



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
P. O. Box 295
TRENTON, NEW JERSEY 08625-0295

CHRIS CHRISTIE
Governor

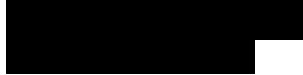
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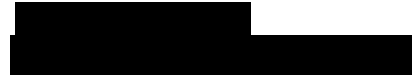
JOHN D. MEGARIOTIS
Acting Director

Telephone (609) 292-7524 / Facsimile (609) 777-1779
TRS 711 (609) 292-6683
www.state.nj.us/treasury/pensions
December 12, 2017

Alterman & Associates
Jeffrey S. Ziegelheim, Esquire



RE: Wendi Pittius



FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board of Trustees of the Police and Firemen's Retirement System ("Board") has reviewed the Initial Decision ("ID") of the Administrative Law Judge ("ALJ") Joan Lasala Candido dated September 29, 2017,¹ in the above captioned matter, together with the joint stipulation of facts, the items submitted into evidence by the parties, exceptions filed by you dated October 6, 2017 and reply to exceptions filed Deputy Attorney General Christina Levecchia dated October 18, 2017.

At its meeting of November 13, 2017, the Board voted to adopt the ALJ's findings of fact, with modification and rejected ALJ's modified forfeiture and reaffirmed its original penalty. The ALJ concluded that the Board met its burden of proof to sustain a partial forfeiture of Ms. Pittius's pension, but the partial forfeiture should only reflect the duration of the relationship Ms. Pittius had with inmate R.P. while the inmate was under her supervision. Thus, the ALJ determined that the appropriate penalty should be four months and fifteen days, January 1,

¹ The Board requested and was granted an extension of time until December 28, 2017 to issue its final decision.

2012 through May 15, 2012 (the period of time she had a relationship with the inmate), rather than the forfeiture (January 2011 through September 30, 2012) imposed by the Board.

The Board rejected this determination and has issued the following Findings of Fact and Conclusions of Law which constitute the Final Administrative Determination in this matter.

FINDINGS OF FACT

At its meeting on September 8, 2014, the Board considered Ms. Pittius's request to file for Ordinary Disability retirement and the question of her honorable service. At that time, Ms. Pittius's PFRS membership account reflected a total of 10 years and 4 months of membership service credit. The Board determined that Ms. Pittius's service and salary credit from January 1, 2011 through the end of her employment, September 30, 2012, would not be used in the calculation of any retirement benefit because that service credit was dishonorable. The Board determined that this forfeiture was appropriate after balancing the 11 factors identified by the Supreme Court in Uricoli v. Board of Trustees, Police and Firemen's Retirement System, 91 N.J. 62 (1982) and codified by the Legislature at N.J.S.A. 43:1-3. After this forfeiture of service and salary, Ms. Pittius's PFRS account reflected less than 10 years of service credit.

The Board then determined that Ms. Pittius was ineligible to file for Ordinary Disability retirement because she did not satisfactorily demonstrate that her employment was discontinued because of a disability. Instead, she filed her application as a result of a guilty plea and subsequent order of forfeiture and did not leave work due to a disabling medical condition. Further, because the order of forfeiture bars her from public employment in New Jersey, she cannot return to employment should she be granted a disability retirement and that disability subsequently diminishes to the point that she can return to employment, in accordance with N.J.S.A. 43:16A-8(2). The Board's determination that Ms. Pittius was ineligible to file for Ordinary Disability was separately voted upon at the Board's September 8, 2014 meeting, and

Ms. Pittius's attorney, Stuart Alterman, Esq, was present at the meeting. The decision was further explained in the Board's letter dated September 11, 2014. The Board's determination related to the ineligibility to file for Ordinary Disability retirement was not appealed and that issue was not transmitted to the Office of Administrative Law ("OAL") for hearing. Therefore, the Board finds that the facts related to the denial of the eligibility to file for an Ordinary Disability retirement are uncontested and incorporates the facts from the September 11, 2014 decision by reference.

As a result of the Board's forfeiture of Ms. Pittius's service and salary credit and determination that she is ineligible to file for Ordinary Disability retirement benefits, Ms. Pittius is only eligible to withdraw her contributions from PFRS.

