



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

TAHESHA L. WAY
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

July 12, 2024

Sent via email to: [REDACTED]

The Lopez Firm
Omar A. Lopez, Esq.

[REDACTED]

RE: Corey Lowery
TPAF #: [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Lopez:

At its meeting on June 6, 2024, the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) considered your appeal of the Board's March 8, 2024 determination that the compensation Corey Lowery received for the period covering July 1, 2023 through September 30, 2023 is not creditable for pension purposes for the reasons set forth in the Division's determination letter, dated November 2, 2023. You filed a timely appeal of the Board's decision on April 22, 2024.

After careful consideration, the Board affirmed its prior decision, and finding no genuine issue of material fact in dispute, denied your request for an administrative hearing. Thereafter, the Board directed the undersigned to draft a Final Administrative Determination, which was reviewed and approved at its meeting of July 11, 2024.

Further, at the June 6, 2024 meeting, the Board also considered and denied Mr. Lowery's request to purchase service credit from the same period – July 1, 2023 through September 30, 2023 – as it was previously found to be not creditable for pension purposes. Because both of Mr.

The Lopez Firm
Omar A. Lopez, Esq.
RE: Corey Lowery
July 12, 2024
Page 2

Lowery's requests centered on whether the period from July 1, 2023 through September 30, 2023 was creditable for pensions purposes, the Board consolidated both appeals in this FAD.

FINDINGS OF FACT

The record before the Board establishes that Mr. Lowery was enrolled in the TPAF effective September 1, 1998, on the basis of his employment with the Hillside Board of Education as a Teacher. On September 1, 2007, he transferred to the Union Township Board of Education (Union) where he held the position of principal until his resignation on September 30, 2023.

Lowery terminated his employment with Union as a result of a "Settlement Agreement and General Release Between Corey Lowery and Township of Union Board of Education," (Agreement) executed on June 29, 2023. The Agreement resolved a NJ First Action; tenure charges filed in 2020;¹ tenure charges filed in 2022² and an Order to Show Cause; and all other matters between Mr. Lowery and Union.

As part of the Agreement, Mr. Lowery remained principal of Union High School and was placed on paid administrative leave for the period covering July 1, 2023 through September 30, 2023, and was paid his regular salary (\$49,930.53), and in exchange, Mr. Lowery would submit a letter of resignation effective September 30, 2023. In addition, Union was to pay Mr. Lowery \$116,178.13, which represented back pay for the periods of disqualification resulting from "the 2020 tenure charges (December 9, 2020 - April 7, 2021) and the 2022 tenure charges (August 24, 2022 - December 22, 2022)." Union also agreed to make any pension contributions associated

¹ On or about March 27, 2023, the arbitrator issued a decision and award in connection with the 2020 tenure charges denying the tenure charges against Mr. Lowery.

² On or about April 29, 2023, the arbitrator issued an Opinion and Award in connection with the 2022 tenure charges sustaining in part and denying in part the tenure charges, requiring the Board to reinstate Mr. Lowery to his position as principal of Union High school contingent upon his resignation from his assistant coaching position with Seton Hall University.

The Lopez Firm
Omar A. Lopez, Esq.
RE: Corey Lowery
July 12, 2024
Page 3

with the aforementioned payment, submit a copy of the Agreement to the Division, and cooperate fully with the Division to facilitate the restoration of such credit.

On September 26, 2023, a copy of said Agreement along with a settlement check was submitted to the Division for review. On October 4, 2023, Mr. Lowery applied for deferred retirement effective September 1, 2035, having accrued 24 years, and 1 month of service credit. On that same date, he sent a letter to the Division requesting that his retirement type be changed to early retirement effective October 1, 2023, once all service and salary credit had been credited to his account. On or about October 5, 2023, the Division credited Mr. Lowery's account with an additional 8 months of service and credit.

By letter dated November 2, 2023, the Division's Retirement Bureau, informed Mr. Lowery that his total service credit was 297 (24 years and 9 months) months as of June 30, 2023. The letter further explained that the Agreement indicated that Mr. Lowery would be on paid administrative leave for the time period covering July 1, 2023, through September 30, 2023, and that an agreement issuing future compensation in the absence of service is not creditable for pension calculation purposes pursuant to N.J.A.C. 17:3-4.1(a)(1)(xvi). The letter further explained that with Mr. Lowery's age and years of service, the only benefit for which he is eligible to apply is deferred retirement. Thereafter, you filed an appeal which was received by the Division on December 18, 2023.

On January 12, 2024, Mr. Lowery submitted a *Purchase Application* to purchase the administrative leave for the time period covering July 1, 2023 through September 30, 2023. The Division issued a denial letter, dated February 14, 2024. The letter explained that an agreement issuing future compensation in the absence of service is not creditable and was therefore ineligible for purchase.

The Lopez Firm
Omar A. Lopez, Esq.
RE: Corey Lowery
July 12, 2024
Page 4

At its meeting of March 7, 2024, the Board denied Mr. Lowery's request for the compensation he received for the 3rd quarter 2023 be deemed creditable for pension purposes for the reasons set forth in the Division's determination letter, dated November 2, 2023. On March 22, 2024, you filed an appeal of the Division's denial of Mr. Lowery's request to purchase the aforementioned period. In your appeal, you requested that in the event the Board denies the request that it grant a hearing "to determine the legal and factual issues in this case." On or about April 22, 2024, you filed a timely appeal of the Board's March 7, 2024 decision and requested that the matter be transferred to the Office of Administrative Law as a contested case.

