

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DST 06764

<p>Stephen J Healy</p> <p>Petitioner</p> <p>v.</p> <p>NC DEPARTMENT OF STATE TREASURER, RETIREMENT SYSTEMS DIVISION</p> <p>Respondent</p>	<p>FINAL DECISION SUMMARY JUDGMENT</p>
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THIS MATTER comes before the Honorable Donald W. Overby, Administrative Law Judge presiding, for consideration of Respondent's Motion for Summary Judgement filed with the Office of Administrative Hearings ("OAH") on January 8, 2015, as well as Petitioner's Response to Respondent's Motion for Summary Judgment dated February 13, 2015, wherein Petitioner asks that summary judgment be entered in his favor. This matter is properly before the OAH for consideration and disposition.

The uncontroverted facts of this contested case reveal that the Petitioner received the full amount of a long term disability benefit from April 2001 through April 2004; that Petitioner's benefit was reduced by a hypothetical Social Security amount beginning in May 2004; and that Petitioner was awarded actual Social Security benefits in April 2005 which was retroactive to May 2003. It is also uncontroverted that Petitioner began reporting his actual income from Social Security to the Respondent in March 2006 for the income he received in 2005. Despite the fact that Petitioner properly sent his income report accurately reporting his Social Security income to Respondent for each successive year, Respondent continued to pay Petitioner benefits reduced by the hypothetical amount until the error was discovered in March 2013. The actual amount that Petitioner was receiving from Social Security was in excess of the hypothetical amount. There is no genuine issue of material fact to these facts as set forth.

An issue of fact exists as to whether or not Petitioner notified the Respondent of his approval for Social Security benefits in April 2005. Petitioner contends that he did notify Respondent, and Respondent contends that he did not. Based on the holdings as set forth below, that fact is of no consequence in the decision and therefore is not "material" to the decision.

Petitioner raises the issue of the applicability of N.C.G.S. § 135–5(n), the statute of limitations. The statute provides

No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made.

N.C.G.S. § 135–5(n) (1995) (state government employees).

In the *Empire Power Co.* case, the North Carolina Supreme Court observed that the Administrative Procedure Act (“APA” or the “Act”) both confers procedural rights as well as imposes procedural duties. Included among those rights conferred is “the right to commence an administrative hearing to resolve disputes between an agency and a person involving the person’s rights, duties, or privileges.” The APA defines those rights, duties, or privileges which provide the grounds for an administrative hearing in the event of an alleged breach. The Supreme Court affirms that the Act confers upon any “person aggrieved” the right to commence an administrative hearing to resolve a dispute with an agency involving that person’s rights, duties, or privileges. *Empire Power Co. v. N. Carolina Dep’t of Env’t, Health & Natural Res., Div. of Env’tl. Mgmt.*, 337 N.C. 569, 583-84, 447 S.E.2d 768, 776-77 (1994)

Thus *Empire Power Co.* holds that the Administrative Procedures Act sets out procedures that govern the relationship between the agencies and citizens affected by agency action. “The basic purpose of a comprehensive administrative procedure act (APA) is to provide minimum uniform standards to govern administrative action.”(Citing Daye, *Administrative Procedure*, p. 835, 837). *Id.* at 586.

It is concluded as a matter of law that: Petitioner is a “person aggrieved” by the “agency action” of Respondent’s attempt to recover the monies paid to Petitioner. This contested case was properly brought before the OAH pursuant to the procedural process as established by the Administrative Procedure Act, N.C.G.S. § 150B. The statute of limitations in N.C.G.S. § 135–5(n) is applicable to this contested case. To hold otherwise is to render the statute of limitations as mere surplusage. Therefore, Respondent is limited to recovery of “any overpayment of benefits or contributions more than three years after such overpayment was made.”

Petitioner also contends that Respondent should be estopped. The case of *McCaskill v. Dep’t of State Treasurer* (citing *Hawkins v. M & J Finance Corp*) sets forth what has been the accepted requirements for estoppel.

