



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

June 3, 2022

Sent via email to: [REDACTED]

David A. Castaldi, Esq.
JACOBS & BARBONE, P.A.

[REDACTED]

RE: Garnell Bailey
TPAF # [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Castaldi:

I am writing in reference to the decision of the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) denying the request of your client, Garnell Bailey, to change her retirement type from Service to Ordinary Disability. The Board originally denied Dr. Bailey's request at its meeting of February 3, 2022. You filed a timely appeal on behalf of Dr. Bailey. At its meeting of May 5, 2022,¹ the Board considered your personal statements, reviewed your written submissions and documentation, and denied Dr. Bailey's request to reopen her pension application. Finding no genuine issue of material fact in dispute, the Board also denied your request for an administrative hearing. The Board's Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the Board at its June 2, 2022 meeting.

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

FINDINGS OF FACT

The record shows that Dr. Bailey established membership in TPAF under account # [REDACTED] on July 1, 2004,² based on her employment as Director of Human Resources with Plainfield Board of Education. Dr. Bailey's TPAF pension contributions with this location continued through February 28, 2010. On January 1, 2010, she accepted a position with Pleasantville Board of Education as Assistant Superintendent and contributions with this location continued through September 30, 2019.

On June 12, 2019, Dr. Bailey submitted an *Application for Retirement Allowance* on which she requested an October 1, 2019 Service retirement under the Maximum Option. On July 24, 2019, Dr. Bailey contacted the Division's Call Center and spoke with a counselor regarding changing her application from Service to Ordinary Disability. The counselor informed Dr. Bailey on two occasions during that phone call that any changes to her retirement application must be done before her retirement becomes due and payable.

A *Quotation of Retirement Benefits*, dated August 2, 2019 was mailed to Dr. Bailey that reflected her Maximum Option selection; it stated, in pertinent part: "You have the right to withdraw, cancel, or change your application for retirement at any time before the later of 30 days after your retirement date or 30 days after the Board of Trustees approves your retirement." The Board approved Dr. Bailey's Service retirement, effective October 1, 2019, at its meeting of August 20, 2019 and a letter was sent on that same date memorializing its decision. The letter stated, in pertinent part: "In accordance with law, you have until thirty days after (A) the effective date of your retirement, or (B) the date your retirement was approved by the Board of Trustees, whichever is the later date, to make any changes to your retirement."

² Dr. Bailey became eligible for TPAF membership on September 1, 2007, as a result of her employment with Plainfield Public Schools. An Interfund Transfer was completed, wherein Dr. Bailey transferred her former Public Employees Retirement System (PERS) membership account # [REDACTED] to her new TPAF membership account # [REDACTED].

David A. Castaldi, Esq.
Re: Garnell Bailey
June 3, 2022
Page 3

Dr. Bailey did not contact the Division to change her retirement application before it became due and payable. Therefore, Dr. Bailey's October 1, 2019 Service retirement became due and payable on October 31, 2019, at which point she was precluded from changing her retirement type in accordance with N.J.A.C. 17:3-6.3.

Nearly two years later, on October 27, 2021, Dr. Bailey contacted the Division's Office of Client Services to inquire about changing her retirement type to Ordinary Disability. The counselor explained that because she was well over her due and payable date that a change in retirement option is not permitted. The counselor also reminded Dr. Bailey of the telephone call she made to the Division in July of 2019 where she was provided information about changing her retirement type from Service to Ordinary Disability. Dr. Bailey's phone call was transferred to a Supervisor who confirmed that she is unable to change her retirement option and informed her that she can file an appeal to the Retirement Bureau to consider. Thereafter, emails were sent to the Retirements Bureau regarding Dr. Bailey's request to change her retirement type from Service to Ordinary Disability.

In response, by letter dated November 1, 2021, Kate Ozol, Disability Retirement Unit, Retirements Bureau, informed Dr. Bailey that her retirement was past due and payable and thus she could not honor her request to change her retirement type from Service to Ordinary Disability. On December 1, 2021, you filed an appeal on Dr. Bailey's behalf requesting that she be permitted to change her retirement date from Service to Ordinary Disability. On December 10, 2021, a corrected administrative denial letter was issued to Dr. Bailey listing her due and payable date of October 31, 2019.

At its meeting of February 3, 2022, the TPAF Board denied the request of Dr. Bailey to change her retirement type from Service to Ordinary Disability in accordance with N.J.A.C. 17:3-6.3. By letter dated March 24, 2022, you filed an appeal of the Board's decision. At its meeting of May 5, 2022, the Board considered your appeal and request for a hearing. The Board ultimately

found that no genuine issue of material fact was in dispute and therefore directed the Board Secretary to draft detailed findings of fact and conclusion of law for review at its meeting of June 2, 2022.

CONCLUSIONS OF LAW

“Except as provided by N.J.A.C. 17:3-6.1 and 6.7, a member shall have the right to withdraw, cancel or change an application for retirement at any time before the member’s retirement allowance becomes due and payable Thereafter, the retirement shall stand as approved by the Board.” N.J.A.C. 17:3-6.3(a). Retirement allowances become due and payable thirty days after Board approval. N.J.A.C. 17:3-6.2. The prohibition against retirees changing their benefit selection option after an allowance becomes due and payable is based on the necessity of maintaining the actuarial integrity of the pension system. In re Van Orden, 383 N.J. Super. 410, 422 n.7 (App. Div. 2006).

