



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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May 16, 2024

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

Sent via email to: [REDACTED]

Paul Ash
[REDACTED]

RE: PERS [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Ash:

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) denying your application for Deferred retirement benefits. At its meeting of January 17, 2024, the Board found that you were ineligible for Deferred retirement benefits because you were dismissed for cause on charges of misconduct or delinquency directly related to your employment in accordance with N.J.S.A. 43:15A-38. Thereafter, you filed a timely appeal of the Board's decision.

At its meeting of April 17, 2024, the Board considered your appeal. After careful review, 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 this Final Administrative Determination. Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the Board at its meeting of May 15, 2024.

FINDINGS OF FACT

The Board made the following factual findings.

You were enrolled in the PERS on April 23, 1988 as a result of your employment with the Bordentown Youth Correctional Institution as a Teacher 2. Subsequently, you transferred to the

Juvenile Justice Commission/Community Program (JJC) as a Teacher 1. You remained with the JJC in that position until your termination on July 10, 2008.

On April 25, 2003, the JJC certified Tenure Charges of Unbecoming Conduct, Insubordination and Neglect of Duty against you. The charges arose from the improper attention you gave to your teaching duties despite numerous warnings, to wit: having no lesson plans on multiple occasions, using outdated materials and failing to instruct for the full period. Additionally, you repeatedly violated the JJC's time and attendance policies by failing to comply with sign in/sign out procedures, falsifying arrival and departure times and frequently leaving work without permission. Further, you violated a directive that precluded you from attending JJC sponsored sports tournaments unless the team you coached was participating.

You challenged your removal and the matter was transmitted to the Office of Administrative Law as a contested case. In the Initial Decision dated May 30, 2008, the Administrative Law Judge found that the JJC had established the Tenure Charges against you and recommended your removal. On July 10, 2008, the Commissioner of Education adopted the Initial Decision as the final decision in the matter and ordered your removal from your tenured position.¹

At the time of your removal from employment, you were 50 years of age and your membership account reflected a total of 21 years and 2 months of PERS service credit. Therefore, at that time, the only benefit for which you could apply was a Deferred retirement. You filed a retirement application on November 30, 2021, requesting Deferred retirement benefits effective December 1, 2021.

The Board considered your application for Deferred retirement benefits at its meeting of January 17, 2024. At the meeting, the Board found that you were removed for cause on charges

¹ Subsequently, the State Board of Examiners ordered the revocation of your teaching certificates.

of misconduct or delinquency directly related to your employment and thus, ineligible for Deferred retirement benefits. You filed a timely appeal of the Board's decision.

At its meeting on April 17, 2024, 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. The Board directed the undersigned to draft detailed Findings of Fact and Conclusions of Law for review at its May 15, 2024 meeting.

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 criteria 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,² if he so qualifies under said section, or;
- (b) A deferred retirement allowance, beginning at the retirement age...

[(Emphasis added)].

At the time of your dismissal from employment, you were 50 years of age and your membership account reflected a total of 21 years and 2 months of PERS service credit. Therefore, at that time, the only benefit for which you could apply was a Deferred retirement. 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 charges of misconduct or delinquency directly related to your employment, and are not eligible for Deferred retirement benefits. See In re Hess, 422 N.J. Super.

² N.J.S.A. 43:15A-41

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27 (App. Div. 2011) (holding that ineligibility for Deferred retirement occurs when a member is terminated for misconduct or delinquency related to the employment).

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

Sincerely,



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

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C: J. Ehrmann (ET); R. Willever (ET)