



MEETING NO: 16-02 D
BENEFIT REVIEW COMMITTEE

The Regular Meeting of the Benefit Review Committee of the Board of Trustees was held Thursday, February 25, 2016. Present at the meeting were Committee members Copper, Kuehne, Piechocinski, and Stanish, IMRF medical consultant, Dr. Miller and Dr. Rao, staff members, Davis, Dixon, Rockett, and Janicki-Clark.

Absent: Trustees Miller and Thompson

(16-02-01)(Visual roll call)

Mr. Piechocinski presided as chairperson and called the meeting to order at 9:30 a.m.

(16-02-02)(Approval of prior meeting minutes)

The Benefits Manager presented the minutes from the Committee meeting held on December 17, 2015.

After discussion, Mr. Kuehne moved to approve the minutes. Seconded by Ms. Stanish.

Motion passed by unanimous voice vote

(16-02-03)(Allan K. Price) Findings and Conclusions of the IMRF Hearing Officer

IMRF Hearing Officer Michael Weinstein presented the following findings and Conclusions:

**BEFORE THE BOARD OF TRUSTEES OF THE
ILLINOIS MUNICIPAL RETIREMENT FUND**

In the Matter of:)
Allan K. Price) Hearing February 4, 2016
[Eligibility to Apply for Temporary)
Disability Benefits])

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Allan K. Price (hereinafter, the "Petitioner") was employed by Minooka School District 111, an Illinois Municipal Retirement Fund (hereinafter, "IMRF") employer, until January 15, 2015, when his employment was terminated. **Board Exhibits, page 5.** Subsequently, on February 18, 2015, the Petitioner commenced employment with

Community School District 203, a separate IMRF employer. **Board Exhibits, page 6.**

On November 9, 2015, IMRF staff received an "Employer Statement – Disability Claim" (IMRF Form 5.41) from the Petitioner's current employer, Community School District 203. **Board Exhibits, page 2.** Upon entering the form into the IMRF database ("Spectrum"), the system indicated that the Petitioner was ineligible to apply for temporary disability benefits since there was a 1-month gap in service during the 12 months immediately preceding the alleged disability. *Id.*¹

Consequently, staff advised the Petitioner that his claim for IMRF disability benefits was denied since he failed to meet the eligibility requirements due to the 1-month gap in service. **Board Exhibits, page 10-11.** Subsequently, the Petitioner timely appealed the staff decision. **Board Exhibits, page 4.**

Pursuant to the IMRF Non-Disability Appeal Procedures, a hearing was held on February 4, 2016, before Michael B. Weinstein, the duly designated IMRF Hearing Officer. Copies of all documentation submitted as evidence at this hearing were received into evidence as **Board Exhibits, pages 1 through 12, as well as a three page cover memo from staff.**

The Petitioner was given proper notice of the hearing. The Petitioner appeared at the hearing by way of teleconference and explained the factual basis for his appeal. Also present at the hearing, in addition to the Hearing Officer and the Petitioner, were Beth Janicki Clark, Associate General Counsel for IMRF, and Larice Davis, IMRF paralegal.

As a result of this hearing, the Board of Trustees of IMRF finds and determines as follows:

I. EVIDENCE AND TESTIMONY

Review of Written Documentation and Mr. Price's Presentation

1. The Petitioner is an IMRF participating employee, currently employed by Community School District 203. **Board Exhibits, page 6; Presentation by Petitioner.**
2. The Petitioner was employed by Minooka School District 111 until January 15, 2015. **Board Exhibits, page 5; Presentation by Petitioner.**
3. The Petitioner commenced new employment with Community School District 203 on February 18, 2015 and was re-enrolled as a participating employee, as of that

¹ Section 7-146(b) of the Illinois Pension Code (40 ILCS 5/7-146(b) provides, in pertinent part, as follows:

A temporary disability benefit shall be payable to a temporarily disabled employee provided:

1. He:

(i) has at least one year of service immediately preceding the date the temporary disability was incurred and has made contributions for at least the number of months of service normally required in his position during a 12-month period, or has at least 5 years of service credit, the last year of which immediately precedes such date; or

(ii) had qualified under clause (i) above, but had an interruption in service with the same participating municipality or participating instrumentality of not more than 3 months in the 12 months preceding the date the temporary disability was incurred and was not paid a separation benefit; or

(iii) had qualified under clause (i) above, but had an interruption after 20 or more years of creditable service, was not paid a separation benefit, and returned to service prior to the date that the disability was incurred.

