

## MEMORANDUM

**TO: Board of Trustees**  
**FROM: Benefit Review Committee**  
**DATE: February 10, 2022**  
**SUBJECT: Report of the Benefit Review Committee Meeting held on February 10, 2022**

A meeting of the Benefit Review Committee of the Board of Trustees was held in the Oak Brook IMRF office on Thursday, February 10, 2022. 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, Rockett, Claussen, Osipczuk, and Hatfield.

### (22-02-01) (Roll call)

Trustee Stefan presided as chairperson and called the meeting to order at 1:02 p.m. Committee members Copper, Kuehne, Miller, Stefan, and Mitchell were present for roll call.

### (22-02-02) Approval of the committee meeting minutes from December 16, 2021

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

### (22-02-3) Annual Reports

Benefits Manager Amy Claussen and Disability Supervisor Denise Rockett presented the annual Benefits and Disability reports. No final action was taken.

### (22-02-04) Frederick Schmidt – Denial of 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. Schmidt appeared for the hearing via videoconference and testified on his own behalf.

**After deliberation, the Committee recommends that the Board affirm the staff decision denying total and permanent disability benefits. The Committee finds that Mr. Schmidt's treating physicians have released Mr. Schmidt to work in a sedentary capacity. There is no physician certifying that Mr. Schmidt cannot perform any gainful activity. 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: Copper  
Ayes: Copper, Kuehne, Miller, Mitchell, Stefan  
Nays: None

Absent: None  
Motion Passed: 5-0

(22-02-05) Findings and Conclusion of the IMRF Hearing Officer – Scott Oney

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

(22-02-06) Findings and Conclusion of the IMRF Hearing Officer – Eric Holzer

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

(22-02-07) Findings and Conclusion of the IMRF Hearing Officer – Jason Caudle

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

(22-02-08) Findings and Conclusion of the IMRF Hearing Officer – John O’Halloran

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

(22-02-09) Findings and Conclusion of the IMRF Hearing Officer – Demosthenes Nikolopoulos

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, Mitchell, Stefan  
Nays: None  
Absent: None  
Motion Passed: 5-0

(22-02-10) Litigation Update

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

(22-02-11) James Akers – Reciprocal Return to Work Violation

Mr. Akers appeared with his attorney Jerome Marconi before the Committee. The Committee received and reviewed the written submissions from the member and IMRF

staff prior to the hearing. The Committee heard testimony from Mr. Akers and argument from Mr. Marconi.

**After deliberation, the Committee recommends that the Board reverse the staff determination that Mr. Akers violated the reciprocal return to work rules. The Committee recommends that the Board adopt the attached findings and conclusions setting forth the basis of its decision.**

Motion: Kuehne  
Second: Copper  
Ayes: Copper, Kuehne, Miller, Mitchell  
Nays: Stefan  
Absent: None  
Motion Passed: 4-1

(22-02-12) Public Comment

None

(22-02-13) Adjournment

Trustee Copper made a motion to adjourn at 3:11 p.m. Seconded by Trustee Kuehne. Motion passed by unanimous roll call vote.

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

In the Matter of: )  
James D. Akers (MID# 186-3138) )  
 ) Hearing held February 10, 2022  
[Appeal of return to work violation] )

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Pursuant to the IMRF Non-Disability Appeal Procedures, the Benefit Review Committee met on February 10, 2022 to hear the appeal of James D. Akers (“Akers”) regarding an IMRF staff determination that Akers returned to work in an SERS qualifying position with the State of Illinois while receiving a reciprocal retirement annuity from IMRF in violation of the Illinois Pension Code. Akers was given proper notice of the hearing.

**Introduction**

Akers participated in the Illinois Municipal Retirement Fund (“IMRF”) with several different IMRF employers prior to his retirement in April 2018. Akers also had service credit with the State Employees Retirement System of Illinois (“SERS”) and chose to use service from both IMRF and SERS to retire reciprocally under the Retirement Systems Reciprocal Act (the “Reciprocal Act”). 40 ILCS 5/20-101 *et seq.* From December 2018 to March 2019 Akers was employed with the Illinois Department of Transportation and from November 2019 to April 2021, Akers was employed with the Illinois Tollway Authority in a SERS qualifying position while continuing to collect his IMRF retirement benefits. Although SERS contacted IMRF to notify it of Akers’ return to employment in a qualifying position, the IMRF portion of his reciprocal annuity was not suspended due to a staff mistake.

