



# 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)

ELIZABETH MAHER MUOIO  
*State Treasurer*

JOHN D. MEGARIOTIS  
*Acting Director*

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

April 25, 2019

Sent via email to: [REDACTED]

GAYLORD POPP, L.L.C.  
Samuel M. Gaylord, Esq.

[REDACTED]

RE: Midalia Martinez

[REDACTED]

App. Div. Dkt. No.:A-0049-17T3

Dear Mr. Gaylord:

## **FINAL ADMINISTRATIVE DETERMINATION**

I am writing in reference to the decision of the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) regarding the appeal of your client, Midalia Martinez, challenging the Board's decision of December 12, 2018. In that decision, the Board considered the Appellate Division's September 5, 2018 remand regarding Ms. Martinez's application for Ordinary Disability retirement benefits. The court specifically directed the Board to address certain legal issues regarding statutory interpretation raised by the Administrative Law Judge (ALJ) in his Initial Decision (ID). At its meeting on March 20, 2019, the Board determined that there are no material facts in dispute and directed the Board Secretary, in consultation with the Attorney General's Office, to prepare Findings of Fact and Conclusions of Law, which were presented and approved by the PERS Board at its April 17, 2019, meeting.

## **FINDINGS OF FACT**

On March 5, 2013, Ms. Martinez applied for Ordinary Disability retirement benefits with an effective date of January 1, 2014. At its meeting of August 21, 2013, the Board found that she was not totally and permanently disabled from performing her regular and assigned duties, and therefore

denied her application. Ms. Martinez appealed the Board's decision and the matter was referred to the Office of Administrative Law (OAL) for a hearing.

On June 15, 2017, the ALJ affirmed the Board's finding that Ms. Martinez was not totally and permanently disabled and was therefore not eligible for Ordinary Disability retirement benefits. However, in affirming the Board's denial, the ALJ noted that the Board had found that she was "not totally and permanently disabled for the performance of [her] regular and assigned duties pursuant to N.J.S.A. 43:15A-42," a quote directly from the Accidental Disability retirement benefits statute. The corresponding language from the Ordinary Disability statute reads that the member must demonstrate that she is "physically or mentally incapacitated for the performance of duty and should be retired." N.J.S.A. 43:15A-42

Ultimately, the Board adopted the ALJ's decision and Ms. Martinez filed a judicial appeal. On September 5, 2018, the court reversed and remanded the Board's decision, and specifically directed the Board to consider 1) the proper standard to be applied by the Board when considering a member's application for Ordinary Disability retirement benefits; 2) whether the Board's Independent Medical Examiner (IME), Dr. Stephen Lomazow, provided testimony consistent with this standard at the administrative hearing; and 3) whether the Board properly considered Ms. Martinez's application as of August 2013, rather than as of January 1, 2014, the effective date of her retirement.

### **CONCLUSIONS OF LAW**

The Board considered the remand opinion at its meeting of December 12, 2018, and answered the court's directive as outlined below.

#### **I. The Disability Standard**

The court's first question was whether the Board had applied the correct standard in denying Ms. Martinez's application for Ordinary Disability retirement benefits under N.J.S.A. 43:15A-42. That is, the court asked whether the Board's finding that a member must demonstrate a "total and permanent disability" is consistent with the language in the Ordinary Disability statute, which requires

that the member be “physically or mentally incapacitated” from performing their regular or assigned duties.

The Board found that the standard governing Ordinary Disability applications is the same as that governed by the Accidental Disability statute, N.J.S.A. 43:15A-43. In fact, the language can be, and has been, used interchangeably. See Patterson v. Bd. of Trs., State Police Ret. Sys., 194 N.J. 29, 42 (2008) (finding that only meaningful distinction between the two standards is that the Ordinary Disability benefit “need not have a work connection”); Bueno v. Bd. of Trs., Teachers’ Pension & Annuity Fund, 404 N.J. Super. 119, 126 (App. Div. 2008) (affirming Board’s denial of Ordinary Disability “on the ground that [petitioner] is not totally and permanently disabled from the performance of her regular and assigned duties.”) (emphasis added), certif. denied, 199 N.J. 540 (2009). Accordingly, the Board then reaffirmed its original determination, upheld by the ALJ below, that Ms. Martinez was not totally and permanently disabled from performing her regular and assigned duties and therefore is also not physically or mentally incapacitated so as to qualify for Ordinary Disability retirement.

