

MEMORANDUM

TO: Board of Trustees
FROM: Benefit Review Committee
DATE: March 25, 2021
SUBJECT: Report of the Benefit Review Committee Meeting held on March 25, 2021

A meeting of the Benefit Review Committee of the Board of Trustees was held via video conference on Thursday March 25, 2021. Present at the meeting were Committee members Copper, Kuehne, Miller, Mitchell, and Stefan. Also present was Trustee Henry. Staff members present were Seputis, Shuliga, Carter, Janicki Clark, Davis, and Claussen.

(21-03-01) (Roll call)

Ms. Copper presided as chairperson and called the meeting to order at 1:00 p.m. Committee members Copper, Kuehne, Miller, Mitchell, and Stefan were present for roll call.

(21-03-02) Approval of the open session committee meeting minutes from February 25, 2021.

Motion: Kuehne
Second: Miller
Ayes: Copper, Kuehne, Miller, Mitchell, Stefan
Nays: None
Motion Passed: 5-0

(21-03-03) Approval of the closed session committee meeting minutes from February 25, 2021.

Motion: Miller
Second: Stefan
Ayes: Copper, Kuehne, Miller, Mitchell, Stefan
Nays: None
Motion Passed: 5-0

(21-03-04) Findings and Conclusion of the IMRF Hearing Officer – Daniel Beck

Hearing Officer Michael Weinstein presented his recommended findings and conclusion in the above referenced case. The Committee reviewed the recommended findings and conclusions of the IMRF hearing officer.

After further discussion, a motion was made to recommend the adoption of the findings and conclusion of the IMRF hearing officer in the above referenced case. The recommended findings and conclusions are attached hereto.

Motion: Miller
Second: Kuehne

Ayes: Copper, Kuehne, Miller, Mitchell, Stefan
Nays: None
Motion Passed: 5-0

(21-03-05) Findings and Conclusion of the IMRF Hearing Officer – Elizabeth Kallal

Hearing Officer Michael Weinstein presented his recommended findings and conclusion in the above referenced case. The Committee reviewed the recommended findings and conclusions of the IMRF hearing officer.

After further discussion, a motion was made to recommend the adoption of the findings and conclusion of the IMRF hearing officer in the above referenced case. The recommended findings and conclusions are attached hereto.

Motion: Kuehne
Second: Mitchell
Ayes: Kuehne, Miller, Mitchell
Nays: Copper, Stefan
Motion Passed: 3-2

(21-03-06) Litigation Report

Attorney Shuliga presented an update regarding pending or recently concluded litigation. No final action was taken.

(21-03-07) Proposed Resolution

IMRF Staff and the Committee discussed a proposed resolution on prepayment recovery procedures. No final action was taken.

(21-03-08) Public Comment

None

(21-03-09) Adjournment

Trustee Stefan made a motion to adjourn at 2:05 p.m. Seconded by Trustee Miller. Motion passed by unanimous roll call vote.

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

In the Matter of:)
Daniel Beck) Hearing held on February 3, 2021
[Removal of IMRF Service Credit])

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In May 2013, Daniel Beck (Petitioner) was enrolled in IMRF as a part-time correctional officer for Effingham County, Illinois. **Beck Supporting Documents, pages 2, 10.** In 2020, IMRF staff audited Effingham County. **Beck Supporting Documents, pages 10-16.** As a result of this audit, it was determined that Petitioner had received service credit for a non-qualifying service period (*i.e.*, May 2013 through April 2020). *Id.* This was due to Petitioner's failure to meet the County's 600-hour requirement for participation in IMRF. *Id.* Subsequently, time sheets and payroll records for the Petitioner were submitted to IMRF. **Beck Supporting Documents, pages 17-34.**

After reviewing the documentation that was submitted, the IMRF General Counsel concluded that the service credit granted for the period of May 2013 through April 2020 was established in error since Petitioner was not employed in an IMRF qualifying position, working the requisite qualifying hours (*i.e.*, 600-hours per year). **Beck Supporting Documents, page 42.** Subsequently, Petitioner timely appealed the Administrative Staff Determination. **Beck Supporting Documents, page 43-41.**

