



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
November 29, 2023

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

Sent via email and regular mail

Robbins and Robbins, LLP
Spencer B. Robbins, Esq.



RE: Vincent Carpenito
SPRS [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Robbins:

I am writing in reference to the decision of the Board of Trustees (Board) of the State Police Retirement System (SPRS) denying the application for Deferred retirement benefits filed by your client, Vincent Carpenito. The Board originally denied Mr. Carpenito's application at its meeting of March 28, 2023, finding him ineligible for Deferred retirement benefits in accordance with N.J.S.A. 53:5A-28. You filed a timely appeal on Mr. Carpenito's behalf by way of letter, dated May 10, 2023.¹

At its meeting of September 26, 2023, the Board considered your written submission, your personal statements and those of Mr. Carpenito, as well as all documentation in the record. Thereafter, the Board affirmed its previous decision, finding Mr. Carpenito ineligible for Deferred retirement benefits. Further, finding no genuine issues of material fact in dispute, the Board denied an administrative hearing and directed the undersigned to draft a Final Administrative Determination.

¹ Due to conflicts with your schedule, the appeal was placed on the agenda of the Board's September 26, 2023 meeting.

Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the Board at its November 28, 2023 meeting.

FINDINGS OF FACT

The Board made the following factual findings.

Vincent Carpenito was enrolled in the SPRS on July 30, 1988 as a Trooper. On January 3, 2004, Mr. Carpenito was promoted to Detective Sergeant, the title he held at the time of his dismissal. On March 24, 2006, Mr. Carpenito was charged with five disciplinary infractions of the Rules and Regulations of the Division of State Police:

- (1) abandonment of his post and failure to report his absence to his superior, in violation of Article V, Section 13 of the Rules and Regulations;
- (2) behavior "in an official capacity to the personal discredit of the member or to the discredit of the Division," in violation of Article VI, Section 2, a. of the Rules and Regulations;
- (3) behavior "in an unofficial or private capacity to the personal discredit of the member or to the discredit of the Division," in violation of Article VI, Section 2, b. of the Rules and Regulations;
- (4) making a false or misleading official statement or intentional misrepresentation of fact, in violation of Article V, Section 15 of the Rules and Regulations; and
- (5) failure to obey a lawful order, specifically displaying "less than complete candor" during the investigation, in violation of Article IV, Section 3, a. of the Rules and Regulations and New Jersey State Police Standard Operating Procedure B-10, Internal Investigative and Disciplinary Procedures, Section F, Paragraph 3.

The charges stem from Mr. Carpenito's dereliction of duty by leaving his post on August 7, 2005 and August 8, 2005; acting or behaving in an official capacity to his personal discredit or to the discredit of the New Jersey State Police by allegedly restraining his then wife with handcuffs

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and thereafter sexually assaulting her; and knowingly making false and misleading statements to the investigating Internal Affairs Officer.

The case was transferred to the Office of Administrative Law as a contested matter. In an Initial Decision, dated July 5, 2007, the Administrative Law Judge (ALJ) sustained all Charges and Specifications with the exclusion of the sexual assault related to Charges 2 and 3, and recommended Mr. Carpenito's termination of employment. Colonel Joseph R. Fuentes, then Superintendent of the Division of State Police, adopted the ALJ's findings and dismissed Mr. Carpenito from the New Jersey State Police by way of his final written decision, dated August 16, 2007. Mr. Carpenito appealed that decision to the New Jersey Superior Court, Appellate Division. However, the Appellate Division rejected all of Mr. Carpenito's arguments finding that "Carpenito's own statements and admissions warranted the Superintendent's conclusion that he had violated the standards of conduct that were charged," and resultantly affirming the dismissal.

At the time of his dismissal, Mr. Carpenito was 39 years of age and his SPRS membership account reflected a total of 17 years and 1 month. Thus, at that time, the only benefit for which Mr. Carpenito could apply was a Deferred retirement.

