



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

February 9, 2021

Sent via email to [REDACTED]

Ms. Mary Kessler
[REDACTED]
[REDACTED]

RE: [REDACTED]
[REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Ms. Kessler:

I am writing in reference to the denial of the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) regarding your request to transfer service credit accrued in your inactive Public Employees' Retirement System (PERS) account to your active TPAF account.

The Board has reviewed your written submissions and the relevant documentation accompanying your appeal and finds that the statutes and relevant case law governing TPAF do not permit the Board to grant you the opportunity to transfer the service credit from PERS to TPAF.

FINDINGS OF FACT

The record shows that you established membership in PERS under account [REDACTED] on December 1, 2007 based upon your employment as a Teacher Aide with the Bayonne Board of Education (BOE) in accordance with enrollment guidelines at that time. On December 10, 2010, you submitted an *Application to Purchase Service Credit* for Temporary/Substitute service from September 1, 2004 to November 30, 2007 under your PERS account [REDACTED]. On

March 4, 2011, a Purchase Quote was issued advising you that you were eligible to purchase 41 months of temporary/substitute service credit from July 1, 2004 to November 30, 2007. On May 11, 2011, the Division acknowledged receipt of your check for the purchase of 41 months of temporary/substitute service credit. At that time, your PERS account reflected a total of 138 months (11 years and 6 months) of service credit from December 1, 2007 through March 31, 2016. Accordingly, you are vested in PERS and eligible for a Deferred retirement from PERS. See N.J.S.A. 43:15A-38.

Subsequently, on March 1, 2016, you became employed as a Teacher also with Bayonne BOE and you were enrolled in TPAF under account [REDACTED]. On April 7, 2016, your enrollment application for TPAF was received via the Employer Pension and Benefits Information Connection on-line application, as required due to your new position as a Teacher. The Division properly enrolled you in TPAF, with an enrollment date of March 1, 2016.

By letter dated December 12, 2017, you were notified that the date of your last contribution to your PERS account was March 31, 2016. At the time of your last contribution you had 10 or more years of PERS service credit and you were eligible to apply for a retirement benefit. This letter stated:

Your retirement benefit is not automatic. You must submit an Application for Retirement Allowance before any benefit can begin. In addition, the effective date of the retirement cannot be earlier than the date you file the application and there are no retroactive payment for periods prior to the retirement date. For detailed information regarding retirement benefits or withdrawal, or to obtain a retirement estimate, please visit our website at www.state.nj.us/treasury/pensions/ and look for the Expired Accounts information under the heading Hot Topics for members.

No response was received. You did not return to PERS-covered employment within two years and your PERS account expired on March 31, 2018.

By letter dated July 15, 2018, you were notified of the following options:

1. Apply for Withdrawal of Your Contributions in a Lump Sum;

2. Apply for a Rollover of Your Contributions to an IRA or Employer Retirement Plan;
or
3. Apply for the Monthly Retirement Allowance.

Again, no action was taken. Your PERS account [REDACTED] remains vested.

On July 3, 2019, over a year and a half after the Division notified you of your last contribution to your PERS account, the Division received a letter from Susan Percella, Bayonne BOE, stating she filed away a copy of an *Application for Interfund Transfer* for you in 2016 and did not follow up on the transaction. Enclosed with this letter was a copy of the *Application for Interfund Transfer*.

By letter dated July 8, 2019, the Division informed Bayonne BOE that the *Application for Interfund Transfer* could not be processed as your PERS account expired on March 31, 2018. Therefore, you were not eligible for an interfund transfer.

On July 24, 2019, the Division received a second letter from Ms. Percella stating that it was not your fault. In 2016, the *Application for Interfund Transfer* was put in the out of office mail, and the mail messenger lost some of the mail on various occasions. Again, Ms. Percella reiterated that she did not follow up to make sure the application was completed.

On September 6, 2019, Nikki Munko, Supervising Pensions Benefits Specialist, Enrollment Section, explained in a letter to you that the transfer never happened because the Division did not receive the *Application for Interfund Transfer* that was required in order to effectuate the transfer until July 3, 2019. Ms. Munko informed you that the option to transfer PERS account [REDACTED] ended on March 31, 2018, when the account expired. Ms. Munko also notified you of your right to appeal the Division's administrative determination to the Board. By letter dated July 18, 2020, you appealed the matter to the Board.

