JOYCE M. SCHAEFFER,
INDIVIDUALLY AND AS
EXECUTRIX OF THE ESTATE
OF GEORGE W. SCHAEFFER, JR.,
Petitioner,
v.
BOARD OF TRUSTEES, PUBLIC
EMPLOYEES' RETIREMENT SYSTEM,
Respondent.

Initial Decision: December 23, 1983
Final Decision: January 18, 1984

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

SYNOPSIS

Petitioner appealed from a determination of the Board of Trustees
of the Public Employees' Retirement System denying her request to
have decedent's retirement benefits changed from maximum allow-
ance without option to option one, that is monthly payments from
a reserve with the remainder of the reserve paid to petitioner as
decedent's beneficiary.

The administrative law judge assigned to the case found that dece-
dent was entirely competent at the time he executed his applications
for retirement benefits and that neither the Board nor the Division
of Pensions had misled decedent or inaccurately stated his retirement
options. The judge determined that petitioner's testimony that her
father, the decedent, had told her that his pension would provide for
her after his death was insufficient to demonstrate either unilateral
or mutual mistake in connection with decedent's selection of retire-
ment benefits.

The judge concluded that where there is no showing of incompeten-
cy, mutual mistake, fraud or other compelling equitable consider-
ations, reformation of a retirement application may not be had. In
addition, respondent has neither the discretion nor authority to de-
viate from the regulatory mandate directing that members may not
withdraw, cancel or change an application of retirement after the
retirement allowance becomes due and payable unless there is a show-
ing of incompetency, mutual mistake, fraud or other compelling
equitable considerations. Nor should the fiscal integrity of the fund
be jeopardized where, as here, a selection of retirement options is demonstrated to have been imprudent because of the retiree's death. Accordingly, the administrative law judge affirmed the action of the Board.

Upon review of this initial decision, the Board of Trustees adopted the decision as its own.

Samuel Ragonese, Esq., for petitioner (Edward Gatier, Esq., attorney)
Ellis I. Medoway, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Initial Decision

MONYEK, ALJ:
Joyce M. Schaeffer, individually and as executrix of the estate of George W. Schaeffer, Jr., appealed from a determination of the Board of Trustees of the Public Employees' Retirement System denying her request to have decedent's (George W. Schaeffer, Jr.) retirement benefits changed from maximum allowance without option to option one, which change was sought to be effectuated after the death of decedent. Accordingly, the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

Prior to the taking of testimony or the offering of other proofs at the administrative judicial proceeding on June 27, 1983, the following stipulations were made by and between counsel for the respective parties:

1. Decedent's date of birth was October 6, 1922.
2. Decedent began employment with the City of Gloucester as a road crewman on March 17, 1952, on which date he received a permanent appointment to said position.
3. Decedent accumulated 29 years, 5 months creditable service in the retirement system.
5. Respondent denied petitioner's request to change decedent's choice of retirement allowance from maximum without option to option 1, by letter dated December 21, 1982.
7. The matter was referred to the Office of Administrative Law as a contested case on February 17, 1983.
The essential operative facts are uncontroversial. The conclusions to be drawn therefrom are in dispute. On August 10, 1981, decedent met with Francis J. Gorman, the Treasurer of the City of Gloucester City, at the City Hall and completed and signed an application for retirement, which was notarized on said date and forwarded to the Division of Pensions. In said application, in response to question number 12, decedent indicated that he wished to receive the maximum monthly retirement allowance without option. On September 21, 1981, Sara A. Septak, Chief, Bureau of Retirement and Claims, Division of Pensions, wrote to decedent and advised that:

This is to advise you that the Board of Trustees, at their regular meeting on September 16, 1981, approved your application for an Early Retirement effective October 1, 1981 in accord with your selection of maximum.

On September 23, 1981, decedent wrote to the retirement system advising:

It is requested that the effective date of my retirement be changed from October 1, 1981 to November 1, 1983.

I have already notified your office of this request by telephone.

