

MEMORANDUM

TO: Board of Trustees
FROM: Benefit Review Committee
DATE: December 16, 2021
SUBJECT: Report of the Benefit Review Committee Meeting held on December 16, 2021

A meeting of the Benefit Review Committee of the Board of Trustees was held in the Oak Brook IMRF office on Thursday, December 16, 2021. Present at the meeting were Committee members Copper, Miller, and Stefan. Committee member Kuehne appeared via video conference. Trustee Mitchell was absent. Trustee Henry was also in attendance. Staff members present were Shuliga, Carter, Janicki Clark, Davis, Dixon, Rockett, Claussen, Seputis, Osipczuk, Zalech, Hatfield and Hollyfield.

(21-12-01) (Roll call)

Ms. Copper presided as chairperson and called the meeting to order at 1:05 p.m. Committee members Copper, Kuehne, Miller, and Stefan were present for roll call. Trustee Mitchell was absent.

(21-12-02) Approval of the committee meeting minutes from November 18, 2021

Motion: Miller
Second: Stefan
Ayes: Copper, Kuehne, Miller, Stefan
Nays: None
Absent: Mitchell
Motion Passed: 4-0

(21-12-03) Jackie Hayes – Denial of Temporary and Total and Permanent Disability

Written materials including medical records, member, employer, and physician questionnaires; and a written statement of claim from the member were provided to the committee members for review prior to the hearing. Mr. Hayes appeared for the hearing and was represented by attorney James Baker.

After deliberation, the Committee recommends that the Board affirm the staff decision denying total and permanent disability benefits. The Committee finds that Mr. Hayes' treating physician Dr. Ratra has repeatedly released Mr. Hayes to work in a light duty capacity, most recently on February 25, 2020. Therefore, the Committee finds that Mr. Hayes does not meet the eligibility requirements for total and permanent disability benefits as set forth in Section 7-150.

Motion: Miller
Second: Kuehne
Ayes: Copper, Kuehne Miller, Stefan
Nays: None
Absent: Mitchell
Motion Passed: 4-0

(21-12-04) James Principe – Denial of Temporary Disability

Written materials including medical records, member, employer, and physician questionnaires; written opinions by the medical consultant; and a written statement of claim from the member were provided to the committee members for review prior to the hearing. Mr. Principe appeared for the hearing and was represented by attorney Gia Scatchell via videoconference.

After deliberation, Trustee Miller made a motion to overturn staff and grant temporary disability benefits.

Motion: Miller
Second: Stefan
Ayes: Miller, Stefan
Nays: Copper, Kuehne
Absent: Mitchell
Motion Failed: 2-2

After additional deliberation, the Committee recommends tabling this appeal to allow staff to gather additional information related to Mr. Principe's claim.

Motion: Miller
Second: Stefan
Ayes: Miller, Stefan, Copper, Kuehne
Nays: None
Absent: Mitchell
Motion Passed: 4-0

(21-12-05) Veronica Montoya – Denial of Total and Permanent Disability

Written materials including medical records, member, employer, and physician questionnaires; written opinions by the medical consultant; and a written statement of claim from the member were provided to the committee members for review prior to the hearing. Ms. Montoya appeared and was represented by attorney Dianne Onichimowski via videoconference.

After additional deliberation, the Committee recommends tabling this appeal to allow staff to gather additional information related to Ms. Montoya's claim.

Motion: Miller
Second: Stefan
Ayes: Miller, Stefan, Copper, Kuehne
Nays: None
Absent: Mitchell
Motion Passed: 4-0

(21-12-06) Kevin Gill – Denial of Total and Permanent Disability

Written materials including medical records, member, employer, and physician questionnaires; written opinions by the medical consultant; and a written statement of

claim from the member were provided to the committee members for review prior to the hearing.

After deliberation, the Committee recommends tabling this appeal to allow staff to arrange transportation to an FCE for Mr. Gill.

Motion: Stefan
Second: Miller
Ayes: Miller, Stefan, Copper, Kuehne
Nays: None
Absent: Mitchell
Motion Passed: 4-0

(21-12-07) Findings and Conclusion of the IMRF Hearing Officer – City of Elgin

Staff Attorney Carter presented the findings and conclusion of the IMRF Hearing Officer 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. Additionally, the Committee recommends including an AP exemption to a future legislative agenda regarding situations in which a decrease in hours causes the AP charge. The recommended findings and conclusions are attached hereto.

Motion: Miller
Second: Stefan
Ayes: Copper, Kuehne, Miller, Stefan
Nays: None
Absent: Mitchell
Motion Passed: 4-0

(21-12-08) Findings and Conclusion of the IMRF Hearing Officer – Jeffrey Mertz

Associate General Counsel Shuliga presented the findings and conclusion of the IMRF Hearing Officer 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, Stefan
Nays: None
Absent: Mitchell
Motion Passed: 4-0

(21-12-09) Findings and Conclusion of the IMRF Hearing Officer – Kelly Garcia Cosimo

Associate General Counsel Shuliga presented the findings and conclusion of the IMRF Hearing Officer 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: Stefan
Ayes: Copper, Kuehne, Miller, Stefan
Nays: None
Absent: Mitchell
Motion Passed: 4-0

(21-12-10) Benefit Review Committee Charter

Associate General Counsel Shuliga and Disability Manager Larry Dixon presented a proposed update to the Benefit Review Committee Charter. The Committee recommends approval of the BRC Charter as revised.

Motion: Miller
Second: Kuehne
Ayes: Copper, Kuehne, Miller, Stefan
Nays: None
Absent: Mitchell
Motion Passed: 4-0

(21-12-11) Disability Appeal Procedures

Associate General Counsel Shuliga and Disability Manager Larry Dixon presented a proposed update to the disability appeal procedures. No final action was taken.

