



# State of New Jersey

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

TRENTON, NEW JERSEY 08625-0295  
Telephone (609) 292-7524 / Facsimile (609) 777-1779  
TRS 711 (609) 292-6683  
[www.state.nj.us/treasury/pensions](http://www.state.nj.us/treasury/pensions)

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

FORD M. SCUDDER  
*State Treasurer*

JOHN D. MEGARIOTIS  
*Acting Director*

October 19, 2017



RE: 

## **FINAL ADMINISTRATIVE DETERMINATION**

Dear Ms. Patel:

I am writing in reference to the denial by the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) of your appeal of the denial of your application for Accidental disability retirement. On July 19, 2017 the Board determined that you are totally and permanently disabled as a direct result of a fall that occurred as you were walking to work through a parking lot. Because you were still in the process of commuting to work when you fell, the Board determined that the fall did not take place during and as a result of your performance of your regular or assigned duties. Disability caused by accidents that do not take place during and as a result of your performance of your duties cannot serve as the basis of an Accidental disability retirement. N.J.S.A. 43:15A-43. By letter dated August 2, 2017, you timely appealed, thereby requesting a hearing in the Office of Administrative Law ("OAL"). At its meeting of September 20, 2017, the PERS Board reviewed your submission in this matter and denied the request for an administrative hearing. Findings of Fact and Conclusions of Law, as outlined below, were approved by the PERS Board at its October 18, 2017 meeting.

### **FINDINGS OF FACT**

According to the record, you established membership in the PERS on April 1, 1971 as a result of your employment as a Teacher's aide with the Jersey City Public Schools. You remained with this employer until January 1, 2007, at which time a *Report of Transfer* was processed because you accepted a position as a Human Services Specialist I with Hudson County. Your PERS employment continued with Hudson County through November 30, 2016.

The Division of Pensions and Benefits (Division) received your *Application for Disability Retirement* on July 8, 2016 seeking Accidental disability retirement effective December 1, 2016, under Option 2, based upon incidents occurring on February 13, 2013, November 16, 2011 and January 19, 2010. On July 11, 2016, you amended your selection from Option 2 to Option D. On August 1, 2016, the Division requested accident reports for each of the incidents. On August 19, 2016, the Division received the *Employer Certification for Disability Retirement* from Hudson County, certifying the same accident dates upon which you based your claim for disability. Also, your employer certified that the last date of your employment was November 30, 2016.

Hudson County provided documentation regarding your allegedly-disabling incidents. Incident reports were provided indicating that on January 19, 2010, [REDACTED] while filing, and on November 16, 2011, [REDACTED]. Also, a Hudson County Sheriff report (Administrative) created by Nicholas Lawson on February 14, 2013 was submitted, confirming that on February 13, 2013 you slipped on the icy walkway. The report indicated that you stated that "she had parked her car and was walking into work when she slipped on a patch of ice on the walkway causing her to fall down and [REDACTED]."

On July 19, 2017, the PERS Board considered your application for Accidental disability retirement and determined that you are totally and permanently disabled from the performance of your regular and assigned duties as detailed by the applicable statute of N.J.S.A. 43:15A-43 and relevant case law. The Board noted that you filed your application on the basis of three

incidents – January 19, 2010, November 16, 2011 and February 13, 2013. The Board first considered the incidents of January 19, 2010 and November 16, 2011 and determined that you are not considered totally and permanently disabled mentally or physically from either incident. In the absence of a total and permanent disability there can be no direct causation. In addition, although these incidents were identifiable as to time and place, occurred during and as a result of your regular and assigned duties and were not the result of your willful negligence, the incidents were not considered undesigned and unexpected.

Further, the PERS Board may consider an application filed after the five year period if it can be factually demonstrated to the satisfaction of the Board that the alleged disability is due to the accident and that the filing was not accomplished within the five year period due to a delayed manifestation of the disability or to circumstances beyond the control of the member. The Board could find no evidence to support that the alleged disability is a result of delayed manifestation from the incidents of January 19, 2010 and/or November 16, 2011.

