



# State of New Jersey

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

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*Acting Director*

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

March 17, 2022

Sent via email to: [REDACTED]

Donna Walton  
[REDACTED]

Donna Walton<sup>1</sup>  
PERS [REDACTED]  
OAL DKT. NO. TYP 03078-2018

Dear Mrs. Walton:

## **FINAL ADMINISTRATIVE DETERMINATION**

At its meeting on February 16, 2022,<sup>2</sup> the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) considered your request for emergency relief pursuant to N.J.A.C. 1:1-12.6.<sup>3</sup> After careful consideration, the Board voted to deny your request for emergency relief because there is no statutory authority to provide disability benefits until the member has been deemed totally and permanently disabled pursuant to N.J.S.A. 43:15A-42, 43. The Board also determined that your application for emergency relief fails to meet the standard as set forth by our Supreme Court in Crowe v. DeGioa, 90 N.J. 126 (1982).

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<sup>2</sup> Due to health and safety concerns for the public regarding COVID-19, the January 19, 2022 and February 16, 2022 meetings were conducted via teleconference.

<sup>3</sup> At the February 16, 2022, meeting, in a separate action, the Board issued its findings of fact and conclusions of law with respect to its decision to reject the legal conclusions in the November 29, 2021, Initial Decision.

### **FINDINGS OF FACT**

In its February 17, 2022, Final Administrative Determination, the Board adopted the findings of fact as found by the Hon. Elaine Frick, ALJ, in the November 29, 2021, Initial Decision, and the same are repeated for background for ease of reference. The record indicates that you originally filed an application for Accidental Disability (AD) retirement benefits on June 15, 2015, with an effective date of July 1, 2015. On January 5, 2016, the Division of Pensions and Benefits (Division) notified you that you were unable to file for an AD retirement and required you to change your retirement type to Ordinary Disability (OD). The letter further stated that your application would be closed on February 15, 2016, if you failed to provide the requisite medical documentation before that date. You appealed this administrative determination to the PERS Board.

At its meeting of March 16, 2016, the Board approved your request to file for an AD retirement on the condition that all medical documentation be received by April 18, 2016. On April 26, 2016, as a courtesy, the Board office left a voice message to inform you that the deadline had passed and to provide you one final opportunity to submit your medical documentation and avoid the closing of your application. On June 2, 2016, you were notified by the Board office that your original application was closed. No appeal was received regarding the closure of the retirement application you filed on June 15, 2015.

Subsequently, on November 10, 2016, you submitted a new application for AD retirement benefits, with an effective date of December 1, 2016. The record shows that you were sent notices dated December 12, 2016, January 11, 2017, and February 13, 2017 requesting the medical documentation that you were responsible to provide within six months of application. On July 10, 2017, the Disability Retirement Section closed your second application, because you failed to provide the necessary medical documentation within the requisite timeframe (plus two months). On August 8, 2017, you appealed the administrative decision to close the application that you had filed on November 10, 2016.

At its meeting on September 20, 2017, the Board postponed action on your appeal and granted your request for additional time, until October 3, 2017, to provide the medical documentation required under N.J.A.C. 17:2-6.1(e) and previously requested by the Division. However, the Board letter clearly indicated that the medical documentation must support your claim that you were disabled when you separated from employment on June 30, 2015. In addition, based upon the information you represented at the meeting on September 20, 2017 regarding the termination of your employment, the Board also obtained documentation related to your disciplinary matter and a mediation agreement negotiated between you and your employer, to which neither the Division nor the Board of Trustees was a party.<sup>4</sup>

On November 15, 2017, following its review of the documentation provided by you and your employer, the Board affirmed the administrative decision to deny your request to re-open your November 10, 2016 application in accordance with N.J.A.C. 17:2-6.1(e). You filed a timely appeal and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed on February 28, 2018, to be heard as a contested case.

You sought emergency relief from the Board, requesting payment for alleged prior and prospective monthly AD retirement benefits until the conclusion of your pending appeal. The Board transmitted the request as an emergent application to the OAL, where it was docketed on December 19, 2018. Oral argument on the emergent application was heard on December 27, 2018. On December 9, 2019, you failed to appear for the scheduled hearing date. You contacted the OAL on December 10, 2019, and indicated that you mixed up the hearing dates. The matter proceeded to a hearing on January 10, 2020.

