



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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July 16, 2020

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

Sent via email to: [REDACTED]

GAYLORD POPP, L.L.C.
Samuel M. Gaylord, Esq.

[REDACTED]

RE: Lois Spaziani
PERS [REDACTED]
OAL DKT: 09159-2015

Dear Mr. Gaylord:

At its meeting on June 17, 2020, the Board of Trustees of the Public Employees' Retirement System (PERS) voted to adopt the factual findings of the Honorable Patricia Kerins, ALJ, but to reject the finding that your client, Lois Spaziani, is entitled to Ordinary Disability retirement benefits (OD), thereby reaffirming its original decision denying Ms. Spaziani's application for OD. The Board directed the Secretary to draft findings of fact and conclusions of law consistent with its decision for presentation at its meeting of July 15, 2020.¹

After careful consideration, the Board adopted the following factual findings and conclusions of law.

FACTUAL FINDINGS AND CONCLUSIONS OF LAW

The Board first rejected the ALJ's finding that Ms. Spaziani's expert, Dr. William Dennis Coffey was more credible than the Board's expert, Dr. Daniel LoPreto. The Board rejected this finding because Dr. Coffey, who did not examine Ms. Spaziani until [REDACTED] and was therefore

¹ Due to health and safety concerns for the public regarding COVID-19, the June 17, 2020 and July 15, 2020 meetings were conducted via teleconference.

unable to provide an opinion regarding whether she was totally and permanently disabled when she applied for OD in 2013. N.J.S.A. 43:15A-42 requires the member to establish that the disability was the reason the member left employment. Because he was unable to credibly render such an opinion, the Board rejected the ALJ's finding that Dr. Coffey's opinion should receive more weight than Dr. LoPreto's.

The Board rejected the ALJ's finding that Dr. Coffey provided a more "credible analysis" of Spaziani's [REDACTED] at the time of her OD application than Dr. LoPreto, notwithstanding that Dr. LoPreto's [REDACTED] occurred much closer in time to Spaziani's application than Dr. Coffey's evaluation and is therefore a more reliable indication of her [REDACTED]. It is undisputed that Dr. LoPreto evaluated Spaziani in [REDACTED], about two years after Spaziani's [REDACTED] application and almost three years before Dr. Coffey's evaluation in [REDACTED].

The Board also noted the contemporaneous medical documents in the record fully support Dr. LoPreto's conclusion that Spaziani was not disabled in [REDACTED] and only became disabled [REDACTED] in [REDACTED]. Moreover, Spaziani's [REDACTED], Terrence P. Brennan, M.A., whom she last saw in [REDACTED], diagnosed her with [REDACTED], which Dr. Coffey described as a [REDACTED]." 2T55:24-58:3; R-5. Additionally, the [REDACTED] [REDACTED] of Dr. Natalie Paul, more than seven months after Spaziani stopped working and two months before her OD application, found only [REDACTED] and recommended that Spaziani [REDACTED] [REDACTED]. P-6. Dr. LoPreto testified in detail about Dr. Paul's report and noted that she did not find [REDACTED]. 3T13:915:5. In contrast Dr. Coffey did not provide any direct testimony regarding Dr. Paul's report and acknowledged on cross-examination that Dr. Paul's diagnosis differed from his and described Spaziani's [REDACTED]. 2T68:3-18.

Next, Dr. LoPreto discussed with Spaziani the details of the [REDACTED], whereas Dr. Coffey did not. 3T16:20-17:9. Dr. LoPreto learned that Spaziani [REDACTED] [REDACTED]. 3T17:10-18:8. Whereas, Dr. Coffey was unaware of the circumstance surrounding her [REDACTED] and acknowledged that he was at fault for [REDACTED]. 2T51:19-52:6. The Board found these facts significant as they all occurred after she left employment.

The Board also found that the ALJ erred in crediting Dr. Coffey over Dr. LoPreto because Dr. Coffey was unable to form any opinion regarding whether Spaziani was totally and permanently disabled in 2013. 2T46:15- 48:8. Dr. Coffey explained that because Spaziani filed a Social Security disability application, he believed it would be a conflict of interest to form an opinion on disability because he is a consultant for the Department of Disability Determination in connection with Social Security disability determinations. 2T24:25:9. Dr. Coffey's report states: "I feel that I am not in a position to make a statement regarding Ms. Spaziani's disability." P-2. The ALJ incorrectly gave this testimony no weight. Because Spaziani bears the burden of proof to establish her disability was present at the time she left employment, the Board found the ALJ erred and found that the application should have been denied on this basis.

Further, Dr. Coffey acknowledged that there were [REDACTED] that Spaziani had not explored and he "recommended that she [REDACTED] [REDACTED]." 2T29:11-23; 2T64:7-21; P-2. Dr. Coffey could not rule out the possibility that Spaziani could return to work if she [REDACTED] [REDACTED]. 2T39:14-23. Dr. Coffey believed that Spaziani had previously stopped [REDACTED] because of [REDACTED]. 2T58:22-59:3. However, Dr. Coffey did not ask Spaziani for any details regarding the [REDACTED]

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acknowledged that Dr. Paul recorded that Spaziani experienced "[REDACTED]". 2T59:4-13; 2T60:12-61:6. All of this goes to whether Spaziani's alleged disability is permanent and total, as required for OD. See Wunder v. Teachers' Pension & Annuity Fund, 2014 N.J. Super. Unpub. LEXIS 1749, at **13-14 (App. Div. July 17, 2014).

In conclusion, the Board rejected the ALJ's finding that Spaziani was eligible for OD because her expert could not credibly determine the "[REDACTED]" of her disability. In fact, the contemporaneous records belie his opinion because he did not have any personal knowledge of her "[REDACTED]". 2T48:9-49:2. Further, this conclusion is at odds with Dr. Coffey's other testimony regarding "[REDACTED]" that he described as "[REDACTED]".

[REDACTED] 2T64:22-65:13. Both events occurred after her application for OD. 2T65:4-13.

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. All appeals should be directed to:

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

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Sincerely,

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

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

G-2/JSI

C: D. Lewis (ET); L. Milton (ET); S. Glynn (ET); K. Ozol (ET); L. Figueroa (ET); P. Sarti (ET)
DAG Amy Chung (ET); DAG Christopher Meyers (ET); OAL, Attn: Library (ET)
Lois Spaziani (Sent via email to: [REDACTED])