



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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October 17, 2017

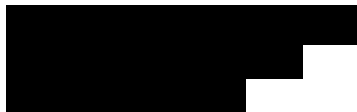
FORD M. SCUDDER
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

ALTERMAN & ASSOCIATES, LLC



Sent via Email to:



RE: Jason Fairchild



FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Alterman:

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, Jason Fairchild'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. Fairchild's request at its May 8, 2017 meeting. On June 23, 2017, you appealed the Board's denial and requested a hearing in the Office of Administrative Law ("OAL").

At its meeting on August 14, 2017, the PFRS Board reconsidered Mr. Fairchild's matter and made a motion to approve his request for Service retirement benefits under Chapter 428, P.L. 1999. However, the motion failed to carry¹. The matter was reconsidered at its meeting on September 11, 2017 wherein 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. Fairchild's

¹ Vote 3-3; (Trustees Middlesworth, Culliton and Colacci nae)

ALTERMAN & ASSOCIATES, LLC
Stuart J. Alterman, Esquire
RE: Jason Fairchild
October 17, 2017
Page 2

request for Service retirement benefits. Determining that there are no factual issues in dispute, the Board voted to deny the request for a hearing and direct the Secretary to draft a Final Administrative Determination. On September 25, 2017, you wrote to the Board Secretary, objecting to the Board's denial of the request for a hearing in the OAL and again requested reconsideration by the Board. Findings of Fact and Conclusions of Law, as outlined below, were approved by the PFRS Board at its meeting of October 16, 2017. This Final Administrative Determination serves as formal notice that the Board denied your request for a hearing.

FINDINGS OF FACT

Jason Fairchild became employed with the County of Morris as a Correction Officer and was enrolled in the PFRS effective May 1, 2005. Mr. Fairchild remained in this position until July 30, 2005. A report of transfer was submitted to the Division of Pensions and Benefits (Division) on November 7, 2005, to execute the transfer of his PFRS membership because Mr. Fairchild accepted a position as a Police Officer effective August 1, 2005 with Millburn Township Police Department. In 2006, Mr. Fairchild purchased 8 years 4 months of military and federal service credit into his PFRS account.

On January 26, 2017, Jason Fairchild submitted an *Application for Retirement Allowance* electronically through the Member Benefit Online System (MBOS) in which he requested a Service Retirement with an effective date of July 1, 2017. As of July 1, 2017, he had 20 years 6 months of service credited in his PFRS account. On January 27, 2017 the Division informed Mr. Fairchild via letter that he was not eligible for either a Service or a Special retirement. The certifying officer for Millburn Township completed an electronic *Certification of Service and Final Salary Retirement* on February 6, 2017 indicating that Mr. Fairchild resigned on June 30, 2017.

On February 17, 2017, Mr. Fairchild wrote to Dawn Lewis, of the Retirement Bureau noting his intentions of retiring as it was his understanding that the Division corrected its misinterpretation of Chapter 428, P.L. 1999 and requested the procedure to appeal the January 27, 2017 decision. Ms.

ALTERMAN & ASSOCIATES, LLC
Stuart J. Alterman, Esquire
RE: Jason Fairchild
October 17, 2017
Page 3

Lewis contacted Mr. Fairchild via telephone and left a voicemail regarding his ineligibility. You notified the Board Secretary by letter dated March 7, 2017, that you were retained to represent Mr. Fairchild “in reference to his filing for a request for a Service Pension at 20 years.” Thereafter, by letter dated March 15, 2017, Ms. Lewis provided Mr. Fairchild with further information as to the basis of the Division’s denial and the procedure to appeal. On April 13, 2017, the Board Secretary notified you that the appeal would be considered at the May 8, 2017, PFRS Board meeting. On April 25, 2017, you appealed the Division’s March 15, 2017 decision denying Mr. Fairchild’s request to file for Service retirement pursuant to Chapter 428, P.L. 1999.

On May 5, 2017, an *Estimate of Retirement Benefits* for Service Retirement with an effective retirement date of June 1, 2025 (at age 55) was issued to Mr. Fairchild. At its meeting on May 8, 2017, the Board affirmed the Division’s denial regarding his ineligibility for a Service retirement pursuant 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. On June 23, 2017, you appealed the Board’s denial and requested a hearing in the OAL. At its meeting on August 14, 2017 the Board reconsidered Mr. Fairchild’s matter and made a motion to approve his request to file for Service retirement benefits under Chapter 428, P.L. 1999. However, as stated previously, the motion failed to carry. The appeal was reviewed by the Board at its meeting on September 11, 2017. The Board did not reconsider the matter and denied the request for a hearing in the OAL.

CONCLUSIONS OF LAW

Following a review of the information, the PFRS upheld the Division’s determination and denied your request. Mr. Fairchild is not eligible for Service retirement benefits under Chapter 428, P.L. 1999. He was not a member of the PFRS until May 1, 2005, years after legislation was enacted under Chapter 428, P.L. 1999. Therefore, he does not qualify for the Service retirement benefit.

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, or 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.

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 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

ALTERMAN & ASSOCIATES, LLC
Stuart J. Alterman, Esquire
RE: Jason Fairchild
October 17, 2017
Page 5

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 the 'Division erroneously determined that in order for this particular Statute to apply the member had to be enrolled in the Police and Fire Pension System prior to January 18, 2000.'

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 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."

ALTERMAN & ASSOCIATES, LLC
Stuart J. Alterman, Esquire
RE: Jason Fairchild
October 17, 2017
Page 6

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).

It is undisputed that Mr. Fairchild enrolled in the PFRS on May 1, 2005, upon attaining a PFRS eligible position. He was clearly not a member of the PFRS on January 18, 2000. Thus, Mr. Fairchild 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.

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-7/MER
C: D. Lewis (ET); DAG Danielle Schimmel (ET)
Jason Fairchild