



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

February 18, 2021

Sent via email to: [REDACTED]

Laura Shaw
[REDACTED]

Re: PERS [REDACTED] (Tier 1)
PERS [REDACTED] (Tier 5)

FINAL ADMINISTRATIVE DETERMINATION

Dear Ms. Shaw:

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) denying your request to extend the expiration period of your PERS account. The Board originally denied your request at its meeting of July 15, 2020. You filed a timely appeal of that determination on September 11, 2020, and requested time to gather additional documents and information in support of your appeal, which the Board Office granted. On January 13, 2021, you submitted correspondence requesting that the Board transmit your appeal to the Office of Administrative Law as a contested case.

At its meeting of January 20, 2021, the Board reconsidered and affirmed its previous decision denying your request to extend the expiration period of your Tier 1 PERS account [REDACTED]. Finding no genuine issue of material fact in dispute, the Board also 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 February 17, 2021, meeting.

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.

FINDINGS OF FACT

The Board made the following factual findings.

You were enrolled in PERS on June 1, 2000, as a result of your employment with Berkeley Township, as a Clerk Typist, and you established membership in PERS account [REDACTED] as a Tier 1 member. You remained with this employer until February 2015. Thereafter, you accepted employment as a Tax Collector with the Borough of Seaside Heights (Seaside) and you continued your membership in the PERS Tier 1 account [REDACTED] effective March 1, 2015. The record indicates that you resigned from this employment and pension contributions were remitted through March 31, 2017. At that time, your PERS account reflected 16 years and 10 months of PERS service credit. After more than two years of inactivity in your PERS Tier 1 account [REDACTED], on July 1, 2019, you became employed in a PERS-covered position through your employment with Egg Harbor City. Therefore, as your Tier 1 membership expired, the Division correctly enrolled you under a new Tier 5 PERS membership account [REDACTED]. The record indicates that you are currently employed with this employer and contributing to your Tier 5 PERS membership.

After you were hired by Egg Harbor City, you sought to retain your PERS Tier 1 membership. Via letters dated December 13, 2019, and January 29, 2020, the Division of Pensions and Benefits (Division) denied your request, citing the 2-year expiration period as outlined in N.J.S.A. 43:15A-7(e). On January 7, 2020, you appealed the Division's December 13, 2019, denial to the Board.¹

At the July 15, 2020, Board meeting, you asserted that you qualify for an exemption to the 2-year expiration period under N.J.S.A 43:15A-8, due to the unique circumstances with regard to your resignation from employment. First, you argued that your resignation was not voluntary and

¹ Your matter was originally scheduled for the April 15, 2020, Board meeting. However, the matter was postponed due to the current health crisis.

that you were awarded unemployment benefits even though you resigned from your previous employer. You also argued that during the two-year expiration period you continuously and diligently sought PERS covered employment. However, the Board rejected these arguments and found that you did not qualify for an exemption under N.J.S.A. 43:15A-8(a).

You filed an appeal of the Board's decision and requested an extension of time to gather documents and information. The Board granted your request. At its meeting of January 20, 2021, the Board considered your appeal and request for a hearing. The Board ultimately found that no genuine issue of material fact was in dispute and therefore directed the Board Secretary to draft detailed findings of fact and conclusion of law for review at its meeting of February 17, 2021.

CONCLUSIONS OF LAW

The Board found that this matter is controlled by N.J.S.A. 43:15A-7(e) and 8. The Board first relied upon the provisions of N.J.S.A. 43:15A-7(e), which states:

Membership of any person in the retirement system shall cease if he shall discontinue his service for more than two consecutive years.

It is undisputed that after separating from your employment with Seaside, you did not commence PERS-covered employment within 2 years of your last contribution and therefore your PERS Tier 1 membership expired.

After your PERS Tier 1 membership account [REDACTED] expired, you accepted employment with Egg Harbor City. Notwithstanding that 2 years had elapsed from the date of your last contribution, you requested that you be re-enrolled in your original Tier 1 membership due to the circumstances regarding your resignation from employment with Seaside. N.J.S.A. 43:15A-8(a), allows the Division of Pension and Benefits (Division) to extend the 2-year expiration period outlined in N.J.S.A. 43:15A-7(e). However, the exemption is not automatic upon return to a PERS-covered position. N.J.S.A. 43:15A-8(a) states, in pertinent part:

If a member of the retirement system 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 has not withdrawn the accumulated member's contributions from the retirement system, the membership of that member may continue, notwithstanding any provisions of this act if the member returns to service within a period of 10 years from the date of discontinuance from service.

The Board found that although you pursued PERS employment during the 2 years after you resigned from public employment, ultimately you did not obtain a PERS-covered position until after the 2-year period had lapsed. Therefore, the Division correctly classified you as a Tier 5 under a new PERS account [REDACTED]. Unfortunately, the Board found that your circumstances do not fall within the exceptions for continuing your first membership as delineated in N.J.S.A. 43:15A-8(a). While your PERS membership is vested, after two years of inactivity, your Tier 1 PERS account [REDACTED] expired and therefore you were not permitted to continue participation in this membership based upon your employment with Egg Harbor City. Because your PERS Tier 1 account expired, when you accepted employment with Egg Harbor City, you were required to enroll in a new PERS account under a new Tier. Accordingly, the Board affirmed the Division's decision and denied your request to extend the expiration period beyond the 2 years permitted per N.J.S.A. 43:15A-7(e) on your Tier 1 membership account.

As noted in the Division's prior communications, your Tier 1 PERS account is vested for the purposes of the Deferred retirement benefits available under the provisions N.J.S.A. 43:15A-38. You also have the option to transfer your pension contributions and pension service credit from your prior Tier 1 membership [REDACTED] to your current Tier 5 membership account [REDACTED]. In doing so, you would waive all rights to a benefit under your Tier 1 PERS membership. To make the transfer, you would need to submit a completed Tier-to-Tier Transfer Form.

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

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

G-11/JSI

C: N. Munko (ET)