

B-46



STATE OF NEW JERSEY
DECISION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Roslyn Jeffers,
Camden County

CSC Docket No. 2015-195

Request for Reconsideration

ISSUED: APR 16 2015 (CSM)

Roslyn Jeffers, a County Correction Officer with Camden County, represented by Stuart J. Alterman, Esq., requests reconsideration of the attached decision rendered on May 7, 2014, which denied her request to consolidate the appeals of her removal and denial of accidental disability retirement benefits at the Office of Administrative Law (OAL).

By way of background, on September 18, 2013, the Public Employees' Retirement System (PERS) denied accidental disability benefits to the appellant and her appeal of that matter was transmitted to the OAL as a contested case. Subsequently, the appellant was removed effective January 28, 2014 on charges of inability to perform duties and other sufficient cause. The appellant appealed her removal to the Civil Service Commission (Commission) and the matter was transmitted to the OAL as a contested case. At the OAL, the appellant filed a motion to consolidate both appeals in accordance with *N.J.A.C. 1:1-17.1(a)*. In denying the appellant's motion, the Administrative Law Judge (ALJ) concluded that the appellant would have the burden of proving that she is totally and permanently disabled as a direct result of a traumatic event that occurred during and as a result of her regular or assigned duties in her appeal of the PERS determination, but that Camden County would have the burden of proving that she is unable to perform essential functions of her job as a County Correction Officer and is unfit for duty. Thus, as the cases involve two different burdens of proof and distinct legal questions, the ALJ concluded that it would pose some danger of confusion if they were consolidated. Further, the ALJ determined that the expert testimony required for the appellant's PERS appeal would present a danger of impermissible delay with regard to the timely disposition of the appellant's removal appeal. Therefore, the

ALJ recommended that the appeals not be consolidated. At its meeting on June 18, 2014, the PERS Board of Trustees adopted the recommendation to deny the consolidation of the appellant's appeals. In accordance with *N.J.S.A. 52:14B-10(c)* and *N.J.A.C. 1:1-17.7(b)*, the Commission took no formal review of the ALJ's recommended order and it was deemed adopted.

On reconsideration, the appellant states that the issues of her inability to perform her regular and assigned duties due to a disability or whether she is fit and should be returned to duty are intrinsically tied and should be consolidated. She also argues that consolidation would allow the simultaneous disposition of both issues in a non-contradictory manner. Further, the appeals have a common identity and questions of fact, will result in a savings of time and expense, and a reduction, if not total elimination, of duplication and inconsistency. The appellant asserts that the ALJ imposed the standard for accidental disability from the pension statute, requiring that she show that she is totally and permanently disabled as a direct result of an event that occurred as a result of her regular or assigned duties. However, she notes that she is also seeking an ordinary disability pension, which has a different standard entirely, which would only require her to show that she is totally and permanently disabled from the performance of her regular duties. As such, the appellant argues that this is the "near perfect reversal" of the appointing authority's burden to show that she is unfit for duty. The appellant also states that the medical testimony from her witnesses would be identical in both cases and would require the same expert witnesses to testify to the same conclusions arising from the same facts in an administrative setting. As such, the costs of retaining expert witnesses would delay the hearing and cause her an undue financial burden. Moreover, the appellant argues that where competing determinations are implicated, consolidation is appropriate. *See In re Capizzi*, Docket No. A-3643-09T1 (App. Div. August 9, 2012). Finally, the appellant maintains that there will be no risk of confusion regardless of the fact that there are dissimilar questions of law as the parties will have the opportunity to examine the same witnesses and hear the same testimony and, thus, it is advisable to dispose of all aspects of a controversy in a single hearing.

In reply, the appointing authority, represented by Antonieta Paiva Rinaldi, Assistant County Counsel, Camden County, states that there was no material error in adopting the ALJ's order as the appellant's removal appeal and appeal to PERS involve questions of law and fact that are distinct. The appointing authority emphasizes that each case involves two different burdens of proof and the analysis of two distinct legal issues. Additionally, due to the differences in the "accidental disability" standard and the "fitness for duty" standard, the appellant may be found unfit for duty as a County Correction Officer, but be found to not meet the standard for obtaining an accidental disability benefit. This, in addition to the fact that the burdens of proof are different, even if the pension appeal was of an ordinary disability, there is cause for much confusion of the issues. Thus, while it is

generally advisable to dispose of all aspects of a controversy in a single proceeding, the potential for confusion and the difference in legal issues weighs against consolidation of these particular matters.