In July 2021, IMRF learned of the mistake when SERS sent a certification of Akers' updated service credit upon the completion of his second post-retirement employment period. IMRF staff determined that Akers accrued a prepayment of \$187,279.65 as of April 2021 when he terminated from the respective State agencies. Akers appealed the IMRF staff determination.

Akers does not dispute that he worked in a SERS qualifying position during the return to work periods but argues that he did his due diligence by calling IMRF and receiving an assurance that it would not impact his IMRF retirement annuity. Moreover, Akers argues that he should not be required to repay the benefits that he received where IMRF failed to suspend his benefit after receiving actual notice from SERS.

#### **Administrative Hearing Procedure**

Akers appeared in-person with his attorney Jerome Marconi and explained the basis for his appeal. Committee Chairperson Peter Stefan presided over the hearing. Committee members Tom Kuehne, Dave Miller, Tracie Mitchell, and Natalie Copper were also present. IMRF staff present at the hearing included Beth Janicki Clark, IMRF General Counsel, Vladimir Shuliga, IMRF Associate General Counsel, Elizabeth Carter, Staff Attorney, Larice Davis, IMRF paralegal, and Amy Claussen, Benefits Manager.

Copies of all documentation submitted as evidence by IMRF staff, and Akers at this hearing were received into evidence as Board Exhibits, pages 1 through 112. As a result of the February 10, 2022, hearing and the written documentation received, the Board of Trustees of IMRF finds and determines as follows:

## **I. EVIDENCE AND TESTIMONY**

### **Review of Written Documentation and Testimony**

1. Akers is an IMRF annuitant who first retired and began drawing a reciprocal retirement annuity in April 2018. (Board Exhibits, p. 11; Testimony of Akers).

2. At the time of retirement, Akers had accrued 3.75 years of SERS service and 29.75 years of IMRF service credit. (Board Exhibits, pp. 10-11).

3. Although he retired reciprocally in April 2018, Akers was not yet eligible to begin collecting the SERS portion of his retirement annuity because he had not yet met its minimum age eligibility. (Board Exhibits, pp. 8, 10; Testimony of Akers).

4. In December 2018, SERS employee, Sheri Digiovanna, notified by e-mail an IMRF employee, Tegan Rogers, that Akers would be returning to full-time employment with a state agency until April 2019. SERS also noted that if Akers had been collecting the SERS portion of his reciprocal retirement, they would have suspended his benefit. (Board Exhibits, pp. 3, 133; Testimony of Akers).

5. According to Akers, he called IMRF directly in early December and was assured that working in a SERS qualifying position would not require the IMRF portion of his pension to be suspended. (Board Exhibits, p. 50; Testimony of Akers).

6. IMRF does not have record of a phone call from Akers regarding his employment with a state agency in December 2018. (Board Exhibits, pp. 96-97).

7. Notwithstanding receipt of the e-mail notice from SERS, IMRF did not suspend the IMRF portion of Akers' reciprocal retirement annuity in December 2018. (Board Exhibits, pp. 3, 12-13) (Testimony of Akers).

8. Akers worked in an SERS qualifying position from December 2018 until April

2019. (Board Exhibits, p. 15; Testimony of Akers).

9. After a several month break, Akers again returned to full-time employment with a state agency entitling him to SERS participation from November 2019 to April 2021. (Board Exhibits, p. 95; Testimony of Akers).

10. On December 17, 2019, SERS employee, Sheri Digiovanna, sent an email to IMRF employee, Tegan Rogers, notifying IMRF of Akers' second return to full-time employment which had begun on November 1, 2019. (Board Exhibits, p. 95).

11. IMRF staff alleges that it had no record of the December 2019 email until Akers' situation was being investigated for this appeal. (Board Exhibits, p. 3).

12. IMRF determined that Akers received a total prepayment of \$187,279.65<sup>1</sup> during the return to work period, which constituted the IMRF retirement annuity payments Akers received while working in an SERS qualifying position with the state agencies. (Board Exhibits, pp. 3-4).

13. Akers testified that he returned to work with the state agencies to help pay for his wife's health insurance.<sup>2</sup> (Testimony of Akers).

14. Akers testified that he contacted both IMRF and SERS before accepting the position because he did not want to jeopardize his pension. Akers further testified that had he known that accepting these positions with the state agencies would have required his IMRF pension to be suspended, he would have quit those jobs. (Testimony of Akers).

