IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED
MAR 26 2009
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

JAMES G. CLAY,
MICHAEL R. CORBETT, and
KATHERINE HOOPENGARNER,

Petitioners,

v. CIVIL ACTION NO. 05-MISC-371

2009 OCT 20 AM 11:12
KANAWHA CO. CIRCUIT COURT

STATE OF WEST VIRGINIA CONSOLIDATED
PUBLIC RETIREMENT BOARD,

Respondent.

FINAL ORDER
AFFIRMING DECISION OF CONSOLIDATED PUBLIC RETIREMENT BOARD

On July 15, 2005, Hearing Officer, Jack W. DeBolt, rendered his *Amended Recommended Decision* regarding Petitioners James G. Clay, Michael R. Corbett, and Katherine Hoopengarner. On August 2, 2005, the Respondent, West Virginia Consolidated Public Retirement Board, issued its *Final Order* adopting the Hearing Officer's *Recommended Decision* and denying the Petitioners' requests. Petitioners filed a *Petition for Writ of Mandamus and Appeal of Final Order* on September 1, 2005. The *Petition for Writ of Mandamus* was dismissed by this Court by Order entered on April 11, 2008, leaving the administrative appeal pending before this Court.

Having reviewed the record below, the petition for appeal, the memoranda of the parties and the pertinent law, this Court FINDS FOR THE RESPONDENT. Thus, this Court hereby AFFIRMS the decision of the Board, as more fully explained below.

STANDARD OF REVIEW

The West Virginia Administrative Procedures Act, subsection (g) governs the review of contested administrative decisions that do *not* involve a disciplinary matter and issues by a circuit court, and specifically provides that:

> [t]he Court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision or order are:
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> (1) In violation of constitutional or statutory provisions; or
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> (2) In excess of statutory authority or jurisdiction of the agency; or
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> (3) Made upon unlawful procedure; or
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> (4) Affected by other error of law; or
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> (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or
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> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
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> West Virginia Code § 29A-5-4.

"A final order of the hearing examiner ... based upon findings of fact, should not be reversed unless clearly wrong." Syl.Pt. 1, *Randolph County Board of Education v. Scalia,* 182 W.Va. 289, 387 S.E.2d 524 (1989).

ISSUE AND DISCUSSION

The issue in this matter is whether or not the Respondent Board's August 2, 2005 decision that Petitioners are obligated to pay the "loan" balance from their respective accounts with the Teachers Retirement System or, in the absence of such payment, have their eventual annuity benefits

reduced, as is the case of Petitioners Corbett and Hoopengarner, or continue to provide reduced annuity benefits, as is the case of Petitioner Clay, should be affirmed, reversed or otherwise modified.

"Loans" to members of the Teachers Retirement System ("TRS") are primarily controlled by the provisions of West Virginia Code § 18-7A-34, which makes clear that continually accruing interest is required for all unpaid loan balances.

Loans from TRS, being from a member's own contributions and affording no right to the CPRB to enforce collection, are not "debts" subject to discharge in bankruptcy. *In Re Villarie*, 648 F.2d 810 (2nd Cir. 1981). Therefore, the filing of a bankruptcy by a member does not discharge the balance of any unpaid "loan" and any balance is to be collected at the time of retirement or at the time of a withdrawal of contributions.

West Virginia Code of State Regulations (CSR) § 162-4-8 provides, in part, that to comply with provisions of the Internal Revenue Code of 1986, "upon retirement of a member, including retirement for disability or withdrawal prior to retirement, any unpaid loan balance including any compounded interest due shall be repaid in full by the member." WV CSR § 162-4-8. If the member does not repay any or part of the amount due, the amount must be deducted in a lump sum from the refund of accumulated contributions or repaid in a lump sum through the reduction of the member's monthly retirement benefits. *Id.* If the member's accumulated contributions or the actuarial reserve for the accrued benefit is not enough to repay the unpaid loan balance in full, including the compounded interest, the member must pay the amount necessary to fully repay the amount due. *Id.*

Additionally, each of the Petitioners signed loan agreements which contained the following language:

> "If, at the end of your loan agreement any balance not paid, including accrued interest, shall be subject to interest charges equal to but not in excess of the rate established by the retirement board for new loans being issued at the time. Such charges shall continue on the unpaid balance until your retirement, withdrawal or death or until such time as your total balance equals your total contributions, plus accrued interest, in the teachers accumulation fund."

"The task of the circuit court is to determine 'whether the agency's decision was based on consideration of the relevant factors and whether there has been a clear error of judgment.'" *Frymier-Hoalloran v. Paige,* 193 W. Va. 687 at 695, 458 S.E,2d 780 at 788 (1995). This court must evaluate the record of an administrative agency's proceeding to determine whether there is evidence on the record as a whole to support the agency's decision. The evaluation is conducted pursuant to the administrative body's findings of fact, regardless of whether the court would have reached a different conclusion on the same set of facts. *Walker v. West Virginia Ethics Com'n,* 201 W.Va. 108 at 109, 110, 492 S.E.2d 167 at 168, 169 (1997).

Interpretations of statutes by administrative bodies charged with enforcing such statutes are to be afforded great weight, and such an agency's construction of these statutes must be given substantial deference unless clearly erroneous. *Corliss v. Jefferson County Board of Zoning Appeals,* 591 S.E.2d 93 (W.Va. 2003); *WV Department of Health v. Blankenship*, 431 S.E.2d 681 (W.Va. 1993) *Dillon v. Board of Education of the County of Mingo*, 301 S.E.2d 588 (W.Va. 1983); *Security National Bank & Trust Co. v. First W. Va. Bancorp., Inc.*, 277 S.E.2d 613 (W.Va. 1981).

After a thorough review of the record, it is apparent that the Hearing Officer as well as the Board evaluated and considered all facts, factors, laws and policy concerns in rendering their decisions. There is more than sufficient evidence in the record, as a whole, to support their determinations. Furthermore, the Board's decision is clearly *not* erroneous and therefore must be

affirmed.

After due and mature consideration of the record, the Court hereby adopts and incorporates, as part of this Order, the findings of fact and conclusions of law of the Hearing Officer as outlined in his *Amended Recommended Decision* dated July 15, 2005. Finally, this Court finds that the decision of the Board was not contrary to law, did not exceed the Board's statutory authority, was not the result of fraud or deceit, was not clearly wrong, and was not arbitrary or capricious.

DECISION

For the reasons set forth herein, the Court hereby **ORDERS** that the Board's *Final Order* dated August 2, 2005, denying Petitioners's appeal for the reasons set forth in the Hearing Officer's *Recommended Decision* dated July 15, 2005, is **AFFIRMED** and that this action is **DISMISSED** and stricken from the open docket of this Court. The objection of any party aggrieved by the entry of this Order is hereby noted and preserved.

The Clerk is directed to send a certified copy of this Order to the following:

James M. Haviland
1558 Quarrier Street
Charleston, WV 25311

Jeaneen Legato
WV Consolidated Public Retirement Board
4101 MacCorkle Ave. S.E.
Charleston, West Virginia 25304

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 22nd DAY OF October 2008
Cathy S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ENTERED this 17 day of Oct, 2008.

James C. Stucky

James C. Stucky, Circuit Judge