

**BEFORE THE BOARD OF TRUSTEES  
TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS**

**In the Matters of:** )  
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 **Thomas Nuzzi** )  
 **and** )  
 **Deborah Nuzzi,** )  
 )  
 )  
 **Petitioners** )

**RECOMMENDED DECISION OF THE CLAIMS HEARING COMMITTEE IN  
THE ADMINISTRATIVE REVIEWS OF  
THOMAS NUZZI AND DEBORAH NUZZI<sup>1</sup>**

**I. Introduction**

On February 8, 2012, the TRS Board of Trustees' Claims Hearing Committee met at TRS offices in Springfield, Illinois, to hear oral argument on cross motions for summary judgment in the administrative reviews of Thomas and Deborah Nuzzi. Present were Presiding Hearing Officer Ralph Loewenstein, Committee Chairman Cynthia O'Neil, and Committee members Sonia Walwyn and Jan Cleveland. Petitioners Thomas and Deborah Nuzzi (the Nuzzis) were represented by attorney Andrea Doyle. The System was represented by attorney Scott Spooner of the firm Kopec, White & Spooner.

At issue in the case is whether the Nuzzis' employment at Olivet Nazarene University negated their continued eligibility for TRS disability benefits. For the reasons set forth herein, the Claims Hearing Committee finds that the Nuzzis lost eligibility to continue receiving disability benefits because they began teaching in violation of 40 ILCS 5/16-149.2(a).

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<sup>1</sup> Thomas Nuzzi and Deborah Nuzzi filed separate requests for administrative review. Because both matters raise identical issues, they have been considered together by the Claims Hearing Committee.

## **II. Findings of Fact**

1. Thomas Nuzzi applied for nonoccupational disability benefits under the provisions of 40 ILCS 5/16-149 on July 21, 2008.
2. Deborah Nuzzi applied for nonoccupational disability benefits under the provisions of 40 ILCS 5/16-149 on May 8, 2008.
3. Thomas Nuzzi's claim for disability benefits was approved September 15, 2008 effective retroactively to July 1, 2008.
4. Deborah Nuzzi's claim for disability benefits was approved August 18, 2008 effective retroactively to February 16, 2008.
5. Thomas Nuzzi received §16-149 disability benefits from July 1, 2008 to June 11, 2009.
6. Deborah Nuzzi received §16-149 disability benefits from February 16, 2008 to February 12, 2009.
7. Thomas Nuzzi's claim for a disability retirement annuity under 40 ILCS 5/16-149.2 was approved June 19, 2009 effective retroactively to June 12, 2009.
8. Deborah Nuzzi's claim for a disability retirement annuity under 40 ILCS 5/16-149.2 was approved February 9, 2009 effective February 13, 2009.
9. Olivet Nazarene University is a private university not covered by the Teachers' Retirement System of the State of Illinois or the State Universities Retirement System.
10. Thomas Nuzzi was hired to teach EDUC784 at Olivet Nazarene University on January 20, 2009.
11. Deborah Nuzzi was hired to teach EDUC784 at Olivet Nazarene University on January 20, 2009.
12. The Nuzzis were also hired to teach EDUC730 at Olivet Nazarene University on September 18, 2009. The class was taught at Homewood Flossmoor High School.

13. The Nuzzis were both employed by Olivet Nazarene University to teach online and classroom courses from at least January 28, 2009 to March 23, 2009 and October to December 2009.
14. On March 31, 2010, Thomas Nuzzi was notified of his ineligibility to continue receiving disability benefits under §16-149.2.
15. On May 24, 2010, Deborah Nuzzi was notified of her ineligibility to continue receiving disability benefits under §16-149.2.

### **III. Legal Analysis**

After carefully reviewing the Nuzzis' appointment letters, job descriptions, and deposition testimony of the Nuzzis and the staff of Olivet Nazarene University, the Committee has determined that Thomas and Deborah Nuzzi were both "employed ...in an equivalent capacity [as a teacher] in a...private...university" in derogation of §16-149.2(a).

The record demonstrates that the Nuzzis were available to answer student questions, provide feedback, check homework, and post grades, all traditional parts of teaching. It strains credibility to conclude that the Nuzzis were not employed by Olivet Nazarene in an equivalent capacity as a teacher. The attempt to call their functions as "facilitating", distinct from teaching, is a semantic artifice that does not change the character of the work they performed for Olivet Nazarene University.

Disability benefits are not payable under Article 16 of the Pension Code to a member who is receiving salary as a teacher. Accordingly, when the Nuzzis decided to take on teaching roles for Olivet Nazarene, they became disqualified to continue receiving disability benefits under TRS law.

Pursuant to 40 ILCS 5/16-149.2(a):

*The disability retirement annuity shall be payable upon receipt of written certificates from at least 2 licensed physicians designated by the System verifying the continuation of the disability condition. A disability retirement annuity shall not be paid during any period for which the member receives benefits under Section 16-133, Section 16-149, or Section 16-149.1 or has a right to receive a salary as a*

*teacher, or is employed in any capacity as a teacher by the employers included under this System or in an equivalent capacity in any other public or private school, college or university, except as provided in Section 16-149.6.*

As the record demonstrates, Mr. and Mrs. Nuzzi were employed in an equivalent capacity of teacher by Olivet Nazarene University. Nor may they avail themselves of the provision in the law that allows limited or part-time employment as a teacher while in receipt of disability benefits. Pursuant to 40 ILCS 5/16-149.6:

