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August 4, 2024

**VIA ELECTRONIC FILING**

Joseph H. Orlando, Clerk  
Superior Court of New Jersey, Appellate Division  
Richard J. Hughes Justice Complex  
P.O. Box 006  
Trenton, New Jersey 08625-0006

**Re: Michael Picariello v. Board of Trustees, Police & Firemen's  
Retirement System  
Docket Number: A-001090-23T2**

Dear Mr. Orlando:

As you are aware, this office represents the Appellant, Michael Picariello (hereinafter “Picariello” or “Appellant”), in the above referenced matter. In this regard, please accept this letter-brief, submitted pursuant to R. 2:6-2, in lieu of a more formal submission to serve as the Appellant’s reply in this matter.

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**STATEMENT OF FACTS AND PROCEDURAL HISTORY**

The Appellant relies upon the statement of facts and procedural history set forth in his initial brief filed with this Honorable Court on June 20<sup>th</sup>, 2024, thereby incorporating the same herein. As such, those facts and the procedural posture need not be repeated here.

## LEGAL ARGUMENT

**I. DESPITE THE RESPONDENT’S ASSERTIONS TO THE CONTRARY, PICARIELLO WAS NOT REMOVED FOR CHARGES OF MISCONDUCT RELATED TO HIS EMPLOYMENT (Aa61; Aa52-60; Rb6-11).**

This appeal addresses a threshold issue, namely whether Picariello is prohibited from receiving deferred retirement benefits as a matter of law. More specifically, the issue is whether Picariello is ineligible and/or disqualified from receiving deferred retirement benefits under the auspices of N.J.S.A. 43:16A-11.2. This issue is a legal question of statutory interpretation, one which this Honorable Court reviews de novo. G.S. v. Dep’t of Human Servs., 157 N.J. 161, 170 (1999); see also Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995) (noting the reviewing court’s obligation to determine whether the agency correctly “follow[ed] the law”).

In its brief, the Respondent, the Board of Trustees, Police and Firemen’s Retirement System (“Board” or “Respondent”), asserts Picariello was removed for charges of misconduct directly related to his employment. (Rb6-11). To this end, the Board argues Picariello was removed pursuant to his violation of an employment policy while he was engaged in his official work capacity at his place of employment. Id. at 11. More specifically, the Board asserts Picariello’s failed urinalysis constitutes work-related conduct that ultimately led to his removal. The Board’s argument must be rejected as

Picariello was not removed for charges of misconduct related to his employment. Rather, he was removed for charges wholly unrelated to his employment.

As set forth in the Picariello's initial brief, the case of In re Hess, 422 N.J. Super. 27 (App. Div. 2022), is particularly instructive in this matter. In Hess, this Honorable Court unequivocally held that forfeiture of deferred retirement benefits is conditioned on an involuntary removal due to misconduct **related to the employment**. Therefore, an employee is precluded from receiving deferred retirement benefits whenever the employee has been removed for cause on charges of misconduct that **relate to his or her official duties**. See also Borrello v. Bd. of Trs., Pub. Emps. Ret. Sys., 313 N.J. Super. 75, 78 (App. Div. 1998). To this end, the Court determined Hess' criminal conviction arising out of driving while intoxicated charges and subsequent removal from employment on account of the same was unrelated to her work and had an insufficient nexus to warrant the forfeiture of deferred retirement benefits. Ibid.

While what constitutes "conduct related to employment" as it pertains to deferred retirement benefits has not been explored in a published opinion since Hess, Courts have discerned from the words themselves that there must be a **relationship or nexus** between the employment and the conduct leading

to the termination. In re Jacalone, 2015 N.J. Super. Unpub. LEXIS 1576 (App. Div. 2015) (Aa62-65).

Thus, a nexus between the position and the conduct at issue has not been found in several cases when official duties and/or employment relationships were not involved. For example, in State v. Hupka, 203 N.J. 222 (2010), the Supreme Court found no forfeiture by an off-duty police officer who pled guilty to criminal sexual conduct with a female acquaintance. Id. at 227, 239. Concluding that the conduct did not involve or touch upon the defendant's employment, the Court reasoned that "there was no relationship between defendant's employment as a police officer, the trappings of that office, or his work-related connections, and the commission of the offense to which he pled guilty, or to his victim[.]" Id. at 239; see also State v. Pavlik, 363 N.J. Super. 307, 312 (App. Div. 2003) (finding an insufficient nexus where the public employee committed acts of domestic violence against his grandfather and resisted arrest).

In this case, the Appellant was not removed for charges of misconduct **directly related to his employment**, a necessary predicate for being deemed ineligible to receive deferred retirement benefits in accordance with Hess. Rather, the Appellant was removed pursuant to the results of a random urinalysis conducted by his employer. Tellingly, the disciplinary charges did

not allege the Appellant was utilizing any controlled dangerous substances at the workplace and/or under the influence of any controlled dangerous substance while at work. Even more importantly, the drug test was not administered to the Appellant based upon any “reasonable suspicion,” pattern of erratic behavior, or in connection with a specific work-related incident. Rather, the test was **randomly** administered pursuant to County and/or Department of Corrections policy.

Despite the Board’s assertions to the contrary, this is a crucial distinction. Like the appellant in Hess, Picariello’s alleged misconduct occurred on his personal time and involved actions outside of the workplace. As a result, the charges, or more specifically the positive urinalysis results, did not relate to actions taken by the Appellant during his employment or any type of negligence in connection with his work duties in any way. Notably, the Board cannot dispute this.

Based upon this, it is evident Picariello was not removed from his Corrections Officer position on charges of misconduct directly related to his employment. Instead, he was removed on charges wholly unrelated to his employment and/or the actual performance of his duties as a Corrections Officer. As aptly stated by the Supreme Court in Hupka, there was “no relationship” between the Appellant’s employment as a Corrections Officer,

“the trappings of that office, or his work-related connections, and the commission of the offense,” i.e. the positive urinalysis, which led to his removal. Therefore, there is an insufficient nexus between the charges and the Picariello’s employment to warrant an automatic forfeiture and/or disqualification of his eligibility to deferred retirement benefits.

As noted in Picariello’s initial brief, under the Board’s rationale, any type of conduct an employee is removed under that constitutes a violation of municipal, county or state policy constitutes misconduct related to employment, thereby precluding an employee from being eligible for deferred retirement benefits. This would appellants like those in Hess, Hupka, etc.

