



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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Lt. Governor

October 6, 2020

Sent via email to: [REDACTED]

ZAZZALI, FAGELLA, NOWAK, KLEINBAUM & FRIEDMAN
Kathleen Naprstek Cerisano, Esq.

[REDACTED]

RE: Enid Golden

[REDACTED]

OAL DKT NO. TYP 03732-2018

Dear Mr. Naprstek Cerisano:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At its meeting on September 3, 2020, the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) considered the Initial Decision ("ID") of Administrative Law Judge (ALJ) Patricia Kerins¹, dated July 28, 2020, in the above captioned matter, together with all exhibits submitted into evidence by the parties, the petitioner's exceptions filed by Kathleen Naprstek Cerisano, Esq. dated August 10, 2020, the respondent's exceptions filed by Deputy Attorney General Jeffrey Padgett, dated August 10, 2020, and the reply to exceptions filed by Kathleen Naprstek Cerisano dated August 14, 2020, on behalf of the petitioner, Enid Golden.

At its meeting of October 1, 2020², the Board voted to adopt the findings of fact and conclusions of law as presented. This will constitute the final administrative determination of the Board in this matter.

¹ As the 45-day statutory period for issuing a final decision would have expired, the TPAF Board properly requested and received an extension of time for issuing its final decision.

² Due to health and safety concerns for the public regarding COVID-19, the meeting was conducted via teleconference.

Enid Golden, a now-retired school district superintendent, has appealed the Board's decision requiring her to repay to TPAF the salary she earned in a different school district after her purported retirement.³ The ALJ found that the Board "is within its statutory and regulatory authority in seeking reimbursement," but reduced the amount owed from \$121,437.21 (total salary earned) to \$53,429.90 (five months of earnings) based on equitable factors. ID at 10. For the reasons set forth below, the Board voted to reject the ALJ's conclusion and require reimbursement for the entire amount of \$121,437.21.

The ALJ correctly applied N.J.A.C. 17:3-6.2 and found that "Golden . . . contravened the relevant regulations by accepting employment with [Matawan Aberdeen Regional Board of Education]." ID at 8. The ALJ correctly found that Golden was "familiar with the Board's retirement process and requirements" and was presented with inconsistent action by the Board: receiving both a retirement check and a notice of Board approval after the check was issued. Id. at 8-9. Golden did not contact the Board or the Division of Pensions and Benefits to clarify her retirement status; rather, she assumed her retirement was effective and took public employment with MARBOE before her retirement became due and payable. Ibid.

The ALJ described Golden's incorrect assumption as "careless of Golden but not unreasonable." ID at 9. The Board rejects this finding and finds Golden's inaction was unreasonable, and properly require full reimbursement given Golden's knowledge of the retirement process. Golden actively applied for retirement yearly from 2011 to 2014. ID at 1-2. She acknowledged that each time she amended her option or retirement she received a notification explicitly explaining the due and payable requirement. ID at 2. She had access to a TPAF handbook explicitly detailing the consequences of non-compliance with the due and payable requirement. R-14. Moreover, she never contacted the Division to inquire into the eligibility of her post-retirement employment or the status of her retirement benefit -- even after seeing letters approving her retirement when she allegedly believed she was retired. ID at 9.

³ Golden's retirement benefits totaled \$394,469

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Based on Golden's knowledge of the retirement process, she must be held to the appropriate standard. Cf. Feigenbaum v. Bd. of Trs., Pub. Emps.' Ret. Sys., 2016 N.J. Super. Unpub. LEXIS 853, at *15 (App. Div. Apr. 14, 2016) (Feigenbaum's "employment experience as a [business administrator] and her familiarity with administrative and financial issues relating to public employment further militate against a finding that her decision to proceed was premised upon a subjective good faith belief that her employment would pose no detriment to her pension eligibility").

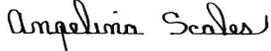
Lastly, the Board has already acted equitably in this matter and allowed Golden to retain her current pension benefit, and instead only required her to remit the \$121,437.21 in salary earned while impermissibly employed by MARBOE. Cf. Knox v. Pub. Emps.' Ret. Sys., 2012 N.J. Super. Unpub. LEXIS 381, at *23 (App. Div. Feb. 23, 2012) (reversing Board's demand for full reimbursement because of Knox's mitigating actions in voluntarily returning portion of his salary and receiving written assurances from his employer that position was not PERS eligible); cf. also Zagorski v. Pub. Emps.' Ret. Sys., 2015 N.J. Super. Unpub. LEXIS 2386, at *17 (App. Div. Oct. 19, 2015) (reversing Board's demand for full reimbursement and remanding for repayment of years Zagorski earned over \$15,000 statutory limit as "equitable remedy"). No further equity should be extended to Golden.

For these reasons, the Board's final agency decision rejected the ALJ's conclusion and requires full reimbursement from Golden.

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 from 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,


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

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G-5/as

c: Enid Golden (Sent via email to: [REDACTED])
S. Fenstermacher (ET); S. Hundal (ET); C. Chianese (ET)
DAG Jeffrey Padgett (ET); DAG Conner Martin (ET); DAG Amy Chung (ET)
OAL, Attn: Library (ET)