

BEFORE AN ADMINISTRATIVE LAW JUDGE  
FOR THE PUBLIC EMPLOYEES' RETIREMENT FUND

TERESA SNUFFER,	)	PUBLIC EMPLOYEES' RETIREMENT
Petitioner,	)	FUND
	)	
v.	)	
	)	
PUBLIC EMPLOYEES'	)	
RETIREMENT FUND,	)	
Respondent.	)	

PUBLIC EMPLOYEES RETIREMENT FUND  
JUN 03 2009  
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**DECISION ON MOTION FOR SUMMARY JUDGMENT AND  
RECOMMENDED ORDER**

Respondent PERF filed a motion for summary judgment that is fully briefed.<sup>1</sup> Neither party requested a hearing. The motion is ready for decision.

**Findings of Undisputed Fact**

The following facts are undisputed from the evidence submitted by the parties.<sup>2</sup>

1. Bradley E. Foster, a member of the Public Employees' Retirement Fund, died on November 16, 2007. At the time of his death, he was married to Teresa Snuffer, the petitioner.
2. Prior to June 8, 2007, Bradley's designated primary beneficiary was his father, Walter Foster, and his contingent beneficiary was his mother, Natalie Foster.

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<sup>1</sup> Consistent with the amended briefing schedule, PERF's motion was filed by postmark on January 30, 2009, and Ms. Snuffer's response was filed by postmark on March 31, 2009. PERF's reply was mailed on April 20, 2009, but was incorrectly addressed to the ALJ, returned to PERF, and then faxed to the ALJ on May 7, 2009. The ALJ instructed PERF staff to notify Ms. Snuffer of the circumstances. She has not challenged the timeliness of the reply.

<sup>2</sup> In her response to PERF's motion, Ms. Snuffer did not submit evidence in the form of an affidavit, but instead merely submitted a signed response. PERF did not object to the factual statements made therein. Although the factual statements in the response are not proper evidence under Ind. Code § 4-21.5-3-23, out of an abundance of caution the ALJ has considered them.

3. On June 8, 2007, through an online "Interactive Update," Bradley Foster updated his beneficiary information to name Ms. Snuffer as his beneficiary.

4. A counseling appointment at PERF was scheduled on September 10, 2007, about two months before Bradley's death. Ms. Snuffer appeared for the appointment without Bradley, but she brought an authorization to release confidential information signed by him. Ms. Snuffer and the PERF counselor discussed disability options for Bradley, including Social Security disability.<sup>3</sup> Ms. Snuffer was given a change of beneficiary form for Bradley to update his account.

5. Before he died, Bradley Foster assured his wife that "all had been left in [her] name," which she took to mean that she had been named his beneficiary.

6. After Bradley Foster died, Ms. Snuffer spoke with Patricia M. Holok, a Death Refund Analyst for PERF. Ms. Holok's responsibilities include reviewing death refunds to determine whether there is a spousal benefit or only the member's annuity savings account can be refunded to a beneficiary.

7. While speaking to Ms. Snuffer, Ms. Holok reviewed an image browser showing beneficiary documentation, and some computer notes, but she did not review any computer notes made before PERF was notified of Bradley Foster's death. Based on this partial information, she mistakenly concluded, and incorrectly informed Ms. Snuffer, that Bradley's named beneficiaries were his parents.

8. This came as a shock to Ms. Snuffer based on her husband's assurance that he had named her as his beneficiary.

9. Ms. Holok explained that Bradley's parents could disclaim a refund of Bradley's annuity savings account and the refund would then be paid to Bradley's estate, of which Ms. Snuffer would be the beneficiary.

10. Ms. Snuffer had not opened an estate for Bradley and did not plan to do so. Ms. Holok explained that if Bradley's total assets were over [REDACTED] she would be required to open an estate. At the time Ms. Holok made this statement, the balance in Bradley's annuity savings account was about [REDACTED]

11. On December 12, 2007, Ms. Holok sent a letter to Walter and Natalie Foster enclosing forms to either disclaim the refund so that the funds would be paid to Bradley's estate, or to claim the refund for Walter as the primary beneficiary.

