



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
P. O. Box 295

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www.nj.gov/treasury/pensions
March 17, 2022

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

Sent via email to: [REDACTED]

Timothy Prol, Esq.
Alterman & Associates
[REDACTED]

RE: Donald Trout (Deceased)
PERS [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Prol:

I am writing in reference to the denial by the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) of the request by your client, Charlotte Salerno-Trout, for Accidental Death Benefits as a result of the passing of her spouse, Donald Trout. The Board originally denied Ms. Trout's application at its meeting of December 8, 2021, finding that she did not qualify for Accidental Death benefits pursuant to N.J.S.A. 43:15A-49 because Mr. Trout passed away from [REDACTED], and not from [REDACTED] while on duty as defined under the statute. You filed a timely appeal on Ms. Trout's behalf on January 17, 2022 and requested that the matter be transferred to the Office of Administrative Law as a contested case. At its meeting of February 16, 2022,¹ the Board found no genuine issue of material fact in dispute and denied your request for an administrative hearing. Thereafter, the Board directed the undersigned to draft Findings of Fact and Conclusions of Law as outlined below, which were presented to and approved by the PERS Board at its March 16, 2022, meeting.

¹ Due to health and safety concerns for the public regarding COVID-19, the meeting was conducted via teleconference.

FACTUAL FINDINGS

The record before the Board establishes that on August 27, 2021, Mr. Trout passed away while on-duty as a Hazmat Tech 1 with the Middlesex County Hazardous Materials Unit. The Board reviewed the relevant incident reports, which indicated that on that date Mr. Trout was responding to an emergency call for services and, while gathering his equipment at his work vehicle, [REDACTED].

The Division of Pensions and Benefits (Division) also requested medical documents related to the incident in order to determine eligibility for Accidental Death benefits. The Division's Medical Review Board (MRB) reviewed the documents that were submitted and determined that:

The member [REDACTED]
[REDACTED] While this occurred on the job, the MRB does not see a particular incident that caused this event.

After reviewing the record, the Board denied Ms. Trout's request for Accidental Death benefits in accord with N.J.S.A. 43:15A-49. The Board based its finding on the fact that Mr. Trout passed away from [REDACTED] and not as a result of an accident in the line of duty. In fact, the incident of August 27, 2021 was not an accident, but was simply Mr. Trout's performance of his assigned duty.

You filed an appeal on Ms. Trout's behalf on January 17, 2022. The Board considered your appeal at its meeting of February 16, 2022. Although you asserted there were factual issues in dispute that would require a hearing, you did not cite to any disputed material facts relevant to the appeal. Accordingly, the Board denied your request for a hearing and directed the undersigned to draft findings of fact and conclusions of law for review at the Board's March 16, 2022, meeting.

CONCLUSIONS OF LAW

The Board made the following conclusions of law.

The receipt of Accidental Death benefits by survivors of PERS members is controlled by N.J.S.A. 43:15A-49, which states, in pertinent part:

- a. Upon the death of a member in active service as a result of:
 - (1) an accident met in the actual performance of duty at some definite time and place, or
- b. Upon the receipt of proper proofs of the death of a member on account of which an accidental death benefit is payable, there shall be paid to his widow or widower a pension of 50% of the compensation, upon which contributions by the member to the annuity savings fund were based in the last year of creditable service, for the use of herself or himself and the children of the deceased member, to continue during her or his widowhood...

In light of the facts as outlined above, the Board denied Ms. Trout's application because Accidental Death benefits are provided only when a member dies as a result of "an accident met in the actual performance of duty[.]" N.J.S.A. 43:15A-49. The record establishes that although Mr. Trout passed away while he was in the actual performance of duty, his passing was not the result of the work he was performing at the time, and that work was not an accident. Rather, Mr. Trout [REDACTED] which ultimately resulted in his death.

In Russo v. Board. of Trs., Teachers' Pensions and Annuity Fund, 62 N.J. 142 (1973), the Court addressed the meaning of "accidental death" as set forth in the Teachers' Pension and Annuity Fund's enabling statute, N.J.S.A 18A:66-46, which employs identical language to that of N.J.S.A. 43:15A-49. Russo, a custodian, died of a heart attack during the performance of his assigned duties. Russo's widow applied for Accidental Death benefits, which the Division denied, finding that he did not "experience an accident" while at work. Id. 144. The Court explained that "[I]njury by ordinary work effort or strain to a diseased heart, although unexpected by the individual afflicted, is not an extraordinary or unusual consequence in common experience." Thus, the Court found, a member who, like Mr. Trout, [REDACTED] while at work and during the performance of the member's regular or assigned job duties, does not qualify for Accidental Death

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benefits because no “accident” occurred within the meaning of the statute. Our Supreme Court also addressed whether [REDACTED] while in the performance of a member’s duties qualifies as an “accident” for the purposes of an Accidental Disability retirement benefit. Richardson v. Police and Firemen’s Ret. Sys., 192 N.J. 189, 214 (2007). (“By way of example, a police officer who [REDACTED] while chasing a suspect has not experienced a traumatic event. In that case, the work effort, alone or in combination with pre-existing disease, was the cause of the injury.”)

As the record establishes, Mr. Trout experienced [REDACTED] at work while gathering his equipment from the employer’s work vehicle in order to respond to a hazardous-materials call and his death was not the result of an accident. Accordingly, the Board denied Ms. Trout’s application for Accidental Death benefits.

Once again, on behalf of the PERS Board, I extend sincere condolences to Ms. Trout and her family.

As noted above, the Board has considered your personal statements, 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.

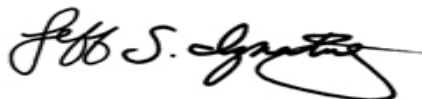
You have the right to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey.

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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, sweeping flourish at the end.

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

G-6/JSI

C: E. Pierson (ET); T. Myhre (ET)