

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

In the Matter of:)
)
 LOIS BODACH,)
)
 Petitioner.)

**PROPOSED DECISION RECOMMENDED BY THE CLAIMS HEARING
COMMITTEE IN THE ADMINISTRATIVE REVIEW OF LOIS BODACH**

I. Introduction

Pursuant to 80 Ill. Admin. Code § 1650.610, *et seq.*, an administrative review hearing was held August 12, 1996, by telephone conference, to consider the appeal of Teachers' Retirement System (TRS) member Lois Bodach, challenging the staff determination denying Ms. Bodach's request to purchase three years of pregnancy leave credit under the provisions of 40 ILCS 5/16-127(b)(5)(iii).

The TRS Board of Trustees (Board), the trier of fact in this matter as provided in TRS Rule 1650.620 (80 Ill. Admin. Code § 1650.620), was represented at hearing by its Claims Hearing Committee comprised of the following Board members: Judy Tucker, Chairperson, James Bruner and Ray Althoff. Sitting as an alternate was Board member Scott Eshelman. The Committee was advised in its deliberations by Ralph Loewenstein, Independent Counsel to the Board of Trustees.

Prior to hearing, it was agreed between the Parties that Ms. Bodach's administrative review would be submitted to the Claims Hearing Committee solely upon the briefs and that oral argument would be waived.

After reviewing the briefs of the Parties and the exhibits submitted therewith, it is the determination of the Claims Hearing Committee that, since Ms. Bodach was not pregnant when she resigned her teaching position in June, 1965, she does not qualify to purchase pregnancy leave credit under the provisions of 40 ILCS 5/16-127(b)(5)(iii).

II. Relevant Statutes and Rules

In the instant case, the Claims Hearing Committee and the Board must apply 40 ILCS 5/16-127(b)(5)(iii), which states:

40 ILCS 5/16-127

Sec. 16-127. Computation of creditable service.

(b) The following periods of service shall earn optional credit and each member shall receive credit for all such service for which satisfactory evidence is supplied and all contributions have been paid as of the date specified:

(5) ... (iii) periods prior to July 1, 1983 during which a teacher ceased covered employment due to pregnancy, provided that the teacher returned to teaching service creditable under this System or the State Universities Retirement System following the pregnancy and submits evidence satisfactory to the Board documenting that the employment ceased due to pregnancy. ...

III. Issue Statements

The Parties agreed prior to hearing upon the following issue statements.

- 1) Did Lois Bodach “cease covered employment due to pregnancy” at the conclusion of the 1964-65 School Year when she resigned her teaching position with Rockford School District No. 205?
- 2) Does the phrase “ceased covered employment due to pregnancy” in 40 ILCS 5/16-127(b)(5)(iii) include within its coverage ceasing covered employment to improve the chance of becoming pregnant?
- 3) Does the phrase “ceased covered employment due to pregnancy” mean ceased covered employment due to the state of pregnancy (i.e., being pregnant at the time the member ceased covered employment)?

The Claims Hearing Committee finds these to be accurate statements of the issues to be resolved in this matter.

IV. Statement of Facts

Prior to hearing, the Parties stipulated to the following facts, which the Committee adopts as the facts of the case.

- 1) In the 1964-65 School Year, Ms. Bodach was employed as a teacher in the Rockford Public School System, District No. 205.
- 2) In June of 1965, at the conclusion of the 1964-65 School Year, Ms. Bodach resigned her teaching position with District No. 205.
- 3) Ms. Bodach was not pregnant at the time she resigned her teaching position in June of 1965.
- 4) Ms. Bodach was having difficulty becoming pregnant and was advised by her physician, Dr. Stephenson, to cease teaching to improve her chances of becoming pregnant.
- 5) Ms. Bodach delivered her first child July 27, 1966.
- 6) Ms. Bodach's second child was born October 13, 1967.
- 7) Ms. Bodach's third child was born September 6, 1973.
- 8) Ms. Bodach did not return to teaching until the 1979-80 School Year.

V. Positions of the Parties

40 ILCS 5/16-127(b)(5)(iii) allows TRS members to purchase optional service for:

... periods prior to July 1, 1983 during which a teacher ceased covered employment due to pregnancy, ... (Emphasis added).