15. Akers further testified that the value of his IMRF benefit far exceeded the salary and benefits he accrued from the state agency positions and that it would have been

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<sup>1</sup> The original notice to Akers calculated the prepayment as if he was continuously employed from December 2018 through April 2021. Upon further investigation, the prepayment was reduced to reflect the time during which he was not employed in a SERS qualifying position.

<sup>2</sup> The Committee found Akers' testimony to be credible and persuasive.

unreasonable for him to jeopardize his pension for the amounts he was getting paid by the state agencies. (Testimony of Akers).

## **II. FINDINGS OF FACT**

1. The Board finds as fact items 1-15, as set forth above.

## **III. CONCLUSIONS OF LAW**

1. The Board of Trustees of IMRF has jurisdiction over this appeal pursuant to Sections 7-146, 7-179, and 7-200 of the Illinois Pension Code (40 ILCS 5/7-146, 7-179, and 7-200), as well as under the Non-Disability Appeal Procedures that have been adopted by the Board pursuant to Section 7-198 of the Illinois Pension Code (40 ILCS 5/7-198).

2. In December 2018, SERS advised IMRF that Mr. Akers had returned to a SERS qualifying position.

3. Notwithstanding that fact, IMRF staff failed to suspend the IMRF portion of Mr. Akers' reciprocal retirement annuity.

4. It is unreasonable that Mr. Akers would have knowingly jeopardize his IMRF pension for the comparative salary and benefits he received from the respective state agencies.

5. Therefore, in considering the totality of the evidence and resolving any conflicts therein and without setting any precedent, the Board hereby finds that Mr. Akers has met his burden of proof that he did not violate the reciprocal return to work rules and does not owe a prepayment of benefits.

## **IV. 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, in regard to the Petitioner, James D. Akers, HEREBY ORDERS as follows:

The administrative staff determination that James D. Akers returned to work in an SERS qualifying position and received a prepayment of IMRF retirement annuity benefits is hereby OVERTURNED.

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

These Findings of Fact and Conclusions of Law are adopted this 11th day of February 2022, 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 )  
Jason M. Caudle (MID# 184-5252) )  
 ) January 24, 2022  
[Appeal for Reinstatement and )  
Transfer of Service Credit] )

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Jason M. Caudle, a former participant in the Illinois Municipal Retirement Fund (“IMRF”), appealed an IMRF staff determination that service credit he earned from 2008 to 2009 as a Community Service Officer through the Village of Carpentersville 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 opportunity on January 24, 2022, was provided by video conference, before Carolyn Welch Clifford, one of the IMRF Administrative Hearing Officers. Caudle was given proper notice of the hearing but declined the opportunity to appear. Associate General Counsel Vladimir Shuliga appeared on behalf of IMRF.

Copies of all documentation submitted by IMRF and Caudle were admitted into evidence for the administrative record as **Caudle Supporting Documents** (pages 1 through 26) (hereinafter, “**Documents**”). As a result of this review, 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 (2<sup>nd</sup> Dist. 1989))

## **B. FINDINGS OF FACT**

5. Caudle enrolled as a participant in IMRF on January 7, 2008. On the IMRF enrollment form, the Village stated Caudle had been hired by its police department as a PT CSO [part-time Community Service Officer]. Furthermore, on the enrollment form, the Village specifically indicated that Caudle did *not* perform police duties. (See **Documents**, p. 8)

6. In his appeal letter, Caudle stated that his position as a Community Service Officer included a variety of police support activities, including animal control, vehicle code enforcement, traffic control, and assisting sworn officers with prisoner booking and release

processes. Caudle stated that he believes his duties as a Community Service Officer met the eligibility requirements because he performed police duties and worked in a police department. (See **Documents**, p. 17)

7. The Village's position description for PT Community Service Officer states that position performs police support activities, and lists 15 essential duties and responsibilities including preparing reports, maintaining files, enforcing animal control ordinances, assisting with traffic control, and assisting with prisoner bookings. Furthermore, the position description requires applicants have a high school diploma or equivalent, and law enforcement experience or work with animals is preferred. (See **Documents**, pp. 12-13)

8. The Village of Carpentersville's Human Resources Manager, Carrie Cichon, stated in an email response to IMRF that, "[T]he position of a community service officer is not a sworn position." (See **Documents**, p. 11)

9. On September 23, 2009, Caudle terminated IMRF participation. On September 28, 2009, he was appointed as a sworn police officer with the Village of Carpentersville Police Department. Caudle is currently a member of the Carpentersville Police Pension Fund with over 12 years of service.<sup>1</sup> (See **Documents**, pp. 9-10)

### C. CONCLUSIONS OF LAW

10. 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).

