



State of New Jersey

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

TRENTON, NEW JERSEY 08625-0295
Telephone (609) 292-7524 / Facsimile (609) 777-1779
TRS 711 (609) 292-6683
www.nj.gov/treasury/pensions

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

March 14, 2019

Oxford Cohen, P.C.
Samuel Wenocur, Esq.

[REDACTED]
[REDACTED]

RE: Michael Nappe

[REDACTED]

Dear Mr. Wenocur:

FINAL ADMINISTRATIVE DETERMINATION

I am writing in reference to the denial by the Board of Trustees of the Teachers' Pension and Annuity Fund (TPAF) of your client, Michael Nappe's request to retroactively change his Service retirement date from September 1, 2018 to July 1, 2018. Because Mr. Nappe's original application for Accidental Disability retirement benefits was closed, Mr. Nappe was directed to submit a new application for Service retirement benefits. This was done on August 13, 2018, with an effective date of retirement of September 1, 2018. By letter dated January 11, 2019, you appealed the Board's decision and requested that Mr. Nappe's application (submitted August 13, 2018) be amended from September 1, 2018 to July 1, 2018. The TPAF Board considered all relevant documentation and denied Mr. Nappe's request to change his retirement date at its February 7, 2019 meeting and thereafter determined there are no material issues of fact in dispute, and directed the Board Secretary to draft a final administrative determination. Findings of Fact and Conclusions of Law as outlined below were presented and approved by the TPAF Board at its March 7, 2019 meeting.

The TPAF Board has reviewed the written submissions and the documentation accompanying your appeal and finds that the statutes and regulations governing the TPAF do not permit the TPAF

Board to grant Mr. Nappe's request to retroactively change his retirement date from September 1, 2018 to July 1, 2018.

FINDINGS OF FACT

According to the records of the Division, Mr. Nappe enrolled in the TPAF effective February 1, 2010, as a result of his employment as a Teacher, with the Perth Amboy Board of Education. On January 1, 2012, Mr. Nappe transferred to the Paterson Public Schools. Thereafter on October 1, 2012, Mr. Nappe transferred to the Linden Board of Education.

On February 14, 2018, the Division of Pensions and Benefits (Division) received Mr. Nappe's *Application for Disability Retirement* requesting an Accidental Disability retirement effective July 1, 2018, based upon an incident alleged to have occurred on March 8, 2017. By letter dated February 15, 2018, the Division confirmed receipt of Mr. Nappe's application with a retirement effective July 1, 2018.

On May 3, 2018, the Division notified Mr. Nappe that in accordance with N.J.A.C. 17:1-6.4, he was ineligible to file for an Accidental Disability retirement because he did not leave employment due to a disabling condition. Rather, Mr. Nappe signed a statement which said that Mr. Nappe had voluntarily and irrevocably resigned and for this reason Mr. Nappe's application for Accidental Disability was closed because he could never be in compliance with N.J.S.A. 18A:66-40(A) which states that there must be a position for Mr. Nappe to return to should his alleged disability diminish at some time in the future to the point that he could return to employment.

At its meeting of July 12, 2018, the TPAF Board affirmed the Division's administrative denial of Mr. Nappe's request to apply for Accidental Disability retirement benefits as the TPAF Board determined Mr. Nappe separated from employment by way of a mutual arrangement to end a seemingly unsustainable employer/employee relationship. Because Mr. Nappe submitted an irrevocable letter of resignation prior to his paid leave of absence for the entire school year, Mr. Nappe would be unable to comply with N.J.S.A. 18A:66-40(a) because in accordance with the Settlement Agreement, Mr. Nappe would have no position to return to should his alleged disability diminish to the

Samuel Wenocur, Esq.
Re: Michael Nappe
March 14, 2019
Page 3

point that he could return to employment. The Board reviewed the letter dated May 24, 2018, submitted by attorney, Mark A. Tabakin, of Weiner Law Group, L.L.P. representing the Linden Board of Education but determined nothing contained therein would negate the aforementioned terms of the Settlement Agreement in regard to Mr. Nappe's irrevocable resignation. Therefore, Mr. Nappe would still be unable to comply with N.J.S.A. 18A:66-40(a). In the same letter, Mr. Nappe was informed that with his age, he does qualify for a Service retirement benefit and if Mr. Nappe chooses Service retirement, he must complete a new retirement application by logging into the Member Benefits Online System (MBOS). The acceptance by Mr. Nappe of a Service retirement will not prejudice an appeal of the Board's denial to apply for Accidental disability retirement benefits.

