



State of New Jersey

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

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Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

May 4, 2018

Zazzali, Fagella, Nowak, Kleinbaum & Friedman
Jason E. Sokolowski, Esquire

[REDACTED]
[REDACTED]

Sent via email to: [REDACTED]

RE: Robert W. Reilly

[REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Sokolowski:

I am writing in reference to the denial by the Board of Trustees of the Teachers' Pension and Annuity Fund (TPAF) of your client, Robert Reilly's request to file for Accidental Disability retirement benefits. The TPAF Board initially reviewed and denied the request at its January 11, 2018 meeting. On February 23, 2018, you appealed the TPAF Board's denial and asked the TPAF Board to reconsider its decision and approve the request to file for Accidental Disability retirement benefits or grant a hearing in the Office of Administrative Law (OAL) if the TPAF Board again denied the request to file for said benefits. At its meeting on April 5, 2018, the TPAF Board reconsidered and denied the request to file for Accidental Disability retirement benefits and denied the request for a hearing in the OAL. Findings of Fact and Conclusions of Law, as outlined below, were approved by the TPAF Board at its meeting of May 3, 2018.

The TPAF Board has reviewed your submissions and the relevant documentation and finds the laws governing the TPAF do not permit the Board to grant Mr. Reilly's request to file for Accidental Disability retirement benefits.

FINDINGS OF FACT

Mr. Reilly was enrolled in the TPAF effective May 1, 2003, as a result of his employment as an Athletic Trainer with the South Plainfield Public Schools. Thereafter, on October 3, 2007, Mr. Reilly transferred to East Orange School District. On March 21, 2017, the Division of Pensions and Benefits (Division) received his *Application for Disability Retirement* requesting an Accidental Disability retirement effective April 1, 2017, based upon an incident alleged to have occurred on January 15, 2015.

On April 20, 2017, a *Certification of Service and Final Salary* was submitted to the Division by East Orange School District, indicating Mr. Reilly was dismissed due to a Reduction in Force.

On August 1, 2017, the Division notified Mr. Reilly 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, his position was abolished by the East Orange School District due to a reduction in force and for this reason his application for a disability retirement was closed. In that same letter, Mr. Reilly was notified that he could appeal the determination by writing to the TPAF Board Secretary.

By letter dated September 15, 2017, Mr. Reilly appealed the Division's decision to the TPAF Board. In his letter, Mr. Reilly indicated the reasons his application meets the standards for Accidental Disability retirement benefits and that the TPAF Board should reopen his case and grant such benefits. In your letter dated December 14, 2017, you notified the Board of your representation of Mr. Reilly. At its meeting of January 11, 2018, the TPAF Board considered your personal statements, Mr. Reilly's letter dated September 15, 2017, and all relevant documentation regarding Mr. Reilly's request to apply for Accidental Disability retirement benefits. Thereafter, the TPAF Board upheld the Division's administrative determination and denied Mr. Reilly's request pursuant to N.J.A.C. 17:1-6.4.

By letter dated February 23, 2018, you exercised your right to appeal and requested that the TPAF Board reconsider its prior denial or grant a hearing in the OAL if the Board again denies the request to file for Accidental Disability retirement benefits. At its meeting of April 5, 2018, the Board denied Mr. Reilly's request to apply for Accidental Disability retirement benefits and denied the request for an administrative hearing, essentially for the reasons set forth in the Board's denial letter dated January 12, 2018. The TPAF Board directed the Board Secretary to draft the findings of fact and conclusions of law.

This Final Administrative Determination serves as formal notice that the TPAF Board denied your request for a hearing.

CONCLUSIONS OF LAW

The TPAF provides for an Accidental Disability retirement in N.J.A.C. 17:1-6.4 which states:

(a) Each disability retirement applicant must prove that his or her retirement is due to a total and permanent disability that renders the applicant physically or mentally incapacitated from performing normal or assigned job duties at the time the member left employment; the disability must be the reason the member left employment

(b) Members who have involuntarily or voluntarily terminated service for any of the reasons listed below will not be permitted to apply for a disability retirement:

1. Removal for cause or total forfeiture of public service;
2. Settlement agreements reached due to pending administrative or criminal charges, unless the underlying charges relate to the disability;
3. Loss of licensure or certification required for the performance of the member's specific job duties;
4. Voluntary separation from service for reasons other than a disability; and
5. Job abolishment or reduction in force.

(c) The Division will review all disability retirement applications submitted after a member has terminated service to determine whether the

member's application is eligible for processing, pursuant to (a) above.

(Emphasis added)

As noted above, Mr. Reilly did not leave employment due to a disabling condition. Rather, the record indicates that Mr. Reilly's employment as Athletic Trainer terminated when the position was abolished due to a reduction in force and the responsibilities of his former position were transferred to an outside vendor. An Initial Decision, Summary Decision issued on April 11, 2017, by ALJ Kimberly A. Moss concluded that the East Orange Board of Education demonstrated that there was a clear economic reason for the position of Athletic Trainer to be abolished and the services to be contracted to an outside vendor as Mr. Reilly's salary was \$100,363 or \$40,000 more than the cost of contracting with the outside vendor to provide Athletic Trainer services. Mr. Reilly appealed the decision of the ALJ and on May 22, 2017, upon comprehensive review, the Commissioner of Education concurred with the ALJ. Accordingly, the Initial Decision of the OAL was adopted as the final decision in the matter.

The TPAF Board also considered your argument that applying N.J.A.C. 17:1-6.4 should not apply to Mr. Reilly's application since the regulation did not become effective until June 20, 2016, which was after Mr. Reilly's position was abolished by his employer because of a reduction in force. As noted in the TPAF Board's letter of January 12, 2018, the regulation was enacted prior to Mr. Reilly's filing of his application for an Accidental Disability retirement. The TPAF Board must rely on when the application was filed. It is undisputed that Mr. Reilly's disability application was not filed until March 21, 2017. At that time, N.J.A.C. 17:1-6.4 was already in effect, and fully applicable to Mr. Reilly's application..

As noted above, the TPAF Board has reviewed your written submissions and 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 in this matter on the basis of the retirement system's enabling regulations and without the need for an administrative hearing. Accordingly, this

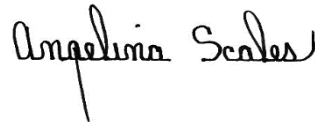
Jason E. Sokolowski, Esq.
Re: Robert Reilly
May 4, 2018
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correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Teachers' Pension and Annuity Fund.

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,

A handwritten signature in black ink that reads "Angelina Scales". The signature is written in a cursive style with a long vertical line extending downwards from the end of the name.

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

G-3

c: Amy Chung, DAG
DAG Jeff Ignatowitz (ET)
Cheryl Chianese
Val McManus (ET)