



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
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November 29, 2018

ELIZABETH MAHER MUOIO  
*State Treasurer*

JOHN D. MEGARIOTIS  
*Acting Director*

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

Lauren Sandy, Esquire



RE: Mark Murphy



Dear Ms. Sandy:

This is in reference to the denial by the Board of Trustees (“Board”) of the State Police Retirement System (“SPRS”) of your request on behalf of Mark Murphy for a deferred retirement. At its July 24, 2018 meeting, the SPRS Board denied Mr. Murphy’s request for deferred retirement pursuant to N.J.S.A. 53:5A-28. By letter dated August 15, 2018, you appealed the Board’s determination that Mr. Murphy is not eligible for a deferred retirement. At its meeting of September 25, 2018, the Board noted your arguments on behalf of Mr. Murphy and thereafter the Board determined that there are no material facts in dispute and 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 SPRS Board at its November 27, 2018<sup>1</sup> meeting.

The SPRS Board has reviewed your written submissions and the relevant documentation, and finds that the statute and relevant case law governing the SPRS does not permit the SPRS Board to grant Mr. Murphy’s request for a deferred retirement.

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<sup>1</sup> The Board noted that you were in attendance at the meeting on November 27, 2018.

### **FINDINGS OF FACT**

Mark Murphy was enrolled in the SPRS on February 1, 1986 as a result of his enlistment as a Trooper with the New Jersey State Police Enlisted Personnel ("State Police"). On June 5, 1998, he was involved in a two car motor vehicle accident, in which the driver of the other vehicle that he struck died. At the time Mr. Murphy was off duty, and not authorized to be utilizing troop car #2542, while under the influence of alcohol. As a result, on June 15, 1998, he was suspended without pay pending an investigation of the accident. On December 1, 1998, he was charged by Indictment #98-12-01460 with Count 1- Aggravated Manslaughter (1<sup>st</sup> degree), Count 2-Vehicular Homicide (2<sup>nd</sup> degree), Count 3-Aggravated Assault by Auto (2<sup>nd</sup> degree), and Count 4- Aggravated Assault by Auto (4<sup>th</sup> degree).

On February 1, 2001, a jury trial found Mr. Murphy guilty of second degree Vehicular Homicide, N.J.S.A. 2C:11-5 and fourth degree Aggravated Assault by auto, N.J.S.A. 2C:12-1B. On March 9, 2001, an order was entered requiring Mr. Murphy to forfeit his public office, position and employment as a member of the New Jersey State Police, pursuant to the provisions of N.J.S.A. 2C:51-2a(1). When he was dismissed from his position with the State Police his SPRS membership reflected a total of 12 years and 4 months of service credit. On March 9, 2001, Mr. Murphy was sentenced to a term of seven years in the custody of the Commissioner of Corrections, with a parole ineligibility period of three years. His driver's license was suspended for five years and he was required to pay various fines. He appealed his conviction and on October 2, 2006, the Appellate Division affirmed the trial's findings.

On March 5, 2004, Mr. Murphy notified the Division of Pensions and Benefits (Division) that he was incarcerated and sought the status of his pension contributions. Specifically, he asked if he was vested or if he needed to roll over his contributions into a private retirement account. In his letter, he did not indicate that he was required to forfeit his position as a result of his criminal misconduct. On March 11, 2004, the Division informed Mr. Murphy that members of

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the SPRS who terminate employment before age 55 with at least 10 years of service credited to the retirement system can apply for a deferred Retirement. However, to qualify “a member must not have been removed from employment for cause on charges of misconduct or delinquency”.

Two years later, Mr. Murphy contacted the Division by phone and requested a letter stating that he was vested in the SPRS. On July 10, 2006, the Division sent him a letter indicating that as of March 31, 2006, he had 12 years and 4 months of posted pension service in the SPRS and advised him of the application process and that it was subject to review and approval by the SPRS Board of Trustees. On August 18, 2017, the Division received Mr. Murphy's *Application for Retirement Allowance* wherein he requested a deferred retirement benefit effective March 1, 2018. The certifying officer of the SPRS filed a *Certification of Service and Final Salary-Retirement* on February 13, 2018, indicating that his service terminated on March 9, 2001.

The Division notified Mr. Murphy on May 9, 2018 that at its meeting on July 24, 2018, the SPRS Board would review his application for a deferred retirement in accordance with N.J.S.A. 53:5A-28. At its meeting of July 24, 2018, the SPRS Board considered his application for deferred retirement benefits, in light of his prior criminal misconduct and his removal from employment. Following its review of all relevant information, the Board denied Mr. Murphy's application for deferred retirement benefits in accordance with N.J.S.A. 53:5A-28. The Board's denial was based on documentation which confirms that pursuant to a Court Order issued on March 9, 2001, he was required to forfeit his position with the State Police as a result of his criminal misconduct which touched upon his duties as a Detective/Sergeant.

