



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
P. O. Box 295
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September 8, 2017

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

FORD M. SCUDDER
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

Samuel J. Halpern, Esq.
[REDACTED]
[REDACTED]

RE: Joan Heleine
[REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Halpern:

At its meeting of May 4, 2017, the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) denied the request of your client, Joan Heleine, for retroactive enrollment in the TPAF based upon her prior employment with the Hope Township Public Schools from 2003-2006. The Board denied this request in accordance with N.J.S.A. 18A:66-2(p) and N.J.A.C. 17:3-2.1.

On June 20, 2017, you appealed the TPAF Board's determination and requested a hearing in the Office of Administrative Law (OAL). At its meeting of August 3, 2017, the Board denied your request. These findings of fact and conclusions of law constitute the Board's Final Administrative Determination in this matter.

FINDINGS OF FACT

Ms. Heleine was enrolled in the TPAF as a result of her employment with Barnegat Township and then the Great Meadows Regional Board of Education. She established a TPAF membership account [REDACTED] and was credited with seven (7) years of service through June 1998. Ms. Heleine filed an application to withdraw all of the funds in this account and a rollover check to Salomon Smith-Barney was issued on March 13, 2000.

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Ms. Heleine was enrolled in a second TPAF account [REDACTED] from her employment with the Netcong Borough Board of Education until March 2008 for a total of nine (9) months of service credit. Again, Ms. Heleine applied to withdraw her contributions and a check was issued to her on October 13, 2008.

On October 9, 2014, the Division received your letter directed to Mary Ellen Rathbun, TPAF Board Secretary, requesting the Board to retroactively enroll Ms. Heleine in the TPAF based on the fact that the Hope Township Public Schools (HTPS) failed to enroll her during her employment between 2003-2006. In an e-mail dated October 14, 2014, addressed to you, Ms. Rathbun indicated that your request to the TPAF Board had not been previously reviewed administratively nor was a response provided by the Division's Operational Section. For that reason, your letter of October 9, 2014, was referred to the appropriate section for review and reply under separate cover and you would receive a response.

On September 23, 2015, Wendy Jamison, Assistant Director of Pension Operations denied your request for Ms. Heleine to be retroactively enrolled in the TPAF. A review of correspondence from Michael Slattery, Superintendent of HTPS, reflected that Ms. Heleine was a contracted vendor for the period from 2003-2006 and that she was ineligible for TPAF enrollment. In addition, according to your October 9, 2014 letter, you indicated that Ms Heleine paid her own social security and not the HTPS. This further supports the position that Ms. Heleine was not an employee and she could not participate in the TPAF. In order to be eligible for TPAF enrollment, Social Security must be deducted from the employee's pay. You also attested to the fact that Ms. Heleine was paid on a per diem contract and based on this type of payment she should have been enrolled in the Retirement System. However, there was no documentation submitted to substantiate this claim. Ms. Jamison also noted that you or Ms. Heleine would need to provide the Division with copies of the 2003-2006 employment contracts, copies of her pay stubs, letters from the HTPS regarding the offer to hire her in an employee-employer relationship and 1099 or W-2 verification for the period of 2003-2006. Ms. Jamison indicated that you could appeal the determination by writing to the TPAF Board Secretary.

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On July 12, 2016, you appealed the Division's denial and in support of your position, you provided copies of the 1) previously submitted letter dated October 9, 2014 to Ms. Rathbun; 2) letter dated September 23, 2015 to Ms. Jamison; 3) letter dated December 9, 2015 with enclosures from Ms. Heleine addressed to you; and 4) 1099's for 2004-2006 and paystub.

On October 25, 2016, you were notified that the TPAF Board would consider your client, Joan Heleine's, request for retroactive enrollment in the TPAF based on her employment with the Hope Township Public Schools from 2003-2006 at its meeting of December 1, 2016. By email dated November 29, 2016, you requested an adjournment of the matter as you were in court in the Office of Administrative Law that day. In its letter of December 5, 2016, the TPAF Board approved your request to postpone the matter for one month until its meeting of January 12, 2017.

At its meeting on January 12, 2017, you requested the opportunity to provide the Board with certain New Jersey Department of Education policies and procedures which you argued were applicable to Ms. Heleine's appeal. Therefore, the TPAF Board postponed its determination to provide you with the opportunity to obtain this information. In addition, the TPAF Board requested that this information be submitted to the TPAF Board Secretary no later than February 16, 2017, so that the matter would be considered by the Board at its March meeting.

