



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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February 4, 2022

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

Sent via email to [REDACTED]

ZAZZALI, FAGELLA, NOWAK, KLEINBAUM & FRIEDMAN
Jason Sokolowski, Esq.
[REDACTED]

Re: Karen Wiseman TPAF [REDACTED]
OAL DKT. NO TYP 10406-18

Dear Mr. Sokolowski:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At its meeting on January 6, 2022,¹ the Board of Trustees of the Teachers' Pension and Annuity Fund ("TPAF") considered the Initial Decision ("ID") of the Honorable Joann LaSala Candido, Administrative Law Assignment Judge ("ALAJ"), dated December 1, 2021, together with the evidence submitted by the parties, the exceptions filed by Deputy Attorney General Brian D. Ragunan, dated December 27, 2021 and the reply to exceptions filed by Jason E. Sokolowski, dated January 3, 2022.

After careful consideration, the Board voted to reject the ALAJ's recommendation that Ms. Wiseman is eligible for Ordinary Disability retirement benefits, thereby reaffirming its original determination.² For the reasons set forth below, the Board modified the ALAJ's findings of fact, but rejected the finding that Dr. Farzana Nanavati ("Dr. Nanavati") presented more reliable testimony than Dr. Steven Lomazow ("Dr. Lomazow"); and rejected the ALAJ's finding that Ms.

¹ Due to health and safety concerns for the public regarding COVID-19, the meeting was conducted via teleconference.

² DAG Joseph Palumbo recused; legal counsel was provided by DAG Porter Strickler.

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Wiseman is entitled to Ordinary Disability (“OD”) retirement benefits.³ The Board directed the Secretary to prepare the Findings of Fact and Conclusions of Law outlined below, which were approved by the TPAF Board at its meeting on February 3, 2022. This will constitute the Final Administrative Determination in this matter.

On December 4, 2017, Ms. Wiseman applied for an OD retirement benefit. The Board noted that Ms. Wiseman did not list the reasons for her disability on her application. At its meeting on May 3, 2018, the Board denied Ms. Wiseman OD retirement benefits after finding that she is not totally and permanently disabled from the performance of her regular and assigned job duties. After a hearing in the OAL, the ALAJ found that Ms. Wiseman is permanently and totally disabled as a high school English teacher due to [REDACTED]. ID at 7.

For the reasons set forth below, the Board rejects the ALAJ’s finding that Ms. Wiseman is totally and permanently disabled and that she is eligible for OD retirement benefits. With respect to Ms. Wiseman’s job requirements, the ALAJ found that Wiseman is unable to do the activities that are necessary to perform her job as a teacher that required her to move between five different classrooms throughout the building, walking up and down stairs, and sitting and/or standing for prolonged periods of time. ID at 9. The Board voted to reject this finding because it conflates how Ms. Wiseman subjectively and specifically taught with the general requirements of being a teacher. Instead, the Board held that the appropriate standard to apply considers the general area of her ordinary employment as a teacher and not specific self-reported tasks or functions. See Skulski v. Nolan, 68 N.J. 179, 205-06 (1975)(citing Getty v. Prison Officers’ Pension Fund, 85 N.J. Super. 383 (App. Div. 1964). To qualify for OD, applicants must demonstrate an incapacity to perform duties in the general area of their regular employment rather than solely showing an inability to perform their specific job. See Bueno v. Bd. of Trs., Teachers’ Pension & Annuity Fund,

³ As the 45-day statutory period for issuing a final decision would have expired, the TPAF Board properly requested and received an extension of time for issuing its final decision.

404 N.J. Super. 119, 130–31 (App. Div. 2008). The Board finds that based on Ms. Wiseman’s job description and the expert medical testimony and evidence in the record there is no reason why she could not perform the general functions of a teacher, which involves planning lessons and verbally communicating with students. P-13.

Although Ms. Wiseman alleged she is disabled because she experienced some difficulty with specific aspects of her job, such as [REDACTED], such difficulties do not meet the standard for disability retirement benefits. See S.G. v. Bd. of Trs., Teachers’ Pension & Annuity Fund, 2021 N.J. Super. Unpub. LEXIS 3136, *21 (App. Div. 2021) (“petitioner was not required to merely prove her condition disabled her from performing the specific duties of ‘her job as a middle school math teacher’ . . . petitioner was required to prove her condition disabled her from performing ‘the general area of [her] ordinary employment.’”).

