

**BEFORE THE EXECUTIVE DIRECTOR  
OF THE INDIANA PUBLIC RETIREMENT SYSTEM**

In the matter of

Yulanda Bolton, Petitioner	)	PUBLIC EMPLOYEES' RETIREMENT
(Doris M. Beene, Member, deceased)	)	FUND
	)	
	)	

**FINAL ORDER**

The Board of Trustees ("Board") of the Indiana Public Retirement System ("INPRS") is the ultimate authority in administrative appeals brought by members of the Public Employees' Retirement Fund ("PERF") under IC 4-21.5-3-28 and 35 IAC 1.2-7-3. In the Statement of Board Governance, the Board delegates to the Executive Director the authority to conduct a final authority proceeding, or a review of decision points by the administrative law judge ("ALJ"), to issue a final order in this matter.

1. The ALJ entered a Decision and Recommended Order on Motion for Summary Judgment ("Order") in this matter on May 17, 2012, granting INPRS' motion for summary judgment and affirming INPRS' initial determination that Petitioner erroneously received PERF death benefits, was overpaid [REDACTED], and must repay PERF for the erroneously paid benefits.
2. Copies of the Order have been served upon the parties.
3. Pursuant to IC 4-21.5-3-29(d)(2), 35 IAC 1.2-7-3(b)(7), and Indiana Trial Rule 4.17(B)(2), it has been more than fifteen (15) days since the ALJ served the Order upon the parties.
4. No objections to the Order have been filed.

NOW THEREFORE the Decision and Order on Motion for Summary Judgment of the Administrative Law Judge is affirmed.

DATED June 6, 2012

A handwritten signature in black ink, appearing to read 'Steve Russo', is written over a horizontal line.

Steve Russo, Executive Director  
Indiana Public Retirement System  
One North Capitol, Suite 001  
Indianapolis, IN 46204

## CERTIFICATE OF SERVICE

I certify that on the 6<sup>th</sup> day of June, 2012, service of a true and complete copy of the foregoing was made upon each party or attorney of record herein by depositing same in the United States mail in envelopes properly addressed to each of them and with sufficient first class postage affixed.

Distribution:

Yulanda Bolton

Laureanne Nordstrom  
Administrative Law Judge  
7689 Briarstone Lane  
Indianapolis, IN 46227

Lindsay Knowles, Staff Attorney  
Indiana Public Retirement System  
One North Capitol, Suite 001  
Indianapolis, Indiana 46204



Steve Russo, Executive Director  
Indiana Public Retirement System  
One North Capitol, Suite 001  
Indianapolis, IN 46204  
(317) 232-3868

BEFORE AN ADMINISTRATIVE LAW JUDGE  
FOR THE INDIANA PUBLIC RETIREMENT SYSTEM

IN THE MATTER OF )  
YULANDA BOLTON, )  
Petitioner )  
(Doris M. Beene, Member). )

RECEIVED

MAY 21 2012

INDIANA PUBLIC  
RETIREMENT SYSTEM

DECISION AND RECOMMENDED ORDER ON  
MOTION FOR SUMMARY JUDGMENT

**Introduction**

Yulanda Bolton (Petitioner) appeals the initial determination of the Indiana Public Retirement System' (INPRS) determination that Petitioner had erroneously received Public Employees' Retirement Fund (PERF) death benefits and that Petitioner must repay PERF for the erroneously paid benefits.

Pursuant to the schedule agreed to by the parties and ordered by the ALJ, PERF filed a motion for summary judgment on March 21, 2012, and Petitioner filed a response to PERF's motion for summary judgment on April 18, 2012. PERF filed a reply to Petitioner's response on April 26, 2012. Neither party requested a hearing, so the motions are ripe for ruling.

**Findings of Undisputed Material Fact**

1. Doris M. Beene (Beene) retired from PERF covered service on November 1, 2005.
2. Beene elected the normal retirement option ten (10) with a five (5) year guarantee period.
3. Beene designated Petitioner as her beneficiary.
4. Beene died on May 5, 2008.
5. Pursuant to Ind. Code § 5-10.2-4-7 (b), Petitioner was entitled to the balance of the benefits that would have been paid to Beene between her death on May 5, 2008 and the end of the five (5) year guaranteed period on October 31, 2010.
6. Petitioner elected to receive the death benefit in monthly installments.
7. On July 22, 2008, PERF sent Petitioner a letter notifying Petitioner that she would receive monthly payments of [REDACTED].
8. Due to a cost of living increase, the monthly payment was increased from the original amount to [REDACTED].

