

**BEFORE THE BOARD OF TRUSTEES  
TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS**

In the Matter of:                    )  
  )  
                  GARY L. WALKER,        )  
  )  
                  Petitioner.            )

**PROPOSED DECISION RECOMMENDED BY THE CLAIMS  
HEARING COMMITTEE IN THE ADMINISTRATIVE REVIEW  
OF GARY L. WALKER**

**I.    Introduction**

Pursuant to 80 Ill. Admin. Code § 1650.610 et seq., an administrative review hearing was held January 24, 1995, in Chicago, Illinois, to consider the appeal of Teachers' Retirement System (TRS) member Gary L. Walker, challenging the staff determination that Mr. Walker is not entitled to a refund of the accumulated interest on his member contributions. There is no dispute between the parties that Mr. Walker is entitled to a refund of his member contributions if and when he elects to file a refund application. In his position statement, Mr. Walker further claims that he is eligible to receive a TRS retirement annuity.

The TRS Board of Trustees (Board), the trier of fact in this matter as provided in TRS Rule 1650.620 (80 Ill. Admin. Code § 1650.620), was represented at hearing by its Claims Hearing Committee comprised of the following Board members: Judy Tucker, Chairperson, Anne Davis, and Ray Althoff. The Committee was advised in its deliberations by Ralph Loewenstein, Independent Counsel to the Board of Trustees.

Prior to hearing, it was agreed between the Parties that Mr. Walker's administrative review would be submitted to the Claims Hearing Committee solely upon the briefs and that oral argument would be waived.

After reviewing the briefs of the Parties and the exhibits submitted therewith, it is the determination of the Claims Hearing Committee that under the clear and unambiguous provisions of 40 ILCS 5/16-151, Refund, while Mr. Walker is clearly entitled a refund of his member contributions to the System should he so elect, he is not entitled to a refund of the accumulated interest earned thereon.

The only circumstance under TRS' statutory scheme when accumulated interest on a member's contributions is payable by the System is at the time of the member's death to the member's designated beneficiary(s) (See 40 ILCS 5/16-138, Refund of Contributions Upon Death of Member or Annuity). The Claims Hearing Committee also finds that Mr. Walker, due to his age, is not eligible to receive a retirement annuity under the provisions of 40 ILCS 5/16-132.

## II. Relevant Statutes and Rules

In the instant case, the Claims Hearing Committee and the Board must apply 40 ILCS 5/16-151 and 40 ILCS 5/16-132, which state:

Sec. 16-151. Refund. Upon termination of employment as a teacher for any cause other than death or retirement, a member shall be paid the following amount upon demand made not previous to 4 months after ceasing to teach:

(1) from the Members' Contribution Reserve, the actual total contributions paid by or on behalf of the member for membership service which have not been previously refunded and which are then credited to the member's individual account in the Members' Contribution Reserve, without interest thereon, and

(2) from the Employer's Contribution Reserve, the actual contributions not previously refunded, paid by or on behalf of the member for prior service and towards the cost of the automatic annual increase in retirement annuity as provided under Section 15-152, without interest thereon.

Any such amounts may be paid to the member either in one sum or, at the election of the board, in 4 quarterly payments.

Upon acceptance of a refund, all accrued rights and credits in the System are forfeited and may be reinstated only if the refund is repaid together with interest from the date of the refund to the date of repayment at the following rates compounded annually: for periods prior to July 1, 1965, regular interest; for periods from July 1, 1965 to June 30, 1977, 4% per year; for periods on and after July 1, 1977, regular interest. Repayment shall be permitted upon return to membership; however, service credit previously forfeited by a refund and subsequently reinstated may not be used as a basis for the payment of benefits, other than a refund of contributions, prior to the completion of one year of creditable service following the refund, except when repayment is permitted under the provisions of the "Retirement Systems Reciprocal Act" contained in Article 20. (Emphasis added).

Sec. 16-132. Retirement annuity - eligibility. A member who has at least 20 years of creditable service is entitled to a retirement annuity upon or after attainment of age 55. A member who has at least 10 but less than 20 years of creditable service is entitled to a retirement annuity upon or after attainment of age 60. A member who has at least 5 but less than 10 years of creditable service is entitled to a retirement annuity upon or after attainment of age 62.

