



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
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PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

July 12, 2018

Sent via email to [REDACTED]

THE TOSCANO LAW FIRM, LLC  
Patrick P. Toscano, Esquire



RE: Raymond Carlson (Deceased)  
[REDACTED]

## **FINAL ADMINISTRATIVE DETERMINATION**

Dear Mr. Toscano:

I am writing in reference to the denial by the Board of Trustees of the Police and Firemen's Retirement System (PFRS) of your client, Stephanie Carlson, surviving widow of the late Raymond Carlson. You are requesting to amend a vested Special retirement survivor death benefit Ms. Carlson is receiving pursuant to N.J.S.A. 43:16A-11 and -12.1 to an accidental death in the line of duty benefit as provided under N.J.S.A. 43:16A-10. The PFRS Board reviewed and denied her request at its meeting on April 9, 2018. Subsequently, by letter dated April 20, 2018 you appealed the Board's denial and requested a hearing in the Office of Administrative Law (OAL). Your appeal and request for a hearing were denied at the Board's May 14, 2018 meeting as the Board determined there are no factual issue to be adduced at a hearing.

Findings of Fact and Conclusions of Law as outlined below were presented and approved by the PFRS Board at its July 9, 2018 meeting.

The Board noted your statements and the arguments set forth in your submissions; however, the Board finds that the statutes and relevant case laws governing the PFRS do not permit the Board

to grant Ms. Carlson's request to amend a vested Special retirement survivor benefit that she has been receiving (N.J.S.A. 43:16A-11 and -12.1) to an accidental death in the line of duty benefit (N.J.S.A. 43:16A-10).

### **FINDINGS OF FACT**

Raymond Carlson became employed with Summit City as a Firefighter and was enrolled in the PFRS effective August 1, 1979. On November 10, 2003, the Division of Pensions and Benefits (Division) received Mr. Carlson's *Application for Retirement Allowance* wherein he requested a Special retirement benefit effective August 1, 2004. The certifying officer with Summit City filed a *Certification of Service and Final Salary-Retirement* on November 10, 2003 indicating that Mr. Carlson's service would terminate on July 31, 2004.

At its meeting of December 15, 2003, the PFRS Board approved Mr. Carlson's application for Special retirement benefits effective August 1, 2004<sup>1</sup>, as a result of 25 years and 2 months of membership service. A statement of retirement allowance was issued to Mr. Carlson by mail dated August 24, 2004. This statement confirmed his retirement allowance and provided a summary of his insurance and survivor benefits. Mr. Carlson received 116 monthly retirement payments through May 1, 2014 totaling \$589,633.06.

On May 15, 2014, the Division received notice that Mr. Carlson passed away on May 6, 2014. As a result, Mr. Carlson's monthly retirement benefit was suspended. Thereafter, Stephanie Carlson received a summary of death benefits which confirmed upon Mr. Carlson's death a survivor's benefit would be paid to her in the amount of \$4,005.39<sup>2</sup> a month and would continue for life or until she remarries. Additionally, Mr. Carlson's dependent child, [REDACTED], would receive a monthly benefit of \$1,201.63. On June 2, 2014, the Division processed the PFRS death benefits which included:(1) Group Life insurance in the amount of \$43,995.96; (2) Ms. Carlson's monthly survivor benefit payment

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<sup>1</sup> His regular monthly retirement allowance was \$ 4,776.22.

<sup>2</sup> Pursuant to N.J.S.A. 43:16A-12.1

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of \$4,005.39; (3) \$1,201.63 for the benefit of [REDACTED]; and (4) \$5,207.05 which represented Mr. Carlson's last check benefit.

From July 2014 until December 1, 2017, Ms. Carlson received a monthly surviving widow and children's benefit totaling \$5,207.02 per month<sup>3</sup>. By letter dated March 24, 2017, nearly three years after Ms. Carlson commenced receipt of her benefits, you requested that she be permitted request accidental death benefits. In conjunction with that submission you provided another death certificate, a marriage certificate, dispatch paperwork showing Mr. Carlson's shift work at the World Trade center on September 11, 2001 and medical records.

By letter dated August 11, 2017, the Division as administrator for the PFRS Board responded to your request to change Mr. Carlson's Special retirement to an 'Accidental Death in the Line of Duty. Cheryl Chianese, Chief of the Retirements Bureau administratively denied Stephanie Carlson's request to change Raymond Carlson's benefits from Special retirement to an accidental death in the Line of Duty. She relied on the fact that Mr. Carlson collected his Special retirement benefits for a period of nine years which is well over his due and payable date. Ms. Chianese's letter relied upon N.J.A.C. 17:2-6.3(a)<sup>4</sup> which states that a member shall have the right to withdraw, cancel or change an application for retirement at any time before the member's retirement allowance becomes due and payable. Additionally, Ms. Carlson received retired survivor benefits for nearly three years. The letter also notified you that the appeal would be forwarded to the PFRS Board to be added to the agenda. Thereafter, on October 23, 2017 you wrote the Division requesting Ms. Carlson's matter be placed on the agenda for a public meeting.

