

**BEFORE AN ADMINISTRATIVE LAW JUDGE
FOR THE INDIANA PUBLIC RETIREMENT SYSTEM**

IN THE MATTER OF)	PUBLIC EMPLOYEES'
Merle Hedrick)	RETIREMENT FUND
)	
)	
Petitioner.)	

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 Order on Motions for Summary Judgment ("Order") in this matter on February 6, 2013, affirming INPRS' initial determination that Mr. Hedrick is not entitled to reimbursement of the bank interest he believes he would have received in January 2012 and February 2012.
2. Copies of the Order have been served upon the parties.
3. Neither INPRS nor the Petitioner has filed objections.
4. 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.

NOW THEREFORE the Recommended Order on Motions for Summary Judgment of the Administrative Law Judge is affirmed.

DATED March 14, 2013



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

CERTIFICATE OF SERVICE

I certify that on the 11th day of March, 2013, 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:

Merle Hedrick

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**BEFORE AN ADMINISTRATIVE LAW JUDGE
OF THE INDIANA PUBLIC RETIREMENT SYSTEM**

**IN THE MATTER OF
MERLE HEDRICK,
Petitioner,**

v.

**INDIANA PUBLIC RETIREMENT
SYSTEM,
Respondent**

**PUBLIC EMPLOYEES' RETIREMENT
FUND**

RECEIVED

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INDIANA PUBLIC
RETIREMENT SYSTEM

DECISION AND ORDER ON MOTIONS FOR SUMMARY JUDGMENT

Petitioner Merle Hedrick appeals from an initial determination that denied him reimbursement of interest he believes he would have received from his bank had Indiana Public Retirement System (INPRS) deposited his pension payments by direct deposit in January 2012 and February 2012. Both parties filed summary judgment motions¹ that are fully briefed and ripe for decision.² Having carefully considered the arguments and information presented,³ and being duly advised in the premises, the Administrative Law Judge (ALJ) recommends that the agency enter the following order.

¹ On September 6, 2012, this ALJ issued a Prehearing Conference Order that ordered Mr. Hedrick to "file his motion for summary judgment (an explanation supporting his position), and accompanying exhibits on or before October 4, 2012." On September 21, 2012, Mr. Hedrick filed various bank and Public Employees Retirement Fund ("PERF") documents in relation to his appeal, hereinafter referred to as "Petitioner's filed documents." Mr. Hedrick failed to file any memorandum that presented any arguments supporting his position. On September 28, 2012, Counsel for INPRS sent correspondence to Mr. Hedrick inquiring about the absence of any explanations or arguments in support of his position. It appears Mr. Hedrick did not respond to Counsel's inquiry.

² The September 6, 2012 Prehearing Order also gave Mr. Hedrick until November 20, 2012 to file a reply brief to respond to INPRS' arguments, but he failed to file a reply.

³ On October 4, 2012, this ALJ sent the parties a Notice of Ex Parte Communication, placing on the record ex parte communications that Mr. Hedrick made through a post-it note attached to his filed documents. Arguably, the post-it note attached to Petitioner's filed documents contained Mr. Hedrick's arguments in support of his position. INPRS was provided with notice and an opportunity to respond and participate in the communication, pursuant to IC 4-21.5-3-11(a) and 11(c). Considering the nature and substance of the communication, the information contained therein has no effect on the fair determination of the issues in this case. *Smith v. Convenience Store Distrib. Co.*, 583 N.E.2d 735,738 (Ind.1992).

