



State of New Jersey

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

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www.nj.gov/treasury/pensions
September 25, 2024

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

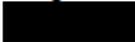
PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

Sent via email and regular mail

The Law Offices of Lauren Sandy, LLC
Lauren Sandy, Esq.



RE: James Regan
SPRS 

FINAL ADMINISTRATIVE DETERMINATION

Dear Ms. Sandy:

I am writing in reference to the decision of the Board of Trustees (Board) of the State Police Retirement System (SPRS) denying the request of your client, James Regan, to register under the amended benefits provisions of L. 2019, c.157, The Bill Ricci World Trade Center Rescue, Recovery and Cleanup Operations Act (Ricci Act) after the eligibility period expired. The Board originally denied Mr. Regan's request at its meeting of May 28, 2024. Thereafter, both you and Mr. Regan submitted timely letters of appeal.

At its meeting of July 23, 2024, the Board considered your personal statements and written submission as well as the personal statements and written submission of Mr. Regan in furtherance of his appeal. After careful consideration, the Board affirmed its previous decision. Further, finding no genuine issue of material fact in dispute, the Board denied an administrative hearing and 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 September 24, 2024 meeting.

FINDINGS OF FACT

The Board made the following factual findings.

Mr. Regan is receiving Special retirement benefits¹ from the SPRS, which became effective July 1, 2021.

The Ricci Act was signed into law on July 8, 2019. The law permits both active and retired members of the SPRS (as well as the PFRS and certain members of the PERS) to file for recalculation of Ordinary Disability retirement benefits or Service retirement benefits to an Accidental Disability retirement benefit if the member is, or becomes, totally and permanently disabled due to participation in the rescue, recovery, or cleanup operations at the World Trade Center between September 11, 2001, and October 11, 2001. The Ricci Act also provides for a rebuttable presumption that the disability “occurred during and as a result of the performance of the member’s regular or assigned duties and not the result of the member’s willful negligence, unless the contrary can be proved by competent evidence.” N.J.S.A. 53:5A-10(e)(2).

N.J.S.A. 53:5A-10(e)(4) required the Board to notify both active members and retired members of the respective retirement systems of the Ricci Act within 30 days of enactment (August 7, 2019). Further, both active members and retired members were required to file “a written and sworn statement with the retirement system on a form provided by the board of trustees thereof indicating the dates and locations of service” within two years (July 8, 2021) of the effective date of the Ricci Act.

In response to the aforementioned statute, on August 7, 2019, the Division of Pensions and Benefits (Division) added the Ricci Act web page to its website.² The page included user-

¹ Special Retirement is available at any age to members who have 25 years or more of service credit. The amount of the annual retirement allowance is equal to 65 percent of Final Compensation plus one percent of Final Compensation for each year of creditable service over 25 years but not to exceed 30 years. The maximum allowance is, therefore, 70 percent of Final Compensation.

² The link on the Division’s public web page was deactivated on or about August 3, 2021. See <https://www.nj.gov/treasury/pensions/ricci-ch157.shtml> (last accessed September 3, 2024).

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friendly tabs for active members, retirees, and employers, which provided information about the law such as qualifying dates, locations, health conditions and impairments; the requisite *Eligibility Registration Form*; the *Request for Amended Benefits Form*; a sample of the postcard to be mailed to retirees; and material for employers regarding the dissemination of information to employees. On August 8, 2019, the Division distributed via email a letter to all Certifying Officers advising them of their responsibilities under the Ricci Act. All Certifying Officers were required to make the letter available to their respective locations' employees and certify to the Division that they had done so. On August 9, 2019, Barton and Cooney, LLC, the vendor contracted by the Division, sent 200,647 postcards addressed to retired members, using the members' home addresses on file with the Division, to the United States Postal Service for standard delivery. On August 16, 2019, the Division sent an email to all Certifying Officers instructing them on how to proceed if they experienced technical difficulty with confirming distribution to their employees of the Ricci Act notice. Finally, on June 10, 2021, the Division posted a news item on its website advising members that the eligibility period to register under the Ricci Act was expiring soon and that "[m]embers who meet the requirements must submit an Eligibility Registration Form by July 8, 2021. Failure to submit the form by that date will render members ineligible to apply at a later date."

On March 3, 2023, you provided the Division with Mr. Regan's *Eligibility Registration Form* completed on February 28, 2023, as well as a sworn affidavit from Mr. Regan certifying that he "did not receive any correspondence or post card from the State Police Retirement Board or the Division of Pensions" with respect to the passage of the Ricci Act.

Subsequently, the Division received Mr. Regan's *Request for Amended Benefits Form*, which he completed on December 12, 2023. By letter dated February 6, 2024, the Division

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advised Mr. Regan that because his *Eligibility Registration Form* was past the deadline of July 8, 2021, his request to amend his retirement benefits pursuant to the Ricci Act was denied.

By letter dated March 13, 2024, you appealed the Division's denial and the matter was placed on the agenda of the Board's meeting of March 26, 2024. At said meeting, the Board noted that Mr. Regan was an active member of the SPRS at the time during which notification of the Ricci Act was required. As mentioned above, by way of email, the Division distributed a letter to all Certifying Officers (CO letter) advising them of their responsibilities under the Ricci Act. All Certifying Officers were required to make the CO letter available to their respective locations' employees and certify to the Division that they had done so. The record before the Board established that on August 16, 2019, Debra Prettyman, then Certifying Officer for the New Jersey State Police, acknowledged receipt and distribution of the information pertaining to the Ricci Act. The Board tabled Mr. Regan's matter at the March 26, 2024 meeting in order to seek clarification regarding the method by which Ms. Prettyman distributed the CO letter. The matter was then placed on the agenda of the Board's meeting of May 28, 2024.

