



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
P. O. Box 295

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August 22, 2024

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

Sent via email to: [REDACTED]

Craig Pressley
[REDACTED]
[REDACTED]

RE: PERS [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Pressley:

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) affirming the determination of the Division of Pensions and Benefits (Division) that your post-retirement employment violated PERS rules for Disability retirees. At its meeting of February 21, 2024, the Board affirmed the Division's determination and found that your employment with the Trenton Board of Education (BOE) required your re-enrollment in the PERS and the cessation of your disability benefit pursuant to N.J.S.A. 43:15A-44. Thereafter, you filed a timely appeal of the Board's decision.

At its meeting of June 19, 2024, the Board considered your appeal. After careful review, the Board found no genuine issue of material fact in dispute and denied your request for an administrative hearing. Thereafter, the Board directed the undersigned to draft this 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 August 21, 2024.

FINDINGS OF FACT

The Board made the following factual findings.

You were originally enrolled in the PERS effective April 1, 1993, as a result of your employment with Mercer County as a Youth Worker. On April 21, 2003, you filed an application

for Ordinary Disability retirement benefits, effective May 1, 2003, which the Board approved at its meeting on May 21, 2003. Your disability benefit consisted of a gross monthly pension benefit of \$1,297.05, comprised of a Regular Allowance of \$1,167.89 and a Cost of Living Allowance (COLA) of \$129.16.

On August 5, 2022, you and your spouse, Tonia Pressley, contacted the Division's Office of Client Services to inquire about how different post-retirement employment scenarios (public/private employment) may affect your disability pension and health benefits. You were properly advised of the post-retirement employment restrictions as a disability retiree and you were provided the Division's Fact Sheet, which explained these provisions in detail.

On or about February 22, 2023, the Division received a *Notification of Employment After Retirement* form filed by the Trenton BOE advising that you had returned to employment in a 10-month, PERS-covered position, as a full-time Safety Officer effective February 6, 2023, at an annual salary of \$62,000. This prompted the Division's External Audit Unit (EAU) to begin its review of your return to employment. The EAU routinely reviews post-retirement employment for PERS retirees to ensure compliance with all applicable pension laws, rules and regulations. The review also determines whether a disability retiree's post-retirement employment requires re-enrollment pursuant to N.J.S.A. 43:15A-44 (b).

Upon completion of its review, the EAU issued its findings on or about June 23, 2023, and determined that your employment with the Trenton BOE while receiving a disability retirement benefit required the cessation of your benefit and re-enrollment in the PERS pursuant to N.J.S.A. 43:15A-44(b). The EAU found that as a disability retiree, you became eligible for membership in the PERS as a salaried employee at the time of your hire with the Trenton BOE because your annual salary was covered by Social Security and would exceed \$1,500, the minimum salary established for PERS membership at the time of your original enrollment in the PERS in 1993. Thus, the EAU determined that your mandatory enrollment date was established as February 1,

2023, and you were required to maintain active enrollment in the PERS from February 1, 2023 under your original membership Tier 1.

Subsequent to the EAU's June 23, 2023 letter, you advised the Division that you wished to continue your employment with the Trenton BOE. However, you advised that the Trenton BOE would not continue your employment after that time and you instead appealed the EAU's determination to the PERS Board.¹

At its meeting of February 21, 2024, the Board considered your personal statements and those of Ms. Pressley on your behalf; the statements of Auditors Katarzyna Brzostowski and Sunanda Rana of the EAU; and all documentation in the record. After careful consideration, the Board affirmed the EAU's determination, substantially for the reasons outlined in its June 23, 2023, letter.

As a result of the Board's decision, you were re-enrolled in the PERS as of February 1, 2023, and are required to repay all retirement benefits you received after that time. The Division previously stopped your monthly pension benefit and provided you with an updated outstanding balance. Based upon your earnings from the Trenton BOE and the prevailing pension rates in effect during this period, the total pension contributions owed to the PERS for the period from February 6, 2023 to the pay check dated June 30, 2023 total approximately \$2,255.25.² You will also accrue additional pension service and salary credit beginning February 1, 2023 on creditable pensionable earnings for the eligible periods of post-retirement employment.

