



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

March 18, 2021

Sent via email to: [REDACTED]

CHAMLIN ULIANO & WALSH
James Uliano, Esquire

[REDACTED]

RE: Cheryl Rooth
PERS [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Uliano:

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) denying your client, Cheryl Rooth's request to file for Accidental Disability retirement benefits. The Board originally denied Ms. Rooth's request at its meeting of November 18, 2020.¹ You filed a timely appeal of that determination on January 7, 2021, and requested a hearing in the Office of Administrative Law as a contested case. At its meeting of February 17, 2021, the Board found no genuine issue of material fact in dispute and denied your request for an administrative hearing. Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the PERS Board at its March 17, 2021, meeting.

The Board has reviewed the documentation and finds that the statutes governing the PERS and relevant case law do not permit your client to file for Accidental Disability retirement benefits because she did not terminate employment due to a disability. Rather, she was terminated from employment and is therefore not eligible to file for a disability benefit.

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

FINDINGS OF FACT

The record establishes that Ms. Rooth was employed as a Bus Driver with the Lacey Township Board of Education (BOE). On April 29, 2019, Ms. Rooth was involved in a collision with another school bus. Toms River police arrived at the scene and Ms. Rooth was subsequently charged with Driving While Intoxicated, Reckless Driving, Driving While Intoxicated in a school zone, Driving While Intoxicated in a school crosswalk area and Driving While Intoxicated with a minor child present (disorderly persons offense).

Ms. Rooth filed her *Application for Disability Retirement* on March 12, 2020, requesting an Accidental Disability retirement effective April 1, 2020 on the basis of the April 29, 2019 incident. The *Employer Certification for Disability Retirement*, submitted by the Lacey Township BOE on March 16, 2020, indicated Ms. Rooth was dismissed on June 30, 2019, due to a settlement agreement. In accord with N.J.A.C. 17:1-6.4, the Division of Pensions and Benefits (Division) requested further information from Lacey Township BOE in regard to Ms. Rooth's dismissal.

In response, the Division was provided a copy of the December 2019 *Confidential Separation Agreement and Full and Final Release (Agreement)* between Lacey Township School District and Ms. Rooth wherein both parties desired to end the relationship between them as well as the issues regarding her employment. The terms of the agreement required that Ms. Rooth irrevocably resign her employment with the district effective June 30, 2019, and that she agreed to not seek employment with the BOE. An appendix to the Agreement indicates Ms. Rooth irrevocably resigned effective December 12, 2019. The Board noted Ms. Rooth did not revoke the Agreement as was her option as stipulated in the Revocation clause.

You wrote to the Board on Ms. Rooth's behalf on October 7, 2020, and asserted that Ms. Rooth should be eligible to file for a disability retirement as the underlying administrative charges which resulted in her loss of employment were related to her disability. The Board noted that as set forth in N.J.A.C. 17:1-6.4(b), members who have involuntarily or voluntarily terminated service

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by way of a settlement agreement reached due to pending administrative or criminal charges will not be permitted to apply for a Disability retirement unless the underlying charges relate to the disability.

The Board also noted that nothing in the Agreement pertains to an alleged disability and found that the record clearly establishes that Ms. Rooth did not separate from employment due to an alleged disability. Rather, Ms. Rooth separated from employment due to the administrative charges. Accordingly, the Board determined Ms. Rooth is ineligible to apply for Accidental (or Ordinary) Disability retirement benefits. You filed a timely appeal of the Board's decision and at its meeting of February 17, 2021, the Board denied your request for an administrative hearing, and directed the Board Secretary to draft findings of fact and conclusions of law for its review at the March 17, 2021, meeting,

CONCLUSIONS OF LAW

The Board made the following legal conclusions.

The Board found that Ms. Rooth is not eligible to apply for Accidental Disability retirement benefits because she did not terminate employment due to an alleged disability. Rather, she was terminated from employment due to administrative and motor vehicle charges stemming from a work-related incident on April 29, 2019, wherein Ms. Rooth was involved in a collision with another school bus. After an investigation by the Toms River Police Department, Ms. Rooth was subsequently charged with Driving While Intoxicated, Reckless Driving, Driving While Intoxicated in a school zone, Driving While Intoxicated in a school crosswalk area and Driving While Intoxicated with a minor child present (disorderly persons offense). Members who separate from employment for a reason other than a disability are not eligible to apply for disability retirement benefits.

In making its determination, the Board relied upon N.J.A.C. 17:1-6.4, which states:

(a) Each disability retirement applicant must prove that his or her retirement is due to a total and permanent disability that renders the applicant physically or mentally incapacitated from performing normal or assigned job duties at the time the member left employment; the disability must be the reason the member left employment.

(b) Members who have involuntarily or voluntarily terminated service for any of the reasons listed below will not be permitted to apply for a disability retirement:

1. Removal for cause or total forfeiture of public service;
2. Settlement agreements reached due to pending administrative or criminal charges, unless the underlying charges relate to the disability;
3. Loss of licensure or certification required for the performance of the member's specific job duties;
4. Voluntary separation from service for reasons other than a disability; and
5. Job abolishment or reduction in force.

(c) The Division will review all disability retirement applications submitted after a member has terminated service to determine whether the member's application is eligible for processing, pursuant to (a) above.

[Emphasis added.]

Accordingly, the Board found that because Ms. Rooth was terminated from employment due to the administrative and motor vehicle violations stemming from the April 29, 2019, incident, she is not eligible to apply for disability retirement benefits. The Board noted your argument that Ms. Rooth is eligible to apply for disability benefits because "the only reason for her dismissal was the underlying charge." However, as required pursuant to N.J.S.A. 43:15A-42, 43 and the regulation, Ms. Rooth is required to establish that she separated from employment due to a disability rather than administrative charges.

With her years of service, Ms. Rooth presently qualifies for a Deferred retirement, which means that she is eligible to begin collecting monthly retirement benefits on the first of the month following her sixtieth birthday. If Ms. Rooth chooses a Deferred retirement, she **must** complete a new retirement application prior to her sixtieth birthday via her MBOS account.

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However, please be advised the Board may consider the issue of honorable service in light of the circumstances under which Ms. Rooth separated from employment and the impact it may have on her application for Deferred retirement benefits, in accordance with N.J.S.A. 43:1-3. The acceptance of Deferred retirement benefits will not prejudice Ms. Rooth's right to appeal the Board's determination that she is not eligible to apply for Disability retirement benefits.

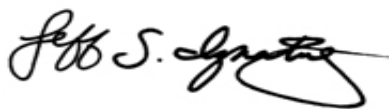
As noted above, the Board has considered your written submission and all documentation in the record. Because this matter does not entail any disputed questions of fact, the Board was able to reach its findings of fact and conclusions of law on the basis of the retirement system's enabling statutes and 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 also 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 Ignatowitz, Secretary
Board of Trustees
Public Employees' Retirement System

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G-7/JSI

c: D. Lewis (ET); K. Ozol (ET); A. Ginsburg (ET); G. Sasileo (ET); L. Hart (ET); P. Sarti (ET)

Cheryl Rooth (Sent via email to: [REDACTED])

Lacey Township Board of Education
Christie Hansen,
[REDACTED]