

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

IN THE MATTER OF	)	Indiana Teachers' Retirement Fund
	)	
ANGELA K. JONES ,	)	
	)	
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 Indiana Teacher's Retirement Fund ("TRF") under IC 4-21.5-3-28. 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 Findings of Fact, Conclusions of Law and Recommended Decision in this matter on July 13, 2015.
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 Findings of Fact, Conclusions of Law and Recommended Decision of the Administrative Law Judge is affirmed.

DATED September 30, 2015.



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

## CERTIFICATE OF SERVICE

I certify that on the 30<sup>th</sup> day of September, 2015, 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.

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INDIANA PUBLIC RETIREMENT SYSTEM

BEFORE AN ADMINISTRATIVE LAW JUDGE  
INDIANA PUBLIC RETIREMENT SYSTEM

In re: ANGELA K. JONES,  
Petitioner.

TEACHERS' RETIREMENT FUND

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

Angela Jones (Petitioner) challenges an initial determination of the Indiana Public Retirement System (INPRS) that she is entitled to [REDACTED] of creditable service as a member of the Teachers' Retirement Fund (TRF). Petitioner contends that she is entitled to [REDACTED] of creditable service.

The matter is before the ALJ on a motion for summary judgment timely filed by INPRS. Because Petitioner did not file a designation of evidence, response, or motion for extension of time within which to do so, the motion must be decided only on the evidence submitted by INPRS. For the reasons set forth below, the ALJ finds that there is no genuine issue of material fact and INPRS is entitled to judgment as a matter of law, and recommends that the initial determination be affirmed. The ALJ further recommends that INPRS research Petitioner's contribution history to ascertain whether she was overcharged for omitted contributions.

**Undisputed Material Facts**

1. Petitioner taught for the [REDACTED]. She applied for retirement benefits on [REDACTED] reporting that her last day of service was [REDACTED] and her retirement date [REDACTED] (INPRS Ex. F). She reported that in addition to employment by [REDACTED], she had previously been employed by the [REDACTED] in a position covered by the Public Employees' Retirement Fund (PERF) from [REDACTED] to [REDACTED] (INPRS Ex. F).

2. Before Petitioner retired, in [REDACTED] submitted a Verification of Prior In State Teaching Service as a substitute teacher, reporting in pertinent part:

School year taught (July 1 through June 30)	Number of days taught	Salary earned
[REDACTED]	[REDACTED]	[REDACTED]

Boxes were checked indicating that employer contributions of three percent had been made for all of this service. (INPRS Ex. A.)

3. INPRS issued two letters dated [REDACTED]. One of them informed Petitioner that she could purchase additional service credit, stating as follows:

The *estimated* cost to purchase your first year of Substitute Teaching service credit is [REDACTED]. The actual cost may be higher or lower after we verify your current year teaching contract. Please note that this estimate is only good for thirty (30) days from the date of this letter.

(INPRS Ex. B.) The letter advised that Petitioner should sign and return it to indicate her desire to purchase the credit. She did not return the form or pay this amount.

4. INPRS now concedes that the paragraph quoted above contained an error. The “first year” of substitute teaching should have been [REDACTED] and the [REDACTED]. The [REDACTED] counted for the second half-year was derived by splitting the total of [REDACTED].

5. The other [REDACTED] letter explained that Petitioner could “purchas[e] additional service credit” for the succeeding years as follows:

Fiscal Year	Days Verified	Salary Verified	3% Member Contribution Due to INPRS
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

(INPRS Ex. C.)

6. INPRS contends that the period of [REDACTED] was the *second half* of the [REDACTED] year, and the amounts due were “omitted contributions” to make up for the failure to pay the three-percent contributions for these years. In fact, the amounts for the first and third periods [REDACTED] are three percent of the verified salary, but the amount for the second period [REDACTED] is 1.5 percent. The record contains no explanation for the fact that [REDACTED] reported that it had made the three-percent contributions (INPRS Ex. A), but these amounts were being charged to Petitioner as “omitted contributions.”

7. Petitioner submitted a check for [REDACTED] (INPRS Ex. D). By letter dated [REDACTED] INPRS acknowledged the payment and confirmed that Petitioner had thereby added [REDACTED] and zero months of prior in-state service credit (INPRS Ex. D).