The Board then considered the incident of February 13, 2013 and determined that you are totally and permanently disabled as a direct result of this incident. However, although the incident was identifiable as to place and time, was undesigned and unexpected and was not the result of your willful negligence, the Board found that the incident of February 13, 2013 did not occur during and as a result of your regular and assigned duties. Rather, the Board determined that you are totally and permanently disabled as a direct result of a fall that occurred as you were walking to work through a parking lot. Because you were still in the process of commuting to work when you fell, the Board determined that the fall did not take place during and as a result of your performance of your regular or assigned duties. Disability caused by accidents that do not take place during and as a result of your performance of your duties cannot serve as the basis of an Accidental disability retirement. N.J.S.A. 43:15A-43 Therefore, the Board denied your application for Accidental Disability retirement benefits. However, as you were found to be totally

and permanently disabled the Board granted you Ordinary disability retirement benefits effective December 1, 2016.

By letter dated August 2, 2017, you appealed the Board's denial and provided additional documentation to support your appeal. In your appeal letter, you stated on February 13, 2013, while walking to work through the gated employee parking lot at Hudson County Plaza, you "slipped and fell on ice prior to the start of my work day." Your car was parked, which indicates that you used your identification card to gain entry to the lot. Then, "While walking on the walkway leading from [the] parking lot to the employees' entrance to the County Plaza[,] I slipped and fell on ice." Lastly, in your letter, you note that your disabling injury resulted in a Workers Compensation award, and that your injury is work-related. However, as explained below, neither of these facts supports your eligibility for Accidental disability retirement given the fact that the disabling accident occurred while you were commuting.

Accordingly, at its meeting on September 20, 2017, the PERS Board reviewed your appeal and denied the request for an administrative hearing. Thereafter, the Board directed the Board Secretary to prepare the Findings of Fact and Conclusions of Law.

### **CONCLUSIONS OF LAW**

N.J.S.A. 43:15A-43 states in relevant part:

A member ... shall ... be retired ... if ... 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, on an accidental disability allowance....

The "during and as a result" principle was restated in Richardson v. PFRS, 192 N.J. 189, 212 (2007), which emphasized that the legislature intended pension-law standards to be more stringent than those set forth for workers' compensation. Richardson, supra, 192 N.J. at 198-99. (This emphasis is significant in your case, because parking-lot injuries are covered under Workers Compensation law. Bradley v. State, 344 N.J. Super. 568, 574-576 (App.Div. 2001).)

In Kasper v. Board of Trustees of the Teachers' Pension and Annuity Fund, 164 N.J. 564 (2000), the Supreme Court explained the meaning of "during and as a result of the performance of his regular or assigned duties":

The organizing principle is that one who is at the employer's premises solely to do his or her duty, and who, while doing what he or she is expected to do, is disabled by a traumatic accident, will qualify for inclusion in the class of those injured "during and as a result of the performance of his regular or assigned duties." That interpretation is faithful to the Legislature's restorative vision in amending N.J.S.A. 18A:66-39(c). As we previously noted, the amendment was not transformative. It was not intended to limit the accidental disability pension solely to an injury sustained while a teacher is writing on the blackboard in her classroom or a policeman is actually engaged in an arrest. On the contrary, it was meant to restore the integrity of the premises rule; to reinvigorate the going and coming rule; and to qualify for an accidental disability pension an employee who is on premises controlled by the employer and whose injury is causally connected, as a matter of common sense, to the work the employer has commissioned.

[Kasper, supra, 164 N.J. at 587 (emphasis supplied)].

Accordingly, a member must be (1) on the work premises (not merely going to or coming from work) and (2) performing a function which in common sense is causally connected to his or her work. Use of the word "and" clearly indicates that an applicant for AD is required to prove both elements to sustain his or her claim.

