

**BEFORE THE EXECUTIVE DIRECTOR
OF THE PUBLIC EMPLOYEES' RETIREMENT FUND**

WILLARD WALKER,)	PUBLIC EMPLOYEES' RETIREMENT
Petitioner,)	FUND
)	
v.)	
)	
PUBLIC EMPLOYEES')	
RETIREMENT FUND,)	
Respondent.)	

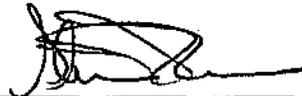
FINAL ORDER

The Board of Trustees ("Board") of the Indiana Public Employees' Retirement Fund (PERF) is the ultimate authority in administrative appeals brought by PERF members under IC 4-21.5-3-28 and 35 IAC 1.2-7-1. In the PERF 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 issued a Decision and Recommended Order on Motions for Summary Judgment ("Recommended Order") in this matter on March 16, 2011, granting PERF's motion for summary judgment and denying Petitioner's motion for summary judgment.
2. Copies of the Recommended Order have been delivered to the parties.
3. It has been more than fifteen (15) days since having received the ALJ's Recommended Order.
4. No objection to the ALJ's Recommended Order has been received.

NOW THEREFORE the Recommended Order of the Administrative Law Judge is affirmed.

DATED April 6, 2011



Steve Russo, Executive Director
Public Employees' Retirement Fund
One North Capitol, Suite 001
Indianapolis, IN 46204

CERTIFICATE OF SERVICE

I certify that on the 6th day of April, 2011, 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:

Willard Walker


Thomas N. Davidson, General Counsel
Jaclyn M. Brinks, Staff Attorney
Indiana Public Employees' Retirement Fund
150 West Market St., #300
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Laureanne Nordstrom
Administrative Law Judge
P.O. Box 47487
Indianapolis, IN 46247



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

RECEIVED

MAR 30 2011

PUBLIC EMPLOYEE'S
RETIREMENT FUND

IN THE MATTER OF)
WILLARD WALKER,)
Petitioner.)

DECISION AND RECOMMENDED ORDER ON
MOTIONS FOR SUMMARY JUDGMENT

Introduction

Willard Walker appeals the initial determination of the Public Employees' Retirement Fund (PERF) denial of his request to change his benefit election.

Pursuant to the schedule agreed to by the parties and ordered by the ALJ, PERF filed a motion for summary judgment on December 22, 2010, and Walker filed a cross-motion for summary judgment on February 1, 2011. TRF filed a response in opposition to Walker's cross-motion on February 17, 2011. Neither party requested a hearing, so the motions are ripe for ruling.

Findings of Undisputed Material Fact

1. Willard Walker became a member of PERF on or about January 1, 1988.
2. On or about November 4, 2005, Walker submitted a PERF Application for Disability Benefits, electing Option 30, or Joint with Full Survivor Benefits, and naming Sandra Dawn Ricketts, his fiancée, as his survivor beneficiary.
3. Walker retired from covered service on September 1, 2003.
4. On or about March 1, 2006, Walker's initial benefit payment was scheduled to begin.
5. In a letter to PERF dated August 19, 2010, Walker requested his survivor beneficiary be changed from Sandra Dawn Ricketts to Walker's brother, Vierl Walker. Ms. Ricketts was no longer Walker's fiancée.
6. On or about September 20, 2010, Walker submitted a Retiree Application for Change of Beneficiary and/or Pension Option ("Retiree Application"), naming Vierl Forrest Walker, his brother, as his survivor beneficiary.
7. In a letter dated September 27, 2010, PERF informed Walker that his Retiree Application was missing information and could not be processed. PERF further informed Walker that he must submit a death certificate or divorce decree for the survivor beneficiary he selected at retirement in order to change his survivor beneficiary.

8. On October 5, 2010, Walker submitted a letter requesting administrative review of PERF's denial of his Retiree Application.
9. On or about October 20, 2010, PERF issued its initial determination upholding Walker's survivor beneficiary election at retirement and denying his Retiree Application.
10. Walker has not provided PERF with a death certification, proof of dissolution of marriage, or a marriage certificate to change his benefit election.
11. 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).

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*, 538 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 PERF unjustly denied Walker's retirement option or change of beneficiary election.

Discussion

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. Retirement fund law also requires PERF to be administered in accordance with Internal Revenue Code § 401 in order to maintain PERF's federal tax-favored status as a qualified retirement plan. 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).

Retirement fund law allows a retired member to change his retirement option or beneficiary designation if: 1) the member is receiving a retirement benefit and the member's beneficiary dies; 2) the member and the member's beneficiary have been parties in an action for dissolution of marriage in which a final order has been issued after the member's first benefit payment is made; or 3) the member marries after the member's first benefit payment is made, and the member's designated beneficiary is not the member's current spouse or the member has not designated a beneficiary. Ind. Code § 5-10.2-4-7.2(b). 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).

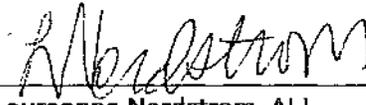
Petitioner has not provided PERF with a death certificate, proof of dissolution of marriage, or a marriage certificate to substantiate the basis for his request to change his benefit election. Thus, PERF correctly concluded that it is prohibited by Indiana law from honoring Walker's request to change his retirement option or beneficiary designation.

Walker essentially concedes this. Instead, Walker argues that the law is "unfair." He does not cite authority for his argument. However, the administrative law judge does not have the authority to pass on the validity of a statute. *Sunshine Promotions, Inc. v. Ridlen*, 483 N.E.2d 761, 765 (Ind. App. 1985); *Bielski v. Zorn*, 627 N.E.2d 880, 887-888 (Ind. Tax 1994). Furthermore, the U.S. Supreme Court recently endorsed the policy reasons behind a rule restricting a pension plan to its own plan documents in determining whether to honor a beneficiary designation. *Kennedy v. Plan Administrator for DuPont Savings and Investment Plan*, 129 S.Ct. 865 (2009).

Recommended Order

PERF's motion for summary judgment is granted, and petitioner Willard Walker's motion for summary judgment is denied. PERF's initial determination to deny Walker's request to change his retirement option or beneficiary designation is affirmed.

March 16, 2011


Laureanne Nordstrom, ALJ
PO Box 47487
Indianapolis, IN 46247
(317)859-4658

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 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 TRF Board, c/o Thomas N. Davidson, General Counsel, 143 W. Market Street, 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 17 day of March, 2011:

Willard Walker, [REDACTED]

Thomas N. Davidson
General Counsel
Public Employees' Retirement Fund
143 W. Market Street
Indianapolis, IN 46204



Laureanne Nordstrom
Administrative Law Judge