Pursuant to the IMRF Non-Disability Appeal Procedures, an administrative hearing was held on February 3, 2021 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 **Beck Supporting Documents, pages 1-56.**

The Petitioner was given proper notice of this hearing and appeared by way of videoconference. Also present at the hearing, in addition to the Hearing Officer, were Vladimir Shuliga, IMRF Associate General Counsel, Elizabeth Carter, IMRF Staff Attorney, Larice Davis, IMRF paralegal and Carolyn Clifford, an attorney with the law firm of Ottosen DiNolfo Hasenbalg & Castaldo, Ltd.

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 Presentation

1. In May 2013, Daniel Beck (Petitioner) was enrolled in IMRF as a part-time correctional officer for Effingham County, Illinois. **Beck Supporting Documents, pages 2, 10.**

2. In 2020, IMRF staff audited Effingham County. **Beck Supporting Documents, pages 10-16.**

3. As a result of this audit, it was determined that Petitioner had received service credit for a non-qualifying service period (*i.e.*, May 2013

through April 2020). *Id.*

4. This was due to Petitioner's failure to meet the County's 600-hour requirement for participation in IMRF. *Id.*

5. Subsequently, time sheets and payroll records for the Petitioner were submitted to IMRF. **Beck Supporting Documents, pages 17-34.**

6. After reviewing the documentation that was submitted, the IMRF General Counsel concluded that the service credit granted for the period of May 2013 through April 2020 was established in error since Petitioner was not employed in an IMRF qualifying position, working the requisite qualifying hours (*i.e.*, 600-hours per year). **Beck Supporting Documents, page 42.¹**

7. Subsequently, the Petitioner timely appealed the Administrative Staff Determination. **Beck Supporting Documents, page 43-41.**

8. Pursuant to the IMRF Non-Disability Appeal Procedures, an administrative hearing was held on February 3, 2021 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 **Beck Supporting Documents, pages 1-56.**

9. The Petitioner was given proper notice of this hearing and appeared by way of videoconference. Also present at the hearing, in addition to the

¹ The current hourly standard for Effingham County employees is 1,000 hours per year; however, Petitioner was grandfathered into the 600-hourly standard since he was first employed by the County in March 2000 when the applicable hourly standard was 600 hours.

Hearing Officer, were Vladimir Shuliga, IMRF Associate General Counsel, Elizabeth Carter, IMRF Staff Attorney, Larice Davis, IMRF paralegal and Carolyn Clifford, an attorney with the law firm of Ottosen DiNolfo Hasenbalg & Castaldo, Ltd.

II. FINDINGS OF FACT

1. The Board finds as fact items 1-9, set forth above.
2. As part of its audit, Effingham County provided the following data with respect to the hours worked by Petitioner from his date of hire in 2013 through April 2020:

2013: 292.5 hours	2017: 297.5 hours
2014: 407.5 hours	2018: 514 hours
2015: 497 hours	2019: 350.5 hours
2016: 462 hours	2020: 64 hours

Beck Supporting Documents, pages 13-15

3. Section 7-137(b)1. of the Illinois Pension Code (40 ILCS 5/7-137(b)1.) provides, in pertinent part, that:

(b) The following described persons shall *not* be considered participating employees eligible for benefits from this fund, but shall be included within and be subject to this Article (each of the descriptions is not exclusive but is cumulative):

1. Any person who occupies an office or is employed in a position normally requiring performance of duty *during less than 600 hours a year* for a municipality (including all instrumentalities thereof) or a participating instrumentality.... (Emphasis added)