A member meeting the above eligibility conditions is entitled to a retirement annuity upon written application to the board setting forth the date the member wishes the retirement annuity to commence. However, the effective date of the retirement annuity shall be no earlier than the day following the last day of creditable service, regardless of the date of official termination of employment. To be eligible for a retirement annuity, a member shall not be employed as a teacher in the schools included under this

system or under Article 17, unless the member is disabled (in which event, eligibility for salary must cease), or unless the system is required by federal law to commence payment due to the member's age; the changes to this sentence made by this amendatory Act of 1991 shall apply without regard to whether the member terminated employment before or after its effective date.

### **III. Issue Statement**

The Parties did not agree upon an issue statement. However, after reviewing the arguments and exhibits submitted by the Parties, the Claims Hearing Committee find the issues to be:

- 1) Is a member of the Teachers' Retirement System, who requests a refund of member contributions entitled to receive the accumulated interest thereon under the provisions of 40 ILCS 5/16-151?
  
- 2) Is a 51 year-old member of the Teachers' Retirement System with 16 years of service credit eligible to receive a retirement annuity under the provisions of 40 ILCS 5/16-132?

### **IV. Statement of Facts**

The Parties also did not agree upon a statement of facts. However, the Claims Hearing Committee notes that the Statement of Undisputed Facts contained in Mr. Walker's December 2, 1994, Response to Teachers' Retirement System Position Statement, does not conflict in any respect with the System's proposed statement of facts. Accordingly, the Committee adopts Mr. Walker's Statement of Undisputed Facts as the facts of the case:

- 1) Gary Walker taught for the New Athens School District, St. Clair County, from the 1966-67 School Year through the 1981-82 School Year.

- 2) Since the 1981-82 School Year, Mr. Walker has not taught in the Illinois public, common schools.
- 3) Mr. Walker contributed \$14,568.25 to the System during the above sixteen (16) year period.
- 4) From the \$14,568.25 contributed by Mr. Walker to the System, \$1,852.96 was deducted to cover Mr. Walker's one percent (1%), non-refundable survivor benefits assessment.
- 5) Mr. Walker's total refundable contributions are \$12,715.29.
- 6) Mr. Walker's refundable contributions with accumulated interest, payable at death or retirement, were \$32,454.97 as of June 30, 1994.
- 7) In 1982, Mr. Walker became employed by the United States Department of Defense Dependents' Schools.
- 8) While actively employed by the Department of Defense, Mr. Walker taught nine years in Italy and one year in Korea.
- 9) In 1992, Mr. Walker was diagnosed with Acquired Immune Deficiency Syndrome (AIDS).

#### V. Positions of the Parties

In his Response to Teachers' Retirement System Position, Mr. Walker raises the following arguments in support of his position that he is entitled to a refund of accumulated interest along with a refund of his member contributions.

- 1) The System is violating the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, et seq. by denying Mr. Walker a refund of accumulated interest on his member contributions or, in the alternative, a retirement annuity, because he is suffering from AIDS.

2) The System is violating Mr. Walker's constitutional due process and equal protection rights by not granting him the refund of accumulated interest or retirement annuity he seeks.

3) The System is denying Mr. Walker a refund of accumulated interest on his member contributions or, in the alternative, a retirement annuity, because he is disabled in violation of the Rehabilitation Act of 1973, 29 U.S.C. § 791, et seq.

4) The System is violating the anti-forfeiture provisions of § 401(a) and § 414(d) of the Internal Revenue Code by not granting Mr. Walker a refund of the accumulated interest on his member contributions or, in the alternative, a retirement annuity

The position of the System is that the language of 40 ILCS 5/16-151 and 40 ILCS 5/16-132 is plain and unambiguous. Refunds of accumulated interest are specifically prohibited by § 16-151, and the earliest Mr. Walker could conceivably receive a retirement annuity from the System is at age 55.

With regard to Mr. Walker's ADA and Rehabilitation Act claims, it is the position of the System that no violations of these laws has taken place. The System further asserts that a TRS administrative review is not the appropriate forum for such claims, and that the TRS Board of Trustees is without jurisdiction to decide them.