The ALJ issued an Initial Decision on November 29, 2021, and recommended that the Board re-open your prior application. At its meeting on January 19, 2022, the Board voted to

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<sup>4</sup> Prior to the Board meeting you were provided with copies of the documentation submitted by your employer.

adopt the ALJ's factual findings but to reject the ALJ's legal conclusion that the Board should re-open your application.

You filed the current application for Emergency Relief on or about January 28, 2022 and your application was heard at the Board's February 16, 2022 meeting. In your appeal, you assert that you are experiencing financial hardship, and are likely to prevail on the merits of your case because you have a legal right to the benefits you seek.

After careful consideration, the Board denied your request to award "temporary" or "interim" AD retirement benefits, having found that the PERS statutes and regulations grant the Board no authority to provide such relief. A member is entitled to disability retirement benefits only after the Board has found the member to be permanently and totally disabled pursuant to N.J.S.A. 43:15A-42, 43. The Board directed the undersigned to draft a final administrative determination consistent with its decision for review at its meeting of March 16, 2022.

#### **CONCLUSIONS OF LAW**

Motions for emergency relief before an administrative agency are governed by N.J.A.C. 1-1-12.6, which states, in pertinent part:

- (a) Where authorized by law and where irreparable harm will result without an expedited decision granting or prohibiting some action or relief connected with a contested case, emergency relief pending a final decision on the whole contested case may be ordered upon the application of a party.

Under the Administrative Code, an application for emergency relief thus requires that the requested action be "authorized by law" and that the failure to authorize the request would result in "irreparable harm to the member." Ibid. The Board denied your application for emergency relief because your request for "temporary" AD retirement benefits is not authorized by law. N.J.S.A. 43:15A-42, 43, the OD and AD retirement statutes, require that the member establish that "the member is physically or mentally incapacitated for the performance of duty and should be retired," or that he or she "is permanently and totally disabled as a direct result of a traumatic

event occurring during and as a result of the performance of his regular or assigned duties.” It is undisputed that the Board has no made no such finding with respect to your application. Accordingly, the Board denied your request for emergency relief in the form of “temporary” AD retirement benefits because it is not authorized by law and therefore fails to meet the requirements under N.J.A.C. 1:1-12.6.

Next, the Board found that you failed to show that denying your request for temporary disability benefits would result in irreparable harm. In the event your application for AD retirement benefits is successful and you were deemed disabled by the Board, you would be entitled to AD or OD retirement benefits retroactive to the effective date of your retirement. Moreover, our courts are guided by the principle “that a preliminary injunction should not issue except when necessary to prevent irreparable harm. Harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages.” Crowe v. DeGioia, 90 N.J. 126, 133 (1982).

The Board also notes that ALJ Frick heard your first application for emergency relief. Walton v. Board of Trustees, PERS, OAL Dkt. No.: 18017-18 (decided December 28, 2018)(adopted March 20, 2019). In rejecting your application, the ALJ found that:

[H]ere, the petitioner asserts she should be awarded back payments of accidental disability retirement she believes she is entitled to receive, and continued monthly payments of same, until the outcome of her pending appeal of the Board’s denial to re-open her application file. There is no such monetary financial relief authorized by law that may be awarded to her.

[(slip op. at 8)].

The ALJ concluded that

there is no legal authority permitting petitioner to be awarded the emergent financial relief she has requested. I further **CONCLUDE** the petitioner has failed to demonstrate she would be entitled to emergency relief, even if it were available, for failure to demonstrate all factors set forth in Crowe v. DeGioia, 90 N.J. 126 (1982).” (emphasis in original).

For these reasons, the Board rejected your application for emergency relief. This

Donna Walton  
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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,

A handwritten signature in black ink, appearing to read "Jeff S. Ignatowitz". The signature is fluid and cursive, with a large loop at the end.

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

G-7/JSI

C: D. Lewis (ET); A. McCormick (ET); T. Fleischmann (ET); K. Ozol (ET); P. Sarti (ET)  
OAL, Attn: Library (ET)  
DAG Yi Zhu (ET)