

**Margo McCormack  
14 Lyons Avenue  
Roseland, New Jersey 07068**

February 16, 2024

Joseph H. Orlando, Clerk  
Appellate Division  
Hughes Justice Complex  
25 West Market Street  
P.O. Box 006  
Trenton, New Jersey 08625-0006  
Attention: Sara Felicia, Case Manager

Re: **Margaret McCormack v. Board of Trustees,  
Public Employees' Retirement System  
Docket No.: A-000344-23T4  
State Agency  
Sat Below: Board of Trustees of the Public  
Employees' Retirement System  
Docket No.: PERS 2-10-362444**

RECEIVED  
APPELLATE DIVISION  
FEB 16 2024  
SUPERIOR COURT  
OF NEW JERSEY

**LETTER BRIEF AND APPENDIX  
OF APPELLANT**

Dear Mr. Orlando:

Pursuant to Rule 2:6-2(b), please accept this letter brief and appendix in support of my appeal in this matter.

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**LIST OF PARTIES**

<b>Party Name</b>	<b>Appellate Party Designation</b>	<b>Agency Party Role</b>	<b>Agency Party Status</b>
Margaret McCormack	Appellant	Plaintiff	Participated below
Attorney General of New Jersey	Respondent	Not applicable (did not participate)	Did not participate below



**PRELIMINARY STATEMENT**

This case illustrates the gauntlet that public employees intending to retire were forced to walk through when their place of work (the Essex County Court House) was closed during the height of the COVID pandemic. Like trying to walk through a minefield with a blindfold on, I entered this gauntlet (consulting regularly with my boss, the Honorable John I. Gizzo, J.S.C.). Before my retirement, the Division of Pension and Benefits (“DPB”) certified in writing that I had the required years of service credit (10 years) needed for full pension and life insurance benefits on my projected retirement date. Relying upon the written representation of the DPB, I retired on February 1, 2022 only to receive July 19, 2022 and July 22, 2022 letters from the DPB stating “oops-we-made-a-mistake” in calculating your service credit at your retirement on February 1, 2022, your monthly retirement benefit has been reduced, your life insurance benefit has been completely taken away and you (unlike us) cannot correct the mistake. In probably the most insincere words ever written, the DPB ended its July 22, 2022 letter notifying me of my retirement disaster (that I could not cure) by stating: “Sorry for any inconvenience.” Pa43. That is my case in a nutshell.

The unusual aspect of my case is that I was out of work on a medical leave (FMLA), starting on September 9, 2021, and could not access my work emails while on medical leave during the critical months before my February 1, 2022 retirement. But for my being on a medical leave, I would have had access to my work emails and may have learned that I was two months short of the required 10 years of service credit needed for my full retirement benefits. Such a lack of service credit would typically have been remedied by the purchase of service credit by the employee. Unfortunately, I never returned to work from my medical leave before retiring and was not notified until after my retirement that, in light of my retirement, I could not purchase any

service credits. (I was paid for one day, called an “administrative day,” in February of 2022 at the suggestion of the Human Resources Division in Essex County solely to avoid a gap in my health insurance.) Obviously, had the DPB advised me before my retirement that I was two months short of the 10 years of service credit needed for full retirement benefits, I would have remedied the problem by purchasing the necessary service credit (two months).

I had no reason to question the December 28, 2021 letter from the DPB stating that I would have the requisite service credit when I retired on February 1, 2022. There is no dispute that the sole reason for the recalculation of my service credit was due to an error by my former employer. Pa72 (the erroneous “information [was] provided by your former employer.”) Now, I am faced with the reduction of my monthly pension benefit and the total elimination of my life insurance benefit (\$9,952.12) through no fault of my own. Since I relied to my detriment on the information provided to me by the DPB while I was on medical leave (without access to my work emails) during the chaos of the pandemic, I should be permitted to purchase the two months service credit (the estimated cost of purchasing the two months service credit is \$614.72) to give me the requisite 10 years service credit needed for both my full pension and life insurance benefit.

### PROCEDURAL HISTORY

By letter dated May 25, 2021 (sent to my home address), I was notified by the DPB of my estimated retirement benefits. Pa1. The May 25<sup>th</sup> letter stated that my service credit would be 9 years and 8 months if I retired on September 1, 2021. Pa1.<sup>1</sup> On September 9, 2021, I began a FMLA/disability leave. Pa4. While I was on FMLA/disability leave, I no longer had access to my work emails. I filed my retirement application on November 24, 2021, with a proposed retirement date of February 1, 2022. Pa11 to Pa13. By letter dated December 28, 2021 (sent to my home address), I was notified by the DPB that my service credit, based on information supplied by my employer, would be 10 years and 1 month based on my proposed retirement date of February 1, 2022. Pa16. The December 28, 2021 letter from the DPB stated that my retirement benefits “may be recalculated in the future due to an audit based on new information received from [my] employer or a discrepancy in [my] account.” Pa16. On January 31, 2022, I had my remote exit interview. Pa28 to Pa31. By letter dated February 28, 2022 (sent to my home address), the DPB confirmed the date of my retirement (February 1, 2022), my monthly retirement benefit (\$677.02) and my life insurance benefit (\$9,952.12). Pa36.

By letter dated July 19, 2022 (sent to my home address), I was notified by the DPB that a “post-retirement audit of [my] account” revealed that my monthly retirement benefit (\$677.02) had been “overstated” and had been reduced to \$652.77. Pa42. By letter dated July 22, 2022, Felisa Miller of the DPB notified me for the first time that I was no longer eligible to receive any life insurance benefit. Pa43. Ms. Miller’s July 22, 2022 letter stated:

This letter is to provide additional information regarding the recent recalculation of your retirement allowance referenced in the July 19, 2022 letter from the Division of Pensions and Benefits.

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<sup>1</sup> Pa = appellant’s appendix

The termination date provided on the *Certification of Service and Final Salary* from your former employer was pay period #3, 2022 (covers the period 1/15/22 to 1/28/22), which projected salary and service credit through this pay period. However, your actual termination date is pay period #22, 2022 (covers the period 10/9/21 to 10/22/21) since pension contributions were not reported for pay periods #23, 2021 to #3, 2022. Your total service credit decreased from 121 months to 118 months and your final average salary decreased from \$48,342.98 to \$47,796.66. As a result, monthly retirement allowance was recalculated.g

You were notified of the amount of the overpayment, the correct amount of your monthly allowance and the repayment schedule in the previous letter.

**In addition, since your service credit decreased to 9 years and 10 months, your beneficiary is no longer eligible to receive a group life insurance benefit upon your passing. Only members with at least 10 years of service credit are eligible for this benefit. Pa43.**

I appealed the recalculation of my service credit, the reduction of my monthly retirement benefit and the determination that I was not eligible for the life insurance benefit that the DPB had confirmed in its December 28, 2021 letter, Pa62 to Pa63, but my appeal was denied even though the October 27, 2022 decision denying my appeal conceded that the error in calculating my service credit (that led to the loss of my retirement benefits) was based solely “on information provided by [my] former employer.” Pa72. I contested the denial of my appeal and requested permission to purchase PERS service credit, Pa77 to Pa78, but the Board of Trustees of the Public Employees’ Retirement System (“Board”) determined that the recalculation of my service credit and the refusal to allow me to purchase service credit was proper. Pa88 to Pa90. I appealed the Board’s determination, Pa91 to Pa92, but the Board denied my appeal in an August 17, 2023 decision, affirming its prior decision and refusing my request for an administrative hearing. Pa93 to Pa97. My Notice of Appeal was filed on September 26, 2023 and my Amended Notice of Appeal was filed on on October 26, 2023. Pa98 to Pa113.

**STATEMENT OF FACTS**

I worked for the Borough of Roseland as Acting Municipal Clerk for years before I was hired in 2014 as a judge's secretary in the Superior Court of New Jersey (Essex County). I first worked for the Honorable Stephen J. Bernstein, J.S.C. for about one year. When he retired, I worked as a judge's secretary for the Honorable John I. Gizzo, J.S.C. in Essex County until September 9, 2021 when I went on a medical leave (FMLA) due to degenerative disc disease and proposed spinal surgery. Pa4 to Pa10. While on medical leave, I could not access my work emails. Having recently reached the age of 70, I submitted my retirement application on November 24, 2021. Pa12 to Pa13. I was notified in a December 9, 2021 Certification from the DPB that my proposed retirement would be effective February 1, 2022. Pa14 to Pa15. By letter dated December 28, 2021 (sent to my home address), the DPB confirmed (1) my retirement date of February 1, 2022 (2) my service termination date of January 28, 2022 (3) my service credit of 10 years and 1 month as of January 28, 2022 and (4) my entitlement to a life insurance benefit of \$9,952.12. Pa16. I had my remote exit interview on January 31, 2022. Pa27 to Pa31. In a letter dated February 28, 2022 (sent to my home address), the DPB confirmed (1) my retirement on February 1, 2022 (2) my monthly pension benefit of \$677.02 based upon my maximum service and (3) my entitlement to a life insurance benefit of \$9,952.12. Pa36.

By letter dated July 19, 2022 (sent to my home address), I was first notified by the DPB that a post-retirement audit of my retirement account had prompted a recalculation of my retirement benefits, resulting in a decrease in my monthly pension from \$677.02 to \$652.77. Pa42. By letter dated July 22, 2022 (sent to my home address), Felisa Miller of the DPB notified me that the recalculation of my retirement account

decreased [my total service credit] from 121 months to 118 months.

\* \* \*

[and] since [my] service credit decreased to 9 years and 10 months, [my] beneficiary is no longer eligible to receive a group life insurance benefit upon [her] passing. Only members with at least 10 years of service credit are eligible for this benefit. Pa43. (emphasis added).