III. CONCLUSIONS OF LAW

1. The Board of Trustees of IMRF has jurisdiction over Petitioner's appeal pursuant to Section 7-200 of the Illinois Pension Code (40 ILCS 5/ 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).
2. Petitioner believes that he should not be penalized since the data reported by Effingham County is inaccurate. Specifically, he points to three payroll records (**Beck Supporting Documents, pages 46-48; Testimony of Petitioner**) which he believes supports his contention that the hours reported to IMRF are inaccurate and, therefore, the decision to rescind his service credit is premised upon faulty information.
3. However, the County's documentation (**Beck Supporting Documents, pages 13-15**) did not use payroll records in order to ascertain the hours worked by the Petitioner. Rather, the County completed a spreadsheet that specifically asked for the hours worked in each year.
4. The County relied upon timesheet records (**Beck Supporting Documents, pages 17-20**) in compiling this spreadsheet.
5. Additionally, Petitioner does not contend that his position of part-time correctional officer requires performance of duty in excess of 600 hours per year.
6. Petitioner also argues that IMRF should have discovered the issue

sooner. **Beck Supporting Documents, page 44; Testimony of Petitioner.** Unfortunately, with over 3,000 employers in IMRF, employer audits cannot be performed every year. In this case, Effingham County was audited in 2011 and again in 2020. As Petitioner was hired in 2013, IMRF, of necessity, had to rely on the employer's Authorized Agent to make a correct determination as to whether Mr. Beck should be enrolled in IMRF. *See* 40 ILCS 5/7-135. At the time of Petitioner's enrollment, there was no reason for doubting the Authorized Agent's determination.

7. Section 7-137 of the Illinois Pension Code (40 ILCS 5/7-137) mandates that an individual be enrolled in IMRF only if the individual is employed in a position normally requiring performance of duty in excess of 600 hours a year (or 1000 hours per year where the participating municipality has adopted a resolution requiring the higher hourly standard).

8. Additionally, Section 3.65 A. of the IMRF Authorized Agents Manual discusses the General Requirements for IMRF Coverage and explains the hourly standard requirement in greater detail.

9. The IMRF Authorized Agents Manual constitutes IMRF's "administrative rules" and can be used as a guide to the interpretation of relevant statutes. *Stevens v. Village of Oak Brook*, 2013 IL App (2d) 120456 at ¶ 17.

10. Petitioner has failed to show, by a preponderance of the evidence that his actual hours worked from May 2013 through April 2020 met the

relevant hourly standard (*i.e.*, 600 hours per year).

11. This conclusion is mandated, notwithstanding court decisions that hold that 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).

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, Daniel Beck, as follows:

The administrative staff determination finding that Petitioner is not entitled to IMRF pension benefits due to his failure to meet the applicable hourly standard is hereby affirmed.

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

These Findings and Decision are adopted this ____ day of _____, 2021, by the following roll call vote:

AYES: _____

NAYS: _____

ABSTAIN: _____

ABSENT: _____

Being parties to these proceedings.

President, Board of Trustees
Illinois Municipal Retirement Fund

ATTEST:

Secretary, Board of Trustees
Illinois Municipal Retirement Fund

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

In the Matter of:)
Elizabeth Kallal)
[Reinstatement of IMRF Service) Hearing held February 3, 2021
Credit – Reciprocal Retirement])

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BACKGROUND

Elizabeth Kallal (Petitioner) was an inactive participant in the Illinois Municipal Retirement Fund (IMRF), having worked as a teacher’s aide from January 1992 through October 1992. **Kallal Supporting Documents, page 1.** Subsequently, Ms. Kallal became a certified teacher and was enrolled in the Teachers’ Retirement System (TRS), where she accrued 19.579 years of service credit. **Id.**

In January 2019, Petitioner advised TRS that she was going to retire under the Illinois Retirement Systems Reciprocal Act on, or about, September 7, 2019. **Kallal Supporting Documents, Page 6.** Petitioner found the retirement process confusing; therefore, she met with TRS retirement counselors on three (3) occasions. **Kallal Supporting Documents, Page 13.** She intended to follow their retirement recommendations, including retaining her IMRF service credit in order to retire reciprocally with the two systems. **Id.**