9. Petitioner received monthly benefit payments through August 2011.
10. During an audit of this account, the overpayments were discovered and the August 2011 overpayment was reclaimed by INPRS.
11. INPRS paid Petitioner benefits between November 2010 through July 2011, which were payments made beyond the five (5) year guaranteed period.
12. [REDACTED]
13. On August 30, 2011, a staff member from INPRS spoke with Petitioner by telephone and notified her of the overpayment of benefits.
14. Petitioner requested administrative review in a letter dated October 5, 2011.
15. INPRS issued its initial determination letter dated October 31, 2011 upholding the INPRS' staff determination that Petitioner was overpaid [REDACTED]
16. On November 16, 2011, INPRS received Petitioner's letter of appeal for a review by the Administrative Law Judge.
17. PERF was created by the Indiana General Assembly as a public trust fund to administer benefits pursuant to Indiana pension laws written and adopted by the Indiana General Assembly.

#### **Conclusions of Law**

##### **Legal Standard**

Summary judgment "shall be rendered immediately if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits and testimony, if any, show that a genuine issue as to any material fact does not exist and that the moving party is entitled to a judgment as a matter of law." Ind. Code §4-21.5-3-23(b).

As with motions under Ind. Trial Rule 56, a genuine issue of material fact exists where facts concerning an issue which would dispose of litigation are in dispute or where the undisputed facts are capable of supporting conflicting inferences on such an issue. The party moving for summary judgment bears the burden of making a *prima facie* showing that there is no genuine issue of material fact and requirements, the burden shifts to the non-moving party to show the existence of a genuine issue of material fact by setting forth specifically designated facts. *Indiana-Kentucky Electric Corp. v. Indiana Dept. of Environmental Management*, 820 N.E.2d 771, 776 (Ind. App. 2005).

Contrary to federal practice, a moving party cannot simply allege that the absence of evidence on a particular element is sufficient to entitle that party to summary judgment -- it must prove that no dispute exists on all issues. *Dennis v. Greyhound Lines, Inc.*, 831 N.E.2d 171, 173 (Ind. App. 2005), citing *Jarboe v. Landmark Community Newspapers*, 644 N.E.2d 118 (Ind. 1994).

An ALJ's review of an agency's initial determination is *de novo*, without deference to the initial determination. *Indiana Dept. of Natural Resources v. United Refuse Company Inc.*, 615 N.E.2d 100, 103-104 (Ind. 1993); *Branson v. Public Employees' Retirement Fund*, 538n N.E.2d 11,13 (Ind. App. 1989).

#### **Evidence**

No party has raised an objection to the admissibility of the evidence submitted.

#### **Genuine disputes of material fact**

No party has argued that there is a genuine dispute of material fact.

#### **Issue presented**

The question presented is whether Petitioner erroneously received PERF death benefits and that Petitioner must repay PERF for the erroneously paid benefits.

#### **Discussion**

Adherence to Plan Provisions. The PERF is mandated to comply with retirement fund law. Ind. Code § 5-10.2-2-1.5(1). The retirement fund law governing PERF is referred to as PERF's "plan document" and includes Ind. Code §§ 5-10.2 and 5-10.3, Title 35 of the Indiana Administrative Code, and PERF Board of Trustees resolutions. PERF lacks the power or the discretion to deviate from restrictions placed upon the administration of a member's retirement benefit by retirement fund law. See Ind. Code § 5-10.2-2-1 (a).

PERF is required by federal and state law to administer benefits in accordance with its plan documents set forth in Ind. Code §§ 5-10.2 and 5-10.3, Title 35 of the Indiana Administrative Code, and PERF Board of Trustees resolutions. See 26 U.S.C. § 401(a); Ind. Code §§ 5-10.2-2-1 (a) and 5-10.2-2-1.5 (a). The relevant part of the plan documents is Ind. Code § 5-10.2-4-7 (b), which states, "A member who retires is entitled to receive monthly retirement benefits, which are guaranteed for five (5) years or until the member's death, whichever is later."

Furthermore, the PERF Board is granted broad authority to "[e]xercise all powers necessary, convenient, or appropriate to carry out and effectuate its public and corporate purposes and to conduct its business." Ind. Code § 5-10.3-3-8(a)(10). The Board's powers shall be interpreted broadly to effectuate the purposes of the PERF law and not as a limitation of powers. Ind. Code § 5-10.3-3-8(c).

Recovery of Overpayments. Retirement fund law also requires PERF to be administered in accordance with Internal Revenue Code § 401 and Treasury Regulations in order to maintain PERF's federal tax-favored status as a qualified retirement plan. If a plan has paid benefits in excess of the benefits provided under the terms of the plan it has failed to use the plan assets solely "for the exclusive benefit of [the employer's] employees or their beneficiaries" under the plan. 26 U.S.C. § 401(a) (2010). The Internal Revenue Service's Employee Plans Compliance Resolution System ("EPCRS"), Rev. Proc. 2006-27 provides a means for qualified plans to correct failures to comply with Code requirements "and thereby continue to provide their employees with retirement benefits on a tax-favored basis." Rev. Proc. 2006-27, Section 1.01. Revenue Proc. 2006-27, Section 5.01(2), (6) provides guidance on correcting an operational failure, which requires that the employer take reasonable steps to have the

overpayment (with appropriate interest) returned by the recipient to the plan. Rev. Proc. 2006-27, Appendix B, Section 2.04(1).

