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MEETING NO: 15-05-D
BENEFIT REVIEW COMMITTEE

The Regular Meeting of the Benefit Review Committee of the Board of Trustees was held Thursday, May 21, 2015. Present at the meeting were Committee members, Copper, Miller, Kuehne, Piechocinski and Stanish, IMRF medical consultant, Dr. Rao, staff members, Davis, Dixon, Janicki-Clark, Kelly and Rockett.

Absent: Trustee Thompson

(15-05-01)(Visual roll call)

Mr. Piechocinski presided as chairperson and called the meeting to order at 11:06 a.m.

(15-05-02)(Total and Permanent Disability Termination – Sharlene A. Andoe – Newark School District - # 66)

Sharlene Andoe appeared before the Committee via teleconference. The Committee heard comments from Ms. Andoe, the Medical Consultant and staff. Finally, the Committee reviewed the written materials that were submitted to the Committee by staff.

After further discussion, the Committee recommends that the Board uphold staff's determination to terminate total and permanent disability benefits.

Motion: Copper
Second: Stanish
Ayes: Copper, Kuehne, Miller, Stanish and Piechocinski
Nays: None
Motion Passed: 5-0

(15-05-03)(Temporary Disability Denial – Andelia D. Hatt – Wesclin School District #3)

Andelia Hatt and her husband, Gerald Hatt, appeared before the Committee via teleconference. The Committee heard comments from Ms. Hatt and her husband regarding her conditions. Ms. Hatt answered questions from the Committee. The Committee heard comments from the Medical Consultant and staff. Finally, the Committee reviewed the written materials that were submitted to the Committee by staff.

After further discussion, the Committee recommends that the Board uphold staff's determination to deny temporary disability benefits.

Motion: Kuehne
Second: Miller
Ayes: Miller, Kuehne, Stanish

Nays: Copper, Piechocinski
Motion Passed: 3-2

Dr. Rao left the meeting

Kathy O'Brien entered the meeting

(15-05-04)(Disability Offset – Nicholas Massey – McLean County # 3041)

Mr. Massey did not appear before the Committee but was represented by his attorney Hugh Rowden.

BACKGROUND

Nicholas Massey, who was employed by the McLean County Sheriff's Department as a deputy, sustained a back injury in an automobile accident while working in April of 2012 and received disability benefits from IMRF for this injury during the time period of May 4, 2013 through August 31, 2014 (he had received TTD through 5/3/2013). In August of 2014 he received an award via settlement under the Worker's Compensation Act totaling $130, 000.000 ($21,559.37 attorney's fees and $8,440.63 in medicals were deducted for a total of $100.000.00 to be paid to Mr. Massey) IMRF disability benefits were offset by Mr. Massey's Worker's Compensation award, creating a prepayment of IMRF benefit totaling $ 31,451.45. Mr. Massey was advised of this on September 29, 2014. Mr. Massey, through his attorneys by letter of October 8, 2014, argued that IMRF miscalculated his prepayment. Kathy O'Brien responded by letter dated November 18, 2014 stating that IMRF would offset for the settlement amount because the settlement was for the same injury for which Mr. Massey received disability benefits and the fact that Mr. Massey's settlement may have been for future effects had no impact on the statutory requirement that IMRF has to reduce benefits. It is from this decision that Mr. Massey has appealed. Mr. Rowden argued that because the settlement payment specified that the $100,000.00 represented "a decreased earning capacity of approximately $45.57 per week for 2,194.4 weeks", that the offset should be for the amount of $45.57 per week during the time that Mr. Massey received his disability payments.

ISSUES

Is IMRF required to reduce Mr. Massey's temporary disability benefits received for the period of May 4, 2013 through August 31, 2014?
If IMRF is required to reduce Mr. Massey's temporary disability benefit, in what amount is the offset?

SCOPE OF REVIEW

The Committee heard testimony and reviewed the entire record presented.

FINDINGS AND CONCLUSIONS

- Mr. Massey received IMRF disability payments for the back injury which occurred in April of 2012 in the amount of approximately $2,171.76 per month from May 4, 2013 through August 31, 2014. Total benefits received from IMRF were $31,596.94.

- On July 27, 2013 Mr. Massey signed a Disability Payment Agreement with IMRF which specified that the reduction amount of his disability benefit was $2,161.76 and such agreement clearly stated that Mr. Massey agreed to repay IMRF any overpayment resulting from a Workers' Compensation offset. (R. p. 57)

- A letter explaining the Disability Payment Agreement was sent to Mr. Massey on July 25, 2014. This letter advised that because Mr. Massey had applied for workers' compensation benefits, IMRF was required to reduce his disability benefit to $10 per month unless he signed the Disability Payment Agreement which was being made available to avoid financial hardship. It was made clear that the agreement may impact future benefits. (R. p. 53)

- Mr. Massey filed a claim with the Workers' Compensation Commission for the same injury for which he filed a claim for IMRF disability benefits.

