BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of	)	
	)	
T X	)	OAH No. 23-0581-PER
	)	Agency No. 2023-006

DECISION ON SUMMARY ADJUDICATION

I. Introduction

T X was a full-time employee of Employer A for approximately three years in the late 1990s. At that time Employer A was a participating employer in the Public Employees Retirement System (PERS), and Ms. X's date of hire gave her Tier II status. When Ms. X ended her employment with Employer A in 1998 she elected to take a refund of all PERS contributions that had been deducted from her paychecks, thus making her a "former member" of PERS. Employer A later terminated its participation in PERS when the Municipality of Anchorage (the "Municipality") sold the utility to a private company in 1999.

Twenty years later Ms. X was hired into a full-time position with the Municipality. Since the Municipality participates in PERS, she subsequently contacted the Division of Retirement and Benefits ("the Division") to request reinstatement to the Tier II status she had during the time she worked for Employer A. The Division denied that request, and this appeal followed.

The Division and Ms. X have both filed motions for summary adjudication based on their shared belief that there are no disputed issues of material fact that require a hearing. As detailed below, Ms. X's decision to take a refund of her employee contributions in 1998, combined with Employer A terminating its participation in PERS in 1999, eliminated her right to seek later reinstatement of her Tier II status. Accordingly, the Division's decision is affirmed.

II. Facts

A. The PERS Tier System and Related Statutes

The State of Alaska operates the Public Employees Retirement System, which offers retirement benefits to employees of the State of Alaska and many local government entities. The PERS system currently has four tiers of benefits, with the date of hire determining the tier to which an individual employee belongs. Tiers I through III, which cover individuals who began work with a participating PERS employer between January 1961 and June 2006, all provide a "defined benefit plan" with a 5-year vesting period that guarantees employees a monthly pension at retirement age, the amount of which varies depending on an employee's compensation and

years of service.[1] Tier IV, which covers PERS-eligible employees who began their employment after July 1, 2006, is a "defined contribution plan" where contributions made by employees and their employers are aggregated and invested in an individual retirement savings account.[2] Unlike the other tiers, there is no possibility of a guaranteed monthly pension for Tier IV employees. For this reason, Tier II membership is generally regarded as preferable to membership in Tier IV.[3]

Under all four tiers, employees make mandatory contributions that are paid to PERS, which are then matched by their employer pursuant to a statutory framework. For Tiers I through III, the employee's share – typically 6.75% of gross pay – is less than a third of the 22% share currently paid by employers.[4] When individuals terminate their employment with an employer participating in PERS, AS 39.35.200(a) allows them to obtain a refund of all the mandatory contributions withheld from their paychecks. Under current law, a person who takes this refund forever forfeits the corresponding "credited service" for purposes of tier membership and is regarded as a "former member" of PERS.[5] Prior to July 1, 2010, however, AS 39.35.350(b) made it possible for employees who took this refund to later seek reinstatement of the credited service associated with that refund if they (1) took a new position with a participating PERS employer; and (2) repaid to PERS the amount that had been refunded, with associated interest.[6] This reinstatement provision was repealed by the Alaska Legislature in 2005, with a delayed effective date in 2010.[7]

Another statute – AS 39.35.615 – addresses the procedures to be followed when a participating *employer* terminates its participation in PERS. The version of this statute that was in effect when Ms. X began working for Employer A provided in relevant part:

> If a political subdivision or public organization amends its participation agreement so as to terminate coverage of a department, group, or other classification of employees, each employee whose coverage is so terminated, *regardless of the employee's employment status at the date of termination*, shall be considered fully vested in actuarially adjusted accrued retirement benefits as of

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1 *See* AS 39.35.095-39.35.680. A chart summarizing the differences the benefits available under the various tiers is available at https://drb.alaska.gov/docs/materials/PERSTierChart.pdf (download date of May 24, 2024).

2 AS 39.35.710-39.35.720.

3 Tiers I through III also offer post-retirement medical benefits unavailable under Tier IV. *See* note 1, *supra.*

4 *See* AS 39.35.160 (employee contribution rate) and 39.35.255(a) (employer contribution rate). Before the current flat rate of 22% was adopted by the legislature in 2008, the employer's contribution rate – which was always higher than the employee contribution rate during the timeframe relevant here -- was adjusted annually based on an actuarial analysis of the system's assets and liabilities pursuant to former AS 39.35.260.

