MILLICENT A. WATSON,
Petitioner,

v.

BOARD OF TRUSTEES, PUBLIC EMPLOYEES' RETIREMENT SYSTEM,
Respondent.

Decided May 8, 1980

Initial Decision

SYNOPSIS

Petitioner, who had been employed by the State for over 25 years, had requested that the Board of Trustees to allow her to be examined by a physician in order to establish "insurability" for life insurance purposes. The Board denied that request.

The administrative law judge assigned to the case found that while the petitioner had never supplied evidence of insurability as required by N.J.S.A 43:15A-41.1 and N.J.A.C 17:2-3.1(b), those same statutes and regulations set forth no time limit with respect to when such evidence must be supplied. Nor had the petitioner even been informed of when such evidence had to be supplied.

Accordingly, the administrative law judge concluded that the petitioner was entitled to be examined in order to establish insurability.

Henry E. Kirchoff, Esq., for petitioner
Stacy L. Moore, Jr., Deputy Attorney General, for respondent (John J. Degnan, Attorney General of New Jersey, attorney)

CLANCY, ALJ:

Petitioner has appealed from a decision of the Board of Trustees of the Public Employees' Retirement System which denied her request to be examined by a physician in order to establish "insurability" for the purpose of securing life insurance coverage from the retirement system.

Prior to the taking of testimony, certain stipulations were entered into between the parties; of significance were: (a) petitioner enrolled in the Public Employees' Retirement System on May 9, 1966; and (b)
on November 15, 1977, petitioner wrote a letter to the Division of Pensions requesting that she be extended the right to apply for life insurance coverage. This request was subsequently denied and instant appeal resulted.

Petitioner testified that she has continuously worked for the State of New Jersey in various capacities since February 18, 1952. At present she is a Head Nurse for the Division of Youth and Family Services. In May 1966, she was enrolled in the Retirement System. Shortly thereafter she received a notice scheduling her for a medical examination. She was unable to keep the appointment because she was caring for her two children, a newborn infant and a preschooler; also, she couldn’t get a babysitter. When she cancelled the appointment she was told to make another one, but she never did, because: (a) it kept slipping her mind, (b) she had difficulty managing her work and child rearing routine, and (c) she was under the impression that at the time she enrolled in the Retirement System she was automatically covered by “non-contributory” life insurance. She knew that she wasn’t covered by “contributory” life insurance and thought that this type of coverage could only be acquired if she passed a physical examination. Insofar as a letter sent to her by the Division of Pension on January 11, 1967, which advised her that “... proof of insurability is required in order to cover you for the Non-Contributory and Contributory Life Insurance connected with your membership, and until you submit to a medical examination, you are not covered by any of the insurance benefits”—she advised that she “might have” received same, but couldn’t actually remember whether this was so, because “It’s been so long ago.” In 1975 she made an inquiry about her life insurance coverage and was informed by the Division of Pensions that she was not covered at all because she had failed to provide evidence of insurability.

Petitioner further advised that in 1966 she was aware that insurance benefits were available in the retirement system, but she wasn’t sure what “contributory” life insurance was. At some point in time she obtained a pamphlet which described “to a point” the insurance benefit available, and when she received the notice scheduling her for a medical examination, she thought it pertained only to the acquisition of “contributory” life insurance coverage since she considered the non-contributory coverage to be part of her contract. In 1966, because she felt she had the “non-contributory” coverage, she decided that she “wouldn’t worry about the ‘contributory’ and that is why I did not reschedule my appointment for a physical.” She testified that her
conclusion to the effect that she had "non-contributory" coverage was in reality an assumption on her part.

The only witness to testify on behalf of the Board of Trustees in this matter was William Murphy, Chief of the Bureau of Enrollment and Claims at the Division of Pensions. He indicated that petitioner's enrollment in the Retirement System was optional and not compulsory. This being the case, petitioner was required by law to provide evidence of insurability for both contributory and non-contributory life insurance coverage. Although a notice-scheduling petitioner for a medical examination was sent out on June 24, 1966, petitioner never submitted to this physical examination. Subsequently, the Division of Pensions wrote another letter to petitioner on January 11, 1967, indicating to her that she had no life insurance coverage until such time as she provided evidence of insurability. Administratively, the Division of Pensions allows one year for a medical examination to take place because this is a "sufficient" period of time within which to accomplish this requirement. Testimony indicated that this has been the procedure employed by the Division of Pensions since 1963.