11. 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)

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<sup>1</sup> Also see Illinois Department of Insurance Annual Statement for the Carpentersville Police Pension Fund for Fiscal Year ending December 31, 2020, p. 37 (available at [Pension Annual Statement System \(illinois.gov\)](#)).

12. 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)

13. 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)

14. Caudle’s IMRF service with the Village of Carpentersville as a Community Service Officer 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)

15. Furthermore, Caudle’s IMRF service with the Village of Carpentersville as a Community Service Officer was not as a “person employed by a participating municipality to perform police duties.” (40 ILCS 5/3-106; 7-139.14)

16. 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)

17. As a Community Service Officer, Caudle 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 performed parking enforcement, animal control and file maintenance, for which no formal police training or certification was

required. In short, Caudle did not perform “police duties” as a Community Service Officer for the Village of Carpentersville.

18. Instead, the Village considered Caudle 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, Caudle’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 Jason M. Caudle did not qualify for reinstatement and transfer of service credit he earned from 2008 to 2009 as a Community Service Officer through the Village of Carpentersville 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 February, 2022, 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	)	
Eric A. Holzer (MID# 136-1089)	)	
	)	Hearing January 24, 2022
[Appeal for Reinstatement and	)	
Transfer of Service Credit]	)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Eric A. Holzer, a former participant in the Illinois Municipal Retirement Fund (“IMRF”), appealed an IMRF staff determination that service credit he earned from 2005 to 2007 as a Community Service Officer through the Village of Carpentersville 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 January 24, 2022, by video conference, before Carolyn Welch Clifford, one of the IMRF Administrative Hearing Officers. Holzer 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 Holzer were admitted into evidence for the administrative record as **Holzer Supporting Documents** (pages 1 through 28) (hereinafter, “**Documents**”). Testimony was received from Holzer, who testified under oath and was subject to cross examination. As a result of this review, 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 (2<sup>nd</sup> Dist. 1989))

## **B. FINDINGS OF FACT**

5. Holzer enrolled as a participant in IMRF on September 26, 2005. On the IMRF enrollment form, the Village stated Holzer had been hired by its police department as a PT CSO [part-time Community Service Officer]. Furthermore, on the enrollment form, the Village specifically indicated that Holzer did *not* perform police duties. (See **Documents**, p. 8)

6. At hearing, Holzer stated that his position as a Community Service Officer included a variety of police support activities, including traffic control, booking of suspects, investigations, and crowd control. Holzer stated in his appeal letter that he believes his duties as a

Community Service Officer met the eligibility requirements because he performed police duties in a police department, while wearing a police CSO uniform and using a police CSO vehicle. (See **Documents**, p. 21)

7. The Village's job summary for Community Service Officer states that position performs police support activities and lists 15 essential duties and responsibilities including preparing reports, maintaining files, enforcing animal control ordinances, assisting with traffic control, and assisting with prisoner bookings. Furthermore, the job summary requires applicants have a high school diploma or equivalent, and law enforcement experience or work with animals is preferred. (See **Documents**, pp. 22-23)

8. The Village of Carpentersville's Human Resources Manager, Carrie Cichon, stated in an email response to IMRF that, "[T]he position of a community service officer was a non-sworn position in 2005." (See **Documents**, p. 11)

9. On July 6, 2007, Holzer terminated IMRF participation. On July 6, 2006, he was appointed as a sworn police officer with the Village of Carpentersville Police Department. Holzer is currently a member of the Carpentersville Police Pension Fund with over 15 years of service.<sup>1</sup> (See **Documents**, pp. 9-10)

### C. CONCLUSIONS OF LAW

10. 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).

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<sup>1</sup> Also see Illinois Department of Insurance Annual Statement for the Carpentersville Police Pension Fund for Fiscal Year ending December 31, 2020, p. 42 (available at [Pension Annual Statement System \(illinois.gov\)](#)). It is unclear whether Holzer held concurrent positions with the Village in 2007 that caused concurrent pension system participation that year or purchased military service or other creditable service with the Carpentersville Police Pension, such that his creditable service start date with the Article 3 fund began in 2006. It is also possible the DOI Annual Statement is in error.