[T]he essential elements of an equitable estoppel as related to the party estopped are: (1) Conduct which amounts to a false representation or concealment of material facts, or, at least, which is reasonably calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party afterwards

attempts to assert; (2) intention or expectation that such conduct shall be acted on by the other party, or conduct which at least is calculated to induce a reasonably prudent person to believe such conduct was intended or expected to be relied and acted upon; (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, they are: (1) lack of knowledge and the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party sought to be estopped; and (3) action based thereon of such a character as to change its position prejudicially. *Hawkins v. M & J Finance Corp.*, 238 N.C. 174, 177-78, 77 S.E.2d 669, 672 (1953).

McCaskill v. Dep't of State Treasurer, 204 N.C. App. 373, 396-97, 695 S.E.2d 108, 125-26 (2010) aff'd in part sub nom. *McCaskill v. Dep't of State Treasurer*, Ret. Sys. Div., 365 N.C. 69, 706 S.E.2d 226 (2011)

It is concluded as a matter of law that, based upon the information before this Tribunal, the three elements set forth in *McCaskill* that are applicable to the party estopped, i.e. the Respondent, exist and have been met. It is concluded as a matter of law based upon the information before this Tribunal that elements number 2 and 3 that are applicable to the party claiming estoppel exist and have been met. It is concluded as a matter of law that the Petitioner at the very least had the “means of knowledge of the truth of the facts in question.”

The facts are uncontroverted that Petitioner received a letter from Respondent dated March 7, 2011 which informed Petitioner that his 2010 benefits were within “acceptable limits” and further that “we will not be reducing your benefit amount based on your earnings.” Any knowledge imputed to Petitioner for having dutifully reported to Respondent his actual earnings, even if it was in excess of the hypothetical amount, would have been erased when Respondent tells him in essence “everything is fine.”

Petitioner was justified in relying on the written communications from Respondent. Just as Dr. Fike had done in the *Fike v. Bd. of Trustees*, Petitioner followed the procedures set out by Respondent. *Fike v. Bd. of Trustees*, 53 N.C. App 78, 279 S. E.2d 910 (1981) Petitioner did everything the Respondent asked of him. Petitioner relied upon the representations of the Respondent. The only difference between this instant case and the *Fike* case is that there is no intervening agency question. In this contested case, there is no question that the representations came straight from the Respondent and that they stated without equivocation that his earnings were within acceptable limits and that there would be no reductions in his benefits.

Based on the foregoing, Petitioner's contention that Respondent should be estopped would be denied from the award of Social Security to the Petitioner dating back to 2003 until his benefits for 2010 were affirmatively found by Respondent to be within acceptable limits. It is reasonable for Petitioner to have relied on Respondent's representations and that reliance is justified. Respondent is estopped from collecting any overpayment beginning in January of 2010.

Based upon the totality of the holdings above Respondent would be entitled to summary judgment for payments to Petitioner from May 2003 until January 1, 2010; however, Petitioner is entitled to summary judgment based upon the statute of limitations which would limit the recovery by Respondent to a period of three years from the inception of its claim in 2013. Thus, Respondent

is precluded from recovery for anything beyond that three year limitation. Based upon the further conclusions above, Petitioner is entitled to summary judgment and Respondent is estopped from recovery for calendar years 2010, 2011, 2012, and 2013.

It is hereby ordered that Petitioner is entitled to Summary Judgment in part and Respondent is entitled to Summary Judgment in part. Based upon the holdings of this decision, Respondent is entitled to no recovery, and Petitioner is entitled to reimbursement of any monies which have been withheld pending disposition of this contested case.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was enclosed in a wrapper and placed in an official depository of the United States Postal Service, as evidenced by the postmark date of the wrapper.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 14th day of May, 2015.

Donald W. Overby
Administrative Law Judge