

FILED

OCT 14 2016

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Rosemary S. Smith,

Petitioner,

vs.

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

Respondent.

 Docket No.: 16-ALJ-30-0197-CC

**ORDER GRANTING
RESPONDENT'S MOTION FOR
SUMMARY JUDGMENT**

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FEB 17 2017

SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the request for a contested case hearing filed by Rosemary S. Smith ("Petitioner") on June 4, 2016. Petitioner challenges the decision of the South Carolina Public Employee Benefit Authority, South Carolina Retirement Systems ("Respondent" or "Retirement Systems"), which found that Petitioner was not eligible to apply for disability retirement benefits. On July 29, 2016, Respondent filed a Motion for Summary Judgment alleging that there is no genuine issue as to any material fact in the case, and therefore Respondent is entitled to judgment in its favor as a matter of law. Petitioner's response to Respondent's Motion for Summary Judgment was filed on August 2, 2016.

BACKGROUND

Petitioner is a former member of the South Carolina Retirement Systems ("SCRS") who was employed with the Berkeley County School District ("School District") before suffering a job-related injury on November 13, 2015. Prior to her injury, Petitioner worked with the School District as a Bus Assistant. Following her injury, Petitioner filed a worker's compensation claim that was settled at some point in November or December 2014. Petitioner's last date of employment with the School District was December 30, 2014.

On January 14, 2016, Petitioner filed an application for disability retirement benefits with SCRS. In the application, Petitioner stated she would have filed the application earlier had her former employer given her correct information about which benefit to apply for. According to

Petitioner, she was initially told to apply for long-term disability and later learned this information was not correct and that she should have filed an application with SCRS for disability retirement. A letter from Tina Dickerson, Benefits Coordinator for the School District, was attached to Petitioner's application. Ms. Dickerson's letter corroborated Petitioner's account of why her application was not filed with SCRS prior to January 14, 2016.

On March 7, 2016, SCRS sent Petitioner a letter notifying her that she was not eligible for disability retirement benefits because she was not a "member in service" with a participating employer when her application was filed, as required under S.C. Code Ann. § 9-1-1540(B)(1). SCRS further explained that there is no exception to the "member in service" filing deadline, and because Petitioner failed to submit her application within ninety days of her last date of employment with the School District, SCRS could not process her application for disability retirement benefits.

By letter dated March 10, 2016, Petitioner requested review by the Director of the Retirement Systems, Peggy Boykin, of the denial of her application for disability retirement benefits. In the request for review, Petitioner again asserted that her application was not filed timely because she relied on incorrect information that was given to her by the School District, and that had she been given the correct information the application would have been filed on time. On May 31, 2016, SCRS issued a Final Agency Determination affirming the initial determination that Petitioner was not eligible to apply for disability retirement benefits because her application was not filed while she was a "member in service". Petitioner filed a Request for Contested Case Hearing with the ALC on June 4, 2016 challenging Respondent's Final Agency Determination.

DISCUSSION

Summary judgment is proper in a case when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See Rule 56(c), SCRPC; See also, e.g., Henderson v. Allied Signal, Inc., 373 S.C. 179, 183, 644 S.E.2d 724, 726 (2007). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. Austin v. Beaufort County Sheriff's Office, 377 S.C. 31, 34 659 S.E.2d 122, 123 (2008). Summary judgment is not appropriate unless it is "shown that further inquiry into the facts is not needed to clarify the application of law." Butts v. AVX Corp., 292 S.C. 256, 258, 355 S.E.2d 876, 877 (Ct. App. 1987).

The procedural and substantive requirements for the issuance of disability retirement benefits to members of the South Carolina Retirement Systems are found in S.C. Code Ann. § 9-1-1540(B)(1), which provides:

Upon the application of a member in service or of the member's employer received by the system after December 31, 2013, **a member in service** who has the earned service required for the member's class pursuant to Section 9-1-1510, or who is disabled as a result of an injury arising out of and in the course of the performance of the member's duties regardless of length of membership, may be retired by the board if the member is determined to be disabled pursuant to subsection (B)(2) of this section. **For purposes of this section, a member is considered to be in service on the date the application is filed if the last day the member was employed by a covered employer in the system occurred not more than ninety days before the date of filing.**

