

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

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DONDI STEMPLE,

Applicant below, Petitioner,

v.

No. 23-ICA-308

**WEST VIRGINIA CONSOLIDATED
PUBLIC RETIREMENT BOARD,**

Respondent.

**RESPONDENT WEST VIRGINIA CONSOLIDATED PUBLIC RETIREMENT
BOARD'S RESPONSE BRIEF IN OPPOSITION TO APPEAL**

Submitted by:

Counsel for Respondent:

**J. Jeaneen Legato, WV Bar No. 6978
WV Consolidated Public Retirement Board
601 57th Street S.E., Suite 5
Charleston, WV 25304
(304) 558-3570; Direct Dial: (304) 957-3522;
fax (304) 558-6337; cell (304) 549-8488
jeaneen.j.legato@wv.gov**

TABLE OF CONTENTS

I. Statement of the Case	1
A. Facts	1
B. Procedural History	4
II. Summary of Argument	5
III. Statement Regarding Oral Argument and Decision	6
IV. Standard of Review	7
V. Argument	8
A. Petitioner Stemple failed to meet her burden of proof.	8
B. Requiring forms to be notarized is not a fiduciary duty and the Board is not the party that violated a fiduciary duty.	10
C. The doctrine of laches bars Petitioner's claim	14
VI. Conclusion	15

TABLE OF AUTHORITIES

Cases:

<i>Cain v. PERS</i> , 197 W. Va. 514, 476 S.E.2d 185 (1996)	8
<i>Dadisman v. Moore</i> , 384 S.E.2d 816, 181 W. Va. 779 (1988)	11
<i>Dillon v. Board of Educ.</i> , 171 W. Va. 631, 301 S.E.2d 588 (1983)	8
<i>Gerdes v. Estate of Cush</i> , 953 F.2d 201, 205 (5 th Cir. 1992)	13, 14
<i>Healy v. West Virginia Bd. of Medicine</i> , 506 S.E.2d 89, 92 (W. Va. 1998)	7
<i>Hoffman v. Wheeling Sav. & Loan Ass’n</i> , 133 W. Va. 694, 712, 57 S.E.2d 725, 735 (1950)	10
<i>Muscatell v. Cline</i> , 196 W. Va. 588, 474 S.E.2d 518 (1996)	7
<i>Parsons v. Halliburton Energy Servs., Inc.</i> , 237 W.Va. 138, 785 S.E.2d 844 (W. Va. 2016)	10
<i>Province v. Province</i> , 196 W. Va. 473, 483, 473 S.E.2d 894, 904 (1996)	14
<i>Smith v. State Workmen’s Comp. Comm’r.</i> , 159 W. Va. 108, 219 S.E.2d 361 (1975) ...	8
<i>State Ex. Rel. Affiliated Construction v. Vieweg</i> , 205 W. Va. 687, 520 S.E.2d 854 (W. Va. 1999)	13
<i>State Ex. Rel. Webb v. W.Va. Bd. of Medicine</i> , 506 S.e.2d 930, 203 W. Va. 234 (1998)	15
<i>Woo v. Putnam County Board of Education</i> , 504 S.E.2d 644, 646 (W. Va. 1998)	7

WV Department of Health v. Blankenship, 189 W. Va. 342, 431 S.E.2d 681 (1993) 8

WV Non-Intoxicating Beer Commr' v. A&H Tavern,

181 W. Va. 364, 382 S.E.2d 558 (1989) 8

Statutes, Regulations, and Rules of Court:

W. Va. Code § 5-10D-1 1

W. Va. Code § 18-7A-1 1

W. Va. Code § 29A-5-4(a) 7

W. Va. Code § 29A-5-4(g) 7, 15, 16

Rule 18(a)(4) of the Rules of Appellate Procedure 6, 7

I. STATEMENT OF THE CASE

This is an appeal by Petitioner Dondi Stemple, a member of the West Virginia Teachers Retirement System (TRS), of the refusal by the Respondent West Virginia Consolidated Public Retirement Board (hereinafter “Board”) to reinstate her 2002/2003 refunded contributions with interest and 6.89 years of service credit to her account in the Teachers Retirement System. Petitioner Stemple asserts that such contributions and credit should be reinstated by the Respondent Board because she alleges the refund was fraudulently obtained by her husband at the time without her permission or knowledge and that the Respondent Board violated its fiduciary duty to her by failing to require the refund form to have been notarized.

