



State of New Jersey

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Governor

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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JOHN D. MEGARIOTIS
Acting Director

April 19, 2024

Sent via email to: [REDACTED]

Michael Mink, Esq.
[REDACTED]

RE: PERS [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Mink:

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) denying your request to have your former service as an Assistant Prosecutor with Camden County included in your Prosecutors Part of PERS (PERS-PP) membership account.

The Board originally denied your request at its meeting of January 17, 2024. You filed a timely appeal of that determination on February 26, 2024. At its meeting of March 20, 2024, the Board found no genuine issue of material fact in dispute and denied your request for an administrative hearing. Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the PERS Board at its April 17, 2024, meeting.

FINDINGS OF FACT

The record before the Board establishes that you were enrolled in PERS on March 1, 2012 as a result of your employment with Camden County as an Assistant Prosecutor. PERS-PP was closed at the time of your employment as a prosecutor, and as a result you were enrolled in "regular" PERS and all of your service credit is considered "regular" PERS service. You later transferred from Camden County to the State Commission of Investigation in the title of Counsel. Subsequent to your transfer the Legislature reopened PERS-PP effective September 24, 2021.

Thereafter, on February 1, 2022, you returned to Camden County as an Assistant Prosecutor and began to accrue PERS-PP service immediately.

By way of letter dated October 12, 2023, you requested to have your prior service as a Prosecutor included in your Prosecutor's Part service. In a letter dated November 3, 2023, Ed Foley, Supervisor in the Division of Pensions and Benefits' Adjustment Section, noted that as of September 21, 2021, you were employed at the State Commission of Investigation, a non-Prosecutor Part eligible location. In addition, he noted you were working in the title of Counsel, a title that is not Prosecutor Part eligible, therefore, you did not meet the criteria to have prior non-Prosecutors Part service converted, and consequently, your request was denied.

Via letter dated November 14, 2023, you filed a timely appeal of the Division's decision. At its meeting of January 17, 2024, the Board denied your request in accordance with N.J.A.C. 17:2-8.4 which states:

A person who was not employed as a prosecutor on September 24, 2021, is not eligible to have any portion of his or her Public Employees' Retirement System account credited to the Prosecutors Part except as provided under the definition of "service" at N.J.A.C. 17:2-8.1.

In a letter dated February 26, 2024, you appealed the Board's decision, and at its meeting of March 20, 2024, the Board denied your request for an administrative hearing and directed the Board Secretary to draft findings of fact and conclusions of law for review at the Board's meeting of April 17, 2024.

CONCLUSIONS OF LAW

The Board made the following conclusions of law.

On January 7, 2002, the Legislature enacted L. 2001, c. 366 (Chapter 366) and created the PERS-PP for members serving in eligible titles at County Prosecutors' Offices and the Division of Criminal Justice within the Department of Law & Public Safety. The purpose of the statute was

to provide enhanced benefits to PERS members who meet the definition of “prosecutor.” The Legislature closed the PERS-PP to prosecutors enrolled in PERS after May 1, 2020. See L. 2010, c. 1 (Chapter 1).

On September 24, 2021, the Legislature passed L. 2021, c. 226 (Chapter 226), which reopened the PERS-PP effective September 24, 2021. N.J.S.A. 43:15a-156 states, as amended:

a. Notwithstanding the provisions of any other law, prosecutors shall be members of the Prosecutors Part, established pursuant to P.L.2001, c.366 (C.43:15A-155 et seq.), of the Public Employees’ Retirement System, established pursuant to P.L.1954, c.84 (C.43:15A-1 et seq.), and shall be subject to the same membership and benefit provisions as State employees, except as provided by P.L.2001, c.366. Membership in the retirement system shall be a condition of employment for service as a prosecutor. Any service credit which has been established in the Public Employees’ Retirement System prior to the effective date [Sept. 24, 2021] of this act, P.L.2021, c.226, shall be established in the Prosecutors Part without further assessment of cost to the prosecutor; provided, however, any service credit which has been established in the Public Employees’ Retirement System and the Judicial Retirement System not deferred pursuant to section 1 of P.L.2019, c.287 (C.43:6A-11.1) by a member of the retirement system in any position prior to service as a county prosecutor, nominated and appointed pursuant to Article VII, Section II, paragraph 1 of the New Jersey Constitution, shall be established in the Prosecutors Part without further assessment of cost to the prosecutor. Any county prosecutor or acting county prosecutor enrolled in the Defined Contribution Retirement Program as a county prosecutor or acting county prosecutor shall be eligible for service credit in the Prosecutors Part, except that the county prosecutor or acting county prosecutor shall first pay the amount equivalent to that amount contributed pursuant to section 3 of P.L.2007, c.92 (C.43:15C-3) during each fiscal year of membership in the Defined Contribution Retirement Program to be credited.

[(emphasis supplied).]

Pursuant to its authority under N.J.S.A. 43:15A-17, the Board promulgated regulations to implement the new legislation, particularly with respect to the treatment of prior pension service credit. N.J.A.C. 17:2-8.4 provides that:

A person who was not employed as a prosecutor on September 24, 2021, is not eligible to have any portion of his or her Public Employees' Retirement System account credited to the Prosecutors Part except as provided under the definition of "service" at N.J.A.C. 17:2-8.1.

Thus, identical to the original regulation implementing the original PERS-PP statute, only PERS members holding an eligible title on September 24, 2021, are eligible to transfer all of their previous "regular" PERS service credit into their PERS-PP membership account.

N.J.A.C. 17:2-8.1(b) defines PERS-PP "service" as:

"Service" as a prosecutor as defined at N.J.S.A. 43:15A-155 shall include the following:

For members employed as prosecutors on September 24, 2021, service shall include any PERS service credited to a member's account as of September 24, 2021, pursuant to P.L. 2021, c. 226.

The Board also reiterates its position that its regulations promulgated as a result of the original PERS-PP statute, which are identical to the regulations at issue here, except for the effective date, were upheld by the courts in both "facial" and "as applied" challenges. See Ouslander v. Pub. Employees' Ret. Sys., A-6287-03 (App. Div. June 22, 2005) certif. denied, 185 N.J. 595 (2005) (Appellate Division upheld the Board's then-current regulation, finding that the member must be employed as a prosecutor on the effective date of the original Prosecutors Part statute in order to transfer PERS service to the PERS-PP.) See also Marzarella v. Pub. Employees' Ret. Sys., A-59773-07T1 (App. Div. April 29, 2010). Thus, our courts have consistently held that a prosecutor must have been serving as a prosecutor on the effective date of the statute in order to transfer their previously earned "regular" PERS service credit into their PERS-PP membership account.

In conclusion, the Board denied your request to transfer your prior "regular" PERS service to your PERS-PP membership account because, at the time of the enactment of Chapter 226,

Michael Mink
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you were employed by the State Commission of Investigation as an attorney, and therefore not eligible to transfer your previous "regular" PERS service credit into your new PERS-PP account.

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 Public Employees' Retirement System.

You also 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,



Jeff Ignatowitz, Secretary
Board of Trustees
Public Employees' Retirement System

G-11/KA
c: N. Munko (ET); E. Foley (ET)