



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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August 15, 2017

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State Treasurer

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Acting Director

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

ZAZZALI, FAGELLA, NOWAK, KLEINBAUM & FRIEDMAN
Colin M. Lynch, Esquire



Sent via Email to: [REDACTED]

RE: James Higgins
[REDACTED]

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. Lynch:

I am writing in reference to the denial by the Board of Trustees of the Police and Firemen's Retirement System (PFRS) of your client, James Higgins's request for Service retirement benefits under N.J.S.A. 43:16A-5 (3) which allows a PFRS member with 20 years of creditable PFRS service who was enrolled in the PFRS on the effective date of P.L. 1999, C. 428, January 18, 2000, to receive a pension in the amount of 50% of the member's final year salary. The PFRS Board initially reviewed and denied his request at its April 10, 2017 meeting. On May 24, 2017, you appealed the Board's denial and requested a hearing in the Office of Administrative Law ("OAL"). The PFRS Board reviewed your letter dated May 24, 2017 and the relevant documentation and finds that the statute and relevant case laws governing the PFRS do not permit the Board to grant Mr. Higgins' request for Service retirement benefits.

At its meeting on July 10, 2017 the Board denied your request for a hearing in the OAL. Findings of Fact and Conclusions of Law, as outlined below, were approved by the PFRS Board at its meeting of August 14, 2017. This Final Administrative Determination serves as formal notice that the Board denied your request for a hearing.

FINDINGS OF FACT

James Higgins became employed with Wayne Township as a dispatcher and was enrolled in the Public Employees' Retirement System (PERS) effective August 1, 1999. Mr. Higgins remained in this position until he resigned and separated from employment effective August 31, 2002. He then became employed as a Police Officer with Vernon Township on September 5, 2002. On December 9, 2002 the Division of Pensions and Benefits (Division) received Mr. Higgins application for an inter-fund transfer and a PFRS Enrollment Application to effectuate his enrollment in the PFRS and the transfer of his earned PERS service credit and contributions from the PERS to PFRS. A Certification of Payroll Deductions was issued confirming his inter-fund transfer from the PERS to the PFRS, transferring a total of 35 months of former PERS service to PFRS, and that the transfer was effective September 1, 2002. This resulted in all his PERS service credit transferred into his new PFRS account.

At the time Mr. Higgins became a PFRS member in September 2002, his account maintained his PERS enrollment date of August 1, 1999; however, the statute explicitly requires that he be a PFRS member as of the date of the enactment of Chapter 428, P.L. 1999.

There is no dispute that Mr. Higgins was a member of the PERS on that date. Mr. Higgins subsequently continued his employment with this employer and earned PFRS service credit from September 1, 2002 through September 31, 2016. He submitted his resignation on November 1, 2016.

On October 21, 2016, James Higgins submitted an *Application for Retirement Allowance* electronically through the Member Benefit Online System (MBOS) in which he requested a Service Retirement with an effective date of November 1, 2016. The certifying officer for Vernon Township completed an electronic *Certification of Service and Final Salary Retirement* on October 27, 2016 indicating that Mr. Higgins resigned on November 1, 2016. On that same date, the Division informed

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Mr. Higgins via letter that he was not eligible for either a Service or a Special retirement because his PFRS membership only reflected 18 years and 9 months of membership service.

By letter dated November 8, 2016, Anthony M. Arbore, Esq., wrote Vernon Township regarding the settlement agreement that was reached but not forwarded to the Division. Consequently, the Township of Vernon informed the Division that a settlement agreement was reached between the Township and Mr. Higgins awarding him back pay from July 1, 2015 through September 30, 2016. In support of the agreement, the Township of Vernon submitted a copy of the *Settlement Agreement and Release of Claims*. Thereafter, the Division increased Mr. Higgins PFRS membership account by 15 months of service¹ and salary giving him a total of 20 years of service credit. However, he only earned PFRS service credit from September 1, 2002, the date that he was eligible to enroll in the PFRS through September 30, 2016.

On December 9, 2016, an *Estimate of Retirement Benefits* for Deferred Retirement with an effective retirement date of July 1, 2025 was issued to Mr. Higgins. You then wrote the Division regarding the alleged errors in Mr. Higgins' PFRS retirement estimate. After an extensive review of his record, the Division confirmed that Mr. Higgins did not qualify for the enhanced pension under N.J.S.A. 43:16A-5 (3) (Service retirement benefits under Chapter 428, P.L. 1999) because he was not a member of PFRS on January 18, 2000, when the legislation was enacted. On January 4, 2017, the Division notified Mr. Higgins that his *Application for Retirement* requesting a November 1, 2016 retirement was cancelled. By letter dated January 9, 2017, you were informed of the Division's determination that Mr. Higgins was not eligible for a Service retirement. Additionally, the PFRS Board Secretary forwarded you a copy of this letter via email on January 12, 2017.

¹ This reflected service credit for the period from July 1, 2015 through September 30, 2016. Mr. Higgins did not receive service or salary credit for October 2016 as he was on leave without pay.

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Subsequently, on February 23, 2017, a letter was received wherein you formally appealed the Division's January 9, 2017 decision denying Mr. Higgins' request to file for Service retirement under Chapter 428, P.L. 1999. At its meeting on April 10, 2017, the Board affirmed the Division's denial regarding his ineligibility for a Service retirement. On May 24, 2017, you appealed the Board's denial and requested a hearing in the OAL. At its meeting on July 10, 2017 the Board denied your request for a hearing in the OAL.

