



# State of New Jersey

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

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PHILIP D. MURPHY  
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TAHESHA L. WAY  
*Lt. Governor*

ELIZABETH MAHER MUOIO  
*State Treasurer*

JOHN D. MEGARIOTIS  
*Acting Director*

May 3, 2024

Sent via email to [REDACTED]

CRIVELLI, BARBATI, & DeROSE, LLC  
Michael P. DeRose, Esq.

[REDACTED]

RE: Ernest Turner  
TPAF #: [REDACTED]

## **FINAL ADMINISTRATIVE DETERMINATION**

Dear Mr. DeRose:

At its meeting on April 4, 2024, the Board of Trustees (Board) of the Teachers' Pension and Annuity Fund (TPAF) considered your appeal of the Board's determination that Ernest Turner's July 1, 2004 Ordinary Disability retirement is non-bona fide. The Board originally adopted the Pension Fraud and Abuse Unit's (PFAU) findings and determined that Mr. Turner failed to separate from service prior to his return to public employment and that his continued service in a TPAF-eligible and certificated position are in violation of N.J.S.A. 18A:66-40(b) and N.J.A.C. 17:3-6.2 at its meeting of January 11, 2024.<sup>1</sup> You filed a timely appeal of the Board's decision on February 28, 2024.

After careful consideration, the Board affirmed its prior decision, and finding no genuine issue of material fact in dispute, denied your request for an administrative hearing. Thereafter,

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<sup>1</sup> Mr. Turner was previously represented by attorney, Robert A. Honecker Jr., Esq.

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the Board directed the undersigned to draft a Final Administrative Determination, which was reviewed and approved at its meeting of May 2, 2024.

### **FINDINGS OF FACT**

The record before the Board establishes that Mr. Turner was enrolled in the TPAF on or about October 1, 1983, as the result of his employment as a School Business Administrator with the Essex County Educational Services Commission. Subsequently, he transferred to various public employers and continued his membership in the TPAF. In February 2002, Mr. Turner transferred to the Glen Rock Borough Board of Education (Glen Rock) as a Business Administrator/Board Secretary. On or about March 24, 2004, Mr. Turner filed an application for Ordinary Disability retirement benefits to become effective July 1, 2004.

On May 17, 2004, Mr. Turner was scheduled to appear for an Independent Medical Examination (IME) with Dr. Schlomo Charlap, Internist. On May 24, 2004, the Board of Education of the Northern Highlands Regional High School District (Northern Highlands) approved, "the appointment of Ernest Turner as the Director of Transportation for Region I for the 2004-2005 school year, at an annual salary of \$104,000, effective July 1, 2004." Mr. Turner's employment contract required that he "...hold the certification of Supervisor as issued by the New Jersey Department of Education," and further defined the position as a TPAF-eligible position. The Supervisor certificate was the same as the job for which he certified that he was disabled from doing.

At its meeting on August 5, 2004, the Board approved Mr. Turner's Ordinary Disability effective July 1, 2004. At the time of its approval, the Board was unaware that Mr. Turner had executed an employment contract with Northern Highlands. A letter dated August 5, 2004, memorialized the Board's decision, and notified him that:

You have a right to withdraw, cancel, or change your retirement application provided you notify the Division of Pensions and

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Benefits within 30 days of the date of the Board's approval or your retirement date, whichever is later; otherwise, the retirement will stand as approved and cannot be changed for any reason.

If you continue to receive a salary beyond the effective date of retirement, no retirement benefits shall be paid for the period where you received salary...

[emphasis added].

The August 5, 2004, Board approval letter that was sent to Mr. Turner also informed him that his retirement allowance as a disability retiree is subject to an Excess Earning Review. The letter included the following language:

Your retirement allowance as a disability [retiree] is subject to adjustment if your earnings from employment after retirement exceed the difference between the pension portion of your retirement allowance and the salary attributable to your former position.

Aware of this pension reduction, Mr. Turner requested Northern Highlands to lower his salary. Attorney Stephen R. Fogarty of Fogarty & Hara sent a letter to the Business Administrator of the Northern Highlands Regional High School, dated June 27, 2005. Mr. Fogarty states, "However, and contrary to Turner's representations to you, the TPAF specifically provides for the adjustment of the individual's pension benefits and not the individual's salary." The letter goes on to state, "... it is a safe assumption that the reduction of that salary purely with the intention of allowing Turner to collect the maximum amount of disability for which he has been approved would be contrary to the treasury regulations." Nevertheless, on June 27, 2005, Northern Highland's meeting minutes indicate that Mr. Turner was reappointed for the 2005-2006 school year for an annual salary of \$78,500 (Note: this salary is a \$25,500 decrease from the prior year).

In a follow-up letter responding to Ernest Turner, dated July 25, 2005, by Christina N. Campanella, of the same firm, stating: reducing Mr. Turner's salary was contrary to TPAF

regulations; however, "It appears ... that as long as the sum of your disability payments and current salary does not exceed the current salary attributable to your former positions of Business Administrator of the Glen Rock Board of Education, no further inquiry is necessary."

In 2007, Turner was the subject of a pension reduction review, which he appealed to the Board. As part of his appeal, he sent the Board an excerpt of the January 2005, Pension News. Within the submission was outlined a scenario in which a disability retiree returned to public employment, and both the location and member failed to notify the Division. The Pension News article goes on to state, "she was required to reimburse the PERS in the amount of all retirement benefits received since the date of reenrollment should have occurred. She has had to enroll and pay pension contributions back to that date." The article continues, "If you are a disability retiree of a NJ State-administered retirement system wishing to return to active service, you must first prove that you are no longer disabled before accepting employment with the same retirement system from which you retired." Mr. Turner neglected to inform the Division that he was working in TPAF eligible and certificated positions while collecting disability retirement benefits.

