



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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April 10, 2018

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SHEILA Y. OLIVER
Lt. Governor

Sent via Email to: [REDACTED]

ALTERMAN & ASSOCIATES, LLC
Stuart J. Alterman, Esquire

[REDACTED]

RE: William McElrea

[REDACTED]

Dear Mr. Alterman:

FINAL ADMINISTRATIVE DETERMINATION

I am writing in reference to the denial by the Board of Trustees of the Police and Firemen's Retirement System (PFRS) of your client, William McElrea's request for Service retirement benefits under N.J.S.A. 43:16A-5 (3) which allows a PFRS member with 20 years of creditable PFRS service who was enrolled in the PFRS on the effective date of Chapter 428, P.L. 1999, January 18, 2000, to receive a pension in the amount of 50% of the member's final year salary. The PFRS Board initially reviewed and denied his request at its December 11, 2017 meeting. On January 26, 2018, you appealed the Board's denial and requested a hearing in the Office of Administrative Law ("OAL").

At its meeting on March 12, 2018, the PFRS Board reviewed your appeal and the relevant documentation and found that the statute, regulation and relevant case laws governing the PFRS do not permit the Board to grant Mr. McElrea's request for Service retirement benefits. Determining that there are no factual issues in dispute, the Board voted to deny the request for a hearing and directed the Secretary to draft a Final Administrative Determination. Findings of Fact and Conclusions of Law, as outlined below, were approved by the PFRS Board at its meeting of April 9, 2018.

FINDINGS OF FACT

William McElrea became employed with Hamilton Township as a Patrolman and was enrolled in the PFRS effective February 2, 2002. On December 20, 2002, the Division of Pensions and Benefits (Division) received Mr. McElrea's Purchase Authorization for the purchase of 58 months of Military Service. In March of 2006, he authorized the purchase of 7 months of Uncredited Service. Therefore, his PFRS membership account was credited with 65 months of additional service credit for the purchase of Military and Uncredited service.

On October 18, 2011, Mr. McElrea requested information regarding his PFRS membership and the various types of retirements¹. On November 23, 2011, the Division provided Mr. McElrea with the total amount of PFRS membership service credit as of September 30, 2011 and referred him to Fact Sheet 19, Applying for Retirement by visiting the Division's website for various forms and publications containing information about the different types of retirements available to a member of the PFRS. In 2012, he requested a statement of his PFRS account as of June 30, 2012. The Division responded to his request and again referred him to the Division's website.

On March 3, 2015, the Division issued Mr. McElrea an *Estimate of Retirement Benefits for the PFRS* (estimate). This estimate indicated that based upon his total membership service of 18 years and 7 months (including his purchase of Military and Uncredited Service), he was only eligible to file for a deferred retirement effective April 1, 2025. On December 18, 2015, he was issued an estimate for a deferred retirement effective April 1, 2025. On page 2 of the estimate, it noted the following: **"You are not eligible for Service retirement September 1, 2016."**

¹ In this letter, Mr. McElrea acknowledged that he was ineligible for Service retirement pursuant to Chapter 428, P.L. 1999 based upon the following statement: "Under the current system I could have retired at 20 years if I were in the PFRS system before January 1, 2000".

On May 19, 2016, he filed an application requesting a Service retirement effective January 1, 2017. On May 20, 2016 a *Certification of Service and Final Salary Retirement* was filed by his employer, Hamilton Township, indicating that he resigned effective December 31, 2016. In May 2016, the Division notified Mr. McElrea that he was not eligible for either a Service or Special retirement because he did not meet the eligibility criteria for either type of retirement as of January 1, 2017. On July 6, 2016, the Division issued Mr. McElrea an estimate for a Service retirement effective on April 1, 2025, at which time he would be fifty-five years old. Subsequently, he cancelled his retirement application. On April 19, 2017, he refiled requesting Service retirement with an April 1, 2018 effective date. Again, the Division informed Mr. McElrea that he was ineligible for Service or Special retirement on April 1, 2018, the effective date requested on his application.