11. 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)

12. 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)

13. 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)

14. Holzer’s IMRF service with the Village of Carpentersville as a Community Service Officer 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)

15. Furthermore, Holzer’s IMRF service with the Village of Carpentersville as a Community Service Officer was not as a “person employed by a participating municipality to perform police duties.” (40 ILCS 5/3-106; 7-139.14)

16. 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)

17. As a Community Service Officer, Holzer 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 performed parking enforcement,

animal control and file maintenance, for which no formal police training or certification was required. In short, Holzer did not perform “police duties” as a Community Service Officer for the Village of Carpentersville.

18. Instead, the Village considered Holzer 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, 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 Eric A. Holzer did not qualify for reinstatement and transfer of service credit he earned from 2005 to 2007 as a Community Service Officer through the Village of Carpentersville 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 February, 2022, 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 )  
Demosthenes P. Nikolopoulos (MID# 180-3644) )  
 ) Hearing January 25, 2022  
 [Appeal for Reinstatement and )  
 Transfer of Service Credit] )

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Demosthenes P. Nikolopoulos, a former participant in the Illinois Municipal Retirement Fund (“IMRF”), appealed an IMRF staff determination that service credit he earned from 2004 to 2007 as a Communications Operator through the Village of Skokie 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 January 25, 2022, by video conference, before Carolyn Welch Clifford, one of the IMRF Administrative Hearing Officers. Nikolopoulos 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 Nikolopoulos were admitted into evidence for the administrative record as **Nikolopoulos Supporting Documents** (pages 1 through 31) (hereinafter, “**Documents**”). Testimony was received from Nikolopoulos, 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 (2<sup>nd</sup> Dist. 1989))

## **B. FINDINGS OF FACT**

5. Nikolopoulos enrolled as a participant in IMRF on October 18, 2004. On the IMRF enrollment form, the Village stated Nikolopoulos had been hired by its Fire and Police Departments as a 911 Communications Operator. Further, on the enrollment form, the Village specifically stated that Nikolopoulos would *not* be “performing police duties” or “fire protection duties.” (See **Documents**, p. 8)

6. Nikolopoulos explained in his Statement of Claim that in his role as a Communications Operator, he was assigned to work in the Police and Fire Combined

Communications Center in Skokie and was responsible for dispatching police and fire personnel for the Village. (See **Documents**, p. 24)

7. Nikolopoulos stated that he wore a blue uniform shirt with a silver badge, name tag and patches on both shoulders with the words, “Skokie Police & Fire Communications.” His required uniform also included uniform pants and boots, and after a training program, he worked an assigned shift. At hearing, he testified that he did not carry a weapon. (See **Documents**, p. 24)

8. The Village’s job description for Communications Operator provides that it is within the Village’s “Administration” Division and reports to the Communications Shift Supervisor. The purpose of the job, as stated in the job description, is, “Under the general supervision of the Communications Shift Supervisor, operates a two-way radio and telephone system and dispatches appropriate vehicles or equipment in response to emergencies or public calls for service.”<sup>1</sup> (See **Documents**, p. 12)

9. The job description lists eight essential job functions for Communications Operator, including “records and dispatches appropriate fire and police equipment” and “obtains and maintains Emergency Medical Dispatch (E.M.D.) certification.” Under “other responsibilities,” Communications Operator “closely monitors interaction between detainees and police personnel in the holding facility.” (See **Documents**, pp. 12-13)

10. Communications Operators are required to have a high school diploma or equivalent, and the job description further notes one year experience in the operation of a multiple switchboard or radio telephone is helpful. (See **Documents**, p. 14)

11. At hearing, Nikolopoulos acknowledged that the Communications Operator 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

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<sup>1</sup> In his Statement of Claim, Nikolopoulos explained that since his tenure as a Communications Operator, multiple pieces of legislation have changed the way dispatch duties are performed such that the job he performed “no longer exists.” Further, he asked the submitted job description for Communications Operator be disregarded because the April 2020 version was not in effect at the time he held the position.

