



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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TAHESHA L. WAY
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

November 16, 2023

Sent via email to: [REDACTED]

David Zulus
[REDACTED]

RE: PERS # [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Zulus,

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) denying your appeal of the Board's determination that you are ineligible for Deferred retirement benefits. At its meeting on September 21 2022,¹ the Board found you ineligible for Deferred retirement benefits because of your removal from employment on charges of misconduct or delinquency directly related to your employment in accordance with N.J.S.A.43:15A-38 and thus, denied your application.

On September 22, 2022, the letter outlining the Board's determination was emailed to you. The letter explained your appeal rights and the timeframe during which you may file an appeal of the Board's determination, i.e., "45 days after the date of written notice of the determination." Thus, you had until November 7, 2022, to file an appeal of the Board's denial of your application for Deferred retirement benefits. On or about September 22, 2023, one year after you received the Board's decision, the Division of Pensions and Benefits received your letter of appeal. At its meeting on October 18, 2023, the Board considered your appeal and found that it is was not submitted within the 45-day beyond established under N.J.A.C. 17:1-1.3. Consequently, the

¹ The meeting was conducted via teleconference.

Board denied your appeal. Finding no genuine issue of material fact in dispute, the Board denied an administrative hearing and directed the undersigned to draft a Final Administrative Determination.

Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the Board at its November 15, 2023 meeting.

FINDINGS OF FACT

The Board made the following factual findings.

The record before the Board establishes that by letter dated August 23, 2022, you were advised that at its telephonic meeting of September 21, 2022, the Board would consider your application for Deferred retirement benefits in accord with N.J.S.A. 43:15A-38. Pursuant to N.J.S.A. 10:4-6 et. seq., known as the "Open Public Meetings Act," you were provided with the dial in information if you wished to present your matter to the Board. However, you did not participate at the September 21, 2022 meeting, during which the Board considered your eligibility for Deferred retirement benefits. At the meeting, the Board noted that you were terminated from your employment as a Public Works Worker 4 with Hillsborough Township (Township) on February 28, 2012.

A Notice of Major Disciplinary Action was issued charging you with Incompetence or Inefficiency in the Performance of Duties and Inability to Perform Assigned Duties, Offensive Treatment of Fellow Employees, Not Being Fit for Duty, Conduct Unbecoming a Public Employee, Making Threatening Remarks and Engaging in a Physical Altercation, Harassment, Violation of the Hillsborough Township Personnel Policies, and Other Sufficient Cause.

Specifically, on February 24, 2012, you engaged in a verbal argument and physical altercation with a co-worker in the Department of Public Works (DPW) parking lot that shifted into the DPW parking garage. The police were called and both parties were required to respond to the Hillsborough Headquarters to give their statements. Further investigation showed that during the

altercation with your co-worker, you threatened the co-worker, stating that you were “going to put a bullet in his head.”

Subsequently, on February 28, 2012, you were placed on an unpaid leave of absence with the possibility of termination or a long-term suspension. A Disciplinary Hearing was held on May 14, 2012, in which the Hearing Officer concluded that your statement that you were going to put a bullet in a co-worker’s head violated the Township’s Personnel Policies. The Hearing Officer also found that your instigation of the altercation and harassment of your co-worker were violations of your duties and responsibilities as a DPW worker at the Township. The Hearing Officer found you guilty of all charges with the exception of the charge of making physical contact with your co-worker due to lack of evidence. The Hearing Officer found that this violation, as well as your cumulative violations warranted your dismissal and recommended your termination for violations of the Violence-Free Workplace Policy. On June 26, 2012, a Township of Hillsborough Resolution was passed terminating you effective February 28, 2012.

At the time of your termination, you had 11 years and 3 months of PERS service credit and were 53 years of age. Therefore, at that time, the only benefit for which you could apply was a Deferred retirement, which you did on January 31, 2022, requesting a February 1, 2022 retirement date.

However, because you were removed for cause on charges of misconduct or delinquency directly related to your employment, the Board found you ineligible for Deferred retirement benefits and denied your retirement application under the provisions of N.J.S.A. 43:15A-38, which provides Deferred retirement benefits only to former employees who were “not ... remov[ed] for cause on charges of misconduct or delinquency.” See also In re Hess, 422 N.J. Super. 27 (App. Div. 2011).

