



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
P. O. Box 295

TRENTON, NEW JERSEY 08625-0295
Telephone (609) 292-7524 / Facsimile (609) 777-1779
TRS 711 (609) 292-6683
www.nj.gov/treasury/pensions

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

February 9, 2021

Sent via email to [REDACTED]

Mr. Peter S. Braverman
[REDACTED]
[REDACTED]

RE: [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Braverman:

I am writing in reference to the denial by the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) with regard to your request to file for Ordinary Disability retirement benefits.

The Board initially reviewed and denied this request at its October 1, 2020 meeting. At its meeting of January 14, 2021, the Board considered your appeal of that decision as outlined in your October 23, 2020 letter and determined that there are no material facts in dispute and directed the Board Secretary, in conjunction with the Attorney's General's Office, to prepare Findings of Fact and Conclusions of Law which were presented and approved by the Board at its meeting of February 4, 2021.

The Board has reviewed your submissions and the relevant documentation and finds the laws governing the TPAF do not permit the Board to grant your request to file for Ordinary Disability retirement benefits.

FINDINGS OF FACT

You enrolled in the TPAF effective September 1, 1998, based on your employment as a Psychologist with the Newark Public Schools. On September 1, 1999, you transferred to Kittatinny Regional High School District. Thereafter, on September 1, 2001, you transferred to the Ridgefield Park Board of Education (BOE). On September 1, 2003, you transferred to Florham Park BOE. Lastly, on September 1, 2004, you transferred to Highland Park BOE. On May 6, 2019, you entered into an Agreement and Release (Agreement) with Highland Park BOE. Section 1 of the Agreement states:

Resignation. Mr. Braverman agrees to tender an irrevocable letter of resignation to the superintendent of schools, which will contain an effective resignation date of October 31, 2019. [Highland Park BOE] will accept Mr. Braverman's irrevocable letter of resignation by approving the herein agreement.

Section 4 of the Agreement states:

Future Employment. Mr. Braverman acknowledges that he is prohibited from seeking future employment, in any capacity, with [Highland Park BOE].

As part of the Agreement, you were placed on a paid leave of absence from September 1, 2018 through October 31, 2019. You were also required to submit an irrevocable letter of resignation in which you agreed to a resignation date of October 31, 2019. On May 6, 2019, you submitted your formal resignation, which states:

Thank you for the opportunity to serve the students of the Highland Park School District as a School Psychologist. Please accept this letter as my resignation from employment effective October 31, 2019.

On May 31, 2019, the Division received your *Application for Disability Retirement* requesting an Ordinary Disability retirement effective November 1, 2019.

On June 30, 2020, Linda A. Hoefele, School Business Administrator/Board Secretary, Highland Park Public Schools, informed the Division:

the agreement was established to prevent the continuation of proceedings leading to tenure charges. In light of the fact that Mr. Braverman would have been brought to tenure charges if he had not signed the Settlement Agreement, there would not have been a position for him in Highland Park Public Schools, should his alleged disability diminish at some time in the future.

On June 30, 2020, the Division notified you that in accordance with N.J.A.C. 17:3-6.1(3), you were ineligible to file for an Ordinary Disability retirement because you had voluntarily and irrevocably resigned pursuant to the Agreement. For these reasons, the Division closed your application because you could never be in compliance with N.J.S.A. 18A:66-40(a), which states that there must be a position for you to return to should your alleged disability diminish at some time in the future to the point that you could return to employment. In that same letter, you were notified that you could appeal the determination by writing to the Board Secretary.

By letter dated July 15, 2020, you appealed to the Board Secretary, asserting that your application meets the standards for Ordinary Disability retirement benefits.

At its meeting of October 1, 2020, the Board considered your submissions and relevant documentation regarding your request to apply for Ordinary Disability retirement benefits and voted to deny your request pursuant to N.J.A.C. 17:1-6.4.

By letter dated October 12, 2020, you appealed the Board's determination and requested a hearing in the Office of Administrative Law. At its meeting of January 14, 2021, the Board reaffirmed its original determination and denied the request for an administrative hearing, essentially for the reasons set forth in the Board's letter dated October 6, 2020. The Board directed the Board Secretary to draft the findings of fact and conclusions of law.