Since Ms. Kallal was less than age 60 at the time of her retirement, she needed 20 years of service credit in order to qualify for a retirement benefit. **Kallal Supporting Documents, Page 14.** The 20 years of service credit

could include reciprocal service between the two systems. Thus, in order to retire, Ms. Kallal needed to use her .833 (*i.e.*, 10 months) IMRF service credit so that her total service credits from the two systems would be excess of twenty years. **Id.**

Petitioner did, in fact, retire in September 2019 and began receiving reciprocal retirement benefits from TRS utilizing the .833 service credit accrued while participating in IMRF. **Kallal Supporting Documents, page 1.** However, in July 2019, Petitioner inexplicably applied for, and received, a refund of her IMRF contributions. **Kallal Supporting Documents, Pages 7-9.**

Ms. Kallal testified at the administrative hearing that she did not understand why IMRF sent a refund check to her. Moreover, she also testified that she did not realize that by accepting the refund from IMRF she would forfeit her IMRF service credit that was required in order to receive early reciprocal retirement benefits from TRS.

Subsequently, TRS received information from IMRF that Ms. Kallal had taken a refund of her IMRF contributions and had, therefore, forfeited her .833 IMRF service credit. **Kallal Supporting Documents, page 14.**¹ Therefore, on November 13, 2020, TRS sent a letter to Ms. Kallal advising her that her retirement application included the .833 IMRF service credits to be used reciprocally. **Id.** Since she had now received a refund from IMRF that service credit could no longer be used as part of a reciprocal retirement. **Id.**

¹ This notification may have occurred as late as 14 months after Ms. Kallal's retirement benefits commenced.

“Without the use of IMRF service credit you are not eligible to receive a monthly annuity from TRS until age 60, September 7th, 2024. Therefore, TRS has discontinued your monthly annuity payments ... until you become eligible for benefits on September 7, 2024.” **Id.**

Moreover, TRS advised Ms. Kallal that she had been overpaid \$24,846.35 for the period of September 7, 2019 and October 31, 2020 and that the overpayment “is due and payable to TRS upon receipt of this letter.” **Id.**

Ms. Kallal immediately contacted IMRF requesting reinstatement of her 10 months of service credit. **Kallal Supporting Documents, page 11.** Her request was denied by the IMRF General Counsel. **Id.** The denial was predicated upon Section 7-169(a) of the Illinois Pension Code which provides that an individual must be a participating IMRF employee for at least two years before a separation refund can be repaid. **Id.**²

Petitioner timely appealed the Administrative Staff Determination and, pursuant to the IMRF Non-Disability Appeal Procedures, an administrative hearing was held on February 3, 2021, before Michael B.

² Section 7-169(a) of the Illinois Pension Code [40 ILCS 5/7-169(a)] provides, as follows: “If an employee who has received a separation benefit subsequently becomes a participating employee, and renders at least 2 years of contributing service from the date of such re-entry, he may pay to the fund the amount of the separation benefit, plus interest at the effective rate for each year from the date of payment of the separation benefit to the date of repayment. Upon payment his creditable service shall be reinstated and the payment shall be credited to his account as normal contributions. Application must be received by the Board while the employee is an active participant in the Fund or a reciprocal retirement system. Payment must be received while the member is an active participant, except that one payment will be permitted after termination of participation in the Fund or a reciprocal retirement system.”

Weinstein, the duly designated IMRF Hearing Officer. Copies of all documentation submitted prior to the hearing were received into evidence as **Kallal Supporting Documents, pages 1-23** (including a 3-page Executive Summary prepared by the IMRF Associate General Counsel). At the hearing, Petitioner's attorney submitted a one-page letter from TRS dated January 22, 2019. Additionally, IMRF staff provided copies of correspondence to Ms. Kallal dated September 4, 2019 and October 4, 2019 with respect to completing an IMRF retirement application under the Reciprocal Act. These documents were also admitted into evidence as **Kallal Supporting Documents, pages 24-34**.

