



MEETING NO: 16-07 D BENEFIT REVIEW COMMITTEE

The Regular Meeting of the Benefit Review Committee of the Board of Trustees was held Thursday, July 21, 2016. Present at the meeting were Committee members Copper, Kuehne, Wallace, Miller, Thompson and Stanish, IMRF staff members, Davis, Dixon, Rockett, Janicki-Clark.

Absent: None

(16-07-01)(Visual roll call)

Ms. Copper presided as chairperson and called the meeting to order at 10:00 a.m.

(16-07-02)(Approval of prior meeting minutes)

The Benefits Manager presented the minutes from the Committee meeting held on May 19, 2016.

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

Motion passed by unanimous voice vote

(16-07-03)(Rae L. Kocinski) Total & Permanent Disability (Deferral)

Rae L. Kocinski and IMRF Medical Consultant Dr. Rachelle Miller appeared before the Committee via teleconference. The Committee heard comments from Ms. Kocinski, Dr. Miller, 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 total and permanent disability benefits to Ms. Kocinski.

Motion: Kuehne

Second: Thompson

Ayes: Copper, Kuehne, Wallace, Miller, Stanish and Thompson

Nays: None

(16-07-04)(Sabrina Wheatley) Recommended Findings and Conclusions of the IMRF Hearing Officer

Ms. Wheatley appeared by video conference from the IMRF Springfield Office and

commented on the proposed findings and conclusions. Associate General Counsel Janicki Clark presented the following findings and conclusions of the IMRF Hearing Officer:

BEFORE THE BOARD OF TRUSTEES OF THE ILLINOIS MUNICIPAL RETIREMENT FUND

In the Matter of:)
Sabrina Wheatley) Hearing July 14, 2016
[Early Retirement Incentive)
Forfeiture])

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On October 20, 2011, the Board of Trustees of the Webber Township High School District 204 (Employer #02342) adopted Resolution No. 1, authorizing an Early Retirement Incentive program (hereinafter, “ERI”) as provided for in Section 7-141.1 of the Illinois Pension Code. (40 ILCS 5/7-141.1) (Board Exhibits, page 75) According to the ERI Resolution, the program would take effect on November 1, 2011 and would expire on October 31, 2012. [*Id.*; 40 ILCS 5/7-141.1(d)]

On October 19, 2012, Ms. Sabrina Wheatley (hereinafter, “Petitioner”) applied for an Illinois Municipal Retirement Fund (hereinafter, “IMRF”) pension (Board Exhibits, page 39) and, at the same time, notified IMRF of her intent to retire under the ERI program. (Board Exhibits, page 38)

Petitioner’s last day of employment with the school district was October 31, 2012. (Board Exhibits, pages 22, 39)

In early February 2016, IMRF staff were advised that Ms. Wheatley continued performing bookkeeping duties for the school district after her retirement, up to, and including, June 2015,¹ and that the school district had compensated her by continuing to provide her with health insurance benefits. Board Exhibits, pages 12-13. As a result

¹ Webber Township High School District 204 merged into another school district at that time.

of receiving this information, on April 14, 2012, IMRF staff notified the Petitioner that, pursuant to Section 7-141.1(g) of the Illinois Pension Code [40 ILCS 5/7-141.1(g)], she had forfeited her ERI incentive and would be required to repay IMRF the portion of her retirement annuity that was attributable to the ERI incentive.² Board Exhibits, pages 4-5. Subsequently, the Petitioner timely appealed the staff decision (Board Exhibits, page 14) and filed a Statement of Claim. Board Exhibits, pages 1-3.

Pursuant to the IMRF Non-Disability Appeal Procedures, a hearing was held on July 14, 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 83, in addition to a two page cover memo from staff.

The Petitioner was given proper notice of the hearing and appeared, in person, and testified at the hearing. In addition to the Petitioner, Ms. Shlonda Horton and Ms. Marla Lacy accompanied Ms. Wheatley and testified on her behalf.

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

² Since the ERI incentive had allowed the Petitioner to retire prior to attaining age 55, the earliest age at which a non-sheriff's law enforcement employee member can retire, all of the annuity benefits that had been paid to the Petitioner were required to be repaid to IMRF.

I. EVIDENCE AND TESTIMONY

Review of Written Documentation and Testimony

1. The Petitioner was employed by Webber Township High School District 204 as a bookkeeper from 1999 until her retirement on October 31, 2012. Board Exhibits, pages 1, 23-24; Petitioner's testimony.

