

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

**Proposed Decision Recommended by the  
Administrative Review Claims Hearing Committee**

**In the Matter of Sally Shrode Gibson**

**Introduction**

Pursuant to the provisions of 80 Ill. Adm. Code 1650.650, an administrative review hearing was held on July 29, 2005 in Springfield, Illinois, to consider the appeal of Sally Shrode Gibson (Gibson), a member of the Teachers' Retirement System of the State of Illinois (TRS or the System). Ms. Gibson petitions the TRS Board of Trustees (Board) to reverse the denial of her claim for TRS disability benefits under the provisions of 40 ILCS 5/16-149. At issue in this case is whether Ms. Gibson was disabled at the time of her employment as a teacher or within the 90-day period after she resigned her teaching position with Quincy School District 172 on January 19, 2001. To be eligible for disability benefits under the provisions of 40 ILCS 5/16-149, a TRS member must "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 such employment." A member's disability claim must be supported by competent medical evidence (see 80 Ill. Adm. Code 1650.205).

The TRS Board of Trustees, the trier of fact in this matter as provided in 80 Ill. Adm. Code 1650.620, was represented at hearing by its Claims Hearing Committee comprised of Sharon Leggett, Jan Cleveland and James Bruner. The hearing was presided over by Presiding Hearing Officer Ralph Loewenstein.

TRS' staff position was presented by attorney Scott Spooner of the law firm of Heyl Royster Voelker & Allen. Ms. Gibson was represented in her claim by Alexandra de Saint Phalle of the Londrigan, Potter and Randle law firm.

In support of her claim for disability, Ms. Gibson argues the System should have accepted the opinions of Dr. James Hambidge and Dr. James Carlson that

Ms. Gibson was unable to physically perform substantially all of her job functions as a teacher prior to her resignation from the Quincy public schools or in the 90 day period following her resignation, in spite of the fact that neither physician was treating Ms. Gibson during the period in question.

In support of its denial of disability benefits, the System argued that the medical reports of Dr. Kurt Leimbach, Ms. Gibson's treating physician during the period in question, and who neither observed nor noted an inability to teach, resolve the matter in the System's favor. The System also presented the testimony of Ronald Baher, Ms. Gibson's principal who testified that Ms. Gibson never told him of any inability to perform her teaching duties in conjunction with her resignation from Quincy School District 172 on January 19, 2001.

After reviewing the Position Statements of the parties and the exhibits and stipulations submitted therewith; hearing the evidence and viewing the exhibits presented at hearing; and considering the arguments of the parties, it is the determination of the Claims Hearing Committee that Ms. Gibson is not entitled to disability benefits under the provisions of §16-149.

### **Findings of Fact**

Based upon the evidence presented at hearing and/or stipulated to by the parties, the Claims Hearing Committee makes the following findings of fact:

- 1) Sally Gibson resigned her teaching position with Quincy School District 172 effective January 19, 2001.
- 2) In her resignation letter of January 16, 2001, addressed to Superintendent Joseph Bocke, Ms. Gibson made no mention of any physical inability to teach.
- 3) In conversations with her principal, Ronald Baher, during the course of her employment with the Quincy Schools, Ms. Gibson never told Mr. Baher that she was tired or fatigued or physically incapable of discharging her employment functions due to health related issues or concerns.
- 4) Neither in her resignation discussion with Mr. Baher or her resignation letter did Ms. Gibson assert that she was tired, fatigued, or physically incapable of discharging her employment functions due to health related issues or concerns.

- 5) Ms. Gibson met with Dr. Kurt Leimbach of the Quincy Medical Group on January 26, 2001. At that meeting, Ms. Gibson provided Dr. Leimbach with an extensive medical history but did not advise Dr. Leimbach that she was tired, fatigued or physically incapable of discharging her employment functions as a teacher. During her examination, she advised Dr. Leimbach that she had been totally healthy since her radiation therapy in 1973. She also described herself as a “retired teacher” but provided Dr. Leimbach no reason for her retirement.
- 6) Dr. Leimbach met with Ms. Gibson on May 23, 2001. In that meeting, again there was no mention of tiredness, fatigue or incapability of employment.
- 7) On July 18, 2001, Ms. Gibson met with Dr. James Hambidge of Evansville, Indiana who identified a suspicious lump in Ms. Gibson’s breast.
- 8) Dr. Hambidge referred Ms. Gibson to Dr. David Carlson, also of Evansville, who confirmed Ms. Gibson had a cancerous tumor in her breast.
- 9) Thereafter, Ms. Gibson applied for social security disability benefits.
- 10) Based upon examinations conducted by Drs. Brandt and Zoberi at Barnes Jewish Hospital in St. Louis on December 23, 2002, the Social Security Administration determined that Ms. Gibson’s onset of disability date was June 1, 2001. However, the criteria for Social Security disability benefits and TRS disability benefits are clearly different.
- 11) Ms. Gibson filed her claim for TRS disability benefits on March 26, 2003, over two years after her resignation from the Quincy Schools.
- 12) Dr. Hambidge’s letter of November 7, 2003, to the System in support of Ms. Gibson’s claim was virtually identical to a draft letter prepared for Dr. Hambidge’s signature by Ms. Gibson’s father, attorney Willard Shrode.
- 13) The System formally denied Ms. Gibson’s claim for TRS disability benefits on February 11, 2004.
- 14) Ms. Gibson filed her timely request for administrative review on February 26, 2004.

