



State of New Jersey

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

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www.nj.gov/treasury/pensions
August 18, 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]

Michael Behar
[REDACTED]

RE: PERS # [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Behar:

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) finding that your post-retirement employment violated the PERS' return to employment rules for retirees. At its meeting of May 18, 2022,¹ the Board found that your return to full-time employment with the Division of Law as an Investigator violated the statutes and regulations undergirding the PERS. On July 4, 2022, you filed a timely appeal of the Board's decision and also requested the Board reconsider its decision. At its meeting of July 20, 2022, the Board considered your appeal and, finding no material facts in dispute, denied your request for an administrative hearing and directed the undersigned to draft this Final Administrative Determination, which the Board reviewed and approved at its meeting of August 17, 2022.

FINDINGS OF FACT

The Board made the following factual findings.

The record before the Board establishes that you retired from the PERS effective June 1, 2017 [REDACTED]. Your retirement was approved by the Board at its

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

monthly meeting of May 17, 2017. The Board finds that you were made aware of the post-retirement employment restrictions in the Board's retirement approval letter which stated that:

If you are considering working after retirement, you should be aware of the restrictions imposed by laws and regulations governing post-retirement employment. It is your responsibility to inform your prospective employer that you are receiving retirement benefits from a New Jersey State-administered retirement system, and to understand the impact employment will have on those retirement benefits. In some instances, your retirement benefits may be suspended or even canceled entirely, and if this occurs, you will be responsible for the repayment of any benefits you were not entitled to receive. You may also be required to re-enroll in your former retirement system or a different retirement system, and make pension contributions into that system.

Please read Fact Sheet # 86 regarding Post-Retirement Employment Restrictions located on the Division of Pensions and Benefits' website:

<http://www.nj.gov/treasury/pensions/documents/documents/factsheets/fact86.pdf>

Upon reading Fact Sheet # 86, if you have any additional questions regarding return to public employment, please contact the Office of Client Services at (609) 292-7524."

The retirement application you filed through MBOS also required you to acknowledge the terms and conditions of retirement (page three), and you certified that you agreed to comply with all application terms and conditions, had made no pre-arrangement to return to public employment after retirement in any capacity, and that you had read the rules regarding potential Post-Retirement Employment.

On January 31, 2022, the Division of Pensions and Benefits (Division) received a *Notification of Employment after Retirement Form* (RTE Form) and an *Employment Verification Form* advising that you were hired by the New Jersey Division of Law (DOL) as an "Investigator 2," a full-time position, at an annual wage of \$ [REDACTED], effective January 03, 2022. As a result, the Division's External Audit Unit (EAU) reviewed your account in order to determine if your post-retirement employment with the DOL required re-enrollment in the PERS. State Centralized Payroll records provided by the DOL confirm that you began receiving a full-time salary in equal

bi-monthly installments as a full-time Investigator 2 and earned [REDACTED] for the period from January 3, 2022 until you terminated your employment with the DOL effective February 23, 2022.

The Board found that neither you nor your employer contacted the Division prior to your return to employment to ascertain whether it would have any impact on your pension and if it was in compliance with all applicable rules and regulations of the retirement system. The Division sent a letter to you and the DOL on February 3, 2022, advising the DOL that you were required to re-enroll in the PERS and that your pension benefit would be cancelled. Further, any retirement benefit you had received while you should have been enrolled in the PERS was in violation of PERS rules and would have to be returned. Finally, you were advised that you must terminate all PERS-covered employment in order to begin receiving a retirement allowance again from the PERS would become eligible to receive your pension benefit after you reapplied for retirement as required under N.J.A.C.17:2-6.1(a). Thereafter, the Division suspended the payment of your retirement benefits effective with the March 1, 2022 pension check.

At its meeting on May 18, 2022, the Board considered your personal statements, the statements of Katarzyna Brzostowski, an Auditor with the Division's EAU, and all relevant documentation in the record concerning your appeal of the EAU's finding that your post-retirement employment violated PERS rules. The Board found that your return to employment was in violation of PERS' rules, substantially for the reasons as outlined in the EAU's letters of February 3, 2022 and March 22, 2022.

Although your post-retirement employment would have required you to re-enroll in the PERS, the EAU noted that you resigned employment with the DOL on or about February 23, 2022. As such, if a Tier 5 PERS membership account had been created for you based on your new employment, you would not have been eligible to receive any retirement benefit since you did not have the required minimum age of 65 to retire (for a Service retirement), or sufficient pension service credit (of ten years to file for a Deferred retirement). Accordingly, you were not

re-enrolled in the PERS and are not required to pay pension contributions on the salaries earned during the relevant time period.

