



# State of New Jersey

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

TRENTON, NEW JERSEY 08625-0295  
Telephone (609) 292-7524 / Facsimile (609) 777-1779  
TRS 711 (609) 292-6683  
[www.nj.gov/treasury/pensions](http://www.nj.gov/treasury/pensions)  
June 12, 2018

ELIZABETH MAHER MUOIO  
*Acting State Treasurer*

JOHN D. MEGARIOTIS  
*Acting Director*

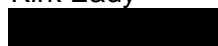
PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

Thomas R. Ashley, Esq.



RE: Kirk Eady



## **FINAL ADMINISTRATIVE DETERMINATION**

Dear Mr. Ashley:

I am writing in reference to the decision of the Board of Trustees of the Police and Firemen's Retirement System (PFRS) regarding your client, Kirk Eady, and your appeal of the Board's determination of a partial forfeiture of service and salary due to dishonorable service. The Board denied the request for a hearing because it was received beyond the 45 days required in accordance with N.J.A.C. 17:1-1.3(d). The Board informed you of the 45 day timeframe to appeal in its letter dated March 17, 2016. Thereafter, you appealed the Board's denial of the hearing request; however, you submitted that appeal in an untimely manner. The Board denied your request for a hearing on September 16, 2016 and again notified you of the 45 day period to appeal that decision. Your appeal of that determination was also received beyond the requisite timeframe to appeal. At its meeting of May 14, 2018, the Board denied your request for a hearing in the Office of Administrative Law (OAL). Findings of Facts and Conclusions of Law, as outlined below, were approved by the PFRS Board at its meeting of June 11, 2018.

The PFRS Board has reviewed your submissions and the relevant documentation and finds that the laws governing the PFRS do not permit the Board to grant your request to appeal

the Board's determination of a partial forfeiture of Mr. Eady's service and salary or your request and to appeal the Board's denial for a hearing of the untimely appeal in the OAL.

### **FINDINGS OF FACT**

Mr. Eady established membership in the PFRS on November 1, 1990 as a result of his employment with Hudson County as a Correctional Officer. His employment continued with Hudson County and pension contributions were remitted on his behalf through January 31, 2014. Mr. Eady started applying for retirement with the Division of Pensions and Benefits (Division) in October 2013. On January 25, 2014, his application for retirement was filed with the Division requesting a Service retirement effective March 1, 2014. On January 27, 2014, he amended his retirement date to February 1, 2014.

On February 6, 2014, a Certification of Service and Final Salary Retirement (certification) was received from Hudson County along with documentation indicating that Mr. Eady was suspended without pay on January 17, 2014 from his employment as a Confidential Aid/Deputy Director, based upon allegations against him in a Federal Criminal Complaint, United States of America vs. Kirk Eady, Mag. No. 14-6502. A Preliminary Notice of Disciplinary Action was issued charging Mr. Eady with various administrative violations<sup>1</sup> stemming from the criminal complaint. Thereafter, he cancelled his retirement application.

On March 13, 2015, Mr. Eady was found guilty on Count One, Illegal wiretapping, by a jury verdict. Subsequently, Mr. Eady filed an application for retirement requesting a Service retirement effective May 1, 2015<sup>2</sup>. On April 29, 2015 Hudson County submitted a certification indicating that Mr. Eady was dismissed effective January 16, 2014 and a pension contribution was made for the month of January 2014. On September 10, 2015, Mr. Eady was sentenced to

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<sup>1</sup> He was charged with Conduct Unbecoming a Public Employee, Insubordination, Misuse of Public Property, neglect of Duty and other Sufficient causes.

<sup>2</sup> Although he refiled his retirement application the Division could not continue with the processing until his matter was fully resolved and the PFRS Board performed an Uricoli analysis.

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a term of 21 months imprisonment in the custody of the United States Bureau of Prisons commencing on October 26, 2015.

On January 15, 2016, Mr. Eady was notified that at its meeting on March 14, 2016, the PFRS Board of Trustees would consider his criminal matter as it relates to honorable service to determine its impact on his application for Service retirement benefits in accordance with N.J.S.A. 43:1-3<sup>3</sup>. At its meeting on March 14, 2016 the PFRS Board voted to impose a partial forfeiture of Mr. Eady's service and salary, determining that after a balancing of the 11 factors of N.J.S.A. 43:1-3, all of the time Mr. Eady served in the title of Confidential Assistant/Deputy Director at the Hudson County Correctional Facility was dishonorable. Thus, the period from January 1, 2005 through the date of his termination was disallowed for pension calculation purpose. Due to the forfeiture of service and salary, Mr. Eady only qualified for a Deferred retirement, payable when he attained 55 years of age.

The Board's decision was outlined in its letter dated March 17, 2016. Also, this letter included the procedure to file an appeal. Specifically, the letter noted the following:

"If you disagree with the determination of the Board, you may appeal by submitting a written statement to the Board within 45 days after the date of written notice of the determination. The statement shall set forth in detail the reasons for your disagreement with the Board's determination and shall include any relevant documentation supporting your claim. If no such written statement is received within the 45-day period, the determination by the Board shall be final."

[Emphasis added]

In accordance with N.J.A.C. 17:1-1.3(d), Mr. Eady had until May 2, 2016 to submit a written statement appealing the Board's determination. However, the record indicates that no such request was made until your letter dated July 11, 2016, which was received on July 14, 2016,

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<sup>3</sup> The letter was sent to the Federal Bureau of Prisons, Kirk Eady, Inmate # 66317-050, Des Moines, Iowa 50947 and indicated that a representative could attend the meeting on his behalf.

