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## **Cologna v. Board of Trustees, Police & Firemen's Retirement System**

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*New York Law School, 2015*

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ERIK W. LANE

*Cologna v. Board of Trustees, Police &  
Firemen's Retirement System*

59 N.Y.L. SCH. L. REV. 243 (2014–2015)

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General Patton's "slap heard around the world"<sup>1</sup> is still felt today. Post-traumatic stress disorder (PTSD) is a psychiatric condition that can occur after an individual experiences, witnesses, or confronts an event, or series of events that involves or threatens death or serious injury.<sup>2</sup> These traumatic events often engender a severe degree of fear or hopelessness in the individual experiencing them.<sup>3</sup> Symptoms of PTSD include severe anxiety, nightmares, fits of anger, intense flashbacks, insomnia, and memory impairment.<sup>4</sup> These symptoms can significantly vitiate the afflicted individual's daily activities<sup>5</sup> and often control his behavior.<sup>6</sup> The disorder has become prolific in our current times. As of March 31, 2014, over 350,000 veterans were seen at U.S. Department of Veteran's Affairs (VA) facilities for potential PTSD-related issues.<sup>7</sup>

In *Cologna v. Board of Trustees, Police & Firemen's Retirement System*, the New Jersey Superior Court, Appellate Division considered whether Fabio Cologna, a policeman who resigned from his position due to severe PTSD symptoms, "[had] been discontinued from service through no fault of his own."<sup>8</sup> If so, Cologna would have been eligible to benefit from a five-year statutory extension, allowing him to reinstate his membership in the Police and Firemen's Retirement System (PFRS) upon his return to public service, this time as a fireman.<sup>9</sup> The court, however, adopted the PFRS Board of Trustees and Administrative Law Judge's (ALJ) interpretation and held that Cologna was not "discontinued" from his service as a police officer, and therefore could not reinstate his membership in the PFRS.<sup>10</sup>

This case comment contends that the *Cologna* court incorrectly interpreted the meaning of section 43:16A-3(5) of the New Jersey Statutes, thereby causing the policeman to lose his hard-earned benefits. First, the court unduly relied on the legislative history of section 43:16A-3(A) when it should have premised its holding on

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1. General Patton infamously slapped a distraught soldier who was diagnosed with a severe case of psychoneurosis, yet had no visible wounds. See Michael Perlin, "John Brown Went Off to War": Considering Veterans Courts as Problem-Solving Courts, 37 NOVA L. REV. 445, 460 (2013).
  2. *Id.* at 460; see also PTSD: National Center for PTSD, U.S. DEP'T VETERANS AFFAIRS, <http://www.ptsd.va.gov> (last visited Jan. 15, 2015).
  3. Perlin, *supra* note 1, at 460.
  4. *Id.*
  5. See *What Is PTSD?*, PTSD FOUND. AMERICA, <http://ptsdusa.org/what-is-ptsd/> (last visited Jan. 15, 2015).
  6. See *Post-Traumatic Stress Disorder (PTSD)*, AM. RESCUE TEAM INT'L, <http://www.amerrescue.org/ptsd.htm> (last visited Jan. 15, 2015).
  7. See EPIDEMIOLOGY PROGRAM ET AL., REPORT ON VA FACILITY SPECIFIC OPERATION ENDURING FREEDOM, OPERATION IRAQI FREEDOM, AND OPERATION NEW DAWN VETERANS DIAGNOSED WITH POTENTIAL OR PROVISIONAL PTSD 3 (June 2014), <http://www.publichealth.va.gov/docs/epidemiology/ptsd-report-fy2014-qtr2.pdf>.
  8. 64 A.3d 995, 996 (N.J. Super. Ct. App. Div. 2013).
  9. *Id.*
  10. *Id.*

the plain meaning of the statutory text.<sup>11</sup> Second, the court incorrectly read language into the statute without stating which terms, if any, were ambiguous.<sup>12</sup> Third, the court failed to follow the precedent of construing pension statutes liberally in favor of public employees.<sup>13</sup> Fourth, the court could have consulted extant case law to carve out a narrow exception for individuals with PTSD, such as *Cologna*.<sup>14</sup> The court's decision sets a dangerous precedent, which enables future courts to undervalue the severity of PTSD.