In several unpublished cases since Kasper, the Appellate Division has applied the "during and as a result" standard. Cannella v Bd. of Trs., PERS, A-4389-07T2, (App. Div. 2009). Cannella, a DYFS case worker, parked her car in her employer's parking lot. While walking from the lot to the building where she worked, she fell on ice, sustaining a disabling injury. The court emphasized that the statutory language was intended to distinguish the pension statutes from the more liberal worker's compensation interpretation and "limit eligibility for accidental disability pensions to accidents that 'occur on premises owned or controlled by the employer.'" Cannella, supra, at 5 (citing Kasper, supra, 164 N.J. at 580). Furthermore, the legislature intended to "make the

granting of an accidental disability pension more difficult.” Id. (citing Kasper, supra, 164 N.J. at 576). In denying Cannella’s claim, the Appellate Division found that she had not reached the building where she worked when she fell, and her fall thus did not occur during and as a result of her performance of duty in accordance with N.J.S.A. 43:15A-43. The court emphasized that walking towards the building was still commuting and any other interpretation “would extend the scope of coverage beyond Kasper.” Cannella, supra at 8.

More recently, in Massie v. Bd. of Trs., PERS, TYP 12271-08 (2010), an art teacher parked her vehicle, entered the school to sign in, and then left the workplace to complete her commute by moving her car into the school parking lot. While walking from the lot to the school, and carrying materials for use in class that day, she fell on ice, permanently injuring herself. The ALJ denied AD pursuant to Kasper and Cannella. Massie at 10. He found that the disabling fall in fact occurred during Massie’s commute. Id.

Kasper emphasized and reinforced the rule that an “employee cannot be ‘coming or going’ to work, but must be engaged in his or her employment duties on property owned or controlled by the employer in order to qualify for an accidental disability pension.” Kasper, supra, 164 N.J. at 581 (emphasis supplied). Kasper also emphasized that the premises was the physical structure itself. Discussing Lewis-Miles v. Board of Trustees, PERS, TYP 8932-96 (July 16, 1998), Kasper specified that the employee must reach his or her “normal work location.” Kasper noted that Lewis-Miles, who was injured inside the front gate of her employer’s facility in an automobile collision, was found not to be injured “during and as result of” performance of duty because she was still commuting at the time of injury. Id. The “employee had not reached her normal work location, had not signed in, and had not begun her usual work duties.” Id. Kasper also cited an OAL case, Estate of Matza v. Board of Trustees, TPAF, 96 N.J.A.R.2d (TYP) 224 (1996) in which a “teacher who slipped and fell on ice while walking across school parking lot towards school was

on his way to work and was not yet in the performance of his duties at the time of the incident."

Kasper, supra, 164 N.J. at 581-82.

In 2015, in a situation very similar to your own, the Appellate Division affirmed the denial of Accidental disability retirement to a correction officer who was disabled as a result of a fall while he was walking from his vehicle across a prison parking lot toward a prison building to begin his work day. The court noted, "We find, as did the Board, that Esposito's disabling incident in the parking lot did not occur on the premises of the prison. Although the parking lot was utilized by employees such as Esposito and arguably was controlled by his employer, we find that at the time of his unfortunate injury, Esposito was not performing any function connected to his work assignment. Thus the injury was not causally connected to his work." Esposito v. Board of Trustees, PFRS, 2015 N.J. Super. Unpub. LEXIS 1187, Docket Number A-1778-12T4 (App. Div. May 21, 2015), Slip op, at \*7).

As set forth above, although your disabling injury occurred in a work parking lot before your work day, it nonetheless occurred before the end of your commute, as indicated in your appeal letter, and therefore is not an accident on which Accidental disability retirement can be based.

As noted above, the Board has reviewed the record in this matter and, because this matter does not entail any disputed questions of fact, the Board was able to reach the foregoing 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.

Aruna Patel  
October 19, 2017  
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You have the right, if you wish 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.

Sincerely,

A handwritten signature in black ink that reads "Mary Ellen Rathbun". The signature is written in a cursive style and is enclosed within a thin vertical rectangular border.

Mary Ellen Rathbun, Secretary  
Board of Trustees  
Public Employees' Retirement System

G-3/MER

C: Amy Chung, DAG, (ET)  
Robert Kelly DAG, (ET)