

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

S. N.,)
)
Appellant,)
)
v.)
)
DIVISION OF RETIREMENT AND,)
BENEFITS,)
)
Appellee.) Case No. 3AN-21-00000CI
_____)

DECISION AND ORDER ON APPEAL

Introduction

This appeal arises from the denial of UA_ professor S. N.'s claim for unused sick leave (USL) credit in the Teachers' Retirement System (TRS). The Division of Retirement and Benefits (Division) rejected his claim because S. N. had filed it after the statutory deadline. S. N. exhausted his appeal rights within the Division and the Office of Administrative Hearings (OAH) affirmed the denial. This court reverses, holding that the Division is estopped from rejecting S. N.'s claim.

Statement of Facts

In October of 2016, after about x years as a professor at the University of Alaska (UA_), S. N. met with UA_ personnel to start his retirement process. UA_ provided him with an outdated USL form.¹ Because S. N. retired as a member of the TRS, he was entitled to receive service credit for his unused sick leave if his application was received

¹ The current USL form, which S. N. never received from either UA_ or the Division, contained a notice in bold stating, "I understand it is my sole personal responsibility to claim my unused sick leave." Appellee's Br., 3.

not later than one year after his appointment to retirement.² He had accrued over a year's worth of USL. That October, S. N. completed his portion of the TRS application, including his part of the outdated USL form, and provided it to an appropriate UA_ representative so they could fill in their part, certify it, and send it on to the Division.³ Under the Division's regulations, only an employee's former employer can complete and certify the USL form.⁴ In December of 2016, S. N. submitted the completed TRS application pages to the Division, minus the outstanding USL form that he had left with UA_ to complete. He had checked the box on one of the forms indicating that he "wished to claim unused sick leave in order to increase [his] TRS monthly benefit."⁵ When S. N. delivered his application, he met with Division Representative Mark Rosier who went through the packet and confirmed with S. N. that UA_ was required to process the USL form.⁶ In January 2017, the Division sent a form letter to S. N. confirming to him that it had received his TRS application, and advising him that should "any additional information be required, [the Division] will contact [him]," the letter did not indicate that his application was deficient.⁷

The Division claims that it subsequently sent S. N. a letter in February of 2017 alerting him to the fact that his USL claim and verification form had not been received but S. N. asserts that he never received that letter and the ALJ specifically found that to be

² Br. of Appellant, 1-2; AS 14.25.115(a).

³ Br. of Appellant, 2.

⁴ Br. of Appellant, 2 (citing 2 AAC 36.290(a), (c) ("an application to credit unused sick leave toward appointment to retirement must contain, or be accompanied by, a certified statement by the employer that confirms the amount of the member's unused sick leave.")). The TRS retirement application booklet S. N. was provided with also stated: "It is your responsibility to ensure your employer completes the [USL] form and submits it to the Division within one year of your retirement date." Appellant's Excerpt of Record Volume I of I, Decision, OAH No. 19-0832-TRS, 2 (Office of Administrative Hearings 2020) [hereinafter Decision].

⁵ Br. of Appellant, 2.

⁶ Appellee's Br., 3-4.

⁷ Br. of Appellant, 2-3; Appellee's Br., 4.

the case.⁸ In the months following his retirement, the Division contacted UA_ several times regarding information UA_ had failed to provide, though, notably, it appears that the Division did not request the certified USL form.⁹ S. N. also maintained contact with the Division about his TRS benefits, and he even met with Mark Rosier again in November of 2017 to discuss issues related to his retirement.¹⁰ Except for the undelivered February, 2017 letter, neither the Division nor Mr. Rosier ever notified S. N. that his USL verification form was missing.¹¹