Mr. Murphy also indicated that neither the original "appointment notice" nor the follow-up letter advised petitioner that she only had one year to provide evidence of insurability. Nothing in the administrative practice at the Division of Pensions advises an applicant that evidence of "insurability" must be supplied within one year of the application and that in the past some three or four individuals had been allowed because of extenuating circumstances—to submit evidence of insurability within a two-year period of time. Mr. Murphy that if petitioner passed physical now, no prejudice or detriment would impact on the retirement system in this isolated situation.

The remainder of the evidence submitted was documentary in nature. All exhibits were examined in detail and were of assistance in providing a fuller understanding of the positions advocated by counsel on behalf of their respective clients. N.J.S.A. 43:15A-41.1 and N.J.A.C. 17:2-3.1(b) focus directly on the "evidence of insurability" issue. In pertinent part they provide as follows:

N.J.S.A. 43:15A-41.1:

a. Any person entitled to become a member of the Public Employees' Retirement System shall not be allowed any of the death benefits . . . if he makes application for membership beyond the year after he first became eligible for membership, . . . unless the member furnishes satisfactory evidence of insurability . . .
N.J.A.C. 17:2-3.1(h):

Optional enrollees under age 60 may qualify for noncontributory and contributory insurance coverage only if ... such application was filed with within one year from the date they first became eligible for enrollment in the system. If an application for an optional enrollee is not received within one year after he became eligible for enrollment, evidence of insurability will be required for the noncontributory and contributory coverage.

Essentially, the argument advanced on behalf of the Board of Trustees highlights two reasons to justify the Board's position: (1) administrative practices and procedures developed and adhered to over many years should still be followed, and (2) to permit the petitioner to succeed would result in prejudice or detriment to the Retirement System. On the other hand, petitioner points out: (a) that the pertinent statutory and regulatory provisions set forth no time limitations with respect to when the evidence of insurability has to be supplied; (b) that no applicant is informed as to when the "evidence of insurability" deadline expires, and (c) that the overall equities present in this case should inure to her benefit.

On the basis of the foregoing, I FIND that:

(a) Petitioner never supplied evidence of insurability as required by N.J.S.A. 43:15A-41.1 and N.J.A.C. 17:2-3.1(b);

(b) N.J.S.A. 43:15A-41.1 and N.J.A.C. 17:2-3.1 (b) set forth no time limitations with respect to when evidence of insurability within a one year's period of time;

(c) Petitioner was never informed that she had to supply evidence of insurability within one year's period of time;

(d) The Board of Trustees did not establish that prejudice or detriment would be visted upon the retirement system in the event petitioner was allowed to: (1) be examined by a physician, or (2) provide definitive evidence of insurability now; and,

(e) The more appropriate and equitable exercise of the Board's discretion would have been to allow the petitioner to be physically examined and to supply evidence of insurability in accord with the relevant statute and regulation.

In addition, I NOTE that the Board of Trustees has determined that the prior administrative practice and procedure in this type of a situation will be (or has been) embodied in a regulation which will (or does) alert the members of the retirement system as to what their exact responsibilities are in this type of a situation.

Thus, I CONCLUDE that petitioner is entitled to be examined by
a physician in order to establish "insurability" for the purpose of securing life insurance coverage in the Retirement System, and I ORDER that the Board of Trustees permit her to so be examined.

After reviewing this Initial Decision, the Board of Trustees of the Public Employees' Retirement System on May 27, 1980, issued the following Final Decision:

The Board of Trustees of the Public Employees' Retirement System at its meeting on May 21, 1980 considered the following in her appeal:
   a. The transcript of the hearing conducted on February 16, 1979
   b. All exhibits
   c. The administrative law judge's report dated May 8, 1980
and by unanimous vote accepted the recommendation of the administrative law judge and reversed the denial of her request to prove insurability.

The Board of Trustees of the Public Employees' Retirement System hereby adopts the findings of fact and conclusions of law of the administrative law judge's report and further adopts the recommendations contained in the administrative law judge's report and incorporates the same herein by inference.