You filed a timely appeal of the Board's decision on July 4, 2022, requesting that the Board reconsider its decision. At its meeting of July 20, 2022, the Board denied your request for reconsideration, 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 for review at its meeting of August 17, 2022.

CONCLUSIONS OF LAW

The Board made the following legal conclusions.

A PERS retiree may return to public employment under certain limited conditions. As a PERS retiree, your post-retirement employment is regulated by the re-enrollment provisions of the pension statutes including N.J.S.A. 43:15A-57.2 (re-enrollment of former member after receiving retirement allowance) and N.J.S.A. 43:15A-7d (4). A PERS retiree who accepts PERS-covered employment may be required to re-enroll and have his or her retirement benefit suspended until he or she separates from that employment.

The Board noted that N.J.S.A. 43:15A-57.2 provides that:

[I]f a former member of the State Employees' Retirement System or the retirement system, who has been granted a retirement allowance for any cause other than disability, becomes employed again in a position which makes him eligible to be a member of the retirement system, his retirement allowance and the right to any death benefit as a result of his former membership shall be canceled until he again retires.

Such person shall be re-enrolled in the retirement system and shall contribute thereto...

Moreover, N.J.S.A. 43:15A-7(4) requires employees hired in a full-time covered position to be enrolled in the pension system.

"After the effective date of P.L.2010, c. 1, no person in an employment, office or position of the State, or an agency, board, commission, authority or instrumentality of the State, for which the

hours of work are fixed at fewer than 35 per week shall be eligible to become a member of the retirement system; and no person in employment, office or position with a political subdivision of the State, or an agency, board, commission, authority or instrumentality of a political subdivision of the State, for which the hours of work are fixed by an ordinance or resolution of the political subdivision, or agency, board, commission, authority or instrumentality thereof, at fewer than 32 per week shall be eligible to become a member of the retirement system...”

In your appeal letter you note that you advised your employer that you were receiving a retirement benefit and therefore the DOL and the Division should have been aware of and notified you of any issue with your return to employment. You also assert that you were unaware that you needed to contact the Division to determine whether your new public employment would adversely impact the receipt of your pension. The Board disagrees with both of these assertions.

First, the Board notes that you were personally notified that, should you return to public employment, you should contact the Division immediately. Although you state that you advised your employer, you failed to contact the Division personally. Second, the Division was not informed of your return to employment by the DOL until one month after you had returned. Put simply, the Division had no way of knowing you returned to employment in the first instance, and certainly could not have notified you of any issue with your pension either prior to or immediately at the time of your return, as you suggest. However, if you had contacted the Division prior to your return to public employment, you would have been notified of the restrictions regarding a retirees' return to employment. Moreover, the Division's website has a wealth of information on a number of topics, including Fact Sheet #86, entitled "*Employment After Retirement Restrictions*."² Thus, the Board found that you had adequate notice of the restrictions on post-retirement employment, and could have availed yourself of the publicly available resources on the Division's website.

² [fact86 \(state.nj.us\)](https://www.state.nj.us/dca/fact86) (last accessed August 15, 2022.)

After careful consideration of the record as detailed above, the Board found that you should have been re-enrolled in the PERS as of January 3, 2022, and you are required to reimburse the fund for any retirement benefit received until you terminated your post-retirement employment. However, because you resigned from employment upon learning that you were no longer eligible to receive a retirement benefit, the Board determined that you would not be required to re-enroll in the PERS, and as a result, you are not required to pay pension contributions on the salary earned while you remained in employment.

Consequently, you are only required to repay your February 1, 2022, retirement check to the PERS in the amount of [REDACTED] that you were also not entitled to receive. The Division also cancelled payment of your retirement benefits effective with the March 1, 2022, pension check because you were not eligible to receive benefits for the month of February 2022. You will not be reimbursed for this monthly retirement benefit. The Division notes that you earned [REDACTED] for the period from January 3, 2022 until you terminated employment with the DOL effective February 23, 2022 and are not required to return these monies.

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.

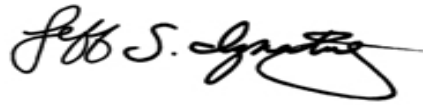
You also have the right to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey.

Michael Behar
August 18, 2022
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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 of the last name.

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

G-5/JSI

C: K. Brzostowski (ET); T. Myrhe (ET) S. Fenstermacher (ET)