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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1980**

Timothy R. Helwig,
Relator,

vs.

Public Employees Retirement Association of Minnesota,
Respondent.

**Filed June 13, 2011
Affirmed
Stauber, Judge**

Public Employees Retirement Association of Minnesota
File No. 298060

James W. Balmer, Duluth, Minnesota (for relator)

Lori Swanson, Attorney General, Rory H. Foley, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Ross, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

Relator challenges a decision of the Public Employees Retirement Association (PERA) denying his request to purchase retirement credit for a period of time when he was serving in the military for the cost at which he could have purchased the credit upon his return from service in 1986. Relator argues that his requested relief is appropriate

because PERA failed to notify him of his right to purchase credit in 1986. Because Minnesota law unambiguously provides that relator may purchase service credit at the present actuarial value, we affirm.

FACTS

In 1978, relator Timothy Helwig began working for the City of Duluth (city). Relator enlisted in the Marine Corps in May 1982, and served on active duty until his honorable discharge in May 1986. When relator joined the Marines, the city notified respondent Public Employees Retirement Association (PERA) that relator's employment had been terminated rather than advising PERA that he had been placed on a military leave of absence from city employment.

Relator was reemployed by the city on June 16, 1986. A few days later, the city sent relator correspondence listing benefits to which he was then entitled together with the dates on which each of those benefits would become effective. The correspondence included a statement of when relator's PERA benefits would resume, but it did not include information regarding any right he might have to purchase PERA service credit for the time he spent in military service. At the time, it was not PERA's practice to specifically inform any returning veterans of their right to make a pension purchase upon their return to government employment.

In 1990, while reading a PERA handbook, relator learned of his right to purchase PERA service credit for the time he spent in the military. Relator subsequently requested information from PERA regarding the cost of purchasing PERA service credit. By letter dated November 16, 1990, PERA advised relator that the total cost of purchasing his

service credit would be \$4,726.47; that the purchase of his service credit had to be completed by June 14, 1991; and that the cost of purchasing his service credit in installments for the next seven months would be \$675.21 per month. Because he could not afford the \$4,726.47, relator declined to purchase the service credit at that time.

In July 2009, relator again inquired about purchasing PERA service credit for his time spent in the Marines. PERA informed relator that he could purchase service credit based upon current actuarial value. According to PERA, the current actuarial value at that time totaled \$122,444.44, provided that relator paid before August 5, 2009. PERA further explained that:

The other method of purchasing military service credit (based on contributions you would have made to the pension fund during the military leave) is not an option for you. Under state and federal law (Minn. Stat. § 353.01, subd. 16(a)(7) (2008); 38 U.S.C. § 4312(e)), military service personnel have the shorter of three times the length of their service or five (5) years past the conclusion of their military service, five years being the maximum amount of time to make this type of purchase.

On October 29, 2009, relator submitted a petition for review of PERA's determination of relator's right to purchase service credit for the period of his former military service. Following a fact-finding conference in April 2010, the administrative-law judge (ALJ) issued his recommendation that the PERA board of trustees deny relator's request to purchase his PERA service credit at less than its current actuarial value. The PERA board of trustees subsequently adopted the ALJ's recommendation. This certiorari appeal followed.

DECISION

PERA is a public-employee pension fund governed by Minn. Stat. ch. 353 (2010). The board is entrusted to administer the fund, which includes the collection of funds and disbursement of payments to members. Minn. Stat. § 353.03, subds. 1, 3 (2010). For purposes of judicial review, the board is treated like an administrative agency. *Axelson v. Minneapolis Teachers' Ret. Fund Ass'n*, 544 N.W.2d 297, 299 (Minn. 1996). This court will reverse the quasi-judicial decision of an agency if it is “fraudulent, arbitrary, unreasonable, unsupported by substantial evidence, not within [the agency’s] jurisdiction, or based on an error of law.” *Id.* (quotation omitted). The reviewing court presumes that the board acted correctly and defers to it in its areas of expertise. *Rosinski v. Teachers Ret. Ass'n Bd. of Trs.*, 495 N.W.2d 14, 16 (Minn. App. 1993). But PERA decisions regarding statutory interpretation are reviewed de novo. *See In re PERA Police & Fire Plan Line of Duty Disability Benefits of Brittain*, 724 N.W.2d 512, 516 (Minn. 2006).

