



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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Lt. Governor

November 15, 2018

Patricia Montero
[REDACTED]
[REDACTED]

RE: Patricia Montero
[REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Ms. Montero:

I am writing in reference to the decision of the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) regarding your request to appeal the Board's May 21, 2012 decision, denying your request to reactivate your former PERS account. On August 21, 2018, the Board denied your request to appeal its decision because it was received approximately 6 years after the 45 days required pursuant to N.J.A.C. 17:1-1.3(d). On or about September 2, 2018, you filed an appeal of the Board's August 21, 2018 decision.

At its meeting on October 17, 2018, the Board considered your request to appeal its August 21, 2018 decision, in which it denied the appeal of your 2012 matter, as out of time. Because this matter does not involve any material facts in dispute, the Board directed the Secretary to draft a detailed Findings of Fact and Conclusions of Law that will formally outline the Board's decision and become the Board's Final Administrative Determination. Findings of Fact and Conclusions of Law, as outlined below, were approved by the Board at its meeting of November 7, 2018.

FINDINGS OF FACT

In the Board's May 21, 2012 decision, the Board voted to deny your request to reinstate your PERS Tier 1 membership account. The Board's decision was outlined in its letter, also dated May 21, 2012, and included the procedure to file an appeal of that decision. Specifically, the letter advised that:

If you disagree with the determination of the Board, you may appeal by submitting a written statement to the Board within 45 days after the date of written notice of the determination. The statement shall set forth in detail the reasons for your disagreement with the Board's determination and shall include any relevant documentation supporting your claim. If no such written statement is received within the 45-day period, the determination by the Board shall be final.

Accordingly, you had until July 5, 2012, to submit a written statement appealing the Board's determination. However, the record indicates that no such appeal was made until your letter dated May 23, 2018, nearly 6 years beyond the regulatory timeframe permitted. Therefore, the Board denied your request to appeal the Board's May 21, 2012 determination, as that determination is final in accordance with N.J.A.C. 17:1-1.3(d).

In your appeal, you acknowledge that you did not file an appeal of the Board's decision, however you assert that you did not do so because of health reasons. While the Board considered the records provided by your health care provider, the Board noted that your appeal was nearly 6 years beyond the timeframe permitted by the regulation.

CONCLUSIONS OF LAW

The Board considered the relevant regulation, N.J.A.C. 17:1-1.3(d), which outlines the process by which a PERS member can appeal a Board determination:

(d) The following statement shall be incorporated in every written notice setting forth the Division, Board or Commission's determination in a matter where such determination is contrary to the claim made by the claimant or the claimant's legal representative: If you disagree with the determination of the Board, Commission or Division, you may appeal by submitting a written statement to the Board, Commission or Division Director within 45 days after the date of written notice of the determination. The statement shall set forth in

detail the reasons for your disagreement with the Board, Commission or Division's determination and shall include any relevant documentation supporting your claim. If no such written statement is received within the 45-day period, the determination by the Board, Commission or Division shall be final.

[Emphasis added]

Based on the factual record, you received a copy of the Board's May 2012 decision, denying your request to extend your PERS membership. You appealed that determination approximately 6 years beyond the regulatory timeframe in accordance with N.J.A.C. 17:1-1.3(d). At its meeting of October 17, 2018, the Board found that no factual issues were in dispute and denied your request to appeal. Based upon the plain language of the regulation, the Board denied your request to file an appeal. By operation of the regulation, the Board's May 2012 decision has become final.

As noted above, the Board has reviewed your written submissions and because this matter does not entail any disputed questions of fact, the PERS Board was able to reach its findings of fact and conclusions of law in this matter on the basis of the Board's enabling regulation 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, 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,



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