5 AS 39.35.680(19).

6 *See* AS 39.35.350 (1995 Alaska Statutes).

7 Sec. 133, ch. 9 FSSLA, eff. June 30, 2010.

> the date of termination, *unless the employee's contributions have been refunded*. (Emphasis added.)[8]

When this termination procedure was invoked, all affected employees were given 60 days in which to advise the PERS administrator whether they wanted to (1) take a refund of their employee contributions; or (2) accept the vested benefit.[9] The statute provided that employees who took refunds were to be paid "the balance of the employee contribution account" without any future right to have service credit reinstated in the future.[10] For employees who elected to take a vested benefit, the employer was required to pay the PERS administrator "the amount actuarially determined as necessary to fully fund the benefits" of those employees."[11] Of critical importance, AS 39.35.615(g) addressed the final closing of the financial books after these steps had been taken:

> After all of the employees whose coverage is terminated have either received refunds or have been vested in their accrued benefits, the remaining funds in the employer contribution account attributable to those employees shall be refunded to the employer.

What makes this termination procedure so noteworthy is that it was the *only* means by which an employer could ever obtain a refund of the contributions it had paid to PERS on behalf of past and current employees.[12] Otherwise, whenever employees took a refund of their PERS contributions the employer's share was *not* refunded back to the employer, but was instead kept by PERS.[13] After this closeout refund was paid to the terminating employer, there was no statutory means by which PERS could go back to that employer to seek additional funds needed to cover unexpected expenses associated with benefits owed to its former employees.[14]

It is presumably for this reason that the legislature included language within AS 39.35.615(c) providing that "credited service may not be reinstated under this chapter" for employees of terminating employer who took refunds of their PERS contributions. Without this provision, PERS would have faced an unfunded liability whenever those employees requested reinstatement of their past service credit. While PERS would have been repaid the employee's

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8 AS 39.35.615(a) (1995 Alaska Statutes).

9 AS 39.35.615(b) (1995 Alaska Statutes).

10 AS 39.35.615(c) (1995 Alaska Statutes).

11 AS 39.35.615(d) (1995 Alaska Statutes).

12 An employer that was being involuntarily terminated from PERS under AS 39.35.620 was also entitled to this same refund if all other indebtedness to the system was paid.

13 *See* former AS 39.35.650 ("An employer may not receive an amount from the system, except as provided under AS 39.35.615(e) and 39.35.620(g).").

14 In 2008, the legislature repealed .615(g) and added a new provision codified at AS 39.35.625 which provides a mechanism for PERS to recover some of these costs.

share of past contribution and associated interest as required by AS 39.35.350(b), there was no means by which PERS could recover the larger share that had been refunded to the employer at the time it terminated its participation in the system.

B. Ms. X's Interactions with the PERS

In April 1995 Ms. X was hired into a full-time position with Employer A which was a participating PERS employer.[15] As has previously been mentioned, based on her hire date, Ms. X had Tier II status, and when she ended her employment with Employer A in June 1998, she elected to take a total refund of her employee's contribution account.[16] As covered above, by doing so, she became a "former member" in PERS and lost her Tier II status. Employer A later terminated its participation in the PERS under AS 39.35.615 when the Municipality sold Employer A to a private company in 1999.[17]

In 2018, when Ms. X accepted a position with the Municipality, which participates in PERS, she was once again a PERS member. But her date of hire meant that she had a less advantageous Tier IV status.[18] Hoping to change this, in 2022 Ms. X contacted the Division to request reinstatement of her past service credit – which would restore her prior Tier II status. The Division responded through a letter dated July 5, 2022, in which a Division representative advised Ms. X that by withdrawing her employee contributions in 1998, under AS 39.35.200(d) she had forfeited any right to later reinstatement.[19]

The next year Ms. X retained an attorney who wrote a letter to the Division in May 2023, contending that Ms. X was entitled to be reinstated to Tier II status under former AS 39.35.350(b) and the 2021 decision issued by the Alaska Supreme Court in *Metcalfe v. State*.[20] This began a series of back-and-forth letters between the Division and Ms. X's attorney which finally concluded with a letter dated July 27, 2023, which the Division characterized as its final decision denying Ms. X's reinstatement request.[21]

III. Discussion

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15 Agency Record at 40.
16 Agency Record at 44.
17 Agency Record at 38.
18 While Ms. X's current tier status is not referenced in the agency record, in its briefing the Division advised that she became a "Tier IV PERS employee." Division Opening Memorandum at 1.
19 Agency Record at 26-27. This subsection provides that an employee who takes a refund of their PERS contributions "forfeits corresponding credited service." However, that statute is not applicable here since it post-dates the time Ms. X was employed by Employer A.
20 484 P.3d 93 (Alaska 2021); Agency Record at 23-24.
21 Agency Record at 3-4.

