

MEMORANDUM

TO: Board of Trustees
FROM: Benefit Review Committee
DATE: November 18, 2021
SUBJECT: Report of the Benefit Review Committee Meeting held on November 18, 2021

A meeting of the Benefit Review Committee of the Board of Trustees was held in the Oak Brook IMRF office on Thursday, November 18, 2021. Present at the meeting were Committee members Copper, Kuehne, Miller, and Stefan. Committee member Mitchell appeared via video conference. Staff members present were Shuliga, Carter, Janicki Clark, Davis, Dixon, Claussen, Seputis, Osipczuk, Meade, Hatfield and Hollyfield.

(21-11-01) (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.

(21-11-02) Approval of the committee meeting minutes from August 26, 2021

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

(21-11-03) Keith Gardner – Denial of Temporary and Total and Permanent Disability

Written materials including medical records, member, employer, and physician questionnaires; written opinions by the medical consultant; arbitration decision by the Illinois Workers' Compensation Commission, and a written statement of claim from the member were provided to the committee members for review prior to the hearing. Mr. Gardner appeared for the hearing and testified on his own behalf.

After deliberation, the Committee recommends that the Board affirm the staff decision retroactively terminating temporary disability benefits to December 11, 2015. The Committee finds that Kane County had given him reasonable accommodations to return to his position which Mr. Gardner declined. The Committee finds that Kane County continues to offer Mr. Gardner reasonable accommodations in order for him to return to work in a modified role. Therefore, the Committee finds that Mr. Gardner did not meet the eligibility requirements for temporary disability benefits as set forth in Section 7-146 when he declined his employer's reasonable accommodations to return to work in a modified duty capacity. Finally, based on the Committee's determination on temporary disability benefits, the denial of total and permanent benefits is moot.

Motion: Kuehne
Second: Stefan
Ayes: Copper, Kuehne Miller, Mitchell, Stefan
Nays: None

Motion Passed: 5-0

(21-11-04) Jackie Hayes – Denial of Total and Permanent Disability

Prior to the hearing, Hayes submitted a request for continuance. The Committee granted a final continuance with the case proceeding to hearing at the BRC meeting scheduled for December 16, 2021.

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

(21-11-05) Andris Dellinger – 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. Mr. Dellinger appeared with his non-attorney representative Melissa Bertolina via videoconference.

After deliberation, the Committee recommends that the Board reverse the staff decision denying total and permanent disability benefits to Mr. Dellinger. The Committee finds Mr. Dellinger’s testimony to be credible and persuasive as to his physical and mental limitations. Therefore, the Committee finds that Mr. Dellinger meets the definition of total and permanent disability benefits as defined in Section 7-150 of the Illinois Pension Code.

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

(21-11-06) Findings and Conclusion of the IMRF Hearing Officer – Don E. Lange

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

(21-11-07) Findings and Conclusion of the IMRF Hearing Officer – Judith Caleca

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. The recommended findings and conclusions are attached hereto.

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

(21-11-08) Findings and Conclusion of the IMRF Hearing Officer – Susan Jacobi

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 overturn the recommendation of the IMRF Hearing Officer and the staff determination. The Committee finds that under the unique facts of this case, Ms. Jacobi is allowed to rescind her non-reciprocal benefit election. Staff is directed to draft new findings and conclusion consistent with this decision.

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

(21-11-09) Disability Appeal Procedures

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

(21-11-10) Litigation Update

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

(21-11-11) Public Comment

None

(21-11-12) Adjournment

Trustee Kuehne made a motion to adjourn at 4:08 p.m. Seconded by Trustee Miller.
Motion passed by unanimous roll call vote.

