

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio ex rel. Douglas Crabtree, :
Relator, :
v. : No. 11AP-187
State Teachers Retirement System : (REGULAR CALENDAR)
Board of Ohio, :
Respondent. :
:

D E C I S I O N

Rendered on May 1, 2012

Cloppert, Latanick, Sauter & Washburn, and Sue A. Salamido, for relator.

Michael DeWine, Attorney General, and *Catherine J. Calko*, for respondent.

IN MANDAMUS
ON OBJECTION TO THE MAGISTRATE'S DECISION

DORRIAN, J.

{¶1} Relator, Douglas Crabtree, commenced this original action requesting a writ of mandamus ordering respondent, State Teachers Retirement System Board of Ohio ("board"), to issue a new notification letter that complies with statutory requirements and includes a new deadline to appeal the decision or, in the alternative, to allow relator's appeal to go forward upon a presumption of timeliness.

{¶2} This court referred the matter to a magistrate of this court pursuant to Civ.R. 53(C) and Loc.R. 12(M) of the Tenth District Court of Appeals. The magistrate issued a decision, including findings of fact and conclusions of law,

which is appended to this decision. In her decision, the magistrate recommended that this court deny relator's request for a writ of mandamus.

{¶3} Relator timely filed a single objection to the magistrate's decision:

The decision fails to address the fact that the [respondent's] notification letter does not indicate that the medical evaluation was conducted in accordance with section 3307.62 or 3307.64 of the Revised Code.

{¶4} Pursuant to Civ.R. 53(D)(4)(d), we undertake an independent review of the objected-to matters "to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law."

{¶5} "The determination of whether a member of the State Teachers Retirement System is entitled to disability retirement is solely within the province of the retirement board." *State ex rel. Hulls v. State Teachers Retirement Bd. of Ohio*, 113 Ohio St.3d 438, 2007-Ohio-2337, ¶ 26. "Mandamus is the appropriate remedy where no statutory right of appeal is available to correct an abuse of discretion by an administrative body." *State ex rel. Hudson v. Ohio Pub. Emp. Retirement Sys.*, 10th Dist. No. 10AP-904, 2011-Ohio-5362, ¶ 64. *See also State ex rel. Pipoly v. State Teachers Retirement Sys.*, 95 Ohio St.3d 327, 2002-Ohio-2219. An abuse of discretion connotes a board decision that is unreasonable, arbitrary or unconscionable. *See Blakemore v. Blakemore*, 5 Ohio St.3d 217, 220 (1983); *see also State ex rel. Mallory v. Pub. Emps. Retirement Sys.*, 82 Ohio St.3d 235, 239 (1998).

{¶6} In his sole objection, relator argues that the magistrate erred in failing to address the fact that the board's January 14, 2011 notification letter, regarding the termination of his disability benefits, does not indicate, pursuant to Ohio Adm.Code 3307:1-7-05(B)(1)(a), that the medical evaluation was conducted in accordance with R.C. 3307.62 or 3307.64. (*See Objection to Magistrate's Decision*, 2.)

{¶7} In response, the board contends that the magistrate addresses that the notice of termination of benefits letter does not indicate that the medical evaluation was conducted in accordance with R.C. 3307.62 or 3307.64 when she

states " 'that section [Ohio Adm.Code 3307:1-7-05] does not require the use of specific words in writing.' " (See Memorandum in Opposition to Objection to Magistrate's Decision, 4.) Further, the board contends that the statement in the January 14, 2011 letter: " 'official action was taken under section 3307.62 and 3307.64 of the Ohio [Revised] Code' " encompasses all of the requirements of Ohio Adm.Code 3307:1-7-05(B)(a) and, in doing so, provides reasonable notice to relator. (See Memorandum in Opposition, 4.)

{¶8} In her decision, the magistrate found that the notice of termination letter included all the components of Ohio Adm.Code 3307:1-7-05 and stated:

The January 14, 2011 letter to relator informed him that the board had taken action at its January 13, 2011 meeting to terminate his disability benefits and referenced both R.C. 3307.62 and 3307.64. The letter clearly set forth relator's rights to appeal and notified him of the 15-day deadline. Further, the letter specifically informed relator in bold lettering, that the deadline is strictly enforced and that postmark dates or other delays are not accepted.

