



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

November 14, 2019

Edward Wortman



RE: 

Dear Mr. Wortman:

FINAL ADMINISTRATIVE DETERMINATION

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 reverse its decision to suspend your retirement benefit, which had been approved at the Board's May 15, 2019 meeting, in accord with N.J.A.C. 17:1-1.13 (a), due to pending administrative charges filed by your employer. You filed an appeal of that decision and requested reconsideration. At its meeting of October 16, 2019, the Board reconsidered your request, but nevertheless affirmed its prior decision. Thereafter, the Board determined that there are no material facts in dispute and found that there is no need for an administrative hearing. Accordingly, the Board directed the Secretary, in conjunction with the Attorney General's Office, to prepare Findings of Fact and Conclusion of Law, which were presented and approved by the PERS Board at its November 13, 2019 meeting.

The PERS Board has considered your personal statements, reviewed the written submissions prepared by your Union representatives, and all the relevant documentation in the record, and finds that there are no genuine issues of material facts in dispute and the Board's decision is within its statutory and regulatory authority, and thus there is no need for an administrative hearing.

FACTUAL FINDINGS

The record before the Board reveals that you applied for a Service retirement on January 2, 2019, with an effective retirement date of July 1, 2019. On May 2, 2019, your employer, the Motor Vehicle Commission (MVC), filed its Certification of Service and Final Salary Retirement, noting that you resigned from employment effective June 29, 2019. At its meeting on May 15, 2019, the Board approved your application for a Service retirement benefit. After the Board's meeting, but prior to your retirement benefit becoming due and payable, the Division was made aware of a Preliminary Notice of Disciplinary Action, filed by the MVC on May 20, 2019, in which you were charged with numerous administrative violations. On June 2, 2019, the Division wrote to you and advised that it had received notice of the charges, and that your retirement benefit would be held in abeyance pending reconsideration by the Board in light of the new information.

At the meeting, you requested that the Board allow you to receive your retirement benefit while the administrative charges were pending. After careful consideration of the serious nature of the charges and the impact it may have on your retirement benefit, the Board reversed its previous determination approving your Service retirement application effective July 1, 2019, until the resolution of the pending administrative charges in accord with N.J.A.C. 17:1-1.13 (a).

On or about August 16, 2019, the Board received a request for an appeal and reconsideration filed by the Communications Workers of America (CWA) on your behalf. In addition to requesting an administrative hearing to appeal the Board's decision, the CWA requested that you be allowed to receive your retirement benefit until your Annuity Savings Fund monies had been exhausted, arguing that, in the event of a total forfeiture, you would still be entitled to receive those funds. The Board reconsidered your matter at its meeting of October 16, 2019, but ultimately reaffirmed its original decision.

CONCLUSIONS OF LAW

N.J.A.C. 17:1-6.2(c) provides that:

No claims for retirement or death benefits can be processed until the matter has been fully adjudicated and completely resolved to the satisfaction of the Board of Trustees, pursuant to N.J.A.C. 17:1-1.13(a) 4. Resolution of these charges must be verified by contact with the County Prosecutor's Office, the Attorney General's Office, the Department of Education, the Civil Service Commission, the employer, or other responsible agencies.

Moreover, N.J.A.C. 17:1-6.2(e) provides that:

If charges listed in N.J.A.C. 17:1-1.13(a) are received by the Boards or Division after the member's date of retirement, the Boards may suspend retirement benefits pending the outcome of such charges.

Further, N.J.A.C. 17:1-1.13(a) 4 authorizes the Board to suspend a member's pension benefit "pending the outcome of charges including, but not limited to "[A]n administrative or disciplinary action."

Pursuant to the regulatory framework governing the PERS, the Board has the authority to stop the processing of a retirement benefit, or, if the charges are received after the member's retirement date, to suspend the retirement benefit pending a resolution of the charges "to the satisfaction of the Board of Trustees." N.J.A.C. 17:1-6.2(e); 17:1-1.13(a)(4). Here, the charges were received after the filing of your application for retirement benefits, but prior to your retirement date. Based on the serious nature of the work-related charges as alleged by the MVC, and pursuant to its regulatory authority, the Board voted to reverse its prior approval of your Service retirement application pending disposition of the charges. For these reasons, the Board has denied your request to process your retirement application until the resolution of the administrative charges.

As noted above, the Board has considered your personal statements and has reviewed the written submissions and all documentation in the record. Because this matter does not entail

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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
Phone: (609) 292-4822

Sincerely,



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

G-6/JSI

C: C. Chianese (ET); D. Dinkler (ET); L. Hart (ET); P. Sarti (ET)

Motor Vehicle Commission
Alberta McClain, Certifying Officer
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