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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

A[redacted] L. H[redacted] Appellant, v. ALASKA PUBLIC EMPLOYEES RETIREMENT SYSTEM, Appellee.	Case No. 3AN-14-[redacted]CI

DECISION ON APPEAL

I. INTRODUCTION

A[redacted] L. H[redacted], a State airport peace officer/firefighter, retired after suffering an occupational injury in 2007. H[redacted] was not granted occupational disability benefits, because he had more than 20 years of experience. H[redacted] paid for his insurance premiums between 2007 and 2012. Due to a regulation adopted in 2010, H[redacted] was credited for insurance premiums paid from 2010 to 2012. Although mistakenly informed that he would receive a full reimbursement, H[redacted] was not reimbursed for any insurance premiums paid before the regulation was adopted. H[redacted] brings this appeal[1] on two issues: 1) whether the 2010 regulation should be applied retroactively and 2) whether the State is equitably estopped from refusing to reimburse H[redacted] for insurance premiums paid prior to 2010. Upon review of the record in this case, this Court affirms the underlying decisions.

[1] *See generally* AS § 39.35.006.

II. FACTS AND PROCEEDINGS

In 2006, H[redacted] was an airport peace officer/firefighter with more than 20 years (but less than 25 years) of Public Employees' Retirement System [PERS] service credit when he suffered an occupational injury to his shoulder. During surgery to repair his shoulder, H[redacted] suffered an anoxic brain injury which eventually resulted in his termination from employment on May 10, 2007. H[redacted] applied, but was ineligible, for occupational disability benefits because he had reached normal retirement age for a peace officer/firefighter, and he had more than 20 years of experience. H[redacted] then retired as of June 1, 2007. At the time Mr. H[redacted] retired in June 2007, the PERS Act required a peace officer/firefighter to pay the premiums for retiree major medical coverage except in four circumstances:

1) The individual was a "disabled member";
2) The individual was a "disabled member . . . appointed to normal retirement";
3) The individual was over 60 years old and had 10 or more years of credited service; or
4) The individual had 25 years of service as a peace officer or 30 years of other service.[2]

H[redacted] was not eligible for health benefits because he had not worked 25 years or more, was not yet 60 years old, and did not meet the PERS criteria as disabled prior to attaining normal retirement after working 20 years.[3] H[redacted] paid for health benefit premiums for himself and his family beginning in June of 2007.

In July of 2010, the PERS Administrator adopted a regulation which extends system-paid health benefits to occupationally disabled peace officers and firefighters with more than 20 years, but less than 25 years, of service credit.

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[2] AS § 39.35.535(c)(2).
[3] H[redacted] contested this determination at the time to no avail. *See In re A.H.*, No. 07-0392-PER (Alaska Office of Administrative Hearings 2007).

> A peace officer or firefighter may elect major medical insurance coverage as a disabled member under AS 39.35.535 (c)(2)(B), if all of the following apply:
>
> (1) the peace officer or firefighter is eligible for normal retirement benefit under AS 39.35.370(a)(2), but has not yet elected normal retirement;
>
> (2) the peace officer or firefighter has less than 25 years of credited service as a peace officer or firefighter;
>
> (3) the peace officer or firefighter becomes eligible for but has not elected an occupational disability benefit under AS 39.35.410(h);
>
> (4) the administrator has determined that the police officer or firefighter is eligible for medical benefits under AS 39.35.535 (c)(2)(B).[4]

The regulation requires the member to apply for, and be found eligible to receive, health benefits by submitting medical documentation substantiating both the disability and the causation, which information is reviewed by the Administrator's consulting physician.[5]

On September 19, 2010, H[redacted] was notified of the new regulation and his potential eligibility for PERS system-paid health benefits. The notification incorrectly indicated that H[redacted] was eligible for health benefits effective the date of his termination from employment on June 1, 2007, which the Division of Retirement and Benefits [Division] corrected in a later correspondence. On November 19, 2010, H[redacted] applied for health benefits pursuant to the notice given him of the new regulation. The Division forwarded the application for medical review. The Administrator's consulting physician recommended approval of the application on December 20, 2011. On January 18, 2012, the Administrator notified H[redacted] that his application for disabled peace officer/firefighter health benefits had been approved. On March 9, 2012, H[redacted] requested in a letter that he be given reimbursement for health

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[4] 2 AAC 39.300(d).
[5] 2 AAC 39.300(f).

insurance premiums he paid from June 2007 through February 2012. H[redacted] again requested reimbursement in a letter dated February 26, 2013.

The Administrator paid H[redacted] $18,046.79 as reimbursement for health benefit premiums H[redacted] had paid from July of 2010 to February 1, 2012.[6] The Administrator denied H[redacted]'s request to be reimbursed for premiums purchased prior to July 2010, stating that, because the regulation cannot be retroactively applied, the Administrator did not have the authority to provide such a reimbursement. On August 8, 2013, H[redacted] appealed the Administrator's decision to the Office of Administrative Hearings [OAH]. The Administrative Law Judge [ALJ] sustained the denial of premium reimbursement, finding the PERS Administrator's statutory authority to create regulations did not grant him the authority to apply them retroactively and that estoppel was not present because H[redacted] did not contend that he acted in reliance on the mistaken statement regarding the dates of reimbursement.[7]

III. STANDARD OF REVIEW

This Court has jurisdiction pursuant to AS § 22.10.020(d). Pro se pleadings are considered liberally in an effort to determine what legal claims have been raised.[8] When the superior court acts as an intermediate court of appeal in an administrative matter, we

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[6] This was the time period between when the regulation became effective and when H[redacted] enrolled in the PERS system-paid health benefits plan.

