

MEMORANDUM

TO: Board of Trustees
FROM: Benefit Review Committee
DATE: May 26, 2022
**SUBJECT: Report of the Benefit Review Committee Meeting held on
May 26, 2022**

A meeting of the Benefit Review Committee of the Board of Trustees was held in the Oak Brook IMRF office on Thursday, May 25, 2022. Present at the meeting were Committee members Copper, Kuehne, Mitchell, and Stefan. Staff members present were Shuliga, Carter, Janicki Clark, Davis, Dixon, Rockett, Osipczuk, Hollyfield, Meade, Seputis, Hatfield, Smith, and Schutz.

(22-05-01) (Roll call)

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

(22-05-02) Approval of the committee meeting minutes from March 24, 2022

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

(22-05-03) James Principe – Denial of Temporary Disability

This matter was previously before the Committee at its December 2021 meeting. Additional written materials including medical records and surveillance reports were provided to the committee members for review prior to the hearing. Prior to the hearing, Mr. Principe's attorney, Barbara Bell, requested a continuance of the hearing because Mr. Principe's treating physician was not available to testify. A hearing was previously held in which Mr. Principe presented testimony as to his medical condition; therefore, the Committee denied the request for a continuance. During the substantive part of the hearing, Ms. Bell stated that her client rests on the record as submitted.

After deliberation, the Committee recommends that the Board affirm the staff decision denying temporary disability benefits. The Committee finds that the surveillance video showing Mr. Principe amidst a crowd and away from home for several hours contradicted Mr. Principe's testimony about being unable to leave his home for more than fifteen minutes and experiencing disabling anxiety when he is in a crowded place. Furthermore, the Committee finds that the medical opinion of Mr. Principe's treating physician is not reliable because it is based on Mr. Principe's self-reported limitations. The video evidence directly contradicted Mr. Principe's self-reported limitations. Therefore, the Committee finds that Mr. Principe does not meet the eligibility requirements for temporary disability benefits as set forth in Section 7-146.

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

(22-05-04) Richard Clinton – 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. Clinton appeared for the hearing with his wife, Julie Clinton, and was represented by attorney Gregory Barry. The Committee heard testimony from Mr. and Mrs. Clinton and argument by Mr. Barry.

After deliberation, the Committee recommends that the Board reverse the staff decision denying total and permanent disability benefits. The Committee finds that Mr. and Mrs. Clinton’s testimony regarding his physical limitations was credible and persuasive. The Committee finds that the results of the FCE did not accurately reflect Mr. Clinton’s physical capacity over a full work day. Therefore, the Committee finds that Mr. Clinton meets the eligibility requirements for total and permanent disability benefits as set forth in Section 7-150.

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

(22-05-05) Surviving Spouse Eligibility – Ruth McGee

This matter was previously heard by the IMRF Hearing Officer. After reviewing the recommended decision at its March 2022 meeting, the Benefit Review Committee requested additional information from Mrs. McGee and Mr. McGee’s former employer. The responsive documentation was provided to the Committee prior to the hearing. Mrs. McGee appeared for the hearing and was accompanied by her niece Debra Dorsey and her sister Florence Rhyne. The Committee heard testimony from Mrs. McGee, Ms. Dorsey, and Ms. Rhyne.

After further discussion, the Committee recommends reversing the staff determination and granting surviving spouse benefits to Mrs. McGee. The Committee further recommends the repayment of the surviving spouse refund at a rate of \$25 per month.

Motion: Copper
Second: Kuehne
Ayes: Copper, Kuehne, Mitchell, Stefan

Nays: None
Absent: Miller
Motion Passed: 4-0

(22-05-06) Findings and Conclusion of the IMRF Hearing Officer – Quincy Asbury

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, Mitchell, Stefan
Nays: None
Absent: Miller
Motion Passed: 4-0

(22-05-07) Findings and Conclusion of the IMRF Hearing Officer – Lee Ann Terry

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, Mitchell, Stefan
Nays: None
Absent: Miller
Motion Passed: 4-0

(22-05-08) Findings and Conclusion of the IMRF Hearing Officer – James Mohn

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 Committee further recommends recovering the prepayment over a five year period. The recommended findings and conclusions are attached hereto.

