



# State of New Jersey

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

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September 21, 2023

ELIZABETH MAHER MUOIO  
*State Treasurer*

JOHN D. MEGARIOTIS  
*Acting Director*

PHILIP D. MURPHY  
*Governor*

TAHESHA WAY, ESQ.  
*Lt. Governor*

Sent via email to: [REDACTED]

Hon. Robert Thuring  
[REDACTED]

RE: PERS #: [REDACTED]

## **FINAL ADMINISTRATIVE DETERMINATION**

Dear Judge Thuring:

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) denying your request for a refund of the monies paid for the purchase of PERS service credit. The Board originally denied your request at its meeting of May 17, 2023. By way of letter dated July 17, 2023, you appealed the Board's decision. At its meeting of August 16, 2023, the Board considered your appeal. Thereafter, finding no genuine issue of material fact in dispute, the Board denied your request for an administrative hearing and 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 September 20, 2023 meeting.

### **FINDINGS OF FACT**

The Board made the following factual findings.

The record before the Board establishes that you were enrolled in the Workers' Compensation Judges Part of the PERS on June 28, 2014 as a result of your appointment as a Judge of Compensation with the New Jersey Department of Labor. On March 18, 2022, you filed an application to purchase former (PERS) membership service credit representing the period of July 1, 1998 through December 31, 2000, during which you served as Spotswood Borough

Municipal Prosecutor. By letter dated March 22, 2022, the Division advised that you are eligible to purchase 150 months of former membership service. The Board noted that the *Purchase Authorization Form* on which you authorized the purchase of 84 months by way of a lump-sum payment of \$72,312.56 indicated that “[l]ump-sum and partial payments cannot be refunded for any reason.”

On May 9, 2022, you submitted an *Application for Retirement Allowance*, requesting Service retirement benefits effective August 1, 2022. In a letter dated June 3, 2022, the Division acknowledged receipt of your check in the lump-sum amount of \$72,312.56 for the purchase of 84 months of former membership. On June 13, 2022, you canceled your application for retirement.

By way of letter dated July 19, 2022, you requested a refund of the monies paid for your purchase. On July 27, 2022, Charles DeAngelo, then Supervisor of the Division of Pensions and Benefits' (Division) Adjustments Section, denied your request to refund your purchase because your lump sum payment had been accepted and the corresponding service credit added to your account in the second quarter of 2022.

You filed a timely appeal of the Division's administrative determination and the Board considered the matter at its May 17, 2023, meeting. At the meeting, you advised the Board that your decision to purchase the 84 months of service credit was based on health challenges you faced at that time, which caused you to seek to retire earlier than you would have preferred. At the time of the purchase, you were 66 years of age with five or more consecutive years of Workers' Compensation Judge service, but your PERS membership account was credited with less than 15 years in the aggregate of public service. You purchased the additional time so that you would be eligible for a retirement benefit effective August 1, 2022. Fortunately, however, your condition improved, and you now intend to remain in office until the mandatory retirement age of 70, at which point you will have 10 or more years of Workers' Compensation Judge service.

Judges of Compensation receive 50% of final salary provided that the requirements of N.J.S.A. 43:15A-147, are fulfilled, which requires that the judge

a. served at least five years successively as a judge of compensation and attained the age of 65 years or more while serving in such office and has served at least 15 years of aggregate public service...

You argued that your purchase monies should be refunded because the purchased service was no longer necessary because you intend to continue to work and would have the requisite years of service for the maximum retirement benefit. Therefore, you canceled your retirement application and requested the cancellation of your purchase and the refund of the purchase price. After careful consideration, the Board denied your request for a refund in accord with N.J.A.C. 17:1-4.1(a).

On July 17, 2023, you filed an appeal, which the Board considered at its August 16, 2023 meeting. 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 20, 2023 meeting.

### **CONCLUSIONS OF LAW**

The Board made the following legal conclusions.

Judges of Compensation, like all members of the PERS, are permitted to purchase prior pension service credit. N.J.S.A. 43:15A-152. However, once the purchase is authorized, N.J.A.C. 17:1-4.1(a) prohibits the return of the monies paid towards the purchase, and allows only for the cancellation of prospective payments. In other words, once the purchase of service credit is complete, it is non-refundable. The regulation states, in pertinent part:

A member who authorizes a purchase of service credit may cancel that purchase at any time on a prospective basis only. No refunds will be made of any lump sum payments, partial payments or installment payments.

[N.J.A.C. 17:1-4.1(a), emphases added.]

In your July 17, 2023 letter, you assert that the Board never took into consideration that you had canceled your retirement application before the Board approved it and thus, there was no account to which the service credit could be applied. You further assert that the retention of the \$72,312.24 has resulted in a windfall to the PERS with no benefit to you. The Board disagrees with both assertions.

The Board found that the cancellation of your planned August 1, 2022, retirement has no bearing on N.J.A.C. 17:1-4.1(a), which unambiguously precludes the refund of purchase monies regardless of whether a member has a retirement application on file. Moreover, the 84 months of former PERS membership service was credited to your current PERS membership account. Therefore, in the event that you wish to retire prior to the age of 70, you will be assured of eligibility for a retirement benefit due to having 15 or more years in the aggregate of public service as a result of the purchase.

In support of your argument, you cite to Schoonover v. Board of Trustees. Public Employee's Retirement System. OAL DKT. NO. TYP17502-16 (ID). Schoonover involved a PERS member that purchased four years of PERS service credit. ID at 2. Schoonover thereafter requested a refund of his purchase monies, alleging that he purchased the four years of service only because a pension counselor incorrectly advised him that he would be eligible to retire “four years early.” ID at 3. Schoonover alleged that he had advised the pension counselor that he wished to purchase only enough time to become eligible to retire at age 55. Ibid. The Administrative Law Judge found that Schoonover “was given three different opinions as to how much he needed to pay to accomplish his retirement goal, which led to more confusion.” ID at 12-13. Ultimately, the ALJ concluded that:

I CONCLUDE that under these very exceptional circumstances, an equitable remedy should be available to Schoonover, an honorably discharged disabled veteran of the Iraqi war, so that he is able to purchase the correct number of months (approximately twenty) to be eligible for his veteran's retirement pension. Accordingly, he shall be entitled to a refund of any overpayment to the Division.

[ID at 17.]

The Board rejected your reliance on Schoonover as there is no record that you contacted the Division for advice regarding your purchase or that you received incorrect or confusing information. Rather, the Purchase Authorization Form you signed unequivocally advised that “[L]ump sum and partial payments cannot be refunded for any reason.” The Division’s Fact Sheet #1, reiterates this information.<sup>1</sup> While the Board understands and sympathizes with your situation, the Board relied on the regulation and denied your refund request.

For these reasons, the Board did not find good cause to waive the requirements of N.J.A.C. 17:1-4.1(a) and therefore denied your request for a refund of the monies paid for the purchase of PERS service credit.

As noted above, the Board has considered your personal statements, 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 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:

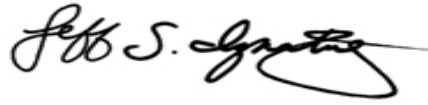
Superior Court of New Jersey  
Appellate Division  
Attn: Court Clerk  
PO Box 006  
Trenton, NJ 08625

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<sup>1</sup> <https://www.state.nj.us/treasury/pensions/documents/factsheets/fact01.pdf> (last accessed August 25, 2023).

Hon. Robert Thuring  
September 21, 2023  
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Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Ignatowicz". The signature is fluid and cursive, with a large, sweeping flourish at the end.

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

G-14/WT

C: N. Munko (ET); S. Scott (ET)