At its meeting on September 3, 2020, the Board considered this matter, reaffirmed the Division's administrative determination, and denied your request to interfund transfer your expired

PERS account into your current TPAF account. The Board based its determination upon the provisions of N.J.S.A. 43:15A-7(e) and N.J.A.C. 17:3-7.1. You appealed the Board's denial by letter dated October 30, 2020; thereby requesting a hearing in the Office of Administrative Law. At its meeting on January 14, 2021, the Board determined there are no factual issues to be adduced at a hearing and directed the Board Secretary in conjunction with the Attorney General's Office to prepare Findings of Fact and Conclusions of Law that will formally outline the Board's decision and become the Board's Final Administrative Determination. The Findings of Fact and Conclusions of Law as detailed below were presented and approved by the Board at its February 4, 2021 meeting.

CONCLUSIONS OF LAW

The Board based its determination upon the provisions of N.J.S.A. 43:15A-7(e) and N.J.A.C. 17:3-7.1

N.J.S.A. 43:15A-7(e) states:

Membership of any person in [PERS] shall cease if he shall discontinue his service for more than two consecutive years.

N.J.A.C. 17:3-7.1 states in pertinent part:

(b) [A] member is eligible to transfer membership from another State-administered defined benefit retirement system, provided the membership has not expired or has not been withdrawn and provided that all service eligible for participation has ceased.

1. A member desiring to transfer service credit and contributions from one State-administered defined benefit retirement system to another, must file an "Application for Interfund Transfer." This application will terminate membership in the former system when approved. (Emphasis added)

...

5. The member is not eligible to transfer service credit if any of the following conditions apply:

ii. The member has credit in the present system for service earned after the date of enrollment in the new system (concurrent service) unless the member meets the criteria established by *N.J.S.A. 43:15A-14*. *N.J.S.A.*

43:15A-14 provides that a member of the PERS at the time of enrollment in the TPAF may transfer the non-concurrent PERS service if the member ceased to be an active contributing member of the PERS three or less years from the date of enrollment in the TPAF. The member must apply to transfer this service no more than two years from the date of the last contribution in the PERS, or the member's PERS account has not expired due to the provisions of *N.J.S.A. 43:15A-8*. A member who transfers service under this provision shall receive credit for the salaries earned in both the TPAF and PERS during the period of concurrent service; or

iii. The account has expired (it has been more than two years from the date of the last contribution, and the member is not vested, nor has the member's account remained active due to the provisions of *N.J.S.A. 18A:66-8*).

The issue before the Board is whether you are able to interfund transfer your expired PERS account into your active TPAF account, more than a year and a half after your PERS account expired. Interfund transfers of service credit are not mandatory. Rather, such transfers are optional, and occur only at the member's request.

You assert that the responsibility to request an interfund transfer was that of your employer, Bayonne BOE, rather than your own. However, while some employers may assist a member in matters such as these, as noted above an interfund transfer is optional, and is not a mandatory transaction, like enrollment. Therefore, if an employee chooses to exercise the option, the responsibility to timely file the required application lies with the member, not the employer.

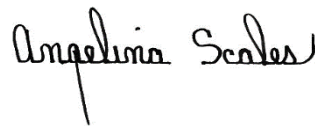
In this case, the Division informed you on December 12, 2017 that the date of your last contribution to your PERS account [REDACTED] was March 31, 2016, well before your PERS account expired. You did not exercise your interfund transfer option in a timely manner, and your PERS membership expired on March 31, 2018 in accordance with *N.J.S.A. 43:15A-7(e)*. Therefore, you are not eligible to interfund transfer the expired PERS account to your active TPAF account. Cf. *Farrington v. State*, 2018 N.J. Super. Unpub. LEXIS 189, at *8 (App. Div. Jan. 26, 2018) (affirming agency determination that inactive PERS account could not be interfund-transferred to active Judicial Retirement System account).

As noted above, the Board has considered your written submissions and all relevant documentation and 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 TPAF enabling statutes and regulations and without the need for an administrative hearing. Accordingly, this correspondence constitutes the Final Administrative Determination of the Board of Trustees of the Teachers' Pension and Annuity Fund.

You have the right, if you wish, 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
Attn: Court Clerk
PO Box 006
Trenton, NJ 08625

Sincerely,



Angelina Scales, Secretary
Board of Trustees
Teachers' Pension and Annuity Fund

G-3/AS

c: DAG Amy Chung (ET)
DAG Jeffrey Padgett (ET)
N. Munko (ET)