



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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Governor

SHEILA Y. OLIVER
Lt. Governor

October 22, 2020

Jan Balut



Re: PERS 

Dear Mr. Balut:

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 application for Deferred retirement benefits. At its meeting of January 15, 2020, the Board considered all relevant documentation and denied your request to receive Deferred retirement benefits. You filed an appeal of that decision and requested a hearing in the Office of Administrative Law. At its meeting of September 16, 2020, the Board considered your appeal and denied your request for a hearing in the Office of Administrative Law, finding that no genuine issue of material fact was in dispute. Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the PERS Board at its October 21, 2020, meeting.

The Board has reviewed the documentation and finds that the statutes governing the PERS and relevant case law do not permit the PERS Board to grant your request to receive Deferred retirement benefits.

FINDINGS OF FACT

The record before the Board reveals that you were enrolled in the PERS effective September 1, 1993, as a result of your employment as a Custodian for the Manville Board of Education. On March 20, 2007, you transferred to Hillsborough Township Board of Education

(Township) in that same title which you continued to hold until your termination on December 31, 2009.

The Board first noted your lengthy disciplinary history. The record contains a letter dated March 12, 2009, from David Frusco, Facilities Director, which served as a final written warning concerning your behavior while on-duty. The letter noted that you had been found to be belligerent, used profanity, and were rude and abrasive toward staff members. Mr. Frusco also noted that you either refused or were unable to consistently complete the responsibilities of your position. Finally, you were advised that any future violations of the Standards of Conduct would result in your termination from employment.

You were found to have violated the Township's Standards of Conduct again in November 2009 when you told the Vice-Principal you refused to work with "black people" and individuals of Spanish descent. The Assistant Superintendent for Personnel advised you that your violation of the final written warning would be addressed at the Township's meeting on December 17, 2009. At its meeting, the Township voted to terminate your employment effective December 31, 2009, for repeated violations of the Standards of Conduct and work performance.

You filed an application for Deferred retirement benefits on or September 26, 2018, with an effective date of October 1, 2018. At the time of your last pension contribution on December 31, 2009, you were 51 years of age and had 15 years and 7 months PERS service credit. Therefore, the only retirement benefit for which you were eligible to apply was a Deferred retirement benefit.

The Board denied your application for Deferred retirement benefits at its meeting of January 15, 2020, because it was determined that you were terminated for cause directly related to your employment. You appealed that determination and requested a hearing in the OAL. The Board denied your request for a hearing and adopted this Final Administrative Determination at its meeting of October 21, 2020.

CONCLUSIONS OF LAW

The Board reached the following conclusions of law:

In making its determination, the Board relied upon N.J.S.A. 43:15A-38 and relevant case law. N.J.S.A. 43:15A-38 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,¹ if he so qualifies under said section, or;

(b) A deferred retirement allowance, beginning at the retirement age...

[Emphasis added]

Additionally, in the case In the Matter of Suzanne Hess, 422 N.J. Super. 27, 37 (2010) the Court held that "forfeiture of deferred retirement benefits pursuant to N.J.S.A. 43:15A-38 is conditioned on an involuntary removal due to misconduct related to employment." See also Robert Joya v. Dept. of Treasury, Div. of Pensions and Benefits, Dkt. No. A-3616-10T3 (decided October 9, 2012.) The finding in Hess is applicable here and, consequently, the Board determined that you are not eligible to receive a Deferred retirement because you were removed for cause directly related to your employment.

The charges that led to your dismissal touched upon and were directly related to your employment, thereby making you ineligible to receive a Deferred retirement benefit. Therefore, in accordance with the prevailing statutes and a plethora of case law on this issue, the Board denied your request to collect Deferred retirement benefits.

As noted above, the Board has considered your written submissions 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

¹ N.J.S.A. § 43:15A-41.

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 are eligible to withdraw your accumulated pension contributions remitted during active membership. You may request an *Application for Withdrawal* by writing to Donna Wood, Supervisor, Loan/Withdrawal Section at the Division, at the address above. **Nonetheless, you are cautioned against filing the Withdrawal Application if you intend to appeal the Board's determination. Withdrawal terminates all rights and privileges of membership.**

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. Ignatowicz, Secretary
Board of Trustees
Public Employees' Retirement System

G-10/JSI
C: D. Dinkler (ET); D. Wood (ET)