In response to decedent's letter of September 23, 1981, Sara A. Septak, on October 19, 1981, wrote the following letter to decedent:

This is in reference to your retirement effective November 1, 1981, under Early Retirement.

Based upon your attained age of 59 and total membership service of 29 year(s) and 7 month(s), the maximum monthly allowance will be $539.59 payable during your lifetime to cease at your death.

Under option 1 the monthly allowance will be $500.59 payable during your lifetime with a balance (if any) of a reserve of $67,248.70 payable to a named beneficiary at your death. This initial reserve will be reduced by each monthly payment of retirement allowance you receive and applies to option 1 only.

Please note that when you apply for your Social Security Benefits you should contact your local Social Security Office.

After retirement you will be covered by an insurance benefit of 3/16ths of your last year's salary which will amount to $2,697.69.

It is required by law that retirants must be living 30 days after the effective date of their retirement or 30 days after approval by the Board of Trustees (whichever is the later date) in order to begin receiving benefits.

Please be advised that any unpaid loan balance at the time of retirement must be paid in full before any retirement allowance checks will be issued to you.

It is required that you complete the enclosed application indicating your selection and have your signature acknowledged by a Notary Public.

Please note that if you receive any periodic Worker's Compensation payments after the effective date of your retirement, your retirement allowance could be subject to a reduction. Therefore, we will need to know the beginning and ending date of the benefit and the amount received.
If you will be changing your mailing address before you can expect to receive payment from our office, please advise us when you move so that any payment to which you may be entitled will be properly directed. All checks disbursed by this office cannot be forwarded but must be returned by the Post Office. [emphasis supplied]

Accordingly, on October 26, 1981, decedent returned to City Hall and completed another Application for Retirement, again indicating that it was his desire to receive the maximum monthly allowance without option, rather than the option one monthly allowance set forth in Sara Septak's letter of October 19, 1981. Again, decedent's Application for Retirement was forwarded to and received by the Division of Pensions. Again, decedent was notified by letter dated November 19, 1981, of the following action taken with respect to his application for retirement:

This is to advise you that the Board of Trustees, at their regular meeting on November 1, 1981, approved your application on an Early Retirement effective November 1, 1981 in accord with your selection of maximum.

Pursuant to his request, decedent retired effective November 1, 1981, and thereafter received a monthly retirement allowance in the sum of $539.89.

On January 21, 1982, decedent died, and petitioner was paid by the Division of Pensions the life insurance proceeds due her in accordance with and pursuant to decedent's retirement selection in the sum of $2,697.69.

In November 1982, petitioner requested respondent to posthumously change decedent's retirement selection from maximum without option to option one benefits. This request was denied, pursuant to N.J.A.C. 17:2-6.2, and this appeal ensued.

Petitioner, decedent's daughter, and decedent's brothers, Jim Schaeffer and Ben Schaeffer, and decedent's sister, Helen Marie Schaeffer, testified that at the time of decedent's making and executing his Applications for Retirement in August and October 1981, and for sometime prior thereto, decedent suffered from chronic obstructive pulmonary disease, pulmonary fibrosis, and emphysema. They further testified that decedent was hard of hearing. These facts were corroborated by the letter of Dr. Charles L. S. Brennan, Jr., to decedent's attorney, Edward L. Gatier, Esq., dated October 17, 1982:

I have had the pleasure of knowing Mr. Schaeffer for almost my entire life and prior to my being a physician in fact. Time moves on so fast that I forget the date of his expiration, but I am sure that you have that. I can attest that Mr. Schaeffer was, in fact, a severe chronic lunger, in our terminology, suffering from chronic obstructive pulmonary disease and pulmonary fibrosis with emphysema. He was also, all of his adult life that I remember, very, very hard of hearing I have no audiometric
test available, mainly due to the fact that George was a very, very hard patient to bring to the doctor’s office since he was so busy working with the City Highway Department and the fact that he really did not like doctors to begin with.