A. STATEMENT OF FACTS

The Respondent West Virginia Consolidated Public Retirement Board (the Board) is the statutory administrator of ten separate and distinct West Virginia public pension plans. Pursuant to West Virginia Code §5-10D-1, the Board is charged with administering the Teachers Retirement System (TRS) as established in article seven-A [§18-7A-1 et seq.], chapter eighteen of the code.

On April 1, 1976, Petitioner Stemple began her employment with Pocahontas County BOE. *Appx. p. 249.* She continued her employment there until June 15, 1984. *Appx. p. 240.*

By check issued on March 5, 1986, in the amount of \$5,333.43, Petitioner Stemple received a refund of her contributions (7.22 years of service credit). *Appx. p. 236, 241.* She testified that she got a refund to get a place to live. *Appx. p. 67.*

On October 18, 1988, Petitioner Stemple again signed an enrollment form to participate in the Teachers Retirement System (TRS) with the form date reflecting the date of “11-3-88.” *Appx. p. 231.*

On September 28, 1995, she enrolled and elected to participate in the Teachers Defined Contribution Plan (TDC). *Appx. p. 229.* The Teachers Defined Contribution Plan (TDC) is the only defined contribution plan administered by the Respondent Board. The other nine (9) plans, including the TRS are defined benefit plans. A defined contribution plan is similar to a 401k with each member having his or her own account and his or her annuity is comprised of the contributions and earnings on investments. Whereas, in a defined benefit plan the contributions are pooled and invested and the annuity is based upon a formula of two percent times final average salary times years of service.

Petitioner Stemple testified that she married John Laney in August of 2002 and they moved to Virginia. *Appx. p. 72.* She further testified that she left her employment with the Pocahontas County BOE on August 5, 2002. *Appx. p. 73.* Approximately two months later, a TRS request for a refund form was submitted to the Board with a signature date of “10-24-02.” *Appx. p. 218.* Then, two months after that, a request for a TDC refund form was submitted to the Board with a signature date of “12-4-02.” *Appx. p. 216, 217.* Petitioner Stemple testified and alleges that she did not sign these forms and that she suspects that her husband at the time may have signed and submitted them. *Appx. p. 91.*

On November 27, 2002, two State of West Virginia checks were issued in the amounts of \$74.62 and \$384.54 to “PAYEE LANEY DONDI” and were endorsed with the signature “Dondi Laney” on the back. *Appx. p. 175, 176.*

By letter dated January 16, 2003, the Respondent Board notified Petitioner Stemple (previously Shears-Laney) that her contributions and 6.89 years of service credit with TDC was being refunded per her request with checks reflecting a net refund for her employee contributions

in the amount of \$8,194.25 and her employer contributions in the amount of \$4,496.69. *Appx. p. 221.* On January 16, 2003, two State of West Virginia checks were issued to “PAYEE DONDI S. SHEARS LANEY” and were endorsed with the signature “Dondi S. Shears Laney” on the back. *Appx. p. 173, 174.*

Petitioner Stemple testified that she and Mr. Laney divorced in 2012 and around that time she discovered that he had opened and maxed out ten (10) credit cards in her name, that they divided the debt accumulated during the marriage, and that she had to file for bankruptcy. *Appx. p. 77-79.* She further testified that during the marriage that they had a joint bank account but that he may have had a separate secret account and that he handled all their finances and taxes. She also testified that she filed for bankruptcy and was discharged in October 2013.

After the divorce, Petitioner Stemple moved back to West Virginia. A TRS enrollment form was signed by Petitioner Stemple on August 19, 2016. *Appx. p. 194.* On the form, Petitioner Stemple does not list any previous employment with any employers who participate in the TRS. *Appx. p. 194.*

By email dated August 22, 2016, Ms. Ervine in the payroll department with Pocahontas County BOE contacted the Board to inquire which retirement system she should be in and further noted that she was in the TDC plan in 2002 but that “she (Petitioner Stemple) could not remember if she drew that money out and if she did whether she paid it back.” *Appx. p. 195.* By email dated August 23, 2016, Respondent Board employee Ms. Vanhorn responded that since Ms. Stemple did not have an account balance as of 12/31/2007 that she could choose to participate in the TDC or the TRS and that she may want to speak to TRS staff prior to making the choice. *Appx. p. 197.*

According to Petitioner Stemple, her ex-husband John Laney died on September 16, 2016.

