



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
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June 29, 2022

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*Acting Director*

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

Sent via email to: [REDACTED]

Samuel J. Halpern, Esq.  
[REDACTED]

RE: Rachel Trent  
SPRS [REDACTED]  
OAL DKT. NO. TYP 14518-19  
(TYP 05248-16 On Remand)

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Dear Mr. Halpern:

At its meeting of May 24, 2022,<sup>1</sup> the Board of Trustees (Board) of the State Police Retirement System (SPRS) considered the Initial Decision on Remand (IDR) of the Honorable Barry E. Moscowitz, Administrative Law Judge (ALJ), dated March 30, 2022, the exceptions filed by Deputy Attorney General (DAG) Robert E. Kelly, dated May 3, 2022, your reply to exceptions, dated May 12, 2022, as well as your personal statements and those of DAG Kelly in regard to the appeal of your client, Rachel Trent. Thereafter, the Board rejected the ALJ's recommendation of a partial forfeiture of three months of service and salary credit, but modified its original determination of a total forfeiture to a forfeiture of all service and salary credit from January 1, 2010 through Trent's termination of employment. The Board also rejected the ALJ's finding that Trent is eligible to file for Accidental Disability retirement benefits. The Board directed the Secretary to draft findings of fact and conclusions of law consistent with its determination.

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<sup>1</sup> Due to health and safety concerns for the public regarding COVID-19, the Board meetings referenced herein were conducted via teleconference.

Findings of Fact and Conclusions of Law were presented to and approved by the Board at its June 28, 2022, meeting.<sup>2</sup> This will constitute the final administrative determination of the Board in this matter.

By way of background, Trent was enrolled in the SPRS on October 18, 2003, as a Trooper. Her SPRS membership account reflects a total of 14 years and 1 month of SPRS service credit. On January 23, 2015, Trent filed for an Accidental Disability retirement with a retirement date of September 1, 2015, claiming a [REDACTED] disability based [REDACTED]. [REDACTED] Trent was served with amended charges and specifications referencing internal investigation 2012-0323. On the same date, Trent voluntarily entered into a Negotiated Plea Agreement, General Disciplinary Matter, with the Division of State Police. In that plea agreement, Trent pleaded guilty to all of the charges and specifications proffered against her based on reference to Internal Affairs Investigation Report #2012-0323:

- Charge 1: A member shall refrain from any association which reasonably tends to create the appearance that such association will interfere with the proper performance of duty. During 2010, while off-duty, Trent engaged in a personal sexual relationship with "JD", a known convicted felon with former affiliations to the Pagan Outlaw Motorcycle club, a known criminal organization, contrary to Article XIII, Section 8, of the Rules and Regulation of the Division of State Police;
- Charge 2: Violation of Article XIII, Section 17, of the Rules and Regulations of the Division of State Police, which states: No member should knowingly act in any way that might be expected to create an impression of suspicion among the public having knowledge of such acts that such member may engage in conduct violative of trust as a member. Trent publically discussed police patrol procedures with "JD" in public, specifically, methods of driving to avoid being stopped by police; and

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<sup>2</sup> By previous order, the Board requested and was granted an extension of time until June 30, 2022, to issue its final administrative determination. As the next regularly scheduled SPRS Board meeting following May 24, 2022, is July 26, 2022, a special meeting of the SPRS Board was held.

- Charge 3: In 2010, while off-duty, Trent acted to her personal discredit and the discredit of the Division. Specifically, Trent engaged in racially offensive behavior, on two occasions, by using the word “n\_\_\_\_\_” when referring to African Americans. , contrary to Article VI, Section 2b, of the Rules and Regulations of the Division of State Police.

Further, Trent agreed to permanently and irrevocably resign from her position as a State Trooper with the New Jersey State Police, effective March 10, 2015. In the plea agreement, Trent also agreed to forfeit all accrued vacation and personal leave time. After acknowledging that she consulted with her counsel, by way of the plea agreement, Trent agreed to “admit[ting] every essential fact or element of the offense as stated in the Amended Charge(s) and Specification(s), and that a PLEA OF GUILTY should be made only because you are convinced that you are guilty and not for any other reason.” As required under the Negotiated Plea Agreement, Trent submitted her letter of resignation on March 10, 2015.

