



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
September 27, 2023

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director


PHILIP D. MURPHY
Governor

TAHESHA WAY, ESQ.
Lt. Governor

Sent via email and regular mail

The Law Offices of Lauren Sandy, LLC
Lauren Sandy, Esq.



RE: Nicholas Olenick
SPRS 

FINAL ADMINISTRATIVE DETERMINATION

Dear Ms. Sandy:

I am writing in reference to the decision of the Board of Trustees (Board) of the State Police Retirement System (SPRS) denying the request of your client, Nicholas Olenick, to register under the amended benefits provisions of L. 2019, c.157, The Bill Ricci World Trade Center Rescue, Recovery and Cleanup Operations Act (Ricci Act) after the eligibility period expired. The Board originally denied Mr. Olenick's request at its meeting of May 23, 2023. You filed a timely appeal of that determination on Mr. Olenick's behalf on July 18, 2023.

At its meeting of July 25, 2023, the Board considered your personal statements and written submission in furtherance of Mr. Olenick's appeal. Finding no genuine issue of material fact in dispute, the Board denied an administrative hearing and directed the undersigned to draft a Final Administrative Determination.

Findings of Fact and Conclusions of Law as outlined below were presented to and approved by the Board at its September 26, 2023 meeting.

FINDINGS OF FACT

The Board made the following factual findings.

Mr. Olenick is receiving Special retirement benefits¹ from the SPRS, which became effective February 1, 2004.

The Ricci Act was signed into law on July 8, 2019. The law permits both active and retired members of the SPRS (as well as the PFRS and certain members of the PERS) to file for recalculation of Ordinary Disability retirement benefits or Service retirement benefits to an Accidental Disability retirement benefit if the member is, or becomes, totally and permanently disabled due to participation in the rescue, recovery, or cleanup operations at the World Trade Center between September 11, 2001, and October 11, 2001. The Ricci Act also provides for a rebuttable presumption that the disability “occurred during and as a result of the performance of the member’s regular or assigned duties and not the result of the member’s willful negligence, unless the contrary can be proved by competent evidence.” N.J.S.A. 53:5A-10(e)(2).

N.J.S.A. 53:5A-10(e)(4) required the Board to notify both active members and retired members of the respective retirement systems of the Ricci Act within 30 days of enactment (August 7, 2019). Further, both active members and retired members were required to file “a written and sworn statement with the retirement system on a form provided by the board of trustees thereof indicating the dates and locations of service” within two years (July 8, 2021) of the effective date of the Ricci Act.

In response to the aforementioned statute, on August 7, 2019, the Division of Pensions and Benefits (Division) added the Ricci Act web page to its website.² The page included user-

¹ Special Retirement is available at any age to members who have 25 years or more of service credit. The amount of the annual retirement allowance is equal to 65 percent of Final Compensation plus one percent of Final Compensation for each year of creditable service over 25 years but not to exceed 30 years. The maximum allowance is, therefore, 70 percent of Final Compensation.

² The link on the Division’s public web page was deactivated on or about August 3, 2021. See <https://www.nj.gov/treasury/pensions/ricci-ch157.shtml> (last accessed September 11, 2023).

The Law Offices of Lauren Sandy, LLC
Lauren Sandy, Esq.
RE: Nicholas Olenick
September 27, 2023
Page 3

friendly tabs for active members, retirees, and employers, which provided information about the law such as qualifying dates, locations, health conditions and impairments; the requisite *Eligibility Registration Form*; the *Request for Amended Benefits Form*; a sample of the postcard to be mailed to retirees; and material for employers regarding the dissemination of information to employees. On August 8, 2019, the Division distributed via email a letter to all Certifying Officers advising them of their responsibilities under the Ricci Act. All Certifying Officers were required to make the letter available to their respective locations' employees and certify to the Division that they had done so. On August 9, 2019, Barton and Cooney, LLC, the vendor contracted by the Division, sent 200,647 postcards addressed to retired members, using the members' home addresses on file with the Division, to the United States Postal Service for standard delivery. On August 16, 2019, the Division sent an email to all Certifying Officers instructing them on how to proceed if they experienced technical difficulty with confirming distribution to their employees of the Ricci Act notice. Finally, on June 10, 2021, the Division posted a news item on its website advising members that the eligibility period to register under the Ricci Act was expiring soon and that "[m]embers who meet the requirements must submit an Eligibility Registration Form by July 8, 2021. Failure to submit the form by that date will render members ineligible to apply at a later date."

On March 3, 2023, you provided the Division with Mr. Olenick's *Eligibility Registration Form* completed on September 26, 2022 and *Request for Amended Benefits Form*, completed on February 16, 2023, as well as a sworn affidavit from Mr. Olenick certifying that he "did not receive any correspondence or post card from the State Police Retirement Board or the Division of Pensions" with respect to the passage of the Ricci Act.

