

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

66 Euclid Street – Suite B
P.O. Box 237
Woodbury, New Jersey 08096-7057

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www.desimonelawyer.com

John G. DeSimone

Samuel G. DeSimone
Counselor to the Firm

December 18, 2002

Hand Delivered to First Floor, West Wing

Nancy Kaplen, Esquire
Assistant Attorney General
Division of Law
25 Market Street
P.O. Box 112
Trenton, NJ 08625

Re: G. Philip Lewis v. PERS
Docket No.: A-001093-02T2

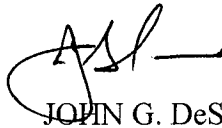
Dear Ms. Kaplen:

As per my conversation with the Appellate Division's Law Division on December 16, 2002, please find herein the amended filed original Notice of Appeal, original Case Information Statement and Proof of Mailing to you showing service of this Notice of Appeal.

Opposing counsel in this matter had been David Denbe, SDAG, and Deborah A. Allen, Deputy Attorney General.

Many thanks for your time and consideration. I appreciate your office having accepted this Service of Process.

Very truly yours,



JOHN G. DeSIMONE, ESQUIRE

JDG:svv

Enclosures

cc: David Denbe, SDAG
Deborah A. Allen, DAG
J. Philip Lewis
Kevin Collins, Team 2 Case Manager

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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: A-001093-02T2
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 Amended Notice of Appeal, Case Information Statement and Proof of Service from October 25, 2002 and November 19, 2002, were filed with the Superior Court of New Jersey, Appellate Division, **ATTN: JACQUELINE TURNER**, 25 Market Street (P.O. Box 006), Trenton, New Jersey 08625, on November 20, 2002.

On **Monday, December 23, 2002**, I, the undersigned, had hand delivered by Courier Service to **Nancy Kaplen, Esquire, Assistant Attorney General**, Division of Law, 25 Market Street (P.O. Box 112), Trenton, New Jersey 08625, the following copies:

Amended Notice of Appeal, Case Information Statement and Proof of Service from October 25, 2002 and November 19, 2002 and original Proof of Service for December 23, 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: December 23, 2002



ELIZABETH COSTILL

APPELLATE DIVISION

FILED
APPELLATE DIVISION

NOV 20 2002

Jon Flynn
CLERK

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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.: A-001093-02T2
v.	:	
	:	AGENCY NUMBER: PERS [REDACTED]
BOARD OF TRUSTEES, PUBLIC	:	
EMPLOYEES' RETIREMENT SYSTEM,	:	<u>CIVIL ACTION</u>
	:	
Respondent.	:	<u>NOTICE OF APPEAL</u>
	:	

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>
<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
JOHN G. DeSIMONE, LLC - ATTORNEYS AT LAW
66 Euclid Street - Suite B
P.O. Box 237
Woodbury, New Jersey 08096
Phone: (856) 848-8800
Fax: (856) 848-8939

FILED
APPELLATE DIVISION

NOV 20 2002

Jan F. [Signature]
CLERK

Attorney for G. Philip Lewis, Appellant

G. PHILIP LEWIS,	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
Appellant,	:	
	:	DOCKET NO.: A-001093-02T2
v.	:	
	:	AGENCY NUMBER: PERS [REDACTED]
BOARD OF TRUSTEES, PUBLIC	:	
EMPLOYEES' RETIREMENT SYSTEM,	:	<u>CIVIL ACTION</u>
	:	
Respondent.	:	CASE INFORMATION STATEMENT

APPELLANT'S ATTORNEY: 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

Date

11/19/02

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

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.

NOTICE OF APPEAL
SUPERIOR COURT OF NEW JERSEY – APPELLATE DIVISION

JOHN G. DeSIMONE, ESQUIRE
JOHN G. DeSIMONE, LLC
Attorneys-at-Law
66 Euclid Street, Suite B
Woodbury, NJ 08096

Attorney for G. Philip Lewis, Appellant

ON APPEAL FROM:

PUBLIC EMPLOYEE'S RETIREMENT SYSTEM
STATE AGENCY

PERS [REDACTED]
AGENCY NUMBER

NONE
TRIAL COURT JUDGE

CIVIL [] CRIMINAL [] JUVENILE []
ADMINISTRATIVE [X]

FILED
APPELLATE DIVISION
OCT 31 2002
Am Flynn
CLERK

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.

