



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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July 24, 2018

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Sent via email to: [REDACTED]

LIMSKY MITOLO
Marcia J. Mitolo, Esquire

[REDACTED]

RE: Sean Link

[REDACTED]

Dear Ms. Mitolo:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At its meeting on May 22, 2018, the Board of Trustees of the State Police Retirement System (SPRS) reviewed the Initial Decision ("ID") of the Administrative Law Judge ("ALJ") Thomas R. Betancourt dated April 12, 2018,¹ in the above captioned matter, together with the joint stipulation of facts, the items submitted into evidence by the parties, exceptions filed by Deputy Attorney General Robert S. Garrison dated May 2, 2018 and the oral arguments presented by attorney Marcia Mitolo at the SPRS Board meeting².

Thereafter, the Board voted to adopt the factual findings of the ALJ, with modification to a technical error. Specifically, the Board removed the word "respondent" on #10 and #12 on page 5 of the Initial Decision because the New Jersey State Police (NJSP) is the employer, a separate entity from the Respondent, the SPRS Board. However, the Board rejected the legal conclusion that only a partial forfeiture starting from April 7, 2008 through the end of Mr. Link's employment was warranted and that Mr. Link is eligible to apply for accidental disability retirement. Instead, the Board reaffirmed its original

¹ The SPRS Board requested and was granted two extensions of time for the Board to issue its final decision.

² The Board voted not to accept the reply to exceptions dated May 22, 2018 filed by Marci Mitolo because they were filed out of time.

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decision ordering a total forfeiture for the rational set forth in its original decision. The Board also reaffirmed its determination that Mr. Link is ineligible to apply for accidental disability retirement.

Additionally, the Board indicated even if it adopted the ALJ's conclusion of a partial forfeiture, Mr. Link would be ineligible to apply for accidental disability retirement because he did not separate from employment from the NJSP due to a disabling condition; instead, he was required to resign due to disciplinary charges.

Findings of Fact and Conclusions of Law as outlined below were presented and approved by the SPRS Board at its meeting on July 24, 2018 which constitutes the Final Administrative Determination in this matter.

FINDINGS OF FACT

The Board adopts the ALJ's factual findings, with the technical modification to page 5, noted above. As a brief summary, at its meeting on May 24, 2016, the Board considered Mr. Link's request to file for accidental disability retirement and the issue of his honorable service. At that time, Mr. Link's SPRS membership account reflected a total of 10 years and 11 months of service credit. The Board determined, after a review of the 11 factors identified by the Supreme Court in Uricoli v. Board of Trustees, Police and Firemen's Retirement System, 91 N.J. 62 (1982) and codified by the Legislature at N.J.S.A. 43:1-3, that a total forfeiture of Mr. Link's service and salary was warranted. The Board then determined that his application for accidental disability retirement was moot because his total service and salary credit were forfeited. However, the Board noted that Mr. Link did not separate from employment from the NJSP due to a disabling condition but rather was required to resign due to disciplinary charges.

Mr. Link was a State Trooper who began working for the State Police in 2005 and pleaded guilty to five charges of misconduct between 2008 and 2009, when he abused his position to stalk women with whom he wished to have a romantic relationship. On April 7, 2008, while on duty, Mr.

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Link utilized a New Jersey State Police Mobile Data Computer to improperly access the Criminal Justice Information System and conduct a "Full Disclosure Inquiry" on D.B.'s motor vehicle registration without initiating a motor vehicle stop. On that date, Mr. Link's patrol car circled around D.B.'s car for approximately ten miles, frightening her. Mr. Link did not provide a reason for his check of D.B.'s motor vehicle information when questioned by investigators.

On January 18, 2009, Mr. Link was involved in a speeding stop that revealed evidence that the driver of the car, J.S. was under the influence of alcohol. Over the course of several months after this incident Mr. Link attempted to use his position as a State Police officer to solicit a romantic relationship with J.S. in return for promises that he would help her to get the DWI complaint dismissed. He met with J.S., and showed up at her job without invitation, and continued to contact her from a blocked number. During this time, Mr. Link failed to disclose his involvement with J.S. to his supervisor or the State Police.

