



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
P. O. Box 295  
TRENTON, NEW JERSEY 08625-0295

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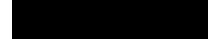
JOHN D. MEGARIOTIS  
*Acting Director*

August 17, 2017

Darrell Laval



Re:



## **FINAL ADMINISTRATIVE DETERMINATION**

Dear Mr. Laval:

I am writing in reference to the denial by the Board of Trustees ("Board") of the Public Employees' Retirement System ("PERS") of your request to apply for Deferred Retirement in accordance with N.J.S.A. 43:15A-38. The PERS Board initially reviewed all relevant documentation and denied your request at its May 17, 2017 meeting. Subsequently, you appealed the Board's denial. At its meeting of July 19, 2017, the Board considered your appeal and denied your request for a hearing in the Office of Administrative Law (OAL). Findings of Fact and Conclusions of Law, as outlined below, were approved by the PERS Board at its meeting of August 16, 2017.

The PERS Board finds, based on a full review of the record, that the statutes and relevant case law governing the PERS do not permit the Board to approve your application for Deferred Retirement.

## **FINDINGS OF FACT**

You were enrolled in the PERS on May 1, 1987, based upon your employment as a Public Housing Specialist with the Jersey City Housing Authority ("JCHA"). Thereafter on January 1,

1991, you were hired as an Aide to Freeholder with Hudson County, thus establishing multiple membership in your PERS account. On January 1, 1994 you accepted a third concurrent position with the Senate as a Legislative Aide.

On October 1, 2009, you were charged in a letter from the JCHA Executive Director, Maria Maio ("the letter"), with 10 violations of the JCHA's Code of Ethics Policy. The following charges were outlined in the letter:

1. You used your JCHA computer for political work;
2. You assigned work of a personal nature to Gloria Darby, JCHA Program Integrity Officer, who was not under your supervision, without permission from her supervisor;
3. You failed to report your status as Executive Director of New Hope Unlimited Inc. on the JCHA's "Outside Employment & Activities" form for several years;
4. You used a JCHA office, file cabinet, and materials to store documents and files connected with matter unrelated to JCHA work;
5. You conducted non-JCHA work at a JCHA office during working hours;
6. You used JCHA intangible assets for use by New Hope Unlimited and misrepresented your status at the JCHA for personal gain;
7. You used a JCHA office, file cabinet, and materials to store documents and files in connection with a political campaign;
8. You conducted business in connection with a political campaign at a JCHA office during working hours;
9. You used your access to confidential resident information for political purposes during a local political campaign; and
10. You borrowed money from an employee four times; you returned the money with interest, but the last time, your check bounced and the employee had to wait several months for you to pay him back.

In addition, the letter delineated a history of disciplinary charges in which progressive penalties were imposed, and noted that you were terminated from your position as Regional Asset Manager, effective October 1, 2009. JCHA concluded that termination was the appropriate penalty, given the scope of the policy transgressions over a substantial period of time, and the seriousness of the charges, the history of progressive discipline, specifically with regard to previous violations of JCHA's Code of Ethics Policy. The record indicates that August 31, 2009 was the last pension deduction remitted to your PERS membership on your behalf from JCHA. At the time you were terminated from JCHA, you had no other PERS employment, so your PERS

membership ended in 2011. When you were terminated, your PERS membership reflected a total of 23 years and 5 months of membership service and you were under the age of sixty; therefore, you were not eligible for Early Retirement (because you had fewer than 25 years of creditable service) or Service Retirement (because you had not reached the retirement age of 60). As discussed below, you were also ineligible for Deferred Retirement due to the nature of your separation from service.

The Division of Pensions and Benefits (Division) sent you a letter on August 28, 2015 regarding *Eligibility for Deferred Retirement Benefits*, indicating that "if you were dismissed from employment as a result of charges or misconduct connected to your employment, you will not be eligible for deferred retirement benefits. You will be able eligible to withdraw your pension contributions." On January 1, 2016, you submitted an electronic *Application for Retirement Allowance* through the Member Benefits Online System (MBOS) wherein you requested a Service retirement with an effective date of February 1, 2016, under Option A. Although you characterized your anticipated retirement as a Service Retirement, as previously noted, based upon your length of service and age when your employment was terminated with JCHA, you did not qualify for Service Retirement: therefore, you effectively applied for Deferred Retirement.