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more than 2 months beyond the regulatory timeframe permitted. While your letter substantively addressed and appealed the Board's partial forfeiture of Mr. Eady's service and salary credit, it provided no explanation as to why the appeal was not filed within the requisite timeframe or May 2, 2016.

At its meeting on September 12, 2016 the PFRS Board considered your July 11, 2016 appeal of the Board's determination of March 14, 2016 to invoke a partial pension forfeiture. The Board denied the appeal because it was received more than two months beyond the regulatory timeframe permitted by N.J.A.C.17:1-1.3(d) and there was no explanation of the late filing and therefore no good cause to permit the appeal out of time. A letter dated September 14, 2016 was sent to you outlining the basis of the Board's determination. The letter included the following appeal paragraph:

"If you disagree with the determination of the Board, you may appeal by submitting a written statement to the Board within 45 days after the date of written notice of the determination. The statement shall set forth in detail the reasons for your disagreement with the Board's determination and shall include any relevant documentation supporting your claim. If no such written statement is received within the 45-day period, the determination by the Board shall be final."

[Emphasis added]

In accordance with N.J.A.C. 17:1-1.3(d,) you had until Monday, October 31, 2016<sup>4</sup> to submit a written statement appealing the September 12, 2016 determination denying your request for a hearing in the OAL. No appeal was received.

On April 7, 2017, you notified the Board Office that Mr. Eady was released from federal custody and inquired when his hearing would be scheduled before the PFRS Board. In response, the Board Office provided you with the sequence of events beginning with when Mr. Eady's matter was first presented to the Board through April 7, 2017 when you inquired about the status of the

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<sup>4</sup> 45 days from the date of the Board's decision is actually Saturday, October 29, 2016. Monday, October 31, 2016, is the next business day.

hearing. Specifically, the timeline noted that Mr. Eady failed to appeal the partial forfeiture of his pension in a timely manner and that you also failed to appeal the Board's September 12, 2016 determination denying your request for a hearing in the OAL in a timely manner. Therefore, the September 12, 2016 was the final determination of the Board.

On April 29, 2017, you acknowledged that Mr. Eady's file was closed and that there was no further administrative avenue to appeal. Also, you requested a copy of the Board's decision regarding your appeal dated July 11, 2016. You were provided with a copy of the Board's September 14, 2016 determination letter. On March 26, 2018, you notified the Board Office of Mr. Eady's request to appeal the Board's determination imposing a partial forfeiture of his pension and to appeal the Board's determination denying the request for a hearing in the OAL. Again, no explanation for the delay in appeal was provided.

At its meeting of May 14, 2018, the Board considered and denied your original appeal of Mr. Eady's pension forfeiture and the request for an administrative hearing in the OAL and directed the Secretary, in conjunction with the Attorney General's Office, to draft a detailed Findings of Fact and Conclusions of Law, that will formally outline the Board's decision and become the Board's Final Administrative Determination.

### **CONCLUSIONS OF LAW**

The Board considered the relevant regulation N.J.A.C. 17:1-1.3(d), which provides the following: ...

(d) The following statement shall be incorporated in every written notice setting forth the Division, Board or Commission's determination in a matter where such determination is contrary to the claim made by the claimant or the claimant's legal representative: If you disagree with the determination of the Board, Commission or Division, you may appeal by submitting a written statement to the Board, Commission or Division Director within 45 days after the date of written notice of the determination. The statement shall set forth in detail the reasons for your disagreement with the Board, Commission or Division's determination and shall include any relevant documentation supporting your claim. If no such written statement is

received within the 45-day period, the determination by the Board, Commission or Division shall be final.

[Emphasis added]

...

Based upon the factual record, the Board noted that Mr. Eady was provided with a copy of the Board's March 14, 2016 determination letter invoking a partial pension forfeiture. He had until May 2, 2016 to appeal that decision. However, the appeal was not received until July 14, 2016, more than 2 months beyond the regulatory timeframe in accordance with N.J.A.C. 17:1-1.3(d). At its meeting of September 12, 2016, the Board considered and denied your untimely request for a hearing in the OAL. You had until October 31, 2016 to appeal that determination. However, it was not until March 26, 2018 that you appealed the denial of a hearing on the Board's decision to invoke a partial pension forfeiture and the September 12, 2016 determination denying the out of time appeal.

Appeals for both Board decisions were not received within the regulatory timeframe in accordance with N.J.A.C. 17:1-1.3(d). The Board notes that neither out of time appeal has provided any reason, let alone good cause, for why the 45 day timeframe for appeal was not met. See In Re Van Orden, 383 N.J. Super. 410, 419 (App. Div. 2006), Zajkowski v. Bd. of Trs., Police and Firemen's Ret. Sys., A-1270-16T1 (App. Div. Jan. 8, 2018). Therefore, the Board denied your request: (1) to appeal the March 14, 2016 partial forfeiture of Mr. Eady's pension and (2) to appeal the September 14, 2016 denial of your request to appeal the partial forfeiture of Mr. Eady's pension and have a hearing, because this request was also out of time.

As noted above, the PFRS Board has reviewed your written submissions and because this matter does not entail any disputed questions of fact, the PFRS Board was able to reach its findings of fact and conclusions of law in this matter on the basis of the retirement system's enabling statutes and without the need for an administrative hearing. Accordingly, this

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correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Police and Firemen's Retirement System.

You have the right, if you wish 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.

Sincerely,



Mary Ellen Rathbun, Secretary  
Board of Trustees  
Police and Firemen's Retirement System

G-8/MER

C: D. Dinkler (ET)  
Kirk Eady  
DAG Danielle P. Schimmel (via e-mail to: [REDACTED])  
DAG Amy Chung (via e-mail to: [REDACTED])