



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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March 13, 2018

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
Acting State Treasurer

JOHN D. MEGARIOTIS
Acting Director

Sent via email to: [Redacted]

Law Offices of Feeley & Larocca, LLC
John D. Feeley, Esquire

[Redacted]

RE: David Crenshaw

[Redacted]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Feeley:

I am writing in reference to the denial by the Board of Trustees of the Police and Firemen's Retirement System (PFRS) of your client, David Crenshaw's request to file for Ordinary Disability retirement benefits. The PFRS Board initially reviewed and denied his request at its January 8, 2018 meeting. On January 24, 2018, you appealed the Board's denial and requested a hearing in the Office of Administrative Law (OAL). At its meeting on February 12, 2018, the PFRS Board denied your request for a hearing in the OAL. Findings of Fact and Conclusions of Law, as outlined below, were approved by the PFRS Board at its meeting of March 12, 2018.

The PFRS Board has reviewed your submissions and the relevant documentation and finds that the laws governing the PFRS do not permit the Board to grant Mr. Crenshaw's request to file for Ordinary Disability retirement benefits.

FINDINGS OF FACT

Mr. Crenshaw originally established membership in the Public Employee's Retirement System (PERS) on July 1, 2002. He remained in the PERS until June 1, 2006 when he accepted a position as a Fireman with Neptune Township which required his enrollment in the PFRS. On

June 1, 2006, Mr. Crenshaw elected to inter-fund his PERS membership service into the PFRS, which permitted him to maintain his original PERS enrollment date of July 1, 2002. Thereafter, Mr. Crenshaw had various PFRS positions with different employers which permitted him to continue his participation in the PFRS. On October 1, 2014, he accepted a position with Monmouth County as a County Investigator where he remained until his termination.

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED] On April 9, 2017, he filed his application for Ordinary Disability retirement requesting an effective date of May 1, 2017. [REDACTED]

[REDACTED] On

May 18, 2017, he was charged with the following:

1. Inability to Perform Job Duties (Section 3:2.5. of the Rules and Regulations of the Monmouth County Prosecutor's Office);
2. Violation of January 12, 2015 Authorized Weapons & Ammunition Policy; and
3. Other Sufficient Cause.

His employer, Monmouth County, sought Mr. Crenshaw's removal and he was suspended without pay pending the outcome of the administrative charges. Subsequently, administrative

disciplinary hearings were held. Ultimately, the Monmouth County Prosecutor's Office determined that the charges issued on May 18, 2017 were upheld. A Final Notice of Charge was issued to Mr. Crenshaw on September 29, 2017 indicating the charges were upheld and that he was formally removed from employment retroactive to April 28, 2017<sup>1</sup>. On October 2, 2017, Monmouth County submitted the Employer Certification for Disability Retirement confirming Mr. Crenshaw's dismissal on April 28, 2017.

By letter dated October 2, 2017, the Division's Disability Section wrote to Monmouth County asking if there would be a position for Mr. Crenshaw should his alleged disability diminish in the future to the point that he could return to employment with Monmouth County and thereby comply with the provisions of N.J.S.A. 43:16A-8(2). [REDACTED]

[REDACTED] and indicated that "if his disability were to diminish to the point that he would be capable of returning from retirement, the Prosecutor's position is that he would not be allowed to return to any position within this office." Therefore, the Disability Section notified Mr. Crenshaw that he was ineligible to file for Ordinary Disability retirement in accordance with N.J.A.C. 17:1-6.4 (b).

On November 21, 2017, you appealed the Division's denial. At its meeting of January 8, 2018, the PFRS Board considered your personal statements and all relevant documentation and denied Mr. Crenshaw's request to file for Ordinary Disability retirement. The Board relied upon N.J.A.C. 17:1-6.4 (b) and further determined that Mr. Crenshaw is unable to comply with N.J.S.A. 43:16A-8(2). On January 24, 2018, you appealed the Board's denial and requested a hearing in the OAL. At its meeting on February 12, 2018, the Board denied your request for a hearing in the

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<sup>1</sup> Pension contributions were remitted through March 1, 2017 at which time his PFRS membership reflected a total of 15 years and 1 month which included a total of 5 months of Military service.

OAL. This Final Administrative Determination serves as formal notice that the Board denied your request for a hearing.