In 1992, *Cologna* joined the U.S. Marine Corps shortly after graduating high school.<sup>15</sup> During his six-year enlistment, *Cologna* witnessed several traumatizing events, including an accident aboard an aircraft carrier and a fatal automobile accident involving a close friend.<sup>16</sup> After being honorably discharged, *Cologna* began working for the City of Edison, New Jersey as a municipal worker and enrolled in the Public Employees' Retirement System (PERS).<sup>17</sup> In 2004, he took a leave of absence to attend the Alternate Route Program in order to join the police academy.<sup>18</sup> On January 3, 2005, after graduating from the police academy, *Cologna* resigned from his position with the City of Edison and began working as a police officer for the Franklin Township Police Department.<sup>19</sup> On January 27, 2005, he transferred his pension contributions from the PERS to the PFRS.<sup>20</sup>

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11. The plain-meaning rule dictates that "if a writing, or a provision in a writing, appears to be unambiguous on its face, its meaning must be determined from the writing itself without resort to any extrinsic evidence." BLACK'S LAW DICTIONARY 1267 (9th ed. 2011).
  12. See *Klumb v. Bd. of Educ.*, 970 A.2d 354, 360 (N.J. 2009) ("If the plain language leads to a clear and unambiguous result, then [the] interpretive process is over." (quoting *Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys.*, 927 A.2d 543, 547 (N.J. 2007))).
  13. See, e.g., *Geller v. Dep't of Treasury*, 252 A.2d 393, 396 (N.J. 1969) ("[S]tatutes creating pensions should be liberally construed and administered in favor of the persons intended to be benefited thereby."); *Estate of Hagel v. Bd. of Trs.*, 543 A.2d 1010, 1013 (N.J. Super. Ct. App. Div. 1988) (same); *Fiola v. Dep't of Treasury*, 474 A.2d 23, 27 (N.J. Super. Ct. App. Div. 1984) (same).
  14. See *Gallira v. Pub. Emps. Ret. Sys.*, No. TYP 9565-95, 1997 LEXIS 98, at \*13-16 (N.J. Admin. Ct. Feb. 19, 1997) (reversing the decision of the Board of Trustees because an employee's voluntary resignation falls within the meaning of the statute when, but for duress caused by the employer's misconduct, she most likely would have continued her employment, and noting that the intent of the legislature was to encourage former employees to return to public service).
  15. *Cologna v. Bd. of Trs., Police & Firemen's Ret. Sys.*, 64 A.3d 995, 997 (N.J. Super. Ct. App. Div. 2013).
  16. *Id.*
  17. *Id.*
  18. *Id.*
  19. *Id.*
  20. *Id.* All police officers and firefighters appointed after June 1944 in New Jersey municipalities, where local police and fire pension funds exist, or where the PFRS system was adopted by referendum or resolution, are required to enroll in the PFRS. See *Police and Firemen's Retirement System (PFRS)*, N.J. DEP'T TREASURY, <http://www.state.nj.us/treasury/pensions/pfrs1.shtml> (last visited Jan. 15, 2015). After joining the Franklin Township Police Department, *Cologna* transferred his PERS benefits earned from his municipal job with the City of Edison to the PFRS. *Cologna*, 65 A.3d at 997.

Weeks after beginning his employment as a police officer, Cologna was assigned the task of handling unattended deaths, which involved dealing with the bodies of those who had died at night until the coroners arrived.<sup>21</sup> His responsibilities also included putting down mortally wounded animals, which once required him to shoot an injured deer in the head with a twelve-gauge shotgun.<sup>22</sup> After these harrowing experiences, Cologna relapsed into the trauma he had previously experienced in the Marine Corps.<sup>23</sup> He frequently experienced “flashbacks,” which affected his performance as a police officer.<sup>24</sup> As a result of his police work, Cologna developed strong, elevated levels of anxiety—as well as depression, forgetfulness, and nervousness—which caused him to have nightmares.<sup>25</sup> His job performance suffered as he failed to maintain focus during radio communications and absorb details on written reports, in addition to having difficulty with a variety of other tasks essential to his role as a police officer.<sup>26</sup> In an interview with his supervisor, Cologna began crying uncontrollably for no apparent reason, which ultimately led him to contact the VA for assistance in the summer of 2005.<sup>27</sup> The physician at the VA prescribed Cologna medication after concluding that Cologna’s symptoms were manifestations of PTSD caused by his traumatic experiences in the Marine Corps.<sup>28</sup>

On August 25, 2005, Cologna applied for a military disability pension through the VA, noting in his application that he suffered from symptoms associated with PTSD.<sup>29</sup> The VA later concluded that he was disabled as of the August 25 filing date and issued him retroactive federal benefits.<sup>30</sup> On September 6, 2005, Cologna submitted a signed letter of resignation to the Township of Franklin’s chief of police.<sup>31</sup> In his letter, he stated, “This resignation is voluntary and comes of my own free will without duress.”<sup>32</sup> Detective Sergeant Gregory Borlan, the former vice president of the local police union and a representative of employees in the local union, countersigned the letter and was present to ensure that the resignation was voluntary.<sup>33</sup> On the same day, Cologna sent a memorandum to the police chief stating

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21. *Cologna*, 64 A.3d at 997.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* at 997–98.