8. The same letter stated that as of [REDACTED] Petitioner's *reported* service credit balance was [REDACTED] and zero months (INPRS Ex. D). An internal document reflects that this calculation was based on a half-year for school year [REDACTED], a half-year for [REDACTED] a full year for [REDACTED], and one year each for the [REDACTED] school years through [REDACTED] (INPRS Ex. D). In other words, [REDACTED] of credit for substitute teaching from [REDACTED], and [REDACTED] years of credit for [REDACTED].

9. It is undisputed that Petitioner was given [REDACTED] of service for her earlier PERF service, and that she earned [REDACTED] of service for her last year of teaching [REDACTED].

10. Petitioner apparently requested review of her service credit on or around [REDACTED]. By letter dated [REDACTED] INPRS reiterated the above history. (INPRS Ex. E.)

11. After Petitioner retired effective [REDACTED] (INPRS Ex. F), [REDACTED] again submitted a Verification of Prior In State Teaching Service with the same information as related in Finding 2 above, (except without a statement regarding payment of the three-percent contributions for those years) (INPRS Ex. G).

12. Petitioner's combined pension and annuity monthly benefit was calculated to be [REDACTED] (INPRS Ex. H).

13. By letter dated [REDACTED] INPRS acknowledged Petitioner's request to purchase [REDACTED] of prior in-state service credit. Apparently the goal of this was to increase her service days in [REDACTED], which would qualify her for a [REDACTED] of credit. The letter stated that she would have to purchase a minimum of [REDACTED] which would cost her [REDACTED]. This was based on her service of [REDACTED], her age, and her last year's salary. (INPRS Ex. I.)

14. Petitioner paid the [REDACTED] she was awarded [REDACTED] of service credit, and it was applied to [REDACTED] to bring the total [REDACTED] (as explained in INPRS Ex. M). By letter dated [REDACTED] INPRS notified Petitioner that the additional service was posted to her account, resulting in total service credit of [REDACTED] (that is, [REDACTED]). Her monthly total benefit was adjusted upwards to [REDACTED] (INPRS Ex. K.)

15. Meanwhile, Petitioner submitted a request for administrative review of staff action received on [REDACTED] arguing that she was entitled to [REDACTED] of service credit. Specifically, she argued that she should have received [REDACTED] of credit for her substitute teaching [REDACTED] and a [REDACTED] (INPRS Ex. J.)

16. By letter dated [REDACTED] INPRS issued its initial determination that Petitioner's service credit of [REDACTED] was correct. (INPRS Ex. M.)

17. Petitioner sought review of the initial determination by letter dated January 6, 2015, and received on January 8, 2015 (INPRS Ex. N).

18. Pursuant to a schedule agreed upon by the parties, and an extension granted without objection, INPRS filed its motion for summary judgment by email, and served it on Petitioner by mail, on April 13, 2015. Petitioner did not file a response.

19. Additional undisputed facts set forth below are incorporated herein.

## Conclusions of Law

### *Issue*

Did INPRS correctly calculate that Petitioner is entitled to [REDACTED] of service credit?

### *Standard of Review*

An ALJ's review of an agency's initial determination is *de novo*, without deference to the initial determination. Ind. Code § 4-21.5-3-14(d) (codifying prior law, *see Indiana Dep't of Natural Resources v. United Refuse Company, Inc.*, 615 N.E.2d 100, 103-04 (Ind. 1993); *Branson v. Public Employees' Retirement Fund*, 538 N.E.2d 11, 13 (Ind. Ct. App. 1989)).

Summary judgment is authorized in administrative proceedings, and a motion for summary judgment is considered as a court would consider such a motion under Indiana Trial Rule 56. I.C. § 4-21.5-3-23(b). Trial Rule 56(C) provides that summary judgment shall be rendered "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

In deciding a summary judgment motion, all reasonable inferences are drawn in favor of the non-moving party. A fact is "material" if its resolution would affect the outcome of the case, and an issue is "genuine" if a trier of fact is required to resolve the parties' differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences. The initial burden is on the moving party to demonstrate the absence of a genuine issue of material fact, at which point the burden shifts to the non-movant to come forward with contrary evidence showing an issue for the trier of fact. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014) (citing *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009)). While the federal standard permits the moving party to merely show that the party carrying the burden of proof lacks evidence on a necessary element, Indiana imposes a more onerous burden to affirmatively negate the opponent's claim. 15 N.E.3d at 1003 (citing *Jarboe v. Landmark Community Newspapers of Indiana, Inc.*, 644 N.E.2d 118, 123 (Ind. 1994)). In *Hughley*, a "perfunctory and self-serving" affidavit was found sufficient to create a genuine issue of fact. 15 N.E.3d at 1004.

