



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
P. O. Box 295

TRENTON, NEW JERSEY 08625-0295
Telephone (609) 292-7524 / Facsimile (609) 777-1779
TRS 711 (609) 292-6683
www.nj.gov/treasury/pensions

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

July 8, 2022

Sent via email to: [REDACTED]

Richard A. Friedman, Esq.
[REDACTED]

RE: Michael Cheski
TPAF [REDACTED] (Expired Account)

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Friedman:

I am writing in reference to the denial by the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) of the request of your client, Michael Cheski, to extend the expiration date of his Tier 1 membership account in the TPAF. At its meeting of April 7, 2022,¹ the Board considered your submissions as well as all relevant documentation in the record and found that the statutes and relevant case law governing TPAF do not permit the Board to grant Mr. Cheski's request to extend the expiration date of his Tier 1 membership account in the TPAF. Finding no genuine issue of material fact in dispute, the Board denied your request for an administrative hearing. The Board's Findings of Fact and Conclusions of Law as outlined below, which were presented to and approved by the Board at its July 7, 2022 meeting.

¹ Due to health and safety concerns for the public regarding COVID-19, the meeting was conducted via teleconference.

FINDINGS OF FACT

The record shows that Mr. Cheski established membership in the TPAF effective February 1, 2002² based upon his employment with Berkeley Heights Board of Education (Berkeley Heights BOE). On September 1, 2008, Mr. Cheski accepted a position at Sussex County Technical School (Sussex) where he served as a Video Technology Teacher until June 30, 2009 when he was laid off from his position. Thereafter, on January 2, 2018, Mr. Cheski began employment with Kittatinny Regional High School (Kittatinny). Because Mr. Cheski had been laid off from Sussex, he was able to maintain his Tier 1 TPAF membership account pursuant to N.J.S.A. 18A:66-8 as he returned to a TPAF-eligible position within ten years from his discontinuance of service. He remained employed by Kittatinny as a non-tenured Teacher until June 30, 2019, when pension contributions stopped. At that time, Mr. Cheski was not a vested member of TPAF as his membership account was credited with 6 years and 11 months of service credit.

On December 22, 2020, Mr. Cheski wrote the Division to inform them of his non-renewal in 2019 and requested that his contributions remain in his account during his break in service. Along with his letter, he enclosed correspondence from Kittatinny and a copy of an email with the Division Pensions and Benefits (Division). The correspondence from Kittatinny stated: "Mr. Cheski was a non-tenured teacher that was non-renewed by the Kittatinny Board of Education and his contract ended with the school on June 30, 2019."

By letter dated March 2, 2021, the Division notified Mr. Cheski and Kittatinny that his TPAF account was due to expire on June 30, 2021, after two years of inactivity, as his last pension

² Mr. Cheski became eligible for TPAF membership on September 1, 2004, as a result of his employment with Berkeley Heights Board of Education. An Interfund Transfer was completed, wherein Mr. Cheski transferred one year and five months of service credit from his then-active Public Employees Retirement System (PERS) membership account (██████████) to his new TPAF membership ██████████ account. Accordingly, he maintained the enrollment date of February 1, 2002.

Richard A. Friedman, Esq.
Re: Michael Cheski
July 8, 2022
Page 3

contribution was June 30, 2019. The notice indicated that when the account expired he would lose the right to all TPAF membership benefits except for a withdrawal of his contributions.

On March 24, 2021, Mr. Cheski sent a second letter to the Division regarding his account expiration status wherein he sought to have his account expiration extended. Along with his letter he enclosed, a copy of his December 22, 2020 letter, the correspondence from Kittatinny, a copy of the certified mail receipt and an incomplete *Account Expiration Status-Employer Certification*.³

By letter dated April 5, 2021, Donna Wood, Supervising Pensions Benefits Specialist, Loan/Withdrawal Section, advised Mr. Cheski that Kittatinny indicated that his position as a non-tenured teacher was not renewed. She further explained that extensions beyond two years of inactivity are only granted if the member has been laid off due to a reduction of force or their position has been abolished. She also reiterated that his account would expire on June 30, 2021 unless he returned to employment by that date.