At its meeting of January 26, 2016, the Board voted to impose a total forfeiture of Trent’s SPRS service and salary credit. Because of the total forfeiture of all of her service and salary credit, the Board determined that Trent was ineligible to file for Accidental Disability retirement benefits as she had no remaining service credit. Further, the Board determined that because the Negotiated Plea Agreement was made to resolve pending disciplinary charges against her, the separation from employment was not due to an alleged disability but was instead the result of a disciplinary termination. In the Agreement, Trent also agreed that her resignation would be permanent and irrevocable. Thus, the Board concluded that she is ineligible to apply for Accidental Disability retirement benefits.

Trent appealed the Board’s decision to forfeit all of her SPRS service credit and that she is ineligible to apply for disability retirement due to the total forfeiture. Trent also appealed the Board’s conclusion that she is ineligible to apply for Accidental Disability retirement benefits because she left work as a result of her permanent and irrevocable resignation and not due to

reasons related to her purported disability. In his Initial Decision (ID) dated August 19, 2019, ALJ Moscowitz recommended a reducing the forfeiture of Trent's service and salary credit to three months, which he estimated to be the length of Trent's prohibited relationship with a known convicted felon, "JD." (ID at 10). The ALJ also found that Trent "separated from her public employment with the State Police Due to her termination", but that she had left "from all public employment altogether due to her disability." (ID at 8).

On September 24, 2019, the Board considered the August 19, 2019 Initial Decision and thereafter remanded the matter so that the record could be fully developed and to provide for additional fact-finding and consideration of the investigative report underlying the charges to which Trent admitted. The Board also asked the ALJ to clarify his opinion on whether Trent is eligible to apply for Accidental Disability retirement.

Additional hearings were held on March 8, 2021, and May 3, 2021, wherein retired SPRS Lieutenant Thomas Preston ("Preston") testified regarding his investigation of Trent's inappropriate relationship with the convicted felon JD, her use of racially derogatory slurs, and her discussions with JD of police procedures, such as shift change times, methods to avoid detection by a police drug sniffing canine, and to avoid police detection while driving with his suspended license. (IDR at 3).<sup>3</sup> The ALJ issued the subsequent IDR on March 20, 2022, maintaining his initial recommendation of a forfeiture of three months of service credit. (IDR at 6) The ALJ also found that Trent is eligible to apply for an Accidental Disability retirement because disciplinary charges were not pending when she applied for Accidental Disability retirement benefits. (IDR at 6).

### **FACTUAL FINDINGS**

The Board hereby modifies the ALJ's findings of fact in the IDR as reflected below.

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<sup>3</sup> Hearing transcripts are referenced herein as 1T (June 9, 2017), 2T (March 8, 2021) and 3T (May 3, 2021).

The Board found that the IDR failed to address the significance of Trent's admissions. While dismissing most of Lieutenant Preston's testimony as hearsay, the ALJ concedes that Trent made certain statements to Lt. Preston that arguably contradict testimony he had relied on in finding her innocent of (1) racist speech and (2) giving improper advice on driving to JD. (IDR at 4-5). Lt. Preston testified that he confronted Trent with allegations that she had used "the n word" in JD's company in a derogatory manner, and she did not deny that she had done so. (2T28:3-29:24). Trent admitted that she might have commented, in a bar, that "These ["n words"] don't know how to behave...." (2T29:14). Trent's admission to, or failure to deny, the use of such language, is deemed speculation by the ALJ. (IDR at 4). But Trent also explained to Lt. Preston that she would use the "n word" when others were using it. (2T30:15-31:11).

At the first hearing, in contrast, Trent had testified inaccurately that she used the word only "when repeating things that other people said," for example if someone asked her what another person had just said. (1T16:14-22). Trent stated that in one instance she told a sergeant that she, a white woman, had been called "n\_\_\_\_\_" by a white arrestee, and the sergeant then noted that Trent, in telling the story, had "said the word." (1T17:4-13). Trent, who said she was a DJ in her personal time, believed that her fellow Troopers did not approve of the hip-hop music she enjoyed which, she noted, used the word "a lot." (1T17:14-25). Trent stated she would also use the word when she was called a "n\_\_\_\_\_" lover – "Yup, I'm a n\_\_\_\_\_" lover." (1T18:8-21).

Without the benefit of Lt. Preston's testimony, the ALJ had credited Trent's testimony, observing that, "If anything, Trent used the word to combat its use as a racial slur by the ones who originally used it." (ID at 13). Trent's admissions to Lt. Preston regarding her use of the word to fit in with JD and his crowd render this conclusion untenable. But the ALJ nonetheless relied solely on Trent's earlier testimony to reaffirm his now-discredited finding that she had not used racist language in a racist way. The Board modifies the IDR to note that Trent admitted to Lt. Preston that she would occasionally use racist language to fit in with others, and that the charge

to that effect, which Trent admitted, implicated dishonorable service. Trent also conceded to Lt. Preston that she possibly said “These N words don’t know how to behave.” 2T29:8-9. Trent also told Lt. Preston that she did not think that she said “Why are these white girls with these N words?” 2T30:1-5.