(21-12-12) Litigation Update

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

(21-12-13) Public Comment

None

(21-12-14) Adjournment

Trustee Stefan made a motion to adjourn at 5:07 p.m. Seconded by Trustee Miller. Motion passed by unanimous roll call vote.

KOEUNE was employed by ELGIN until his retirement in May of 2021. KOEUNE was an active participant of IMRF and received yearly IMRF credit for each year he worked. KOEUNE took unpaid leave from May of 2018 through April of 2019. This resulted in a decrease in his IMRF reported earnings during this period, even though there was no discernible decrease in his actual salary. Similarly, when KOEUNE returned to work after his leave and again received his regular salary, there was an increase in his IMRF reported earnings during this period, even though there was no discernible increase in his actual salary.

On May 3, 2021, the IMRF sent an Accelerated Payment Invoice to ELGIN in the amount of eleven thousand, nine hundred and eighty-seven and 86/100 (\$11,987.86) dollars. The AP Invoice stated that based on KOEUNE'S final rate of earnings period preceding his date of retirement, his earned wages during the twelve-month period from 5/2020 through 4/2021 was ninety-two thousand, two hundred and fifty-three and 47/100 (\$92,253.47) dollars, which was more than 6% greater than his earned wages from the previous twelve-month period of eighty-four thousand, six hundred and twenty-four and 48/100 (\$84,624.48) dollars. The AP Invoice also stated that KOEUNE'S earned wages from 5/2019 through 4/2020 was eighty-four thousand, six hundred and twenty-four and 48/100 (\$84,624.48) dollars while his earned wages from the previous twelve-month period from 5/2018 through 4/2019 had been seventy-four thousand, nine hundred and six and 27/100 (\$74,906.27) dollars, an increase of greater than 6%. Therefore, based on actuarial assumptions and tables, the IMRF determined that due to KOEUNE'S increases in earned wages during the forty-eight months final rate of earnings period prior to his May 2021 retirement date, ELGIN was required to pay an \$11,987.86 accelerated payment.

ELGIN then submitted IMRF Form 7.20 and requested an exemption to the accelerated payment, on the basis that the pay increases were due to negotiated union contracts, unpaid time off, vacation payouts and retroactive pay. ELGIN checked the box on the form requesting an exemption due to a personnel policy that was entered into prior to January 1, 2012. IMRF exempted certain overtime wages paid as a lump sum settlement arising out of a collective bargaining agreement, and also exempted vacation payouts that it determined were made within the final three months of the final rate of earnings period, but otherwise denied the exemption request. IMRF adjusted the accelerated payment to \$8,586.93. ELGIN then requested a hearing to appeal the Administrative Staff Determination. ELGIN argued that any increase in KOEUNE'S salary was a result of union negotiated cost of living increases and from taking unpaid leave after exhausting his paid time off due to family illness, which made it artificially appear as if there was a greater than 6% change in his salary. IMRF determined that there was no evidence that the increases in KOEUNE'S earned wages were due to any of the statutory exemptions provided in 5/7-172(k) of the Pension Code, and therefore, there were no grounds for an exemption to the request for the accelerated payment. IMRF stated that neither the increases in salary that arose out of a collective bargaining agreement signed after January 1, 2012 or the changes in salary resulting from KOEUNE'S return to work after taking unpaid leave of absence were listed as an allowable exemption under 40 ILCS 5/7-172(k) of the Illinois Pension Code (hereinafter referred to as Pension Code).

At the hearing, ELGIN requested an exemption from the accelerated payment because KOEUNE'S purported earning increases were due to the requirements set forth pursuant to personnel policies adopted prior to January 2012. ELGIN stated that it had a personnel policy that warranted an exemption to the requirements of 40 ILCS 5/7-172(k). After reviewing the personnel policies sent to it by ELGIN after the appeal hearing, IMRF reaffirmed its denial on the basis that the personnel policy submitted did not apply to unpaid leave or cost of living increases.

ISSUES TO BE REVIEWED

Whether an employer can be exempted from an accelerated payment when increases in reportable earned wages during a twelve-month period within the final rate of earnings period, has occurred not because there has been an actual salary increase, but because the employee has returned to work after taking extended unpaid leave of absence.

DISCUSSION AND ANALYSIS

Based on the Findings of Fact, the Illinois Pension Code and IMRF Rules and Procedures, the Board of Trustees of the IMRF has jurisdiction over this appeal.

Article 7 of the Illinois Pension Code authorizes the Illinois Municipal Retirement Fund to provide retirement, disability, and death benefits to the employees of participating local governments and school districts in Illinois. It also provides that the IMRF Board of Trustees may make rules and regulations for the IMRF to efficiently administer the fund. The revenue that is used to pay retirement benefits are paid under a defined benefit plan authorized by State law, and comes from three sources: employees contribute a percentage of each paycheck; governments and agencies contribute at fluctuating rates, depending on the pay and ages of their employees; and, the employee and employer contributions are invested, and any income that comes from these investments is also used to pay benefits. When an employee retires, IMRF averages the forty-eight months final rate of earnings period, and calculates the monthly pension amount. Once IMRF determines the monthly pension amount, it estimates how long the retiree will live and calculates a total pension cost. It subtracts the employee's contributions and takes the rest out of the employer's deposits.

