



State of New Jersey

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

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June 20, 2024

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

Sent via email to: [REDACTED]

Law Offices of Eliot P. Green, Esq. LLC
Eliot P. Green, Esq.

[REDACTED]

RE: Wendell Smith
PERS [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Green:

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) denying the application for Deferred retirement benefits filed by your client, Wendell Smith. The Board originally denied Mr. Smith's application at its meeting of October 20, 2023, finding him ineligible for Deferred retirement benefits because he was removed for cause on charges of misconduct or delinquency directly related to his employment in accordance with N.J.S.A. 43:15A-38. By letter dated December 1, 2023, you filed a timely appeal of the Board's decision on Mr. Smith's behalf.¹

At its meeting on May 15, 2024, 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 June 16, 2024, meeting.

¹ To accommodate your request to obtain documentation in furtherance of the appeal, the matter was placed on the agenda of the Board's May 15, 2024 meeting.

FINDINGS OF FACT

The Board made the following factual findings.

Mr. Smith was enrolled in the PERS on June 29, 1991, as a result of his employment as an Institutional Trade Instructor II with Northern State Prison. He remained with Northern State Prison and held the title of Assistant Supervisor, Regional Food Service Operation, until his termination.

Records provided to the Division of Pensions and Benefits reveal that Mr. Smith was charged with Conduct Unbecoming a Public Employee and Verbal Abuse. In an Initial Decision Settlement dated September 22, 2004, the Administrative Law Judge approved the settlement between Mr. Smith and Northern State Prison and ordered a suspension of six (6) working days.

Subsequently, Mr. Smith was terminated from employment effective January 31, 2008 for verbally abusive conduct towards other employees and for extorting money from his subordinates.

At the time of Mr. Smith's removal from employment, he was 47 years of age and his membership account reflected a total of 16 years and 4 months of PERS service credit. Therefore, at that time, the only benefit for which Mr. Smith could apply was a Deferred retirement. He filed a retirement application on May 22, 2022, requesting Deferred retirement benefits effective June 1, 2022.

At its meeting of October 18, 2023, the Board considered Mr. Smith's application for Deferred retirement benefits. The Board found that because Mr. Smith was removed for cause on charges of misconduct or delinquency directly related to his employment, he is ineligible for Deferred retirement benefits and thus, denied his application.

By letter dated December 1, 2023, you filed a timely appeal of the Board's decision on Mr. Smith's behalf. To accommodate your request to obtain documentation in furtherance of the appeal, the matter was placed on the agenda of the Board's May 15, 2024 meeting. At said meeting, the Board considered your submissions and personal statements in support of your

appeal. After careful consideration, the Board affirmed its prior decision, finding Mr. Smith ineligible for Deferred retirement benefits based on the record. Finding no genuine issue of material fact in dispute, the Board 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 June 16, 2024 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 criteria 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,² if he so qualifies under said section, or;
- (b) A deferred retirement allowance, beginning at the retirement age...

[(Emphasis added)].

Based on the plain language of the statute as applied to the facts in the record, the Board determined that Mr. Smith was removed for cause on grounds of misconduct or delinquency directly related to his employment, and he is 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).

In support of your appeal, you provided an affidavit from Mr. Smith's former supervisor, dated May 14, 2024, in which he claims the allegations of misconduct leveled at Mr. Smith by his co-workers in 2007 were false and motivated by jealousy and ill will and that "in [his] opinion, [Mr.

² N.J.S.A. 43:15A-41

Smith] was wrongfully terminated.” Mr. Smith’s former supervisor then asserts that based on his fifteen years of supervising and managing Mr. Smith, including his observations of Mr. Smith’s conduct, demeanor and interactions with his fellow employees, Mr. Smith “absolutely deserves” Deferred retirement benefits.

First, the responsibility to evaluate an application for Deferred retirement benefits is solely the Board’s and it must do so consistently with the plain terms of N.J.S.A. 43:15A-38, which, as indicated above, provide Deferred retirement benefits only to former employees who were “not ... remov[ed] for cause on charges of misconduct or delinquency.”

Second, the affidavit does not vacate Mr. Smith’s termination. Mr. Smith had the opportunity to appeal his termination at the time he separated from service. Having failed to avail himself of that option, his termination on charges of misconduct or delinquency directly related to his employment became final. It is not within the Board’s purview or competence to re-litigate Mr. Smith’s termination over sixteen years later.

At the time of Mr. Smith’s removal from employment on January 31, 2008, he was 47 years of age and his membership account reflected a total of 16 years and 4 months of PERS service credit. At that time, the only benefit for which Mr. Smith could apply was a Deferred retirement. However, it is undisputed that Mr. Smith was removed for cause on charges of misconduct or delinquency directly related to his employment. Thus, based on the plain language of N.J.S.A. 43:15A-38 as applied to the facts presented to the Board, Mr. Smith is not eligible for Deferred retirement benefits.

Mr. Smith is eligible to withdraw his accumulated pension contributions remitted during active membership, and he may request an *Application for Withdrawal* by writing to Robin Willever, Supervisor, Loan/Withdrawal Section at the Division, at the address above. **Nonetheless, Mr. Smith is cautioned against filing the withdrawal application if he intends**

Eliot P. Green, Esq.
Re: Wendell Smith
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to appeal the Board's determination. Withdrawal terminates all rights and privileges of membership.

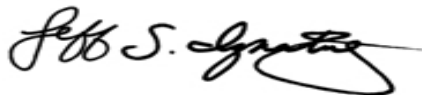
As noted above, the Board has considered your personal statements, written submission and all documentation in the record. Because this matter does not entail any disputed questions of fact, the Board was able to reach its findings of fact and conclusions of law on the basis of the retirement system's 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.

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

G-7/SD

C: J. Ehrmann (ET); R. Willever (ET)
Wendell Smith (via regular mail)