



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
December 8, 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]

Kristen W. Ragon, Esq.
[REDACTED]

RE: Dulce Vieira
PERS [REDACTED]
PERS [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Ms. Ragon:

I am writing in reference to the decision of the Board of Trustees (“Board”) of the Public Employees' Retirement System (PERS) denying the request of your client, Dulce Vieira, to remain in her PERS Tier 1 membership account. The Board originally denied Ms. Vieira’s request at its meeting of July 20, 2022.

You filed a timely appeal on behalf of Ms. Vieira. At its meeting of November 16, 2022,¹ the Board considered your written submissions and personal statements. Finding that the statutes and relevant case law governing PERS do not permit the Board to grant Ms. Vieira’s request to remain in her expired PERS Tier 1 membership account, the Board affirmed its original decision. Finding no genuine issue of material fact in dispute, the Board also denied your request for an administrative hearing. Therefore, the Board directed the Board Secretary to draft findings of fact and conclusions of law for review at its December 7, 2022, Board meeting. After careful consideration, the Board approved this Final Administrative Determination.

¹ The meeting was conducted via teleconference.

FINDINGS OF FACT

The Board made the following factual findings.

Ms. Vieira was enrolled in her original PERS Tier 1 membership account ([REDACTED]) on July 1, 2004, as a result of her employment as a Library Assistant with Boonton Township. On September 1, 2005, she became a “multiple” member of the PERS as she simultaneously accepted employment with Bloomingdale Board of Education (BOE) as a Personal Assistant. On September 1, 2006, Ms. Vieira resigned from Bloomingdale BOE.

On May 22, 2010, L. 2010, c. 1 (Chapter 1), was passed, eliminating the creation of “multiple member” status for members hired on or after said date. Once a “multiple member” was down to one remitting location, a new higher salary employer could replace the remitting location.

Ms. Vieira began employment with Roxbury Township (Roxbury) as a Library Assistant on February 1, 2016. As the salary from Roxbury was higher than that from Boonton Township, her PERS membership was transferred to Roxbury. Ms. Vieira resigned from Roxbury on July 6, 2019 and pension contributions were last submitted on June 30, 2019. Thus, her PERS Tier 1 membership account expired on June 30, 2021 pursuant to N.J.S.A. 43:15A-7(e), which states:

Membership of any person in the retirement system shall cease if he shall discontinue his service for more than two consecutive years.

On October 28, 2021, the Division received an Enrollment Application via the Employer Pensions and Benefits Information Connection (EPIC) from the Department of Environmental Protection (DEP) – Site Remediation indicating that Ms. Vieira began employment on September 25, 2021 as an Environmental Services Trainee. Thus, she was enrolled in a new PERS Tier 5 membership account ([REDACTED]) as her previous PERS Tier 1 membership account had expired on June 30, 2021.

The Board noted the May 5, 2022 letter from the Assistant Director of the DEP’s Division of Human Resources indicating that Ms. Viera’s original interview scheduled on March 16, 2020

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was rescheduled to May 24, 2021 due to the pandemic and that had the interview taken place as originally scheduled, she may have been hired within two years from her last pension contributions. The Board further noted a conditional offer of employment was made to Ms. Vieira within the two-year period from June 30, 2019. However, the actual start date of her employment, the standard by which PERS membership is determined, was September 25, 2021, beyond the date on which her original PERS account had expired.

However, Ms. Vieira advised the Board that she voluntarily resigned her previous position, and therefore she is not eligible for the 10-year extension of her PERS membership. It is undisputed that Ms. Vieira did not return to PERS-covered employment within two years and her PERS account expired on June 30, 2021, pursuant to N.J.S.A. 43:15A-7(e).

At its meeting of July 20, 2022, the Board considered Ms. Vieira's personal statements and submissions as well as all documentation in the record. Thereafter, the Board denied Ms. Vieira's request to remain in her PERS Tier 1 membership account. You filed a timely appeal on behalf of Ms. Vieira.

The Board considered your personal statements on Ms. Vieira's behalf at its meeting of November 16, 2022. However, the Board affirmed its denial of Ms. Vieira's request to maintain her expired PERS Tier 1 membership account and determined that no genuine issue of material fact was in dispute, and therefore directed the Board Secretary to draft findings of fact and conclusions of law consistent with its decision for review at its meeting of December 7, 2022.