ILLINOIS MUNICIPAL RETIREMENT FUND

IN THE MATTER OF JUDITH A. CALECA) **MID #117-1093**
re:)
FROM A DECISION OF THE ILLINOIS MUNICIPAL) **Susan Davis Brunner**
RETIREMENT FUND ADMINISTRATIVE STAFF) **Hearing Officer**

STATEMENT OF THE CASE AND FACTUAL BACKGROUND

JUDITH A. CALECA MID # 117-1093 (hereinafter referred to as “CALECA”) is a current employee of the Village of Algonquin (hereinafter referred to as “ALGONQUIN”), where she has worked since 2007 and has been an active participant in the Illinois Municipal Retirement Fund (hereinafter referred to as “IMRF”). Prior and simultaneous to working for ALGONQUIN, CALECA began working part-time for the Village of Schaumburg (hereinafter referred to as “SCHAUMBURG”) in a position that does not qualify for IMRF participation. On May 29, 2020, the IMRF Board of Trustees passed Board Resolution 2020-05-10(a) (hereinafter referred to as the “Resolution”) pertaining to the need to have a complete separation from service in order to be eligible to receive retirement benefits. This Resolution clarified the requirements for the separation of service and was to be effective beginning January 1, 2021. CALECA seeks to retire and in early 2021 contacted IMRF and requested an IMRF advisory opinion as to whether she could continue to work for SCHAUMBURG after her planned retirement and still receive her retirement annuity. In a letter dated June 3, 2021 IMRF staff responded that CALECA’S application for an exemption from the IMRF separation of service rules so that she could collect retirement benefits while working for SCHAUMBURG was denied. IMRF stated that the Pension Code and Resolution required that in order to be fully separated from her employment with SCHAUMBURG, CALECA could not work in any capacity for any IMRF employer until at least 60 days after her retirement. Moreover, IMRF advised that CALEGA could not prearrange to return to SCHAUMBURG after the sixty-day period.

CALECA now appeals the IMRF Administrative Staff Determination and maintains that IMRF is exceeding its authority because the Pension Code does not require a sixty-day waiting period before working for a different IMRF employer in a non-qualifying IMRF position. She also maintains that in adding the new requirement after she commenced employment, IMRF has violated her contractual right to her pension. CALECA also maintains that the sixty-day waiting period should not apply to her, as her position with SCHAUMBURG is not IMRF eligible as she is only a part-time employee working less than 600 hours with no eligibility for IMRF participation or pension credit. IMRF argues that the Pension Code and the Internal Revue Service (hereinafter referred to as “IRS”) require an employee to be separated from service before receiving retirement annuities and the sixty-day waiting period ensures that neither IMRF nor the individual employee will run afoul of the law. IMRF also maintains that it is not adding a new requirement by

adding a sixty-day waiting period but is just clarifying what is meant by the undefined term “separation from service” that was already present in section 7-141(a) of the Pension Code.

The appeal was heard remotely before Hearing Officer Susan Davis Brunner on October 8, 2021, at 10:00 a.m. CALECA appeared remotely on behalf of herself. Attorneys Vladimir Shuliga and Elizabeth Carter appeared on behalf of IMRF.

ISSUES TO BE REVIEWED

At issue in this case is whether IMRF’S Resolution setting forth the requirement that an individual employee cannot receive retirement benefits from one’s employer unless he/she/they has not worked for or made plans to work for any IMRF employer in any capacity for at least 60 days after retirement is a legal and authorized interpretation of the requirements set forth in 40 ILCS 7-141(a).

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 (40 ILCS 5/7 et seq; hereinafter referred to as the 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. The Pension Code also provides that the IMRF Board of Trustees may make rules and regulations for the IMRF to efficiently administer the fund. Although the IMRF is not an administrative agency and does not have formal regulations set forth in the Illinois Administrative Code, the IMRF Board of Trustees (IMRF Board) has authority to make “administrative decisions on participation and coverage, which are necessary for carrying out the intent of this fund in accordance with the provisions of this Article.” 40 ILCS 5/7-200 (West 2010). The Pension Code gives the authority to the IMRF to interpret the intent of the Pension Code and make rules and regulations on participation and coverage it believes are necessary to efficiently administer the fund. To that end, the IMRF Board has passed numerous Resolutions and has also adopted the “Authorized Agent’s Manual” (hereinafter referred to as the Manual), which it uses to provide guidance regarding IMRF rules. The resolutions and the Manual therefore constitute the IMRF’S “administrative rules.” Administrative rules interpreting a statute can be used by the court as guides but are binding on the court only to the degree that they follow the statute. (see *Stevens v. Oakbrook*, 2013 IL App (2d) 120456; also see *Illinois RSA No. 3, Inc. v. Department of Central Management Services*, 348 Ill. App. 3d 72, 77 (2004)).

