



State of New Jersey

DEPARTMENT OF THE TREASURY
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September 19, 2002

DeSIMONE LAW OFFICES
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PO Box 237
Woodbury, NJ 08096-7057

Re: **G. Philip Lewis**
PERS # [REDACTED]
Appellate Division Docket No.
A-5660-00T3

FINAL ADMINISTRATIVE DETERMINATION

Dear Mr. DeSimone:

I am writing in reference to the action of the Board of Trustees of the Public Employees' Retirement System ("PERS Board") in denying your request on behalf of G. Philip Lewis to purchase additional service credit in the PERS from September 19, 1986 until April 1, 1993 when Mr. Lewis was an employee, pursuant to the Job Training Partnership Act (JTPA) at the County of Salem. The PERS Board reviewed this request at its March 21, 2001, and April 18, 2001, meetings and denied your request. Findings of Fact and Conclusions of Law were presented and approved by the PERS Board at its May 16, 2001, meeting. The matter proceeded to the Appellate Division after you appealed these Findings of Fact and Conclusions of Law. The Appellate Division remanded the matter to the Board for further review. Specifically, the Appellate Division required "the Board [to] explain the rationale for concluding (if it does) that subsection h carves out an absolute exception that would deprive a JTPA employee, who is also a veteran 'in continuous service,' of membership in the retirement system the right to purchase service credit."

The PERS Board has reviewed your written submissions and the documentation accompanying your appeal. Additionally, the Board heard your arguments on behalf of Mr. Lewis, as well as his own arguments and those of the Attorney General. Based upon the facts presented, as well as the statutes and regulations governing the PERS, the Board cannot grant your request to allow Mr. Lewis to purchase the JTPA service from September 19, 1986 to April 1, 1993.

The Board made the following findings of fact. Mr. Lewis was employed through the County of Salem under the Comprehensive Employment Training Act (CETA) program as a Teachers Aide from December 1, 1974 through December 2, 1976. On December 13, 1976 Mr. Lewis became the Community Service Planner with CETA. On January 1, 1977 he became the Senior Community Service Planner. On July 1, 1977 Mr. Lewis became the Deputy Director for the Department of Community Development with CETA. On January 1, 1980 he became the Manpower Coordinator with CETA. This position continued until October 1, 1983 when Mr. Lewis became the JTPA Administrator. On July 1, 1988 Mr. Lewis became the Human Resource Coordinator continuing in the JTPA. Mr. Lewis' position became permanent with the County of Salem on April 7, 1993.

At its meeting of April 18, 2001, the PERS Board voted to deny your request to allow Mr. Lewis to purchase a portion of his JTPA employment from September 19, 1986 through April 1, 1993. In support of its determination the Board cited N.J.S.A. 43:15A-7(h).

The Board made the following conclusions of law:

The provisions of N.J.S.A. 43:15A-7(h):

A temporary employee who is employed under the federal Job Training Partnership Act, Pub.L. 97-300 (29 U.S.C. § 1501) shall not be eligible for membership in the system. Membership for temporary employees employed under the federal Job Training Partnership Act, Pub.L. 97-300 (29 U.S.C. § 1501) who are in the system on September 19, 1986 shall be terminated, and affected employees shall receive a refund of their accumulated deductions as of the date of commencement of employment in a federal Job Training Partnership Act program. Such refund of contributions shall serve as a waiver of all benefits payable to the employee, to his dependent or dependents, or to any of his beneficiaries under the retirement system.

N.J.S.A. 43:15A-7(h) provided that temporary employees who were employed under the federal Job Training Partnership Act are ineligible for membership in the PERS. The law also provided that temporary employees who were enrolled in the PERS on or before September 19, 1986, would have their membership terminated and all contributions refunded.¹ The refund served as a waiver of any future benefits payable to any employee or beneficiary.

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The Board consistently attempts to read statutes liberally and in a light most favorable to the member. Consistent with this goal and in an attempt to permit the maximum amount of PERS membership credit eligible for purchase to the member herein, the Board permitted the JTPA time that was creditable at the time of Mr. Lewis' employment. Thus, the period between October 1, 1983, and September 18, 1986, was permitted as Mr. Lewis was eligible for pension credit during these nearly three years.

Because this law specifically prohibits PERS membership to JTPA employees after September 18, 1986, the Division is without discretion to permit your request. Mr. Lewis' request to purchase his employment with the County of Salem pursuant to the CETA program was granted. Additionally, the request to purchase the JTPA employment from October 1, 1983, through September 18, 1986 was approved, as this time was not prohibited by subsection (h), which required that all membership for those JTPA employees be terminated on or before September 19, 1986.

You argue that Mr. Lewis should be entitled to membership due to his continuous employment in a temporary position, pursuant to N.J.S.A. 43:15A-7(b), which was amended on April 7, 1985. The PERS did permit enrollment for all JTPA employees in 1985 as a result of the enactment of N.J.S.A. 43:15A-7(b), which expressly states that a temporary employee with at least one year's continuous service is included in PERS. However, subsection (h) was enacted one year later. The Board, relying upon the longstanding interpretation of the Division of Pensions and Benefits, interprets subsection (h) as an absolute exception to the mandatory enrollment provided in subsection (b). The Legislative history of subsection (h) was reviewed at the Board's meeting, wherein it was noted that the all JTPA employees were precluded from PERS membership. Specifically, the history includes a conditional veto by then Governor Kean of Senate Bill No. 1471, which initially applied only to JTPA employees "not currently enrolled in the PERS." However, due to strong concerns for the limited resources of the federally funded JTPA program, Governor Kean declared that the bill must be "amended to make its provisions apply to all JTPA employees, regardless of whether they are currently enrolled in the PERS." As a result, the statute was enacted and all JTPA employees, who were permitted membership prior to September 18, 1986, were terminated from such membership and all previous contributions were refunded. Consistent with this clear statutory mandate, the Board determined that Mr. Lewis should not be entitled to the purchase of such service to which he was formerly not permitted credit.

Further, you argue that the Mr. Lewis should be exempt from subsection (h) because he is a veteran. However, you provide no support for this argument. While veterans are provided with enhanced benefits under certain specific statutes, they are not exempted from the JTPA exception to the membership statute -- N.J.S.A. 43:15A-7. Eligibility for enrollment in the system is a condition precedent before a veteran may be entitled to any benefits under the system. Thus, Mr. Lewis may not be a member of the PERS solely by virtue of his veteran status; he must first be eligible for enrollment pursuant the statute. Clearly, subsection (h) exempts him from membership.

Mr. Lewis was barred from membership in the PERS at the time subsection (h) became effective, or September 19, 1986. Mr. Lewis again became eligible for membership in the PERS in April of 1993, when his employer enrolled him as a full-time employee. The Board permitted Mr. Lewis to purchase time for all periods sought, with the exception of the above-cited JTPA time. This finding by the Board is based upon its determination that subsection (h) carves out an absolute exception for all JTPA employees.

John G. DeSimone, Esq.
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As noted above, the PERS Board has reviewed your written submissions including your written request for a formal hearing, in the Office of Administrative Law in accordance with the provisions of N.J.A.C. 17:1-1.5. Because your matter does not entail any disputed questions of fact, the PERS Board was able to reach its findings of fact and conclusions of law in this matter 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, 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,



Kathleen Coates, CEBS
Secretary, Board of Trustees
Public Employees' Retirement System

kc/G-11

c: David Dembe, SDAG

G. Philip Lewis
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