



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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February 22, 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]

Angelo Greene
[REDACTED]

RE: PERS # [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Greene:

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 on October 18, 2023, the Board found you ineligible for Deferred retirement benefits because you were removed for cause on charges of misconduct or delinquency directly related to your employment in accordance with N.J.S.A.43:15A-38. On November 28, 2023, you filed a timely appeal of the Board's decision.

At its meeting on January 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 a Final Administrative Determination.

Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the Board at its February 21, 2024 meeting.

FINDINGS OF FACT

The Board made the following factual findings.

You were enrolled in the PERS on September 1, 1994, as a result of your employment with the Morris-Union Joint Commission as a Bus Driver. On September 1, 2012, you transferred

to Benjamin Banneker Preparatory Charter School (Charter School) where you held the title of Custodian until your termination on January 15, 2015.

A memo dated January 14, 2013, from the CEO of the Charter School, informed you that the front door of the school was left unlocked and a parent entered the school and had to wait for several minutes for you to return to your station at the front desk. The memo reminded you of your duty to remain stationed at the front door at all times unless other coverage was provided, and that school doors are never to be left unlocked during the school day.

By memo dated October 22, 2014, you were advised that on October 21, 2014, you were observed sitting in your truck at an unapproved time during work hours. On that same day, you were also observed in the teacher's prep room, despite a prior directive given to you on October 1, 2014, which stated that "staff members are not to congregate in the prep room "for any reason" and that anyone seen in the teacher's prep room for unintended purposes would be written up.

On November 3, 2014, you took two unauthorized breaks despite prior directives. During one of these breaks, you had students vacuuming the floors of the school grounds while you went to the Verizon store. On November 5, 2014, the CEO advised you via letter that your actions were deemed insubordinate and therefore you were placed on a 30-day probation effective immediately. The letter further advised that immediate disciplinary action would be taken if you were to take any other unauthorized breaks.

Lastly, on December 16, 2014, an executive assistant at the Charter School detailed an incident, which occurred that morning relating to how she felt disrespected and offended when she caught you making an obscene gesture with your hand in reference to her. On that same date, the Charter School Board voted to place you on paid administrative leave, effective immediately, and decided that your contract would be terminated effective January 15, 2015.

At the time of your dismissal from employment, you had 19 years and 2 months of PERS service credit and you were 50 years of age. Therefore, at that time, the only benefit for which

you could apply was a Deferred retirement. On February 17, 2023, you filed a retirement application requesting Deferred retirement benefits effective April 1, 2023.

The Board considered your application for Deferred retirement benefits at its meeting of October 18, 2023. At the meeting, the Board found that because you were removed for cause on charges of misconduct or delinquency, you are ineligible for Deferred retirement benefits and thus, denied your application. By e-mail dated November 28, 2023, you filed a timely appeal of the Board's decision.

At its meeting on January 17, 2024, the Board considered your e-mail correspondence and personal statements in support of your appeal. Thereafter, the Board 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 February 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,¹ if he so qualifies under said section, or;
- (b) A deferred retirement allowance, beginning at the retirement age...

[(Emphasis added)].

¹ N.J.S.A. 43:15A-41

In your appeal, you assert that you were not written-up for breaking policy. The Board however, disagrees with this assertion, as the record is replete with documentation detailing your disciplinary history. For example, you received a memo on January 14, 2013, for not being at your workstation and for leaving the front door unlocked. On October 22, 2014, you were informed that you disobeyed policy by sitting in your truck at an unapproved time during work hours. Lastly, on November 3, 2014, you were reminded that you took unauthorized breaks. As a result of these events, you received a Probation Notice dated November 5, 2014, indicating that your actions were deemed insubordinate and therefore, you were placed on probation for thirty days. Thereafter, the School Board voted to suspend you with pay and terminate your contract. Further, in your appeal, you do not dispute that you were terminated effective January 15, 2015.

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 grounds of misconduct or delinquency directly related to your employment, and you 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).

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 you intend to appeal the Board's determination. Withdrawal terminates all rights and privileges of membership.**

As noted above, the Board has considered your personal statements, 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.

Angelo Greene
February 22, 2024
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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

Sincerely,

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

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

G-8/KA

C: J. Ehrmann (ET); R. Willever (ET)