On April 15, 2021, the Division received the portion of the notice, *Account Expiration Status-Employer Certification*, completed by the Certifying Officer of Kittatinny, indicating that Mr. Cheski had resigned. Thereafter, on April 20, 2021, Mr. Cheski contacted the Division's Call Center to inform them that he had sent in the wrong layoff letter from Kittatinny.

On April 22, 2021, Mr. Cheski sent a third letter to Ms. Wood explaining that his contract was not renewed due to budget cuts and that his position no longer existed. He enclosed a letter from his former supervisor, which acknowledged that he was terminated because of budget cuts.

On May 10, 2021, Ms. Wood responded to Mr. Cheski's letter and stated that the reason for termination provided by the School Business Administrator indicated that he was in a non-

³ *The Account Expiration Status-Employer Certification* indicated "Laid off" and listed "Staff Reduction, Non Tenure- See Attached letter," but did not have a signature from the Certifying Officer.

tenured position and that his contract was not renewed as of June 30, 2019. She again explained that extensions are not permitted for non-tenured positions.

After two years with no pension contributions, Mr. Cheski's membership account [REDACTED] expired effective June 30, 2021 pursuant to the provisions of N.J.S.A. 18A:66-7(a).

On July 8, 2021,⁴ Mr. Cheski sent a fourth letter to the Division's Withdrawal Section to clarify his separation from employment. Mr. Cheski explained that he was laid off due to budget cuts and was entitled to a 10-year extension of his account. He enclosed a letter from Kathleen Kane, School Business Administrator of Kittatinny who indicated that Mr. Cheski was a non-tenured teacher and that his contract was not renewed due to budget cuts.

By letter dated July 26, 2021, Donna Wood, Supervising Pensions Benefits Specialist, Loan/Withdrawal Section, advised Mr. Cheski that the correspondence he submitted from Kittatinny indicated that he was employed as a non-tenured teacher and that his contract was not renewed. She further stated, "our office does not grant an extension beyond the two years of inactivity for members who were terminated due to their contract not being renewed. Therefore, your account expired on June 30, 2021 unless you returned to employment by this date."

On September 20, 2021, Mr. Cheski scheduled a virtual interview with the Division for September 21, 2021. During the interview, the representative informed Mr. Cheski that he did not meet the requisite age or service credit to qualify for a monthly retirement benefit, and that he was only eligible for a withdrawal of his pension contributions. The representative further explained that because he was non-tenured and his contract was not renewed, that he was not entitled to a 10-year extension of his account.

By letter dated October 18, 2021, you submitted your letter of representation and filed an appeal of the administrative determination. You represent that Mr. Cheski was laid off from his

⁴ Mr. Cheski also contacted the Division's Call Center on July 8, 2021. A representative informed him that his account could only be extended if he was laid off, not if his contract was not renewed.

Richard A. Friedman, Esq.
Re: Michael Cheski
July 8, 2022
Page 5

non-tenured teaching position at Kittatinny due to budgetary reasons, not for any performance-related issues, which would qualify him for the statutory exemption of expiration of membership beyond two years, thus allowing him to maintain his original membership account under ■■■■■

At its meeting of April 7, 2022, the Board determined that Mr. Cheski's annual contract with Kittatinny was not renewed and his non-tenured teaching position ended on June 30, 2019 and as a result, he is not entitled to an extension. You filed a timely appeal of the Board determination and requested reconsideration and/ or a hearing request.

At its meeting of June 2, 2022, the Board reviewed your written submissions. Thereafter, the Board affirmed its original determination. Further, finding no genuine issue of material fact in dispute, the Board denied your request for an administrative hearing and directed the Board Secretary to draft detailed Findings of Fact and Conclusions of Law for review at its meeting of July 7, 2022.

CONCLUSIONS OF LAW

The issue before the Board is whether Mr. Cheski is able to extend his expired TPAF membership account. As noted above, the last contribution to Mr. Cheski's TPAF membership account was on June 30, 2019, at which time his TPAF membership account reflected a total of 6 years and 11 months of TPAF service credit. There was no record of activity in his account after June 30, 2019.

N.J.S.A. 18A:66-7(a) states:

Membership of any person shall cease: (a) if, except as provided in section 18A:66-8, he shall discontinue his service for more than two consecutive years;

...