- date, on February 23, 2015. **Board Exhibits, page 6; Presentation by Petitioner.**
4. The Petitioner's first payroll period with Community School District 203 ended on February 27, 2015. **Board Exhibits, page 1; Presentation by Petitioner.**
 5. The Petitioner received his first paycheck from School District 203 on March 6, 2015. **Board Exhibits, page 1; Presentation by Petitioner.**
 6. The first wages reported to IMRF by Community School District 203 were for March 2015. **Board Exhibits, pages 2, 8.**

I. FINDINGS OF FACT

1. The Board finds as fact items 1-6, above.
2. If the Petitioner had been paid immediately upon the conclusion of the payroll period in question he would be entitled to apply for IMRF disability benefits since there would not be a 1-month gap in service.
3. Section 7-146(b) of the Pension Code provides for additional exceptions that would allow certain individuals, other than the Petitioner, to avoid the "gap in service" problem.
4. Had the Petitioner remained with the same employer, the gap in service might have been eliminated through the use of "Benefit Protection Leave."
5. The IMRF Authorized Agents Manual provides that IMRF wage reporting is on a "cash basis". *IMRF Authorized Agents Manual, Sec. 4.20.* The Manual notes that, "This means that wages are reported to IMRF for the month and when they are paid to the member. It does not matter when the wages were earned or when the obligation to pay the wages accrued." *Id.*

III. CONCLUSIONS OF LAW

6. The Board of Trustees of IMRF has jurisdiction over the Petitioner's appeal pursuant to Sections 7-146, 7-179, and 7-200 of the Illinois Pension Code (40 ILCS 5/7-146, 7-179, and 7-200), as well as under the Non-Disability Appeal Procedures that have been adopted by the Board pursuant to Section 7-198 of the Illinois Pension Code (40 ILCS 5/7-198).
7. Section 7-146(b) of the Illinois Pension Code (40 ILCS 5/7-146(b) provides, in pertinent part, that:

A temporary disability benefit shall be payable to a temporarily disabled employee provided:

1. He:

(i) has at least one year of service immediately preceding the date the temporary disability was incurred and has made contributions for at least the number of months of service normally required in his position during a 12-month period, or has at least 5 years of service credit, the last year of which immediately precedes such date; or

(ii) had qualified under clause (i) above, but had an interruption in service with the same participating municipality or participating instrumentality of not more than 3 months in the 12 months preceding the date the temporary disability was incurred and was not paid a separation benefit; or

(iii) had qualified under clause (i) above, but had an interruption after 20 or more years of creditable service, was not paid a separation benefit, and returned to service prior to the date that the disability was incurred.

8. Section 7-113 of the Illinois Pension Code (40 ILCS 5/7-113) defines "Creditable Service" as:

All periods of prior service or current service for which credits are granted under the provisions of Section 7-139.

9. Section 7-139 of the Illinois Pension Code (40 ILCS 5/7-139) defines "Credits and

Creditable Service to Employees”, in pertinent part, as:

(a) Each participating employee shall be granted credits and creditable service, for purposes of determining the amount of any annuity or benefit to which he or a beneficiary is entitled, as follows:

* * *

2. For current service, each participating employee shall be credited with:

* * *

b. Normal credits of amounts equal to each payment of normal contributions received from him, as of the date the corresponding payment of earnings is *payable* to him,.... (Emphasis added)

10. The IMRF Authorized Agents Manual constitutes IMRF’s “administrative rules”. *Stevens v. Village of Oak Brook*, 2013 IL App (2d) 120456, ¶ 17.
11. Administrative rules interpreting a statute can be used as guides, but are binding only to the degree that they follow the statute. *Id.*
12. As previously noted, Section 7-139 (a) 2. of the Pension Code provides that, “For current service, each participating employee shall be credited with: ... b. Normal credits of amounts equal to each payment of normal contributions received from him, as of the date the corresponding payment of earnings is *payable* to him,.... (Emphasis added)
13. The dictionary definition of the word “payable” is “that may, can, or must be paid.” Merriam-Webster Dictionary (on-line at www.merriam-webster.com/dictionary/payable)
14. The language of pension statutes must be liberally construed in favor of the rights of the pensioner. *Matsuda v Cook County Employees’ & Officers’ Annuity & Benefit Fund*, 178 Ill.2d 360, 365-66, 687 N.E.2d 866, 227 Ill.Dec. 384 (1997).
15. The Petitioner’s earnings became payable to him as of February 27, 2015, the date that his initial payroll period with Community School District 203 ended.
16. In view of the unique facts of this appeal, the Petitioner should not be disqualified from receiving IMRF temporary disability benefits based upon eligibility and should be given the opportunity to provide medical documentation in support of his application for disability benefits.

