



State of New Jersey

PHILIP D. MURPHY
Governor

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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November 21, 2024

JOHN D. MEGARIOTIS
Acting Director

Sent via email to: [REDACTED]

Donna Gaines
[REDACTED]

RE: PERS [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Ms. Gaines,

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) regarding your eligibility to apply for Accidental Disability (or Ordinary) retirement benefits. At its meeting on July 17, 2024, the Board found that you are not eligible to apply for Accidental (or Ordinary) Disability retirement benefits because you did not separate from employment due to a disability. The Board also found that even if you were eligible to apply for Disability retirement benefits, which you are not, you failed to submit the necessary documentation to process your application. Thereafter, you filed a timely appeal of the Board's decision.

At its meeting of October 16, 2024, the Board considered your submissions and personal statements in furtherance of your appeal. After careful review, the Board affirmed its decision that based on the circumstances under which you separated from employment, you are ineligible to apply for Accidental (or Ordinary) Disability retirement benefits. Further, finding no genuine issue of material fact in dispute, the Board denied your request for an administrative hearing. Thereafter, the Board 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 meeting of November 20, 2024.

FINDINGS OF FACT

The Board made the following factual findings.

You applied for Accidental Disability¹ retirement benefits with an effective date of January 1, 2024,² alleging an incident on July 9, 2010 caused you to become totally and permanently disabled. At the outset of the application process, you were advised in writing that all required documentation should be submitted to the Division of Pensions and Benefits by July 1, 2024.

Your employer filed its *Employer Certification for Disability Retirement* on February 26, 2024, noting that you were terminated from your position.³ The Department of Education issued a Preliminary Notice of Disciplinary Action (PNDA) dated July 3, 2014 as well as a PNDA dated July 23, 2014. Each PNDA charged you with insubordination and neglect of duty. The Department of Education sought your removal. You requested a departmental disciplinary appeal hearing, which was held on or about November 25, 2014. In a comprehensive decision, the Hearing Officer noted your lengthy disciplinary history and noted that you were “unwilling or unable to conform (your) behavior to acceptable and appropriate workplace standards” and recommended your removal. The Commissioner of Education reviewed the findings of fact and recommendation of the Hearing Officer and adopted the report as the final determination in the matter. Thereafter, a Final Notice of *Major* Disciplinary Action (FNDA) dated February 19, 2015 sustained the charges of insubordination and neglect of duty and you were removed from employment effective March 6, 2015.

¹ Because your previous applications were never considered on the merits, you were permitted to file a subsequent application with a new effective retirement date.

² This was your third application for Accidental Disability retirement benefits. Your previous applications were canceled because you failed to submit the documents required for processing. The Board’s determination was upheld in the Appellate Division. Walton v. Bd. of Trs., Pub. Employees’ Ret. Sys., App. Div. Dkt. No.: A-2422-21 (decided June 28, 2023).

³ Your employer also noted that the alleged traumatic event did not occur during the performance of your duties.

On or about June 3, 2015, you and your employer entered into a Settlement Agreement (Agreement). In the Agreement, you and your employer agreed that you would apply (and provide proof) for disability retirement benefits by June 17, 2015. If you failed to provide proof that you applied, the disciplinary charges you would be reinstated. In addition, you agreed “not to seek or accept further employment with the DOE.”

At its meeting of July 17, 2024, the Board found that you did not separate from employment due to a disability. Rather, you separated from employment due to disciplinary charges. The Board further noted that you also agreed not to return to employment in the future. Accordingly, the Board found you ineligible to apply for Accidental (or Ordinary) Disability retirement benefits pursuant to N.J.S.A. 43:15A-44 and N.J.A.C. 17:1-6.4. The Board also noted that even if you were eligible to apply for Accidental (or Ordinary) Disability retirements, which you are not, you failed to submit the requisite documentation necessary to process your disability retirement application and determined that your application should be closed. The Board noted that you submitted the *Medical Examination by Personal or Treating Physician* form, but failed to provide any treatment records. Thus, having reviewed your application and medical submissions, the Board found that you did not comply with the requirements outlined in N.J.A.C. 17:2-6.1(e)(2).

You filed a timely appeal of the Board’s decision.