- Mr. Massey settled his Workers' Compensation claim on August 29, 2014 for the amount of $130,000.00. Mr. Massey was to receive a lump sum of $100,000.00 which the settlement specified represented "a decreased earning capacity of approximately $45.57 per week for 2,194.4 weeks". IMRF was not a party to the settlement agreement.

- Section 7-222 of the Illinois Pension Code ("the IMRF offset") states:

Whenever any person is entitled to a disability or survivors benefit under this Article and to benefits under the Workers' Compensation Act or the Workers' Occupational Diseases Act in relation to the same injury or disease, the monthly benefits payable under this Article shall be reduced by the amount of any such benefits payable under either of those Acts, except payments for medical, surgical and hospital services, non-medical remedial care and treatment rendered in accordance with a religious method of healing recognized by the laws of this State, and for artificial members or appliances, and fixed statutory payments for the loss of or the permanent and complete loss of the use of any bodily member, provided that the monthly benefit payable under this Article shall not be reduced to less than $10 per month. If the benefits deductible under this paragraph are stated in a weekly amount, the monthly amount for the purposes of this Section shall be 4 1/3 times the weekly amount.

- Gentry v. IMRF, (4th District 1981) 182 Ill. App. 3d 494 provides that the legislative intent behind the IMRF offset is to prevent a windfall or double recovery of benefits.

- Wright v Board of Trustees of SURS, 2014 Ill App (4th) 130719 deals with the SURS offset provision which contains different language than the IMRF offset but

considers the calculation of the offset period. The settlement agreement in Wright stated that the award was not payable until January 11, 2011 (180 days after its approval) and should only apply to SURS benefits paid after that date. SURS argued that the offset began on February 24 ,2007 and continued through May 22, 2010 despite the language in the settlement agreement regarding when it was payable. The Court found that construing the word payable to mean the date that payment is received is contrary to the purpose of the statute which is to prevent a double recovery.

- The Wright Court states that: "If this Court were to interpret the offset language as Wright suggests, SURS participants need only delay actual receipt of any workers' compensation award to avoid reimbursing SURS for any offset. The actual date is irrelevant. What is relevant is whether the worker's compensation award is being issued for the same period of time for which the SURS participant also received disability benefits."

- Wright did not dispute the SURS offset amount but the case can be said to stand for the proposition that the terms contained in a lump sum settlement agreement are of no consequence in computing the offset.

- This interpretation is in keeping with a 1981 Attorney General Opinion which recognized that a workers' compensation settlement agreement cannot bind a state pension system with respect to disability benefits. 1981 Ill. A.G. Op. No. 81-026 (July 28, 1981)

- Allowing proration language contained in a lump sum settlement agreement to control how much IMRF disability is offset would thwart the legislative intent of the IMRF offset. While the contract purports to be a settlement which reflects a decreased earning capacity of $45.57 per week over 2,194.4 weeks, it was not a benefit paid in a weekly amount, it was paid in a lump sum. IMRF should offset dollar per dollar regardless of the attempt to spread the settlement out over a larger period of time to avoid the offset.

- This interpretation is in keeping with Section 5.40 B of the IMRF Authorized Agent's Manual provides, in part, that "The IMRF monthly benefit is adjusted for a lump sum settlement on the basis of converting the lump sum amount into a monthly workers' compensation amount, until the total withhold equals the amount of the lump sum payment".

- Mr. Massey received IMRF disability benefits in the amount of $31,596.94 and he should have received $145.49, per the reduction requirement of 40 ILCS 5/7-222. A prepayment of benefits exists of $31,451.45 and IMRF has the ability to recover this amount pursuant to 40 ILCS 5/7-217(c)

MOTION

After further discussion, Mr. Kuehne moved to recommend that the committee uphold the staff determination regarding the dollar to dollar offset for disability benefits by a lump sum workers' compensation claim and affirm the prepayment of benefits determined by staff. Mr. Miller seconded the motion.

Motion: Kuehne
Second: Miller
Ayes: Copper, Miller, Kuehne, Stanish and Piechocinski
Nays: None
Motion Passed: 5-0

(15-05-05)(Public Comments)

There were no public comments made

(15-05-06)(Adjournment)

Ms. Copper made a motion to adjourn at 2:33 p.m. Seconded by Ms. Stanish.

Motion passed by unanimous voice vote

The next regular scheduled meeting of the Committee will be at 11:00 a.m. on Thursday July 23, 2015.

Chairperson _____ Date _____

Clerk _____ Date 7/23/15