



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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January 9, 2018

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Acting Director

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

Malamut & Associates
Christopher St. John, Esquire



Sent via Email to: 

RE: Bradd Thompson


FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. St. John:

I am writing in reference to the denial by the Board of Trustees of the Police and Firemen's Retirement System (PFRS) of your client, Bradd Thompson's request for Service retirement benefits under N.J.S.A. 43:16A-5(3) which allows a PFRS member with 20 years of creditable PFRS service who was enrolled in the PFRS on the effective date of Chapter 428, P.L. 1999, January 18, 2000, to receive a pension in the amount of 50% of the member's final year salary. The PFRS Board initially reviewed and denied Mr. Thompson's request at its September 11, 2017 meeting. On October 9, 2017, you appealed the Board's denial and requested a hearing in the Office of Administrative Law ("OAL").

At its meeting on December 11, 2017¹, the Board reviewed your appeal and the relevant documentation and found that the statute and relevant case laws governing the PFRS do not permit the Board to grant Mr. Thompson's request for Service retirement benefits. Determining that there are no material facts in dispute, the Board voted to deny the request for a hearing and direct the

¹ The PFRS Board was prepared to review your appeal at its meeting of November 13, 2017, however you requested a postponement by email on November 3, 2017. Thereafter, the Board granted your request for postponement until the meeting on December 11, 2017.

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Secretary to draft a Final Administrative Determination. Findings of Fact and Conclusions of Law, as outlined below, were approved by the PFRS Board at its meeting of January 8, 2018. This Final Administrative Determination serves as formal notice that the Board denied your request for a hearing.

FINDINGS OF FACT

Bradd Thompson became employed with the Burlington County Board of Chosen Freeholders as a County Investigator and was enrolled in the PFRS effective August 1, 2002. In 2004, Mr. Thompson purchased 5 years and 2 months of military service credit which was included in his total PFRS membership service. He remained employed by the Burlington County Board of Chosen Freeholders until August 31, 2006 at which time he accepted employment as an Investigator in the Prosecutor's Office in Gloucester County effective September 1, 2006. A report of transfer was submitted to the Division of Pensions and Benefits (Division) to execute the transfer of his PFRS membership to his new employer.

On June 24, 2015, Mr. Thompson wrote to the Division regarding an alleged inconsistency he believed occurred when he submitted a request for an Estimate of Retirement benefits online through the Member Benefit Online System (MBOS).² He claimed the system indicated that he was only eligible for Deferred Retirement with an effective date of September 1, 2030, if he terminated employment on May 31, 2017. However, Mr. Thompson indicated this contradicted previous information he was given by the Division, namely, that he would be eligible for a Service retirement under Chapter 428 P.L. 1999.

The Division notified Mr. Thompson via email on October 27, 2015 that at its meeting on December 14, 2015, the PFRS Board would review his letter and supporting documentation regarding

² Mr. Thompson included with his letter the following documents: an Estimate of Retirement Benefits he prepared online through MBOS; a screen print of the retirement calculator; a Personal Benefits Statement (information as of 3/31/2015) and an email thread between himself, Regina Trauner and a Division employee.

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his eligibility for Service retirement benefits under Chapter 428, P.L. 1999. Thereafter, on December 2, 2015, former counsel Stuart J. Alterman, Esquire wrote to the Division to inform them of his representation of Mr. Thompson and submitted his arguments in support of Mr. Thompson's application for a Service retirement under Chapter 428.

At its meeting of December 14, 2015, the PFRS Board considered Mr. Thompson's June 24, 2015 letter with attachments, Mr. Alterman's letter, and Mr. Alterman's statements to the Board, and denied his request to be permitted to apply for Service retirement benefits. The Board denied this request because the Board does not issue advisory opinions; there was no retirement application pending and therefore there was no case or controversy before the Board at that time.

On August 1, 2016, Bradd Thompson submitted an *Application for Retirement Allowance* electronically through the MBOS in which he requested a Service Retirement with an effective date of June 1, 2017. On August 2, 2016, the Division informed Mr. Thompson via letter that he was not eligible for either a Service or a Special retirement. The certifying officer for Gloucester County completed an electronic *Certification of Service and Final Salary Retirement* on September 12, 2016 indicating that Mr. Thompson resigned on May 31, 2017.