The Board now adopts the ALJ's factual findings related to Ms, Pittius's appeal of the partial forfeiture with modification to Fact #7 in the Initial Decision which states "Pittius intends to apply for Ordinary Disability pension benefits based upon the 10 years and four month in PFRS." The Board modifies this factual finding to reflect that a member of PFRS only needs 4 years of membership service credit to apply for Ordinary Disability retirement and Ms. Pittius has the requisite service credit both before and after the Board's forfeiture of service and salary credit.

LEGAL CONCLUSION

It is undisputed that Ms. Pittius had an inappropriate relationship with R.P., an inmate under her supervision. After she pleaded guilty to fourth degree criminal sexual contact, the Board voted to forfeit her service and salary for the period of January 1, 2011 (one year prior to the start of the relationship) to the end of Pittius's employment on September 30, 2012 -- a total of 21 months. The ALJ recommended a forfeiture of service and salary credit limited to the duration of the relationship between Ms. Pittius and R.P., based on her findings that with the

exception of the admitted relationship with R.P, Ms. Pittius had an otherwise remarkable career, and the Board did not prove that Ms. Pittius's sexual relationship with R,P. extended beyond May 15, 2012. The Board does not dispute these findings. However, after balancing the 11 factors of Uricoli, supra, and N.J.S.A. 43:1-3, the Board concludes that its original forfeiture of 21 months of service and salary credit is the more appropriate forfeiture based on egregious nature of the misconduct to which she pleaded guilty, fourth degree criminal sexual contact with an inmate who was under her supervision. Based on the facts as found by the ALJ and modified by the Board, the Board analyzes the 11 factors as follows:

1. The member's length of service;	10 years, 4 months;
2. The basis of retirement;	Ordinary Disability;
3. The extent to which the member's pension has vested;	The member's pension is vested she has more than 10 years of service;
4. The duties of the particular member;	Correction Officer for Middlesex County;
5. The member's public employment history and record covered under the retirement system;	10 years, 4 months;
6. Any other public employment;	Ms. Pittius enrolled in the PERS on June 1, 2002 as a Communications Officer. She enrolled in PFRS on September 1, 2004. She transferred 27 months of PERS service credit to the PFRS;
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;	<p><u>Criminal Charges:</u></p> <p>Mr. Pittius was charged with 1 count 4th degree Criminal Sexual Contact;</p> <p>Specifically, between January 1, 2012 and May 15, 2012 Ms. Pittius did commit an act of Sexual contact with an inmate detained in the Middlesex County Adult Correctional Facility. Ms. Pittius had supervisory or disciplinary power over the inmate;</p> <p>Administrative Charges:</p> <p>Ms. Pittius was charged with conduct</p>

	<p>unbecoming a public employee. In violation of Departmental Rules and Regulations. Ms. Pittius maintained an inappropriate relationship with an inmate and her family. She was suspended effective August 31, 2012 without pay;</p>
<p>8. The relationship between the misconduct and the member's public duties;</p>	<p>There was a direct relationship between Ms. Pittius' misconduct and her public duties as a correction officer;</p>
<p>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;</p>	<p>Her crime reflected a high degree of moral turpitude;</p>
<p>10. The availability and adequacy of other penal sanctions; and</p>	<p>Ms. Pittius pleaded guilty to 4th degree, Criminal Sexual Contact. Per the terms of the plea agreement, Ms. Pittius forfeited her present public employment as a corrections officer. She was permitted enrollment in the Pre-Trial Intervention Program (PTI) subject to entering into a Consent Judgment whereby she agreed to forfeiture forever from holding any public office, position, or employment, elective or appointive, in the State of NJ;</p> <p><u>Administrative Charges:</u></p> <p>On March 2, 2014 Ms. Pittius resigned not in good standing from employment with Middlesex County;</p>
<p>11. Other personal circumstances relating to the member which bear upon the justness of forfeiture.</p>	<p>Ms. Pittius filed for Ordinary Disability retirement benefits. Mr. Alterman claimed that the previous abuse by Ms. Pittius' supervisor lead to her misconduct and behavior.</p>

Where the Board determines that a partial, rather than a total, forfeiture is warranted, the Board "shall order that the benefits be calculated as if the accrual of pension rights terminated as of the date the misconduct first occurred." N.J.S.A. 43:1-3(d) (emphasis added). Where

