administrative official is . . . the more deference should be owed to the fact finder." Id. Determinations of credibility by the hearing officer, for example, should not be disturbed unless they are "clearly wrong." Id. at 206.

III

Analysis

Jurisdiction under § 42-35-15

ERSRI contends that this Court lacks jurisdiction over the matter because Castro filed his complaint in Superior Court more than thirty days from the mailing of notice of the Board's final decision as required by § 42-35-15(b). ERSRI argues that the final decision was mailed to Castro on September 16, 2008 and therefore, he had until October 17, 2008 to file a complaint with this Court. On the other hand, Castro contends that no final decision was ever made on his application for accidental disability; thus, he argues, this Court should remand the matter to the Board for further findings of fact and conclusions of law.

In support of his position, Castro directs this Court to the transcript of the Subcommittee's reconsideration hearing, at which Castro failed to appear. Castro maintains that there were no specific findings of fact and conclusions of law at this hearing as required by § 42-35-15. Essentially, Castro contends that the Subcommittee's vote affirming its prior decision contained no specific findings of fact and conclusions of law, and thus it was not a final agency decision.

Section 42-35-12 provides that "[a]ny final order shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings." "The final decision must be in writing and contain a statement of reasons and a determination of

every issue of fact or law." Environmental Scientific Corp., 621 A.2d at 203. "[T]he rationality of an agency's decision must encompass its fact findings, its interpretations of the pertinent law, and its application of the law to the facts as found." Sakonnet Rogers, Inc. v. Coastal Resources Mgmt. Council, 536 A.2d 893, 896 (R.I. 1988) (quoting Arrow Transportation Co. v. United States, 300 F. Supp. 813, 817 (D.R.I. 1969)).

Accordingly, our Supreme Court has affirmed a Superior Court ruling remanding an agency decision to the agency when the decision did not contain any findings of fact and further the record did not contain any transcripts from the agency proceedings. East Greenwich Yacht Club v. Coastal Resources Management Council, 118 R.I. 559, 568, 376 A.2d 682, 687 (1977) (noting judicial review impossible without agency's findings of fact); see also Sobanski v. Providence Employees' Retirement Bd., 981 A.2d 1021 (R.I. 2009) (vacating agency decision because review impossible absent findings of fact or conclusions of law). Similarly, our Supreme Court has reversed an agency decision and ordered the Superior Court to issue an appropriate order when the agency failed to consider the relevant regulatory provision. Sakonnet Rogers Inc., 536 A.2d at 896-97.

Castro's argument that the Subcommittee was required to make specific findings of fact and conclusions of law at the reconsideration hearing is without merit. In December 2007, the Subcommittee issued a written recommendation, which included twelve paragraphs of specific findings of fact and two paragraphs of conclusions of law. The Subcommittee ultimately concluded that Castro's injury was not proximately caused by his fall at the State House. This recommendation was made in compliance with § 36-10-14. Section 36-10-14 requires that after the applicant has been examined by medical professionals, the Board must make a determination as to whether the applicant's disability was a proximate result of an accident while performing

his or her job duties. See G.L. 1956 § 36-10-14. Thereafter, the Board adopted the Subcommittee's original recommendation, which included findings of fact, to deny Castro's application because his injury was not proximately related to his fall at work. (ERSRI Record, Ex. 33.)

The Subcommittee was not required to make specific findings of fact and conclusions of law at a reconsideration hearing. ERSRI Reg. § 9.9(a). Instead, it was the Board that was required to make such findings. "The decision of the hearing officer is not the final agency decision, it is the final decision of the [] director that constitutes the final agency action." Birchwood Realty Inc., v. Grant, 627 A.2d 827, 834 (R.I. 1993). The Subcommittee issued a written recommendation, which was adopted by the Board in its final decision. The decision complied with §§ 36-10-14 and 42-35-15 because it contained specific findings of fact and conclusions of law regarding Castro's disability and the proximate cause of that disability.

Furthermore, the Subcommittee's denial of Castro's application was not a final agency decision; the Board's letter to Castro adopting the Subcommittee's recommendation, on the other hand, was a final agency decision. In its letter to Castro, the Board informed him of its decision, attached a copy of the Subcommittee's decision, and his rights of appeal as required by statute. See § 42-35-10. The Board's letter to Castro specifically stated that the denial "constitute[d] a final decision of ERSRI." (ERSRI Record, Ex. 33.) Moreover, the Board's decision was a final agency decision because the issue of whether Castro was entitled to an accidental disability pension had been formally decided by the Board, thus ending the application process for Castro. See 2 Am. Jur. 2d Administrative Law § 459 (2004) ("In order for agency action to be final, the action must mark consummation of the agency's decision-making process, rather than merely be

tentative or interlocutory in nature, and the action must be one by which rights or obligations have been determined or from which legal consequences will flow.").

