

State of New York  
Supreme Court, Appellate Division  
Third Judicial Department

Decided and Entered: May 30, 2024

CV-23-1429

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In the Matter of DAVID STRZEPEK,  
Petitioner,

v

THOMAS P. DiNAPOLI, as State  
Comptroller,  
Respondent.

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MEMORANDUM AND JUDGMENT

Calendar Date: April 23, 2024

Before: Pritzker, J.P., Reynolds Fitzgerald, Ceresia, McShan and Mackey, JJ.

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*Longstreet & Berry, LLP, Fayetteville (Michael J. Longstreet of counsel), for petitioner.*

*Letitia James, Attorney General, Albany (Sean P. Mix of counsel), for respondent.*

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Pritzker, J.P.

Proceeding pursuant to CPLR article 78 (transferred to this Court by order of the Supreme Court, entered in Albany County), to review a determination of respondent denying petitioner's application for Retirement and Social Security Law article 15 service retirement benefits.

Petitioner worked as a correction officer for the Department of Corrections and Community Supervision from February 1988 until July 2019. On June 14, 2019, petitioner also began working as a substitute bus driver on an as-needed basis for the Whitesboro Central School District. Less than one month later, petitioner filed an application with the New York State and Local Retirement System seeking service

retirement benefits under Retirement and Social Security Law article 15 and listing the effective date of his retirement as July 26, 2019.<sup>1</sup> In response, the Retirement System sent a letter to the school district indicating that petitioner had applied for retirement, that the effective date thereof would be July 26, 2019 and that the day prior thereto would be the last day that petitioner could appear on the school district's payroll. The Retirement System also requested that the school district complete a statement of accrued payments and leave credits – once petitioner had received his final payment – for purposes of calculating petitioner's pension benefit.

As relevant here, the application filed by petitioner contained the following advisement: "Your paid public employment must cease at the time of your retirement. There are laws governing employment after retirement, and if you plan to be employed by or contract with a public employer, it is important for you to know about them" (emphasis omitted). The application further provided that the failure to comply with the pertinent laws could result in a suspension or diminishment of benefits or the termination of the member's retirement. A July 23, 2019 letter from the Retirement System providing petitioner with an estimate of his retirement benefits similarly advised petitioner that he "must terminate all public employment before [his] retirement date" and that if he was "considering returning to public service in New York State after retirement, [he] should be aware of the laws governing post-retirement employment." Despite these advisements, petitioner continued to work on an as-needed basis for the school district – with no break in service – until he suffered a heart attack on January 31, 2020. In this regard, although petitioner apparently did not work on the effective date of his retirement, he nonetheless remained on the school district's payroll and list of available substitute bus drivers and failed to tender a resignation letter prior to his retirement date. Indeed, subsequent correspondence with the school district revealed that petitioner did not advise the school district of his retirement, that such retirement was not processed through the school district's payroll system and that petitioner's sole appointment by the school district

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<sup>1</sup> Retirement System members who retire as correction officers are entitled to benefits under Retirement and Social Security Law article 14, whereas members employed by certain other public employers, including school districts, are entitled to benefits under Retirement and Social Security Law article 15 (*see* Retirement and Social Security Law §§ 504 [e]; 600 [2] [a]). However, and according to respondent, if a former correction officer retires after service with an article 15 employer, that individual's years of service under article 14 are considered in the article 15 retirement benefit calculation and, in some instances, the benefits available under article 15 may be more advantageous.

occurred when he began work as a substitute bus driver in June 2019, i.e., he was not reappointed to this position after July 26, 2019.

Beginning in May 2019, respondent's pension integrity bureau began investigating retirement applications tendered by correction officers who predominately worked under Retirement and Social Security Law article 14 but were seeking benefits under Retirement and Social Security Law article 15. By letter dated August 18, 2021, respondent's pension integrity bureau informed petitioner that, upon reviewing his application, petitioner was "not eligible to retire under the [a]rticle 15 plan because [he] did not have a bona fide termination from employment prior to the effective date of his retirement (i.e., July 26, 2019)." A hearing ensued, at the conclusion of which the Hearing Officer denied petitioner's application finding, among other things, that there was no genuine termination of his employment with the school district. Respondent upheld the Hearing Officer's decision, prompting petitioner to commence this CPLR article 78 proceeding to challenge respondent's determination.