I can attest for certain that his hearing loss was considerable. He would not submit to an audiogram nor would he submit to an eyes, nose, or throat examination but was under extreme difficulty with hearing even in a quiet doctor’s office in extreme proximity to the man.

His expiration was on the basis of a cardiac arrest probably secondary to hypoxemia which was secondary to both pulmonary and cardiac failure, primarily due to the chronic obstructive pulmonary disease...

It was undisputed that decedent had completed the sixth grade by way of education. It was also undisputed that in December 1980, he suffered a fall while hanging Christmas lights, which further aggravated his condition.

Decedent’s daughter, petitioner herein, testified that it was her father’s intention to make her the sole beneficiary of his estate, subject only to a life estate in decedent’s residential premises, in decedent’s sister, Helen Marie Schaeffer, and that her father told her that his pension would provide for her after he died.

Although each of the witnesses who testified on behalf of petitioner alleged that decedent was both hard of hearing and suffering from a chronic pulmonary condition, none asserted that he was mentally incompetent. Neither were any medical proofs submitted to suggest that decedent was mentally incompetent. To the contrary, decedent’s brother, Jim, specifically testified that decedent’s mental condition, even after his physical illness manifested itself by way of a deteriorating pulmonary condition, was the same as it had always been. In response to the question: “Was he the same to you in August and through December—personally, to you—was he the same mentally as far as his condition was with you as he was prior to when he got sick?” Jim responded: “I’d say yes. He was about the same. I mean, I couldn’t see where he really changed anything mentally.” Thereafter, the following colloquy took place:

Q. He didn’t act in any peculiar way?
A. No.
Q. When you did discuss things with him, he made sense with you, is that right?
A. Well, we didn’t discuss things. I mean, we didn’t really discuss nothing. We were brothers and neighbors.
Q. But your conversations were the same kind of conversations that transpired in the past, prior to his becoming sick, right?
A. Right.

Francis J. Gorman, City Treasurer of Gloucester City testified on behalf of respondent, with respect to decedent’s meeting with him on
August 10, 1981, when decedent executed his application for retirement benefits. Mr. Gorman testified that he had been the City Treasurer for 26 years, that he knew decedent for approximately 40 years personally, professionally, and politically, and that he met with decedent on August 10, 1981, for purposes of initiating the processing of decedent's Application for Retirement. He claimed to have been aware that at the time of the completing of the application decedent had been on sick leave and was receiving full salary from the City but that he wasn't actually working. With respect to the completion of the relevant portion of decedent's application for retirement, Mr. Gorman testified as follows:

Q. Now, where it says, "Do you wish to receive the maximum monthly allowance without option," it says "Yes," there.
A. Yes.
Q. Did you write yes?
A. Yes, I did.
Q. Why?
A. At George's instructions. The normal procedure, and I guess I have handled almost 50 of these in my 20 some years, you go through the options that a retiree has. With George, you really didn't have to do that too much, because having been a union representative for many years, George was more knowledgeable of his retirement options than most employees are. George opted for the maximum benefit as most single employees retiring do.

* * * *

Q. Mr. Gorman, before you wrote down yes for maximum monthly allowance, did you advise—in any way did you have discussions—in any way with George Schaeffer as to his other possible selections, and when I say that, I am talking about options one, two, three and four, which are listed right underneath where it says the maximum choice?
A. Yes, I did.
Q. Could you tell the court what transpired?
A. I went through the maximum. Without option is the maximum benefit that you can get per month and the next lowest is option one where the pension fund sets up a fund actuarially based on the age at the time of retirement which if you—that's a lesser amount, and that fund is reduced each month by the amount of the pension benefit that you receive. If you died, you know, before that was exhausted, then the beneficiary would get the balance.

Q. That's option one?
A. That's option one. There is also options two or three where the beneficiary could have been given a pension amounting to one-half or the full pension. But in order to get that, you have to take the lesser amounts each time. The fourth option is where you set up annuity for the beneficiary.