In support of his argument that the Subcommittee's decision was not a final agency decision, Castro relies on Department of Corrections v. Rhode Island State Labor Relations Board et al., 703 A.2d 1095 (R.I. 1997). However, his reliance on Department of Corrections is misplaced. In Department of Corrections, our Supreme Court held that before the Labor Relations Board could issue a final decision, it must comply with all statutory provisions, and because it had not done so, there was no final decision from which an appeal could be taken. 703 A.2d at 1097. In Department of Corrections, the Labor Relations Board was required to hold both informal and formal hearings as required by G.L. 1956 § 28-7-9(b)(5). Id. at 1096-97. As discussed supra, here, the Board and Subcommittee followed all of the relevant statutory provisions, thus rendering Department of Corrections distinguishable and not controlling with respect to the case at bar.

Castro also contends that there is excusable neglect for his untimely appeal because he did not receive notice of the Board's final decision. ERSRI contends that Castro failed to properly appeal this matter to this Court within thirty days of the mailing of its decision to Castro.

Under the Administrative Procedures Act ("APA"), an appeal from an agency's final decision is properly brought under § 42-35-15. See Barrington Sch. Comm., 608 A.2d at 1130-33. The time requirement under the APA is governed by § 42-35-15(b). Specifically, § 42-35-15(b) provides that the persons who seek review of an administrative decision must file a complaint in the Superior Court "within thirty days after mailing notice of the final decision of the agency." A failure to file a complaint within thirty days after mailing notice pursuant to

§ 42-24-15(b) prohibits this Court from exercising jurisdiction over the matter. See Pizzi, 857 A.2d at 764; Great American Nursing Ctrs., Inc., 439 A.2d at 253; see also 3 Charles H. Koch, Jr., Administrative Law and Practice § 8:24 (3d 2010) (explaining that failing to meet the filing deadline "constitutes a bar to action filed after that date" and that "the court may have no jurisdiction" over such a matter).

This Court is mindful that "[s]ubject matter jurisdiction is an indispensable ingredient of any judicial proceeding, and the absence thereof can be raised . . . by the court sua sponte at any time and can be neither waived nor conferred by consent of the parties. . . ." Warwick School Committee v. Warwick Teachers' Union, 613 A.2d 1273, 1276 (R.I. 1992). Subject matter jurisdiction refers to a court's power to hear and decide a particular case and is an indispensable ingredient of any judicial proceeding. See George v. Infantolino, 446 A.2d 757, 759 (R.I. 1982). If an administrative appeal is untimely filed, the Court lacks subject matter jurisdiction. See G.L. 1956 § 8-2-17 ("The superior court shall have jurisdiction of such appeals and statutory proceedings as may be provided by law."); § 42-35-15(a)–(b) (aggrieved persons are entitled to judicial review instituted "within thirty (30) days after mailing notice of the final decision of the agency"); see also Great American Nursing Centers, Inc. v. Norberg, 439 A.2d 249, 253 (R.I. 1981) ("[F]ailure . . . to comply with the Administrative Procedures Act provision requiring appeals to be brought within thirty days . . . precluded relief.") "No action of the parties can confer subject-matter jurisdiction upon a . . . court." Sidell v. Sidell, 18 A.3d 499, 507 (R.I. 2011) (citing Insurance Corp. of Ireland, Ltd., 456 U.S. 694, 702 (1982)).

The statutory deadline provided in § 42-35-15(b) cannot be altered or expanded by this Court. 3 Koch, at § 8:24. This requirement enforces the legislative intent of the APA: "to provide one uniform method and time schedule for the purpose of taking an administrative

appeal in a contested case." Considine v. Rhode Island Dep't of Transportation, 564 A.2d 1343, 1344 (R.I. 1989) (citing Herald Press, Inc. v. Norberg, 122 R.I. 264, 270-71, 405 A.2d 1171, 1175-76 (1979)); see also Great American Nursing Ctrs., Inc., 439 A.2d at 252 (finding that when the APA was passed "a need existed for 'a uniform and consistent approach to the problems created by the increasing number and expanding jurisdictions of state administrative agencies'" (quoting New England Telephone and Telegraph Co. v. Fascio, 105 R.I. 711, 715, 254 A.2d 758, 761 (1969)).