Section 7-141(a) of the Pension Code provides that an employee may only receive a retirement annuity once they are “separated from the service of all participating municipalities and instrumentalities thereof and participating instrumentalities.”

The phrase “separation from service” is not expressly defined in the Pension Code. IMRF has stated that the requirement that one must “separate from service” before receiving a retirement annuity arises from the requirements set forth in both the Pension Code and also the U.S. Tax Code. IMRF also states that IRS rules require IMRF to pay retirement benefits only to those members that have legitimately retired and terminated employment and if a member retires and is then reemployed without a bona fide separation of service, it raises qualification issues for the plan. Treas. Reg. § 1.401-1(a)(2)(i); Rev. Rul. 74-254, 1974-1 C.B. 94. Therefore, in order to retain its legal status and comply with federal law, IMRF maintains that by requiring the sixty-day waiting period after retirement before working for any IMRF employer, it is doing what is necessary to comport with the law and be certain there has been a bona fide separation from work so IMRF can maintain its qualified plan status.

The RESOLUTION regarding the separation of service provides as follows:

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

WHEREAS, Section 7-141 of the Illinois Pension Code conditions the payment of a retirement annuity on an employee’s separation of service from all IMRF participating employers; and

WHEREAS, the Internal Revenue Service has ruled that individuals who retire with the explicit understanding with their employer that they will continue working are not separating from service with the employer are not legitimately retired; and

WHEREAS, in order to preserve IMRF’s qualified plan status under the Internal Revenue Code, IMRF may not pay a retirement annuity to an employee who has not legitimately separated from service

“1. In order for a member to qualify to receive a retirement annuity the member must separate from the service of all IMRF employers. Moving from a qualifying IMRF position to a temporary or part-time position at an IMRF employer, or becoming a leased employee or an independent contractor of an IMRF employer, is not sufficient to constitute a bona fide separation of service.

2. A member may never prearrange continued employment as a common law employee, leased employee or independent contractor with an IMRF employer at the time of retirement from that employer. Such arrangement does not constitute a bona de separation of service and such individuals would not be eligible to receive an IMRF pension.

3. IMRF will suspend the retirement annuity of a member who returns to employment or service with an IMRF employer earlier than sixty (60) days from their annuity start date. The suspension will begin on the first day of the month following the reemployment. This is true regardless of the number of hours worked, or whether the retiree is employed as an independent contractor.

4. Retirees who have received one or more retirement annuity payments after returning to service in violation of this policy will be required to return such payment(s) to IMRF. In the

case of hardship, staff is permitted to enter into a repayment plan with the elected retiree, for a term not to exceed eight years.

After sixty (60) days from the annuity start date, retirees may return to service with an IMRF employer, provided that there was no pre-arranged agreement to return to employment before retirement. In this case, the return-t- work rules established by the IMRF Board will apply”.

On May 29, 2020, IMRF issued and disseminated a General Memorandum #336 (hereinafter referred to as the “Memo”), that clarifies and reiterates the requirements set forth in the Resolution. In addition, the IMRF requirements regarding a “separation of service” are provided in the Manual.

In the “WHEREAS” clauses of its Resolution, IMRF asserts that the Internal Revenue Service has ruled that individuals who retire with the explicit understanding with their employer that they will continue working are not separating from service with the employer are not legitimately retired. IMRF also asserts that in order to preserve IMRF’s qualified plan status under the Internal Revenue Code, IMRF may not pay a retirement annuity to an employee who has not legitimately separated from service. IMRF maintains that it passed the Resolution because the IRS has stated that separation from service requires that an employee “stops performing service for the employer and there is not the explicit understanding between the employer and employee that upon retirement the employee will immediately return to service with the employer.” For purposes of this Hearing Officer’s written Recommendations for the IMRF Board of Trustees, the written IRS and US tax rules, regulations, letters and laws relied upon by IMRF will be taken as true, as this administrative hearing is not the arena to interpret or determine federal tax law. Therefore, what is at issue here is whether the IMRF’S new requirement that an employee must wait sixty days before working in any capacity for any IMRF employer, a requirement not stipulated in the Pension Code, is a legal exercise of IMRF’S rulemaking authority in managing and maintaining the Pension Fund, and whether this requirement applies to CALECA.