Petitioner was given proper notice of the hearing. Ms. Kallal appeared at the hearing by video conference. Also present at the hearing, in addition to the Hearing Officer, were Jerry Marconi, Attorney for Ms. Kallal, Vladimir Shuliga, Associate General Counsel for IMRF, Elizabeth Carter, IMRF Staff Attorney, Larice Davis, IMRF paralegal and Carolyn Clifford, an attorney with law firm of Ottosen DiNolfo Hasenbalg and Castaldo, Ltd.

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 Presentation

1. Elizabeth Kallal ("Petitioner") was an inactive participant in the Illinois Municipal Retirement Fund ("IMRF"), having worked as a teacher's

aide from January 1992 through October 1992. **Kallal Supporting Documents, page 1.**

2. Subsequently, Ms. Kallal became a certified teacher and was enrolled in the Teachers' Retirement System (TRS), where she accrued 19.579 years of service credit. **Id.**

3. In January 2019, Petitioner advised TRS that she was going to retire under the Illinois Retirement Systems Reciprocal Act on, or about, September 7, 2019. **Kallal Supporting Documents, Page 6.**

4. Ms. Kallal found the retirement process confusing; therefore, she met with TRS retirement counselors on three (3) occasions. **Kallal Supporting Documents, Page 13.**

5. She intended to follow their retirement recommendations, including retaining her IMRF service credit in order to retire reciprocally with the two systems. **Id.**

6. Since Petitioner was less than age 60 at the time of her retirement, she needed 20 years of service credit in order to qualify for a retirement benefit. **Kallal Supporting Documents, Page 14.**

7. The 20 years of service credit could include reciprocal service between the two systems. Thus, in order to retire, Ms. Kallal needed to use her .833 (10 months) IMRF service credit so that her total service credits from the two systems would be in excess of twenty years. **Id.**

8. Ms. Kallal did, in fact, retire in September 2019 and began

receiving reciprocal retirement benefits from TRS utilizing the .833 IMRF service credit. **Kallal Supporting Documents, page 1.**

9. However, in July 2019, Petitioner inexplicably applied for, and received, a refund of her IMRF contributions. **Kallal Supporting Documents, Pages 7-9.**

10. Ms. Kallal testified at the administrative hearing that she did not understand why IMRF sent a refund check to her.

11. Moreover, she also testified that she did not realize that by accepting the refund from IMRF she would forfeit her IMRF service credit that was required in order to receive early reciprocal retirement benefits from TRS.

12. Subsequently, (perhaps as late as 14 months after her retirement benefits commenced) TRS received information from IMRF that Ms. Kallal had taken a refund of her IMRF contributions and had, therefore, forfeited her .833 IMRF service credit. **Kallal Supporting Documents, page 14.**

13. Therefore, on November 13, 2020, TRS sent a letter to the Petitioner advising her that her retirement application had included the .833 IMRF service credit to be used reciprocally. **Id.**

14. The letter went on to state that since Petitioner had received a refund from IMRF, that service credit could no longer be used as part of a reciprocal retirement. **Id.** “Without the use of IMRF service credit you are not

eligible to receive a monthly annuity from TRS until age 60, September 7th, 2024. Therefore, TRS has discontinued your monthly annuity payments ... until you become eligible for benefits on September 7, 2024.” **Id.**

15. Moreover, TRS advised Ms. Kallal that she had been overpaid \$24,846.35 for the period of September 7, 2019 and October 31, 2020 and said overpayment “is due and payable to TRS upon receipt of this letter.” **Id.**

16. Ms. Kallal immediately contacted IMRF requesting to reinstate her 10 months of service credit. **Kallal Supporting Documents, page 11.** Her request was denied by the IMRF General Counsel. **Id.** The denial was predicated upon Section 7-169(a) of the Illinois Pension Code which provides that an individual must be a participating IMRF employee for at least two years before a separation refund can be repaid. **Id.**