Appx. p. 81.

Petitioner Stemple testified that in September of 2022, she contacted the Respondent Board regarding her upcoming retirement. By letter dated September 16, 2022, the Respondent Board sent Petitioner Stemple a retirement estimate which reflected that she had 6.093 years of service credit and an estimate of the amount she would receive if she were to retire July 1, 2023. *Appx. p. 190.* Petitioner Stemple testified that it was around this time that she discovered that her service credit and contributions were *fraudulently* refunded by her husband in 2002/2003.

Deputy Director/Chief Operating Officer Terasa Miller testified that she was unaware of any legislative rule, statute or Board policy that required refund forms to be notarized; that Respondent Board refund forms were never required to be notarized but prior to the Respondent Board's existence in 1991 that the Teachers Retirement Board may have had notarized forms; that three (3) employees handle and process approximately 2500 requests for refunds per year in all ten plans; that Petitioner Stemple would have received quarterly statements reflecting her account balance in the TDC as long as she had a balance; that because taxes must be paid on refunds, the Respondent Board reports refunds to the I.R.S.; and, that she was only aware of one other similar fraud case in which someone fraudulently submitted a change of direct deposit form to the Respondent Board regarding a retired judge and that the Respondent Board handled it by turning it over to the state police. *Appx. p. 111-119.*

B. PROCEDURAL HISTORY

On April 18, 2023, an administrative hearing was held before Hearing Officer Anne Charnock.

On June 7, 2023, Hearing Officer Charnock issued a *Recommended Decision* which

recommended that the Respondent Board should deny Petitioner's appeal.

On June 28, 2023, the Respondent Board considered the appeal at its meeting and issued a *Final Order* adopting the *Recommended Decision* and denying the appeal.

On July 18, 2023, Petitioner filed an appeal with this honorable Court.

II. SUMMARY OF ARGUMENT

Petitioner Stemple has failed to prove that the Respondent Board breached a fiduciary duty that caused her harm. Because no policy, legislative rule or statute is alleged to have been violated, it is questionable whether an administrative appeal is the proper venue to assert a breach of fiduciary duty claim.

Assuming *arguendo* that this is the proper forum, a breach of fiduciary duty claim requires proof of fraud, larceny, breach of trust or some other action outside the limits of the fiduciary's authority. Petitioner Stemple does not allege that the Respondent Board committed any such acts rather she asserts that the Respondent Board or trust fund should be liable for her husband's breach of fiduciary duty to her. The Respondent Board cannot be held liable for the actions of her former husband.

Petitioner Stemple has also failed to show how she has been damaged. Under her own theory, the refund was issued a few months after she was married and utilized as a marital asset similar to her credit card debt that she did not know about but was responsible for half. She now seeks reinstatement of a refund that came from her Teachers Defined Contribution (TDC) account. Unlike the other nine (9) plans administered by Respondent Board, members have separate and distinct accounts in the TDC plan. There is no pool of money to reinstate the refund and because this is an administrative appeal as opposed to a civil action, there is no insurance coverage. It

would be a breach of fiduciary duty to take money from other members' accounts to reinstate Petitioner's refund and/or could also possibly be a crime.

Additionally, Petitioner Stemple's claim is barred by the doctrine of laches and waiver. It is simply incredulous for Petitioner Stemple to assert that she *first* learned of the 2002/2003 refund in the fall of 2022. An IRS 1099R was issued with each of the refunds in 2002/2003. On January 16, 2003, the Respondent Board sent a letter regarding the refund. She was divorced in 2012 and filed for bankruptcy in 2013. Both of those proceedings would have included a review of her retirement accounts. When she became re-employed in 2016, her payroll clerk emailed the Respondent Board and stated that Petitioner Stemple could not remember whether she had received a refund and Respondent Board replied that she had. She also did not list any previous employment on her 2016 TRS enrollment form which strongly indicates that she knew she had refunded the credit from such employment.

