



# State of New Jersey

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

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September 22, 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]

Angela Haines  
[REDACTED]

RE: PERS #: [REDACTED]

## **FINAL ADMINISTRATIVE DETERMINATION**

Dear Ms. Haines:

At its meeting on August 17, 2022,<sup>1</sup> the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) considered all documentation in the record concerning your appeal of the Board's June 15, 2022, decision, in which it found you are not eligible for a Deferred retirement benefit because you were removed for cause on charges of misconduct or delinquency directly related to your employment in accord with N.J.S.A. 43:15A-38. On or about July 31, 2022, you filed a timely appeal of the Board's decision. At its meeting of August 17, 2022, the Board, finding no genuine issue of material fact in dispute, denied your request for a hearing and directed the undersigned to draft a Final Administrative Determination for review and consideration at its meeting of September 21, 2022.

## **FINDINGS OF FACT**

The record before the Board establishes that you were enrolled in the PERS on January 1, 1977, as a result of your employment with Atlantic County as an Institutional Attendant. You continued to hold the same title until your termination on August 5, 1998. By way of two Preliminary Notices of Disciplinary Action (PNDAs) issued on June 23, 1998 and July 1, 1998,

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<sup>1</sup> The meeting was conducted via teleconference.

you were charged with Neglect of Duty and Other- Failure to Follow Facility Policy. Specifically, two residents in your care were observed needing incontinence pad changes and repositioning from 7:00 am until 3:15 pm. You only performed these tasks once during your shift. At a minimum, the residents should be repositioned every two hours or four times per shift. On multiple occasions, you failed to give basic care as well as compromised residents' health and dignity despite direction and supervision. A Final Notice of Disciplinary action dated July 22, 1998, sustained the charges of the PNDA's, and you were removed from service effective July 26, 1998.

A Consent Order executing a Settlement Agreement between you and Atlantic County was issued on April 15, 1999. In the Settlement Agreement, your termination of July 26, 1998 was changed to a voluntary resignation in good standing effective August 5, 1998, and all issues related to your appeal were resolved. However, the Settlement Agreement acknowledges that your termination was converted into a resignation "to enable (you) to be eligible for (your) longevity payment under the County's longevity program." An Initial Decision dated April 22, 1999, approved the Settlement Agreement, and a Final Administrative Action of the Merit System Board on June 8, 1999, acknowledged the settlement in this matter as clarified.

At its meeting on June 15, 2022,<sup>2</sup> the Board considered all relevant documentation in the record in regard to your eligibility for Deferred retirement benefits, in light of your dismissal for cause on charges of misconduct or delinquency directly related to your employment. After careful consideration, the Board denied your application for Deferred retirement benefits in accord with N.J.S.A. 43:15A-38.

You filed an appeal of the Board's decision on or about July 21, 2022. At its August 17, 2022 meeting, the Board considered your appeal and there being no genuine issue of material

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<sup>2</sup> Due to health and safety concerns for the public regarding COVID-19, the meeting was conducted via teleconference.

fact in dispute, directed the undersigned to draft this Final Administrative Determination, which was presented to and approved by the Board at its September 21, 2022, meeting.

### **CONCLUSIONS OF LAW**

The Board made the following legal conclusions.

PERS members with 10 or more years of service are eligible to file for Deferred retirement benefits upon reaching service retirement age:

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) The payments provided for in section 41b of this act,<sup>3</sup> if he so qualifies under said section, or;
- (b) A deferred retirement allowance, beginning at the retirement age...

[N.J.S.A. 43:15A-38 (Emphasis added)].

At the time of your removal from employment, you were approximately ■ years of age and your PERS account reflected a total of 20 years and 10 months of service credit. Therefore, the only benefit for which you could file was a Deferred retirement. You filed an application for Deferred retirement on August 2, 2021, requesting a Deferred retirement to become effective September 1, 2021.

In your appeal to the Board, you asserted that staffing shortages prevented you from performing all of your required duties and thus led to the charges against you. While the Board understands your position, you had the opportunity to appeal your termination at the time you separated from service. Having failed to avail yourself of that option, your termination on charges of misconduct or delinquency became final. It is not within the Board's purview or competence to re-litigate your termination over twenty years after your termination.

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<sup>3</sup> N.J.S.A. 43:15A-41

Based on the plain language of the statute, the Board determined that your removal for cause on grounds of misconduct or delinquency directly related to your employment rendered you ineligible for Deferred retirement benefits. See In re Hess, 422 N.J. Super. 27 (App. Div. 2011) (holding that ineligibility for Deferred retirement occurs only when a member is terminated for misconduct or delinquency related to the employment). Accordingly, the Board denied your application.

You are eligible to withdraw your accumulated pension contributions remitted during active membership. You may request an *Application for Withdrawal* by writing to **Robin Willever**, Supervisor, Loan/Withdrawal Section at the Division, at the address above. **Nonetheless, you are cautioned against filing the withdrawal application if you intend to appeal the Board's determination. Withdrawal terminates all rights and privileges of membership.**

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

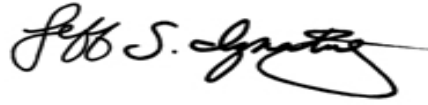
You have the right to appeal this final administrative action to the Superior Court of New Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules Governing the Courts of the State of New Jersey.

All appeals should be directed to:

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

Angela Haines  
September 22, 2022  
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Sincerely,

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

Jeff S. Ignatowicz, Secretary  
Board of Trustees  
Public Employees' Retirement System

G-9/JSI

C: R. Willever (ET); T. Myhre (ET); J. Ehrmann (ET)