

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (4th) 130545-U

NO. 4-13-0545

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 4, 2014

Carla Bender
4th District Appellate
Court, IL

YVONNE JOHNSON,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Champaign County
THE EXECUTIVE COMMITTEE OF THE BOARD)	No. 12MR453
OF TRUSTEES OF THE STATE UNIVERSITIES)	
RETIREMENT SYSTEM,)	Honorable
Defendant-Appellee.)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court (1) found (a) the State Universities Retirement System of Illinois (SURS) had standing to seek reimbursement of disability benefits, and (b) section 15-153.1(c) of the Pension Code (40 ILCS 5/15-153.1(c) (West 2008)) does not contain an intent requirement; and (2) affirmed the Executive Committee's determination the offset amount must be recalculated using 40 1/7 weeks, instead of 75 weeks.

¶ 2 In November 2003, plaintiff, Yvonne Johnson, was awarded disability benefits by the State Universities Retirement System of Illinois (SURS) retroactive to August 17, 2003, based on a June 18, 2003, injury. In May 2007, SURS was notified Johnson received an Illinois workers' compensation award for 75 weeks beginning December 16, 2002. In December 2007, SURS notified Johnson it was required to reduce her SURS disability benefits by the amount of the overlapping workers' compensation benefits and sought reimbursement of \$21,573.24, an amount later changed to \$27,161.10. Johnson sought administrative review.

¶ 3 In October 2011, the Claims Panel of SURS issued a written opinion upholding the SURS staff's determination Johnson was required to reimburse SURS but finding the \$27,161.10 figure was incorrect. It ordered SURS staff to recalculate the offset amount using a figure of 40 1/7 weeks, rather than 75 weeks. Both Johnson and SURS filed exceptions to this decision and in April 2012, the Executive Committee of the Board of Trustees of SURS (Executive Committee) issued a final administrative decision upholding the Claims Panel's decision in its entirety. In June 2013, the circuit court affirmed the decision of the Executive Committee insofar as it held the Executive Committee's decision requiring Johnson to reimburse SURS was not against the manifest weight of the evidence, but it held the workers' compensation offset to be \$27,161.10 (the amount initially calculated by the SURS staff).

¶ 4 Plaintiff appeals, asserting (1) SURS lacks standing to seek reimbursement, (2) she should not be required to reimburse SURS for the amount of overpayment received because she did not intend to receive a double recovery, (3) the circuit court erred in finding \$27,161.10 was owed, and (4) it would be egregious to require her to pay back the money.

¶ 5 We affirm the portion of the circuit court's judgment upholding the determination of the Executive Committee, vacate the portion of the circuit court's judgment finding the amount of the offset to be \$27,161.10, and affirm and reinstate the Executive Committee's order directing SURS staff to recalculate the workers' compensation offset.

¶ 6 I. BACKGROUND

¶ 7 In September 2003, Johnson filed an application for disability benefits as the result of a June 2003 on-the-job accident. In November 2003, SURS notified her by letter she would begin receiving disability benefits from SURS in the amount of \$1,216.79 per month retroactive to August 17, 2003. Contained within that letter was a notice tracking section 15-

153.1(c) of the Illinois Pension Code (Pension Code) (40 ILCS 5/15-153.1(c) (West 2002)), stating as follows:

"If you qualify for benefits under any State or Federal Worker's Compensation or Occupational Diseases Acts for any period for which disability benefits are payable by SURS, the disability benefit paid by SURS will be reduced by an amount equivalent to such Worker's Compensation or Occupational Diseases payment."

Johnson's disability benefits expired on February 1, 2006, at which time she retired and began collecting her SURS retirement benefits.