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

(22-05-9) Litigation Update

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

(22-05-10) Public Comment

None

(22-05-10) Trustee Comments

The Committee discussed the possible need for a special BRC meeting before the next regularly scheduled meeting. Staff will report back on the need for an additional meeting depending on the number of appeals that are ready.

The Committee discussed the current continuance procedures and whether an update is necessary.

No final action was taken.

(22-05-11) Adjournment

Trustee Kuehne made a motion to adjourn at 3:41 p.m. Seconded by Trustee Copper. Motion passed by unanimous roll call vote.

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

In the Matter of)
Quincy Asbury (MID# 146-7229))
) Hearing May 5, 2022
[Appeal of Separation of Service Issue])

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Quincy Asbury, an employee of the River Forest School District #90 (“Asbury”) and participant of the Illinois Municipal Retirement System (“IMRF”), appealed an IMRF staff determination that he must separate from service from all IMRF participating municipalities and instrumentalities in order to qualify to receive his IMRF retirement pension. Asbury also works as a part-time police officer for another IMRF employer, the Village of River Grove (“Village”), a position he intended to retain after his retirement from his IMRF position at River Forest School District #90 (“School District”). IMRF staff determined Asbury would not qualify to retire from the School District unless he also terminated his employment relationship with the Village, as required in Section 7-141(a) of the Illinois Pension Code (40 ILCS 5/7-141(a)) and IMRF Board Resolution 2021-11-12(c).

Pursuant to the IMRF Non-Disability Appeal Procedures, a hearing was held on May 5, 2022, by video conference, before Carolyn Welch Clifford, one of the IMRF Administrative Hearing Officers. Asbury 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 Asbury were admitted into evidence for the administrative record as **Asbury Supporting Documents** (pages 1 through 36) (hereinafter, “**Documents**”). Testimony was received from Asbury, 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

1. Section 7-141(a) of the Illinois Pension Code provides that a participating employee is eligible for retirement when he or she separates from all participating municipalities and instrumentalities and meets additional eligibility requirements of age and service (40 ILCS 5/7-141(a)).

2. Under Section 5.20 of the IMRF Manual for Authorized Agents, in subsection A(1), “Eligibility for an IMRF Retirement Pension” for Regular Plan Tier 1 members, the manual states:

c. Employment status – Member must not be working in any position qualifying for IMRF coverage. **For terminations on or after January 1, 2021, the member must not be working for any IMRF employer in any capacity, including part-time or independent contractor work.** Members also may not prearrange a return to employment with an IMRF employer. [emphasis added] (IMRF Manual for Authorized Agents, Section 5.20 (A)(1)(c))

3. IMRF Board Resolution 2021-11-12(c), dated November 19, 2021, further delineates the separation of service requirements. Noting its obligation to adopt rules consistent with Internal Revenue Code rules and regulations to preserve IMRF’s qualified plan status, the Board has reiterated the statutory requirement:

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 from service. [emphasis added] (IMRF Board Resolution 2021-11-12(c))

B. FINDINGS OF FACT

4. Asbury began working full-time at the School District on February 18, 2003, as a building engineer, and became a participant in IMRF. (See **Documents**, p. 2)

5. While working full-time for the School District, Asbury also worked for the Village of River Grove Police Department as a certified part-time police officer, a position he has held since 2008. In that position, Asbury does not qualify for or participate in either IMRF or an Article 3 police pension fund. (See **Documents**, p. 14; 40 ILCS 5/3-106 and 7-109)

6. In January of 2022, Asbury contacted IMRF to inquire about the retirement rules to begin drawing an IMRF benefit. Asbury advised IMRF staff that he worked as a part-time police officer for the Village and did not participate in IMRF through this part-time employment. (See **Documents**, p. 6)

7. On January 12, 2022, General Counsel Beth Janicki Clark advised Asbury by letter that he would be required to terminate employment with the Village in order to qualify to receive retirement benefits for his position with the School District. Specifically, she advised that because the Village is an IMRF-participating employer and the Illinois Pension Code requires the separation of all service (not just IMRF-qualifying service) with IMRF employers, Asbury would be ineligible to qualify to receive his IMRF retirement pension until he separated service with both the School District and the Village. (See **Documents**, pp. 11-12)