The Office of Administrative Hearings has original jurisdiction over PERS appeals. Accordingly, the administrative law judge serves as the final executive branch decisionmaker and in that role is empowered to interpret and apply statutes and regulations based on facts that are either determined through a hearing or stipulated to by the parties.[22]

A. Framing the Critical Issue

Both sides concur that if Ms. X had been employed by Employer A when the utility withdrew from PERS in 1999, she would have indisputably lost the right to seek reinstatement of her service credit had she elected to take a refund of her PERS contributions under former AS 39.35.615(c).[23] The single issue presented here is whether this outcome changes for employees such as Ms. X who took a refund of their employee contributions *prior* to their former employer terminating its participation in PERS.

The Division contends this is a distinction without a difference since former AS 39.35.615(a) provided that employees of terminating employers became fully vested in an adjusted pension benefit "regardless of the employee's employment status at the date of termination … *unless the employee's contributions have been refunded*." (Emphasis added). As the Division points out, this statutory language does not distinguish between individuals who took refunds of their contributions prior to their employer terminating participation in PERS, and those who elected to do so at the time of termination. Thus, the Division contends that Ms. X is subject to the language in .615(c) which provides that "credited service may not be resinstated under this chapter" for those who took a refund of their employee contributions.[24] The Division characterizes this as a longstanding interpretation of the statute that should be afforded deference by this tribunal.[25]

The Division further notes that the interpretation advocated by Ms. X would result in PERS facing an unfunded liability whenever a former member in her position requested reinstatement.[26] This is an outcome the legislature presumably would have sought to avoid.[27]

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22 *In re T.N.S.*, OAH No. 09-0025-PER (2009).
23 X Memorandum at 7.
24 Division Opening Memorandum at 16.
25 Division Opening Memorandum at 12-13.
26 Division Reply Memorandum at 7.
27 *See generally* AS 39.35.255(i) (PERS is to be self-funded, with contributions sufficient to cover "the cost of providing the benefits expected to be credited, with respect to service, to all active members of the plan during the year").

For her part, Ms. X begins with the premise that the holding of *Metcalfe* requires any statutory limitation on reinstatement rights to be narrowly construed.[28] Building from this, she argues that the loss of reinstatement rights under AS 39.35.615(a) and (c) does not apply to her since, at the time Employer A terminated its participation in PERS, she was a "former member" whose rights could not be extinguished since she never made the election between a refund of contributions, or a fully vested benefit, as described in .615(c).[29] As for the Division's concerns about the unfunded liability that would result if she were granted reinstatement, Ms. X suggests "exploring alternative funding mechanisms or considering legislative amendments that provide a remedy for the unfunded liability issues."[30]

The first issue to be addressed is the extent to which deference should be given to the Division's interpretation of AS 39.35.615. Analysis of the parties' differing interpretations of this statute, and the holding of *Metcalfe,* will follow from there.

B. The Division's interpretation of AS 39.35.615 is entitled to deference.

The Division contends that it has consistently interpreted AS 39.35.615(c) as eliminating the reinstatement rights of former PERS members who, like Ms. X, took refunds of their contributions prior to their former employers terminating participation in PERS. Given this, the Division asserts that its interpretation of the statute should be accorded deference under the holding of *Bartley v. State, Dep't of Admin., Teacher's Ret. Board*, where the Alaska Supreme Court held:

> Although we generally rely on our independent judgment when we decide questions involving pure statutory interpretation, we have recognized that an agency's interpretation of a law within its area of jurisdiction can help resolve lingering ambiguity, particularly when the agency's interpretation is longstanding. In such cases we have suggested that precedent counsels restraint and directs us to look for "weighty reasons" before substituting our judgment for the agency's.[31]

The court's adherence to this approach was later confirmed in *Marathon Oil Co. v. State, Dep't of Nat. Resources*, where it noted, "In multiple cases, we have recognized the special

