

DESIMONE LAW OFFICES
JOHN G. DeSIMONE, LLC – ATTORNEYS AT LAW

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John G. DeSimone

www.desimonelawyer.com

Samuel G. DeSimone
Counselor to the Firm

November 19, 2002

Sent Via FedEx Overnight Priority Mail

Superior Court of New Jersey, Appellate Division
Richard J. Hughes Justice Complex
ATTN: JACQUELINE TURNER
25 Market Street (P.O. Box 006)
Trenton, New Jersey 08625

Re: G. Philip Lewis v. Board of Trustees, Public Employees' Retirement System
Notice of Appeal – Received by App. Div. 10-31-02
Agency Number: PERS # [REDACTED]

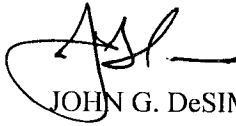
Dear Ms. Turner:

Please find herein an original and two (2) copies of the corrected Notice of Appeal and Case Information Statement you requested when speaking to my staff member, Jill, on November 13, 2002, in regard to the above referenced matter.

Also, you verified receiving the additional filing fee and Agency Decisions of 8-23-02 and 9-19-02, copies of which have been attached to the Case Information Statements enclosed, along with a copy of your deficiency letter dated November 6, 2002, copy of original Proof of Service dated October 25, 2002 and Proof of Service dated November 19, 2002.

Many thanks for your time and consideration. In the event you should have any questions please do not hesitate to call.

Very truly yours,



JOHN G. DeSIMONE, ESQUIRE

JGD/jcm

Enclosures

Cc: Kathleen Coates, Secretary, Board of Trustees, PERS
Debra A. Allen, DAG
David Denbe, SDAG
G. Philip Lewis

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION



JAMES M. FLYNN
CLERK

JOHN K. GRANT
DEPUTY CLERK

JACK G. TRUBENBACH
CHIEF COUNSEL
JOHN G DeSIMONE ESQ
66 EUCLID STREET, STE B
WOODBURY NJ 08096

RICHARD J. HUGHES JUSTICE COMPLEX
PO Box 006
TRENTON, NEW JERSEY 08625-0006
(609) 292-4822

DATE: November 6, 2002

FIRST NOTICE

RE: G PHILIP LEWIS

A-1093-02T2

We are holding, your notice of appeal in reference to the above-captioned matter due to the following:

- [] Failure to attach a copy of the transcript request form to the notice of appeal or certify exemption from same as required by R. 2:5-1. The original, together with the appropriate deposit, must be sent to the court reporter.
- [] Failure to attach a case information statement to the notice of appeal as required by R. 2:5-1.
- [X] Failure to attach a copy of the AGENCY DECISIONS OF 8-23-02 AND 09-19-02 appealed from to the case information statement as required by Rule 2:5-1.
- [X] Failure to submit the required \$200.00 filing fee payable to the Clerk of the Superior Court. ADDITIONAL \$25.00 NEEDED.
- [X] Failure to comply with the caption and/or format required by R. 1:4-1.
- [] Other:

If the deficiency (s) noted above are corrected and resubmitted within ten days(NOVEMBER 22 2002)the appeal will proceed in its normal course. If the corrections are not received by the above date, MOTION to file Notice of Appeal Nunc Pro Tunc will be necessary. Please return a copy of this notice with your corrections to facilitate handling of this appeal.

JAMES M FLYNN
CLERK OF THE APPELLATE DIVISION

Enclosure:
/jlt
ADMIN-3
9/93

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 Fax: (856) 848-8939

Attorney for G. Philip Lewis, Appellant

| | | |
|-------------------------------|---|--------------------------------|
| G. PHILIP LEWIS, | : | SUPERIOR COURT OF NEW JERSEY |
| | : | APPELLATE DIVISION |
| Appellant, | : | DOCKET NO.: |
| v. | : | AGENCY NUMBER: PERS [REDACTED] |
| BOARD OF TRUSTEES, PUBLIC | : | <u>CIVIL ACTION</u> |
| EMPLOYEES' RETIREMENT SYSTEM, | : | |
| Respondent. | : | NOTICE OF APPEAL |

NOTICE IS HEREBY GIVEN THAT G. PHILIP LEWIS APPEALS TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, FROM THE JUDGMENT [] ORDER [] STATE AGENCY DECISION [X] ENTERED IN THIS ACTION ON AUGUST 23, 2002 AND SEPTEMBER 19, 2002.

