



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
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*Acting Director*

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*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

August 20, 2020

Sent via email to: [REDACTED]

Judy Thorpe  
[REDACTED]

Re: PERS [REDACTED]

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Dear Ms. Thorpe:

I am writing in reference to the decision of the Board of Trustees of the Public Employees' Retirement System (PERS) regarding your appeal of the Board's decision of February 19, 2020, in which it denied your eligibility to file for Ordinary Disability retirement benefits. On March 12, 2020, you appealed the Board's decision and requested that the Board reconsider its prior decision. At its meeting on July 15, 2020, the Board reconsidered and denied your request to file for Ordinary Disability retirement benefits, and determined there are no material facts in dispute and therefore directed the Board Secretary, in consultation with the Attorney General's Office, to prepare Findings of Fact and Conclusions of Law, which were presented and approved by the Board at its August 19, 2020, meeting.

## **FINDINGS OF FACT**

The record before the Board reveals that you were enrolled on or about June 9, 1984, as a result of your employment with the Marlboro Psychiatric Hospital. On November 9, 2018, you filed your *Application for Disability Retirement*, requesting an Ordinary Disability retirement effective December 1, 2018. The *Employer Certification for Disability Retirement*, submitted by the Juvenile Justice Commission (JJC) on January 11, 2019, indicated you were dismissed on

August 15, 2008 due to administrative charges. Accordingly, the Division of Pensions and Benefits requested further information from the JJC with regard to the administrative charges and the reasons you separated from employment.

The documentation provided by the JJC revealed that on January 8, 2008, you were served with a Preliminary Notice of Disciplinary Action (PNDA), charging you with the following:

N.J.A.C. 4A:2-2.3(a):  
2 – Insubordination  
11 – Other Sufficient cause defined as violation of  
N.J.A.C. 4A:6-1.4(g) Sick Leave procedures: State Service

The JJC advised that you were directed to report to a [REDACTED] on Friday, January 4, 2008, and advised that your continued employment as a Supervisor of Nursing Services was contingent upon the results. However, you refused to consent to the evaluation. Consequently, you were suspended without pay effective January 9, 2008 and the JJC sought your removal. Per a Final Notice of Major Disciplinary Action, dated August 20, 2008, the charges were sustained and you were removed from employment with the JJC effective August 15, 2008. Thereafter, the matter was submitted to arbitration. By way of the Opinion and Award, dated February 12, 2010, the arbitrator determined the JJC had just cause to remove you from your position as a Supervisor of Nursing Services. The Board could find no record that you successfully challenged your removal from employment subsequent to the arbitrator's decision.

The Board first considered your application for Ordinary Disability retirement benefits at its meeting of February 19, 2020. After careful consideration, the Board found that you were not eligible to file for disability retirement benefits because you did not separate from service as a result of a disability as required pursuant to N.J.A.C. 17:1-6.4 and N.J.S.A. 43:15A-44. N.J.A.C. 17:1-6.4.

On March 12, 2020, you filed an appeal and requested the Board reconsider its prior determination that you are not eligible to apply for Ordinary Disability retirement benefits. In your appeal and request for reconsideration you assert that you were wrongfully terminated from your

position. Although you provided documentation concerning an alleged malpractice claim against your prior attorneys, you have not provided any documentation which establishes that you appealed your termination from employment. At its meeting of July 15, 2020, the Board affirmed its prior determination that you were not eligible to file for Ordinary Disability retirement benefits.

### **CONCLUSIONS OF LAW**

Based on the undisputed facts as outlined above, the Board determined you are ineligible to apply for Ordinary Disability retirement benefits. In making its determination, the Board relied on N.J.S.A. 43:15A-44 and N.J.A.C. 17:1-6.4. N.J.A.C. 17:1-6.4 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.

[Emphasis added.]

The Board found that as indicated by the record presented, you did not separate from employment due to the condition on which you based your application for Ordinary Disability retirement benefits. Rather, you were terminated due to disciplinary charges.

The Board also noted that in order to comply with N.J.S.A. 43:15A-44, a member seeking a disability retirement must have a position to return to should the alleged disability diminish to the point that the member could return to employment. N.J.S.A. 43:15A-44 states, in pertinent part:

...

If the report of the medical board shall show that such beneficiary is able to perform either his former duty or other comparable duty which his former 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 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.

...

Thus, if you were granted an Ordinary Disability pension, but later it was determined that you are no longer disabled, there is no mechanism for the Board to stop paying the pension because you could never be ordered to return to work, as required by N.J.S.A. 43:15A-44. Granting a disability retirement under such circumstances would be in contravention of the statutory scheme, and place the Board in the position of potentially paying a pension for which the Board has no ability or mechanism to terminate the disability pension payment.

As noted above, the Board has considered your written submissions 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 in this matter on the basis of the retirement system's enabling statutes and regulations 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

Judy Thorpe  
August 20, 2020  
Page 5

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,

A handwritten signature in black ink, appearing to read "Jeff S. Ignatowitz". The signature is fluid and cursive, with a large loop at the end.

Jeff Ignatowitz, Secretary  
Board of Trustees  
Public Employees' Retirement System

c: D. Lewis (ET); L. Milton (ET); S. Glynn (ET); K. Ozol (ET); L. Figueroa (ET); P. Sarti (ET)