CALECA argues that although the Pension Code does not specifically define “separation from work” and that the Pension Code does not intend to prohibit a retiring employee from working less than 600 hours in a non-qualifying independent contractor position for another IMRF employer. CALECA maintains that the Pension Code, in section 7-137 specifically excludes from IMRF participation those employees who hold a position that requires less than 600 hours a year for a participating municipality. In addition, section 7-111 states that the period when the employee was employed in a position normally requiring less than 600 hours of service during a year does not qualify as “prior service.” Similarly, since her SCHAUMBURG position does not qualify for IMRF participation or prior service credit CALECA should not be barred from collecting retirement benefits from ALGONQUIN if she does not stop working for SCHAUMBURG. CALECA further maintains that since the Pension Code does not require a waiting period of sixty days before one can be deemed to have separated from work, nor does it prohibit her from making plans ahead of time to work after retirement, any attempt by IMRF to add this requirement impairs and diminishes her contractual right to collect her pension.

The Resolution states that an employee who does not wait sixty days before working for any IMRF employer even if it is not the same one, has not fully separated from service and that even making plans to work within that time period means you are not separated from work. The Pension Code in 7-141 requires an employee to be separated from service from all IMRF employers but does not define the term “separated from service”. The Resolution makes clear that sometimes a determination as to whether an employee has sufficiently separated may depend not only on whether the employee has left the service of their employer. Sometimes, an immediate return to work can indicate the employee has not really separated. IMRF has been the arbiter in the past in deciding whether there has been a bona fide retirement, and this is part of its authority under the Pension Code.

IMRF has stated that it is in receipt of prior IRS decisions that state that the IMRF’S legal status would be in jeopardy if the tax court deems an IMRF employee had not legally retired and/or had never intended to retire. It is then reasonable for IMRF to determine the best way to ensure that IMRF and the pensions of all the other employees are protected. It is up to IMRF to determine if there has been an adequate separation from service, as required by 7-141 of the Pension Code. Section 7-141(a) requires the employee to be “separated from the service of all participating municipalities and instrumentalities...” There is nothing in this section to suggest that this requirement does not apply to those who retire but are also working as an independent contractor with an IMRF employer. The section could have limited the need to separate from service only to the job from which one is retiring but did not do so. IMRF has determined that 7-141 a requires separation from one’s employer as well as any IMRF employer. By passing the Resolution, IMRF has not changed the requirement that one must separate from work but has clarified what is necessary to comply with the requirement. Per the Resolution, IMRF has determined that having the limited waiting period of sixty days before returning to work ensures that an employee has complied with the Pension Code and also with the IRS and tax laws. IMRF has also determined that an employee may not make prior plans with an IMRF employer to work after one’s retirement, presumably in order to prevent against a later determination that an employee’s prior plans to work are actually an indication that the employee never intended to retire. These are reasonable decisions within the authority of the IMRF Board to administer the Fund in a manner that comports with the law.

For all the above reasons I recommend that the Board AFFIRM the IMRF staff decision stating that CALECA is subject to the terms of the Resolution and the Memo which clarify what is required for an employee to be considered fully separated from work in order to receive retirement benefits. Upon her retirement, CALECA must stop working for SCHAUMBURG with no plans for future work and then wait sixty days before working for any IMRF employer.

