

BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:)
)
 R. B.)
 _____)

OAH No. 10-0406-TRS
Agency No. 2010-008

ORDER DISMISSING CASE FOR LACK OF JURISDICTION

R. B. is a former member of the Teachers’ Retirement System (TRS).¹ He left the system in 1997, receiving a refund of 100 percent of his contributions.² On May 24, 2010, he requested that his TRS service be restored and that he be placed back in the system in the tier from which he departed.³ Mr. B. wants to be allowed to buy back his prior service.⁴

On July 15, 2010, the TRS Administrator denied Mr. B.’ request.⁵ The Administrator’s decision and the cover letter by which it was sent to Mr. B. stated that he could appeal “to the Department of Administration, Office of Administrative Hearings.”⁶

The Administrator’s appeal notice was mistaken. The Office of Administrative Hearings (OAH) is the appellate tribunal for appeals by an “employer, member, annuitant, or beneficiary” of the TRS system.⁷ Mr. B. is not presently any of these things.⁸ As he candidly acknowledges, he is a former member who wants to *become* a member by repurchasing his years of service.

It would do Mr. B. no favor to hear his appeal in this office when there is no jurisdiction to do so. The resulting decision would be of no effect, and Mr. B. would have wasted his time.

Since there is no appeal route to OAH, the Administrator’s decision of July 15 was, in fact, the “final decision” of the Department of Administration under AS 14.25.006. Any “aggrieved party”—not just an employer, member, annuitant, or beneficiary—can appeal a “final decision” to the Superior Court. Mr. B. is an “aggrieved party.” Therefore, he has a right to appeal the Administrator’s “final decision” to the Superior Court.

¹ A.R. 13 (“As a former member of the TRS . . .”).

² A.R. 41.

³ A.R. 13-14.

⁴ Statement of R. B. in Case Planning Conference, August 27, 2010.

⁵ A.R. 5-6.

⁶ A.R. 6, 7.

⁷ AS 14.25.006.

⁸ There is no statutory definition of “member” that applies to AS 14.25.006. There is a definition at AS 14.25.590(16) that was written for other parts of AS 14.25, and that can be used by analogy. It restricts “member” to people who “retain[] a right to benefits under the plan.” Mr. B. concedes that he presently has no “right to benefits” under the plan; he wants to repurchase that right.

The Administrator has moved to dismiss this appeal before OAH on the basis of his error in routing the appeal. Because this office has no jurisdiction, the motion must be granted.⁹ This appeal is dismissed.

The Administrator should promptly re-issue his July 15 decision with correct instructions regarding appeal. It is likely that Mr. B.' time for appeal to the Superior Court will not run until such a corrected decision is issued.¹⁰

DATED this 12th day of October, 2010.

By: Signed
Christopher Kennedy
Administrative Law Judge

Adoption

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 8th day of November, 2010.

By: Signed
Christopher Kennedy
Administrative Law Judge

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

⁹ Not reached in this decision is the question whether there could ever be jurisdiction by estoppel—that is, jurisdiction because the Administrator told a person to appeal to OAH, and the person relied on that advice to the person's detriment. Such a situation might conceivably arise if a person had devoted a lot of time and resources to an OAH hearing before the Administrator realized and raised his mistake. In this case, the problem was identified immediately.

¹⁰ 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 Mr. B. wants the merits of his arguments addressed, he should appeal directly from the corrected decision by the Administrator.