The Pension Code and IMRF rules require government agencies to contribute over time at a pace that will cover pension costs if employees' salaries rise at a normal pace. However, when an employee's salary increases at the end of his or her career, the amount earned during the forty-eight months period increases, and the pay average of that forty-eight months period also increases, and neither the employee nor the employer has contributed enough to cover the increased pension. The Pension Code requires that when an employee retires, and an employer is left with this deficit to cover future retirees, it must pay more than usual to make up the difference. The Pension Code and the IMRF rules and manual make clear that the goal is to make the pension fund fully funded.

The Illinois Pension Code, in section 7-172(k) provides, in part, as follows:

“(k) If the amount of a participating employee's reported earnings for any of the 12-month periods used to determine the final rate of earnings exceeds the employee's 12 month reported earnings with the same employer for the previous year by the greater of 6% or 1.5 times the annual increase in the Consumer Price Index-U, as established by the United States Department of Labor for the preceding September, the participating municipality or participating instrumentality that paid those earnings shall pay to the Fund, in addition to any other contributions required under this Article, the present value of the increase in the pension resulting from the portion of the increase in salary that is in excess of the greater of 6% or 1.5 times the annual increase in the Consumer Price Index-U, as determined by the Fund. This present value shall be computed on the basis of the actuarial assumptions and tables used in the most recent actuarial valuation of the Fund that is available at the time of the computation...”

In addition, the language provided above in the Pension Code is repeated and clarified in detail in IMRF Rule 720.E, Accelerated Payments as well as IMRF Rule 3-1-5, Employer Reporting and Contributions. Both rules state clearly that the excess earnings are based upon a comparison of earnings received during the twelve months period just prior to the IMRF termination date with earnings received during any twelve-months period within the final rate of earnings period. In this case, a comparison of 5/2020-4/2021 earnings with 5/2019-4/2020 earnings triggered the necessity for an accelerated payment as did a comparison of 5/2019-4/2020 earnings with the 5/2018-4/2019 earnings.

Moreover, section 3.96(A) of the IMRF Manual states, “The basic rule is that most forms of compensation for personal services paid during the employment relationship and through the first calendar month after termination of employment are included as IMRF earnings.” It then specifically states, in section 3.96 (B) that compensation for IMRF earning purposes includes: “All wages, salaries and fees paid to IMRF members by IMRF employers are considered IMRF earnings regardless of the source of the funds. Amounts paid from money derived from property taxes, miscellaneous revenues, federal grants, and state reimbursements should all be reported as IMRF earnings.” This section of the Manual clarifies that all payments to employees by employers are assumed to be reportable wages unless there is an express exception provided in the Pension Code or Manual for said payment.

The Pension Code expressly provides, in section 7-172(k) below, that certain earnings are excluded from an employee’s final rate of earnings when determining whether the 6% cap has been exceeded: earnings from overtime, promotion, increase in hours, increases paid pursuant to pre-2012 collective bargaining agreements and personnel policies. The list of exceptions set forth in the Code does not include an increase to IMRF reportable earnings during a twelve-month period that result after an employee returns to work

following an unpaid leave during the prior twelve-month period.

When assessing payment for any amount due under this subsection (k), the fund shall exclude earnings increases resulting from overload or overtime earnings.

When assessing payment for any amount due under this subsection (k), the fund shall exclude earnings increases resulting from payments for unused vacation time, but only for payments for unused vacation time made in the final 3 months of the final rate of earnings period.

When assessing payment for any amount due under this subsection (k), the fund shall also exclude earnings increases attributable to standard employment promotions resulting in increased responsibility and workload.

This subsection (k) does not apply to earnings increases paid to individuals under contracts or collective bargaining agreements entered into, amended, or renewed before January 1, 2012 (the effective date of Public Act 97-609), earnings increases paid to members who are 10 years or more from retirement eligibility, or earnings increases resulting from an increase in the number of hours required to be worked.

When assessing payment for any amount due under this subsection (k), the fund shall also exclude earnings attributable to personnel policies adopted before January 1, 2012 (the effective date of Public Act 97-609) as long as those policies are not applicable to employees who begin service on or after January 1, 2012 (the effective date of Public Act 97-609).

The change made to this Section by Public Act 100-139 is a clarification of existing law and is intended to be retroactive to January 1, 2012 (the effective date of Public Act 97-609). 40 ILCS 7-172(k)

After the hearing, ELGIN submitted its Resolution 11-213, signed in 2011, which states in pertinent part:

“...Section 1. Amendment to City of Elgin Personnel Policies. The City of Elgin’s Personnel Policies are hereby amended by adding the following section thereto relating to employees who have begun service before January 1, 2012, with such new section being as follows:

Employees Who Begin Service Before January 1, 2012: In addition to any other categories under which an employee of the City of Elgin may be classified pursuant to the City of Elgin’s personnel policies, there shall be a class of employees who began service with the City of Elgin prior to January 1, 2012 (a “Pre-2012Employee”). To the maximum extent authorized by law, for all Pre-2012 Employees, it is the policy of the City of Elgin not to include as part of such employee’s reported earnings for any of the 12-month periods that may be used to determine such employee’s final rate of earnings for the purposes of assessing or making accelerated contributions or payments to the Illinois Municipal Retirement Fund in accordance with 40 ILCS 5/7-172(k), any of the earnings, adjustments, payments, benefits and compensation which are provided for or otherwise allowed pursuant to the terms of this personnel policy, including, without limitation: a. Increases in vacation time earned as a result of seniority or

continued service; b. Increases in authorized accrual of vacation time as a result of seniority or continued service; c. Increases in sick leave time earned as a result of seniority or continued service; d. Increases in authorized accrual of vacation time as a result of seniority or continued service; e. Payments made from selling back to the City of Elgin any accrued vacation or sick leave time; f. Changes to insurance benefits that are generally applicable to all Pre-2012 Employees; g. Increases in annual compensation based on seniority or continued service, including “step” increases; h. Adjustments in annual salary based on increases to the Consumers Price Index or another generally accepted index of inflation; i. Merit bonuses; and j. Payments made as reimbursement of amounts paid to an employee for use of a personal vehicle or other equipment or property.”

