



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
June 12, 2018

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

Richard G. Huizenga, Esquire
[REDACTED]

RE: Joseph Hornick
[REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Huizenga:

I am writing in reference to the decision made by the Board of Trustees of the Police and Firemen's Retirement System (PFRS) to deny Deferred retirement benefits requested by your client, Joseph Hornick. At its meeting of March 12, 2018, the Board reopened its prior approval of Mr. Hornick's retirement based upon additional information not available to the Board when his application was originally approved on January 9, 2017, and determined he is ineligible for a Deferred retirement benefit under N.J.S.A. 43:16A-11.2. Also, the Board concluded that the Division did not err in calculating his total years of creditable service in the PFRS. On April 12, 2018, you appealed the Board's denial and requested a hearing in the Office of Administrative Law ("OAL"). At its meeting on May 14, 2018, the Board determined that there are no material facts in dispute, and therefore, voted to deny the request for a hearing and directed the Secretary to draft a Final Administrative Determination.

The PFRS Board has reviewed your written submissions and the documentation accompanying your appeal and finds that the statutes governing the PFRS do not permit the PFRS Board to grant Mr. Hornick's request to collect Deferred retirement benefits because he

was removed for cause based upon misconduct directly related to his employment and his account lacks the requisite 10 years of membership service to qualify for a Deferred retirement.

Findings of Fact and Conclusions of Law, as outlined below, were approved by the PFRS Board at its meeting of June 11, 2018. This Final Administrative Determination serves as formal notice that the Board denied your request for a hearing.

FINDINGS OF FACT

Mr. Hornick established membership in the PFRS on April 1, 1987 as a result of his employment with Long Branch City (Long Branch) as a firefighter. His employment continued and pension contributions were remitted on his behalf. Ultimately, administrative charges¹ were filed against him by Long Branch seeking his termination. After a departmental hearing, he was removed for cause effective March 5, 1996 on charges including violations of the Rules and Regulations for the Uniform Fire Division, conduct unbecoming a public employee, and neglect of duty. Mr. Hornick appealed his termination as a firefighter and the matter was transferred to the OAL as a contested case.

On November 3, 2000, the Administrative Law Judge issued an Initial Decision affirming Mr. Hornick's removal from his position of firefighter with Long Branch. On June 15, 2001, the Merit System Board determined that the removal of Mr. Hornick by Long Branch was not justified and modified the penalty to a 60-day suspension. As a result, Mr. Hornick was granted back pay, benefits and seniority from the date following the removal through the date of the actual reinstatement.

On January 4, 2002, Long Branch notified the Division of Pensions and Benefits (Division) that Mr. Hornick was reinstated due to the Merit System Board decision on June 15, 2001, and inquired how to initiate pension deductions for Mr. Hornick. The Division issued a *Certification of Payroll Deductions* notifying Long Branch that pension deductions would begin on March 1, 2002. Thereafter,

¹ He was charged with (1) failure to respond timely with assigned fire apparatus to a fire on November 21, 1995; (2) sleeping through dispatch of a call to respond to a fire on December 3, 1995 and (3) a pattern of neglect evidence by similar conduct.

the Division notified Long Branch that there was a shortage in Mr. Hornick's PFRS account and that pension contributions were due on the back pay award. The record indicates that Mr. Hornick remitted pension contributions from his employment with Long Branch through October 1, 2003, at which time his PFRS membership reflected a total of 10 years and 10 months of membership service. During the first quarter of 2005 his PFRS membership was increased to include the 65 months of service credit as a result of the back pay award, when contributions were made on the award. After the posting of this service, his PFRS account reflected a total of 16 years and 3 months of membership service.

On September 23, 2015, he filed an application for retirement requesting a Deferred retirement, effective September 1, 2016. On October 5, 2015, Long Branch submitted a *Certification of Service and Final Salary Retirement* certifying that Mr. Hornick was dismissed from employment on October 3, 2003, the last date for which pension contributions were remitted by Long Branch on his behalf. On or about December 23, 2016, prior to the PFRS Board's consideration of Mr. Hornick's application for Deferred retirement benefits, the Division wrote to Mr. Hornick and advised that Long Branch certified that he had been terminated for cause in 2003.

At that time, the Division advised Mr. Hornick that a dismissal for cause would "affect [his] retirement benefits." The Division explained that Long Branch did not provide any documentation to support that administrative charges had been filed and sustained. It is important to note that the Division also invited Mr. Hornick to provide evidence or otherwise advise if he could establish that he was not dismissed for cause. However, Mr. Hornick failed to provide the Division with any information regarding his removal for cause.