On September 22, 2022, a copy of the letter outlining the Board’s denial of your application

for Deferred retirement Benefits was emailed to you. In regard to your right to appeal the Board's determination, the letter included:

If you disagree with the determination of the Board, you may appeal by submitting a written statement to the Board within 45 days after the date of written notice of the determination. The statement shall set forth in detail the reasons for your disagreement with the Board's determination and shall include any relevant documentation supporting your claim. If no such written statement is received within the 45-day period, the determination by the Board shall be final.

The Board shall determine whether to grant an administrative hearing based upon the standards for a contested case hearing set forth in the Administrative Procedure Act, N.J.S.A.52:14B-1 and the Uniform Administrative Procedure Rule, N.J.A.C. 1:1-1 et seq. Administrative hearings shall be conducted by the Office of Administrative Law pursuant to the provisions of N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1-1.

If the granted appeal involves solely a question of law, the Board may retain the matter and issue a final determination, which shall include detailed findings of fact and conclusions of law based upon the documents, submissions and legal arguments of the parties. The Board's final determination may be appealed to the Superior Court, Appellate Division. If the granted appeal involves a question of facts, the Board shall submit the matter to the Office of Administrative Law.

Therefore, you had until November 7, 2022 to submit an appeal of the Board's denial of your application for Deferred retirement benefits. Subsequently, the Division received a letter dated November 10, 2022 from Buck Sixt on your behalf. Mr. Sixt represented that he was employed by Hillsborough Township and "was involved with [your] hiring and firing." However, Mr. Sixt has no legal standing in the matter of your eligibility for Deferred retirement benefits and was therefore could not file an appeal on your behalf.

On or around September 22, 2023, one year after the Board rendered its decision finding you ineligible for Deferred retirement benefits, you submitted a letter of appeal. At its meeting on October 18, 2023, the Board considered your appeal and found that it is was not submitted within the 45-day beyond established under N.J.A.C. 17:1-1.3 and therefore denied it. Finding no genuine issue 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 15, 2023 meeting.

CONCLUSIONS OF LAW

Appeals of the Board's decisions are governed by N.J.A.C. 17:1-1.3, which states, in pertinent part:

a) The applicant will be given written notice of any decision by the Division, Board or Commission. Said notice shall inform the applicant of the appeal process available in the event the applicant disagrees with the decision of the Division, Board or Commission, including the proper procedure for requesting a hearing.

(b) The decision by the agency shall be final unless the applicant shall file a request for a hearing within 45 days after the date of the written notice of the decision.

...

(d) The following statement shall be incorporated in every written notice setting forth the Division, Board or Commission's determination in a matter where such determination is contrary to the claim made by the claimant or the claimant's legal representative: If you disagree with the determination of the Board, Commission or Division, you may appeal by submitting a written statement to the Board, Commission or Division Director within 45 days after the date of written notice of the determination. The statement shall set forth in detail the reasons for your disagreement with the Board, Commission or Division's determination and shall include any relevant documentation supporting your claim. If no such written statement is received within the 45-day period, the determination by the Board, Commission or Division shall be final.

...

(Emphasis added.)

It is undisputed that you were informed of the Board's denial of your application for Deferred retirement benefits due to your removal for cause on charges of misconduct or delinquency directly related to your employment by way of a letter, dated September 22, 2022. In accord with N.J.A.C. 17:1-1.3, you had until November 7, 2022 to submit an appeal. However, the record indicates that you did not submit an appeal until one year after the Board provided written notice of its decision. Thus, in accord with N.J.A.C. 17:1-1.3, the language of which is clear

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and unambiguous, the Board's determination finding you ineligible for Deferred retirement benefits is final.

You are eligible to withdraw your accumulated pension contributions remitted during active membership, and may request an *Application for Withdrawal* by writing to Robin Willever, Supervisor, Loan/Withdrawal Section at the Division, at the address above. **Nonetheless, you are cautioned against filing the withdrawal application if you intend to appeal furthermore.**

Withdrawal terminates all rights and privileges of membership.

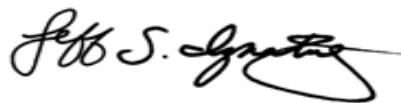
The Board considered your written submission and all documentation in the record. Because this matter does not entail any disputed questions of fact, the Board was able to reach its findings of fact and conclusions of law on the basis of the retirement system's enabling statutes and without the need 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 have the right to appeal this final administrative determination 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
Attention: Court Clerk
PO Box 006
Trenton, NJ 08625

Sincerely,



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

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G-4/WT
C: J. Ehrmann (ET) R. Willever (ET)