IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

WILLIAM GEORGE,	)	
	)	
Employee,	)	C.A. No. 08A-05-008 JRS
	)	
v.	)	Board of Pension Trustees
	)	Appeal No.: 08-01/121515
BOARD OF PENSION TRUSTEES,	)	
	)	
Employer.	)	

Date Submitted: October 10, 2008
Date Decided: January 29, 2009

Upon Appeal from the Board of Pension Trustees.
AFFIRMED.

This 29th day of January, 2009, upon consideration of the appeal of William L. George, Jr. (Appellant), from the decision of the State Board of Pension Trustees ("the Board") denying Appellant's request to be granted creditable service for his employment from January 2, 1979 through September 30, 1979, based on unaudited estimates provided to Appellant by the State of Delaware Office of Pensions ("Pension Office"), it appears to the Court that:

1. Appellant was employed as a special investigator and then as a Deputy Attorney General with the Department of Justice from January 2, 1979 until his retirement in 2007. Appellant's employment from January 2, 1979 through September

30 1979, was funded by the now defunct Comprehensive Employment and Training Act Program ("CETA"), a federal program administered by state and local governments. By statute, use of CETA funds for state administered retirement or pension plans was strictly prohibited[1] and, in fact, no pension contributions were withheld from Appellant's payroll during this time period.

2. In 2005, Appellant began to think about early retirement. He called the Pension Office and set up an in-house counseling meeting to discuss his options. On May 5, 2005, Appellant met with Linda Hinkle at the Pension Office. During this meeting, Ms. Hinkle and Appellant went through an "Employee Counseling Checklist." The Checklist included a section entitled "Estimated Benefit Calculation." The purpose of this section was to estimate Appellant's retirement date and, based on that date, to estimate the amount of his pension creditable service and benefit calculation. Ms. Hinkle provided Appellant with a "Pension Benefit Estimate." At the bottom of this Estimate, in all capital letters, appeared the following disclaimer:

> THIS STATEMENT REPRESENTS ONLY AN ESTIMATE OF CREDITED SERVICE AND POTENTIAL BENEFITS. ACTUAL SERVICE CREDIT AND BENEFITS WILL BE DETERMINED ONLY

[1] *See State ex rel. Baxley v. U.S. Labor Dept.,* 463 F.Supp. 652, 653 (M.D.Ala. 1979) (noting that 29 C.F.R. § 98.25, which became effective on October 1, 1977, prohibited the use of CETA funds by state retirement systems).

AFTER AN AUDIT OF AN EMPLOYEE'S REPORTED SERVICE CREDIT IS COMPLETED.[2]

3. During the May 5th meeting, Appellant determined that he had accrued an estimated 27 years of pension creditable service, and that if he retired early, his monthly pension would be reduced by 0.2% per month for each month short of 30 years pension creditable service. At this time, Appellant was not aware that his CETA funded employment did not qualify as pension creditable service. Appellant also discovered that his employment with the Newark School District, from 1977 through 1978, may, in fact, have been pension creditable. As a result, Appellant sought to obtain documentation of this employment, and was later credited an additional one year, four months, and 26 days for his Newark School District employment. Following the May 5th meeting, Appellant did not seek an audit of his service record. He did, however, conclude that he could not afford to retire early.[3]

4. Appellant visited the Pension Office again at the end of March 2007, this time meeting with Dianne Johnson. Based on the estimates he had received during the May 2005 meeting, Appellant believed he was nearing the completion of a full 30 years of pension eligible service and again wanted to discuss his retirement options. Appellant brought several documents with him to this meeting including, *inter alia*,

---

[2] Tr. of Pension Brd. Hrg. at Ex. 2 (February 13, 2008).