/s/ Susan Davis Brunner

SUSAN DAVIS BRUNNER, Hearing Officer

These Findings and Conclusions of Law are adopted this 18th day of November, 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

ILLINOIS MUNICIPAL RETIREMENT FUND

IN THE MATTER OF

DON LANGE,) **MID # 177-6730**
re: APPEAL OF BENEFITS AMOUNT) **ER # 4572**
FROM A DECISION OF THE ILLINOIS MUNICIPAL) **Susan Davis Brunner**
RETIREMENT FUND ADMINISTRATIVE STAFF) **Hearing Officer**

STATEMENT OF THE CASE AND FACTUAL BACKGROUND

DON LANGE, # 177-6730 (hereinafter referred to as “LANGE”) was employed by Village of Oakbrook (hereinafter referred to as “OAKBROOK”) for approximately 39 years until July of 2021, at which time he retired. While employed at OAKBROOK, he was enrolled in and contributed to the Illinois Municipal Retirement Fund (hereinafter referred to as IMRF). During 2014, LANGE and his now ex-wife signed and agreed to a QILDRO agreement as part of their dissolution of marriage agreement, giving each party 50% of LANGE’S pension benefits earned during the marital period. The QILDRO was then entered by the domestic relations judge as part of the divorce settlement. As of the date of the hearing on October 8, 2021, the Circuit Court had not yet issued or been requested to issue a calculation court order.

Between 2018 and 2021, in anticipation of his planned 2021 retirement LANGE asked for and received fourteen written pension estimates from IMRF. He received one such pension estimate on May 12th, 2021. The May 12th estimate given to LANGE was erroneously based on LANGE having been married for 203 months, while he had actually been married for approximately 302 months. As a result, the May estimate concluded that LANGE’S ex-wife would be given a smaller amount of LANGE’S total pension benefits and LANGE would be receiving more. The May estimate incorrectly stated that upon his retirement LANGE would receive approximately \$5666.00 month and his ex-wife would receive approximately \$1548.00. A corrected estimate based on 302 months of marriage later given to LANGE determined that LANGE would receive approximately \$4573.00 monthly and his ex-wife would receive \$2451.00. This estimate was similar to an earlier pension estimate given to LANGE during February of 2021.

LANGE now maintains that he only retired on July 9, 2021, because he relied on the May 12th estimate of his monthly benefit payment amount but instead found out that his monthly benefit payment amount is far less. LANGE asserts that that it was IMRF’S mistake and not his, and that he would not have retired as early as he did except for IMRF’s mistake. LANGE maintains that therefore, IMRF should either give him the larger estimated monthly amount promised in the incorrect May 12, 2021, estimate (5666.00 monthly), pay him the difference between the incorrect May estimated amount and his correct benefit payment amount until LANGE is age 62 (\$5666.00 minus \$4573.00 monthly), or pay him lump sum damages to compensate him for the mistake.

LANGE is also requesting that IMRF pay his ex-wife \$2451.00 each month, based on the correct pension estimate.

The appeal was heard remotely by teleconference before Hearing Officer Susan Davis Brunner on October 8, 2021, at 10:00 a.m. Attorneys James A. Murphy and Laura Malinowski of law firm Mahoney, Silverman and Cross and LANGE appeared on behalf of LANGE, and Elizabeth Carter and Vladimir Shuliga, Associate General Counsel, appeared on behalf of IMRF.

ISSUES TO BE REVIEWED

At issue in this case is whether LANGE is entitled to receive additional benefit payments or other monthly payments or lump sum damages from IMRF in addition to his earned monthly pension benefits because he was given an inaccurate pension estimate by IMRF when LANGE relied on the inaccurate estimate amount in determining his retirement date.

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 (40 ILCS 5/7 et seq; hereinafter referred to as the 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. The Pension Code also provides that the IMRF Board of Trustees may make rules and regulations for the IMRF to efficiently administer the fund. Although the IMRF is not an administrative agency and does not have formal regulations set forth in the Illinois Administrative Code, the IMRF Board of Trustees (IMRF Board) has authority to make “administrative decisions on participation and coverage, which are necessary for carrying out the intent of this fund in accordance with the provisions of this Article.” 40 ILCS 5/7-200 (West 2010). The Pension Code gives the authority to the IMRF to interpret the intent of the Pension Code and make rules and regulations on participation and coverage it believes are necessary to efficiently administer the fund. To that end, the IMRF Board has passed numerous Resolutions and has also adopted the “Authorized Agent’s Manual” (hereinafter referred to as the Manual), which it uses to provide guidance regarding IMRF rules. The resolutions and the Manual therefore constitute the IMRF’S “administrative rules.” Administrative rules interpreting a statute can be used by the court as guides but are binding on the court only to the degree that they follow the statute. (see *Stevens v. Oakbrook*, 2013 IL App (2d) 120456; also see *Illinois RSA No. 3, Inc. v. Department of Central Management Services*, 348 Ill. App. 3d 72, 77 (2004)).

