



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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October 25, 2022

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

Sent via email to: [REDACTED]

Neila Clitus
[REDACTED]

RE: PERS #: [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Ms. Clitus:

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) denying your application for Deferred retirement benefits. At its meeting of July 20, 2022, the Board found that you were ineligible for Deferred retirement benefits because of your dismissal for cause on charges of misconduct or delinquency directly related to your employment in accord with N.J.S.A. 43:15A-38. By way of letter dated September 5, 2022, you appealed the Board's decision. At its meeting of September 21, 2022, the Board considered your appeal and denied your request for a hearing in the Office of Administrative Law, finding that no genuine issue of material fact was in dispute. Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the Board at its meeting of October 24, 2022.¹

The Board has reviewed the documentation and finds that the statutes governing the PERS and relevant case law do not permit the Board to grant your request to receive Deferred retirement benefits.

¹ Due to a scheduling conflict, this matter was moved from the agenda of the PERS Board's regularly scheduled meeting of October 19, 2022 to the agenda of a special meeting on October 24, 2022. Both meetings were conducted via teleconference.

FINDINGS OF FACT

The record before the Board establishes that you were enrolled in the PERS on January 1, 2000, as a result of your employment with VA-Paramus as a Human Services Assistant. You continued to hold the same title until your termination on September 29, 2014.

You were removed from public office on charges of Neglect of Duty; Loafing; Idleness or Willful Failure to Devote Attention to tasks, Which Could Result in Danger to Persons or Property; and Negligent Contribution to an Elopement of Escape or a Resident.

The disciplinary charges stemmed from video camera footage at the Veterans Memorial Home, which revealed that on September 8, 2014, you reported to work twenty-one minutes after the start of your shift and then proceeded directly into the break room in the nurses' station for an additional twelve minutes. After leaving the break room you entered the Nourishment Room also located in the nurses' station, and continued to alternate from the break room to the Nourishment Room for approximately 2.5 hours (2:31 a.m.). You left the nurses' station and were undetected by the video cameras for approximately fifty minutes, after which you returned to the nurses' station and continued to alternate between the break rooms in the nurses' station until 5:14 a.m.

Consequently, you failed to attain the reports from the prior shift workers and neglected to perform patient checks, which are required every two hours. Your actions allowed for an unmonitored 88-year-old patient with Alzheimer's disease and other serious medical conditions to escape from his room on the second floor, and eventually leave the building on the first floor. In addition, you were not present to assist in finding the patient in your unit after his escape.

You appealed your termination to the Office of Administrative Law. In an Initial Decision dated March 26, 2018, an Administrative Law Judge (ALJ) found your conduct irresponsible and flagrant and affirmed your termination. A Final Administrative Action of the Civil Service Commission dated May 4, 2018, affirmed the ALJ's decision resulting in your removal.

At the time of your termination, you were approximately [REDACTED] of age and your PERS account reflected a total of 14 years and 7 months of service credit. Therefore, the only benefit for which you could file was a Deferred retirement. On October 26, 2020, you filed an application for Deferred retirement benefits effective November 1, 2020.

At its meeting on July 20, 2022,² the Board considered all relevant documentation in the record concerning your eligibility for Deferred retirement benefits, in light of your dismissal for cause on charges of misconduct or delinquency directly related to your employment. After careful consideration, the Board denied your application for Deferred retirement benefits in accord with N.J.S.A. 43:15A-38.

You filed an appeal of the Board's decision on or about September 5, 2022. At its September 21, 2022 meeting, the Board considered your appeal and there being no genuine issue of material fact in dispute, directed the undersigned to draft this Final Administrative Determination, which was presented to and approved by the Board at its October 24, 2022, meeting.

CONCLUSIONS OF LAW

The Board made the following legal conclusions.

PERS members with 10 or more years of service are eligible to file for Deferred retirement benefits upon reaching service retirement age. However, N.J.S.A. 43:15A-38 states, in pertinent part:

Should a member of the Public Employees' Retirement System, after having completed 10 years of service, be separated voluntarily or involuntarily from the service, before reaching service retirement age, and not by removal for cause on charges of misconduct or delinquency, such person may elect to receive:

- (a) The payments provided for in section 41b of this act,³ if he so qualifies under said section, or;

² The meeting was conducted via teleconference.

³ N.J.S.A. 43:15A-41

(b) A deferred retirement allowance, beginning at the retirement age...

At the time of your termination, you were approximately [REDACTED] years of age and your PERS account reflected a total of 14 years and 7 months of service credit. Therefore, the only benefit for which you could file was a Deferred retirement.

In your appeal to the Board, you asserted that your employer made false and exaggerated statements against you. However, it is not within the Board's purview or competence to re-litigate your termination, which was a matter between you and your employer. Your appeal of your termination to the Office of Administrative resolved with the ALJ affirming your termination. The Civil Service Commission adopted the ALJ's decision. The record establishes that you took no further appeal of that decision.

Based on the plain language of the statute, the Board determined that your removal for cause on grounds of misconduct or delinquency directly related to your employment rendered you ineligible for Deferred retirement benefits. See In re Hess, 422 N.J. Super. 27 (App. Div. 2011) (holding that ineligibility for Deferred retirement occurs only when a member is terminated for misconduct or delinquency related to the employment). Accordingly, the Board denied your application.

You are eligible to withdraw your accumulated pension contributions remitted during active membership. You may request an *Application for Withdrawal* by writing to **Robin Willever**, Supervisor, Loan/Withdrawal Section at the Division, at the address above. **Nonetheless, you are cautioned against filing the withdrawal application if you intend to appeal the Board's determination. Withdrawal terminates all rights and privileges of membership.**

As noted above, the Board has considered your personal statements, written submissions and all documentation in the record. 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 on the basis of the retirement system's enabling statutes and without the need for an administrative hearing.

Neila Clitus
October 25, 2022
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Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Public Employees' Retirement System.

You have the right to appeal this final administrative action 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
PO Box 006
Trenton, NJ 08625

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Ignatowitz". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Jeff S. Ignatowitz, Secretary
Board of Trustees
Public Employees' Retirement System

G-8/WT

C: R. Willever (ET); J. Ehrmann (ET)