“termination as of [the date the misconduct first occurred] would in light of the nature and extent of the misconduct result in an excessive pension or retirement benefit,” the Board may choose “a date reasonably calculated to impose a forfeiture that reflects the nature and extent of the misconduct and the years of honorable service.” N.J.S.A. 43:1-3(d) (emphasis added). The Board rejects the forfeiture recommended by the ALJ, of four months and 15 days, as too lenient.² It is less than the Legislature’s presumptive forfeiture of the date of misconduct through the end of employment and does not reflect the egregious nature of the misconduct. N.J.S.A. 43:1-3(d). The Board’s forfeiture of one year back from the start of the misconduct, resulting in a 21 month forfeiture of service credit is appropriate, given that Ms. Pittius pled guilty to a fourth degree crime of criminal sexual conduct with an inmate who was in custody, and thus the criminal act directly relates to her job duties as a correction officer. Further, N.J.A.C. 17:1-6.1(c) explicitly permits the Board to craft an equitable remedy, reflecting the “nature and extent of the misconduct” and “the years of honorable service.”

The Board’s forfeiture is consistent with its prior actions, including Orosz v. Board of Trustees, A-3175-13T3 (App. Div. June 3, 2015), where the Appellate Division affirmed the Board’s partial forfeiture of one year of service credit, reducing Orosz’s service credit to below the four years required for an Ordinary Disability retirement benefit. Orosz, a correction officer, was arrested and charged with criminal sexual conduct and simple assault, and arrested again the next day on charges of unlawful possession of a weapon, pepper spray, resisting arrest, and harassment. Id. at *1-2. He was also charged administratively. Id. at *2. His disciplinary charges resulted in an agreement for Orosz to resign in good standing but he would remain suspended until his resignation. Ibid. The criminal charges resulted in Orosz’s guilty plea to

² The Board notes that even under the forfeiture recommended by the ALJ, Ms. Pittius would have less than 10 years of service credit in the PFRS and therefore be ineligible for a Deferred retirement pursuant to N.J.S.A. 43:16A-11.2.

two charges of disorderly conduct involving the use of offensive language and a dismissal of the other criminal charges. Ibid. He was sentenced to two years' probation on each charge, to run concurrently. Ibid. When the Board originally considered Orosz's application for Ordinary Disability retirement benefits, the Board voted to forfeit his entire pension service and salary credit of four years and nine months. Id. at *3. After a hearing, an ALJ recommended that none of Orosz's service and salary credit be forfeited because the Board had not proven more than the charges involving offensive language, the conduct was off-duty, did not involve a high degree of moral turpitude, and Orosz already suffered by not being allowed to return to law enforcement. Id. at *3-4. The Board rejected the ALJ's recommendation, setting forth its findings based on the record, and again considered the factors for honorable service, now determining that a partial forfeiture of one year service and salary credit was warranted. Id. at *4-6. The Board explicitly noted that this forfeiture resulted in Orosz having less than four years of honorable service, making him ineligible for any retirement benefits. Id. at *6.

On appeal, the Appellate Division affirmed the Board's forfeiture, noting the Board's determination that "Orosz had unlawfully possessed pepper spray and resisted arrest. The Board also took note of the administrative charges, and found there was a 'direct relationship' between the neglect of duty charge and Orosz's service as a corrections officer." Id. at *8.

Here, given the egregious quality of Ms. Pittius's criminal behavior and its direct relationship to her duties, and the fact that her administrative charges were resolved by resignation not in good standing, the Board concludes that a partial forfeiture of 21 months is appropriate and consistent with its prior actions.

Finally, the Board concludes that Ms. Pittius is not eligible to file for Ordinary Disability retirement. The basis of the Board's denial, that she filed her application as a result of a guilty plea and subsequent order of forfeiture, did not leave work due to a disabling medical condition,

and cannot return to public employment in New Jersey under the forfeiture order, was outlined in its decision letter dated September 11, 2014. This issue was never appealed nor was this issue litigated in the OAL. The Board thus concludes that Ms. Pittius did not leave work due to her disability as required by N.J.S.A. 43:16A-6, which provides for an Ordinary Disability retirement when the “member is mentally or physically incapacitated for the performance of his usual duty...and that such incapacity is likely to permanent and to such an extent that he should be retired.” As Ms. Pittus left work due to the criminal conviction and order of forfeiture, she did not leave work because she was incapacitated and should be retired.