2. Petitioner's retirement was pursuant to an ERI program that was adopted by her employer's board resolution. Board Exhibits, page 75; Petitioner's testimony.

3. Petitioner, acting in the capacity of Board Secretary, certified the board resolution. Board Exhibits, page 75.

4. The board resolution provided that:

In order to help achieve a true cost savings, an employee who retires under the early retirement incentive program shall lose those incentives if he or she later accepts employment with any IMRF employer in any position. *Id.*

5. Notwithstanding her retirement, the Petitioner continued to provide bookkeeping/accounting services for the school district until June 2015. Board Exhibits, pages 1, 4, 8; Petitioner's testimony.

6. The school district continued to pay for the Petitioner's health insurance after she retired. Board Exhibits; pages 1, 4, 6, 8-9, 71-74; Petitioner's testimony.

7. In addition to paying for her health insurance, the school district also directly paid the Petitioner for her bookkeeping/accounting services. Petitioner's testimony.

8. Petitioner served as the Authorized Agent for the school district from 1999 until her retirement. Petitioner's testimony.

9. Petitioner completed and signed a "Notice of Intent to Retire under Employer's IMRF Early Retirement Incentive" (hereinafter, "Notice") on October 19,

2012. **Board Exhibits, page 38.**

10. Just above the Petitioner's signature on the Notice is the following affirmation:

If I return to work for any IMRF employer in any position, my IMRF pension will be suspended (from the date of employment), and I will repay IMRF any enhanced pension I received from this early retirement incentive. *Id.*

11. The Petitioner received a "Member Invoice for Cost of ERI Retirement" (hereinafter, "Invoice") in early December, 2012. **Board Exhibits, pages 44-45; Petitioner's testimony.**

12. The invoice advised the Petitioner that, "[I]f you return to work for ANY IMRF employer in ANY position, you will be required to reimburse IMRF for ANY pension payments received which are attributable to your ERI service credit." (Emphasis in original) *Id.*

13. On January 17, 2013, Petitioner left a voicemail message with IMRF staff asking to discuss "ERI RTW (Return to Work) AS IND CONT (Independent Contractor)"; however, staff failed to respond to the message. **Board Exhibits, page 70; Petitioner's testimony.**

14. As of July 14, 2016, Petitioner had received ERI retirement payments totaling \$91,948.68.

II. FINDINGS OF FACT

1. The Board finds as fact items 1-14, noted above.
2. The undisputed evidence shows that Webber Township High School District 204 continued to pay the Petitioner for bookkeeping/accounting services after she retired under the district's ERI program. It is also undisputed that the school district

continued to pay the cost of the Petitioner's health insurance after she retired.

III. CONCLUSIONS OF LAW

1. The Board of Trustees of IMRF has jurisdiction over the Petitioner's appeal pursuant to Sections 7-141.1, 7-179, 7-200 and 7-217 of the Illinois Pension Code (40 ILCS 5/7-141.1, 7-179, 7-200 and 7-217), 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. Section 7-141.1(g) of the Illinois Pension Code [40 ILCS 5/7-141.1(g)] provides that:

An annuitant who has received any age enhancement or creditable service under this Section and thereafter accepts employment with or enters into a personal services contract with an employer under this Article thereby forfeits that age enhancement and creditable service; except that this restriction does not apply to (1) service in an elective office, so long as the annuitant does not participate in this Fund with respect to that office, (2) a person appointed as an officer under subsection (f) of Section 3-109 of this Code, and (3) a person appointed as an auxiliary police officer pursuant to Section 3.1-30-5 of the Illinois Municipal Code. A person forfeiting early retirement incentives under this subsection (i) must repay to the Fund that portion of the retirement annuity already received which is attributable to the early retirement incentives that are being forfeited, (ii) shall not be eligible to participate in any future early retirement program adopted under this Section, and (iii) is entitled to a refund of the employee contribution paid under subsection (f). The Board shall deduct the required repayment from the refund and may impose a reasonable payment schedule for repaying the amount, if any, by which the required repayment exceeds the refund amount.

3. Section 7-141.1(g) of the Pension Code does not provide for any exceptions that are applicable to the circumstances in this appeal.

4. 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 the receipt of ERI pension payments in view of her continued employment and/or personal services contract with the

Webber Township High School District 204 after her retirement.

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, Sabrina Wheatley, as follows:

The administrative staff determination terminating her ERI pension payments, pursuant to the provisions of Section 7-141.1(g) of the Illinois Pension Code, is hereby affirmed.