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28 X Memorandum at 8.
29 X Memorandum at 2.
30 X Opposition Memorandum at 14.
31 110 P.3d 1254, 1261 (Alaska 2005). *See also Bullock v. State, Dep't of Community & Reg'l Affairs*, 19 P.3d 1209, 1216 (Alaska 2001) (affirming agency interpretation of ambiguous statute that was continuous, long-standing, and not arbitrary or capricious).

deference that is due to longstanding agency statutory interpretations."[32] All of this is subject to the important proviso that the agency's interpretation must be a reasonable one.[33]

A preliminary question is whether the Office of Administrative Hearings, as final executive branch decisionmaker, is required to accord this kind of deference to others in the executive branch. In most cases within the OAH docket, no such deference is required because the final decisionmaker sits in a supervisory, policy-making role vis-à-vis the agency staff whose decision is being challenged.[34] In the PERS docket, however, OAH fills the role of an administrative court rather than a body making a recommendation to an agency head or other policy-maker. Thus, court-like deference is generally appropriate, provided the agency requests it and can show the prerequisites for it.[35]

Consistent with the Supreme Court guidance, the first question is whether the Division's interpretation of former AS 39.35.615 is reasonable. This is easily answered in the affirmative given the structure of .615(a), which provided that both current and former employees of a terminating employer were entitled to an adjusted vested retirement benefit *unless* the employee's contributions had been refunded. This, combined with the language of .615(c) which provides that payment of a refund forecloses any future reinstatement of service credit, constitutes a reasonable basis for the Division's interpretation of the statute – notwithstanding the countervailing arguments advocated by Ms. X.

The reasonableness of the Division's interpretation is reinforced by the way it closes the door on a potential unfunded liability. It is doubtful that the legislature would have wanted PERS to be burdened with an unfunded liability every time a former member in Ms. X's position sought reinstatement of past service credit under former AS 39.35.350(b).

The next prong of this deference analysis requires an evaluation of whether AS 39.35.615 is a law within the Division's "area of jurisdiction." As set out in AS 39.35.004(a), the Division and its administrator are directed to approve or disapprove claims for retirement benefits, formulate and adopt regulations governing the internal operations of PERS, and perform all management and accounting functions required to keep the system functional. Given this broad

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[32] 254 P.3d 1078, 1085-86 (Alaska 2011).

[33] *Premera Blue Cross v. State, Dept. of Commerce, Community & Economic Development, Div. of Ins*., 171 P.3d 1110, 1119 (Alaska 2007).

[34] *See, e.g., Carr & Family Properties, LLC v. Ted Stevens Anchorage Int'l Airport,* OAH No. 21-2536-APT (Comm'r of Transp. & Pub. Fac. 2024), at 21-22 (pub. at https://aws.state.ak.us/OAH/Decision/Display?rec=7009).

[35] The same kind of deference is applied in the primary area where OAH has final decision authority, tax appeals. *See, e.g., In re Phillips Petroleum Co.,* OAH No. 08-0143-TAX (OAH 2010), at 5-6 (pub. at https://aws.state.ak.us/OAH/Decision/Display?rec=4800).

scope of authority, it seems self-evident that AS 39.35.615 is a statute that is within the Division's area of jurisdiction. This conclusion is buttressed by the holding of *Bartley*, where the Alaska Supreme Court noted that a statute setting eligibility requirements for normal retirement benefits was within the jurisdiction of the Teacher's Retirement Board.[36]

The final question is the extent to which the Division's interpretation of AS 39.35.615 is longstanding and continuous in nature. Here this is demonstrated by a memorandum to the PERS Plan Administrator dated January 14, 2003, the purpose of which was to "summarize how to handle members and former members…when an employer elects to terminate from PERS."[37] Therein, the Plan Administrator was advised that, under AS 39.35.615, former employees of a terminating employer who had previously taken a refund of their PERS contributions had "no rights to service time, cannot reinstate service time with the terminating employer, and service time with that employer will be identified as non-reinstatable in the [Combined Retirement System]."[38] This clearly qualifies as a statutory interpretation that is longstanding and continuous in nature.[39]

Accordingly, consistent with the holding of *Bartley*, the Division's interpretation of AS 36.35.615 is entitled to deference in this proceeding.

C. Under the plain language of AS 39.35.615, Ms. X lost the right to reinstatement when Employer A terminated its participation in PERS.