[3] Tr. of Pension Brd. Hrg. at 18:8-11 (February 13, 2008).

the documents provided to him in the May 2005 meeting, his employment records from Newark School District, and the Comprehensive Annual Statements from the last several years provided to him by the Delaware Public Employees' Retirement System ("DPERS"). At the top of each Comprehensive Annual Statement was a disclaimer, in bold capital letters, reading:

> **THIS STATEMENT REPRESENTS ONLY AN ESTIMATE OF CREDITED SERVICE AND POTENTIAL BENEFITS. ACTUAL SERVICE CREDIT AND BENEFITS WILL BE DETERMINED ONLY AFTER AN AUDIT OF AN EMPLOYEE'S REPORTED SERVICE CREDIT IS COMPLETED.**[4]

5. Prior to the March 2007 meeting, Appellant had become "very familiar" with the Pension Office's website and the calculator provided therein for the purpose of estimating monthly benefits.[5] A disclaimer displayed at the bottom of the webpage containing the benefits estimate calculator states that any estimate is "for illustrative purposes only…[and]is not a guarantee of benefits that may be available to a member at retirement. Any reliance on information obtained through this benefits estimator must be done solely at the user's own risk."[6] The disclaimer further noted that "[a]ll member accounts are subject to final audit."[7]

---

[4] Tr. of Pension Brd. Hrg. at Ex. 4 (February 13, 2008).

[5] Tr. of Pension Brd. Hrg. at 20:16-21:4 (February 13, 2008).

[6] Tr. of Pension Brd. Hrg. at Ex. 6 (February 13, 2008).

[7] *Id.*

6. During the March 2007 meeting, Ms. Johnson went through a new "Employee Counseling Checklist" with Appellant. Appellant had chosen a tentative retirement date of August 1, 2007. Based on that date, Ms. Johnson provided Appellant with a new "Pension Benefit Estimate" containing the same disclaimer as the estimate he received in May 2005. Although Appellant's service record still had not been subject to an audit, it was estimated that Appellant had accrued 29 years, 11 months, and 24 days of pension creditable employment with the State of Delaware.

7. After the second meeting, Appellant engaged in several discussions with his supervisor regarding his contemplated retirement. Appellant had recently prosecuted a high profile murder case resulting in a hung jury, and it was set to be retried in September 2007. Appellant was mindful that the retrial may conflict with his contemplated retirement date. Appellant also had approximately 100 other assigned criminal cases that he needed either to resolve or pass off to other prosecutors before he retired. Ultimately, Appellant submitted his resignation on August 24 noting that he intended to retire on October 31, 2007. Appellant did not request an audit of his service record prior to submitting his resignation.

8. Appellant received acceptance of his resignation on September 11, 2007. On approximately September 13, Appellant purchased a plane ticket for travel to Florida in November, where he planned to meet a friend for a month-long sailing trip

to the Bahamas. Three other friends were also scheduled to participate in the trip. Appellant's plane ticket cost less than $200, and that was the only financial expense he incurred in preparation for the trip.[8]

9. Appellant met with Lori Smith, a DOJ Human Resources Specialist, on September 20, 2007. Ms. Smith advised Appellant that he would not have accrued 30 years of pension eligible service if he chose to retire on October 31st because his employment as an investigator at the DOJ from January 2, 1979 to September 30, 1979 had been funded under the federal CETA program and, therefore, was not pension creditable employment. This was the first time Appellant became aware that he may not receive pension credit for his employment during that time period, and he requested that Ms. Smith verify the information. Ms. Smith received verification from the State Pension Office that Appellant's CETA funded employment was not pension creditable on September 24, 2007, and she informed Appellant thereafter in writing.

10. On October 5, 2007, Appellant submitted a letter to the Pension Office requesting reconsideration of the decision to exclude his CETA funded employment from his pension creditable service.[9] In this letter, Appellant did not dispute the fact that no pension was withheld from his payroll during the period in question.

[8] Tr. of Pension Brd. Hrg. at 37:4-5 (February 13, 2008).

[9] Tr. of Pension Brd. Hrg. at Ex. 1 (February 13, 2008).