IV. **DECISION**

By reason of the above findings of fact and conclusions of law, and after careful consideration of the evidence, IT IS HEREBY ORDERED by the Board of Trustees of the Illinois Municipal Retirement Fund, in regard to the Petitioner, Allan K. Price, as follows: The administrative staff determination denying the application for IMRF temporary disability benefits is *reversed* and this matter is remanded to staff for further consideration as the merits of the Petitioner’s application.

This is a final administrative decision, which is reviewable under the terms of the Illinois Administrative Review Law. (See 40 ILCS 5/7-220)

After further discussion, the Committee recommends that the Board reject the hearing officer's determination and uphold the staff determination that creditable service cannot be granted for period of service where no IMRF contributions are made since IMRF operates on a cash basis and this interpretation is consistent with the Wage Payment and Collection Act and IMRF rules. 820 ILCS 115/4. The phrase payable does not mean when earned but the time that an employer has fixed for payment when consistent with the law.

Motion: Kuehne
Second: Stanish
Ayes: Copper, Kuehne, Piechocinski, and Stanish
Nays:
Motion Passed: 4-0

(16-02-04)(Penny E. Adams) Findings and Conclusions of the IRMF Hearing Officer

IMRF Hearing Officer Michael Weinstein presented the following findings and conclusions:

BEFORE THE BOARD OF TRUSTEES OF THE
ILLINOIS MUNICIPAL RETIREMENT FUND

In the Matter of:)
Penny Adams) Hearing February 4, 2016
[Felony Forfeiture])

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On April 27, 2015, Penny Adams (hereinafter, the "Petitioner") entered a guilty plea, in the Circuit Court for the Sixth Judicial Circuit of Illinois (Macon County), to one count of "Official Misconduct", a Class 3 felony (Board Exhibits, pages 11; 18-19; 22), "in that she, in her official capacity, a public employee employed as a correctional officer for the Macon County Sheriff's Department, knowingly performed an act which she knew was forbidden by law to perform in that she provided Willie Franklin with electronic contraband, a cellular telephone while Willie Franklin was in custody in the Macon County Jail," Board Exhibits, page 21. The Petitioner was sentenced to three (3) years imprisonment on that same day. Board Exhibits, page 22.

As a result of this felony conviction, on July 8, 2015, IMRF staff notified the Petitioner that, pursuant to Section 7-219 of the Illinois Pension Code (40 ILCS 5/7-219), she was ineligible to receive a pension, or any other benefit, other than a refund of member contributions, since she had been "sentenced on a felony conviction 'relating to or arising out of or in connection with' her employment with Macon County." Board Exhibits, page 12. Subsequently, the Petitioner timely appealed the staff decision. Board Exhibits, page 2.(The Petitioner failed to file a Statement of Claim, which under normal circumstances, would result in a waiver of hearing and a decision based solely upon the written materials in the file. (IMRF Non-Disability Appeal Procedures, Section II 2: "In the event that a petitioner fails to submit a Statement of Claim, consideration of the appeal will be based solely upon the written materials that are already in the IMRF file on the due date

for the Statement of Claim.”) However, IMRF staff has waived any objection since it scheduled this appeal for a hearing)

Pursuant to the IMRF Non-Disability Appeal Procedures, a hearing was held on February 4, 2016, before Michael B. Weinstein, the duly designated IMRF Hearing Officer. Copies of all documentation submitted as evidence at this hearing were received into evidence as Board Exhibits, pages 1 through 25, in addition to a two page cover memo from staff.

