



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*

January 10, 2023

Sent via email to: [REDACTED]

C. ELSTON & ASSOCIATES, LLC  
Cathlene Y. Banker, Esq.

[REDACTED]

RE: David Roe  
PFRS # [REDACTED]

**FINAL ADMINISTRATIVE DETERMINATION**

Dear Ms. Banker:

The Board of Trustees ("Board") of the Police and Firemen's Retirement System of New Jersey ("PFRSNJ"), at its meeting of December 12, 2022, considered your request for a Declaratory Ruling on behalf of your client, David Roe, in his appeal to continue processing his application for Accidental Disability retirement benefits ("AD"), despite the fact that he has pending civil litigation with his former employer, Clifton City ("Clifton" or "the City").

The Board voted to deny your Petition for a Declaratory Ruling, dated March 3, 2022, and determined that Roe's application for AD will continue to be held in abeyance until there is a final resolution of the litigation between Roe and Clifton in accordance with N.J.A.C. 17:1-6.2(d). Because the facts are undisputed and the appeal involves solely a question of law, the PFRSNJ Board retains the matter and hereby issues this correspondence as its Final Administrative Determination.

Findings of Fact and Conclusions of Law as outlined below were presented and approved by the Board at its meeting of January 9, 2023.

**FINDINGS OF FACT**

David Roe began his career as a Police Officer with Clifton and was enrolled in the Police and Firemen's Retirement System ("PFRS") on January 1, 2007. Roe remained employed with Clifton until his resignation<sup>1</sup>.

<sup>1</sup> The original resignation date was listed as August 31, 2021, on the *Employer Certification for Disability Retirement* ("Certification") as submitted by Clifton. Several updated Certifications have been submitted, corresponding with Roe's updated AD applications. As of this writing, December 31, 2022, is listed as Roe's resignation date.

On or about November 11, 2020, Roe filed a civil suit against Clifton [REDACTED]

[REDACTED] The matter, [REDACTED] remains pending disposition in the Superior Court of New Jersey, Law Division, Passaic County.

On March 11, 2021, Roe filed an application<sup>2</sup> for AD, with the Division of Pensions and Benefits (“DPB”) claiming total and permanent disability from his position as Police Sergeant, allegedly due to a December 27, 2020 work-related incident.

On December 7, 2021, Patrick Toscano, Esq., Roe’s attorney regarding his application for AD retirement, advised the DPB that Roe had filed the aforementioned civil complaint against Clifton and provided a copy of the complaint for DPB to review. Toscano requested that the AD application not be delayed pending the civil matter.

The DPB advised Roe by letter dated December 16, 2021, that his application would be held in abeyance pending resolution of the civil suit against Clifton, citing N.J.A.C. 17:1-6.2(d): “likewise in cases where anything pertaining to a member’s employment is in litigation, or under appeal, the matter shall be held in abeyance until the Division determines if claims can be processed or whether the processing of such claims are to be postponed pending a final resolution of the litigation or appeal.”

On December 28, 2021, Toscano noted DPB’s December 16, 2021 correspondence but reiterated his request that the Board advance Roe’s AD application “notwithstanding [the DPB’s] correspondence.”

On February 3, 2022, your office petitioned the DPB for a Declaratory Ruling on behalf of Roe, pursuant to N.J.S.A. 52:14B-8<sup>3</sup>, on its decision to hold his AD application in abeyance while his civil litigation against Clifton is pending.

In response to your request for a Declaratory Ruling, the DPB advised your office, by letter dated March 1, 2022, that they were not able to make any final administrative determinations or rulings on the matter, as they are not the agency head for the PFRS. The letter advised that the DPB’s determination to hold the AD application in abeyance pending a final resolution to the litigation with Clifton was appealable to the PFRSNJ Board.

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<sup>2</sup> Records indicate that Roe has changed his retirement date several times. The original requested effective retirement date was September 1, 2021. As of this writing, the requested effective date of retirement is March 1, 2023.

<sup>3</sup> N.J.S.A. 52:14B-8 provides that “an agency upon the request of any interested person may in its discretion make a Declaratory Ruling with respect to the applicability to any person, property or state of facts of any statute or rule enforced or administered by that agency. A Declaratory Ruling shall bind the agency and all parties to the proceedings on the state of facts alleged. Full opportunity for hearing shall be afforded to the interested parties. Such ruling shall be deemed a final decision or action subject to review in the Appellate Division of the Superior Court. Nothing herein shall affect the right or practice of every agency in its sole discretion to render advisory opinions.” (emphasis added)

Upon receipt of said letter from the DPB, you petitioned the PFRSNJ Board for a Declaratory Ruling on March 3, 2022<sup>4</sup>. The PFRSNJ Board considered your request for a Declaratory Ruling at its meeting of December 12, 2022. It determined that such a ruling circumvents the administrative process. The Board further voted to deny Roe's request to continue processing his AD retirement application despite the fact that he has civil litigation pending with Clifton; the matter would continue to be held in abeyance pending final resolution of the litigation.

### **LEGAL CONCLUSIONS**

N.J.A.C. 17:1-6.2(d) states:

Likewise in cases where anything pertaining to a member's employment is in litigation, or under appeal, the matter shall be held in abeyance until the Division determines if claims can be processed or whether the processing of such claims can be postponed pending a final resolution of the litigation or appeal.

The PFRSNJ Board has interpreted and applied this regulation consistently in its determinations regarding all similar appeals before it thus far. [REDACTED] (holding that the PFRS Board properly interpreted and applied N.J.A.C. 17:1-6.2(d) when it held member's disability application in abeyance pending final resolution of litigation between the member and employer). It is the position of the Board that any application for a retirement benefit submitted by a member with pending litigation pertaining to their employment be held in abeyance until such time that proof of a final resolution of the litigation or appeal is received.

The Board cannot review an application without finalized information that potentially could have an impact on the calculation of the retirement benefit. Litigation could result in possible changes to information that is fundamental to the processing of the retirement benefit, including, but not limited to, date of termination or final compensation, elements which must be settled before processing may continue.

### **CONCLUSION**

For the foregoing reasons, Roe's AD application will continue to be held in abeyance until such time that sufficient evidence is received that the litigation is concluded, including all appeals. As this matter does not involve any disputed questions of fact, the PFRNJ Board was able to reach its finds of fact and conclusions of law in this matter on the basis of the applicable statutes and regulations and without the need for an administrative hearing. Accordingly, this correspondence shall constitute the Final Administrative Determination of the PFRSNJ Board of Trustees.

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.

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<sup>4</sup> On August 25, 2022, you filed a Notice of Appeal appealing the Board's alleged inaction to render a decision on your request for a declaratory ruling. That appeal is still pending.

Cathlene Y. Banker, Esq.  
RE: David Roe  
January 10, 2023  
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Sincerely,



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

G-10/sb

c: David Roe [REDACTED]  
Juliana C. DeAngelis, Esq. (ET)  
D. Lewis; S. Glynn; K. Ozol; (ET)  
OAL, Attn: Library (ET)