HENRY M. SHIPLEY,
Petitioner,

v.

BOARD OF TRUSTEES,
TEACHERS' PENSION AND
ANNUITY FUND,
Respondent.

Initial Decision: April 16, 1984 Final Decision: May 3, 1984

Approved for Publication by the Director of the Division of Pensions,
Douglas Forrester: March 6, 1985

SYNOPSIS

Petitioner appealed from a decision of the Board of Trustees of the
Teachers' Pension and Annuity Fund which denied his application to
increase his monthly retirement benefits and further denied his claim to
retroactive retirement benefits. The Board based its action on N.J.S.A.
18A:66-32.1(b), the so-called "Workers" Compensation Off-Set."

The administrative law judge assigned to the case found that peti-
tioner was injured while performing his job duties for which he received
a worker's compensation award. Subsequently, petitioner retired on an
ordinary disability allowance. These retirement benefits were based on
the actuarially computed "off-set" of his workers' compensation award

The judge rejected petitioner's argument that because he had taken a
lump sum payment of his worker's compensation award rather than the
remaining installment payments he had suffered a detriment and thus
equitable estoppel should be applied and his pension benefits increased.
The judge noted that although the lump sum payment was less than
what petitioner would have received in installment payments, this was
not a legally sufficient detriment to justify the application of equitable
estoppel.

Upon review, the Board of Trustees of the Teachers' Pension and
Annuity Fund adopted the judge's initial decision.

Richard A. Friedman, Esq. for petitioner (Ruhlman, Butrym and
Friedman, attorneys)
Kathleen Curley, Deputy Attorney General for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Initial Decision

MILLER, ALJ:

STATEMENT OF THE CASE

Henry M. Shipley appeals from a decision of the Board of Trustees of the Teachers' Pension and Annuity Fund denying his application to increase his monthly retirement benefits from $46 to $213.13 and further denying his claim to retroactive retirement benefits totaling approximately $9,600. The Board of Trustees based its denial upon the provisions of N.J.S.A. 18A:66-32.1(b) (the so-called "Workers' Compensation Off-Set").

On July 25, 1983, the instant matter was filed in the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

With one important exception (which will be discussed later), the essential facts in this matter are not in dispute. They were established by stipulations of counsel, by the submission into evidence of various documents and letters, and by the testimony of both petitioner and Sara Septak, Chief of the Bureau of Retirement of the Division of Pensions. Accordingly, I make the following:

FINDINGS OF FACT

Petitioner, who was born on January 28, 1932, began his teaching career on September 1, 1967 at the Essex County Vocational Technical High School. By virtue of this employment, he became enrolled in the Teachers' Pension and Annuity Fund in the latter part of 1967 or early 1968. On March 14, 1974 petitioner was injured while performing the duties of his employment. His last day of active service was June 30, 1975. At the time of his retirement petitioner was given credit in TPAF for ten years and one month of service, of which two years and four months represented credit for workers' compensation payments made on his behalf.

As a result of the injury which he had sustained on March 14, 1974, petitioner received a workers' compensation award on March 1, 1975 (the amount of which was $112 per week for 682 1/2 weeks). Effective January 1, 1978, petitioner was retired on an ordinary disability retirement allowance. He received monthly payments under the disability
allowance of $42.38 until April 1, 1980, at which time the payments were increased to $46 per month retroactive to January 1, 1978. The aforesaid payments were based on the actuarially computed "off-set" of his workers' compensation award under the provisions of N.J.S.A. 18A:66-32.1(b).

On or about July 20, 1982, petitioner first made inquiry by telephone of the Division of Pensions with respect to his ordinary disability retirement allowance and its relationship to his workers' compensation award. By letter dated August 18, 1982, Sara Septak, Chief of the Retirement Bureau of the Division responded to petitioner's inquiry by informing him that his "basic retirement benefit" of $552.04 was reduced to $46 (the annuity apportion of his retirement allowance) per month because of his receipt of periodic workers' compensation benefits. Mrs. Septak further stated:

If and when your periodic Worker's Compensation benefits change or stop, please notify this office since it may be possible to revise your retirement benefit.

Further telephone conversations between petitioner and Mrs. Septak ensued. By letter dated September 29, 1982, Mrs. Septak again informed petitioner that his retirement benefits had been reduced because of the workers' compensation off-set. She added:

If we say that your workers' compensation stops as of now, we would then recompute your benefit based on an actuarial reduction. . . . Based on these facts, we determine that your monthly allowance would amount to $213.13 retroactive to January 1, 1978. Thus if your workers' compensation benefits do indeed stop as of now, we would owe you the difference between the $213.13 and the $46 that you are receiving. Plus, we would give you the difference between the $213.13 and the $42.38 for whatever period you had received that amount. This retroactive payment would amount to approximately $9,600.1

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1 The area of disagreement in this case, to which I previously referred, relates to the telephone advice or information given by Mrs. Septak to petitioner. Petitioner alleges that Mrs. Septak told him that he could get his workers' compensation award in a lump sum and stated that if he did so, his disability retirement allowance would be recomputed so as to result in a sizable increase thereof. Mrs. Septak's recollection of the telephone conversations was different. She testified that petitioner asked what would happen if his workers' compensation payments "stopped," and she replied that it would depend on several factors. She admitted saying to him that if payments "stopped" immediately he would be eligible for an increase in disability payments, but she denied discussing, or even mentioning, the effect of a "commuted" or "lump sum" award or of telling petitioner that by obtaining his workers' compensation award in a lump sum he would receive an increase in his disability pension.

