



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

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

June 8, 2018

Via email - [Redacted]

Daniel W. Sexton, Esq.

[Redacted]

Re: John A. Smith III

[Redacted]

FINAL ADMINISTRATIVE DETERMINATION

I am writing in reference to the denial by the Board of Trustees of the Teachers' Pension and Annuity Fund (TPAF) of your client, John Smith's request to transfer service credit from his membership account in the TPAF to his current Public Employees' Retirement System (PERS) membership account. The TPAF Board initially reviewed and denied this request at its January 11, 2018, meeting. On February 23, 2018, you appealed the TPAF Board's denial and asked the TPAF Board to reconsider its decision and approve the request to transfer the TPAF service credit of 9 years and 1 month to the PERS without cost or grant a hearing in the Office of Administrative Law (OAL). At its meeting on May 3, 2018, the TPAF Board reconsidered and denied the request to transfer the TPAF service credit to the PERS account and denied the request for a hearing in the OAL. Findings of Fact and Conclusions of Law, as outlined below, were approved by the TPAF Board at its meeting of June 7, 2018.

The TPAF Board has reviewed your submissions and the relevant documentation and finds the laws governing the TPAF do not permit the Board to grant Mr. Smith's request to transfer his TPAF service credit to his PERS account without cost.

### **FINDINGS OF FACT**

The record shows that Mr. Smith was enrolled in the TPAF effective September 1, 1968, as a result of his employment with Jersey City Public Schools. In accordance with enrollment guidelines at that time, he was enrolled in the TPAF and assigned pension membership account number [REDACTED]. Mr. Smith remained in this position, and pension contributions were received in his TPAF account, until September 30, 1978. At that time, Mr. Smith's TPAF account reflected a total of 9 years and 1 month of service credit.

On March 29, 1977, Mr. Smith signed a PERS enrollment application as required due to his position as an Assistant Court Administrator with Hudson County. On this PERS enrollment application, Mr. Smith indicated that he was a former member of the TPAF and that **"I do not wish to transfer accumulated pension to this new pension at this time."** The Division properly enrolled Mr. Smith in the PERS, with an enrollment date of April 1, 1977.

By letter dated December 15, 2003, Mr. Smith was notified that the pension contributions associated with his inactive TPAF membership account had been transferred to the Department of the Treasury-Unclaimed Properties. This notice included the following statement: "If you have any questions regarding this matter, please do not hesitate to contact Unclaimed Property at (609) 292-9200. You may also write to them at the following address: Department of the Treasury, Division of Administration, Unclaimed Property, P.O.Box 214, Trenton, NJ 08646."

The Division's records indicate that it was not until a letter dated August 13, 2012, Mr. Smith requested an audit of his retirement account as he thought he had a total of 43 years and 3 months in the pension system at the time the request was made. Upon reviewing Mr. Smith's account, he was advised in a letter dated August 20, 2012, from Michelle McGrillies, Client Services that he had a former membership under TPAF [REDACTED] of 9 years and 1 month of service with Jersey City Public Schools. A letter was mailed to Mr. Smith on December 15, 2003, stating that his account was escheated to Unclaimed Properties and that he would need to contact them to see if there are any remaining contributions under that membership. A copy of that letter was enclosed for Mr. Smith's

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review. In addition, the Division advised Mr. Smith's that his account under PERS [REDACTED] had 35 years and 3 months of service as of June 30, 2012. The Division stated that Mr. Smith could purchase former membership by completing a purchase application through the Member Benefits Online System (MBOS) to find out if he was eligible to purchase this available time.

On February 10, 2017, Mr. Smith sent an email to the Division requesting a copy of any notice of cessation of his membership in the Pension Fund. On the same day, an automated email response was generated from the Division and if this response did not answer his inquiry, or if he has additional questions, to please reply directly to the email with his full name and membership number.

On March 27, 2017, Mr. Smith sent a letter to the Division requesting that the Application to Transfer he enclosed be accepted as "a correction of this long standing error" so that his TPAF time will be transferred into the PERS.

On June 27, 2017, Mr. Smith applied to purchase Former Membership service credit for the period covering September 2, 1968 to June 30, 1977, with Jersey City Board of Education. By letter dated July 13, 2017, from the Purchase Section, Mr. Smith was informed that he was eligible to purchase 105 months of former member service beginning date of 07/01/1968 to ending date of 03/31/1977 with the Jersey City Public School. This quotation letter indicated "TPAF WDL [REDACTED]."

By letter dated June 30, 2017, Nikki Munko, Pensions Benefits Specialist I, Enrollment Section, informed Mr. Smith that he was ineligible to transfer the TPAF account into his PERS account. The last date of contribution in Mr. Smith's TPAF account was September 30, 1978. After two years of inactivity, his TPAF account expired pursuant to the provisions of N.J.S.A. 18A:66-7. The Division never received an Application for Interfund Transfer. Mr. Smith's right to transfer this account expired as of September 30, 1980.

