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Lt. Governor

State of New Jersey
DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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ELIZABETH MAHER MUOIO
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Acting Director

June 20, 2019

[REDACTED]

ZAGER FUCHS, P.C.
Michael T. Warshaw, Esquire

[REDACTED]
[REDACTED]

RE: Sharon Boss

[REDACTED]

Dear Mr. Warshaw:

FINAL ADMINISTRATIVE DETERMINATION

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) in denying your client, Sharon Boss' request to receive Deferred retirement benefits. At its October 17, 2018, meeting, the Board considered all relevant documentation and denied Ms. Boss' request to receive Deferred retirement benefits. At its meeting of May 15, 2019, the Board considered your personal statements, previous correspondence, and all relevant documentation in the record and denied your request for reconsideration as well your request for a hearing in the Office of Administrative Law. Findings of Fact and Conclusions of Law as outlined below were presented and approved by the PERS Board at its June 19, 2019, meeting.

The Board has reviewed the documentation and finds that the statutes governing the PERS and relevant case law do not permit the PERS Board to grant Ms. Boss' request to receive Deferred retirement benefits.

FINDINGS OF FACT

The Board made the following findings of fact:

A review of the relevant documentation in this matter establishes that Ms. Boss was enrolled in the PERS on November 1, 2007, as a result of her employment with Cumberland County as a Teacher with the Juvenile Detention Facility. She continued to hold that title as of her termination from employment on March 13, 2014.

On August, 1, 2013, Ms. Boss' employer filed a Preliminary Notice of Disciplinary Action (PNDA), charging her with Conduct Unbecoming a Public Employee, Theft by Deception, Falsification of Official Document and Criminal Attempt. These charges stemmed from her submission of payment vouchers for student tutoring that her employer claimed she did not perform.

By letter dated August 2, 2013, Cumberland County scheduled a Loudermill hearing on the administrative charges on August 8, 2013. The hearing was presided over by Craig Atkinson, Director of Personnel and Human Resources Hearing Officer. As a result of the Loudermill hearing, Ms. Boss was suspended indefinitely without pay pending the final disposition of the charges. On or about March 9, 2015, Ms. Boss' employer filed a Final Notice of Disciplinary Action, removing her from employment effective March 13, 2014. The Board has no record that Ms. Boss resigned from her employment, voluntarily relinquished her teaching certificates, and moreover, there is no record that Ms. Boss appealed her suspension or termination.

Ms. Boss filed an application for Deferred retirement benefits on or about June 6, 2017, with an effective retirement date of August 1, 2017. As a result, on or about June 21, 2017, Cumberland County filed the required "Certification of Service and Final Salary Retirement" form with the Division. On that form, Cumberland County certified that Ms. Boss "was dismissed from this organization of March 13, 2014." The certification also advised that Ms. Boss was dismissed

due to “Administrative Charges (Employee Not Appealing)” and “Criminal Charges (Employee Not Appealing.”

The Board considered Ms. Boss’ application for Deferred retirement benefits in light of her termination for cause directly related to her employment pursuant to N.J.S.A. 43:15A-38 at its meeting of October 17, 2018. After careful consideration, the Board found that it was undisputed that Ms. Boss was removed from employment for misconduct directly related to her employment and therefore found that she is not eligible for a Deferred retirement.

Ms. Boss filed an appeal of the Board’s decision on November 7, 2018. On November 21, 2018, Mr. Charles I. Coant, Esq., Ms. Boss’ previous attorney, also filed an appeal on Ms. Boss’ behalf, alleging that, although Ms. Boss was represented by counsel at the Loudermill hearing, she was nonetheless unaware of the consequences of the hearing on her pension benefit. Mr. Coant also argued that Ms. Boss effectively became ineligible to teach as of March 14, 2014, the date of her termination, because Ms. Boss was required to relinquish her teaching certificates as a result of her request to enter the Pre-Trial Intervention program. The Board was prepared to hear Ms. Boss’ appeal at its meeting of January 14, 2019, however, you were retained prior to that meeting and requested to postpone consideration of the appeal. The Board granted your request and the matter was postponed until the February 20, 2019 meeting.

