



State of New Jersey

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

TRENTON, NEW JERSEY 08625-0295
Telephone (609) 292-7524 / Facsimile (609) 777-1779
TRS 711 (609) 292-6683
www.nj.gov/treasury/pensions
December 11, 2018

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

Sent via email to: [REDACTED]

Samuel J. Halpern, Esquire
[REDACTED]

RE: Brian Favretto
[REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Halpern:

This is in reference to the denial by the Board of Trustees of the Police and Firemen's Retirement System (PFRS) of your request on behalf of Brian Favretto for a deferred retirement pursuant to N.J.S.A. 43:16A-11.2. The PFRS Board initially reviewed the request at its September 10, 2018, meeting and denied Mr. Favretto's application for deferred retirement. On October 18, 2018, you indicated that you were recently retained by Mr. Favretto and requested that the Board reconsider its decision and approve his application or in the alternative you requested a hearing in the Office of Administrative Law ("OAL"). At its meeting of November 5, 2018, the Board denied your request for reconsideration. Also, the Board denied your request for a hearing in the OAL as the Board determined that there are no material facts in dispute and directed the Board Secretary, in conjunction with the Attorney General's Office, to prepare Findings of fact and Conclusions of Law, which were presented and approved by the PFRS Board at its December 10, 2018 meeting.

The PFRS Board has reviewed your written submission and the relevant documentation and finds that the statutes and regulations governing the PFRS do not permit the PFRS Board to

grant Mr. Favretto's request to collect deferred retirement benefits because he was removed from employment on charges of misconduct or delinquency which touched upon his employment.

FINDINGS OF FACT

Mr. Favretto was enrolled in the PFRS on May 1, 1998 based upon his employment as a Police Officer with the Edison Township Police Department. On October 24, 2014, he was charged by Indictment with Count One-Conspiracy, 4th degree, and Count Four-Official Misconduct, 2nd degree. On that same date, as a result of Indictment, Mr. Favretto was suspended from employment pursuant to N.J.S.A. 40A:14-149.1. The record indicates that his employer, Edison Township, submitted pension contributions on his behalf through October 31, 2014, at which time his PFRS membership reflected 16 years and 6 months of membership service.

On September 16, 2016, Mr. Favretto pled guilty to amended Count One of the Indictment-Obstruct Administration of Law-Obstruct Government Function, 2C:29-1A, a Disorderly Persons Offense. Count Four of the Indictment was dismissed. These charges stemmed from Mr. Favretto's accessing the CJIS computer database without legitimate law enforcement reasons in order to obtain specific information about a North Brunswick police officer as well as performing surveillance on his residence and travel habits. On September 19, 2016, he filed an application for deferred retirement requesting a May 1, 2030 effective date with the Division of Pensions and Benefits. Edison Township filed a Certification of Service and Final Salary Retirement on October 26, 2016, in which it certified that Mr. Favretto was dismissed on September 16, 2016, the same date that he pled guilty.

On January 13, 2017, by Judgment of Conviction, he was ordered to forfeit his office, position or employment, and is forever disqualified from holding any office or position of honor, trust or profit under this State or any of its administrative or political subdivisions. He was also required to pay various fines.

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By letter dated July 30, 2018, Mr. Favretto was notified that at its meeting on September 10, 2018, the PFRS Board would review his application for deferred retirement in accordance with N.J.S.A. 43:16A-11.2, in light of his criminal matter. At its meeting of September 10, 2018, the PFRS Board denied Mr. Favretto's application for deferred retirement benefits. The Board's denial was based on the documentation which confirmed that he was removed from his position with Edison Township, as a Police Officer, for criminal conduct directly related to his employment. On October 18, 2018, you notified the Board Secretary that you were retained by Mr. Favretto to represent him in his appeal of the Board's determination which denied his application for deferred retirement.

You requested that the Board reconsider its determination based on your assertion that the amended Count One charge that he pled guilty-Obstruct Administration of Law-Obstruct Government Function does not constitute delinquency. Also, in the event that the Board does not change its determination, you requested that his matter be referred to the Office of Administrative Law (OAL) for a hearing.

At its meeting of November 5, 2018, the Board denied your request for reconsideration. Also, the Board denied your request for a hearing in the OAL because there are no material facts in dispute and directed the Board Secretary, in conjunction with the Attorney General's Office to prepare Findings of Fact and Conclusions of Law, which were presented and approved by the PFRS Board at its meeting on December 10, 2018.

CONCLUSIONS OF LAW

Following its review of the record, the Board denied Mr. Favretto's application for deferred retirement benefits. The Board relied upon N.J.S.A. 43:16A-11.2, which states:

Should a member, after having established 10 years of creditable service, be separated voluntarily or involuntarily from the service, before reaching age 55, and not by removal for cause on charges of misconduct or delinquency, such person may elect to receive the payments provided for in section 11 of P.L.1944, c. 255 or section

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16 of P.L.1964, c. 241, or a deferred retirement allowance, beginning on the first day of the month following his attainment of age 55 and the filing of an application . . .
[Emphasis added.]

The Board determined that Mr. Favretto's guilty plea to an amended Count One- Obstruct Administration of Law-Obstruct Government Function, is misconduct directly related to his employment as a Police Officer with Edison Township. Mr. Favretto only had access to the CJIS computer system because he was a police officer. Additionally, as a result of his guilty plea, Mr. Favretto was required and ordered to forfeit his law enforcement position.

You assert that the amended Count One charge noted above that Mr. Favretto pled guilty does not constitute delinquency and therefore Mr. Favretto should be eligible for a deferred retirement. However, N.J.S.A. 43:16A-11.2 clearly states that a member of the PFRS is not eligible for a deferred retirement if the member is removed for cause on charges of misconduct or delinquency. Mr. Favretto's guilty plea related to his improper use of a law enforcement tool, the CJIS database, is clearly misconduct related to his job as a police officer. Therefore, the Board determined that based upon his removal he is automatically disqualified for a deferred retirement.

The Board's decision that he was removed for cause on charges of misconduct or delinquency pursuant to N.J.S.A. 43:16A-11.2 is further supported by relevant case law. 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." Because Mr. Favretto was removed for cause based on misconduct or delinquency related to his employment, the Board's decision is fully consistent with this court's opinion in Hess. See also Danny Glenn v. Board of Trustees, Public Employees' Retirement System, Dkt. No. A5271-14T1, decided June 30, 2017, slip op at *4 ("The plain language of this statute [N.J.S.A. 43:15A-38] leaves no room for discretion by the Board: any

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member removed as a public employee for charges of misconduct or delinquency is ineligible to receive benefits from PERS as a matter of law”).

Mr. Favretto is eligible for the return of his accumulated pension contributions. Please be cautioned that if he intends to file an appeal of this Final Administrative Determination, he should NOT withdraw his pension contributions. If Mr. Favretto wants to withdraw, he must complete an Application for Withdrawal by logging into the Member Benefits Online System (MBOS). Nonetheless, he is cautioned against filing the withdrawal application if he intends to appeal. Withdrawal terminates all rights and privileges of membership.

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 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-6/MER

C: D. Dinkler (ET); DAG Amy Chung (ET); DAG Danielle Schimmel (ET)
Brian Favretto