



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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December 18, 2019

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

[REDACTED]

RIDGEWAY & STAYTON, LLC
Herbert Stayton, Esquire

[REDACTED]
[REDACTED]

RE: Robyn Fisher
[REDACTED]

Dear Mr. Stayton:

FINAL ADMINISTRATIVE DETERMINATION

I am writing in reference to the decision of the Board of Trustees of the Public Employees' Retirement System (PERS) regarding the appeal of your client, Robyn Fisher, challenging the Board's decision of July 17, 2019. In that decision, the Board denied Ms. Fisher's request to reinstate her matter to the Office of Administrative after she voluntarily withdrew her appeal. At its meeting on October 16, 2019, the Board determined that there are no material facts in dispute and directed the Board Secretary, in consultation with the Attorney General's Office, to prepare Findings of Fact and Conclusions of Law, which were presented and approved by the Board at its December 11, 2019, meeting.

FINDINGS OF FACT

The record before the Board reveals that Ms. Fisher originally applied for Ordinary Disability retirement benefits on March 11, 2016 on the basis of cognitive deficits and orthopedic conditions. At its meeting of February 16, 2017, the Board found that Ms. Fisher was not totally and permanently disabled and denied her application. On March 16, 2017, Ms. Fisher filed an application for Accidental Disability, alleging a November 3, 2015, incident, caused her to become disabled. On March 31, 2017, you contacted Valerie McManus, in the Division of Pensions and

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Benefits (Division) Disability Review Section, and withdrew Ms. Fisher's Ordinary Disability application, electing to proceed on the most recent, March 15, 2017, disability application.

On September 20, 2017, the Board considered Ms. Fisher's application for Accidental Disability retirement benefits. The Board again found that Ms. Fisher was not totally and permanently disabled. She appealed the Board's denial and at its meeting of November 8, 2017, the Board approved her request for a hearing in the OAL and transferred the matter as a contested case.

On or about October 10, 2018, Ms. Fisher withdrew her appeal from the OAL. Neither the withdrawal letter nor the captioned Withdrawal of Appeal motion papers mentioned that the matter should remain pending in the OAL or that Ms. Fisher sought a determination on the merits regarding her application for Ordinary Disability retirement benefits. The Board noted Ms. Fisher's withdrawal at its meeting of November 7, 2018.

Three months after withdrawing her matter from the OAL, on January 30, 2019, Ms. Fisher filed another application for Ordinary Disability retirement benefits based solely on orthopedic and neurologic conditions. On January 31, 2019, Ms. McManus wrote to Ms. Fisher and advised that because Ms. Fisher withdrew her appeal, she would not be able to refile an application on the conditions included in the withdrawn application, as the withdrawal is considered a final disposition of the matter.

On March 4, 2019, you appealed Ms. McManus' decision to the Board. You asserted that when this matter was set for hearing in the OAL, you had a discussion with the Deputy Attorney General representing the Board and the Administrative Law Judge concerning whether Mr. Fisher would proceed with her application for Accidental Disability retirement benefits or whether she would withdraw her appeal. Ultimately, Ms. Fisher determined that she would withdraw her matter from the OAL.

At its meeting of July 16, 2019, the Board denied Ms. Fisher's request to reinstate her appeal in the OAL. The Board noted that there was no requirement that Ms. Fisher withdraw her appeal so that she may proceed with an application for Ordinary Disability retirement benefits. Ms. Fisher had filed and withdrew several disability applications, all generally on the same alleged impairments. Further, no explanation has been provided as to why she would have withdrawn her appeal from the OAL in the event that, at the time, she sought to proceed on the basis of an Ordinary Disability retirement. Thus, the ALJ had jurisdiction to consider whether Ms. Fisher was eligible for Ordinary Disability retirement benefits. The matter was ripe for a hearing before the ALJ and Ms. Fisher opted to withdraw. Accordingly, the Board denied the request to reinstate her appeal.

On or about August 13, 2019, you filed a timely appeal of the Board's July 16, 2019, decision, and requested an administrative hearing. You asserted that you would rely on the transcript of the hearing, including your on the record discussion with ALJ Lieberman and the DAG representing the Board, your July 2, 2019, certification, and additional medical records in support of your appeal. The Board notes that you neither cited to nor provided the hearing transcripts in support of your position.

The Board considered your appeal at its meeting of October 16, 2019, and denied your request for an administrative hearing, essentially for the reasons set forth in the Board's denial letter dated August 2, 2019. The Board determined that there were no material facts in dispute and directed the Board Secretary in conjunction with the Attorney General's Office to prepare Findings of Fact and Conclusions of Law which constitutes the Board's Final Administrative Determination.

CONCLUSIONS OF LAW

Under the Uniform Administrative Procedure Rules, a party may withdraw their request for a hearing on the contested issues before the OAL upon written notice to the ALJ and all parties.

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N.J.A.C. 1:1-19.2. Once a party withdraws their request for a hearing, the ALJ returns the matter to the clerk and the matter is returned to the agency head for disposition. Ibid. In this case, you filed papers to withdraw Ms. Fisher's appeal from the OAL. The Board notes that there is no language in either document which limits the withdrawal to a specific issue in the case, and the withdrawal was not filed with any language respecting whether it was with or without prejudice. In light of the procedural posture of this case, the Board also found that you failed to provide a reasonable basis or good cause to reinstate a matter that was withdrawn from the OAL, returned to the agency, and placed on the Board's meeting agenda to note the withdrawal.

The Board also notes that there was no reason to withdraw Ms. Fisher's appeal from the OAL in order to pursue an Ordinary, rather than an Accidental, Disability pension. PERS members may apply for either Ordinary or Accidental Disability retirement benefits. N.J.S.A. 43:15A-42, 43. Under both statutory schemes, a member must establish a total and permanent disability in order to qualify for either disability benefit. Ibid. Moreover, the regulations authorize the Board to award an Ordinary Disability retirement benefit to an Accidental Disability applicant if the member is found to be disabled from performing their regular and assigned duties without the need for a separate hearing or application. N.J.A.C. 17:2-6.7.

For these reasons, the Board denied Ms. Fisher's request to reinstate her appeal after her withdrawal.

As noted above, the PERS Board has considered your written submissions and all documentation in the record. Because this matter does not entail any disputed questions of fact, the PERS Board was able to reach its findings of fact and conclusions of law in this matter on the basis of the retirement system's enabling statutes and regulations 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.

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You have the right, if you wish, 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 Ignatowitz, Secretary
Board of Trustees
Public Employees' Retirement System

G-16/JSI

C: DAG Amy Chung (ET); DAG R. Kelly (ET) D. Lewis (ET)