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Governor

SHEILA Y. OLIVER

Lt. Governor

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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www.nj.gov/treasury/pensions September 2, 2022 ELIZABETH MAHER MUOIO State Treasurer

JOHN D. MEGARIOTIS

Acting Director

Sent via email to:

GAYLORD POPP, L.L.C. Samuel M. Gaylord, Esq.

RE: Sharon Giles

TPAF#

OAL DKT, NO. TYP 16562-2015

Dear Mr. Gaylord:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Giles worked as a public schoolteacher in East Orange where she taught economics and entrepreneurship classes to third, fourth, and fifth grade students. <u>Giles v. Bd. of Trs., Teachers' Pension & Annuity Fund</u>, No. A-0640-20 (App. Div. May 19, 2022) (slip op. at 2). On October 27, 2014,

<u>Ibid.</u> On February 4, 2015, Giles applied for ordinary disability retirement benefits (OD). <u>Ibid.</u> Giles's last day worked was October 27, 2014. <u>Ibid.</u>

On June 5, 2015, Arnold T. Berman, M.D., the testifying medical expert for the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF), examined Giles. (2T20:4; J-7). Dr. Berman opined Giles was not totally and permanently disabled from the performance of her regular or assigned job duties as a teacher. (2T19:5-11; 2T30:5-11; J-7; J-8). On July 1, 2015, Giles resigned her teaching position. <u>Giles</u>, slip op. at 2. Giles never requested an accommodation prior to her resignation. (1T91:18-93:14).

On August 6, 2015, the Board considered and denied Giles's application for OD because it found she was not totally and permanently disabled from the performance of her regular or

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assigned job duties as a teacher. Giles, slip op. at 2-3. Giles appealed the denial of her

application for OD, and the matter was transferred to the Office of Administrative Law (OAL) as a

contested case on October 7, 2015. Giles, slip op. at 3. While the matter was pending in the

OAL, Giles's testifying medical expert, David Weiss, D.O., eventually examined her on June 25,

2018, nearly three full years after she resigned. (P-2).

After a hearing with testimony from Giles, Dr. Weiss, and Dr. Berman, the administrative

law judge issued her initial decision (ID) on July 3, 2020. Giles, slip op. at 3. The ALJ

recommended Giles receive OD. Ibid. "[T]he ALJ held

which has left her totally and permanently disabled from working as a

teacher or in any other capacity." Giles, slip op. at 6.

On September 3, 2020, the Board considered the ID, the Exceptions filed the Attorney

General's office, and the hearing exhibits. (Bd.'s Oct. 2020 FAD at 1). After careful consideration,

"the Board modified the ALJ's finding of fact related to Giles's job duties and rejected the ALJ's

determination Giles was permanently and totally disabled from employment as a schoolteacher."

Ibid. Accordingly, the Board directed the Secretary to draft Findings of Fact and Conclusions of

Law consistent with its determination, which the Board voted to adopt on October 1, 2020. Ibid.

Giles appealed the Board's October 6, 2020 final administrative determination to the

Superior Court of New Jersey, Appellate Division. Giles, slip op. at 7. On May 19, 2022, the court

remanded the matter to the Board "for specific findings of facts and conclusions of law concerning

Giles's ability to perform duties in the 'general area of [her] ordinary employment " Giles, slip

op. at 2 (alterations in original) (quoting Skulski v. Nolan, 68 N.J. 179, 206 (1975)).