On August 15, 2018, you informed the Division that you were representing Mr. Murphy and that you were formally appealing the Board's denial of his deferred retirement benefits. In support of your appeal, you indicated that Mr. Murphy was vested in the SPRS and asserted that the Board failed to consider all of the Uricoli factors and that the Board misapplied the Uricoli factors it did consider. At its meeting of September 25, 2018, the SPRS Board considered your

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appeal. Thereafter, the Board determined there are no factual issues to be adduced at a hearing and directed the Board Secretary in conjunction with the Attorney General's Office to prepare Findings of Fact and Conclusions of Law that will formally outline the Board's decision and become the Board's Final Administrative Determination. The Board's determination was memorialized in a letter dated September 26, 2018.

### **CONCLUSIONS OF LAW**

N.J.S.A. 53:5A-28 requires the Board to determine whether Mr. Murphy was removed for cause or delinquency from employment with the State Police. As noted above, Mr. Murphy was informed in 2004 and 2006 about the rules pertaining to a deferred retirement, specifically that he could apply for a deferred retirement but retirement applications were subject to the review and approval by the SPRS Board. However, he did not file his application with the Division until August 18, 2017. Following its review of the information, the Board denied his application for deferred retirement benefits. The record before the Board confirmed that on March 9, 2001, he was ordered to forfeit his position with the State Police in accordance to N.J.S.A. 2C:51-2a(1). Additionally, the documentation demonstrates that Mr. Murphy's criminal misconduct touched upon his official duties as a Detective/Sergeant because at the time of the incident he was in his troop car which he was not authorized to be utilizing and was under the influence of alcohol.

Because the record establishes that Mr. Murphy was removed for cause, the Board denied his application for deferred retirement benefits. The Board relied upon N.J.S.A. 53:5A-28 which states:

Should a member, after having established 10 years of creditable service as a full time commissioned officer, noncommissioned officer or trooper of the Division of State Police, be separated voluntarily or involuntarily from the service, before reaching age 55, and not by removal for cause on charges of misconduct or delinquency, ...

[Emphasis added]

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The Board's decision is further supported by relevant case law. In the matter of Suzanne Hess, 422 N.J. Super. 27, 37 (App. Div. 2010), the Court held that "forfeiture of Deferred retirement benefits pursuant to N.J.S.A. 43:15A-38 is conditioned on an involuntary removal due to misconduct related to employment." Because Mr. Murphy was removed for cause based on misconduct or delinquency related to his employment, the Board's decision is fully consistent with the Appellate Division's decision in Hess. See also Danny Glenn v. Board of Trustees, Public Employees' Retirement System, Dkt. No. A5271-14T1, decided June 30, 2017, slip op at \*4 ("[t]he plain language of this statute [N.J.S.A. 43:15A-38] leaves no room for discretion by the Board: any member removed as a public employee for charges of misconduct or delinquency is ineligible to receive benefits from PERS as a matter of law").

In your appeal you claim that the Board failed to consider all of the Uricoli factors and that the Board misapplied the Uricoli factors it did consider. The Board disagrees with your argument based upon the fact that N.J.S.A. 43:1-3 is not applicable to Mr. Murphy's matter. When he was removed for cause, the only benefit that he could file for was a deferred retirement. N.J.S.A. 53:5A-28. However, removal for cause on charges of misconduct or delinquency automatically disqualifies Mr. Murphy from being eligible for a deferred retirement.

Mr. Murphy does qualify for the return of his accumulated pension contributions. Please be cautioned that if he intends to file an appeal of this Final Administrative Determination, he should NOT withdraw his pension contributions. If he wishes to withdraw, he must complete an Application for Withdrawal by logging into the Member Benefits Online System (MBOS). Nonetheless, he is cautioned against filing the withdrawal application if he intends to appeal. Withdrawal terminates all rights and privileges of membership.

As noted above, this matter does not entail any disputed questions of fact, and the SPRS Board was therefore able to reach its findings of fact and conclusions of law on the basis of the retirement system's enabling statutes and regulations and without the need for an administrative

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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.

Sincerely,

A handwritten signature in black ink that reads "Mary Ellen Rathbun". The signature is written in a cursive style and is enclosed within a thin black rectangular border.

Mary Ellen Rathbun, Secretary  
Board of Trustees  
State Police Retirement System

G-1/mer

C: D. Dinkler (ET); DAG Rob Garrison (ET); DAG Amy Chung (ET)  
Mark Murphy