



State of New Jersey

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

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PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

February 4, 2022

Sent via email to: [REDACTED]

Szaferman, Lakind, Blumstein & Blader, P.C.
Arnold C. Lakind, Esq.

[REDACTED]

RE: John Caucino
TPAF [REDACTED]

Dear Mr. Lakind:

FINAL ADMINISTRATIVE DETERMINATION

I am writing in reference to the decision of the Board of Trustees ("Board") of the Teachers' Pension and Annuity Fund ("TPAF") regarding your appeal of the Board's denial of your client, John Caucino's request to file for Deferred retirement benefits. The Board originally denied Mr. Caucino's request at its meeting of November 10, 2021. You filed a timely appeal of that determination on December 17, 2021. At its meeting of January 6, 2022, the Board considered your written submissions and accompanying documentation and found that the relevant case law governing the TPAF require the Board deny your request for Deferred Retirement benefits. Finding no genuine issue of material fact in dispute, the Board also denied your request for an administrative hearing. The Findings of Fact and Conclusions of Law, as outlined below, were presented to and approved by the TPAF Board at its February 3, 2022, meeting.

FINDINGS OF FACT

The record shows that Mr. Caucino established membership in the TPAF under account [REDACTED] on September 1, 1993, based upon his employment with the Monmouth County

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Vocational School District (“MCVSD”). Mr. Caucino’s TPAF pension contributions with this location continued through August 17, 2004, when he was terminated due to a prior conviction that disqualified him from holding a teaching certificate.

Prior to his employment as a teacher with MCVSD, he worked for Ocean Bay Mortgage Company in Toms River, New Jersey. Between 1985 and 1989, he engaged in a scheme with associates to falsify bank loan application documents and construction reports in order to improperly secure 100 percent financing for their projects resulting in significant financial losses for Action Savings Bank.

Mr. Caucino pled guilty to 18 U.S.C.A. 1344, Bank Fraud, in 1995. He was sentenced on or about July 14, 1999, and ordered to pay approximately \$15,500 in restitution and fees and serve a five-year term of probation. In October of 1999, U.S. Probation Officer, Kenneth Manual wrote to the New Jersey Department of Education (“NJDOE”) advising them of Mr. Caucino’s conviction and sentencing. The letter advised Mr. Caucino had illegally received \$173,250 in funds of the Actions Savings Bank to which he was not entitled. The letter further advised that he was employed as a teacher at MCVSD and that he was complying with all areas of his conditions of probation. No action was taken against his teaching position at that time.

In 2004, a fingerprint search conducted through the New Jersey State Police and the Federal Bureau of Investigation revealed the aforementioned conviction and sentencing. By letter dated June 11, 2004, the NJDOE’s Criminal History Review Unit issued written notice to Mr. Caucino that he was permanently disqualified from employment for any position with a school or other educational institution pursuant to N.J.S.A. 18A:6-7.1 due to his federal criminal conviction. On August 17, 2004, Mr. Caucino’s employment was terminated.

Mr. Caucino appealed the disqualification and termination and the matter was transferred to the Office of Administrative Law (“OAL”) for a hearing before an Administrative Law Judge (“ALJ”). An Initial Decision was issued and the ALJ concluded that the criminal conviction was

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substantially equivalent to theft by deception: disqualifying Mr. Caucino from holding employment as a teacher. The ALJ found that the conviction qualified as a third degree crime under N.J.S.A. 18A:6-7.1(c)(2) and therefore his disqualification of employment was upheld.

At its meeting of October 28, 2004, the State Board of Examiners (“SBE”) reviewed the information received from the Office of Criminal History Review indicating that Mr. Caucino was convicted in 1999 of bank fraud. As a result of this conviction, he was disqualified from public service pursuant to N.J.S.A. 18A:6-7.1 et seq.

On January 6, 2005, an Order to Show Cause was issued by the SBE for Mr. Caucino to show cause as to why his Teacher of General Business Studies certificate should not be revoked. Mr. Caucino filed an answer shortly thereafter and a hearing was scheduled. At its meeting on December 8, 2005, the SBE issued an Order of Revocation, revoking his Teacher of General Business Studies certificate. The SBE found that Mr. Caucino’s disqualification from service in the public schools of New Jersey due to his conviction for bank fraud provided just cause to take action against his certificate.

On January 5, 2021, Mr. Caucino filed an application for a Service Retirement effective May 1, 2021. At the time of his last pension contribution on June 30, 2004, he was 43 years of age and had 11 years of TPAF service credit, so Mr. Caucino could only submit an application for Deferred Retirement.