While this resolution pertaining to personnel policy clarifies what is to be excluded from salary, wages and reportable earnings and is dated prior to January 1, 2012, it does not include or make reference to increases that occur when an employee has returned to work with pay after taking extended unpaid leave or from cost of living increases and cannot be used now as a basis for an exemption from an accelerated payment.

ELGIN also argues that IMRF’S recent COVID-19 and Accelerated Payment memorandum should apply to KOEUNE’S situation. The policy states as follows:

“In some situations, temporarily reduced member earnings due to COVID-19 could result in an unanticipated Accelerated Payment invoice.

If during the Final Rate of Earnings (FRE) period, a member had a reduction in hours required by the employer during the pandemic, and then the member’s hours were increased back to pre-pandemic levels once the employer returned to normal operating levels, IMRF may send the employer an Accelerated Payment invoice.

However, only in these Covid-related cases, IMRF will consider this situation to be under the "increased hours" exemption.

To request the exemption, complete and submit the Request for an Accelerated Payment Exemption form (IMRF form 7.20) provided with your AP Invoice, and check the qualifying exemption box for:

- Increase in Required Hours: An increase in the number of hours worked. An increase in required hours does NOT include overtime or overload hours or a promotion. A change from part-time to full-time is also considered an increase in required hours.”

However, the memo clearly states that it will only apply in covid-related cases where an employee’s reduction in hours was caused by the pandemic and required by the employer. Neither is applicable in this situation.

ELGIN argues that it should be exempt from any accelerated payment even though there is not an express exemption because KOEUNE’S pay increases were minimal, if any, and did not exceed the statutory amount. ELGIN maintains that pursuant to its collective

bargaining contract and personnel policies KOEUNE was allowed to, and did, take unpaid leave during 2018 and 2019, after he had used up his vacation pay, resulting in lower reportable IMRF earned wages for the same salary paid. ELGIN argued that any comparison of KOEUNE'S earned wages from year to year should properly compare his yearly salary, rather than the timing of his unpaid leave. ELGIN maintains that KOEUNE'S salary increases were well below the salary increase necessary for an accelerated payment, so it should not have to pay the accelerated payment. IMRF maintains that it has no legal authority to exempt an employer from an accelerated payment if it is not expressly provided in the Pension Code, and changes to an employee's earned income resulting from having taken unpaid leave is not listed as an exemption in 40 ILCD 5/7-172(k).

I recommend that the IMRF staff decision denying the Accelerated Payment Exemption be AFFIRMED as the Illinois Pension Code, as well as the written IMRF rules are very clear that it is the twelve months period immediately preceding KOEUNE'S termination date from IMRF participation that must be compared to other twelve-month periods within the forty-eight months final rate of earnings period. Per IMRF rules and the Pension Code, each of the twelve months periods from 5/2020 to 4/2021, and from 5/2019 to 4/2020, when compared with the twelve months period immediately preceding it, shows that KOEUNE'S increase in earnings was sufficient to trigger the need for an accelerated payment. Section 7-172(k) applies unless there is an exemption set forth in the Code. While ELGIN has a personnel policy signed prior to 2012 relating to exemptions for vacation and sick time payouts as stated above, there was no such personnel policy providing a basis for an allowable exemption caused by apparent changes in KOEUNE'S earned wages due to his return to work after taking unpaid leave or due to his cost of living increases. Nor is there any other exemption listed in 7-172(k) that would exempt ELGIN from the accelerated payment necessitated by increases in KOEUNE'S reportable earnings.



SUSAN DAVIS BRUNNER, Hearing Officer

December 6, 2021

These Findings and Decision are adopted this 17th day of December, 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)	
Kelly Cosimo (MID# 142-6300))	
)	Hearing November 24, 2021
[Appeal for Reinstatement)	
Transfer of Service Credit])	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Kelly Cosimo, a former participant in the Illinois Municipal Retirement Fund (“IMRF”), appealed an IMRF staff determination that service credit she earned from 2002 to 2004 as a youth counselor through Kane County did not qualify for reinstatement and transfer to an Article 3 pension fund because the position did not involve “police duties” under Section 7-139.14 of the Illinois Pension Code (40 ILCS 5/7-139.14).

Pursuant to the IMRF Non-Disability Appeal Procedures, a hearing was held on November 24, 2021, by video conference, before Carolyn Welch Clifford, one of the IMRF Administrative Hearing Officers. Cosimo was given proper notice of the hearing and appeared at the hearing. Associate General Counsel Vladimir Shuliga appeared on behalf of IMRF.