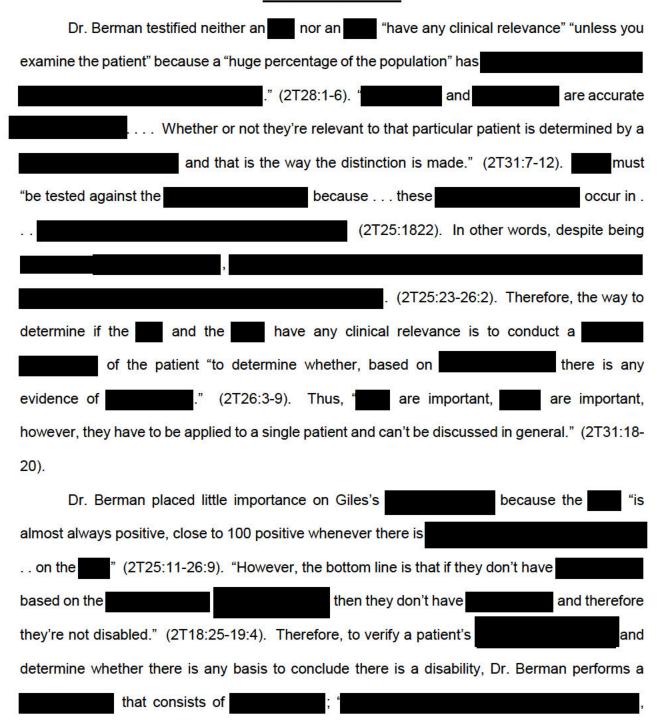
On June 2, 2022, the Board considered the court's decision and directed the Secretary to

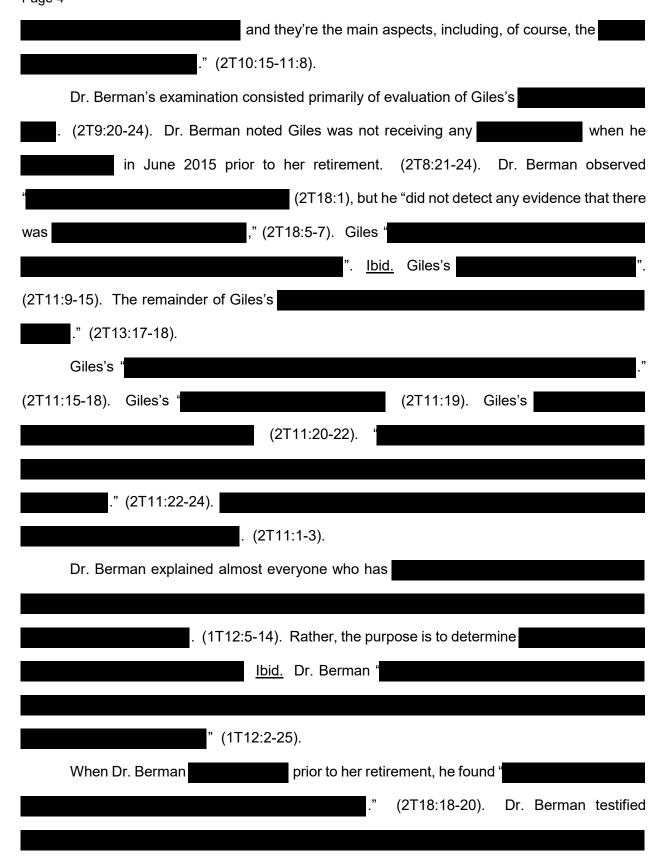
draft revised Findings of Fact and Conclusions of Law consistent with the court's opinion. At its

meeting of September 1, 2022, the Board voted to adopt the revised findings of fact and

conclusions of law as presented. This will constitute the final administrative determination of the Board in the matter.

