



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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December 7, 2023

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

Sent via email to [REDACTED] .

Obianuju Okosa
[REDACTED]

PERS # 2-[REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Ms. Okosa:

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 of July 19, 2023, the Board found that you were ineligible for Deferred retirement benefits because you were dismissed for cause on charges of misconduct or delinquency directly related to your employment in accordance with N.J.S.A. 43:15A-38. By way of letter dated September 5, 2023, you appealed the Board's decision.

At its meeting of November 15, 2023, 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 meeting of December 6, 2023.

FINDINGS OF FACT

The Board made the following factual findings.

The record before the Board establishes that you were enrolled in the PERS on November 1, 1990, as a result of your employment as an Income Maintenance Technician with the Union

County Board of Social Services. You remained with this employer and held the title of Redetermination Worker until your termination on July 7, 2003.

On February 17, 1999, you were administratively removed from public employment for Incompetency, Inefficiency or Failure to Perform Duties; Insubordination; Conduct Unbecoming a Public Employee; and Neglect of Duty. Subsequently, you appealed the termination and the Appellate Division affirmed the decision to sustain all charges but reduced the termination to a three-month suspension. Thereafter, you were awarded back pay, lost benefits and seniority.

However, your employer again issued a Preliminary Notice of Disciplinary Action that charged you with Incompetency, Inefficiency or Failure to Perform Duties, Insubordination, Conduct Unbecoming a Public Employee, Neglect of Duty, and Other Sufficient Cause. Union County Board of Social Services sought your removal effective July 7, 2003.

Specifically, you failed to incorporate your training into your daily assignments, failed to differentiate among the different programs offered by the Union County Board of Social Services and were deemed inefficient in implementing tasks required of your position. Furthermore, you displayed inappropriate behavior including complaints made by clients about your conduct, threatened harm to supervisors, and acted in an unprofessional manner towards supervisors and colleagues. You also took official records out of the office and failed to return them the next day. In addition, you were ordered to counseling with the County Employee Assistance Program counselor on June 3, 2003. However, you refused to set up an appointment.

On November 11, 2003, a Final Notice of Disciplinary Action sustained all charges and terminated you from employment. You appealed the termination and the matter was transmitted to the Office of Administrative Law (OAL). On July 5, 2007, the Administrative Law Judge (ALJ) issued an Initial Decision and found that your employer met its burden of proof with respect to all charges and upheld your removal.

At the time of your dismissal from employment, you were 41 years of age and your membership account reflected a total of 12 years and 5 months of PERS service credit. Therefore, at that time, the only benefit for which you could apply was a Deferred retirement. On March 9, 2022, you filed a retirement application requesting Deferred retirement benefits effective April 1, 2022.

The Board considered your application for Deferred retirement benefits at its meeting of July 19, 2023. At the meeting, the Board found that you were removed for cause on charges of misconduct or delinquency and thus, ineligible for Deferred retirement benefits. By letter dated September 5, 2023, you filed a timely appeal of the Board's decision.

At its meeting on November 15, 2023, the Board considered your appeal, 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 December 6, 2023 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 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 claimed that your former employer “sent and formatted things that do not exist” and put them in your personnel file. You also claim that you were unsuccessful in overturning your second termination due to lack of counsel. However, the factual issues surrounding your termination were supported by documentary evidence and testimony that the ALJ found credible. It is not within the Board’s purview or competence to re-litigate your termination years after the event.

At the time of your dismissal from employment, you were 41 years of age and your membership account reflected a total of 12 years and 5 months of PERS service credit. Therefore, at that time the only benefit for which you could apply was a Deferred retirement.

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 charges of misconduct or delinquency directly related to your employment, and 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 he intends to appeal the Board’s determination. Withdrawal terminates all rights and privileges of membership.**

As noted above, the Board has considered your 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. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Public Employees’ Retirement System.

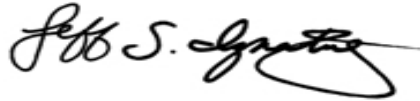
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You have the right to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey.

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. Ignatowicz". The signature is fluid and cursive, with a large loop at the end.

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

G-8 /SD
C: J. Ehrmann (ET); R. Willever (ET)