12. Walter and Nancy Foster executed the disclaimer forms on January 6, 2008.

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<sup>3</sup> See I.C. 5-10.2-4-6, authorizing disability retirement if a member with at least five years of creditable service has qualified for Social Security disability benefits.

13. Ms. Snuffer hand-delivered the disclaimer forms to Ms. Holok on January 31, 2008. According to computer notes, Ms. Holok confirmed that the annuity savings account money would be paid to the estate. She also entered, "Wife will bring me letter of admin. total assets over [REDACTED]"

14. On February 20, 2008, Ms. Snuffer filed a Petition for Appointment of Personal Representative and for Unsupervised Administration in the Marion County Probate Court. The petition stated that Bradley Foster died intestate; that Ms. Snuffer was his surviving spouse and an heir at law; that the only other heir at law was Bradley's mother Natalie, who consented to the appointment of Ms. Snuffer as personal representative; and that Bradley's estate consisted entirely of the PERF annuity savings account with a balance of approximately [REDACTED]

15. Ms. Holok began processing the refund and changed Bradley's beneficiary to his estate. However, an audit disclosed Bradley's online change of beneficiary in June 2007. Thus, it was discovered that Ms. Snuffer had been his designated beneficiary all along.

16. On March 25, 2008, Ms. Holok sent Ms. Snuffer's attorney an application for survivor benefits for Ms. Snuffer to complete.

17. Ms. Snuffer was required to leave Bradley Foster's estate open until August 18, 2008, when she closed it.

18. On August 28 and September 12, 2008, Ms. Snuffer's attorney sent letters on Ms. Snuffer's behalf seeking reimbursement for her legal expenses (these letters are not in the record provided to the ALJ). By letter dated September 23, 2008, PERF's legal counsel declined the requests.

19. By letter dated September 30, 2008, and received by PERF on October 2, 2008, Ms. Snuffer requested review of legal counsel's decision. She sought reimbursement of [REDACTED] attorney fees and [REDACTED] for a bond that she was required to post.

20. Ms. Snuffer is currently receiving a surviving spouse disability benefit, and elected to roll over the funds in Bradley's annuity savings account. She received a retroactive survivor benefit for the period of time that Bradley was entitled to a benefit before his death.

21. Any finding of fact stated as a conclusion of law below is incorporated herein.

## 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). This mirrors Ind. Trial R. 56(C). The standard for summary judgment under that rule is well-established:

A party seeking summary judgment bears the burden to make a prima facie showing that there are no genuine issues of material fact and that the party is entitled to judgment as a matter of law. Once the moving party satisfies this burden through evidence designated to the trial court pursuant to Trial Rule 56, the nonmoving party may not rest on its pleadings, but must designate specific facts demonstrating the existence of a genuine issue for trial. The court must accept as true those facts alleged by the nonmoving party, construe the evidence in favor of the nonmovant, and resolve all doubts against the moving party. . . . A genuine issue of material fact exists where facts concerning an issue that would dispose of the litigation are in dispute or where the undisputed material facts are capable of supporting conflicting inferences on such an issue.

*McDonald v. Lattire*, 844 N.E.2d 206, 210 (Ind. App. 2006).

The moving party has the burden of showing that no genuine issue of material fact exists. Only when the moving party has done so does the burden shift to the nonmovant to establish that a genuine issue of fact exists. 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).

PERF has designated its denial of Ms. Snuffer’s claim as an initial determination subject to administrative review, and concedes that Ms. Snuffer’s request for review is timely. (Letter to ALJ Uhl, 10/15/08.) Review of an agency’s initial determination is *de novo*, without deference to the agency’s determination. *Indiana Dept. of Natural Resources v. United Refuse Co., Inc.*, 615 N.E.2d 100, 103-04 (Ind. 1993); *Branson v. Public Employees’ Retirement Fund*, 538 N.E.2d 11, 13 (Ind. App. 1989).