I found both petitioner and Mrs. Septak to be sincere and truthful. I am inclined to think that Mrs. Septak's recollection is more accurate, however, because none of the letters which were exchanged before petitioner's receipt of the $24,910.94 in November 1982 mentioned "lump sum" or "commutation". I believe the problem arose from a difference
Five days prior thereto, i.e., on September 24, 1982, petitioner executed an application for commutation of his workers' compensation award, which application was filed on September 29, 1982 in the Division of Workers' Compensation in Trenton. Petitioner's application for commutation was subsequently approved. In late November 1982 petitioner received a check from the Royal Insurance Company in the amount of $24,910.94. This check bore the following notation:

Final compensation for all injuries sustained on 3/1/74 in accordance with commutation making total payment of $35,486.94 after $2,511.93 advance discount.

By letter dated November 14, 1982 petitioner had advised Mrs. Septak of the fact that he was receiving a "final award from workers' compensation." Petitioner requested that the Division of Pensions "compute and change retirement benefits as of your correspondence dated September 29, 1982." Mrs. Septak responded to the aforesaid letter by one of her own, dated December 9, 1982. In this letter, Mrs. Septak declared:

You had asked this office to calculate the amount of your retirement benefit if your workers' compensation were to cease and you gave us a tentative date of September 30, 1982. We in turn quoted figures to you based on this presumption and, of course, you were advised that these were approximate and based only on your request and tentative information. When we quoted these figures to you we were not aware that you were contemplating getting a lump sum from workers' compensation, which, in effect, is simply your periodic benefits paid in one amount. As stated by telephone, since we now know that you received this lump sum amount, the total amount still must be used as an off-set against your retirement allowance . . . and as a result your allowance from this fund must remain at $46 a month.

Petitioner requested that the Board of Trustees review the entire matter and reinstate his full ordinary disability retirement allowance. The Board determined, however, that his monthly retirement allowance would continue at $46 due to the effect of N.J.S.A. 18A:66-32.1(b). Following this adverse determination, petitioner requested a hearing and, as noted above, the matter was filed with the Office of Administrative Law as a contested case.

of interpretation, petitioner assuming that if his monthly workers' compensation payments "stopped"—for whatever reason—he would be entitled to the increase, and Mrs. Septak assuming that petitioner was intending to give up or to waive all of his remaining workers' compensation payments.

Petitioner used this money to pay various expenses and bills (including a personal loan), to construct a garage for his home, and to purchase new furniture and automotive tools.
ISSUE AND ANALYSIS OF LAW

The only issue to be decided in this case is whether, under the circumstances present here, the principle of equitable estoppel should be invoked in favor of petitioner so as to require the granting of the increased disability retirement allowance which he anticipated receiving. For the reasons to be expressed hereafter, I CONCLUDE that this question must be answered in the negative.

As noted earlier, the applicable statutory section in this case is N.J.S.A. 18A:66-32.1(b) (the workers' compensation "off-set" provision). This section states that if a member who is receiving periodic benefits under the workers' compensation law applies for and receives retirement benefits, "the actuarial equivalent of such periodic benefits remaining to be paid shall be computed and will serve to reduce the pension portion of the retirement allowance payable to the retireant. . . ."

Under the literal language of this section, the Division properly reduced the pension portion of petitioner's retirement allowance because at the time petitioner applied for retirement benefits there were admittedly substantial workers' compensation benefits still "remaining to be paid." Petitioner insists, however, that the doctrine of equitable estoppel requires that this statutory provision be ignored.

The doctrine of estoppel rests upon the principle that where someone has done an act or made a statement which would be a fraud to controvert because another party reasonably relied upon it to his detriment, in the belief that what was done or said was true, conscience and fairness require that the first person not be permitted to repudiate his act, or deny the statement. Summer Cottagers' Ass'n of Cape May v. City of Cape May, 19 N.J. 493 (1955); Bowler v. Fidelity and Gas Co. of N.Y., 99 N.J. Super. 84 (App. Div. 1968). The person invoking estoppel must sustain some damage or detriment.

The pension statute is carefully drawn to protect the integrity of the public and contributed funds from which pensions are paid. Administrative errors by officials in respect of such funds, which are a public trust, cannot on the theory of estoppel be permitted to aggrandize the specific statutory rights of qualified pensioners into illegal depletions of such funds for their private benefit. . . . The applicability of the doctrine of estoppel against public agencies and officials is quite limited, to guard against use thereof to injure the public interest. Id., at 263-264.

