



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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November 17, 2022

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

Sent via email to: [REDACTED]

David Winkler
[REDACTED]

RE: PERS # [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Winkler:

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) denying your application for Deferred retirement benefits. At its meeting of August 17, 2022, the Board found that you were ineligible for Deferred retirement benefits because of your dismissal for cause on charges of misconduct or delinquency directly related to your employment in accord with N.J.S.A. 43:15A-38. You filed a timely appeal of the Board's decision. At its meeting of October 24, 2022, the Board considered your appeal and denied your request for a hearing in the Office of Administrative Law, finding that no genuine issue of material fact was in dispute. Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the Board at its meeting of November 16, 2022.¹

The Board has reviewed the documentation and finds that the statutes governing the PERS and relevant case law do not permit the Board to grant your request to receive Deferred retirement benefits.

¹ The meeting was conducted via teleconference.

FINDINGS OF FACT

The record before the Board establishes that you were enrolled in the PERS on July 4, 1987, as a result of your employment with Capital Services as a Repairer. At the time of your termination, you held the position of Building Management Services Specialist 1 with the New Jersey Department of Treasury - Division of Property Management and Construction.

On April 10, 2008, you were arrested and charged with Third Degree Theft, and Second Degree Official Misconduct.

By way of a Preliminary Notice of Disciplinary Action, filed on April 17, 2008, you were charged with Conduct Unbecoming a Public Employee, Violation of Public Trust; Notoriously Disgraceful Conduct, Theft, and Official Misconduct. You were suspended without pay effective April 14, 2008, with removal pending the criminal charges.

Specifically, between on or about July 1, 2005 and on or about December 13, 2007, you sold scrap metal and other property belonging to the State of New Jersey from your workplace, First Avenue Warehouse. It was alleged that you and other employees sold state-owned scrap metal and divided the proceeds amongst yourselves.

On November 20, 2008, you were Indicted on the following charges:

- Count One - Conspiracy; 2nd Degree
- Count Two - Official Misconduct; 2nd Degree
- Count Three - Official Misconduct; 2nd Degree
- Count Four - Theft by Unlawful Taking; 3rd Degree
- Count Five - Misapplication of Entrusted Property and Property of the Government; 3rd Degree

On January 23, 2013, a jury found you guilty of Counts One, Two, Four and Five. An Order of Forfeiture dated January 25, 2013, ordered you to forfeit your public employment and you were forever disqualified from holding any office or position of honor, trust or profit under the

State or any of its administrative or political subdivisions. On April 15, 2013, a Judgment of Conviction and Order for Commitment sentenced you to five years in prison, and to pay fines and restitution totaling \$11,603.00.

At the time of your termination, you were approximately 46 years of age and your PERS account reflected a total of 20 years and 9 months of service credit. Therefore, at that time, the only benefit you could file for was a Deferred retirement. On October 2, 2020, you filed for retirement benefits effective October 1, 2021.

At its meeting on August 17, 2022, the Board considered all relevant documentation in the record concerning your eligibility for Deferred retirement benefits, in light of your dismissal for cause on charges of misconduct or delinquency directly related to your employment. After careful consideration, the Board denied your application for Deferred retirement benefits in accord with N.J.S.A. 43:15A-38.

You filed a timely appeal of the Board's decision. At its October 24, 2022 meeting, the Board considered your appeal and there being no genuine issue of material fact in dispute, directed the undersigned to draft this Final Administrative Determination, which was presented to and approved by the Board at its November 16, 2022, meeting.

CONCLUSIONS OF LAW

The Board made the following legal conclusions.

PERS members with 10 or more years of service are eligible to file for Deferred retirement benefits upon reaching service retirement age. However, N.J.S.A. 43:15A-38 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...

At the time of your termination, you were approximately 46 years of age and your PERS account reflected a total of 20 years and 9 months of service credit. Therefore, the only benefit for which you could file was a Deferred retirement.

In your appeal to the Board, you asserted that your infraction for official misconduct occurred in April 2008 prior to the law for mandatory forfeiture.³ You also alleged that the infraction in question was documented in court testimony for saving the State \$4.2 million dollars. However, it is not within the Board's purview or competence to re-litigate your termination, which was a matter between you and your employer. Furthermore, the Order of Forfeiture dated January 25, 2013, ordered that you shall forfeit your public employment and be forever disqualified from holding any office or position of honor, trust or profit under the State or any of its administrative or political subdivisions. However, the Board did not rely on the mandatory forfeiture provisions of N.J.S.A. 43:1-3.1; because you were only eligible for a Deferred retirement at the time of your termination, N.J.S.A. 43:15A-38 renders you ineligible for Deferred retirement benefits.

Based on the plain language of the statute, the Board determined that your removal for cause on grounds of misconduct or delinquency directly related to your employment rendered you ineligible for Deferred retirement benefits. See In re Hess, 422 N.J. Super. 27 (App. Div. 2011) (holding that ineligibility for Deferred retirement occurs only when a member is terminated for misconduct or delinquency related to the employment). Accordingly, the Board denied your application.

² N.J.S.A. 43:15A-41

³ Please note, although the Board did not rely on the mandatory forfeiture provisions in N.J.S.A. 43:1-3.1, that statute was passed and went into effect in March 2007.

You are eligible to withdraw your accumulated pension contributions remitted during active membership. You may request an *Application for Withdrawal* by writing to **Robin Willever**, Supervisor, Loan/Withdrawal Section at the Division, at the address above. **Nonetheless, you are cautioned against filing the withdrawal application if you intend to appeal the Board's determination. Withdrawal terminates all rights and privileges of membership.**

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

G-7/SD

C: R. Willever (ET); J. Ehrmann (ET)