8. On February 22, 2022, Asbury timely appealed the IMRF Staff Determination, in a letter sent to IMRF with an accompanying brief, outlining his disagreement with the IMRF decision. (See **Documents**, pp. 13-14) On February 28, 2022, IMRF Associate General Counsel Shuliga provided correspondence to Asbury acknowledging receipt of the appeal and providing a copy of the IMRF appeal procedures. (See **Documents**, pp. 21-26)

9. In his brief and at hearing, Asbury explained his understanding that although the Village is an IMRF participating employer, the River Grove Police Department is not; rather, he understood that the police department is required to and does maintain a separate pension fund for its full-time police officers, the Illinois Public Pension Fund Association.¹ (See **Documents**, p. 14)

¹ The River Grove Police Department is not the “employer” in this instance; the Village of River Grove is the employer of the officers and other staff who work within the Village’s Police Department. Furthermore, the Illinois Public Pension Fund Association is a non-profit organization, dedicated to the education and interests of the Article 3 police pension funds (40 ILCS 5/3-101 *et seq.*) and Article 4 pension firefighter funds (40 ILCS 5/4-101 *et seq.*), but is not itself a “public pension fund.” (See <http://ippfa.org/about-us/history>)

10. Asbury stressed that he would suffer economic harm if he was forced to resign from his current non-IMRF position as a part-time police officer for the Village, in order to retire in his IMRF full-time position from the School District. (See Documents, p. 14)

C. CONCLUSIONS OF FACTS

11. The undisputed evidence shows that Asbury currently works for two IMRF participating employers in his full-time position with the School District and his part-time position with the Village.

12. Although Asbury would like to retire from his School District position and begin drawing his IMRF retirement benefit, he desires to maintain his part-time position with the Village.

D. 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 only pay those benefits authorized by the Illinois Pension Code. (40 ILCS 5/1-109)

15. In order to receive retirement benefits from IMRF, a participant must terminate all employment with any IMRF employer. Under Section 7-141(a) of the Illinois Pension Code, Asbury must not only separate service with the School District, where he works full-time and participates in IMRF, but also from the Village, where he works part-time and does not participate in IMRF. (40 ILCS 5/7-141(a))

E. 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 Quincy Asbury must terminate employment from all IMRF employers in order to be eligible to begin drawing retirement benefits 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 27th day of May, 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

ILLINOIS MUNICIPAL RETIREMENT FUND

IN THE MATTER OF

LEE ANN TERRY,) MID # 198-3923
re: APPEAL OF BENEFITS AMOUNT)
FROM A DECISION OF THE ILINOIS MUNICIPAL) Susan Davis Brunner
RETIREMENT FUND ADMINISTRATIVE STAFF) Hearing Officer

STATEMENT OF THE CASE

Between the years of 1986 through May 2019, LEE ANN TERRY, # 198-3923 (hereinafter referred to as "TERRY") worked for several different Illinois Municipal Retirement Fund (hereinafter referred to as "IMRF") employers and while employed during these years she was an active IMRF participant. After leaving each of her first four IMRF jobs and while she was still an active IMRF participant, TERRY received a refund of IMRF service contributions. During January of 2016, TERRY applied for the reinstatement of past service credit by filing IMRF Form 6.03 but paid no money for the reinstatement at that time. In April of 2019 TERRY informed IMRF that she wished to pay IMRF for the reinstatement of the minimum number of service credit months necessary to vest her pension and begin receiving benefits at age 55. IMRF responded to TERRY in a letter dated April 24, 2019 and provided her with the cost estimate and a remittance form but TERRY did not make any payment at that time. In July of 2019, TERRY resigned from her job and terminated her active participation in IMRF. TERRY made no payment until October 24, 2019, when she filed Form 6.04 and paid IMRF a check for seven months of service credit. TERRY subsequently returned to work as an independent contractor for another IMRF employer from 2019 to 2021, but she was not eligible and did not become an active IMRF participant or a participant in any reciprocal retirement fund. During December of 2021, TERRY again applied for a reinstatement of past service credit and repayment of her refund money and mailed a check to IMRF. IMRF denied her application and returned her check and informed TERRY that as a Tier 1 IMRF member she was only allowed to make one payment of a service credit refund after termination of her active IMRF participation and although TERRY had first applied to reinstate her service credit during 2016, she made no payment at that time. TERRY did not purchase the seven months of service credit until October of 2019, which was after her IMRF termination. Because the October 2019 refund repayment was after her IMRF termination, IMRF determined that she had already made her one allowed payment and refund of service credit per Illinois pension law.

