



# State of New Jersey

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

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[www.nj.gov/treasury/pensions](http://www.nj.gov/treasury/pensions)  
November 21, 2024

PHILIP D. MURPHY  
*Governor*

TAHESHA L. WAY  
*Lt. Governor*

ELIZABETH MAHER MUOIO  
*State Treasurer*

JOHN D. MEGARIOTIS  
*Acting Director*

Sent via email to: [REDACTED]

Joseph Drayton  
[REDACTED]

RE: PERS [REDACTED]

## **FINAL ADMINISTRATIVE DETERMINATION**

Dear Mr. Drayton,

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) denying your appeal of the Board's partial forfeiture of your service and salary credit. At its meeting of September 20, 2023, the Board considered all documentation in the record concerning the administrative charges that resulted in your removal from employment from Jersey City on February 22, 2021, to determine what impact, if any, it may have on your application for Service retirement benefits, in accordance with N.J.S.A. 43:1-3. After careful consideration, the Board forfeited all of the service and salary credit you had accrued beyond March 31, 2019. Thereafter, the Board approved your application for Service retirement benefits effective March 1, 2022 and pursuant to the Board's decision, the Division of Pensions and Benefits (Division) excluded service and salary credit from April 2019 through February 2021, a total of 23 months, from the calculation of your retirement benefit.

On September 29, 2023, the letter outlining the Board's determination was emailed to you. The letter explained your appeal rights and the timeframe during which you may file an appeal of the Board's determination, i.e., "45 days after the date of written notice of the determination." Thus, you had until November 13, 2023, to file an appeal of the Board's partial forfeiture of your service and salary credit.

On or about August 27, 2024, 11 months after you received the Board's decision, the Division received your letter of appeal. At its meeting on October 16, 2024, the Board considered your appeal and found that it is was not submitted within the 45-day period established under N.J.A.C. 17:1-1.3. Consequently, the Board denied your appeal. Finding no genuine issue of material fact in dispute, the Board denied an administrative hearing and directed the undersigned to draft a Final Administrative Determination.

Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the Board at its November 20, 2024 meeting.

### **FINDINGS OF FACT**

The Board made the following factual findings.

The record before the Board establishes that by email dated August 2, 2023, you were advised that at its meeting of September 20, 2023, the Board would consider the circumstances surrounding your termination from employment to determine what impact, if any, it may have on your application for Service retirement benefits in accordance with N.J.S.A. 43:1-3. Pursuant to N.J.S.A. 10:4-6 et. seq., known as the "Open Public Meetings Act," you were advised of the meeting location and start time if you wished to attend and address the Board directly. However, you did not attend the September 20, 2023 meeting during which the Board considered the aforementioned matter nor did you provide any submission for the Board to review prior to the meeting.

At the meeting, the Board considered the record, which reflected multiple disciplinary infractions, the last of which resulted in Jersey City removing you from employment by way of a Final Notice of Disciplinary Action dated February 23, 2021. After careful contemplation of the 11 factors established by N.J.S.A. 43:1-3, the Board found that a forfeiture of all service and salary credit beyond March 31, 2019 was appropriate in light of the serious nature of your misconduct.

On September 29, 2023, a copy of the letter outlining the Board's determination was emailed to you. In regard to your rights to appeal the Board's determination, the letter included:

If you disagree with the determination of the Board, you may appeal by submitting a written statement to the Board within 45 days after the date of written notice of the determination. The statement shall set forth in detail the reasons for your disagreement with the Board's determination and shall include any relevant documentation supporting your claim. If no such written statement is received within the 45-day period, the determination by the Board shall be final.

The Board shall determine whether to grant an administrative hearing based upon the standards for a contested case hearing set forth in the Administrative Procedure Act, N.J.S.A.52:14B-1 and the Uniform Administrative Procedure Rule, N.J.A.C. 1:1-1 et seq. Administrative hearings shall be conducted by the Office of Administrative Law pursuant to the provisions of N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1-1.

If the granted appeal involves solely a question of law, the Board may retain the matter and issue a final determination, which shall include detailed findings of fact and conclusions of law based upon the documents, submissions and legal arguments of the parties. The Board's final determination may be appealed to the Superior Court, Appellate Division. If the granted appeal involves a question of facts, the Board shall submit the matter to the Office of Administrative Law.

Therefore, you had until November 13, 2023 to submit an appeal of the Board's partial forfeiture of your service and salary credit to the Board.