Furthermore, members' accounts are not in grave danger because refund forms are not notarized. The Respondent Board has more safeguards in place than Petitioner's bank or credit cards. To obtain a refund the Respondent Board confirms with the employer that the member is no longer employed, verifies the social security number, notifies the IRS, and issues the check payable to the member. Also, the Respondent Board has had only one other similar incident in the last twenty years, and it was timely reported to and handled by the police.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to Rule 18(a)(4) of the Rules of Appellate Procedure, counsel for Respondent believes that oral argument is unnecessary because the facts and legal arguments are adequately presented in the briefs and record on appeal, and the decisional process would not be significantly

aided by oral argument. Rule 18(a)(4) of the W.V. Rules of Appellate Procedure.

IV. STANDARD OF REVIEW

"On appeal of an administrative order, the Court is bound by the statutory standards contained in W. Va. Code § 29A-5-4(a) and reviews questions of law presented de novo; findings of fact by the administrative officer are accorded deference unless the reviewing court believes the findings to be clearly wrong." Syl. Pt. 1, *Muscatell v. Cline*, 196 W.Va. 588, 474 S.E.2d 518 (1996).

The West Virginia Administrative Procedures Act governs the review of contested administrative decisions and issues by a court and specifically provides that:

(g) The Court may affirm the ...decision of the agency or remand the case for further proceedings. It shall reverse, vacate or modify the...decision of the agency if the substantial rights of the petitioner...have been prejudiced because the administrative...decisions are:

- (1) In violation of constitutional or statutory provisions; or
- (2) In excess of statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

West Virginia Code §29A-5-4.

In the absence of an error of law, factual findings by an administrative agency should be given great deference and should not be disturbed on appeal unless clearly wrong or “arbitrary and capricious.” See, e.g. *Healy v. West Virginia Bd. of Medicine*, 506 S.E. 2d 89, 92 (W.Va. 1998). Under the arbitrary and capricious standard, a circuit court which is reviewing the factual findings of an administrative agency must “not substitute its judgment for that of the hearing examiner.” *Woo v. Putnam County Board of Education*, 504 S.E. 2d 644, 646 (W.Va. 1998). Legal issues, such as statutory and regulatory interpretation, are legal matters which are subject to de novo

review. Id.

Interpretations of statutes by administrative bodies charged with enforcing such statutes are to be afforded great weight, and such an agency's construction of these statutes must be given substantial deference. *Sniffen*, citing *WV Department of Health v. Blankenship*, 189 W. Va. 342, 431 S. E. 2d 681 (1993); *WV Non-Intoxicating Beer Commr' v. A&H Tavern*, 181 W.Va. 364, 382 S. E. 2d 558 (1989); *Dillon v. Board of Educ.*, 171 W.Va. 631, 301 S. E. 2d 588 (1983); *Smith v. State Workmen's Comp. Comm'r.*, 159 W.Va. 108, 219 S. E. 2d 361 (1975).

This Court may not confer retirement benefits for employment where the legislature has not so authorized. See *Cain v. PERS*, 197 W.Va. 514, 476 S.E.2d 185 (1996). The rule of statutory construction to liberally construe a remedial statute to the benefit of the beneficiaries of the statute does not operate to confer a benefit where none is intended. Id.

V. ARGUMENT

A. Petitioner Stemple failed to meet her burden of proof.

Petitioner Stemple has the burden of proving her case. Not only has she failed to prove that a fiduciary duty specific to her claim existed and that the Respondent Board breached such duty, but she has also failed to prove that she was harmed by such breach or that such action was not implicitly or explicitly authorized by her or waived by her subsequent action or inaction.

Petitioner Stemple was familiar with refunds. Her 2002/03 refund was not her first refund. In 1986, she received a refund after her first break from employment. When she returned to West Virginia in 2016, her payroll clerk informed the Board by email that Ms. Stemple could not remember if she had also refunded in 2002, and the Board responded that she had. Clearly, if she had forgotten or was unaware of the 2002/03 refund, she was informed about it in 2016.

Additionally, the refund checks were made payable to her name. The signature endorsements on the back of the checks also reflected her name which means they were either deposited into an account bearing her name or were cashed by her or someone successfully pretending to be her. If cashed by someone successfully pretending to be her, then the liability would lie with that entity rather than the Respondent Board or retirement fund.