S. C. Code Ann. § 9-1-1540(B)(1) (Supp. 2015) (emphasis added). Section 9-1-1540(B)(1) unambiguously requires a member to submit a disability retirement application while a "member in service". *Id.* The statute specifically provides that for purposes of the disability retirement statute, a member is considered to be "in service" on the date the application is filed if the last day the member was employed by a covered employer in the System occurred not more than ninety days before the date of filing. *Id.* Thus, the statute incorporates a ninety-day grace period after the last date of employment during which a member may file a disability retirement application. Consequently, once a member has been separated from all covered employment in the System for more than ninety days, and is no longer "in service" with a participating employer, the member is no longer eligible to apply for disability retirement benefits under S.C. Code Ann. § 9-1-1540. See Lazicki-Thomas v. S.C. Budget and Control Bd., 378 S.C. 72, 75, 661 S.E.2d 374, 376 (2008) ("The disability retirement statutes mandate that the application be filed by a 'member in service.'" (emphasis added); see also Anderson v. S.C. Budget & Control Bd., S.C. Ret. Sys., Docket No. 06-ALJ-30-0008-CC, slip op. at 6 (S.C. Admin. Law Ct. Aug. 21, 2006) (en banc)(holding that the opening clause of Section 9-1-1540 "requires the member to make an application and establishes a time for making that application (i.e., while the member is 'in service')").

In this case, Petitioner's last date of employment with the School District was December 30, 2014, and she had ninety days from that date to submit her application for disability retirement to SCRS. Specifically, Petitioner needed to submit her application on or before March 30, 2015, or during the period when she was still a "member in service" as defined by Section 9-1-

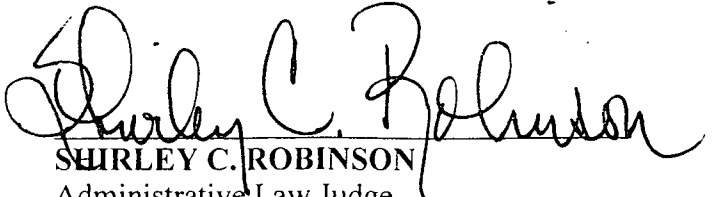
1540(B)(1). Petitioner acknowledges her disability retirement application was filed after the ninety-day grace period expired. However, Petitioner asserts SCRS should accept the application because she relied on incorrect information from the School District and was given paperwork for the wrong type of benefits. Had she been provided with the correct information, Petitioner contends she would have filed her application prior to the expiration of the 90-day grace period. Unfortunately, this contention does not alter the conclusion that Petitioner was ineligible to apply for disability retirement benefits because she was no longer a “member in service” with a covered employer when she submitted her application. See S.C. Code Ann. § 9-1-1540 (Supp. 2015); Lazicki-Thomas, 378 S.C. 72, 661 S.E.2d 374 (2008).

Further, this Court has consistently recognized that the statutory requirement that a member be “in service” with a participating employer in SCRS in order to be eligible to apply for disability retirement benefits is a substantive condition precedent to filing such an application. See, Sheryl D. Smith v. S.C. Budget & Control Bd., S.C. Ret. Sys., Docket No. 11-ALJ-30-0061-CC (S.C. Admin. Law Ct., May 3, 2011); Polly V. Jacobs v. S.C. Budget & Control Bd., S.C. Ret. Sys., Docket No. 08-ALJ-30-0311-CC (S.C. Admin. Law Ct., Jan 23, 2009) (both granting summary judgment in favor of Retirement Systems where a member claimed that her failure to timely file her disability retirement application was caused by inadequate benefit counselling by her employer). Although Petitioner’s circumstance is unfortunate, the undisputed fact is that Petitioner was not a “member in service” when her application was filed, and this Court has no authority to expand or waive the statutory time requirements of Section 9-1-1540. See Lazicki-Thomas, 378 S.C. at 75, 661 S.E.2d at 376 (“The disability retirement statutes mandate that the application be filed by a ‘member in service’”); see also, Anderson, supra, at 14 (recognizing that the Administrative Law Court could not “invade the province of the South Carolina Legislature by expanding the terms of [Section 9-1-1540] beyond its plain meaning to allow members who are no longer “in service” with a participating employer to apply for disability retirement benefits).

In summary, when Petitioner filed her application with SCRS on January 14, 2016, she was not a “member in service” as required by section 9-1-1540(b)(1), and therefore was not eligible to apply for disability retirement. Because there is no genuine issue as to any material fact in this case, the Respondent is entitled to judgment in its favor as a matter of law.

THEREFORE, IT IS HEREBY ORDERED that Respondent’s Motion for Summary Judgment is **GRANTED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

October 14, 2016
Columbia, South Carolina

DEPT. OF SERVICE
This is to certify that the undersigned has this date
served this order in the above entitled action upon all
parties to this cause by depositing a copy thereof,
in the United States mail postage paid, or in the emergency
Mail Service addressed to the party(ies) or their attorney(s).

This 14 day of October 2016
By: Jeeshy Moncler
Deputy Clerk