Even if the Division's interpretation was not afforded deference, independent analysis of the key subsections of former AS 39.35.615 leads to the conclusion that Ms. X lost the right to have her service credit reinstated when Employer A terminated its participation in PERS.

Under Alaska law, interpretation of a statute begins with its text,[40] with unambiguous language given its ordinary and common meaning.[41] The goal of this analysis is to "give effect to the legislature's intent, with due regard for the meaning the statutory language conveys to others."[42]

When the various subsections of AS 39.35.615 are evaluated in light of this guidance, it is apparent that the statute was drafted in manner intended to place current and former employees

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[36] 110 P.3d at 1216 (noting that an agency interpretation of statute dating back 23 years "easily qualifies as long-standing").
[37] Agency Record at 29.
[38] Agency Record at 33.
[39] *See also Bullock,* 19 P.3d at 1209
[40] *Blythe P. v. State, Dep't of Health & Soc. Servs., Off. of Children.'s Servs*., 524 P.3d 238, 246 (Alaska 2023) (quoting *Pruitt v. Off. of Lieutenant Governor*, 498 P.3d 591, 600 (Alaska 2021)).
[41] *Cora G. v. State, Dep't of Health & Soc. Servs., Off. of Child.'s Servs*., 461 P.3d 1256, 1277 (Alaska 2020).
[42] *City of Valdez v. State*, 372 P.3d 240, 254 (Alaska 2016).

of a terminating employer into one of two classes: (1) those who had a fully vested retirement benefit; and (2) those who took refunds of their PERS contributions, either prior to or at the time of the employer's termination of participation. For individuals in the first category, PERS was protected from an unfunded liability due to the requirement set out in .615(d) that the money needed to fund all vested benefits be paid from employee and employer contributions into a retirement reserve account. For individuals in the second category, the risk of an unfunded liability was eliminated by specifying in .615(c) that individuals who took refunds of their employee contributions were not allowed to seek future reinstatement of service credit.

The terminating employer's right to receive a refund of all remaining funds in its contribution account under .615(e) is critical to this analysis. As noted above, the only means by which an employer could ever obtain a refund of past contributions was by terminating its participation in PERS. After this refund was paid, any reinstatement of service credit would have left PERS burdened with the obligation of paying future benefits without the employer's contributions needed to fully fund them. Ms. X offers no legislative history or collateral information suggesting that the legislature intended to impose an unfunded liability upon PERS when it was enacting this statutory language.

In formulating former AS 39.35.615, the legislature could arguably have been more precise in specifying that individuals such as Ms. X lost the right to reinstate past service credit when their former employers terminated their participation in PERS. As the Alaska Supreme Court has noted, however, "It is not and cannot be required that a legislative measure carve out distinctions with mathematical nicety."[43] For purposes of this case, the overall structure of the statute, combined with the obvious objectives it was mean to serve, compels the conclusion that the Division's interpretation of AS 39.35.615 should be affirmed.

D. The holding of Metcalfe does not impact the outcome here.

Hoping to control the increasing cost of providing retirement benefits to PERS members, the legislature substantially overhauled the system in 2005. While the most notable change was the elimination of the defined benefit plan for new employees, the legislature also repealed AS 39.35.350, with this repeal having a delayed effective date in 2010.[44]

[43] *Isakson v. Rickey*, 550 P.2d 359, 368 (Alaska 1976), abrogated on other grounds by *Com. Fisheries Entry Comm'n v. Apokedak*, 606 P.2d 1255 (Alaska 1980).

[44] Sec. 133, ch. 9 FSSLA, eff. June 30, 2010.

In 2013, a former state employee named Peter Metcalfe filed a lawsuit against the State of Alaska which alleged (among other claims) that the repeal AS 39.35.350 could only be applied prospectively under article XII, section 7 of the Alaska Constitution which provides:

> Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired.