It is important to note that the pertinent statute in the instant case, N.J.S.A. 18A:66-32.1(b), specifically requires that in the event a member is approved for retirement benefits while in receipt of periodic benefits under worker’s compensation, an actuarial equivalent of these periodic benefits “remaining to be paid shall be computed and will serve to reduce the pension portion of the retirement allowance . . . .” (emphasis added). When a statute clearly mandates the taking of some action by an administrative agency or clearly precludes the exercise of discretion, the doctrine of estoppel cannot ordinarily be employed. See, O'Neill v. N.J. Treasury Dept., supra, at 214.

Furthermore, estoppel cannot be invoked to subvert a statutory scheme or to cause a governmental body to act in contravention of its governing statute, thereby defeating the public policy intended to be served. Slurzberg v. Bayonne, 29 N.J. 106 (1959); Midland Glass Co. v. Dept. of Env. Prot. N.J., 136 N.J. Super. 194 (App. Div. 1975) cert. dismissed, 70 N.J. 152 (1976); See also, Summer Cottagers' Ass'n v. City of Cape May, supra at 505.

Thus, unless the demands of “justice and good conscience” require otherwise, petitioner is bound by the terms of the statute and must have his retirement allowance reduced. See Miller v. Teachers' Pension and Annuity Fund, 179 N.J. Super. 473, 476 (App. Div. 1981) (equitable estoppel applied to prevent reduction of pension allowances to individuals who had been retired for up to eight years) and Skulski v. Nolan, 68 N.J. 179 (1975) (equitable considerations are relevant in determining propriety of actions—here, re-opening of pension awards—of public entities, where pensioners have acted in good faith and substantially relied on prior decisions of those entities).

Upon careful consideration of the circumstances here, I CONCLUDE that “justice and good conscience” do not require the application of equitable estoppel to effect the relief petitioner seeks. Petitioner alleges that the “detriment” he sustained was the loss of the remaining number of installment payments of his workers’ compensation award. However, one cannot ignore the fact that by obtaining commutation of benefits, he received a lump sum award of almost $25,000. I hereby take official
notice of the fact that this money represents the actuarial equivalent of the money which would have been paid to him in installments over a period of several years. In short, petitioner obtained the entire workers' compensation award to which he was entitled, but he received it years earlier than he ordinarily would have; the price he had to pay for this advance payment was, of course, the fact that the total amount of money received was less as a lump sum than it would have been if he had waited for the full 682 1/2 weeks of installment payments. I am aware of no authority indicating that this kind of situation constitutes a legal detriment sufficient to call for the application of equitable estoppel.

Similarly, the fact that petitioner spent all or part of the lump sum money in ways which, retrospectively, were unwise and which now result in his suffering financial hardship does not, it seems to me, require a different result.

The pension cases cited by petitioner—Miller v. Teachers' Pension and Annuity Fund, supra; Carlsen v. Masters, Mates and Pilots' Pension Plan Trust, 80 N.J. 334 (1980); In re Vaccaro, 131 N.J. Super. 264 (App. Div. 1974), affd, o.b., 66 N.J. 151 (1974); and Bernstein v. Bd. of Trustees, TPAF, 151 N.J. Super. 71 (App. Div. 1977)—are all distinguishable in that the harm sustained by the persons invoking estoppel was clear, immediate, substantial and direct. Specifically, in these cases the individual was threatened with either a reduction, denial or total loss of pension benefits, whereas in the instant case petitioner has only been told that, contrary to his expectations, the pension allowance which he had been receiving for several years, would not be increased.

Finally, it must be recognized that if petitioner were to prevail in this claim, he would in effect be receiving a double benefit from the same injury, i.e., the total workers' compensation award and a full ordinary disability retirement allowance. By enacting N.J.S.A. 18A:66-32.1(b) the Legislature intended to prevent a double recovery of benefits for the same disability. Conklin v. City of East Orange, 73 N.J. 198, 205 (1977).

Accordingly, I CONCLUDE that under the circumstances of this case, the doctrine of equitable estoppel cannot properly be applied so as to defeat the "offset" provisions of N.J.S.A. 18A:66-32.1(b). It is therefore ORDERED that petitioner's application for an increase in his monthly ordinary disability retirement allowance (and for a lump sum retroactive payment of approximately $9,600) be DENIED.
FINAL DECISION BY THE BOARD OF TRUSTEES, TEACHERS' PENSION AND ANUITY FUND:

The Board of Trustees of the Teacher's Pension and Annuity Fund, at its meeting on May 3, 1984, considered the following in Mr. Shipley's appeal:

a. The transcript of the hearing conducted on January 25, 1984,
b. All exhibits,
c. Administrative Law Judge's decision dated April 16, 1984,
d. Exceptions dated March 21, 1984,

and by unanimous vote the Board of Trustees accepted the decision of the administrative law judge and affirmed their previous decision of January 10, 1983 and denied Mr. Shipley's request for an increase in his monthly Ordinary Disability retirement allowance and for a lump sum retroactive payment.

The Board of Trustees of the Teachers' Pension and Annuity Fund hereby adopts the findings of fact and conclusions of law of the administrative law judge consistent with its original determination and further adopts the recommendations contained in the administrative law judge's report and incorporates the same herein by reference.