

member shall submit at least one of the following types of documentation in the following order of priority:

- 1) Certified records of the Chief Educational Officer of the County in which the member was employed.
- 2) Income tax records for the entire time period showing employment as a teacher.
- 3) Certified records of another retirement system.
- 4) Such other documentation found by the System to be trustworthy, such as that produced by independent third parties.

III. Issue

The issue before the Board was:

Does the information submitted by Nicole Lorton meet the documentation requirements of TRS Rule 1650.110(b) necessary to establish Ms. Lorton's claim for service credit for substitute teaching claimed to have been performed in the 1967-68 and 1968-69 School Years?

IV. Statement of Facts

After considering all the facts, testimony and evidence presented in this case, the Board finds:

1. On May 4, 1993, District No. 186 sent a letter to TRS asking if the time Ms. Lorton was away from teaching in 1967-68 after she resigned to go to work for the Girl Scouts was creditable as an approved leave of absence. (Whether Ms. Lorton was on an approved leave is not an issue in this administrative review.)

2. By letter dated May 18, 1993, Ms. Lorton was advised by TRS that the period she was away from teaching and working for the Girl Scouts did not qualify as a leave of absence.

3. By letter dated November 12, 1993, Ms. Lorton was granted one year of service credit for the 1966-67 School Year.

4. On December 2, 1993, District No. 186 submitted a verification that Ms. Lorton substitute taught 44 days in the 1967-68 School Year and 18 days in the 1968-69 School Year. However, the verification also stated, "Best estimate we can make, records lost."

5. On December 10, 1993, TRS called District No. 186 and advised the Personnel Office of ways to document substitute teaching.

6. On December 14, 1993, TRS received three letters from principals in District 186 stating that Ms. Lorton had substitute taught in District No. 186 but furnished no dates as to when.

7. By letter dated December 27, 1993, Ms. Lorton was advised the letters submitted on her behalf were insufficient to support her claim for substitute teaching credit. It was again suggested what alternatives were available to support her claim.

8. On January 3, 1994, Ms. Lorton filed for administrative review. In that letter, Ms. Lorton advised Director Daniels that "all records (of the Springfield Public Schools) prior to 1972 had been destroyed" and that she had no past tax records to support her claim.

9. By letter dated January 10, 1994, TRS suggested to Ms. Lorton that she contact the Internal Revenue Service (IRS) to see if they retained relevant records in their files.

10. On February 17, 1994, Ms. Lorton advised TRS that the IRS did not retain records dating back to the period in question.

11. TRS has consistently interpreted TRS Rule 1650.110(b)(4) to require a claimant who cannot document a service claim with existing employment or tax records to first submit other types of official records in support of their claim, and if other types of official records are unavailable through no fault of the member, then and only then, will TRS consider documentation, such as corroborating affidavits, that are based upon actual knowledge and are sufficiently specific as to times, dates, places, and surrounding circumstances so that the proof of service presented reliably documents the service in question while eliminating the possibility of mistake or fraud.

12. TRS staff has been trained to process optional service claims in this fashion at least since March, 1987.

13. TRS staff has utilized the process set forth in paragraph 11 to review optional service claims since at least March, 1987.

14. All TRS members seeking to purchase optional service credit have been treated consistently with regard to the documentation requirements of TRS Rule 1650.110(b).

15. It is Ms. Lorton's plan to retire at the conclusion of the 1993-94 School Year under the provisions of the Early Retirement Incentive (ERI) Program, and without the 62 days of optional service credit in question, Ms. Lorton's total enhanced service credit under ERI will only be 34.66 years.

V. Position of the Parties

It is Ms. Lorton's position that the three letters from District 186 administrators she submitted in support of her request to purchase optional service credit are sufficient to document her claim of substitute teaching 62 days during the 1967-68 and 1968-69 School Years. It is

TRS' position that the three letters submitted are insufficient to document Ms. Lorton's claim for substitute teaching credit because they are not in affidavit form and they contain no specifics as to when the alleged substitute teaching was performed or any other details of the surrounding circumstances necessary to insure their reliability and eliminate the possibility of mistake or fraud.

VI. Discussion and Analysis

It is the determination of the Board that TRS Rule 1650.110(b) does not authorize the purchase of optional service credit unless the purchase request is supported by existing school records or other reliable means of documentation, and that Ms. Lorton has failed to furnish any of the public records or affidavits based thereon as required by TRS Rule 1650.110(b) to support her claim for optional service credit. Ms. Lorton and the District No. 186 Personnel Office advised TRS that there were no existing school records to substantiate Ms. Lorton's claim that she substitute taught during the 1967-68 and 1968-69 School Years. Ms. Lorton also has advised TRS that her federal income tax records from 1967-68 and 1968-69 were no longer in existence. Ms. Lorton's sole option at that point was to furnish TRS "such other documentation found by the System to be trustworthy..." to establish her claim.

Ms. Lorton attempted to meet the "other documentation" requirement of Rule 1650.110(b)(4) by submitting letters from three District No. 186 administrators stating that they remember that Ms. Lorton substitute taught in District No. 186. However, the letters contained no specifics as to when this substitute teaching was performed or any other details of the surrounding circumstances.