TERRY maintains that had she been told that she needed to make payment by a certain date she would have done so. She now appeals the IMRF Staff decision based on her claim that she should be allowed to pay for and receive additional service credit even

though she is no longer a participating member of IMRF. TERRY maintains that she was also misled by IMRF as she was informed in a December, 2021 letter that she would be able to make another repayment of her refund and reinstate her remaining service credit and therefore the requirements set forth in the Pension Code should not apply to her.

Prior to the scheduling of the remote hearing to be heard before Hearing Officer Susan Davis Brunner, TERRY elected to proceed by written documents and the written file only. Since no remote hearing was held, this appeal will be based on the records already received, including the parties' Statements of Claims, all memoranda, and all other supporting documents and exhibits provided.

FACTUAL BACKGROUND

TERRY was employed on the dates as stated by the following list of IMRF employers:

June 17, 1986 January 16, 1987 LaSalle County (LaSalle);
August 22, 2000 June 2, 2003 Ottawa School District 140 (Ottawa);
August 18, 2003 July 19, 2006 Seneca School District 160 (Seneca);
August 22, 2006 August 31, 2010 Wallace Community Consolidated School District 195 (Wallace);
August 19, 2011 August 30, 2013 Streator Elementary School District 44 (Streator);
August 19, 2013 May 27, 2016 Joliet School District 204 (Joliet);
August 17, 2016 July 1, 2019 Oswego Community Unit School District 308 (Oswego).

TERRY applied and paid for and received a refund of her IMRF contributions on four occasions: after terminating her employment with LaSalle County in 1987, Ottawa School District 140 in 2003, Seneca School District in 2006, and Wallace Community Consolidated School District 195 in 2010. During January of 2016, while still employed by Joliet, TERRY submitted IMRF Form 6.03 requesting a reinstatement of past service credit but did not pay any money for the reinstatement at that time. In response to her application, IMRF sent a letter to TERRY on January 12, 2016, titled "Past Service Payment Schedule" that provided her with instructions and informed her that she had 122 months of service credit that were eligible to reinstate and the cost of the reinstatement. The letter from IMRF also advised her that "If your IMRF or reciprocal participation is terminated you will be eligible to make ONLY ONE PAYMENT to purchase your IMRF service credit." IMRF sent another "Past Service Payment Schedule" letter with updated information to Terry on April 24, 2019, which again warned her that she would only be able to make one payment for service credit reinstatement after she terminated her IMRF participation. Even though she had submitted her application for service credit refund during 2016, TERRY did not make any payment until October of 2019, at which time she paid for seven months of service credit.

TERRY stopped working for Oswego during July of 2019 and ceased her active participation in IMRF at that time. TERRY subsequently returned to work as an independent contractor for an IMRF employer from 2019 to 2021, where she did not become an IMRF participant. During December of 2021 TERRY requested a

reinstatement of her past service credit and mailed a check to IMRF which was later returned to her. IMRF denied her 2021 application on the basis that the Pension Code states that she was only allowed to make one payment of a service credit refund after she terminated her participation in IMRF and during 2019 she had already made her one allowed payment.

ISSUES TO BE REVIEWED

At issue in this case is whether TERRY is entitled to make a second repayment of her separation refund and receive additional service credit even though she already made one such repayment for service credit subsequent to her termination from active IMRF participation.

