



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
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January 28, 2021

ELIZABETH MAHER MUOIO  
*State Treasurer*

JOHN D. MEGARIOTIS  
*Acting Director*

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

Sent via e-mail to: [REDACTED]

LIMSKY MITOLO  
Marcia J. Mitolo, Esquire

[REDACTED]

RE: J.A.W.  
SPRS [REDACTED]

Dear Ms. Mitolo:

This is in reference to the denial by the Board of Trustees (“Board”) of the State Police Retirement System (“SPRS”) of your client, J.A.W.’s application for a Deferred retirement benefit. At its September 22, 2020 meeting, the SPRS Board denied J.A.W.’s request for a Deferred retirement and issued a letter on October 8, 2020 setting forth the basis of its decision. By letter dated November 11, 2020, you requested reconsideration of the Board’s decision and/or a hearing in the Office of Administrative Law (“OAL”). At its meeting of November 24, 2020, the Board noted your statements on behalf of J.A.W., denied your request for reconsideration, and affirmed its previous decision that J.A.W. is not eligible for a Deferred retirement. The Board also denied your request for an OAL hearing because there are no genuine issues of material fact in dispute. As such, the Board directed the Board Secretary in conjunction with the Attorney General’s Office to prepare Findings of Fact and Conclusions of Law, which were presented and approved by the SPRS Board at its January 26, 2021 meeting.

After a review of your written submissions and other relevant documentation, the SPRS Board – once again – reaffirms its decision denying J.A.W.’s request for a Deferred retirement in accordance with the governing statute, N.J.S.A. 53:5A-28, and relevant case law.

### **FINDINGS OF FACT**

J.A.W. was enrolled in the SPRS on November 17, 2001, as a result of his enlistment as a Trooper with the New Jersey State Police Enlisted Personnel ("State Police"). His membership continued with this employer until December 13, 2018 - when J.A.W. consented to the entry of an Order of Forfeiture of Employment ("Forfeiture Order"). The Order includes the following:

" . . . [J.A.W.], a [REDACTED] with the New Jersey State Police having been charged with one count of fourth-degree Falsifying or Tampering with Records, in violation of N.J.S.A. 2C: 21-4, having entered the Pretrial Intervention Program [{"PTI"}], and having consented to the entry of this Order;

. . . shall forfeit any and all public employment and shall be forever disqualified from holding any office or position of honor, trust or profit under the state or any of its administrative or political subdivisions." (citing N.J.S.A. 2C:51-2).

Thus, J.A.W.'s employment with the State Police terminated pursuant to the Forfeiture Order and said forfeiture was a condition for him to enter PTI on December 13, 2018. On September 6, 2019, J.A.W. filed an Application for Retirement Allowance, requesting a Deferred retirement effective December 1, 2033. On October 10, 2019, his employer filed a Certification of Service and Final Salary Retirement, which confirmed that his employment terminated on December 13, 2018. At that time, his SPRS membership reflected a total of 16 years and 9 months of service credit.

On September 6, 2019, the Board Office received your written submission supplementing J.A.W.'s Deferred retirement application, including several documents you characterized as "required" - including the Forfeiture Order. Thereafter, you were notified that the SPRS Board would consider the issue of J.A.W.'s honorable service and the impact it may have on his eligibility for a Deferred retirement under N.J.S.A. 53:5A-28. However, by letter dated November 21, 2019, you were informed that his matter was removed from the Board's agenda - as the Board would not have a quorum because one Trustee had recused from this matter.

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By email dated June 26, 2020, you inquired about the status of J.A.W.'s pending matter. By email dated September 1, 2020, you were notified that the Board would consider the issue of his honorable service at its meeting on September 22, 2020. Due to health and safety concerns to the public posed by COVID-19, the SPRS meeting was conducted telephonically. At the meeting, the Board considered your personal statements, your correspondence dated September 6, 2019, your e-mail dated June 26, 2020, and other relevant documentation related to J.A.W.'s application for a Deferred retirement.

Following its review of all relevant information, the Board denied J.A.W.'s application for Deferred retirement benefits and noted that his termination constitutes a "forced resignation" or "removal for cause" under N.J.S.A. 53:5A-28. Again, the basis of the Board's determination was memorialized in a letter dated October 8, 2020.

By letter dated November 11, 2020, you requested that the Board reconsider its denial (as you disagree with the Board's finding that his resignation constitutes a "forced resignation" or "removal for cause") and/or requested a hearing in the OAL. At its meeting on November 24, 2020, the Board denied your request for reconsideration and affirmed its previous determination – relying on and referring to the Forfeiture Order as well as the reasons set forth in its October 8, 2020 letter. Lastly, the Board denied your request for an OAL hearing, finding no genuine issues of material fact in dispute. The SPRS Board directed the Board Secretary to prepare findings of fact and conclusions of law, which follow herein.