Copies of all documentation submitted by IMRF and Cosimo were admitted into evidence for the administrative record as **Cosimo Supporting Documents** (pages 1 through 29) (hereinafter, “**Documents**”). Testimony was received from Cosimo, who testified under oath and was subject to cross examination. As a result of the hearing, the Board of Trustees of IMRF finds and determines as follows:

A. REVIEW OF APPLICABLE STATUTES AND CASE LAW

1. Section 7-139.14 of the Illinois Pension Code provides a six-month window for an active police officer participating in an Article 3 police pension fund to transfer three specific types of IMRF service credit to that Article 3 fund: (a) IMRF service as a sheriff’s law enforcement employee; (b) IMRF service by a person employed by a participating municipality to

perform police duties; or (c) IMRF service as a law enforcement officer employed on a full-time basis by a forest preserve district. (40 ILCS 5/7-139.14)

2. Section 3-106 of the Illinois Pension Code provides, in relevant part, that a “police officer” is “any person . . . appointed to the police force of a police department and sworn and commissioned to perform police duties.” (40 ILCS 5/3-106)

3. Section 7-109 of the Illinois Pension Code provides a definition of “employee” for purposes of IMRF membership. Subsection (2)(b) of Section 7-109 specifically states that “employee” does not include persons who are designated by their municipality to perform “police duties,” with the exception of the head of a police department or chief of police under certain limited circumstances. (40 ILCS 5/7-109)

4. “Police duties,” as the term is used in the Illinois Pension Code, are performed by individuals who are appointed to a police department, and sworn and commissioned to perform such duties. “Generally, police duties encompass a wide variety of law enforcement and order-maintenance functions including arrest, crime prevention and deterrence, crowd control, investigation, providing aid, and creating and maintaining a feeling of security.” (See IMRF Legal Interpretation 182, **Documents**, pp 6-7; 40 ILCS 5/3-106; also see *Fraternal Order of Police Lodge No. 109 v. Illinois Labor Relations Board*, 189 Ill. App. 3d 914, 918 (2nd Dist. 1989))

B. FINDINGS OF FACT

5. Cosimo enrolled as a participant in the IMRF regular plan on September 16, 2002. On the IMRF enrollment form, Kane County stated Cosimo was hired by the Court Services Department as a youth counselor.¹ (See **Documents**, p. 8)

¹ Cosimo was not -- and has not claimed to be -- a sheriff’s law enforcement employee for Kane County and did not participate in the SLEP plan. Membership in the SLEP plan is defined in Section 7-109.3 of the Illinois Pension Code (40 ILCS 5/7-109.3).

6. In her Statement of Claim, Cosimo stated that her position was in a closed juvenile facility or jail, and her responsibilities included “intake of juvenile prisoners, but also searches of persons, cell searches, cell checks, applying cuffs, shackles, escorting individuals to court proceedings and other medical necessities and maintaining security in the facility.” (See **Documents**, p. 15)

7. Information from the Kane County Juvenile Justice Center’s website states that its youth counselors are “court-appointed officers with a minimum of a Bachelor’s degree who are responsible for maintaining the security of the facility, ensuring the safe and secure custody of each resident; monitoring the behavior of the residents; and providing for their physical and emotional needs.” The website further describes the youth counselors as advocates for the minors in detention. “The youth counselor will help the resident adjust to the facility’s environment and will assist and counsel the resident. Advocates are also responsible for writing each resident’s behavior report which is provided to the juvenile court.” (See **Documents**, pp. 17-18)

8. The Kane County’s job description for youth counselor enumerates 15 primary responsibilities, which include such duties as supervising and counseling youth placed in the Juvenile Justice Center to processing female admissions (searching, applying body pest spray and showering). Equipment used in the position include metal detectors, cuffs and shackles, but does not include the use of weapons or firearms. (See **Documents**, pp. 20-21)

9. At hearing, Cosimo acknowledged that the youth counselor position did not require successful completion of a basic law enforcement training program, a firearms training course, or certification by the Illinois Law Enforcement Training and Standards Board. Further, she testified that she did not carry a firearm as a youth counselor.

10. In a letter supporting Cosimo’s appeal, the Executive Director of Court Services stated that all Court Services employees are employed by the Chief Judge and as such, are sworn officers of the court. (See **Documents**, p. 29)

11. On June 11, 2004, Cosimo (nee Garcia) terminated IMRF participation and later took a refund of her accrued IMRF service in October 2004. On July 5, 2004, she was appointed as a sworn police officer with the Village of Oswego Police Department after a testing process conducted by the Village's Board of Fire and Police Commissioners. Cosimo is currently a member of the Oswego Police Pension Fund with over 16 years of service.² (See Documents, pp. 10-11)

12. At hearing, Cosimo testified that she has a Bachelor's Degree in Law Enforcement from Western Illinois University. At the time she was appointed as a sworn police officer for the Village, Cosimo completed police academy training and became certified as an officer through the Illinois Law Enforcement Training and Standards Board.

C. CONCLUSIONS OF LAW

13. The Board of Trustees of the Illinois Municipal Retirement Fund has jurisdiction over this appeal pursuant to Section 7-179 of the Illinois Pension Code (40 ILCS 5/7-179), 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).

14. The Board has a fiduciary duty to administer the Fund in accordance with applicable provisions of the Illinois Pension Code. (40 ILCS 5/1-109)

15. In order to transfer IMRF service to an Article 3 police pension fund under Section 7-139.14 of the Illinois Pension Code, the service must qualify under one of the three enumerated types of service set forth in the statute. (40 ILCS 5/7-139.14)

16. As used in various sections of Article 7, IMRF applies the Article 3 definition of "police officer." According to IMRF Legal Interpretation 182, "[s]omeone who performs 'police duties' is defined as someone 'who is appointed to the police force of a police department and sworn and commissioned to perform police duties.'" Thus, individuals who are not sworn and

² Also see Illinois Department of Insurance Annual Statement for the Oswego Police Pension Fund for Fiscal Year ending April 30, 2021, p. 37 (available at [Pension Annual Statement System \(illinois.gov\)](https://www.pensionannualstatement.com/illinois.gov)).

commissioned to perform police duties, including law enforcement and arrest functions, are not individuals who perform “police duties” under Article 7 of the Illinois Pension Code. (See Documents, pp. 6-7)

17. Cosimo’s IMRF service with Kane County was neither “service as a sheriff’s law enforcement employee” nor service as a “law enforcement officer employed on a full-time basis by a forest preserve district.” (40 ILCS 5/7-139.14)