### Discussion

Ms. Snuffer seeks “reimbursement” of her attorney fees and costs totaling [REDACTED] on the theory that she incurred them based solely on PERF’s incorrect advice that she was not

her husband's beneficiary, and that she would have to open an estate to receive a refund of his annuity savings account.

PERF concedes that the information and advice given by its employee was incorrect, but argues that Ms. Snuffer never needed to open an estate because the estate was less than [REDACTED] and that the principles of equitable estoppel do not compel PERF to reimburse Ms. Snuffer's legal fees. In the alternative, PERF argues that it can be held liable only for the fees incurred up to the point at which PERF realized its mistake, but there is no evidence that would permit a determination that Ms. Snuffer had not incurred the entire [REDACTED] simply to open the estate.

This matter is unusual in that the petitioner is not seeking a benefit or increased benefit from the fund. She is not making a claim of error in the determination of creditable service or a benefit. I.C. § 5-10.3-8-5 (claims of error); *see also* I.C. § 5-10.3-3-7(8) (board's duties include acting on applications for benefits and claims of error). To the contrary, she has received the benefit to which she is entitled. Instead, in effect, she is seeking damages caused by PERF's mistake. Her claim sounds in tort, as a claim for fraud or misrepresentation.<sup>4</sup>

The first question is whether PERF has jurisdiction or statutory authority to grant Ms. Snuffer's request. An administrative body generally possesses jurisdiction to determine initially whether a matter falls within its jurisdiction. *Guinn v. Light*, 558 N.E.2d 821, 823 (Ind. 1990). Jurisdiction of an administrative agency is not waivable by consent, agreement or estoppel. *Howell v. Indiana-American Water Co.*, 668 N.E.2d 1272, 1275-76 (Ind. App. 1996).

The ALJ has concluded that PERF does not have jurisdiction to consider, as a matter of administrative adjudication, whether it is liable in tort to an injured person. The authority of an administrative agency is limited to that which is granted by statute. *Planned Parenthood of Indiana v. Carter*, 854 N.E.2d 853, 864 (Ind. App. 2006) (citing cases). There is no statute granting PERF the authority to determine and compensate a tort claim against itself. Tort claims against governmental entities are governed by the Indiana Tort Claims Act (ITCA), I.C. §§ 34-13-3-1 *et seq.* The claimant must give notice of the claim to the agency or the Attorney General. I.C. §§ 34-13-3-6 and -10. The Governor (not the agency) has the authority to settle the claim, for which a fund is appropriated. I.C. §§ 34-13-3-14 and -24.

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<sup>4</sup> The tort of fraud or misrepresentation is made out where [1] the defendant made a material misrepresentation of a [2] past or existing fact, which was [3] false, was [4] made with knowledge or in reckless ignorance of the falsity, was [5] relied upon by the plaintiff, and [6] proximately caused the plaintiff's injury. *Brazauskas v. Fort Wayne-South Bend Diocese, Inc.*, 714 N.E.2d 253, 263 (Ind. App. 1999), citing *First Bank of Whiting v. Schuyler*, 692 N.E.2d 1370, 1372 (Ind. App. 1998); *Parke County v. Ropak, Inc.*, 526 N.E.2d 732 (Ind. App. 1988).

The ALJ was unable to find an Indiana case on this point. There are a few cases involving disputes between private parties and whether those disputes were within the jurisdiction of an agency. See, e.g., *Austin Lakes Joint Venture v. Avon Utilities, Inc.*, 648 N.E.2d 641, 649 (Ind. 1995) (claims of breach of contract and fraud not within agency jurisdiction); *M.C. Welding and Machining Co., Inc. v. Kotwa*, 845 N.E.2d 188, 193-94 (Ind. App. 2006) (Indiana Civil Rights Commission did not have jurisdiction over employee's retaliatory discharge claim); *Title Services, LLC v. Womacks*, 848 N.E.2d 1151 (Ind. App. 2006) (plaintiff required to exhaust administrative remedies for property tax reassessment challenges before bringing "negligence" claim against auditor for improper processing of exemption and deduction papers).