In late 2018 or early 2019, S. N. contacted the Division because he noticed he was not receiving credit for his USL. The Division informed him that it had not received the completed form from UA_. The University subsequently provided the Division with a USL form, dated January 16, 2019, signed by both S. N. and a UA_ representative, but the Division rejected the form and claim because it was received more than a year after S. N.'s retirement.¹² After exhausting his appeal rights within the Division, S. N. appealed the matter to the OAH. The assigned administrative law judge (ALJ) issued a decision on December 4, 2020, declining to apply the doctrines of unjust enrichment and equitable estoppel.¹³ Thus, the OAH affirmed the Division, finding: that S. N.'s application was untimely, that the Division asserted a position when it promised it would contact S. N. if additional information was needed and did not follow up, but that S. N. relied on UA_'s representations (not the Division's), and that S. N. would likely have met the last two elements of equitable estoppel.¹⁴ S. N. appealed the decision to this court.

⁸ Br. of Appellant, 3, 7.

⁹ Br. of Appellant, 3; Decision, 7.

¹⁰ Br. of Appellant, 3.

¹¹ Br. of Appellant, 3.

¹² Appellee's Br., 4-5.

¹³ Appellee's Br., 6.

¹⁴ Appellee's Br., 6-7.

Statement of Issues

S. N. argues four issues on appeal: first, that the ALJ erred when he ruled that the Division was not equitably estopped from denying S. N.'s USL claim. Second, that S. N.'s application did comply with AS 14.25.115. Third, that enforcing the Division's interpretation of AS 14.25.115 and 2 AAC 36.290 to preclude S. N.'s USL claim violates his constitutional rights. And fourth, that denying S. N.'s USL claim results in improper forfeiture and unjustly enriches the state.¹⁵

Discussion

A. Standards of review

The standard of review for appeals of administrative decisions varies depending on the type of administrative determination being challenged.¹⁶ A court sitting in its appellate capacity reviews questions of law not involving agency expertise under the "substitution of judgment" test, which allows the reviewing court to substitute its own judgment for that of the agency even if the agency's decision had a reasonable basis in law.¹⁷ Whether equitable principles require agencies to accept late filings in some circumstances is a question of law not involving agency expertise and is subject to independent review.¹⁸ The court adopts the rule of law that is most persuasive in light of precedent, reason, and policy.¹⁹

B. Equitable estoppel

¹⁵ Br. of Appellant.

¹⁶ *Dep't of Com. and Econ. Dev., Div. of Ins. v. Schnell*, 8 P.3d 351, 355 (Alaska 2000).

¹⁷ *Boyd v. Dep't of Com. and Econ. Dev., Div. of Occupational Licensing*, 977 P.2d 113, 115 (Alaska 1999).

¹⁸ *Dep't of Commerce and Economic Devel., Div. of Ins. v. Schnell*, 8 P.3d 351, 355 (Alaska 2000).

¹⁹ *Power Constructors, Inc. v. Taylor & Hintze*, 960 P.2d 20, 26 (Alaska 1998).

Estoppel may apply against the government in favor of a private party if: (1) the government 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.²⁰

First, the government can assert a position by conduct, words, or, when it is under a duty to speak and has an opportunity to do so but does not, silence.²¹ In *Crum v. Stalaker*, the Division had an obligation, under its own regulations and policy, to provide the retiree with a form for claiming unused sick leave and with clear instructions regarding that form.²² In that case, the Division failed to meet its obligation because it did not provide the retiree with a form to claim his USL and the provided informational materials confusingly suggested that the employer was responsible for completing and filing the forms.²³ Those same duties existed, and were breached, here. The Division had the duty to provide S. N. with the proper form, and the existing regulations and materials required the employer to complete and file that form.

And, in fact, the ALJ found that the Division had the duty to assist retirees in understanding and maximizing their retirement benefits, which “meant communicating effectively with S. N. about his deficient application.”²⁴ The ALJ also found that the Division asserted a position by effectively remaining silent with respect to S. N.’s missing USL form, despite its duty to notify him.²⁵ The ALJ found, and this court agrees, that the Division’s representation that it would contact S. N. if any additional information was

²⁰ *Crum v. Stalaker*, 936 P.2d 1254, 1256 (Alaska 1997) (citing *Wassink v. Hawkins*, 763 P.2d 971, 975 (Alaska 1988)).