Nevertheless, Appellant asserted that his employment during that time period should be considered pension creditable service based on the doctrine of promissory estoppel. Simultaneously, Appellant continued to process his retirement request.

11. Diane Haase, DOJ's Director of Human Resources, testified at the February 13, 2008 hearing that she spoke to Appellant's supervisor regarding Appellant's situation. The supervisor indicated to Ms. Haase that Appellant could extend his service at DOJ pending the outcome of his reconsideration request. Ms. Haase conveyed this option to Appellant shortly after September 20, 2007, when it was first discovered that Appellant's CETA funded employment may not be pension creditable. Appellant responded that "he already had some vacation plans and would not be able to change his date."[10] On October 9, 2007, Ms. Haase sent a follow-up email to Appellant advising him of the likelihood that the Pension Board would not reach a decision on his request for reconsideration until 2008. Ms. Haase again recommended that Appellant discuss changing his retirement date with his supervisor. Appellant did not respond to Ms. Haase's email, nor did he discuss delaying his retirement date with anyone within the DOJ. Instead, Appellant submitted his completed retirement application and opted to have his remaining vacation time paid

[10] Tr. of Pension Brd. Hrg. at 93:17-19 (February 13, 2008).

out on October 12, 2007, with full knowledge that he may not receive pension creditable time for his CETA funded employment.[11]

12. On October 18, 2007, the Pension Office affirmed the exclusion of Appellant's CETA funded employment from his pension creditable service, and denied Appellant's request for reconsideration. On October 26, 2007, Appellant appealed the Pension Office's decision to the Board. Despite uncertainty regarding the Board's pending decision on his appeal, Appellant officially retired on October 31, 2007.

13. The appellate hearing took place before the Board on February 13, 2008. At the hearing's start, Appellant and the Pension Office stipulated that "the final pension time calculated by the Pension Office and the DOJ [was] accurate with respect to [Appellant's] actual service to the State which qualified for pension credit."[12] Therefore, the sole issue before the Board was Appellant's administrative estoppel claim.

14. During the hearing, Appellant acknowledged that "there was no doubt in [his] mind" that the information with which he was provided at the Pension Office

---

[11] *See* Tr. of Pension Brd. Hrg. at Ex. 1 (February 13, 2008) (Appellant's October 5, 2007 letter to the Pension Office requesting reconsideration of the Office's decision to exclude his CETA funded employment from his pension eligible service).

[12] *In re: The Appeal of William L. George, Jr.,* Appeal No.08-01/121515 at 1 (April 25, 2008).

was an "educated guesstimate" as opposed to an "exact figure."[13] In fact, Appellant "realized that until [he] received his last paycheck any figure [the Pension Office] gave [him] was an estimate."[14] Appellant was also aware that there was uncertainty as to the pension credit eligibility of his previous employment with the Newark School District in his first meeting at the Pension Office. Appellant admitted, in fact, that he was "amazed that [he] was going to get service credit" for his employment during that time period.[15] Despite these acknowledgements, Appellant claimed in the hearing that he "absolutely under no circumstances thought that [the Pension Office] wouldn't know how long [he] had been working for the State."[16]

15 According to Appellant's hearing testimony, he knew "there was a possibility that he could withdraw [his resignation] if he wanted" prior to his actual retirement date. He "gave that some thought, but for a number of reasons [he] decided that that was not a viable option for [him]."[17] Appellant also testified that, as of the hearing date, he believed his former position at DOJ remained open.[18]

---

[13] Tr. of Pension Brd. Hrg. at 25:14-26:4 (February 13, 2008).

[14] Tr. of Pension Brd. Hrg. at 26:14-16 (February 13, 2008).

[15] Tr. of Pension Brd. Hrg. at 31:3-5 (February 13, 2008).

[16] Tr. of Pension Brd. Hrg. at 30:6-9 (February 13, 2008).