This is a misreading of Hess, Hupka, and the litany of case law cited above in Picariello’s initial brief by impermissibly expanding the type of conduct which prohibits an employee from being eligible for and/or receiving deferred retirement benefits. Given pension statutes should be liberally construed and administered in favor of public employees, such an expansion must not occur.

**II. ASSUMING PICARIELLO IS FOUND ELIGIBLE FOR DEFERRED RETIREMENT BENEFITS, HE IS UNDOUBTEDLY ENTITLED TO AN HONORABLE SERVICE ANALYSIS (Ab9; Ab16; Rb12-14).**

In its brief, the Board asserts Picariello is not entitled to an “honorable service” analysis pursuant to Uricoli v. Board of Trustees, Police and

Firemen's Retirement System, 91 N.J. 62 (1982). Specifically, the Board argues Uricoli is inapplicable because that case involved an application for accidental disability retirement benefits and, even if Uricoli was applicable, the case is no longer current and is no longer applied in the manner it was at the time of the decision. The Board's argument misses the mark and is bewildering to say the least.

First, if this Honorable Court determines Picariello is categorically ineligible for deferred retirement benefits as a matter of law, i.e. he was removed for charges of misconduct directly related to his employment, it is undisputed he would not be entitled to an honorable service analysis. However, if this Honorable Court determines Picariello was not removed for charges of misconduct directly related to his employment and, thus eligible to receive deferred retirement benefits, he is undoubtedly entitled to an honorable service analysis under the auspices of Uricoli.

Despite the Board's assertions, Uricoli is not only applied in caases involving accidental disability retirement benefits. Rather, Uricoli is the seminal case on pension forfeiture and the factors to be considered to determine whether a public employee should receive the full allotment of certain pension benefits or if any portion thereof is subject to forfeiture. To this end, the Supreme Court's decision in Uricoli "reaffirmed the rule that



honorable service is an implicit requirement of every public pension statute, whether or not this conditional term appears in the particular statute.” Uricoli, 91 N.J. at 66. To assist court and administrative bodies with implementation of a flexible test for pension forfeiture, the Supreme Court identified factors to be considered and balanced when applying that test to determine the reasonableness of pension forfeiture. Id. at 77-78. These factors were ultimately codified in N.J.S.A. 43:1-3(c).

In 2007, the Legislature added N.J.S.A. 43:1-3.1, which sets forth certain **criminal convictions** that require **mandatory forfeiture** of a public employee’s pension benefits if they are convicted of the same. State v. Anderson, 248 N.J. 53 (2021). Simply put, the Uricoli or N.J.S.A. 43:1-3(c) factors apply when mandatory absolute forfeiture is not required by N.J.S.A. 43:1-3.1. Id. at 73-74. In other words, the factors for consideration contained in N.J.S.A. 43:1-3, which resemble those set forth in Uricoli, apply to public employee misconduct raising honorable service questions **outside of** circumstances involving convictions for which N.J.S.A. 43:1-3.1 requires mandatory and absolute forfeiture. Ibid.

In this case, it is undisputed Picariello was not criminally convicted for the incident at issue or any of the crimes set forth in N.J.S.A. 43:1-3.1 that would require mandatory and absolute forfeiture of his pension benefits. In

fact, it is undisputed Picariello was not convicted of any crimes whatsoever. Therefore, mandatory and absolute forfeiture of Picariello's pension benefits is not required assuming he is eligible for the same.

As such, if this Honorable Court determines Picariello is eligible for deferred retirement benefits as a matter of law, he is certainly entitled to an "honorable service" or Uricoli analysis to determine whether any portion of the same are subject to forfeiture. As such, the Board's assertions as to the scope and viability of Uricoli are legally erroneous, altogether bewildering, and must be rejected.

### **CONCLUSION**

For all the foregoing reasons and for all the reasons previously set forth in his initial brief, the Appellant, Michael Picariello, submits the Board of Trustees, Police and Firemen's Retirement System acted arbitrarily, capriciously, and unreasonably in determining Appellant was categorically ineligible from receiving deferred retirement benefits and, thus, dismissing his appeal for the same.

Consequently, this Honorable Court must enter an Order reversing the Board's determination and requiring the Board to conduct an "honorable service" analysis pursuant to Uricoli.

Respectfully Submitted,

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By: */s/ Donald C. Barbati*

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DCB

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MICHAEL PICARIELLO,

Appellant,

V.

BOARD OF TRUSTEES, POLICE AND  
FIREMEN'S RETIREMENT SYSTEM  
OF NEW JERSEY,

Respondent.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

APPEAL OF ADMINISTRATIVE  
FINAL DECISION

Docket No. **A-001090-23T2**

ON APPEAL FROM:  
FINAL ORDER  
AGENCY DECISION  
Agency No. 3-67486

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**BRIEF OF RESPONDENT - BOARD OF TRUSTEES, POLICE AND  
FIREMEN'S RETIREMENT SYSTEM OF NEW JERSEY**

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

Appellant (“Petitioner”), a former Corrections Officer and Sergeant for the Hudson County Department of Corrections appeals from the denial by Respondent Board of Trustees, Police and Firemen’s Retirement System of New Jersey (“the Board”) of Petitioner’s application for deferred retirement benefits (“DR”) (Aa61).<sup>2</sup>

On November 16, 2023, the Board properly adopted the decision of Administrative Law Judge Susana E. Guerrero (hereinafter “ALJ Guerrero”) (Aa61). ALJ Guerrero denied Petitioner’s application for deferred retirement benefits as a matter of law and granted the Board’s Motion for Summary Decision (Aa52-60). ALJ Guerrero found that Petitioner was removed from employment on charges of misconduct directly related to his employment and in accordance with applicable law, Petitioner is ineligible for deferred retirement (Ibid.)

Petitioner was employed as a Corrections Officer with the Hudson County Department of Corrections (hereinafter “Hudson County DOC”) in 1990 and enrolled into the Police and Firemen’s Retirement System (hereinafter “PFRS”) as a condition of employment (Aa1; Aa53). He achieved the rank of Sergeant in or about 1995 (Aa53.).

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<sup>1</sup> Because the Procedural History and Counterstatement of Facts are closely related, they are combined to avoid repetition and for the Court’s convenience.

<sup>2</sup> “Aa” refers to Petitioner’s Appendix.



