

BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:)
)
 M. R. B.) OAH No. 10-0451-PER
) Agency No. 2010-009
 _____)

ORDER REGARDING MOTION TO DISMISS

I. INTRODUCTION

M. R. B., a former state employee, appeals a decision by the Director of the Division of Retirement and Benefits regarding her status under the Public Employees’ Retirement System (PERS). The Division has filed a motion to dismiss based on its claim that the Office of Administrative Hearings has no jurisdiction to hear appeals of former PERS members. Ms. B. has not filed an opposition. Because there are no facts in dispute, and because the Office of Administrative Hearings does not have jurisdiction over this appeal as a matter of law, the Division’s motion to dismiss is granted.

II. FACTS

Ms. B. resigned in good standing from state employment in August of 1973.¹ At that time, she requested a refund of her PERS contributions.² The form she was required to sign acknowledged

that upon receipt of this refund, all service credits accumulated to my account are terminated. I understand that if I am re-employed under the Public Employees’ Retirement System, I may have this service credit reinstated by repaying the amount of refund plus interest from date of rehire.^[3]

In 2005, the Alaska Legislature enacted SB 141 which revoked a former employee’s right to reinstate prior service credit upon re-employment with the state.⁴ Former employees wishing to reinstate their prior service credit were informed that they had to obtain state employment and repay their refunded contributions before July 1, 2010, or they would lose the right to do so in the future.⁵

On June 30, 2010, Ms. B. wrote to Governor Parnell asking for an extension of the deadline for obtaining re-employment and repaying the refunded contributions.⁶ Her request

¹ Record at P23. This document is admissible under 2 AAC 64.290(a)(1). See also 2 AAC 64.290(b) (rules of evidence may be used as a guide); Evidence Rule 803(8).

² Record at P17.

³ *Id.*

⁴ See Record at P13.

⁵ *Id.*

⁶ Record at P11.

was referred to the Director, who denied that request. As part of that denial, the Director indicated that Ms. B. had the right to appeal his decision to the Office of Administrative Hearings.⁷ Ms. B. did appeal, and the Division forwarded the appeal to the Office of Administrative Hearings.⁸

III. DISCUSSION

Summary adjudication is appropriate where there are no material facts in dispute and one party is entitled to prevail on one or more legal issues as a matter of law.⁹ The Division has moved to dismiss this appeal, arguing that the Office of Administrative Hearings does not have jurisdiction.¹⁰ Alaska Statute 39.35.006 says:

An employer, member, annuitant, or beneficiary may appeal a decision made to the office of administrative hearings established under AS 44.64. An aggrieved party may appeal a final decision to the superior court.

A member is someone eligible to participate in the [PERS] plan.¹¹ Former members are specifically excluded from the definition of “member.”¹² A former member is defined as an employee who terminated employment and requested or received a full refund of their retirement contributions.¹³

Ms. B. is not an employer, member, annuitant, or beneficiary. Ms. B. is a former member and she does not have the right under AS 39.35.006 to appeal the decisions of the PERS Administrator.¹⁴ This does not end the discussion, however. An argument could be made that based on the Administrator’s actions in promising Ms. B. an appeal to the Office of Administrative Hearings, the Administrator may be estopped from claiming that there is no such appeal right.

The government may be estopped from asserting a position when four elements are present:

(1) the governmental body asserts a position by conduct or words; (2) the private party acts in reasonable reliance thereon; (3) the private party suffers resulting

⁷ Record at P4.

⁸ Notice of Referral dated September 8, 2010.

⁹ 2 AAC 64.250(a).

¹⁰ Summary Adjudication is permitted by 2 AAC 64.250.

¹¹ AS 39.35.680(22)(A).

¹² AS 39.35.680(22)(C).

¹³ AS 39.35.680(20).

¹⁴ The Administrator is the Commissioner of Administration or the Commissioner’s designee. AS 39.35.003(a). No evidence has been submitted to show that the Division Director has been named the Commissioner’s designee, but neither party has asserted that the Director is not the designee, and this decision assumes that such designation has been made.

prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury.^[15]

In this case, the Administrator clearly asserted that Ms. B. had the right to appeal to the Office of Administrative Hearings. Ms. B. reasonably relied on that assertion by filing her appeal. She has not, however, suffered any prejudice. The Administrator has agreed that she may still appeal to the Superior Court. Thus, the only harm to Ms. B. has been a few months delay.

In the context of this proceeding, the delay of a few months is not prejudicial. Ms. B. is attempting to re-establish her membership in the PERS system as a Tier I employee. She cannot do that until she actually obtains PERS employment.¹⁶ Only after obtaining that employment and then retiring will her Tier status make a difference. A short delay in determining whether she will be eligible to retire as a Tier I employee is not prejudicial.

Because she has not suffered any significant harm from the Administrator's assertion, the Administrator is not estopped from asserting the Office of Administrative Hearings' lack of jurisdiction to hear this appeal.¹⁷

It is important to note that the Superior Court may be in the best position to provide Ms. B. with a remedy. Ms. B. will likely wish to assert that the document she signed when she was refunded her retirement contributions promised her the right to have her service credit reinstated.¹⁸ SB 141 could be characterized as having revoked that promise, which may or may not be constitutionally permissible. An Administrative Law Judge has limited authority to rule on the constitutionality of statutes. Appealing directly to the Superior Court may actually result in a faster resolution of Ms. B.'s dispute than if this matter was first heard by the Office of Administrative Hearings and then later reviewed by the Superior Court to determine the constitutional question.

This appeal is dismissed on jurisdictional grounds. The decision does not address the merits of Ms. B.'s claim. Specifically, it does not rule on whether the Administrator has the authority to extend the statutory deadline for obtaining re-employment and repaying PERS contributions. Nor does this decision rule on whether, assuming the authority exists, the Administrator should or should not grant such a request.

¹⁵ *Crum v. Stalnaker*, 936 P.2d 1254, (Alaska 1997).

¹⁶ Her request in this case is that she be granted additional time in which to find appropriate employment. Record at P11.

¹⁷ There would be serious harm if Ms. B. did not continue to have the right to appeal the merits of her claim to the Superior Court.

¹⁸ Record at P17.

IV. CONCLUSION

The Administrator incorrectly directed Ms. B.’s appeal to the Office of Administrative Hearings. This office does not have jurisdiction to hear this appeal. Accordingly, Ms. B.’s appeal is dismissed.

The Administrator should promptly re-issue his July 28, 2010 decision with correct instructions regarding appeal. It is likely that Ms. B.’s time for appeal to the Superior Court will not run until such a corrected decision is issued.¹⁹

DATED this 4th day of November, 2010.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 44.64.030(b). The undersigned, in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.

DATED this 3rd day of December 2010.

By: Signed
Signature
Jeffrey A. Friedman
Name
Administrative Law Judge
Title

[This document has been modified to conform to technical standards for publication.]

¹⁹ See *Manning v. Alaska R.R. Corp.*, 853 P.2d 1120 (Alaska 1993).

This decision, if adopted under AS 44.64.060(e), will also be appealable to Superior Court. However, such an appeal might only encompass the jurisdictional issue; if the Superior Court agreed with this office regarding this office’s jurisdiction, the Superior Court might simply have to affirm the decision and might be unable to reach the substance of the case. Therefore, if Ms. B. wants the merits of her arguments addressed, she should appeal directly from the corrected decision by the Administrator.