The materials provided by Ms. Lorton were not sufficiently trustworthy under Rule 1650.110(b)(4) to allow the purchase of optional service credit based upon the representations contained therein. The Board finds that TRS has consistently interpreted § 1650.110(b)(4) to require a claimant who cannot document a service claim with existing employment or tax records to first submit other types of official records in support of their claim. If other types of official records are unavailable through no fault of the member, then and only then, has TRS considered documentation, such as corroborating affidavits, that are based upon actual knowledge and are sufficiently specific as to times, dates, places, and surrounding circumstances so that the proof of service presented reliably documents the service in question while eliminating the possibility of mistake or fraud. The letters submitted by the Claimant failed to meet this long-standing test.

Where a governmental agency has interpreted an administrative rule in a consistent manner over a long period of time, and no action is taken by the Legislature to pass legislation to change the interpretation in question it is presumed the Legislature concurs with the agency's interpretation. As stated in Freeman Coal v. Ruff, 228 N.E.2d 279 (1967):

Rules of statutory construction are tools or aids for ascertaining legislative intention and the application of a particular rule is not in and of itself determinative of legislative intention. It is, of course, axiomatic that longstanding contemporaneous construction by ones charged with the administration of a particular statute is entitled to great weight in construing the statute. This doctrine of contemporaneous construction becomes even more persuasive when it has been of long-standing and the legislature, presumably aware of the administrative interpretation, has amended other sections of the act during the period involved but left untouched the sections subject to the seemingly approved administrative interpretation. Illinois Bell Tel. Co. v. Illinois Commerce Comm'n, 414 Ill. 275, 111 N.E.2d 329 (1953). People ex rel. Spiegel v. Lyons, 1 Ill.2d 409, 115 N.E.2d

895 (1953). Bell v. South Cook Co. Mosquito Abatement Dist., 3 Ill.2d 353, 121 N.E.2d 473 (1954). Mississippi River Fuel Corp. v. Illinois Commerce Comm'n., 1 Ill.2d 509, 116 N.E.2d 394 (1953). (Ruff at p. 282.) (The rules of statutory interpretation as set forth in Ruff are equally applicable to the interpretation of agency rules.)

Were the Board to grant Ms. Lorton's claim, it would have to reverse long-standing TRS practice with regard to Rule 1650.110(b). The Board finds it may not do this. As stated in Heavner v. Ill. Racing Bd., 59 Ill. Dec. 706, 432 N.E.2d 290 (1982):

While it is familiar law that administrative regulations enjoy a presumption of validity (Du-Mont Ventilating v. Department of Revenue (1977), 52 Ill.App.3d 59, 10 Ill.Dec. 144, 367 N.E. 532; Armstrong Chemcon, Inc. v. The Pollution Control Board (1974), 18 Ill.App.3d 753, 310 N.E.2d 648), it is equally well established that where an administrative agency adopts rules or regulations under its statutory authority for carrying out of its authorized duties, it is bound by those rules and cannot arbitrarily disregard them or apply them in a discriminate manner. (Service v. Dulles (1957), 354 U.S. 363, 1 L.Ed.2d 1403, 77 S.Ct. 1152; Citizens to Preserve Overton Park, Inc. v. Volpe (1971), 410 U.S. 402, 91 S. Ct. 814, 28 L.Ed.2d 136; Holland v. Quinn (1978), 67 Ill.App.3d 571, 24 Ill.Dec. 325, 385 N.E.2d 92; Margolin v. Public Mutual Fire Insurance Company (1972), 4 Ill.App.3d 661, 281 N.E.2d 728.) In the latter case, the court said at p. 667:

"Having once established rules and regulations pursuant to statutory authority, an administrative agency is bound by those rules and regulations and may not violate them." (Heavner at p. 710).

Having set the standard of proof in these matters, the Board finds it cannot now arbitrarily disregard Rule 1650.110(b) and TRS' consistent application of that rule to grant Ms. Lorton the relief she seeks.

The Board further finds TRS Rule 1650.110(b) has been consistently applied to disallow the purchase of service credit for substitute teaching when the purchase request is unsupported by reliable corroborating documentation.

At hearing, TRS employee Karen Dulakis testified that to the best of her knowledge TRS has never allowed any member to purchase service credit for substitute teaching where supporting documentation meeting the reliability criteria of § 1650.110(b)(4) was not furnished to TRS. Clearly, TRS has treated those members in the same situation as Ms. Lorton similarly.

Again, the Board must look to the Freeman Coal case for guidance. Based upon Ms. Dulakis' testimony, TRS has interpreted Rule 1650.110(b) to disallow service credit for inadequately documented substitute teaching since her employment with TRS in 1991. Since then, there has been a multitude of changes to Article 16 of the Pension Code, the most recent one being enacted in January 1993. In this period, the Illinois General Assembly has not seen fit to enact a law regarding purchase of optional service by those in Ms. Lorton's situation. By not addressing this issue, the Legislature is presumed to have concurred with TRS' administrative actions relative to Rule 1650.110(b).

VII. Conclusion

Based upon the foregoing and the Claims Hearing Committee's recommendation that the staff determination in the instant case, which is supported by long-term, consistent interpretation

and application of TRS Rule 1650.110(b) be upheld, Ms. Lorton's request to purchase optional service credit for the 62 days of undocumented substitute teaching is denied.

VIII. 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 Claimant. 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 Claimant.