



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
P. O. Box 295

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ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

April 5, 2024

Sent via email to: [REDACTED]

ZAZZALI, P.C.

Kathleen Naprstek Cerisano, Esq.
[REDACTED]

RE: Tracy McPhatter-Alexander
TPAF # [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Ms. Cerisano:

At its meeting on March 7, 2024, the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) considered your appeal of the Board's determination that Tracy McPhatter-Alexanders' July 1, 2022 retirement is non-bona fide. The Board originally adopted the External Audit Unit's (EAU) findings and affirmed their determination that Ms. McPhatter-Alexander's retirement is non-bona fide at its meeting of December 7, 2023. You filed a timely appeal of the Board's decision on January 26, 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 April 4, 2024.

FINDINGS OF FACT

The record before the Board establishes that Tracy McPhatter-Alexander was enrolled in the TPAF on September 1, 1996, as a result of her employment with the Orange Board of Education as a Teacher. She subsequently transferred to East Orange Board of Education on

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September 1, 2005 and Newark Public Schools (Newark) on March 1, 2006. On or about June 6, 2022, Ms. McPhatter-Alexander filed an application for Early retirement benefits to become effective July 1, 2022. On June 16, 2022, Newark certified that Ms. McPhatter-Alexander resigned from their location effective June 30, 2022, and that she did not make a pre-arrangement to return to employment with them in any capacity. The Board approved her retirement application at its meeting on July 7, 2022.

On or about July 7, 2022, the Board sent Ms. McPhatter-Alexander a letter advising her that her retirement had been approved and notified her that:

In accordance with law, you have until thirty days after (A) the effective date of your retirement, or (B) the date your retirement was approved by the Board of Trustees, whichever is the later date, to make any changes to your retirement.

The letter also advised Ms. McPhatter-Alexander that:

If you are considering working after retirement, you should be aware of the restrictions imposed by law and regulations governing post-retirement employments. It is your responsibility to inform your prospective employer that you are receiving retirement benefits from a New Jersey public retirement system, and to understand the impact employment will have on those retirement benefits. In some instances, your retirement benefits may be suspended or even cancelled entirely, and if this occurs, you will be responsible for the repayment of any benefits you were not entitled to receive. You may also be required to re-enroll in your former retirement system or a different retirement system, and make pension contributions to that system. Please read Fact Sheet #86 regarding Post-Retirement Employment Restrictions located on the Division of Pensions and Benefits' website:

<http://www.nj.gov/treasury/pensions/documents/factsheets/fact86.Pdf>

Upon reading Fact Sheet #86, if you have any additional questions regarding return to public employment, please contact the Office of Client Services at (609) 292-7524.

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On September 1, 2022, Newark issued a job offer letter recommending her for rehire for the 2022-2023 school year. She then executed a post-retirement employment contract with Newark on September 30, 2022. On January 9, 2023, the Division of Pensions and Benefits (Division) received a Notification of Employment after Retirement Form (RTE Form) from Newark stating that Ms. McPhatter-Alexander was hired by them as a full-time Elementary Teacher from January 3, 2023 to June 30, 2023, at an annual salary of \$75,286.00. Subsequent to the receipt of the RTE Form, the Division contacted Newark to request additional records and information to document Ms. McPhatter-Alexander's earnings.

Based upon the information provided by Newark concerning Ms. McPhatter-Alexander's post-retirement employment, the Division found that Ms. McPhatter-Alexander did not separate from employment as required by the provisions of N.J.A.C. 17:3-6.2, N.J.A.C. 17:1-7.7(b) and N.J.A.C. 17:1-17.14(a)2, nor did she qualify for post-retirement employment pursuant to P.L. 2021, c. 408. The Board also noted that neither Ms. McPhatter-Alexander nor Newark contacted the Division at any time regarding the above-referenced post-retirement employment to ascertain whether it would have any negative impact on her pension and whether it was in compliance with all applicable statutes, regulations, and federal code.

The Board also noted that Fact Sheet #86 contains a section "Return to Work With Your Former Employer" which states that "Bona fide severance of employment means there was a complete termination of the employer/employee relationship for a period of at least 180 days from the date of retirement for PERS, TPAF, SPRS, and JRS retirees, or 90 days from the date of retirement for PFRS retirees." Ms. McPhatter-Alexander's severance period started September 1, 2022.

The Board affirmed the Division's administrative determination of July 7, 2023, and found that Ms. McPhatter-Alexander's alleged July 1, 2022 retirement was not bona fide. Consequently,

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as a non-bona fide retiree, she is required to repay to the TPAF all the overpaid benefits she's received for the period of July 1, 2022 through January 31, 2023. In addition, the Board found that she is required to be re-enrolled back into the TPAF effective January 1, 2023, and make the mandatory pension contributions for one month of service. The Board further determined that she is eligible for a February 1, 2023, retirement date.