²¹ *Id.* at 1257 (quoting *Hartway v. Bd. of Control*, 69 Cal. Rptr. 199, 200 (Cal. Ct. App. 1976)).

²² *Id.*

²³ *Id.* at 1258.

²⁴ Decision, 7.

²⁵ Decision, 7.

required, followed by total silence about the USL form in the face of several inquiries and face-to-face meetings, constituted an assertion of position, and collectively, meets the first element of the *Crum* estoppel requirements.²⁶

Second, the private party must reasonably rely on the government's asserted position. In *Crum*, the retiree's failure to file a timely claim form in reliance on the Division's omission and confusing instructions was reasonable and satisfied the second element of the estoppel test.²⁷ Here, the ALJ found that the second element of *Crum*'s estoppel requirements was not met. Despite his finding that the Division asserted a position and violated its duty to S. N., the ALJ felt that S. N. acted in reliance only on UA_'s advice when he took no action to ensure that his USL form was timely submitted.²⁸ In making this finding, the ALJ relied upon S. N.'s own testimony that even if he had received the February letter, he probably would not have taken action because a UA_ employee had told him that it could take two years for the benefit to be reflected in his monthly pension.²⁹ But this court finds S. N.'s actions to be more telling than those words. Here, the record reflects that upon receiving actual notice of the missing form, S. N. acted immediately to urge UA_'s compliance. There is every reason to believe that he would have done so a few months earlier, had he received the same notice. The fact that he did not convinces this court that he relied, at least in part, on the Division's silence as well as UA_'s representations. Looking at the facts cumulatively, S. N. reasonably relied upon the

²⁶ That silence continued, despite S. N. having checked the box asserting his claim for USL credits, until S. N. inquired about the absence of credits.

²⁷ *Crum*, 936 P.2d at 1258.

²⁸ Decision, 7-8.

²⁹ Decision, 7-8.

Division's initial assertion that it would contact him if it needed any further information and the Division's ongoing silence with respect to the missing USL form.

The State argues that S. N.'s testimony, that he would not have changed his position if he had received the letter from the Division, is critical because it established that even if the Division had represented to S. N. that his form was missing, he would not have done anything about it.³⁰ But that argument ignores the ensuing 10-month silence during which the Division had ample opportunity to notify S. N. about his application's deficiency and failed to do so. The ALJ analogized S. N.'s case to another administrative appeal in which it had been found that even if the Division had implied it was sufficient for the retiree to submit his form to the employer, the retiree could no longer reasonably rely upon that representation after "the Division's letter specifically notified him the USL application had not been received."³¹ But that notification letter was never received by S. N. Overall, this court concludes that S. N.'s reliance on the Division's silence was reasonable, given the earlier assurance that he would be notified of any deficiency and his several meetings with Division personnel.

Third and fourth, the private party must suffer prejudice as a result of their reasonable reliance and the application of equitable estoppel must serve the interest of justice so as to limit public injury. In a footnote the ALJ remarked that the harm S. N. suffered in the form of lost pension benefits clearly constitutes prejudice sufficient to meet the third element, and his receipt of those benefits would probably be found to serve the interests of justice.³² This court agrees that, in this case, as in *Crum*, application of

³⁰ Appellee's Brief, 9-10.

³¹ Decision, 8-9 (citing *In re R.D.C.*, OAH No. 09-0682-TRS (Office of Administrative Hearings 2010)).