The Petitioner was given proper notice of the hearing. Exhibits A through C, attached hereto. Subsequently, the Petitioner contacted Larice Davis, an IMRF Paralegal, and confirmed that she would appear, by way of teleconference, on February 4, 2016. On that date, Ms. Davis, initiated two telephone calls to the phone number that had been supplied to her by the Petitioner. The first call was made at 1:15 pm, resulting in no answer after at least 10 rings. A second phone call was initiated at 1:45pm and, again, there was no answer after approximately 7 rings. Each phone call was made in the presence of the Hearing Officer.

Since the Petitioner has also failed to submit a Statement of Claim, as noted above, the Hearing Officer has concluded that this appeal should be decided based solely upon the written materials that are already present in the IMRF file.

As a result, the Board of Trustees of IMRF (hereinafter, the “Board”) finds and determines as follows:

I. EVIDENCE AND TESTIMONY
Review of Written Documentation

1. The Petitioner is an IMRF Annuitant who was last employed by the Macon County, Illinois. Board Exhibits, Pages 1,12. She began receiving an IMRF retirement benefit in June 2014. Board Exhibits, Pages 1, 13.
2. On June 17, 2014, the Petitioner was charged, in a two-count Information, with the crimes of “Unauthorized Delivery of Contraband in a Penal Institution by an Employee” (a Class X Felony) and “Official Misconduct” (a Class 3 Felony) in connection with her employment with the Macon County Sheriff’s Department. Board Exhibits, pages 18; 20-21.
3. On April 27, 2015, the Petitioner pleaded guilty to Count II of the Information (“Official Misconduct”) and was sentenced to 3 years of imprisonment. Board Exhibits, pages 18-19; 22.

II. FINDINGS OF FACT

1. The Board finds as fact items 1-3, noted above.
2. The Petitioner was given proper notice and an opportunity to be heard with respect to her appeal.

III. CONCLUSIONS OF LAW

3. The Board of Trustees of IMRF has jurisdiction over the Petitioner's appeal pursuant to Sections 7-179, 7-200 and 7-219 of the Illinois Pension Code (40 ILCS 5/7-179, 7-200 and 7-219), as well as under the Non-Disability Appeal Procedures that have been adopted by the Board pursuant to Section 7-198 of the Illinois Pension Code. (40 ILCS 5/7-198)
4. Section 7-219 of the Illinois Pension Code provides, in pertinent part, that: "None of the benefits provided for in this Article shall be paid to any person who is convicted of any felony relating to or arising out of or in connection with his service as an employee." (40 ILCS 5/7-219)
5. Section 7-219 of the Pension Code does not provide for any exceptions to the forfeiture of benefits when an individual has been convicted of a "job-related" felony.
6. The written materials in the IMRF file clearly support a conclusion that the Petitioner was convicted of a "job-related" felony. Board Exhibits, pages 18; 20-21.
7. In considering the totality of the evidence and resolving any conflicts therein, the Board hereby finds that the Petitioner has failed to meet her burden of proving that she is entitled to continue to receive a pension benefit in view of her "job-related" felony conviction.

IV. DECISION

By reason of the above findings of fact and conclusions of law, and after careful consideration of the evidence, IT IS HEREBY ORDERED by the Board of Trustees of the Illinois Municipal Retirement Fund, in regard to the Petitioner, Penny Adams, as follows: The administrative staff determination terminating her pension benefit, pursuant to the provisions of Section 7-219 of the Illinois Pension Code, is hereby affirmed.

The only payment that IMRF can now make to the Petitioner is a refund of her member contributions.

This is a final administrative decision which is reviewable under the terms of the Illinois Administrative Review Law. (See 40 ILCS 5/7-220)

After further discussion the committee recommends that the Board adopt the hearing officer's findings and conclusions which upheld the administrative staff determination.

Motion: Stanish

Second: Kuehne

Ayes: Copper, Kuehne, Piechocinski, and Stanish

Nays:

Motion Passed: 4-0

(16-02-05)(Temporary Disability Termination – Amy S. Price – City of Peoria # 3379)

Amy Price appeared before the Committee in person via video conference on February 25, 2016. The Committee heard comments from Ms. Price, the Medical Consultant and staff regarding her conditions. 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 temporary disability benefits.

Motion: Copper

Second: Kuehne

Ayes: Copper, Kuehne, Piechocinski, and Stanish

Nays:

Motion Passed: 4-0

(16-02-06)(Temporary Disability Termination – Lauren R. Fields Village of Midlothian # 3923)

Lauren Fields, and her witness, Deanna Boswell did not appear before the Committee. The staff made numerous attempts to contact Ms. Fields and her witness by telephone which was their preferred manner of appearance.. After several attempts and waiting an additional 30 minutes to try to reach her, the Committee heard comments from the Medical Consultants 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 temporary disability benefits.

