

years of optional service credit. However, the Committee finds that Ms. McCartney failed to meet the eligibility requirements to participate in the ERI Program by failing to retire from teaching on or before September 1, 1994.

II. Relevant Statutes and Rules

With regard to Ms. McCartney's claim for optional service, the Claims Hearing Committee must apply TRS Rule 1650.110(b), which states:

Creditable service and salary is established by submission of annual reports (filed by the member's employer), an affidavit of a school official based upon existing school records, or copies of contracts, board minutes, memoranda, payroll records and other materials as requested by the System for assistance in making the necessary determinations. If the preceding documentation is unavailable, the 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.

With regard to Ms. McCartney's request to retire under the provisions of the ERI Program, the Claims Hearing Committee must apply 40 ILCS 5/16-133.5(a) and (d) which state:

(a) To be eligible for the benefits provided in this Section, a member must:

(1) be a member of this System who, on or after May 1, 1994, is (i) in active payroll status as a full-time teacher employed by an employer under this Article, or (ii) on layoff status from such a position with a right of re-employment or recall to service, or (iii) on disability or a leave of absence from such a position, but only if the member has not been receiving benefits under Section 16-149 or 16-149.1 for a continuous period of 2 years or more as of the date of application;

(2) have never previously received a retirement annuity under this Article, except that receipt of a disability retirement annuity does not disqualify a member if the annuity has been terminated and the member has returned to full-time employment under this Article before the effective date of this Section;

(3) file with the Board before March 1, 1994, an application requesting the benefits provided in this Section;

(4) be eligible to receive a retirement annuity under this Article (for which purpose any age enhancement or creditable service received under this Section may be used), and elect to receive the retirement annuity beginning not earlier than June 1, 1994 and not later than September 1, 1994 (September 1, 1995 if retirement is delayed under subsection (e) of this Section);

(5) have attained age 50 (without the use of any age enhancement received under this Section) by the effective date of the retirement annuity;

(6) have at least 5 years of creditable service under this System or any of the participating systems under the Retirement Systems Reciprocal Act (without the use of any creditable service received under this Section) by the effective date of the retirement annuity; and

(d) An annuitant who has received any age enhancement or creditable service under this Section and who re-enters contributing service under this Article shall thereby forfeit the age enhancement and creditable service, and upon re-retirement the annuity shall be recomputed. The forfeiture of creditable service under this subsection shall not entitle the employer to a refund of the employer contribution paid under this Section, nor to forgiveness of any part of that contribution that remains unpaid. The forfeiture of creditable service under this subsection shall not entitle the employee to a refund of the employee contribution paid under this Section.

III. Issue Statement

The Parties failed to agree upon a statement of issues prior to hearing. However, after hearing the Parties' arguments and reviewing the exhibits submitted, the Claims Hearing Committee determines the issues raised in Ms. McCartney's administrative review to be:

1) Has Ms. McCartney submitted sufficient evidence under the provisions of TRS Rule 1650.110(b) to establish 6.347 years of teaching service with Cook District No. 103?

2) Is a TRS member, who did not elect to receive a retirement annuity between June 1, 1994 and September 1, 1994, and who returned to teaching in the 1994-95 School Year, eligible to participate in the Early Retirement Incentive (ERI) Program as provided in 40 ILCS 5/16-133.5?

IV. Statement of Facts

The Parties did not agree upon a statement of facts. Accordingly, based upon the testimony presented at hearing and a thorough review of all exhibits submitted therewith, the Claims Hearing Committee makes the following findings of fact in this case:

- 1) Ms. McCartney served as a certificated part-time Chapter I teacher during the 1977-78 School Year through the 1986-87 School Year.
- 2) Ms. McCartney did not retire from teaching or elect to retire from teaching under the provisions of the ERI Program on or before September 1, 1994.
- 3) As of the date of hearing in her administrative review, Ms. McCartney was still employed as a teacher.
- 4) Ms. McCartney did not consult with any TRS staff regarding her decision to continue teaching in the 1994-95 School Year.
- 5) TRS staff did not advise Ms. McCartney she could continue to teach past September 1, 1994, and still be eligible to participate in the ERI Program.
- 6) No TRS staff members advised Ms. McCartney she could not or should not file an application to retire under the ERI Program on or before September 1, 1994.
- 7) On August 30, 1994, 3.03 years of optional service credit was approved for substitute teaching performed by Ms. McCartney.