(See Magistrate's Decision, ¶ 35.) The magistrate also stated that "the January 14, 2011 letter * * * included the required components, and, at a minimum, there was compliance with notice requirements." (See Magistrate's Decision, ¶ 36 .)

{¶9} Ohio Adm.Code 3307:1-7-05(B), in relevant part, states that, following board action terminating or denying disability benefits:

(1) The applicant or recipient will be informed in writing of the action taken by the board. Notification shall include:

(a) A statement that medical evaluation and board action was conducted in accordance with section 3307.62 or 3307.64 of the Revised Code.

(b) Confirmation that the applicant or recipient has the right to appeal the board action.

(c) A statement explaining that written notice of appeal must be filed with the retirement system no later than fifteen calendar days from receipt of notification of denial or termination.

(d) An explanation of future rights and limitations upon the rights to again apply for disability benefits if an appeal is not pursued.

{¶10} In the present matter, the board's January 14, 2011 letter to relator states, in relevant part, that:

This letter is to notify you that the Retirement Board took *official action under Section 3307.62 and 3307.64 of the Ohio Revised Code* at its meeting on January 13, 2011 to terminate your disability benefits effective August 31, 2011. * * *

You have the right to appeal the Retirement Board action under Section 3307.64 of the Ohio Revised Code and Rule 3307:1-7-05 of the Ohio Administrative Code, provided written notification is received by STRS Ohio within 15 calendar days from your receipt of this letter. * * *

STRS Ohio strictly enforces all deadlines associated with appeals. The 15-day deadline for STRS Ohio's receipt of your written request for appeal as stated above is firm. STRS Ohio will not accept postmark dates or any other delay beyond the stated deadline.

* * *

You have the right to again apply for disability benefits if a new condition develops or if you can show through medical records progression of the former disabling condition or evidence of a new disabling condition expected to last at least 12 months from the date the new application is filed with STRS Ohio.

(Bold sic; emphasis added.) While the board's January 14, 2011 letter does not specifically state that "medical evaluation * * * was conducted in accordance with section 3307.62 or 3307.64 of the Revised Code," it does generally state that "the Retirement Board took *official action* under Section 3307.62 and 3307.64 of the Revised Code" (emphasis added), which, arguably, could encompass any official action of the board, including those regarding medical evaluations pursuant to R.C. 3307.62 and 3307.64. In this instance, it was not therefore necessary, as relator suggests, to use the "magic words" that the medical evaluation was conducted in

accordance with R.C. 3307.62 and 3307.64. Additionally, in compliance with Ohio Adm.Code 3307:1-7-05(B)(1)(b), (c), and (d), the board's January 14, 2011 letter does notify relator of (1) his right to appeal the board's action, (2) the 15-day deadline to appeal the board's decision from receipt of notification of denial or termination, and (3) his future rights and limitations to apply for disability benefits if an appeal is not pursued. (See January 14, 2011 letter to Douglas M. Crabtree.)

{¶11} In reviewing the board's January 14, 2011 letter to relator, we believe that the board correctly included: (1) a statement that its official actions were conducted in accordance with R.C. 3307.62 or 3307.64; (2) a confirmation that he has a right to appeal; (3) a statement explaining the deadlines for appeal; and (4) an explanation of his future rights and limitations to apply for disability benefits if an appeal is not pursued.

{¶12} Following an independent review of the record, we find that the magistrate has properly determined the facts and applied the appropriate legal standards. Therefore, we overrule relator's objection to the magistrate's decision and adopt the magistrate's decision as our own, including the findings of fact and conclusions of law. In accordance with the magistrate's decision, we deny relator's request for a writ of mandamus.

Objection overruled; writ denied.

BROWN, P.J., and BRYANT, J., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Douglas Crabtree,	:	
	:	
Relator,	:	
v.	:	No. 11AP-187
State Teachers Retirement System	:	(REGULAR CALENDAR)
Board of Ohio,	:	
	:	
Respondent.	:	

MAGISTRATE'S DECISION

Rendered on September 22, 2011

Cloppert, Latanick, Sauter & Washburn, and Sue A. Salamido, for relator.

Michael DeWine, Attorney General, and Catherine J. Calko, for respondent.

