



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

February 17, 2022

Sent via email to: [REDACTED]

Donna Walton
[REDACTED]

Donna Walton¹
PERS [REDACTED]
OAL DKT. NO. TYP 03078-2018

Dear Mrs. Walton:

At its meeting on January 19, 2022, the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) considered the Initial Decision (ID) of the Honorable Elaine B. Frick, Administrative Law Judge (ALJ), dated November 29, 2021,² all exhibits, exceptions filed by Deputy Attorney General (DAG) Yi Zhu, dated December 9, 2021, and exceptions filed by you dated January 13, 2022.³ After careful consideration, the Board voted to adopt the ALJ's factual findings, but to reject her legal conclusion that you provided documentation that satisfied the regulatory requirements for an application for Accidental Disability (AD) retirement benefits and that the Board should consider the application on its merits. The Board directed the Secretary to draft findings of fact and conclusions of law consistent with its decision for presentation at its meeting of February 16, 2022.⁴

¹ Ms. Walton notified that the Board by email dated February 3, 2022 that she changed her name to Donna Gaines. For purposes of clarity, Mrs. Gaines will be referred to as Ms. Walton in this document, as she was in the Initial Decision. No disrespect is intended.

² The Board requested and was granted an extension of time until February 28, 2022 to issue its final administrative determination.

³ The reply to exceptions was timely submitted under a granted extension.

⁴ Due to health and safety concerns for the public regarding COVID-19, the January 19, 2022 and February 16, 2022 meetings were conducted via teleconference.

The record indicates that you originally filed an application for AD retirement benefits on June 15, 2015, with an effective date of July 1, 2015. On January 5, 2016, the Division of Pensions and Benefits (Division) notified you that you were unable to file for an AD retirement and required you to change your retirement type to Ordinary Disability. The letter further stated that your application would be closed on February 15, 2016 if you failed to provide the requisite medical documentation before that date. You appealed this administrative determination to the PERS Board.

At its meeting of March 16, 2016, the Board approved your request to file for an AD retirement on the condition that all medical documentation be received by April 18, 2016. On April 26, 2016, as a courtesy, the Board office left a voice message to inform you that the deadline had passed and to provide you one final opportunity to submit your medical documentation and avoid the closing of your application. On June 2, 2016, you were notified by the Board office that your original application was closed. No appeal was received regarding the closure of the retirement application you filed on June 15, 2015.

Subsequently, on November 10, 2016, you submitted a new application for AD retirement benefits, with an effective date of December 1, 2016. The record shows that you were sent notices dated December 12, 2016, January 11, 2017, and February 13, 2017 requesting the medical documentation that you were responsible to provide within six months of application. On July 10, 2017, the Disability Retirement Section closed your second application, because you failed to provide the necessary medical documentation within the requisite timeframe (plus two months). On August 8, 2017, you appealed the administrative decision to close the application that you had filed on November 10, 2016.

At its meeting on September 20, 2017, the Board postponed action on your appeal and granted your request for additional time, until October 3, 2017, to provide the medical documentation required under N.J.A.C. 17:2-6.1(e) and previously requested by the Division.

However, the Board letter clearly indicated that the medical documentation must support your claim that you were disabled when you separated from employment on June 30, 2015. In addition, based upon the information you represented at the meeting on September 20, 2017 regarding the termination of your employment, the Board also obtained documentation related to your disciplinary matter and a mediation agreement negotiated between you and your employer, to which neither the Division nor the Board of Trustees was a party.⁵

On November 15, 2017, following its review of the documentation provided by you and your employer, the Board affirmed the administrative decision to deny your request to re-open your November 10, 2016 application in accordance with N.J.A.C. 17:2-6.1(e). You filed a timely appeal and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on February 28, 2018, to be heard as a contested case.

You sought emergency relief from the Board, requesting payment for alleged prior and prospective monthly AD retirement benefits until the conclusion of your pending appeal. The Board transmitted the request as an emergent application to the OAL, where it was docketed on December 19, 2018. Oral argument on the emergent application was heard on December 27, 2018. On December 9, 2019, you failed to appear for the scheduled hearing date. You contacted the OAL on December 10, 2019, and indicated that you mixed up the hearing dates. The matter proceeded to a hearing on January 10, 2020.

CONCLUSIONS OF LAW

The Board noted that Ms. Walton worked for the Department of Education (DOE) prior to her resignation. Ms. Walton alleges that she [REDACTED]

[REDACTED]

[REDACTED] Ms. Walton was [REDACTED]

[REDACTED]. Ms. Walton

⁵ Prior to the Board meeting you were provided with copies of the documentation submitted by your employer.

testified that [REDACTED]

[REDACTED]. ID at 3.