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 Illinois Pension Code provides, in part, as follows:

Retirement annuities - Conditions. Retirement annuities shall be payable as hereinafter set forth:

(a) A participating employee who, regardless of cause, is separated from the service of all participating municipalities and instrumentalities thereof and participating instrumentalities shall be entitled to a retirement annuity provided:

(1) He is at least age 55, or in the case of a person who is eligible to have his annuity calculated under Section 7-142.1, he is at least age 50;

(2) He is not entitled to receive earnings for employment in a position requiring him, or entitling him to elect, to be a participating employee;

(3) The amount of his annuity, before the application of paragraph (b) of Section 7-142 is at least \$10 per month;

(4) If he first became a participating employee after December 31, 1961, he has at least 8 years of service. This service requirement shall not apply to any participating employee, regardless of participation date, if the General Assembly terminates the Fund.
Section 7-141(b)(2)

(b) Retirement annuities shall be payable:

* * *

(2) Except as provided in item 3, upon receipt by the fund of a written application. The effective date may be not more than one year prior to the date of the receipt by the fund of the application

Sections 5/7-166 through 169(1)(a) of the Pension Code apply when an employee separates from an IMRF job and receives a refund of IMRF contributions. Section 5/7-169, as provided below, specifically applies when an employee has received a refund of IMRF contributions but wants to repay the contribution and reinstate that period of active IMRF participation.

Sec. 7-169. Separation benefits; repayments.

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

In addition, Sections 5.50(F) and 6.40 of the IMRF Authorized Agent's Manual (Manual) apply to IMRF members who seek to reinstate IMRF credit by repaying a refund previously taken. Section 6.40 requires that a person be a member who returns to participating employment under an IMRF employer. Section 4.12 of the Manual defines an IMRF member as being "An employee who works in a position not excluded from IMRF coverage (such as some police, fire, and teaching positions) and whose position meets the annual hourly standard for IMRF coverage is an IMRF member. Section 6.40 states that "Payment of the separation refund plus interest will reinstate service credit".

Section 5/7-169 of the Pension Code requires an application for a repayment of a separation refund to be received by the IMRF Board while the employee is still an active participant in the IMRF fund. In this case, TERRY was neither an employee nor an active member of IMRF or a reciprocal system at the time she sought to repay her separation benefits and reinstate her credits in 2021. Therefore, to be allowable under the Pension Code, the 2021 repayment would have to be TERRY'S first repayment after her termination of IMRF participation.

During January of 2016, while she was still an active participant in IMRF, TERRY submitted an application for a service credit refund, but she did not make her payment until October of 2019, which was after she had stopped working at Oswego and had already terminated her active participation from IMRF. Therefore, because both application and payment are listed conditions before service credit can be reinstated, TERRY'S service credit was not reinstated until she made payment in October of 2019. This was the first payment of her separation refund after her termination from IMRF participation.

TERRY argues that did not know she could make only one payment for a refund after IMRF termination and even though she was not an active IMRF member after July of 2019, she was working as an independent contractor for Putnam County. TERRY maintains that she should be allowed to make an additional payment so that she can receive all the past service credit that she is entitled to. However, TERRY was working as an independent contractor and not an employee and was not an active IMRF participant. Therefore, there is no provision in the Pension Code, and no IMRF rule or regulation that allows IMRF to grant TERRY permission to make a second payment for service credit reinstatement After TERRY made her October 2019 repayment of her separation refund, all her remaining service credit hours were ineligible to be credited to her.

In addition, TERRY maintains that in 2021 IMRF had informed her that she would be allowed to make a repayment of her refund and so she should now be allowed to do so. IMRF confirms that this erroneous information was given to TERRY in December of 2021 but states that she had previously been given correct information about IMRF requirements regarding the repayment of refunds and reinstatement of service credit and that IMRF has no legal authority or ability under the Pension Code to ignore the code requirements and allow her to make a second refund repayment even if an IMRF staff member erred.

Even if IMRF made a mistake or an IMRF agent or staff provided TERRY with conflicting information about her eligibility to repay her separation benefits and reinstate her service credit in 2021, the Pension Law and IMRF Manual make clear that the rule is that service credit is not reinstated until payment is made and Tier 1 employees are only given one chance after termination of active IMRF participation to make such a repayment. There is no mechanism to backdate a second refund payment and no mechanism to allow the reinstatement of service credit that is no longer eligible for

reinstatement. IMRF must abide by the law as written and cannot carve out an exception to the law as this is the responsibility of the legislature. IMRF also has brochures, handouts, newsletters, which provide information regarding the refund and the repayment of refund of separation benefits. TERRY was also given specific written information from IMRF that warned her that repayments of refunds generally had to be paid while she was an active IMRF participant except that she had one opportunity only to repay her refund and reinstate her service credit after termination. Moreover, even if IMRF told TERRY in December of 2021 that she was eligible to repay her refund for the remaining service credits, she had already terminated IMRF by then and had already made her first refund repayment in 2019 and so information given to her in 2021 was moot. TERRY did not rely to her detriment on erroneous information and advice given to her in 2021.