The standard does not, however, relieve the opposing party of its burden to come forward with at least a scintilla of evidence showing a dispute of material fact. *Cox v. Mayerstein-Burnell Co.*, 19 N.E.3d 799, 804 (Ind. Ct. App. 2014). A moving defendant is not required to

anticipate and disprove alternative theories that were not pleaded. *Id.* at 807. In certain circumstances, the non-moving party is required to come forward with more than a merely self-serving affidavit, such as in a medical malpractice case in which the plaintiff must present expert evidence to defeat summary judgment. *Perry v. Anonymous Physician 1*, 25 N.E.3d 103, 106-07 (Ind. Ct. App. 2014), *trans. denied*.

Nor is the non-moving party relieved of the requirement of Trial Rule 56(C) to *designate* the evidence relied upon to show a dispute of fact. *Pearman v. Jackson*, 25 N.E.3d 772, 778-79 (Ind. Ct. App. 2015) (citing *Filip v. Block*, 879 N.E.2d 1076 (Ind. 2008)).

### ***Evidence***

INPRS filed and served its motion and supporting evidence on April 13, 2015. Petitioner was required, within 30 days after service, to “serve a response and any opposing affidavits” and to “designate to the court each material issue of fact which that party asserts precludes entry of summary judgment and the evidence relevant thereto.” Ind. T.R. 56(C). By both the ALJ’s order granting INPRS’s motion for extension of time, and by rule, Petitioner’s response and evidence were due on May 18, 2015.<sup>1</sup>

Petitioner did not file any evidence in response to the motion. An extension of time can be granted only if the motion for extension was filed before the expiration of the time to respond. T.R. 56(I); *Mitchell v. 10th & The Bypass, LLC*, 3 N.E.3d 967, 971-73 (Ind. 2014). Thus the ALJ is limited to the properly designated evidence filed by INPRS.

### ***Discussion***

The point of contention is the calculation of Petitioner’s service credit for her years of substitute teaching for [REDACTED]. There is no dispute as to her [REDACTED] of TRF credit for her full-service teaching from school years [REDACTED], or [REDACTED] of PERF service from [REDACTED].

To receive one year of service credit, a member of TRF must serve at least 120 days in a year or 60 days in each of two years. I.C. § 5-10.4-4-2(b). But the member may earn no more than one year of service credit in a calendar year or fiscal year. I.C. § 5-10.4-4-2(c).

Every member is required to contribute to the fund three percent of the member’s compensation, which may be paid by the employer on the member’s behalf. I.C. § 5-10.4-4-11(b). In any case where the employing unit has failed to report and forward the requisite contributions, service credit will not be granted until the member and/or the employer remits the full amount due. 35 Indiana Admin. Code 14-5-2(a).

Petitioner automatically became a member of TRF *after* she completed one year of

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<sup>1</sup> By rule, Petitioner would have had 33 days to respond because INPRS’s motion was served by mail, and the 33rd day after April 13 (May 16) fell on a weekend, so the due date was Monday, May 18. I.C. § 4-21.5-3-2.

substitute teaching. 35 I.A.C. 14-4-1(a) (“Licensed substitute teachers who have at least an associate’s degree and who have taught at least one hundred twenty (120) days in any one (1) school year or at least sixty (60) days in any two (2) school years are also required to become members of the fund.”) This occurred after she taught [REDACTED]

As a member, Petitioner was then able to purchase service credit for prior substitute teaching service in Indiana pursuant to Indiana Code § 5-10.4-4-6, subsection (b) of which provides:

- (b) A member may purchase and claim substitute teaching service if:
  - (1) the member has at least one (1) year of creditable service in the fund;
  - (2) before the member retires, the member makes contributions to the fund:
    - (A) that are equal to the product of:
      - (i) the member’s salary at the time the member actually makes a contribution for the service credit;
      - (ii) a percentage rate, as determined by the actuary of the fund, based on the age of the member at the time the member makes a contribution for service credit and computed to result in a contribution amount that approximates the actuarial present value of the benefit attributable to the service credit purchased; and
      - (iii) the number of years of substitute teaching service the member intends to purchase; and
    - (B) for any accrued interest, at a rate determined by the actuary of the fund, for the period from the member's initial membership in the fund to the date payment is made by the member; and
  - (3) the fund receives verification from the school corporation that the substitute teaching service occurred.