27. *Id.* at 998.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. Detective Sergeant Borlan served in several capacities: He assisted officers by ensuring that discipline was fairly administered, and helped ensure that union members received proper medical treatment. Borlan indicated that Cologna had never approached him with regard to his PTSD symptoms. *Id.*

that his resignation was due to “personal issues that have come up to preclude [him] from performing the job of police officer in the Township of Franklin.”<sup>34</sup>

In January 2006, Cologna began seeing a therapist to treat his PTSD.<sup>35</sup> As a result of the treatment, Cologna’s confidence began to return, and he was able to reenter the public sector as a fireman with the Hoboken Fire Department.<sup>36</sup> As a member of the fire department, he was once again eligible to participate in the PFRS and enrolled in the program under a new membership account on March 1, 2008.<sup>37</sup> Two years later, he wrote to the Division of Pensions and Benefits (“Division”) requesting permission to continue his membership under the initial account he had established as a member of the Franklin Township Police Department.<sup>38</sup> The Division rejected his request, stating that his prior membership had expired because it had been more than two years since he last paid into that account, and that he was therefore required to re-enroll under a new membership.<sup>39</sup>

Cologna appealed the Division’s decision to the Board of Trustees,<sup>40</sup> which then referred the matter to the New Jersey Office of Administrative Law for an administrative hearing.<sup>41</sup> Following that hearing, on June 24, 2011, the ALJ issued an opinion agreeing with the Board of Trustees and rejecting the reactivation of Cologna’s prior account.<sup>42</sup> The ALJ recognized that Cologna was diagnosed with PTSD, that his disease stemmed from his service in the Marine Corps, and that his experiences as a police officer had exacerbated those symptoms.<sup>43</sup> However, the ALJ found it important that Detective Sergeant Borlan had witnessed Cologna’s resignation to ensure that he resigned voluntarily and free from coercion or duress.<sup>44</sup> The ALJ concluded that Cologna voluntarily resigned his position from the Franklin

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34. *Id.* at 999.

35. *Id.* at 998.

36. *Id.* at 998–99.

37. *Id.* at 999.

38. *Id.*

39. *Id.* If Cologna was not allowed to continue his prior membership, his only other options were to either lose credit for his prior membership service or purchase the credit by paying into the annuity savings fund. *See* N.J. STAT. ANN. § 43:16A-11.4 (Westlaw 2014).

40. The Board of Trustees is vested with the operational responsibilities of the PFRS under the provisions of section 43:16A-13, which include, inter alia, reviewing appeals pertaining to the disallowance of pension benefits. *See* N.J. STAT. ANN. § 43:16A-13 (Westlaw 2014); *see also* *Board Election Information*, N.J. DEP’T TREASURY, [http://www.state.nj.us/treasury/pensions/board\\_results.shtml#pfrs](http://www.state.nj.us/treasury/pensions/board_results.shtml#pfrs) (last visited Jan. 15, 2015). The board currently consists of eleven members: two policemen, two firemen, one retiree, five governor’s appointments, and one treasurer’s appointment. *Members of the Boards of Trustees*, N.J. DEP’T TREASURY, <http://www.state.nj.us/treasury/pensions/96boards.shtml> (last visited Jan. 15, 2015). Cologna’s request to the Division was reviewed by the Board of Trustees. *Cologna*, 64 A.3d at 999.

41. *Cologna*, 64 A.3d at 999.

42. *Id.*

43. *Id.*

44. *Id.*

Township Police Department. The ALJ reasoned that because the record did not support Cologna's argument that PTSD had inhibited his ability to understand the voluntariness of his resignation, he was not under any meaningful duress when he resigned,<sup>45</sup> and there was "no element of wrongfulness on behalf of his employer."<sup>46</sup> Therefore, the ALJ denied reinstatement of Cologna's previous account.<sup>47</sup> The ALJ also noted that the language of section 43:16A-3(5) was unambiguous.<sup>48</sup> On March 12, 2012, the Board of Trustees issued its final decision, adopting the ALJ's findings that Cologna had not "been discontinued from service through no fault of his own."<sup>49</sup>