The following key facts are undisputed:

- I received written confirmation from the DPB before my retirement that my total service credit, based on my proposed February 1, 2022 retirement, satisfied the requisite 10 years of service needed to entitle me to full pension benefits and a life insurance benefit of \$9,952.12; Pa16;
- nearly 7 months after my retirement, I was first notified by the DPB that my retirement benefits had been recalculated and, based solely on a mistake in calculations by my former employer, my total service credit was reduced from 121 months [10 years and 1 month] to 118 months [9 years and 10 months]; Pa43;
- I was not notified of the recalculation of my retirement benefits, resulting in the reduction in my pension and total elimination of my life insurance benefit, until it was too late for me to purchase service credit (2 months) needed to have the requisite service credit of 10 years needed for full retirement benefits. Pa42 to Pa43, Pa72 to Pa73, Pa88 to Pa89 and Pa93 to Pa96; and
- At the suggestion of the Human Resources Division in Essex County, I was put on the payroll for one day (a so-called “administrative leave day”) in February of 2022 to make sure that there was no gap in my health insurance. Pa19 to Pa24 and Pa35.

The following chronology may help to place in perspective the sequence of relevant events:

<u>DATE</u>	<u>EVENT</u>
September 9, 2021	Medical leave under the FMLA begins
November 24, 2021	Retirement application submitted
December 9, 2021	Certification from the DPB confirming retirement effective 2/1/22 and retirement benefits
December 28, 2021	DPB confirms total service credit of 10 years and 1 month on retirement date of 2/1/22 and retirement benefits
January 31, 2022	Exit interview
February 1, 2022	Retirement
February 28, 2022	DPB statement confirming (1) monthly pension benefit of \$677.02 based on maximum service and (2) entitlement to a life insurance benefit of \$9,952.12
July 19, 2022	DPB first notification that retirement benefits had been recalculated
July 22, 2022	DPB first notification of complete loss of life insurance benefit (\$9,952.12)
October 27, 2022	Denial of appeal of reduction of monthly pension benefit and elimination of life insurance benefit
June 5, 2023	Denial by Board of request to restore full pension benefits
August 17, 2023	Board affirms its June 5, 2022 decision

**LEGAL ARGUMENT**

**THE DECISION OF THE BOARD OF TRUSTEES OF THE PUBLIC  
EMPLOYEES' RETIREMENT SYSTEM SHOULD BE OVERTURNED**

The law in New Jersey is well settled that pensions for public employees serve a desired public purpose. As the New Jersey Supreme Court stated in Geller v. Department of the Treasury, 53 N.J. 591, 597-598 (1969):

Pensions for public employees serve a public purpose. A primary objective in establishing them is to induce able persons to enter and remain in public employment, and to render faithful and efficient service while so employed. . . . They are in the nature of compensation for services previously rendered and act as an inducement to continued and faithful service. Being remedial in character, statutes creating pensions should be liberally construed and administered in favor of the persons intended to be benefited thereby (emphasis added).

The Legislature enacted N.J.S.A. 43:15A-54 in 1971 to correct errors in the calculation of the amount and eligibility of public employees to retirement benefits. The Act is a remedial statute and should be liberally construed and administered in favor of public employees intended to be benefited by the Act. See Burkhardt v. Public Employees Retirement System, 158 N.J. Super. 414, 422-423 (App. Div. 1978) (the legislative intent of the statute was “to restore the employee . . . as if the error had not been committed”); see also Geller v. Department of the Treasury, supra, 53 N.J. at 597-598 (statutes concerning public pensions should be liberally interpreted in favor of public employees).

The key facts in this case are clear. Before my retirement, the DPB confirmed with me in a December 28, 2021 letter that my service credit on February 1, 2022, the date of my proposed retirement, would be 10 years and 1 month. Pa16. Since I had been on medical leave since September 9, 2021 and had no access to my work emails while I was on medical leave, I



relied upon the December 28, 2021 letter from the DPB and retired on February 1, 2022. By letter dated February 28, 2022, the DPB confirmed the terms of my retirement benefits. Pa36. Nearly 7 months after my retirement, though, the DPB notified me for the first time that my retirement benefits had been unilaterally reduced based on a “post-retirement audit of [my] account.” Pa42. The error in my account was caused solely upon incorrect “information provided by [my] former employer.” Pa72. In other words, my retirement benefits were reduced solely due to an error by my former employer, not by any error by me. When I contested the reduction in my retirement benefits, the DPB affirmed the denial of my benefits on October 27, 2022, basing its October 27, 2022 decision on N.J.S.A. 43:15A-54 and N.J.A.C. 17:2-5.1. Pa72 to Pa73. According to the DPB, the belated reduction and elimination of my retirement benefits in July of 2022 was permitted by the Correction of Errors Statute (N.J.S.A. 43:15A-54). Pa72. Since I retired on February 1, 2022, the DPB concluded that I could no longer purchase service credit since only “active members in the system” were permitted to do so under N.J.A.C. 17:2-5.1 Pa73. In effect, the “Catch-22” position of the DPB was as follows: Oops, your former employer (not you) made a mistake, but you cannot fix your former employer’s mistake now by purchasing two months of service credit since you retired by mistakenly relying on the written information that we (the DPB) provided you. See Pa42 to Pa43 and Pa72 to Pa73.

The following are legal grounds that support, individually or in combination, the relief that I request in this appeal.

a) **Equitable estoppel.**

The New Jersey Supreme Court defined equitable estoppel as follows:

The essential principle of the policy of estoppel here invoked is that one may, by voluntary conduct, be precluded from taking a course of action that would work injustice and wrong to one who with good reason and in good faith has relied upon such

conduct. . . . An estoppel . . . may arise by silence or omission where one is under a duty to speak or act. . . . It has to do with the inducement of conduct to action or nonaction. . . . The doing or forbearing to do an act induced by the conduct of another may work an estoppel to avoid wrong or injury ensuing from reasonable reliance upon such conduct. The repudiation of one's act done or position assumed is not permissible where that course would work injustice to another who, having the right to do so, has relied thereon.

Summer Cottagers' Association v. Cape May, 19 N.J. 493, 503-04 (1955).

Here, I relied in good faith to my detriment on the information provided to me by the DPB on December 28, 2021 that was based solely upon mistaken information provided by my former employer, not by me. In effect, my former employer's error has caused my retirement disaster. This is a classic set of facts that warrants the use of equitable estoppel. See Middletown Township Policemen's Benevolent Ass'n Local No. 124 v. Township of Middletown, 162 N.J. 361, 367 (2000) (equitable estoppel relied upon to reverse the decision of a municipality from terminating the post-retirement health benefits of a former municipal employee where the employee had relied in good faith on those benefits); Skulski v. Nolan, 68 N.J. 179, 198-199 (1975) (based on "equitable considerations [and] the interests of justice," the Court refused to terminate the pensions of public employees based on equitable estoppel where the employee/pensioners had acted in good faith in relying on their prior pension awards in declining other employment); see also In re Frank, 2007 WL 2005083 (App. Div. 2007) (in ruling that "equity warrants estoppel" to prevent the Board from requiring a Patricia Frank, a retired custodian in a public school, to repay disability retirement benefits of \$15,954.93, the Court based its decision on equitable principles).

b) **Precedent for granting the relief requested based on general equitable considerations.**

The following cases support granting the relief sought in this case based on

equitable considerations. Thomas Evans, a Nutley Township (“Township”) elected official since 2003 and an attorney, was eligible to enroll in the Public Employees’ Retirement System (“PERS”) before the law was changed in 2007 to render him ineligible to enroll in PERS. In re Evans Public Employees’ Retirement System Enrollment Eligibility, 2018 N.J. Super. Unpub. LEXIS 1767 (App. Div. 2018), Pa122 to Pa125. Mr. Evans had a window between 2003 and 2007 to enroll in PERS, but there was no dispute that he failed to do so. He claimed that he asked a Township payroll clerk (Kim) to enroll him, but she failed to do so. Pa123 to Pa124. His application to enroll in PERS was submitted twice electronically by the Township in 2009, but was rejected each time as untimely (due to legislation enacted in 2007 that rendered him ineligible to enroll in PERS). Pa123. In 2013, four years after his enrollment applications were rejected in 2009, Mr. Evans wrote a letter to the Board of Trustees of PERS detailing how the Township payroll clerk that he had asked to enroll him in PERS had failed to do so and arguing that the Board should retroactively enroll him in PERS. Pa123 to Pa124. The Board determined that Mr. Evans was ineligible and rejected his request to enroll him in PERS retroactively. Pa124. Mr. Evans appealed the Board’s Board’s decision and requested a hearing before the Office of Administrative Law (“OAL”). The Board denied the appeal and refused to permit Mr. Evans an administrative hearing on the ground that the appeal was solely a question of law. On appeal to the Appellate Division, Mr. Evans argued that he should be enrolled in PERS retroactively under N.J.S.A. 43:15A-54, the Correction of Errors Statute. Mr. Evans’ argument in the Appellate Division was that the Board had failed to consider his contention that the failure of the Township payroll clerk to enroll him in PERS was an error that should be corrected retroactively by the Board under N.J.S.A. 43:15A-54. Given that the equities were strongly in favor of Mr. Evans, the Appellate Division reversed the Board’s decision and remanded the case to the Board “to fully consider” Mr. Evans’ contention that the

Township payroll clerk's error should be corrected under N.J.S.A. 43:15A-54 and whether Mr. Evans should be enrolled in PERS retroactively. Pa125. Obviously, the Appellate Division would not have remanded the Evans case to the Board unless N.J.S.A. 43:15A-54 permitted retroactive relief for a retired public employee, precisely the relief that I request.