[17] Tr. of Pension Brd. Hrg. at 40:10-41:23 (February 13, 2008).

[18] Tr. of Pension Brd. Hrg. at 34:11-12 (February 13, 2008).

16. David Craik, pension administrator for the State of Delaware, testified that a state employee's pension contributions are placed into a "trust fund," with calculation of benefits upon an employee's retirement "set in Delaware statute."[19] When a state employee is preparing to retire, that employee can set up a counseling session at the Pension Office, as did Appellant, for the purpose of estimating his/her retirement benefits. No audit of a state employee's service record is made prior to or during a counseling session. An audit may occur "at the time of retirement when [the Pension Office] process[es] their pension application."[20] An audit may also occur prior to retirement if requested by the employee, or after retirement when the Pension Office goes through its financial audit each summer.

17. Mr. Craik testified that the Pension Office, as administrator of a trust, is bound by state and federal laws. By Delaware statute, benefits from the State Employee Retirement Plan ("the Plan") are "due and payable…only to the extent provided in [Title 29, Chapter 55 of the Delaware Code], and neither the State nor the State Employee's Pension Plan shall be liable for any amount in excess of such sums."[21] Furthermore, retirement benefits are subject to retroactive adjustment for

---

[19] Tr. of Pension Brd. Hrg. at 55:21-23 (February 13, 2008).

[20] Tr. of Pension Brd. Hrg. at 58:6-12 (February 13, 2008).

[21] 29 DEL. C. § 5549.

three years following a state employee's retirement date.[22] In addition to the limitations imposed by Delaware statue, Mr. Craik testified that administration of the Plan is also subject to "IRS type of guidelines that [the administrators] are only allowed to pay what's owed to an employee."[23]

18. Ms. Hinkle and Ms. Johnson, the two retirement counselors with whom Appellant had met during his visits to the Pension Office, testified at some length during the February 13th hearing. Ms. Hinkle confirmed that counselors do not participate in audits of state employee's service records; rather, counseling sessions provide only an estimate of benefits an employee may receive upon retirement. Ms. Hinkle also testified that she typically suggests that employees request an audit of their service records prior to retirement; however, she was unable to recall if she had made this specific recommendation to Appellant. Ms. Johnson's testimony was very similar to Ms. Hinkle's. She verified that, as a counselor, she did not take part in audits of an employee's service record. During a counseling session, however, she always conveyed that the information she provided was merely an estimate. Both Ms. Hinkle and Ms. Johnson also testified that that the paperwork provided to Appellant during his counseling sessions used the term "estimate" with regard to calculation of

[22] 29 DEL. C. § 5533.

[23] Tr. of Pension Brd. Hrg. at 68:5-7 (February 13, 2008).

benefits and retirement dates, and contained the disclaimers previously discussed in this opinion.[24]

19. The Board issued its decision on April 25, 2008, and found that no promise was made to Appellant because the numerous disclaimers "sufficiently provide notice that the pre-retirement counseling sessions are estimates and cannot be relied upon as verification of either creditable service, or compensation."[25] The Board was "unable to conclude that [Appellant], particularly as a practicing attorney, was unaware of the significance of the various disclaimers appearing on the various statements and estimates he received from the Pension Office."[26] In light of these disclaimers, Appellant could not reasonably rely upon the Pension Office's estimates. The timing of the discovery that Appellant's CETA funded employment did not qualify as pension creditable service was also significant to the Board's decision. The Board found that Appellant had the opportunity to delay his retirement date in order to receive an unreduced pension credit, but instead chose to retire "fully informed of the status of his retirement benefit after the audit of his service and compensation were

[24] Tr. of Pension Brd. Hrg. at 71:7-73:8, 79:20-84:8 (February 13, 2008).

[25] *In re: The Appeal of William L. George, Jr.,* Appeal No.08-01/121515 at 9 (April 25, 2008).