This provision – which will be referenced as the "non-diminishment clause" herein – effectively prevents the legislature from making retroactive changes to Alaska law that either reduce the amount of benefits available to PERS members, or makes those benefits more difficult to earn.[45]

This lawsuit was ultimately the subject of two Alaska Supreme Court decisions. The first, issued in 2016, referenced the facts that Mr. Metcalfe had been briefly employed by the State of Alaska in the early 1970's, and took a refund of his PERS contributions in 1981.[46] The court went on to hold that that claims for declaratory and injunctive relief asserted under the non-diminishment clause are not subject to a statute of limitations.[47]

Following a remand to the superior court for further proceedings, the matter returned to the Alaska Supreme Court, which ruled in 2021 that the reinstatement right available under AS 39.35.350(b) was "plainly a benefit that came with PERS membership" that could not be retroactively eliminated by the legislature.[48] In reaching this decision, the court focused on the fact that, at the time Mr. Metcalfe had worked for the State, an employee's right to seek reinstatement of past service credits was part of the "PERS complex of provisions…and became an accrued benefit at that time."[49] In making these points, however, the court was careful to note the possibility of situations "when current membership is dispositive of a former member's rights because the right to the benefit was extinguished when the member left the system."[50]

The obvious distinction between the facts giving rise to the *Metcalfe* decisions, and those presented here, is that Ms. X was *not* employed by the State of Alaska or some other employer that was a continuous participant in PERS. Instead, she was employed by a municipally owned utility that terminated its participation in PERS in 1999. As noted above, the Division argues this distinction makes all the difference since, under the statutes already in effect when Ms. X

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45 *Hammond v. Hoffbeck*, 627 P.2d 1052, 1056–57 (Alaska 1981).
46 *Metcalfe v. State*, 382 P.3d 1168, 1170 (Alaska 2016), *abrogated in part on other grounds by Hahn v. GEICO Choice Ins. Co*., 420 P.3d 1160 (Alaska 2018).
47 *Id.* at 1176.
48 *Metcalfe*, 484 P.3d at 99.
49 *Id.* at 100.
50 *Id.* at 101.

began work with Employer A, individuals who took refunds of their employee contributions lost their reinstatement rights under AS 39.35.350 if their employer later terminated its participation in PERS.

The Division's focus on the laws in place when Ms. X began her employment with Employer A is consistent with the second *Metcalfe* decision, and the Alaska Supreme Court's decision in *McMullen v. Bell*.[51] There, a PERS member who began state service in 1969 sought to include substantial cashed-in leave as part of his compensation for purposes of calculating the amount of his retirement benefits. The PERS administrator denied that request, relying in part on a 1977 legislative amendment that excluded cashed-in leave from the definition of "compensation" under AS 39.35.680.[52] In upholding that decision, the court first noted that in 1969 employees did not even have the right to cash-in leave, much less have it treated as added compensation for the purposes of calculating retirement benefits, and that there were no legislative or administrative changes in the years that followed that arguably created such a right. Based on these conclusions, the court held:

> Before the legislature amended the law in 1977, neither by law nor by practice did McMullen actually acquire a right to have his cashed-in leave included as part of his compensation. He therefore had no right that could have been impaired when the legislature excluded cashed-in leave from the definition of compensation.[53]

This decision effectively controls the outcome of Ms. X's appeal here. Like the plaintiff in *McMullen*, Ms. X contends that a legislative enactment post-dating her employment with Employer A diminished her entitlement to PERS retirement benefits. However, the laws in place when Ms. X began her employment with Employer A provided that persons who took refunds of their employee contributions would not be allowed to seek later reinstatement of service credit if their former employer later terminated participation in PERS. The later repeal of AS 39.35.350(b) is wholly irrelevant here, since it did nothing to subtract from the rights afforded to Ms. X under the laws in place at the time she began work for Employer A. Accordingly, the holding in *Metcalfe* has no bearing on the outcome here.

IV. Conclusion

Pursuant to AS 39.35.615(a) and (c), Ms. X lost the right to seek reinstatement of past service credit under AS 39.35.350(b) when Employer A terminated its participation in PERS. Since this occurred by force of law under statutory language that was on the books when she

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[51] 128 P.3d 186 (Alaska 2006).
[52] *Id.* at 192.
[53] *Id.* at 193.

began working for Employer A in 1995, the legislature's subsequent repeal of AS 39.35.350, and the later holding in *Metcalfe*, do not alter the outcome here. Accordingly, the Division's decision to deny Ms. X's request for reinstatement of her past service credit is AFFIRMED.

DATED: June 14, 2024.

By: *Signed*_____
Max Garner
Administrative Law Judge

ADOPTION

This Decision is issued under the authority of AS 39.35.006. The undersigned, in accordance with AS 44.64.060, adopts this Decision 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 10th day of July, 2024.

By: *Signed*
Signature
Max Garner
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]