IMRF derives its powers from the Pension Code and has no legal authority to change the requirements of the Pension Code and the applicable IMRF rules. The Pension Code provides the correct method for repaying a refund and reinstating past service credit, and IMRF must obey the law. 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”. The Pension Code provides no applicable legal exception to the requirements of section 7-136, which states that an IMRF member can only make one reinstatement of service credit payment after the member terminates their active IMRF participation. Similarly, IMRF has no legal authority to allow TERRY to receive retirement benefits when she is ineligible under the requirements of 7-136. When construing a statute, the primary objective is to give effect to the intent of the legislature. The language of the statute is the best indicator of legislative intent, and the language should be given its plain and ordinary meaning whenever possible. *Roselle Police Pension Board v. Village of Roselle*, 232 Ill. 2d 546, 552 (2009). Although it is unfortunate that IMRF may have erred in providing information to TERRY in 2021, there is no law or rule which binds IMRF to its mistakes if they conflict with the Pension Code. Moreover, by the time she received the erroneous information from IMRF, TERRY had already made her only eligible refund repayment, and therefore, the error did not impact her eligibility to make a second payment in 2021.

I recommend that the Board affirm the IMRF staff decision to deny TERRY’S request to make a second repayment of refund for service credit reinstatement. IMRF is authorized by statute, and must abide by that statute, which states that only one payment is allowed after IMRF termination.

/s/ Susan Davis Brunner

SUSAN DAVIS BRUNNER, Hearing Officer

These Findings of Fact and Conclusions of Law are adopted this 27th day of May, 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

ILLINOIS MUNICIPAL RETIREMENT FUND

IN THE MATTER OF JAMES MOHN) **#148-6360**
re:)
FROM A DECISION OF THE ILLINOIS MUNICIPAL) **Susan Davis Brunner**
RETIREMENT FUND ADMINISTRATIVE STAFF) **Hearing Officer**

STATEMENT OF THE CASE AND FACTUAL BACKGROUND

Until his last day of employment on October 2, 2021, JAMES MOHN MID # 148-6360 (hereinafter referred to as “MOHN”) was an employee of the Illinois Bluffs Community School District #327 (hereinafter referred to as “Illinois Bluffs”). Prior to and while working at Illinois Bluffs MOHN had been an active participant in the Illinois Municipal Retirement Fund (hereinafter referred to as “IMRF”). MOHN applied for his retirement benefits in August of 2021 and began receiving his retirement annuity payment effective November 1, 2021. Beginning December 6, 2021, and several subsequent dates ending on January 31, 2022, MOHN drove a bus for the Norwood School District #63 (hereinafter referred to as “Norwood”), an IMRF employer, where he had previously been employed from September 1992 through November 2004. MOHN had been asked to substitute for the school’s regular drivers on five requested days due to numerous Covid-19 absences. While driving for Norwood MOHN was paid as an employee but he was not reenrolled in IMRF and did not receive any IMRF benefits.

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. During January of 2022, IMRF learned of MOHN’S work for Norwood and IMRF staff subsequently determined that MOHN was no longer eligible for the retirement benefits he received beginning November 1, 2021 since the Resolution required that MOHN be fully separated from his employment at Illinois Bluffs before he could work at Norwood. Therefore, MOHN could not work in any capacity for any IMRF employer until at least 60 days after November 1, 2021, which was the first day of his retirement and the first day of his annuity period. IMRF further stated that MOHN was required to pay back all benefit payments he had been paid since November 1, 2021, an amount totaling \$13,083.03. MOHN stated that he believed he had waited the required 60 days from retirement before working for an IMRF employer since he retired on October 2nd and did not work for Norwood until December 6th.