Findings of Undisputed Material Fact

1. Merle Hedrick ("Hedrick") submitted a Public Employees Retirement Fund ("PERF")⁴ Application for Direct Deposit of Recurring Payment ("direct deposit form") on [REDACTED] [REDACTED] (Petitioner's filed documents (see Footnote 1), and INPRS Exhibit B).
2. INPRS did not receive Hedrick's [REDACTED] direct deposit form in enough time to process the request before the [REDACTED] pension payment. (Steven Barley Aff. ¶ 7).
3. On or about [REDACTED], [REDACTED] Bank sent correspondence to Hedrick confirming its receipt of his request to change his former checking account to a [REDACTED] account. The account number referenced in the letter matches the account number provided on Hedrick's direct deposit form. (Petitioners' filed documents).
4. [REDACTED] Bank offers a [REDACTED] account that provides monthly compounded interest to account members that meet certain qualifications including having one direct deposit, or one ACH auto debit, post and clear the account per qualification cycle. (Petitioners' filed documents).
5. On or about January 17, 2012, INPRS advised Hedrick that direct deposits take up to two payment cycles before going into effect. (Steven Barley Aff. ¶ 9).⁵
6. On or about February 13, 2012, at Hedrick's request, INPRS confirmed that Hedrick's direct deposit information was updated in its system. (Steven Barley Aff. ¶10).
7. Hedrick's January 2012 and February 2012 pension payments were issued as paper checks, rather than through direct deposit. (Steven Barley Aff. ¶ 9).
8. Hedrick's March 15, 2012 pension payment was issued without incident via direct deposit according to his instructions. (Steven Barley Aff ¶9).
9. PERF's Application for Direct Deposit of Recurring Payment states, "If you receive multiple benefit payments and elect to have all Fund accounts electronically deposited, a separate Application for Direct Deposit of Recurring Payment must be completed for each payment." (INPRS Exhibit B).
10. On or about February 28, 2012, [REDACTED] Bank representative [REDACTED] sent an email to [REDACTED] presumably another bank representative, confirming that Hedrick would have received [REDACTED] in interest if he had met the bank's minimum requirements for February 2012. The account number that correlates with the [REDACTED] in interest matches the account number on Hedrick's direct deposit form. (Petitioner's filed documents and INPRS Exhibit C). The email does not identify the amount of interest that would have been credited for January

⁴ Effective July 1, 2011, INPRS administers the PERF trust fund; however as of December 2011, the Application for Direct Deposit was still on a PERF form.

⁵ Steven Barley is INPRS' Chief Operations Officer and Deputy Director. (Steven Barley Aff. ¶ 2).

2012 for this same account. Potential credits for Hedrick's two [REDACTED] accounts were also referenced in the email.

11. Neither party submitted evidence demonstrating that a request to deposit pension funds into the two [REDACTED] accounts referenced in the email had been submitted to, or received by PERF.

12. Any Conclusion of Law that should have been deemed a Finding of Undisputed Material Fact is hereby adopted as such.

Conclusions of Law

1. Summary judgment is proper if the designated evidentiary material demonstrates there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56.

2. The issue to be decided is whether Hedrick is owed reimbursement of bank interest he believes he would have earned if INPRS had issued his January 2012 and February 2012 pension payments by direct deposit.

3. The INPRS Board has the authority to "[e]xercise all powers necessary, convenient, or appropriate to carry out its public and corporate purposes and to conduct its business." Ind. Code § 5-10.5-4-2(a)(17). The board's powers shall be interpreted broadly to accomplish the purpose of the Indiana Public Pension Modernization Act or applicable retirement law. Ind. Code § 5-10.5-4-3.

4. INPRS administers the Public Employees Retirement Fund. Ind. Code § 5-10.5-2-2.

5. PERF was established to "pay benefits to officers and employees of the state and its political subdivisions after specified years of service and under other specified circumstances." Ind. Code § 5-10.3-2-1(a).

6. PERF, as a retirement fund, must satisfy the qualification requirements under Section 401 of the Internal Revenue Code. Ind. Code § 5-10.2-2-1.5.

7. To be qualified, contributions to the plan must be made "for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan." 26 U.S.C. § 401(a)(1). The plan must also be used for the "exclusive benefit of [the] employees or their beneficiaries." 26 C.F.R. § 1.401-1(a)(3).

8. Based on its statutory obligations, INPRS must use the corpus and income of the fund for public and corporate purposes, and to conduct its business. The term "public" is not defined in Ind. Code 5-10.3-1, or 35 IAC 1.2-2-1. Black's Law Dictionary defines public as the whole body politic, or the aggregate of the citizens of the state, nation, or municipality. It also defines public as the body of the people at large. Black's Law Dictionary (6th ed. 1991), INPRS'

corporate purposes are to administer and manage the fund in accordance with retirement law. Ind. Code 5-10.5-3-1. No part of the corpus or income of the fund may be used for or diverted to any purpose other than the exclusive benefits of the members and their beneficiaries. Ind. Code § 5-10.2-2-1.5(2)

9. The legal definition of the term public, the corporate purpose of the fund, as well as the exclusive benefit rule all indicate that INPRS must distribute funds in a manner that furthers its public obligation of providing retirement benefits to the body of the fund (i.e., the employees at large), and must manage the fund in accordance with state and federal retirement law. Consistent with its mandate, INPRS simply is not authorized to use funds designated for public and corporate purposes to reimburse Hedrick the [REDACTED] in bank promotion interest he believes he is owed.