The appellate division affirmed the ALJ's decision and denied Cologna's request to reinstate his original PFRS account.<sup>50</sup> The court followed the ALJ's reasoning after conducting a lengthy statutory interpretation exercise.<sup>51</sup> The court began its analysis by first looking at the text of section 43:16A-3(5),<sup>52</sup> finding that Cologna's PTSD did not fall within the terms of the statute because his employer took no action to remove him from his position.<sup>53</sup> The court premised its interpretation on the use of the passive voice for the operative verb "discontinued," reasoning that the act of "discontinuation" must be a result of employer action for an employee to qualify for reinstatement under the statute.<sup>54</sup> The court followed its textual analysis by adopting the ALJ's finding that Cologna's resignation was of his own free will.<sup>55</sup> The court reasoned that because Cologna's PTSD did not interfere with his ability to understand the nature of his voluntary resignation, and because he was not coerced to resign by his supervisors,

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45. *Id.*

46. *Cologna v. Bd. of Trs., Police & Firemen's Ret. Sys.*, No. TYP 08993-10, 2012 WL 447595, at \*3 (N.J. Admin. Ct. Feb. 9, 2012).

47. *Id.*

48. *Id.* at \*3 (distinguishing *Gallira v. Pub. Emps. Ret. Sys.*, No. TYP 9565-95, 1997 LEXIS 98 (N.J. Admin. Ct. Feb. 19, 1997)). The court held that an employee was terminated through no fault of her own due to extreme mental and psychological stress suffered at the hands of her employer. The court further stated, "The plain meaning of the term 'fault' contains an element of wrongfulness . . . Black's Law Dictionary 608 (6th ed. 1990) [fault] 'connotes an act to which blame, censure, impropriety, shortcoming or culpability attaches' . . . [T]here is no element of wrongfulness on the part of the employer . . . The law is unambiguous that membership ends on resignation." *Id.*

49. *Cologna*, 64 A.3d at 999. The ALJ filed the decision with the PFRS Board of Trustees as a recommendation that could lawfully be adopted, modified, or rejected by the Board of Trustees within forty-five days. If the Board did nothing, the ALJ's decision would then become final and binding. *Cologna*, 2012 WL 447595, at \*4.

50. *See Cologna*, 64 A.3d at 996.

51. *See id.* at 1000.

52. The court stated that Cologna overlooked the phrase "has been discontinued from service," which is written in the passive voice. The court reasoned that the passive phrase "has been discontinued" in the context of section 43:16A-3(5) "signifies that the employee in question, as the recipient of the action, has been terminated from his job as a result of the employer's own actions." *Id.* at 1000-01.

53. *Id.* at 1001.

54. *Id.* at 1000-01.

55. *See id.* at 1001.

“that conceded truth prevent[ed] [Cologna] from taking advantage of the five-year extended reinstatement period.”<sup>56</sup> Finally, the court engaged in an in-depth analysis of the legislative history to dispel any residual doubt about its textual interpretation and concluded that the purpose of the statute was to benefit only those who had been laid off while attempting to curb fiscal and administrative costs.<sup>57</sup> Because the court read the statute as specifically requiring termination by the employer, the administrative finding that Cologna’s resignation was voluntary precluded the court from granting him the benefit of the five-year extended reinstatement period.<sup>58</sup>

This case comment contends that the *Cologna* court incorrectly interpreted the plain meaning of section 43:16A-3(5), thereby denying Cologna his employment benefits as a policeman based on a gross undervaluation of the effects of PTSD on an individual’s psyche. First, the court should have relied upon the plain meaning of the statute to guide its interpretation instead of resorting to legislative history to justify the lower court’s decision. Second, the court erroneously read language into the statute without identifying any textual ambiguity.<sup>59</sup> Third, the court did not follow the “axiomatic” canon, which requires that pension statutes be “liberally construed and administered in favor of the persons intended to be benefited thereby.”<sup>60</sup> Fourth, the court could have relied on prior New Jersey case law to read a narrow exception into the statute for individuals suffering from PTSD.<sup>61</sup> Finally, the court’s ruling denied Cologna, a veteran of the Marine Corps, hard-earned benefits, and in doing so, set a dangerous precedent that undervalues the issues, complications, and mental hygiene of veterans suffering from PTSD.

First, the *Cologna* court failed to identify which terms of the statute, if any, were ambiguous.<sup>62</sup> When discerning the meaning of a statute, courts must first consult

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56. *Id.*

57. The court pointed to a number of findings in the legislative history. First, a 1980 conditional veto by Governor Brendan Byrne exercised in response to concerns that Assembly Bill No. 555 (“A-555”)—a bill to amend section 43:16A-3(5)—was unnecessarily broad. Second, Assemblyman James Zangari, who sponsored A-555, was concerned with the hardships endured by police officers in Newark who had been laid off and were unable to maintain their PFRS accounts. Third, the Treasury Department had objected to A-555 as originally drafted on the ground that it was overly broad and threatened to impose a fiscal burden on the state. Finally, the General Assembly adopted the amendments recommended by Governor Byrne, which suggested that the statute be limited to members who had been laid off, however, the General Assembly failed to modify the language to reflect the governor’s wishes, indicating that the statute was not intended to be limited solely to those who had been laid off. *Id.* at 1001–03.