After Glen Poosikian was elected to the Haworth Borough Council, he claims that he asked the Haworth Borough Clerk/Administrator, Ann Fay, to enroll him in PERS, but that Ms. Fay mistakenly told him that he did not qualify for PERS enrollment at the time. Poosikian v. Division of Pension and Benefits, 2021 N.J. Super. Unpub. LEXIS 319 (App. Div. 2021). Pa126 to Pa129. (Mr. Poosikian, an attorney, had won his election to the Borough Council on November 6, 2006, took office on January 1, 2007 and legislation barring an elected official from enrolling in PERS under N.J.S.A. 43:15A-7(d) did not become effective until July 1, 2007.) Mr. Poosikian took no action to determine his PERS enrollment eligibility for over ten (10) years according to the record in the case. Pa127. In 2018, over ten (10) years after Mr. Poosikian became aware that he may have been eligible for PERS enrollment (between the window of January 1, 2007 and July 1, 2007), he requested that a payroll clerk in Haworth enroll him in PERS. The DPB initially decided that Mr. Poosikian was eligible for PERS enrollment and sent an invoice for \$1,706.60 for the delayed enrollment of Mr. Poosikian in PERS. Pa128. After the invoice was paid, the DPB confirmed in writing that Mr. Poosikian was enrolled in PERS. Pa128. About two (2) months later, though, the DPB reversed its position, advising Mr. Poosikian that his enrollment application was processed in error "and that his [PERS] account had been cancelled." Pa128. Mr. Poosikian appealed the decision, but his appeal was denied. He then appealed the denial of his requests (1) for enrollment in PERS retroactively and (2) for the alternative relief of an administrative hearing. Pa128. After the Board denied all of his requested relief, he filed an

appeal with the Appellate Division. In reversing the decision of the Board, the Appellate Division Division remanded the case to the Board to “take action” consistent with the equities strongly favoring Mr. Poosikian. Pa127 to Pa129. The not so subtle message of the Appellate Division opinion seemed to be that the Board should consider favorably the relief requested by Mr. Poosikian.

The Evans and Poosikian case illustrate that, depending upon the equitable considerations in a case, there is ample discretion under New Jersey law to correct an injustice in the loss of pension benefits of a retired public employee. Since the plaintiffs in Evans and Poosikian were both experienced attorneys and were presumably well versed in the law, I (a retired secretary) should be entitled to at least the same consideration given to Mr. Evans and Mr. Poosikian by the Court.

c) **Medical leave in the months before my retirement supports the relief requested.**

Since I was out of work on medical leave (FMLA) starting on September 9, 2021 and never returned to work before I retired on effective February 1, 2022, I was not able to access my work emails while I was on medical leave during the critical months before my retirement. This factor supports the relief requested. See Chiappini v. Board of Trustees of the Public Employees’ Retirement System, 2011 N.J. Super. Unpub. LEXIS 2062 (App. Div. 2011) (the fact that Marc Chiappini, for medical reasons, had not worked for a number of months before his retirement was considered a persuasive factor by the Court in reversing the Board’s decision to require Mr. Chiappini to reimburse the DPB \$32,479.95 in pension benefits previously paid to him and to have his life insurance benefit reduced from \$12,875.00 to \$1,000.00). Pa114 to Pa121.

d) **Penalty imposed by the Board on me for the error of my former employer is too severe.**

The mistaken calculations by my employer (not by me) has resulted in the entire loss of my life insurance benefit (\$9,952.12), a retirement disaster. See Pa42 to Pa43 and Pa72. Without such a life insurance benefit, my family will probably not be able to pay my funeral expenses. There is precedent under New Jersey law to permit the Court to grant the relief requested. See Chiappini v. Board of Trustees of the Public Employees' Retirement System, 2011 N.J. Super. Unpub. LEXIS 2062 (App. Div. 2011) (where Marc Chiappini, a teacher who had not worked for a number of months for medical reasons before his retirement, had inadvertently failed to observe the required 30 day waiting period between his retirement and starting a part-time teaching position, the Board's decision to require Mr. Chiappini to reimburse the DPB \$32,479.95 in pension benefits previously paid to him and to have his life insurance benefit reduced from \$12,875.00 to \$1,000.00 was considered "excessive" and the Court restored Mr. Chiappini to "full pension status"); Pa114 to Pa120; Geller v. Department of the Treasury, 53 N.J. 591 (1969) (the Court restored the full pension benefits of a retired public school teacher by allowing her to purchase "6.4 years prior service credit" at a reduced cost solely based on the equities of the case); Indursky v. Board of Trustees of the Public Employees' Retirement System, 137 N.J. Super. 335 (App. Div. 1975) (the Court reversed the decision of the Board to demand that Henry Indursky, an attorney who had been declared totally disabled, reimburse \$5,302.32 in pension benefits since "every equity" in the case favored Mr. Indursky); In re Frank, 2007 WL 2005083 (App. Div. 2007) (the Court reversed the decision of the Board requiring that Patricia Frank, a retired public school custodian who had been declared totally disabled, reimburse \$49,209.76 in retirement benefits due to her inadvertent violation of the regulations for part-time work in retirement on the ground that the equities of the case estopped the Board from the collection of benefits paid to Ms. Frank in error); Fasolo v. Board of Trustees of Division of

Pensions of New Jersey Treasury, 190 N.J. Super. 573 (App. Div. 1983) (where PERS improperly withheld the retirement benefits of William Fasolo, an attorney who had worked as counsel for various public entities, the Court held that the equities in the case warranted that interest should be assessed on the monies improperly withheld by PERS that PERS was ordered to pay Mr. Fasolo); Roselle v. Board of Trustees of the Public Employees' Retirement System, 2022 N.J. AGEN LEXIS 933 (Admin. Law 2022) (Carla Roselle, a librarian at a public library, was permitted under N.J.S.A. 43:15A-54 to enroll in PERS retroactively to her date of hire 12 years earlier since her failure to enroll in PERS was due to the mistake of the municipality and the equitable considerations favored Ms. Roselle); Hughes v. Board of Trustees of the Public Employees' Retirement System, 2011 N.J. AGEN LEXIS 195 (Admin. Law 2011) (where the DPB demanded that John Hughes, a 69 year-old disabled maintenance worker, pay \$84,553.78 in penalties due to a violation of the maximum salary permitted for a disability retiree, OAL reduced the "extraordinary hardship" of the penalties to be paid by Mr. Hughes from \$84,553.78 to \$2,019.66 based solely on the equities in the case).

- e) **Minimal cost to purchase service credits in this case \$614.72 will not undermine the financial integrity of the PERS fund.**

The relief requested in this appeal includes the purchase of two months of service credit necessary to have the 10 years of service time needed for the life insurance benefit (\$9,952.12) that was taken away from me by the DPB in July of 2022. I have requested the cost of purchasing two months service credit, but have not been provided with the cost to date. My estimate is that the cost of my purchasing two months in service credits would be \$614.72 calculated as follows: \$153.68, a pension deduction from my two-week salary statement in the fall of 2021, over the course of two months and four two-week pay periods totals \$614.72. Pa34. Clearly, the financial integrity of the PERS fund would not be undermined if I were permitted to

purchase two months of service credit. See Krayniak v. Board of Trustees of the Public Employees' Retirement System, 412 N.J. Super. 232, 238 (App Div. 2010) (deciding PERS pension benefits requires a Court to balance maintenance of the financial integrity of the PERS fund with the overriding mandate to liberally interpret public pension laws in favor of retired public employees).

f) **Due process.**

Due process considerations are raised where, as here, a retired public employee is essentially deprived of a meaningful right to contest a reduction in retirement benefits caused by the error of someone else. The "Catch-22" that I faced occurred when I was first notified by the DPB in July of 2022, nearly 7 months after my retirement, that I was "short" two months of service credit, but had no remedy to correct a mistake made solely by my former employer since I was told that only active employees could purchase service credit under N.J.A.C. 17:2-5.1. See Pa42 to Pa43, Pa72 to Pa73, Pa88 to Pa89 and Pa93 to Pa96. I was also denied an administrative hearing to present my case. Pa93 to Pa96. The law is well settled that the unilateral taking away of retirement benefits of a public employee without any meaningful recourse is a denial of due process. See, e.g., Hipsher v. Los Angeles County Employee Retirement Ass'n., 58 Cal. App. 5<sup>th</sup> 671, 272 Cal. Rptr. 3d 664, 2020 Cal. App. LEXIS 1184, 2020 WL 7350585 (Cal App. 2020) (a public employee was deprived of due process when his retirement benefits were forfeited in an administrative process where deficiencies in the administrative process prejudiced the employee). I was afforded no due process, meaningful or otherwise, in this case since I was notified of the reduction in my monthly pension benefit and complete loss of my life insurance benefit (\$9,952.12) in July of 2022, seven months after my retirement on February 1, 2022, and told that I had no remedy to cure my retirement disaster caused by the error of my former employer. Pa11



to Pa13, Pa42 to Pa43 and Pa72 to Pa73. Where is the due process in DBP notifying me “oops-you-no-longer-have-any-life-insurance-benefit-and-it-is-too-late-for-you-to-fix-this-disaster”?

Had I been given notice before my retirement, I could have purchased two months service credit for \$614.72 to avoid my retirement disaster. Does anyone seriously think that I would not have done so?

**g) Service time vs. service credit.**

After my retirement on February 1, 2022, I was first notified by the DBP in letters dated July 19, 2022 and July 22, 2022 that a post-retirement audit had reduced my retirement benefits due to a decrease in my service credit from 121 months (10 years and 1 month) to 118 months (9 years and 10 months). Pa42 to Pa43. Before being so notified by the DPB, I did not know that there was a distinction between service time and service credit. As a lay person, how was I supposed to know of such a technical distinction?