At its meeting of November 10, 2021, the Board considered whether Mr. Caucino was eligible for Deferred Retirement. The Board found that, because he was removed for conduct unbecoming a teacher, he is not eligible for a Deferred Retirement pursuant to N.J.S.A. 18A:66-36. You filed an appeal on December 17, 2021, requesting that the Board reconsider its prior decision and, alternatively, permit an administrative hearing. At its meeting of January 6, 2022, the Board reaffirmed its previous decision and denied your request for a hearing.

CONCLUSIONS OF LAW

The issue before the Board is whether Mr. Caucino is eligible to apply for Deferred Retirement light of his removal for conduct unbecoming a teacher. In making its determination, the Board relied upon N.J.S.A. 18A:66-36, which states in pertinent part:

Should a member of the Teachers' Pension and Annuity Fund, 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 conduct unbecoming a teacher or other just cause under the provisions of N.J.S. 18A:28-4 to 18A:28-5 and 18A:28-9 to 18A:28-13 inclusive, such person may elect to receive, in lieu of the payment provided in N.J.S. 18A:66-34:

(Emphasis added.)

Here, Mr. Caucino's conviction of Bank Fraud rendered him ineligible to continue in his teaching position, pursuant to N.J.S.A. 18A:6-7.1. Crimes of theft have been specifically stated as conduct which disqualifies an individual from serving as a teacher and is therefore conduct unbecoming a teacher. The Order of Revocation dated December 20, 2005, provides:

...

In enacting the Criminal History Review statute, N.J.S.A. 18A:6-7.1 et seq. in 1986, the Legislature sought to protect public school pupils from contact with individuals whom it deemed to be a danger to them. Individuals convicted of a crime of theft fall squarely within this category. This strong legislative policy statement is in accord with the Commissioner's long-standing condemnation of criminal acts by teaching-staff members. "Teachers are professional employees to whom the people have entrusted the care and custody of ... school children. This heavy duty requires self-restraint and controlled behavior rarely requisite to other types of employment." Tenure of Sammons, 1972. S.L.D. 302, 321.

You assert that the Board's decision to deny Mr. Caucino a deferred retirement benefit is incompatible with New Jersey Law. First, you assert that In re Hess, 422 N.J. Super 27 (App. Div. 2011) is dispositive. The Board disagrees. N.J.S.A. 43:15A-38 (a PERS statute) differs entirely from N.J.S.A. 18A:66-36. N.J.S.A. 43:15A-38 provides that PERS members are ineligible from receiving Deferred Retirement benefits if they are removed "for cause on charges of misconduct or delinquency . . ." Under the TPAF statutory scheme, a member is disqualified from receiving Deferred Retirement benefits if they are removed "for conduct unbecoming a teacher or other just cause . . ." N.J.S.A. 18A:66-36. The Hess decision involved the interpretation of an entirely different statute and is inapplicable to his matter.

Next, you assert that the Board should have performed an "Uricoli" analysis pursuant to N.J.S.A. 43:1-3 and/or N.J.S.A. 43:1-3.1. Again, the Board disagrees. Entitlement to a Deferred Retirement is a prerequisite to any Honorable Service analysis. Generally, pension statutes are "remedial in character" and "should be liberally construed and administered in favor of the persons intended to be benefited thereby." Klumb v. Board of Educ. of Manalapan-Englishtown Regional High School Dist., 199 N.J. 14, 34 (2009). However, "eligibility is not to be liberally permitted." Smith v. State, Dept. of Treasury, Div. of Pensions & Benefits, 390 N.J. Super. 209, 213 (App. Div. 2007). Rather, "the applicable guidelines must be carefully interpreted so as not to 'obscure or override considerations of . . . a potential adverse impact on the financial integrity of the [f]und.'" (quoting Chaleff v. Teachers' Pension & Annuity Fund Trustees, 188 N.J. Super. 194, 197, (App. Div. 1983).

Finally, you assert that Mr. Caucino was not "removed" due to "conduct unbecoming a teacher." While the Board understands the criminal misconduct took place outside of his school, it is also clear that having been convicted of the misconduct, Mr. Caucino was not eligible to hold the position of a teacher as a matter of law. Having never been eligible to hold the position in the

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first instance, he was removed when the criminal conviction came to light. Mr. Caucino appealed his removal and an ALJ affirmed his removal.

As noted above, the Board has reviewed all relevant documentation and written submissions, 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 on the basis of the TPAF enabling statutes and without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the TPAF.

Mr. Caucino is eligible to withdraw his accumulated pension contributions remitted during active membership. He may request an *Application for Withdrawal* by writing to Robin Willever, Supervisor, Loan/Withdrawal Section at the Division, at the address above. **Nonetheless, he is cautioned against filing the *Application for Withdrawal* if he intends to appeal the Board's determination. Withdrawal terminates all rights and privileges of membership.**

You have the right, if you wish, to appeal this final administrative determination 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,



Saretta Dudley, Secretary
Board of Trustees
Teachers' Pension and Annuity Fund

G-3/SD

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