

In the
Supreme Court of Ohio

STATE OF OHIO EX REL.)	Supreme Court of Ohio
MICHELLE R. ADAMS,)	Case No. 2013-1788
)	
Relator,)	Original Action in Mandamus
)	
vs.)	
)	
OHIO PUBLIC EMPLOYEES)	
RETIREMENT SYSTEM,)	
)	
Respondent)	

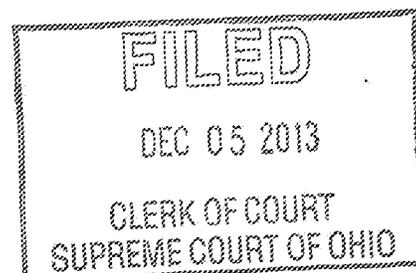
**RESPONDENT OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM'S
MOTION TO DISMISS**

MICHELLE R. ADAMS
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Relator, pro se

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MOTION TO DISMISS

Respondent Ohio Public Employees Retirement System moves this Court, pursuant to S.Ct.Prac.R. 12.04(A)(1), to dismiss the Complaint filed by Relator. OPERS' Motion is based on the accompanying memorandum in support.

Respectfully submitted,

MICHAEL DeWINE (0009181)
Ohio Attorney General



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MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

I. INTRODUCTION

The present case involves the unfortunate situation of a disabled individual suing Respondent Ohio Public Employees Retirement System's ("OPERS") essentially so that she can forego an ongoing stream of monthly disability payments (and health care coverage) in exchange for a lump-sum refund payment. The single issue before the Court is whether Relator's Complaint sets forth a viable mandamus action against OPERS. It does not. Even taking into consideration Relator's pro se status, she has failed to identify any clear legal right to the relief she has requested or a clear legal duty on behalf of OPERS to provide this relief.

First, Relator asserts that she is seeking a "return to work authorization." Complaint at 4. As Relator has provided no explanation or citation, it is unclear to what she is referring. While Relator may (or may not) need such an authorization to return to work with her former employer—the City of Columbus—nothing that OPERS has done prevents Relator from seeking any type of employment she wishes. Furthermore, any form or authorization indicating Relator is capable of returning to work presumably would need to come from a doctor; neither OPERS nor the OPERS Board of Trustees (the "Board") is in a position to provide this relief.

Second, Relator is correct that, as a result of her and her employer's prior contribution, she has account balance with OPERS—which she cannot seek a refund of due to her current status as a disability benefit recipient. Pursuant to R.C. 145.362, Relator requested a voluntary termination of her disability benefits. OPERS subsequently had Relator examined by an independent medical examiner ("IME"). Based on the IME's recommendation, the OPERS Board *denied* Relator's request. Critically, Relator's Complaint fails to allege that she is no longer disabled, or that the OPERS Board's decision was an abuse of discretion.

In sum, Relator has not set forth a viable complaint in mandamus. Accordingly, the Complaint should be dismissed.

II. FACTUAL BACKGROUND AS ALLEGED BY RELATOR¹

Relator was previously employed by the City of Columbus and worked in the Income Tax Division. Complaint at 1. In June 2007, Relator applied for disability benefits from OPERS. *Id.* The OPERS Board approved the application in August 2007. *Id.* at 2. Relator has been receiving disability benefits ever since.

In November 2011, Relator spoke with an OPERS representative regarding her desire to terminate her disability benefits and receive a refund of her OPERS account balance. Complaint at 2. At that point, OPERS advised Relator of the existence of the self-termination process. *Id.* Relator eventually initiated the self-termination process, and in June 2012, Relator underwent a psychiatric examination by Mark Reynolds, M.D. *Id.* at 3. Dr. Reynolds concluded Relator was still disabled. *Id.* Based in part on the recommendation of Dr. Reynolds, the OPERS Board denied Relator's request to self-terminate her disability benefits. *Id.* Relator subsequently filed a complaint against OPERS with the Ohio Civil Rights Commission, but ultimately obtained no relief. *Id.*

Relator currently seeks a "return to work authorization retroactive to April 2012." Complaint at 4. Relator also seeks a refund of her current OPERS account balance—which she estimates to be \$60,000. *Id.* Finally, Relator appears to be seeking \$1,000 a month in damages, beginning as of May 2012, due to her inability to return to work with the City of Columbus. *Id.*

¹ While OPERS disagrees with several of the factual representations in the Complaint, for purposes of the Motion to Dismiss OPERS treats the factual allegations in the Complaint as true.

III. LAW AND ARGUMENT

In order to obtain a writ of mandamus, Relator must demonstrate that: (1) she has a clear legal right to the relief prayed for; (2) OPERS has a clear legal duty to provide the requested relief; and (3) she has no plain and adequate remedy in the ordinary course of the law. *See, e.g., State ex rel. Gill v. School Employees Ret. Sys. of Ohio*, 121 Ohio St.3d 567, 2009-Ohio-1358, ¶¶ 19-20. Relator has no clear legal right to any of the relief she has requested, and OPERS has no clear legal duty to provide the requested relief. Accordingly, the Complaint should be dismissed.