**h) Improper use of N.J.S.A. 43:15A-54.**

The Correction of Errors Act, N.J.S.A. 43:15A-54, has been improperly used by the DPB against me based on an error by my former employer. Pa72. While the DPB has authority under the Act to correct errors in retirement benefits, the statute is remedial and should be interpreted liberally in favor of the public employees (like me) who have remained in public employment to render faithful and efficient service while so employed. See Geller v. Department of the Treasury, *supra*, 53 N.J. at 597-598; Burkhart v. Public Employees Retirement System, *supra*, 158 N.J. Super. 414, 420-423. The statute should be used, as its name states, to correct mistakes, not as a weapon against a blameless public employee whose good faith has never been questioned. As the Appellate Division stated in Burkhart v. Public Employees Retirement System, *supra*, 158 N.J. Super. at 420, the “legislative intent [of the Correction of Errors Act] was

to restore the employee . . . as if the error” in the employee’s retirement benefits “had not been committed.” Here, the DPB has essentially used the Act as a weapon against me contrary to the intent of the Act.

i) **DBP has been my adversary in this case.**

Even though the law in New Jersey is well settled that statutes creating pensions for public employees should be liberally construed and administered in favor of persons intended to benefit from the statute to induce and encourage public service, Geller v. Department of the Treasury, *supra*, 53 N.J. at 597-598, the DBP has been my adversary in this case. The emails written by Felisa Miller of the DPB in this case speak for themselves. Pa44 to Pa60 and Pa70 to Pa71. For example, when Felisa Miller wrote a July 22, 2022 letter advising me that I was ineligible for any life insurance benefit, she made no reference to my purchasing service credits even though N.J.A.C. 17:2-5.1 permits the purchase of service credits by active members who have contributed to PERS within the last two years. See Pa43 and Pa95. Was that two-year window available to me in July of 2022 since I had made pension contributions in the fall of 2021? Ms. Miller never raised such an issue. Instead, Ms. Miller’s letter merely stated that my life insurance benefit was completely forfeited by the recalculation of my service credit without any mention of any option to cure the two month deficiency in my service credit. Pa43. I am not an attorney, but my reading of the language providing a two-year window under N.J.A.C. 17:2-5.1 seems to indicate that I was arguably within the two-year window, particularly since these laws are supposed to be interpreted in favor of public employees.

**CONCLUSION**

Justice Robert Clifford of the New Jersey Supreme Court wisely cautioned that the law is “not simply a minuet scored for [litigants] to prance through on pain of losing the dance

contest should they trip.” Stone v. Township of Old Bridge, 111 N.J. 110, 125 (1988). To paraphrase Justice Clifford’s words, I was never even permitted to hear the music or invited to the dance contest before I was told by the DPB that I had lost. The situation that I faced in late 2021 was pure chaos. In the midst of a once-in-a-lifetime pandemic while out of work on medical leave (with my place of work, the Essex County Court House, closed) and facing spinal surgery, I acted in good faith by relying on a December 28, 2021 letter from the DPB stating that I would have 10 years and 1 month of service credit when I retired on February 1, 2022. Nearly 7 months after my retirement, I was shocked when I was told by the DPB “oops-a-mistake-was-made-by-my-former-employer,” that I could not correct such a mistake, but we, the DBP, can unilaterally take away your retirement benefits without giving you any remedy. The Correction Act that is supposed to be liberally interpreted to benefit public employees was never intended to be a one-way street as it has been used in my case, permitting the DPB to make unilateral decisions that leave a blameless retired public employee facing a retirement disaster with no recourse. If this Court relied on the equitable considerations favoring Thomas Evans (an attorney), Glenn Poosikian (an attorney), William Fasolo (an attorney), Harry Indursky (an attorney), Marc Chiappini (a teacher), Patricia Frank (a custodian) and Harriet Geller (a teacher) in reversing the improper denial or reduction of their pension benefits, I should be entitled to the same consideration since my good faith in this case is not in question. Simply put, why should I receive less justice than Mr. Evans, Mr. Poosikian, Mr. Fasolo, Mr. Indursky, Mr. Chiappini, Ms. Frank and Ms. Geller? I therefore request a reversal of the decision below and the restoration of my full retirement benefits (my monthly full pension and my life insurance benefit of \$9,952.12).

Respectfully submitted,

  
Margaret McCormack



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March 20, 2024

VIA ECOURTS

Joseph H. Orlando, Clerk  
Superior Court of New Jersey - Appellate Division  
R.J. Hughes Justice Complex  
PO Box 006  
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Re: Margaret McCormack v. Board of Trustees, Public Employees'  
Retirement System  
Docket No. A-000344-23T4

On appeal from a Final Agency Decision of the Board of  
Trustees, Public Employees' Retirement System

Letter Brief of Respondent, Board of Trustees, Public  
Employees' Retirement System on the Merits of the Appeal

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Dear Mr. Orlando:

Please accept this letter brief on behalf of Respondent, the Board of Trustees,  
Public Employees' Retirement System, on the merits of the appeal.



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**PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS<sup>1</sup>**

Appellant, Margaret McCormack, appeals an August 17, 2023 Final Agency Decision of Respondent Board of Trustees, Public Employees’ Retirement System (“PERS”), which denied her request to purchase service credit following the recalculation of her retirement benefit.

McCormack was a PERS member in connection with her employment with

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<sup>1</sup> Because the procedural history and facts are closely related, they are combined for efficiency and the court’s convenience.

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the New Jersey Superior Court, Essex Vicinage. (Pa12-14).<sup>2</sup> On or about May 25, 2021, McCormack requested and was provided by the New Jersey Division of Pensions and Benefits (the “Division”) an estimate of retirement benefits, which reflected her selection of service retirement<sup>3</sup> and a proposed retirement date of September 1, 2021. (Pa1). According to the said estimate, she would have nine years and eight months of service credit if she continued to work until August 31, 2021. Ibid. She would be seventy years old at the time of her retirement and she would not be entitled to any life insurance benefits after retirement. Ibid. The beginning of the estimate letter advised McCormack that “[t]his Estimate of Retirement Benefits was prepared based on current information available in our system and projected information reported by your employer,” and that “[y]our benefit may be recalculated in the future due to an audit based on new information received from your employer or for a discrepancy in your account.” Ibid.

On the same day, McCormack requested and was provided by the Division another estimate of retirement benefits, which reflected her selection of service

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<sup>2</sup> “Pa” refers to McCormack’s appendix; “Pb” refers to her brief; “Ra” refers to Respondent’s appendix.

<sup>3</sup> There are several types of retirement benefits available to PERS members that vary by membership tiers and requirements including service, early, veteran, deferred, and disability retirements. Information concerning the various types of retirement benefits for PERS members is stated in the Division’s Retirement Planning Member Guidebook, available to the public at its website.

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retirement and a proposed retirement date of October 1, 2021. (Ra1). As stated in that estimate, she would have nine years and nine months of service credit if she continued to work until September 30, 2021, and she would not be entitled to any life insurance benefits after retirement. Ibid. It again advised her that the estimate was generated based on current information available, and that the projected benefits may be recalculated based on new information provided. Ibid.

On or about September 9, 2021, McCormack applied and was approved for extended medical leave by her employer. (Pa4-10). Specifically, she would have paid leave (with salary and pension contribution) from September 9, 2021, through October 19, 2021, by using her accrued vacation and sick time. (Pa4). She then would have unpaid leave (without salary or pension contribution) starting on October 20, 2021, by using her FMLA leave. Ibid.

On November 24, 2021, McCormack applied for service retirement under the maximum payout option with a selected effective retirement date of February 1, 2022. (Pa12). Subsequently, McCormack's employer issued a Certification of Service and Final Salary, which certified that she would be resigning on January 31, 2022, and that her last pension contribution would be made on pay period "#4" of 2022 (covering January 29, 2022, through February 11, 2022). (Pa14).

On or about December 28, 2021, McCormack requested and was provided by

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the Division a quotation of retirement benefits, which reflected her selection of service retirement and effective retirement date of February 1, 2022. (Pa16). As stated in that quotation, she would have ten years and one month of service credit if she continued to work until January 28, 2022; and she would be entitled to life insurance benefits in the sum of \$9,952.12 after retirement. Ibid. The beginning of the quotation letter also advised McCormack that “[t]his Quotation of Retirement Benefits was prepared based on current information available in our system and projected information reported by your employer,” and that “[y]our benefit may be recalculated in the future due to an audit based on new information received from your employer or for a discrepancy in your account.” Ibid.

At its meeting of January 19, 2022, the Board approved McCormack’s application for service retirement, effective February 1, 2022. (Pa26). The Board also sent a decision letter on that same day to McCormack memorializing its decision approving her retirement. Ibid. The Board stated, in pertinent part: “[i]n accordance with law, you have until thirty days after (A) the effective date of your retirement, or (B) the date your retirement was approved by the Board of Trustees, whichever is the later date, to make any changes to your retirement.” Ibid.

On January 31, 2022, McCormack had an exit meeting with the Human Resource personnel from her employer. (Pa27-31). On or about February 28, 2022,



McCormack received a letter from the Division, which confirmed her retirement and listed her retirement date, type, payment option, monthly allowance and life insurance benefit (in the sum of \$9,952.12 payable upon death after retirement). (Pa36).

On July 19, 2022, the Division mailed McCormack a letter advising her that her monthly retirement benefits had been overstated and would be reduced from \$677.02 to \$652.77. (Pa42). This recalculation was based upon a post-retirement audit of her account due to an unresolved balance in her account (because no pension contribution was made to her account after pay period “#22” of 2021 covering the pay period of October 9, 2021, through October 22, 2021). (Pa42; Pa72).

On July 22, 2022, Felisa Miller from the Division mailed McCormack another letter to explain in detail the recalculation of her retirement benefits. (Pa43). Specifically, Miller advised McCormack that the Certification of Service and Final Salary from her prior employer had indicated that McCormack would continue to work until the end of January 2022, which would make her projected service credit ten years and one month (or 121 months). Ibid. However, McCormack in fact stopped working and made no pension contributions after pay period “#22” of 2021. Ibid. As such, her actual total service credit was nine years and ten months (or 118 months) and her actual final average salary (to be used to calculate her retirement

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allowances) was \$47,796.66 (instead of the projected \$48,342.98). Ibid. Further, Miller advised McCormack that she would not be eligible to receive a group life insurance benefits after retirement as only PERS members with at least ten years of service credit were eligible for this benefit. Ibid.

