



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

May 19, 2022

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

Sent via email to: [REDACTED]

Samuel J. Halpern, Esquire
Attorney at Law

[REDACTED]

RE: Judy Thorpe
PERS [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Halpern:

At its meeting on April 20, 2022,¹ the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) considered your personal statements on behalf of your client, Judy Thorpe, and all documentation in the record concerning her appeal of the Board's July 21, 2021, determination that she is not eligible for Deferred retirement benefits because she was removed for cause on charges of misconduct or delinquency directly related to her employment. Ms. Thorpe filed an appeal of the Board's decision via email on or about August 2, 2021, and requested additional time to secure legal representation. Ms. Thorpe's appeal was presented to the Board at its meeting of October 20, 2021, at which time she again requested, and the Board agreed, to postpone consideration of her appeal in order to allow her additional time to secure counsel and documents related to her appeal. After several additional extensions were granted, the Board ultimately heard her appeal at its meeting of April 20, 2022.

After careful consideration, the Board denied Ms. Thorpe's request for reconsideration and affirmed its prior determination that she was not eligible for Deferred retirement benefits under

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

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N.J.S.A. 43:15A-38. Finding no genuine issue of material fact in dispute, the Board denied her request for an administrative hearing and directed the undersigned to draft a Final Administrative Determination. Findings of Fact and Conclusions of Law were presented to and approved by the Board at its May 18, 2022, meeting.

FINDINGS OF FACT

The record before the Board establishes that Ms. Thorpe was enrolled in the PERS on June 9, 1984, as a result of her employment with Marlboro Psychiatric Hospital as an Hourly Human Services Assistant. Thereafter, she transferred to the Arthur Brisbane Child Treatment Center as a Head Nurse. Ms. Thorpe remained with this employer until April 18, 2005, when she transferred to the Juvenile Justice Commission (Mercer) as a Supervisor of Nursing Services. While she was employed in this position, a Preliminary Notice of Disciplinary Action was filed, charging her with Insubordination and Other Sufficient Cause, and Violation of Sick Leave Procedures for State Service. As a result, she was instructed to report for a [REDACTED] Evaluation. When she reported for the evaluation, she refused to sign the Independent Medical Examiner's consent form and therefore did not undergo the exam, despite knowing that her continued employment was contingent on the results of the evaluation. In the months that followed, her noncompliance continued. Ms. Thorpe proffered an examination that was performed by a professional of her own choosing, but the Juvenile Justice Commission did not accept it in lieu of the required examination.

A Final Notice of Disciplinary Action was issued to Ms. Thorpe on August 20, 2008, terminating her employment effective August 15, 2008. She filed a grievance, and Arbitrator Joyce M. Klein conducted a hearing on December 10, 2009. The Arbitrator issued her Opinion and Award on February 12, 2010, holding that the Juvenile Justice Commission had just cause to remove Ms. Thorpe based upon the fact that she had multiple opportunities to undergo the required [REDACTED] Evaluation and failed to do so because she refused to sign the consent

form. Ms. Thorpe's employer filed its *Certification of Service and Final Salary Retirement*, which certified that she was dismissed on August 15, 2008.

The Arbitrator noted that Ms. Thorpe alleged that she was confused by the consent form, and had requested additional time to consult with her attorney before signing it. Although her attorney advised her to sign the consent form, she never did. Ms. Thorpe was offered the opportunity to reschedule the [REDACTED] evaluation, and her employer postponed the disciplinary hearing in order to allow her to do so. Ultimately, the Arbitrator found that Ms. Thorpe was given ample opportunity to comply and failed to do so. Based on the above, the Arbitrator found the employer had just cause to terminate Ms. Thorpe's employment. No appeal was taken from the Arbitrator's decision.

At the time of her removal from employment, Ms. Thorpe was approximately 47 years of age and her PERS account reflected a total of 23 years and 5 months of service credit. Based on her age and years of service, the only benefit for which she was eligible to apply was a Deferred retirement. Ms. Thorpe filed her application for Deferred retirement on April 11, 2021, requesting a retirement effective May 1, 2021.

