



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**SUSAN LAGERMAN v. ARIZONA STATE RETIREMENT SYSTEM,
CV-19-0101-PR**

PARTIES:

Petitioner: Susan Lagerman

Respondent: Arizona State Retirement System (“ASRS”)

FACTS:

Lagerman was employed by a state agency and was a member of the ASRS. For purposes of her retirement, her last day of employment was in February 2003, and her normal retirement date would have been July 23, 2005. However, Lagerman wanted to continue working full time and did not retire on that date.

From 2006 to 2010, ASRS annually mailed Lagerman member statements that moved the normal retirement date to the end of the statement period. They also contained information regarding return-to-work options for retirees. After 2011, ASRS ceased mailing statements and required members to access their retirement information through online accounts. Lagerman had created an account in 2007 and had once contacted ASRS for assistance resetting her password.

On April 6, 2016, ASRS received Lagerman’s completed retirement application. It listed Lagerman’s requested retirement date as July 23, 2005. ASRS processed the application using the application date—April 6, 2016—as the effective retirement date. Lagerman appealed the use of the April 2016 date within the ASRS appeals process, but the decision was affirmed.

Lagerman then appealed to the superior court, which also affirmed. The court rejected Lagerman’s argument that A.R.S. § 38-764(A) (quoted below) permitted her to elect a retirement date that occurred before the date she submitted her retirement application. Lagerman appealed.

The court of appeals also affirmed the ASRS determination that Lagerman’s retirement date could not be a date before she submitted an application. The court rejected Lagerman’s contention that “because the statute uses the word ‘or,’ it should be read in the disjunctive, meaning that she could elect a retirement date that satisfied only the first clause, i.e., a date that occurred after she had terminated her employment.” *Lagerman v. Ariz. State Ret. Sys.*, 246 Ariz. 270, 274 ¶ 12 (App. 2019). The court instead read § 38-764(A) as providing that

a member’s retirement date “shall not be earlier” than (1) the day following the date of termination, (2) the date ASRS receives the member’s completed retirement application, or (3) the date specified by the member under A.R.S. § 38-764(I). As such, the statute’s plain language prohibits a member’s retirement from beginning before all of the aforementioned dates.

Id. ¶ 13.

However, the court noted that there is an exception to § 38-764(A) created by § 38-764(I) which permits an ASRS member to retire and be employed part time. The court addressed the “inconsistency” between subsection (A) and subsection (I) by reviewing the statute’s legislative history. The court determined that by enacting subsection (I), the legislature intended to permit ASRS members to retire and work on a limited basis, but had not eliminated the requirement that a member submit a completed retirement application before receiving benefits.

The court also found that related statutes, including A.R.S. §§ 38-757(A) and 38-766(A), supported its interpretation of § 38-764(A), because those other statutes also indicated that a member must submit a retirement application form to obtain retirement benefits.

The court of appeals rejected Lagerman’s contention that the ASRS interpretation violated the requirement in § 38-757(A) that a member’s benefit be “nonforfeitable;” the court held that the benefits had been vested, but their receipt was contingent on submitting an application. The court also held that the ASRS interpretation did not “diminish or impair” benefits in violation of Arizona Constitution Article 29, Section 1(C)-(D) because, once an application was submitted, ASRS began paying monthly retirement benefit.

ISSUES:

1. Whether the Opinion of the Court of Appeals incorrectly determines that the Arizona State Retirement System may deny Susan Lagerman the full value of her normal retirement benefit without causing a forfeiture, diminishment, or impairment of that benefit in violation of A.R.S. §38-757(A) and art. 29, section 1(D) of the Arizona Constitution.
2. Whether the Opinion incorrectly interprets A.R.S. §38-764(A) as prohibiting an ASRS member from electing a retirement date that is before the date that ASRS receives the member’s retirement application, an interpretation that creates an irreconcilable conflict with another subsection of the statute.

STATUTES:

In relevant part, A.R.S. § 38-764 provides:

A. Retirement is deemed to commence on a date elected by the member. That date shall not be earlier than the day following the date of termination of employment, the date ASRS receives the member’s completed retirement application or the date specified by the member pursuant to subsection I of this section.

.....

I. A member who attains a normal retirement date may retire at any time without terminating employment if the member is employed for less than the hours required for active membership pursuant to § 38-711, paragraph 23, subdivision (b).

This Summary was prepared by the Arizona Supreme Court Staff Attorney’s Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.