Ms. Walton filed for AD retirement benefits on November 10, 2016, alleging that she is totally and permanently disabled on [REDACTED] as a direct result of [REDACTED]. The Board acknowledges that the Division administratively closed her application prematurely on April 27, 2017⁶ due to her failure to provide the requisite medical documentation in support of her claim. Three months later, Ms. Walton sought to re-open her application and asked the Board for additional time to submit the required medical documents. The Board granted this request, providing an extension to submit the required medical documentation “no later than October 3, 2017” -- nearly eleven months after the 2016 application was filed. P-6. Ms. Walton again failed to supply the requisite medical documentation within the extended time.

The Board notes on October 4, 2017, Ms. Walton hand-delivered various documents to the Division, including a copy of a settlement agreement with her former employer wherein she agreed to never seek reemployment with the DOE; a medical examination form completed by a nurse practitioner, dated October 3, 2017; and additional medical records. R-15; P-6; 2T8:14-15; 2T76:3-77:11; 2T120:2-17. Upon review of her submissions, the Board denied Ms. Walton’s request to re-open her AD application for multiple reasons, but principally because her submission did not comply with the regulatory requirement that the medical report be completed by [REDACTED]. See Board letter of November 15, 2017

The Board rejected the ALJ’s finding that Ms. Walton is entitled to re-open her application for AD retirement benefits because she complied with the Board’s extension of time to submit the

⁶ Although the Division “administratively” closed the application approximately 13 days prior to the six-month deadline, this action did not affect Ms. Walton’s ability to supplement her application with the required documentation before the deadline. Applicants for disability are afforded a grace period after the application is “administratively” closed.

required medical documentation under N.J.A.C. 17:2-6.1(e).⁷ The Board also noted that the ALJ found that the Board unreasonably denied Ms. Walton's request to re-open her AD application because the required [REDACTED] form was completed by [REDACTED], rather than [REDACTED], as required by the statute. The Board disagrees with both of these findings by the ALJ.

First, the Board rejects the ALJ's conclusion that the documentation was submitted timely. It is clear that the Board provided Ms. Walton with a lengthy extension to "no later than October 3, 2017" to submit her documentation. In total, the Board granted Ms. Walton extensions of approximately five months after she filed her AD application in 2016. P-6. Ms. Walton's hand-delivery of additional documents occurred on October 4, 2017, the day after the Board's deadline. R-15; P-6; 2T8:14-15; 2T76:3-77:11; 2T120:2-17. Thus, Ms. Walton failed to submit the required documentation on time, even if the documentation may have been dated (or "as of") October 3, 2017.

More importantly, the Board rejected the ALJ finding that it had unreasonably denied Ms. Walton the opportunity to re-open her AD application because the medical report was completed by [REDACTED], instead of [REDACTED]. The ALJ asserted that Ms. Walton was never advised by the Division that the medical report completed by [REDACTED] did not comply with the statute. ID at 18. In addition, the ALJ suggested that the medical report submitted by Ms. Walton is sufficient because [REDACTED] possesses [REDACTED] [REDACTED]. ID at 23. However, N.J.A.C. 17:2-6.1(e) explicitly states "[a]n application for [REDACTED] disability retirement must be supported by at least two medical reports," one of which must be completed by the applicant's [REDACTED]." (Emphasis

⁷ The applicable version of the regulation in this matter would be N.J.A.C. 17:2-6.1(e), as amended by R.2010 d.149, effective July 19, 2010. N.J.A.C. 17:2-6.1 was rewritten in 2018 with a new subsection that moved subsection (e) to subsection (f) and added certain language not pertinent here. 49 N.J.R. 2189(a), 50 N.J.R.646(a).

added). A report by [REDACTED] simply does not satisfy the requirement.

Finally, the Board's fiduciary efforts to protect the members' funds are hampered when members continue to miss deadlines to provide documents and information, which are readily available to the member. Not only does the delay hinder the Division administratively, the Board is also required to determine if the member is disabled at the time of the filing of the application, not years after the member has separated from employment. Documentation received years after the application is filed simply do not provide the status of the member's ability to perform their regular or assigned duties prior to leaving employment, which is the standard for the receipt of disability retirement benefits.

For these reasons, the Board rejected the ALJ's legal conclusion that the documentation Ms. Walton provided satisfied the regulatory requirements for an application for Accidental Disability retirement benefits. Consequently, the Board will not re-open her application for AD. 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 Ignatowitz, Secretary
Board of Trustees
Public Employees' Retirement System

Donna Walton
February 17, 2022
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G-11/SD

C: D. Lewis (ET); A. McCormick (ET); T. Fleischmann (ET); K. Ozol (ET); P. Sarti (ET)
OAL, Attn: Library (ET)
DAG Yi Zhu (ET)