Moreover, these specific complications might have been resolved by simply requesting an accommodation. *Id.* at *22. (The Board noted that petitioner had the option to request an accommodation such as [REDACTED], was arbitrary, capricious or unreasonable). See also Grieco-Hicks v. Bd. of Trs., Teachers’ Pension & Annuity Fund, 2017 NJ. Super. Unpub. LEXIS 1159, at *12 (App. Div. May 11, 2017) (affirming denial of AD, where “[t]here was no evidence that even if [an art teacher] used a wheelchair, she would be unable to move about a classroom to guide and teach art students, particularly if reasonable accommodations to classroom layout were made”). Most of the specific duties Ms. Wiseman stated she could not perform were not in her official job description but particular to her specific teaching assignment (walking up and downstairs, changing classrooms, taking on extra duties). P-13; DeFeo v. Bd. of Trs., Pub. Emps.’ Ret. Sys., 2018 NJ. Super. Unpub. LEXIS 537, at *7 (App. Div. March 9, 2018) (inability to “perform all of the duties required of [a] job . . . does not amount to the inability to perform [the] job”), certif.

denied, 234 NJ 9 (2018). For these reasons, Ms. Wiseman did not provide evidence to support that she is permanently and totally disabled from her general employment as a teacher. Therefore, the Board modifies the ALAJ's finding of fact to include only those in the job description.

Next, the ALAJ incorrectly weighed the opinion of Ms. Wiseman's expert, Dr. Nanavati over that of the Board's expert, Dr. Lomazow. ID at 6. The Board rejects the ALAJ's finding that Dr. Nanavati presented more reliable testimony than that of Dr. Lomazow because the ALAJ erred in minimizing the absence of a clinical correlation between Ms. Wiseman's complaints and diagnostic tests and Dr. Lomazow's hands-on testing. ID at 5. The Board notes the ALAJ found Dr. Lomazow credible. Based on the testimony and medical evidence presented, the Board finds that Dr. Lomazow's opinion more reliably accounts for the objective evidence contained in the record and that Ms. Wiseman's subjective complaints do not have a sufficient objective [REDACTED] basis. ID at 6; See Angel v. Rand Express Lines, Inc., 66 N.J. Super. 77, 86 (App. Div. 1961).

Dr. Lomazow reviewed Ms. Wiseman's medical records and history that she provided and performed a [REDACTED] exam. The Board notes Dr. Lomazow did not find any disabling [REDACTED] conditions, and opined that her [REDACTED], and were not ultimately disabling. ID at 4. Further, the results of Ms. Wiseman's [REDACTED] exam and [REDACTED] were normal. Ibid. This objective testing is of particular importance compared to the subjective complaints relied upon by Ms. Wiseman's expert. Dr. Lomazow reliably opined that Ms. Wiseman could fully perform her job duties as she had been for years with [REDACTED] after a thorough review of Ms. Wiseman's job description. Ms. Wiseman's own testimony showed that she had suffered with [REDACTED] for over three decades. In addition, she testified that the [REDACTED] treatments that she receives every three months have helped ease the [REDACTED]. The objective evidence in the record bears this out. Ibid. On the

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contrary, Dr. Nanavati's finding that Ms. Wiseman is totally and permanently disabled is not supported by objective evidence, but was only based on Ms. Wiseman's self-reported pain. Ibid.

Finally, the Board rejected the substantial weight the ALAJ gave to the fact that Dr. Nanavati was Ms. Wiseman's treating physician since 2015. The Board finds that the ALAJ failed to adequately weigh that Ms. Wiseman was still working when she filed her application for OD in December 2017 and was also actively working when she was examined by Dr. Lomazow in March of 2018. P-14; J-4. In contrast, Dr. Nanavati based many of her findings on treatment from 2012 and exams in September 2018. Fineberg v. Bd. of Trs., Teachers' Pension & Annuity Fund, 2019 N.J. Super. Unpub. LEXIS 2010, at *4 (App. Div. October 1, 2019) (affirming denial of OD, based in part on ALAJ's finding that opinion of Board's expert was "entitled to greater weight than that of petitioner's expert because he examined [Fineberg] closer to the date of her departure").] The Board's decision is in line with the well settled principle that "the weight to which an expert opinion is entitled can rise no higher than the facts and reasoning upon which that opinion is predicated." Johnson v. Salem Corp., 97 N.J. 78, 91 (1984).

For these reasons, the Board rejected the ALAJ's legal conclusion that Ms. Wiseman is eligible for Ordinary Disability retirement benefits. 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,

ZAZZALI, FAGELLA, NOWAK, KLEINBAUM & FRIEDMAN
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A handwritten signature in black ink, appearing to read "Saretta Dudley", enclosed in a thin black rectangular border.

Saretta Dudley, Secretary
Board of Trustees
Teachers' Pension and Annuity Fund

G-/SD

C: D. Lewis (ET); T. Fleischman (ET); K. Ozol (ET); P. Sarti (ET);
OAL, Attn: Library (ET); Brain Ragunan (ET)

Karen Wiseman