



State of New Jersey

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

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September 16, 2021

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

Sent via email to: [REDACTED]

William Schaffer
[REDACTED]

RE: PERS [REDACTED]

Dear Mr. Schaffer:

FINAL ADMINISTRATIVE DETERMINATION

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 amend your Early retirement to an Accidental Disability retirement benefit pursuant to L. 2019, c. 157, The Bill Ricci World Trade Center Rescue, Recovery and Cleanup Operations Act (Chapter 157).¹ The Board originally denied your request at its meeting of May 19, 2021. You appealed the Board's decision via letter dated July 21, 2021. At its meeting of August 18, 2021, the Board considered your appeal and denied an administrative hearing, essentially for the reasons set forth in the Board's denial letter dated June 8, 2021. Finding no genuine issue of material fact in dispute, the Board directed the Board Secretary to draft a Final Administrative Determination for review at its meeting of September 15, 2021. After careful consideration, the Board approved this Final Administrative Determination.

FINDINGS OF FACT

The record before the Board establishes that you were enrolled in the PERS on July 11, 1981, as a result of your employment with Ancora Psychiatric Hospital as an Electronics Technician I. On October 7, 2015, you submitted an *Application for Retirement Allowance*

¹ Due to health and safety concerns for the public regarding COVID-19, the meeting was conducted via teleconference.

requesting Early retirement benefits effective January 1, 2016. At its meeting of January 20, 2016, the Board approved your Early retirement.

The Division of Pensions and Benefits (Division) received your *Eligibility Registration Form* dated August 23, 2019, requesting Accidental Disability retirement benefits under Chapter 157. However, by letter dated December 12, 2019, Dawn Lewis, Supervisor, Disability Review Section, determined you are not eligible to apply under the criteria set forth in Chapter 157. You appealed that decision by way of letter, dated December 18, 2019. In your appeal, you indicated your Civil Service Title on September 11, 2001 was Construction Management Specialist 3 with the Department of Human Services. In her response dated December 27, 2019, Cheryl Chianese, then Chief, Retirement Bureau, again denied your eligibility to receive Accidental Disability retirement benefits under Chapter 157. The matter was forwarded to the Board for its consideration.

At its meeting of May 18, 2021, the Board considered your appeal. After careful consideration, the Board voted to deny your request, as you did not qualify under the plain language of Chapter 157. You filed an appeal, dated July 21, 2021, asserting that you were eligible under the law to amend your retirement benefit. At its meeting of August 18, 2021, the Board, finding no genuine issue of material fact in dispute, directed the undersigned to draft detailed findings of fact and conclusions of law for its review at the September 15, 2021, meeting.

CONCLUSIONS OF LAW

The Board made the following conclusions of law.

N.J.S.A. 43:15A-43(b)(5) provides that:

This subsection shall apply only to: any member or retiree who is or was enrolled in the Public Employees' Retirement System because the member or retiree did not meet the age or medical requirements for enrollment in the Police and Firemen's Retirement System on the basis of the position held; and to any emergency medical technician who is a member or retiree of the Public Employees' Retirement System. For the purposes of this paragraph, "emergency medical technician" means a person trained in basic life support services as defined in section 1 of P.L.1985, c.351

(C.26:2K-21) and who is certified by the Department of Health to perform these services.

[(Emphasis supplied.)]

Thus, in order to qualify for amended benefits under the statute, the PERS retiree must have been “enrolled in the Public Employees’ Retirement System because the member or retiree did not meet the age or medical requirements for enrollment in the Police and Firemen’s Retirement System on the basis of the position held...” In reviewing your work history, you did not hold a position that was eligible for PFRS. Thus, you could not have been denied enrollment on the basis of your age or medical condition. This exception applies to law enforcement or firefighters holding eligible positions qualifying for PFRS enrollment, but were not eligible for PFRS enrollment because they were overage or failed to meet the medical requirements under that system. It is undisputed that you did not hold a PFRS title and therefore this exception is not applicable to your eligibility.

Next, Chapter 157 benefits are available to a PERS member or retiree if they are an:

emergency medical technician who is a member or retiree of the Public Employees’ Retirement System. For the purposes of this paragraph, “emergency medical technician” means a person trained in basic life support services as defined in section 1 of P.L.1985, c.351 (C.26:2K-21) and who is certified by the Department of Health to perform these services.

You have not provided any documentation demonstrating that you were certified by the Department of Health as an emergency medical technician. Thus, you fail to meet either exception for PERS’ retirees to qualify for amended benefits under Chapter 157.

In your letters of appeal, you have asserted that the position you held on September 11, 2001, “Construction Management Specialist 3 (CMS3) was eligible for the amended benefits under Chapter 157 because you were not eligible to enroll in the Police and Firemen’s Retirement System. You state that you disagreed with the Board’s findings because you were “not allowed to become a member of PERS on July 6, 1998 when (you) accepted the (New Jersey Civil Service Commission) title of CMS3...” You also state that because you were age 39 at the time you

accepted the CMS3 position you were not eligible to transfer to PFRS due to your age. As stated above, you never held a position which would have been eligible for PFRS, and therefore you were never denied enrollment for any reason. The Legislature intended that only a certain number of PERS' members or retirees would be eligible, and the Board is required to apply the law as it is written to carry out the legislative intent. In enacting Chapter 157, the Legislature intended to include a certain set of PERS' members or retirees, and unfortunately, you do not qualify under the plan language of the law. DiProspero v. Penn, 183 N.J. 477, 493 (2005) ("The legislature's intent is the paramount goal when interpreting a statute and, generally, the best indicator of that intent is the statutory language.") Unfortunately, you do not qualify under the plain language of Chapter 157.

Following its review of the documentation, the Board affirmed the Division's determination that you are not eligible to receive Accidental Disability retirement benefits under Chapter 157 because you do not meet the eligibility requirements under this law. You were not barred from enrollment in the PFRS due to age or medical requirements and you were not an emergency medical technician as defined by the statute.

The Board thanks you for your service and selfless dedication and efforts at Ground Zero.

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:

William Schaffer
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Superior Court of New Jersey
Appellate Division
Attn: Court Clerk
PO Box 006
Trenton, NJ 08625

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Ignatowitz". The signature is fluid and cursive, with a large, sweeping flourish at the end.

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

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c: D. Lewis (ET); D. Dinkler (ET)