



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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July 20, 2023

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

Sent via email to: [REDACTED]

Vanessa Shaw
[REDACTED]

RE: PERS # [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Ms. Shaw:

At its meeting on June 21, 2023, the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) considered your appeal of the Board's decision finding that you were ineligible to apply for Ordinary Disability retirement benefits. The Board originally denied your request at its meeting of October 24, 2022, finding that because you voluntarily resigned and agreed not to return to employment in order to settle disciplinary charges filed by your employer, you were not eligible to file for disability retirement benefits in accord with N.J.S.A. 43:15A-44 and N.J.A.C. 17:1-6.4. You filed a timely appeal of the Board's decision.

After careful consideration, 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, which was reviewed and approved at its meeting of July 19, 2023.

FINDINGS OF FACT

The Board made the following factual findings.

The record before the Board establishes that you filed your *Application for Disability Retirement* on August 31, 2021, requesting an Ordinary Disability retirement benefit effective

September 1, 2021.¹ The *Employer Certification for Disability Retirement*, submitted by the Department of Community Affairs (Department) on October 15, 2021, indicated that you were terminated on July 31, 2020.

The Board noted the Settlement Agreement (Agreement) between you and the Department dated August 25, 2021, which states, in pertinent part:

- ...
2. The Appellant submitted an application for retirement and intends to retire effective August 1, 2020. In lieu of major disciplinary action, Respondent agrees to accept Appellant's retirement. Upon receipt of the fully signed Settlement Agreement, Respondent's record will reflect her retirement effective August 1, 2020. In the event that the Appellant modifies her retirement date or withdraws her retirement application, then the Appellant will have been considered to have resigned effective July 31, 2020 and this Agreement shall act as her notice of resignation.
 - ...
 5. Appellant agrees not to seek future employment with the Department of Community Affairs.

The Board noted that neither the intent of parties to an Agreement, nor such Agreement's terms, bind the Board, because the Board is not a party to the Agreement. Accordingly, at its meeting of October 24, 2022, the Board denied your request to file for disability retirement benefits.

CONCLUSIONS OF LAW

The Board made the following conclusions of law.

The Board first notes that a PERS member seeking disability retirement benefits must separate from service due to a disability. N.J.S.A. 43:15A-42, 43. Likewise, a member whose disability diminishes to the point that they may return to public employment must have a position to which they may return. N.J.S.A. 43:15A-44. See Cardinale v. Bd. of Trs., Police & Firemen's

¹ The record indicates that you previously applied for Ordinary Disability retirement benefits on June 23, 2020, requesting an Ordinary Disability retirement effective August 1, 2020 but that application was closed by the Division on May 1, 2021 due to a lack of requisite documentation. See N.J.A.C. 17:2-6.1

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 stipulated that you would not return to employment, 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 “major” 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 was processed and you were granted an 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

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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.

As noted above, the Board has considered your personal statements, 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 based on 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. Ignatowitz, Secretary
Board of Trustees
Public Employees' Retirement System

G-10/JSI
C: D. Lewis (ET); K. Ozol (ET)