Furthermore, when the language of a statute is "unambiguous and expresses a clear and sensible meaning, there is no need for statutory construction or the use of interpretive aids." Mauricio, 590 A.2d at 880. Here, the statute is clear and unambiguous. See id. (where, in the context of an administrative zoning appeal, the Superior Court held § 45-24-20 was plain and unambiguous, which provides that an appeal of a zoning board decision must be filed within twenty days). Under § 42-35-15(b), the Appellant is required to file the complaint in the Superior Court within thirty (30) days after the mailing of notice of the final decision of the agency to the Appellant.

Castro's argument that his untimely appeal should be considered because of excusable neglect is without merit. Our Supreme Court has defined excusable neglect as "[a] failure to take the proper steps at the proper time, not in consequence of the party's own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident . . . ." Pleasant Management LLC v. Carrasco, 960 A.2d 216, 224-25 (R.I. 2008) (quoting Jacksonbay Builders, Inc. v. Azarmi, 869 A.2d 580, 584 (R.I. 2005)). Extenuating circumstances that are associated with excusable neglect are those that are "out of that party or counsel's control." Boranian v. Richer, 983 A.2d 834, 840 (R.I.

2009). For example, "[r]elief from a counsel's failure to comply with procedural requirements will not be granted 'unless it is first factually established that his [or her] neglect was occasioned by some extenuating circumstance of sufficient significance to render it excusable.'" Astors' Beechwood v. People Coal Co., Inc., 659 A.2d 1109, 1115 (R.I. 1995) (quoting King v. Brown, 103 R.I. 154, 157, 235 A.2d 874, 875 (1967)). However, the defense of excusable neglect is inapplicable to this late filing of an administrative appeal.

First, the Board sent Castro notice of its decision by certified mail. "Notice by certified or registered mail is a common method of providing notice in business, governmental, and legal contexts and is considered 'reasonably calculated' to provide actual notice." Carmel Credit Union v. Bondeson, 772 N.E.2d 1089, 1092 (Mass. App. Ct. 2002) (citing Andover v. State Financial Servs., Inc., 736 N.E.2d 837 (Mass. 2000)); see Town of Newport v. State, 345 A.2d 402, 404, 115 N.H. 506, 508 (1975) ("notice by [certified] mail is considered to have reached a recipient when it is delivered where he normally receives mail"). ERSRI's mailing of its decision to Castro constituted actual notice to him of the Board's final decision. It is clear to this Court that Castro's appeal is untimely and not a matter of excusable neglect. When the Board sent its decision by certified mail to Castro on September 16, 2008, he received actual notice of the Board's decision. See Carmel Credit Union, 772 N.E.2d at 1092. Castro's proffered excuse that he did not receive the certified letter does not rise to the level of "extenuating circumstance of sufficient significance" as required by our Supreme Court. If Castro were no longer receiving mail at the address provided to ERSRI, then the burden fell squarely on him to notify ERSRI. See Boranian, 983 A.2d 834, 840. Castro was aware of his pending appeal and should have taken affirmative steps to make sure he would receive the Board's decision.

Castro did not timely appeal this matter because he filed his complaint in Superior Court on November 28, 2008, more than thirty days after the mailing of notice on September 16, 2008. See § 42-35-15(b). The filing of the appeal is a condition precedent to the Superior Court invoking its jurisdiction. See Mauricio, 590 A.2d at 880 ("[T]he filing of a notice of appeal is a sine qua non in order to invoke the jurisdiction of the Supreme Court for appellant purposes.") In the event that the condition is not met, the appeal is null and void. Since the thirty (30) day filing time is a sine qua non to invoking the jurisdiction of this Court, and since Appellant's filing was not timely, this Court lacks subject matter jurisdiction over this matter. See Mauricio, 590 A.2d at 880; Wood, Director v. Department of Environmental Management, 525 A.2d 901 (R.I. 1987); East Greenwich Yacht Club v. Coastal Resources Management Council, 118 R.I. 559, 567-68, 376 A.2d 682, 686-87 (1977). The time constraints contained in § 42-35-15(b) "are jurisdictional and may not be extended 'by a sympathetic trial justice.'" Griggs v. Estate of Griggs, 845 A.2d 1006, 1009 (R.I. 2004) (quoting In re Estate of Speight, 739 A.2d 229, 231 (R.I. 1999).

IV

Conclusion

Castro's appeal is dismissed due to lack of jurisdiction, the appeal time having expired prior to the filing of the complaint. Accordingly, this Court lacks the authority to review the decision of ERSRI, and this appeal is dismissed. Counsel shall submit the appropriate Order for entry.