On January 9, 2017, without any information provided by Mr. Hornick or Long Branch concerning his removal for cause, the Board, in error, approved Mr. Hornick's retirement application, and sent Mr. Hornick a letter confirming the approval. On January 10, 2017, the day after the Board erroneously approved his application, the Division wrote to Mr. Hornick to advise

that the Civil Service Commission, as well as the Attorney General's Office, had provided an Initial Decision and an Appellate Division decision affirming Hornick's removal for cause. The information provided indicated that the decision to restore Mr. Hornick to employment and award him back pay had been overturned by the Superior Court of New Jersey, Appellate Division. The Appellate Division's decision in I/M/O Joseph Hornick, A-5860-00T2, (App. Div. July 11, 2003) states that Long Branch appealed the Merit System Board's reduction in discipline while Mr. Hornick cross-appealed the adoption of the ALJ's findings of fact and some evidentiary rulings. Finding the Merit System Board's determination as to discipline without substantial support in the record, the court remanded the matter for a redetermination by the Merit System Board. On remand, the Merit System Board reversed its earlier determination, and found Mr. Hornick's removal as a firefighter, effective March 5, 1996, was warranted. Mr. Hornick appealed that decision and on June 8, 2005, the Appellate Division affirmed the Merit System Board's removal of Mr. Hornick. I/M/O Joseph Hornick, A-1592-03T2 (App. Div. June 8, 2005). In affirming Mr. Hornick's removal, the Appellate Division quoted the Merit System Board's decision at length:

The Board notes that appellant's conduct in this matter in failing to respond to calls could have resulted in the most serious of consequences. On both incident dates at issue, appellant was designated as the first-due response to the calls. A quick response to an emergency scene is essential to effect the timely rescue of individuals threatened by the situation. The Board points out that firefighting is a team effort, which requires coordination of engine and ladder company activities. The Board agrees [sic.] with the Appellate Division that a firefighter's failure to respond to an emergency call is among the most serious, work related offenses he could commit. It endangers the lives of his fellow firefighters, as well as the public he serves. Appellant, by his actions, jeopardized the success of the team operation. Moreover, his complete and utter disregard of the safety of the public he was sworn to serve shows a blatant disregard for the most basic responsibilities of a firefighter.

[Hornick], A-1592-03T2 (slip op. at 4).

The Supreme Court of New Jersey denied Mr. Hornick's Petition for Certification in September, 2005.

After receiving this information, it was necessary for the Division to audit Mr. Hornick's PFRS membership account. By letter dated January 10, 2017, the Division notified Mr. Hornick that the audit determined he was improperly awarded PFRS service credit because his reinstatement and back pay award was overturned as a result of the Appellate Division's decision. As a result of the audit, Mr. Hornick's PFRS membership account was left with 8 years and 11 months² of PFRS service credit. Because he did not have ten years of service credit, Mr. Hornick is not entitled to a Deferred retirement benefit. Moreover, even if Mr. Hornick's account was credited with 10 years of PFRS service credit, he would not be entitled to a Deferred retirement benefit under N.J.S.A. 43:16A-11.2. because he was removed for cause Mr. Hornick was advised that he was entitled to a return of his accumulated pension deductions.

The Division wrote a second letter dated January 10, 2017, advising Mr. Hornick that because he was terminated for cause, his application would be referred to the Board for reconsideration. On January, 23, 2017, the Division advised Hornick that his application for a Deferred retirement benefit was under review. Therefore, his case was not moved to payroll and he was not paid any retirement benefits.

On March 20, 2017, prior to the matter being returned to the Board for reconsideration, Mr. Hornick filed a Complaint in Superior Court of New Jersey, Law Division – Civil Part, Mercer County against the PFRS Board and Long Branch City alleging that he worked the necessary time to qualify for a Deferred retirement and is entitled to such. On November 14, 2017, the Superior Court of New Jersey, Law Division entered a "Consent Order" in the matter of Joseph F. Hornick v. PFRS, et als., Docket No. MER-L-00687-17 in which the parties agreed that the matter

² His PFRS membership was reduced by 88 months of membership service reflecting the period from May 1, 1996 through September 30, 2003 and he was issued a refund for overpaid pension in the amount of \$38,643.24.

Richard G. Huizenga, Esquire
RE: Joseph Hornick
Page 6
June 12, 2018

shall be referred back to the PFRS Board for further Administrative Action to consider his application for Deferred retirement benefits.

On December 12, 2017, you provided a copy of the Consent Order and requested that the matter be considered by the PFRS Board. On January 19, 2018, you were notified that Mr. Hornick's request for Deferred retirement benefits would be reconsidered by the PFRS Board at its meeting on February 12, 2018. However, prior to the meeting you requested a postponement which was granted by the PFRS Board at its meeting on February 12, 2018. At its meeting on March 12, 2018, the Board reviewed your submissions regarding Mr. Hornick's eligibility for a Deferred retirement benefit under N.J.S.A. 43:16A-11.2 and reopened its prior approval of his retirement based upon additional information not available to the Board when his application was erroneously approved on January 9, 2017.