At its meeting of October 16, 2024, the Board considered your submissions and personal statements in furtherance of your appeal. After careful review, the Board affirmed its decision that based on the circumstances under which you separated from employment, you are ineligible to apply for Accidental (or Ordinary) Disability retirement benefits. Further, finding no genuine issue of material fact in dispute, the Board denied your request for an administrative hearing. Thereafter, the Board directed the undersigned to draft detailed Findings of Fact and Conclusions of Law for review at its meeting of November 20, 2024.

CONCLUSIONS OF LAW

The Board made the following conclusions of law.

A PERS member seeking disability retirement benefits must separate from service due to a disability. N.J.A.C. 17:1-6.4 states:

(a) Each disability retirement applicant must prove that his or her retirement is due to a total and permanent disability that renders the applicant physically or mentally incapacitated from performing normal or assigned job duties at the time the member left employment; the disability must be the reason the member left employment.

(b) Members who have involuntarily or voluntarily terminated service for any of the reasons listed below will not be permitted to apply for a disability retirement:

1. Removal for cause or total forfeiture of public service;
2. Settlement agreements reached due to pending administrative or criminal charges, unless the underlying charges relate to the disability;
3. Loss of licensure or certification required for the performance of the member's specific job duties;
4. Voluntary separation from service for reasons other than a disability; and
5. Job abolishment or reduction in force.

(c) The Division will review all disability retirement applications submitted after a member has terminated service to determine whether the member's application is eligible for processing, pursuant to (a) above.

Based on the foregoing regulation as applied to the facts presented to the Board, you are precluded from applying for a Disability retirement because you did not separate from employment due to a disability. Rather, you separated from employment due to disciplinary charges, none of which relate to a disability.

Further, a PERS member seeking disability retirement benefits must have a position to return to should the disability diminishes to the point that the member may return to public employment. N.J.S.A. 43:15A-44. See Cardinale v. Bd. of Trs., Police & Firemen's Ret. Syst., 458 N.J. Super. 260, 263 (App. Div. 2019) (when a member "irrevocably resigns from active

service, such a separation from employment automatically renders the individual ineligible for ordinary disability benefits.”)

The Board noted In re Adoption of N.J.A.C. 17:1-6.4, 454 N.J. Super. 386, 402 (App. Div. 2018), in which the court held that a PERS member who irrevocably resigns is not eligible to receive a disability retirement benefit. The court stated that “voluntary or involuntary termination of employment, for non-disability reasons, generally deems a member ineligible for disability benefits.” *Id.* at 394. By the express terms of the Agreement, you agreed “not to seek or accept further employment with the DOE” which belies the assertion that a total and permanent disability is the reason for your separation from employment. Put simply, if the alleged disability is the sole obstacle precluding you from performing your job duties, there would be no reason to preclude your return to employment should the disability diminish to the point that you could return. Your employer agreed to drop the disciplinary charges on the condition that you agree to never return to employment.

The Board notes that in order to comply with N.J.S.A. 43:15A-44, a member seeking a disability retirement *must* have a position to return to should the alleged disability diminish to the point that the member could return to employment. N.J.S.A. 43:15A-44 states, in pertinent part:

If the report of the medical board shall show that such beneficiary is able to perform either his former duty or other comparable duty which his former employer is willing to assign to him, the beneficiary shall report for duty; such a beneficiary shall not suffer any loss of benefits while he awaits his restoration to active service. If the beneficiary fails to return to duty within 10 days after being ordered so to do, or within such further time as may be allowed by the board of trustees for valid reason, as the case may be, the pension shall be discontinued during such default.

Thus, if your application were processed and you were granted an Accidental (or Ordinary) Disability pension, but later it was determined that you are no longer disabled, there is no mechanism for the Board to stop paying the pension because you could never be ordered to return to work, as required by N.J.S.A. 43:15A-44. Granting a disability retirement under such

circumstances would be in contravention of the statutory scheme, and place the Board in the position of potentially paying a pension for which the Board has no ability or mechanism to terminate the pension payment.

The Board considered your written submission 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 determination 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
Attention: Court Clerk
PO Box 006
Trenton, NJ 08625

Sincerely,



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

G-13

C: D. Lewis (ET); A. Saco (ET)

Department of Education
Charlotte Geary, Certifying Officer
[REDACTED]