Your active Tier 1 PERS account will remain open for a period of two years from the date you separated from employment with the Trenton BOE on June 30, 2023 (June 30, 2025). Should you return to employment in a PERS-covered position with any public employer in New Jersey within this two-year period, you will be eligible to contribute to this account as an active PERS

¹ You earned salary from the Trenton BOE from February 6, 2023 through June 21, 2023.

² Please note, the amounts estimates and are subject to change.

member. If you accept employment with any public employer in New Jersey, please notify the Division of Pensions and Benefits immediately.

You filed a timely appeal of the Board's decision.

At its meeting on June 19 2024, the Board considered your letter of appeal 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 August 21, 2024 meeting.

CONCLUSIONS OF LAW

The Board made the following conclusions of law.

A PERS disability retiree may, in some limited circumstances, return to public employment, provided such employment does not require the member to re-enroll in the PERS. However, once a disability retiree returns to public employment which makes them eligible to re-enroll, PERS' statutes require the member to re-enroll and as consequence, the member is no longer entitled to receive disability retirement benefits.

This matter is governed by N.J.S.A. 43:15A-44(b), which provides that:

If a disability beneficiary becomes employed again in a position which makes him eligible to be a member of the retirement system, his retirement allowance and the right to any death benefit as a result of his former membership, shall be canceled until he again retires.

Such person shall be reenrolled in the retirement system and shall contribute thereto at a rate based on his age at the time of his prior enrollment. Such persons shall be treated as an active member for determining disability or death benefits while in service and no benefits pursuant to an optional selection with respect to his former membership shall be paid if his death shall occur during the period of such reenrollment.

Upon subsequent retirement of such member, he shall receive a retirement allowance based on all his service as a member computed in accordance with applicable provisions of this act, but the total retirement allowance upon subsequent retirement shall not be a greater proportion of his final compensation than the proportion to which he would have been entitled had he remained in service

during the period of his prior retirement. Any death benefit to which such member shall be eligible shall be based on his latest retirement.

N.J.A.C. 17: 2-2.3(a) 7 states in pertinent part that,

... a "retired member" is a former member who has terminated all employment covered by the PERS, who has not received compensation from employment covered by the PERS for at least 30 consecutive calendar days, who is not receiving a disability retirement benefit...

The Board first determined that the position you returned to is PERS-eligible pursuant to N.J.S.A. 43:15A-7d (1) and N.J.A.C. 17:2-2.1 (a) & (b)1, because you were employed in a position that is covered by Social Security and earned more than \$1,500, the minimum annual salary required for enrollment under your original Tier 1 PERS membership. The regulations promulgated by the PERS Board, specifically N.J.A.C. 17:2-2.1 (a) & (b) 1, state:

"(a) A position with a public employer must be covered by Social Security as a prerequisite for membership in the System....

(b) Salary requirements and full-time fixed weekly work hours applicable to an employee's date of eligibility for enrollment must also be met, in order to qualify for enrollment:

1. If eligibility for enrollment began prior to November 2, 2008, the minimum salary requirement for the position is \$ 1,500 or more within a work year..."

In light of the above, the Board found that your employment with Trenton BOE was a PERS-covered position, which required your re-enrollment in PERS. As a result, you were not entitled to receive disability retirement benefits as of the date you should have been enrolled in the PERS (February 1, 2023) and are therefore required to repay all retirement benefits received after that date. In addition, because you were working in a PERS-covered position, you earned additional PERS service credit and are required to pay pension contributions on all salary earned during this period.

While the Board noted your assertion that you never intended to violate PERS' rules and regulations, it also noted that is required to enforce the PERS provisions as well as remain in compliance with IRS rules in order to maintain its tax-exempt status.

As noted above, the Board has considered your written submission and personal statements, as well as all documentation in the record. Because this matter does not entail any disputed questions of material 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.

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,



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