THE COURT: So I am not confused, let me ask you this, Mr. Gorman: Are you now speaking of your awareness of
the various options, or are you speaking about what you spoke to Mr. Schaeffer about at the time that you met with him on August 10, 1981?

THE WITNESS:
I spoke to Mr. Schaeffer about these options, and as I indicated, Mr. Schaeffer was more aware of these than most employees because of his activities union-wise throughout his many years of employment. But we did go over them, and there was no question in my mind that he opted maximum.

Q. To go back to the judge's question, however, Mr. Gorman, were you aware at the time you sat down with George Schaeffer as to all these options and what selections would—how they would affect the beneficiary.
A. Was I aware of them, yes. Yes.
Q. And how long had you been advising members who were about to retire from the Public Employees' Retirement System in a similar situation to Mr. Schaeffer?
A. For the 26 years that I have been in the city treasury.
Q. Now, again when you wrote down yes for maximum, that was after you had explained the various selection options available to Mr. Schaeffer, is that correct?
A. Yes.
Q. At the time you and Mr. George Schaeffer sat down, was there anything that you observed as far as George Schaeffer's demeanor, his actions, the way he talked to you, the way you related to each other? Was there anything at all that indicated to you in any way at all possibly that George Schaeffer was not of sound mind?
A. No.
Q. Was there anything that you could see in your observations when you spoke to George Schaeffer on August 10, 1981, that indicated to you in some way he did not understand the contents of this application for retirement allowance that you were explaining to him and that he was putting his signature on?
A. No. I felt that he was completely aware of the options and all the things in this application. I had no doubt that he had understood them and agreed with what we put down there and when he affixed his signature he affirmed that.
Q. Mr. Gorman, when you sat down with George Schaeffer on this date, August 10, 1981, was there anything again that indicated to you that he was acting differently than he had acted with you in the past? Well, let me strike that. Let me go to the past.
Have you had encounters or contracts with Mr. Schaeffer prior to August 10, 1981, within a month or within two months of August 10, 1981?
A. I really hadn't come in contact with George for possibly a few months before he came in. I don't remember seeing George.
Q. Did you see him within six months prior to August 10, 1981?
A. I really don't recall. Within a year, I probably would say yes, but I don't remember any specific time that I saw him or talked to him other than this.
Q. If we go back to this point in which you saw him prior to the August 10, 1981, meeting with him, was there anything at all that indicated to you he was acting in any way differently from the time before as far as mental competence goes?
A. No.
Q. From a layman's point of view when you sat down and advised and spoke to Mr. Schaeffer, George Schaeffer, on August 10, 1981, from a layman's point of view, would you say he was competent and that he understood what was going on as far as this application goes?
A. Yes, I would.

Sara Septak, the chief of the Retirement Bureau of the Division of Pensions, testified that she has been employed by the Division of Pensions for approximately 32 years and that for the past three years has been chief of the Retirement Bureau. In that capacity it is her responsibility to see that all of the functions of processing are carried out on a timely basis. In the instant case, it was she who sent decedent the letter of October 19, 1981, wherein she described to decedent the benefits he would receive under both maximum monthly allowance without option and the benefits he would receive under option I. This letter was forwarded to decedent subsequent to the receipt by the Division of Pensions of his initial Application for Retirement, wherein he selected maximum. Ms. Septak stated that where a potential retiree is unmarried at the time of the making of his retirement application the Division of Pensions always makes certain that it forwards to such retiree the benefits available under both maximum and option one in order to give the applicant a knowing and intelligent choice of applicable retirement benefits. In the instant case, Ms. Septak's letter of October 19, 1981, was forwarded to decedent one week prior to his submission of his Application for Retirement dated October 26, 1981, and approximately one month prior to respondent's notification that it had approved decedent's Application for Retirement "in accord with your selection of Maximum." Furthermore, it was Ms. Septak's testimony that decedent had the right to change his selection of retirement benefits at any time within 30 days after Board approval and that decedent chose not to make any change in the form of retirement that he originally selected in August and thereafter confirmed in October. It was also Ms. Septak's testimony that printed matter on the back of the application form, as well as on the face of the form itself, alerts the applicant to refer to the retirement booklet published by the Division of Pensions, which specifically explains in detail each of the options available to a retiree. Ms. Septak further testified that in the case at hand no one from the Division of Pensions
or respondent ever discussed directly with decedent either of the Applications in question and that upon receipt of an Application for Retirement each person gets basically the same information from her office and that each receives a letter setting forth at least an explanation of benefits payable under maximum without option and under option one.

