



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
August 17, 2023

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

Sent via email to: [REDACTED]

Cesar Urvina Gallegos
[REDACTED]

Re: PERS # [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Urvina Gallegos:

At its meeting on July 19, 2023, the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) considered your appeal of the Board's decision denying your eligibility for Deferred retirement benefits in light of your dismissal for cause on charges of misconduct or delinquency directly related to your employment in accord with N.J.S.A. 43:15A-38. The Board had originally denied your application for Deferred retirement benefits at its meeting of April 19, 2023. You filed a timely appeal of the Board's decision on June 2, 2023.

After careful consideration, the Board affirmed its prior decision, and finding no genuine issue of material fact in dispute, denied your request for an administrative hearing. Thereafter, the Board directed the undersigned to draft a Final Administrative Determination, which was reviewed and approved at its meeting of August 16, 2023.

FINDINGS OF FACT

The Board made the following factual findings.

The record before the Board establishes that you were enrolled in the PERS on January 1, 1988, as a result of your employment as a Resource Recovery Worker–Outside, with the

Somerset County- Finance Office (Somerset). You remained with this employer and in this title until your termination on December 4, 2006.

Records provided by Somerset establish that from March 10, 1988, through November 13, 2006, you were suspended 17 times for disciplinary reasons relating to your leaving work without pay, taking days off after exhausting all of your sick time, poor attendance and excessive absenteeism. On December 4, 2006, Somerset held a pre-termination hearing and charged you with excessive absenteeism and terminated you from public employment effective immediately.

On May 22, 2020, you filed a retirement application requesting a June 1, 2020, retirement. At the time of your dismissal from employment, you were 46 years of age and your membership account reflected a total of 18 years and 8 months of PERS service credit. Therefore, at that time the only benefit you could file for was a Deferred retirement.

The Board considered your application for Deferred retirement benefits at its meeting of April 19, 2023. At the meeting, the Board found that you were removed for cause on charges of misconduct or delinquency and denied your application. On or about June 2, 2023, you filed a timely appeal of the Board's decision and requested that the matter be transferred to the Office of Administrative Law as a contested case.

At its meeting on July 19, 2023, the Board considered your appeal, affirmed its prior decision, and finding no genuine issue of material fact in dispute, denied your request for an administrative hearing.

CONCLUSIONS OF LAW

The Board made the following conclusions of law.

Tier 1 and 2 PERS members with 10 or more years of service are eligible to file for Deferred retirement benefits upon reaching 60 years of age. The eligibility for Deferred retirement benefits are outlined in N.J.S.A. 43:15A-38, which states, in pertinent part:

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,¹ if he so qualifies under said section, or;
- (b) A deferred retirement allowance, beginning at the retirement age...

[(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 you are not eligible 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).

In your appeal you argued that there were certain factual issues surrounding your termination that you wished to address and provided an explanation for the history of disciplinary actions taken against you. While the statute's reference to "misconduct," standing alone, might be construed as a high bar, the addition of the words "or delinquency," in the Board's view, indicates that the statute is intended to apply to a broad range of employee behavior. Consistent failure, over years, to comply to the employer's satisfaction with job attendance requirements and procedures, as occurred in this case, falls within this broad range of behavior. The Board therefore finds that your failure to comply with your employer's procedures and your failure to improve after 17 suspensions constitutes misconduct or delinquency as contemplated under the statute. Moreover, you had the opportunity to appeal your termination when you were separated from service. Having failed to avail yourself of that option, your termination on charges of misconduct or delinquency became final. It is not within the Board's purview or competence to re-litigate your termination sixteen years after the event.

¹ N.J.S.A. 43:15A-41

At the time of your dismissal from employment, you were 46 years of age and your membership account reflected a total of 18 years and 8 months of PERS service credit. Therefore, at that time the only benefit you could file for was a Deferred retirement.

Consequently, the Board found that because you were removed for cause on charges of misconduct or delinquency directly related to your employment, you are not eligible for a Deferred retirement, and the Board denied your retirement application under the provisions of N.J.S.A. 43:15A-38. See also In re Hess, 422 N.J. Super. 27 (App. Div. 2011).

You are eligible to withdraw your accumulated pension contributions remitted during active membership, and 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 he intends to appeal the Board's determination. Withdrawal terminates all rights and privileges of membership.**

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.

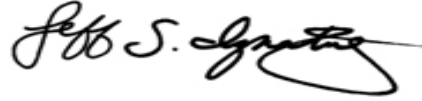
You have the right to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey.

All appeals should be directed to:

Superior Court of New Jersey
Appellate Division
Attn: Court Clerk
PO Box 006
Trenton, NJ 08625

Cesar Urvina Gallegos
August 17, 2023
Page 5

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Ignatowitz". The signature is fluid and cursive, with a large loop at the end.

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

G-11/JSI
C: J. Ehrmann (ET); R. Willever (ET)