

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1037**

In the Matter of the MSRS General Employees Retirement Plan Retirement Benefit of
Pamela S. Johnson.

**Filed April 26, 2021
Affirmed
Connolly, Judge**

Minnesota State Retirement System
File No. 5100787289

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Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Jesson,
Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Relator challenges the decision of respondent Minnesota State Retirement System that relator is not entitled to interest accrued on her combined service annuity under Minn. Stat. § 356.30, subd. 1(c) (2020) because she returned to work in the public sector following the initial termination of her employment. Because this decision is consistent with the relevant statutes, we affirm.

FACTS

The employment history of relator Pamela Johnson, R.N., includes six periods. During two of these, January 1975-June 1976 and March 1990-August 1992, she earned credit with the Public Employees Retirement Association (PERA); during three of them; September 1993-January 1997, August 1997-March 2012, and July 2018-November 2018, she earned credit with the Minnesota State Retirement System (MSRS). She worked for a nongovernmental entity from 2012 until her position was terminated on March 31, 2018. The effective date of her retirement was November 29, 2018. She deferred both her PERA and her MSRS benefits until retirement.

In January 2019, relator was informed that her monthly benefit would be about \$200 less than she expected because, by taking a position with another MSRS entity after leaving MSRS in March 2012, she lost the interest that began to accrue when she deferred her MSRS benefit, i.e., the interest from March 2012 until her retirement in November 2018. When she appealed to MSRS, its executive director told her that she was not eligible for interest during that period because she did not terminate all public service until November 2018. She requested additional information and learned that her annuity could be calculated by one of two methods, governed by two different statutes. The combined service annuity (CSA), governed by Minn. Stat. § 356.30 (2020) did not include interest and resulted in a total single-life annuity from both PERA and MSRS of \$2,537.36, while the coverage by more than one fund annuity (CBMTOF), governed by Minn. Stat.

§ 356.311 (2020) did include interest and resulted in a total single-life annuity from both PERA and MSRS of \$2,435.47, or \$101.89 less.¹

Relator challenged the executive director's decision, arguing that the CBMTOF annuity should also include interest, which would have raised it by \$257.13 to \$2,794.49. The executive director directed relator to participate in a fact-finding conference conducted by an administrative-law judge (ALJ), as provided by Minn. Stat. § 356.96, subd. 7(b) (2020). The parties agreed that no material facts were in dispute, stipulated to the facts and documents in the case, and filed cross-motions seeking the ALJ's recommendation for summary disposition.

Following a hearing, the ALJ issued findings of fact, conclusions of law, and the recommendation that relator's appeal be denied, which were adopted by the MSRS board. Relator sought and was granted certiorari review by this court. She argues that both the relevant statutes and the doctrine of promissory estoppel entitle her to interest on her CSA benefit.

DECISION

Standard of Review

An appellate court may reverse or modify an administrative decision if substantial rights of the petitioners have been prejudiced by administrative findings, inferences, conclusions or decisions that are unsupported by substantial evidence in view of the entire record, or arbitrary and capricious, but the court must also recognize the need for exercising judicial restraint and for restricting judicial functions to a narrow area of responsibility lest (the court)

¹ Although the statutes refer to interest as "augmentation," this opinion will use the more usual term "interest."

substitute its judgment for that of the agency. It must be guided in its review by the principle that the agency's conclusions are not arbitrary and capricious so long as a rational connection between the facts found and the choice made has been articulated.

....

... The agency decision-maker is presumed to have the expertise necessary to decide technical matters within the scope of the agency's authority, and judicial deference, rooted in the separation of powers doctrine, is extended to an agency decision-maker in the interpretation of statutes that the agency is charged with administering and enforcing. We defer to an agency's conclusions regarding conflicts in testimony, the weight given to expert testimony and the inferences to be drawn from testimony.