With regard to Mr. Walker's loss of qualified status claim, the System asserts that governmental pension plans are specifically exempted by the Internal Revenue Code from the anti-forfeiture provisions of § 401(a) and § 414(d).

With regard to Mr. Walker's equal protection claim, it is the position of the System that TRS' refund and retirement age provisions serve legitimate government purposes and pass the rational relationship test. As such, TRS' refund and retirement age provisions are constitutionally permissible.

Finally, with regard to Mr. Walker's due process claim, it is the position of the System that since Mr. Walker has no vested interest in the accumulated interest on his member contributions or a retirement date of his choosing, there is no taking and, thus, no due process violation.

## VI. Discussion and Analysis

### 1. ADA Claim

With regard to Mr. Walker's ADA claim, the Claims Hearing Committee finds that under the provisions of 42 U.S.C. § 12010, et seq., an ADA claim is federal in nature and that neither Article 16 of the Illinois Pension Code, 40 ILCS 5/16-101, et seq., nor the ADA confer authority on the Board to hear such a claim. Jurisdiction to hear an ADA claim properly lies with the Equal Employment Opportunity Commission (EEOC) or the federal courts. Accordingly, the Claims Hearing Committee declines to rule on this issue.

### 2. Rehabilitation Act Claim

With regard to Mr. Walker's Rehabilitation Act claim, the Claims Hearing Committee finds that under the provisions of 29 U.S.C. § 791, et seq., a Rehabilitation Act claim is also federal in nature and that neither Article 16 nor the Rehabilitation Act confer authority on the Board to hear such a claim. Jurisdiction to hear a Rehabilitation Act claim properly lies with the EEOC, the Department of Labor, a federal grantor agency,<sup>1</sup> or the federal courts. Accordingly, the Claims Hearing Committee declines to rule on this issue.

### 3. Loss of Qualified Plan Status Claim

With regard to Mr. Walker's loss of qualified plan status claim, the Claims Hearing Committee finds that TRS administers a governmental pension plan and, as such, is exempt from the provisions of § 401(a)(19) and § 414(d) of the Internal Revenue Code (See the very

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<sup>1</sup> It should be noted the System receives no federal grants.

last sentence of § 401(a) as well as § 411(e)(1)(A) of the Internal Revenue Code).

4. Equal Protection Claim

With regard to Mr. Walker's equal protection claim, the Claims Hearing Committee finds that the rational relation rather than the strict scrutiny test governs the Committee's analysis. The Committee further finds the following cases to be controlling: In re P.M., 163 Ill. Dec. 566, 581 N.E.2d 721 (1991); Snedden v. State Emp. Retirement System, 26 Ill. Dec. 605, 388 N.E.2d 229 (1979); and Fishman v. Teachers' Retirement System, 41 Ill. Dec. 767, 408 N.E.2d 113 (1980).

As stated in In re P.M.:

Equal protection does not proscribe treatment of different classes of persons in different ways; it requires only equal treatment of persons similarly situated. (P.M. at p. 568).

Under the provisions of 40 ILCS 5/16-151, there is no classification whatsoever. No TRS member is allowed to receive accumulated interest with a refund of contributions. All TRS members receive equal treatment under the statute.

Mr. Walker claims § 5/16-151 discriminates against terminally ill and disabled members. However, Mr. Walker has failed to demonstrate any differential treatment. TRS' statutory scheme regarding refunds has no terminal illness/disability component.

Likewise, 40 ILCS 5/16-132 imposes no terminal illness/disability test. Depending on years of service, the earliest a member can receive a TRS annuity is at age 55. The provisions of § 16-132 apply equally to all TRS members. No member is treated differently based upon health or physical condition.

Mr. Walker seeks special treatment available to no other member. The Committee has no statutory authority to grant such relief [See Homefinders, Inc. v. City of Evanston, 2 Ill. Dec. 565, 357 N.E.2d 785

(1976)]. Furthermore, the imposition of age and service requirements to receive a retirement annuity clearly are permissible under the equal protection clause as evidenced by the Snedden and Fishman cases.

