



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
December 11, 2018

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

Sent via email to: [REDACTED]

Jennifer L. Gottschalk, Esquire
Attorney At Law

[REDACTED]

RE: Jose Velazquez

[REDACTED]

Dear Ms. Gottschalk:

FINAL ADMINISTRATIVE DETERMINATION

This is in reference to the Board of Trustees of the Police and Firemen's Retirement System's (PFRS) denial of your client, Jose Velazquez's appeal of the Board's determination of July 11, 2018, which denied Mr. Velazquez's appeal of the Board's March 10, 2014 determination that Mr. Velazquez was not eligible to file an application for Accidental disability retirement because he was not a member in service at the time he attempted to file the application. The Board denied Mr. Velazquez's appeal because it was received more than four years beyond the 45-day time period for appeal, set forth in the March 10, 2014 determination pursuant to N.J.A.C. 17:1-1.3(d).

By letter dated August 20, 2018, you appealed the Board's July 11, 2018 determination and requested reconsideration. The Board was scheduled to consider your request for reconsideration or in the alternative for a hearing, at its meeting of October 15, 2018. However, based upon your request, the Board postponed action until its meeting of November 5, 2018. At that meeting, the Board denied your request for reconsideration and denied your request for a hearing in the Office of Administrative Law (OAL) as the Board determined that there are no material facts in dispute. The Board directed the Board Secretary in conjunction with the Attorney General's Office to prepare

Findings of Fact and Conclusions of Law, which were presented and approved by the PFRS Board at its December 10, 2018 meeting.

The PFRS Board considered your personal statements, your written submissions and the relevant documentation and finds that the statutes and regulations governing the PFRS do not permit the PFRS Board to grant your request for a hearing of the Board's denial of March 10, 2014 because it was received beyond the 45 days required in accordance with N.J.A.C. 17:1-1.3(d).

FINDINGS OF FACT

Mr. Velazquez was enrolled in the PFRS on September 1, 2000, based upon his employment with the Department of Corrections, Camden County as a County Correction Officer. In January 2001, he accepted employment with Camden City as a Police Officer and transferred his membership to Camden City on January 1, 2001. On August 31, 2005, the Division of Pensions and Benefits (Division) received his application for Accidental disability retirement to be effective on September 1, 2005. Thereafter, on three different occasions, Mr. Velazquez amended his retirement date, the last time to August 1, 2006.

On June 28, 2006, Mr. Velazquez canceled his retirement application. By letter dated July 17, 2006, the Division informed Mr. Velazquez that in accordance with his request his August 1, 2006 retirement application was cancelled. That same letter indicated that if in the future he chose to retire it would be necessary for him to file a new retirement application. On November 25, 2008, a notice was issued to Mr. Velazquez advising him that the last contribution to his PFRS account was on March 31, 2007 and therefore his account would expire on March 31, 2009.

Additionally, on September 1, 2008 Mr. Velazquez joined the Public Employees' Retirement System (PERS) based upon his employment as an Instructional Aide with the Lindenwold Borough Board of Education¹. He remained with this employer until November 6, 2010, at which time he

¹ Mr. Velazquez became a dual pension member because his PFRS account was still active at the time he became a PERS member.

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transferred to the Division of Taxation, as an Auditor, wherein he continues to be an active contributing member of the PERS.

In May of 2012, on several occasions, Mr. Velazquez contacted the Division about the status of his PFRS application for Accidental Disability retirement, which he previously canceled on July 17, 2006. In those communications with the Division, he acknowledged that he did cancel his application because his PFRS employer reinstated him to his position. Mr. Velazquez informed the Division that once he returned to employment, his employer terminated him, and he indicated in these conversations that he was currently appealing his termination. The Division informed Mr. Velazquez that he may refile his application with a future retirement date but cautioned him that if it was more than five years from the date of the incident on which he based his application for Accidental disability retirement, he would have to prove delayed manifestation.