In re Excess Surplus Status of Blue Cross & Blue Shield of Minn., 624 N.W.2d 264, 277-78 (Minn. 2001) (citations and quotations omitted). However, an appellate court “[retains] the authority to review de novo errors of law which arise when an agency decision is based upon the meaning of words in a statute.” *In re Denial of Eller Media Co.’s Applications for Outdoor Adver. Device Permits*, 664 N.W.2d 1, 7 (Minn. 2003).

1. The MSRS denial of relator’s petition

As a retiree entitled to benefits under both PERA and MSRS, relator was entitled to either CSA benefits under Minn. Stat. § 356.30, subd. 1(a) (2020) or CBMTOF benefits under Minn. Stat. § 356.311. She was provided with, and does not dispute, the calculations under both statutes in a letter from MSRS counsel on May 23, 2019.

Minn. Stat. § 356.30 provides that “the average salary used to calculate the annuity for each formula plan must be based on the employee’s highest five successive years of covered salary [(high-five salary)] during the entire service in covered plans.” Minn. Stat. § 356.30, subd. 1(b)(2) (2020). When relator terminated her MSRS employment on

November 29, 2018, she had 18.5 years with MSRS, which was multiplied by the statutory annuity multiplier with a result of 30.45%. Her high-five salary was \$6,634.17, which was multiplied first by 30.45% to result in \$2,086.45 for her MSRS CSA annuity and then by the appropriate length of service and statutory annuity multiplier to result in \$450.91 for her PERA CSA annuity. The sum of the two, both based on the high-five salary, was \$2,537.36.

The CSA statute also provides that, “[i]f a person eligible for an annuity . . . from each covered plan terminates all public service, the deferred annuity must be augmented [i.e., interest must be paid on the annuity] from the date of termination until . . . the effective date of retirement.” *Id.* at subd. 1(c). Because relator’s date of termination was November 29, 2018, and the effective date of her retirement was December 1, 2018, no interest accrued on her CSA benefit.

The CBMTOF option available to employees entitled to benefits under more than one plan is governed by Minn. Stat. § 356.311:

(d) No portion of the service upon which the retirement annuity from one retirement plan is based shall be again used in the computation of a retirement annuity from another plan. The annuity from each plan must be determined under the laws applicable to that plan. . . .

(e) Any deferred annuity payable under this section shall be subject to augmentation under the laws applicable to the deferred annuity.

Minn. Stat. § 356.311.

The first segment of relator’s MSRS service lasted 18 years and one month, which was multiplied by the statutory multiplier for a result of 30.741%; this was multiplied by

the high-five salary, and then by the interest for six years, seven months, or 1.139247, for an annuity of \$2,323.39. The second segment of her service lasted five months at a monthly salary of \$3,088.96. This was multiplied by the number of months of service and a statutory multiplier, then by a reduction factor, for an annuity of \$20.91; thus the total MSRS CBMTOF benefit was \$2,353.58. The PERA CBMTOF annuity was \$91.89, so the total CBMTOF annuity, MSRS plus PERA, was \$2,435.47, or \$101.89 less than the total CSA total annuity. Relator was accordingly given the CSA annuity.

She argues that, although her CSA benefit provides that interest is paid only “from the date of termination . . . to the effective date of retirement,” she is entitled to the interest provided in the CBMTOF annuity, which is paid “under the laws applicable to the deferred annuity.” See Minn. Stat. § 356.311(e). The MSRS board chair observed, “[Relator]’s appeal requests, in effect, that MSRS import the CBMTOF [interest] calculation into the CSA statute. MSRS has no discretion or authority to do so. See, e.g., Minn. Stat. § 352.03, subd. 4(3) [2018] (stating that the [MSRS] Board is required to transact the business of the retirement system, subject to the limitations of law).”