58. *See Cologna*, 64 A.3d. at 1001.

59. *See infra* text accompanying note 71.

60. *See, e.g.*, *Geller v. Dep’t of Treasury*, 252 A.2d 393, 396 (N.J. 1969); *Estate of Hagel v. Bd. of Trs.*, 543 A.2d 1010, 1013 (N.J. Super. Ct. App. Div. 1988); *Fiola v. Dep’t of Treasury*, 474 A.2d 23, 27 (N.J. Super. Ct. App. Div. 1984).

61. *See Gallira v. Pub. Emps. Ret. Sys.*, No. TYP 9565-95, 1997 LEXIS 98, at \*13–16 (N.J. Admin. Ct. Feb. 19, 1997) (holding that although the termination was mechanically voluntary, subsection 8(a) nevertheless applied because it was “through no fault of [the employee]”).

62. Throughout the opinion, the *Cologna* court does not describe the language of 43:16A-3(5) as ambiguous. *See generally Cologna*, 64 A.3d 995. With no ambiguity identified, the court had a duty to apply the plain



the language of the statutory text.<sup>63</sup> Courts “must presume that [the] legislature says in a statute what it means and means in a statute what it says.”<sup>64</sup> If none of the terms are ambiguous and the plain meaning of the text is clear, the analysis halts and the statute is applied according to its ordinary, plain meaning, thereby obviating any need for the court to consult the legislative history or other extrinsic evidence.<sup>65</sup> The mere fact that a statute is awkward or even ungrammatical does not make it ambiguous, justifying an exploration of its legislative history.<sup>66</sup>

Here, the *Cologna* court failed to identify any textual ambiguity in the statute and, therefore, had no reason to pursue legislative intent other than to confirm the inapplicability of section 43:16A-3(5).<sup>67</sup> Yet the court relied on this mode of analysis despite the lack of support for the court’s interpretation in the statute.<sup>68</sup> For an employee to come within the statute’s application, his resignation need not be involuntary or prompted by the employer.<sup>69</sup> Although the statute was drafted in the passive voice and, as such, reads somewhat awkwardly, that alone does not permit the court to delve into the legislative history.<sup>70</sup> By failing to identify any ambiguous terms, the *Cologna* court incorrectly and prematurely turned to the statute’s legislative history in order to justify its decision.

Second, because the statute was unambiguous, the court should not have written in additional language, namely a requirement of employer fault or involuntary resignation, which alters the meaning of section 43:16(A)-3(5).<sup>71</sup> “A court may neither rewrite a plainly-written enactment of the legislature nor presume that the legislature

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import of the statute, and should not have resorted to the legislative history to divine a meaning with which the court was more comfortable.

63. See, e.g., *Carcieri v. Salazar*, 555 U.S. 379, 386–87 (2009); *In re Probate Will & Codicil of Macool*, 3 A.3d 1258, 1265 (N.J. Super. Ct. App. Div. 2010); *Klumb v. Bd. of Educ. of Manalapan-Englishtown*, 970 A.2d 354, 359–60 (N.J. 2009).
64. *Dodd v. United States*, 545 U.S. 353, 357 (2005) (quoting *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253–54 (1992)); see also *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241–42 (1989) (noting that interpretation begins with the statutory text, and where the text is clear, the inquiry ends); *United States v. Goldenberg*, 168 U.S. 95, 102–03 (1897) (“The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. . . . No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute.”).
65. See *Klumb*, 970 A.2d at 360.
66. *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004) (“The statute is awkward, and even ungrammatical; but that does not make it ambiguous on the point at issue.”).
67. See *supra* text accompanying note 62.
68. See *Cologna v. Bd. of Trs., Police & Firemen’s Ret. Sys.*, 64 A.3d 995, 1001-03 (N.J. Super. Ct. App. Div. 2013).
69. See N.J. STAT. ANN. § 43:16A-3(5) (Westlaw 2014).
70. See *Lamie*, 540 U.S. at 534.
71. See, e.g., *State v. Lawless*, 70 A.3d 647, 654 (N.J. 2013); *DiProspero v. Penn.*, 874 A.2d 1039, 1048 (N.J. 2005); *O’Connell v. State*, 795 A.2d 857, 859 (N.J. 2002).

intended something other than that expressed by way of the plain language.”<sup>72</sup> The fact that the legislature “might have acted with greater clarity or foresight does not give courts a *carte blanche* to redraft statutes in an effort to achieve that which [the legislature] is perceived to have failed to do.”<sup>73</sup>

The word “fault,” when used as a noun, as in section 43:16A-3(5),<sup>74</sup> is defined in the Merriam-Webster Dictionary as “responsibility for a problem, mistake, bad situation, etc.”<sup>75</sup> “Discontinue” is defined as “to break off: give up: terminate.”<sup>76</sup> Employing these definitions, the statute reads as “given up or terminated from his employment through no responsibility of his own”—Cologna was not responsible for the onset of his PTSD.

