



# State of New Jersey

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August 15, 2017

Sent via Email to: [REDACTED]

Jacobs & Barbone  
Ronald A. Rosa, Esquire

RE: Steve Jones  
[REDACTED]

Dear Mr. Rosa:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Board of Trustees of the Police and Firemen's Retirement System ("PFRS Board") has reviewed the Initial Decision ("ID") of the Administrative Law Judge ("ALJ") Jeffrey R. Wilson dated May 10, 2017,<sup>1</sup> in the above captioned matter, together with the joint stipulation of facts, the items submitted into evidence by the parties, exceptions filed by Deputy Attorney General Thomas R. Hower dated June 14, 2017<sup>2</sup> and reply to exceptions filed by you dated June 26, 2017.

At its meeting of July 10, 2017, the PFRS Board modified the Initial Decision and imposed a partial forfeiture of service and salary starting from November 28, 2007 (the date of the first incident that Mr. Jones was untruthful to the investigators) forward or through June 30, 2011. The Board based the partial forfeiture on the evidence adduced at the hearing, its original Uricoli analysis and the disciplinary actions from 2008 and 2011.

<sup>1</sup> The PFRS Board requested and was granted an extension of time for the Board to issue its final decision.

<sup>2</sup> DAG Hower requested and was granted an extension of time to file exceptions.

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Additionally, the Board rejected the ALJ's conclusion that Mr. Jones is eligible to apply for an Accidental disability retirement. This issue was not transmitted to the Office of Administrative Law ("OAL") as a contested issue. Thereafter, the Board determined that he is ineligible to apply for an Accidental disability retirement benefit. The Board noted that Mr. Jones and the City of Millville ("Millville") executed a settlement agreement whereby Mr. Jones waived any right to return to employment in any position with Millville. Further, when Millville was asked if Mr. Jones would have a position to return to in order to comply with N.J.S.A. 43:16A-8(2), Millville indicated that Mr. Jones waived his right to return to employment and even in the event of a denial of any pension application, that the agreement stands, and there is no position available for him with Millville. Therefore, should Mr. Jones' alleged disability diminish in the future he would not be eligible for re-employment with Millville and therefore, he is unable to comply with N.J.S.A. 43:16A-8(2).

The Board adopts the following Findings of Fact and Conclusions of Law which constitute the Final Administrative Determination in this matter.

#### **FINDINGS OF FACT**

As found in the ID, Mr. Jones was a police officer for Millville. He was a PFRS member from November 1, 1998 through December 1, 2011. From October 2005 through September 2006, Mr. Jones attended three conferences, for which he submitted receipts for expense reimbursement. Millville had a resolution stating procedures to claim reimbursement for expenses. Mr. Jones submitted paperwork with receipts for reimbursement on October 17, 2005, July 7, 2006 and September 29, 2006.

Mr. Jones submitted seventeen receipts for payment that were very similar in form and did not contain the name of any restaurant or place of business and whose pre-printed numbers were

close together. An internal investigation was commenced regarding these receipts and Mr. Jones talked to investigators on November 28, 2007 and November 29, 2007.

Millville served a Preliminary Notice of Disciplinary Action on March 19, 2008 (the “2008 PNDA”) alleging various violations based on the submission of receipts. On July 9, 2008, a departmental hearing was held and a six-month suspension was recommended. Mr. Jones appealed the discipline to the OAL. Following a hearing, an ID dated May 28, 2010 concluded that the expenses were for reasonable amounts and for reasonable items and that Mr. Jones’s statement that the receipts were given to him by the restaurants at which he ate was untrue. The ID recommended a three-month suspension, which was adopted by the Civil Service Commission (the “CSC”).

A second PNDA was issued by Millville on July 25, 2011 (the “2011 PNDA”). The 2011 PNDA made multiple administrative charges and rule infractions against Mr. Jones for allegedly “dishonest and purposely deceitful” statements made on the nights of December 27, 2010 and July 21, 2010. The 2011 PNDA was dismissed pursuant to the terms of a settlement between Millville and Mr. Jones.

On December 27, 2011, Mr. Jones applied for Accidental disability retirement benefits.

The Board specifically rejects the ALJ’s factual finding that the Board did not consider the 2011 PNDA. The Board considered the misconduct in both the 2008 PNDA and the 2011 PNDA and referenced both PNDAs in its August 22, 2012 decision that was appealed to the OAL.

The Board considered the facts regarding all of Mr. Jones’s misconduct.

