



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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May 19, 2022

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

Sent via email to: [REDACTED]

Mitchell Dinnerstein
[REDACTED]

RE: PERS #: [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Dinnerstein:

At its meeting on April 20, 2022,¹ the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) considered your appeal of the Board's determination of March 16, 2022, finding you ineligible for Deferred retirement benefits because you were removed for cause on charges of misconduct or delinquency directly related to your employment. You filed a letter of appeal on or about March 23, 2022.

After careful consideration, the Board denied your appeal and affirmed its prior determination that you are not eligible for Deferred retirement benefits under N.J.S.A. 43:15A-38. Finding no genuine issue of material fact in dispute, the Board determined that no administrative hearing was necessary, and directed the undersigned to draft a Final Administrative Determination. Findings of Fact and Conclusions of Law were presented to and approved by the Board at its May 18, 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 Board made the following factual findings.

The record before the Board establishes that you were enrolled in the PERS on July 29, 2000, as a result of your employment with The College of New Jersey as a Repairer. On August 28, 2003, you transferred to the Ocean County Board of Social Services as a Maintenance Repairer. You then transferred to Burlington County College (BCC) as a Maintenance Mechanic–Electrician in 2007. You remained in this position until your termination on December 8, 2011.

You were terminated from employment on December 8, 2011, due to your behavior on numerous occasions from April 11, 2008 through December 8, 2011. Your employer provided documents and other evidence, which establish that you were counseled verbally, received written warnings, and received three suspensions for work performance and misconduct leading up to your termination.

Specifically, you were terminated for Violating BCC’s Civility Policy 913 in addition to Insubordination. Records provided by BCC establish that you were involved in several altercations with your co-workers where you yelled and used abusive, vulgar, and racially insensitive language towards them. Furthermore, you refused to perform work as assigned. On August 10, 2011, you were suspended without pay for three days on charges of failing to follow established communication protocols. You were informed that any future misconduct would result in your termination and given a Final Warning. Subsequent to that admonition, on December 8, 2011, you used profanities regarding the supervisory staff in a public area in violation of the College’s Civility Policy. Your employment was terminated immediately.

On December 23, 2011, the BCC Support Staff Association (Association) filed a grievance contending that you were terminated without just cause. The College Board of Trustees denied the grievance. Subsequently, the Association elected to proceed to Step Five of the negotiated grievance procedure, which provides for advisory arbitration. Ultimately, the College Board of

Trustees issued a written decision dated June 14, 2012, sustaining your termination on charges of misconduct or delinquency directly related to your employment. The College Board of Trustees determined that your termination was reasonable and justified.

An Arbitration Hearing was held on March 22, 2013. On July 5, 2013, the State of New Jersey Public Employment Relations Commission (PERC) denied your grievance. PERC found that the College did not violate the negotiated agreement in terminating you.

You then filed a lawsuit challenging your termination. On November 21, 2017, the United States District Court, District of New Jersey, granted the College's Motion for Summary Judgment. The court found that you had failed to meet the burden to demonstrate unlawful discrimination based upon your religion or a hostile work environment. The Third Circuit Court of Appeals issued an unpublished opinion dated March 8, 2019, affirming that decision. Finally, on October 8, 2019, the Supreme Court of the United States denied your Writ of Certiorari.

At the time of your removal from employment, you were approximately 50 years of age and your PERS account reflected a total of 10 years of service credit. Therefore, before your termination, the only benefit you could have filed for was a Deferred retirement. You filed an application for Deferred retirement on February 27, 2020, to become effective November 1, 2021. At its meeting of March 16, 2022, the Board considered and denied your application for Deferred retirement benefits pursuant to N.J.S.A. 43:15A-38, because you were removed for cause on charges of misconduct or delinquency.

On March 23, 2022, you filed an appeal of the Board's decision denying your application for Deferred retirement benefits. Your appeal letter essentially reiterated your statements at the Board's meeting of March 16, 2022, and did not specify any factual or legal issue. At the Board's April 20, 2022, meeting, the Board found that there was no need for an administrative hearing, noting that no genuine issue of material fact was in dispute. The Board therefore directed the

undersigned to draft findings of fact and conclusions of law consistent with its determination for consideration at its meeting of May 18, 2022.

CONCLUSIONS OF LAW

The Board made the following conclusions of law.

PERS members with 10 or more years of service are eligible to file for Deferred retirement benefits upon reaching 60 years of age:

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,² if he so qualifies under said section, or;
- (b) A deferred retirement allowance, beginning at the retirement age...

[N.J.S.A. 43:15A-38 (Emphasis added)].

Based on the plain language of the statute as applied to the facts in the record, the Board determined that you were removed for cause on grounds of misconduct or delinquency directly related to your employment, and so are ineligible for Deferred retirement benefits. See In re Hess, 422 N.J. Super. 27 (App. Div. 2011) (holding that ineligibility for Deferred retirement occurs 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**

² N.J.S.A. 43:15A-41

determination. Withdrawal terminates all rights and privileges of membership, including the right of appeal.

As noted above, the Board has considered your personal statements, written submission 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. 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,



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