On September 8, 2017, you provided the Division with a letter of representation in Mr. McElrea's appeal of the Division's denial. On September 13, 2017, you requested that the Division provide a basis of its denial. Thereafter, the Division informed Mr. McElrea that he was ineligible to file for a Service retirement pursuant to Chapter 428, P.L. 1999 because he was not a member of the PFRS on or before the effective date of the law or January 18, 2000. He did not enroll in the PFRS until February 1, 2002 and therefore, Mr. McElrea was not eligible to file for a Service retirement pursuant to Chapter 428, P.L. 1999.

On October 27, 2017, you submitted a formal appeal. On November 7, 2017, you were notified that appeal would be considered at the December 11, 2017, PFRS Board meeting. At the December 11, 2017 meeting, the Board determined that Mr. McElrea is ineligible for a Service retirement pursuant N.J.S.A. 43:16A-5(3) which allows a PFRS member with 20 years of creditable PFRS service who was enrolled in the PFRS on the effective date of Chapter 428, P.L. 1999, January 18, 2000. The basis for the Board's denial was outlined in its letter dated December 13, 2017.

Thereafter, you appealed the Board's denial. Mr. McElrea amended his retirement for Service from April 1, 2018 to January 1, 2019. Mr. McElrea remains on payroll with Hamilton Township².

At its meeting on March 12, 2018, the Board determined that there were no facts in dispute and directed the Board Secretary to draft a Final Administrative Determination. This Final Administrative Determination serves as formal notice that the Board denied your request for a hearing.

CONCLUSIONS OF LAW

Following a review of the information, the PFRS upheld the Division's determination and denied Mr. McElrea's request for Service retirement. Mr. McElrea is not eligible for Service retirement benefits under Chapter 428, P.L. 1999. He was not a member of the PFRS until February 1, 2002, almost 2 years after the enactment of the law. Therefore, he does not qualify for the Service retirement benefit³.

The PFRS provides members with a Service retirement upon attaining 55 years of age. N.J.S.A. 43:16A-5. The statute was amended in 1999, under P.L. 1999, c. 428, and stipulated that when a PFRS member attains 20 or more years of creditable PFRS service, the member is eligible for a pension equal to at least 50% of the member's final compensation, provided the member was a member of the PFRS as of the effective date of the statute, or January 18, 2000.

N.J.S.A. 43:16A-5(3) states, in pertinent part:

Any member of the retirement system as of the effective date of P.L.1999, c.428 who has 20 or more years of creditable service at the time of retirement shall be entitled to receive a retirement allowance equal to 50% of the member's final compensation plus, in the case of a member required to retire pursuant to the provisions of subsection (1) of this section, 3% of final compensation multiplied

² As of December 31, 2017, his PFRS membership reflects a total of 21 years and 4 months of membership service which includes 65 months of his purchase of additional service credit.

³ The Board concurs that the amount of his service credit is not in dispute.

by the number of years of creditable service over 20 but not over 25.

[ibid.]

The Board also promulgated N.J.A.C. 17:4-6.11, which states, in relevant part:

(a) A member becomes eligible for "service" retirement:

....

2. On the first of the month following the attainment of 20 years of service credit in the Retirement System, if the member was enrolled in the Retirement System as of January 18, 2000.

Effective February 21, 2001, the Board amended the regulation to include eligibility for Service retirement "when the member has a minimum of 20 years of service credit, if the member was enrolled in PFRS as of January 18, 2000." 32 N.J.R. 4060(a). No comments on the amendment were received. 22 N.J.R. 684(a). In 2006, the Board clarified "that a member must have 20 years of service credit before being able to file for a service retirement, and the effective date would be the first of the month following the attainment of 20 years of service credit." 37 N.J.R. 4521(a). The requirement that the member be enrolled in PFRS as of January 18, 2000, to receive the benefit, remained. ibid. No comments were received relating to N.J.A.C. 17:4-6.11. 38 N.J.R. 1578(a).