By letter dated, January 4, 2016 you were informed by the Division's Bureau of Retirements that you are were not eligible for a Service Retirement (because you were terminated for misconduct or delinquency) or an Early Retirement (because your length of service is less than 25 years). On January 20, 2016, JCHA faxed a copy of the Personnel Action Form which indicated that you were removed for cause effective October 1, 2009, for violation of the JCHA's Code of Ethics Policy. On March 27, 2017, the Board Office notified you that at the May 17, 2017 meeting, the PERS Board would consider your eligibility to apply for Deferred retirement benefits under the terms of N.J.S.A. 43:15A-38.

At its meeting on May 17, 2017 the PERS Board considered all documents relating to this matter and denied your application for Deferred Retirement. Since you were removed from employment involuntarily for cause on charges of misconduct or delinquency, the Board was required to deny your retirement application under the provisions of N.J.S.A. 43:15A-38.

Subsequently, on June 20, 2017, you appealed the Board's May 17, 2017 denial of Deferred Retirement. In your letter, you defended your record and disputed the charges upon which your termination was based. At its meeting on July 19, 2017, the Board denied your appeal and your request for a hearing in the OAL. This Final Administrative Determination serves as formal notice of the Board's denial.

#### **CONCLUSIONS OF LAW**

The Board determined that because you were removed for cause from your employment, you are not eligible for Deferred Retirement, in accordance with N.J.S.A. 43:15A-38:

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 deferred retirement allowance, beginning at the retirement age...."  
[Emphasis added]

The Board's decision is further supported by relevant case law. In 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." Because you were removed for cause based on misconduct or delinquency related to your employment, the Board's decision is fully consistent with this court's opinion in Hess. See also Danny Glenn v. Board of Trustees, Public Employees' Retirement System, Dkt. No. A5271-14T1, decided June 30, 2017, slip op at \*4 ("The plain language of this statute [N.J.S.A. 43:15A-38] leaves no room for discretion by the Board: any member removed

as a public employee for charges of misconduct or delinquency is ineligible to receive benefits from PERS as a matter of law.”) (emphasis in the original).

The charges which led to your dismissal from the JCHA were directly related to your employment with JCHA and constituted charges of misconduct or delinquency, thereby making you ineligible to apply for Deferred Retirement. Although you dispute the charges, the Board does not have the discretion to disregard the stated reasons for your involuntary removal from service. As stated by the court in Glenn, supra, at \*6-7, “Although petitioner presents a legal argument that his conduct did not constitute ‘misconduct’ or ‘delinquency’ under N.J.S.A. 43:15A-38, there is no dispute of material fact that the grounds relied upon for his dismissal were job-related misconduct and delinquency.” As in Glenn, the plain language of N.J.S.A. 43:15A-38 leaves the Board no discretion to deem you eligible after your involuntary removal on charges of misconduct or delinquency.

Therefore, in accordance with the prevailing statutory and case law, the PERS Board has denied your request to collect Deferred Retirement benefits.

As noted above, the PERS Board has reviewed your written submissions and, because this matter does not entail any disputed questions of fact, 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 Public Employees' Retirement System.

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.

All appeals should be directed to:

Superior Court of New Jersey  
Appellate Division  
Attn: Court Clerk  
PO Box 006  
Trenton, NJ 08625  
Phone: (609) 292-4822

Sincerely,

A handwritten signature in black ink that reads "Mary Ellen Rathbun". The signature is written in a cursive, flowing style.

Mary Ellen Rathbun, Secretary  
Board of Trustees  
Public Employees' Retirement System

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C: Amy Chung, DAG/Robert Kelly, DAG (ET)  
C. Law (ET)