First, Relator seeks a return to work authorization. Complaint at 4. Based on the overall tenor of the Complaint, it appears Relator wants to return to her prior position with the City of Columbus and believes that a return to work authorization entitles her to her old position. That may or may not be the case. It should also be noted that Relator already has sued her former employer in Franklin County Common Pleas Court. *See Michelle R. Adams v. Columbus City Income Tax Division*, No. 10 CV 015922.

More relevant to the Complaint, OPERS has no influence on Relator's past or current relationship with the City of Columbus. From a legal perspective, nothing that OPERS did (or did not do) *prevents* the City of Columbus from rehiring Relator, and Relator has not identified otherwise. Similarly, nothing that OPERS has done (or refrained from doing) prevents Relator from seeking employment with, or being hired by, any other private or public employer, anywhere in the city, state, or country.

While Relator has failed to provide an explanation or cite a statute or rule, the return to work authorization presumably is something the City of Columbus was or is requiring from Relator. However, neither OPERS nor the OPERS Board, as an entity, has the authority to issue

a return to work authorization. Similarly, neither OPERS nor the OPERS Board has the authority to compel a doctor to issue a return to work authorization. Admittedly, Relator alleges that a representative from OPERS “advised Relator she could return to work if a [d]octor completed the disability return to work form.” Complaint at 2. OPERS disagrees with this representation and believes Relator’s recollection of this conversation is inaccurate. In any event, it is well established that the doctrine of estoppel does not apply to public retirement systems. *See, e.g., State ex rel. Swartzlander v. State Teachers Retirement Bd.*, 117 Ohio App.3d 131, 136, 690 N.E.2d 36(10th Dist. 1996); *State ex rel. Shumway v. State Teachers Retirement Bd.*, 114 Ohio App.3d 280, 289, 683 N.E.2d 70 (10th Dist. 1996).

In sum, *nothing* in statute or rule authorizes either OPERS or the OPERS Board to issue a return to work authorization as described by Relator. Accordingly, Relator has failed to establish that she has a clear legal right to have *OPERS* issue a return to work authorization.

Relator next seeks a refund of her current OPERS account balance—which she estimates to be \$60,000. Complaint at 4. Relator further alleges that, when she contacted OPERS in November 2011 regarding an account refund, she was advised that she could not obtain a refund while receiving disability benefits and that she could not unilaterally cancel her disability benefits. *Id.* at 2-3.

Relator’s understanding of the statutory scheme is generally accurate. R.C. 145.40(A)(1) prohibits OPERS from issuing an account refund to a current OPERS member receiving disability benefits. Similarly, R.C. 145.362 states that the OPERS Board “*may* terminate a disability benefit at the request of the recipient.” (Emphasis added.) Thus, the plain language of the statute gives the OPERS Board discretion, even when dealing with a self-termination request.

This Court is very familiar with former disability benefit recipients suing in mandamus when their disability benefits are terminated. In such a situation, it is well established that a court should not overturn the retirement board's decision if there is some evidence to support the decision that the relator is no longer disabled. *See State ex rel. Marchiano v. School Employees Ret. Sys.*, 121 Ohio St.3d 139, 2009-Ohio-307, ¶ 21; *Kinsey v. Bd. of Trustees of Police & Firemen's Disability & Pension Fund of Ohio*, 49 Ohio St.3d 224, 226-227 (1991).

The present case presents the opposite of the typical scenario. Here, Relator requested self-termination, but the OPERS Board ultimately concluded that Relator is still disabled. Theoretically at least, Relator could challenge this decision. However, the Complaint does not raise this issue. Relator concedes that, at her request, OPERS referred her to Dr. Reynolds for an IME in June 2012, and that Dr. Reynolds opined that she was still disabled. Complaint at 3. In addition, Relator fails to allege that the OPERS Board decision is not supported by some evidence or that it abused its discretion in any way regarding the self-termination process. It is also worth noting that—while Relator repeatedly conveys her desire to return to her old position with the City of Columbus and indicates that the decision to apply for disability benefits initially was not her idea—she does not, in fact, deny that she is disabled. Accordingly, Relator has failed to allege a viable mandamus claim with regard to the denial of her self-termination request.

Finally, Relator asserts that she is seeking \$1,000 per month from OPERS, beginning May 2012, as a result of her not being reinstated to her prior position with the City of Columbus. As noted previously, nothing that OPERS has done or failed to do prohibits Relator from resuming her position with the City of Columbus. OPERS also has no legal obligation to assist Relator or ensure that she successfully returns to her old position. In sum, while the situation

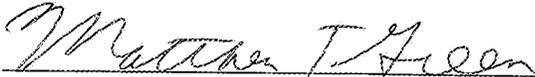
involving Relator and her former employer is unfortunate (at least from Relator's perspective), the Complaint fails to identify why OPERS has a clear legal duty to pay Relator \$1,000 per month.

IV. CONCLUSION

For the reasons set forth above, the Court should dismiss Relator's Complaint.

Respectfully submitted,

MICHAEL DeWINE (0009181)
Ohio Attorney General



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**Counsel of Record*

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Counsel for Respondent

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was served via regular U.S. mail, this 5th day of December, 2013, upon the following:

Michelle R. Adams
5129 Mapleridge Dr.
Columbus, Ohio 43232
Relator


Matthew T. Green