- 8) On August 30, 1994, Ms. McCartney had 14.803 years of service credit, not including the 5 years she would have received had she timely filed her ERI retirement application.
- 9) The hold Ms. Holthaus (Blackwell) placed upon Ms. McCartney's file did not prevent Ms. McCartney from filing her ERI retirement application and retiring under the ERI Program. The hold alerted the TRS Accounting Department not to begin issuing annuity payments to Ms. McCartney to allow her to prove up optional service.¹

V. Position of the Parties

It is Ms. McCartney's position that:

- 1) She is eligible to purchase 6.347 years of additional optional service credit for part-time teaching service performed between the 1977-78 School Year and the 1986-87 School Year (not including the 3.03 years already approved by TRS).
- 2) TRS prevented Ms. McCartney from meeting the September 1, 1994, ERI retirement deadline, by failing to approve in full the part-time service verification she filed with TRS on November 19, 1993, prior to September 1, 1994.

It is the System's position that:

- 1) Ms. McCartney lost ERI eligibility when she failed to file her ERI retirement application by September 1, 1994.
- 2) Ms. McCartney was not misinformed by TRS regarding her need to retire from teaching by September 1, 1994, to be eligible to participate in the ERI Program.
- 3) Ms. McCartney did not advise TRS of her concern that she would be ineligible to retire under the ERI Program unless she received the full amount of service credit sought in the verification filed November 19, 1993.
- 4) Proving up optional service is not an attempt to retire.

¹ Pursuant to 40 ILCS 5/16-128(e), optional service cannot be purchased once annuity payments are received by the member.

- 5) Optional service is not necessarily proved up at the time a member submits an optional service verification form.

VI. Discussion and Analysis

The Claims Hearing Committee will begin by summarizing its decision in this case.

1) Based upon the testimony presented at hearing by Peter Walls, Assistant Superintendent of Cook District No. 103, that FICA was paid for all part-time teachers during the period in question, and that Ms. McCartney was employed as a teacher rather than a teacher's aide during this period, as well as the testimony of Mr. and Ms. McCartney that Ms. McCartney was employed as a teacher rather than a teacher's aide, the Committee finds that Ms. McCartney is entitled to purchase the 6.347 years of optional service credit at issue in this case.

2) However, the Committee finds that the dispute whether Ms. McCartney had adequately proved-up her claim for optional service was no excuse for Ms McCartney to fail to file her ERI retirement application and cease teaching by September 1, 1994.

3) The Committee further finds that the burden to meet the requirements to participate in the ERI Program lay with Ms. McCartney and that the staff of TRS was not responsible for her failure to do so.

4) Lastly, the Committee finds that Ms. McCartney's failure to elect to receive an ERI retirement annuity between June 1, 1994 and September 1, 1994, as provided in 40 ILCS 5/16-133.5(a)(4) and her return to teaching in the 1994-95 School Year in derogation of 40 ILCS 5/16-133.5(d) was the proximate cause of Ms. McCartney's loss of ERI eligibility.

Before explaining the legal basis for its decision in this case, the Committee feels it must address the following misapprehensions asserted by Petitioner at hearing regarding optional service administration and the ERI Program.

1) The application requesting to participate in the ERI Program Ms. McCartney filed with TRS pursuant to 40 ILCS 5/16-133.5(a)(3) was not a retirement application. The §16-133.5(a)(3) filing only notified TRS of Ms.

McCartney's interest in the ERI Program. The (a)(3) filing was necessary to participate in the ERI Program, but it did not commit the member to retirement.

2) The hold for additional service placed by Michelle Holthaus (Blackwell) on Ms. McCartney's file on September 27, 1994, which Ms. McCartney mischaracterized as a hold on her retirement, only advised the TRS Audit Department to hold Ms. McCartney's annuity payments up until she proved-up the optional service in question as provided in 40 ILCS 5/16-128(e).

3) Pursuant to 40 ILCS 5/16-133.5(4), an ERI retirement application had to be filed with TRS setting a begin date for an ERI annuity sometime between June 1, 1994 and September 1, 1994.