10. INPRS believes Hedrick's request for relief should also be denied under the doctrine of equitable estoppel. (INPRS Memorandum, pg. 5-8).⁶ The ALJ agrees.

11. A party claiming equitable estoppel must show: "(1) lack of knowledge and of the means of knowledge as to the facts in question, (2) reliance upon the conduct of the party estopped, and (3) action based thereon of such a character as to change his position prejudicially." *City of Crown Point v. Lake County*, 510 N.E.2d 684, 687 (Ind. 1987).

12. As a general rule, estoppel is not applicable to government entities. *Story Bed & Breakfast, LLP v. Brown County Area Plan Comm'n*, 819 N.E.2d 55, 67 (Ind. 2004). The exception to the general rule is that estoppel may be appropriate where the party has detrimentally relied on a governmental entity's affirmative assertion or on its silence where there was a duty to speak. *Equicor Dev., Inc., v. Westfield- Washington Twp Plan Comm'n*, 758 N.E.2d 34, 39 (Ind. 2001). In order for the exception to apply, there must be clear evidence that the government agents made such representations. *Story Bed & Breakfast*, 819 N.E.2d at 67.

13. Hedrick was informed that direct deposits take up to two (2) payment cycles to process. (Steven Barley Aff. ¶ 9). Hedrick has not provided any evidence to the contrary. Even if Hedrick relied on representations that his request for direct deposit would become effective immediately, he did not take any action of such a character as to change his position prejudicially. *City of Crown Point*, 510 N.E.2d at 687. Hedrick converted his [REDACTED] account to a [REDACTED] account that would likely provide him with account membership benefits for months to come. There is no indication that when Hedrick converted his account to a [REDACTED] account, he did so to his detriment, or was otherwise prejudiced.

14. Hedrick has failed to present any evidence, much less clear evidence, that INPRS was aware of the bank promotion, gave assurances or representations that the direct deposit would be effective in less than two payment cycles, or that the funds would be deposited in time to benefit from the promotion.

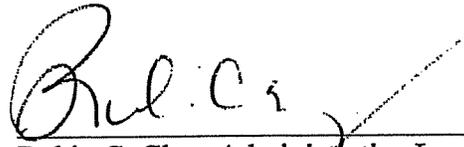
⁶ As indicated, Hedrick failed to present any arguments in support of his position; however, the ALJ has addressed the doctrine of equitable estoppel because it was raised in INPRS' memorandum in support of its motion.

15. Any Finding of Undisputed Material Fact that should have been deemed a Conclusion of Law is hereby adopted as such.

Order

Based on the Findings of Undisputed Material Fact and the Conclusions of Law stated above, Hedrick's summary judgment motion is denied and INPRS' summary judgment motion is granted. Hedrick is not entitled to reimbursement of the bank interest he believes he would have received in January 2012 and February 2012.

ORDERED: February 6, 2013



Robin C. Clay, Administrative Law Judge
310 N. Alabama Street, Suite 300
Indianapolis, IN 46204

PROCEDURES FOR REVIEW

The administrative law judge is not the ultimate authority in this case, but was designated by INPRS to hear this proceeding pursuant to I.C. § 4-21.5-3-(9)(a). The order issued in this matter becomes a final order when affirmed under I.C. § 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

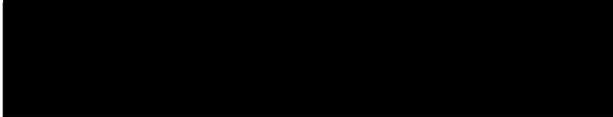
fifteen (15) days (or any longer period set by statute) after the order is served on the petitioner.

(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 in section 5(d) of this chapter. The notice must identify the issues that the ultimate authority or its designee intends to review.

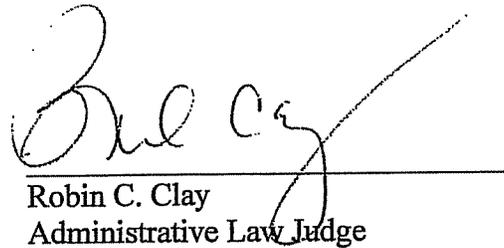
CERTIFICATE OF SERVICE

I hereby certify that I served a copy of this document, by U.S. First Class mail, postage prepaid, certified mail with return receipt requested, on this 6th day of February 2013, upon:

Merle Hedrick



Lindsay R. Knowles, Staff Attorney
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Certified Mail # 7011 0110 0002 0575 9087


Robin C. Clay
Administrative Law Judge