



# State of New Jersey

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

TRENTON, NEW JERSEY 08625-0295  
Telephone (609) 292-7524 / Facsimile (609) 777-1779  
TRS 711 (609) 292-6683  
[www.nj.gov/treasury/pensions](http://www.nj.gov/treasury/pensions)

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

ELIZABETH MAHER MUOIO  
*State Treasurer*

JOHN D. MEGARIOTIS  
*Acting Director*

May 5, 2023

Sent via email to: [REDACTED]

Askiaa Jabir Nash  
[REDACTED]

RE: TPAF [REDACTED]

W [REDACTED]

Dear Mr. Nash:

## **FINAL ADMINISTRATIVE DETERMINATION**

I am writing in reference to the decision of the Board of Trustees ("Board") of the Teachers' Pension and Annuity Fund ("TPAF") regarding your appeal of the Board's denial of your request to file for Accidental Disability retirement benefits. The Board originally denied your request at its meeting of March 9, 2023. You filed a timely appeal of that determination on March 13, 2023. At its meeting of April 13, 2023, the Board considered your written submissions and accompanying documentation and found that the relevant case law governing the TPAF require the Board deny your request for Deferred Retirement benefits. Finding no genuine issue of material fact in dispute, the Board also denied your request for an administrative hearing. Findings of Fact and Conclusions of Law, as outlined below, were presented to and approved by the TPAF Board at its May 4, 2023, meeting.

## **FINDINGS OF FACT**

The record before the Board establishes that you were employed by Newark Public Schools under yearly contracts as an Educational Media Specialist from 1993 to 2001, when you

were terminated following a criminal indictment. After a trial, you were convicted of sexual assault of one student and “endangering the welfare of another student...” State v. Nash, 212 N.J. 518, 526 (2013). On January 22, 2013, the New Jersey Supreme Court vacated your conviction and found that you were “entitled to a new trial based on newly discovered evidence.” Id. at 555.

The record further establishes that in approximately June 2001, you requested information from the Division regarding the withdrawal of the pension contributions accumulated in your TPAF account. Thereafter, you completed an *Application for Withdrawal*.

The Division received your signed *Application for Withdrawal* on June 29, 2001. By letter dated August 10, 2001, the Division notified you that they were in the process of issuing a check<sup>1</sup> representing the total of the accumulated deductions credited to your TPAF account. This letter also stated:

As a result of withdrawing your contributions from the system you have terminated any benefits to which you might have been entitled.

The Board notes that you were notified by the Division of the consequences of withdrawing your accumulated TPAF contributions. Therefore, since you exercised your right to withdraw your contributions from the TPAF based upon the provisions of N.J.S.A. 18A:66-34, you are no longer considered a member of the TPAF and the Board denied your request to reinstate your TPAF membership. See also, N.J.S.A. 18A:66-7. In accordance with the aforementioned statutes your membership in the TPAF ceased upon your authorization to withdraw your accumulated deductions.

The Board noted your assertion that in the years following the Supreme Court’s decision ordering a new trial, you wrote the Division and explained that you were experiencing a financial hardship<sup>2</sup> at the time of your withdrawal, but sought to return the contributions and reestablish

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<sup>1</sup> Subsequently, the Division issued a check to you in accordance with N.J.S.A. 18A:66-34.

<sup>2</sup> You advised via letter dated November 14, 2012, that due to work related issues you needed to withdrawal your account to pay for legal defense.

membership in the TPAF. You were administratively denied this request by letters dated May 3, 2004, July 31, 2006, and November 21, 2012.

On or about March 28, 2013, you appealed the administrative determination of the Division denying your request to reinstate your TPAF account. Thereafter, attorney, Arnold M. Mellk, Esq., filed an appeal of that determination on your behalf. This appeal was ultimately postponed, as you sought an appeal with the Commissioner of Education (Commissioner), in which you claimed to be a tenured employee and requested to be reinstated with full back pay to the date of your wrongful termination. These claims were dismissed by the Commissioner in a final decision on November 25, 2013, and later affirmed by the Appellate Division.