Mr. Alterman advised the Division by letter dated September 27, 2016, that he still represented Mr. Thompson relative to his application for Service retirement benefits. He requested that the Division process Mr. Thompson's application and that if the Division denied his request to process the application, he intended to appeal the determination.

On April 20, 2017, the Division replied to Mr. Alterman's letter and informed him that as of June 1, 2017, Mr. Thompson's selected retirement date, he would not be eligible for any type of retirement benefit. The letter further explained Service retirement falls under two categories: (1) a member in service age 55 or older without any required minimum years of service and, (2) a member with at least 20 years of service, provided the member was enrolled in PFRS as of January 18, 2000.

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On May 17, 2017, Mr. Thompson cancelled his application for retirement requesting a June 1, 2017 retirement date. On that same date he submitted another application for a Service retirement requesting an effective date of October 1, 2017.

On July 31, 2017, you informed the Division that you were now representing Mr. Thompson regarding the aforementioned matter and that you were formally appealing the Division's determination of April 20, 2017. On August 9, 2017, Mr. Thompson cancelled his retirement application again and submitted another application requesting a Service retirement effective June 1, 2018. The certifying officer completed an electronic *Certification of Service and Final Salary Retirement* on September 6, 2017, indicating Mr. Thompson's resignation date of May 31, 2018. By letter dated August 23, 2017, the Division informed Mr. Thompson that as of the selected retirement date (June 1, 2018) he was not eligible for receipt of any type of retirement benefit on that date. Subsequently, the PFRS Board Secretary notified you on August 28, 2017 that the Board would consider Mr. Thompson's request for Service retirement benefits under N.J.S.A. 43:16A-5(3) at its meeting on September 11, 2017.

At its meeting on September 11, 2017, the Board denied Mr. Thompson's request for Service retirement benefits pursuant to the provisions of Chapter 428, P.L. 1999 because he was not a member of PFRS on January 18, 2000. On October 9, 2017, you appealed the Board's September 11, 2017 decision and requested reconsideration or an administrative hearing in the OAL. On November 3, 2017, you requested a postponement of the Board's consideration of your appeal, which the Board granted at its meeting on November 13, 2017. On December 11, 2017, the Board considered your appeal, including your personal statements on that date and supporting arguments. However, the Board denied your request for reconsideration and denied the request for a hearing in the OAL because there are no material facts in dispute that require a hearing.

CONCLUSIONS OF LAW

Following a review of the information, the PFRS upheld the Division's determination and denied your request to grant Mr. Thompson Service retirement benefits under Chapter 428, P.L. 1999. Mr. Thompson was not a member of the PFRS until August 1, 2002, after the effective date of Chapter 428, P.L. 1999. Therefore, he does not qualify for the Service retirement benefits.

The PFRS provides members with a service retirement upon attaining 55 years of age. N.J.S.A. 43:16A-5. The statute was amended in 1999, under P.L. 1999, c. 428, and stipulated that when a PFRS member attains 20 or more years of creditable PFRS service, the member is eligible for a pension equal to at least 50% of the member's final compensation, provided the member was a member of the PFRS as of the effective date of the statute, January 18, 2000. N.J.S.A. 43:16A-5(3) states, in pertinent part:

Any member of the retirement system as of the effective date of P.L.1999, c.428 who has 20 or more years of creditable service at the time of retirement shall be entitled to receive a retirement allowance equal to 50% of the member's final compensation plus, in the case of a member required to retire pursuant to the provisions of subsection (1) of this section, 3% of final compensation multiplied by the number of years of creditable service over 20 but not over 25.

[ibid.]

The Board also promulgated N.J.A.C. 17:4-6.11, which states, in relevant part:

(a) A member becomes eligible for "service" retirement:

....

2. On the first of the month following the attainment of 20 years of service credit in the Retirement System, if the member was enrolled in the Retirement System as of January 18, 2000.

[Emphasis added].