II. Expert Testimony of Dr. Lomazow

The Appellate Division next directed the Board to address whether the Board’s expert, Dr. Steven Lomazow (“Lomazow”) “provided testimony addressing [the correct standard] and whether he gave consideration to [Martinez]’ other medical issues, such as back pain, diabetes, and depression, in formulating his opinion.” Slip op. at 14. Because the Board found the standard under the Ordinary Disability statute in N.J.S.A. 43:15A-42 and the Accidental Disability statute under N.J.S.A. 43:15A-43 interchangeable, Dr. Lomazow properly found that Ms. Martinez was not “totally and permanently disabled” from performing her job duties.

The Board also found the “other medical issues” claimed by Martinez to be irrelevant in this proceeding. There is no question that Ms. Martinez bears the burden of proof to establish that she is totally and permanently disabled from performing her regular and assigned duties. Ms. Martinez relied

solely on the expert testimony of Dr. Anca Bereanu, a neurologist, and she simply could not meet her burden as to “the other medical issues” unrelated to her neurological conditions. Accordingly, the Board finds that Ms. Martinez failed to meet her burden of proof that these other medical conditions cause her to be totally and permanently disabled.

III. Date of Disability Determination

Finally, the Appellate Division directed the Board to address whether it had “deprived [Martinez] of rights” when it denied her application “as of August 21, 2013” (the date of the Board’s initial denial) and “not on or about January 1, 2014,” the effective date of her retirement. The Board found that the language in N.J.S.A. 43:15A-42 allows it to consider an application at any time after the member submits an application for disability retirement benefits. The statute does not require the Board to delay consideration of the application until the member’s effective retirement date. Clearly, by filing an application for disability retirement, the member is claiming that a disability is currently preventing him or her from performing his or her regular assigned duties, and not that a potential disability which has not yet manifested itself will disable him or her at some future date. This approach is consistent with the court’s analysis in In re Adoption of N.J.A.C. 17:1-6.4, 17:1-7.5 & 17:1-7.10, 454 N.J. Super. 386, 397 (App. Div. 2018), which explained that “it is common sense that disability retirees leave their jobs due to a purported disability.” Moreover, the court explained that “it makes sense that disability retirees leave their jobs due to a purported disability.” Id. at 401.

Ms. Martinez left her employment, presumably due to her claimed disability, in June 2013, and then moved to Florida in August 2013. Thus, at the time her application was considered, she had already effectively claimed that she was no longer capable of performing her job duties. The Board’s consideration of her claim as of August 21, 2013 was therefore appropriate and did not deprive her of any rights.

Moreover, any issue as to the timing of the Board’s August 2013 rejection of her application is moot given that Dr. Lomazow reevaluated Ms. Martinez in October 2014 and he found that she was

GAYLORD & POPP, LLC  
Samuel Gaylord, Esq.  
RE: Midalia Martinez  
April 25, 2019  
Page 5

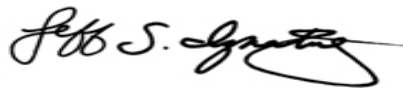
still not disabled from her employment. Thus, the Board had Ms. Martinez medically evaluated both prior to and after January 1, 2014. Accordingly, the Board properly found that Ms. Martinez is not eligible for Ordinary Disability retirement benefits.

Based on the above, the Board re-affirmed its original determination to adopt the Initial Decision with the above clarifications as directed by the court. The Board has determined that this matter does not entail any disputed questions of fact, and the Board was able to reach its findings of fact and conclusions of law in this matter on the basis of the statutory language 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, 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. 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

G-11/JSI

C: DAG Amy Chung (ET); DAG Juliana DeAngelis  
Midalia Martinez