18. Furthermore, Cosimo’s IMRF service with Kane County as a youth counselor was not as a “person employed by a participating municipality to perform police duties.” (40 ILCS 5/3-106; 7-139.14)

19. Section 7-109 of the Illinois Pension Code specifically excludes from IMRF participation any person who is “designated by the governing body of a municipality in which a pension fund is required by law to be established for policemen or firemen, respectively, as performing police or fire protection duties.” (40 ILCS 5/7-109)

20. As a youth counselor, Cosimo was sworn as a court officer, but was not sworn or commissioned as a police officer, sheriff’s deputy, or law enforcement officer. Cosimo did not carry a firearm, and she did not make arrests or perform other law enforcement duties. She primarily processed inmates and supervised youth in the juvenile facility, for which no formal police or firearms training or certification was required. In short, Cosimo did not perform “police duties” as a youth counselor for Kane County.

D. DECISION

By reason of the above findings of fact and conclusions of law, and after careful consideration of the evidence, the Board of Trustees of the Illinois Municipal Retirement Fund, HEREBY ORDERS as follows:

1. The administrative staff determination that former IMRF participant Kelly Cosimo did not qualify for reinstatement and transfer of service credit she earned from 2002 to 2004 as a youth counselor through Kane County to an Article 3 pension fund because the position

did not involve “police duties” under Section 7-139.14 of the Illinois Pension Code (40 ILCS 5/7-139.14) is hereby AFFIRMED.

2. This is a final administrative decision, which is reviewable under the terms of the Illinois Administrative Review Law. (40 ILCS 5/7-220; 735 ILCS 5/3-101)

These Findings of Fact and Conclusions of Law are adopted this _____ day of
December, 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)
Jeffrey C. Mertz (MID# 113-7514))
) Hearing November 16, 2021
 [Appeal for Reinstatement and)
 Transfer of Service Credit])

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jeffrey C. Mertz, a former participant in the Illinois Municipal Retirement Fund (“IMRF”), appealed an IMRF staff determination that service credit he earned from 1993 to 1998 as a Community Service Officer (“CSO”) through the Village of Downers Grove did not qualify for reinstatement and transfer to an Article 3 pension fund because the position did not involve “police duties” under Section 7-139.14 of the Illinois Pension Code (40 ILCS 5/7-139.14).

Pursuant to the IMRF Non-Disability Appeal Procedures, a hearing was held on November 16, 2021, by video conference, before Carolyn Welch Clifford, one of the IMRF Administrative Hearing Officers. Mertz was given proper notice of the hearing and appeared at the hearing. Associate General Counsel Vladimir Shuliga appeared on behalf of IMRF.

Copies of all documentation submitted by IMRF and Mertz were admitted into evidence for the administrative record as **Mertz Supporting Documents** (pages 1 through 42) (hereinafter, “**Documents**”). Testimony was received from Mertz, who testified under oath and was subject to cross examination. As a result of the hearing, the Board of Trustees of IMRF finds and determines as follows:

A. REVIEW OF APPLICABLE STATUTES AND CASE LAW

1. Section 7-139.14 of the Illinois Pension Code provides a six-month window for an active police officer participating in an Article 3 police pension fund to transfer three specific types of IMRF service credit to that Article 3 fund: (a) IMRF service as a sheriff’s law enforcement employee; (b) IMRF service by a person employed by a participating municipality to

perform police duties; or (c) IMRF service as a law enforcement officer employed on a full-time basis by a forest preserve district. (40 ILCS 5/7-139.14)

2. Section 3-106 of the Illinois Pension Code provides, in relevant part, that a “police officer” is “any person . . . appointed to the police force of a police department and sworn and commissioned to perform police duties.” (40 ILCS 5/3-106)

3. Section 7-109 of the Illinois Pension Code provides a definition of “employee” for purposes of IMRF membership. Subsection (2)(b) of Section 7-109 specifically states that “employee” does not include persons who are designated by their municipality to perform “police duties,” with the exception of the head of a police department or chief of police under certain limited circumstances. (40 ILCS 5/7-109)

4. “Police duties,” as the term is used in the Illinois Pension Code, are performed by individuals who are appointed to a police department, and sworn and commissioned to perform such duties. “Generally, police duties encompass a wide variety of law enforcement and order-maintenance functions including arrest, crime prevention and deterrence, crowd control, investigation, providing aid, and creating and maintaining a feeling of security.” (See IMRF Legal Interpretation 182, **Documents**, pp 6-7; 40 ILCS 5/3-106; also see *Fraternal Order of Police Lodge No. 109 v. Illinois Labor Relations Board*, 189 Ill. App. 3d 914, 918 (2nd Dist. 1989))

B. FINDINGS OF FACT

5. Mertz enrolled as a participant in IMRF on August 30, 1993. On the IMRF enrollment form, the Village stated Mertz had been hired by its public works department as a maintenance worker. (See **Documents**, p. 8)

6. However, in his Statement of Claim, Mertz stated that he began his employment with the Village’s Police Department as a CSO 1 (parking enforcement officer) in September 1993, which he acknowledges was a civilian position. Later, Mertz stated he was promoted to a

CSO 3 position on August 14, 1995, assigned to the “Selective Traffic Enforcement Program” (“STEP”).¹ (See **Documents**, pp. 21 and 28)

7. Mertz explained that the STEP program utilized Community Service Officers to enforce Illinois Vehicle Code violations within the Village from the 1980s through the early 2000s. According to his Statement of Claim and his testimony at hearing, STEP was “rather unique and not widely utilized with other police departments.” (See **Documents**, p. 21)