4) Proving-up optional service does not constitute an attempt to retire. Filing an optional service verification does not constitute the filing of a retirement application.

5) TRS did not "miscalculate" Ms. McCartney's optional service. "Miscalculation" implies an arithmetical error was made in totaling Ms. McCartney's service. Ms. McCartney's claim for optional service was not approved because there was an issue as to whether Ms. McCartney served as a "teacher" (i.e. did the work in question require a teaching certificate?) during the time in question.

6) TRS never denied Ms. McCartney the service credit in question. The service Ms. McCartney sought to purchase was still in the prove-up stage when Ms. McCartney filed for administrative review, thereby, taking the decision-making process out of the staff's hands.

7) Because such service was not previously reportable to TRS, part-time teachers did not pay TRS contributions'. However, it does not follow that these teachers were required to pay FICA. All teachers are exempt from paying FICA no matter if they are full-time, part-time, or substitute.

The basis for the Committee's decision is as follows:

1) The dispute over Ms. McCartney's optional service claim arose when Ms. McCartney was listed as a part-time, Chapter 1 teacher on her Part-time Service Verification Form. Michelle Holthaus (Blackwell) testified at hearing that

Chapter 1 employees are often listed as teachers when in fact they were employed as teacher aides.²

In response to Ms. Holthaus' request, Cook District No. 103 furnished TRS copies of Ms. McCartney's W-2 tax forms for the School Years in question. Those forms showed that FICA was withheld for Ms. McCartney's part-time, Chapter I employment. Since teachers do not pay FICA, further documentation was requested to confirm Ms. McCartney's teaching service. This was the status of Ms. McCartney's optional service claim when this matter went to hearing.

At hearing, Mr. Peter Walls, the Assistant Superintendent of District No. 103 testified that District No. 103 could not produce School Board minutes from every School Year between 1977 and 1987 documenting Ms. McCartney served as a Chapter 1 teacher, because it was school practice that once a Chapter 1 teacher was hired Board approval was not needed thereafter. Mr. Walls further testified that FICA was withheld from the pay of all part-time teachers because that too was school practice. Additionally, both Ms. McCartney and her husband testified that Ms. McCartney served as a certificated Chapter I teacher and not a Chapter I teachers' aide during the period in question. Based upon this testimony, the Committee finds that Ms. McCartney's optional service claim has been fully verified and credit is granted subject to Ms. McCartney's payment of TRS service contributions.

2) Regarding Ms. McCartney's request to retire under the ERI Program, the Committee finds 40 ILCS 5/16-133.5(a)(4) to govern. As stated therein:

a) To be eligible for the benefits provided in this section a member must:

4) be eligible to receive a retirement annuity under this Article (for which purpose any age enhancement or creditable service received under this Section may be used), and elect to receive the retirement annuity beginning not earlier than June 1, 1994 and not later than September 1, 1994 (September 1, 1995 if retirement is delayed under subsection (e) of this Section); . . . (Emphasis added).

² Teacher aides are covered by the Illinois Municipal Retirement Fund.

The committee finds the language of §16-133.5(a)(4) to be clear and unambiguous. Ms. McCartney had to retire by September 1, 1994 [her employer was not eligible to delay retirements under 40 ILCS 5/16-133.5(e)]. As stated by the Illinois Supreme Court in People ex rel Pauling v. Misevic, 203 N.E.2d 393 (1964):

Where the words employed in a legislative enactment are free from ambiguity or doubt, they must be given effect by the courts even though the consequences may be harsh, unjust, absurd or unwise. (Louisville and Nashville Railroad Co. v. Industrial Board, 282 Ill. 136, 118 N.E. 483; City of Nameoki v. City of Granite City, 408 Ill. 33, 95 N.E.2d 920.) Such consequences can be avoided only by a change of the law, not by judicial construction, (City of Decatur v. German, 310 Ill. 591, 142 N.E. 252,) and, by the same token, courts are not at liberty to read exceptions into a statute the legislature did not see fit to make, (Belfield v. Coop, 8 Ill.2d 293, 134 N.E.2d 249, 59 A.L.R.2d 1008,) or by forced or subtle constructions, to alter the plain meaning of the words employed. (People v. Shader, 326 Ill. 145, 157 N.E.225, Stiska v. City of Chicago, 405 Ill. 374, 90 N.E.2d 742.) (Misevic at p. 395).²

Furthermore, as stated in Homefinders, Inc. v. City of Evanston, 2 Ill. Dec. 565, 357 N.E.2d 785 (1976):

Since an administrative agency is a creature of the legislative body from which it derives its existence and authority, any of its acts or orders which are unauthorized by the enabling statute or ordinance are void. (Homefinders at p. 572).