Board. However, he noted that in the position, he interacted with citizens at the front desk of the police department and conducted physical checks of prisoners in the custody of the Skokie Police Department. Further, Nikolopoulos testified at hearing that a Communications Operator could be called upon in a detention situation to assist a police officer with an unruly suspect. (See **Documents**, p. 24)

12. In support of his claim, Nikolopoulos submitted a letter from the Village of Skokie Chief of Police, Brian Baker, in which Chief Baker stated, “It is my determination as the Chief of Police for the Skokie Police Department that Mr. Nikolopoulos performed police duties while serving in the role as a Communications Operator.” (See **Documents**, p. 29)

13. Also in support of his claim, Nikolopoulos provided a letter from David Pawlak, President of the Skokie Police Pension Fund, in which Mr. Pawlak stated, “[A] ‘police officer’ is just one of several positions (police dispatchers, police community service officers, auxiliary police officers) in a police organization which conducts ‘police duties.’” (See **Documents**, pp. 30-31)

14. On June 24, 2007, Nikolopoulos terminated IMRF participation. On June 25, 2007, he was appointed as a sworn police officer with the Village of Skokie Police Department. Nikolopoulos is currently a member of the Skokie Police Pension Fund with over 13 years of service.<sup>2</sup> (See **Documents**, pp. 9-10)

### C. CONCLUSIONS OF LAW

15. 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).

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<sup>2</sup> Also see Illinois Department of Insurance Annual Statement for the Skokie Police Pension Fund for Fiscal Year ending April 30, 2021, p. 59 (available at [Pension Annual Statement System \(illinois.gov\)](https://www.pensionannualstatement.com/illinois)).

16. 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)

17. 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)

18. 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)

19. Nikolopoulos’s IMRF service with the Village of Skokie as a Communications Operator 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)

20. Furthermore, Nikolopoulos’s IMRF service with the Village of Skokie as a Communications Operator was not as a “person employed by a participating municipality to perform police duties.” (40 ILCS 5/3-106; 7-139.14)

21. 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)

22. As a Communications Operator, Nikolopoulos 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 dispatched police and fire

personnel for the Village, for which no formal police training or certification was required. In short, Nikolopoulos did not perform “police duties” as a Communications Operator for the Village of Skokie.

23. Instead, the Village considered Nikolopoulos a civilian employee in the administration division of its fire and police departments who qualified for IMRF membership. Upon his appointment as a sworn and commissioned police officer for the Village, Nikolopoulos’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 Demosthenes P. Nikolopoulos did not qualify for reinstatement and transfer of service credit he earned from 2004 to 2007 as a Communications Operator through the Village of Skokie 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 February, 2022, 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	)	
John J. O'Halloran (MID# 186-1079)	)	
	)	Hearing January 25, 2022
[Appeal for Reinstatement and	)	
Transfer of Service Credit]	)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

John J. O'Halloran, a former participant in the Illinois Municipal Retirement Fund ("IMRF"), appealed an IMRF staff determination that service credit he earned from 1996 to 1999 as a Community Service Officer through the City of Berwyn 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 set for January 25, 2022, by video conference, before Carolyn Welch Clifford, one of the IMRF Administrative Hearing Officers. O'Halloran was given proper notice of the hearing but failed to appear at the hearing. Associate General Counsel Vladimir Shuliga appeared on behalf of IMRF.

Copies of all documentation submitted by IMRF and O'Halloran were admitted into evidence for the administrative record as **O'Halloran Supporting Documents** (pages 1 through 34) (hereinafter, "**Documents**"). As a result of this review, 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 (2<sup>nd</sup> Dist. 1989))

## **B. FINDINGS OF FACT**

5. O’Halloran enrolled as a participant in IMRF on September 3, 1996. On the IMRF enrollment form, the City stated O’Halloran had been hired by its police department as a Community Service Officer. (See **Documents**, p. 8)

6. In his appeal letter, O’Halloran stated that his position as a Community Service Officer included “law enforcement officer duties such as completing police reports, issuing tickets for various violations including local ordinance enforcement ranging from parking

violations, building and permit violations and animal violations as well as traffic control[,] all duties of police officers.” (See **Documents**, p. 17)

7. In his Statement of Claim, O’Halloran stated that he “performed duties that were and are still performed by police officers” during his time as a Community Service Officer. (See **Documents**, p. 25)

8. O’Halloran conceded that he was not a certified sworn police officer with arrest powers at the time he was a Community Service Officer. However, he believed he performed several police duties in the position as a Community Service Officer, including completing official police incident reports, traffic control, securing crime scenes, and transporting prisoners. (See **Documents**, pp. 26-27)

9. In support of his appeal, O’Halloran submitted a letter from the City of Berwyn Chief of Police, Michael D. Cimaglia, in which Chief Cimaglia stated, “The duties assigned to Community Service Officers are the same duties in which a full time police officer would equally be required to respond to when available.” (See **Documents**, p. 33)

10. The City’s job description for Community Service Officer states that, “The Community Service Division consists of 19 *civilian* officers who patrol the streets, investigate abandoned vehicles, provide animal control services, assist the Patrol Division, and are responsible for the removal of graffiti.” [emphasis added] (See **Documents**, p. 15)

11. City of Berwyn’s City Administrator, Ruth E. Siaba Green stated in an email response to IMRF that, “The position of a community service officer is not a sworn or commissioned position.” (See **Documents**, p. 14)

12. On April 30, 1999, O’Halloran terminated IMRF participation. On May 3, 1999, he was appointed as a sworn police officer with the City of Berwyn Police Department.