8. Mertz stated that the CSO 3 position was a full-time, non-sworn position, and acknowledged at hearing that his promotion to the position did not occur through a process before the Village’s Board of Fire and Police Commissioners. At hearing, Mertz stated that he took the job “to get a foot in the door” toward becoming a police officer. (See **Documents**, p. 21)

9. The Village’s job description for CSO 3 required a high school diploma “combined with six months to one year of experience in technical police work, or a combination of education and experience which produced the necessary level of knowledge and experience.” Furthermore, the job required a valid Illinois State Class D Driver’s License, a satisfactory driving record, and overweight truck enforcement certification. (See **Documents**, pp. 23-26)

10. At hearing, Mertz acknowledged that the CSO 3 position did not require successful completion of a basic law enforcement training program, a firearms training course, or certification by the Illinois Law Enforcement Training and Standards Board.

11. In Mertz’s Statement of Claim, he stated he wore a uniform as a CSO 3 and was assigned a decommissioned squad car with amber (not red) lights, radar unit, bullet proof vest, handcuffs, and mace. As a CSO 3, he issued traffic tickets and citations for overweight commercial motor vehicles, completed vehicle crash reports, and enforced railroad safety measures. However, he did not carry a firearm, and while he could initiate a traffic arrest where a

¹ Although Mertz’s transfer application requests transfer of IMRF service credit from September 1993 to September 1998, Mertz’s Statement of Claim focuses his argument on his service time as a CSO 3, the position he held from August 1995 to September 1998. At hearing, Mertz confirmed he was requesting the transfer of only the three years of service as a CSO 3.

driver's driving privileges were suspended or revoked, only sworn police officers were able to place drivers into police custody. (See **Documents**, pp. 21-22)

12. On September 19, 1998, Mertz terminated IMRF participation and later took a refund of his accrued IMRF service in November 1998. On September 20, 1998, he was appointed as a sworn police officer with the Village of Downers Grove Police Department after a testing process conducted by the Village's Board of Fire and Police Commissioners. Mertz is currently a member of the Downers Grove Police Pension Fund with over 22 years of service.² (See **Documents**, pp. 10-11)

13. At hearing, Mertz testified that at the time he was appointed as a sworn police officer for the Village, he completed police academy training and became certified as an officer through the Illinois Law Enforcement Training and Standards Board. He stated that successful completion of the police academy was required as a police officer with the Village of Downers Grove Police Department.

C. CONCLUSIONS OF LAW

14. The Board of Trustees of the Illinois Municipal Retirement Fund has jurisdiction over this appeal pursuant to Section 7-179 of the Illinois Pension Code (40 ILCS 5/7-179), 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).

15. The Board has a fiduciary duty to administer the Fund in accordance with applicable provisions of the Illinois Pension Code. (40 ILCS 5/1-109)

16. In order to transfer IMRF service to an Article 3 police pension fund under Section 7-139.14 of the Illinois Pension Code, the service must qualify under one of the three enumerated types of service set forth in the statute. (40 ILCS 5/7-139.14)

² Also see Illinois Department of Insurance Annual Statement for the Downers Grove Police Pension Fund for Fiscal Year ending December 31, 2020, p. 43 (available at [Pension Annual Statement System \(illinois.gov\)](https://www.pensionannualstatement.com/illinois.gov)).

17. As used in various sections of Article 7, IMRF applies the Article 3 definition of “police officer.” According to IMRF Legal Interpretation 182, “[s]omeone who performs ‘police duties’ is defined as someone ‘who is appointed to the police force of a police department and sworn and commissioned to perform police duties.’” Thus, individuals who are not sworn and commissioned to perform police duties, including law enforcement and arrest functions, are not individuals who perform “police duties” under Article 7 of the Illinois Pension Code. (See Documents, pp. 6-7)

18. Mertz’s IMRF service with the Village of Downers Grove as a CSO 3 was neither “service as a sheriff’s law enforcement employee” nor service as a “law enforcement officer employed on a full-time basis by a forest preserve district.” (40 ILCS 5/7-139.14)

19. Furthermore, Mertz’s IMRF service with the Village of Downers Grove as a CSO 3 was not as a “person employed by a participating municipality to perform police duties.” (40 ILCS 5/3-106; 7-139.14)

20. Section 7-109 of the Illinois Pension Code specifically excludes from IMRF participation any person who is “designated by the governing body of a municipality in which a pension fund is required by law to be established for policemen or firemen, respectively, as performing police or fire protection duties.” (40 ILCS 5/7-109)

21. As a CSO 3, Mertz was not sworn or commissioned as a police officer; he did not carry a firearm and did not have the power to arrest and place a suspect into custody without a sworn officer present. He primarily enforced traffic laws, for which no formal police training or certification was required. In short, Mertz did not perform “police duties” as a CSO 3 for the Village of Downers Grove.

22. Instead, the Village considered Mertz a civilian employee in its police department who qualified for IMRF membership. Upon his appointment as a sworn and commissioned police officer for the Village, Mertz’s membership in IMRF properly terminated because he was no longer qualified as an “employee” under Section 7-109. Thereafter, he became

a member of the Village's Article 3 police pension fund as a "police officer" performing "police duties" under Section 3-106. (40 ILCS 5/3-106 and 7-109)

D. DECISION

By reason of the above findings of fact and conclusions of law, and after careful consideration of the evidence, the Board of Trustees of the Illinois Municipal Retirement Fund, HEREBY ORDERS as follows:

1. The administrative staff determination that former IMRF participant Jeffrey C. Mertz did not qualify for reinstatement and transfer of service credit he earned from 1993 to 1998 as a Community Service Officer ("CSO") through the Village of Downers Grove to an Article 3 pension fund because the position did not involve "police duties" under Section 7-139.14 of the Illinois Pension Code (40 ILCS 5/7-139.14) is hereby AFFIRMED.