By letter dated June 8, 2012, Stuart J. Alterman, Esq., wrote to the Division in the capacity of Mr. Velazquez's attorney, requesting the status of Mr. Velazquez's pension application and information from his pension file. Thereafter, Mr. Velazquez filed a new application for Accidental Disability retirement, requesting an effective date of January 1, 2013. By letter dated November 27, 2012, the Division notified Mr. Velazquez that it had received his application and informed him that he did not file his application within five years from the claimed accident date. This notification stated that the Board might consider his application, if he is able to provide documentation that his inability to file within the five-year period was due to a delayed manifestation of the disability or circumstances beyond his control. Mr. Velazquez was informed that he needed to submit the documentation within 30 days or his application would be cancelled.

On December 19, 2012, the Division received notification that John J. Feeley, Esq., was now representing Mr. Velazquez, and that new counsel needed additional time to submit the medical documentation. On January 2, 2013, the Division received the required Certification of Service and Final Salary from the City of Camden, which stated that Mr. Velazquez's employment was terminated

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on October 6, 2011. On February 8, 2013, the Division wrote to Mr. Feeley and requested that he advise within 10 days if he would be submitting additional medical documentation on behalf of Mr. Velazquez. Mr. Velazquez continued to inquire about the status of his application. On January 27, 2014, the Division notified Mr. Velazquez that when he filed his application in November of 2012, he was no longer considered a member in service because he was removed from employment on October 8, 2011. That same letter provided him with appeal rights to the PFRS Board of Trustees. His attorney, Mr. Feeley, was copied on the January 27, 2014 letter.

On February 4, 2014, Mr. Feeley filed an appeal of the Division's January 27, 2014 determination that Mr. Velazquez was ineligible to file for Accidental disability retirement. At its meeting on March 10, 2014, the Board found that Mr. Velazquez's application for Accidental disability was not filed in accordance with N.J.S.A. 43:16A-7, which requires that an application be filed "by a member in service." "Member in service" is defined by the Board at N.J.A.C. 17:4-6.7(a)(1) As previously indicated the Camden City Police Department removed him from his position on October 6, 2011² and he did not file his application for Accidental disability retirement until November 19, 2012, after his removal. The Board's decision was outlined in its letter dated March 11, 2014. The letter also included the following:

"If you disagree with the determination of the Board, you may appeal by submitting a written statement to the Board within 45 days after the date of written notice of the determination....If no such written statement is received within the 45-day period, the determination by the Board shall be final."

(Emphasis Added)

² A Final Notice of Disciplinary Action confirms that Mr. Velzaquez was removed from employment on this date. The record indicates that he appealed his removal, but at the time the Board considered Mr. Velazquez's application, the Board understood that his appeal of his termination was completed and his termination finalized in 2012.

It was not until several years later on March 13, 2018 that you notified the PFRS Board that Mr. Velazquez formally withdrew the appeal of his termination, pending in the OAL under docket number CSV 14130-2011S, on March 5, 2018, without prejudice. Further, you filed an appeal of the Board's determination of March 11, 2014, which determined that Mr. Velazquez was ineligible to file for Accidental disability retirement because he was not a member in service at the time of his application. In support of your appeal, you informed the Board for the first time that when the Board denied his application, Mr. Velazquez was still appealing his termination³. You asserted that his appeal of his termination should toll the 45 days for appeal.

By letter dated March 22, 2018, you supplemented the record indicating that Mr. Velazquez withdrew the appeal of his termination because he wanted to pursue his pension, rather than resolution of the propriety of his termination. You asked that the Board waive the time frame for filing the appeal based upon a standard of "good cause" claiming the delays that occurred were not caused by Mr. Velazquez.

At its meeting of May 14, 2018, the PFRS Board postponed action and requested that you provide a timeline of his litigation with supporting documentation. By letter dated June 21, 2018, you provided the requested information. At its meeting on July 10, 2018, the Board considered your personal statements, your submissions, including the timeline and thereafter, denied your request to appeal the Board's March 10, 2014 determination that Mr. Velazquez can file for Accidental disability retirement. The Board found that you did not present good cause to relax the regulatory timeframe set forth in N.J.A.C. 17:1-1.3(d).