[26] *In re: The Appeal of William L. George, Jr.,* Appeal No.08-01/121515 at 8 (April 25, 2008).

completed."[27] In fact, when Appellant retired on October 31, 2007, he did so knowing that "he was going to receive a reduced service pension and that the Pension Office had denied his request for reconsideration."[28]

20. The Board members also concluded that the relief requested by Appellant, to "grant pension credit where it was not creditable in the first instance," would be contrary to their fiduciary duties as trustees of the pension fund.[29] The Board pointed to a prior decision of this Court, noting that "the basic purpose and intent of the Pension Plan requires careful preservation of the Trust Fund for its intended beneficiaries—those individuals who have entered and remained in public service in reliance upon it and who have been obligated to contribute to it."[30]

21. On appeal to this Court, Appellant alleges that the Board erred in refusing to apply the equitable remedy of administrative estoppel to the facts in his case. That is, he contends that the Board erred as a matter of fact and law by failing to find that (1) the Pension Office's provision of erroneous information to Appellant constituted a promise (2) which the Pension Office could reasonably expect to induce

---

[27] *In re: The Appeal of William L. George, Jr.,* Appeal No.08-01/121515 at 8 (April 25, 2008).

[28] *In re: The Appeal of William L. George, Jr.,* Appeal No.08-01/121515 at 8 (April 25, 2008).

[29] *In re: The Appeal of William L. George, Jr.,* Appeal No.08-01/121515 at 7-8 (April 25, 2008).

[30] *In re The State Employees' Pension Plan,* 364 A.2d 1228, 1237 (Del.Super. 1976).

action or forbearance on Appellant's part, (3) that Appellant reasonably relied to his detriment on this erroneous information in selecting a retirement date, and (4) that the Pension Office's promise is binding because injustice can be avoided only by enforcement of this promise.

22. This Court has repeatedly emphasized the limited extent of its appellate review of administrative determinations. The Court's review is confined to ensuring that the Board made no errors of law and determining whether "substantial evidence" supports the hearing officer's factual findings.[31] Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[32] It is "more than a scintilla but less than a preponderance of the evidence."[33] The "substantial evidence" standard of review contemplates a significant degree of deference to the Board's factual conclusions and its application of those conclusions to the appropriate legal standard.[34] Questions of law that arise from the hearing officer's decision are subject to *de novo* review, pursuant to Superior Court Civil Rule 3(c), which requires the Court to determine whether the Board erred in

---

[31] *Canyon Cont. v. Williams,* 2003 WL 1387137 at *1 (Del. Super. Ct.); *Hall v. Rollins Leasing,* 1996 WL 659476 at *2-3 (Del. Super.).

[32] *Breeding v. Contractors-One, Inc.,* 549 A.2d 1102, 1104 (Del. 1998).

[33] *Id.*

[34] *Hall,* 1996 WL 659476 at*2 (*citing* DEL. CODE ANN. TIT. 29 § 10142(d)).

formulating or applying legal precepts.[35] In its review, the Court will consider the record in the light most favorable to the prevailing party below.[36]

A. The Board's Decision was Supported by Substantial Evidence

23. The factual record consists of the Employee Counseling Checklists and Pension Benefit Estimates provided to Appellant during his meetings with Ms. Hinkle and Ms. Johnson; the DPERS Comprehensive Annual Statements provided to Appellant for the years 2004, 2005, and 2006; a print out of the Pension Office's website for In-Person Retirement Counseling; a printout of the State Employee Calculator; Appellant's October 5, 2007 letter to the Pension Office requesting reconsideration; the Pension Office's October 18, 2007 letter denying Appellant's request; Ms. Haase's email to Appellant advising him to change his retirement date; and testimony from Appellant and Pension Office employees David Craik, Linda Hinkle, Dianne Johnson, Lori Smith, and Diane Haase.