Furthermore, she submitted no proof to support her claim. She did not present statements from her bank accounts in 2002 or 2003 which would have reflected whether the checks were deposited into her account. She did not submit tax returns from those years which would have reflected whether she had paid taxes on the refunds. She also did not submit any orders from her bankruptcy.

She also failed to submit any Orders regarding her bankruptcy in 2013 or her divorce in 2012. Such Orders would have presumably included a qualified domestic relations order that would have detailed the amount of retirement she and her husband had and how it was to be divided. She testified that her ex-spouse *fraudulently* opened and maxed-out ten credit cards in her name during the marriage and that she was responsible for half of that debt after the divorce because it was debt that was acquired and utilized during the marriage. The refunds were also money acquired and utilized during the marriage; however, she asserts that unlike the credit cards, the Respondent Board or retirement fund should be responsible for this marital asset/debt.

Despite clearly knowing or having good reasons to know about the refunds during her 2012 divorce, 2013 bankruptcy, and again upon her return to employment through the 2016 emails, she never contacted the police and did not contact the Respondent Board until 2022.

Under general principles of contract law, waiver requires proof of “a voluntary act which

implies a choice by the party to dispense with something of value, or to forego some advantage which he might at his option have demanded and insisted on.” *Hoffman v. Wheeling Sav. & Loan Ass'n*, 133 W.Va. 694, 712, 57 S.E.2d 725, 735 (1950); *Parsons v. Halliburton Energy Servs., Inc.*, 237 W.Va. 138, 785 S.E.2d 844 (W. Va. 2016). Petitioner Stemple waived her claim when she divorced her former husband and divided the debts and assets of the marriage, the refund being one which was accumulated during the marriage.

The 2002/03 refunds were acquired and utilized during the marriage. She does not allege that the Respondent Board did anything fraudulent. *If* the refunds were obtained *fraudulently*, they were still obtained and utilized during the marriage and were co-mingled with other marital assets and debts. Petitioner Stemple’s failure to report it to the Board or police and then later ratifying the action in two judicial proceedings regarding her divorce and bankruptcy waives her right to a claim now. It is simply nonsensical for the innocent party such as the Respondent Board or the retirement fund to be held responsible for a refund issued in her name during her marriage and utilized while she was married and then considered and allocated accordingly during the divorce.

Petitioner Stemple has failed to prove each and every element of her claim that the Board breached its fiduciary duty to her as a member of the retirement plan. There was no such duty owed by the Respondent Board. Her husband, not the Respondent Board, may have engaged in self-dealing. His action was the proximate cause of any loss she may have or did suffer.

B. Requiring forms to be notarized is not a fiduciary duty and the Respondent Board is not the party that violated a fiduciary duty.

First, it is questionable whether a *breach of fiduciary duty* is an appropriate issue for an

administrative appeal, especially in this context when no statute or legislative rule is alleged to have been violated. Common law seems to suggest that it is an action sounding in tort, equity, or contract more so than in administrative law. Clearly, the Respondent Board has a fiduciary duty to the plans it administers as well as its members, but here the member does not claim the Respondent Board breached its fiduciary duty to her, but rather she asserts that the Respondent Board could have had additional procedures in place to keep someone else (a spouse) from breaching his fiduciary duty to the member. This proposition creates the slipperiest of slopes ever proposed for administrative agencies.

In *Dadisman*, the Court held that “the PERS Trustees have the highest fiduciary duty to maintain the terms of the trust, as spelled out in the statute.” *Syllabus pnt. 5, Dadisman v. Moore*, 384 S.E.2d 816, 181 W.Va. 779 (W. Va. 1988).

No policy, statute or legislative rule is alleged to have been violated by the Respondent Board in this case ergo no duty could have been breached. This is literally the “Board could have done more argument.” Such a standard would open a floodgate of litigation and cause the plans to incur tremendous liability because literally in every single appeal - the Respondent Board could have done more. For example, literally in every appeal it could be asserted that a Board employee could have called and verified or explained in detail the consequences of a member’s decision or the statutes and rules regarding such decision.