The Board considered Ms. Boss’ appeal at its meeting of February 26, 2019.¹ At that meeting, you argued that the Board should not forfeit any of Ms. Boss’ pension because the misconduct was minor in nature, and further that she resigned her employment. You also took the position that the Board could not consider Ms. Boss’ criminal charges or any consequence thereof because the records had been expunged. The Board thereafter tabled the matter for additional review by the Attorney General’s Office.

¹ The Board’s February 20, 2019, meeting was postponed due to inclement weather.

Michael T. Warshaw, Esquire
Re: Sharon Boss
June 20, 2019
Page 4

On March 26, 2019, you filed a letter brief on Ms. Boss' behalf, arguing that N.J.S.A. 43:1-3 did not apply to Ms. Boss' matter because "there was no conviction" or "disqualifying event" that would cause her to forfeit pension service credit. You also argued that Ms. Boss was not terminated from employment, notwithstanding her termination which became effective March 14, 2014, because she "submitted a voluntary surrender of her teaching credentials" and thus, she had effectively resigned her position. However, no evidence was produced that such action was either voluntary or had the effect of a resignation from her employment. In fact, her employer certified to the Board that Ms. Boss had been dismissed from her employment, and the FNDA established that her employer removed from her position effective March 14, 2014.

The Board again considered Ms. Boss Deferred retirement application at its meeting of May 15, 2019, and found that because she had been removed for cause directly related to her employment, she was not eligible for Deferred retirement benefits. The Board also considered and denied your request for an administrative hearing, finding no genuine issue of material fact in dispute which would require a fact-finding hearing. Rather, the question presented before the Board is purely legal in nature; to wit, whether Ms. Boss, having been removed for cause directly related to her employment, is entitled to a Deferred retirement benefit.

The documentation before the Board substantiated that Ms. Boss' employment was terminated for cause on charges of misconduct or delinquency. Therefore, the Board denied her application for deferred retirement under the provisions of N.J.S.A. 43:15A-38.

CONCLUSIONS OF LAW

The Board reached the following conclusions of law:

In making its determination, the Board relied upon N.J.S.A. 43:15A-38 and relevant case law. N.J.S.A. 43:15A-38 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,² if he so qualifies under said section, or;

(b) A deferred retirement allowance, beginning at the retirement age...

[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.” See also Robert Joya v. Dept. of Treasury, Div. of Pensions and Benefits, Dkt. No. A-3616-10T3 (decided October 9, 2012.) The finding in Hess is applicable here and, consequently, the Board determined that Ms. Boss is not eligible to receive a Deferred retirement because she was removed for cause as a consequence of misconduct or delinquency, including: N.J.A.C. 4A:2-2.3(a).

The charges that led to Ms. Boss’ dismissal touched upon and were directly related to her employment with Cumberland County, thereby making her ineligible to receive a Deferred retirement benefit. Ms. Boss was charged with filing vouchers and seeking payment for tutoring services she never performed. Therefore in accordance with the prevailing statutes and a plethora of case law on this issue, the PERS Board denied Ms. Boss’ request to collect Deferred retirement benefits.

As noted above, the Board has considered your personal statements on behalf of Ms. Boss, 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

² N.J.S.A. § 43:15A-41.

Michael T. Warshaw, Esquire
Re: Sharon Boss
June 20, 2019
Page 6

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 Jersey³.

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. Ignatowicz, Secretary
Board of Trustees
Public Employees' Retirement System

G-11/JSI
C: C. Chianese (ET); D. Dinkler (ET)

³ As noted in the Board's letter dated October 23, 2018, please be advised that although Ms. Boss is eligible to withdraw her accumulated pension contributions remitted during active membership. However, Ms. Boss is cautioned against filing an *Application for Withdrawal* if you intend to appeal the Board's determination. Withdrawal terminates all rights and privileges of membership.