On October 12, 2023, you contacted the Division's Office of Client Services via telephone regarding the issuance of your retirement checks and the service credit reflected on your *Quotation of Retirement Benefits*. The counselor advised you of the Board's partial forfeiture of your service and salary credit. Via email correspondence dated October 18, 2023, the Counselor advised you of the September 29, 2023 letter and your appeal rights stated therein. The Counselor further advised that you could write to the Board to appeal its decision and provided the mailing address to send your letter of appeal. However, no such letter was submitted within the period

during which you could do so. Rather, by letter dated May 28, 2024, Jersey City, Department of Administration, Division of Human Resources advised the Division that you appealed your misconduct with the City of Jersey City / Law Department on November 5, 2023 after the Board approved your retirement application at its September 20, 2023 meeting. The letter further advised that you contacted Jersey City on May 23, 2024 to request a letter to the Division, which states that your termination was amended to "Resigned in Good Standing." Included with the May 28, 2024 letter was: a copy of the Settlement Agreement and General Release (Agreement) between you and Jersey City executed on November 5, 2023; an Amended FNDA, dated January 17, 2024 indicating that per the Agreement you are resigning in good standing effective February 22, 2021; and a letter dated January 24, 2024 indicating that you are withdrawing your matter from the Office of Administrative Law (OAL) in light of the Agreement. Prior to the Board's meeting of September 20, 2023, you did not communicate to the Division that you had appealed your removal from employment to the OAL on or about April 14, 2021.

On or around August 27, 2024, 11 months after the Board rendered its decision, the Division received your letter of appeal. At its meeting on October 16, 2024, the Board considered your appeal and found that it was not submitted within the 45-day period established under N.J.A.C. 17:1-1.3 and therefore denied it. Finding no genuine issue of material fact in dispute, the Board denied an administrative hearing and directed the undersigned to draft detailed Findings of Fact and Conclusions of Law for review at its November 20, 2024 meeting.

#### **CONCLUSIONS OF LAW**

Appeals of the Board's decisions are governed by N.J.A.C. 17:1-1.3, which states, in pertinent part:

- a) The applicant will be given written notice of any decision by the Division, Board or Commission. Said notice shall inform the applicant of the appeal process available in the event the applicant disagrees with the decision of the Division, Board or Commission, including the proper procedure for requesting a hearing.

**(b) The decision by the agency shall be final unless the applicant shall file a request for a hearing within 45 days after the date of the written notice of the decision.**

...

**(d) The following statement shall be incorporated in every written notice setting forth the Division, Board or Commission's determination in a matter where such determination is contrary to the claim made by the claimant or the claimant's legal representative: If you disagree with the determination of the Board, Commission or Division, you may appeal by submitting a written statement to the Board, Commission or Division Director within 45 days after the date of written notice of the determination. The statement shall set forth in detail the reasons for your disagreement with the Board, Commission or Division's determination and shall include any relevant documentation supporting your claim. If no such written statement is received within the 45-day period, the determination by the Board, Commission or Division shall be final.**

...

(Emphasis added.)

It is undisputed that you were duly advised of the September 20, 2023 meeting during which the Board would consider your application for Service retirement benefits in light of your termination from employment in accordance with N.J.S.A. 43:1-3. You neither attended the meeting nor provided any submission for the Board to consider prior to the meeting. It is further undisputed that you were informed of the Board's determination to forfeit all of your service and salary credit accrued beyond March 31, 2019, by way of a letter, dated September 29, 2023. The letter outlined your rights to appeal the Board's determination and advised that in accordance with N.J.A.C. 17:1-1.3, you had "within 45 days after the date of the written notice" to submit an appeal. Thus, you had until November 13, 2023 to do so. This did not occur. Instead, subsequent to the Board's approval of your application for retirement benefits you and Jersey City reached an Agreement whereby you were permitted to retroactively resign in good standing. The Board notes that neither the intent of parties to an agreement, nor such agreement's terms bind the Board, when the Board is not a party to the agreement. This point is underscored by the following stipulation outlined in the Agreement:

Drayton agrees that the City, Kucharczuk and the Public Employee Retirement System ("PERS") are separate and distinct entities. The City and Kucharczuk stipulate that they are not liable for Drayton's pension, disbursements, calculations, terms, deadlines, filings, etc. Drayton must unilaterally handle his pension issues and/or concerns with PERS alone.

At no point prior to the Board's September 20, 2023 meeting did you communicate to the Division that you had appealed your removal from employment to the OAL in April 2021. Had the Division been made aware of the appeal, it would have held the Board's review of your retirement application pursuant to N.J.S.A. 43:1-3 in abeyance until the contested disciplinary matter between you and Jersey City was fully adjudicated. Regardless of the final resolution, the Board would still be compelled to review the underlying administrative charges to determine if a forfeiture or partial forfeiture of your service and/or salary credit was warranted. However, the contested disciplinary matter was not adjudicated. You and Jersey City settled the dispute after the Board approved your retirement application.

On September 29, 2023, the letter outlining the Board's determination was emailed to you. The letter explained your appeal rights and the timeframe during which you may file an appeal of the Board's determination, i.e., "45 days after the date of written notice of the determination." Thus, you had until November 13, 2023, to file an appeal of the Board's partial forfeiture of your service and salary credit.

You did not submit an appeal to the Board until 11 months after the Board provided written notice of its decision. Thus, in accordance with N.J.A.C. 17:1-1.3, the language of which is clear and unambiguous, the Board's determination to forfeit all of your service and salary credit accrued beyond March 31, 2019 is final.

The Board 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

Joseph Drayton  
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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 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  
Attention: Court Clerk  
PO Box 006  
Trenton, NJ 08625

Sincerely,

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

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

G-/WT

C: J. Ehrmann (ET)