LEGAL CONCLUSION

While the ALJ correctly cites the governing statute, N.J.S.A. 43:1-3³ and Uricoli, the ALJ fails to correctly apply the facts to the law. N.J.S.A. 43:1-3 states:

- a. The receipt of a public pension or retirement benefit is hereby expressly conditioned upon the rendering of honorable service by a public officer or employee.
- b. The board of trustees of any State or locally-administered pension fund or retirement system created under the laws of this State is authorized to order the forfeiture of all or part of the earned service credit or pension or retirement benefit of any member of the fund or system for misconduct occurring during the member's public service which renders the member's service or part thereof dishonorable and to implement any pension forfeiture ordered by a court pursuant to section 2 of P.L.2007, c.49 (C.43:1-3.1).

³The Initial Decision actually states N.J.S.A. 49:1-3, which is a technical error, as the substance of the statutory reference is actually N.J.S.A. 43:1-3. While the Board did reject the ALJ's legal conclusions, this technical error is noted for completeness as this decision references the Initial Decision.

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c. In evaluating a member's misconduct to determine whether it constitutes a breach of the condition that public service be honorable and whether forfeiture or partial forfeiture of earned service credit or earned pension or retirement benefits is appropriate, the board of trustees shall consider and balance the following factors in view of the goals to be achieved under the pension laws:

- (1) the member's length of service;
- (2) the basis for retirement;
- (3) the extent to which the member's pension has vested;
- (4) the duties of the particular member;
- (5) the member's public employment history and record covered under the retirement system;
- (6) any other public employment or service;
- (7) the nature of the misconduct or crime, including the gravity or substantiality of the offense, whether it was a single or multiple offense and whether it was continuing or isolated;
- (8) the relationship between the misconduct and the member's public duties;
- (9) the quality of moral turpitude or the degree of guilt or culpability, including the member's motives and reasons, personal gain and similar considerations;
- (10) the availability and adequacy of other penal sanctions; and
- (11) other personal circumstances relating to the member which bear upon the justness of forfeiture.

The ALJ appropriately references the facts of this case in the context of the eleven factors, and the Board adopts the ALJ's discussion of the eleven factors on pages 11 and 12 of the Initial Decision. However, the ALJ's analysis of these factors under the governing law is incorrect and rejected. While the ALJ correctly cites to Uricolj, the ALJ then relies on T.J.M. v. Bd. of Trs., 218 N.J. Super. 274 (1987). However, T.J.M. is inapplicable because Mr. Link's misconduct occurred while on-duty and is directly related to his employment as a Trooper while the misconduct in T.J.M. was unrelated to the employment. The ALJ then simply repeated that the dishonorable conduct started in April 7, 2008 without analysis. Thus, the Board rejects the ALJ's recommendation and legal conclusion that only a partial forfeiture starting from April 7, 2008 through the end of Mr. Link's employment was appropriate. Mr. Link began working for the State Police on February 9, 2005. At the time of his first instance of

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dishonorable conduct he had only three years and one month of honorable service. N.J.S.A. 43:1-

3(d) grants the Board the discretion to determine whether:

a partial forfeiture of earned service credit or earned pension or retirement benefits is warranted, it shall order that benefits be calculated as if the accrual of pension rights terminated as of the date the misconduct first occurred or, if termination as of that date would in light of the nature and extent of the misconduct result in an excessive pension or retirement benefit or in an excessive forfeiture, a date reasonably calculated to impose a forfeiture that reflects the nature and extent of the misconduct and the years of honorable service.

On this set of facts, that Board finds that forfeiture from the date of the offense forward would result in an excessive pension. Uricoli factors 1, 2, 3 and 5, which relate to length of service, the type of pension being applied for and vesting, strongly weigh against Mr. Link. The serious nature of the offense weighs against him, as does its ongoing nature, which is directly related to his position as State Trooper. Mr. Link abused his position as a State Police Officer to stalk women he wished to have a romantic relationship with, starting three years after Mr. Link began employment as a State Trooper. Given the egregious nature of the misconduct and the short duration of his honorable service, the Board finds a total forfeiture supported and appropriate.