At the May 28, 2024 meeting, the Board considered your submissions and personal statements, the personal statements of Mr. Regan and all pertinent documentation in the record, including the additional information the Board had sought regarding the CO letter. Although Ms. Prettyman has since retired, her successor confirmed that CO letters are disseminated through the Administration Information Center (AIC), which is the intranet site for the New Jersey State Police. Administrative items such as payroll/fiscal information, webinars, Standard Operating Procedure information as well as CO letters are posted to the site. Ms. Prettyman emailed the AIC manager on August 16, 2019 to post the CO letter. An AIC posting removal date of September 1, 2019 was listed on the request. It was explained that in the event of limited server space, the removal date refers to the request to not remove a posting prior to that date. However, due to a

new platform now used by the New Jersey State Police for their intranet, the actual removal date of the posting of the CO letter cannot be confirmed. The record before the Board further indicated that at least 17 active SPRS members filed timely eligibility registration forms, which establishes that active SPRS members were aware of the Ricci Act in the period during which they could register.

Finding that Mr. Regan did not submit his eligibility registration form by July 8, 2021, the Board determined that Mr. Regan is ineligible to register for amended benefits provided under the Ricci Act and denied his request to do so.

Thereafter, Mr. Regan and you each submitted a letter of appeal, dated June 26, 2024 and July 17, 2024 respectively.

At its meeting of July 23, 2024, the Board considered your personal statements and written submission as well as the personal statements and written submission of Mr. Regan in furtherance of his appeal. After careful consideration, the Board affirmed its previous decision. Further, finding no genuine issue of material fact in dispute, the Board denied an administrative hearing and directed the undersigned to draft detailed Findings of Fact and Conclusions of Law for review at its September 24, 2024 meeting.

CONCLUSIONS OF LAW

The Board found that this matter is controlled by N.J.S.A. 53:5A-10(e)(4), which states:

The board of trustees shall promulgate rules and regulations necessary to implement the provisions of this subsection and shall notify members and retirants in the retirement system of the enactment of this act, P.L.2019, c.157, within 30 days of enactment.

A member or retiree shall not be eligible for the presumption or recalculation under this subsection unless within two years of the effective date of this act, P.L.2019, c.157, the member or retiree files a written and sworn statement with the retirement system on a form provided by the board of trustees thereof indicating the dates and locations of service.

Mr. Regan did not submit his eligibility registration form until approximately 1 year and 7 months after the July 8, 2021 statutory deadline to do so. While "[t]he power to reopen proceedings 'may be invoked by administrative agencies to serve the ends of essential justice and the policy of the law,'" Minsavage for Minsavage v. Bd. of Trs., Teachers' Pension & Annuity Fund, 240 N.J. 103, 107-08 (2019) (quoting In re Van Orden, 383 N.J. Super. 410, 419 (App. Div. 2006)), the Board's exercise of that inherent power should be invoked only when a member demonstrates "good cause, reasonable grounds, and reasonable diligence." Minsavage for Minsavage, 240 N.J. at 109.

All active and retired members were notified of the Ricci Act's passage in August 2019. Because Mr. Regan was an active member at the time, no post card was sent to him. However, the evidence in the record establishes that the Division notified all Certifying Officers of the Ricci Act on August 8, 2019, thus demonstrating compliance with N.J.S.A. 53:5A-10(e)(4). The Certifying Officer of the New Jersey State Police at that time confirmed that information pertaining to the Ricci Act was disseminated to the location's employees.

In appealing the Board's denial of Mr. Regan's request to register for amended benefits provided under the Ricci Act, you assert that the AIC was not the appropriate place for the Certifying Officer of the New Jersey State Police to post the legislative notice about the Ricci Act. You pointed to a lack of proof that the notice was posted for a sufficient amount of time, if at all. You also claim that the notice, if posted, was deficient in form as it was allegedly the memorandum to Certifying Officers.

Although the Board is a single-employer body, the Board and the New Jersey State Police are separate and unique. It is not within the Board's purview or competence to determine how the Certifying Officer of the New Jersey State Police should distribute information it receives from the Division.

It is undisputed that the Division noticed the Certifying Officer of the New Jersey State Police of the Ricci Act on August 8, 2019 and that on August 16, 2019, Debra Prettyman, then Certifying Officer for the New Jersey State Police, acknowledged receipt and distribution of the information pertaining to the Ricci Act. The manner by which the Certifying Officer distributed that information is not within the scope of the Board nor does it negate the Board's compliance with N.J.S.A. 53:5A-10(e)(4).

In addition, the Division posted online all the information concerning the Ricci Act, including the eligibility registration form. Thus, the Board found Mr. Regan failed to establish good cause to allow Mr. Regan to file the form over 1 year and 7 months past the statutory deadline. Further, the Board also found that Mr. Regan did not exercise reasonable diligence nor demonstrate reasonable grounds for such a protracted delay in filing the eligibility registration form. See Velazquez v. Bd. of Trs., Police and Firemen's Retirement System, 2020 N.J. Super. Unpub. LEXIS 1126 (App. Div. June 12, 2020).

As Mr. Regan did not submit the eligibility registration form to the Division by July 8, 2021, and did not demonstrate "good cause, reasonable grounds, and reasonable diligence," the Board found him ineligible to register for amended benefits provided under the Ricci Act, and denied his request to do so.

As noted above, the Board has considered your personal statements and written submissions and those of Mr. Regan 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 State Police 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,



William Tedder, Secretary
Board of Trustees
State Police Retirement System

G-2/WT

C: C: D. Lewis (ET); A. Saco (ET); R. Clark (ET)

James Regan (sent via email to: [REDACTED])

Division of State Police
Dianna Sampson, Benefits Unit Head
[REDACTED]