John P. Olender, secretary of the Board of Trustees of the Public Employees' Retirement System, testifed on behalf of respondent. It was his testimony that he has held his current position for the last six years and has been employed by the Division of Pensions for approximately 18 years. Mr. Olender testified that the Board of Trustees of the Public Employees' Retirement System has never allowed a change in a retirement allowance selection posthumously. Further, it was the policy of the Board of Trustees, pursuant to the regulation in question, N.J.A.C. 17:2-6.2, not to permit changes in option selections after a retirement allowance becomes due and payable. It was Mr. Olender's testimony that the certifying officer of decedent's employer is not an employee or agent of respondent or the Division of Pensions, but rather merely the conduit who transmits information back and forth between the employer and the Division of Pensions. Mr. Olender testified that in the instant case 30 days after the Board of Trustees acted with respect to decedent's second Application for Retirement, retirement benefits became due and payable and, accordingly, on December 18, 1981, a check was issued to decedent pursuant to his selection of benefits. Thereafter benefits continued to be paid to decedent until he died. Mr. Olender explained that the policy considerations of N.J.A.C. 17:2-6.2 are actuarial soundness of the retirement system and orderly administration of public trust funds. To permit beneficiaries such as petitioner herein to change decedent's benefit selection approximately one year after the selection was made and approximately ten months after the death of the decedent would lead to a "helterskelter" approach to the administration of public trust funds, and therefore, could not be permitted.

N.J.A.C. 17:2-6.2(a) provides:

A member shall have the right to withdraw, cancel or change an application for retirement at any time before his retirement allowance becomes due and payable; thereafter the retirement shall stand as approved by the Board.

The question presented for resolution may be stated as follows:

May decedent's choice of retirement benefits be changed posthumously after retirement benefits have been paid to the decedent while he was alive?
It is initially noted that if decedent had attempted while alive to change his retirement selection, *N.J.A.C.* 17:2-6.2 would have precluded him from doing so. Petitioner herein, therefore, seeks to do that which her father, the decedent, would not have been permitted to do. Therefore, it must be shown that decedent’s selection of retirement benefits was induced by wrongdoing on behalf of the retirement system or the Division of Pensions or, in the alternative, decedent was incompetent at the time he made his selection. The proofs herein, even when considered in a light most favorable to petitioner, do not indicate that either circumstance existed.


In effect, petitioner herein seeks reformation of decedent’s Application for Retirement to reflect a selection of option one benefits rather than maximum without option, as selected by decedent. Reformation is an available remedy where there has been a mutual mistake by both parties or a unilateral mistake by one party accompanied by the fraudulent knowledge and procurement of the other. *Brodzursky v. Pulek*, 75 N.J. Super. 40, 48 (App. Div. 1962). The proofs herein demonstrate neither mutual mistake nor unilateral mistake on the part of decedent accompanied by fraudulent knowledge and procurement on behalf of respondent. The proofs clearly and convincingly demonstrate that respondent in no way wrongfully participated in influencing decedent in his choice of retirement benefits. To the contrary, by its letter of October 19, 1981, it set forth the two options available to decedent and expressly stated that if decedent selected maximum without option, said maximum monthly allowance in the sum of $539.59 payable during his lifetime would cease upon his death. It further stated that if he chose option one he would receive a monthly allowance in a lesser sum payable during his lifetime with a balance of a reserve of $67,248.70 payable to a named beneficiary at his death, which initial reserve would be reduced by each monthly payment of retirement allowance and that this would apply with respect to option one only.