On August 15, 2022, the Division sent McCormack a new confirming letter, which reflected the revised monthly allowance and her ineligibility for group life insurance benefits. (Pa61). Around the same time, McCormack wrote to the Division seeking to challenge the recalculation of her retirement benefits and asking if she could purchase service credit to bring her PERS account to the requisite ten years for her to obtain group life insurance benefits. (Pa62-63). In response, Damon Bernardini, the acting supervising pensions benefits specialist from the Division, wrote to McCormack on October 27, 2022. (Pa72-73). Bernardini explained that the Division was required under the Correction of Errors statute, N.J.S.A. 43:15A-54, to recalculate McCormack's retirement benefits because she did not earn salary or make any pension contributions after October 22, 2021, and that the recalculation or correction reduced her total service credit from 121 months to 118 months, which disqualified her from group life insurance as a death benefit. (Pa72). Further, Bernardini explained that only active PERS members could purchase service credit pursuant to the plain language of the applicable regulation, N.J.A.C. 17:2-5.1.

(Pa72-73). Because McCormack's retirement benefits had long become due and payable, she was no longer an active PERS member, thus, could not purchase service credit anymore. Ibid.

On or about April 28, 2023, McCormack, through her attorney, wrote to appeal the Division's decision of recalculating her retirement benefits and denying her request to purchase service credit. (Pa80-87). At its meeting on May 17, 2023, the Board considered and denied McCormack's request to purchase service credit as McCormack was no longer an active member after her retirement became due and payable on March 2, 2022. (Pa88-89). The Board further explained why the recalculation was made and that McCormack was ineligible for the group life insurance, as she lacked the requisite ten years of service credit. Ibid.

By letter dated July 5, 2023, McCormack appealed the Board's decision and requested an administrative hearing. (Pa91-92). McCormack claimed that she never received the two estimates dated May 25, 2021, but she admitted that she knew if she had retired in September 1 or October 1, 2021, she would lack the requisite ten years of service credit to receive group life insurance benefits after retirement. (Pa91).

The Board found no genuine issues of material fact in dispute and denied McCormack's request for administrative hearing at its meeting of July 19, 2023.

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(Pa93). The Board issued its Final Administrative Decision on August 17, 2023. (Pa93-96). In that decision, the Board found that, although the Certification of Service and Final Salary dated December 9, 2021, by McCormack's former employer projected her service credit through January 28, 2022, she did not continue working and making pension contributions after October 22, 2021. (Pa93-94). As such, her actual service credit was nine years and ten months (or 118 months), which rendered her ineligible for group life insurance benefits for which ten years (or 120 months) of service credit is required. Ibid.

Although McCormack stated that she relied on the December 28, 2021 quotation of retirement benefits, which reflected ten years and one month of service credit based on information provided by her employer, the quotation itself advised her that it was prepared based on current available information from her employer and it was subject to revision and recalculation in the future based on new information. (Pa94; Pa16). Further, the Board did not reach the equitable principles argued by McCormack; she argued that she was placed in a “[c]atch-22” situation because of the wrong information provided by her former employer. (Pa94; Pa85-86). The Board instead found that the two estimates dated May 25, 2021, had advised McCormack that she would have less than ten years of service credit and would not be entitled to group life insurance benefits if she stopped working in

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September 2021. (Pa94; Pa1; Ra1). Further, McCormack herself acknowledged in her appeal letter that she knew if she had stopped working in September or October, 2021, she would lack the required ten years of service credit to receive group life insurance benefits. (Pa91). As such, it was evident to McCormack that she would lack the requisite ten years of service credit once she decided to take the unpaid leave (without salary or pension contributions) starting on October 20, 2021. (Pa93-94).

Finally, the Board denied McCormack's request to purchase service credit as only active PERS members can purchase service credit under the clear language of the regulation, N.J.A.C. 17.2-5.1(a), and McCormack was no longer an active member after her retirement became due and payable on March 2, 2022. (Pa95-96).

Thereafter, this appeal followed.

### **ARGUMENT**

#### **THE BOARD'S DENIAL OF MCCORMACK'S REQUEST TO PURCHASE SERVICE CREDIT FOLLOWING THE RECALCULATION OF HER RETIREMENT BENEFITS IS REASONABLE AND SHOULD BE AFFIRMED.**

Judicial "review of administrative agency action is limited." Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011). "An administrative agency's final quasi-judicial decision will be sustained unless there is a clear showing that it is arbitrary, capricious, or unreasonable, or that it lacks fair support

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in the record.” Ibid. (quoting In re Herrmann, 192 N.J. 19, 27-28 (2007)). We “afford substantial deference to an agency’s interpretation of a statute that the agency is charged with enforcing.” Richardson v. Bd. of Trs., Police & Firemen’s Ret. Sys., 192 N.J. 189, 196 (2007) (citing R & R Mktg., LLC v. Brown-Forman Corp., 158 N.J. 170, 175 (1999) (additional citations omitted)). “Such deference has been specifically extended to state agencies that administer pension statutes.” Piatt v. Police & Firemen’s Ret. Sys., 443 N.J. Super. 80, 99 (App. Div. 2015). “This deference comes from the understanding that a state agency brings experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise.” Ibid. (quoting In re Election Law Enft Comm’n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010) (additional citations omitted)).

Here, the Board’s determination was reasonable, as the Board applied the undisputed facts to the controlling statutes and regulations. Specifically, the PERS Correction of Errors statute requires in relevant part:

If any change or error results in an employee or beneficiary receiving from the retirement system more or less than he would have been entitled to receive, then on discovery of the error, the retirement system shall correct it and, so far as practicable, adjust the payments in such a manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

[N.J.S.A. 43:15A-54.]

It is undisputed that McCormack's retirement benefit was calculated as though she worked until the end of January 2022, but McCormack actually stopped working in October 2021 and made no further pension contributions. (Pa4; Pa42; Pa72). Upon discovering this, the PERS was required to correct the error. McCormack's actual service credit was nine years and ten months, and her actual final average salary was \$47,796.66 (not the projected \$48,342.98), resulting in the required recalculation of her retirement allowance and her ineligibility for group life insurance. (Pa43).

Moreover, a retiree is eligible for group life insurance only if they have established ten or more years of service credit. N.J.A.C. 17:2-3.9 ("noncontributory life insurance shall be payable after the death of a retired member, only if the member established 10 or more years of pension membership credit at the time of retirement, or retired on a disability retirement."). Thus, under the plain language of the regulation, McCormack is not eligible for group life insurance.

Further, "[o]nly active members of [PERS] who are currently contributing, or who have contributed within the last two years to the [PERS], shall be eligible to make application for purchase of service credit." N.J.A.C. 17:2-5.1(a). Active members "who have contributed within the last two years to the PERS" refer to those

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members who discontinue public employment but whose PERS membership would stay open or active for two more years. N.J.S.A. 43:15A-7(e). However, if a PERS member retires during or after the two-year period, they become a PERS retirant, rather than active PERS member, immediately after their retirement benefits become due and payable. Specifically, a PERS retirant is defined as a “former member” receiving a pension or retirement allowance from PERS rather than an active member. See e.g. N.J.S.A. 43:15A-142 (defining retirant in the context of workers compensation judges in PERS); N.J.S.A. 43:15A-155 (defining retirant in the context of Prosecutors Part in PERS).

Moreover, under N.J.A.C. 17:2-6.2 and N.J.A.C. 17:2-6.3, regulations that are common to all the pension systems, retirees are permitted a thirty-day period in which to amend their retirement application; thereafter, the retirement becomes vested and irrevocable. Once vested, retirees cannot make changes or modifications to their retirement application including but not limited to purchasing service credit to obtain additional service credit for purpose of calculating their retirement benefits. Ibid. Here, McCormack retired effective February 1, 2022, and her retirement became due and payable, i.e., finalized and unable to be changed or modified, on March 3, 2022, pursuant to N.J.A.C. 17:2-6.2 and N.J.A.C. 17:2-6.3. Thus, under the statute and regulations, McCormack was no longer an active member and is



unable to purchase service credit as a retiree of the PERS after that date. The burden to establish pension eligibility is on the applicant, not the Board. Patterson v. Bd. of Trs., State Police Ret. Sys., 194 N.J. 29, 50-51 (2008).

Nevertheless, with this appeal, McCormack argues that the Board improperly applied the PERS Correction of Errors statute, N.J.S.A. 43:15A-54, to recalculate and correct her retirement benefits, claiming it is a remedial statute in nature and she should benefit from the liberal construction of pension statutes. (Pb9-10).

It is true that pension laws “should be liberally construed and administered in favor of the persons intended to be benefited thereby.” Geller v. Dep’t of Treasury, 53 N.J. 591, 597-98 (1969). “However, ‘[i]n spite of liberal construction, an employee has only such rights and benefits as are based upon and within the scope of the provisions of the statute.’” Francois v. Bd. of Trs., Pub. Emps.’ Ret. Sys., 415 N.J. Super. 335, 349 (App. Div. 2010) (quoting Casale v. Pension Com. of the Emp. Ret. Sys. of Newark, 78 N.J. Super. 38, 40 (Law Div. 1963) (alteration in original)). Therefore, “eligibility is not to be liberally permitted. Instead, in determining a person’s eligibility to a pension, the applicable guidelines must be carefully interpreted so as not to ‘obscure or override considerations of . . . a potential adverse impact on the financial integrity of the [f]und.’” Smith v. State, Dep’t of Treasury, Div. of Pensions & Benefits, 390 N.J. Super. 209, 213 (App. Div. 2007) (alterations

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in original) (quoting Chaleff v. Tchrs' Pension & Annuity Fund Trs., 188 N.J. Super. 194, 197 (App. Div. 1983)). In fact, “[a]n inappropriate allowance of benefits tends ‘to place a greater strain on the financial integrity of the fund in question and its future availability for those persons who are truly eligible for such benefits.’” Cardinale v. Bd. of Trs., Police & Firemen’s Ret. Sys., 458 N.J. Super. 260, 272 (App. Div. 2019) (quoting Francois, 415 N.J. Super. at 350 (additional citations omitted)).