On May 31, 2006, Petitioner was subjected to a random urinalysis in accordance with the Guidelines of the Office of the Attorney General, New Jersey Department of Law and Public Safety, as adopted by the Hudson County DOC's employment policies. (Aa53). May 31, 2006 was not the first time that Petitioner was subjected to a random urinalysis. (Aa4). The urinalysis report, dated July 12, 2006, revealed Petitioner tested positive for the metabolite of cocaine, which is present in the body after ingesting cocaine and after the body starts processing its disposal. (Aa3; Aa53). Thereafter, the County served Petitioner with a Preliminary Notice of Disciplinary Action (hereinafter "PNDA")(Aa4), and a Notice of Immediate Suspension (Aa5) on July 26, 2006. The PNDA referenced Petitioner's urinalysis result of "Cocaine-positive", and cited six employment charges:

- 1) N.J.A.C. 4a:2-2.3(A)1 *Incompetency, inefficiency or failure to perform duties;*
- 2) N.J.A.C. 4a:2-2.3(A)2 *Insubordination*
- 3) N.J.A.C. 4a:2-2.3(A)3 *Inability to Perform Duties*
- 4) N.J.A.C. 4a:2-2.3(A)6 *Conduct Unbecoming of a Public Employee*
- 5) N.J.A.C. 4a:2-2.3(A)7 *Neglect of Duty*
- 6) N.J.A.C. 4a:2-2.3(A)11 *Other Sufficient Cause*

(Aa4).

A departmental hearing was thereafter conducted with regard to the charges set forth in the PNDA (Aa54). The charges were thereby sustained during the hearing on June 30, 2008, and Petitioner was removed from his position pursuant to a Final Notice of Disciplinary Action (Aa6; Aa54). The effective date of his

termination was July 16, 2008, at which time Petitioner had fifteen (15) years and nine (9) months of service and/or credit in the PFRS, and he had not yet reached age fifty-five (Aa54).

Petitioner appealed his removal, and the matter was transmitted to the Office of Administrative Law (hereinafter “OAL”) for a hearing (Aa7; Aa54). The OAL conducted two hearings on December 8, 2009 and March 25, 2010 (Ibid.). On December 20, 2010, an OAL Initial Decision sustained the charges and affirmed Petitioner’s employment removal (Ibid.). Following a further appeal to the New Jersey Civil Service Commission (hereinafter “Commission”), a Final Decision dated February 17, 2011, upheld the employment removal, and adopted the findings of fact and conclusions of law set forth in the OAL’s Initial Decision of December 20, 2010 (Aa25-Aa34; Aa54). Thereafter, Petitioner sought further relief with the Appellate Division, and the Appellate Division affirmed the Commission’s Final Decision on July 9, 2012 (Aa35-Aa43; Aa54). A certification with the New Jersey Supreme Court was then filed, but the Petition was denied on December 4, 2012 (Aa44.).

Petitioner filed an application for deferred retirement benefits on July 6, 2019 (Aa45-Aa47; Ra1), of which the Board denied on January 13, 2020 (Aa48-Aa49; Aa55). Thereafter, Petitioner appealed the Board’s determination, and the matter was transmitted to the OAL where it was filed as a contested case on July 13, 2022

(Aa50; Aa51; Aa53).

Following several prehearing conferences with the ALJ, the Board filed a motion for summary decision on June 9, 2023 (Aa53). Petitioner filed an opposition motion on June 28, 2023, and the Board filed a reply brief on August 9, 2023 (Aa53). Petitioner filed a sur-reply on August 17, 2023, and oral argument was held on August 22, 2023 (Aa53).

ALJ Guerrero’s Initial Decision dated September 29, 2023 granted the Board’s Motion for Summary Decision, concluding that Petitioner was removed from employment due to misconduct directly related to his employment, finding that a “sufficient nexus between Picariello’s employment as a sergeant, a sworn law enforcement officer, and the offense for which he was disciplined—testing positive for the use of an illegal drug, cocaine, in the workplace.” (Aa58). Petitioner filed a Notice of Appeal with the New Jersey Appellate Division on December 11, 2023 (Aa66-68).

### **STANDARD OF REVIEW**

On judicial review of an administrative agency determination, courts have a limited role to perform. Gerba v. Board of Trustees, Public Employees Retirement System, 83 N.J. 174, 189 (1980) (citations omitted). An administrative agency’s determination is presumptively correct, and on review of the facts, this Court will

not substitute its own judgment for the agency's where the agency's findings are supported by sufficient credible evidence. Ibid.; see also Campbell v. New Jersey Racing Comm'n, 169 N.J. 579, 587 (2001); Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). If the Appellate Division is satisfied after its review that the evidence and the inferences to be drawn therefrom support the agency head's decision, then it must affirm even if the court feels that it would have reached a different result. Campbell, 169 N.J. at 587.

Only where an agency's decision is clearly arbitrary, capricious or unreasonable or unsupported by sufficient credible evidence in the record may it be reversed. Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980); Atkinson, 37 N.J. at 149. Moreover, the party challenging the validity of the administrative decision bears the burden of showing that it was "arbitrary, unreasonable or capricious." Boyle v. Riti, 175 N.J. Super. 158, 166 (App. Div. 1980) (internal citations omitted). "The precise issue is whether the findings of the agency could have been reached on substantial credible evidence in the record, considering the proofs as a whole. Close v. Kordulak Bros., 44 N.J. 589 (1965).

Further, although a person eligible for benefits is entitled to a liberal interpretation of a pension statute, "eligibility [itself] is **not** to be liberally permitted." Smith v. Dep't of Treasury, Div. of Pensions & Benefits, 390 N.J. Super. 209, 213 (App. Div. 2007). "Our courts have long been cognizant that the pension

boards "are fiduciaries and therefore have a duty to protect the [pension] fund[s] and the interests of all beneficiaries thereof[,]" and not just the individual member seeking a retirement allowance." Oliveria v. Board of Trs., 2016 N.J. Super. Unpub. LEXIS 1916 (August 17, 2016)<sup>3</sup> at 5 (Ra1), *citing* Mount v. Bd. of Trs., Pub. Emps.' Ret. Sys., 133 N.J. Super. 72, 86, 335 A.2d 559 (App. Div. 1975).

As will be further discussed and analyzed, Petitioner was terminated as a result of misconduct directly related to his employment, thereby rendering him ineligible for deferred retirement benefits in accordance with applicable case and statutory authority.