CONCLUSIONS OF LAW

The Board made the following conclusions of law.

In making its determination, the Board first relied upon the provisions of N.J.S.A. 43:15A-7(e), which states:

Membership of any person in the retirement system shall cease if he shall discontinue his service for more than two consecutive years.

There is also no dispute that Ms. Vieira voluntarily ended her employment with Roxbury on July 6, 2019, and her last pension contribution from that position was remitted to her PERS Tier 1 membership account on June 30, 2019. At that time, Ms. Vieira was vested in the PERS with a total of 14 years and 1 month of service credited to her PERS Tier 1 account. Pursuant to the statute, her account would expire after two years, or June 30, 2021. Thus, there is no dispute that her PERS Tier 1 membership account expired two years from the date of her last contributions to that membership account.

The Board also noted Ms. Vieira's PERS Tier 1 membership account is vested for the purposes of the Deferred retirement benefits available under the provisions N.J.S.A. 43:15A-38. The Division notified Ms. Vieira on March 2, 2021, that her last contribution to the PERS was June 30, 2019, and that she was eligible for the aforementioned benefit.

In your letter of appeal, you assert that principles of equity require the Board to allow Ms. Vieira to take advantage of the extension provided by N.J.S.A. 43:15A-8 to continue her PERS Tier 1 membership because she was unable to obtain a PERS covered position within the two years after her last pension contribution. You also assert that although Ms. Vieira voluntarily resigned her employment, her resignation was a constructive discharge due to a reduction in her hours. The Board rejected these arguments.

N.J.S.A. 43:15A-8 provides, in pertinent part:

If a member of the retirement system has been discontinued from service without personal fault or through leave of absence granted by an employer or permitted by any law of this State and has not withdrawn the accumulated member's contributions from the retirement system, the membership of that member may continue, notwithstanding any provisions of this act if the member returns to service within a period of 10 years from the date of discontinuance from service.

[bid.]

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First, a plain reading of the statute requires that the member be “discontinued from service.” N.J.S.A. 43:15A-8 does not apply to Ms. Vieira because she voluntarily left her previous position. As the Appellate Division recently found, “discontinued from service” means “discontinued by the employer.” Shaw v. Board of Trustees, Pub. Employees’ Ret. Sys., No. A-2216-20 (decided December 14, 2021)(slip op. at 5). See also, Cologna v. Board of Trustees, Police and Firemen’s Retirement System, 430 N.J. Super. 362, 372 (App. Div. 2013). The court stated that “N.J.S.A. 43:15A-8(a) is a limited exception applicable where an employee has been involuntarily terminated from service by an employer due to, for example, a layoff or workforce reduction initiated by the employer.” Ibid. The court’s reasoning is particularly applicable here, because Shaw voluntarily resigned her position “albeit for reasons she explains were justified.” (slip op. at 6). In fact, Shaw was found to have resigned her employment with good cause attributable to the work and she was eligible “for unemployment benefits under N.J.S.A. 43:21-5(a).” (slip op. at 3). Thus, the Board found that Ms. Vieira’s voluntary resignation does not qualify her for an extension under N.J.S.A. 43:15A-8(a).

Although the Board is cognizant of the fact that Ms. Vieira was offered the position with the DEP within the two year time frame, she is clearly not eligible for the extension of the expiration period under N.J.S.A. 43:15A-8. Moreover, the provisions of N.J.S.A. 43:15A-7(e) are clear and unambiguous that a member’s PERS account expires two years from the date of the last pension contribution and the Board denied Ms. Vieira’s request to extend the two-year time period due to the delay in her hiring.

As noted above, the Board has considered your personal statements and written submission as well as all documentation in the record. Because the Board found that 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

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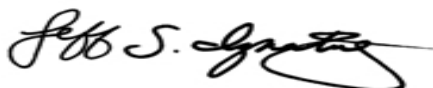
Administrative Determination of the Board of Trustees of the Public Employees' Retirement System.

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.

All appeals should be directed to:

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

Sincerely,



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

G-6/SD

C: N. Munko (ET) L. Quinn (ET)
Dulce Vieira (sent via email to: [REDACTED])