Thereafter, the Board determined that his total creditable PFRS service is 8 years and 11 months and that he lacks the requisite membership service to qualify for a Deferred retirement. Further, the Board determined that Mr. Hornick was removed for cause on charges of misconduct or delinquency directly related to his employment. The Board notes that the Appellate Division relied on the Merit System Board's rationale for the termination, explaining that

The [Merit System Board] aggress [sic.] with the Appellate Division that a firefighter's failure to respond to an emergency call is among the most serious, work related offenses he could commit. It endangers the lives of his fellow firefighters, as well as the public he serves. Appellant, by his actions, jeopardized the success of the team operation. Moreover, his complete and utter disregard of the safety of the public he was sworn to serve shows a blatant disregard for the most basic responsibilities of a firefighter.

[Hornick, A-1592-03T2 (slip op. at 4).]

On April 12, 2018, you appealed the Board's determination and requested a hearing in the OAL. At its meeting on May 14, 2018, the Board denied your request for a hearing in the OAL.

finding no material facts in dispute, and directed the Board Secretary to draft a final administrative determination.

CONCLUSIONS OF LAW

The Board determined that Mr. Hornick is not eligible to receive a Deferred retirement because he was removed for cause on charges of misconduct or delinquency directly related to his employment. The Board also upheld the Division's determination that his total creditable PFRS service is 8 years and 11 months. The Board noted that it approved his application on January 9, 2017. However, the Division acted immediately to correct the error upon learning that he was removed for cause. The Board relied upon N.J.S.A. 43:16A-18 and N.J.S.A. 43:16A-11.2.

N.J.S.A. 43:16A-18 states:

. . . If any change or error results in the records result in any member or person receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, the retirement system shall correct such error, and as far as practicable, shall adjust the payments in such manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. . . .

N.J.S.A. 43:16A-11.2 states:

Should a member, after having established 10 years of creditable service, be separated voluntarily or involuntarily from the service, before reaching age 55, and not by removal for cause on charges of misconduct or delinquency, such person may elect to receive the payments provided for in section 11 of P.L.1944, c. 255 or section 16 of P.L.1964, c. 241, or a deferred retirement allowance, beginning on the first day of the month following his attainment of age 55 and the filing of an application . . .

[Emphasis added]

The Board and the Division acted to correct the error in Mr. Hornick's PFRS account and approval of Deferred retirement as soon as they were informed of the Appellate Division's decision affirming Mr. Hornick's removal. As a result of the Appellate Division's June 8, 2005 decision, Mr. Hornick was not eligible for PFRS service credit through Long Branch after March 5, 1996. Once

the records were adjusted to effectuate the court's decision, the Board determined that Mr. Hornick is not eligible for Deferred retirement because he does not have 10 years of service credited in his PFRS account. Further, even if he had 10 years of PFRS service credited in his account, he was removed for cause on charges of misconduct or delinquency and is not eligible in accordance with N.J.S.A. 43:16A-11.2. In affirming the Merit System Board's removal of Mr. Hornick, the Appellate Division explained that Mr. Hornick committed one of

...the most serious, work related offenses he could commit. It endangers the lives of his fellow firefighters, as well as the public he serves. Appellant, by his actions, jeopardized the success of the team operation. Moreover, his complete and utter disregard of the safety of the public he was sworn to serve shows a blatant disregard for the most basic responsibilities of a firefighter.

[Hornick, A-1592-03T2 (slip op. at 4).

It is therefore clear that even if Mr. Hornick had 10 years of service credited in his PFRS account, he would not be eligible for a Deferred retirement due to his removal for cause.

You allege in your appeal that Mr. Hornick resigned in October 2003 in order to preserve his eligibility for Deferred retirement. There is no evidence to support this claim. Further, the record indicates Mr. Hornick did not resign his employment but continued to appeal his termination and sought reinstatement to his position. In fact, on September 23, 2005, the Supreme Court denied Mr. Hornick's Petition for Certification. The fact that he continued his appeal belies the newly raised allegation that he resigned on October 3, 2003.

You also claim that the question of Mr. Hornick's eligibility for Deferred retirement is a new issue that was not previously raised. The Board disagrees. The question of Mr. Hornick's eligibility for Deferred retirement was raised by the Division's letter of January 10, 2017, and none of the documentation provided supports any assertion that Mr. Hornick has the requisite 10 years of creditable service credit to be eligible for a Deferred retirement. In fact, the Division requested

Richard G. Huizenga, Esquire
RE: Joseph Hornick
Page 9
June 12, 2018

that Mr. Hornick provide additional information regarding his termination, in light of the fact that Long Branch certified he was terminated from employment.

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 was 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-9/MER

C: C. Chianese (ET); D. Dinkler (ET); D. Lewis (ET)
DAG Danielle P. Schimmel (via e-mail to [REDACTED])
DAG Amy Chung (via e-mail to [REDACTED])
Joseph Hornick