As detailed above, the Board considered Ms. Thorpe's Deferred retirement application at its meeting of July 20, 2021. Because Ms. Thorpe was removed for cause on charges of misconduct or delinquency related to her employment, the Board denied her application for Deferred retirement benefits in accord with N.J.S.A. 43:15A-38. Ms. Thorpe filed a timely appeal of the Board's decision and requested several postponements in order to obtain legal counsel and additional documentation in support of her appeal. Several postponements were granted before the Board heard her appeal at the April 20, 2022, meeting. At that meeting, the Board denied her request for reconsideration and denied her request for a hearing, noting that no genuine issue of material fact was in dispute. The Board therefore directed the undersigned to

draft findings of fact and conclusions of law consistent with its determination for consideration at its meeting of May 18, 2022.

LEGAL CONCLUSIONS

The Board made the following legal conclusions.

PERS members with 10 or more years of service are eligible to file for Deferred retirement benefits upon reaching 60 years of age:

Should a member of the Public Employees' Retirement System, after having completed 10 years of service, be separated voluntarily or involuntarily from the service, before reaching service retirement age, and not by removal for cause on charges of misconduct or delinquency, such person may elect to receive:

- (a) The payments provided for in section 41b of this act,² if he so qualifies under said section, or;
- (b) A deferred retirement allowance, beginning at the retirement age...

[N.J.S.A. 43:15A-38 (Emphasis added)].

Based on the plain language of the statute, the Board determined that Ms. Thorpe's removal on grounds of misconduct or delinquency related to her employment rendered her ineligible for Deferred retirement benefits. See In re Hess, 422 N.J. Super. 27 (App. Div. 2011) (holding that ineligibility for deferred retirement occurs when a member is terminated for misconduct or delinquency related to the employment). Accordingly, the Board denied her application.

You argued to the Board that Ms. Thorpe's failure to consent to the [REDACTED] Evaluation required by her employer did not "rise to the level" of misconduct or delinquency as required under the statute. The Board disagrees. There is no question that Ms. Thorpe was terminated on charges of delinquency related to her employment. While the statute's reference to "misconduct," standing alone, might be construed as a high bar, the addition of the words "or

² N.J.S.A. 43:15A-41

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delinquency,” in the Board’s view, indicate that the statute is intended to apply to a broad range of employee behavior. Consistent failure, over months, to comply to the employer’s satisfaction with a job requirement, as occurred in this case, is properly characterized as delinquency. Thus, because she was terminated on charges of delinquency related to her employment, Ms. Thorpe is not eligible for Deferred retirement.

You also argued that Ms. Thorpe did not really refuse to attend the required [REDACTED] [REDACTED] Evaluation but merely declined to sign a “General Agreement and Release” document, which you characterized as very complex that indicated her understanding that the examination results would be provided to her employer. Thus, you assert, her actions fail to clear “the high bar” of misconduct or delinquency specified in N.J.S.A. 43:15A-38. Again, the Board disagrees. There is no question here that Ms. Thorpe’s termination for her continued failure to sign the consent form and attend the required [REDACTED], even after being advised to do so by her attorney, constitutes “delinquency” directly connected to her work. Moreover, had Ms. Thorpe disagreed with her termination, she could have appealed that action when it occurred. She failed to avail herself of that option, and so her termination on charges of delinquency became final. It is not within the Board’s purview to re-litigate Ms. Thorpe’s termination fourteen years after it had taken place.

Consequently, the Board found that because Ms. Thorpe was removed on charges of misconduct or delinquency directly related to her employment, she is not eligible for a Deferred retirement, and the Board denied her retirement application under the provisions of N.J.S.A. 43:15A-38. See also In re Hess, 422 N.J. Super. 27 (App. Div. 2011).

Ms. Thorpe is eligible to withdraw her accumulated pension contributions remitted during active membership. She may request an *Application for Withdrawal* by writing to Robin Willever, Supervisor, Loan/Withdrawal Section at the Division, at the address above. **Nonetheless, she is cautioned against filing the withdrawal application if she intends to appeal the Board’s**

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determination or to continue her current appeal in the Appellate Division regarding her application for disability retirement. Withdrawal terminates all rights and privileges of membership.

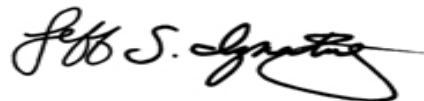
As noted above, the Board has considered your personal statements, written submission and all documentation in the record. Because this matter does not entail any disputed questions of fact, the Board was able to reach its findings of fact and conclusions of law on the basis of the retirement system's 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 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 S. Ignatowitz, Secretary
Board of Trustees
Public Employees' Retirement System

G-14/JSI
C: J. Ehrmann (ET); R. Willever (ET)

Judy Thorpe ([REDACTED])