In an email dated February 21, 2017, to the TPAF Board Secretary, you indicated that you were still awaiting a response from the Department of Education. Therefore, it was determined that Ms. Heleine's case was not ripe for Board review and would tentatively be referred to the April 6, 2017, Board meeting for consideration provided the information was received by March 16, 2017.

In an email dated March 28, 2017, to the TPAF Board Secretary, you requested one final extension and the TPAF Board Secretary rescheduled the matter to be presented at its May 4, 2017 meeting.

At its meeting of May 4, 2017, the Board considered and denied Ms. Heleine's request, in accordance with N.J.A.C. 17:3-2.1. The Board found that the documentation demonstrates that Ms. Heleine was not considered an employee; instead, she was an independent contractor who provided

professional services to the Hope Township Public Schools and therefore, the Board determined that the period of employment from 2003-2006 is ineligible for membership in the TPAF

By letter dated June 20, 2017, the TPAF Board received correspondence from you appealing the denial of Ms. Heleine's application for retroactive TPAF enrollment and reinstatement of her TPAF account. At its meeting of August 3, 2017, the Board affirmed its decision and denied a hearing request in the OAL, essentially for the reasons set forth in the Board's letter dated May 8, 2017. This Final Administrative Determination serves as formal notice of the Board's denial.

CONCLUSIONS OF LAW

The TPAF Board denied Ms. Heleine's request for retroactive enrollment in the TPAF based upon her prior employment with the Hope Township Public Schools from 2003-2006. The Board's decision is based upon the provisions of N.J.A.C. 17:3-2.1 and N.J.S.A. 18A:66-2(p) as well as the reasons set forth in the Division's letter dated May 8, 2017.

In that regard, N.J.A.C. 17:3-2.1 states, in pertinent part:

(a) Any person appointed by the State, local board of education or charter school to a position listed in the definition of "teacher" found at N.J.S.A. 18A:66-2(p) or as a regular, full-time employee in a position that meets the following conditions shall be required to become a member of the Fund effective as of the date of their employment:

1. The position requires a valid certificate issued by the State Board of Examiners, pursuant to N.J.S.A. 18A:6-34 et seq. and N.J.A.C. 6A:9, and the person employed holds this valid certificate;
2. The position is covered by Social Security; and
3. Salary requirements and full-time weekly work hours to qualify for enrollment are met, based on the date of eligibility for enrollment:
 - i. If eligibility for enrollment began prior to November 2, 2008, the minimum salary requirement for the position is \$500.00 or more within a work year;
...
 - iv. If a break in a member's service occurs and it has been more than two consecutive years since that member's last pension contribution, reenrollment will occur based on the date of eligibility for enrollment, in accordance with (a)3i, ii, or iii above.

...

(c) An employee meeting the conditions stipulated in (a) above who is paid on an hourly or per diem basis is eligible for membership in the Fund.

...

(e) N.J.S.A. 18A:66-2(p) specifically excludes substitute teachers from enrollment in the Fund. The statute also permits the Board to determine whether any person is a teacher as defined in this article. The following positions have been determined by the Board to be ineligible for enrollment in the Fund:

1. Substitute and replacement teacher positions;
2. Permanent or long term substitute positions; and
3. Independent contractors and consultants.

...

As evidenced by the record, Ms. Heleine did provide services for the Hope Township Public Schools from approximately 2003-2006. However, the records provided by the Hope Township Public Schools confirm that during this period of time, Ms. Heleine was not considered an employee; instead, she was an independent contractor who provided professional services to the district. She was paid a per diem rate, was issued a 1099 for each year, and the Hope Township Public Schools did not take any taxes or Social Security from her wages as would have been deducted if she was considered an employee of the district. An employer is not required to take Social Security deductions if the individual is a vendor on a professional service contract.

It is the responsibility of the employer to properly classify the employee as an employee or vendor. Here, clearly Ms. Heleine was not an employee of the Hope Township Public Schools and therefore, based upon N.J.S.A. 18A:66-2(p) and N.J.A.C. 17:3-2.1, as referenced above, the Board determined that this period of employment is ineligible for membership in the TPAF. For the foregoing reasons, the Board has no authority to grant your request and permit Ms. Heleine retroactive enrollment in the TPAF based upon her prior employment with the Hope Township Public Schools from 2003-2006.

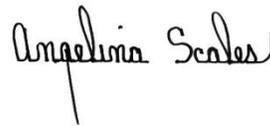
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Because this matter does not entail any disputed questions of fact, the TPAF Board was able to reach its findings of fact and conclusions of law in this matter on the basis of the retirement system's enabling statutes and regulations and without the 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,



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

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