Effective February 21, 2001, the Board amended the regulation to include eligibility for service retirement "when the member has a minimum of 20 years of service credit, if the member was enrolled

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in PFRS as of January 18, 2000.” 32 N.J.R. 4060(a). No comments on the amendment were received. 22 N.J.R. 684(a). In 2006, the Board clarified “that a member must have 20 years of service credit before being able to file for a service retirement, and the effective date would be the first of the month following the attainment of 20 years of service credit.” 37 N.J.R. 4521(a). The requirement that the member be enrolled in PFRS as of January 18, 2000, to receive the benefit, remained. Ibid. No comments were received relating to N.J.A.C. 17:4-6.11. 38 N.J.R. 1578(a). Based upon the above, the Board disagrees with your claim that the Division and Board are now incorrectly interpreting the statute. The Board has a longstanding regulation that was not commented on in 2001 or in 2006.

Also, you argue that the New Jersey Assembly Statement makes it clear that there is no limitation under the language; it states that, “the purpose of this bill, as stated in the sponsor’s statement, is to make the retirement and survivor’s benefits of the Police and Fireman’s Retirement System (PFRS) comparable, to the extent possible, to benefits under the State Police Retirement System, N.J.S.A. 53:5A-1...” You support this argument further with an August 4, 2014, letter from Senator Diane Allen to Florence Sheppard, Acting Director of the Division of Pensions and Benefits.

The Board disagrees with your assertions. “When the Legislature’s chosen words lead to one clear and unambiguous result, the interpretative process comes to a close, without the need to consider extrinsic aids.” State v. Shelley, 205 N.J. 320, 323 (2011) (citing State v. D.A., 191 N.J. 158, 164 (2007). “Extrinsic evidence, such as legislative history” is looked to for assistance “when statutory language yields ‘more than one plausible interpretation.’” Id. at 323-24, (quoting DiProspero v. Penn, 183 N.J. 477, 492-93 (2005)).

By its express language, N.J.S.A. 43:16A-5(3), begins with “[A]ny member of the retirement system as of the effective date of P.L.1999, c.428 who has 20 or more years of creditable service at the time of retirement” requires that the member seeking the enhanced retirement benefit provided by the statute to have been a member as of the effective date of the statute. There is no ambiguity in the

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statute requiring further interpretation. N.J.A.C. 17:4-6.11(a)(2) echoes the clear language of the statute, explicitly permitting service retirement “if the member was enrolled in the Retirement System as of January 18, 2000.”

While the Board is mindful of the liberal approach our courts have taken with respect to pension statutes, Bumbaco v. Bd. of Trs., Pub. Employees’ Ret. Sys., 325 N.J. Super. 90, 94 (App. Div.), certif. denied, 163 N.J. 75 (2000), it is just as mindful of our courts’ caution that “eligibility is not to be liberally permitted.” Smith v. Dep’t of Treas., 390 N.J. Super. 209, 213 (App. Div. 2007). “Instead, in determining a person’s eligibility to a pension, the applicable guidelines must be carefully interpreted so as not to ‘obscure or override considerations of ... a potential adverse impact on the financial integrity of the [fund].’” Ibid. (quotation omitted).

Lastly, you argue that permitting the retirement makes financial sense, and costs the system less money. However, the statutes and regulations governing the PFRS do not permit the Board to grant your request. It is undisputed that Mr. Thompson enrolled in the PFRS on August 1, 2002, upon attaining a PFRS eligible position. He was clearly not a member of the PFRS on January 18, 2000. Thus, Mr. Thompson does not qualify for service retirement under N.J.S.A. 43:16A-5(3) and N.J.A.C. 17:4-6.11.

As noted above, the PFRS Board has reviewed your written submissions and because this matter does not entail any disputed questions of fact, the PFRS 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 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 Police and Firemen’s Retirement System.

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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.

Sincerely,



Mary Ellen Rathbun, Secretary
Board of Trustees
Police and Firemen's Retirement System

G-10/MER

C: D. Lewis (ET); DAG Danielle Schimmel (ET); DAG Amy Chung (ET)
Bradd Thompson