On August 13, 2018, the Division received Mr. Nappe's *Application for Retirement Allowance* for Service retirement effective September 1, 2018. By letter dated August 14, 2018, the Division confirmed the receipt of Mr. Nappe's application for retirement effective September 1, 2018. At its meeting on October 4, 2018, the TPAF Board approved Mr. Nappe's application for service retirement benefits effective September 1, 2018.

Between July 17, 2018 and January 8, 2019, emails were exchanged between counsel for Mr. Nappe and the Board. The topic was whether Mr. Nappe was permitted to change his retirement date from September 1, 2018 to July 1, 2018. In those emails it was clearly stated that Mr. Nappe was prohibited from changing his retirement date.

By letter dated January 11, 2019, you exercised your right to appeal and requested Mr. Nappe's retirement date be changed from September 1, 2018 to July 1, 2018. Subsequently, your appeal was reviewed by the TPAF Board of Trustees. At its meeting of February 7, 2019, the Board considered your documentation dated January 11, 2018 and all relevant correspondence regarding Mr. Nappes' request to change his retirement date from September 1, 2018 to July 1, 2018. Thereafter, the Board denied your request to retroactively change Mr. Nappe's retirement date in accordance with N.J.S.A. 18A:66-43 and N.J.A.C. 17:3-6.1(a).

CONCLUSIONS OF LAW

The Board cannot grant your request for a retroactive service retirement date of July 1, 2018, in accordance with the provisions of N.J.S.A. 18A:66-43 and N.J.A.C. 17:3-6.1(a)

N.J.S.A 18A:66-43, states in pertinent part:

Retirement for service shall be as follows: (a) A person who was a member before the effective date of P.L. 2008, c. 89 and has attained 60 years of age may retire on a service retirement allowance by filing with the retirement system a written application, duly attested, stating at which time subsequent to the execution and filing thereof he desires to be retired. The board of trustees shall retire him at the time specified or at such other time within 1 month after the date so specified as the board finds advisable. (Emphasis added)

In addition, N.J.A.C. 17:3-6.1(a), states in pertinent part:

(a) Applications for retirement must be made over the Internet, using the online forms required by the Fund through a member's secure account established through the Member Benefits Online System (MBOS). Such forms must be completed in all respects and filed with the Division on or before the requested dated of retirement. Applications for retirement can be filed no more than one year in advance, except that a member whose TPAF-eligible employment has ended may file for deferred retirement at any time after the employment has ended. A member's retirement application becomes effective on the first of the month following receipt of the application unless a future date is requested. Members enrolled at multiple TPAF locations on or before May 21, 2010, who have not had a pension reporting period without pay (break in service) after May 21, 2010, pursuant to the provisions of N.J.S.A. 18A:66-4, must retire from employment in all covered positions before a retirement shall become effective. (Emphasis added)

Mr. Nappe's retirement application was not received in the Division until August 13, 2018; therefore, the earliest possible effective date of Mr. Nappe's retirement under the law is September 1, 2018. The record indicates that by e-mails dated between July 17, 2018 and July 25, 2018, you requested guidance from the TPAF Board Secretary to start the Service retirement process in sufficient time to submit the completed form to qualify for a retirement date of August 1, 2018. Indeed, Mr. Nappe had the opportunity to file his application electronically on-line prior to the end of July 2018, or visit the Division to file his application, which would have verified receipt on the same day.

Samuel Wenocur, Esq.
Re: Michael Nappe
March 14, 2019
Page 5

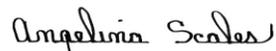
The Board finds that the statutory and regulatory language is clear and unambiguous and therefore, the Board is without authority pursuant to N.J.S.A 18A:66-43 and N.J.A.C. 17: 3-6.1(a) to approve a retirement date earlier than September 1, 2018. Therefore, Mr. Nappe's retirement date shall stand as September 1, 2018.

As noted above, the TPAF Board has reviewed all documents, because this matter does not entail any disputed questions of fact, the TPAF Board was able to reach its findings of fact and conclusions of law on the basis of the retirement system's statute and 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 Teachers' Pension and Annuity Fund.

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. All appeals should be directed to:

Superior Court of New Jersey
Appellate Division
Attn: Court Clerk
PO Box 006
Trenton, NJ 08625
Phone: (609) 292-4822

Sincerely,



Angelina Scales, Secretary
Board of Trustees
Teachers' Pension and Annuity Fund

G-1/as

c: DAG Amy Chung (ET)
DAG Juliana DeAngelis (ET)
C. Chianese/V. McManus/D. Dinkler (ET)
Michael Nappe