<b>1. The member’s length of service;</b>	<b>12 years 2 months</b>
<b>2. The basis of retirement;</b>	<b>Accidental Disability</b>
<b>3. The extent to which the member’s pension has vested;</b>	<b>The pension is vested with over 10 years of service.</b>
<b>4. The duties of the particular member;</b>	<b>Police Officer</b>

<p><b>5. The member's public employment history and record covered under the retirement system;</b></p>	<p><b>12 years 2 months</b></p>
<p><b>6. Any other public employment;</b></p>	<p><b>None noted</b></p>
<p><b>7. The nature of the misconduct or crime, including the gravity or substantiality of the offense, whether it was a single or multiple offense and whether it was continuing or isolated;</b></p>	<p><b>Preliminary Notice of Disciplinary Action on March 19, 2008 alleging various violations based on the submission of false receipts.</b></p> <p><b>Preliminary Notice of Disciplinary Action dated July 25, 2011, Mr. Jones was charged with the following:</b>  <b>Conduct unbecoming a Public Employee 4A:2-2.3(a)6</b>  <b>Other Sufficient Cause 4A:2-2.3(a)11</b>  <b>High Ethical Standards 3.3.6</b>  <b>High Ethical Standards on/off duty 3.4.5</b>  <b>Obedience to laws and rules 4.1.3</b>  <b>Compromising Criminal Case(s) 4.1.8</b>  <b>Truthfulness 4.12.6</b>  <b>Repeated violations 6.1.2</b>  <b>Obedience to Laws G.O 2-99 III (a)1a</b>  <b>Conduct unbecoming an officer 2-99 III (a)2a</b>  <b>Complete and Truthful in all matters 2-99 III(a)3.c</b></p> <p><b>Mr. Jones was placed on administrative suspension without pay pending disposition of the Departmental Disciplinary Charges.</b></p>
<p><b>8. The relationship between the misconduct and the member's public duties;</b></p>	<p><b>Direct relationship between Mr. Jones and his public duties as a police officer.</b></p>
<p><b>9. The quality of moral turpitude or the degree of guilt or culpability, including the member's motives and reasons, personal gain and similar considerations;</b></p>	<p><b>High degree of moral turpitude.</b></p>
<p><b>10. The availability and adequacy of other penal sanctions; and</b></p>	<p><b>On July 9, 2008, a departmental hearing was held on the charges stemming from false receipts and a six-month suspension was recommended. Mr. Jones appealed the discipline and following a hearing in the OAL, which resulted in a recommendation for a 3</b></p>

	<p>month suspension because Mr. Jones made false statements during the investigation of his receipts, even though the amount of the expenses were reasonable. The CSC adopted the recommendations in the ID.</p> <p>By means of a Settlement Agreement and General Release, Mr. Jones' resignation from employment with Millville and the Police Department was effective December 1, 2011. The pending administrative disciplinary charges will be considered dismissed and withdrawn as moot. Mr. Jones will not seek nor will he be entitled to a return to employment with Millville.</p>
<p><b>11. Other personal circumstances relating to the member which bear upon the justness of forfeiture.</b></p>	<p>None provided by Mr. Jones.</p>

Additionally, the Board finds that the settlement agreement entered into by Millville and Mr. Jones, prohibits Mr. Jones from returning to employment in any position with the City of Millville.

The agreement states that Mr. Jones:

Agrees to waive any right to return to employment in any position with the City of Millville and agrees that he shall not do so. This waiver of any return to employment with the Defendant shall include that Plaintiff shall not seek a return to employment in the event of a denial of any pension application he may file and shall also not seek a return to employment in the event that he may be approved for some form of disability pension and later if it shall be determined that he is no longer subject to the disability which formed the basis for the pension. Even in that event, regardless of any effect which it may have upon his pension or income status and regardless of any statutory or regulatory provisions which may suggest to the contrary, Plaintiff shall not seek nor shall he be entitled to a return to employment with the City of Millville.

On June 16, 2017, the PFRS Board staff sent a letter to Millville asking if Mr. Jones would have a position to return to in the event he was granted a disability retirement and the disability

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later substantially diminished to the point he was able to return to work pursuant to N.J.S.A. 43:16A-8(2). On June 20, 2017 Millville indicated that Mr. Jones waived his right to return to employment even in the event of a denial of any pension application, that the agreement stands and there is no position available for him with the Millville.

### **Legal Conclusion**

The ID recommended reversing the total forfeiture of Mr. Jones's salary and service credit and imposing no forfeiture at all, finding that factors seven, eight and nine under the Uricoli test were not satisfied. Uricoli v. Bd. of Trs., Police & Firemen's Ret. Sys., 91 N.J. 62, 68-70 (1982) (factor seven concerns nature of misconduct or crime; factor eight concerns relationship between misconduct and member's public duties; and factor nine concerns quality of moral turpitude or degree of guilt or culpability). The ALJ indicated that the Board did not consider the 2011 PNDA. Further, the ALJ recommended that the Board allow him to proceed with his application for Accidental disability retirement benefits. ID at 20.

