



# State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PENSIONS AND BENEFITS  
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*Acting Director*

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

November 15, 2018

Sent via email to [REDACTED]

Theresa Triola  
[REDACTED]

RE: [REDACTED]

Dear Ms. Triola:

## **FINAL ADMINISTRATIVE DETERMINATION**

I am writing in reference to the decision of the Board of Trustees of the Public Employees' Retirement System (PERS) regarding your appeal of the Board's denial of your request to extend your expired PERS membership account until 2025. At its meeting on June 20, 2018, the Board denied your request and relied upon the provisions in N.J.S.A. 43:15A-7(e) and N.J.S.A. 43:15A-8. On August 5, 2018, you appealed the Board's decision and requested a hearing in the Office of Administrative Law (OAL).

At its meeting on September 19, 2018, the Board determined that there are no material facts in dispute, denied your request for a hearing 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 PERS Board at its November 7, 2018 meeting.

The PERS Board has reviewed your written submissions and the relevant documentation, and finds that the statutes, regulations and relevant case law governing the PERS do not permit the Board to grant your request to extend your expired PERS membership until 2025.

## **FINDINGS OF FACT**

The record shows that you established membership in the PERS on September 1, 2005 based upon your employment with Gloucester County College (GCC) as an Adjunct Professor.

You also accepted a position with the Department of Children and Families (DCF) as Assistant Supervisor of Education and established "multiple" PERS enrollment status with this employer on November 24, 2007. Subsequently, you opted to interfund a total of 171 months of your membership service and salary established under your Teacher's Pension and Annuity Fund (TPAF) into your PERS membership account. On February 13, 2009, you completed an Election of Retirement Coverage opting to waive enrollment in the Alternate Benefit Program (ABP) and remain in the PERS based upon your position as an Adjunct Professor with GCC.

On or about December 30, 2011, you applied for Accidental disability retirement requesting a January 1, 2012, retirement date. DCF certified that you resigned on June 18, 2010 and GCC certified that you resigned December 31, 2011. On September 19, 2012, the Board denied your application. You appealed the matter and the Board's decision was upheld in the Appellate Division. The Supreme Court granted certification but ultimately dismissed the petition as improvidently granted. See Triola v. Bd. of Trs., Pub. Employees' Ret. Sys., 228 N.J. 463, 463.

On September 8, 2015, you were advised that your last pension contribution was June 30, 2013, and because you had 10 or more years of PERS service credit, you were eligible to apply for a Deferred retirement benefit. You contacted the Division regarding this notice and on September 23, 2015, you were incorrectly advised that your PERS account would remain active for 10 years, until 2025. On March 23, 2016, you were informed by the Division that your account had expired. The next day, you visited the Division and were informed that the information regarding the expiration of your PERS membership was incorrect and that your PERS membership expired on September 30, 2015, because it had been more than 2 years since your last pension deduction in your PERS account.

You wrote to the Division requesting that your PERS membership account remain active until 2025. On May 6, 2016, the Division advised you that after 2 years of inactivity your PERS

account expired pursuant to N.J.S.A. 43:15A-7(e). Accordingly, your PERS membership account expired on September 30, 2015. You were also advised that if you wish to appeal that determination to the PERS Board of Trustees, direct your appeal to the PERS Board Secretary.

Your attorney, David Castellani, appealed the Board's decision and requested that your PERS membership be extended due to your unclassified DCF employment. On November 22, 2017, the Board Secretary wrote advising that your position with DCF had no bearing on the determination by the Division of the expiration of your PERS account. The record confirmed that your unclassified position with DCF was discontinued on June 18, 2010, and that pension contributions were remitted through June 30, 2013, based upon you working with GCC for the 2013 spring semester with GCC. On December 15, 2017, Mr. Castellani appealed to the Board Secretary disputing the expiration of your PERS membership claiming that your PERS membership ended as a result of your employment with DCF on June 18, 2010. On January 26, 2018, the Division explained that even though her employment ended with DCF on June 19, 2010, you were eligible for continued participation in the PERS with GCC and that employment did not cease until June 30, 2013, as indicated above.

Subsequently, you had communications with the PERS Board Secretary regarding various issues, specifically, purchasing additional service credit, your total membership earned in the PERS and the postponement of your appeal to the PERS. On March 22, 2018, the Board Secretary provided the results of an audit which confirmed that your PERS account was credited with 23 years and 3 months of membership service and that any additional purchase would not provide you with the requisite 25 years to qualify for an Early retirement. Your request to extend your PERS membership account beyond the expiration date of your account was on the Board's agenda for its meeting of March 27, 2018. However, the Board approved your request to postpone consideration until the June 20, 2018 meeting.

At its meeting of June 20, 2018 the Board considered your personal statements all submissions and relevant documentation in the record. Prior to consideration of the expiration of your PERS account, the Board also declined to reconsider your application for Accidental disability because your case was fully resolved by the Courts. Thereafter, the Board denied your request to extend your PERS membership account. By letter dated August 5, 2018, you appealed the Board's determination and requested a hearing in the Office of Administrative Law. At its meeting of September 19, 2018, the PERS 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.

#### **Conclusions of Law**

The issue before the Board is your request to extend your PERS membership account which expired on September 30, 2015, two years after your last pension deduction from your employment with BCC. While you were employed by DCF, you were also employed by GCC as an adjunct covered by the PERS. You remained in employment with Gloucester County College until June 30, 2013. Therefore, two years after your last deduction with GCC, your PERS membership account expired on September 30, 2015.

The Board relied upon the provisions of N.J.S.A. 43:15A-7(e), which states:

Membership of any person in the retirement system shall cease if he shall discontinue his service for more than two consecutive years.  
...

In addition, the Board noted that N.J.S.A. 43:15A-8(a) provides, in pertinent part:

If a member of the retirement system has been discontinued from service without personal fault or through leave of absence granted by an employer or permitted by any law of this State and has not withdrawn the accumulated member's contributions from the retirement system, the membership of that member may continue, notwithstanding any provisions of this act if the member returns to

service within a period of 10 years from the date of discontinuance from service.

The Division's long-standing interpretation of the above statutory language includes employees who have been terminated through either a Reduction in Force or where the member's position has been eliminated. The nature of an adjunct faculty's employment is on a semester by semester basis. The Division and Board view an employer's decision not to extend an offer of rehire to an adjunct faculty member as distinct from either scenario above which would qualify for an extension of PERS membership beyond the statutorily required expiration under N.J.S.A. 43:15A-8(a).

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. All appeals should be directed to:

Superior Court of New Jersey  
Appellate Division  
Attn: Court Clerk  
PO Box 006  
Trenton, NJ 08625

Sincerely,



Jeff Ignatowitz, Secretary  
Board of Trustees  
Public Employees' Retirement System |

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C: L. Barnett (ET)