*(a) A teacher who (i) has been receiving a disability, occupational disability, or disability retirement benefit under Section 16-149, 16-149.1, or 16-149.2 for at least one year and (ii) remains unable to resume regular full-time teaching due to disability, but is able to engage in limited or part-time employment as a teacher, may engage in such limited or part-time employment as a teacher for an employer under either this Article or an employer under Article 15 of this Code without less of the disability, occupational disability, or disability retirement benefit, provided that the teacher's earnings for that limited or part-time employment, when added to the amount of the benefit, do not exceed 100% of the salary rate upon which the benefit is based.*

*(b) A disabled teacher who engages in limited or part-time teaching under this Section and earns service and contribution credits for that teaching shall not receive duplicate service or contribution credits under Section 16-149 or 16-149.1.*

First, the Nuzzis were not in receipt of §16-149.2 benefits for at least one year. Second, Olivet Nazarene University is a private university which is not a TRS-covered employer, or an employer under Article 15 of the Illinois Pension Code.<sup>2</sup> Thus, the law also does not allow their employment to be treated as permissible limited or part-time teaching.

The Nuzzis also argue they were engaged in permissible “gainful employment” as defined in 80 Ill. Adm. Code 1650.202 because they made less than \$10,000. However, this line of reasoning disregards the TRS statutory scheme. As provided in 40 ILCS 5/16-149.2(c):

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<sup>2</sup> Article 15 of the Pension Code applies to the State Universities Retirement System.

*If an annuitant receiving a disability retirement annuity under this Section is engaged in or able to engage in gainful employment (including limited employment under Section 16-149.6) paying more than the difference between the disability retirement annuity and the salary rate upon which the disability benefit is based, with no salary to be considered less than the minimum prescribed in Section 24-8 of the School Code, the disability retirement annuity shall be reduced to an amount which together with the amount earned by the annuitant, equals the salary rate upon which the disability benefit is based. However, for the purposes of this subsection (c) only, the salary rate upon which the benefit is based shall be deemed to increase by 15% on the tenth anniversary of the commencement of the annuity.*

Paragraph (c) deals with all employment other than teaching employment (except as allowed under §16-149.6), under 40 ILCS 5/16-149.2(a). Therefore, this provision does not provide an avenue to allow the Nuzzis' continued receipt of disability benefits, given the facts at hand.

The Nuzzis also raise an estoppel claim against the System. They assert that TRS employee Kathy Cronister, who has been employed as a disability analyst by the System since 1992, told them it was permissible to teach at Olivet Nazarene University. Nothing in the record verifies this conversation, and Ms. Cronister denied such a conversation in her deposition. But even assuming this were true, the legal doctrine of estoppel does not sound against TRS, because no TRS staff person has authority to change operation of the Pension Code.

As the TRS Board of Trustees found in the *Administrative Review of Ralph Haldorson*:

*As further stated in Lewis-Connelly v. Bd. of Ed., 214 Ill. Dec. 92, 660 N.E.2d 283 (1996):*

*Defendant correctly asserts that "the doctrine of estoppel cannot be invoked against a public body when the action taken by it was ultra vires, i.e., beyond its authority and void." (Evans v. Benjamin School District no. 25 (1985), 134 Ill.App.3d 875, 883, 89 Ill. Dec. 637, 480 N.E.2d 1380.) Here, the Board's action of allowing plaintiff to teach until February 25 was beyond its authority because*

*sections 21-1 and 21-1b prohibited such action. “The doctrine of estoppel may not be applied to validate an ultra vires act, and we will not do so here.” Evans, 134 Ill.App.3d at 883, 89 Ill. Dec. 637, 480 N.E.2d 1380. (Lewis-Connelly at p. 96).*

*Under the provisions of § 16-106(a), Mr. Haldorson was not eligible to contribute to TRS because he was not serving in certificated positions in the 24 districts. The Committee finds that, even if Mr. Kennedy had received all the facts from Mr. Haldorson, no representation by a TRS staff member could change the operation of § 16-106(a).*

As explained in Haldorson, neither Ms. Cronister, nor any TRS staff, has authority to change operation of the law in Section 16-149.2.

Finally, the Committee has also considered whether the Nuzzis could re-qualify for disability benefits. As stated in 40 ILCS 5/16-149:

*The benefit shall be granted only if the member is found by medical examination to be incapacitated to perform the duties of his or her position as a teacher and only if the commencement of the incapacity occurred while the member was employed as a teacher or within 90 days of the employment.*

Accordingly, the Nuzzis must return to TRS-covered service to re-qualify for disability benefits, which they have not done.

#### **IV. Conclusion**

The Claims Hearing Committee finds in favor of the staff determination in this matter. The Committee also finds, pursuant to 80 Ill. Admin. Code 1650.595, that the Nuzzis must repay the System the disability retirement annuity benefits they received<sup>3</sup> after they began teaching for Olivet Nazarene University.

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<sup>3</sup> Thomas Nuzzi: \$44,271.89, plus accrued interest of \$9,301.90 as of April 10, 2012.  
Deborah Nuzzi: \$37,218.61, plus accrued interest of \$7,054.96 as of April 10, 2012.  
Interest accrues at 0.83% per month in accordance with 80 Ill. Admin. Code 1650.595.

## **V. Notice of Right to File Exceptions**

Exceptions to the Claims Hearing Committee's Recommended Decision must be filed within 15 days of receipt by the Petitioners. A Final Decision will be issued by the TRS Board of Trustees after it has considered the Claims Hearing Committee's Recommended Decision and any exceptions filed by the Petitioners.