As set forth above, the Board modified several factual findings, specifically the consideration of the 2011 PNDA, because the ALJ failed to recognize that the Board considered both the 2008 PNDA and 2011 PNDA. The Board's authority in honorable service matters is set forth in N.J.S.A. 43:1-3(b), which states:

The board of trustees of any State or locally-administered pension fund or retirement system created under the laws of this State is authorized to order the forfeiture of all or part of the earned service credit or pension or retirement benefit of any member of the fund or system for misconduct occurring during the member's public service which renders the member's service or part thereof dishonorable and to implement any pension forfeiture ordered by a court pursuant to section 2 of P.L. 2007, c.49 (C.43:1-3.1).

[ibid.]

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The statute uses the word “misconduct” -- not crime, offense or charge. The Legislature has empowered the Board to look at all misconduct, including charges like the 2011 PNDA. Even when civil or criminal charges or actions for misconduct are dismissed in exchange for a resignation in good standing, the Board is specifically authorized to review the charges for honorable service. N.J.S.A. 43:1-3. The Board did, can and should examine the charges contained in the 2011 PNDA.

The Board rejects the ALJ’s legal conclusions to the extent the legal analysis adopts a definition of “moral turpitude” based on State Board of Medical Examiners v. Weiner, 68 N.J. Super. 468 (App. Div. 1961). While the Uricoli Court in part derived the moral turpitude factor from Gauli v. Board of Trustees, Police and Firemen’s Retirement System, 143 N.J. Super. 480 (App. Div. 1976), which does cite to State Board of Medical Examiners v. Weiner, no express definition of moral turpitude is adopted. Uricoli, supra, 91 N.J. at 68. In fact Gauli holds that the “real lesson” with respect to moral turpitude in State Board of Medical Examiners v. Weiner, is the “acknowledgement of ‘the elasticity of the phrase and its necessarily adaptive character’” and that it should be applied to reflect “at all times [] the common moral sense prevailing throughout the community.” 143 N.J. Super. at 483 (quoting State Board of Medical Examiners v. Weiner, supra, 68 N.J. Super. at 484). The Uricoli Court noted that the “decisions of this Court [after Gauli] expressly embrace a more flexible approach in determining whether the character of misconduct of public employees will justify the deprivation of pension benefits. 91 N.J. at 68.

The Board also rejects the legal conclusion that the “Appellate Division has yet to affirm total forfeiture outside of Corvelli.” ID at 13. The Appellate Division has affirmed at least two total forfeitures in the following unreported cases. Tavaglione v. Bd. of Trs., Police & Firemen’s Ret. Sys., Docket No. A-5478-13T4, (App. Div.), certif. denied 225 N.J. 220 (2016)(affirming total forfeiture of

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5 years and six months); Barnes v. Bd. of Trs., Pub. Employees' Ret. Sys., Docket No. A-4686-12T3, (App. Div. May 9, 2014) (affirming total forfeiture of about twelve years of creditable service).

In accordance with N.J.S.A. 43:1-3 and Uricoli, supra, the Board balanced the 11 factors incorporating the Board's original analysis and the additional facts and evidence adduced at hearing. Factors 1 through 6 are not in dispute. Mr. Jones has 12 year and 2 months of PFRS service credit, he applied for an Accidental disability retirement, his pension is vested, and he is a police officer with 12 years and 2 months of public service.

The Board expressly rejects the ALJ's legal conclusions related to Uricoli factors 7, 8, and 9. The Board rejects the ALJ's conclusion on factor 7 that Mr. Jones's 'misconduct was not substantial or grave' and that it "was not continuing in nature, but isolated to the internal investigation." Instead, the Board concludes that Mr. Jones has a history of being untruthful, starting on November 28, 2007, when he was untruthful with investigators regarding his submission of receipts for reimbursement in 2005 and 2006. His untruthfulness continued through the investigation and was the basis for the three month suspension recommended by the OAL and adopted by the CSC. He was again charged in 2011 in part with being untruthful. Additional charges in 2011 related to not obeying rules and laws, compromising an investigation, and conduct unbecoming of public employee and an officer. Thus, the misconduct is substantial and ongoing.