This court’s reasoning in Krayniak v. Board of Trustees, Public Employees’ Retirement System, 412 N.J. Super. 232, 234-35 (App. Div. 2010), is helpful here. There, the appellant was a member of the “Prosecutor’s Part” of PERS and appealed the Board’s denial of his application for early retirement pursuant to the Early Retirement Incentive Act (the “ERI Act”), L. 2008, c. 21. Ibid. The court concluded that the ERI Act specifically excluded members of the Prosecutor’s Part of PERS from eligibility. Id. at 237. The court rejected Krayniak’s attempt to benefit from the liberal construction of pensions statutes. Id. at 241-42. The court noted the Board was not obligated to construe the ERI legislation liberally to allow Krayniak’s early retirement because the issue was one of eligibility. Id. at 242. “Rather, the Board was under an obligation to strictly adhere to the eligibility requirements

clearly indicated in the ERI legislation to protect the financial integrity of the PERS fund.” Ibid.

Here, eligibility for group life insurance requires ten or more years of service credit. N.J.A.C. 17:2-3.9. The undisputed fact is that McCormack’s last pension contribution was made during the pay period “#22” of 2021 (covering the pay period of October 9, 2021, through October 22, 2021). (Pa43; Pa72). As such, she established nine years and ten months of PERS service credit at the time of her retirement. Ibid. Accordingly, she lacks the required ten years of service credit to receive group life insurance benefits. The Board’s recalculation of her service credit and denial of group life insurance benefits is an issue of eligibility, which is not entitled to be liberally construed. Accordingly, McCormack cannot benefit from a liberal construction of the Correction of Errors statute, N.J.S.A. 43:15A-54, as she simply is not eligible for group life insurance benefits.

McCormack also makes equity arguments and contends that she was placed in a “catch-22” situation – she detrimentally relied on the Board’s quotation letter which was issued based upon the information from her employer and she was later denied the opportunity to establish the required ten years of service credit by purchasing service after her retirement benefits had become due and payable. (Pb10-14). McCormack mainly relies on this Court’s unpublished decisions from In re

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Evans Public Employees' Retirement System Eligibility, No. A-2698-16 (App. Div. July 14, 2018), and Poosikian v. Division of Pensions and Benefits, No. A-0343-19 (App. Div. February 26, 2021). (Pb11-14; Pa123-129). McCormack further argues that the consequence imposed on her due to the mistake of her prior employer is severe, and that equitable considerations may be afforded to her as established by prior precedents of this Court. (Pb14-16).

First, McCormack's reliance on In re Evans and Poosikian is misplaced because they do not address the application of equitable principles; rather, both cases involved this court's decision to remand the matter for the Board to apply the Correction of Errors statute, N.J.S.A. 43:15A-54, to address a known error. Evans, slip op. at 7-8 (Pa125); Poosikian, slip op. at 8-9. (Pa129). In both cases, the appellants were actually eligible to enroll into PERS and attempted to enroll on time but they failed to do so due to the township clerks' mistake or neglect. Evans, slip op. at 1-4 (Pa123-124); Poosikian, slip op. at 1-6. (Pa127-128). In both cases, this court asked the Board to reconsider and address the factual and legal issues in the context of the Correction of Errors statute, N.J.S.A. 43:15A-54. Evans, slip op. at 8 (Pa125); Poosikian, slip op. at 9. (Pa129). Thus, these cases do not support McCormack's plea for equitable relief in this case. Significantly, here, the Board

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did, in fact, correct the error in McCormack's service and salary credit pursuant to N.J.S.A. 43:15A-54. (Pa72).

In addition, McCormack argues equitable considerations in general should apply, anchoring her argument by citing Geller v. Treasury Department of N.J., 53 N.J. 591, 600 (1969) (allowing a teacher to receive full credit for prior teaching service where the Board failed to comply with the teacher's vague authorization for making appropriate deduction and failed to seek clarification from the teacher); Indursky v. Board of Trustees, PERS, 137 N.J. Super. 335, 343-44 (App. Div. 1975) (reversing the Board's decision asking the member to repay a six-year pension benefit upon finding the Board failed to exercise reasonable diligence during that time period); Fasolo v. Division of Pensions, 190 N.J. Super. 573, 587-89 (App. Div. 1983) (awarding prejudgment interest to the member for his improperly retained pension contributions when the pension system had seven-year delay in returning the improperly retained contributions in light of the relative equities); In re Frank, No. A-5261-05 (App. Div. July 12, 2007) (slip op. at 6) (finding that because pensioner was misinformed by an employee of the Division about the criteria for loss of her retirement allowance following acceptance of a part-time job, the Division could not require her to repay the full portion of her earnings from her part-time work); Chiappini v. Board of Trustees, No. A-3983-09 (App. Div. July 29,

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2011) (slip op. at 22-23) (finding that the member's repayment obligation to PERS should be reduced for equitable reasons as he had a genuine misunderstanding of applicable regulations concerning bona fide retirement which led to severe economic consequences). (Pb14-15; Pa115-121).

It is true that New Jersey courts have recognized that in certain pension cases equitable principles may prevent the strict application of a regulatory or statutory provision if fairness so dictates. See generally Sellers v. Bd. of Trs., Police & Firemen's Ret. Sys., 399 N.J. Super. 51, 62 (App. Div. 2008) (finding that pension boards have "the authority to apply equitable principles to provide a remedy when justice so demands, provided the power is used rarely and sparingly, and does no harm to the overall pension scheme"). Under the doctrine of equitable estoppel, "one may, by voluntary conduct, be precluded from taking a course of action that would work injustice and wrong to one who with good reason and in good faith has relied upon such conduct." Summer Cottagers' Ass'n v. Cape May, 19 N.J. 493, 503-04 (1955). The doctrine requires "a knowing and intentional misrepresentation by the party sought to be estopped under circumstances in which the misrepresentation would probably induce reliance, and reliance by the party seeking estoppel to his or her detriment." O'Malley v. Dep't of Energy, 109 N.J. 309, 317 (1987). And while "[e]quitable estoppel is rarely invoked against a governmental

entity,” “particularly when estoppel would ‘interfere with essential governmental functions[,]’ . . . equitable considerations are relevant to assessing governmental conduct, and may be invoked to prevent manifest injustice.” Id. at 316 (first citing Cipriano v. Dep’t of Civil Serv., 151 N.J. Super. 86, 91 (App. Div. 1977); then quoting Vogt v. Borough of Belmar, 14 N.J. 195, 205 (1954); then citing Skulski v. Nolan, 68 N.J. 179, 198 (1975)).

In this matter, the Board found that, unlike those cited cases by McCormack, equitable principles are not applicable in McCormack’s favor because she could not have detrimentally relied upon the December 28, 2021 quotation letter, which was issued based on the incorrect information provided by her former employer. (Pa94). First, the quotation letter specifically advised McCormack that it “was prepared based on current information available in our system and projected information reported by your employer” and that “[y]our benefit may be recalculated in the future due to an audit based on new information received from your employer or for a discrepancy in your account.” (Pa16). As such, it was known to McCormack that the projected retirement benefits were subject to revision and recalculation if the information provided by her former employer was inaccurate.

More importantly, the Board found that the two estimates dated May 25, 2021, provided clear notification to McCormack that she would not have ten years of

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service credit and would therefore not be entitled to group life insurance benefits if she stopped working in September 2021. (Pa94; Pa1; Ra1). Notably, McCormack herself acknowledged in her appeal letter that she knew if she had stopped working in September or October, 2021, she would lack the required ten years of service credit to receive group life insurance benefits. (Pa94; Pa91). Thus, it was evident to McCormack that she would lack the requisite ten years of service credit when she decided to take the unpaid leave (without salary or pension contributions) in October 2021. (Pa91). On this record, it is unreasonable for McCormack to argue that she was forced into this situation when she knew she would lack the service credit and she still chose to proceed with unpaid leave prior to her retirement. Equity is simply not in her favor. Contrary to her assertion that her medical leave prior to retirement supports granting her relief in this situation (Pb14), it actually weighs against her because she was well aware that her retirement estimate was based on working until February 2022 and that she would not have the requisite ten years of service credit for group life insurance if she stopped contributing to her pension in September or October, 2021, which is exactly what she did.

McCormack also argues on appeal that she should be allowed to purchase service credit under N.J.A.C. 17:2-5.1, and that allowing her to do so would not undermine the financial integrity of the PERS fund. (Pb16-17; Pb19). Further, she



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argues that the Board should apply the Correction of Errors statute, N.J.S.A. 43:15A-54, to allow her to make that purchase. (Pb18-19).

McCormack's service retirement became due and payable on March 3, 2022<sup>4</sup> – thirty days after the effective date of her retirement. (Pa94). Accordingly, as of March 3, 2022, she was a PERS retirant and no longer an active PERS member. As such, she could no longer purchase service credit. McCormack criticizes the Board generally and Miller specifically for not advising her about the “two-year window” under N.J.A.C. 17:2-5.1 for purchase of service credits. (Pb19). As explained above, however, that two-year window for the purchase of service credit did not apply to McCormack as she was then a retirant and not an active member of PERS.

In short, McCormack's arguments on appeal run contrary to the plain language and simple interpretation of the statute and the regulation. “The Court's obligation when interpreting a law is to determine and carry out the Legislature's intent.” Sussex Commons Assocs., LLC v. Rutgers, 210 N.J. 531, 540-41 (2012) (citing Allen v. V & A Bros., Inc., 208 N.J. 114, 127 (2011)). “[G]enerally, the best indicator of that intent is the statutory language.”

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<sup>4</sup> The Final Administrative Decision letter made a clerical error by stating March 2, 2022. (Pa94).