The most closely analogous case that can be located is *O'Toole v. Board of Trustees of South Dakota Retirement System*, 648 N.W.2d 342 (S.D. 2002), in which two members of a pension fund left state employment and withdrew their own contributions. Afterward, on the recommendation of the pension fund board, the state legislature amended the law to provide that departing members were also entitled to a refund of the employer's contributions. The former members brought a claim for refund of their employer's contributions, asserting that the pension fund breached its fiduciary duty to them by failing to timely notify them that it was going to seek the amendment.

The South Dakota Supreme Court held that the pension board had jurisdiction to hear and deny the members' claim for refund, but did not have jurisdiction to decide its own liability for the tort of breach of fiduciary duty.

Tort claims are properly brought in the circuit court, not before administrative agencies. The statutory authority given to an administrative agency to conduct hearings does not extend to deciding contested tort allegations leveled against the agency. Board had no statutory authority, and thus no jurisdiction, to consider or provide a monetary remedy based on a claim of tort damages.

648 N.W.2d at 347. In support, the court cited South Dakota's "exclusive benefit" statute, which provides, "No part of the fund created by this chapter may be used for any purpose other than for the exclusive benefit of members and their beneficiaries and payment of reasonable administrative expenses of the system." *Id.* n. 3, quoting S.D. Codified Laws 3-12-72.1. The cited statute, required of all pension funds by the Internal Revenue Code, is mirrored in Indiana by I.C. § 5-10.2-2-1.5(2): "No part of the corpus or income of a fund may be used for or diverted to any purpose other than the exclusive benefit of the members and their beneficiaries." By the reasoning in *O'Toole*, PERF is likewise prevented from awarding compensation for torts allegedly committed by PERF staff.

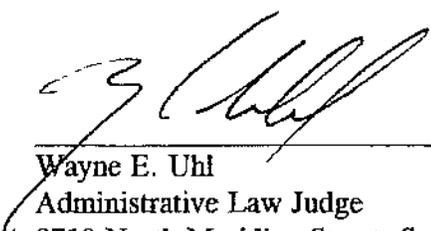
As noted above, Ms. Snuffer is not seeking a refund or recalculation of her benefit, a matter over which PERF would have jurisdiction. She is only seeking compensation for PERF's allegedly wrongful conduct, a matter over which PERF does not have jurisdiction or

authority. Therefore, PERF correctly denied her request, which should have been treated instead as a tort claim notice.<sup>5</sup>

### Conclusion and Recommended Order

PERF's motion for summary judgment is granted. The initial determination of PERF, denying Ms. Snuffer's claim for compensation allegedly incurred as a result of her reliance on negligent misstatements of PERF staff regarding her late husband's beneficiary designation, is affirmed because PERF lacks jurisdiction or authority to grant the relief requested.

ORDERED on June 1, 2009.



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Wayne E. Uhl  
Administrative Law Judge  
8710 North Meridian Street, Suite 200  
Indianapolis, Indiana 46260-5388

### STATEMENT OF AVAILABLE PROCEDURES FOR REVIEW

The undersigned administrative law judge is not the ultimate authority, but was designated by the PERF 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 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.

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<sup>5</sup> The ALJ notes that, pursuant to the ITCA, a governmental agency cannot be liable for negligent misrepresentation. I.C. § 34-13-3-3(14) (governmental entity or employee not liable for "[m]isrepresentation if unintentional").

(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 June 1, 2009:

Teresa K. Snuffer



Marcia E. Roan



Kathryn Cimera, General Counsel  
PERF  
143 W. Market St.  
Indianapolis IN 46204

A handwritten signature in black ink, appearing to read "Wayne E. Uhl", written over a horizontal line.

Wayne E. Uhl  
Administrative Law Judge