

On February 6, 2007, Ms. C. met with Pete Fisher of the Division of Retirement and Benefits to plan her retirement. Based on PERS records and information she provided, Fisher produced a projection under which Ms. C. would end her service July 31, 2007 with 30.06 years of service and begin receiving normal retirement benefits on August 1, 2007.³ The amount of credited service was based on what had been reported to the system by the employer, but was subject to verification. There is no evidence that Fisher made any promises or guarantees to Ms. C. about the service she had accrued.

Leave without pay reduces the amount of credited service for retirement. Fisher gave Ms. C. a Verification of Salary and Service form, which she took to her employer. In April, she received the form back from the municipality. In the blanks where leave without pay should be recorded, the municipality entered “Ø”.⁴ Ms. C. delivered the form to Fisher. The form did not provide any basis to alter his retirement projection.

Ms. C. applied for retirement on June 26, 2007, including with her application a copy of the municipality’s verification.⁵ The division scheduled her retirement to be effective August 1, 2007, noting that her credited service was subject to “verification.”⁶

Ms. C.’s last day of credited service was July 24, 2007, five business days before the end of the month. She took five days of terminal leave thereafter (terminal leave does not count toward service).

As it happens, on July 24, 2008 Ms. C. was six eight-hour days short of 30.0 years of service. This fact came to light when, on September 14, 2007, the municipality submitted a new Verification of Salary and Service form showing 160.47 hours of leave without pay in 1995.⁷ The 1995 leave reduced her credited service from the 30.06 years calculated by Fisher to 29.98 years.⁸ Accordingly, she was appointed to early retirement rather than normal retirement, with a benefit substantially lower than Fisher’s projection.⁹

Ms. C. had not been aware of the 1995 leave without pay as a service credit issue because of the way the leave came about. The leave appears to have involved a reduction in hours for

³ R. 39-40.

⁴ R. 38.

⁵ R. 29, 6.

⁶ R. 28.

⁷ R. 26. This September 14 verification seems to have been submitted in response to a request from a PERS technician faxed to the municipality on August 5, 2007. The inquiry sought a response within ten days. Hearing Ex.

1. Had the response been provided in the time requested, some or all of Ms. C.’s losses may have been avoided.

⁸ R. 23.

⁹ *Id.*

which she received short-term disability payments. It was not obvious that her credited service would be altered by this period of partial disability.

As soon as the shortage in credited service came to light, the division notified her and the municipality of the problem.¹⁰ All parties appear to have concluded readily that the solution was to bring Ms. C. back to work for at least seven days. The reemployment was slightly delayed by a transition between directors that was then underway in the department she had worked for, but on October 18, 2007 she went back on the municipality's payroll for ten days. This enabled her to re-retire on November 1, 2007 with normal benefits, relinquishing any benefits under the voided early retirement.¹¹ The municipality covered her medical insurance for the period in which she was in neither employment nor retirement status.¹²

III. Discussion

It is not disputed in this case that on July 24, 2007, her last day of creditable service prior to the October reemployment, Ms. C. lacked the thirty years of service needed for normal retirement. Had she continued to work until she had the full thirty years she needed, her last day of service would have been August 1, 2007 or later, and she could have been eligible to receive a normal retirement benefit as early as September 1, 2007.¹³ Her monthly normal retirement benefits could therefore have commenced two months sooner than they ultimately did. Her losses from the unfortunate misunderstanding detailed above are therefore two months of benefits plus cost of living allowances, or approximately \$6762.10.¹⁴

The basis under which PERS might be responsible for such a loss is the doctrine of equitable estoppel, which can come into play when an employee has reasonably acted in reliance on misinformation provided by the Division of Retirement and Benefits. To be able to recover under this doctrine, Ms. C. would have to prove each of the following elements:

- (1) the governmental body asserts a position by conduct or words;
- (2) the private party acts in reasonable reliance thereon;
- (3) the private party suffers resulting prejudice; and
- (4) the estoppel serves the interest of justice so as to limit public injury.¹⁵

¹⁰ R. 18, 44-47.

¹¹ R. 8-9.

¹² R. 45. Ms. C. testified that the municipality did this because it recognized it had made an error.

¹³ See AS 39.35.370(e). She could not have completed her eligibility in July, and therefore under no circumstances—even if there had been no errors by anyone—could she have received a normal retirement benefit for August.

¹⁴ Two monthly benefits of \$3073.68 plus two COLAs of \$307.37. See R. 8.

¹⁵ *Crum v. Stalnacker*, 936 P.2d 1254, 1256 (Alaska 1997) (applying estoppel against the government test in a Teachers' Retirement System case).

In this case, however, the first element was not met: the division never asserted a position regarding the amount of service Ms. C. would have on a given date. It simply projected her benefits on the basis of the information supplied to it. It was the municipality that asserted a position through the erroneous Verification of Salary and Service form, not the division.

IV. Conclusion

The Division of Retirement and Benefits correctly determined that Ms. C. lacked thirty years of credited service on July 24, 2007, and it is not estopped to apply that determination. The Administrator’s decision of December 3, 2007, rejecting Ms. C.’s request to have her benefits effective prior to the date she actually met the eligibility requirements for normal retirement, is affirmed.

DATED this 29th day of March, 2008.

By: Signed
Christopher Kennedy
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 39.35.006. The undersigned, in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.

DATED this 27th day of April, 2008.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

[This document has been modified to conform to technical standards for publication.]