In Snedden, the Fourth Appellate Court found that the State Employees' Retirement System did not violate equal protection by requiring a spouse to be married to a member for at least one year prior to the member's death to receive survivors benefits. As stated by the Court:

Plaintiff contends that the classification of spouses into those married less than one year before the member's death and those married one year or more is unconstitutional because it is unreasonable, arbitrary and contrary to public policy. Plaintiff does not contend that this distinction is a "suspect" classification which would be subject to "strict scrutiny" and judged by the "compelling interest" test. Rather, this classification is subject to the following standard stated in *Grasse v. Dealer's Transport Co.* (1952), 412 Ill. 179, 193.94, 106 N.E.2d 124, 132, and later applied in *Laffoon v. Bell & Zoller Coal Co.* (1976), 65 Ill.2d 437, 444, 3 Ill.Dec. 715, 718, 359 N.E.2d 125, 128-29:

"For these classifications to be deemed constitutional, as in all cases involving classifications, it must appear that the particular classification is based upon some real and substantial difference in kind, situation or circumstance in the persons or objects on which the classification rests, and which bears a rational relation to the evil to be remedied and the purpose to be attained by the statute, otherwise the classification will be deemed arbitrary and in violation of the constitutional guarantees of due process and equal protection of the laws."

We believe that the classification here meets that standard. Here, the evil to be remedied is the conscious adverse risk selection of "deathbed" marriages whereby a terminally ill member of the System marries another to

enable that person to become eligible for benefits. The one-year marriage requirement, designed to prevent the abuse of the pension system, is based on a difference in situation or circumstance and bears a rational relation to the purpose of the statute. (Snedden at p. 607).

In Fishman, the Fourth Appellate Court again dealt with the issue of equal protection. In upholding the constitutionality of TRS' military service credit statute, Ill. Rev. Stat., ch. 108 1/2, § 16-127(5) (1979), the Court stated:

We now turn to the plaintiffs' contention that they have been denied equal protection of the law. As we have interpreted section 16-127(5), it operates upon a group of members of the System who have served in the armed forces and makes two classifications. One classification consists of those of the group who were "members" of the System at the time of their entry into the service and who returned "to teaching service" within a specified short period thereafter. This class may obtain retirement credit. The other class are those of the group not meeting the retirement of the first class. All plaintiffs are in this class and the class is denied pension credit.

We reject summarily plaintiffs' contention that the classification is an invidious one requiring strict scrutiny under state or federal constitutions because it is based on gender. Unlike *Memorial Hospital v. Maricopa County* (1974), 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (indigent's right to free hospital and medical care) and *Shapiro v. Thompson* (1969), 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (indigent's right to general welfare assistance), cases enunciating the high priority right to travel, the rights to the pension credit are not conditioned upon the length of any prior residency. Rather, the pension rights are conditioned upon prior employment by the state granting the rights and prior membership in the System. Even if consideration be given to the likely relationship between

prior membership in the System and prior residence within the state, we note that a federal district court has held that a state may condition benefits under a veteran's preference statute to residence within the state at the time of entry into the service and may properly exclude veterans who later become residents without infringing upon their constitutional right to travel. (*Langston v. Levitt* (S.D.N.Y. 1977), 425 F.Supp. 642.) Similarly, there is no gender qualification for receipt of the pension credit. The classification is between classes of veterans. All plaintiffs are males. By no stretch of the imagination does the classification discriminate against them because of their masculinity. (*Fishman* at p. 770).

In the case of age and service requirements to receive an annuity, the Claims Hearing Committee finds a rational relation to the purpose of the Teachers' Retirement System. Retirement at age 55 insures TRS members, many of whom are not members of the Social Security System, will have a source of income in their old age. Age and service requirements also insure actuarial soundness and adequate contributions to support the entire membership.

The Committee further finds a rational relation to restricting the receipt of accumulated interest on member contributions to survivors. Such a benefit structure also encourages teachers to remain in the System and protects the System's financial integrity. It should be remembered that teaching, while a life-time profession, is often interrupted by temporary absences for such reasons as maternity or higher education. The System's benefit structure serves the purpose of removing the temptation for a member to ignore future considerations concerning retirement by taking a refund to satisfy a more immediate want or need. The benefit structure also has an insurance aspect in that it provides survivors with a financial cushion after a member's premature death<sup>2</sup>. Clearly, Mr. Walker's equal protection claim is without merit.

