



State of New Jersey

PHILIP D. MURPHY
Governor

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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May 22, 2025

JOHN D. MEGARIOTIS
Acting Director

Sent via email to: [REDACTED]

Gary Pressley
[REDACTED]

RE: PERS [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Pressley:

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 February 21, 2025, the Board found that you were ineligible for Deferred retirement benefits because you were dismissed for cause on charges of misconduct or delinquency directly related to your employment in accordance with N.J.S.A. 43:15A-38. Thereafter, you filed a timely appeal of the Board's decision.

At its meeting of April 23, 2025, the Board considered your appeal. After careful review, the Board affirmed its prior decision and, finding no genuine issue of material fact in dispute, 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 May 21, 2025.

FINDINGS OF FACT

The Board made the following factual findings.

The record before the Board establishes that you were enrolled in the PERS effective August 1, 1994, as a result of your employment as a Laborer with Asbury Park City. You remained with this employer and in this title until your termination.

A Preliminary Notice of Disciplinary Action (PNDA) dated November 8, 2006, charged you with Resignation Resulting in Unauthorized absence; Neglect of Duty; Incapacity Due to Mental or Physical Disability and Chronic or Excessive Absenteeism and suspended you without pay. These charges stem from you failing to adhere to call-out procedures. From October 31, 2006 through November 8, 2006, you did not call or report to work. In 2006, you were absent for 111 days (including 71 days docked). From approximately 2001 until March 2004, you received warnings, were suspended on two occasions and docked 37 days in 2004 and 9 days in 2005. From approximately March 2004 until September 2006, no disciplinary action was taken against you.

Per the PNDA, you were suspended without pay and your employer sought your removal. A departmental hearing was held on February 6, 2007. A Final Notice of Disciplinary Action sustained the charges in the PNDA and removed you from employment effective March 30, 2007.

You challenged your removal and the matter was transmitted to the Office of Administrative Law as a contested case. In the Initial Decision dated March 17, 2008, the Administrative Law Judge (ALJ) found that over the course of your employment you received sufficient warnings regarding your excessive absenteeism and failure to adhere to departmental call-in sick procedures. In addition, the ALJ indicated that your failure to call-in sick and your absences from September 26 2006 through November 16, 2006 justified your termination. Therefore, the ALJ upheld your removal.

At its meeting on April 23, 2008, the Merit Board System adopted the ALJ's Findings of Fact and Conclusions of Law and affirmed your removal.

At the time of your removal from employment, you were 46 years of age and your membership account reflected a total of 11 years and 9 months of PERS service credit. Therefore, at that time, the only benefit for which you could apply was a Deferred retirement. You filed a retirement application on August 15, 2024, requesting Deferred retirement benefits effective September 1, 2024.

The Board considered your application for Deferred retirement benefits at its meeting of February 19, 2025. At the meeting, the Board found that you were removed for cause on charges of misconduct or delinquency directly related to your employment and thus, ineligible for Deferred retirement benefits. You filed a timely appeal of the Board's decision.

At its meeting on April 23, 2025, the Board considered your appeal, affirmed its prior decision, and finding no genuine issue of material fact in dispute, denied your request for an administrative hearing. The Board directed the undersigned to draft detailed Findings of Fact and Conclusions of Law for review at its April 23, 2025 meeting.

CONCLUSIONS OF LAW

Tier 1 and 2 PERS members with 10 or more years of service are eligible to file for Deferred retirement benefits upon reaching 60 years of age. The eligibility criteria for Deferred retirement benefits are outlined in N.J.S.A. 43:15A-38, which 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,¹ if he so qualifies under said section, or;
- (b) A deferred retirement allowance, beginning at the retirement age...

[(Emphasis added)].

¹ N.J.S.A. 43:15A-41

At the time of your dismissal from employment, you were 46 years of age and your membership account reflected a total of 11 years and 9 months of PERS service credit. Therefore, at that time, the only benefit for which you could apply was a Deferred retirement. Based on the plain language of the statute as applied to the facts in the record, the Board determined that you were removed for cause on charges of misconduct or delinquency directly related to your employment, and are not eligible for Deferred retirement benefits. See In re Hess, 422 N.J. Super. 27 (App. Div. 2011) (holding that ineligibility for Deferred retirement occurs when a member is terminated for misconduct or delinquency related to the employment).

In your appeal, you assert that serious medical conditions prevented you from working during the period in which you were subject to discipline. While the Board is sympathetic, the plain language of the statute renders individuals terminated for cause directly related to their employment ineligible for Deferred retirement benefits.

You are eligible to withdraw your accumulated pension contributions remitted during active membership, and 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 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.

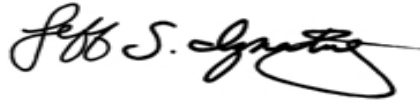
Gary Pressley
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You have the right to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey.

All appeals should be directed to:

Superior Court of New Jersey
Appellate Division
Attn: Court Clerk
PO Box 006
Trenton, NJ 08625

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Ignatowicz", with a stylized flourish at the end.

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

G-6 /kb
C: J. Ehrmann (ET); R. Willever (ET)