In [REDACTED], Petitioner was given two different opportunities, and could have exercised both of them. First, she could have purchased credit for her first year of substitute teaching before she became a member ([REDACTED]), which would have cost about [REDACTED] using the method described in I.C. § 5-10.4-4-6(b). Unfortunately, the letter advising her of this option had an error in listing the year when this service was worked [REDACTED] but there is no evidence that this error had any impact on Petitioner’s decision not to agree to pay this amount. In fact, in one of her letters to INPRS, she wrote, “I of course opted not to pay [REDACTED]” (INPRS Ex. J, p. 16.)

Second, she could obtain [REDACTED] of credit for her substitute teaching from [REDACTED]

██████████ Because she was already a member, she only had to make up omitted contributions, which INPRS calculated to be ██████████ She paid that amount and received the ██████████ of credit.

Later, after she had retired, Petitioner was permitted to purchase one month of credit which pushed her from one-half year in ██████████ She did so, resulting in the total service credit of ██████████ As INPRS argues, she cannot go back and purchase her first year of service credit now that she has retired. I.C. § 5-10.4-4-6(b)(2) (service must be purchased “before the member retires . . .”).

Thus, Petitioner is entitled to no more than the ██████████ for which she has been given credit.

Notwithstanding this analysis of the question raised by Petitioner, the ALJ is concerned that ██████████ service verification (INPRS Ex. A) affirmatively stated that ██████████ had made three-percent contributions for all of the substitute teaching years. INPRS dismisses this possibility by stating, without citation, that “[e]mployers do not make contributions for substitute teachers” and while making such contributions after Petitioner became a member would have been ideal, “most employers did not.” (INPRS Mem. in Supp. at 7-8.)<sup>2</sup>

If ██████████ made the contributions, it would not result in Petitioner receiving service credit for her first year of substitute teaching. But it might mean that the “omitted contributions” she paid in ██████████ were not omitted. Although she does not seek this relief in her administrative appeal, INPRS should research whether in fact the contributions had been made, and whether Petitioner should be refunded any overpayment.

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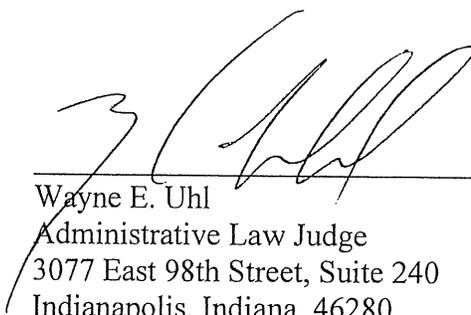
<sup>2</sup> There is a document that purports to show that no contributions were made by ██████████ but this document appears to cover only ██████████ (INPRS Ex. E page 2).

## Conclusion and Recommended Order

There is no genuine issue of material fact and INPRS is entitled to judgment as a matter of law. It is recommended that the motion for summary judgment filed by INPRS be granted, and that the initial determination of INPRS finding that Petitioner's service credit was correctly calculated be affirmed.

The ALJ further recommends that INPRS be ordered to research whether [REDACTED] made the three-percent contributions for Petitioner's years of substitute teaching as reported by INPRS Exhibit A and, if so, recalculate the amount of "omitted contributions" that Petitioner was instructed to pay in order to receive service credit for those years.

*Issued* on July 13, 2015.



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Wayne E. Uhl  
Administrative Law Judge  
3077 East 98th Street, Suite 240  
Indianapolis, Indiana 46280  
Email: [wuhl@stephlaw.com](mailto:wuhl@stephlaw.com)

## STATEMENT OF AVAILABLE PROCEDURES FOR REVIEW

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

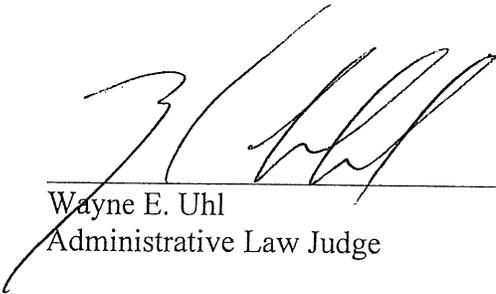
(e) Without an objection under subsection (d), the ultimate authority or its designee may serve written notice of its intent to review any issue related to the order. The notice shall be served on all parties and all other persons described by section 5(d) of this chapter. The notice must identify the 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 on the following persons, by U.S. Postal Service first-class mail, **certified mail, return receipt requested**, postage prepaid, on July 13, 2015:

Angela K. Jones  


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\_\_\_\_\_  
Wayne E. Uhl  
Administrative Law Judge