The problem with this proposition is that there are ten separate and distinct retirement plans with approximately 75,000 active members and 70,000 retirees who are serviced by less than 100 Board employees. Deputy Director Terasa Miller testified that 3 employees handle approximately 2500 requests for refunds in a year in addition to other work performed by them. Processing a

refund is not as simple as the Board sending a request to the Auditor to issue a check to the member. The Respondent Board must verify the service credit, contributions, and interest, then verify with the last known employer that the member is no longer employed prior to sending the request to the Auditor to issue a check and remove the service credit and contributions from the member's account.

Another problem with imposing additional duties, standards, or procedures upon the Respondent Board that are subjective and not found in statute or legislative rule is the backlash the Board would receive from its members and retirees for the additional time-consuming work and expense they would incur to access their money. In this case, Petitioner Stemple suggests having a form notarized may have prevented her husband from accessing her refund. However, many of the members and retirees are older and lack transportation and/or do not have easy access to a notary or are unwilling to pay for one. Also, in this case, such an additional procedure may not have prevented her husband from tricking her into signing it or forging it and having a friend notarize it. Assuming fraud occurred in this case, he is the one who perpetrated the fraud, not the Respondent Board.

Again, it is important to note that no policy, rule, or statute requires refund forms to be notarized and that banks too are depositories of individuals' money and banks do not require checks to be notarized. Millions of checks are issued and mailed every day by state agencies, banks, and other institutions throughout the nation many times with a telephone call, facsimile, or email request without any requirement of a notarized form. Imagine if banks were to require every check you write to be notarized.

The safeguards in those cases are far less than those utilized by the Respondent Board in

this case. Name, birth date, social security and account number must be provided to the Board and the check is issued in the member's name so that it can be deposited into the member's account or cashed by the member. Petitioner testified that her ex-husband opened ten (10) credit cards she did not know about during their marriage, yet she rather than the credit card company was responsible for that debt during the divorce because it was a marital asset just like the refund.

In this case, the check was issued in Petitioner Stemple's name and the endorsement on the back was Petitioner Stemple's name which indicates that it either went into an account bearing her name (possibly joint) or was fraudulently cashed by someone pretending to be her. Once again, fraud not perpetrated by the Respondent Board but rather someone else and/or possibly negligence on the part of the bank if the bank cashed it for someone other than her.

Additionally, Petitioner Stemple cannot show that any action taken by the Board was the proximate cause of her alleged loss. In discussing a possible claim involving a breach of fiduciary duty, the Court in *Gerdes* noted "although this Court has not previously identified precisely the elements of a cause of action for a breach of a fiduciary duty, courts have held that the elements of such a cause of action are the existence of the fiduciary relationship, its breach, and damage proximately caused by that breach, and that "a cause of action for breach of fiduciary duty requires proof of fraud, breach of trust, or an action outside the limits of the fiduciary's authority." *Gerdes v. Estate of Cush*, 953 F.2d 201, 205 (5th Cir.1992).; cited in concurring opinion of – *State Ex. Rel. Affiliated Const. v. Vieweg*, 205 W. Va. 687, 520 S.E.2d 854 (W. Va. 1999)

In *Gerdes*, the attorney was sued for failing to inspect the property that was the subject of the agreement between his client and a scammer. In deciding whether the claim against the attorney was governed by the one (1) year negligence statute of limitations or ten (10) year breach

of a fiduciary duty standard, the Court held, “in the absence of self-dealing or a breach of the duty of loyalty, negligence by [an attorney] is subject to the one year prescriptive period and that there was no evidence that the attorney placed his interests above the plaintiff’s in this particular case.” *Gerdes v. Estate of Cush*, 953 F.2d 201 (5th Cir. 1992).

Like that case, the Respondent Board in this case did not violate a fiduciary duty to Ms. Stemple. The Board did not engage in any self-dealing or put the Board’s or fund’s interest above her interest. With respect to its “fiduciary” duty, the Respondent Board is required to and did act in an honest, loyal, impartial manner with her account and all members’ retirement accounts. The Respondent Board did not violate any “fiduciary” duty in this matter when it processed a request for a refund in the same manner it does for all such requests and caused a check to be issued made payable to the member. Petitioner Stemple’s husband at the time may have breached a fiduciary duty that is the proximate cause of any loss she alleges but the Board did not.