In addition to the requirements of the Internal Revenue Code and Treasury Regulations, Indiana law provides that one who pays money to another under mistake of fact is entitled to restitution. *St. Mary's Medical Center, Inc. v. United Farm Bureau Family Life Ins. Co.*, 624 N.E.2d 939, 941 (Ind. Ct. App. 1993), citing *Restatement of Restitution § 18* (1937). This rule applies even when the [payor] "may have been careless and failed to employ the means of knowledge which would have disclosed the mistake." *Century Bldg. Partnership, L.P. v. SerVaas*, 697 N.E.2d 971, 974 (Ind. Ct. App. 1998), citing *Monroe Financial Corp. v. DiSilvestro*, 529 N.E.2d 379, 383 (Ind. Ct. App. 1988), *trans. denied* (Ind. 1989).

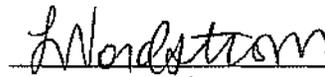
Finally, in the case of a pension fund, some courts give weight to the obligation of the fund to all of its beneficiaries to maintain the integrity of the fund. "Forcing ... a plan to pay benefits [that] are not part of the written terms of the program disrupts the actuarial balance of the plan and potentially jeopardizes the pension rights of others legitimately entitled to receive them." *Central States, Southeast & Southwest Areas Health & Welfare Fund v. Neurobehavioral Associates, P.C.*, 53 F.3d 172, 175 (7<sup>th</sup> Cir. 1995) (reversing and remanding dismissal of action in which plan sought restitution of overpayment after clerical error resulted in \$10,000 payment when only \$100 owed).

Application of applicable law. The ALJ concludes that PERF is required by federal and state law to administer benefits in accordance with its plan documents. The ALJ further concludes that INPRS is prohibited by Indiana law from paying benefits to Petitioner to which she is not entitled. Finally, the ALJ concludes that the Internal Revenue Code and Treasury Regulations require INPRS to seek repayment of the overpayment of benefits and that, by Indiana law, INPRS is entitled to restitution of the mistakenly paid benefits.

#### **Recommended Order**

INPRS's motion for summary judgment is granted, and petitioner Yulanda Bolton's motion for summary judgment is denied. INPRS initial determination that Petitioner had erroneously received Public Employees' Retirement Fund (PERF) death benefits and that Petitioner must repay PERF for the erroneously paid benefits is affirmed.

DATED: May 17, 2012



Laureanne Nordstrom, ALJ  
7689 Briarstone Lane  
Indianapolis, IN 46227  
(317)480-2244

#### **STATEMENT OF AVAILABLE PROCEDURES FOR REVIEW**

The undersigned administrative law judge is not the ultimate authority, but was designated by the INPRS to hear this matter pursuant to Ind. Code. § 4-21.5-3-9 (a). Under Ind. Code §4-21.5-3-27(a),

this order becomes a final order when affirmed under Ind. Code § 4-21.5-3-29, which provides in pertinent part:

(b) After an administrative law judge issues an order under section 27 of this chapter, the ultimate authority or its designee shall issue a final order: (1) affirming; (2) modifying; or (3) dissolving; the administrative law judge's order. The ultimate authority or its designee may remand the matter, with or without instructions, to an administrative law judge for further proceedings.

(c) In the absence of an objection or notice under subsection (d) or (e), the ultimate authority or its designee shall affirm the order.

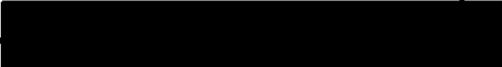
**(d) To preserve an objection to an order of an administrative law judge for judicial review, a party must not be in default under this chapter and must object to the order in a writing that: (1) identifies the basis of the objection with reasonable particularity; and (2) is filed with the ultimate authority responsible for reviewing the order within fifteen (15) days (or any longer period set by statute) after the order is served on the petitioner.**

(e) Without an objection under subsection (d), the ultimate authority or its designee may serve written notice of its intent to review any issue related to the order. The notice shall be served on all parties and all other persons described by section 59df) of this chapter. The notice must identify the issues that the ultimate authority or its designee intends to review.

This means that any party who objects to this decision and recommended order must, within 15 days after service, file a written objection with the INPRS, c/o Thomas N. Davidson, General Counsel, 1 N. Capitol Avenue, Suite 001, Indianapolis In, 46204. The written objection must state the basis of the objection with reasonable particularity.

#### CERTIFICATE OF SERVICE

I hereby certify that I served a copy of this document on the following persons, by U.S. Postal Service first-class mail, on the 19 day of May, 2012:

Yulanda Bolton, 

Lindsay Knowles  
Indiana Public Retirement System  
1 N. Capitol Avenue, Suite 001  
Indianapolis, IN 46204

  
\_\_\_\_\_  
Laureanne Nordstrom  
Administrative Law Judge