10/28/02
DATE


SIGNATURE OF ATTORNEY

JOHN G. DeSIMONE, LLC
ATTORNEY AT LAW
66 Euclid Street, Suite B
P.O. Box 237
Woodbury, NJ 08096
Phone: (856) 848-8800
Fax: (856) 848-8939

FILED
APPELLATE DIVISION
OCT 31 2002
Clerk

TITLE IN FULL:
IN RE: G. Philip Lewis

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

AGENCY NUMBER: [REDACTED]

APPELLANT'S ATTORNEY: 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?

Yes ___ No X.

(If not, leave to appeal must be sought. R. 2:2-4, 2:5-6.)

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).

IF YOU ARE APPEALING FROM A JUDGMENT ENTERED BY A TRIAL JUDGE SITTING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

1. Did the trial judge issue oral findings or opinion? Yes No
If so, on what date? N/A
2. Did the trial judge issue written findings or opinion? Yes No
If so, on what date? N/A

Caution: Before you indicate that there was neither an opinion nor findings, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of

counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

Date of your inquiry: _____ N/A _____

Will the trial judge be filing a statement or opinion pursuant to R. 2:5-1(b)?

Yes ___ No ___

Civil appeals are screened under the Civil Appeals Settlement Program to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a conference. Yes ___ No X .

Explain your answer:

Interpretation of *N.J.S.A. 43:15A-7* et seq. is being asked of the Appellate Division.

1. IS THERE ANY CASE NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

(A) Arises from substantially the same case or controversy as this appeal?

Yes X No ___ .

(B) Involves an issue that is substantially the same, similar or related to an issue in this appeal?

Yes X No ___ .

Presently there stands before this Court a Notice of Motion For Leave to File an Interlocutory Appeal. The issues in that Notice of Motion involve substantially the same, similar or related to the issue in this appeal.

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:

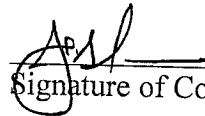
G. Philip Lewis v. Board of Trustees
Public Employees Retirement System

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

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

Docket No. AM-63-02T5

10/28/02
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

JAMES E. MCGREEVEY
Governor

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

September 19, 2002

DeSIMONE LAW OFFICES
John G. DeSimone, Esquire
66 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.

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.



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

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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

G. PHILIP LEWIS, Appellant,

Civil Action

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

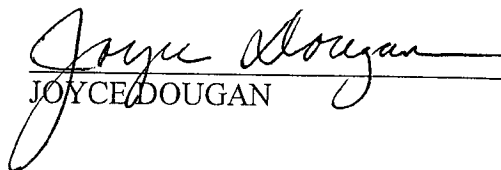
On Appeal from
State of New Jersey Department of
Treasury, Department of Pensions
and Benefits Final Administration
Determination

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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Woodbury, New Jersey 08096
Phone: (856) 848-8800
Fax: (856) 848-8939

Attorney for G. Philip Lewis, Appellant

G. PHILIP LEWIS,
Appellant,

v.

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

:
: SUPERIOR COURT OF NEW JERSEY
: APPELLATE DIVISION
:
: DOCKET NO: A-001093-02T2
:
: AGENCY NUMBER: PERS [REDACTED]
:
: CIVIL ACTION
:
: **PROOF OF SERVICE**

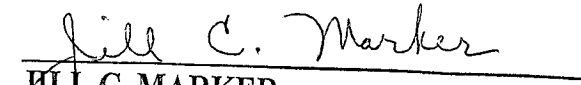
The original of the within Notice of Appeal, Case Information Statement and Proof of Service from October 25, 2002 and November 19, 2002, were sent for filing via FedEx Overnight Priority Mail to the Superior Court of New Jersey, Appellate Division, ATTN: JACQUELINE TURNER, 25 Market Street (P.O. Box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