Additionally, the Teachers Defined Contribution System (TDC) is the only defined contribution plan administered by the Respondent Board. Unlike the defined benefit plans in which all members’ contributions are pooled and invested, all members in the TDC have separate individualized accounts and choose their investments. It would be a clear breach of the Respondent Board’s fiduciary duty to the other members of the TDC plan and possibly a crime to remove money from their accounts to reinstate Petitioner Stemple’s refund. A refund she essentially admits was utilized during her marriage.

C. The doctrine of laches bars Petitioner Stemple’s claim.

The doctrine of laches bars Petitioner Stemple’s claim for being untimely. The doctrine of laches was stated in *Province v. Province*, 196 W.Va. 473, 483, 473 S.E.2d 894, 904 (1996):

'The elements of laches consist of (1) unreasonable delay and (2) prejudice.'..." See *State ex rel. Webb v. W. Va. Bd. of Medicine*, 506 S.E.2d 830, 203 W.Va. 234 (W. Va. 1998).

Petitioner Stemple's 2002/2003 refunds were issued payable to her name and were endorsed on the back with a signature reflecting her name. As previously noted, if she was unaware of it at the time, she certainly became aware of it or had reason to know about the refund checks when she paid her taxes that year. She also had reason to know about the refund during her divorce in 2012 and bankruptcy in 2013 in which marital debt and assets including retirement accounts were divided and she again knew about it in 2016 when she returned to employment and had her payroll clerk inquire with the Respondent Board as to whether she had refunded. Her former husband died in 2016. Petitioner Stemple never contacted the police and did not contact the Respondent Board until 2022. Petitioner Stemple's delay in asserting her claim after she knew or clearly should have known about it has greatly prejudiced the police and the Respondent Board's ability to recoup the lost funds because the perpetrator has been dead for seven (7) years. Because the delay was unreasonable and prejudicial, her claim should be barred by the doctrine of laches.

VI. CONCLUSION

Petitioner Stemple's former husband may have breached a fiduciary duty to her, but the Respondent Board did not. If fraud did occur by her husband as she alleges, then it should have been resolved in the divorce and/or he or his estate should be held responsible rather than the TRS and TDC funds and its other members.

When the Court reviews a final order of an agency, it determines whether the agency's action and final order violated one the following:

§29A-5-4. Judicial review of contested cases.

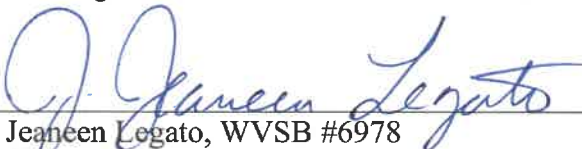
(g) The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision, or order are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency;
- (3) Made upon unlawful procedures;
- (4) Affected by other error of law;
- (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In this case, Petitioner Stemple has failed to prove that the Respondent Board violated any of the six criteria listed above in the Administrative Procedures Act and Respondent prays that this Court will affirm its *Final Order*.

RESPECTFULLY SUBMITTED,
West Virginia Consolidated Public Retirement Board,

By Counsel:


J. Jeaneen Legato, WVSB #6978
W.V. Consolidated Public Retirement Board
601 57th Street S.E., Suite 5
Charleston, West Virginia 25304
Phone (304) 558-3570 ext, 52409
Fax: (304) 558-6337
Direct dial (304) 957-3522
Cell (304) 549-8488
jeaneen.j.legato@wv.gov

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Respondent.

CERTIFICATE OF SERVICE

I, J. Jeaneen Legato, counsel to the WV Consolidated Public Retirement Board, do hereby certify that *Respondent's, West Virginia Consolidated Public Retirement Board's, Response Brief in Opposition to Appeal*, filed herein on this 14th day of December 2023, was forwarded to counsel for Petitioner by email (Lonnie.Simmons@dbdlawfirm.com) and U.S. Mail with proper postage affixed on the same day of said filing, to the following address:

Lonnie Simmons, Esq.
Dipiero, Simmons, McGinley & Bastress
PO Box 1631
Charleston, WV 25326

Submitted by:
Counsel for Respondent:


J. Jeaneen Legato, WV Bar No. 6978
WV Consolidated Public Retirement Board
601 57th Street S.E., Suite 5
Charleston, WV 25304
Office: 304-957-3522; Cell 304-549-8488
Fax 304-558-6337
jeaneen.j.legato@wv.gov