

**BEFORE AN ADINISTRATIVE LAW JUDGE
INDIANA PUBLIC RETIREMENT SYSTEM**

IN THE MATTER OF)
Daniel F. Leonard,)
)
Petitioner,)
)
and)
)
PUBLIC EMPLOYEES)
REITEMENT FUND)

INPRS 1809-PERF-5

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

This matter is before the successor Administrative Law Judge (“ALJ”) on Petitioner’s Petition for Administrative Review, Appeal of INPRS initial determination, his Motion for Summary Judgment and INPRS’ Motion for Summary Judgment.

Following preliminary and appropriate proceedings in this matter Respondent filed its Motion for Reassignment on November 13, 2019 due to unexpected delays arising related to the initial ALJ. Such Motion was granted and the successor ALJ assigned on February 28, 2020.

Following delays in communicating with Petitioner a Final Prehearing Conference was scheduled and conducted on April 13, 2020. During the course of such call it was determined and agreed that Petitioner was aware of his right to be represented by counsel but had not been successful in securing such representation. Further it was determined that settlement or an agreed resolution had not been reached and was not feasible. Facts or circumstances not previously addressed or presented for review and consideration were not identified.

The basis of this ongoing proceeding is Petitioner’s belief that he was and is entitled to receive a PERF Disability Pension following approximately twelve (12) years of service with the Jeffersonville Flood Control District. Petitioner seeks back pay from March 1, 2015 until receipt of a monthly PERF Disability Retirement.

Petitioner applied for PERF Disability on or about [REDACTED] such application was denied by PERF via its Initial Determination Letter issued [REDACTED]. Petitioner had applied for Social Security Disability which application was granted effective [REDACTED]. Petitioner’s PERF eligible employment and contributions terminated on [REDACTED]. Petitioner had accumulated nearly twelve (12) years of service prior to his voluntary layoff.

INPRS has consistently taken the position that Petitioner is not eligible for PERF Disability Retirement even though he was vested under the Public Employees' Retirement Fund. Review and analysis of pertinent laws and regulations support the decision rendered by INPRS.

Review of all pertinent and appropriate statutory and administrative code provisions establish it is clear that Petitioner is not entitled to receive Disability Retirement Benefits at this time. The primary basis for this result and determination are found in Indiana Code 5-10.2-4-6 which provides in part:

“Sec. 6. (a) A member who becomes disabled while receiving a salary or employer provided income protection benefits or who is on leave under the Family and Medical Leave Act may retire for the duration of the member's disability if:

- (1) the member has at least five (5) years of creditable service before the:
 - (A) termination of a salary or employer provided income protection benefits or Family and Medical Leave Act leave; or
 - (B) exhaustion of all worker's compensation benefits;
- (2) the member has qualified for Social Security disability benefits and has furnished proof of the Social Security qualification to the board; and
- (3) at least once each year until the member reaches age sixty-five (65) a representative of the board verifies the continued disability.”

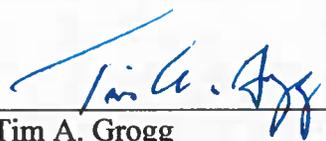
Petitioner will be eligible for a regular PERF retirement as of [REDACTED], after attaining the age of sixty-five (65) years.

Based upon the foregoing Petitioner's Motion for Summary Judgment is denied and Respondent's Motion for Summary is granted.

Conclusion and Recommended Order

There is no genuine dispute as to any material fact or law and Respondent is entitled to judgment as a matter of law. The INPRS initial determination is upheld. Petitioner does not qualify for disability retirement benefits and upon application will be eligible regular PERF retirement as of [REDACTED] after attaining the age of sixty-five (65) years.

ORDERED this 22nd day of April, 2020



Tim A. Grogg
Administrative Law Judge

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 certify that on the 12th day of April, 2020, service of a true and complete copy of the foregoing was made upon each party or attorney of record herein by electronic transmission to the e-mail address appearing below.

Daniel F. Leonard,

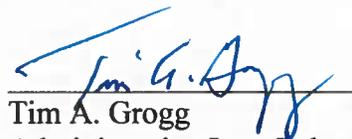
[REDACTED]

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Tim A. Grogg
Administrative Law Judge