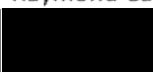



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<sup>3</sup> As guardian for the minor child, [REDACTED], Ms. Carlson received her monthly benefit also.

<sup>4</sup> The regulation cited by the Division governs the Public Employees' Retirement System. N.J.A.C. 17:4-6.3(a), which governs the PFRS, is identical.

On December 18, 2017, you were notified that at its meeting on January 8, 2018 the PFRS Board would consider Stephanie Carlson's request to amend the retired survivor benefits she is currently receiving to an Accidental death in the line of duty benefit.<sup>5</sup>

At the PFRS meeting on April 19, 2018, the PFRS Board considered your personal statements and your submission regarding Ms. Carlson's request to change a Special retirement survivor death benefit to an accidental death in the line of duty benefit, as provided under N.J.S.A. 43:16A-10. The Board considered and denied Ms. Carlson's request, in accordance with N.J.S.A. 43:16A-10 which requires that the death of the PFRS member must occur while in active service. As part of its deliberation, the Board reviewed a comparison of benefits chart that was prepared by Division staff. The summary of the benefits paid and proposal of outcomes were done to assist the Board in its determination. The information is as follows:

Raymond Carlson	Retirement Date <b>8/1/2004</b>	<b>DOD 5/6/2014</b>
	Board Approved for Special Retirement 12/15/2003	
Special Retirement Benefits from retirement date 8/1/2004 through 5/1/14.		
Member (Raymond)	Monthly Benefit \$4776.22	
9/1/2004	1 @	\$4,551.74 QDRO reduction
10/1/04 through 5/1/14	116 @	<u>\$4,776.22</u> (17 account deceased increased benefit effective 10/1/04 check)
		\$589,633.06 * Includes total CPI of \$32,199.80
Special Retirement Benefits after death to be calculated for:		
Widow (Stephanie)		
Dependent child  age out on 9/11/2020.		
Widow (Stephanie)	.50 X \$87,991.92/12 = \$3,666.33	
	41 @	\$3,666.33 Reg Allow
	41 @	<u>\$339.06</u> CPI
Total received from		\$161,848.93 *Includes total CPI of \$11,529.40
Dependent  Birthdate  aging out on 9/11/2020		
	41 @	\$1,099.90 Reg Allow
	41 @	<u>\$101.73</u> CPI
		\$48,554.72 *Includes CPI

<sup>5</sup> Subsequently, you requested several postponements which were granted by the PFRS Board.

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If [REDACTED] were to continue to receive benefits up to her emancipation date, she would be entitled to an additional \$43,258.68 for total benefit of \$92,932.43 (assuming the BOT does not approve an Accidental Death Benefit)

**Total benefits paid out under Special Retirement**      **\$800,036.71**

If Accidental Death Benefits were approved from date of death 5/6/2014 through 12/1/17.  
NO DEPENDENT BENEFIT PAYABLE

Widow (Stephanie)                                                      .70 X \$87,991.92/12 = \$5,132.86

7/1/14 through 9/1/17                              58 @  $\frac{\$5,132.87}{\$297,688.00}$

There is a difference of \$1,466.53 between the widow's benefit from the Special to the AD benefit.

By letter dated April 20, 2018, you appealed the Board's April 19, 2018 decision which denied Mr. Carlson's request to change from Special retirement survivor benefits to an accidental death in the line of duty. The Board denied reconsideration of this decision at its May 14, 2018 meeting and voted to issue a Final Administrative Determination in accordance with your request as there are no material issues of fact in dispute. This Final Administrative Determination serves as formal notice of the Board's denial.

**CONCLUSIONS OF LAW**

At its meeting on December 15, 2003, Mr. Carlson was approved for Special retirement benefits as an active member based upon his 25 years and 2 months of membership service. His retirement benefit was effective August 1, 2004. Mr. Carlson received 116 monthly retirement payments through May 1, 2014. Mr. Carlson passed away on May 6, 2014. Upon his death, his beneficiary, Ms. Carlson received \$43,995.96 in group life insurance (N.J.S.A. 43:16A-7(3)). Also, she began receiving a monthly benefit of \$4,005.39 and \$1,201.63 per month for [REDACTED], pursuant to N.J.S.A. 43:16A-12.1(a).