FINDINGS OF FACT

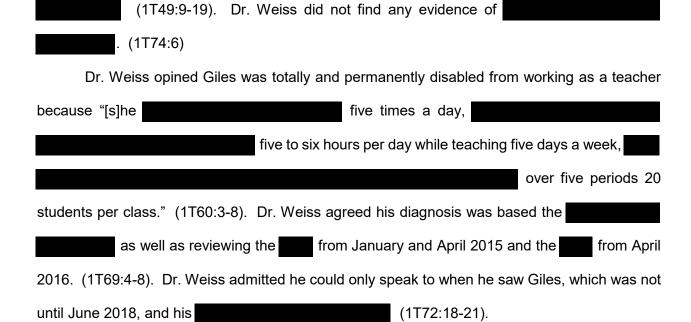




Page 5 It's not disabling. If there is , it could be disabling and that's the reason for the distinction and that's the reason for my conclusions." (2T87:13-18). Dr. Berman testified a patient with " ." (2T13:7-16). (2T35:21-36:2). Dr. Berman opined Giles was not totally and permanently disabled from the performance of her regular or assigned job duties as a teacher. (2T19:5-11; 2T30:5-11; J-7; J-8). Dr. Berman reviewed the job description and testified Giles could perform "all" her job duties. (2T29:1-15). Dr. Berman opined Giles . (2T29:16-24). According to Dr. Berman, (2T30:3-4). Dr. Berman testified Giles could work as a teacher and participate in all activities of daily life. (2T30:5-11). Dr. Weiss agreed the "basic problem" with Giles was " (1T39:11-12). Dr. Weiss testified Giles ." (1T54:13-14). Dr. (1T48:4-5; 1T52:8-10). Dr. Weiss testified Weiss agreed (1T46:6-7). During the , Dr. Weiss found Giles had " (1T71:4-5). While Dr. Weiss diagnosed Giles with he conceded he could not know if Giles had . (1T72:5-12; P-2). Dr. Weiss testified Giles's "

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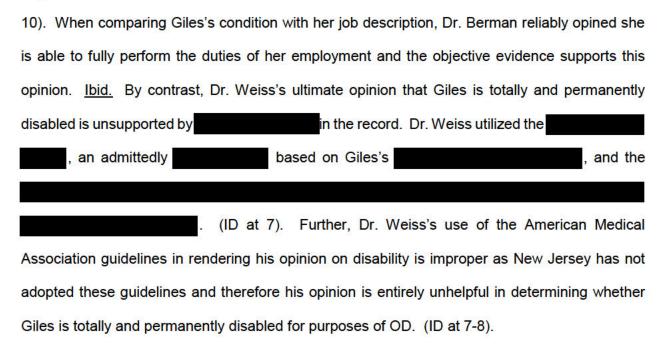
CONCLUSIONS OF LAW

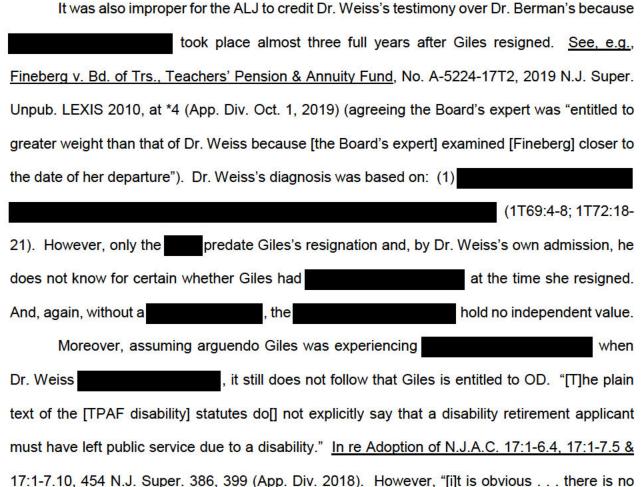
The Board finds Giles is not totally and permanently disabled from the performance of her regular or assigned job duties as a teacher, is not totally and permanently disabled from the performance of duties in the general area of her ordinary employment, and is not totally and permanently disabled from the performance of her regular or assigned job duties as a teacher even with reasonable accommodation. "The applicant for ordinary disability retirement benefits has the burden to prove that he or she has a disabling condition and must produce expert evidence to sustain this burden." Bueno v. Bd. of Trs., Teachers' Pension & Annuity Fund, 404 N.J. Super. 119, 126 (App. Div. 2008) (citing Patterson v. Bd. of Trs., State Police Ret. Sys., 194 N.J. 29, 50-51 (2008)). The applicant must also "establish incapacity to perform duties in the general area of his ordinary employment" rather than just showing inability to perform the specific job for which they were hired. Id. at 130 (quoting Skulski v. Nolan, 68 N.J. 179, 205 (1975)). The applicant for OD must also prove "[s]he was disabled and could not function in h[er] position even with reasonable accommodation." Ensslin v. Bd. of Trs., Police & Firemen's Ret. Sys., 311 N.J. Super. 333, 336 (App. Div. 1998). Thus, the applicant must meet "an extraordinarily high