Notwithstanding the potential adverse effect on the fiscal integrity of the fund, our Supreme Court has held the Board possesses the inherent power to reopen a pension proceeding “to serve the ends of essential justice and the policy of the law.” Minsavage v. Bd. of Trs., Teachers’ Pension & Annuity Fund, 240 N.J. 103, 107-08 (2019) (quoting Van Orden, 383 N.J. Super. at 419). Nevertheless, the need to insure the fiscal integrity of the fund confines the Board’s exercise of that power to those situations in which the retiree has demonstrated “good cause, reasonable grounds, and reasonable diligence.” Steinmann v. N.J. Dep’t of Treasury, Div. of Pensions, Teachers Pension & Annuity Fund, 116 N.J. 564, 573 (1989) (citing Duvin v. N.J. Dep’t of Treasury, Pub. Emps.’ Ret. Sys., 76 N.J. 203, 207 (1978)); see also Buono v. Bd. of Trs., Teachers’ Pension & Annuity Fund, 188 N.J. Super. 488, 493 (App. Div. 1983) (holding person seeking such relief “must demonstrate extreme hardship and a clear equity in his favor”).

The facts in this matter are readily distinguishable from cases where a retiree demonstrated the necessary “good cause, reasonable grounds, and reasonable diligence” to

reopen a pension application. For example, unlike in Steinmann, Dr. Bailey does not argue she was deprived of the information necessary to determine which retirement option would be most financially advantageous to her. 116 N.J. at 565, 570. Dr. Bailey does not even allege she was unaware of the fact that ordinary disability retirement benefits would result in a higher overall monthly benefit than her service retirement. Thus, unlike in Steinmann, Dr. Bailey does not allege she “was unable to make an informed choice among her retirement options.” Id. at 566, 576.

Further, Dr. Bailey is not trying to overturn a mistaken retirement selection, which can deprive a retiree of “substantially higher [monthly] benefits” for the rest of her life. Duvin, 76 N.J. at 207. Dr. Bailey did not rely on any determination by the Division, as in Skulski v. Nolan, 68 N.J. 179, 196-200 (1975), and Ruvoldt v. Nolan, 63 N.J. 171, 183-84 (1973). Likewise, Dr. Bailey did not receive misleading information from her employer as in Outland v. Board of Trustees, Teachers’ Pension and Annuity Fund, 326 N.J. Super. 395, 398 (App. Div. 1999). Nor was Dr. Bailey “unable to undo the court-mandated selection” that forced her to select retirement benefits for her then-spouse. See Van Orden, 383 N.J. Super. at 421-22 (holding “the legislative purpose to enable public employees to make fully informed decisions and select pension options that best meet their individual needs was thwarted” when Van Orden was prevented from “reinstat[ing] his original personal choice” once “his wife . . . relinquished any interest she may have had in his pension”).

Finally, there is no assertion of incapacity due to illness. See Minsavage, 240 N.J. at 109-10 (holding widow should be given opportunity to demonstrate her husband would have modified his retirement selection, but for his incapacity caused by terminal pancreatic cancer); see also Harris ex. rel. Harris v. Bd. of Trs., Pub. Emps.’ Ret. Sys., 378 N.J. Super. 459, 462-66 (App. Div. 2005) (holding widower was entitled to a tolling of thirty-day statutory time limitation to modify his wife’s pension selection because there was uncontroverted medical evidence that the sudden

David A. Castaldi, Esq.
Re: Garnell Bailey
June 3, 2022
Page 6

onset of terminal cancer incapacitated his wife and prevented her from completing the process to modify her retirement selection).

Rather, Dr. Bailey first spoke with a counselor from the Division to discuss changing her retirement from Service to Ordinary Disability on July 24, 2019. The Division correctly advised Dr. Bailey that if she wished to change her retirement type that she would need to do so before her retirement became due and payable in accordance with N.J.A.C. 17:3-6.3. The counselor told Dr. Bailey how to submit the change online through MBOS, the documents she would need to provide and gave an estimated timeframe on the Disability Review process. The counselor further advised Dr. Bailey two times during the conversation that she would need to make any changes to her retirement application prior to her due and payable date.

Dr. Bailey was informed on multiple occasions that any changes to her retirement application must be done prior to her due and payable date as evidenced by her phone call to the Division on July 24, 2019, her *Quotation of Retirement Benefits* dated August 2, 2019, and her Board approval letter dated August 20, 2019. Thereafter, Dr. Bailey had until October 31, 2019 to change her retirement from Service to Ordinary Disability. Dr. Bailey failed to change her retirement from Service to Ordinary Disability in a timely manner

You cite to Minsavage and assert Dr. Bailey “need only show good cause to reopen and amend an application for retirement that is due and payable.” However, even if the facts in Minsavage (or Steinmann, Duvin, Skulski, Ruvoldt, Outland, Van Orden, and Harris) and those presented here were parallel, which there are not, the standard is “good cause, reasonable grounds, and reasonable diligence” not merely good cause. Minsavage, at 240 N.J. at 105. Dr. Bailey contacted the Division and specifically asked about changing her retirement application from Service to Ordinary Disability in July 2019. The next time Dr. Bailey contacted the Division about changing her retirement type to Ordinary Disability was more than two years later on October 27, 2021. Therefore, even if Dr. Bailey established good cause, which she did not, the

David A. Castaldi, Esq.
Re: Garnell Bailey
June 3, 2022
Page 7

facts of this matter do not demonstrate that Dr. Bailey acted with reasonable diligence. As such, the TPAF Board finds Dr. Bailey has not demonstrated “good cause, reasonable grounds, and reasonable diligence” to reopen her retirement application.

As noted above, the Board has reviewed all relevant documentation and written submissions, and 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 without the need for an administrative hearing. Accordingly, this correspondence constitutes 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 determination 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,



Saretta Dudley, Secretary
Board of Trustees
Teachers’ Pension and Annuity Fund

G-2/SD

c: J. Ehrmann (ET)
DAG Jeffrey Padgett (ET)
Dr. Garnell Bailey