The Pension Code in tandem with the Dissolution of Marriage Code provide for a process where pension members who divorce may assign an amount or percentage of their retirement benefits to their ex-spouses through a court ordered Qualified Illinois

Domestic Relations Order (hereinafter referred to as a QILDRO). The Pension Code, in section 40 ILCS 1-119(b) (1) provides, in part, that:

“An Illinois court of competent jurisdiction in a proceeding for declaration of invalidity of marriage, legal separation, or dissolution of marriage that provides for support or the distribution of property, or any proceeding to amend or enforce such support or property distribution, may order that all or any part of any (i) member's retirement benefit, (ii) member's refund payable to or on behalf of the member, or (iii) death benefit, or portion thereof, that would otherwise be payable to the member's death benefit beneficiaries or estate be instead paid by the retirement system to the alternate payee.

(2) An order issued under this Section provides only for the diversion to an alternate payee of certain benefits otherwise payable by the retirement system under the provisions of this Code. The existence of a QILDRO shall not cause the retirement system to pay any benefit, or any amount of benefit, to an alternate payee that would not have been payable by the system to a regular payee in the absence of the QILDRO.

(3) A QILDRO shall not affect the vesting, accrual, or amount of any benefit, nor the date or conditions upon which any benefit becomes payable, nor the right of the member or the member's survivors to make any election otherwise authorized under this Code, except as provided in subsections (i) and (j).

(4) A QILDRO shall not apply to or affect the payment of any survivor's benefit, disability benefit, life insurance benefit, or health insurance benefit.

(c) (1) A QILDRO must contain the name, mailing address, and social security number of the member and of the alternate payee and must identify the retirement system to which it is directed and the court issuing the order.

(2) A QILDRO must specify each benefit to which it applies, and it must specify the amount of the benefit to be paid to the alternate payee. In the case of a non-periodic benefit, this amount must be specified as a dollar amount or as a percentage as specifically provided in subsection (n). In the case of a periodic benefit, this amount must be specified as a dollar amount per month or as a percentage per month as specifically provided in subsection (n).

(3) With respect to each benefit to which it applies, a QILDRO must specify when the order will take effect. In the case of a lump sum benefit payable to an alternate payee of a participant in the self-managed plan authorized under Article 15 of this Code, the benefit shall be paid upon the proper request of the alternate payee. In the case of a periodic benefit that is being paid at the time the order is received, a QILDRO shall take effect immediately or on a specified later date; if it takes effect immediately, it shall become effective on the first benefit payment date occurring at least 30 days after the order is received by the retirement system. In the case of any other benefit, a QILDRO shall take effect when the benefit becomes payable, unless some later date is specified pursuant to subsection (n). However, in no event shall a QILDRO apply to any benefit paid by the retirement system before or within 30 days after the order is received. A retirement system may adopt rules to prorate the amount of the first and final periodic payments to an alternate payee.

(4) A QILDRO must also contain any provisions required under subsection (n)

or (p).

(5) If a QILDRO indicates that the alternate payee is to receive a percentage of any retirement system benefit, the calculations required shall be performed by the member, the alternate payee, their designated representatives or their designated experts. The results of said calculations shall be provided to the retirement system via a QILDRO Calculation Court Order issued by an Illinois court of competent jurisdiction in a proceeding for declaration of invalidity of marriage, legal separation, or dissolution of marriage. The QILDRO Calculation Court Order shall follow the form provided in subsection (n-5). The retirement system shall have no duty or obligation to assist in such calculations or in completion of the QILDRO Calculation Court Order, other than to provide the information required to be provided pursuant to subsection (h).

