

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

In the Matter of:)
)
)
 Signe Oakley)
)
 Petitioner.)

**PROPOSED DECISION RECOMMENDED BY THE CLAIMS HEARING
COMMITTEE IN THE ADMINISTRATIVE REVIEW OF SIGNE OAKLEY**

I. Introduction

Pursuant to 80 Ill. Admin. Code 1650.640(e), Petitioner Signe Oakley agreed with System staff that her request for administrative review would be presented to the TRS Board of Trustees' Claims Hearing Committee solely upon the record agreed to by the parties. The Claims Hearing Committee met by telephonic conference on May 9, 2002, to consider Ms. Oakley's appeal. Present were Presiding Hearing Officer Ralph Loewenstein, Committee Chairman James Bruner and Committee members Sharon Leggett and John Glennon.

Teachers' Retirement System (TRS) member Signe Oakley has filed the instant administrative review challenging the disallowance of her request to purchase eight years of optional service credit for the time she was employed by Adams County Mental Health Center (the Center), now known as Transitions of Western Illinois. The Center was and remains a "not for profit," charitable corporation, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

It is Ms. Oakley's position that she qualifies for service under 40 ILCS 5/16-127(b)(2); specifically, that part of §16-127(b)(2), which allows the purchase of optional service credit for "service during any period of professional...special education experience for a public agency within this State..." Even though Ms.

Oakley was admittedly employed by a private, “not for profit,” charitable corporation, she asks the Claims Hearing Committee to allow her service credit based upon her claim that the service was provided (1) at the request of a public agency pursuant to State statute, (2) was subject to the regulatory oversight of a public agency and (3) was funded by a public agency.

It is the System’s position that to receive service credit under the above provision, one must be directly employed as a special education professional by an Illinois public agency and that Ms. Oakley was neither a special education professional when she worked for the Center nor employed by a public agency.

After considering the Position Statements of the parties, their stipulations of fact and the agreed upon exhibits contained in the Claims Hearing Packet, the Committee’s recommendation is to uphold the staff’s determination. As will be more fully explained, the Committee finds that Ms. Oakley did not meet the test to purchase optional service under §16-127(b)(2) because she was not employed by a public agency and because Ms. Oakley’s services were performed for her employer, the Center, as a member of the Center’s staff and not for the Quincy Public Schools.

II. Findings of Fact

Based on the stipulations of the parties and the case record, the Committee makes the following factual determinations:

- 1) The Adams County Mental Health Center was not and is not a public agency. Rather, the Center was and is an Illinois not for profit corporation and an exempt organization under Section 501(c)(3) of the Internal Revenue Code (see Claims Hearing Packet pages 10, 14, 54, and 60 through 68).
- 2) Ms. Oakley was an employee of the Adams County Mental Health Center during the period of August, 1971 to June, 1979 (see Claims Hearing Packet pages 10, 14, 33, 36, 37, 38, 41, 42, 70 through 80, 83, 84, 88, 89 and 91).
- 3) The services Ms. Oakley provided were to the Adams County Mental Health Center (see Claims Hearing Packet pages 10, 14, 33, 36, 37, 37, 38, 41, 42, 70 through 80, 83, 83, 88, 89 and 91).

III. Issue to be Decided

The Claims Hearing Committee is faced with deciding the following issue in this case.

Did Ms. Oakley's employment by the Adams County Mental Health Center, a "not for profit" corporation, constitute service for a public agency under the provisions of 40 ILCS 5/16-127(b)(2)?

IV. Discussion and Analysis

It is clear from the record that Ms. Oakley was an employee of the Adams County Mental Health Center and that the Center was not a public agency. Ms. Oakley asks the Committee to look past her employment relationship to find that her service was for the Quincy Public Schools. However, where a person was employed is the test for determining eligibility to purchase optional service. Extraneous factors such as students taught or funding sources are irrelevant to the determination.

Ms. Oakley served the Center and its students. She had no relationship with the Quincy Public Schools. The District did not hire Ms. Oakley nor did the District pay her salary. The mere fact that Ms. Oakley's students may have resided in the District is irrelevant. Again, the test for purchasing optional service is whether Ms. Oakley was employed by an eligible employer as defined in §16-127(b)(2).

Ms. Oakley argues that she served students from the Quincy Public School District and that is all the statute requires. The Committee finds this argument to be unpersuasive. The Committee agrees with staff that "service" is synonymous with "employment." As this Board found in the Shirley Harris Administrative Review:

Section 16-127(b)(2) provides credit not just for service "in a capacity essentially similar or equivalent to that of a teacher or administrator," but mandates in addition that such service be performed in one of the settings specifically described in the statute. Employment by United Cerebral Palsy, or for that matter by any non-

governmental agency, is not listed in the statute as an item of optionally creditable service. The crucial element is the nature of the employer. Simply, the Board must decide whether the service was performed:

- *in public school districts in this state not included within the provisions of this System;*
- *in public school districts of any other state, territory, dependency or possession of the United States;*
- *in schools operated by or under the auspices of the United States;*
- *in schools operated under the auspices of any agency or department of any other state;*
- *during any period of professional speech correction or special education experience for a public agency within this state or any other state, territory, dependency or possession of the United States; or*
- *prior to February 1, 1951, as a recreation worker for the Illinois Department of Public Safety.*

The Board concludes that employment by United Cerebral Palsy in 1970-1973 is not included in any of the above permitted types of optional service. Neither the nature of the work performed (“essentially similar” to that of a teacher or administrator) nor the source of funding (Illinois state and federal grant funds) can transform non-covered service into covered service.

Therefore, in applying the Illinois Pension Code as enacted by the General Assembly, the Board must deny Petitioner’s request for TRS service credit for school years 1970-1973, when she was employed by United Cerebral Palsy.

Ms. Oakley also implies that she served as an independent contractor to the Quincy Public Schools. This is simply not the case. Ms. Oakley had no independent contractor relationship with the District. She was an employee of the Center, and this employment relationship negates her claim for optional service credit.

Even if Ms. Oakley were an independent contractor with the District, her claim must be denied. In the case of Falato v. TRS, 568 N.E.2d 233(1991), the First Appellate Court specifically found that a teacher employed by a private corporation who taught within a TRS-covered public school was not eligible to purchase such service under the provisions of 40 ILCS 5/16-127(b)(2). Ms. Oakley's situation is even more removed because she taught at an independently operated private school.

That "service" means employment as an employee and not as an independent contractor is further supported by the First Appellate Court's decision in Kloman v. IMRF, 220 Ill.Dec. 767(1996). In Kloman, an independently retained attorney was found ineligible to participate in the Illinois Municipal Retirement Fund as an employee. It is clear from both the Falato and Kloman cases that "service" means employment in an employee / employer relationship.

Conclusion

Based on the foregoing, the Claims Hearing Committee finds in favor of the staff in this matter. Since Ms. Oakley did not meet the "service" or "public agency" requirements of 40 ILCS 5/16-127(b)(2), the Committee does not need to address the System's argument as to whether Ms. Oakley was a special education professional.

VI. 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.