As to factor 8, the Board rejects the ALJ's conclusion that the "misconduct of being untruthful during the internal investigation had no bearing or connection to his duties as a police officer." Mr. Jones was a police officer who repeatedly lied about documents submitted to his employer as part of his job. He lied to fellow police officers investigating him. In 2011, he was again charged with untruthfulness, violations of ethical standards, violating rules and regulations, compromising an



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investigation, and conduct unbecoming a public employee and officer. The Board finds that there is a direct relationship between the misconduct and Mr. Jones's public duties.

As discussed above, the Board rejects the legal conclusion related to "moral turpitude" because the ALJ applied a specific definition that was not adopted by the Uricoli Court. The Board concludes that Mr. Jones actions in lying were for personal gain. He lied about receipts he submitted in order to obtain monetary reimbursement. Mr. Jones's degree of responsibility for the charges is high, as established at an OAL hearing. The Board finds a high degree of guilt or culpability in factor 9.

In regard to the availability and adequacy of penal sanctions, factor 10, the Board notes that Mr. Jones received a three month suspension for the 2007 untruthfulness, and the 2011 PNDA was settled with Mr. Jones agreeing to leave employment.

As to factor 11, the Board accepts the analysis of the ALJ, recognizing the record of progressive disciplinary actions prior to 2007 and the commendations Mr. Jones received.

In balancing the 11 factors, the Board noted that November 28, 2007, was the date that Mr. Jones was first untruthful to the investigators. Based on the facts adduced at hearing and the totality of the evidence, the Board rejects the ALJ's conclusion that a partial forfeiture is not warranted. Instead, the Board now concludes that a partial forfeiture of service and salary credit from November 28, 2007, the date that Mr. Jones was first untruthful to the investigators, through June 30, 2011, the date for which pension contributions were last submitted, is warranted. The Board relied upon a modified Uricoli analysis, set forth above, incorporating the evidence at hearing along with the 2011 PNDA, in accordance with N.J.S.A. 43:1-3(b) and N.J.A.C. 17:1-6.1(c).

Finally, the Board rejects the legal conclusion that Mr. Jones qualifies to apply for Accidental disability retirement benefits. The only issue transmitted to the OAL was an appeal of the total

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forfeiture of Mr. Jones's pension service and salary credit. The question of whether Mr. Jones could apply for Accidental disability retirement benefits was not the matter transmitted to the OAL on appeal and therefore, the ALJ had no jurisdiction to rule on this issue. N.J.S.A. 52:14B-10.

The Board concludes that Mr. Jones is ineligible for file for Accidental disability retirement benefits. Mr. Jones and Millville entered into a settlement agreement stating Mr. Jones:

Agrees to waive any right to return to employment in any position with the City of Millville and agrees that he shall not do so. This waiver of any return to employment with the Defendant shall include that Plaintiff shall not seek a return to employment in the event of a denial of any pension application he may file and shall also not seek a return to employment in the event that he may be approved for some form of disability pension and later if it shall be determined that he is no longer subject to the disability which formed the basis for the pension. Even in that event, regardless of any effect which it may have upon his pension or income status and regardless of any statutory or regulatory provisions which may suggest to the contrary, Plaintiff shall not seek nor shall he be entitled to a return to employment with the City of Millville.

In response to a direct question on whether the settlement agreement would prohibit Mr. Jones from returning to work pursuant to N.J.S.A. 43:16A-8(2), Millville stated that Mr. Jones waived his right to return to employment even in the event of a denial of any pension application, that the agreement stands, and there is no position available for him with Millville. Thus, the Board concludes that Mr. Jones is unable to comply with N.J.S.A. 43:16A-8(2).

If Mr. Jones's application was processed and he was granted an Accidental disability retirement benefit and later it was determined that he was no longer disabled, there is no mechanism for the Board to stop paying his pension because he could never be ordered to return to work, as required by N.J.S.A. 43:16A-8(2). Granting a disability retirement under these circumstances would be in contravention of the statutory scheme, and place the Board in the position of potentially paying

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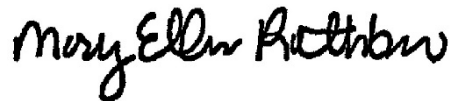
a disability pension which the Board has no ability or mechanism to terminate if the member is no longer totally and permanently disabled.

**CONCLUSION**

For the foregoing reasons, the Board (1) modifies the factual findings as indicated above, (2) modified the legal conclusion and imposed a partial forfeiture of service and salary from November 28, 2007 through June 30, 2011 in accordance with N.J.S.A. 43:1-3(b) and N.J.A.C. 17:1-6.1(c) and (3) determined that Mr. Jones is ineligible to apply for Accidental disability retirement.

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-10/MER

C: DAG Thomas Hower (ET); DAG Danielle Schimmel (ET)  
Steve Jones |