### **CONCLUSIONS OF LAW**

The SPRS provides for a deferred retirement in N.J.S.A. 53:5A-28 which states, in relevant part:

Separation of certain personnel from service; election to receive deferred retirement allowance; reenrollment upon reemployment a. Should a member, after having established 10 years of creditable service as a full time commissioned officer, noncommissioned officer or trooper of the Division of State Police, be separated voluntarily or involuntarily from the service, before reaching age 55, and not by removal for cause on charges of misconduct or delinquency, such person may elect to receive the payments provided for in section 26 or 27 or a deferred retirement allowance, beginning on the first day of the month following his attainment of age 55 and the filing of an application therefor, which shall consist of:

[Ibid.] (emphasis added).

Therefore, the Deferred retirement eligibility analysis turns on whether the applicant was removed for cause “on charges of misconduct or delinquency.” Ibid. As noted above, J.A.W. separated from service pursuant to a Forfeiture Order that identified the criminal charges of misconduct filed against him and required him to “forfeit any and all public employment” in accordance with N.J.S.A. 2C:51-2. It is well-settled that a forfeiture of public employment pursuant to N.J.S.A. 2C:51-2 constitutes an “involuntary termination” and/or “removal for cause” for purposes of N.J.S.A. 53:5A-28. See Widdis v. Pub. Emp. Ret. Sys., 238 N.J. Super. 70, 80 (App. Div. 1990)(holding that to “be separated . . . involuntarily” occurs when one is fired, suspended or forced to resign)(emphasis added); see also In re Jacalone, 2015 N.J. Super. Unpub. LEXIS 1576, at \*\*9-10 (App. Div. July 1, 2015) (affirming the pension board’s determination that appellant was “removed for misconduct” and rejecting appellant’s argument that she “voluntarily resign[ed]” when she consented to the entry of a forfeiture order pursuant to N.J.S.A. 2C:51-2); see also Manzella v. Twp. of Rochelle Park, 2008 N.J. Super. Unpub. LEXIS 2485, at \*5 (App. Div. May 7, 2008) (affirming the pension board’s determination that appellant was “removed for cause” by operation of his execution of a forfeiture order pursuant to N.J.S.A.

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2C:51-2). As such, J.A.W. is not eligible to receive a Deferred retirement because he was involuntarily terminated from his employment on charges of misconduct.

The Board noted your argument that J.A.W. is entitled to a Deferred retirement because he was not convicted of a crime. The Board disagrees. N.J.S.A. 53:5A-28 “does not require conviction of an indictable offense.” Manzella, 2008 N.J. Super. Unpub at \*6. Rather, it only requires a showing that a member of SPRS was removed for cause on “charges of misconduct.” N.J.S.A. 53:5A-28. Indeed, the “charges of misconduct” do not even have to be “criminal” in nature – as is the case here – to render an applicant ineligible to receive a deferred retirement. See Danny Glenn v. Pub. Emp. Ret. Sys., 2017 N.J. Super. Unpub. LEXIS 1854, at \*4 (App. Div. July 21, 2017) (holding that there is “no support in the [deferred retirement] statute for the interpretation urged by petitioner that the ‘charges’ must involve acts of criminality, misconduct in office or egregious conduct). As such, your arguments in this regard lack merit and have been rejected.

J.A.W. does qualify for the return of his accumulated pension contributions. Please be cautioned that if he intends to file an appeal of this Final Administrative Determination, he should NOT withdraw his pension contributions. If he wishes to withdraw, he must complete an application for withdrawal by logging into the Member Benefits Online System (“MBOS”). Nonetheless, he is cautioned against filing the withdrawal application if he intends to appeal. Withdrawal terminates all rights and privileges of membership.

As noted above, this matter does not entail any disputed questions of fact. Thus, the SPRS Board was able to reach its findings of fact and conclusions of law on the basis of the retirement system’s enabling statutes and regulations and without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the State Police Retirement System.

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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.

Sincerely,

A handwritten signature in black ink that reads "Mary Ellen Rathbun". The signature is written in a cursive style and is enclosed within a thin black rectangular border.

Mary Ellen Rathbun, Secretary  
Board of Trustees  
State Police Retirement System

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C: J.A.W. (sent via email)  
DAG Amy Chung (ET)  
DAG Juliana DeAngelis (ET)