IN MANDAMUS

{¶13} Relator, Douglas Crabtree, has filed this original action requesting that this court issue a writ of mandamus ordering respondent, State Teachers Retirement System Board of Ohio ("board"), to vacate its decision which denied relator's request to appeal the board's action terminating his disability benefits on grounds that he failed to meet the appeal deadline.

Findings of Fact:

{¶14} 1. Relator was a math and science teacher and a member of the State Teachers Retirement System ("STRS").

{¶15} 2. Relator submitted a disability retirement application to STRS on April 10, 2000.

{¶16} 3. As of August 2000, relator had been teaching for approximately nine and one-half years and was evaluated by James Youngman, M.D., to determine if he was disabled from a psychiatric point of view. At that time, Dr. Youngman determined relator was disabled and recommended retirement disability with review of his status in one year.

{¶17} 4. On September 12, 2000, the Medical Review Board informed STRS that it recommended approval of disability benefits based on the condition that relator obtain psychiatric treatment.

{¶18} 5. Relator was examined in January 2002, February 2005, January 2007, and March 2009, and his disability benefits were continued.

{¶19} 6. On November 9, 2010, relator was evaluated by Richard H. Clary, M.D., who determined that relator's anxiety and depression had improved and relator's psychiatric conditions did not cause any limitations or restrictions in his ability to work and he could return to work as a teacher.

{¶20} 7. The medical file was reviewed by several doctors, all members of the Medical Review Board. The Medical Review Board concurred with Dr. Clary and recommended that disability benefits be terminated.

{¶21} 8. In a letter dated December 15, 2010, STRS notified relator that the Medical Review Board had concluded that relator no longer met the criteria for permanent disability. The letter indicated that his case would be presented to the board the week of January 10, 2011.

{¶22} 9. In a letter dated January 14, 2011, the deputy executive director of member benefits of STRS informed relator that the board "took official action under Section 3307.62 and 3307.64 of the Ohio Revised Code at its meeting on January 13, 2011 to terminate your disability benefits effective August 31, 2011." The letter explained that relator had the right to appeal the board action provided

that "written notification is received by STRS Ohio within 15 calendar days from your receipt of this letter." Further, in bold type, the letter explained, as follows:

STRS Ohio strictly enforces all deadlines associated with appeals. The 15-day deadline for STRS Ohio's receipt of your written request for appeal as stated above is firm. STRS Ohio will not accept postmark dates or any other delay beyond the stated deadline.

{¶23} 10. The United States Postal Service "Track & Confirm" receipt indicates delivery on January 18, 2011 at 12:21 p.m.

{¶24} 11. On February 3, 2011, STRS received a letter from relator's counsel indicating that she had faxed a letter requesting an appeal on January 24, 2011 and included a signed authorization for release of retirement account information.

{¶25} 12. On February 8, 2011, STRS sent relator a letter informing him that he had failed to meet the appeal deadline, which was February 2, 2011.

{¶26} 13. On February 9, 2011, relator's counsel sent STRS a letter claiming that she had mailed and attempted to fax the appeal on January 24, 2011. She also claimed that relator did not receive the notification of the denial until January 19, 2011, thus making the appeal deadline February 3, 2011.

{¶27} 14. On February 22, 2011, the deputy executive director of member benefits of STRS replied to relator's counsel and sent her a letter informing her that STRS did not receive correspondence either faxed or mailed on January 24, 2011. Further, the letter explained that the notice of board action was sent by priority mail and delivered on January 18, 2011, and the notice stated that STRS strictly enforces all deadlines and postmarked dates or other delays beyond the deadline would not be accepted. Thus, STRS cannot grant counsel's request for the appeal.

{¶28} 15. Relator filed the instant mandamus action in this court and an amended complaint on May 25, 2011, asking this court to order the board to vacate its decision which denied his request to appeal for his failure to meet the appeal deadline.

Conclusions of Law:

{¶29} The Supreme Court of Ohio has set forth three requirements which must be met in establishing a right to a writ of mandamus: (1) that relator has a clear legal right to the relief prayed for; (2) that respondent is under a clear legal duty to perform the act requested; and (3) that relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28.

