



State of New Jersey

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

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ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

May 20, 2021

Sent via email to: [REDACTED]

Angelo Genova, Esq.
Genova Burns LLC
[REDACTED]

RE: PERS [REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Genova:

I am writing in reference to the decision of the Board of Trustees ("Board") of the Public Employees' Retirement System (PERS) denying the request of your client, Ms. Cynthia Covie, to extend the expiration period of her PERS account from two to ten years pursuant to N.J.S.A. 43:15A-7(e) and N.J.S.A. 43:15A-8. The Board originally denied Ms. Covie's request at its meeting of October 21, 2020. Ms. Covie filed an appeal on her own behalf and requested additional time to secure documents related to her appeal. You filed appeals on Ms. Covie's behalf dated December 31, 2020, and April 14, 2021. At its meeting of April 19, 2021,¹ the Board denied your request for reconsideration and determined that no material facts were in dispute. Therefore, the Board directed the Board Secretary to draft findings of fact and conclusions of law for review at its May 19, 2021, Board meeting. After careful consideration, the Board approved this Final Administrative Determination.

FINDINGS OF FACT

The Board made the following factual findings.

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

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Ms. Covie was originally enrolled in the PERS on or about May 1, 1991. Ms. Covie's most recent position, with the Board of Public Utilities (BPU), ended on or about February 16, 2020, due to a change in administration. As a result, her last pension contribution from that position was remitted to her PERS account on or about March 31, 2018.

On or about December 3, 2019, the Division of Pensions and Benefits (Division) wrote to Ms. Covie and advised that her account would expire two years after her last pension contribution pursuant to N.J.S.A. 43:15A-7(e). In response, Ms. Covie wrote to the Division on January 27, 2020, requesting an extension of the time period in which her PERS membership would expire pursuant to N.J.S.A. 43:15A-8. Ms. Covie argued that the circumstances surrounding her separation from employment qualified for an extension under the plain language of the statute because she was involuntarily separated from employment. The BPU confirmed that Ms. Covie's employment ended due to a "change of administration in 2018."

The Division wrote to Ms. Covie on February 10, 2020 and March 9, 2020, advising that N.J.S.A. 43:15A-8, does not allow for the extension of the expiration period for members appointed to "at-will" unclassified positions. Rather, the Division explained, the extension applies only to those members who were laid off or those members who were terminated due to their positions being abolished. Thereafter, Ms. Covie appealed the Division's determination to the Board.

The Board considered her appeal at its meeting of October 21, 2020. Ms. Covie spoke on her own behalf at the meeting, and argued that the plain language of the statute should be interpreted broadly, essentially asserting that every member, absent those who resign, is entitled to an extension of time. Ultimately, the Board affirmed the Division's determination, finding that unclassified "at-will" employees, and those who hold political positions which end with a change in administration, do not fall within the exceptions for extending the two-year expiration period for PERS membership as delineated in N.J.S.A. 43:15A-8.

Ms. Covie filed an appeal of the Division's determination and requested additional time to secure documentation pertinent to her appeal. You and your firm filed letters of appeal on her behalf on December 31, 2020, and April 14, 2021. The Board considered your personal statements on Ms. Covie's behalf at its meeting of April 19, 2021. However, the Board denied reconsideration of her appeal and determined that no genuine issue of material fact was in dispute, and therefore directed the Board Secretary to draft findings of fact and conclusions of law consistent with its decision for review at its meeting of May 19, 2021.

CONCLUSIONS OF LAW

The Board made the following conclusions of law.

In making its determination, the Board first relied upon the provisions of N.J.S.A. 43:15A-7(e), which states:

Membership of any person in the retirement system shall cease if he shall discontinue his service for more than two consecutive years.

Thus, there is no dispute that Ms. Covie's active PERS membership account expired two years from the date of her last PERS contributions.

In your appeal, you argue that N.J.S.A. 43:15A-8(a) applies to Ms. Covie's situation and makes her eligible for an extension of the expiration of her PERS account. The statute reads, in pertinent part:

If a member of the retirement system has been discontinued from service without personal fault or through leave of absence granted by an employer or permitted by any law of this State and has not withdrawn the accumulated member's contributions from the retirement system, the membership of that member may continue, notwithstanding any provisions of this act if the member returns to service within a period of 10 years from the date of discontinuance from service.

[Ibid.]

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The Division has interpreted the statute to apply to individuals who were separated from employment due a layoff or job abolishment. Ms. Covie was a political appointee whose service was terminated due to a change in the political administration. The Board finds that the statute was not intended to apply to such a situation and therefore denied Ms. Covie's request to extend the expiration of her PERS account beyond the two years as outlined in N.J.S.A. 43:15A-7(e).

The Board also noted Ms. Covie's Tier 1 PERS account is vested for the purposes of the Deferred retirement benefits available under the provisions N.J.S.A. 43:15A-38. If Ms. Covie returns to PERS-covered employment, she would also have the option to transfer her pension contributions and pension service credit from her prior Tier 1 membership to a Tier 5 membership account. In doing so, she would be waiving all rights to a benefit under her Tier 1 PERS membership.

As noted above, the Board has considered your written submission and all documentation in the record. Because the Board found that 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.

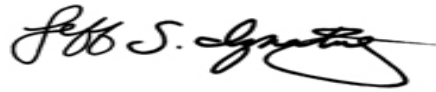
You also have the right to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey.

All appeals should be directed to:

Superior Court of New Jersey
Appellate Division
Attn: Court Clerk
PO Box 006
Trenton, NJ 08625

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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

G-6/JSI

C: D. Wood (ET)

Sent via email to: [REDACTED]