



PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

**STATE OF NEW JERSEY**  
DEPARTMENT OF THE TREASURY  
POLICE AND FIREMENS' RETIREMENT SYSTEM  
OF NEW JERSEY  
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ELIZABETH MAHER MUOIO  
*State Treasurer*

Ed Donnelly  
*Chairman, PFRSNJ*

July 9, 2019

Sent via email to: [REDACTED]

MINTZ & GEFTIC  
Bryan H. Mintz, Esquire  
[REDACTED]

RE: Gordon Koncsol (Dec'd)  
[REDACTED]

**FINAL ADMINISTRATIVE DETERMINATION**

Dear Mr. Mintz:

I am writing in reference to the action of the Board of Trustees of the Police and Firemen's Retirement System of New Jersey ("PFRSNJ Board") in denying your request on behalf of your client, Dolores Ortega, to receive survivor benefits as the domestic partner of decedent Gordon Koncsol. The PFRSNJ Board reviewed and denied Ms. Ortega's appeal of the denial of her entitlement to a survivor benefit as a result of the death of Gordon Koncsol at its April 8, 2019 meeting. By letter dated May 13, 2019, you appealed the Board's decision, thereby requesting a hearing in the Office of Administrative Law, which was denied at the Board's June 10, 2019 meeting. Findings of Fact and Conclusions of Law, as outlined below, were presented and approved by the PFRSNJ Board at its July 8, 2019 meeting.

The PFRSNJ Board has reviewed your written submissions and the documentation accompanying your appeal and finds that the statutes and regulations governing the PFRS do not permit the PFRSNJ Board to grant survivor benefits to opposite-sex domestic partners.

**FINDINGS OF FACT**

A review of the relevant facts in this case reveals that Mr. Koncsol was originally enrolled in the Police and Firemen's Retirement System (PFRS) effective February 1, 1969, as a result of his employment with the city of Perth Amboy as a firefighter. On August 2, 1994, Mr. Koncsol applied for a Special Retirement as part

of an Early Retirement Incentive Program. At its meeting of September 19, 1994, the Board approved the retirement, with an effective date of November 1, 1994. At the time of his retirement, Mr. Koncsol was married to Mariette Koncsol. Mr. Koncsol was later divorced from Mariette Koncsol on December 15, 1994.

The Domestic Partnership Act was enacted on July 10, 2004, wherein same-sex couples and those over age 62 could enter into domestic partnerships. However, under the Domestic Partnership Act, domestic partners only qualified for pension benefits if they were same-sex domestic partners. When civil unions were permitted (and then same-sex marriage) the Domestic Partnership Act was amended so that domestic partnerships were only permitted for those over age 62.

After this change, Gordon Koncsol and Dolores Ortega entered into a valid and legally recognized domestic partnership on April 30, 2010. However, under the Domestic Partnership Act and the pension regulations, this opposite-sex domestic partnership does not qualify for pension benefit purposes.

Mr. Koncsol filed a designation of beneficiary form in 2009, naming Dolores Ortega as his beneficiary for life insurance and pension benefits. On December 25, 2009, the Division of Pensions and Benefits, Beneficiary Services Section, responded noting the change and indicating that Dolores Ortega is the primary insurance beneficiary and primary last check benefit beneficiary but specifically states, “[t]he pension benefit is a monthly pension determined by the governing statutes regarding spouses, civil union partners, domestic partners, minor children...” It does not indicate that Ms. Ortega is entitled to a monthly survivor benefit.

On September 18, 2018, the Division of Pensions and Benefits (Division) received notice via a telephone call from Ms. Ortega that Mr. Koncsol died on September 5, 2018. The Division informed Ms. Ortega via letter dated September 27, 2018, that she was entitled to the group life insurance benefit and to the last check benefit as his designated beneficiary. The letter indicated that there was no monthly benefit payable. Ms. Ortega contacted the Division by telephone on October 4, 2018, and was advised that she was not entitled to a monthly survivor benefit because she was not a same-sex domestic partner. Ms. Ortega was referred to the PFRS Member Guidebook for the definition of domestic partner in relation to survivor benefits.

The Division received a letter dated October 22, 2018, from J. Gary Mohr, attorney for the Estate of Gordon Koncsol, requesting an explanation as to why Ms. Ortega is not eligible for a survivor benefit.

The Division received a letter on January 14, 2019 from you, advising that your firm was representing Ms. Ortega. You stated that you were following up on your recent telephone call to the Division, requesting that we commence payment of a survivor benefit to Ms. Ortega or, alternatively, provide a written denial. Eugenia Pierson, Supervisor of the Division's Beneficiary Services Section, replied to you on January 16, 2019, indicating that opposite-sex domestic partners are not entitled to a survivor benefit.

By letter received via facsimile on January 31, 2019, you appealed the denial of a survivor benefit to the PFRSNJ, claiming that "same sex" was added to the definition erroneously. You alleged that the Division violated the doctrine of promissory estoppel. You also asserted that your client has claims for breach of contract, breach of good faith and fair dealing, as well as statutory claims arising out of N.J.S.A. 43:16A-1 et. seq.

At its meeting of April 8, 2019, the PFRSNJ Board considered your personal statements and your letter of January 31, 2019 on behalf of Ms. Ortega. After careful consideration, the Board voted to deny the request for a survivor's benefit because Ms. Ortega did not meet the legal definition of "survivor" according to the statute.

By letter received via email on May 13, 2019, you requested an administrative hearing for reconsideration of the matter. By letter dated June 11, 2019, you were advised that the PFRSNJ Board denied the request for an administrative hearing and directed the Board Secretary to prepare a Final Administrative Determination to be presented at the Board's July 8, 2019 meeting.

### **CONCLUSIONS OF LAW**

The Board denied your request for Ms. Ortega to receive a monthly survivor benefit because opposite-sex domestic partners do not meet the legal definition of "survivor" according to statute. The Board relied upon N.J.S.A. 43:16A-1 (24)(b) & (c), which states, in pertinent part:

(b) "widow" for employees of public employers other than the State, means the woman to whom a member or retirant was married on the date of his death and who has not remarried.

(c) A public employer other than the State may adopt a resolution providing that the term "widow" as defined by N.J.S.A. 26:8A-3 shall include domestic partners...

Further, the provisions of N.J.S.A. 26:8A-2 (e), stipulate the following:

The Legislature, however, discerns a clear and rational basis for making certain health and pension benefits available to dependent domestic partners only in the

case of domestic partnerships in which both persons are of the same sex and are therefore unable to enter into a marriage with each other that is recognized by New Jersey law, unlike persons of the opposite sex who are in a domestic partnership but have the right to enter into a marriage that is recognized by State Law and thereby have access to these health and pension benefits.

The provisions of the Domestic Partnership Act (N.J.S.A. 26:8A-11), with regard to the pension and health benefits of domestic partners, only apply in the case of two persons who are of the same sex and have established a domestic partnership in accordance with N.J.S.A. 26:8A-4.

Because this matter does not entail any disputed questions of fact, the PFRSNJ 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 without the need for an administrative hearing. Your request for a hearing in the Office of Administrative Law, therefore, is denied. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Police and Firemen's Retirement System of New Jersey.

You have the right, if you wish, to appeal this Final Administrative Determination 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,



Lisa Pointer  
Board Secretary  
Police and Firemen's Retirement System of New Jersey

G-6/jb

c: Dolores Ortega  
DAG Amy Chung (ET)  
Cheryl Chianese (ET)