2. This is a final administrative decision, which is reviewable under the terms of the Illinois Administrative Review Law. (40 ILCS 5/7-220; 735 ILCS 5/3-101)

These Findings of Fact and Conclusions of Law are adopted this _____ day of
December, 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

| December ~~2020~~2021

BENEFIT REVIEW COMMITTEE CHARTER

The Board of Trustees of the Illinois Municipal Retirement Fund has adopted this Benefit Review Committee (“Committee”) Charter. The Benefit Review Committee of the Board shall review and reassess this charter annually and recommend any proposed changes to the Board for approval.

PURPOSE

To assist the Board of Trustees in fulfilling its oversight responsibilities for the process of hearing appeals of certain staff determinations regarding members’ claims for benefits, benefit calculation errors and resulting benefit recoupment, and non-ERI related return to work issues. The Committee will review written findings and conclusions of the IMRF Hearing Officer related to employer contribution delinquencies, employer rates, accelerated payments, eligibility for participation, IMRF reportable earnings, felony forfeitures, contested beneficiary designations, ERI return-to-work violations and other appeals assigned to the IMRF Hearing Officer for determination. The Board may assign other duties to the Committee.

AUTHORITY

The Benefit Review Committee has authority to conduct or authorize investigations into any matters within its scope of responsibility. It is empowered to:

- ◆ Utilize outside medical consultants or others to advise the committee or assist in the conduct of an investigation.
- ◆ Seek any information it requires from Fund employees--all of whom are directed to cooperate with the Committee's requests--or external parties.
- ◆ Meet with Fund staff, medical consultants, outside counsel, and members as necessary.

COMPOSITION

The Benefit Review Committee will consist of at least three members of the Board of Trustees. At the January Board Meeting, the president of the Board will nominate, and the full Board will elect, committee members, the committee chair, and vice-chair for one-year terms.

MEETINGS

The Committee will generally meet as scheduled, with authority to convene additional meetings, as circumstances require. All committee members are expected to attend each meeting, in person or via teleconference or videoconference. In the absence of the Chairperson, the vice chairperson shall preside. In absence of both the chairperson and vice chairperson the other members of the Committee shall designate a chairperson pro tem to preside over the Committee meeting.

The Committee will require that staff, medical consultants, and others attend meetings to provide pertinent information, as necessary. Meeting agendas will be prepared and

provided in advance of the meetings. Staff will provide the Committee with a copy of the statement of claim, a statement of the position of the administrative staff, and any other documentation (medical records, etc.) available to the Fund. For appeals heard by the IMRF Hearing Officer, the Committee will receive the full packet of materials presented at the hearing along with the written findings and conclusions of the Hearing Officer. Members of the Committee may ask questions necessary for better understanding of the facts or law.

All Committee hearings shall be open to the public unless the chairperson, for good cause shown and pursuant to the applicable provisions of the Open Meetings Act, shall determine otherwise. The member/claimant is not required to attend the meeting, and may be represented solely by the statement of claim on file. However, he/she may appear at the meeting in person, by teleconference, or by videoconference. The member may come alone, with an attorney, or with any other authorized representative. An attorney or other authorized representative may represent the member in his/her absence.

Staff will prepare minutes for each meeting. These minutes will serve as a record of proceedings in the form of a non-verbatim report. The claimant may obtain a verbatim record of hearing taken by a court reporter provided he/she makes a timely request for a court reporter to be present. The claimant must pay the full cost for the services of a court reporter.

RESPONSIBILITIES

The Committee will carry out the following responsibilities:

Hear appeals of certain staff determinations regarding members' claims for disability benefits, benefit calculation errors and resulting benefit recoupment and non-ERI return to work issues.

Review the findings and conclusions of the IMRF Hearing officer related to employer contribution delinquencies, employer rates, accelerated payments, eligibility for participation, IMRF reportable earnings, felony forfeitures, contested beneficiary designations, ERI return-to-work violations and any other appeals assigned to the IMRF Hearing Officer for determination.

Staff will schedule the hearings on the meeting dates selected by the Committee.

Determination by the Committee

Upon conclusion of all evidence and arguments, the Benefit Review Committee will make a decision as to the disposition of the claim. At least a majority vote is required for any decision of the Benefit Review Committee. The Committee will render one of the following decisions: affirmance of the staff recommendation, reversal of the staff recommendation, remand of the proceedings to staff for further investigation, request the development of an alternative resolution, or, in the case of deadlock, continuation of the claim for consideration by the full Board of Trustees. The decision will be in the form of a recommendation to the full Board of Trustees or, in the case of deadlock, without recommendation.

Immediately following each Committee meeting staff will prepare the chairperson's summary report to the Board of Trustees.

~~The Benefits Manager, or other staff designee,~~ A staff designee will send written notice of the decision of the Board of Trustees to the claimant, and if applicable, to the claimant's representative.

Reporting Responsibilities

- ◆ Regularly report to the Board of Trustees about Committee activities, issues, and related recommendations.
- ◆ Provide an open avenue of communication between medical consultants and the Board of Trustees.
- ◆ Review any other issues that relate to Committee responsibilities.

Other Responsibilities

- ◆ Perform other activities related to this charter as requested by the Board of Trustees.
- ◆ Institute and oversee special investigations as needed.
- ◆ Make recommendations to the Board of Trustees concerning policies related to the responsibilities set forth herein.
- ◆ Confirm annually that all responsibilities outlined in this charter have been carried out.