IF NOT APPEALING THE ENTIRE JUDGMENT, ORDER OR AGENCY DECISION, SPECIFY WHAT PARTS OF PARAGRAPHS ARE BEING APPEALED:

HAVE ALL ISSUES AS TO ALL PARTIES BEEN DISPOSED OF IN THIS ACTION IN THE TRIAL COURT OR AGENCY? YES [X] NO []

IF NOT, HAS THE ORDER BEEN CERTIFIED AS FINAL PURSUANT TO R. 4:42-2? YES [] NO []

IN CRIMINAL, QUASI-CRIMINAL, AND JUVENILE CASES: N/A
 GIVE A CONCISE STATEMENT OF THE OFFENSE AND OF THE JUDGMENT, DATE ENTERED AND ANY SENTENCE OR DISPOSITION IMPOSED.

IS DEFENDANT INCARCERATED? YES [] NO [] N/A
 WAS BAIL GRANTED OR THE SENTENCE OR DISPOSITION STAYED? YES [] NO []
 IF IN CUSTODY, GIVE THE PLAE OF CONFINEMENT _____
 NOTICE OF APPEAL AND ANNEXED CASE INFORMATION STATEMENT HAVE BEEN SERVED ON:

DATE OF SERVICE

TRIAL COURT JUDGE N/A N/A
 TRIAL COURT CLERK OR STATE AGENCY: Kathleen Coates, CEBS Secretary, Board of Trustees for Public Employee Retirement System
 ATTORNEY GENERAL OF THE STATE OF NEW JERSEY
 PURSUANT TO R. 2:5-1(a), (e) or (h) R. 2:5-1(e)

OTHER PARTIES:

| NAME AND DESIGNATION | ATTORNEY NAME, ADDRESS AND TELEPHONE NUMBER | DATE OF SERVICE |
|----------------------|---|-----------------|
| <u>N/A</u> | <u></u> | <u></u> |
| <u></u> | <u></u> | <u></u> |
| <u></u> | <u></u> | <u></u> |

ANNEXED TRANSCRIPT REQUEST FORM HAS BEEN SERVED ON:


| NAME | DATE OF SERVICE | AMOUNT OF DEPOSIT |
|---|-----------------|-------------------|
| COURT REPORTER'S SUPERVISOR, CLERK OF COURT OR AGENCY <u>N/A</u> | <u></u> | <u></u> |
| COURT REPORTER <u></u> | <u></u> | <u></u> |

EXEMPT FROM ANNEXING THE TRANSCRIPT REQUEST FORM DUE TO THE FOLLOWING:

- NO VERBATIM RECORD, ADMINISTRATIVE AGENCY: PURSUANT TO R.2:5-1(f)(2), AGENCY DECISION ATTACHED HERETO
- TRANSCRIPT IN POSSESSION OF ATTORNEY OR PRO SE LITIGANT. [FOUR COPIES, ALONG WITH THE COMPUTER DISKETTE FROM THE TRANSCRIPT PREPARER, MUST BE SUBMITTED]
- MOTION FOR ABBREVIATION OF TRANSCRIPT FILED WITH THE COURT OR AGENCY BELOW
- MOTION FOR FREE TRANSCRIPT FILED WITH THE COURT BELOW

I CERTIFY THAT THE FOREGOING STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF. I ALSO CERTIFY THAT, UNLESS EXEMPT, THE FILING FEE REQUIRED BY N.J.S. 22A:2 HAS BEEN PAID.

11/19/02
DATE


SIGNATURE OF ATTORNEY

DESIMONE LAW OFFICES
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 66 Euclid Street - Suite B
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 Woodbury, New Jersey 08096
 Phone: (856) 848-8800
 Fax: (856) 848-8939

Attorney for G. Philip Lewis, Appellant

| | | |
|-------------------------------|---|-----------------------------------|
| G. PHILIP LEWIS, | : | SUPERIOR COURT OF NEW JERSEY |
| | : | APPELLATE DIVISION |
| Appellant, | : | |
| | : | DOCKET NO.: |
| v. | : | |
| | : | AGENCY NUMBER: PERS [REDACTED] |
| BOARD OF TRUSTEES, PUBLIC | : | |
| EMPLOYEES' RETIREMENT SYSTEM, | : | <u>CIVIL ACTION</u> |
| | : | |
| Respondent. | : | CASE INFORMATION STATEMENT |
| | : | |

APPELLANT'S ATTORNEY: X Plaintiff ___ Defendant ___ Other (Specify)

| <u>NAME</u> | <u>ADDRESS</u> | <u>TELEPHONE</u> | <u>CLIENT</u> |
|-----------------------------|--|------------------|-----------------|
| JOHN G. DeSIMONE Esquire | JOHN G. DeSIMONE, LLC 66 Euclid Street, Suite B Woodbury, NJ 08096 | 856-848-8800 | G. PHILIP LEWIS |