## **Issue**

*Was Sally Gibson disabled under the provisions of 40 ILCS 5/16-149 at the time of her employment with or during the 90-day period following her resignation from the Quincy Public Schools on January 19, 2001?*

At the heart of this case is whether Ms. Gibson was disabled, i.e., unable to teach, during the period January 19 through April 19, 2001. The standard of proof to establish disability is the preponderance of the evidence, i.e., evidence that is of greater weight than the evidence offered in opposition. The Committee notes that Ms. Gibson as claimant, not the System, bears the burden of proof in this administrative review proceeding. In making this determination, it is appropriate to consider evidence which arose before, during and after the period in question to the extent the evidence is relevant. The Committee finds that Ms. Gibson failed to prove that she was unable to teach during the period January 19, 2001 through April 19, 2001.

## **Ms. Gibson's Case**

Ms. Gibson presented the testimony of Dr. Hambidge, Dr. Carlson, her father Willard Shrode, as well as testifying herself. The Committee finds these witnesses unpersuasive for the following reasons.

## **Dr. Hambidge**

Dr. Hambidge practices internal medicine in Evansville, Indiana, and is board certified in his practice area. Dr. Hambidge examined Ms. Gibson on July 18, 2001. At that examination, Ms. Gibson advised Dr. Hambidge that she had noticed a lump in her breast with attendant soreness two and one half weeks prior to her examination. She also advised Dr. Hambidge that she had been feeling “generalized fatigue for the last couple of months.”<sup>1</sup>

In support of her claim for TRS disability benefits filed in March 26, 2003, Ms. Gibson submitted a letter from Dr. Hambidge dated November 7, 2003. As the record shows, this letter, while signed by Dr. Hambidge, was drafted for Dr. Hambidge by attorney Willard Shrode, Ms. Gibson's father. In his deposition, Dr.

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<sup>1</sup> “Couple” is defined in the American Heritage Dictionary as “two items of the same kind, pair” (i.e. two months).

Hambidge states that he was a family friend of Ms. Gibson and her parents and that he met with Mr. Shrode two times prior to submitting Mr. Shrode's letter to the System.

While Dr. Hambidge speculates in his letter that Ms. Gibson left her Quincy teaching position due to the breast tumor he found in July, 2001, his contemporaneous notes do not support his 2003 observations. As stated in his July 18, 2001 report:

*SUBJECTIVE: It has been years since I have seen her. She has been doing well. Wrote a book. Went to school in Accounting. Just took her CPA and hopes to be relocating from Quincy, Illinois to Indianapolis, Indiana, later this year to work in the tax accounting division of Ernst & Young. Main reason for being here today is about two and a half to three weeks ago, she noticed a left breast lump, also some soreness there. A little soreness in the left axilla. She says she is a bit overdue for mammograms. She has hypothyroidism. She has been on her medication. She said she has checked a TSH in the last couple of months, and it was okay. **She has had some generalized fatigue for the last couple months, but she also quit her regular exercise a couple of months ago, and that may account for her feeling of lethargy and her weight gain.** Blood pressure is 120/70. Pulse is 70 and regular. Left breast reveals a diffuse firmness, mass effect the lateral quarter of the breast. It extends both upper and lower quadrants. I did feel a 1 cm left axillary node. PLAN: I have told her that I think this mass is suspicious. I have set her up for a mammogram tomorrow morning and a consultation with Dr. Carlson, surgeon, tomorrow afternoon" (emphasis added).*

In his evidence deposition testimony, Dr. Hambidge attempts to explain his note that Ms. Gibson had experienced generalized fatigue for a couple of months by testifying that a "couple" meant two to four months. However, in other portions of his notes, Dr. Hambidge was quite precise in his recordation that Ms. Gibson had noticed the lump in her breast 2 ½ to 3 weeks prior to her visit.

