

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

IN THE MATTER OF)	TEACHERS'
M. LATIF JAVED,)	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 Teacher's Retirement Fund ("TRF") 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 Motions for Summary Judgment ("Order") in this matter on February 25, 2013, affirming INPRS' initial determination that Javed's retirement benefit is based on a total of [REDACTED] years of creditable service.
2. Copies of the Recommended Order have been served upon the parties.
3. On March 11, 2013, Petitioner filed with the ultimate authority Petitioner's Objection to the ALJ's Recommended Order and Request for Review of my Appeal.
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~~ ^{April} 9, 2013



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

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of this document on the following persons, by US Postal Service first-class mail on the 11th day of ~~March~~, 2013.

April

Distribution:

M. Latif Javed

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)
LATIF JAVED,)
Petitioner.)

RECEIVED
FEB 26 2013
INDIANA PUBLIC
RETIREMENT SYSTEM

**DECISION AND RECOMMENDED ORDER ON
MOTIONS FOR SUMMARY JUDGMENT**

Introduction

Latif Javed appeals the initial determination of the Indiana Public Retirement System (INPRS) determination that his retirement benefit is calculated based on a total of [REDACTED] years of creditable service.

Pursuant to the schedule agreed to by the parties and ordered by the ALJ, INPRS filed a motion for summary judgment on January 7, 2013, and Javed filed a motion for summary judgment and response to respondent's motion for summary judgment on February 1, 2013. INPRS filed a reply in support of respondent's motion for summary judgment on February 19, 2013. Neither party requested a hearing, so the motions are ripe for ruling.

Findings of Undisputed Material Fact

1. Petitioner, Latif Javed, began receiving retirement benefits [REDACTED].
2. Javed's benefit was calculated based on [REDACTED] years of service credit.
3. Between [REDACTED] Javed taught at the [REDACTED] in a program funded by USAID, a federal agency.
4. Beginning in at least [REDACTED], Javed made inquiries to the TRF Director about receiving service credit for the time Javed spent teaching at the [REDACTED].
5. In a letter dated April 2, 1996, the TRF Director formally denied Javed's request for service credit for the time Javed spent teaching at [REDACTED]. The letter provided Javed with an explanation of his administrative appeal rights.
6. Javed never appealed the April 2, 1996 determination of the TRF Director.
7. In 2002 and 2003, TRF issued the same Annual State Entitlement Statements to all TRF members. The Annual State Entitlement Statements Javed received in 2002 and 2003 were based on an assumption that his "employment will be continuous from the date of [the] statement through the first June 30th after reaching the corresponding age listed in the State pension benefit estimate" contained within the statements. All members who received these statements in 2002 and 2003 received statements based on the same assumptions. The Annual

State Entitlement Statements did not contain calculations or assumptions based on an individual member's particular situation.

8. On September 26, 2012, INPRS received correspondence from Javed requesting administrative review of his pension amount. Javed sought review on the issue of whether he was entitled to service credit for the period of time he taught at the [REDACTED]
9. INPRS issued an initial determination on October 17, 2012 indicating that his retirement benefit was properly calculated based on a total of [REDACTED] years of creditable service.
10. By letter dated October 28, 2012, Javed brought this action to appeal INPRS' October 17, 2012 initial determination.
11. TRF was created by the Indiana General Assembly as a public pension trust fund to administer retirement 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).

When the parties have filed cross-motions for summary judgment, each motion is considered separately to determine whether the moving party is entitled to judgment as a matter of law, construing the facts most favorably to the non-moving party in each instance. *Keaton and Keaton v. Keaton*, 842 N.E.2d 816, 819 (Ind. 2006); *Sees v. Bank One, Indiana, N.A.*, 839 N.E.2d 154, 160 (Ind. 2005).

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

In their briefs, neither party alleges that there are material facts in dispute. Therefore, the ALJ concludes that there are not genuine disputes of material fact.

Issue presented

The question presented is whether INPRS' initial determination that Javed's retirement benefit is calculated based on a total of [REDACTED] years of creditable service is correct.