### **CONCLUSIONS OF LAW**

The PFRS provides for an Ordinary disability retirement in N.J.S.A. 43:16A-6, which states:

1) Upon the written application by a member in service, by one acting in his behalf or by his employer, any member, under 55 years of age, who has had four or more years of creditable service may be retired on an ordinary disability retirement allowance; provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the performance of his usual duty and of any other available duty in the department which his employer is willing to assign to him and that such incapacity is likely to be permanent and to such an extent that he should be retired.

In addition, N.J.S.A. 43:16A-8 (2) states in pertinent part:

(2) Any beneficiary under the age of 55 years who has been retired on a disability retirement allowance under this act, on his request shall, or upon the request of the retirement system may, be given a medical examination and he shall submit to any examination by a physician or physicians designated by the medical board once a year for at least a period of five years following his retirement in order to determine whether or not the disability which existed at the time he was retired has vanished or has materially diminished. If the report of the medical board shall show that such beneficiary is able to perform either his former duty or any other available duty in the department which his employer is willing to assign to him, the beneficiary shall report for duty; such a beneficiary shall not suffer any loss of benefits while he awaits his restoration to active service. If the beneficiary fails to submit to any such medical examination or fails to return to duty within 10 days after being ordered so to do, or within such further time as may be allowed by the board of trustees for valid reason, as the case may be, the pension shall be discontinued during such default.

[Emphasis Added]

Also, N.J.A.C. 17:1-6.4. which states:

- (a) Each disability retirement applicant must prove that his or her retirement is due to a total and permanent disability that renders the applicant physically or mentally incapacitated from performing

normal or assigned job duties at the time the member left employment; the disability must be the reason the member left employment.

(b) Members who have involuntarily or voluntarily terminated service for any of the reasons listed below will not be permitted to apply for a disability retirement;

1. Removal for cause or total forfeiture of public service;
2. Settlement agreements reached due to pending administrative or criminal charges, unless the underlying charges relate to the disability;
3. Loss of licensure or certification required for the performance of the member's specific job duties;
4. Voluntary separation from service for reasons other than a disability; and
5. Job abolishment or reduction in force.

(c) The Division will review all disability retirement applications submitted after a member has terminated service to determine whether the member's application is eligible for processing, pursuant to (a) above.

[REDACTED]

[REDACTED] it was

determined there was sufficient evidence to administratively charge him with the following:

1. Inability to Perform Job Duties (Section 3:2.5. of the Rules and Regulations of the Monmouth County Prosecutor's Office);
2. Violation of January 12, 2015 Authorized Weapons & Ammunition Policy; and
3. Other Sufficient Cause.

Subsequently, a Final Notice of Charge was issued to Mr. Crenshaw informing him that the charges were upheld and that he was removed from employment retroactive to April 28, 2017. Based upon the aforementioned facts, Mr. Crenshaw is ineligible to file for Ordinary Disability because based upon the charges he cannot comply with N.J.A.C.17:1-6.4.

Further, his employer has confirmed that Mr. Crenshaw would not have a position to return to in the future should his alleged disability diminish to the point that he could return to employment. Therefore, he cannot comply with N.J.S.A. 43:16A-8(2). If Mr. Crenshaw's application was processed and he was granted an Ordinary Disability pension and later it was determined that he was no longer disabled, there is no mechanism for the Board to stop paying the pension because he could never be ordered to return to work, as required by N.J.S.A. 43:16A-8(2). Granting a disability retirement under these circumstances would be in contravention of the statutory scheme, and place the Board in the position of potentially paying a disability pension which the Board has no ability or mechanism to terminate if the member is no longer totally and permanently disabled.

Lastly, the Board noted that Mr. Crenshaw may be eligible to file for Deferred retirement. However, he is cautioned that if he files an application for Deferred retirement the Board would review the circumstances surrounding his removal as it relates to his eligibility for Deferred retirement in accordance with N.J.S.A. 43:16A-11.2.

As noted above, the PFRS Board has reviewed your written submissions and because this matter does not entail any disputed questions of fact, the PFRS Board was able to reach its findings of fact and conclusions of law in this matter 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 Police and Firemen's Retirement System.

Law Offices of Feeley & Larocca, LLC  
John D. Feeley, Esquire  
RE: David Crenshaw  
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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,



Mary Ellen Rathbun, Secretary  
Board of Trustees  
Police and Firemen's Retirement System

G-/mer

C: V. McManus (ET);  
David Crenshaw  
DAG Danielle P. Schimmel (via e-mail to: [REDACTED])  
DAG Amy Chung (via e-mail to: [REDACTED])