Regarding Deferred retirement, the May 2010 *State Police Retirement System Handbook* included the following:

This type of retirement is available to SPRS members with at least ten years of service credit and who are not yet 55 years of age when they terminate employment. The annual retirement allowance is 2 percent of Final Compensation for each year of service up to 25 years.

The effective date of a Deferred Retirement is the first of the month after you attain age 55. You must file an *Application for Retirement Allowance* to receive a Deferred Retirement, and you should file the application when you terminate covered employment. If you are terminated for cause, you may not be eligible to receive Deferred Retirement benefits. The SPRS Board of Trustees will make that determination at the time you file your application.

(Emphasis added)

By letter dated May 13, 2021, the Division of Pensions and Benefits advised Mr. Carpenito that he may be eligible for Deferred retirement benefits. The letter stated the following:

As a result of your New Jersey public employment, you qualify for the withdrawal of your total pension contributions of \$68,282.72 in a lump sum from the State Police Retirement System or you may elect a transfer to an Individual Retirement Account (IRA) or an employer's retirement plan through a rollover or you may qualify for a lifetime retirement benefit. If you were dismissed from employment as a result of charges or misconduct connected to your employment, you will not be eligible for deferred retirement benefits. You will be eligible to withdraw your pension contributions.

(Emphasis added)

On August 7, 2022, Mr. Carpenito filed an application for Deferred retirement benefits effective March 1, 2023 (the first of the month following his 55th birthday).

At its meeting of March 28, 2023, the Board considered Mr. Carpenito's personal statements and submissions as well as all documentation in the record concerning his eligibility for Deferred retirement benefits in light of his dismissal from employment with the Division of State Police on charges of misconduct. After careful consideration, the Board found Mr. Carpenito ineligible for Deferred retirement benefits pursuant to N.J.S.A. 53:5A-28 and denied his application.

By letter dated May 10, 2023, you timely appealed the Board's determination on behalf of Mr. Carpenito. Due to conflicts with your schedule, the appeal was placed on the agenda of the Board's September 26, 2023 meeting. At said meeting, the Board considered your written submission, your personal statements, and those of Mr. Carpenito, as well as all documentation in the record. Thereafter, the Board affirmed its previous decision, finding Mr. Carpenito ineligible for Deferred retirement benefits based on undisputed facts in the record. Finding no genuine issues of material fact in dispute, the Board denied an administrative hearing and directed the

undersigned to draft detailed Findings of Fact and Conclusions of Law for review at its November 28, 2023 meeting.

CONCLUSIONS OF LAW

The Board found that Mr. Carpenito is ineligible for Deferred retirement benefits pursuant to N.J.S.A. 53:5A-28, which states in pertinent part:

a. Should a member, after having established 10 years of creditable service as a full time commissioned officer, noncommissioned officer or trooper of the Division of State Police, be separated voluntarily or involuntarily from the service, before reaching age 55, and not by removal for cause on charges of misconduct or delinquency, such person may elect to receive the payments provided for in section 26 or 27 or a deferred retirement allowance, beginning on the first day of the month following his attainment of age 55 and the filing of an application therefor, which shall consist of:

...

(Emphasis added)

Based on the plain language of the statute as applied to the facts in the record, the Board determined that Mr. Carpenito was removed for cause on grounds of misconduct or delinquency directly related to his employment, and is 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); See also J.A.W. v. Bd. of Trs., State Police Ret. Sys., No. A-1570-20 (App. Div. March 2, 2022) (slip op. at 7) (holding that “[t]he plain language of [N.J.S.A. 53:5A-28] leaves no room for discretion by the Board: any member removed as a public employee for charges of misconduct or delinquency is ineligible to receive benefits from SPRS as a matter of law.”).