On March 24, 2017, thirteen years after Mr. Carlson's effective date of Special retirement, and over three years subsequent to his death, you requested that Ms. Carlson be permitted to amend a vested Special retirement survivor death benefit she is receiving pursuant to N.J.S.A. 43:16A-11 and -12.1 to an accidental death in the line of duty benefit as provided under N.J.S.A. 43:16A-10.

Following a review of the documentation, the Board denied your request. As an active member Mr. Carlson applied for and was granted a Special retirement. At that point his status was no longer an active participant, but Mr. Carlson was a retiree of PFRS. As a matter of law, the Board denied your request in accordance with N.J.S.A. 43:16-A-10 which requires that the death of the PFRS member must occur while the member is in active service. Because Mr. Carlson was retired and receiving Special retirement benefits he is not eligible for accidental death benefits. Specifically, N.J.S.A. 43:16-A-10 states:

- (1) Upon the death of a member in active service as a result of:
  - (a) An accident met in the actual performance of duty at some definite time and place, or
  - (b) Service in the reserve component of the Armed Forces of the United States or the National Guard in a federal active duty status, and such death was not the result of the member's willful negligence, an accidental death benefit shall be payable if a report of the accident is filed in the office of the retirement system within 60 days next following the accident, but the board of trustees may waive such time limit, for a reasonable period, if in the judgment of the board the circumstances warrant such action. No such application shall be valid or acted upon unless it is filed in the office of the retirement system within five years of the date of such death.

...

[Emphasis added.]

The term "active service" is not specifically defined, but N.J.S.A. 43:16A-1 defines "service" as "service as a policeman or fireman paid for by an employer." Further, for the purposes of an accidental death benefit, N.J.S.A. 43:16A-9(5)(a) provides that a member is in "active service":

for no more than 93 days while on an official leave of absence without pay for reasons other than illness,  
for not more than one year if the member is on an official leave of absence

- (a) for maternity,
- (b) for a residency requirement for an advanced degree, or
- (c) for full-time studies at an institution of higher education,  
and

(1) is disabled from a condition arising out of his employment, is not working, and is receiving or eligible to receive periodic benefits under Workers' Compensation law, "and has not retired or terminated his membership" or

(2) for not more than two years while on an official unpaid leave of absence if due to personal illness other than to which (1) applies.

(Emphasis added.)

A review of the history of N.J.S.A. 43:16A-10 indicates that prior to 1967, an accidental death benefit was awarded "[u]pon the accidental death of a member before retirement." L. 1964, c. 241, § 7 (emphasis added). Thus, a death benefit was payable so long as no retirement application was filed, even if the member had left service and was not contributing to the system. In 1967, the language of N.J.S.A. 43:16A-10 was amended to provide the benefit "...[u]pon the death of a member in active service." L. 1967, c. 250 (Chapter 250), § 10 (emphasis added). Chapter 250's definition of the term "retirement" further indicates that the Legislature's intent to narrow the eligibility for an accidental death benefit. It defined "Retirement" as "withdrawal from active service with a retirement allowance granted under [the PFRS statutes]."<sup>6</sup> N.J.S.A. 43:16A-1. Chapter 250 included in N.J.S.A. 43:16A-9 the definition of "active member", explained above, that for the first time was applicable to the accidental death benefit statute, N.J.S.A. 43:16A-10. L. 1967, c. 250, § 9. Chapter 250 added the language described above.

By the plain language of N.J.S.A. 43:16A-10, the Legislature intended that an accidental death benefit only be available to those members who are in "active service" at the time of death

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<sup>6</sup> "Retirement" is currently defined as "the termination of a member's active service with a retirement allowance granted and paid under the provisions of this act." N.J.S.A. 43:16A-1(16).

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and had not yet retired. As the Board is responsible for the general administration and proper operation of PFRS and to make effective the provisions of the PFRS statutes, the Board cannot grant a benefit that is not authorized by the Legislature. N.J.S.A. 43:16A-13; L. 1944, c. 255.

Mr. Carlson received a retirement benefit which was granted by the Board during his life, and which he collected for almost 10 years. He cannot meet the statutory definition of being in "active service" at the time of his death or May 6, 2014 and therefore, he is not eligible for an accidental death in the line of duty.

As noted above, the PFRS Board has reviewed your written submissions and because this matter does not entail any disputed questions of fact, the PFRS Board is 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 without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Police and Firemen's Retirement System.

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.

Sincerely,



Mary Ellen Rathbun, Secretary  
Board of Trustees  
Police and Firemen's Retirement System

G-7/MER

C: C. Chianese (ET); D. Dinkler (ET) DAG Danielle Schimmel (ET)  
Stephanie Carlson