Because the language of the statute is unambiguous, the court’s interpretive analysis should not have reached beyond the ordinary and plain meaning of the statutory text.<sup>77</sup> It is simply impermissible for a court to read extrinsic language into a statute without expressly stating and explaining which terms of the statute are ambiguous.<sup>78</sup> Cologna’s resignation was not the result of an error in judgment or misconduct on his part. He did not act through inattention, bad faith, or mismanagement. Under the definition of “discontinue,” Cologna could have also “given up” his service, which he did when he resigned. Accordingly, the plain meaning of section 43:16A-3(5) does not condition extension of the reinstatement period on termination by the employer.

Third, the *Cologna* court failed to follow a well-settled canon of construction applicable to section 43:16A-3(5), which prescribes that pension statutes be liberally construed in favor of the beneficiary.<sup>79</sup> New Jersey courts have gone so far as to say that it is “axiomatic” that statutory provisions benefitting pensioners be interpreted liberally.<sup>80</sup> Pensions are not a gratuitous benefit conferred by the government because they represent deferred compensation earned during the employee’s years of service.<sup>81</sup> Forfeiting hard-earned employee benefits is “a drastic penalty which the New Jersey

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72. *O’Connell*, 795 A.2d at 859.

73. *United States v. Locke*, 471 U.S. 84, 95 (1985).

74. The term “fault” is not defined in the statute. *See* N.J. STAT. ANN. § 43:16A-1 (Westlaw 2014).

75. *Fault*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/fault> (last visited Jan. 15, 2015).

76. WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 646 (Philip Babcock Gove et al. eds., 3d ed. 1993).

77. *See, e.g.*, *State v. Lawless*, 70 A.3d 647, 654 (N.J. 2013); *DiProspero v. Penn*, 874 A.2d 1039, 1048 (N.J. 2005); *O’Connell v. State*, 795 A.2d 857, 859 (N.J. 2002).

78. *See, e.g.*, *Lawless*, 70 A.3d at 654; *DiProspero*, 874 A.2d at 1048; *O’Connell*, 795 A.2d at 859.

79. *See, e.g.*, *Geller v. Dep’t of Treasury*, 252 A.2d 393, 396 (N.J. 1969); *Estate of Hagel v. Bd. of Trs.*, 543 A.2d 1010, 1013 (N.J. Super. Ct. App. Div. 1988); *Fiola v. Dep’t of Treasury*, 474 A.2d 23, 27 (N.J. Super. Ct. App. Div. 1984).

80. *Fiola*, 474 A.2d at 27; *see also* *D’Alessio v. Bd. of Trs., Pub. Emps. Ret. Sys.*, No. TYP 9927-90, 1992 LEXIS 4550, at \*9–10 (N.J. Admin. Ct. May 22, 1992).

81. *Fiola*, 474 A.2d at 27.

Supreme Court has become increasingly loath to permit even in the case of employee misconduct unless that penalty has been *clearly mandated* by the Legislature.”<sup>82</sup>

In *Geller v. Department of Treasury*, a schoolteacher was forced to re-enroll in a retirement plan under a new membership at a significantly higher contribution rate, after exceeding the two-year statutory absentee allotment period by four months.<sup>83</sup> At the time of re-enrollment, the teacher had rendered 13.8 years of service.<sup>84</sup> However, due to the rate increase, she was credited only 7.4 years; in order to receive full credit for the entirety of her service, she would have had to purchase the remaining 6.4 years at a higher rate.<sup>85</sup> The schoolteacher wrote a letter to the retirement fund requesting additional information, but also stated that “I am interested in receiving full credit for all my years of teaching service. I authorize contribution deductions at the legal rate due in my case.”<sup>86</sup> After receiving additional information, the teacher took no further action because she felt her initial letter was sufficient to settle the matter and assumed that the 6.4 years of service would be repurchased as requested.<sup>87</sup> However, the retirement fund failed to apply the necessary rate and more than 18 years passed before she became aware of the error, costing her \$6,487.17 to repurchase the 6.4 years.<sup>88</sup>

The New Jersey Supreme Court reversed in favor of the teacher, despite the miscommunication with the retirement fund, stating:

Pensions for public employees serve a public purpose . . . [and] are in the nature of compensation for services previously rendered and act as an inducement to continued and faithful service. Being remedial in character, statutes creating pensions should be liberally construed and administered in favor of the persons intended to be benefited thereby.<sup>89</sup>

The court stated that the public schoolteacher “should not be penalized so grossly at this late date.”<sup>90</sup> Thus, taking these policy concerns into account, the New Jersey Supreme Court administered the statute in the manner most favorable to the schoolteacher by allowing her to purchase her credits at the lower rate.