Based upon the above, the Board disagrees with your claim that the Division is not correctly interpreting the statute. Most importantly, the Board concurs with the Division's interpretation of the statute that the member had to be enrolled in the Police and Fire Pension System prior to January 18, 2000. By its express language, N.J.S.A. 43:16A-5(3), begins with "[A]ny member of the retirement system as of the effective date of P.L.1999, c.428 who has 20 or more years of creditable service at the time of retirement" requires that the member seeking the enhanced retirement benefit provided by the statute to have been a member as of the effective date of the statute. There is no ambiguity in the statute requiring further interpretation. N.J.A.C. 17:4-6.11(a)(2) echoes the clear language of the

ALTERMAN & ASSOCIATES, LLC
Stuart J. Alterman, Esquire
RE: William McElrea
Page 6
April 9, 2018

statute, explicitly permitting Service retirement “if the member was enrolled in the Retirement System as of January 18, 2000.”

While the Board is mindful of the liberal approach our courts have taken with respect to pension statutes, Bumbaco v. Bd. of Trs., Pub. Employees’ Ret. Sys., 325 N.J. Super. 90, 94 (App. Div.), certif. denied, 163 N.J. 75 (2000), it is just as mindful of our courts’ caution that “eligibility is not to be liberally permitted.” Smith v. Dep’t of Treas., 390 N.J. Super. 209, 213 (App. Div. 2007). “Instead, in determining a person’s eligibility to a pension, the applicable guidelines must be carefully interpreted so as not to ‘obscure or override considerations of . . . a potential adverse impact on the financial integrity of the [fund].’” Ibid. (quotation omitted).

It is undisputed that Mr. McElrea enrolled in the PFRS on February 1, 2002, upon attaining a PFRS eligible position. He was clearly not a member of the PFRS on January 18, 2000. Thus, Mr. McElrea does not qualify for Service retirement under N.J.S.A. 43:16A-5(3) and N.J.A.C. 17:4-6.11.

Also, you argue that the New Jersey Assembly Committee Statement makes it clear that there is no limitation under the language; it states that, “the purpose of this bill, as stated in the sponsor’s statement, is to make the retirement and survivor’s benefits of the Police and Fireman’s Retirement System (PFRS) comparable, to the extent possible, to benefits under the State Police Retirement System, N.J.S.A. 53:5A-1...” You support this argument further with an August 4, 2014, letter from Senator Diane Allen to Florence Sheppard, Acting Director of the Division of Pensions and Benefits.

The Board disagrees with your assertions. “When the Legislature’s chosen words lead to one clear and unambiguous result, the interpretative process comes to a close, without the need to consider extrinsic aids.” State v. Shelley, 205 N.J. 320, 323 (2011) (citing State v. D.A., 191 N.J. 158, 164 (2007). “Extrinsic evidence, such as legislative history” is looked to for assistance “when statutory language yields ‘more than one plausible interpretation.’” Id. at 323-24, (quoting DiProspero v. Penn, 183 N.J. 477, 492-93 (2005)).

ALTERMAN & ASSOCIATES, LLC
Stuart J. Alterman, Esquire
RE: William McElrea
Page 7
April 9, 2018

As noted above, the PFRS Board has reviewed your written submissions and because this matter does not entail any disputed questions of fact, the PFRS 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 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 Police and Firemen's Retirement System.

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.

Sincerely,



Mary Ellen Rathbun, Secretary
Board of Trustees
Police and Firemen's Retirement System

G-6/mer

C: D. Lewis (ET); D. Dinkler (ET); G. Sasileo (ET)
William McElrea
DAG Danielle P. Schimmel (via e-mail to: [REDACTED])
DAG Amy Chung (via e-mail to: [REDACTED])