[7] The ALJ stated that support for this decision was found in the "clear statement" rule. R. 143 (*citing Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988)). Furthermore, the ALJ noted that H[redacted] had appealed the denial of PERS occupational disability benefits in 2008, and the previous decision created res judicata as to two issues relevant to the present case: 1) H[redacted] did not prove he met the PERS criteria for occupational disability benefits prior to his 20-year eligibility for retirement; and 2) prior to the regulatory change in July 2010, the law did not permit system-paid health benefits for H[redacted] on the basis of his disability. R. 141; *In re A.H.*, No. 07-0392-PER (Alaska Office of Administrative Hearings 2007) at p. 5-6.

[8] *Breck v. Ulmer*, 745 P.2d 66, 75 (Alaska 1987) (*citing Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 595, 30 L.Ed.2d 652, 654 (1972) (per curiam)).

independently review the merits of the board's decision.[9] Factual findings made by the board are reviewed under the "substantial evidence" standard.[10] Factual findings will be upheld so long as there is enough relevant evidence to allow a reasonable mind to adequately support such a conclusion.[11] To the extent that the board's decision rests upon interpretation of statutory language, such decisions involve questions of law to which this Court will apply its independent judgment.[12] This Court will "adopt the rule of law that is most persuasive in light of precedent, reason, and policy."[13]

IV. DISCUSSION

A. Retroactivity Of The Law

Retroactivity is not favored in the law.[14] "A statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by [the legislative branch] in express terms."[15] Neither AS § 39.35.003 nor AS § 39.35.005 expressly grants the ability to adopt regulations and apply them retroactively.

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[9] *Rhines v. State*, 30 P.3d 621, 624 (Alaska 2001) (*citing DeYonge v. NANA/Marriott*, 1 P.3d 90, 94 (Alaska 2000)).
[10] *Id.*
[11] *Id.*
[12] *Id.* (*see Berger v. Wien Air Alaska, 995 P.2d 240, 242 (Alaska 2000)).*
[13] *Id.*
[14] *Bowen v. Georgetown University Hosp.*, 488 U.S. 204, 208 (1988).
[15] *Id.* (*citing Brimstone R. Co. v. United States*, 276 U.S. 104, 122 (1928) ("The power to require readjustments for the past is drastic. It ... ought not to be extended so as to permit unreasonably harsh action without very plain words")).

B. Equitable Estoppel

H[redacted] has asserted the theory of equitable estoppel applies in this case. The letter, dated January 18, 2012, that H[redacted] received notifying him of the regulation stated as follows:

> Your benefit will be effective the first of the month following your termination from employment due to disability. Our records show you terminated employment on May 10, 2007. If your employer verifies this date you and your qualified dependents will be eligible for health insurance benefits effective June 1, 2007.[16]

The ALJ briefly addressed the issue,[17] finding that H[redacted] had not relied upon the statement in the letter and that H[redacted]'s argument that the letter simply "establishes the rule of law for my case" was not correct.[18] However, pro se pleadings are to be interpreted liberally.

"Estoppel may apply against the government and in favor of a private party if 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 prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury."[19] In the present case, the letter received by H[redacted] contains a position asserted by a governmental body, meeting the first requirement. However, H[redacted] could not reasonably rely upon that assertion for the health premiums paid between 2007 and 2010 because those charges had already been incurred. Despite H[redacted]'s belief that he was entitled to reimbursement, he suffered no prejudice for those charges, again, because they had already been incurred. Therefore, there is substantial evidence supporting the finding that H[redacted] failed to meet the requirements necessary to establish estoppel.

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[16] R. 96 (The State's Brief incorrectly noted this as R. 90-91).
[17] R. 144.
[18] *Id.* (*see Flisock v. State, Div. of Retirement and Benefits*, 818 P.2d 640, 644 n. 5 (Alaska 1991) (No vested right in a mistaken application of the retirement system.))
[19] *Crum v. Stalnaker*, 936 P.2d 1254, 1256 (Alaska 1997) (*citing Wassink v. Hawkins*, 763 P.2d 971, 975 (Alaska 1988)).

V. CONCLUSION

The OAH was correct in its determination that 2 AAC 39.300(d) could not be applied retroactively. Furthermore, H[redacted] has not met the burden of establishing equitable estoppel against the State. Therefore, the decision of the Office of Administrative Hearings[20] is hereby AFFIRMED.

ENTERED this 4th day of November, 2014, in Anchorage, Alaska.

[redacted]

Hon. Patrick J. McKay
Judge of the Superior Court

I certify that on 11/5/14,
a copy of the above was mailed to each of
the following at their addresses of record:

[redacted]

K. Nixon/Judicial Assistant [redacted]

[20] *In re A[redacted] L. H[redacted]*, No. 13-1141-PER (Alaska Office of Administrative Hearings 2013).