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SC Court of Appeals

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Edward W. Miller,

Petitioner,

vs.

South Carolina Public Employee Benefit
Authority, South Carolina Retirement
Systems,

Respondent.

Docket No. 14-ALJ-30-0539-CC

**ORDER DENYING PETITIONER'S
MOTION TO ALTER OR AMEND**

This matter is before the Administrative Law Court (ALC or Court) pursuant to Petitioner's request for a contested case hearing challenging a decision of the South Carolina Public Employee Benefit Authority, South Carolina Retirement Systems (PEBA). In that decision, PEBA determined that Petitioner's August 7, 2014 challenge of a 2002 determination of the amount of service credit Petitioner was eligible to purchase was untimely.

On May 5, 2015 counsel for PEBA wrote this Court stating that, "the parties do not believe that an evidentiary hearing is necessary in this matter and instead believe that this matter could be decided by the [Court] as a matter of law based upon stipulations of fact, joint exhibits, and memoranda of law submitted by the parties." As noted in this Court's scheduling order dated May 7, 2015, the parties agreed that there were no issues of material fact and that there was no need for a hearing in this case. The parties agreed to submit joint stipulations of fact and exhibits as well as memoranda of law for this Court to consider.

After careful consideration of the parties' briefs and stipulations of fact, an Order Granting Respondent's Motion for Summary Judgment was issued on August 24, 2015. On September 2, 2015 Petitioner filed a Motion to Alter or Amend that order.

Petitioner alleges that this Court mischaracterized this case in handling it as cross motions for summary judgment. Petitioner and Respondent joined in a letter requesting that the Court decide the on case factual stipulations and the legal issues based upon the parties' agreement that there were no significant issues of material fact. Therefore, in this Court's May 7, 2015 scheduling order the posture of the case was characterized as cross motions for summary judgment. However,

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Petitioner's brief filed on July 6, 2015 was organized as an appellate brief¹. Because the brief addressed the issues of law the parties sought to have this Court decide, the Court notified Petitioner by letter dated July 9, 2015 that the brief would "be accepted as a memorandum of law in support of a motion for summary judgment pursuant to this Court's Order dated May 7, 2015." Petitioner did not raise any objection at that time to the case being handled in that way. Now, Petitioner asserts that the Court has "mischaracterized the procedural posture of this action as if it were presented to the Court for disposition by Respondent's Motion for Summary Judgment, when no such motion was filed." The Court conducted a telephonic hearing to determine Petitioner's position as to the proper procedural posture of the case. Petitioner acknowledged that while he had not made a formal motion for summary judgment that the standard by which the case should be decided is the same as the standard for summary judgment. He stated that there were no issues of fact to be decided. The parties made a joint request that this Court decide the case as a matter of law. Petitioner then filed a memorandum of law supporting his argument that the case should be decided in his favor without resorting to an evidentiary hearing. Finally, he made no objection to this Court's letter advising him that his brief would be accepted as a brief in support of his summary judgment motion. At no time did Petitioner assert that there was a significant issue of material fact requiring an evidentiary hearing in this case. Therefore, the case was properly decided based upon the legal standards applicable to summary judgment motions.

Petitioner next points out that this Court failed to rule on whether or not PEBA should be estopped from asserting the statutory time bar to contest the 2002 decision because PEBA had breached a fiduciary duty to disclose the disposition of another member's similar request to purchase time. The August 24, 2015 order did not discuss the doctrine of estoppel or the issue of fiduciary duty, relying instead on the ruling that the doctrine of laches was not implicated in this matter. Therefore, I take this opportunity to discuss those arguments in greater detail.

The issue of whether Respondent owed a fiduciary duty to Petitioner is a question of law. "[T]he question of whether [a fiduciary duty] should be imposed between two classes of people is a question for the court." Spence v. Wingate, 395 S.C. 148, 160, 716 S.E.2d 920, 927 (2011). Petitioner has not cited any authority to support the imposition of fiduciary duty requiring the administrator of benefits to disclose decisions made concerning benefits of other members of the

¹ Because the case at hand is a contested case and not an appeal, it would be resolved either on a motion for summary judgment or by conducting an evidentiary hearing.

retirement system. To establish the existence of a fiduciary relationship, the facts and circumstances must indicate the party reposing trust in another has some foundation for believing the one so entrusted will act not in his own behalf but in the interest of the party so reposing. Burwell v. South Carolina Nat'l Bank, 288 S.C. 34, 41, 340 S.E.2d 786, 790 (1986). The evidence must show the entrusted party actually accepted or induced the confidence placed in him." Moore v. Moore, 360 S.C. 241, 251, 599 S.E.2d 467, 472 (Ct. App. 2004). I find no precedent for imposing a fiduciary duty under the circumstances presented in this case. The Respondent did nothing to induce confidence on the part of its members that it was acting on their behalf or to create an expectation that it would disclose the details of its dealings with other members to serve as a comparator for decisions made in a particular member's case. Therefore, I conclude that PEBA did not owe a fiduciary duty to the Petitioner to advise him of the circumstances of other claimants' dealings with the agency.

Furthermore, even if a fiduciary duty were found to exist, the stipulated facts do not contain sufficient evidence to establish a breach of that duty. The determination of whether a fiduciary duty has been breached is a question of fact. Spence, 395 S.C. at 160. A determination that PEBA should be estopped from asserting the time limitation by its actions would require a finding of facts not stipulated by the parties. Regions Bank v. Schumach, 354 S.C. 648, 582 S.E.2d 432 (2003) ("Whether the actions lulled the plaintiff into a false sense of security is usually a question of fact. However, summary judgement is proper where there is no evidence of conduct warranting estoppel.") The parties have not stipulated that a breach of fiduciary duty occurred. Because Petitioner took the position that there was no genuine issue of material fact for this Court to decide, such a finding was beyond the scope of the order issued by this Court on August 24, 2015.

"The party asserting estoppel bears the burden of establishing all its elements." Estes v. Roper Temp. Servs., 304 S.C. 120, 122, 403 S.E.2d 157, 158 (Ct. App. 1991). A government entity may be equitably estopped in matters that do not affect the due exercise of its police power or the application of public policy. Grant v. City of Folly Beach, 346 S.C. 74, 80, 551 S.E.2d 229, 232 (2001). A party asserting estoppel against the government must prove "(1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) justifiable reliance upon the government's conduct, and (3) a prejudicial change in position." Id. Absent even one element, estoppel will not lie against a government entity. Id. However, citizens are presumed to know the law and are charged with exercising "reasonable care to protect [their] interest[s]." Smothers v.

U.S. Fidelity and Guar. Co., 322 S.C. 207, 210-11, 470 S.E.2d 858, 860 (Ct. App. 1996). Here, as discussed above, Petitioner has not shown that it would have been justifiable to rely on PEBA's silence to conclude that no individuals who were employed performing indigent criminal defense work in Greenville County had been found to be full-time employees. Where the relevant statutes and plan language do not leave PEBA authority or discretion to provide a claimant with the benefit sought it is improper to apply the doctrine of estoppel. Morgan v. S. Carolina Budget & Control Bd., 377 S.C. 313, 320, 659 S.E.2d 263, 267 (Ct. App. 2008). Therefore, I must conclude that the doctrine of estoppel does not operate to excuse Petitioner's delay in bringing his challenge to the 2002 decision regarding service purchase. Therefore,

IT IS HEREBY ORDERED that Petitioner's Motion to Alter or Amend is **DENIED**.
AND IT IS SO ORDERED.



Deborah Brooks Durden
Administrative Law Judge

September 28, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Robin E. Coleman

Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

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