Motion: Kuehne

Second: Copper

Ayes: Copper, Stanish, Kuehne, and Piechocinski

Nays:

Abstain:

Motion Passed: 4-0

(16-02-07)(Temporary Disability Denial – Marlene A. Nimmer Fenton S.D. # 1524)

Marlene Nimmer's claim was submitted to the committee on August 27, 2015 and the committee deferred making a decision pending additional medial information, not all of the requested medical information was received, therefore the committee heard comments from the Medical Consultant and staff regarding her conditions. 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: Copper

Second: Stanish

Ayes: Copper, Kuehne, Piechocinski, and Stanish

Nays:

Motion Passed: 4-0

(16-02-08)(Gainful Activity)

Staff presented the following draft resolution concerning the definition of “gainful activity” for purposes of total and permanent disability benefits:

DRAFT RESOLUTION “GAINFUL ACTIVITY”

WHEREAS, section 7-198 of the Illinois Pension Code authorizes the Board of Trustees of the Illinois Municipal Retirement Fund (IMRF) to establish rules necessary or desirable for the efficient administration of the Fund; and

WHEREAS, Section 7-150 of the Illinois Pension Code sets forth the eligibility requirements for total and permanent disability benefits; and

WHEREAS, a participating employee is considered totally and permanently disabled if he or she is “unable to engage in any gainful activity because of any medically determinable physical or mental impairment which can be expected to result in death or be of a long continued or indefinite duration, other than as a result of self-inflicted injury or addiction to narcotic drugs”;

WHEREAS the term “gainful activity” requires further definition:

THEREFORE, BE IT RESOLVED that the term “gainful activity” for purposes of eligibility and continued eligibility for IMRF total and permanent disability is as follows:

“gainful activity” for purposes of Section 7-150 of the Illinois Pension Code shall mean whether the applicant, at the time of his or her application for total and permanent disability, is capable of obtaining potential employment in any occupation or position under which the applicant has the ability to earn at a minimum the monthly Social Security gainful work activity earnings limitation. In making this gainful activity determination, consideration shall be given to an applicant’s education and work experience although the determination of whether an applicant is able to engage in gainful activity is not limited to employment in the field where the applicant had previously worked, studied or trained. In addition, in making this gainful activity determination, the geographic availability of gainful activity shall not be considered. In certain cases, at the discretion of IMRF, a vocational expert may be used to make the determination of whether an applicant is unable to engage in any gainful activity as herein defined due to any medically determinable physical or mental impairment which can be expected to result in death or be of a long continued and indefinite duration, other than as a result of self-inflicted injury or addiction to narcotic drugs. An impairment which is considered remediable does not qualify as a total and permanent disability if, with reasonable effort and safety to the applicant, the impairment can be diminished to the extent that the individual will not be prevented by the impairment from engaging in any gainful activity as defined herein.

After further discussion, it was moved that the Committee recommend that the Board adopt the definition of gainful activity as presented by staff.

Motion: Kuehne
Second: Stanish
Ayes: Copper, Kuehne, Piechocinski, and Stanish
Nays:
Motion Passed: 4-0

(16-02-09)(Benefits Department Reports)

The Benefits Manager presented the Annual Committee and Consultant Activities Report and the Benefits Department Claims Activity report 2015

(16-02-10)(Public Comments)

There were no public comments made

(16-02-11)(Adjournment)

Ms. Copper made a motion to adjourn at 1:05 p.m. Seconded by Ms. Stanish.

Motion passed by unanimous voice vote

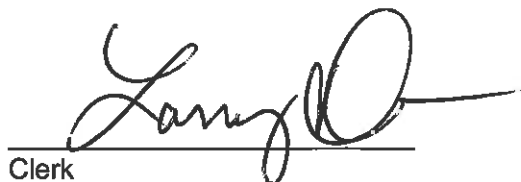
The next regular scheduled meeting of the Committee will be at 9:30 a.m. on Thursday May 19, 2016.



Chairperson

5/19/16

Date



Clerk

5/19/16

Date

2016-02 Board Summary