{¶30} Pursuant to R.C. 3307.39, the determination of whether a member of STRS is entitled to disability retirement benefits is solely within the province of the retirement board. *State ex rel. McMaster v. School Emp. Retirement Sys.*, 69 Ohio St.3d 130, 1994-Ohio-96. However, a determination by the board that an applicant is not entitled to disability retirement benefits is subject to review by mandamus, which may also be utilized to correct any other abuse of discretion in the proceedings. *Id.* The term "abuse of discretion" means an unreasonable, arbitrary or unconscionable decision. *State ex rel. Pipoly v. State Teachers Retirement Sys.*, 95 Ohio St.3d 327, 2002-Ohio-2219, ¶14.

{¶31} In this mandamus action, relator argues that the board abused its discretion by failing to comply with the requirements of Ohio Adm.Code 3307:1-7-05 and requiring him to abide by the time guidelines set forth in the Ohio Administrative Code to perfect his appeal.

{¶32} For the reasons that follow, the magistrate recommends that this court deny relator's request for a writ of mandamus.

{¶33} Initially, relator contends that the January 14, 2011 letter from the deputy executive director of member benefits of STRS informing relator that the board "took official action under Section 3307.62 and 3307.64 of the Ohio Revised Code at its meeting on January 13, 2011 to terminate [his] disability benefits" did not comply with Ohio Adm.Code 3307:1-7-05, which provides as follows:

(B) Following board action terminating or denying disability benefits:

(1) The applicant or recipient will be informed in writing of the action taken by the board. Notification shall include:

(a) A statement that medical evaluation and board action was conducted in accordance with section 3307.62 or 3307.64 of the Revised Code.

(b) Confirmation that the applicant or recipient has the right to appeal the board action.

(c) A statement explaining that written notice of appeal must be filed with the retirement system no later than fifteen calendar days from receipt of notification of denial or termination.

(d) An explanation of future rights and limitations upon the rights to again apply for disability benefits if an appeal is not pursued.

{¶34} Relator argues that the board failed to comply with the mandatory provisions of the Ohio Administrative Code by using the words "took official action under Section 3307.62 and 3307.64 of the Ohio Revised Code" instead of the words "in accordance with." Further, relator argues that the letter fails to make any reference to any medical evaluation conducted by the board as required. Thus, relator argues that since the letter fails to comply with the mandatory language requirements of Ohio Adm.Code 3307:1-7-05, the board is required to send another notification to relator and provide a new date to file a notice of appeal.

{¶35} While relator is correct that Ohio Adm.Code 3307:1-7-05 uses the word "shall" to require the recipient be informed in writing of the board action terminating benefits, that section does not require the use of specific words in the writing. The January 14, 2011 letter to relator informed him that the board had taken action at its January 13, 2011 meeting to terminate his disability benefits and referenced both R.C. 3307.62 and 3307.64. The letter clearly set forth relator's rights to appeal and notified him of the 15-day deadline. Further, the letter specifically informed relator in bold lettering, that the deadline is strictly enforced and that postmark dates or other delays are not accepted.

{¶36} The notice of termination letter included all the components of Ohio Adm.Code 3307:1-7-05. STRS provided relator with reasonable notice that his benefits were to be terminated. Thus, in the January 14, 2011 letter, STRS included the required components, and, at a minimum, there was compliance with notice

requirements. See *Qureshi v. Bob Evans Farms, Inc.* (Mar. 10, 1994), 10th Dist. No. 93APE09-1318.

{¶37} Relator also argues that a presumption of timeliness exists because Ohio Adm.Code 3307:1-7-05 does not prescribe any particular method of delivery and as a result, "any method productive of certainty of accomplishment is countenanced." *Columbus v. Upper Arlington* (1964), 201 N.E.2d 305, 308, 94 Ohio Law Abs. 392, 397. However, Ohio Adm.Code 3307:1-7-05(2)(a) does provide a method of delivery, it provides that the appeal must be "filed," not merely delivered as relator argues. The code provides, as follows:

Written notice of appeal, accompanied by a statement from the applicant or recipient, his or her counsel and/or attending physician that an appeal will be based on evidence contrary to the findings of the independent medical examiners, must be filed with the retirement system within fifteen calendar days of receipt of notification of board action.