You represent that Mr. Carpenito “was advised that his pension benefits were not at jeopardy at the time of the administrative proceeding.” However, the Board noted that it was not a party to any assurance given to Mr. Carpenito regarding his pension benefits. Any such promise

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has no effect on the Board's statutory responsibility to evaluate an application for Deferred retirement consistent with the plain terms of N.J.S.A. 53:5A-28, which, as indicated above, provide Deferred retirement benefits only to former employees who were "not ... remov[ed] for cause on charges of misconduct or delinquency."

Mr. Carpenito further represented that he believed he would be eligible to receive Deferred retirement benefits as the Division of Pensions and Benefits accepted the Domestic Relations Order (DRO) between him and his former spouse, dated November 9, 2009. However, the acceptance of the DRO by the Division of Pensions and Benefits is not dispositive of Mr. Carpenito's eligibility to receive Deferred retirement benefits. The Division of Pensions and Benefits was not aware of the circumstances under which Mr. Carpenito left employment until he filed his *Application for Retirement Allowance* and the Division of State Police indicated that he was terminated on the corresponding *Certification of Service and Final Salary – Retirement* and provided supporting documentation.

The Board also noted your argument that Mr. Carpenito is entitled to Deferred retirement benefits because there was no related criminal conviction. N.J.S.A. 53:5A-28 "does not require conviction of an indictable offense." Manzella v. Twp. Of Rochelle Park, No. A-4534-06 (App. Div. 2008) (slip op. at 6). Rather, it only requires a showing that a member of the SPRS was removed for cause on "charges of misconduct or delinquency." N.J.S.A. 53:5A-28. Indeed, the "charges of misconduct or delinquency" do not have to be "criminal" in nature to render an applicant ineligible to receive a Deferred retirement. See Danny Glenn v. Pub. Emp. Ret. Sys., No. A-5271-14 (App. Div. July 21, 2017) (slip op. at 4) (holding that there is "no support in the [deferred retirement] statute for the interpretation urged by petitioner that the 'charges' must involve acts of criminality, misconduct in office or egregious conduct"). See also J.A.W., No. A-1570-20 at 10

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("ineligibility for Deferred benefits pursuant to N.J.S.A. 53:5A-28 requires only 'charges of misconduct or delinquency' rather than an actual conviction").

At the time of Mr. Carpenito's dismissal on August 16, 2007, he was 39 years of age and his SPRS membership account reflected a total of 17 years and 1 month. At that time, the only benefit for which Mr. Carpenito could apply was a Deferred retirement. However, it is undisputed that Mr. Carpenito was removed "for cause on charges of misconduct or delinquency" directly related to his employment based on the Final Decision of Superintendent Fuentes. Thus, based on the plain language of N.J.S.A. 53:5A-28 as applied to the facts presented to the Board, Mr. Carpenito is not eligible for Deferred retirement benefits.

Mr. Carpenito is eligible to withdraw his accumulated pension contributions remitted during active membership,² and may request an *Application for Withdrawal* by writing to Robin Willever, Supervisor, Loan/Withdrawal Section at the Division of Pensions and Benefits, at the address above. **Nonetheless, Mr. Carpenito is cautioned against filing the withdrawal application if he intends to appeal the Board's determination. Withdrawal terminates all rights and privileges of membership.**

As noted above, the Board has considered your personal statements, written submissions 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. N.J.S.A. 52:14B-2; N.J.A.C. 17:1-1.3(g); N.J.A.C. 17:5-1.6(e). Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the State Police Retirement System.

² Subject to the stipulations of the DRO on file.

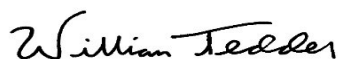
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You have the right to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey.

All appeals should be directed to:

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

Sincerely,



William Tedder, Secretary
Board of Trustees
State Police Retirement System

G-1/WT

C: J. Ehrmann (ET); R. Willever (ET)

Vincent Carpenito (sent via email to: [REDACTED])

Division of State Police
Dianna Sampson, Benefits Unit Head
[REDACTED]