



# State of New Jersey

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

October 17, 2019

STAUB & SCHROTH, L.L.C.  
Raymond C. Staub, Esq.

[REDACTED]  
[REDACTED]

Re: Patrick Woods

[REDACTED]

Dear Mr. Staub:

## **FINAL ADMINISTRATIVE DETERMINATION**

I am writing in reference to the decision of the Board of Trustees (Board) of the Public Employees' Retirement System (PERS) in which it found that your client, Patrick Woods, was not eligible to file for Ordinary Disability retirement benefits. At its meeting on July 17, 2019, the Board determined that Mr. Woods is ineligible to apply for Ordinary Disability retirement benefits and denied his request to do so. You filed an appeal on Mr. Wood's behalf, which was considered at the Board's September 18, 2019 meeting. After careful consideration, the Board determined that there are no material facts in dispute and found that there is no need for an administrative hearing. Accordingly, the Board directed the Secretary, in conjunction with the Attorney General's Office, to prepare Findings of Fact and Conclusion of Law, which were presented and approved by the PERS Board at its October 14, 2019 meeting.

The 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 Mr. Wood's request to apply for Ordinary Disability retirement benefits.

### **FINDINGS OF FACT**

The record indicates that Mr. Woods filed his *Application for Disability Retirement* on May 18, 2018, requesting an Ordinary Disability retirement effective June 1, 2018. The *Employer Certification for Disability Retirement*, submitted by Trenton Psychiatric Hospital (TPH) on July 2, 2018, indicated that Mr. Woods was dismissed on October 27, 2016 due to administrative charges. In accord with the regulations, the Division requested further information from TPH in regard to Mr. Woods' disciplinary charges.

The documentation provided by TPH revealed that by way of a Preliminary Notice of Disciplinary Action (PNDA), dated October 25, 2016, Mr. Woods was charged with the following administrative charges:

N.J.A.C. 4A:2-2.3(a)6 – Conduct unbecoming a public employee;  
N.J.A.C. 4A:2-2.3(a)8 – Misuse of public property, including motor vehicle;  
N.J.A.C. 4A:2-2.3(a)12 – Other sufficient cause;  
NJ Department of Human Services, Disciplinary Action Program, Administrative Order 4:08:  
C13: Actual or attempted theft of State property or equipment or the property of other employees, residents, clients or patients;  
E1-1: Violation of a rule, regulation, policy, procedure, order, or administrative decision (P&P 2.401.17, Code of Ethics)

The Board noted none of the foregoing charges relate to an alleged disability. Rather, the violations were the result of the following events:

1. On September 16, 2016, at approximately 6:02 a.m., Mr. Woods was observed via a security camera removing items from the plumbing storeroom and placing them into a State vehicle. Mr. Woods then drove that State vehicle to his personal vehicle, took the items out of the State vehicle, and then placed them into his personal vehicle.
2. On October 6, 2016, between 3:00 p.m. and 4:00 p.m., Mr. Woods' supervisor asked why he had corn stalks in the bed of the truck, a State vehicle, to which Mr. Woods replied that he had removed them from the dumpster and was going to take them home. Mr. Woods then pulled his personal vehicle next to the truck, placed the corn stalks into his vehicle and drove off the grounds.
3. Mr. Woods was previously disciplined for actual or attempted theft of State property or equipment and later agreed to a "last chance settlement" (on March 13, 2014) whereby

TPH 'will seek removal for any further personal conduct...and/or misuse of public property.'

As a result of the above, Mr. Woods was suspended as of October 27, 2016, and TPH sought his removal from employment. A departmental hearing was held on August 11, 2017, per Mr. Woods' request. A Final Notice of Disciplinary Action (FNDA), dated September 6, 2017, sustained the charges set forth in the PNDA and Mr. Woods was removed from his employment from TPH effective October 27, 2016.

Mr. Woods appealed the decision and the matter was transferred to the Office of Administrative Law (OAL) as a contested case. Subsequently, a Settlement Agreement (Agreement) was reached in January 2019 wherein TPH, (New Jersey Department of Health and New Jersey Department of Human Services) and Mr. Woods agreed to a General Resignation as resolution to all of the administrative charges. Mr. Woods agreed not to seek or accept employment with the TPH or any of its subsidiaries at any time in the future. At the July meeting, the Board noted that as set forth in the Agreement, TPH permitted Mr. Woods to apply for a disability pension. However, as the Board was not a party to the Agreement, it is not bound thereby.

