



State of New Jersey

PHILIP D. MURPHY
Governor

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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JOHN D. MEGARIOTIS
Acting Director

July 17, 2025

Sent via email to: [REDACTED]

Porter Thomas Grabell & Baumwoll P.C.
David Baumwoll, Esq.
[REDACTED]
[REDACTED]

RE: Imad Mowaswes
PERS [REDACTED]

Dear Mr. Baumwoll:

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 client, Imad Mowaswes' application for Deferred retirement benefits. The Board originally denied Mr. Mowaswes' application at its meeting of April 23, 2025, finding him ineligible for Deferred retirement benefits because he was removed for cause on charges of misconduct or delinquency directly related to his employment in accordance with N.J.S.A. 43:15A-38. By letters dated May 28, 2025 and June 10, 2025, you filed a timely appeal of the Board's decision on behalf of Mr. Mowaswes.

At its meeting on June 18, 2025, the Board considered your appeal and presentation to the Board. After careful review, the Board affirmed its prior decision, and finding no genuine issue of material fact in dispute, denied your request for an administrative hearing. Thereafter, the Board directed the undersigned to draft a Final Administrative Determination.

Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the Board at its July 16, 2025, meeting.

FINDINGS OF FACT

The Board made the following findings of fact:

The record before the Board establishes that Mr. Mowaswes was enrolled in the PERS effective January 1, 1997, with Paterson City (Paterson), as a result of his employment as a Carpenter. He remained with this employer and in the position of Traffic Signal Superintendent 1 at the time of his termination.

An Indictment issued by the New Jersey Division of Criminal Justice charged Mr. Mowaswes with the following:

- Count 1 - Conspiracy in the Second Degree;
- Count 2 - Official Misconduct in the Second Degree;
- Count 3 - Pattern of Official Misconduct in the Second Degree;
- Count 4 - Theft by Unlawful Taking or Disposition in the Third Degree;
- Count 5 - Tampering with Public Records or Information in the Third Degree; and,
- Count 6 - Falsifying or Tampering with Records in the Fourth Degree.

From approximately July 1, 2014 through April 30, 2015, while employed at Paterson, Mr. Mowaswes, along with other co-conspirators, were involved in a fraudulent scheme against Paterson. On more than one occasion, Mr. Mowaswes submitted false timesheets authorizing the payment of compensation, including overtime pay, from Paterson funds to himself and DPW workers for work completed at a private warehouse. In addition, supplies used at the warehouse were paid by Paterson funds and Paterson vendors and contractors were unpaid for their work completed at the warehouse.

As a result of Mr. Mowaswes' criminal activity, a Preliminary Notice of Disciplinary Action (PNDA), dated March 9, 2017, charged him with Conduct Unbecoming a Public Employee, Other Sufficient Cause and Unfit for Duty. He was suspended without pay effective March 13, 2017, and

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Paterson sought his removal. A Final Notice of Disciplinary Action (FNDA) dated March 20, 2017, suspended Mr. Mowaswes indefinitely without pay pending the outcome of the criminal charges.

On September 18, 2017, Mr. Mowaswes pleaded guilty to the amended charge of Count 1-Conspiracy in the Third Degree. In exchange, the State agreed to dismiss all remaining charges contained in the Indictment and recommended he be sentenced to non-custodial probation.

On September 22, 2017, an Order of Forfeiture and Permanent Disqualification from Future Public Employment was filed. Because Mr. Mowaswes' crime touched upon his position, he was ordered to forfeit any and all public employment and was forever disqualified from holding any office or position of honor, trust or profit under the State. In addition, if Mr. Mowaswes submitted an application for any future public employment, he would be subject to an additional charge of Contempt of Court in the Fourth Degree. An FNDA removed him from employment effective September 22, 2017.

A Judgment of Conviction, dated November 11, 2017, sentenced Mr. Mowaswes to probation for a period of three years, and because his misconduct "involved or touched upon his public office, position or employment..." he consented to an order which forfeited his public employment and barred him from seeking public employment in the future. The remaining charges were dismissed. In addition, he was required to provide a DNA sample and ordered to pay restitution with fines and fees totaling \$10,155.

When Mr. Mowaswes was removed from employment, he was 52 years of age and his PERS membership account reflected a total of 20 years and 5 months of PERS service credit. Therefore, at that time, the only benefit Mr. Mowaswes could apply for was a Deferred retirement. He filed a retirement application on July 30, 2024, requesting Deferred retirement benefits effective October 1, 2024.

The documentation before the Board substantiated that Ms. Mowaswes' employment was terminated for cause on charges of misconduct or delinquency directly related to his employment. Therefore, the Board denied his application for Deferred retirement under the provisions of N.J.S.A. 43:15A-38. On June 10, 2025, you filed an appeal arguing that N.J.S.A. 43:15A-38(b) does not apply to Mr. Mowaswes because his misconduct was unrelated to his official employment duties.