Discussion

The TRF is a public pension fund managed by INPRS. INPRS is mandated to comply with retirement fund law. Ind. Code § 5-10.5-3-1. The retirement fund law governing INPRS is referred to as INPRS's "plan document" and includes Ind. Code §§5-10.2 through -10.5, Title 35 of the Indiana Administrative Code, and INPRS Board of Trustees resolutions. INPRS lacks 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).

In addition to the state law requirements, INPRS is also required by federal law to administer benefits in accordance with its plan documents set forth in Ind. Code §§ 5-10.2 through 10.5, Title 35 of the Indiana Administrative Code, and INPRS 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). As a qualified governmental plan pursuant to Internal Revenue Code § 401(a), INPRS must follow the applicable Revenue Code provisions and Treasury Regulations. Included among the requirements for a qualified government plan is the requirement that the plan be administered in accordance with its terms. Treas. Regs. § 1.401-1(a)(2). Failure to administer the plan in accordance with its terms risks the plan's status as a qualified governmental plan.

Contained within INPRS's "plan document" is a provision that addresses a time frame within which service credit determinations can be appealed. Indiana Code § 5-10.4-5-17 creates a six (6) year statute of limitations for appealing agency determinations regarding service credit. According to the undisputed facts, TRF issued an initial determination letter to Javed dated April 2, 1996. This initial determination letter addressed the question of whether Javed was entitled to service credit for the period of time he spent teaching at the [REDACTED]. The initial determination letter contained a statement of appeal rights. According to the undisputed facts, Javed did not appeal the April 2, 1996 initial determination.

Javed pursued the same issue a second time beginning with his September 26, 2012, correspondence to INPRS requesting administrative review of his pension amount. By letter dated October 28, 2012, Javed brought this action to appeal INPRS's October 17, 2012 initial determination. The ALJ concludes that Javed's current appeal occurred more than six (6) years from the date when the service credit determination was made and is, therefore, barred by Ind. Code § 5-10.4-5-17.

Even if the statute of limitations did not preclude Javed's appeal, the ALJ concludes that Javed is not eligible for service credit for the time he spent teaching in a USAID funded program at the [REDACTED] Ind. Code § 5-10.4-4-4 defines "out-of-state service" as "service in any state in a comparable position that would be creditable service if performed in Indiana. The term includes comparable service performed:

- (1) on a United States military installation;
- (2) in a federal prison; or
- (3) at an educational facility operated or supervised by the Bureau of Indian Affairs."

Javed believes that he is entitled to an additional [REDACTED] years of service credit when calculating his TRF retirement benefit for the approximately [REDACTED] years he spent teaching at the [REDACTED] Javed compares his term of teaching at [REDACTED] to service on a U.S. military installation, at a federal prison, or at an educational facility operated or supervised by the Bureau of Indian Affairs because the program he was teaching was funded by a federal agency. The language of the statute is unambiguous, and Javed's comparison is not supported by the clear language of the statute. When a statute is clear and unambiguous on its face, the court may not interpret the statute, but rather the statute should be held to its clear and plain meaning. *Scheub v. Town of Schererville*, 617 N.E.2d 585, 587 (Ind. Ct. App. 1993). The language of the statute is clear – Indiana law does not give credit for service performed out of the country unless it occurs in one of the settings enumerated in Ind. Code § 5-10.4-4-4.

In conclusion, the ALJ concludes that Javed's appeal is barred by the six (6) year statute of limitations set forth in Ind. Code § 5-10.4-5-17. Furthermore, even if his appeal was timely, the ALJ concludes that INPRS's calculation of Javed's retirement benefit based on [REDACTED] years of creditable service is supported by Ind. Code § 5-10.4-4-4.

Recommended Order

INPRS' motion for summary judgment is granted, and petitioner Latif Javed's motion for summary judgment is denied. INPRS's initial determination that Javed's retirement benefit is calculated based on a total of [REDACTED] years of creditable service is affirmed.

February 25, 2013



Laureanne Nordstrom
Administrative Law Judge
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 TRF Board 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 59(f) 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 Board, 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 22 day of FEB, 2013:

M. Latif Javed



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



Laureanne Nordstrom
Administrative Law Judge