## LEGAL ARGUMENT

### **I. THE BOARD'S DECISION THAT PETITIONER IS NOT ENTITLED TO DEFERRED RETIREMENT BENEFITS IS SUPPORTED BY SUFFICIENT, CREDIBLE EVIDENCE IN THE RECORD AND SHOULD BE AFFIRMED**

*N.J.S.A. 43:16A-11.2* is the governing statute for deferred retirement benefits. *N.J.S.A. 43:16A-11.2* provides in pertinent part:

"Should a member, after having established 10 years of creditable service, be separated voluntarily or involuntarily from service, before reaching age 55, and **not by removal for cause on charges of misconduct or delinquency**, such person may elect to receive the payments provided for in section 11 of P.L.1994, c. 255 or section 16 of P.L.1964, c. 241, or a deferred retirement allowance, beginning on the first day of the month following his attainment of age 55 and the filing of an application therefore..."

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<sup>3</sup> "Ra" refers to Respondent's Appendix

See also Oliveira v. Board of Trs., 2016 N.J. Super. Unpub. LEXIS 1916.<sup>4</sup>

Hence, the applicable pension statute authorizes an automatic forfeiture where deferred retirement benefits are concerned upon the “removal for cause on charges of misconduct or delinquency.” It is undisputed that Hudson County DOC conducts random urinalyses on Correctional Sergeants and Officers as part of their employment policies. (Aa53). A urinalysis that tests positive for an illegal substance is a strict violation of Hudson County DOC’s policies. (Ibid.) Petitioner, a Correctional Sergeant, tested positive for the metabolite of Cocaine, which means he ingested Cocaine, an illegal substance. (Aa3; Aa53). Following Petitioner’s employment violation, he was then charged with six (6) separate consequential NJ Administrative Code employment charges that culminated from his employment violation. (Aa3; Aa6; Aa5-Aa6). His subsequent suspension and eventual termination occurred following his requested hearing, which sustained the findings of the urinalysis result and the six separate violations of the NJ Administrative Code.

Petitioner contends that he was not removed from conduct directly related to his employment, and therefore *N.J.S.A. 43:16A-11.2* is inapplicable. He asserts that the only conduct related to his employment involved his mere production of a urine sample that later tested positive for Cocaine. Instead, he argues that the Board

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<sup>4</sup> Pursuant to R. 1:36-3, the undersigned is unaware of any contrary precedent to this unpublished opinion and a copy of the unpublished opinion is attached hereto.

incorrectly determined a relationship between the conduct and his employment. He points to the fact that he was never accused of utilizing a controlled dangerous substance in the workplace or reporting to work under the influence thereof. Therefore, he attempts to conclude that producing a Cocaine-positive urine sample in accordance with an employment urinalysis is not evidence that he engaged in misconduct directly related to his employment.

Petitioner's argument is outright absurd. Employment policies regarding the random urinalysis of Correctional Sergeants as authorized by the Office of Attorney General, and adopted by the Hudson County DOC, are implemented to ensure that Correctional Sergeants are not taking illegal substances, an action of which violates the law. Reporting to work with illegal drugs present in the body is in conflict with a Correctional Sergeant's duties of managing and rehabilitating inmates incarcerated for criminal violations of the law, including drug offenses. Random urinalysis policies promote Hudson County DOC's retention of law-abiding employees and prevents illegal drug abuse. Therefore, the record reflects unambiguously, that Petitioner was terminated due to misconduct causally related to his employment because he reported to work with illegal drugs in his system. (Aa6). Whether or not he presented to work as noticeably impaired is debatable and irrelevant to his employment violation. As provided for explicitly by the governing statute, *N.J.S.A. 43:16A-11.2*, Petitioner is barred from being able to elect his deferred retirement

benefits.

Petitioner cites State v. Hupka, 203 N.J. 222 (2010) and In re Hess, 422 N.J. Super. 27 (App. Div. 2011) as examples in which the Courts in each matter failed to find a nexus between the employment position and the conduct at issue. Petitioner relies on these cases as justification that his matter should be determined similarly. However, the facts contained in both of these are readily distinguishable from this case.

Hupka concerns a sheriff's officer who was off duty and visited a female acquaintance, whom he previously had a romantic relationship with. Heavy drinking was involved during the visit, and the female alleged that she was subjected to unwanted touching and filed a criminal complaint. See Hupka at 222. Hupka admitted to fondling the female without her consent during this visit and later plead guilty to one count of 4<sup>th</sup> degree criminal sexual content. Id. The issue before the Supreme Court determined whether or not Hupka's criminal conviction forfeited his pension. Id. at 226.

In its determination regarding the appropriateness of forfeiture, the Court conducted an analysis into whether a substantial nexus existed between the offending conduct and his sheriff's officer position. See Hupka at 227-28. In its review, the Court noted that although this conduct was egregious, criminal and violated employment policies, a substantial nexus between the conduct, and his job could not



be found and his pension was not forfeited Id. at 232.

In reaching its holding, the Court relied on the fact that Hupka was not at work or engaged in any work duties at the time, nor was he wearing his official uniform during the incident. Id. at 222, 233. Furthermore, the female acquaintance was not a random member of the public but someone whom he had a previous romantic relationship with. Id. Following its analysis, the Court declined to establish a causal nexus between the misconduct and his employment, stating that there was no relation to “his office or its trappings” in the commission of the offense. Id. at 236.

Similarly, In re Hess, 422 N.J. Super. 27 (App. Div. 2011) has a significantly varying fact pattern from the current matter. Hess was employed as a Geographic Information Specialist with the New Jersey Office of Information Technology. While traveling in her personal vehicle during her personal time, she drove under the influence and crashed head-on into an oncoming vehicle. See Hess at 30. The crash caused significant injuries to the passengers of the other vehicle. Id. Pursuant to a plea agreement, Hess plead guilty to two counts of assault by auto, and she was subjected to employment termination. Id. at 31-2.

Thereafter, Hess applied for deferred retirement benefits, which the Board denied Id. at 31. The Appellate Division reviewed the Board’s decision and found that the Board’s determination was incorrect. Id. at 30. Before reaching its conclusion, the Court reviewed the facts and circumstances in order to identify a

sufficient nexus between the misconduct and her employment, in accordance with the standard set forth by *N.J.S.A. 43:15A-38*. Through its review and analysis, the Court in Hess determined that the conduct was wholly unrelated to Hess's position as a Geographic Information Specialist in the Office of Information Technology. Furthermore, the incident occurred during Hess's personal time, and in her personal vehicle. Therefore, the Court held that the misconduct "had an insufficient nexus to warrant the forfeiture of deferred retirement benefits" in accordance with the statute. Id. at 36.

Unlike the petitioners in Hopka and Hess, the Petitioner here violated an employment policy while he was engaged in his official work capacity and at his place of employment. Petitioner was fully aware that he was subject to random urinalysis at any time. After his urine was collected and it was found to test positive for Cocaine, Petitioner was suspended and formally charged with multiple work violations that necessarily arose from the failed urinalysis (Aa6). After a hearing, he was ultimately terminated when the charges against him were sustained from his work-related conduct. Quite simply, the facts of this case do not align with the fact patterns of Hopka or Hess, in which both incidents of misconduct were completely unrelated to the employment.

## II. PETITIONER IS NOT ENTITLED TO AN HONORABLE SERVICE ANALYSIS

Petitioner argues that the Board erroneously denied him an “honorable service” analysis pursuant to Uricoli v. Board of Trustees, Police and Firemen’s Retirement System, 91 N.J. 62 (1982). The Uricoli decision set forth a balancing test and analysis to be applied when an applicant for *accidental disability* retirement has also engaged in employment misconduct that threatens forfeiture of the applicant’s pension rights. See Uricoli at 78. In accordance with the Uricoli balancing test, a pension could also be partially forfeited instead of wholly forfeited due to the misconduct. In adopting the balancing test, the Court stated that it was “striving to effectuate the intention of the Legislature” at the time.

Nevertheless, Petitioner’s reliance on the Uricoli case as justification for his entitlement to an “honorable service” analysis is flawed for several reasons. First, the Uricoli case concerns an application for accidental disability retirement benefits, and is inapplicable to the matter at hand, which concerns an application for deferred retirement. See Uricoli at 73. There are differing legal standards that govern accidental disability benefits as opposed to deferred retirement benefits. See Uricoli at 73-4. In fact, the Uricoli Court mentions this difference, and references the fact that the Petitioner, Uricoli, would not have been permitted to obtain deferred retirement benefits utilizing the “honorable service” analysis as he was able to do for his accidental disability retirement application. Id.

The Uricoli Court specifies more thoroughly in a footnote to its analysis and states:

It is therefore evident, in light of this express provision for forfeiture in the case of an employee who seeks early retirement benefits and who was removed for “cause of charges of misconduct or delinquency,” that Uricoli is ineligible to obtain pension benefits under this provision.

Id. at 74 n.4.

The Petitioner in this current matter was evidently removed from employment “for cause” as the direct result of misconduct related to his employment. As such, he is not entitled to an analysis within the purview of the Uricoli decision because he is not seeking accidental disability benefits but deferred retirement benefits. See also J.A.W. v. Bd. of Trs., 2022 N.J. Super. Unpub. LEXIS 331 (App. Div. Mar. 2, 2022)<sup>5</sup> (Ra2)

In J.A.W. v. Bd. of Trs., J.A.W. faced criminal charges directly related to his employment and consented to his removal from employment “for cause.” Id. at \*4. Thereafter, the Board denied J.A.W.’s deferred retirement application since his removal from employment was “for cause.” Id. at \*2. J.A.W. appealed the Board’s decision arguing that he was entitled to the analysis in accordance with Uricoli. Id. at \*4-5. The Appellate Division rejected J.A.W.’s arguments, referencing that the

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<sup>5</sup> Pursuant to R. 1:36-3, the undersigned is unaware of any contrary precedent to this unpublished opinion and a copy of the unpublished opinion is attached hereto.

terms of the statute applicable to deferred retirement benefits condition a [PFRS] member's eligibility upon "the absence of any for-cause removal from employment"...therefore the "balancing test of Uricoli is simply inapplicable. " Id. at \*9.

Lastly, even if Uricoli were applicable here, which it is not, our Supreme Court in State v. Anderson, 248 N.J. 53 (2021) distinguished the Uricoli case and referenced how it is no longer current. The Anderson Court reviewed and referenced later statutory amendments in 2007, and case law that followed and determined that the application of the Uricoli balancing test, which is inapplicable here, is no longer applied in the manner it was at the time of the decision. Id. at 75-6.

### **CONCLUSION**

The facts of this matter are straightforward with a strict statutory application. The legal analysis and evidentiary support overwhelmingly support the Board's decision to deny Petitioner's deferred retirement benefits. For the foregoing reasons, the Board's denial of Petitioner's AD application should be affirmed.

Respectfully submitted,



**Leslie A. Parikh, Esq.**  
Gebhardt & Kiefer, P.C.

Dated: July 22, 2024

**MICHAEL PICARIELLO,**

**Appellant,**

**v.**

**BOARD OF TRUSTEES,  
POLICE AND FIREMEN'S  
RETIREMENT SYSTEM  
OF NEW JERSEY,**

**Respondent.**

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION**

**DOCKET NO: A-001090-23T2**

**ON APPEAL FROM A FINAL  
ADMINISTRATIVE ACTION OF THE  
POLICE AND FIREMEN'S  
RETIREMENT SYSTEM**

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**BRIEF IN SUPPORT OF APPELLANT, MICHAEL PICARIELLO'S  
NOTICE OF APPEAL TO SET ASIDE A DECISION OF THE POLICE  
AND FIREMEN'S RETIREMENT SYSTEM**

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## **PRELIMINARY STATEMENT**

The Appellant, Michael Picariello (hereinafter “Picariello”), challenges the final administrative action of the Board of Trustees, Police and Firemen’s Retirement System (hereinafter “Board”) dismissing his underlying appeal for deferred retirement benefits. In its decision dated November 16, 2023, the Board adopted the initial decision and recommendation of Administrative Law Judge Susana E. Guerrero (hereinafter “ALJ” or “ALJ Guerrero”), who determined Picariello did not qualify for deferred retirement benefits as a matter of law, thereby granting the Board’s Motion for Summary Decision.

The Board improperly adopted the ALJ’s ultimate decision to dismiss Picariello’s appeal. Specifically, the ALJ’s determination Picariello was removed for charges of misconduct directly related to his employment, thereby rendering him ineligible for deferred retirement benefits, was erroneous and legally infirm. In reviewing all the salient facts of this matter, it is clear Picariello was not removed for charges of misconduct directly related to his employment within the meaning of the applicable law.

Rather, Picariello was removed for charges unrelated to his employment and/or official duties. As such, he was not categorically ineligible from receiving deferred retirement benefits. As a result, this Honorable Court must reverse the Board’s final administrative action. To this end, the Court: (1) must determine

Picariello is eligible for deferred retirement benefits under the applicable law; and (2) require the Board to conduct an “honorable service” analysis to ascertain whether he [Picariello] should receive the full allotment of deferred retirement benefits he seeks or if any portion thereof is subject to forfeiture.

### **STATEMENT OF FACTS**

The operative facts of this matter are undisputed. Picariello became employed as a Corrections Officer with the Hudson County Department of Corrections in 1990. (Aa53). As a term and condition of his employment, Picariello was enrolled into the Police and Firemen’s Retirement System (hereinafter “PFRS”). (Aa1-2). Eventually, he achieved the rank of Sergeant in or about 1995. (Aa53). On May 31, 2006, Picariello was subjected to a random urinalysis. Ibid. The urinalysis report, dated July 12, 2006, revealed Picariello tested positive for benzodiazepines, the metabolite of cocaine after ingestion when the body begins the disposal process of that drug. (Aa3).

As such, the County served Picariello with a Preliminary Notice of Disciplinary Action dated July 26, 2006 seeking his removal from employment based upon the urinalysis results. (Aa4). To this end, the specifications to the disciplinary charges indicated:

On May 31, 2006, during a “Random Urinalysis” conducted at the Hudson County Correctional Facility, Sergeant Picariello was urine tested. On July 26, 2006, this Department received the Lab results of the aforementioned

Urinalysis. Sergeant Picariello tested “Positive” for COCAINE based on the results of the New Jersey State Toxicology Laboratory.

[Aa4.]

Subsequently, Picariello was suspended from employment without pay pending a departmental hearing regarding the charges lodged against him. (Aa5). Eventually, a departmental hearing was conducted on June 30, 2008, approximately two (2) years later. After the hearing, the charges against Picariello were sustained and he was officially removed from his position of employment by virtue of a Final Notice of Disciplinary Action served upon him. (Aa6) The effective date of his termination was July 16, 2008. (Aa54). At the time of his official termination, Picariello had fifteen (15) years and nine (9) months of service and/or credit in the PFRS. Ibid.

Picariello appealed his removal to the New Jersey Merit System Board, now known as the New Jersey Civil Service Commission (hereinafter “Commission”). (Aa54). In the normal course, the matter was transmitted to the Office of Administrative Law (hereinafter “OAL”) for adjudication. Ibid. To this end, hearings were conducted before the OAL on December 8, 2009 and March 25, 2010. Ibid. Thereafter, in an initial decision dated December 20, 2010, the Honorable Daniel B. McKeown, A.L.J. affirmed Picariello’s removal from employment. (Aa7-24). The initial decision was then sent to the Commission for consideration. (Aa25-

34). The Commission, in its Final Administrative Action dated February 17, 2011, accepted and adopted the Findings of Fact and Conclusions of Law contained in the initial decision as well as Judge McKeown's recommendation to uphold Picariello's removal. Ibid.

Subsequently, Picariello appealed the Commission's final decision to this Honorable Court. (Aa35-43). In an unpublished opinion dated July 9, 2012, the Appellate Division affirmed the Commission's decision and, thus, Picariello's removal from employment. Ibid. Picariello then filed a Petition for Certification with the New Jersey Supreme Court seeking review, but the Petition was denied by the Court on December 4, 2012. (Aa44).

### **PROCEDURAL HISTORY**

On July 6, 2019, Picariello filed an application with the PFRS for his retirement allowance. (Aa45-47). To this end, the Board only considered Picariello for deferred retirement benefits since those were the only pension benefits he was potentially eligible for based upon his years of service and/or credit in the PFRS. (Aa48).

At its meeting on January 14, 2020, the Board considered the circumstances which led to Picariello's removal as part and parcel to determining his eligibility for deferred retirement benefits. (Aa48-49). After doing so, the Board denied Picariello's application. Ibid. Specifically, the Board

determined Picariello was removed for charges of misconduct directly related to his employment and, therefore, was not eligible for deferred retirement benefits pursuant to N.J.S.A. 43:16A-11.2. Ibid. Instead, the Board found Picariello was only entitled to the return of his accumulated pension contributions. Ibid.

Picariello appealed the Board's determination, requesting that the matter be declared a contested case and transmitted to the OAL for adjudication. (Aa50). The Board granted Picariello's request and the matter was eventually assigned to ALJ Guerrero. (Aa51).

After several telephonic prehearing conferences took place, the Board filed a Motion for Summary Decision seeking to dismiss Picariello's appeal. (Aa53). Specifically, the Board argued Picariello did not qualify for deferred retirement benefits as a matter of law given the undisputed nature of the misconduct for which he was removed from public employment. (Aa52-53). Picariello filed opposition to the same. (Aa53). After the Board filed a reply brief and Picariello filed a sur-reply, oral argument was conducted before the ALJ on August 22, 2023. Ibid.

In an initial decision dated September 29, 2023, ALJ Guerrero granted the Board's Motion for Summary Decision, thereby dismissing Picariello's appeal. (Aa52-60). Specifically, ALJ Guerrero determined Picariello was removed from employment on charges of misconduct directly related to his employment. (Aa58).

Consequently, the ALJ concluded he is ineligible for deferred retirement benefits as a matter of law pursuant to N.J.S.A. 43:16A-11.2. Ibid.

Subsequently, Picariello filed exceptions to the initial decision and the Board replied to the same. (Aa61). On November 13, 2023, the Board met to review the record and the ALJ's initial decision. Ibid. After doing so, the Board voted to adopt the ALJ's decision to dismiss Picariello's appeal in its entirety. Ibid. Consequently, Picariello filed a Notice of Appeal with this Honorable Court on December 11, 2023. (Aa66-68).

### **STANDARD OF REVIEW**

An appellate court's review of an agency decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011). "An appellate court ordinarily will reverse the decision of an administrative decision only when the agency's decision is 'arbitrary, capricious or unreasonable or [ ] is not supported by substantial credible evidence in the record as a whole.'" Ramirez v. Dep't of Corr., 382 N.J. Super. 18, 23 (App. Div. 2005) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)) (alteration in original). In determining whether an agency's decision is arbitrary, capricious or unreasonable, reviewing courts assess:

- (1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law;
- (2) whether the record contains substantial evidence to support the findings on which the agency based its action;
- and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion

that could not reasonably have been made on a showing of the relevant factors.

[In re Carter, 191 N.J. 474, 482-83 (2007) (quoting Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995)).]

“A reviewing court ‘may not substitute its own judgment for the agency’s, even though the court might have reached a different result.’” Stallworth, 208 N.J. at 194 (quoting Carter, 191 N.J. at 483). “This is particularly true when the issue under review is directed to the agency’s special ‘expertise and superior knowledge of a particular field.’” Id. at 195 (quoting In re Hermann, 192 N.J. 19, 28 (2007)).

However, “an appellate court is ‘in no way bound by the agency’s interpretation of a statute or its determination of a strictly legal issue[.]’” Carter, 191 N.J. at 483 (quoting Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973)). Indeed, an agency’s “interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.” Manalapan Realty, L.P. v. Twp. Comm. of Twp. of Manalapan, 140 N.J. 366, 378 (1995).

## **LEGAL ARGUMENT**

### **I. THE BOARD’S DECISION TO ADOPT THE ALJ’S RECOMMENDATION TO DISMISS PICARIELLO’S APPEAL WAS ARBITRARY, CAPRICIOUS, AND UNREASONABLE (Aa61; Aa52-60).**

In reviewing this matter in its entirety, this case came down to one straightforward legal issue. Specifically, the issue presented in this case was whether



Picariello was removed from employment on charges of misconduct “**directly related to his employment.**” In her initial decision, ALJ Guerrero found the following:

Picariello was ultimately removed for job-related misconduct and delinquency when he tested positive for the use of cocaine, an illegal drug. The Civil Service Commission agreed and upheld Picariello’s removal in its Final Decision. Remaining drug-free was a condition of Picariello’s employment, but he presented to work with cocaine in his system, and subsequently failed the required drug test that was lawfully administered by his employer. I **FIND**, therefore, that there exists a sufficient nexus between Picariello’s employment as a sergeant, a sworn law enforcement officer, and the offense for which he was disciplined-testing positive for the use of an illegal drug, cocaine, in the workplace, which is prohibited and subject to termination.

[Aa58.]

Based upon her determination that Picariello was removed for charges of misconduct directly related to his employment, ALJ Guerrero granted the Board’s Motion for Summary Decision, thereby dismissing Picariello’s appeal for deferred retirement benefits. (Aa58).

It is our position that the Board’s determination to adopt the ALJ’s initial decision was arbitrary, capricious, and unreasonable. Specifically, the ALJ’s determination that Picariello was removed for charges of misconduct directly related to this employment should have been rejected by the Board. As set forth below, a review of the evidence in this case clearly indicates Picariello was not removed for

charges of misconduct directly related to his employment within the meaning of N.J.S.A. 43:16A-11.2. Instead, Picariello was removed for charges unrelated to his employment and/or official duties in accordance with the relevant case law.

As such, the Board's adoption of the ALJ's initial decision must be reversed. To this end, this Honorable Court must: (1) determine Picariello is eligible for deferred retirement benefits under the applicable law; and (2) require the Board to conduct an "honorable service" analysis regarding Picariello's application pursuant to Uricoli v. Board of Trustees, Police and Firemen's Retirement System, 91 N.J. 62 (1982) to ascertain whether Picariello should receive the full allotment of deferred retirement benefits he seeks or if any portion thereof is subject to forfeiture. To hold otherwise would deprive Picariello of the opportunity to obtain crucial retirement benefits he is legally entitled to. Such a result must not be permitted.

**II. THE BOARD ERRONEOUSLY ADOPTED THE ALJ'S CONCLUSION PICARIELLO WAS REMOVED FOR CHARGES OF MISCONDUCT DIRECTLY RELATED TO HIS EMPLOYMENT (Aa61; Aa52-60).**

In its final administrative action, the Board affirmed the ALJ's determination that Picariello was removed for charges of misconduct directly related to his employment within the meaning of N.J.S.A. 43:16A-11.2. (Aa61). To this end, the ALJ found there was a sufficient nexus between Picariello's employment as a Sergeant and the offense for which he was disciplined, failing a random urinalysis.

(Aa58). The Board's affirmation of the ALJ's determination was erroneous and belies the applicable law regarding what constitutes "conduct related to employment." Therefore, the Board's determination must be reversed and Picariello must be deemed eligible for deferred retirement benefits.

Suffice it to say, the dispute in this case centers upon the legal interpretation of the statute defining the eligibility of public employees to receive a deferred retirement allowance. Critically, pension statutes should be liberally construed and administered in favor of public employees because they represent deferred compensation for a government employee's service. Klumb v. Bd. of Educ. of Manalapan-Englishtown Reg'l High School Dist., 199 N.J. 14, 34 (2009); Geller v. Dep't of the Treasury of New Jersey, 53 N.J. 591, 597-98 (1969); Widdis v. Pub. Emp. Ret. Sys., 238 N.J. Super. 70, 78 (App. Div. 1990). "When considering forfeiture provisions which adversely impact on vested rights, strict construction of the statute is required." Widdis, 238 N.J. Super. at 78. Further, when reviewing pension disputes, Courts have recognized that "the public pension systems are bound up in the public interest and provide public employees significant rights which are deserving of conscientious protection." Zigmont v. Bd. of Trs., 91 N.J. 580 583 (1983).

The statute at issue here, N.J.S.A. 43:16A-11.2, provides in pertinent part:

Should a member, after having established 10 years of creditable service, be separated voluntarily or

involuntarily from service, before reaching age 55, and **not by removal for cause on charges of misconduct or delinquency**, such person may elect to receive the payments provided for in section 11 of P.L.1994, c. 255 or section 16 of P.L.1964, c. 241, or a deferred retirement allowance, beginning on the first day of the month following his attainment of age 55 and the filing of an application therefor...

[N.J.S.A. 43:16A-11.2 (emphasis added).]

In the case of In re Hess, 422 N.J. Super. 27 (App. Div. 2022), this Honorable Court unequivocally held that forfeiture of deferred retirement benefits is conditioned on an involuntary removal due to misconduct **related to the employment**. Therefore, the highlighted portion of the statute above is invoked whenever a PFRS member has been removed for cause on charges of misconduct that relate to his or her official duties. See also Borrello v. Bd. of Trs., Pub. Emps. Ret. Sys., 313 N.J. Super. 75, 78 (App. Div. 1998). To this end, this Court determined that the appellant's criminal conviction arising out of appellant's driving while intoxicated charges and subsequent removal from employment on account of the same was unrelated to her work and had an insufficient nexus to warrant the forfeiture of deferred retirement benefits. Ibid.

While what constitutes "conduct related to employment" as it pertains to deferred retirement benefits has not been explored in a published opinion since Hess, Courts have discerned from the words themselves that there must be a relationship

or nexus between the employment and the conduct leading to the termination. In re Jacalone, 2015 N.J. Super. Unpub. LEXIS 1576 (App. Div. 2015) (Aa62-65).