¶ 8 In March 2007, SURS received notice of an Illinois workers' compensation arbitration decision in two workers' compensation cases Johnson had previously filed for accidents occurring on December 16, 2002 (No. 03-WC-28424), and May 8, 2002 (No. 02-WC-28303). In the workers' compensation cases, Johnson was awarded permanent partial disability benefits for 75 weeks, equating to a 15% loss of person as a whole or \$25,272, beginning on December 16, 2002. In December 2007, SURS notified Johnson by letter an audit of her disability claim revealed she received a workers' compensation award from April 17, 2004, through January 31, 2006, in the amount of \$1,045.15 per month, whereas her SURS disability benefit was \$1,216.79 per month. Due to the required workers' compensation offset, SURS informed Johnson it had overpaid her \$21,573.24 and sought reimbursement. In November 2009, this amount was corrected to reflect an overpayment of \$27,161.10. Johnson filed a written request for review.

¶ 9 In July 2011, a hearing was conducted before the Claims Panel, resulting in an October 2011 written decision. The Claims Panel upheld the SURS staff's determination Johnson was subject to the workers' compensation offset, but it found the amount of the offset was improperly calculated, even though Johnson never contested the amount of the offset. The Claims Panel directed staff to recalculate the workers' compensation offset after finding Johnson had only received duplicate payments for 40 1/7 weeks instead of the 75 weeks originally calculated. Both Johnson and SURS filed exceptions to the Claims Panel's decision, resulting in an April 2012 final administrative decision by the Executive Committee upholding the Claims Panel's decision in its entirety. Johnson appealed.

¶ 10 In June 2013, the circuit court affirmed the decision of the Executive Committee insofar as it held the Executive Committee's decision requiring Johnson to reimburse SURS was not against the manifest weight of the evidence, but it held the workers' compensation offset to be \$27,161.10 (the amount initially calculated by the SURS staff).

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, Johnson asserts (1) SURS lacks standing to seek reimbursement, (2) she should not be required to reimburse SURS for the amount of overpayment received because she did not intend to receive a double recovery, (3) the circuit court erred in finding \$27,161.10 was owed, and (4) it would be egregious to require her to pay back the money.

¶ 14 A. Standard of Review

¶ 15 Pursuant to section 15-188 of the Pension Code (40 ILCS 5/15-188 (West 2010)), the Administrative Review Law (735 ILCS 5/art. III (West 2010)) applies to all proceedings for judicial review of the final administrative decisions of the Board of Trustees (Board) of SURS.

We review the administrative agency's decision rather than the judgment of the circuit court.

Marconi v. Chicago Heights Police Pension Board, 225 Ill. 2d 497, 531, 870 N.E.2d 273, 292 (2006).

"The applicable standard of review—which determines the extent of deference afforded to the administrative agency's decision—depends upon whether the question presented is a question of fact, a question of law, or a mixed question of law and fact. [Citations.] Rulings on questions of fact will be reversed only if against the manifest weight of the evidence. [Citation.] In contrast, questions of law are reviewed *de novo* [citation], and a mixed question of law and fact is reviewed under the clearly erroneous standard [citations]." *Id.* at 532, 870 N.E.2d at 292-93.

¶ 16

B. Standing

¶ 17

Johnson contends because SURS failed to assert its right to credits under subsection 8(j)(2) of the Workers' Compensation Act (820 ILCS 305/8(j)(2) (West 2008)), which provides for credits in cases of double recovery, before the arbitrator or the commission in the workers' compensation cases, it has waived whatever right it had to them. See *Board of Education of City of Chicago v. Chicago Teachers Union, Local No. 1*, 86 Ill. 2d 469, 476, 427 N.E.2d 1199, 1201-02 (1981) (by failing to claim the credits and showing it was entitled to them before the Industrial Commission or the arbitrator, the Board of Education "waived whatever rights it had to them"). Conversely, SURS claims because Johnson failed to raise this argument before the SURS Claims Panel, the SURS Executive Committee, or the circuit court she has procedurally forfeited the issue. See 735 ILCS 5/3-110 (West 2012) (no new or additional

evidence shall be heard on review of a final administrative decision); *Carpetland U.S.A., Inc. v. Illinois Department of Employment Security*, 201 Ill. 2d 351, 396-97, 776 N.E.2d 166, 192 (2002) (declining to reach due process claim because it was not raised during the agency proceeding). Alternatively, SURS contends section 8(j)(2) of the Workers' Compensation Act (820 ILCS 305/8(j)(2) (West 2012)) is not applicable to SURS disability benefits.

