



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
POLICE AND FIREMENS' RETIREMENT SYSTEM
OF NEW JERSEY
(609) 292-7524 TDD (609) 292-7718
www.nj.gov/treasury/pensions

Mailing Address:
PO Box 295
Trenton, NJ 08625-0295
Location:
50 West State Street
Trenton, New Jersey

ELIZABETH MAHER MUOIO
State Treasurer

ED DONNELLY
Chairman, PFRSNJ

June 11, 2019

Sent via email to: [REDACTED]

ALTERMAN & ASSOCIATES, LLC
Arthur J. Murray, Esquire

[REDACTED]

RE: Alonzo Herran

[REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Murray:

I am writing in reference to the action of the Board of Trustees of the Police and Firemen's Retirement System of New Jersey ("PFRSNJ Board") in denying your request on behalf of your client, Alonzo Herran, to change from ordinary disability, which was approved by the PFRS Board on May 15, 2018, to accidental disability retirement. The PFRS Board reviewed and denied Mr. Herran's request to reopen and change the retirement type from ordinary to accidental disability at its March 11, 2019 meeting. By letter dated April 23, 2019, you appealed the Board's decision, thereby requesting a hearing in the Office of Administrative Law, which was denied at the PFRSNJ Board's May 13, 2019 meeting. Findings of Fact and Conclusions of Law, as outlined below, were presented and approved by the PFRSNJ Board at its June 10, 2019 meeting.

The PFRSNJ Board has reviewed your written submissions and the documentation accompanying your appeal and finds that the statutes and regulations governing the PFRS do not permit the PFRSNJ Board to grant a change in Mr. Herran's retirement type, which was requested more than seven months after the date he was Board approved for ordinary disability.

FINDINGS OF FACT

A review of the relevant facts in this case reveals that Mr. Herran was originally enrolled in the Public Employees' Retirement System (PERS) effective August 1, 1999, as a result of his employment with the City of Newark as a code enforcement officer. Thereafter, he interfund transferred from the PERS into the PFRS when he became employed with the City of Newark on February 14, 2002, as a police officer. As a result of this employment he continued to be enrolled in the PFRS. On June 2, 2017, Mr. Herran filed an application for ordinary disability retirement benefits with the Division of Pensions and Benefits (the Division). He listed a retirement date of February 1, 2018. On June 8, 2017, Mr. Herran was provided with an Estimate of Retirement Benefits for ordinary disability retirement benefits.

At its meeting of May 15, 2018, the PFRS Board approved Mr. Herran's application for ordinary disability effective February 1, 2018. In accordance with N.J.A.C. 17:4-6.3, which states in pertinent part:

- (a) Except as provided by N.J.A.C. 17:4-6.7, a member shall have the right to withdraw, cancel or change an application for retirement at any time before the member's retirement allowance becomes due and payable by sending a written request signed by the member. Thereafter, the retirement shall stand as approved by the Board.

In addition, N.J.A.C. 17:4-6.7 (b) states:

Once the Board approves a member for a disability retirement allowance, the member's retirement application shall not be withdrawn, canceled or amended.

Therefore, Mr. Herran was not permitted to make any changes once the Board approved his application for ordinary disability retirement benefits, which occurred on May 15, 2018.

By letter dated January 11, 2019, attorney Samuel Halpern¹ requested that Mr. Herran be permitted to reopen his ordinary disability retirement application in order to obtain an accidental disability retirement benefit. Attached to Mr. Halpern's letter was an AFFIDAVIT OF ALONZO HERRAN, dated December 26, 2018. Mr. Herran attests to the fact that he was terminated from employment effective September 27, 2016.

¹ In a letter dated March 12, 2019, Arthur J. Murray, Esquire, for Alterman & Associates is now representing Mr. Herran.