LANGE acknowledges that he signed a QILDRO granting his now ex-wife 50% of the total pension he earned during their marriage and that he and his ex-wife were married approximately 302 months, and not 203 months. He also acknowledges that he received several prior correct pension estimates from IMRF based on 302 years of marriage before receiving the incorrect May 2021 pension estimate based on 203 months. He further acknowledged at his hearing that since his QILDRO ordered that his wife must receive half of his earned pension amounts, any additional amounts to be paid to him so that he receives the benefit amount quoted to him in the May estimate must be labelled as something other than “pension” or half of that additional amount would then have to be paid to his ex-wife. LANGE also does not dispute that IMRF is required by statute to pay his ex-wife the amount stipulated in the Circuit Court’s calculation court order, once received. LANGE concedes that normally the rules provided in the Pension Code, the IMRF Manual, and the IMRF Brochures would apply and that he would only be entitled to \$4573.00 per month as his half of earned pension benefits during the time he was married. However, LANGE maintains that because he did not make any mistake or do anything wrong, and that it was IMRF that gave him the incorrect pension estimate that he relied upon, he should not be bound by the normal pension laws and IMRF rules and should instead receive an extra payment amount each month to equal the difference between his actual earned pension amount and the amount he was given in his incorrect May pension estimate.

IMRF maintains that LANGE was given several earlier correct pension estimates and had numerous phone conversations with IMRF staff and should not have relied on one incorrect estimate that was an obvious anomaly. IMRF also asserts that these estimates all state that they are estimates only and are not final pension figures and therefore, he should not have relied on the estimate to the extent that he did. IMRF further asserts that LANGE knew or should have known that the pension estimates were just estimate because the final figures were by law required to be provided by the Circuit Court in a calculation court order. Moreover, IMRF maintains that it is created by Illinois statute, and derives its authority only from these statutes, so cannot give LANGE more pension benefits and service credit than he is allowed by law and cannot pay damages or any other kind of non-pension payments as it is given no authority to do so in the Pension Code or IMRF rules. IMRF argues that the Pension Code, the IMRF Manual, and IMRF

Rules all make clear that an employee cannot receive more pension benefits than he or she has earned. IMRF maintains that, even if it made a mistake, IMRF cannot authorize a pension benefit or civil damages to be paid or service credit to be received when this would violate statutory and administrative laws.

I agree that IMRF has no authority to pay LANGE more than the monthly pension benefits he has earned because IMRF made a pension estimate mistake. Neither the Pension Code, the Manual or IMRF Rules provides any authority to IMRF to pay an incorrect amount of pension benefits or to pay negligence or contract damages which are not based on earned service credits. The Pension Code expressly provides that IMRF must obey the law. In fact, the Pension Code, expressly provides that funds must be returned if made in error, in section © of § 7-217, titled “Payment of benefits and assignments” that “(c) The board may retain out of any annuity or benefit payable to any person such amount or amounts as the board may determine are owing to the fund because required employee contributions were not made, in whole or in part, or employee obligations to return refunds were not made, or because money was paid to any annuitant or employee through misrepresentation, fraud or error”. (40 ILCS 5/7-217) Pursuant to this section, if IMRF were to pay additional unearned money to LANGE it would be an error that would have to be refunded to IMRF. Moreover, if additional pension benefits or damages were paid to LANGE, then his ex-wife would also likely be entitled to claim 50% of that additional amount.

IMRF has a fiduciary duty to its members, employers, and beneficiaries to pay out only allowable and authorized pension benefits. Pursuant to its qualified plan status under I.R.S guidelines, IMRF must abide by the provisions of the Internal Revenue Code and related regulations. I.R.C. § 401(a). Most importantly, IMRF may only administer the plan according to its rules. Treas. Reg. § 1.401-1(a)(2). IMRF must also abide by the “exclusive benefit rule”, meaning that IMRF may not pay benefits in excess of those provided under the plan rules. I.R.C. § 401(a)(2); Treas. Reg. § 1.401-2(a)(1). The overpayment of benefits constitutes a failure in plan administration. Id.; Treas. Reg. § 1.401-2(a)(3). Under I.R.S guidelines, IMRF is even required to have a procedure in place to correct the overpayment of benefits. An overpayment is “a payment being made to a participant or a beneficiary that exceeds the amount payable to the participant or beneficiary under the terms of the plan.” I.R.S. Rev. Proc. 2019-19, § 5.01(3)(c). Thus, in order to operate in compliance with the law and in accordance with plan documents, IMRF must only pay earned pension benefits to LANGE and payments to his ex-wife as set out in the calculation court order.