N.J.S.A. 18A:66-7(a) requires that membership in the TPAF shall cease after more than two consecutive years of inactivity. In addition N.J.S.A. 18A:66-8 provides:

a. If a teacher:

- (1) is dismissed by an employer by reason of reduction in number of teachers employed in the school district, institution or department when in the judgment of the employer it is advisable to abolish any office, position or employment for reasons of a reduction in the number of pupils, economy, a change in the administrative or supervisory organization or other good cause; or becomes unemployed by reason of the creation of a regional school district or a consolidated school district; or has been discontinued from service without personal fault or through leave of absence granted by an employer or permitted by any law of this State; and
- (2) has not withdrawn the accumulated member's contributions from the retirement system, the teacher's membership may continue, notwithstanding any provisions of this article, if the member returns to service within a period of 10 years from the date of discontinuance from service. ...

The crux of your argument is that you contend Mr. Cheski was "laid off" from his non-tenured teaching position at Kittatinny due to budgetary reasons, not for any performance-related issues, and for that reason he should qualify for the statutory exemption of expiration of membership beyond two years, thus allowing him to maintain his original membership account under [REDACTED].

Here, Mr. Cheski's year-to-year contract with Kittatinny was not renewed and his non-tenured teaching position ended on June 30, 2019. The non-renewal of a non-tenured teacher's annual contract does not constitute a reduction in number or a discontinuance of service, which both pertain to tenured teachers. Cf. Pascack Valley Reg'l High Sch. Bd. of Educ. v. Pascack Valley Reg'l Support Staff Ass'n, 192 N.J. 489, 497 (2007) ("The practice of offering separate, annual employment contracts to nontenured school employees is long-standing."); see also id. at 491 (noting nontenured school employees "have no right to the renewal of their individual contracts"); Bd. of Educ. v. Wyckoff Educ. Ass'n, 168 N.J. Super. 497, 501 (App. Div. 1979) ("the right not to renew the contracts of nontenured teachers" is "a management prerogative"). The Board determined that the circumstances which resulted in the non-renewal of Mr. Cheski's

Richard A. Friedman, Esq.
Re: Michael Cheski
July 8, 2022
Page 7

contract with Kittatinny was not a lay-off which would qualify him for the statutory exemption of expiration of membership beyond two years. Instead, Mr. Cheski's annual contract was not renewed and his employment ended on June 30, 2019. As the Appellate Division noted in Cologna v. Board of Trustees, Police and Firemen's Retirement System, 430 N.J. Super. 362, 372 (App. Div. 2014), "the phrase 'has been discontinued' is written in the passive voice. As such, it connotes a situation in which an employer . . . took action against an employee by discontinuing his services." Cologna, 430 N.J. Super. at 372. It is not a situation where a discrete yearly employment period ended and was not renewed for a new, separate, discrete, yearly employment period. Put another way, service cannot "discontinue" if employment would not have continued onward (absent an affirmative renewal).

Finally, the Board denied your request to stay its final determination until our Supreme Court issues its decision in Buskey v. Bd. of Trs., TPAF, No. A-3559-19 (decided November 22, 2021)(Appellate Division found that N.J.S.A. 18A:66-8 does not apply to untenured teachers as a matter of law).

As noted above, the Board has reviewed all relevant documentation and written submissions, and because this matter does not entail any disputed questions of fact, the Board was able to reach its Findings of Fact and Conclusions of Law without the need for an administrative hearing. Accordingly, this correspondence constitutes the Final Administrative Determination of the Board of Trustees of the Teachers' Pension and Annuity Fund.

You have the right, if you wish, to appeal this final administrative determination to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter, in accordance with the Rules Governing the Courts of the State of New Jersey. All appeals should be directed to:

Superior Court of New Jersey
Appellate Division
Attn: Court Clerk

Richard A. Friedman, Esq.
Re: Michael Cheski
July 8, 2022
Page 8

PO Box 006
Trenton, NJ 08625

Sincerely,

A handwritten signature in black ink, appearing to read "Saretta Dudley", enclosed in a thin black rectangular border.

Saretta Dudley, Secretary
Board of Trustees
Teachers' Pension and Annuity Fund

G-6/SD

C: R. Willever (ET)
Jeffrey Padgett, DAG (ET)
Michael Cheski (ET)