The crux of the parties' dispute upon review centers upon whether Retirement and Social Security Law article 15 requires an applicant to actually stop working for a public employer in order to obtain retirement benefits. "[Respondent] is vested with the exclusive authority to determine all applications for retirement benefits and the determination must be upheld if the interpretation of the controlling retirement statute is reasonable and the underlying factual findings are supported by substantial evidence" (*Matter of Tamucci v DiNapoli*, 133 AD3d 960, 961 [3d Dept 2015] [internal quotation marks, brackets and citations omitted]; see *Matter of Sawma v DiNapoli*, 139 AD3d 1273, 1274 [3d Dept 2016], *appeal dismissed* 28 NY3d 1053 [2016]). "When presented with a question of statutory interpretation, a court's primary consideration is to ascertain and give effect to the intention of the Legislature" (*Matter of Walsh v New York State Comptroller*, 34 NY3d 520, 524 [2019] [internal quotation marks and citations omitted]; see *Matter of Digbasanis v Pelham Bay Donuts Inc.*, 224 AD3d 1047, 1048 [3d Dept 2024]). "[A]s the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof" (*Matter of Grube v Board of Educ. Spencer-Van Etten Cent. Sch. Dist.*, 194 AD3d 1222, 1225 [3d Dept 2021] [internal quotation marks and citations omitted]; see *Matter of Turdo v Assessor of the Town of Vestal, N.Y.*, 205 AD3d 1102, 1103 [3d Dept 2022]). "In the absence of a statutory definition, we construe words of ordinary import with their usual and commonly understood meaning, and in that connection have regarded dictionary definitions as useful guideposts in determining the meaning of a word or phrase" (*Matter of Walsh v New York State Comptroller*, 34 NY3d

at 524 [internal quotation marks and citations omitted]; *see Matter of Schwabler v DiNapoli*, 194 AD3d 1235, 1237 [3d Dept 2021]). "Notably, courts will not disturb respondent's application and interpretation of relevant statutes unless they are irrational or contrary to the plain language of the statutes" (*Matter of Graziose v DiNapoli*, 137 AD3d 1452, 1453 [3d Dept 2016] [internal quotation marks, brackets and citations omitted]).

Retirement and Social Security Law article 15 does not define the term "retirement" (*see* Retirement and Social Security Law § 601) and, therefore, we employ the commonly understood meaning thereof, which is "to withdraw from one's position or occupation" or to "conclude one's working or professional career" (Merriam-Webster.com Dictionary, retirement [<https://www.merriam-webster.com/dictionary/retirement>]).<sup>2</sup> Against that backdrop, we have no quarrel with the proposition that, in order to qualify for benefits under Retirement and Social Security Law article 15, an applicant such as petitioner indeed must demonstrate that he or she *actually retired* from public service employment in the first instance.<sup>3</sup> We are similarly persuaded that it is entirely rational and reasonable for respondent to require that such retirement be genuine, i.e., the applicant must demonstrate that there has been a legitimate cessation or termination of employment. Contrary to petitioner's assertion, simply filing an application for benefits, selecting a retirement date and abstaining from performing services for the employer on the effective date thereof does not constitute a legitimate retirement – particularly where, as here, the applicant in question remains on the employer's payroll and subsequently continues to perform services for the employer. Indeed, adopting petitioner's strained definition of retirement would render meaningless those provisions of the Retirement and Social Security Law governing a retired member's return to or re-employment in public service (*see* Retirement and Social Security Law §§ 101 [a]; 210 [a]; 211, 212).

In light of the foregoing, we find that respondent's interpretation of the term "retirement" is entirely reasonable and, given that petitioner continued to work for the school district after the retirement date selected, substantial evidence supports

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<sup>2</sup> Although the parties debate the applicability of various federal statutes, regulations and cases, resort to these materials is unnecessary under our established principles of statutory interpretation.

<sup>3</sup> This commonsense – if not self-evident – proposition does not, as petitioner contends, impose a new standard or retroactive requirement upon those seeking benefits under Retirement and Social Security Law article 15.

respondent's determination that petitioner did not actually retire from service on July 26, 2019. Accordingly, respondent properly denied petitioner's application for benefits. Petitioner's remaining contentions, to the extent not specifically addressed, have been examined and found to be lacking in merit.

Reynolds Fitzgerald, Ceresia, McShan and Mackey, JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger  
Clerk of the Court