O'Halloran is currently a member of the Berwyn Police Pension Fund with over 22 years of service.<sup>1</sup> (See **Documents**, pp. 10-11)

### 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 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. O'Halloran's IMRF service with the City of Berwyn as a Community Service Officer 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)

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<sup>1</sup> Also see Illinois Department of Insurance Annual Statement for the Berwyn Police Pension Fund for Fiscal Year ending December 31, 2020, p. 60 (available at [Pension Annual Statement System \(illinois.gov\)](https://www.pensionannualstatement.com/illinois.gov)).

18. Furthermore, O'Halloran's IMRF service with the City of Berwyn as a Community Service Officer 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 Community Service Officer, O'Halloran 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 performed parking enforcement, animal control and transport services, for which no formal police training or certification was required. In short, O'Halloran did not perform "police duties" as a Community Service Officer for the City of Berwyn.

21. Instead, the City considered O'Halloran a civilian employee in its police department who qualified for IMRF membership. Upon his appointment as a sworn and commissioned police officer for the City, O'Halloran'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 City'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 John J. O'Halloran did not qualify for reinstatement and transfer of service credit he earned from 1996 to 1999 as a Community Service Officer through the City of Berwyn 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 February, 2022, 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	)	
Scott L. Oney (MID# 195-8572)	)	
	)	November 16, 2021
[Appeal on Separation of Service	)	
and Retirement Eligibility]	)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Scott L. Oney, a participant in the Illinois Municipal Retirement Fund (“IMRF”), appealed an IMRF staff determination that he was ineligible to draw retirement benefits because of his continued employment with IMRF-participating employers under Section 7-141(a) of the Illinois Pension Code (40 ILCS 5/7-141(a)).

Pursuant to the IMRF Non-Disability Appeal Procedures, a hearing was scheduled for November 16, 2021 by video conference, before Carolyn Welch Clifford, one of the IMRF Administrative Hearing Officers. Oney and his attorney, Thomas E. Schooley, were given proper notice of the hearing. However, Mr. Schooley advised IMRF that his client decided to waive a hearing and proceed with a review based on the administrative record. Associate General Counsel Vladimir Shuliga appeared on behalf of IMRF.

Copies of all documentation submitted by IMRF and Oney were admitted into evidence for the administrative record as **Oney Supporting Documents** (pages 1 through 44) (hereinafter, “**Documents**”). As a result of this review, the Board of Trustees of IMRF finds and determines as follows:

**A. REVIEW OF APPLICABLE STATUTE AND IMRF BOARD RESOLUTION**

1. Section 7-141 of the Illinois Pension Code sets forth the conditions under which retirement annuities shall be payable. Specifically, Section 7-141(a) requires that the participating employee be separated from the service of *all participating municipalities and instrumentalities*

*thereof and participating instrumentalities* to be entitled to a retirement annuity. (40 ILCS 5/7-141(a))

2. Furthermore, IMRF Board Resolution 2020-05-10(a) which addresses Return to Work and Separation of Service Requirements (May 29, 2020) specifically provides that, “In order for a member to qualify to receive a retirement annuity, the member must separate from the service of all IMRF employers.” [emphasis added] (See Documents, pp. 7-8)

## **B. FINDINGS OF FACT**

3. Oney was employed as the Comptroller of the City of Granite City (“Granite City”), an IMRF-participating employer, until terminating employment on April 30, 2021. In addition to his employment at Granite City, Oney was also employed as the Comptroller of both the Village of Pontoon Beach (“Pontoon Beach”) beginning in 2014 and the City of Madison (“Madison”) beginning in 2019. Both Pontoon Beach and Madison are IMRF-participating employers. (See Documents, pp. 26, 36-38)

4. Oney’s position with Granite City qualified him for participation in IMRF for which he was enrolled on October 1, 2005. Through his employment with Granite City, Oney earned all of his IMRF service credit. (See Documents, pp. 26, 36)