24. Testimonial evidence necessarily implicates an inquiry by the fact finder into the credibility of the witnesses testifying before him. The Board is in the best position to make that inquiry. Credibility determinations made by the Board will not be disturbed on appeal unless the Court determines that the hearing officer abused his

---

[35] *See Anchor Motor Freight v. Ciabattoni,* 716 A.2d 154, 256 (Del. 1998).

[36] *General Motors Corp. v. Guy,* 1991 WL 190491 at *3 (Del Super.).

discretion.[37] On appeal, the Court will not independently "weigh the evidence, determine questions of credibility, and make its own factual findings and conclusions."[38] In this case, the combined physical evidence and testimony of Appellant and the Pension Office employees provided the Board with substantial evidence upon which to conclude that Appellant's administrative estoppel claim must fail. Indeed, the factual record with respect to Appellant's estoppel claim really is not in dispute. It is the Board's application of those facts to the law with which Appellant takes issue.

B. The Board's Decision Denying Appellant's Benefits Was Free From Legal Error.

25. Prior to the hearing before the Board, Appellant stipulated to the Pension Office's determination that no pension was withheld during the period of his CETA funded employment from January 2, 1979 to September 30, 1979. Appellant further stipulated that the Pension Office's calculation of his pension creditable service correctly excluded his CETA funded employment.[39] Therefore, the only question

---

[37] *Simmons v. Delaware State Hosp.* 660 A.2d 384, 388 (Del.Super).

[38] *Johnson v. Chrysler Corp.,* 213 A.2d 64, 66 (Del.Super 1965).

[39] Tr. of Pension Brd. Hrg. 6:13-7:3 (February 13, 2008).

before the Board was whether Appellant had demonstrated, by clear and convincing evidence, all three prongs of his administrative estoppel claim.[40]

26. The Board's decision was free from legal error because it properly applied the law as articulated in *Pattanayak v. Board of Pension Trustees*, to the facts of record.[41] In *Pattanyak,* the Court set forth the elements of an administrative estoppel claim: (1) that a promise was made, (2) that the promisor reasonably expected the promisee to act or refrain from acting based on that promise, (3) that the promise did, in fact, rely on this promise to his detriment, and (4) that manifest injustice will result if the promise is not enforced.[42] Appellant, relying solely upon *Keating v. Board of Education*[43] and *Blackwell v. Board of Pension Trustees,*[44] asserts that representations made to him by employees of the Pension Office constituted promises upon which he reasonably relied to his detriment in selecting a retirement date and actually retiring on that date. Appellant's reading of these two cases is incorrect, as both are easily distinguishable from his case.

---

[40] *Pattanayak v. Board of Pension Trustees,* 1998 WL 442684 at 2 (Del.Super.) (noting that an administrative estoppel claim must be supported by clear and convincing evidence).

[41] *Pattanayak v. Board of Pension Trustees,* 1998 WL 442684 (Del.Super.).

[42] 1998 WL 442684 (Del.Super.).

[43] 1993 WL 460527 (Del.Ch).

[44] 1997 WL 718630 (Del.Super.).

27. *Keating* dealt with a teacher who was informed that while her contract would not be renewed, she would be rehired after obtaining her teaching certification.[45] After obtaining certification, the school principal told the teacher that she was rehired, although she was being transferred to another school.[46] Specifically, the principal told the teacher that she could purchase a car she had planned to buy now that her employment contract had been renewed.[47] The teacher purchased the car, and did not seek an alternative teaching position for the following school year.[48] At the end of year school picnic, the teacher's transfer to another school was the topic of much discussion, and a banner was displayed at the event congratulating the teacher on her tenure.[49] In fact, unbeknownst to the teacher, her rehiring depended upon approval by the School Board.[50] Approximately three weeks after being told she was rehired, the teacher was informed that the School Board had voted not to rehire her.[51] This was the first time she was told that her rehiring was contingent upon the School

---

[45] *Keating*, 1993 WL at *1.

[46] *Id.* at *2.

[47] *Id*.