At its June 18, 2025 meeting, the Board considered your written submissions and personal statements. After careful consideration, the Board affirmed its previous decision, finding Mr. Mowaswes' ineligible for Deferred retirement benefits. Further, finding no genuine issue of material fact in dispute, the Board denied your request for an administrative hearing and directed the undersigned to draft detailed Findings of Fact and Conclusions of Law for review at its July 16, 2025 meeting.

CONCLUSIONS OF LAW

The Board reached the following conclusions of law:

Tier 1 and 2 PERS members with 10 or more years of service are eligible to file for Deferred retirement benefits upon reaching 60 years of age. The eligibility criteria for Deferred retirement benefits are outlined in N.J.S.A. 43:15A-38, which states, in pertinent part:

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,¹ if he so qualifies under said section, or;
- (b) A deferred retirement allowance, beginning at the retirement age...

¹ N.J.S.A. 43:15A-41

[(Emphasis added)].

Additionally, in the case In the Matter of Suzanne Hess, 422 N.J. Super. 27, 37 (2010) the Court held that “forfeiture of Deferred retirement benefits pursuant to N.J.S.A. 43:15A-38 is conditioned on an involuntary removal due to misconduct related to employment.” The finding in Hess is applicable here and, consequently, the Board determined that Mr. Mowaswes is not eligible to receive a Deferred retirement because he was removed for cause as a consequence of misconduct or delinquency related to his employment.

In your appeal dated June 10, 2025, you asserted that N.J.S.A. 43:15A-38(b) does not warrant automatic pension revocation because the criminal charge was unrelated to Mr. Mowaswes’ employment as the work he and his subordinates performed occurred in a private warehouse, and that the crime occurred after regular work hours and that he had no knowledge of the intent behind the work at the warehouse. In support of your position, you cited McCann v. Clerk of Jersey City, 167 NJ.311, 321 (2001) and Masse v. Board of Trustees, 87 NJ. 252 (1981). The Board rejected these arguments.

It is beyond genuine dispute that the criminal and administrative charges, which caused his removal directly relate to Mr. Mowaswes’ employment with Paterson, thus rendering him ineligible for Deferred retirement benefits. The Board notes that there is no question that Mr. Mowaswes was the supervisor of his department and enlisted his subordinates to perform work for private entities at the expense of Paterson taxpayers. Next, as the result of his conviction, Mr. Mowaswes and his criminal attorney consented to an Order of Forfeiture and Permanent Disqualification From Future Public Employment which unequivocally state that the offense to which he pleaded guilty “involved or touched upon his public office, position or employment...” In addition, Mr. Mowaswes was required to pay restitution to his employer, Paterson, for having been paid taxpayer monies for work he understood was for a private entity. The misconduct clearly

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occurred while he was acting within the scope of his duties with Paterson and he was required to pay restitution to Paterson for the compensation he earned for work performed for the private entity. Finally, you allege that Mr. Mowaswes had no idea of the “corrupt intent” behind the Mayor’s request for him and his subordinates to perform work for a private entity while being paid by Paterson. However, the Board notes that Mr. Mowaswes claimed at the time of his arrest that he was “coerced” into performing these services because he was instructed to do so by the Mayor. Clearly, at the time Mr. Mowaswes performed his work, he knew and understood that it was improper to use city resources to perform work for a private entity and chose to do so anyway. There is no question there is a substantial nexus between Mr. Mowaswes’ duties and his misconduct. See In re Jacalone, App. Div. Dkt. No.: A-1940-13T3 (decided July 1, 2015 (Appellate Court affirms Board’s denial of Deferred retirement benefits for a PERS member removed for cause after stealing from her volunteer union position she held only as a result of her public employment)).

The charges that led to Mr. Mowaswes’ dismissal touched upon and were directly related to his employment with Paterson, thereby making him ineligible to receive a Deferred retirement benefit. Therefore, in accordance with the prevailing statutes and a plethora of case law on this issue, the PERS Board denied Mr. Mowaswes’ request to collect Deferred retirement benefits.

Mr. Mowaswes is eligible to withdraw his accumulated pension contributions remitted during active membership, and he may request an *Application for Withdrawal* by writing to Robin Willever, Supervisor, Loan/Withdrawal Section at the Division, at the address above. **Nonetheless, Mr. Mowaswes is cautioned against filing the withdrawal application if he intends to appeal the Board’s determination. Withdrawal terminates all rights and privileges of membership.**

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As noted above, the Board has considered your personal statements on behalf of Mr. Mowases, and has reviewed the written submissions 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
Phone: (609) 292-4822

Sincerely,



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

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C: J. Ehrmann (ET); R. Willever (ET)
Imad Mowaswes (via regular mail)