The Committee does not find Dr. Hambridge's testimony to be persuasive. Given that he was a family friend of Ms. Gibson and her parents and that he submitted Mr. Shrode's letter virtually unchanged to the System, the Committee believes his testimony in support of Ms. Gibson's disability claim was biased.

Furthermore, Dr. Hambidge's testimony regarding what the word "couple" means rings hollow.

### **Dr. Carlson**

Dr. Carlson is a board-certified surgeon whose practice is located in Evansville, Indiana. Dr. Carlson examined Ms. Gibson on July 19, 2001. Ms. Gibson was referred to Dr. Carlson by Dr. Hambidge. On January 13, 2005, Dr. Carlson prepared a letter to Willard Shrode, based upon a meeting with him that day, in which he too speculated that Ms. Gibson was unable to teach on January 7, 2001, when she resigned her teaching position, "because she was too fatigued and ill to do the work that her contract required."

The Committee notes that Ms. Gibson actually resigned her position on January 19, 2001. Both Dr. Hambidge and Carlson used this date, which was found in the letter Mr. Shrode drafted for Dr. Hambidge. It is obvious to the Committee that Mr. Shrode took an active role in assisting Dr. Carlson with his letter. This calls Dr. Carlson's testimony that Ms. Gibson was disabled in the 90 day period after her resignation into serious question. Furthermore, like Dr. Hambidge, Dr. Carlson's contemporaneous examination notes on July 19, 2001, do not note anything about fatigue prior to that date. The Committee finds Dr. Carlson's speculation as to Ms. Gibson's reason for resigning four years after the fact unpersuasive.

### **Willard Shrode**

Attorney Willard Shrode is the father of Sally Gibson. Mr. Shrode testified at hearing on his daughter's behalf. Of note to the Committee is that there was no evidence adduced that Mr. Shrode saw Ms. Gibson at any time between her resignation on January 19, 2001 and when she came to Evansville to see Dr. Hambidge in June, 2001. It is clear to the Committee that Mr. Shrode took an active role in presenting his daughter's disability claim to the System, including assisting Ms. Gibson's physicians with their testimony. As an advocate for his daughter, Mr. Shrode's testimony is also not persuasive to the Committee.

### **Sally Gibson**

With regard to the testimony of Sally Gibson, the Committee finds the following to be problematic. Ms. Gibson gave no reason for her resignation in her letter of January 16, 2001 nor did she advise her principal, Mr. Baher, of any

medical problems during the entire course of her employment in the Quincy schools.

While it is understandable that Ms. Gibson may not have wanted to discuss medical information in her resignation letter, it troubles the Committee that Ms. Gibson put on no testimony from her fellow teachers, friends or others regarding fatigue, illness or health problems causing her resignation or during the 90 days following her resignation.

Furthermore, the discussions which were documented by her treating physicians, Drs. Leimbach and Hambidge, indicate Ms. Gibson left teaching to pursue employment opportunities as a Certified Public Accountant.

With regard to her visit with Dr. Leimbach on January 26, 2001, the only doctor visit during the relevant 90-day period, Ms. Gibson made no mention of fatigue or ill health. At that examination, Ms. Gibson refused lab workups, which indicates to the Committee she had no pressing concerns with her health. The major concern brought to Dr. Leimbach's attention was a growth on Ms. Gibson's ring finger. The Committee concludes that had Ms. Gibson felt she could not perform her teaching duties or had been feeling ill or fatigued, she would have brought this to Dr. Leimbach's attention. Based on her failure to tell her doctor and her fellow educators, friends or others that she could not teach or was ill or fatigued, the Committee cannot find that Ms. Gibson was disabled from teaching between January 19, 2001 through April 19, 2001.

### **Conclusion**

Ms. Gibson waited over two years to file a disability claim with TRS. The doctors that testified on her behalf appeared to have been heavily coached by her father. They contradicted their contemporaneous medical notes and their opinions were based on speculation, guess and conjecture. Based on these and the other previously stated reasons, the Committee affirms the staff's denial of Ms. Gibson's claim for TRS disability benefits.

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

Exceptions to the Claims Hearing Committee's Proposed Decision must be filed within fifteen (15) days of receipt by the Petitioner. A Final Decision will be issued by the Board of Trustees after it has considered the Claims Hearing Committee's Proposed decision and any exceptions filed by the Petitioner.