Petitioner also suggests that decedent because of his illness, his limited educational background, and his physical condition at the time that he completed his application for retirement benefits was, perhaps,
mentally incompetent to complete and execute an Application for Retirement. However, petitioner's suggestion is completely unsupported by the proofs. There was not a single shred of competent, credible evidence to support the suggestion of incompetency. Both decedent's brother, Ray, and his sister testified that decedent was mentally competent, albeit physically ill. No medical testimony was presented by petitioner upon which a conclusion of mental incompetency could be drawn. Furthermore, the testimony of Francis J. Gorman was diametrically opposed to such a proposition. Mr. Gorman appeared to be an extremely candid, credible, convincing, and sincere witness. He appeared to be knowledgeable, truthful, and impartial. Both what he said and the manner in which he said it rang clear and true. Both his long and intimate relationship with the decedent in general and the specifics surrounding decedent's completion and execution of his Application for Retirement in August 1981 clearly, unequivocally, and convincingly demonstrated that decedent, although he had a hearing deficiency and was suffering from a pulmonary condition, was well aware of his retirement options and after discussion with Mr. Gorman, at that time, voluntarily, knowingly, and intentionally selected the maximum monthly allowance without option. This conclusion is both reinforced and buttressed by decedent's reiteration of the same option several months later when he executed a second Application for Retirement allowance, again selecting the same maximum monthly allowance without option, after having received respondent's letter of October 19, 1981, wherein he was specifically advised of the consequences of both maximum monthly payment without option and option one benefits. Accordingly, the record is barren of any proofs upon which a conclusion of incompetency could be based, and, therefore, it must be concluded that at best petitioner demonstrated that decedent's choice of retirement benefits at the times that he selected maximum was perhaps imprudent but not the result of incapacity, incompetence, or fraud.

The facts herein do not remotely resemble those set forth in the decision, In the Matter of Gertrude E. Fallon, deceased, Margaret F. O'Horo, (N.J. App. Div., August 4, 1978, A374376) (unreported), where the court found that Ms. Fallon was "not possessed of sufficient mentality to fully comprehend the nature and effect of the business then being transacted by her" as a result of longstanding debilitating, extensive metastases to the chest, skull, mandible, and the skeletal system generally. The court therein further found that the cancerous condition had invaded her brain, that she was under heavy sedation
and slept for long periods of time and that the medication which she was constantly taking clouded her thought processes. The court further relied heavily upon the testimony of her treating physician, who affirmatively stated that Ms. Fallon was incapable of managing her own affairs because of her condition. Additionally, the court specifically held that Ms. Fallon was not possessed of sufficient mentality to fully comprehend the nature and effect of the selection of her retirement benefits and stated that its determination therein was singularly applicable to the facts of that case and concluded, "our decision is dictated by the unusual facts exhibited by the record herein" and "not as a precedent intended to jeopardize the enforcement or integrity of the laws controlling the operation of the Retirement System."