¶ 18 Section 8(j)(2) of the Workers' Compensation Act provides as follows:

"Nothing contained in this Act shall be construed to give the *employer* or the *insurance carrier* the right to credit for any benefits or payments received by the employee other than compensation payments provided by this Act, and where the employee receives payments other than compensation payments, whether as full or partial salary, group insurance benefits, bonuses, annuities or any other payments, the *employer* or *insurance carrier* shall receive credit for each such payment only to the extent of the compensation that would have been payable during the period covered by such payment." (Emphases added.) 820 ILCS 305/9(j)(2) (West 2008).

¶ 19 We agree section 8(j)(2) of the Workers' Compensation Act does not apply to SURS. SURS is neither Johnson's employer nor an insurance carrier. Further, neither the Workers' Compensation Act nor the Pension Code require SURS be made a party to proceedings under the Workers' Compensation Act. The *Board of Education* case relied on by Johnson is inapposite here, because that case dealt with a private agreement between the Board of Education and the Chicago Teachers Union. SURS is not a private benefit plan and, thus, has standing.

¶ 20 C. Section 15-153.1 of the Pension Code

¶ 21 Next, Johnson argues because she did not "try to intentionally receive double recoveries," she should not be required to reimburse SURS for any overpayment under section 15-153.1(c) of the Pension Code.

¶ 22 Section 15-153.1(c) of the Pension Code (40 ILCS 5/15-153.1(c) (West 2008)) provides, in relevant part, as follows:

"In determining the monthly benefits payable under this Article, a deduction shall be made equivalent to any benefits payable to any employee under any State or Federal Workers' Compensation or Occupational Diseases Acts for any period for which disability benefits are payable."

Johnson asserts courts have interpreted this provision of the Pension Code to prevent *intentional* double recoveries from the workers' compensation system and the State. In support of her position, she cites this court's decision in *Taylor v. State Universities Retirement System*, 203 Ill. App. 3d 513, 522, 560 N.E.2d 893, 899 (1990), where we noted, "[t]he purpose of this legislation is to prevent SURS participants from obtaining double recoveries of disability benefits [citation] and to facilitate recoupment of SURS disability benefits to the extent a SURS participant is eligible for workers' compensation or occupational diseases benefits for a period of time for which he or she received SURS benefits." Further, Johnson asserts, without citation to any authority, "since the statute was written to avoid any fraud or deception, [she] should not have to be forced to comply with any subrogation since she received the SURS benefits without any intention to deceive."

¶ 23 Despite Johnson's argument to the contrary, neither the Pension Code nor case law requires an individual must "intentionally receive double recoveries" by committing "fraud or deception" to be liable for reimbursement to SURS for such double recovery. *Taylor* did not impose any intent requirement with respect to the offset, nor did it conclude the rationale for the statute was to prevent intentional double recoveries. In her reply brief, Johnson asserts, "[i]f *** the legislature had meant that the deduction would only be triggered when a double recovery occurred even if the SURS participant was not at fault, it would have added those very words." We are not convinced.

¶ 24 "The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent, and the plain language of the statute is the best indication of that intent." *People v. Martin*, 2011 IL 109102, ¶ 21, 955 N.E.2d 1058. "We will not depart from the plain language of the statute by reading into it exceptions, limitations, or conditions that conflict with the express legislative intent." *People v. Bocclair*, 202 Ill. 2d 89, 100, 789 N.E.2d 734, 741 (2002). Here, the legislature's intent was for SURS be reimbursed for the amount of any disability benefits paid to a recipient who also received benefits under a State or Federal Workers' Compensation or Occupational Diseases Act for the same time period. The purpose is to prevent a double recovery of any sort, not an intentional double recovery obtained through fraud or deception. Reading any intent requirement into the statute would significantly alter its meaning and, thus, we decline to do so. It is immaterial that Johnson did not intend to deceive SURS.