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DiProspero v. Penn, 183 N.J. 477, 492 (2005) (citing Frugis v. Bracigliano, 177 N.J. 250, 280 (2003)). “A court should ‘ascribe to the statutory words their ordinary meaning and significance, and read them in context with related provisions so as to give sense to the legislation as a whole.’” D’Ambrosio v. Dep’t of Health & Sr. Servs., 403 N.J. Super. 321, 334 (App. Div. 2008) (citing DiProspero, 183 N.J. at 492).

In addition, “[t]he PERS Board owes a fiduciary duty to its members to protect the financial integrity of the fund.” Francois, 415 N.J. Super. at 357 (citing Mount v. Trs. of Pub. Emps.’ Ret. Sys., 133 N.J. Super. 72, 86 (App. Div. 1975)). As fiduciaries of the PERS, the Board cannot permit ineligible PERS retirants to purchase service credit after their retirement because it would not only risk the solvency of the fund but also push the Board to act in direct contraction of the legislation. Thus, contrary to McCormack’s contention (Pb16), the concern is not the amount of the money involved in her particular case, but rather the potential impact of abrogating the relevant statutes and regulations to allow retirants to purchase service credit.

McCormack’s argument -- that the Correction of Errors statute, N.J.S.A. 43:15A-54 should allow her to purchase service credit (Pb18-19) -- should also fail because there is no longer an error to correct. The Board acted in compliance

with the governing statute and regulation and found the equitable principles are not warranted in McCormack's favor as discussed above. (Pa93-96).

McCormack also argues that the Board's denial of her request for an administrative hearing deprived her right of due process. (Pb17). Contrary to her argument, the Board properly decided that a testimonial hearing was not necessary because the controlling facts were undisputed. (Pa96). See N.J.A.C. 1:1-4.1(a) ("After an agency proceeding has commenced, the agency head shall promptly determine whether the matter is a contested case."). As explained by the Supreme Court, "[i]t is well-established that where no disputed issues of material fact exist, an administrative agency need not hold an evidential hearing in a contested case." Frank v. Ivy Club, 120 N.J. 73, 98 (1990) (citing Cunningham v. Dept. of Civil Service, 69 N.J. 13, 24-25 (1975)). "The mere existence of disputed facts is not conclusive. An agency must grant a plenary hearing only if material disputed adjudicative facts exist." Ibid. (citing Bally Mfg. Corp. v. Casino Control Comm'n, 85 N.J. 325, 334 (1981) (emphasis in original)).

Because there were no material facts in dispute here with respect to the controlling legal issues in McCormack's appeal, the Board reasonably denied her request for an administrative hearing, which fully comported with

administrative due process. (Pa96).

Finally, McCormack argues that as a lay person, she did not understand the distinction between service time and service credit. (Pb18). It is unclear to what distinction McCormack is referring, but a member does not earn service credit when the member is not working or making pension contributions. (Pa94). See also N.J.A.C. 17:2-4.12(b) (“No deductions shall be taken, nor service credit given, in any pay period . . . in which the employee’s salary is not sufficient to cover the required deductions for the PERS.”). Regardless, “ignorance of the law . . . is not a sufficient basis to excuse compliance with the requirements of an established rule of law.” Kalogeras v. 239 Broad Ave., L.L.C., 202 N.J. 349, 367 (2010) (quoting Circle Chevrolet Co. v. Giordano, Hallernan & Ciesla, 142 N.J. 280, 302-03 (1995)). Here, McCormack needed ten or more years of service credit to be eligible for group life insurance in retirement. Any inference or contention that she was unaware that she would not earn service credit while not working and not contributing to her pension does not excuse compliance with the ten year requirement.

On the record presented, it is submitted that the Board carefully evaluated the circumstances surrounding McCormack’s request for purchase of service credit following the recalculation of her retirement benefit and reasonably

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denied such request. The Board's determination should be affirmed.

**CONCLUSION**

For these reasons, the Board's Final Administrative Determination is reasonable and should be affirmed.

Respectfully submitted,

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**Re: Margaret McCormack v. Board of Trustees,  
Public Employees' Retirement System  
Docket No.: A-000344-23T4  
State Agency  
Sat Below: Board of Trustees of the Public  
Employees' Retirement System  
Docket No.: PERS 2-10-362444**

RECEIVED  
APPELLATE DIVISION

APR 22 2024

SUPERIOR COURT  
OF NEW JERSEY

**REPLY LETTER BRIEF OF APPELLANT**

Dear Mr. Orlando:

Please accept this letter brief on my behalf in reply to the March 20, 2024 letter brief of respondent, the Board of Trustees, Public Employees' Retirement System ("the Board") in opposition to my appeal in this case.

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**PRELIMINARY STATEMENT**

In 2021, facing retirement as a 70-year-old single sole support mother of two, I was focused on making sure that (1) I was covered by health insurance without a lapse in coverage during the time when I was on disability and being treated with spinal injections for pain and facing spinal surgery (2) that I retired with my full life insurance benefit (\$9,952.12). Assisting me as I tried to navigate the retirement process, made immeasurably more complex by the restrictions placed on person-to-person contact during the pandemic, was my then boss, the Honorable John J. Gizzo, J.S.C. I had originally planned to retire in the fall of 2021, but delayed retiring until February 1, 2022 (after consulting with Judge Gizzo) to make sure that I would have the option of health insurance and life insurance benefits when I retired. I drove from my home to the Essex County Courthouse (at the height of Covid), to hand deliver checks paying the premiums on my health insurance. Oftentimes, it was difficult to gain access because there was virtually no one in the Courthouse. I had to drop the checks in the Human Resource mail-slot. I was concerned that the checks would not be received because of an absence of mailroom personnel as well. Does anyone doubt that I would not have done the same thing – paying my pension contributions when I was on FMLA leave – to avoid the retirement disaster that I now face (i.e., my family will most likely not be able to cover my funeral expenses without my \$9,952.12 life



insurance benefit.) I retired on February 1, 2022 and was confident that I had my full pension and life insurance benefits.

Ignoring these facts, respondent represents to this Court that I knew (“it was evident to Ms. McCormack”) when I retired on February 1, 2022 that I was not entitled to any life insurance benefit. Rb at 9-10 and 20-21.[1] Such a statement is not true. On the contrary, my impression (shared by Judge Gizzo and Essex County Human Resources ) was that I had the requisite service time (I was not aware of the distinction between service time and service credit) to entitle me to a full life insurance benefit (\$9,952.12) when I retired on February 1, 2022.

The Respondent’s brief includes in the Appendix the “Estimate of Retirement Benefits Public Employees’ Retirement System” that was dated May 25, 2021. The Estimate indicates that if I retired on September 1, 2021 that I would have 9 years and 8 months of service. The other Estimate indicates that if I retired on October 1, 2021, I would have 9 years and 9 months of service. That is not being disputed by me. That is why I did not retire on September 1, 2021 or October 1, 2021. I knew that I would not have the requisite 10 years of service to be eligible for State health benefits or to receive the life insurance policy awarded for 10 years of service. With the assistance of the Leave Specialist (Nadiege B. Louis-Pierre),

the Essex County Human Resource Department in the Superior Court of New Jersey and my Judge, The Honorable John I. Gizzo, I decided to remain as an active employee to attain the 10 year goal. This decision was a costly one because I needed to ensure that I maintained health coverage until my retirement and transfer to Medicare. All of those working with me knew that at the age of 70, I was not planning on returning to work. My retirement plans were not a secret and I was working toward the goal of 10 years of service.

The respondent brief states (Rb Pg 5) that “As stated in the quotation, she would have ten years and one month of service credit if she continued to work until January 28, 2022”. It does not state that anywhere on the quotation. It states that my Service Termination Date is January 28, 2022. I am told at various points that I was an “active employee” until I retired and then I had 30 days to purchase service credits because I was still an “active employee”. The terms seemed to be used only to my detriment. The respondent states (Rb Pg 6) that the Certification of Service and Final Salary Retirement “indicated that McCormack would continue to work until the end of January 2022”. It does not stipulate that I “would continue to work”. Respondent also state (Rb Pg 6,12) that I “stopped working” and fails to mention that I did not stop working voluntarily. I was placed on disability. It states that I would resign on January 31, 2022. It also states that my last pension

deduction was made on P/P# 4/2022! (This was admittedly a mistake by Human Resources.) The respondent fails to mention this error. I would also note that the respondent repeatedly refers to “pension contributions” (Rb pg 4,9,10). Neither the Certification of Service and Final Salary Retirement nor the Quotation of Retirement Benefits stipulates “pension contributions”.

In the final phases of my retirement, I checked on the online PERS system that generated the Estimate of Retirement Benefits Public Employees’ Retirement System. The system still reflected my inquiry related to retirement on September or October 1, 2021. I contacted Kim Tuttle-Alexander in Essex County Human Resources and was advised that the PERS system was updated quarterly. Ms. Tuttle-Alexander then went on to explain that the systems were all backlogged and the updates had not been made because the personnel was not in the office. She said that due to the Omicron variant upsurge resources were not available for updating the system. This was even more apparent to me by fact that I did not receive my state disability check for my 2021 disability until March of 2023. The systems were all in chaos because of the impact of Covid on the operation of all institutions worldwide.

**PROCEDURAL HISTORY AND STATEMENT OF FACTS**

I rely on the procedural history and statement of facts set forth in my February 16, 2024 letter brief, but add the following prompted by respondent's factual inaccuracies and omissions.

**(a) My understanding was that I had full life insurance benefits (\$9,952.12) when I retired on February 1, 2022.**

The factual basis for respondent's opposition to my appeal is that respondent contends that there is no factual dispute that I knew ("it was evident to Ms. McCormack") that I did not qualify for a life insurance benefit when I retired on February 1, 2022. Rb 9-10 and 20-21. Such a critical fact is disputed. I did not have such knowledge, stating in my July 5, 2023 appeal:

I [knew] that if I had retired on September 1, 2021 or October 1, 2021, I would have been short on my length of service. That is the reason that I continued in the system until February 1, 2022. I paid all my health benefits until February [of 2022] which was a cost to me that would not be necessary had I retired in September or October [of 2021]. If I was not trying to stay for 10 years to get the benefits (i.e., health insurance, life insurance), I would have retired then [in September or October of 2021]. Pa91 (emphasis added).