The records further establish that the employment contracts provided to the PFAU for the 2004-2005 and 2005-2006 school years state, "The employee shall, upon employment, hold the certification of Supervisor as issued by the New Jersey Department of Education." The contract also states, "The following compulsory deductions will be made: Federal Income Tax; State Income Tax; F.I.C.A. (Social Security); and deductions for the Teachers' Pension [and] Annuity Fund." The Board adopts the entirety of the factual findings of the PFAU's December 14, 2023 violation letter including Mr. Turner's continued work as an independent contractor for various Board's of Education following his discontinuance of employment with Northern Highlands.

On April 7, 2022, the Board voted to suspend Mr. Turner's monthly retirement benefit. The Board reviewed evidence showing that Mr. Turner had continued public employment following his

disability retirement. As the investigation was ongoing, the Board postponed further action until the investigation was complete.

On January 11, 2024, following the completion of the PFAU's investigation, the Board adopted the PFAU's findings of fact and found that Turner violated both N.J.S.A. 18A:66-40(b) and N.J.A.C. 17:3-6.2. N.J.S.A. 18A:66-40(b). Therefore, Mr. Turner is required to repay all retirement benefits paid from July 1, 2004 to April 1, 2022. Additionally, the Board has found that Mr. Turner is required to make the mandatory pension contributions on the salaries earned while he worked at Northern Highlands from July 1, 2004 through June 30, 2006.

At its meeting on April 4, 2024, the Board considered your appeal, affirmed its prior decision, and finding no genuine issue of material fact in dispute, denied your request for an administrative hearing.

### **CONCLUSIONS OF LAW**

The issue before the Board is whether Mr. Turner continued working in a TPAF eligible position following his disability retirement, and returned to employment before his retirement was approved, in violation of both N.J.S.A. 18A:66-40(b) and N.J.A.C. 17:3-6.2. N.J.S.A. 18A:66-40(b) states:

If a disability beneficiary becomes employed again in a position which makes him eligible to be a member of the retirement system, his retirement allowance and the right to any death benefit as a result of his former membership, shall be canceled until he again retires.

Such person shall be reenrolled in the retirement system and shall contribute thereto at a rate based on his age at the time of his prior enrollment. Such person shall be treated as an active member for determining disability or death benefits while in service and no benefits pursuant to an optional selection with respect to his former membership shall be paid if his death shall occur during the period of such reenrollment.

Upon subsequent retirement of such member, he shall receive a retirement allowance based on all his service as a member,

computed in accordance with applicable provisions of this article, but the total retirement allowance upon subsequent retirement shall not be a greater proportion of his final compensation than the proportion to which he would have been entitled had he remained in service during the period of his prior retirement. Any death benefit to which such member shall be eligible shall be based on his latest retirement.

[emphasis added].

Additionally, N.J.A.C. 17:3-6.2 stipulates that:

A member's retirement allowance shall not become due and payable until 30 days after the date the Board approved the application for retirement or 30 days after the date of retirement, whichever is later.

[emphasis added].

The record before the Board clearly shows that Northern Highlands "approved the appointment of Ernest Turner as the Director of Transportation for Region I for the 2004-2005 school year, at an annual salary of \$104,000, effective July 1, 2004." Mr. Turner's Ordinary Disability was not approved by the Board until August 5, 2004. Mr. Turner's employment contract required that he "...hold the certification of Supervisor as issued by the New Jersey Department of Education," and further defined the position as a TPAF-eligible position. Accordingly, Mr. Turner never stopped working in a TPAF eligible position, and returned to employment before his retirement was approved, in violation of both N.J.S.A. 18A:66-40(b) and N.J.A.C. 17:3-6.2 respectively.

As the Northern Highlands position was indisputably TPAF-eligible, Mr. Turner must pay pension contributions on the salary received through that employment from July 1, 2004 through June 30, 2006, and receive pension credit for those years. The Board notes that neither Mr. Turner nor Northern Highlands contacted the Division to ascertain whether it would have any negative impact on his pension and whether it was in compliance with all applicable statutes and regulations. The Board further notes Mr. Turner's specific requests in 2007 indicate his

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understanding of the retirement restrictions, and sought to evade the return to service and salary reduction principles of the TPAF.

In your appeal, you assert that Mr. Turner's "subsequent engagements with various school districts following his 2004 retirement were as an independent contractor and expressly as a consultant..." were not full-time positions, that the services he rendered for these school districts were not in TPAF-eligible positions, and did not require the use of his business administrator certificate. You also allege that following the approval of his Ordinary Disability retirement he met with a Division representative and informed the representative of his "engagement" with Northern Highlands in 2004, and that he was advised that he did not need to make any changes to his retirement status despite the services he was performing for that district and that as a result the Board is equitably estopped from asserting that his retirement was not bona fide.

As previously noted, Mr. Turner's employment contracts with Northern Highlands required that he "...hold the certification of Supervisor as issued by the New Jersey Department of Education," and further defined the position as a TPAF-eligible position. It is without dispute that the position he held at Northern Highlands from July 1, 2004 through June 30, 2006, was TPAF-eligible, and thus required enrollment in the TPAF. Furthermore, the Board considered your equitable estoppel claims and found that they do not apply in this matter, as the record is clear that Mr. Turner's retirement was not bona fide and, thus he is required to re-enroll and pay the mandatory pension contributions for the period he returned to employment and reimburse the TPAF for any retirement benefits he was not entitled to receive.

As noted above, the Board has considered your written submission 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

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correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Teachers' Pension and Annuity Fund.

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

Sincerely,



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

G-3/SD

C: K. Conover (ET); N. Munko (ET); J. Ehrmann (ET)

Ernest Turner  
[REDACTED]