CONCLUSIONS OF LAW

In making its determination, the Board relied on N.J.S.A. 18A:66-40(a) and N.J.A.C. 17:1-6.4.

N.J.S.A. 18A:66-40(a) states, in pertinent part:

Once each year the retirement system may, and upon his application shall, require any disability beneficiary...to undergo medical examination by a physician or physicians designated by the system for a period of 5 years following his retirement in order to determine whether or not the disability which existed at the time he was retired has vanished or has materially diminished.

....

If the report of the medical board shall show that such beneficiary is able to perform either his former duty or other comparable duty which his former employer is willing to assign to him, the beneficiary shall report for duty; such a beneficiary shall not suffer any loss of benefits while he awaits his restoration to active service. If the beneficiary fails to return to duty within 10 days after being ordered so to do, or within such further time as may be allowed by the board of trustees for valid reason, as the case may be, the pension shall be discontinued during such default.

In furtherance of the statutory requirements, N.J.A.C. 17:1-6.4 requires:

(a) Each disability retirement applicant must prove that his or her retirement is due to a total and permanent disability that renders the applicant physically or mentally incapacitated from performing normal or assigned job duties at the time the member left employment; the disability must be the reason the member left employment

(b) Members who have involuntarily or voluntarily terminated service for any of the reasons listed below will not be permitted to apply for a disability retirement:

1. Removal for cause or total forfeiture of public service;
2. Settlement agreements reached due to pending administrative or criminal charges, unless the underlying charges relate to the disability;
3. Loss of licensure or certification required for the performance of the member's specific job duties;
4. Voluntary separation from service for reasons other than a disability; and
5. Job abolishment or reduction in force.

(c) The Division will review all disability retirement applications submitted after a member has terminated service to determine whether the member's application is eligible for processing, pursuant to (a) above.

[Emphasis added.]

As noted above, you did not leave employment due to a disabling condition. You left employment pursuant to the Agreement. The Agreement placed you on a paid leave of absence through October 31, 2019 and required your irrevocable resignation at the end of that time. You filed your irrevocable and voluntary letter of resignation the same day as the signing of the Agreement. N.J.A.C. 17:1-6.4(b)(2) expressly prohibits members who leave employment pursuant to settlement agreements due to administrative charges from filing for a disability retirement, unless the underlying charges relate to the disability. Further, N.J.A.C. 17:1-6.4(b)(4) prohibits members from applying for a disability retirement when they voluntarily separate from service for reasons other than a disability. Your separation from service pursuant to the Agreement cannot comply with the statutory or regulatory requirements for Ordinary Disability retirement benefits.

If your application for disability retirement were to be approved and your alleged disability were to diminish to the point that you could return to employment, you would be unable to comply with N.J.S.A. 18A:66-40(a). As the Appellate Division explained, in In re Adoption of N.J.A.C. 17:1-6.4, 454 N.J. Super. 386 (App. Div. 2018), the rehabilitation statutes, including N.J.S.A. 18A:66-40(a), “presume that, unlike other retirees attempting to return to state service, the only obstacle to a disability retiree’s reemployment is the disability itself.” Id. at 402. Here, the Agreement and irrevocable resignation bar your reinstatement from disability. Cf. Cardinale v. Bd. of Trs., Police & Firemen’s Ret. Sys., 458 N.J. Super. 260, 263 (App. Div. 2019) (voluntary irrevocable resignation “automatically renders the individual ineligible for ordinary disability benefits”).

As noted above, the Board has reviewed your written submissions and all relevant documentation, and 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 in this matter on the basis of the TPAF enabling statutes and regulations and without the need for an administrative hearing. Accordingly,

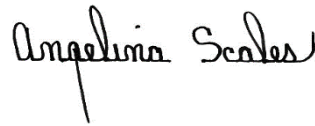
Mr. Peter Braverman
February 9, 2021
Page 6

this correspondence shall constitute 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

Sincerely,

A handwritten signature in black ink that reads "Angelina Scales". The signature is written in a cursive style with a long vertical line extending downwards from the end of the name.

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

G-4/AS

c: DAG Amy Chung (ET)
DAG Jeffrey Padgett (ET)
D. Lewis (ET); A. Ginsburg (ET); L. Figueroa (ET); L. Hart (ET); P.Sarti (ET)