

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-5348

September Term, 2019

FILED ON: OCTOBER 25, 2019

EUGENE ZOGLIO,

APPELLANT

v.

STEVEN T. MNUCHIN,

APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:17-cv-01594)

Before: GARLAND, *Chief Judge*, and TATEL and GRIFFITH, *Circuit Judges*.

JUDGMENT

This case was considered on the record from the United States District Court for the District of Columbia and the briefs of the parties. The Court has accorded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). For the reasons set out below, it is

ORDERED and **ADJUDGED** that the decision of the district court be **AFFIRMED**.

Eugene M. Zoglio challenges the refusal of the Office of D.C. Pensions (the “Office”) to reinstate his disability annuity under the District of Columbia Police Officers and Firefighters’ Retirement Plan (the “Retirement Plan”). *See* D.C. CODE § 5-701 *et seq*.

Zoglio served as an officer in the District’s Metropolitan Police Department from 1958 until 1970, when he began to suffer from a psychiatric disorder after a work-related incident. Zoglio retired and started receiving a disability annuity under the Retirement Plan. Soon enough, however, Zoglio returned to work—first as an adjunct lecturer at a community college (in 1972), then as a real estate broker (in 1974), and finally as a practicing lawyer at his eponymous firm (in 1978). In 1984, the Retirement Plan’s administrator determined that Zoglio’s “earning capacity” had been “restored” and ordered Zoglio’s disability-annuity payments to cease. J.A. 17.

Since 1997, the Secretary of the Treasury (the “Secretary”) has borne financial and administrative responsibility for this Retirement Plan. *See* District of Columbia Retirement Protection Act of 1997, Pub. L. 105-33, 111 Stat. 715 (codified as amended at D.C. CODE § 1-801.01 *et seq.*); *see also* D.C. CODE §§ 1-803.01, 1-803.02, 1-807.05. Currently, the Secretary allows an independent agency in the District government to adjudicate initial claims for benefits. *See id.* § 1-809.01; 31 C.F.R. §§ 29.103(a)(1), 29.404(a); Mnuchin Br. 6. An unsuccessful claimant may appeal to the Office, which is within the Department of the Treasury. *See* D.C. CODE § 1-805.02(a)(2); 31 C.F.R. § 29.405; Treas. Dir. 13-20 (Oct. 6, 2006); Mnuchin Br. 6.

In 2014, Zoglio, then seventy-eight years old, commenced proceedings to reinstate his disability annuity. The Office (in due course) concluded that Zoglio failed to show that he was entitled to a disability annuity under the Retirement Plan’s terms. Of relevance here, those terms state that a retiree’s disability may be “reestablished if his disability recurs, or when his *earning capacity* is less than 80% of the rate of compensation of the position occupied immediately prior to retirement.” D.C. CODE § 5-714(a)(2) (emphasis added). Interpreting this language, the Office concluded that a retiree (like Zoglio) must show that (1) he lacks a certain “earning capacity”—construed to mean his “*ability* to earn income,” J.A. 66-67 (emphasis added)—and (2) he “suffers from the same disability” that forced him to retire, J.A. 68. The Office found that Zoglio failed to make either showing. Zoglio sued in the district court, but the court granted summary judgment in the agency’s favor. This timely appeal followed.

Although the District Court treated Zoglio’s claim as an APA challenge, Zoglio’s cause of action arises under the District of Columbia Retirement Protection Act, D.C. CODE § 1-815.01, not the APA. The district court had exclusive jurisdiction over Zoglio’s suit under D.C. Code § 1-815.02(a), and we have jurisdiction under D.C. Code § 1-815.02(b). We owe “great deference” to the Office’s interpretation of the Retirement Plan, *id.* § 1-805.02(b), and we review *de novo* the district court’s grant of summary judgment, *see Chenari v. George Washington Univ.*, 847 F.3d 740, 744 (D.C. Cir. 2017).

Zoglio challenges the Office’s conclusion that “earning capacity” means the ability to earn income. Zoglio Br. 14-16. He claims, instead, that a retiree’s “earning capacity” is equal to his actual “income ... from wages or self-employment.” Zoglio Br. 15 (quoting D.C. CODE § 5-714(a)(2)). If a retiree’s “earned income” falls below the threshold in the Retirement Plan for any reason, Zoglio concludes, then the Retirement Plan entitles him to “a reestablishment of the annuity.” Zoglio Br. 20.

Zoglio’s argument fails for at least two reasons. *First*, a person’s “earning capacity” usually refers to his “ability or power to earn money, given the person’s talent, skills, training, and experience.” *Earning Capacity*, BLACK’S LAW DICTIONARY 547 (8th ed. 2004). The ordinary meaning of “earning capacity,” therefore, supports the agency’s interpretation. *Second*, as the Office noted, Zoglio’s interpretation would allow a former annuitant to “decide for any or no reason to stop working” and still collect a regular check. J.A. 67. That result, however, would entitle retirees to disability benefits without requiring them to have a disability. *See O’Rourke v.*

D.C. Police & Firefighters' Ret. & Relief Bd., 46 A.3d 378, 389 (D.C. 2012) (explaining that the Retirement Plan's "primary purpose" is to "serve[] as the worker's compensation plan for the District's police and firefighters"). We owe "great deference" to the agency's interpretation of the statute, and we cannot say that its interpretation is unreasonable. D.C. CODE § 1-805.02(b).

We need not address Zoglio's challenge to the Office's other basis for denying his claim for benefits—*i.e.*, that Zoglio failed to show that he "suffers from the same disability that entitled him to a disability annuity." J.A. 68. Nor need we address his argument that the Office erroneously requires that both circumstances ("earning capacity" and "same disability") be present for an annuity to be reestablished since the statute is stated in the disjunctive ("or"). The Office rejected Zoglio's claim for benefits because he failed to show insufficient earning capacity, and we will "uphold an agency action resting on several independent grounds if any of those grounds validly supports the result." *Pierce v. SEC*, 786 F.3d 1027, 1034 (D.C. Cir. 2015).

For the foregoing reasons, we affirm the judgment of the district court granting the Secretary's motion for summary judgment.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41(a)(1).

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk