

PHILIP D. MURPHY

Governor

SHEILA Y. OLIVER *Lt. Governor*

DEPARTMENT OF THE TREASURY
DIVISION OF PENSIONS AND BENEFITS
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January 16, 2020

ELIZABETH MAHER MUOIO
State Treasurer

JOHN D. MEGARIOTIS

Acting Director

Sent via e-mail to:

Law Offices of Daniel J. Zirrith, LLC Daniel J. Zirrith, Esquire

RE: Dianne Merwin
PERS OAL DKT. NO. TYP 05256-2018

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Dear Mr. Zirrith:

At its meeting on December 11, 2019, the Board of Trustees of the Public Employees' Retirement System (PERS) considered the October 7, 2019, Initial Decision of the Hon. Elissa Mizzone Testa, ALJ, regarding your client, Dianne Merwin's appeal of the Board's denial of her application for Accidental Disability retirement benefits. The Board also considered the exceptions filed by Deputy Attorney General Christopher Meyer, and your reply thereto, dated November 15, 2019. After careful consideration, the Board adopted the ALJ's Findings of Fact and legal conclusion denying Ms. Merwin's application for Accidental Disability retirement benefits but rejected the ALJ's conclusion that she is eligible for Ordinary Disability retirement benefits. Thereafter, the Board directed the Secretary to draft Findings of Fact and Conclusions of Law consistent with its determinations, to be presented to the Board for discussion and review.

At its meeting of January 15, 2020, the Board approved the following Findings of Fact and Conclusions of Law.

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FINDINGS OF FACT

CONCLUSIONS OF LAW

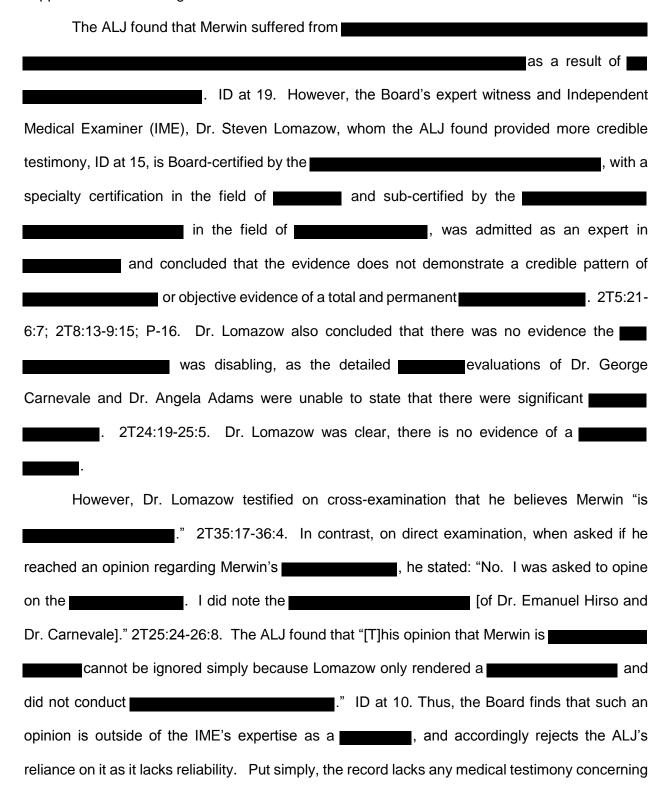
The Board adopted the ALJ's conclusion that Merwin is not eligible for Accidental Disability retirement benefits, finding that the alleged incident did not directly result in a disability. ID at 14. However, the Board rejected the ALJ's legal conclusion that Merwin is eligible for Ordinary Disability retirement benefits because of the totality of all of her medical conditions. ID at 19-20.

The case law provides that a PERS member is entitled to a liberal interpretation of a pension statute, ID at 19, however, "eligibility [itself] should not to be liberally permitted." In re Adoption of N.J.A.C. 17:1-6.4, 454 N.J. Super. 386, 399 (App. Div. 2018). The Board finds that Merwin failed to satisfy her burden of proof that she is eligible for Ordinary Disability retirement

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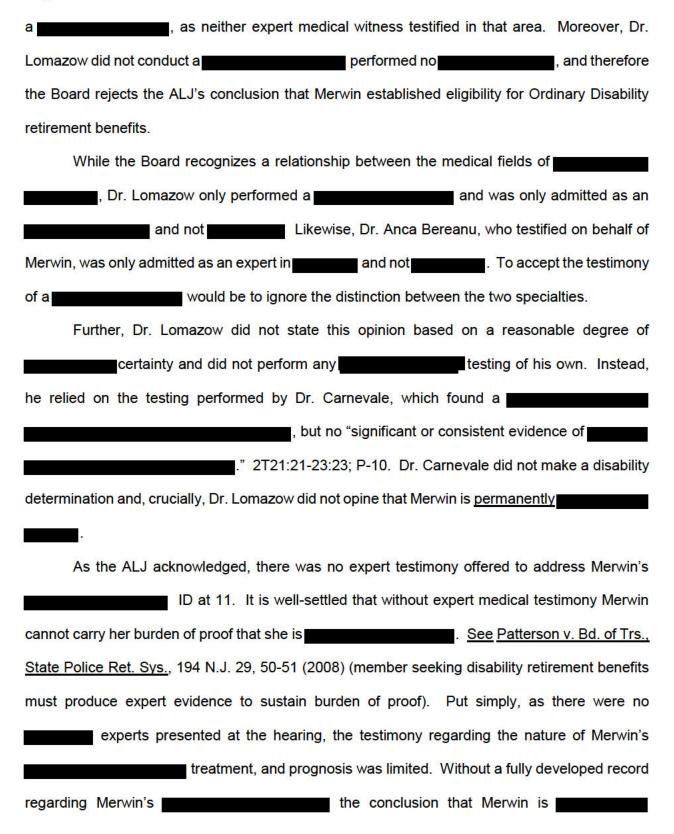
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benefits because she failed to establish sufficient credible medical testimony and evidence to support the ALJ's findings.



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disabled is not reliable and the Board rejects the ALJ's legal conclusion that she sustained her

burden to establish eligibility for Ordinary Disability retirement benefits.

Based on the above, the Board adopted the ALJ's Findings of Fact, as well as the legal

conclusion that Merwin is not eligible for Accidental Disability retirement benefits. However, the

Board rejected the ALJ's legal conclusion that she is eligible for Ordinary Disability retirement

benefits. This correspondence shall constitute the Final Administrative Determination of the

Board of Trustees of the Public Employees' Retirement System.

You have the right to appeal this final administrative action to the Superior Court of New

Jersey, Appellate Division, within 45 days of the date of this letter in accordance with the Rules

Governing the Courts of the State of New Jersey. All appeals should be directed to:

Superior Court of New Jersey

Appellate Division Attn: Court Clerk

PO Box 006

Trenton, NJ 08625

Sincerely,

Jeff S. Ignatowitz, Secretary

Board of Trustees

Public Employees' Retirement System

G-7/JSI

C: D. Lewis (ET); L. Milton (ET); L. Hart (ET); P. Sarti (ET)

DAG Meyer (ET)

OAL, Attn: Library (ET)

Dianne Merwin