In Jacalone, the Court found N.J.S.A. 2C:51-2 instructive. (Aa62-65). N.J.S.A. 2C:51-2 concerns the consequences to public office holders and employees of convictions for certain crimes. N.J.S.A. 2C:51-2(a) requires a public employee who has been convicted of specified crimes to forfeit his or her public employment, including that the employee “is convicted of an offense involving or touching such office, position or employment.” N.J.S.A. 2C:51-2(a)(2). In addition, an employee “convicted or an offense involving or touching on his [or her] public office, position or employment, shall be forever disqualified from holding any office or position of honor, trust or profit under this State...” N.J.S.A. 2C:51-2(d). In 2007, the Legislature added additional language to subsections (a) and (d) to clarify that “as used in this subsection, ‘involving or touching such office, position or employment’ means that **the offense was related directly to the person’s performance in, or circumstances flowing from, the specific public office, position or employment held by the person.**” L.2007, c. 49 §5; N.J.S.A. 2C:51-2(a), (d) (emphasis added).

In Moore v. Youth Corr. Inst., 119 N.J. 256 (1990), the New Jersey Supreme Court found forfeiture appropriate when a corrections officer harassed his supervisor by stalking him at his home when off-duty. In McCann v. Clerk of Jersey City, 167 N.J. 331 (2001), the Supreme Court, commenting on Moore, noted that “the

petitioner's harassment of his co-employee...bore a direct and substantial relationship to their respective governmental positions." Id. at 323. The McCann Court held that "involving or touching on his public office" necessarily implied "a determination on the part of the Legislature to limit the scope of the disqualification provision to **crimes that are related directly to an individual's performance in, or circumstances flowing from, a specific office or position held by that individual.**" Id. at 321 (emphasis added).

Thus, a nexus between the position and the conduct at issue has not been found in several cases when official duties and/or employment relationships were not involved. For example, in State v. Hupka, 203 N.J. 222 (2010), the Supreme Court found no forfeiture by an off-duty police officer who pled guilty to criminal sexual conduct with a female acquaintance. Id. at 227, 239. Concluding that the conduct did not involve or touch upon the defendant's employment, the Court reasoned that "there was no relationship between defendant's employment as a police officer, the trappings of that office, or his work-related connections, and the commission of the offense to which he pled guilty, or to his victim[.]" Id. at 239; see also State v. Pavlik, 363 N.J. Super. 307, 312 (App. Div. 2003) (finding an insufficient nexus where the public employee committed acts of domestic violence against his grandfather and resisted arrest).

In this case, Picariello was not removed for charges of misconduct **directly related to his employment**, a necessary predicate for being deemed ineligible to receive deferred retirement benefits in accordance with Hess. Rather, Picariello was removed pursuant to the results of a random urinalysis conducted by his employer. Tellingly, the disciplinary charges underlying the removal did not allege Picariello was: (1) utilizing any controlled dangerous substances at the workplace; and/or (2) under the influence of any controlled dangerous substance while at work. Even more importantly, the drug test was not administered to Picariello based upon any “reasonable suspicion,” pattern of erratic behavior, or in connection with a specific, work-related incident.

Instead, the test was **randomly** administered pursuant to County and/or Department of Corrections policy. As a result, the charges, or more specifically the positive urinalysis results, did not relate to actions taken by Picariello during his employment or any type of negligence in connection with his work duties in any way. This crucial fact is undisputed.

As a result, and considering the liberal construction to be applied to pension statutes regarding public employees’ deferred compensation under the applicable law, it is evident Picariello was not removed on charges of misconduct directly related to his employment within the meaning of N.J.S.A. 43:16A-11.2. Instead, Picariello was removed on charges wholly unrelated to his employment and/or the

actual performance of his duties as a Corrections Sergeant with the County Department of Corrections. As aptly stated by the Supreme Court in Hupka, there was “no relationship” between Picariello employment as a Corrections Sergeant, “the trappings of that office, or his work-related connections, and the commission of the offense,” i.e. the positive urinalysis, which led to his removal. Therefore, despite the Board and ALJ’s finding to the contrary, there is an insufficient nexus between the charges and Picariello’s employment to warrant an automatic forfeiture and/or disqualification of his eligibility to deferred retirement benefits.

Under the Board and/or ALJ’s rationale, any type of conduct an employee is removed under that constitutes a violation of: (1) municipal, county or state policy; or (2) an implicit code of conduct constitutes misconduct “related to employment,” thereby precluding an employee from being eligible for deferred retirement benefits. This is a misreading of Hess, Hupka, and the case law cited above by impermissibly expanding the type of conduct which prohibits an employee from receiving deferred retirement benefits. Such an approach must not be sanctioned by this Honorable Court.

To this end, if violating an implicit and/or generic code of conduct could always be deemed “directly related to employment,” the appellants in Hess and Hupka would certainly have been deemed ineligible for deferred retirement benefits. Significantly, however, this was not the case, despite the egregious nature of their



respective offenses. In deeming Picariello ineligible for deferred retirement benefits in this matter, wherein significant issues pertaining to the validity of the urinalysis results were present in the underlying disciplinary proceedings, the Board and/or ALJ clearly contravened the relevant case law set forth in Hess and Hupka. As such, the Board's determination must be reversed.

Given Picariello is eligible for the receipt of deferred retirement benefits, he is entitled to a Uricoli, or N.J.S.A. 43:1-3 "honorable service" analysis, wherein which various equitable factors are balanced to see if he should receive the same or any portion thereof. On account of the Board not conducting the same in its initial, underlying consideration of Picariello's application for deferred retirement benefits, the Board clearly erred and ultimately must be compelled to do so.

### **CONCLUSION**

For all the foregoing reasons, the Appellant, Michael Picariello, submits the Board of Trustees, Police and Firemen's Retirement System improperly adopted ALJ Guerrero's recommendation and, therefore, the decision to dismiss Picariello's appeal for deferred retirement benefits must be reversed. As evidenced above, Picariello was not removed for charges of misconduct directly related to his employment in accordance within the meaning of N.J.S.A. 43:16A-11.2. As such, he was not categorically ineligible from receiving deferred retirement benefits.

Consequently, this Honorable Court must: (1) enter an Order reversing the Board's determination; (2) determine Picariello is eligible for deferred retirement benefits under the applicable law; and (3) require the Board to conduct an "honorable service" analysis pursuant to Uricoli.

Respectfully submitted,

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Dated: June 20, 2024