In contrast, the *Cologna* court denied the relief sought by the wronged plaintiff, absent any provision that mandated this punitive outcome. More importantly, the court failed to liberally construe the pension statute, as required by the New Jersey Supreme Court in *Geller*.<sup>91</sup> Although the court acknowledged that pension statutes

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82. *Id.* (emphasis added) (citing *Eyers v. Pub. Emps. Ret. Sys.*, 449 A.2d 1261 (N.J. 1982)).

83. *See Geller*, 252 A.2d at 394–95.

84. *Id.* at 395.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.* at 396.

90. *Id.* at 397.

91. *See id.* at 396.

are liberally construed,<sup>92</sup> it disregarded that established canon in holding that *Cologna* had “no recourse under the statute.”<sup>93</sup> Had the court applied the apposite canon of construction, it would not have interpreted the statute as conditioning the receipt of benefits on termination by the employer—an interpretation that clearly disfavors the pension beneficiary. A liberal interpretive approach would have appreciated that the onset of *Cologna*’s PTSD, which prompted his voluntary resignation, was “through no fault of his own,” and would have allowed *Cologna* to benefit from the five-year extended reinstatement period under section 43:16A-3(5). The unnecessary reading of a requirement into the statute that penalizes the pension recipient is the obverse of a liberal interpretation.

Fourth, the *Cologna* court should have looked to New Jersey case law which reads section 43:16A-3(5) as not conditioning reinstatement of retirement benefits on termination by the employer. In *Gallira v. Public Employees Retirement System*, the director of staff operations at the Housing Authority in Elizabeth, New Jersey, sought to extend her PERS membership based on a textually identical provision in section 43:16A-3(5).<sup>94</sup> Over the course of her employment with the Housing Authority, the employee was consistently promoted until she became the director of staff operations.<sup>95</sup> However, after the appointment of a new Housing Authority Board of Commissioners, the director was subjected to extreme harassment and “increasing pressure of threats and coercion, [and] felt compelled to resign.”<sup>96</sup> Following her resignation, and before she returned to work as a public schoolteacher, the director’s PERS account expired.<sup>97</sup> In order to reinstate her PERS account, she sought to re-enroll under her prior membership account using the statutory extension provided in section 43:15A-8(a) of the New Jersey Statutes.<sup>98</sup>

In *Gallira*, the ALJ held that the director’s termination was through no fault of her own and applied the statutory extension period, thereby allowing her to reinstate her PERS account.<sup>99</sup> The judge reasoned that the director could not have foreseen a forced resignation due to the conduct of her employer.<sup>100</sup> The ALJ pointed to *D’Alessio*

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92. *Cologna v. Bd. of Trs., Police & Firemen’s Ret. Sys.*, 64 A.3d 995, 1000 (N.J. Super. Ct. App. Div. 2013).

93. *Id.* at 1003.

94. No. TYP 9565-95, 1997 LEXIS 98, at \*4 (N.J. Admin. Ct. Feb. 19, 1997); *see also* N.J. STAT. ANN. §§ 43:15A-8, 43:16A-3 (Westlaw 2014).

95. *Gallira*, 1997 LEXIS 98, at \*4.

96. In 1992, petitioner filed a suit against the Board of Commissioners, which was subsequently settled. *Id.* at \*5.

97. The employer last paid into her account on July 31, 1990. She received an expiration notice on March 21, 1995 stating that her membership would expire on May 21, 1995 unless she returned to public service by that date, which she failed to do. *Id.* at \*6–7.

98. *Id.* at \*7–8.

99. *Id.* at \*14–16.

100. *Id.* at \*11 (quoting *LaMastro v. Pub. Emps. Ret. Sys.*, No. TYP 7320-92, 1993 LEXIS 896, at \*6 (N.J. Admin. Ct. June 16, 1993) (interpreting section 43:15A-8(a) to apply to “something that is unforeseeable by the employee”).