5. Because Oney performed less than 600 hours of work annually in his Comptroller positions with Pontoon Beach and Madison, he did not qualify as a participating employee for IMRF service with either IMRF-participating employer. (See Documents, pp. 26, 37-38)

6. Notably, Oney served as the IMRF Authorized Agent for Madison, a position to which he was appointed in October of 2019 (See Documents, pp. 11-12)

7. After terminating his employment with Granite City, Oney submitted his application for an IMRF pension on May 3, 2021. Oney submitted his application via his online Member Access Account. (See Documents, p. 13)

8. When he submitted his online application, Oney certified and acknowledged that he would not work in any capacity for any IMRF employer for sixty days after his pension start date. Furthermore, when he submitted the application, Oney attested that he does not have any pre-arrangement to return to work for an IMRF employer. (See **Documents**, pp. 9-10)

9. Despite Oney's representation that he would not work in any capacity for any IMRF employer for at least 60 days after his pension start date, IMRF learned that Oney had not separated from the service of all IMRF participating employers. Instead, Oney continued to work as the Comptroller for Pontoon Beach and the Comptroller of Madison, despite receiving IMRF benefits. In a letter to Oney on May 20, 2021, the IMRF Benefits Department advised Oney that his benefits were suspended. Specifically, IMRF Benefits Department advised Oney that:

For members to qualify for an IMRF pension, retirees must truly separate from the service of all IMRF participating employers. A Member who continues to work for an IMRF employer in any capacity, including as an employee, an independent contractor, or a leased employee, have [sic] not truly separate from the service of that employer.

Therefore, as you indicated that you are on a board with the Metro East Sanitary District,<sup>1</sup> an independent contractor with the Village of Pontoon Beach and also working with the City of Madison, you are not yet eligible to start collecting your pension benefits.

As you are not truly separated, you are not eligible to receive the May 2021 pension benefit of \$742.41, and you have now been prepaid IMRF Pension Benefits. (See **Documents**, p. 14)

### C. CONCLUSIONS OF LAW

10. 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).

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<sup>1</sup> IMRF Board Resolution 2020-05-10(a) exempts elected officials from vacating office upon payment of a pension as long as no IMRF service credit was earned in that position, which is the case for Oney in his appointed Commissioner position for the Metro East Sanitary District. (See **Documents**, pp. 7-8, 26 and 39)

11. 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)

12. In order to be eligible for a retirement annuity, a participating employee must – as an initial matter -- be separated from the service of *all* participating municipalities and instrumentalities thereof and participating instrumentalities. (40 ILCS 5/7-141(a))

13. Board Resolution 2020-05-10(a) formally explains and emphasizes this critical requirement of separation of service for retirement eligibility. Specifically, the separation rules provide that:

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. (See **Documents**, p. 7)

14. In order to receive retirement benefits, Oney must cease service for Pontoon Beach and Madison to establish eligibility for his pension for his years of service with Granite City. Furthermore, Oney must refrain from performing work for any IMRF employer for sixty days after his pension start date. Finally, Oney may not prearrange to return to work for any IMRF employer during the sixty-day period. (See 40 ILCS 5/7-141(a); IMRF Manual for Authorized Agents, Section 5.20A; **Documents**, pp. 7-8)

15. In order to maintain its qualified plan status under the Internal Revenue Code, IMRF must enforce the separation of service rules. IMRF's provision of retirement benefits on a tax-favored basis for its members hinges on compliance with all Internal Revenue Code requirements. This includes only paying a retirement pension benefit to a member when he or she has retired and terminated employment. When a public pension plan permits a member to retire and be reemployed without a bona fide separation of service, it raises qualification issues for the plan. (See 26 U.S.C. §401(c); Treas. Reg. §§1.401-1(b)(1)(i) and 1.401-1(a)(2)(i); Rev. Rul. 74-254, 1974-1 C.B. 94)

16. Permitting members to begin retirement benefits while they are still employed with any IMRF employer would render Section 7-141(a)'s requirement that a member be "separated from the service of all participating municipalities and instrumentalities" meaningless. (40 ILCS 5/7-141(a))

#### **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 IMRF participant Scott L. Oney must separate from the service of Pontoon Beach and Madison in order to qualify for his pension benefit under Section 7-141(a) of the Illinois Pension Code (40 ILCS 5/7-141(a)) 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 February, 2022, 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