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January 14, 2002

Katherine Trupin, Case Manager  
Team 3  
Superior Court of New Jersey, Appellate Division  
Richard J. Hughes Justice Complex  
25 Market Street  
P.O. Box 006  
Trenton, New Jersey 08625-0006

**Re: Title I/M/O G. Philip Lewis**  
**Docket No.: A-005660-00T3**

Dear Ms. Trupin:

On January 14, 2002, a letter enclosing an original and five copies of Appellant's Reply Brief was hand delivered to you for filing in the above captioned matter. The Certification of Services was inadvertently not included in that package. Therefore, please find herein an original and five copies of Appellant's Certification of Service in the above captioned matter.

Would you be kind enough to please have one copy marked "filed" and return same to my attention in the self-addressed stamped envelope it would be appreciated.

If you have any questions, please feel free to contact the undersigned. I apologize for any inconvenience this may have caused the Court.

Respectfully submitted,



JOHN G. DeSIMONE, ESQUIRE

JGD/jld

Enclosures

cc: Wendy Jamison, Secretary, Board of Trustees, Public Employees Retirement System, two  
(2) copies  
Debra A. Allen, DAG, two (2) copies  
Mr. G. Philip Lewis, w/enclosure

G. PHILIP LEWIS,

Appellant,

CIVIL ACTION

v.

BOARD OF TRUSTEES, PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM,

Respondent,

On Appeal from  
State of New Jersey Department of  
Treasury, Department of Pensions  
and Benefits Final Administration  
Determination

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**PROOF OF SERVICE**

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I, Joyce Dougan, of full age, do hereby certify that two copies of Appellant's Reply Brief were served upon Wendy Jamison, at the State of New Jersey, Department of Treasury, Division of Pensions and Benefits, 50 West State Street, Trenton, New Jersey, by having same hand delivered, as well as to Debra A. Allen, Deputy Attorney General at offices located at R. J. Hughes Justice Complex, 25 Market Street, Trenton, NJ 08625 via hand delivery on January 14, 2002.

Dated: January 14, 2002

  
JOYCE DOUGAN

G. PHILIP LEWIS,  
Appellant,

Civil Action

BOARD OF TRUSTEES,  
PUBLIC EMPLOYEES'  
RETIREMENT SYSTEM,  
Respondent,

On Appeal from  
A Final Determination of the  
Board of Trustees, Public  
Employees' Retirement System

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REPLY BRIEF OF BEHALF OF APPELLANT, G. PHILIP LEWIS

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On the Brief:

John G. DeSimone, Esquire

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Cases Cited

Outland v. Board of Trustees, 326 N.J. Super. 395 (1999)  
at 399. . . . . . 1

Statutes Cited

N.J.S.A. 43:15A-7 (h). . . . . 1,2,3  
N.J.S.A. 43:15A-7 (b). . . . . 2  
N.J.S.A. 43:15A-7 (d). . . . . 2

REPLY STATEMENT

The Appellant's employment was continuous and uninterrupted from December 1, 1974 through June 30, 2000 therefore entitling him to pension benefits.

REPLY TO PROCEDURAL HISTORY AND  
COUNTERSTATEMENT OF FACTS

None.

REPLY TO RESPONDENT'S ARGUMENT

The Respondent states that "as a general matter, it is well settled that an administrative agency's determinations carry some presumption of correctness and, on review of the facts, the Court will not substitute its own judgment for that of an agency where the agency's findings are supported by substantial credible evidence." (Please see Db 6) This presumption is incorrect. Pursuant to Outland v. Board of Trustees, 326 N.J. Super. 395 (1999) at 399, the Appellate Division held that "the interest of justice, however, authorizes a reviewing Court to abandon its traditional deference to agency decisions when an agency's decision is manifestly mistaken". The agency's decision in this matter before the Court is clearly mistaken in denying the benefits by not considering the Appellant's veteran status and his continuous employment.

The agency's acts are arbitrary, capricious and unreasonable in that Respondent states at Db 8 it is "[O]nly a portion of the Appellant's purchase request is barred by the operation of law" and in the Governor's reconsideration as cited at "Db 9" of the Respondent's

brief N.J.S.A. 43:15A-7 (h) fails to address the definition of temporary status and continuous employment of Appellant, G. Philip Lewis. The Governor's reconsideration fails to address the definition of "temporary" and "continuous" as articulated in the Appellant's Brief at Pb 5, thereby entitling the Appellant to all purchases requested, not just a portion of the request.

Furthermore, in reply to the Respondent's brief at Db 12, N.J.S.A. 43:15A-7 (b) specifically states that membership in the retirement system is for **every veteran**. See Pb 4.

Moreover, N.J.S.A. 43:15A-7 (d) says, "Membership in the retirement system shall be optional for elected officials **other than than veterans** [emphasis added] and for school crossing guards, who have become eligible for benefits under pensions systems are so employed on a part-time basis." See Pb 4. Therefore, membership for veterans is not optional and in reply to Respondent's assertion at Db 12, the law does not require that a veteran must be a permanent employee of the state. The law clearly states that "membership to the retirement system is for every veteran which is described in N.J.S.A. 43:15A-7 (b). 43:15A-7 (b) does not require the veteran employee be a permanent employee.

As to Respondent's statement saying, "While Appellant is correct that his service with the County was 'continuous,' service was still 'temporary' as it was deemed to be within either CETA or JTPA.", is an admission, therefore, if the Court accepts the Appellant's argument at Pb 5 the G. Philip Lewis' employment status should be considered a permanent employment making him eligible to receive benefits from the State of New Jersey Retirement Fund. Please see Pb 5-10.

CONCLUSION

The Appellant's reply shows the Court that an administrative agency's determination does not carry the presumption of correctness and on review of the Briefs the Court will see N.J.S.A. 43:15A-7 (h) is arbitrary, capricious and unreasonable.

Respectfully submitted,



JOHN G. DeSIMONE, ESQUIRE  
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