In March of 2015, the Board office was notified that your appeal with the Commissioner was pending. In an Initial Decision, dated June 14, 2017, the Administrative Law Judge (ALJ) granted the State-Operated District of the City of Newark's motion for summary decision and dismissed your petition. Thereafter, the Commissioner concurred with the ALJ's findings and conclusion and adopted the Initial Decision as the final decision.

You filed an *Application for Disability Retirement* on or about February 3, 2023, requesting an Accidental Disability retirement effective June 1, 2023, based on an incident date of [REDACTED]. In response, by letter dated February 16, 2023, the Disability Retirement Unit informed you that you were ineligible to file for any retirement benefit, as you withdrew your pension contributions and terminated any benefits to which you might have been entitled. To that point, the Board noted that only members may apply for Accidental Disability retirement benefits under N.J.S.A. 18A:66-39(c).

The Board noted your equitable arguments, but determined that you ceased to be a member of the TPAF in 2002 upon your authorization to withdraw your pension contributions and as a result, found that you are not eligible to file for Accidental Disability retirement benefits. You filed an appeal on March 13, 2023, requesting that the Board reconsider its prior decision and,

alternatively, permit an administrative hearing. At its meeting of April 13, 2023, the Board reaffirmed its previous decision and denied your request for a hearing.

### **CONCLUSIONS OF LAW**

The issue before the Board is whether you are eligible to apply for Accidental Disability retirement benefits. In making its determination, the Board relied upon N.J.S.A. 18A:66-7, N.J.S.A. 18A:66-34, and N.J.S.A. 18A:66-39(c). N.J.S.A. 18A:66-7 states, in pertinent part:

Membership of any person shall cease:

- (a) if, except as provided in section 18A:66-8, he shall discontinue his service for more than two consecutive years;
- (b) upon the withdrawal by a member of his accumulated deductions as provided in this article;
- (c) upon resignation and election to receive, in lieu of the return of his accumulated deductions, the benefits provided in section 18A:66-36 and 18A:66-37;
- (d) upon retirement;
- (e) at death;

...

[Emphasis added.]

It is undisputed that you authorized the withdrawal of your accumulated deductions in 2002. This action resulted in the termination of your membership and any benefits to which you may have been entitled.

Upon receipt of your *Application for Withdrawal*, the Division issued a check to you in accordance with N.J.S.A. 18A:66-34, which states:

A member who withdraws from service or ceases to be a teacher for any cause other than death or retirement shall, upon the filing of an application therefore, receive all of his accumulated deductions standing to the credit of his individual account in the annuity savings fund, plus regular interest on contributions made after January 1, 1956, less any loan outstanding, and except that for any period after June 30,

1944, the interest payable shall be such proportion of the interest determined at the regular rate as 2% per annum bears to the regular rate of interest; provided, however, that no interest shall be payable if such a member does not have 3 years of membership service at the time of withdrawal from service or cessation of employment.

...

Finally, in order to qualify for Accidental Disability retirement benefits under N.J.S.A.

18A:66-39(c) you must be a member. N.J.S.A. 18A:66-39(c) states, in pertinent part:

(c) A member, under 65 years of age, shall, upon the application of his employer or upon his own application or the application of one acting in his behalf, be retired by the board of trustees, if said member is permanently and totally disabled as a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties, on an accidental disability allowance. A traumatic event occurring during voluntary performance of regular or assigned duties at a place of employment before or after required hours of employment which is not in violation of any valid work rule of the employer or otherwise prohibited by the employer shall be deemed as occurring during the performance of regular or assigned duties.

...

[Emphasis added.]

Based upon the plain language of the statute, the Board determined that because you withdrew you accumulated pension deductions in 2002, your TPAF membership ceased at that time and thus, you are not eligible for to apply for Accidental Disability retirement benefits.

As noted above, the Board has reviewed all relevant documentation and written submissions, and 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 TPAF enabling statutes and without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the TPAF.

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

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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

Sincerely,

A handwritten signature in black ink, appearing to read "Saretta Dudley", enclosed in a rectangular box.

Saretta Dudley, Secretary  
Board of Trustees  
Teachers' Pension and Annuity Fund

G-5/SD

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

DAG Jeffrey Padgett (ET)