The ALJ did acknowledge two admissions that contradicted Trent’s earlier testimony.

“Preston did note that Trent admitted that she did discuss with J.D. methods of driving to avoid being stopped by the police, namely, to slow down and stay out of the left lane, when she knew that his license had been suspended. Similarly, Preston noted that Trent admitted that she spoke to J.D. about shift changes (when fewer State Troopers patrol) and air fresheners (which mask contraband). Accordingly, I accept those two admissions as fact.”

[IDR 17, 4-5.]

The ALJ acknowledged these facts – that Trent advised someone she knew had a suspended license on how to drive to avoid detection, had advised him of the timing of her fellow Troopers’ shift changes near the Pennsylvania border, and had noted that multiple air fresheners in a car were a “felony forest” that a Trooper would notice. (2T47:3-48:1; 3T8:10-23). But their addition to the record had no effect on the recommended minimal forfeiture and he instead concluded that this warranted no additional forfeiture.

The New Jersey State Police were first informed of Trent’s improper relationship with JD through contact from the FBI who was conducting an investigation concerning international cocaine distribution from JD’s tattoo parlor. (2T16:2-17). The record shows that Trent began and ended her relationship with JD in 2010. (ID at 7). On October 8 and 15, 2012, then-Detective-Sergeant Preston interviewed her about that relationship. (2T17:1-18:8). Trent was relieved of her service weapon and police powers on October 15, 2012. (3T33:5-8). Preston submitted a report for Case #2012-0323, dated November 20, 2012, at the completion of his investigation of Trent. (2T14:20-24). The report found the charges of Questionable Association, Failure to

Perform Duties and Conflict of Interest, but not the charge of Disparate Treatment, to be substantiated. (2T14:23-25).

### **CONCLUSIONS OF LAW**

The New Jersey Supreme Court has held that that “[t]he condition of honorable service is applicable without regard to whether retirement is based on disability, age or length of service.” Uricoli v. Board of Trustees, Police and Firemen’s Retirement System, 91 N.J. 62, 66 (1982). In 1995 the legislature codified the holdings of Uricoli stating that the receipt of a public pension is “expressly conditioned upon the rendering of honorable service by a public officer or employee.” N.J.S.A. 43:1-3(a). The term honorable service “is sufficiently generic to encompass a broad range of misconduct bearing on the forfeiture decision, including but not limited to criminal conviction.” Corvelli v. Bd. of Trs., 130 N.J. 539, 552 (1992). When the Board determines that a partial forfeiture is warranted “it shall order that benefits be calculated as if the accrual of pension rights terminated as of the date the misconduct first occurred or, if termination as of that date would in light of the nature and extent of the misconduct result in an excessive pension or retirement benefit or in an excessive forfeiture, a date reasonably calculated to impose a forfeiture that reflects the nature and extent of the misconduct and the years of honorable service.” N.J.S.A. 43:1-3(d).

The Board first found that the ALJ disregarded the statutory method for determining the length of forfeiture as he does not discuss it in either of his Initial Decisions. Ignoring the statutory method, the ALJ recommends a forfeiture equivalent to the three months’ which he believes is equal to the time he estimates Trent was involved in a relationship with JD. (ID at 10, IDR at 6). He reasons that Trent “was dishonorable during her relationship — not before and not after.” (IDR at 5). The Board instead begins its analysis with the consideration that the “default” penalty for dishonorable service is that benefits cease to accrue when the dishonorable conduct commences:

[W]henver a board of trustees determines, pursuant to this section, that a partial forfeiture of earned service credit or earned pension or retirement benefits is warranted, it shall order that benefits be calculated **as if the accrual of pension rights terminated as of the date the misconduct first occurred** or, if termination as of that date would in light of the nature and extent of the misconduct result in an excessive pension or retirement benefit or in an excessive forfeiture, a date reasonably calculated to impose a forfeiture that reflects the nature and extent of the misconduct and the years of honorable service.

[N.J.S.A. 43:1-3 (d) (emphasis added).]