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

Board's decision. The teacher brought an action claiming administrative estoppel against the Board of Education and seeking "an order compelling her reinstatement as a teacher…and for back pay."[52]

28. *Keating* found detrimental reliance only after concluding that the teacher relied upon the offer of continuing employment to her detriment ***before*** she was advised that the offer was contingent and ultimately withdrawn. Unlike *Keating*, in this case, the Board found that Appellant's decision to retire was made ***after*** he was fully informed of "the status of his retirement benefit after audit of his service and compensation were completed."[53] Indeed, Appellant stated that he knew "there was a possibility that he could withdraw [his resignation] if he wanted" prior to his actual retirement date. Apparently, he "gave that some thought, but for a number of reasons [he] decided that that was not a viable option for [him]."[54] Therefore, the Board found that Appellant pursued his retirement knowing "that the Pension Office had denied his request for reconsideration," and that, unless his appeal was successful, "he was going to receive a reduced service pension."[55]

---

[52] *Id.* at *1.

[53] *In re: The Appeal of William L. George, Jr.,* Appeal No.08-01/121515 at 8 (April 25, 2008).

[54] Tr. of Pension Brd. Hrg. at 40:10-41:23 (February 13, 2008).

[55] *Id.*

29. In *Blackwell*, the appellant, who had suffered a stroke, met with an employee of the Pension Office in search of a disability pension.[56] During this meeting, the appellant was informed that part time employment would not affect the amount of his disability pension payments.[57] The appellant, based on this advice, resigned from his full time position and accepted a part time position with the same State employer.[58] Initially, the appellant was denied a disability pension because he was "not legally eligible for disability pension benefits while he was employed with the State."[59] The appellant subsequently ended his employment with the State.[60] His disability pension payments were then calculated based on his lower part-time salary, as opposed to the full-time salary he had been receiving at the time he became disabled.[61] In applying administrative estoppel to the appellant's claim, the court noted the "unusual facts" of the case and that the appellant had, in reliance on the Pension Office's representations, "changed his position to his detriment."[62]

---

[56] *Blackwell*, 1997 WL 718630 at *1.

[57] *Id.*

[58] *Id.*

[59] *Id.*

[60] *Id.*

[61] *Id.*

[62] *Id.* at *3.

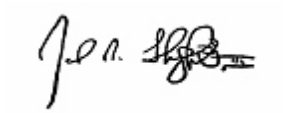
30. Like this case, *Blackwell* involved the Board of Pension Trustees. But, unlike this case, the promises and representations at issue in *Blackwell* did not come with the clear disclaimers that accompanied each calculation and estimate upon which Appellant rests his estoppel claim. In Appellant's case, the Board, relying on *Pattanayak*, found that disclaimers and estimates are not equivalent to promises. Indeed, *Pattanyak* involved disclaimers identical to the ones in this case, and supports the Board's finding that when such disclaimers are given, the Pension Office has not made a promise. In the absence of a promise, Appellant cannot satisfy the essential first element of an administrative estoppel claim. Additionally, the Board was "unable to conclude" that a practicing attorney such as Appellant "was unaware of the significance of the various disclaimers appearing on the various statements and estimates he received from the Pension Office."[63] The Court agrees.

31. Based on the foregoing, the Court is satisfied that the Board applied the correct legal standards and that its decision is supported by substantial evidence. Accordingly, the decision of the Board denying Appellant's request to be granted pension creditable service for his CETA employment from January 2, 1979 through September 30, 1979, time not otherwise eligible for creditable service, must be **AFFIRMED.**

---

[63] *In re: The Appeal of William L. George, Jr.,* Appeal No.08-01/121515 at 8 (April 25, 2008).

IT IS SO ORDERED.



Judge Joseph R. Slights, III

Original to Prothonotary

cc: William L. George, Jr., Esq.
Elio Battista, Jr., Esq.
Janice R. Tigani, Esq.