Ultimately, the City of Newark agreed to reduce the penalty to a suspension and on August 16, 2017, he was placed back to work on light duty. On August 25, 2017 Newark City submitted the Employer Certification for Disability Retirement indicating Mr. Herran would be resigning on January 29, 2018. Mr. Herran also attests to the fact that although he claims there was a work incident which caused his disability, he did not report the incident, because he was already facing disciplinary action and “did not want to make things worse for myself” by filing for an accidental disability retirement benefit. In addition, the letter from Mr. Halpern was received seven months beyond the date that the Board approved Mr. Herran’s application for ordinary disability retirement benefits. Therefore, the request to change his approved retirement type was not made timely and his ordinary disability has become final and no changes can be made. On January 17, 2019 Mr. Halpern’s request, on behalf of Mr. Herran, was administratively denied by Valerie McManus, Supervisor, of the Disability Retirement.

Then, on February 8, 2019 Mr. Halpern appealed Ms. McManus’ administrative denial to the PFRSNJ Board. On March 12, 2019 the Board denied Mr. Halpern’s request, on behalf of Alonzo Herran, to reopen and amend his application from Ordinary disability to Accidental disability. On April 23, 2019, you provided a letter indicating that Alterman & Associates was now counsel to Mr. Herran and requested that the Board reconsider its determination of March 12, 2019 and Mr. Herran be permitted to reopen his application and apply for accidental disability retirement benefits. Alternatively, you requested that the matter be transmitted for a hearing in the Office of Administrative Law. By letter dated May 15, 2019, you were advised that the PFRSNJ Board denied the request for reconsideration and denied your request for an administrative hearing and directed the Board Secretary to prepare a Final Administrative Determination to be presented at the Board’s June 10, 2019 meeting.

CONCLUSIONS OF LAW

The Board denied your request to change Mr. Herran’s retirement type from ordinary disability to accidental disability retirement because Mr. Herran did not submit an application for accidental disability prior

to the Board's approval of ordinary disability retirement benefits. The Board relied upon N.J.A.C. 17:4-6.3, which states in pertinent part:

- (a) Except as provided by N.J.A.C. 17:4-6.7, a member shall have the right to withdraw, cancel or change an application for retirement at any time before the member's retirement allowance becomes due and payable by sending a written request signed by the member. Thereafter, the retirement shall stand as approved by the Board.

In addition, N.J.A.C. 17:4-6.7 (b) states:

Once the Board approves a member for a disability retirement allowance, the member's retirement application shall not be withdrawn, canceled or amended.

The Board approved Mr. Herran's ordinary disability retirement benefits effective February 1, 2018 at its meeting of May 15, 2018. Mr. Herran was informed by the Board approval letter that no changes could be made to his application once it was Board approved.

In the appeal, you raised the issue of reopening Mr. Herran's application due to "good cause" for which you relied on the Affidavit of Mr. Herran. Specifically, Mr. Herran attests to the fact that although he claims there was a work incident which caused his disability, he did not report the incident because he was already facing disciplinary action and "did not want to make thing worse for myself" by filing for an accidental disability retirement benefit. The Board determined that "good cause" does not exist to reopen Mr. Herran's application.

Because your request to make a change was received well beyond the regulatory timeframe permitted to make a change as set forth above in N.J.A.C. 17:4-6.3(a) and N.J.A.C. 17:4-6.7(b), the Board denied your request and Mr. Herran's ordinary disability retirement "shall stand as approved by the Board" on May 15, 2018.

As noted above, the PFRSNJ Board has reviewed your written submissions. However, the Board cannot grant relief. Because this matter does not entail any disputed questions of fact, the PFRSNJ 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. Your request for a hearing in the Office of Administrative Law therefore is denied. Accordingly, this correspondence shall constitute the

Arthur J. Murray, Esq.
RE: Alonzo Herran
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Final Administrative Determination of the Board of Trustees of the Police and Firemen's Retirement System of New Jersey.

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. All appeals should be directed to:

Superior Court of New Jersey
Appellate Division
Attn: Court Clerk
PO Box 006
Trenton, NJ 08625
Phone: (609) 292-4822

Sincerely,



Jacquelyn Bussanich
Interim Board Secretary
Police and Firemen's Retirement System of New Jersey

jb/G-15

c: Alonzo Herran
DAG Robert Garrison (ET)
Cheryl Chianese (ET)