MOHN now appeals the IMRF Administrative Staff Determination and maintains that he retired on October 2, 2021, and IMRF is exceeding its authority by interpreting the Pension Code as requiring a sixty-day waiting period after the first annuity payment has

been issued instead of the day after he stopped working and became retired. Moreover, MOHN argues that the sixty-day rule should not apply to him when he did not return to work in the usual sense, and only worked for Norwood a few days to help out during the Covid pandemic. In addition, MOHN maintains that the sixty-day waiting period should not apply to him, as his substitute position with Norwood is not IMRF eligible as he was only there part-time for five days and so was an employee working less than 600 hours with no eligibility for IMRF participation or pension credit. IMRF argues that the Pension Code and the Internal Revenue 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 April 29, 2022, at 9:00 a.m. MOHN appeared remotely on behalf of himself. 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 has not worked for or made plans to work for any IMRF employer in any capacity for at least 60 days after retirement applies to MOHN who worked more than 60 days after his last date of employment with Illinois Bluffs but less than 60 days after he was paid his first IMRF annuity check.

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-to-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.

MOHN argues that the requirement that one wait 60 days after “retirement” is misleading because although IMRF has determined that he did not retire until he was paid his first annuity check on November 1, 2021, MOHN maintains that he retired on October 2, 2021, since that was his last day of employment. MOHN asserts that, therefore, he did wait the required 60 days before working for Norwood on December 6, 2021. MOHN also argues that 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. MOHN 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 his sporadic and limited bus driving for Norwood does not qualify for IMRF participation or prior service credit MOHN should not be barred from collecting retirement benefits just because of those few days he worked for Norwood

Therefore, what is at issue here is whether the IMRF’S determination that an employee’s retirement date does not occur upon one’s last day of employment but upon the date of the first annuity payment is a proper interpretation of the Pension Code and also whether the requirement that an employee must wait sixty days before working in any capacity for any IMRF employer, a requirement not expressly 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 MOHN.

IMRF states that it was essential for it to set clear rules in its Resolutions and Memo 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." The "WHEREAS clause" of the IMRF resolution states 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 further maintains that it may not pay a retirement annuity to an employee who has not separated from service with any and all IMRF employers. 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.

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.

IMRF has determined that one's retirement for purposes of the Pension Code begins upon the beginning of the annuity period, as indicated by the date of the first annuity payment. Section 4 of the Resolution specifically requires that the 60 days begins after the annuity start date: "*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.*" By passing the Resolution, IMRF has not changed the requirement that one must separate from work but has tried to clarify what is necessary to comply with the requirement and when the sixty-day waiting period begins. In its Memo and rules and printed material, IMRF also uses the phrase "...60 days after retirement", to describe a separation of service, which is perhaps confusing and easily misunderstood. However, the Resolution states clearly that the 60 days is measured from the annuity start date and IMRF letters sent to MOHN and IMRF printed material instructs retirees to contact IMRF before working again after retirement.

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 an IMRF employee is not fully separated from service until 60 days after the beginning of the annuity period. The Resolution also clarifies that an immediate return to work for another IMRF employer can indicate the employee has not really separated from a previous employer and never really 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. 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.

For all the above reasons I recommend that the Board AFFIRM the IMRF staff decision stating that MOHN 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. Upon his retirement, MOHN was required to stop working for all IMRF employers in any capacity with no plans for future work and then wait sixty days after the beginning of his annuity period on November 1, 2021, before working for any IMRF employer. Therefore, MOHN was not eligible to receive the \$13,080.03 in retirement benefits he was paid from November 1, 2021, to February 1, 2022, as he had not fully separated from work as required for 60 days when he began working for Norwood on December 6, 2021. Therefore, even though MOHN did not intend to violate the sixty-day separation from work requirement, and even though his August 2021 application was initially approved, he was not eligible until February 1, 2022, and must repay, over a period not to exceed five years, the retirement benefits he received prior to that time.

/s/ Susan Davis Brunner

May 11, 2022

SUSAN DAVIS BRUNNER, Hearing Officer

These Findings of Fact and Conclusions of Law are adopted this 27th day of May, 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