The ALJ seems to disregard the statutory standard in favor of something untethered to, and much more lenient than, that standard. In determining an appropriate forfeiture for Trent, the Board evaluated whether the “default” penalty would result in an excessive pension or excessive forfeiture and, if so, in accordance with the statute, determine a more appropriate penalty based on “a date reasonably calculated to impose [an appropriate] forfeiture.” Ibid.

The ALJ reasoned that “the time Trent spent with J.D. is more than enough pensionable service credit to forfeit. She was dishonorable during her relationship — not before and not after.” (IDR at 5). This reasoning ignores the facts found on remand about Trent’s advising JD on driving methods, “felony forests” and, most significantly, the timing of Trooper shift changes. It also ignores the fact, shown at the remand hearing but dismissed by the ALJ, that Trent admittedly used racist language in a racist way on occasion. In proposing a forfeiture equivalent to the estimated length of Trent’s relationship with JD, the ALJ not only disregarded the analysis set forth in the statute, as discussed above, but recommended the same minimal forfeiture for an assortment of serious offenses that he had previously recommended for just one.

The ALJ’s discounting of Trent’s admissions, when added to his minimizing of the impropriety of Trent’s relationship, thus resulted in an inadequate forfeiture recommendation. The Board considered Trent’s admission to Preston “that she had heard a lot of things and she chose to ignore them, she didn’t want to believe everything that she was seeing, she was hearing, didn’t

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want to believe that any tattoos that displayed his affiliations that were not covered up with other tattoos . . . meant anything and a lot of stories that people had told her she didn't want to believe[.]” (2T20:25-21:12). The Board finds that Trent's carelessness in ignoring these danger signs and continuing the relationship for several months was, as the ALJ himself found in his Initial Decision, dishonorable. Moreover, providing the driving advice to elude detection by other Troopers on the roadways, was another significant offense. By disclosing confidential shift change times, when officers were more likely to be on patrol alone rather than with a partner, also put her fellow officers in danger. (2T43:12-13). Finally, her admitted use of racist language on several occasions brought dishonor on the State Police which must maintain equality towards all regardless of their race.

The Board considered the multiple offenses, along with the ALJ's finding that Trent did not intentionally associate with a felon, despite recklessly ignoring many indications, in crafting an appropriate partial forfeiture. Accordingly, the Board modified its original determination of a total forfeiture of Trent's SPRS service and salary credit to a forfeiture of all service and salary credit effective January 1, 2010,(the beginning of the year in which the misconduct first occurred, through her termination of employment.<sup>4</sup> This forfeiture reflects the seriousness of Trent's admitted dishonorable behaviors in neglecting to look into JD's affiliations, in using racist language and in providing advice regarding “felony forests,” State Police reductions in patrols due to changes of shift, and ways of avoiding traffic stops.

The Board also rejects the ALJ's conclusion that Trent is eligible to file for Accidental Disability retirement benefits. Members are eligible to apply for disability retirement only when they leave employment due to disability. N.J.A.C. 17:1-6.4(a); Rooth v. Board of Trs., Pub. Emps.' Ret. Sys., No. A-2378-20, 2022 N.J. Super. LEXIS 77 (App. Div. June 3, 2022) (slip op. at 14). In

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<sup>4</sup> This partial forfeiture of service and salary credit takes Trent's SPRS membership account from 14 years and 1 month of service credit to 6 years and 2 months of service credit.

re Adoption of N.J.A.C. 17:1-6.4, 17:1-7.5 & 17:1-7.10, 454 N.J. Super. 386 (App. Div. 2018)

provides:

It is true that the plain text of the enabling statutes does not explicitly say that a disability retirement applicant must have left public service due to a disability. But still, the statutes governing the retirement systems make clear that, although a person eligible for benefits is entitled to a liberal interpretation of a pension statute, “eligibility [itself] is not to be liberally permitted.” Smith v. Dep’t of Treasury, Div. of Pensions & Benefits, 390 N.J. Super. 209, 213, 915 A.2d 48 (App. Div. 2007). It is obvious to us that there is no such explicit text in the enabling statutes because it is common sense that disability retirees leave their jobs due to a purported disability. After all, the employee seeks *disability* retirement benefits.

[Ibid., emphasis in the original.]

Members whose employment is terminated by a settlement including an irrevocable resignation are ineligible for disability retirement even if they are disabled. Cardinale v. Bd. Of Trs., Police and Firemen’s Ret. Sys., 458 N.J. Super. 260, 269 (App. Div. 2019). Cardinale held that a police officer’s “irrevocable resignation made him ineligible for [disability retirement] benefits in the first place.” Ibid. Thus, “even if he was disabled — as a matter of law — the consequence of his irrevocable resignation [wa]s determinative.” Id. at 269. See also Noda v. Bd. of Trs, Police and Firemen’s Ret. Sys., Dkt. No. A-3868-19 (App. Div. February 24, 2022)(slip op. at 8-9).

