



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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SHEILA Y. OLIVER
Lt. Governor

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

January 22, 2021

Sent via email to: [REDACTED]

Daniel M. Kurkowski, Esq.
KURKOWSKI LAW

[REDACTED]

RE: Joseph Giordano
PERS [REDACTED]

Dear Mr. Kurkowski:

FINAL ADMINISTRATIVE DETERMINATION

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) denying the Deferred retirement application of your client, Joseph Giordano. The Board originally denied Mr. Giordano's application at its meeting of September 16, 2020. On Mr. Giordano's behalf, you filed a request for reconsideration and an appeal of the Board's decision via letter dated October 30, 2020. At its meeting of December 9, 2020, the Board reconsidered and affirmed its previous decision denying your client's application for Deferred retirement benefits. At that meeting, the Board also denied your request for a hearing in the Office of Administrative Law, finding that no genuine issue of material fact was in dispute. Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the PERS Board at its January 20, 2021, meeting.

The Board has reviewed the documentation and finds that the statutes governing the PERS and relevant case law do not permit the PERS Board to grant your client's request to receive Deferred retirement benefits.

FINDINGS OF FACT

Mr. Giordano established membership in the PERS effective October 1, 1990, based upon his employment with Sea Isle City. He remained with this employer and held various positions, however, at the time of his dismissal he held the position of Sanitation Worker/Public Works Trainee.

The record indicates that a Preliminary Notice of Disciplinary Action (PNDA) dated April 7, 2009 charged Mr. Giordano with Violation of Federal Regulations related to the operation of a commercial motor vehicle, Local Government Personal Polices & Procedures Manual VIII and Drug and Alcohol Abuse Resolution #551 (1995). The charges were based upon the fact that he tested positive on a urine drug screening (3rd offense). The results indicated that he ingested cocaine at the approximate time that he reported to work on April 2, 2009, and he was on duty with the commercial vehicle.¹ Mr. Giordano filed an appeal of the PNDA. Ultimately, the Hearing Officer determined that termination was the appropriate penalty. Thereafter, a Final Notice of Disciplinary Action was issued removing him from public employment effective July 31, 2009.

On May 18, 2020, Giordano filed an application for Service² retirement effective June 1, 2020. At the time of his last pension contribution, Mr. Giordano was 49 years of age and had 18 years and 4 months of PERS service credit. Therefore, the only retirement benefit for which he was eligible to apply was a Deferred retirement.

At its meeting of September 16, 2020, the Board found that because Mr. Giordano was removed for cause directly related to his employment, that he was not eligible for a Deferred retirement, and therefore the Board denied his application under the provisions of N.J.S.A. 43:15A-38. You filed an appeal on his behalf on October 30, 2020, requesting that the Board

¹ According to the job description, Mr. Giordano was required to possess a Commercial Driver's License.

² Although Mr. Giordano characterized his application as a Service retirement, at the time of his dismissal the only benefit that he was eligible to apply for was a Deferred retirement.

reconsider its prior decision and requested an administrative hearing. At its meeting of December 9, 2020, the Board reconsidered, but reaffirmed, its previous decision and denied your request for a hearing.

CONCLUSIONS OF LAW

In making its determination, the Board relied upon N.J.S.A. 43:15A-38, which states, in pertinent part:

Should a member of the Public Employees' Retirement System, after having completed 10 years of service, be separated voluntarily or involuntarily from the service, before reaching service retirement age, and not by removal for cause on charges of misconduct or delinquency, such person may elect to receive:

- (a) The payments provided for in section 41b of this act,³ if he so qualifies under said section, or;
- (b) A deferred retirement allowance, beginning at the retirement age...

Additionally, in the case In the Matter of Suzanne Hess, 422 N.J. Super. 27, 37 (2010) the Court held that “forfeiture of deferred retirement benefits pursuant to N.J.S.A. 43:15A-38 is conditioned on an involuntary removal due to misconduct related to employment.” See also Robert Joya v. Dept. of Treasury, Div. of Pensions and Benefits, Dkt. No. A-3616-10T3 (decided October 9, 2012.) The finding in Hess is applicable here and, consequently, the Board determined that Mr. Giordano is not eligible to receive a Deferred retirement because he was removed for cause directly related to his employment.

The charges that led to Mr. Giordano’s dismissal touched upon and were directly related to his employment, thereby making him ineligible to receive a Deferred retirement benefit. Therefore, in accordance with the prevailing statutes and a plethora of case law on this issue, the Board denied his application for Deferred retirement benefits.

³ N.J.S.A. 43:15A-41

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As noted above, the Board has 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.

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

Mr. Giordano also has 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 S. Ignatowicz, Secretary
Board of Trustees
Public Employees' Retirement System

G-4/JSI

C: D. Dinkler (ET); D. Wood (ET)
Joseph Giordano (Sent via email to: [REDACTED])