Further, due to the fact that Ms. Pittius can never return to public employment in New Jersey, she cannot comply with the provisions of N.J.S.A. 43:16A-8(2). N.J.S.A. 43:16A-8(2) provides, in pertinent part:

Any beneficiary under the age of 55 years who has been retired on a disability retirement allowance under this act, on his request shall, or upon the request of the retirement system may, be given a medical examination and he shall submit to any examination by a physician or physicians designated by the medical board once a year for at least a period of five years following his retirement in order to determine whether or not the disability which existed at the time he was retired has vanished or has materially diminished. If the report of the medical board shall show that such beneficiary is able to perform either his former duty or any other available duty in the department which his employer is willing to assign to him, the beneficiary shall report for duty; such a beneficiary shall not suffer any loss of benefits while he awaits his restoration to active service. If the beneficiary fails to submit to any such medical examination or fails to return to duty within 10 days after being ordered so to do, or within such further time as may be allowed by the board of trustees for valid reason, as the case may be, the pension shall be discontinued during such default.

[Ibid.]

Both the New Jersey Supreme Court and Appellate Division have held that N.J.S.A. 43:16A-8(2) mandates an employer reinstate a member returned from disability with seniority and credit for prior service.

In In Re Allen, 262 N.J. Super. 438 (App. Div. 1993), the Appellate Division considered Hazlet Township's appeal from a Merit System Board determination that Allen, a formerly disabled police sergeant, be returned to employment in his former position with the next vacancy and that his seniority include his prior and current employment. Id. at 440. In affirming the Merit System Board's determination, the Appellate Division discussed the Merit System Board's application and interpretation of N.J.S.A. 43:16A-8(2) and held:

It is apparent that the grant of disability retirement is conditioned on the continuation of the incapacity. If the retired employee regains the ability to perform his or her duties, the Legislature mandated that he or she be returned to the former position. The Legislature clearly recognized that individuals returning from a disability retirement are in a unique situation, plainly different from all other employees returning to active service. Their separation from employment is unlike the voluntary separation of other civil servants whose seniority is not aggregated. In our view, N.J.S.A. 43:16A-8(2) contemplates that a restoration to employment return the formerly disabled individual as nearly as possible to the status held at the time he or she was pensioned. The aggregation of seniority complies with the legislative mandate that disabled employees return to their former position upon cessation of their disability.

[Allen, supra, 262 N.J. Super. at 444.]

In looking at the return to work provisions governing the Teachers' Pension and Annuity Fund ("TPAF") (N.J.S.A. 18A:66-40(a)), in Klumb v. Board of Education of Manalapan-Englishtown Regional High School District, 199 N.J. 2009, our Supreme Court noted that while TPAF had "not [yet] developed a consistent administrative position" on the return to work provision, the other State retirement systems, the Public Employees' Retirement System and PFRS, had interpreted their respective statutes. Id. at 30-34. In agreeing with the longstanding administrative and judicial interpretation of N.J.S.A. 18A:66-40(a), and specifically adopting the rationale of the Appellate Division in Allen, supra, the Court stated:

In our view, N.J.S.A. 18A:66-40(a), like its counterparts, is not simply an anti-fraud measure, but part and parcel of a humane and sensible scheme that allows a worker who has recovered from a disability to be assured gainful employment, assuming he remains qualified therefor. The statute balances the worker's

interest with those of the employer and the public by encouraging the worker to report his rehabilitation and forgo his pension in favor of work. Under that scheme, the pension system does not continue to pay an able-bodied worker; the school district obtains the services of a qualified teacher; and the newly rehabilitated teacher returns to being a productive member of society.

[Klumb, supra, 199 N.J. at 34-35].

It is thus clear under N.J.S.A. 43:16A-8 that an employer must return a formerly disabled employee to employment. Due to the forfeiture of public office, Ms. Pittius can never return to work. Thus, if her application were processed and she were granted a disability pension there is no mechanism for the Board to stop paying the pension if she is no longer disabled, because she could never be ordered to return to work, as required by N.J.S.A. 43:16A-8(2).

For the foregoing reasons, the Board adopts the ALJ's findings of fact, with modification, to Fact #7 and rejects the ALJ's recommendation of a modified forfeiture of four months and fifteen days and stands by its original forfeiture of twenty one months. The Board confirms its determination that Ms. Pittius is not eligible to apply for Ordinary Disability retirement benefits.

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-12/mer

C: Christina Levecchia, DAG (ET); Danielle Schimmel, DAG (ET)

Wendi Pittius