The Committee must strictly adhere to the language of the statute in question. There is simply no latitude to ignore the plain statutory language of § 16-133.5(a)(4) to grant Ms. McCartney the relief she seeks.

3) The Board further finds that the prove-up of optional service did not prevent Ms. McCartney from retiring under the ERI Program.

² Rules of statutory construction governing courts are equally applicable to administrative tribunals [See Heifner v. Bd. of Ed. of Morris Comm. H.S. Dist. No. 101, 335 N.E.2d 600 (1975)].

40 ILCS 5/16-128(e) governs the purchase of optional service. As stated therein:

The contributions required under this Section may be made from the date the statement for such creditable service is issued until retirement date. All such required contributions must be made before any retirement annuity is granted.

Ms. McCartney could have retired and deferred her annuity until any questions regarding her optional service were resolved. The hold Michelle Holthaus (Blackwell) placed upon Ms. McCartney's retirement annuity (not her retirement as alleged) was done with this in mind. Many ERI retirees took this approach to maximize their benefits or to establish their ERI eligibility. Had Ms. McCartney told the staff her concerns about her eligibility, TRS could have advised Ms. McCartney of her § 16-128(e) options and worked with her to resolve her problem.

4) Lastly, the Committee finds that TRS is not estopped from denying Ms. McCartney participation in the ERI Program.

As stated in Kruse v. Department of Public Aid, 173 Ill. Dec. 119, 596 N.E.2d 743 (1992):

However, before an estoppel against a government agency can be found, it must be shown that an affirmative act occurred on the part of the agency and that the affirmative act of the agency induced substantial reliance by the litigant and the complained-of action by the litigant. (See Schumann v. Kimarich (1981), 102 Ill.App.3d 454, 58 Ill.Dec. 157, 430 N.E.2d 22; Lake Shore Riding Academy, Inc. v. Daley (1976), 38 Ill.App.3d 1000, 350 N.E.2d 17.) (Kruse at p 120 and 121).

The evidence clearly shows that TRS did not advise Ms. McCartney:

1) she could not nor should not file an election to receive an ERI retirement annuity between June 1 1994 and September 1, 1994;

2) to return to work in the 1994-95 School Year; or

3) that she could ignore the provisions of 40 ILCS 5/16-133.5(a)(4) and (d).

As further stated in Pack v. Santa Fe Park Enterprises, 154 Ill.Dec. 360, 568 N.E.2d 360 (1992):

It has been stated that “{a} party claiming the benefit of an estoppel cannot shut his eyes to obvious facts, or neglect to seek information that is easily accessible, and then charge his ignorance to others.” (Vaughn, 126 Ill.2d at 169, 127 quoting Vail v. Northwestern Mutual Life Insurance Co. (1901), 192 Ill. 567, 570, 61 N.E. 651.) thus, to benefit from equitable estoppel, the plaintiff must have “had no knowledge or means of knowing the true facts. [Citations.]” (Lissner v. Michael Reese Hospital & Medical Center (1989), 182 Ill.App.3d 196, 207, 130 Ill.Dec. 673, 537 N.E.2d 1002.) (Pack at p.10).

Ms. McCartney was made aware of her need to retire by September 1, 1994, in the ERI Information Packet she was sent on February 25, 1994. Ms. McCartney was clearly on notice of § 16-133.5(a)(4)’s retirement provision.

VII. Conclusion

Based upon the foregoing, it is the Claims Hearing Committee’s recommendation that:

- 1) Ms. McCartney’s claim for 6.347 years of optional service credit for Chapter 1 teaching at Cook District No. 103 be approved.
- 2) Ms. McCartney’s request to participate in the ERI Program be 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 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.