The Board of Trustees of the Public Employees' Retirement System does not have the discretionary power to ignore the regulatory mandates set forth in the New Jersey Administrative Code governing the Pension System; neither does it have the arbitrary and unfettered discretion to allow indiscriminate deviations from the statutory scheme. The legal rights and obligations of both the petitioner and the Board of Trustees are derived from, defined by, and limited to the applicable statutory and regulatory provisions. The Board of Trustees has only those powers set forth in the statute and regulations, and although pension legislation is remedial in nature and thus should be liberally construed, there is no room for construction or interpretation where both the facts and law are clear and unambiguous, and there is no allegation of fraud, deceit, or wrongdoing on the part of either the Board of Trustees or the Division of Pensions. Matthews v. Bd. of Ed. of Irvington, 31 N.J. Super. 292 (App. Div. 1954); Casale v. Pension Commissioner of Newark, 78 N.J. Super. 38 (Law Div. 1963). The regulation here in question is clear, unequivocal and unambiguous. The right to withdraw, cancel, or change an Application for Retirement may not be accomplished after the payment of retirement benefits pursuant to the retireant's selection of benefits. Decedent herein, on two separate occasions, selected maximum benefits without option; the second time he made said selection was after receipt of a letter from the Division of Pensions setting forth in specific and detailed terms the options available to him. He chose to stand by his choice of selection; he retired and received monthly benefits pursuant to his choice. He never indicated any desire to change his selection. To permit his daughter, approximately one year after the effectuation of pension benefits and more than nine months after the death of
decedent, to alter decedent's selection of benefits, based upon mere speculation and conjecture that decedent intended otherwise, would be both contrary to the expressed mandate of the regulation and would permit the accomplishment by indirection of that which could not be accomplished directly.

Accordingly, based upon the testimony heard and evidence adduced, I make the following:

**FINDINGS OF FACT**

1. Stipulations numbered 1 through 8, inclusive, are hereby adopted as findings of fact as though set forth herein at length.
2. Decedent was not incompetent at the time that he executed either of his Applications for Retirement benefits.
3. Neither respondent nor the Division of Pensions in any way mislead decedent, nor did either respondent or the Division of Pensions make any misstatement of fact or law upon which decedent relied to his detriment.
4. Decedent's selection of retirement benefits was the same both before and after respondent's letter to him of October 19, 1981.
5. Pursuant to decedent's selection of benefits, he was retired effective November 1, 1981, and received retirement benefits in accordance with his selection thereof.
6. Decedent at no time evidenced any desire to change, alter, withdraw, or cancel the retirement benefits theretofore selected by him.
7. Neither mutual mistake nor unilateral mistake was demonstrated to have existed in connection with decedent's selection of retirement benefits.

**CONCLUSIONS OF LAW**

1. Reformation of a retirement application may not be had where there is no showing of incompetency, mutual mistake, fraud, or other compelling equitable considerations.
2. The Board of Trustees of the Public Employees' Retirement System has neither the discretion nor the authority to deviate from the regulatory mandate directing that members may not withdraw, cancel, or change an application of retirement after the retirement allowance becomes due and payable, unless there is a showing of incompetency, mutual mistake, fraud, or other compelling equitable considerations.
3. The fiscal integrity of the retirement system's public trust funds may not be jeopardized or encroached upon where, as here, at best a choice of selection is demonstrated to have been imprudent based upon the death of the retiree shortly after the commencement of his receipt of retirement benefits.

I CONCLUDE, therefore, that petitioner failed to demonstrate that decedent was incompetent at the time of his selection of retirement benefits and further that if, in fact, a unilateral mistake was made by decedent said mistake was in no way attributable to, occasioned by, or caused through the actions or inactions of anyone on behalf of the retirement system.

It is, therefore, ADJUDGED that the determination of the Board of Trustees of the Public Employees' Retirement System denying petitioner's request to posthumously change decedent's selection of retirement benefits be and is hereby in all respects AFFIRMED.

FINAL DECISION BY THE BOARD OF TRUSTEES, PUBLIC EMPLOYEES' RETIREMENT SYSTEM:

The Board of Trustees of the Public Employees' Retirement System at its meeting on January 18, 1984 considered the following in Joyce M. Schaeffer's appeal:

a. The transcript of the hearing conducted on June 27, 1983 and September 29, 1983
b. All exhibits
c. The administrative law judge's report dated December 23, 1983. and by unanimous vote accepted the recommendation of the administrative law judge and affirmed the denial of her request for a change in option selection from maximum allowance to option one.

The Board of Trustees of the Public Employees' Retirement System hereby adopts the findings of fact and conclusion of law of the administrative law judge's report 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.

You must check the New Jersey Citation Tracker in the companion looseleaf volume to determine the history of this case in the New Jersey Courts.