At its July meeting, the Board found that Mr. Woods did not separate from employment due a disability, but rather due to the administrative charges. In addition, Mr. Woods would not be able to return to employment because he agreed that he would not seek employment with TPH in the future. You filed an appeal of the Board's decision, arguing that no findings were ever made with respect to Mr. Woods' disciplinary charges, notwithstanding the affirmance of the charges at the Departmental level. You assert that rather than dispute the charges against him, Mr. Woods agreed to resign from employment because he opined he would not be able to return to employment due to a medical condition. This is based on the fact that Mr. Woods was involved

in a motor vehicle accident in November 2017, approximately a year after he was suspended and ultimately removed from employment.

#### **CONCLUSIONS OF LAW**

In making its determination, the Board relied on N.J.A.C. 17:1-6.4 and N.J.S.A. 43:15A-44. N.J.A.C. 17:1-6.4 states:

**(a)** Each disability retirement applicant must prove that his or her retirement is due to a total and permanent disability that renders the applicant physically or mentally incapacitated from performing normal or assigned job duties at the time the member left employment; the disability must be the reason the member left employment.

**(b)** Members who have involuntarily or voluntarily terminated service for any of the reasons listed below will not be permitted to apply for a disability retirement:

1. Removal for cause or total forfeiture of public service;
2. Settlement agreements reached due to pending administrative or criminal charges, unless the underlying charges relate to the disability;
3. Loss of licensure or certification required for the performance of the member's specific job duties;
4. Voluntary separation from service for reasons other than a disability; and
5. Job abolishment or reduction in force.

**(c)** The Division will review all disability retirement applications submitted after a member has terminated service to determine whether the member's application is eligible for processing, pursuant to (a) above.

[Emphasis added.]

There is no question here that Mr. Woods left employment due to the disciplinary matters rather than a disability and therefore he is not eligible for Ordinary Disability retirement benefits.

The Board also noted that in order to comply with N.J.S.A. 43:15A-44, a member seeking a disability retirement must have a position to return to should the alleged disability diminish to the point that the member could return to employment. N.J.S.A. 43:15A-44 states, in pertinent part:

...

If the report of the medical board shall show that such beneficiary is able to perform either his former duty or other comparable duty which his former employer is willing to assign to him, the beneficiary shall report for duty; such a beneficiary shall not suffer any loss of benefits while he awaits his restoration to active service. If the beneficiary fails to return to duty within 10 days after being ordered so to do, or within such further time as may be allowed by the board of trustees for valid reason, as the case may be, the pension shall be discontinued during such default.

...

Thus, if Mr. Woods' application was processed and he was granted an Ordinary Disability pension, but later it was determined that he is no longer disabled, there is no mechanism for the Board to stop paying his pension because Mr. Woods could never be ordered to return to work, as required by N.J.S.A. 43:15A-44. Granting a disability retirement under such circumstances would be in contravention of the statutory scheme, and place the Board in the position of potentially paying a pension for which the Board has no ability or mechanism to terminate the pension payment. Cardinale v. Bd. of Trs., Police and Firemen's Ret. Sys., 458 N.J. Super. 260 (App Div. 2019).

For the reasons stated herein, the Board determined Mr. Woods is ineligible to apply for Ordinary Disability retirement benefits.

The Board has considered your personal statements on behalf of Mr. Woods, and has reviewed the written submissions and all documentation in the record. Because this matter does not entail any disputed questions of fact, the Board was able to reach its findings of fact and conclusions of law 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 Public Employees' 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.

Raymond C. Staub Esq.  
Re: Patrick Woods  
October 17, 2019  
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All appeals should be directed to:

Superior Court of New Jersey  
Appellate Division  
Attn: Court Clerk  
PO Box 006  
Trenton, NJ 08625  
Phone: (609) 292-4822

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Ignatowitz". The signature is fluid and cursive, with a large loop at the end.

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

G-8/JSI

c: D. Lewis (ET); L. Milton (ET); L. Hart (ET); P. Sarti (ET)

Patrick Woods

Trenton Psychiatric Hospital  
Melissa Johnson, Certifying Officer  
[MELISSA.JOHNSON@DHS.STATE.NJ.US](mailto:MELISSA.JOHNSON@DHS.STATE.NJ.US)