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*v. Public Employees Retirement System*, which interpreted “discontinued from service through no fault of [her] own” to mean “unexpected circumstances beyond the control of the employee result[ing] in involuntary and untimely termination of employment.”<sup>101</sup> Applying this interpretation, the judge determined that while the director’s termination was mechanically voluntary, it was through no fault of her own because “absent the [unforeseeable] duress of the employer’s misconduct, she most likely would have continued her employment at the Housing Authority.”<sup>102</sup>

Had the *Cologna* court followed the reasoning in *Gallira*, it would have found that Cologna’s PTSD was an “unexpected circumstance” beyond his control, resulting in an involuntary and untimely resignation, and would therefore have permitted reinstatement of his benefits under section 43:16A-3(5). Like the claimant in *Gallira*, Cologna’s resignation was mechanically voluntary but caused by unexpected circumstances beyond his control—the onset of his PTSD. It is irrelevant that Cologna’s PTSD was not caused by his employer, but was rather the result of unforeseen circumstances outside of his control. Although *Gallira*, as an administrative decision, did not bind the *Cologna* court, the court could still have looked at such factually similar cases where judges have broadly interpreted the phrase “has been discontinued from service through no fault of [their] own” to allow hard-working public employees to re-enroll in retirement benefit systems when resignation is prompted by uncontrollable circumstances. Therefore, the *Cologna* court should have adopted the reasoning set forth in *Gallira*, under which the unexpected onset of Cologna’s PTSD would not have precluded him from benefitting from the statutory extension under section 43:16A-3(5) of the New Jersey Statutes.

Cologna did not bring his PTSD upon himself, nor did he acquire the syndrome as a result of negligence or misconduct; his PTSD was an unfortunate byproduct of six years of dedicated service in the Marine Corps.<sup>103</sup> By treating his PTSD as his “fault,” as though it were a foreseeable or preventable development, the *Cologna* court misconceived the psychological condition. Moreover, to find that Cologna was under no “meaningful duress” grossly undervalues PTSD and fails to appreciate both the nature and severity of its symptoms. The *Cologna* court misapplied section 43:16A-3(5) because Cologna’s decision to leave the police force was “through no fault of his own” and therefore falls within the unambiguous, plain meaning of the statute.<sup>104</sup>

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101. No. TYP 9927-90, 1992 LEXIS 4550, at \*8–9 (N.J. Admin. Ct. May 22, 1992).

102. *Gallira*, 1997 LEXIS 98, at \*13–14.

103. *Cologna v. Bd. of Trs., Police & Firemen’s Ret. Sys.*, 64 A.3d 995, 997–98 (N.J. Super. Ct. App. Div. 2013).

104. Additionally, even if it were permissible for the court to consider the legislative history, the opinion of the New Jersey governor, who is not a member of the legislature, and the views of the bill’s sponsor, who is but one member of the legislature, are not persuasive when interpreting the meaning of a statute. Moreover, the legislature seemingly rejected both the governor’s and the bill sponsor’s proposals to narrow the scope of the statute by failing to change the language to expressly state “laid off” instead of “discontinued from service through no fault of his own,” which weighs in favor of a broad construction. Because the proposed amendment was not incorporated into the statute as enacted, the legislature must be presumed to have rejected an interpretation of the statute that would benefit solely those employees who had been “laid off.” See N.J. STAT. ANN. § 43:16A-3(5) (Westlaw 2014).

The court incorrectly interpreted the meaning of section 43:16A-3(5) to deny Cologna his hard-earned retirement benefits, owed on account of his public service as a police officer. The court's reliance on statements made by individual legislators to bolster a textually tenuous interpretation was impermissible because precedent required the court to apply the interpretive canon to which extrinsic materials of interpretation—including legislative history—are necessarily subordinate. The court incorrectly read language into the statute and disregarded the controlling interpretive canon, which requires courts to construe pension statutes as liberally as possible to benefit the pension recipient. Moreover, the *Cologna* court ignored instructive New Jersey case law, which has liberally construed section 43:16A-3(5) by refusing to treat a voluntary resignation as a bar to reinstatement. Instead of reading a requirement of involuntariness where there was none, the appellate division should have recognized that the onset of Cologna's PTSD was, "through no fault of his own," a circumstance beyond his control. The court's line of reasoning discounts the severity of PTSD symptoms and deliberately impedes the well-being of our veterans,<sup>105</sup> furthering their pain and struggle in the process. Finally, the *Cologna* court should have appreciated that Cologna acknowledged his extreme and debilitating condition by voluntarily relinquishing his position and firearm, a decision in line with a police officer's duty to protect the general public. Instead, the court punished him through semantics. This dangerous precedent prevents an exception for PTSD and, in doing so, effectively stamps victims with the word "fault."

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105. It is estimated that one in three troops returning from service will be diagnosed with PTSD; less than forty percent will seek help. *The Statistics*, PTSD FOUND. AMERICA, <http://ptsdusa.org/what-is-ptsd/the-statistics/> (last visited Jan. 15, 2015).