Relator argues that he should have received notice of his right to purchase PERA service credit for his military leave of absence immediately upon his return to work with the city in June 1986. Relator argues that failure to furnish such notice should obligate PERA to make the retirement credit available to him at the cost he would have had to endure had he been immediately notified of his rights. Thus, relator argues that the PERA board erred by denying his request to purchase his PERA service credit at less than its current actuarial value.

We disagree. At the time relator was honorably discharged from the Marines, Minnesota law provided that relator had five years to purchase his service credit. Minn.

Stat. § 353.01, subd. 16 (5) (1986). However, the five-year statutory deadline for purchasing service credit for time spent in the military has now been eliminated, which allows relator to purchase his service credit even though it has been well over five years since he was discharged from the Marines. *See* Minn. Stat. § 353.01, subd. 16b (Supp. 2009) (current version at Minn. Stat. § 353.013 (2010)). Under Minnesota law, the cost to relator for purchasing the service credit “is an amount equal to the actuarial present value, on the date of payment.” Minn. Stat. § 356.551, subd. 2(a) (2010).

Relator argues that, under *Alabama Power Co. v. Davis*, 431 U.S. 581, 97 S. Ct. 2002 (1977), PERA is obligated to credit his retirement account with those pension rights that would have accrued to him had he never taken the military leave of absence. We disagree. In *Davis*, the employer refused to give an employee, whose employment had been interrupted by a period of military service, any credit toward his pension for the time he spent in the military. 431 U.S. at 582, 97 S. Ct. at 2003. The employer argued that pension payments should be considered compensation for services rendered rather than a “prerequisite of seniority” that would be protected by the Military Selective Service Act.¹ *Id.* at 592, 97 S. Ct. at 2008. The Supreme Court rejected that argument holding that

pension payments are predominantly rewards for continuous employment with the same employer. Protecting veterans

¹ In *Davis*, the Court was interpreting Section 9 of the Military Selective Service Act of 1967. The provisions of that statute relating to veterans’ reemployment rights were reenacted without substantive change in the Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (VRR) and codified at 38 U.S.C. §§ 2021 et seq. *See Coffy v. Republic Steel Corp.*, 447 U.S. 191, 194 n.2, 100 S. Ct. 2100, 2103 n.2 (1980). The VRR was later replaced by the USERRA, codified at 38 U.S.C. §§ 4301-4333.

from the loss of such rewards when the break in their employment resulted from their response to the country's military needs is the purpose of section 9. That purpose is fulfilled in this case by requiring [the employer] to pay [the employee] the pension to which he would have been entitled by virtue of his lengthy service if he had not been called to the colors.

Id. at 594, 97 S. Ct. at 2010.

We conclude that *Davis* is not applicable to the issue before us. Unlike the situation in *Davis*, relator's right to obtain service credit for his time spent in the service is controlled by state statute. The statute specifically provided that relator had a right to obtain PERA service credit for his time spent in the military for at least five years after he returned to work with the city. Relator's simply failed to purchase that service credit during that time period. Moreover, PERA service credit is available to be purchased by relator for his time spent in the military, and the cost to relator for purchasing the service credit is the current actuarial value.

Relator further suggests that, because he was not notified of his right to purchase the service credit at the time he was reemployed with the city, he is entitled to the equitable remedy of purchasing the service credit at the 1986 cost. But, relator cites no authority for his assertion that he is entitled to equitable relief. Moreover, the record reflects that, at the time relator was reemployed with the city, PERA was not obligated to inform relator of his right to purchase the service credit. Minnesota law unambiguously states that the cost to relator for purchasing the service credit is the current actuarial value. Minn. Stat. § 356.551, subd. 2(a). Accordingly, the PERA board of trustees did

not err by denying relator's request to purchase PERA service credit at less than its current actuarial value for his time spent in the Marines.

Affirmed.