On July 13, 2017, Mr. Smith was issued a letter indicating that his account was credited for the period of employment covering April 1, 1977 to June 30, 1977, with Hudson County, through regular pension contribution remittance. Therefore, no additional service credit could be added to his account for this period.

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On July 14, 2017, Mr. Smith sent a second letter to Nikki Munko, appealing the administrative denial letter dated June 30, 2017. This letter included additional documentation pertaining to Mr. Smith's leave of absence from the Jersey City Public Schools.

By letter dated August 8, 2017, Nikki Munko, informed Mr. Smith that based on the additional documentation received, the Division's position remained unchanged. The last date of contribution in his TPAF account was September 30, 1978. In Mr. Smith's letter of August 8, 2017, he indicated that he was granted an indefinite leave of absence. However, the documentation included in his letter indicated that the Jersey City Board of Education at its meeting of November 19, 1980 granted Mr. Smith a leave of absence for Personal Business from September 1, 1980 to September 1, 1981. Since Mr. Smith did not return to covered employment with the Jersey City Board of Education nor extended his leave of absence, his TPAF account expired after two years of inactivity or September 1, 1983 in accordance with N.J.S.A. 18A:66-7(a).

Further, Mr. Smith claims that he did not receive his expiration notice from the TPAF. Despite his claim, according to the Division's records, Mr. Smith was issued annual Employee Benefits Statements which contained total membership service through his employers. In addition, Mr. Smith had available to him sufficient resources to find out the necessary steps he needed to take regarding his request to transfer.

By letter dated August 25, 2017, Mr. Smith appealed the Division's decision to the TPAF Board. In his letter, Mr. Smith indicated the reasons he should be permitted to transfer his teaching time in the TPAF to the PERS cost free. At its meeting of January 11, 2018, the TPAF Board considered Mr. Smith's letter dated August 25, 2017, and all relevant documentation regarding his request. Thereafter, the TPAF Board upheld the Division's administrative determination and denied Mr. Smith's request pursuant to N.J.S.A. 18A:66-7(a).

By letter dated February 23, 2018, you exercised your right to appeal and requested that the TPAF Board reconsider its prior denial or grant a hearing in the OAL if the Board again denies the request to transfer service credit from the TPAF to the PERS without cost. At its meeting of May 3,

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2018, the Board denied Mr. Smith's request to transfer the TPAF service credit of 9 years and 1 month to his PERS account.

The Final Administrative Determination serves as formal notice that the TPAF Board denied your request for a hearing.

### **CONCLUSIONS OF LAW**

The Board based its determination upon the provisions of N.J.S.A. 18A:66-7(a).

In that regard, N.J.S.A. 18A:66-7(a), states in pertinent part:

Membership of any person shall cease:

...

(a) if, except as provided in section 18A:66-8, he shall discontinue his service for more than two consecutive years;

...

The issue before the Board is whether Mr. Smith is able to transfer his expired TPAF membership service into his PERS account. Interfund transfers of membership are not mandatory. Rather, such transfers are optional, and occur only at the member's request.

Mr. Smith asserts that the responsibility to request a transfer was his employer's, Jersey City Board of Education, rather than his own. However, while some employers may assist a member in matters such as these a transfer is optional, and is not a mandatory transaction. Therefore, if an employee chooses to exercise the option, the responsibility to timely file the required application lies with the member, not the employer.

It is clear by the above referenced statute that Mr. Smith's TPAF membership ceased as of September 1, 1983, two years after his leave of absence. Since Mr. Smith took no action to pursue the transfer of service credit from his TPAF account to his PERS account during this period of time, he is ineligible to now interfund transfer.

As noted above, the TPAF Board has reviewed your written submissions and because this matter does not entail any disputed questions of fact, the TPAF 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 regulation

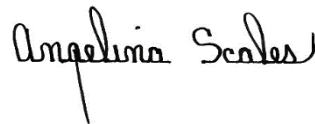
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and without the need for an administrative hearing. Accordingly, this correspondence constitutes the Final Administrative Determination of the Board of Trustees of the Teachers' Pension and Annuity Fund.

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  
Phone: (609) 292-4822

Sincerely,

A handwritten signature in black ink that reads "Angelina Scales". The signature is written in a cursive style with a long, thin vertical stroke extending downwards from the end of the name.

Angelina Scales, Secretary  
Board of Trustees  
Teachers' Pension and Annuity Fund

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c: Amy Chung, DAG (ET)  
DAG Jeff Ignatowitz (ET)  
Luann Barnett (ET)  
Nikki Munko (ET)