17. Section 7-169(a) of the Illinois Pension Code (40 ILCS 5/7-169(a)) provides, in pertinent part, that:

(a) If an employee who has received a separation benefit subsequently becomes a participating employee, and renders at least 2 years of contributing service from the date of such re-entry, he may pay to the fund the amount of the separation benefit, plus interest at the effective rate for each year from the date of payment of the separation benefit to the date of repayment. Upon payment his creditable service shall be reinstated and the payment shall be credited to his account as normal contributions. Application must be received by the Board while the employee is an active participant in the Fund or a reciprocal retirement system. Payment must be received while the member is an active participant, except that one payment will be permitted after termination of participation in the Fund or a reciprocal retirement system.

II. FINDINGS OF FACT

1. The Board finds as fact items 1-17, as set forth above.

III. CONCLUSIONS OF LAW

1. The Board of Trustees of IMRF (“Board”) has jurisdiction over the Petitioner's application and appeal pursuant to Section 7-200 of the Illinois Pension Code (40 ILCS 5/7-200), as well as under the Non-Disability Appeal Procedures that have been adopted by the Board.

2. In January 2019, TRS advised IMRF that Ms. Kallal would be retiring under the Illinois Retirement Systems Reciprocal Act.

3. Notwithstanding that fact, IMRF staff failed to advise Ms. Kallal of the benefit implications of requesting a refund of her IMRF contributions.

4. Nor is there any evidence that the IMRF website adequately explains the implications of receiving a refund of IMRF contributions in the context of a reciprocal retirement with TRS.

5. Furthermore, by letters dated September 4, 2019 and October 4, 2019, IMRF continued to treat Ms. Kallal as a reciprocal retiree, notwithstanding the fact that she had already received a refund of her IMRF contributions.

6. These letters reinforce a conclusion that IMRF staff were confused as to the status of Ms. Kallal’s IMRF service credit and that the IMRF computer system was deficient, at least with respect to the processing of Ms. Kallal’s reciprocal retirement application.

7. IMRF's action in this matter may well have confused Ms. Kallal into believing that a request for a separation refund would not affect her reciprocal retirement with TRS.

8. Indeed, it is inconceivable that Ms. Kallal would knowingly accept a separation refund of less than \$275.00 from IMRF that would void her TRS pension and result in an overpayment debt to TRS of \$24,846.35.

9. Given the forgoing, Ms. Kallal should not be penalized for any error in requesting a separation refund, especially when it resulted in a substantial harm to her retirement plans.

10. Section 7-169(a) of the Illinois Pension Code [40 ILCS 5/7-169(a)] does not apply to this situation as that section of the Pension Code merely provides a process for reinstating service credit once an individual terminates employment with an IMRF employer but later returns as an IMRF participating employee.

11. Therefore, in considering the totality of the evidence and resolving any conflicts therein and without meaning to set any precedent, the Board hereby finds that Petitioner has met her burden of proving that she is entitled to reinstate her forfeited service credit.

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, regarding the

Petitioner, Elizabeth Kallal, as follows:

The Administrative Staff Determination finding that the Petitioner is not entitled to reinstate her .833 (10 months) of IMRF service credit is hereby reversed.

Petitioner can reinstate her service credit by paying IMRF the amount of the refund she previously received (\$265.35), plus applicable interest.

Upon receipt of the refund plus interest, IMRF staff are directed to reinstate Petitioner's service credit and advise the Teachers' Retirement System (TRS) of said reinstatement.

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

These Findings and Decision are adopted this ____ day of _____, 2021, by the following roll call vote:

AYES: _____

NAYS: _____

ABSTAIN: _____

ABSENT: _____

Being parties to these proceedings.

President, Board of Trustees
Illinois Municipal Retirement Fund

ATTEST:

Secretary, Board of Trustees
Illinois Municipal Retirement Fund