The Law Offices of Lauren Sandy, LLC
Lauren Sandy, Esq.
RE: Nicholas Olenick
September 27, 2023
Page 4

However, by way of the previously mentioned postcard, a copy of which is included in Mr. Olenick's pension file, the Division notified him of the Ricci Act as required by law. The postcard states:

In accordance with P.L. 2019, c. 157 (Chapter 157), the Bill Ricci World Trade Center Rescue, Recovery, and Cleanup Operations Act, certain retirees of the Police and Firemen's Retirement System, State Police Retirement System, and Public Employees' Retirement System may be eligible to amend an existing retirement to an Accidental Disability Retirement benefit if you are or may become disabled due to working or volunteering in the rescue, recovery, or cleanup operations at the World Trade Center site between September 11, 2001, and October 11, 2001.

An Eligibility Registration Form must be filed within two years of the date of enactment of Chapter 157 (July 8, 2021) to be considered for Accidental Disability under this law. Retirees who currently qualify for an amended retirement benefit under this law have 30 days from the date of this notice (September 16, 2019) to file a Request for Amended Benefits Form with the New Jersey Division of Pensions & Benefits (NJDPB). If the NJDPB does not receive the required form(s) within the time frames indicated, you will not be eligible for the recalculation under this law. For more information, please visit our website at: www.nj.gov/treasury/pensions.

At its meeting of May 23, 2023, the Board considered your submissions and personal statements, as well as all pertinent documentation in the record. Thereafter, finding that Mr. Olenick did not submit his eligibility registration form by July 8, 2021, the Board determined that Mr. Olenick is ineligible to register for amended benefits provided under the Ricci Act and denied his request to do so.

By letter dated July 18, 2023, you appealed the Board's determination on Mr. Olenick's behalf. At its meeting of July 25, 2023, the Board considered your personal statements and written submission in support of the appeal. Finding no genuine issue of material fact in dispute, the Board denied an administrative hearing and directed the undersigned to draft detailed Findings of Fact and Conclusions of Law for review at its September 26, 2023 meeting.

CONCLUSIONS OF LAW

The Board found that this matter is controlled by N.J.S.A. 53:5A-10(e)(4), which states:

The board of trustees shall promulgate rules and regulations necessary to implement the provisions of this subsection and shall notify members and retirants in the retirement system of the enactment of this act, P.L.2019, c.157, within 30 days of enactment.

A member or retiree shall not be eligible for the presumption or recalculation under this subsection unless within two years of the effective date of this act, P.L.2019, c.157, the member or retiree files a written and sworn statement with the retirement system on a form provided by the board of trustees thereof indicating the dates and locations of service.

It is undisputed that the Division notified Mr. Olenick of the Ricci Act as required by law. It is also undisputed that the Division did not receive Mr. Olenick's *Eligibility Registration Form* prior to the deadline of July 8, 2021.

Although Mr. Olenick alleges that he did not receive the postcard, New Jersey courts have consistently "recognized a presumption that mail properly addressed, stamped, and posted was received by the party to whom it was addressed." SSI Medical Servs. v. HHS, Div. of Medical Assistance & Health Servs., 146 N.J. 614 (1996). As stated above, a copy of the postcard mailed to Mr. Olenick's address on file with the Division is located in his pension file.

Mr. Olenick did not submit his eligibility registration form until approximately 1 year and 2 months after the July 8, 2021, statutory deadline to do so. While "[t]he power to reopen proceedings 'may be invoked by administrative agencies to serve the ends of essential justice and the policy of the law,'" Minsavage for Minsavage v. Bd. of Trs., Teachers' Pension & Annuity Fund, 240 N.J. 103, 107-08 (2019) (quoting In re Van Orden, 383 N.J. Super. 410, 419 (App. Div. 2006)), the Board's exercise of that inherent power should be invoked only when a member demonstrates "good cause, reasonable grounds, and reasonable diligence." Minsavage, 240 N.J. at 109.

The Law Offices of Lauren Sandy, LLC
Lauren Sandy, Esq.
RE: Nicholas Olenick
September 27, 2023
Page 6

The evidence in the record establishes that the Division mailed notice of the Ricci Act to Mr. Olenick on August 9, 2019. The Division posted online all the information concerning the Ricci Act, including the eligibility registration form. All active and retired members were notified of the Ricci Act's passage in August 2019. The Board found that Mr. Olenick's assertions that he does not remember receiving or seeing the post card notice, which was undisputedly sent to his home address by the Division, failed to establish good cause for allowing him to file the form over 1 year and 2 months past the statutory deadline. Further, the Board also found that Mr. Olenick did not exercise reasonable diligence nor demonstrate reasonable grounds for such a protracted delay in filing the eligibility registration form. See Velazquez v. Bd. of Trs., Police and Firemen's Retirement System, 2020 N.J. Super. Unpub. LEXIS 1126 (App. Div. June 12, 2020).

As Mr. Olenick did not submit the eligibility registration form to the Division by July 8, 2021, and did not demonstrate "good cause, reasonable grounds, and reasonable diligence," the Board found him ineligible to register for amended benefits provided under the Ricci Act, and denied his request to do so.

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 State Police 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.

The Law Offices of Lauren Sandy, LLC
Lauren Sandy, Esq.
RE: Nicholas Olenick
September 27, 2023
Page 7

All appeals should be directed to:

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

Sincerely,



William Tedder, Secretary
Board of Trustees
State Police Retirement System

G-6/WT

C: D. Lewis (ET)

Nicholas Olenick (sent via email to: [REDACTED])

Division of State Police
Dianna Sampson, Benefits Unit Head
[REDACTED]