¶ 25 Further, we note Johnson was notified in the SURS disability benefits approval letter if she qualified for workers' compensation benefits for the same time period in which she was paid disability benefits by SURS, SURS would offset the amount equivalent to such

workers' compensation payment. Additionally, Johnson received SURS disability benefits four times previously, in 1982, 1989, 1992, and 1998, and on each occasion, she was notified in writing of the workers' compensation offset.

¶ 26 D. Johnson's Obligation To Reimburse SURS

¶ 27 Last, Johnson asserts the circuit court erred in ordering her to reimburse SURS \$27,161.10 because this was the only number before it. She points out the final administrative decision in this case directed SURS staff to recalculate the workers' compensation offset using a formula of 40 1/7 weeks rather than the 75 weeks used to obtain the \$27,161.10 figure. In contrast, SURS contends the circuit court was correct because the amount of the offset was not disputed by Johnson in prior proceedings and, thus, the Claims Panel and the Executive Committee should not have modified the figure.

¶ 28 In its written decision (adopted by the Executive Committee), the Claims Panel noted Johnson's award of 75 weeks' workers' compensation permanent partial disability benefits began to run on December 16, 2002. Johnson's SURS disability benefits began to run on August 17, 2003, and terminated on February 1, 2006. Thus, the Claims Panel found, of the 75 weeks of workers' compensation benefits awarded, Johnson received a double recovery during only 40 1/7 of those weeks because she began receiving SURS disability benefits on August 17, 2003. Accordingly, SURS staff was directed to recalculate the offset amount consistent with that formula.

¶ 29 As noted previously, we review the administrative agency's decision—in this case the Executive Committee's decision—rather than the judgment of the circuit court. See *Marconi*, 225 Ill. 2d at 531, 870 N.E.2d at 292. The Executive Committee, in adopting the Claims Panel's calculation, found Johnson received a double recovery during 40 1/7 weeks. We note SURS did

not appeal the Executive Committee's decision to reduce the number of weeks Johnson received a double recovery in the circuit court. At oral argument, counsel for SURS conceded this fact. Further, on appeal to this court, SURS fails to adequately develop its argument with citation to authorities to assist us in determining whether the Executive Committee erred in its calculation. Thus, we decline to do so.

¶ 30 E. Requiring Reimbursement to SURS is Not Egregious

¶ 31 Johnson further argues to require her to reimburse SURS any amount of money would be egregious because (1) it was not her fault she received these benefits or was only notified she should not have received them long after they had been paid, (2) the benefits she received have been depleted, (3) she is on a fixed income, and (4) reimbursing SURS would be an extreme hardship on her. While we are certainly sympathetic to Johnson's financial circumstances, the plain language of the Pension Code requires SURS disability benefits to be reduced by the amount of the workers' compensation benefits paid during the same period of time. We recognize she was not at fault for receiving both benefits, but she was notified in the letter approving her SURS disability benefits if she qualified for workers' compensation benefits, her SURS benefits would be reduced by that amount. Further, SURS could not have notified her of the offset amount until it had notice of her workers' compensation award, which was well after the SURS disability benefits ceased. The statute does not contain an exception applicable to Johnson.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm the portion of the circuit court's judgment upholding the determination of the Executive Committee, vacate the portion of the court's judgment finding the amount of the offset to be \$27,160.10, and affirm and reinstate the

Executive Committee's order directing SURS staff to recalculate the workers' compensation offset.

¶ 34 Affirmed in part and vacated in part; Executive Committee's decision reinstated and affirmed.