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<sup>2</sup> Member contributions plus accumulated interest pay a member's initial monthly retirement annuities until the amount is exhausted. This occurs on average approximately 2 1/2 years after a member begins receiving a retirement annuity from the System.

5. Fifth Amendment Due Process Claim

With regard to Mr. Walker's Fifth Amendment due process claim, the Claims Hearing Committee would point out that the Fifth Amendment of the United States Constitution applies only to federal agencies [see Citizens Util. Co. of Ill. v. Metropolitan Sanitary Dist., 322 N.E.2d 857 (1974)]. Even if Mr. Walker had raised a Fourteenth Amendment due process claim, TRS' refund and age and service credit requirements would not constitute an unconstitutional taking. Mr. Walker had no vested interest in the accumulated interest on his contributions or in receiving an annuity prior to age 55. The Illinois Supreme Court has dealt with the due process issue in the public pension area. In Jaris v. Public School Teach. P & R Fund of Chicago, 317 N.E.2d 51 (1974), the Court specifically determined that the statutory requirements of the Illinois Pension Code do not violate due process.

Furthermore, there has been no taking by TRS. Mr. Walker is entitled to a refund of contributions. His survivors are entitled to his contribution plus interest depending on his date of death and retirement status. And, Mr. Walker is still eligible to retire at age 55. Mr. Walker's due process claim is also without merit.

In conclusion, there is simply no provision in TRS' statutory scheme to grant Mr. Walker the relief he seeks. 40 ILCS 5/16-151 and 16-132, the statutory provisions governing refunds and retirement eligibility are plain and unambiguous.

When a statute is clear on its face, it must be given effect by the Claims Hearing Committee and the Board. As stated in Powers v. Retirement Bd., 188 Ill. Dec. 387, 618 N.E.2d 957 (1993); a pension fund case also involving the issue of refunds:

We have examined the statute in question and find it to be clear, plain and unambiguous. This statute admits of only two circumstances where a participant in the Fund is entitled to a refund of sums paid for the establishment of a

widow's annuity; namely, if the police officer is unmarried when he withdraws from service and enters upon his own annuity, or when he becomes a widower while still in active service. The plaintiff in this case was married at the time he withdrew from service and entered upon his annuity, and consequently was not entitled to a refund of his contributions under either circumstance set forth in the statute. As our supreme court held in People ex rel. Pauling v. Misevic (1994), 32 Ill.2d 11, 15, 203 N.E.2d 393:

“Where the words employed in a legislative enactment are free from ambiguity or doubt, they must be given effect by the courts even though the consequences may be harsh, unjust, absurd or unwise. (Citations.) Such consequences can be avoided only by a change of the law, not by judicial construction, (citation) and, by the same token, courts are not at liberty to read exceptions into a statute the legislature did not see fit to make, (citation) or, by forced or subtle constructions, to alter the plain meaning or the words employed. (Citations)”

We do not mean to minimize the logic of the plaintiff's argument that the statute as written permits a retention by the Fund of all the plaintiff's contributions for a widow's annuity when there is no possibility for a widow to take. However, since the language of the statute is clear and unambiguous, it must be given effect as written. The plaintiff's argument is one that ought to be addressed to the legislature. (Powers at p. 388 and 389.)

The rule of statutory construction set forth in Powers are equally applicable to Mr. Walker's case.

Mr. Walker is clearly authorized by statute to a return of his refundable contributions of \$12,715.29. However, his request for a

refund of the interest earned thereon of \$19,739.68 or, in the alternative, a retirement annuity, must be denied.

### **VII. Conclusion**

Based upon the foregoing, it is the Claims Hearing Committee's recommendation that the staff determination that Mr. Walker is not entitled to a refund of accumulated interest or to receive a retirement annuity be upheld.

### **VIII. Notice of Right to File Exceptions**

Exceptions to the Claims Hearing Committee's Proposed Decision must be filed within fifteen (15) days of receipt of the Proposed Decision by the Claimant. A Final Decision will be issued by the Board of Trustees after it has considered the Claims Hearing Committee's Proposed Decision and any exceptions filed by the Claimant.