It is Ms. Bodach's position that the phrase "ceased covered employment due to pregnancy" should be interpreted to include ceasing covered employment to become pregnant.

It is TRS' position that § 16-127(b)(5)(iii) requires a member to have been pregnant at the time covered employment ceased or to have left employment due to complications arising out of a pregnancy.

VI. Discussion and Analysis

It is a cardinal rule of statutory construction that the words used in a statute be given their plain and ordinary meaning. As stated in Potts v. Industrial Commission, 46 Ill. Dec. 172, 413 N.E.2d 1285 (1980):

In construing the intent of the legislature, we must look to the language of the statute (Totten v. State Board of Elections (1980), 79 Ill.2d 288, 291, 38 Ill.Dec. 137, 403 N.E.2d 225), and that language should normally be given its ordinary meaning (Peoria Savings & Loan Association v. Jefferson Trust & Savings Bank (1980), 81 Ill.2d 461, 468, 43 Ill.Dec. 712, 410 N.E.2d 845). (Potts at p. 174).

“Pregnancy” is defined in Webster’s Third New International Dictionary as “the condition of being pregnant; the state of being with young; gestation.” “Pregnant” is defined as “containing unborn young within the body.”

Based upon Potts, the Committee finds that § 16-127(b)(5)(iii) requires a member to have been pregnant (i.e., being with young; gestating) to be eligible to purchase optional service under the provisions of 40 ILCS 5/16-127(b)(5)(iii). Since Ms. Bodach was not pregnant when she resigned her teaching position in June 1965, she does not qualify for credit thereunder.

As further stated in People v. Kerans, 59 Ill.Dec. 225, 431 N.E.2d 726 (1982):

The primary rule in the interpretation and construction of statutes is that the intention of the legislature should be ascertained and given effect. Legislative intent is derived primarily from the language used in the statute. (Certain Taxpayers v. Sheahan (1970), 45 Ill.2d 75, 256 N.E.2d 758.) Where the language is certain and unambiguous, there is no need for judicial interpretation or construction (Illinois Racing Board v. Arlington Park Thoroughbred Race Track Corp. (1979), 76 Ill.App.3d 289, 32 Ill.Dec. 146, 395 N.E.2d 93.) and the only

legitimate function of the courts is to enforce the law as enacted (Certain Taxpayers v. Sheahen, 256 N.E.2d at 764). As the supreme court has recently stated in People v. Haron (1981), 85 Ill.2d 261, 52 Ill.Dec. 625, 628, 422 N.E.2d 627, 630:

“*** it is not our function to declare that the General Assembly did not mean what the plain language of the statute imports, ***.”

It is a reviewing court’s duty to interpret the statute as it is, regardless of the court’s own opinion as to the desirability of the result from that interpretation. People v. McCoy (1975), 29 Ill.App.3d 601, 332 N.E.2d 690. (Kerans at p. 227).

The Committee is constrained by the plain language of § 16-127(b)(5)(iii) and must enforce the statute as written. The desire to become pregnant is not a predicate to purchasing pregnancy leave optional service.

Ms. Bodach asks the Committee to read § 16-127(b)(5)(iii) as if it stated:

... periods prior to July 1, 1983 during which a teacher ceased covered employment due to pregnancy or to attempt to become pregnant ...

However, as stated in Western Nat. Bank of Cicero v. Village of Kildeer, 167 N.E.2d 169 (1960):

Courts will not inject provisions not found in the statute however desirable they may appear to be. People ex rel. Honefenger v. Burris, 408 Ill. 68, 95 N.E.2d 882; People ex rel. Bondurant v. Marquiss, 192 Ill. 377, 61 N.E. 352. (Western Nat. Bank at p. 173).

The Committee is without authority to read the words into § 16-127(b)(5)(iii) necessary to grant the relief sought by Ms. Bodach.

VII. Conclusion

Based upon the foregoing, it is the Claims Hearing Committee’s recommendation that the staff decision to deny Ms. Bodach’s claim for pregnancy leave credit be upheld.

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.