



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

November 14, 2019

Deborah Kendig



Re: 

Dear Ms. Kendig:

FINAL ADMINISTRATIVE DETERMINATION

I am writing in reference to the decision of the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) in which it found that you are not eligible for Deferred retirement benefits. At its meeting of July 17, 2019, the Board considered all relevant documentation in the record and found that you are not eligible for Deferred retirement benefits pursuant to N.J.S.A. 43:15A-38, because you were removed for cause directly related to your employment. On or about August 26, 2019, you filed an appeal of the Board's decision. At its meeting of October 16, 2019, the Board considered your appeal and determined that there are no material facts in dispute and therefore found that there is no need for an administrative hearing. Accordingly, the Board directed the Secretary, in conjunction with the Attorney General's Office, to prepare Findings of Fact and Conclusion of Law, which were presented and approved by the PERS Board at its November 13, 2019 meeting.

The Board has reviewed your written submissions and all of the relevant documentation in the record, and finds that the statutes, regulations and relevant case law governing the PERS do not permit the Board to approve your application for Deferred retirement benefits.

FACTUAL FINDINGS

The record before the Board establishes that you were enrolled in the PERS effective June 1, 1979, at Gloucester County Utilities Authority ("Authority") as a result of your employment as an Accounting Clerk. You held the title of Office Manager/Payroll Personnel Clerk when you were terminated from employment on December 16, 1997.

As the Authority's Payroll Personnel Clerk, you used your office and position to misappropriate Authority funds in excess of \$9,400 when you borrowed from your pension account and configured the payments to be made by the Authority instead of having the loan payments deducted from your paychecks. As a result, you were terminated from employment on December 16, 1997 and criminally charged. On or about February 1, 1999, you were placed into the Pretrial Intervention Program (PTI) and as a condition of PTI, required to make full restitution to the Authority in the amount of \$9,014.36

You filed an application for Deferred retirement benefits on December 11, 2018, with an effective retirement date of January 1, 2019. At the time of your last pension contribution on December 31, 1997, you were 45 years of age and had 18 years and 7 months of PERS service credit. Therefore, the only retirement benefit for which you were eligible to apply was a Deferred retirement.

At its meeting of July 17, 2019, the Board considered your eligibility for Deferred retirement benefits in light of your dismissal for conduct directly related to your employment. Pursuant to N.J.S.A. 43:15A-38, the Board denied your application for Deferred retirement benefits because you were removed for cause directly related to your employment. You filed an appeal of the Board's decision, noting that you disagreed with the Board's decision because you had made full restitution to your previous employer and that you had worked 18 years without any other misconduct. Further, you asserted that your criminal violation had been expunged and that this was an isolated incident. The Board considered your appeal at its meeting of October 16,

2019 and determined that there are no material facts in dispute and directed the Secretary to draft Findings of Fact and Conclusions of Law.

CONCLUSIONS OF LAW

Members of the PERS with 10 or more years of pension service credit, who are not removed for cause directly related to their employment, are eligible to receive Deferred retirement benefits. PERS Deferred retirement benefits are governed by N.J.S.A. 43:15A-38, which states, in pertinent part:

Should a member of the Public Employees' Retirement System, 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 cause on charges of misconduct or delinquency, such person may elect to receive:

- (a) The payments provided for in section 41b. of this act,¹ if he so qualifies under said section, or;
- (b) A deferred retirement allowance, beginning at the retirement age...

[Emphasis added]

Additionally, in the case In the Matter of Suzanne Hess, 422 N.J. Super. 27, 37 (2010) the Court held that “forfeiture of deferred retirement benefits pursuant to N.J.S.A. 43:15A-38 is conditioned on an involuntary removal due to misconduct related to employment.” See also Robert Joya v. Dept. of Treasury, Div. of Pensions and Benefits, Dkt. No. A-3616-10T3 (decided October 9, 2012.)

The charges that led to your dismissal touched upon and were directly related to your employment with the Authority, thereby making you ineligible to receive a Deferred retirement benefit. You were charged with using Authority funds to repay your pension loan, clearly an offense directly related to your employment. Therefore, in accordance with the prevailing statutes and case law on this issue, the Board denied your request to collect Deferred retirement benefits.

¹ N.J.S.A. § 43:15A-41.

As noted above, the Board has considered your correspondence and has reviewed the all documentation in the record. 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 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 Public Employees' Retirement System.

You have the right 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
Phone: (609) 292-4822

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Ignatowicz". The signature is fluid and cursive, with a large loop at the end.

Jeff S. Ignatowicz, Secretary
Board of Trustees
Public Employees' Retirement System

G-5/JSI
C: D. Dinkler (ET); DAG Amy Chung (ET)