CONCLUSIONS OF LAW

Following a review of the information, the PFRS upheld the Division's determination and denied your request. Mr. Higgins is not eligible for Service retirement benefits under Chapter 428, P.L. 1999. He was a member of the PERS from August 1, 1999 through August 31, 2002. He was not a member of the PFRS until September 1, 2002. The fact that he was permitted to inter-fund his PERS service into the PFRS and maintain his August 1, 1999 PERS date of enrollment does not change the fact that Mr. Higgins was not a member of the PFRS on January 18, 2000, when legislation was enacted under Chapter 428, P.L. 1999. Therefore, he does not qualify for the Service retirement benefit.

The PFRS provides members with a service retirement upon attaining 55 years of age. N.J.S.A. 43:16A-5. The statute was amended in 1999, under L. 1999, c. 428, and provided that when a PFRS member attains 20 or more years of creditable PFRS service a pension equal to at least 50% of the member's final compensation, provided the member was a member of the PFRS as of the effective date of the statute, or January 18, 2000. N.J.S.A. 43:16A-5(3) states, in pertinent part:

Any member of the retirement system as of the effective date of P.L.1999, c.428 who has 20 or more years of creditable service at the time of retirement shall be entitled to receive a retirement allowance equal to 50% of the member's final compensation plus, in the case of a member required to retire pursuant to the provisions of subsection (1) of this section, 3% of final compensation multiplied

by the number of years of creditable service over 20 but not over 25.

[Ibid.]

The Board also promulgated N.J.A.C. 17:4-6.11, which states, in relevant part:

(a) A member becomes eligible for "service" retirement:

....

2. On the first of the month following the attainment of 20 years of service credit in the Retirement System, if the member was enrolled in the Retirement System as of January 18, 2000.

Effective February 21, 2001, the Board amended the regulation to include eligibility for service retirement "when the member has a minimum of 20 years of service credit, if the member was enrolled in PFRS as of January 18, 2000." 32 N.J.R. 4060(a). No comments on the amendment were received. 22 N.J.R. 684(a). In 2006, the Board clarified "that a member must have 20 years of service credit before being able to file for a service retirement, and the effective date would be the first of the month following the attainment of 20 years of service credit." 37 N.J.R. 4521(a). The requirement that the member be enrolled in PFRS as of January 18, 2000, to receive the benefit, remained. Ibid. No comments were received relating to N.J.A.C. 17:4-6.11. 38 N.J.R. 1578(a).

You argue that the Board's denial of the service pension is based on a misunderstanding of N.J.S.A. 43:16A-5(3). You argue that the New Jersey Assembly Statement supports your assertion that Mr. Higgins is eligible for service retirement because the sponsor's statement does not indicate an intent to limit new members' eligibility for the benefit. You support this argument further with an August 4, 2014, letter from Senator Diane Allen to Florence Sheppard, Acting Director of the Division of Pensions and Benefits.

The Board disagrees with your assertions. "When the Legislature's chosen words lead to one clear and unambiguous result, the interpretative process comes to a close, without the need to

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consider extrinsic aids." State v. Shelley, 205 N.J. 320, 323 (2011) (citing State v. D.A., 191 N.J. 158, 164 (2007). "Extrinsic evidence, such as legislative history" is looked to for assistance "when statutory language yields 'more than one plausible interpretation.'" *Id.* at 323-24, (quoting DiProspero v. Penn, 183 N.J. 477, 492-93 (2005)).

By its express language, N.J.S.A. 43:16A-5(3), begins with "[A]ny member of the retirement system as of the effective date of P.L.1999, c.428 who has 20 or more years of creditable service at the time of retirement" requires that the member seeking the enhanced retirement benefit provided by the statute to have been a member as of the effective date of the statute. There is no ambiguity in the statute requiring further interpretation. N.J.A.C. 17:4-6.11(a)(2) echoes the clear language of the statute, explicitly permitting service retirement "if the member was enrolled in the Retirement System as of January 18, 2000."

While the Board is mindful of the liberal approach our courts have taken with respect to pension statutes, Bumbaco v. Bd. of Trs., Pub. Employees' Ret. Sys., 325 N.J. Super. 90, 94 (App. Div.), certif. denied, 163 N.J. 75 (2000), it is just as mindful of our courts' caution that "eligibility is not to be liberally permitted." Smith v. Dep't of Treas., 390 N.J. Super. 209, 213 (App. Div. 2007). "Instead, in determining a person's eligibility to a pension, the applicable guidelines must be carefully interpreted so as not to 'obscure or override considerations of . . . a potential adverse impact on the financial integrity of the [fund].'" Ibid. (quotation omitted).

It is undisputed that Mr. Higgins enrolled in the PERS on August 1, 1999, and only upon attaining a PFRS eligible position, transferred his membership to and enrolled in the PFRS in September 1, 2002. Mr. Higgins' transfer of an earlier PERS membership to PFRS does not change when he became a member of PFRS. He was clearly not a member of the PFRS on January 18, 2000. Thus, Mr. Higgins does not qualify for service retirement under N.J.S.A. 43:16A-5(3).

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As noted above, the PFRS Board has reviewed your written submissions and because this matter does not entail any disputed questions of fact, the PFRS Board was able to reach its findings of fact and conclusions of law in this matter 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 Police and Firemen's Retirement System.

You have the right, if you wish 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: C. Law (ET); DAG Danielle Schimmel (ET)
James Higgins