On August 20, 2018, you requested reconsideration of the Board's July 10, 2018 determination. The matter was scheduled for consideration at the Board's October 15, 2018 meeting but on that date the Board granted your request for a postponement. The Board considered and

³ The Board has no record of Mr. Velazquez or any of his counsel indicating that Mr. Velazquez's wrongful termination litigation was not resolved in 2012, until it received your letter in March 2018.

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denied your request for reconsideration at its November 5, 2018, meeting. Because there are no material facts in dispute the Board directed the Board Secretary, in conjunction with the Attorney General's Office, to prepare Findings of Fact and Conclusions of Law, which constitutes the Board's Final Administrative Determination.

CONCLUSIONS OF LAW

As stated previously, at its meeting of March 10, 2014, the Board denied Mr. Velazquez's request to file for Accidental disability retirement because the Board found that he was not a "member in service" at the time his application was filed, as required by N.J.S.A. 43:16A-7 and N.J.A.C. 17:4-6(a)(1). The Board's decision was outlined in its letter dated March 11, 2014. Also, this letter included the procedure to file an appeal. Specifically, the letter noted the following:

"If you disagree with the determination of the Board, you may appeal by submitting a written statement to the Board within 45 days after the date of written notice of the determination. The statement shall set forth in detail the reasons for your disagreement with the Board's determination and shall include any relevant documentation supporting your claim. If no such written statement is received within the 45-day period, the determination by the Board shall be final."

[Emphasis added]

Based upon the provisions of the law, Mr. Velazquez had until April 23, 2014 to submit a written statement appealing the Board's determination. However, the record indicates that no such request was made until your letter dated March 13, 2018, almost four years beyond the permitted timeframe. It was then that you informed the Board that Mr. Velazquez's wrongful termination litigation was not resolved in 2012 and that his appeal was pending until March 2018, when he withdrew it without prejudice, with consent of the City of Camden, on March 5, 2018.

The Board did consider your personal statements, and your submissions, including the timeline of his litigation, however, the Board denied your request to appeal the Board's determination of March 10, 2014, because you have not presented good cause to relax the regulatory timeframe set forth in N.J.A.C. 17:1-1.3(d), which states in pertinent part:

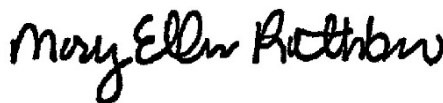
(d) The following statement shall be incorporated in every written notice setting forth the Division, Board or Commission's determination in a matter where such determination is contrary to the claim made by the claimant or the claimant's legal representative: If you disagree with the determination of the Board, Commission or Division, you may appeal by submitting a written statement to the Board, Commission or Division Director within 45 days after the date of written notice of the determination. The statement shall set forth in detail the reasons for your disagreement with the Board, Commission or Division's determination and shall include any relevant documentation supporting your claim. If no such written statement is received within the 45-day period, the determination by the Board, Commission or Division shall be final.

[Emphasis added]

The Board notes that Mr. Velazquez was represented by multiple attorneys, and did have counsel when he appeared before the Board in 2014. While the Board did not know Mr. Velazquez's wrongful termination litigation was still pending at that time, Mr. Velazquez certainly possessed that information. Thus, Mr. Velazquez does not present new, previously unavailable information, to support a relaxing of the 45-day appeal period and the Board determines there is no good cause to reopen a final decision. Accordingly, this correspondence shall constitute the Final Administrative Determination of the Board of Trustees of the Police and Firemen's 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.

Sincerely,



Mary Ellen Rathbun, Secretary
Board of Trustees
Police and Firemen's Retirement System

G-8/MER

C: DAG Schimmel (ET); DAG Amy Chung (ET); Jose Velazquez