



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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July 21, 2022

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

Sent via email to: [REDACTED]

Robin Ripa
[REDACTED]

RE: PERS #: [REDACTED]
PERS #: [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Ms. Ripa:

I am writing in reference to the denial by the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) of your request to reinstate your former PERS Tier 1 membership account. The Board originally denied your request at its meeting on April 20, 2022.¹ Thereafter, on or about May 22, 2022, you filed a timely appeal of the Board's decision. At its meeting of June 15, 2022, the Board considered your appeal and, finding no material facts in dispute, denied your request for an administrative hearing and directed the undersigned to draft this Final Administrative Determination, which the Board reviewed and approved at its meeting of July 20, 2022.

FINDINGS OF FACT

The Board made the following factual findings.

The record before the Board reveals that you were enrolled in your original PERS Tier 1 membership account ([REDACTED]) effective May 1, 2005, as a result of your employment with the Town of Hammonton as a Clerk Typist. On August 26, 2013 you transferred to the Buena Regional School District as a Secretary. Via letter dated May 12, 2014, the Buena Regional

¹ Due to health and safety concerns for the public regarding COVID-19, the meeting was conducted via teleconference.

School District informed you that they would not renew your contract for the 2014-2015 school year. On January 1, 2020, you returned to public employment and began working for the Town of Hammonton (Hammonton) as a Part-Time Keyboarding Clerk 1. On June 1, 2021 you were enrolled in your current PERS Tier 5 membership account (██████████) as a result of your employment with Hammonton as a Planning Aide.

Upon your enrollment with Hammonton, you requested that you be re-enrolled in your expired PERS Tier 1 membership account. In a letter dated January 6, 2022, Niquisha Munko, Acting Chief of the Enrollment Bureau, advised that your original account expired on or about September 30, 2016, because no pension contributions were received for over two years after you left employment. See N.J.S.A. 43:15A-7(e). Ms. Munko also advised because your original PERS Tier 1 membership account had expired, you were now required to be re-enrolled in a new Tier 5 membership account. Finally, Ms. Munko advised that because you were not terminated, dismissed, or otherwise laid off, you were not eligible to extend the expiration of your original PERS Tier 1 membership account. See N.J.S.A. 43:15A-8.

At its meeting of April 20, 2022, the Board considered your appeal and denied your request to reinstate your PERS Tier 1 membership account, substantially for the same reasons as outlined in Ms. Munko's January 6, 2022, letter. The Board determined that you were not eligible for the extended 10-year period as detailed in N.J.S.A. 43:15A-8, because you were not terminated as envisioned under the statute. Rather, your employment contract was not renewed and therefore the Division properly enrolled in you in a PERS Tier 5 membership account upon your return to public employment.

CONCLUSIONS OF LAW

The Board made the following conclusions of law.

As a general matter, a PERS member's account will expire within 2 years after their last pension contribution. However, N.J.S.A. 43:15A-8 provides that:

If a member of the retirement system has been discontinued from service without personal fault or through leave of absence granted by an employer or permitted by any law of this State and has not withdrawn the accumulated member's contributions from the retirement system, the membership of that member may continue, notwithstanding any provisions of this act if the member returns to service within a period of 10 years from the date of discontinuance from service.

[bid.]

Based on the plain language of the statute, because you were not terminated, dismissed, or otherwise laid off, your original PERS Tier 1 membership account is not eligible for the 10-year extension under N.J.S.A. 43:15A-8.

The Board also noted that the Appellate Division recently affirmed a decision of the Board of Trustees, Teachers' Pension and Annuity Fund on this issue in Buskey v. Bd. of Trs., Teachers' Pension and Annuity Fund No. A3559-19 (App. Div. Nov. 22, 2021). The court held:

N.J.S.A. 18A:27-4.1 (b) states: "A board of education shall renew the employment contract of a certificated or non-certificated . . . employee only upon the recommendation of the chief school administrator" and a non-tenured . . . employee who is not recommended for renewal by the chief school administrator shall be deemed non-renewed. Accordingly, in Pascack Valley, the Court held non-tenured employees "have no right to renewal of their [employment] contracts. 192 N.J. at 492. "These employees are then considered 'non-renewed' rather than terminated or dismissed. "ID at 493 (citing N.J.S.A. 18A:27-4.1 (b). To underscore the point, the Court distinguished between employees who are terminated and those whose contracts are simply not renewed. See id. at 492-93. This mirrored the Court's findings in other cases that the term "layoff" connotes involuntary dismissal during the term of a contract, and is not applicable to the non-renewal of a particular employee's appointment at the end of a fixed term. Camden Bd. Of Education v. Alexander, 181 NJ.187, 200 (2004) (superseded on other grounds by N.J.S.A. 34:13A-5.3).

In light of the statute and case law, the Board denied your request to reinstate your former PERS Tier 1 membership account.

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As noted above, the Board has considered your written submissions 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.

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

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

G-10/JSI
C: N. Munko (ET); R. Willever (ET)