{¶38} "[H]istorically, 'filing' occurs when a person manually presents a paper pleading to the clerk of courts. See, e.g., *King v. Paylor* (1942), 69 Ohio App. 193, 196, * * * ('a filing can only be accomplished by bringing the paper to the notice of the officer, so that it can be accepted by him as official custodian')." *Louden v. A.O. Smith Corp.*, 121 Ohio St.3d 95, 2009-Ohio-319, ¶15. In *Austin v. Ohio Fair Plan Underwriting Assoc.*, 10th Dist. No. 10AP-895, 2011-Ohio-2050, this court held that in order to comply with R.C. 119.12, an appellant must file, not just mail, a notice of appeal by the 15-day deadline.

{¶39} In *Fulton v. State ex rel. Gen. Motors Corp.* (1936), 130 Ohio St. 494, 497-98, the Supreme Court of Ohio examined various definitions of "file" and "filed," as follows:

Webster's New International Dictionary defines the word "file" thus: "To deliver (a paper or instrument) to the proper officer so that it is received by him to be kept on file, or among the records of his office."

Funk & Wagnall's New Standard Dictionary thus: "To present in the regular way, as to a judicial or legislative body, so that it shall go upon the records or into the order of business; * * * to deposit in a court or public

office, and pay the fees prescribed therefor, as a paper or document."

Bouvier's Law Dictionary thus: "In the sense of a statute requiring the filing of a paper or document, it is filed when delivered to and received by the proper officer to be kept on file. The word carries with it the idea of permanent preservation of the thing so delivered and received; that it may become a part of the public record."

United State v. Lombardo, 241 U.S. 73, 76, 36 S.Ct. 508, 509, 60 L.Ed. 897, thus: "A paper is filed when it is delivered to the proper official and by him received and filed."

City Street Improvement Co. v. Babcock, 6 Cal.Unrep. 910, 913, 68 P. 584, 585, thus: "In modern days it is usually held that a paper is filed on the part of the party who is required to file it when he has presented it at the proper office and left it with the person in charge thereof."

25 Corpus Juris, 1124, 1125, § 4, thus: "The word 'filed' has a well defined meaning, signifying delivered to the proper officer and by him received to be kept on file; delivered into the actual custody of the officer designated by the statute, to be kept by him as a permanent record of his office." And on page 1127: "Filing is not complete until the document is delivered and received."

{¶40} In *Fulton*, the court held that the act of mailing was the first step, but the date of mailing was immaterial because the "fact which [was] controlling is the time of actual delivery * * * into the official custody and control of the [official]." *Id.* at 500.

{¶41} In this case, relator's counsel argues that she mailed and faxed a copy of the appeal on January 24, 2011. However, she admits that the fax was not successful. Respondent received no appeal before February 3, 2011. Mailing a letter is not sufficient to constitute "filing," it must actually be received by respondent before the expiration of the deadline.

{¶42} Relator also argues that his intent to appeal requires respondent to allow his appeal to proceed. Since respondent owes a fiduciary duty to act in the best interest of all its members, including relator, respondent should allow relator's appeal. Relator argues that his counsel's affidavit and the affidavit of counsel's assistant demonstrate that the first letter of appeal was timely placed in the outgoing mail and a second letter confirmed that the appeal was received one day after the deadline. However, these affidavits are not part of the certified record, but are attached to relator's brief. The certified record does not contain any evidence that the notice of appeal was timely received. Documents only attached to a brief are not part of the official record. *Bank One v. Barclay*, 10th Dist. No. 03AP-870, 2004-Ohio-2718, ¶17.

{¶43} Furthermore, the certified record contains an e-mail string from STRS employees indicating that they looked but did not receive a letter in the mail or a fax from relator's counsel. As in *Burton v. Dept. of Agriculture* (Feb. 9, 1993), 10th Dist. No. 92AP-1499, when a party chooses to rely on ordinary mail for delivery of the notice of appeal, the party must accept the consequences when that manner of delivery proves inadequate. See also *Frasca, D.C. v. State Bd. of Chiropractic Examiners* (July 30, 1998), 10th Dist. No. 97APE10-1387.

{¶44} Accordingly, for all the above reasons, it is the magistrate's decision that the board did not abuse its discretion by finding that relator's appeal was untimely and not granting his appeal, and this court should deny relator's request for a writ of mandamus.

/s/ Stephanie Bisca Brooks
STEPHANIE BISCA BROOKS
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or

conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).