RESPONDENT'S ATTORNEY*:

| <u>NAME</u> | <u>ADDRESS</u> | <u>TELEPHONE</u> | <u>CLIENT</u> |
|--------------------|---|------------------|---|
| DAVID DENBE, SDAG | OFFICE OF THE ATTORNEY GENERAL P.O. BOX 080 TRENTON, NJ 08625-0030 | 609-292-4925 | PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS BOARD) |
| DEBORAH ALLEN, DAG | OFFICE OF THE ATTORNEY GENERAL P.O. BOX 080 TRENTON, NJ 08625-0030 | 609-292-4925 | PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS BOARD) |

[*Indicate which parties, if any, did not participate below or were no longer parties to the action at the time of entry of the judgment or decision being appealed.]

GIVE DATE AND SUMMARY OF JUDGMENT OR DECISION BEING APPEALED AND ATTACH A COPY:

Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees?

Yes ___ No X .

If so, has the order been certified as final pursuant to R. 4:42-2? (If not, leave to appeal must be sought. R. 2:2-4, 2:5-6.)

Yes ___ No X .

Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(h)).

Yes X No ___ .

GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:

This is the second Appeal that has been taken by Appellant, G. Philip Lewis, in this matter. On May 17, 2001, a Final Administrative Determination was forwarded to the Appellant, who took an Appeal and on June 24, 2002, the Appellate Division reversed and remanded PERS BOARD'S decision for a further proceeding.

The further proceeding was conducted on August 21, 2002, which resulted in an interim decision being provided to counsel affirming the PERS SYSTEMS Final Administrative Determination of May 16, 2001 (the subject of an original Appeal), specifically denying the Appellant the purchase of additional service credit in the PERS Program. Upon receipt of this August 23, 2002 letter, the Appellant filed an Interlocutory Appeal with the Appellate Division on September 11, 2002 entitled Docket No. AM-63-02T5. The Attorney General's Office responded to this Interlocutory Appeal on September 23, 2002 and a Reply Brief was filed on behalf of Appellant, G. Philip Lewis, and forwarded October 2, 2002.

While the Notice of Motion for Leave to Appeal for an Interlocutory Order was pending, the PERS Board forwarded a Final Administrative Determination dated September 19, 2002. The Appellant's Notice of Motion for Leave of Interlocutory Appeal was denied and therefore the Appellant requests the Final Administrative Determination dated September 19, 2002 is now the subject of this Appeal.

TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THIS APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(a)(5). (Appellant or cross-appellant only.)

1. Whether or not N.J.S.A. 43:15-7(h) carves out an absolute exception that would deprive Veteran G. Philip Lewis of membership benefits as provided by Public Employees Retirement System (PERS), entitled N.J.S.A. 43:15-7(a-h).
-

2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR
CONTROVERSY? Yes X No

IF THE ANSWER TO EITHER 1 OR 2 ABOVE IS YES, STATE:

Case Name

Appellate Division Docket Number:


G. Philip Lewis v. Board of Trustees
Public Employees Retirement System

Docket No. A-005660-00T3 (Closed)

G. Philip Lewis v. Board of Trustees
Public Employees Retirement System

Docket No. AM-63-02T5

11/19/02
Date


Signature of Counsel of Record



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
(609) 292-7524 TDD (609) 292-7718
www.state.nj.us / treasury / pensions

Mailing Address:
PO Box 295
Trenton, NJ 08625-0295
Location:
50 West State Street
Trenton, New Jersey

JOHN E. MCCORMAC, CPA
State Treasurer

THOMAS P. BRYAN
Director

JAMES E. MCGREEVEY
Governor

August 23, 2002

DeSIMONE LAW OFFICES
John G. DeSimone, LLC
66 Euclid Street – Suite B
P.O. Box 237
Woodbury, NJ 08096-7057


Re: G. Philip Lewis
PERS [REDACTED]
A-5660-00T3

Dear Mr. DeSimone:

The Board of Trustees of the Public Employees' Retirement System (PERS) at its meeting of August 21, 2002 reconsidered and reaffirmed their final administrative determination of May 16, 2001 specifically denying Mr. Lewis the purchase of 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 Board denied the request for an administrative hearing essentially for the reason(s) set forth in the Board's letter dated May 16, 2001, which specifically relates to the request to purchase JTPA service.