³² Decision, 9 n.33.

estoppel will prevent S. N. from suffering a substantial and unfair hardship while causing no harm to the public.³³

C. The Division's interpretation of AS 14.25.115 and 2 AAC 36.290

The Division's own regulations and policies precipitated this situation by placing the burden on the employer to complete the form, and leaving employees open to forfeiture if the employer, predictably, sometimes fails. This scheme places the power over a retiree's property interest in the hands of their employer, an entity that may have little to no incentive to fulfil the retiree's duty to make timely filings. Apparently, retirees are expected to hound the bureaucrats that are assigned to complete their forms. Yet, it is ultimately the Division that has the overall duty to assist retirees in obtaining and completing all necessary forms.³⁴ It could be argued that the Division should do the hounding. Nevertheless, because this court holds that the Division is equitably estopped from denying S. N.'s application, it does not reach the issue of whether the Division's regulations and interpretation of AS 14.25.115 are reasonable.

D. S. N.'s constitutional rights

S. N. argues that he has a protected property right in receiving the USL benefits he earned and, for the same reasons the Division's interpretation and application of AS 14.25.115 and 2 AAC 36.290 was unreasonable, the denial was also a violation of S. N.'s due process right. The Division argues that S. N. failed to raise this argument below so it is waived and that it was inadequately briefed.³⁵

³³ *Crum*, 936 P.2d at 1258.

³⁴ *Id.* (holding the Division's failure to provide a retiree with the proper form constituted "silence" where the division "was under a duty to speak.").

³⁵ Appellee's Br., 17; the parties both produced additional briefing on the constitutional issue at the court's request.

When a party challenges the constitutionality of a statute, a presumption of constitutionality applies, and doubts are resolved in favor of constitutionality.³⁶ But there is no need to reach the constitutional issue in this case because this court holds that the Division is equitably estopped from denying S. N.'s application.

E. Forfeiture and unjust enrichment

Courts of equity historically have had broad power to shape remedies.³⁷ It is well settled in Alaska that equity abhors a forfeiture, and will seize upon slight circumstances to relieve a party therefrom.³⁸ The Alaska Supreme Court has held that a trial court can refuse to enforce a forfeiture when its enforcement will cause a loss of property that is out of proportion to the other party's claimed injury.³⁹

This situation is undeniably an inequitable one. S. N. earned over a year of USL through his x years of employment UA_ and, because his employer failed to send one form to the Division on time, he forfeits that substantial benefit. This forfeiture is well out of proportion to any injury the State might suffer by accepting his late application.

S. N. did initially rely upon UA_'s representation that it would submit his application to the Division, however, the Division had multiple opportunities wherein it could have told S. N. that his form was missing and did not. On the other hand, the State loses nothing by granting S. N. the benefits he has earned and has not shown prejudice in receiving his claim late.

³⁶ *State v. Planned Parenthood of the Great Northwest*, 436 P.3d 984, 992 (Alaska 2019).

³⁷ *Fleenor v. Church*, 681 P.2d 1351, 1355 (Alaska 1984).

³⁸ *Duenas-Rendon v. Wells Fargo Bank*, 354 P.3d 1037, 1043 (Alaska 2015) (citing *Curry v. Tucker*, 616 P.2d 8, 13 (Alaska 1980)); *Jameson v. Wurtz*, 396 P.2d 68, 74 (Alaska 1964).

³⁹ *Duenas-Rendon*, 354 P.3d at 1043; see *Land Development, Inc. v. Padgett*, 369 P.2d 888 (Alaska 1962) and *Williams v. DeLay*, 395 P.2d 839 (Alaska 1964), in both cases the Supreme Court affirmed the trial court's decision not to enforce a forfeiture because the result was in line with the principles of equity and justice and because the forfeiture would cause a loss to the buyers out of proportion to any injury that might be sustained by the seller.

Order and Decision.

The *Crum* elements for equitable estoppel are met. The Division asserted a position that S. N. reasonably relied on, to his substantial detriment, and his receipt of the benefits he earned causes no harm to the public. For the foregoing reasons, the Division is estopped from denying S. N.'s unused sick leave claim.

IT IS SO ORDERED.

Dated at Anchorage, Alaska this 3rd day of February, 2023.

Signed _____

Hon. Kevin M. Saxby
Superior Court Judge

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