

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

REGINALD BINGHAM,
Appellant,
vs.
PUBLIC EMPLOYEES' RETIREMENT
SYSTEM OF NEVADA,
Respondent.

No. 69927

FILED

FEB 10 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for a writ of mandamus in a public benefits matter. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Appellant Reginald Bingham, a former Las Vegas city employee, was terminated from his job in 2010 and started to receive retirement benefits from respondent, the Public Employees' Retirement System of Nevada (PERS). In 2012, Bingham sent a letter to PERS inquiring if he could obtain PERS-based disability benefits. PERS concluded that, because Bingham did not apply for disability benefits in the time set by statute, he was not eligible for disability retirement. See NRS 286.620(1)(b) (providing that a party seeking disability retirement must apply for such while still "in the employ of a participating public employer" in order to be eligible). Bingham administratively appealed that decision, but it was upheld by the PERS Board, which also declined Bingham's invitation to allow him to apply for disability retirement based on equity considerations. See NRS 286.190(3)(a) (giving the PERS Board the discretion to adjust benefits "after an error or inequity has been

determined”). Bingham then filed a petition for writ of mandamus¹ with the district court, alleging that the PERS decision was an arbitrary and capricious abuse of discretion. The district court denied the petition, finding that he failed to timely seek disability retirement and that PERS properly denied his request to file an untimely application, and this appeal followed.

On appeal, Bingham raises the same arguments as he did before the PERS board and the district court. Specifically, he asserts that, even if his request for disability retirement was untimely, the City of Las Vegas sent a letter notifying Bingham that he would need to apply for disability retirement before his termination date in order to be eligible for those benefits, but that this letter was sent to the incorrect address. Thus, Bingham argues that he was not properly notified of this requirement, which constitutes an inequity that the PERS board should have used its discretionary powers under NRS 286.190(3)(a) to correct. In this vein, Bingham claims it does not matter whether his application was just two weeks late, or two years late; the equity principles in NRS 286.190(3)(a) apply regardless.

Having reviewed the briefs and record on appeal, we conclude that the district court did not abuse its discretion in denying Bingham’s petition for a writ of mandamus. *See Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006) (explaining that a district court’s decision regarding a petition for a writ of mandamus is reviewed under an abuse of discretion standard). A writ of mandamus is “available to compel the

¹Initially, Bingham filed a petition for judicial review of the PERS decision, but the parties stipulated to convert that petition to one for mandamus relief. Because neither party asserts that writ relief was an inappropriate avenue for the relief Bingham sought, we do not address that issue further.

performance of an act that the law requires . . . or to control an arbitrary or capricious exercise of discretion.” *Int’l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); *see also* NRS 34.160. In particular, we conclude that Bingham failed to show that PERS abused its discretion in refusing to allow him to seek disability retirement, despite the untimeliness of his request, based on equity considerations and NRS 286.190(3)(a). *See* NRS 34.160; *cf. Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (recognizing that the petitioner carries the burden of demonstrating that the extraordinary remedy of writ relief is warranted).

NRS 286.190(4) defines “error or inequity” as used in subsection (3)(a) to mean “the existence of extenuating circumstances, including, but not limited to, a member’s reasonable and detrimental reliance on representations made by [PERS] or by the public employer . . . which prove to be erroneous, or the mental incapacity of the member.” And, while the list of extenuating circumstances identified in the statute is not exhaustive, “it is significant that none of the examples involves employee fault or neglect.” *See Nev. Pub. Emps. Ret. Bd. v. Smith*, 129 Nev. 618, 627, 310 P.3d 560, 566 (2013).


In this case, Bingham alleges neither detrimental reliance on an erroneous statement by PERS or his employer nor mental incapacity; rather, he only alleges that the letter notifying him of the application deadline was sent to the wrong address. But Bingham points to no law that even requires a public employer to send such a letter or other notice before an employee is terminated or otherwise separates from public service. And, further, he waited approximately two years after leaving public employment to request disability benefits. Thus, the failure to timely apply for disability retirement rests squarely on Bingham’s shoulders rather than that of PERS or Bingham’s prior employer, the City


of Las Vegas. As a result, PERS did not abuse its discretion in declining to use its equitable powers to rectify Bingham's self-inflicted failure to timely request disability retirement. *See id.* at 626-29, 310 P.3d at 566-67 (concluding that PERS did not abuse its discretion in refusing to use NRS 286.190(3)(a) to allow a party to receive retirement benefits that the party did not timely request, when neither PERS nor the employer was at fault for the late application).

Accordingly, because PERS' refusal to allow Bingham to file a late application for disability retirement under equity principles did not constitute an arbitrary or capricious exercise of its discretion, *see id.* at 623, 310 P.3d at 564 (providing that PERS decisions are reviewed like administrative agency decisions such that a court may not substitute its judgment regarding the evidence for that of PERS), we necessarily conclude that the district court did not abuse its discretion in refusing to grant mandamus relief on this ground. *See Int'l Game Tech.*, 124 Nev. at 197, 179 P.3d at 558; *see also Kay*, 122 Nev. at 1105, 146 P.3d at 805.

Based on the foregoing, we affirm the district court's denial of Bingham's petition for mandamus relief.

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Stefany Miley, District Judge
Israel Kunin, Settlement Judge
Kirk T. Kennedy
Christopher G. Nielsen
Woodburn & Wedge
Eighth District Court Clerk