At its meeting of June 6, 2024, the Board considered your appeal of its determination that the compensation Mr. Lowery received for the period of July 1, 2023 through September 30, 2023, was not creditable for pension purposes. The Board also considered and denied your request to purchase this period for the reasons set forth in the Division's administrative determination letter, dated February 14, 2024. The Board found that the Agreement, which permitted Mr. Lowery to remain as principal on paid administrative leave for the period of July 1, 2023 through September 30, 2023 provided Mr. Lowery with future compensation in the absence of service in violation of N.J.A.C. 17:3-4.1(a)(1) (xvi). Therefore, the Board determined that Mr. Lowery was not entitled to receive credit for, nor was he eligible to purchase this period. As both issues covered the same period and were denied for the same reason, you agreed to consolidate both appeals.

Accordingly, the Board affirmed its prior decision, and finding no genuine issue of material fact in dispute, denied your request for an administrative hearing. Thereafter, the Board directed the undersigned to draft a Final Administrative Determination, which was reviewed and approved at its meeting of July 11, 2024.

CONCLUSIONS OF LAW

The issue before the Board is whether Mr. Lowery is eligible to receive service credit for or purchase service credit for the period covering July 1, 2023 through September 30, 2023.

N.J.A.C. 17:3-4.1(a)(1)(xvi), states in pertinent part:

(a) The compensation of a member subject to pension and group life insurance contributions and creditable for retirement and death benefits in the Fund shall mean the contractual salary, for services as a teacher defined at N.J.S.A. 18A:66-2d(1)(2), which is in accordance with established salary policies of the member's employer for all employees in the same position and shall not include extra compensation.

1. Forms of compensation that have been identified as extra compensation include, but are not limited to:

...

xvi. Compensation in the absence of services;

...

In this matter, it is clear that the Agreement provided future compensation from July 1, 2023 through September 30, 2023 to Mr. Lowery in the absence of services in violation of N.J.A.C. 17:3-4.1(a)(1)(xvi). Although, per the Agreement, Union considered Mr. Lowery as principal on administrative leave, he did not perform any services as defined at N.J.S.A. 18A:66-2(p).

In your appeal, you allege that the period from July 1, 2023 through September 30, 2023 constitutes service because Mr. Lowery was on administrative leave and was not permitted to work for other school boards in an administrative or teaching capacity. The Board found this claim to be without merit. Mr. Lowery himself signed the Agreement that continued his employment until September 30, 2023, giving him three months of pay in the absence of services. Mr. Lowery cannot claim that because he was not permitted to work anywhere due to the Agreement, the period from July 1, 2023 through September 30, 2023 is creditable.

The Lopez Firm
Omar A. Lopez, Esq.
RE: Corey Lowery
July 12, 2024
Page 6

You also cite to Blinn v. Board of Trustees of PERS, 173 N.J. Super. 277 (App. Div. 1980), for the proposition that a leave of absence has been considered to be employment and creditable for pension purposes. The Board found the reliance on Blinn to be misplaced. In Blinn, the court found that during a leave of absence, the employment relationship continues because it “implies the right of the employee to return to active employment in the employer’s service at the conclusion of such leave of absence.” 173 N.J. Super. at 279 (emphasis added). The Court further explains that “[i]f a state employee who has been granted a leave of absence continues to be in the service or employment of his employer until the expiration of such leave, it necessarily follows that he retains his membership in the pension system during the leave of absence.” Id. (emphasis added). Blinn does not apply to Mr. Lowery’s situation because the Agreement expressly prohibited Mr. Lowery from returning to employment after September 30, 2023 because he was required to retire after September 30, 2023. Therefore, under the Blinn court’s analysis, because Mr. Lowery did not have the right to return to active employment after the period between July 1, 2023 through September 30, 2023, the period July 1, 2023 through September 30, 2023 cannot be considered a leave of absence where the employment relationship would continue and pension credit would accrue.

Next, you assert that Mr. Lowery’s position as a tenured employee guaranteed his employment for the period from July 1, 2023 through September 30, 2023. The Board again finds this argument without merit. Mr. Lowery is attempting to conflate protections afforded by tenure laws with the requirements imposed by the pension statutory and regulatory framework. The Board has the exclusive authority to determine what constitutes creditable compensation for pension purposes. N.J.A.C. 17:3-4.1(b).

Finally, you allege that you contacted the Division on several occasions to discuss service credit and that the Division did not explain the consequences of agreeing to remain on

The Lopez Firm
Omar A. Lopez, Esq.
RE: Corey Lowery
July 12, 2024
Page 7

administrative leave as part of a settlement agreement. The Board finds that the Division would not have known the specifics of the Agreement and could only advise on the information provided.

As noted above, the Board has considered your written submission and 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 Teachers' Pension and Annuity Fund.

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

Sincerely,



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

G-3/SD

C: J. Ehrmann (ET); C. Law (ET); M. Kusmierczyk (ET); J. DiDonato (ET); S. Scott (ET)

Corey Lowery (sent via email to: [REDACTED])