Relator also argues that the phrase “terminates all public service” in Minn. Stat. § 356.30, subd. 1(d)(1) (2020), could be interpreted to mean that she was entitled to interest from the time she left public service in March 2012 until she returned to public service in July 2018 because, “[d]uring that time, she ha[d], in fact, *terminat[ed] all public service*.” But the phrase “terminated all public service” and the phrase “returned to public service” are mutually exclusive: no one who has already terminated all public service can return to it, and no one who returns to public service can previously have terminated it. Moreover,

under relator's interpretation, she would have continued to earn interest on the retirement benefit from her first MSRS employment at the same time she was accruing another retirement benefit from her second employment.²

In effect, relator replaces "all" with "any"; she argues that she is entitled to interest from the time she quit *any* public service until the effective date of her retirement. But this court may neither incorporate a provision from one statute into another nor replace one word in a statute with another: "[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court." *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987). Relator's argument that she is entitled to interest that accrued prior to the date she terminated all public service is unpersuasive.

2. Promissory Estoppel

Relator also argues that promissory estoppel entitles her to the interest. However,

Minnesota courts have long held that estoppel cannot be applied when doing so would cause an agency to act outside the bounds of its authority. . . . [A]bsent a prohibition against estoppel, states and municipalities would repeatedly find themselves bound by the unauthorized acts of officers and agents possessing only limited authority.

. . . .

. . . [T]he rule [is] that, regardless of the equities involved, a government agency's unauthorized act cannot be made effective by estoppel.

² Such a system would provide an incentive for employees to quit and resume work repeatedly, in order to earn more benefits while accruing interest on those previously earned.

In re McGuire, 756 N.W.2d 517, 519 (Minn. App. 2008) (quotations and citations omitted). If MSRS lacks authority to contravene the statute and pay appellant interest to which the statute says she is not entitled, it cannot be estopped from denying that payment.

Moreover, an individual invoking equitable estoppel against the government must show (1) wrongful conduct by an authorized government agent, (2) that the individual reasonably relied on the wrongful conduct, (3) that the individual incurred a unique expense in reliance on the wrongful conduct, and (4) that the balance of equities must weigh in favor of estoppel. *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 25 (Minn. 2011) (reversing the determination that the elements of estoppel had been met and concluding that the conduct in question was not wrongful but rather a simple mistake). A court considering estoppel against the government “must first look for the government’s wrongful conduct. Only if it is found to exist does the balancing begin.” *Ridgewood Dev. Co. v. State*, 294 N.W.2d 288, 293 (Minn. 1980); *see also Matter of Westling Mfg., Inc.*, 442 N.W.2d 328, 333 (Minn. App. 1989) (quoted in *Kmart Corp. v. County of Stearns*, 710 N.W.2d 761, 771 (Minn. 2006) for the proposition that “this ‘wrongful conduct’ element has since been interpreted to require some degree of malfeasance”), *review denied* (Minn. Aug. 25, 1989).

The wrongful conduct relator alleges was a failure to warn her that she could lose the interest by returning to work for an MSRS-covered entity. But this allegation is inaccurate: relator was told in the MSRS annual statements of 2015, 2016, and 2017 that “[y]our monthly benefit increases every year from termination from employment until you begin collecting your benefit, regardless of age. *Increases may not apply if you are*

currently employed in a position covered by a Minnesota public retirement plan.” (Emphasis added). When relator met with an MSRS retirement counselor in September 2017, she did not mention the possibility of her return to MSRS-covered employment. The counselor’s estimate of what relator would receive when she retired included the italicized language quoted above as well as the following language: “This estimate is based on current information. *Changes to your work pattern or legislative actions could affect the final monthly benefit amount.* If you believe there is an error in this estimate, please notify our office. We reserve the right to correct errors and prepare a new estimate.” (Emphasis added).

Relator did not tell the MSRS counselor in September 2017 that she had any plan to return to work for an MSRS entity, nor did she call or consult with MSRS before taking a new government job in July 2018. MSRS did not wrongfully conceal from relator the effect her 2018 job would have on her retirement pay. Relator has not shown the “wrongful conduct” requisite for asserting equitable estoppel against the government. While we recognize that our decision means that relator will suffer a genuine financial hardship, we are obligated to follow the law.

Affirmed.