Therefore, the Board has directed the Secretary, in conjunction with the Attorney General's Office, to draft a detailed Finding of Facts and Conclusions of Law consistent with its original decision that will formally outline the Board's decision and become the Board's final administrative determination. Since the Board has denied your request for a hearing and will issue its Finding of Facts and Conclusions of Law. The Board will review and adopt these findings and conclusions and send a copy of the final decision to you. Upon receipt of this final administrative determination, you will have the right to appeal the Board's decision; hence, the 45 days to appeal this decision will not begin until the Board adopts the final administrative determination.

Sincerely,

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

Jb/G-6
c: DAG Susanne Culliton
DAG Debra Allen
G. Philip Lewis



State of New Jersey
 DEPARTMENT OF THE TREASURY
 DIVISION OF PENSIONS AND BENEFITS
 (609) 292-7524 TDD (609) 292-7718
 www.state.nj.us/treasury/pensions

JAMES E. MCGREEVEY
 Governor

Mailing Address:
 PO Box 295
 Trenton, NJ 08625-0295
 Location:
 50 West State Street
 Trenton, New Jersey

JOHN E. MCCORMAC, Cf
 State Treasurer

THOMAS P. BRYAN
 Director

September 19, 2002

DeSIMONE LAW OFFICES
 John G. DeSimone, Esquire
 68 Euclid Street – Suite B
 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.

EXHIBIT "A"

John G. DeSimone, Esq.
Re: G. Philip Lewis
Page 3
September 19, 2002

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.

G. PHILIP LEWIS, Appellant,

Civil Action

I/M/O IN THE MATTER OF G. PHILIP LEWIS


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

PROOF OF SERVICE

I, Joyce Dougan, of full age, do hereby certify that an original and five copies of Plaintiff's/Appellant's Notice of Appeal were served upon James M. Flynn, Clerk Superior Court of New Jersey, Appellate Division, via regular mail, for filing, at the Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 006, Trenton, New Jersey 08625-0006, by having same hand delivered, as well as two copies being served via regular mail upon David Denbe, SDAG, Office of the Attorney General, R. J. Hughes Justice Complex, 25 Market Street, Trenton, NJ 08625 and two copies being served upon Debra A. Allen, Deputy Attorney General at offices located at R. J. Hughes Justice Complex, 25 Market Street, Trenton, NJ 08625 on October 25, 2002.

Dated: October 25, 2002

DeSIMONE LAW OFFICES
Attorneys for Appellant, G. Philip Lewis


JOYCE DOUGAN

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Phone: (856) 848-8800
Fax: (856) 848-8939

Attorney for G. Philip Lewis, Appellant

| | | |
|-------------------------------|---|--------------------------------|
| G. PHILIP LEWIS, | : | SUPERIOR COURT OF NEW JERSEY |
| | : | APPELLATE DIVISION |
| Appellant, | : | |
| | : | DOCKET NO: |
| v. | : | |
| | : | AGENCY NUMBER: PERS [REDACTED] |
| BOARD OF TRUSTEES, PUBLIC | : | |
| EMPLOYEES' RETIREMENT SYSTEM, | : | <u>CIVIL ACTION</u> |
| | : | |
| Respondent. | : | PROOF OF SERVICE |

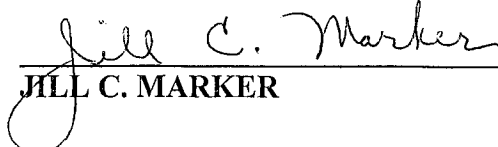
The original of the within Notice of Appeal, Case Information Statement and Proof of Service from October 25, 2002 and November 19, 2002, were sent for filing via FedEx Overnight Priority Mail to the Superior Court of New Jersey, Appellate Division, ATTN: JACQUELINE TURNER, 25 Market Street (P.O. Box 006), Trenton, New Jersey 08625.

On Tuesday, November 19, 2002, I, the undersigned, sent by regular mail to David Dembe, SDAG and Debra A. Allen, DAG, both at the Office of Attorney General, State of New Jersey, Department of Treasury, Hughes Justice Complex, 25 West Market Street, P.O. Box 106, Trenton, New Jersey 08625 -and- Kathleen Coates, Secretary, Board of Trustees, Public Employees' Retirement System, State Street Square, P.O. Box 295, Trenton, New Jersey 08625-0295, the following:

Notice of Appeal, Case Information Statement and Proof of Service from October 25, 2002 and November 19, 2002.

I certify that the foregoing statements made by me are true, I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: November 19, 2002



JILL C. MARKER