In imposing a total forfeiture, the Board intends to deny Mr. Link, who would have been eligible for a deferred retirement if his service was honorable, the opportunity to collect an immediate and very generous lifetime benefit in return for the brief service that culminated in his mandatory termination due to significant, deliberate, and sustained egregious misconduct. The Board's intention to deny him disability retirement benefits is consistent with N.J.A.C. 17:1-6.1, which allows a Board to craft a forfeiture that specifically prevents an applicant from receiving a particular benefit.

The Appellate Division recently addressed the Board's ability to apply a discretionary forfeiture based on misconduct in office, holding that when performing a discretionary analysis under N.J.S.A. 43:1-3, the Board may impose a forfeiture of all or part of the earned service credit or retirement

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benefit of any member for misconduct occurring during the member's public service, provided the Board considers the eleven factors identified in the statute. See James v. Alternate Benefit Program, A-0522-16T4 (App. Div. March 27, 2018). Further, the court has considered the limited number of years of service and the serious nature of the offense in affirming total forfeiture. See Beagin v. Bd. of Trs., PFRS, Docket No. A-4132-15T3 (App. Div. Jan. 19, 2018) (upholding Board's analysis that less than 7 years of service weighed against the member); See also Tavaglione v. Board of Trustees, Police and Firemen's Retirement System, A-5478-13T4 (App. Div. January 8, 2016). On this set of facts, the Board finds that Mr. Link's misconduct and his limited number of years of service supports a total forfeiture.

Finally, even if a partial forfeiture were appropriate, Mr. Link would not be eligible for an accidental disability retirement benefit. He left employment as a Trooper as a result of a negotiated voluntary plea agreement related to the misconduct. N.J.S.A. 53:5A-10 has always required that in order to be eligible for a disability retirement, a member must leave employment due to the claimed disability. This underlying requirement for disability retirement was recently affirmed in the Appellate Division's explanation of the statutory language in affirming N.J.A.C. 17:1-6.4. In Re Adoption of N.J.A.C. 17:1-6.4, 17:1-7.5 and 17:1-7.10, ___ N.J. Super. ___ (App. Div. May 7, 2018) (slip op. at 3, 10-19). While N.J.A.C. 17:1-6.4 was promulgated after Mr. Link's retirement application, the statutory language and requirements were in existence at the time of the application. As explained in Bellomo v. Board of Trustees, Police and Firemen's Retirement System, TYP 07095-16 (November 9, 2016), eligibility for an accidental disability is contingent upon a permanent and total disability and that disability must be the reason the member can no longer work.⁴

⁴ Bellomo applied N.J.S.A. 43:16A-7, the accidental disability statute governing the Police and Firemen's Retirement System. N.J.S.A. 53:5A-10, governing the State Police Retirement System is substantially similar. Patterson v. Bd. of Trs., State Police Ret. Sys., 194 N.J. 29, 42 (2008) (noting that same standard applies for accidental disability pensions in the State Police Retirement System, Police and Firemen's Retirement System, Teacher's Pension and Annuity Fund, and the Public Employees' Retirement System).

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For the foregoing reasons, the Board adopts the ALJ's findings of fact with modification to the aforementioned technical error and rejects the legal conclusions and reinstates a total forfeiture of Mr. Link's SPRS service and salary credit. Because of the total forfeiture, Mr. Link is not eligible to apply for an accidental disability retirement. However, even if he did have service credit to apply for an accidental disability retirement benefit, Mr. Link would be ineligible because he did not leave work due to a disabling condition, but rather due to the disciplinary action and charges against him.

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
State Police Retirement System

G-2/mer

C: V. McManus (ET); D. Dinkler (ET)
DAG Robert Garrison (ET); DAG Amy Chung (ET)
Sean Link