Instead of retiring in September or October of 2021 (as I originally intended), I continued "in the system" until February 1, 2022 for the

express purpose of making sure that I would not lose my health and life insurance benefits.

**(b) Respondent's mistaken factual contention concerning the impact of my medical leave on my pension benefits.**

Respondent's purely factual argument that I knew that I was not entitled to any life insurance benefit when I retired is based on (1) the May 25, 2021 letter from the Division of Pension and Benefits (the "DPB") (2) my July 5, 2023 appeal and (3) respondent's misrepresentation that I knew that my FMLA leave did not count towards the length of service needed for my life insurance benefit (\$9,952.12). The May 25, 2021 letter mailed by the DPB to me (I never received it in the mail) indicated that I would not be entitled to any life insurance benefit if I retired on September 30, 2021 based on my length of service (9 years and 9 months). Pa1 and Ra 001. The May 25, 2021 letter from the DPB refers to "service credit," but does not define such a term or explain how "service credit is accrued and whether "service credit" is the same as length of service. My July 5, 2023 appeal does state that I knew that I would have been "short on my length of service" needed for my pension benefits, Pa91. Incredibly, respondent, in an apparent attempt to mislead this Court, ignores in its brief the following critical language in my July 5, 2023 appeal: "That [my being short on my length of

service] is the reason that I continued in the system until February 1, 2022.”

Obviously, this quoted language (that respondent pretends is not in my July 5, 2023 appeal) is critical to my appeal since it confirms my understanding that my FMLA leave gave me the required length of service to entitle me to life insurance benefits (\$9,952.12). The failure of respondent to even mention such quoted language in its 26-page brief is linked with respondent’s misrepresentation to this Court that I knew (“it was evident to McCormack”) that my time on FMLA leave did not provide me with the “requisite ten years of service credit” needed for life insurance benefits. Rb10 and Rb21. I had no such knowledge, unaware that my length of service was different from the “service credit” referred to by the DPB in its May 25, 2025 letter. Respondent refers to my FMLA leave as “unpaid” leave ... without salary or pension contributions.” Rb10 and Rb21. My FMLA leave was paid, not unpaid as respondent states. Respondent contends that while I was on FMLA leave, there were no contributions to my pension. Rb10 and Rb21. However, respondent once again hides critical facts from this Court. There was an inexplicable delay in my receiving disability checks during my FMLA leave. How was I supposed to know that there were no pension contributions made during my FMLA leave since no one advised me until July 22, 2022 (Pa43), over 6 months after the March 3, 2022 deadline for purchasing service credit. Compare Pa43 and

Rb22. Obviously, had I known that my FMLA leave did not count towards the length of service required for my life insurance benefit, I would have remedied the problem by purchasing two months in service credits. (When faced with a similar problem with my health insurance, I drove to the Essex County Courthouse to pay by check for my health insurance during my FMLA leave).

**(c) My FMLA leave was medically mandated, not voluntary as respondent suggests.**

Respondent, ignoring the undisputed fact that my FMLA leave was medically mandated, states that I “decided to take” a leave, Rb10 and Rb21, suggesting my leave was purely a voluntary decision on my part. Not true. My FMLA leave was medically mandated since I was undergoing pain injections and was facing cervical spinal surgery for chronic degenerative disc disease. Pa8 to Pa10.

### **LEGAL ARGUMENT**

#### **THE DECISION OF THE BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM SHOULD BE OVERTURNED**

The letter brief of the respondent disputes my legal arguments in this case. Rb14 to Rb25. All of the respondent's legal arguments are on a foundation of facts

that are disputed. Since the legal arguments of respondent collapse once the faulty factual foundation of such arguments is exposed, I stand by my legal arguments set forth in my February 16, 2024 letter brief and will focus the remainder of this reply letter brief on the faulty factual foundation for the legal arguments of respondent.

**(a) Medically-mandated FMLA leave.**

In September 2021, when the Essex County courthouse (which had been closed since March due to Covid restrictions) was preparing to reopen, I applied for an ADA accommodation. Aside from being extremely high risk for Covid due to my age, I had developed a serious, chronic and long term health issue. I was diagnosed with a degenerative cervical disc that was collapsing and slipping. I was scheduled for regular surgical spine injections for the pain and possible spinal surgery and/or fusion. My doctor stated that I would be incapacitated for a continuous period of time and needed treatment 3 times a week. My disability was from 9/9/21 to 6/1/22 or longer if surgery was necessary. I could not return to work with medical clearance until at least that date. I was asking not to “stop working” but rather to work from home. I was advised that my request could not be honored. It was at this point that I had to go on mandatory disability. While going for my regularly scheduled spinal injections at the surgical center, I was tasked with the decision on whether or not to retire. My disability term was from 9/1/21 to 6/1/22.



I could not return to the Courthouse without medical clearance until at least June. In her letter in support of my appeal (Pa 69) Kim Tuttle-Alexander, the Human Resources Administrative Specialist represents that there was a conception that I was returning to work prior to my retirement. That was a total misconception and that could not have happened without medical clearance.

**(b) Significance of my payment of the premiums for my health insurance during my FMLA leave.**

After I decided to retire, the Essex County Court Human Resource department, Nadiege Louis- Pierre and Judge Gizzo were all aware that I wanted to remain an employee in order to ascertain the 10 years of service to get me life insurance and other benefits. I paid my health insurance for all these months to ensure my status in the system. Why would I have hand delivered my health insurance checks (driving to Newark to a Courthouse that was virtually closed down again due to the Omicron variant that was surging at the time) to make sure that I had coverage? If I wanted to have less than 10 years of service it behooves me to have retired in September or October. The whole purpose in doing so was to extend my “service time”. Everyone involved knew that and assisted me in doing so. The respondent mentions that I “stopped working” but then states I was an “active employee “ until March of 2023. Hence my confusion even as I was undergoing treatment for pain and trying to process my retirement application.

**(c) Respondent makes the ridiculous argument that the financial integrity of the PERS fund would be undermined if I were permitted to purchase two months service credit to entitle me to a life insurance benefit.**

The relief I seek in this appeal is a reversal of the Board's decision and the restoration of my full retirement benefits (my full monthly pension and my life insurance benefit of \$9,952.12). Pb20. Such relief, if granted, would necessitate that I be permitted to purchase two months service credit to entitle me to my life insurance benefit of \$9,952.12. Id. I estimated in my February 16, 2024 letter brief that the cost of two months service credit would be \$614.72. Pb18. In opposing the relief I seek, respondent argues that the financial integrity of the PERS fund would be undermined by such "liberal construction" of the Correction of Errors statute, N.J.S.A. 43:15A-54. I doubt that the financial integrity of the PERS fund would be impacted at all, let alone be undermined by such an interpretation. Respondent's argument is ridiculous in light of the facts and equities in this case.

**d) Service time vs. service credit.**

After my retirement on February 1, 2022, I was first notified by the DPB in letters dated July 19, 2022 and July 22, 2022 that a post-retirement audit had reduced my retirement benefits due to a decrease in my service credit

from 121 months (10 years and 1 month) to 118 months (9 years and 10 months). Pa42 to Pa43. Before being so notified by the DPB, I did not know that there was a distinction between service time and service credit. As a lay person, how was I supposed to know of such a technical distinction?

e) **Record on appeal.**

This reply letter brief has focused on the numerous factual statements by respondent that are either not accurate or misrepresentations. I requested that the Board schedule an administrative hearing to make a proper record if there was an appeal in this case, but the Board refused my request for an administrative hearing, mistakenly finding that there were no “disputed questions of fact.” Pa96. Because of such an error by the Board, this Court is asked to decide this appeal with an inadequate record on appeal concerning the following material factual issues that are disputed by the parties:

- whether I knew or should have known when I retired on February 1, 2022 that I was not entitled to any life insurance benefit;
- whether my reliance on the December 28, 2021 written statement by the DPB that I would be entitled to a life

insurance benefit of \$9,952.12 when I retired on February 1, 2022 was reasonable;

- whether I knew or should have known that my FMLA leave did not “count” towards the length of service needed to entitle me to a life insurance benefit;
- whether I was provided with any information by the DPB, Human Resources in Essex County or anyone else to explain service credit, how service credit was calculated and the distinction, if any, between service credit and length of service;
- whether I acted in good faith in this case or, as respondent cynically suggests, whether I knew when I retired on February 1, 2022 that I was not entitled to any life insurance benefits and this appeal is merely my attempt to obtain benefits that I have known for years that I was never entitled to upon my retirement; and
- whether the relief I seek in this appeal would undermine the financial integrity of the PERS fund.

These disputed material facts should have been addressed in the administrative hearing that I requested from the Board. Unfortunately, the Board denied my request for an administrative hearing. Pa96.

**CONCLUSION**

For the reasons set forth in both my February 16, 2024 letter brief and this reply letter brief, I request a reversal of the Board's decision below and the restoration of my full retirement benefits (my full monthly pension and my life insurance benefit of \$9,952.12) or, alternatively, a remand of this case to the Board to conduct an administrative hearing to address the disputed material factual issues detailed in this reply letter brief.

I implore the Judges' humanity to eschew the unyielding bureaucracy's unfeeling application of the weight of its rules labyrinth to crush life out of my modest retirement benefit. I was a loyal employee who worked until my health failed and then retired in accordance with what I thought was the correct information provided to me by the Human Resources Department of the Essex County Superior Court and the Division of Pension and Benefits.

Respectfully submitted

  
Margaret McCormack

[1] Rb refers to respondent's brief and Ra refers to respondent.