The Board considered your appeal of the EAU's determination that Ms. McPhatter-Alexander's July 1, 2022 retirement was non-bona fide at its meeting of December 7, 2023. At the meeting, the Board found that Ms. McPhatter-Alexander did not separate from employment as required by the provisions of N.J.A.C. 17:3-6.2, N.J.A.C. 17:1-7.7(b) and N.J.A.C. 17:1-17.14(a)2, nor did she qualify for post-retirement employment pursuant to P.L. 2021, c. 408. Therefore, the Board affirmed the EAU's determination that Ms. McPhatter-Alexander's retirement was non-bona fide. On or about January 26, 2024, you filed a timely appeal of the Board's decision and requested that the matter be transferred to the Office of Administrative Law as a contested case.

At its meeting on March 7, 2024, the Board considered your appeal, affirmed its prior decision, and finding no genuine issue of material fact in dispute, denied your request for an administrative hearing.

CONCLUSIONS OF LAW

The issue before the Board is whether Ms. McPhatter-Alexander properly separated from employment as required by the provisions of N.J.A.C. 17:3-6.2, N.J.A.C. 17:1-7.7(b) and N.J.A.C. 17:1-17.14(a)2.

N.J.A.C. 17:3-6.2 states:

A member's retirement allowance shall not become due and payable until 30 days after the date the Board approved the

application for retirement or 30 days after the date of retirement, whichever is later.

N.J.A.C. 17:1-7.7(b), provides in pertinent part:

(b) Members employed on a 10-month schedule who retire as of July 1st and return to another position within the same pension system, prior to October 1st of the same year, shall be deemed not to have a valid break-in-service for retirement purposes; thus, they are not considered to have a bona fide retirement. A bona fide severance from employment, as defined by N.J.A.C. 17:1-17.14(a)2, means a complete termination of the employee's employment relationship with the employer for a period of at least 180 days.

N.J.A.C. 17:1-17.14(a)2 defines a "bona fide severance from employment" as:

2. "Bona fide severance from employment" means a complete termination of the employee's employment relationship with the employer for a period of at least 180 days. The following does not constitute a complete termination of the employee's relationship with the employer:

- i. Employment or reemployment in a part-time position;
- ii. Employment or reemployment in a position that is not covered by the Defined Benefit Plan;
- iii. A change in title;
- iv. Employment or reemployment as a contract employee, a leased employee, or an independent contractor; or
- v. Termination of employment with a pre-arranged agreement for reemployment.

Federal Internal Revenue Service factors shall be used as guidance in determining whether an employment relationship exists. A mandatory retirement shall be treated as a bona fide severance from employment.

First, Ms. McPhatter-Alexander's retirement was approved by the Board until July 7, 2022. Accordingly, her retirement did not become due and payable, or final until October 1, 2022 as provided in N.J.A.C. 17:1-7.7(b). Ms. McPhatter-Alexander submitted an online job application to Newark on August 18, 2022 and then received a job offer September 1, 2022, then Ms. McPhatter-

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Alexander executed a post-retirement employment contract with Newark on September 30, 2022, prior to her retirement becoming due and payable. Accordingly, she returned before her retirement was due and payable. The Board determined these actions invalidated her July 1, 2022 retirement.

Second, Ms. McPhatter-Alexander did not have a bona fide severance of employment from Newark as required by N.J.A.C. 17:1-17.14(a)(2). A bona fide severance from employment means a complete termination of the employee's employment relationship with the employer for a period of at least 180 days. N.J.A.C. 17:1-17.14(a)(2). According to the records provided by Newark, Ms. McPhatter-Alexander accepted employment as a full-time elementary Teacher on September 30, 2023, well before the 180 day required break in service.

Third, the statutory exemption under C. 408 permitting retired teachers or professional staff members who provide services to return to employment to fulfill a "critical need of a school district" during the school years 2021-2022 or 2022-2023, without requiring re-enrollment in the TPAF is contingent upon the member having a bona fide retirement. Since Ms. McPhatter-Alexander returned to full-time employment in January 2023, for the same employer, she did not terminate her employment relationship with Newark for a period of at least 180 days pursuant to N.J.A.C. 17:1-17.14(a)(2), and thus her retirement was non-bona fide.

In your appeal, you acknowledge that Ms. McPhatter-Alexander's post-retirement employment violated the TPAF regulations but claim that the amount that she must repay is excessive and that equitable remedies must be applied. The Board disagrees, as Ms. Phatter-Alexander is responsible for the repayment of any retirement benefits she was not entitled to receive and is also required to re-enroll and pay the mandatory pension contributions for the period she returned to employment. Moreover, the Board applied equity in this matter when it

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determined that Ms. McPhatter-Alexander was eligible to retire effective February 1, 2023, even though her retirement application was not received by the Division until July 2023.

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: D. Walsh (ET); N. Munko (ET); S. Rana (ET); R. Bowman (ET); S. Fenstermacher (ET)

Tracy McPhatter-Alexander