PERS, represented by Joseph F. Dorfler, Deputy Attorney General, presents that while the facts are similar, whether a PERS member is totally and permanently disabled is derived solely from the statutes and case law pertaining to the awarding of accidental disability benefits and the appellant must prove that she is totally and permanently disabled from the performance of her duties as a direct result of a traumatic event. However, the burden of proof in her removal appeal is not placed on the appellant, but rather on the appointing authority. PERS maintains that these different standards pose a significant risk of confusion and delay. It also notes that the appellant may have to take contrary positions in each matter, namely, that she is able to return to work as a County Correction Officer in her removal matter, but that she is totally and permanently disabled in the pension matter. Finally, PERS emphasizes that a finding that the appellant is unfit for duty does not satisfy all of the elements required for a disability benefit. Thus, ruling that the appellant is unfit for duty, yet not totally and permanently disabled, are not contradictory outcomes.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

N.J.A.C. 1:1-17.3(a) states that in ruling upon a motion to consolidate, the judge shall consider:

1. The identity of parties in each of the matters;
2. The nature of all the questions of fact and law respectively involved;
3. To the extent that common questions of fact and law are involved, the saving in time, expense, duplication and inconsistency which will be realized from hearing the matters together and whether such issues can be thoroughly, competently, and fully tried and adjudicated together with and as a constituent part of all other issues in the two cases;
4. To the extent that dissimilar questions of fact or law are present, the danger of confusion, delay or undue prejudice to any party;

5. The advisability generally of disposing of all aspects of the controversy in a single proceeding; and

6. Other matters appropriate to a prompt and fair resolution of the issues, including whether a case still pending in an agency is contested or is ripe to be declared contested.

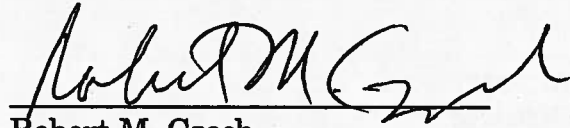
In the instant matter, the appellant has not met the standard for reconsideration. As the ALJ correctly noted, in accordance with *N.J.S.A. 11A:2-21*, the appointing authority has the burden to prove the charge of inability to perform duties. Conversely, in her matter before PERS, the appellant has the burden to prove she is totally and permanently disabled from the performance of her job duties as a direct result of a traumatic event. Thus, in order to advance her matter before PERS, regardless of whether she is seeking an accidental or ordinary disability retirement, she has to maintain that she is unable to perform the duties of a County Correction Officer. In the removal matter, the only possible basis for her appeal to the Commission is that she disagrees with the appointing authority's assertion that she should be removed from employment on the basis of inability to perform duties. Stated plainly, in the PERS matter, she essentially asserts that she is unable to work as a County Correction Officer due to her physical condition and in the matter before the Commission, the only possible basis for her defense is that she is able to perform the duties of a County Correction Officer. Thus, the Commission agrees that consolidation would present the risk of confusion as they involve two different burdens of proof, the analysis of two distinct legal issues, and two conflicting successful outcomes for the appellant.

Further, consolidation would clearly delay the proceeding with respect to her removal appeal. The process for the appellant's removal appeal is subject to *N.J.A.C. 4A:2-2.13*, which requires, subject to certain tolling periods, that the Commission render a final decision on the matter within 180 calendar days from the date of removal. As such, the ALJ's determination that the expert medical testimony necessary in the PERS matter would delay the removal is reasonable. While the Commission agrees that consolidation is generally preferable, the facts in this matter clearly support the ALJ's determination that the matters would not be more efficiently adjudicated together.

ORDER

Therefore, it is ordered that this request for reconsideration be denied.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 15TH DAY OF APRIL, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

Attachment

c: Stuart J. Alterman, Esq.
 Antonieta Paiva Rinaldi, Esq.
 Joseph F. Dorfler, DAG
 The Honorable Robert W. Bingham, A.L.J.
 The Honorable Susan M. Scarola, A.L.J.
 Roslyn Jeffers
 Joseph Gambino



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER

DENYING CONSOLIDATION

OAL DKT. NO. TYP 393-14

AGENCY DKT. NO. 2-1109037

ROSLYN JEFFERS,

Petitioner,

v.

**PUBLIC EMPLOYEES'
RETIREMENT SYSTEM,**

Respondent.

AND

**IN THE MATTER OF ROSLYN JEFFERS,
CAMDEN COUNTY CORRECTIONAL
FACILITY.**

OAL DKT. NO. CSR 1507-14

AGENCY DKT. NO. N/A

Stuart J. Alterman, Esq., for petitioner/appellant (Alterman and Associates,
attorneys)

Joseph F. Dorfler, Deputy Attorney General, for respondent Public Employees'
Retirement System (John J. Hoffman, Acting Attorney General of New
Jersey, attorney)

Antonieta Paiva Rinaldi, Assistant County Counsel, for respondent Camden
County Correctional Facility (Sherri L. Schweitzer, County Counsel)

BEFORE ROBERT BINGHAM II, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On September 18, 2013, respondent, Public Employees' Retirement System (PERS), denied accidental disability retirement benefits to petitioner, Roslyn Jeffers. Petitioner appealed and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on January 13, 2013, as TYP 393-14. On January 20, 2014, respondent, Camden County Correctional Facility (the County), terminated petitioner's employment. Petitioner appealed simultaneously to the Civil Service Commission and the OAL, where the appeal was filed on February 4, 2014, as CSR 1507-14.¹

On April 11, 2014, petitioner filed a motion to consolidate both appeals. On April 23, 2014, PERS filed its opposition to petitioner's motion, and on April 28, 2014, the County did the same. On April 24, 2014, petitioner filed a response to respondents' opposition. On May 5, 2014, the County filed a reply to petitioner's response.²

FACTUAL DISCUSSION

Jeffers, a County correction officer, was placed on light duty after a work-related injury in June 2012. On April 18, 2013, results of a fitness for duty examination indicated that she was unable to perform her essential job functions as a correction officer. On October 24, 2013, the County issued a Preliminary Notice of Disciplinary Action removing her from employment and, following a departmental hearing, it issued a Final Notice of Disciplinary Action terminating her employment for inability to perform duties, as well as other sufficient cause.

