



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
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*Lt. Governor*

August 20, 2018

Sent via email to: [REDACTED]

Gaylord Popp  
Samuel M. Gaylord, Esquire

RE: Manuel Rodrigues  
[REDACTED]

Dear Mr. Gaylord:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

At its meeting on July 18, 2018, the Board of Trustees of the Public Employees' Retirement System (PERS) reviewed the Initial Decision ("ID") of Administrative Law Judge ("ALJ") Jude-Anthony Tiscornia, dated June 1, 2018 in the above captioned matter, together with the joint stipulation of facts, the items submitted into evidence by the parties, and exceptions filed by Deputy Attorney General Robert S. Garrison, dated June 14, 2018. Thereafter, the Board voted to adopt the factual findings of the ALJ, but rejected the ALJ's legal conclusion and reaffirmed its original determination that Mr. Rodrigues is not eligible to file for Ordinary Disability retirement.

Findings of Fact and Conclusions of Law as outlined below were presented and approved by the PERS Board at its meeting on August 15, 2018. These Findings of Fact and Conclusions of Law constitute the Final Administrative Determination in this matter.

## **FINDINGS OF FACT**

It is undisputed that Mr. Rodrigues was employed by the New Jersey Judiciary, Union County Vicinage since 1998 as a probation officer. (ID at 2). On September 9, 2015, Mr. Rodrigues was

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served with notice of disciplinary charges by his employer because of improper statements made by him on his Facebook account that brought disrepute upon his employer. Ibid. On January 14, 2016, Mr. Rodrigues applied for Ordinary Disability retirement benefits. Ibid. On July 8, 2016, he signed a settlement agreement with his employer whereby the employer would drop any and all disciplinary charges in exchange for his resignation. Ibid. On July 8, 2016, Mr. Rodrigues resigned from his position. Ibid. The Board denied Mr. Rodrigues's request to apply for Ordinary Disability retirement benefits on November 10, 2016. Ibid.

The Board had denied Mr. Rodrigues's request for two reasons: (1) he separated from his employment not due to a disability but rather due to the settlement agreement with his employer and his resulting resignation and (2) N.J.S.A. 43:15A-44 would bar Mr. Rodrigues from receiving Ordinary Disability retirement benefits due to the language of the settlement agreement, which precludes him from ever again being employed by the New Jersey Judiciary. (ID at 3-4). The ALJ rejected these reasons and reversed the Board's denial. (ID at 3). For the reasons set forth below, the Board rejected the ALJ's legal conclusions and reaffirmed Mr. Rodrigues's ineligibility to apply for Ordinary Disability retirement benefits.

### **LEGAL CONCLUSION**

The ALJ's legal conclusion that Mr. Rodrigues is not precluded from filing for Ordinary Disability retirement benefits is contrary to the holdings in two recent Appellate Division decisions that disability retirement applications are barred if the applicant leaves service for a non-disability related reason. First, In re Adoption of N.J.A.C. 17:1-6.4, 17:1-7.5, and 17:1-7.10, \_\_\_ N.J. Super. \_\_\_ (App. Div. 2018) upheld regulations limiting disability retirement benefits to applicants who left service due to a disability. (Slip op. at 10). Second, Bellomo v. Board of Trustees, Police and Firemen's Retirement System, A-2506-16T1 (App. Div. May 10, 2018) held that a police officer who left service due to aggravated assault charges could not prove that he was totally and permanently disabled when he left employment and thus did not qualify for an Accidental Disability retirement benefit.

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Additionally, In re Jamie McCarron, No. A-1944-09T2 (App. Div. Dec. 15, 2011), informs the Board's decision here. In McCarron, this court found that a disability retiree who was terminated for cause would not be eligible for reinstatement should the disability diminish sufficiently to allow re-employment. McCarron was a Middletown Township police officer who filed for and was granted an Ordinary Disability retirement. Id. at 1. Prior to his retirement, Middletown had begun an investigation into previous misconduct and issued a Preliminary Notice of Disciplinary Action. Middletown filed its final charges seeking termination four days after McCarron was granted an Ordinary Disability retirement. Id. at 2. McCarron appealed, and the matter was transferred to the OAL. Ibid. While in the OAL, McCarron moved to dismiss the matter as moot because he was receiving disability retirement benefits before his termination. Ibid. The ALJ denied the motion and upheld the termination, and the CSC adopted the ALJ's decision. Ibid. McCarron appealed. Ibid. The Appellate Division upheld the termination and found that the matter was not moot because, if McCarron's disability were to diminish, he could not be restored to active service, as contemplated by the statute. Id. at 3; see N.J.S.A. 43:16A-8(2). Here, as in McCarron, Mr. Rodrigues would be prohibited from ever returning to work if his alleged disability were to diminish.

The facts of this case are clear: Mr. Rodrigues left due to his settlement of disciplinary charges, and not due to a disability. This precludes Mr. Rodrigues from applying for Ordinary Disability retirement benefits, and because the settlement agreement states that he can never return to employment, N.J.S.A. 43:15A-44 acts as an independent bar to his application. If his application was processed and he was granted an Ordinary Disability pension and later it was determined that he was no longer disabled, there is no mechanism for the Board to stop paying the pension because he could never be ordered to return to work, as required by N.J.S.A. 43:15A-44. Granting a disability retirement under these circumstances would be in contravention of the statutory scheme, and place the Board in the position of potentially paying a disability pension which the Board has no ability or mechanism to terminate if the member is no longer totally and permanently disabled.

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For the foregoing reasons, the Board adopts the ALJ's findings of fact but rejects the legal conclusion that Mr. Rodrigues is eligible to apply for Ordinary Disability retirement benefits.

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,

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  
Public Employees' Retirement System

G-8/mer

C: Manuel Rodrigues  
DAG Robert Garrison (ET)  
DAG Robert Kelly (ET) |