threshold that culls out all minor injuries; all major injuries that have fully resolved; all partial or temporary disabilities; and all cases in which a member can continue to work in some other capacity. Patterson, 194 N.J. at 43 (quoting Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 195 (2007)).

First, the Board rejects the ALJ's finding Giles is totally and permanently disabled from the performance of her regular or assigned job duties as a teacher. The Board finds the ALJ incorrectly weighed the opinion of Dr. Weiss over Dr. Berman. (ID at 13). The Board rejects the ALJ's finding Dr. Weiss presented more reliable testimony than Dr. Berman because the ALJ erred in minimizing the absence of a clinical correlation between Giles's . Dr. Berman reliably found Giles's For example, the ID states "[Dr.] Berman administered several , which he did not identify," but then goes on to name every Dr. Berman performed, which Dr. Berman clearly stated on the record. (ID at 9; 2T11:1-24). The Board therefore rejects the ALJ's finding Dr. Berman did not identify the on which he based his opinion. Dr. Berman conducted a relatively unremarkable (ID at 9). Dr. Berman found no were not Ibid. The and . (ID at 10). Put simply, while Giles has a , Dr. Berman found Overall, Dr. Berman only found evidence of

(ID at





such explicit text in the enabling statutes because it is common sense that disability retirees leave their jobs due to a purported disability. After all, the employee seeks <u>disability</u> retirement benefits." Ibid. See also Rooth v. Bd. of Tr., Pub. Emps.' Ret. Sys., 472 N.J. Super. 357, 365-66 (App. Div. 2022) (noting an OD applicant must prove she retired due to a total and permanent disability that was present at the time the member left employment).

Second, the Board finds Giles is not totally and permanently disabled from the performance of duties in the general area of her ordinary employment. The ALJ found:

teaching is a demanding position; it requires not only intellect, but physical stamina, to keep up with active young children. As [Giles] testified, it requires one to immediately be able to engage in fire and active-shooter drills. As an elementary teacher, one is constantly bending, stooping, walking, and moving. It is not a job for one who is not physically fit.

[ID at 13.]

The ALJ conflated how Giles subjectively and specifically taught with the general requirements of being a teacher. Under <u>Skulski</u> and <u>Bueno</u>, the proper standard looks to her general employment as a teacher, not to specific self-reported tasks. Based on the job description, there is no reason

someone in Giles's condition could not perform the general functions of a teacher, which involves planning lessons and verbally communicating with students. (J-4). The Board rejects the invitation to find totally and permanently disabled from working as an elementary school teacher.

Moreover, Dr. Berman opined Giles could

. Therefore, the only evidence

Giles may even have needed an accommodation is her

. Thus, Giles cannot show she is totally and permanently disabled from the performance of her regular or assigned job duties as a teacher even with reasonable accommodation. DeFeo v. Bd. of Trs., Pub. Emps.' Ret. Sys., 2018 N.J. Super. Unpub. LEXIS 537, at *7 (App. Div. Mar. 9, 2018) (inability to "perform all of the duties required of [a] job . . . does not amount to the inability to perform [the] job").

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For these reasons, the Board's final agency decision rejected the ALJ's finding of

permanent and total disability and denied OD.

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 from 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

Sincerely,

Saretta Dudley, Secretary

Board of Trustees

Teachers' Pension and Annuity Fund