The only payment that IMRF can now make to the Petitioner is a refund of the employee contribution paid under Section 7-141.1(f) of the Illinois Pension Code.³

IMRF staff should take the necessary steps to recover the ERI pension payments that were received by the Petitioner from November 1, 2012 through June 2015; establishing a reasonable payment schedule as provided for in Section 7-141.1(g) of the Pension Code.

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

³ It appears from the record that the employer may have paid the employee contribution, in addition to the required employer cost. **Board Exhibits, page 9, 50, 57.**

After further discussion, the committee recommends that the Board adopt the written findings and conclusions of the IMRF Hearing Officer.

Motion: Miller

Second: Stanish

Ayes: Copper, Kuehne, Wallace, Miller, Stanish and Thompson

Nays: None

(16-07-05)(Annie Delgado) Return to Work

Annie Delgado and her attorney Kurt Asprooth appeared before the Committee via teleconference. A court reporter was present at Mr. Asprooth's office. The Committee heard comments from Mr. Asprooth, Ms. Delgado, and staff regarding return to work situation. There was no dispute concerning the factual allegations. Ms. Delgado agreed that she remained in an IMRF eligible position (Village Trustee) while she collected her IMRF pension. Ms. Delgado described the confusion surrounding the situation and evidence existed that Ms. Delgado had met with IMRF and that IMRF had notice that she was returning to the Village Trustee position (a position upon which her pension was partially based). 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 that Ms. Delgado violated the return to work provisions of the Pension Code by remaining in an IMRF qualified position as Village Trustee while drawing her IMRF pension which was based in part on service in that position. However, the committee recommends that Ms. Delgado be allowed to rescind her original election to participate in IMRF as a Village Trustee and that the prepayment be calculated as the portion of her pension that related to her service as a Village Trustee. Ms. Delgado's pension credits related to that position shall be removed going back to her original date of enrollment in IMRF for the Village Trustee position and her pension shall be recalculated to reflect the removal of that service.

Motion: Stanish

Second: Kuehne

Ayes: Copper, Kuehne, Wallace, Miller, Stanish and Thompson

Nays: None

(16-07-06)(Kimberly Orvis) Temporary Disability

Kimberly Orvis and IMRF Medical Consultant Dr. Rachelle Miller appeared before the Committee via teleconference. The Committee heard comments from Ms. Orvis, Dr. Miller, 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 to Ms. Orvis.

Motion: Wallace

Second: Kuehne

Ayes: Copper, Kuehne, Wallace, Miller, Stanish and Thompson

Nays: None

(16-07-07)(Rena Woellert) Total & Permanent Disability (Deferral)

Rena Woellert appeared before the Committee via teleconference. The Committee heard comments from Ms. Woellert 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 total and permanent disability benefits to Ms. Woellert

Motion: Kuehne

Second: Thompson

Ayes: Copper, Kuehne, Wallace, Miller, Stanish and Thompson

Nays: None

(16-07-08) Old Business none

(16-07-09) New Business none

(16-07-10) Public Comments none

(16-07-11) Adjournment

Motion: Miller

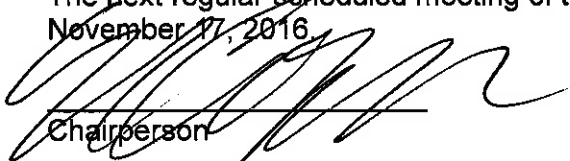
Second: Thompson

Ayes: Copper, Kuehne, Wallace, Miller, Stanish and Thompson

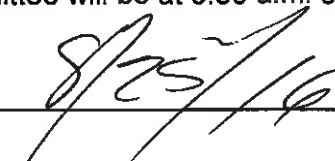
Nays: None

Meeting adjourned at 1:34 p.m.

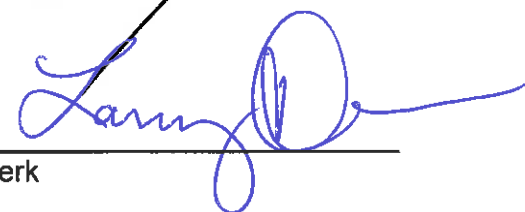
The next regular scheduled meeting of the Committee will be at 9:30 a.m. on Thursday
November 17, 2016



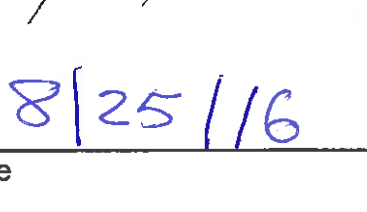
Chairperson



Date



Clerk



Date