Undergirding the court’s determination in Cardinale was the fact that disability retirees are subject to reexamination and, if deemed sufficiently recovered, are to be rehired by the employer — an eventuality that an irrevocable resignation prevents. 458 N.J. Super. at 262-63. If a disabled retiree “regains the ability to perform his or her duties, the Legislature mandated that he or she be returned to the former position.” Ibid. (quoting In re Allen, 262 N.J. Super. 438, 444 (App. Div. 1993)).

Here, Trent left work due to her settlement of a disciplinary charge, nearly six months before her requested retirement date. Therefore, the Board found that she is ineligible to apply

for disability retirement under In re Adoption of N.J.A.C. 17:1-6.4, 17:1-7.5 & 17:1-7.10. Further, a member cannot apply for a disability retirement if he or she separated from employment pursuant to a “[s]ettlement agreement . . . reached due to pending administrative or criminal charges, unless the underlying charges relate to the disability.” N.J.A.C. 17:1-6.4(b)(2). Here, Trent never contended that the disciplinary charges related in anyway to her alleged disability. Likewise, a member who “voluntar[ily] separat[ed] from service for reasons other than a disability” cannot apply. N.J.A.C. 17:1-6.4(b)(4). Due to the Negotiated Plea Agreement in which Trent agreed to permanently and irrevocably resign in order to resolve the pending disciplinary charges the Board concludes that this unequivocally demonstrates that Trent left her employment for reasons other than a disability.

Importantly, the settlement also included her irrevocable resignation. Therefore, on this basis alone she is ineligible for a disability retirement under Cardinale.

The ALJ determined in the ID that:

[Trent] may have been separated from her public employment with the State Police due to her termination, but she did not retire from all public employment altogether due to her termination. She retired from all public employment altogether due to her [alleged] disability.

[ID at 8.]

The Board found that the ALJ’s statement above is a distinction without a difference and an incorrect interpretation of the law. In 2015, Trent was a public employee solely by virtue of her employment with the State Police. She had no independent status as public employee. When the distinction is properly disregarded, what remains is the ALJ’s original correct (and disqualifying) conclusion that Trent was “separated from her public employment with the State Police due to her termination[.]”

The ALJ abandoned the distinction in the IDR, and instead adopted Trent’s counterfactual argument that she applied for disability retirement before charges were served on her, and that

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her claimed disability was the reason for her retirement. (IDR at 5). The argument is unavailing. Even if Trent could qualify for a disability retirement in the absence of her irrevocable agreement to resign, the agreement renders her ineligible under Cardinale.<sup>5</sup>

The ALJ's assertion that "no record exists that charges were pending," (IDR at 4) as of January 23, 2015 is thus simply wrong and the Board rejects that conclusion. The "serving of charges" was contained in the March 9, 2015 negotiated plea agreement, signed by Trent and her counsel almost six months prior to Trent's requested retirement date. Preston's report had been submitted years earlier and negotiations were ongoing. Thus, the Board finds that Ms. Trent ended her career due to the March 9, 2015 disciplinary settlement, not due to disability, and she is ineligible for disability retirement under In re Adoption of N.J.A.C. 17:1-6.4, 17:1-7.5 & 17:1-7.10.

This correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the State Police 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:

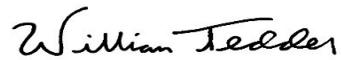
Superior Court of New Jersey  
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PO Box 006  
Trenton, NJ 08625

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<sup>5</sup> The ALJ asserts that this approach "would mean that the mere threat of termination would negate all applications for disability retirement." (IDR at 6). Not so. A person under threat of termination who timely applies for disability retirement might qualify for that benefit if she did not tender an irrevocable resignation and if she had left work due to a disability. Trent by contrast irrevocably resigned and never asserted that the disciplinary charges were in anyway related to her alleged disability.

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Sincerely,

A handwritten signature in cursive script that reads "William Tedder".

William Tedder, Secretary  
Board of Trustees  
State Police Retirement System

G-1/WT

C: D. Lewis (ET); K. Ozol (ET); S. Glynn (ET)

OAL, Attn: Library (ET); DAG Robert Kelly (ET)

Rachel Trent (via regular mail)