



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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August 22, 2024

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

Sent via email to: [REDACTED]

Evern Dock
[REDACTED]
[REDACTED]

RE: PERS # [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Dock:

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) denying your application for Deferred retirement benefits. At its meeting of June 19, 2024, the Board found that you were ineligible for Deferred retirement benefits because you were dismissed for cause on charges of misconduct or delinquency directly related to your employment in accordance with N.J.S.A. 43:15A-38. Thereafter, you filed a timely appeal of the Board's decision.

At its meeting of July 17, 2024, the Board considered your appeal. 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 this Final Administrative Determination. Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the Board at its meeting of August 21, 2024.

FINDINGS OF FACT

The Board made the following factual findings.

You were enrolled in the PERS on August 1, 1998, as a result of your employment with William Paterson University (University) as a Grounds Worker. You remained with this employer and in this position until your termination on June 28, 2017.

On December 16, 2016, you tested positive for marijuana in violation of the University's Drug Free Workplace Policy. Thereafter, you voluntarily entered into a rehabilitation treatment program and were required to comply with the prescribed program. Subsequently, the University was notified by the rehabilitation program that you were non-compliant with your prescribed treatment. On multiple occasions, you tested positive for marijuana use, failed to attend sessions and refused a higher level of care. Consequently, by way of a Preliminary Notice of Disciplinary Action (PNDA), dated May 4, 2017, the University charged you with "General Causes: Other Sufficient Cause" and sought your removal.

Following a hearing on June 6, 2017, the Hearing Officer recommended the University's proposed disciplinary action of removal in the matter of "General Causes: Other Sufficient Cause". The Hearing Officer found that despite the University affording you numerous opportunities to seek treatment, you failed to comply with the program and tested positive for drug and alcohol use during the treatment period. The Hearing Officer also noted that your position required you to operate motorized equipment and drive a vehicle, and if impaired, you would be a danger to yourself and others and a potential liability to the University. Further, the Hearing Officer recommended the University's proposed disciplinary action of removal in the matter of "Conduct Unbecoming a Public Employee" and sustained the violation of "Chronic and Excessive Absenteeism" and recommended that the resultant suspension without pay for 5 working days be upheld.¹

A Final Notice of Disciplinary Action dated May 18, 2017, sustained the charge of the May 4, 2017, PNDA, and removed you from your position. The University listed your date of termination as June 28, 2017. Thereafter, you appealed your removal to the Civil Service Commission (CSC).

¹ Respective PNDA's for these violations were not provided by the University. However, the facts of the violations were detailed in the Hearing Officer's Report and Recommendation.

However, the CSC denied your request for a hearing because your appeal was untimely. On September 13, 2017, the CSC issued a final administrative determination denying a hearing.

At the time of your removal from employment, you were 53 years of age and your membership account reflected a total of 17 years and 10 months of PERS service credit. Therefore, at that time, the only benefit for which you could apply was a Deferred retirement. You filed a retirement application on August 9, 2023, requesting Deferred retirement benefits effective October 1, 2023.

At its meeting of February 21, 2024, the Board was prepared to consider your application for Deferred retirement benefits. However, during that meeting, you requested additional time to retain legal representation. Accordingly, the Board voted to table your matter to afford you the opportunity to seek legal counsel. By way of email dated May 17, 2024, you advised the undersigned that you wished to proceed without legal representation.

Therefore, the Board considered your application for Deferred retirement benefits at its meeting of June 19, 2024. At the meeting, the Board found that you were removed for cause on charges of misconduct or delinquency directly related to your employment and thus, ineligible for Deferred retirement benefits. You filed a timely appeal of the Board's decision.

At its meeting on July 17, 2024, the Board considered your letter of appeal, affirmed its prior decision, and finding no genuine issue of material fact in dispute, denied your request for an administrative hearing. The Board directed the undersigned to draft detailed Findings of Fact and Conclusions of Law for review at its August 21, 2024 meeting.

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,² if he so qualifies under said section, or;
- (b) A deferred retirement allowance, beginning at the retirement age...

[(Emphasis added)].

Based on the plain language of the statute as applied to the facts in the record, the Board determined that you were removed for cause on charges of misconduct or delinquency directly related to your employment, and are not eligible for Deferred retirement benefits. See In re Hess, 422 N.J. Super. 27 (App. Div. 2011) (holding that ineligibility for Deferred retirement occurs when a member is terminated for misconduct or delinquency related to the employment).

In support of your appeal, you attribute your termination to mental health issues and addiction. However, you had the opportunity to appeal your termination, a matter between you and your employer, at the time you separated from service. Having failed to avail yourself of that option, your termination on charges of misconduct or delinquency became final. It is not within the Board's purview or competence to re-litigate your termination over seven years later.

Your letter of appeal also referred, generally, to pardons granted to individuals previously charged with marijuana-related offenses. The Board noted that any changes to New Jersey State law regarding marijuana use, particularly for a public employee charged with operating equipment or motor vehicles, that may have taken effect have no bearing on your 2017 termination.

At the time of your dismissal from employment, you were 53 years of age and your membership account reflected a total of 17 years and 10 months of PERS service credit. Therefore, at that time, the only benefit for which you could apply was a Deferred retirement. However, it is undisputed that you were removed for cause on charges of misconduct or

² N.J.S.A. 43:15A-41

delinquency directly related to your employment. Thus, based on the plain language of N.J.S.A. 43:15A-38 as applied to the facts presented to the Board, you are not eligible for Deferred retirement benefits.

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

As noted above, the Board has considered your written submission 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

Evern Dock
August 22, 2024
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Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Ignatowitz". The signature is fluid and cursive, with a large, sweeping flourish at the end.

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

G-9/wt
C: J. Ehrmann (ET); R. Willever (ET)