In the case of *Sheahan v. the Illinois Municipal Retirement Fund Board of Trustees*, 2016 IL App (2d) 151127, IMRF admitted that it had erroneously informed the Plaintiff that he could retire from his position with the Oakbrook Police and qualify for a SLEP pension by transferring his funds from the Deerfield Police Pension Fund and the Municipal Employees’ Annuity Benefit Fund of Chicago to his IMRF account, and this decision was upheld by the Board of Trustees. Plaintiff then relied on the information and retired from Oakbrook and started receiving SLEP benefits based on the amount of the combined

funds. However, the Sheahan court ruled that Sheahan had transferred his funds improperly, based on an erroneous interpretation of the law by IMRF. The Court ruled that the IMRF Board did not have the authority to continue paying plaintiff SLEP pension benefits, stating that the board of trustees of a retirement system “is a creature of statute and, as such, has only the authority that is conferred upon it by law.” *People ex rel. Madigan v. Burge*, 2014 IL115635, ¶ 21. Section 7-178 of the Pension Code provides that the Board “shall have the powers and duties stated in Sections 7-179 to 7-200, inclusive, in addition to such other powers and duties provided in this Article.” 40 ILCS 5/7-178. Section 7-179 empowers the Board “to authorize or suspend the payment of any annuity or benefit in accordance with this Article.” 40 ILCS 5/7-179. The Court reasoned that, “Precluding the Board from terminating plaintiff’s pension benefits would lead to absurd results, allowing plaintiff to continue to receive an annuity to which he has no legal right. It would also result in a windfall to plaintiff, potentially giving him not only SLEP pension benefits, but interests in two other pension funds as well” (West 2014). Therefore, even though Sheahan had been given incorrect information by IMRF, had transferred his funds, had retired, and had been paid some benefits, IMRF was not and could not be bound by its mistaken decision to authorize the transfer of funds.

Similarly, in this matter, it is unfortunate that the erroneous pension estimate given to LANGE in May of 2021 resulted in him retiring earlier than he had planned. However, IMRF had no legal or statutory authority to pay unearned and unauthorized benefits or amounts to LANGE when to do so is prohibited by the Pension Code and the IMRF Rules. The Pension Code provides that IMRF must obey the law, even if IMRF made a mistake. The Pension Code and the IMRF Manual establish that IMRF can only pay LANGE retirement benefits earned through his service credit and can only pay LANGE and his ex-wife the amounts required in the calculation order to be issued by the Circuit Court. Illinois courts have, to date, held that the requirements set forth in the Pension Code, as interpreted by IMRF, and set forth in its Manual and through its resolutions must be abided by IMRF. As the Court stated in the case of *Wood Dale Fire Protection District*, 395 Ill. App. 3d at 527-28, “an administrative agency’s authority derives from its enabling statute, and the agency has no inherent or common-law authority. Consequently, if an agency’s rules go beyond the scope of the legislative grant of authority or conflict with the enabling statute, the rules are invalid.” Moreover, pension estimates are indeed estimates. Although it is unfortunate that IMRF erred when providing the earlier estimate, there is no law or rule which binds IMRF to its estimation mistakes.

For all the above reasons, I recommend that the Board affirm the IMRF staff decision to grant LANGE only those pension amounts he is entitled to by law, and not the incorrect pension amount quoted to him in the May 12th estimate. Nor is LANGE entitled under the Pension Code or IMRF rules to any additional non-retirement payments or money damages. IMRF is authorized by statute and must abide by that statute.



SUSAN DAVIS BRUNNER, Hearing Officer

October 28, 2021

These Findings and Conclusions of Law are adopted this 18th day of November, 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