Also, Jeffers had filed an application for accidental disability benefits. By letter dated September 19, 2013, PERS found a lack of evidence of direct causation and denied her application on grounds that she is not totally and permanently disabled from

¹ Joseph Lavery, ALJ t/a was assigned CSR 1507-14.

² The undersigned ALJ is assigned TYP 0393-14, the earlier case, and thus decides petitioner's motion.

performance of her job duties. On appeal of her pension case, Jeffers contends that her medical condition due to her work-related injuries has resulted in an inability to perform her job duties.

Petitioner contends that her appeals share her common identity, and consolidation would save time and expense and reduce duplication. Petitioner further contends that the facts in each case are nearly identical, the legal standards are linked, and there is no risk of confusion. PERS asserts that, as to respondents, there is no common identity between the cases and the cases also have no common questions of law. The County asserts that the identities and concerns of respondents are distinct, as are the questions of law and fact. Additionally, both the burden and standard of proof are different in each matter. Further, the distinct questions of fact and law pose a danger of confusion, delay, and undue prejudice against the County.

LEGAL ANALYSIS AND CONCLUSION

Once a case has been filed with the OAL, any party may move to consolidate the matter with any other contested case involving common questions of fact or law between identical parties or between any party to the filed case and any other person, entity or agency. N.J.A.C. 1:1-17.1(a). The Uniform Administrative Procedure Act sets forth the standards to decide whether two or more matters should be consolidated. N.J.A.C. 1:1-17.3(a). Accordingly, when deciding a motion to consolidate, an ALJ must consider:

1. The identity of parties in each of the matters;
2. The nature of all the questions of fact and law respectively involved;
3. To the extent that common questions of fact and law are involved, the saving in time, expense, duplication and inconsistency which will be realized from hearing the matters together and whether such issues can be thoroughly, competently, and fully tried and adjudicated together with and as a constituent part of all other issues in the two cases;
4. To the extent that dissimilar questions of fact or law are

present, the danger of confusion, delay or undue prejudice to any party;

5. The advisability generally of disposing of all aspects of the controversy in a single proceeding; and

6. Other matters appropriate to a prompt and fair resolution of the issues, including whether a case still pending in an agency is contested or is ripe to be declared contested.

[ibid.]

Applying these factors to the matters herein yields the conclusion that petitioner's motion for consolidation must be denied. First, petitioner is the only party common to both cases. PERS is the respondent in the first case, TYP 393-14, and the County is the respondent in the second case, CSR 1507-14. Second, while the cases share a common factual genesis, petitioner's work-related injury, they lack common questions of law. In the matter styled TYP 393-14, petitioner has the burden of proving that she is totally and permanently disabled as a direct result of a traumatic event that occurred during and as a result of her regular or assigned duties. N.J.S.A. 43:15A-43. However, in CSR 1507-14, the County has the burden of proving that petitioner is unable to perform essential functions of her job as a correction officer and is thus unfit for duty. N.J.A.C. 4A:2-2.3(a)(3). The cases will involve two different burdens of proof and the analysis of two distinct legal issues.

Further, the distinct burdens of proof and legal questions do pose some danger of confusion. Additionally, the necessity of expert medical testimony in TYP 0393-14, in particular, presents a danger of impermissible delay with regard to the timely disposition of CSR 1507-14, considering that medical experts are not generally available on short notice and such testimony may, in any event, unnecessarily prolong the trial of the disciplinary appeal.

Simply put, these are separate controversies that would not be more efficiently adjudicated together. Rather, consolidation would present the risk of confusion and the potential for delay. It would not be advisable, in my view, to dispose of all aspects of the

controversy in a single proceeding. Therefore, I **CONCLUDE** that the above cases are not appropriate for consolidation.

ORDER

Accordingly, I **ORDER** that OAL Docket Nos. TYP 393-14 and CSR 1507-14 shall not be consolidated and petitioner's Motion to Consolidate those matters is **DENIED**.

This order may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION** and the **BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES RETIREMENT SYSTEM**, who/which by law are authorized to make a final decision in this matter. The **CIVIL SERVICE COMMISSION** and the **BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES RETIREMENT SYSTEM** are encouraged to consult and coordinate with each other before issuing a final order. If the **CIVIL SERVICE COMMISSION** and the **BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES RETIREMENT SYSTEM** do not adopt, modify or reject this order within forty-five days and unless such time limit is otherwise extended, this recommended order shall be deemed adopted by the **CIVIL SERVICE COMMISSION** and the **BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES RETIREMENT SYSTEM**.

May 7, 2014

DATE



ROBERT BINGHAM II, ALJ

Date Mailed to Parties:

May 7, 2014

/bdt