

**BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS**

In the Matter of: )  
R.J. )  
\_\_\_\_\_ ) Div. R & B No. 2008-005

**ORDER ON SUMMARY ADJUDICATION**

**I. Introduction**

R.J. appeals a decision of the administrator issued on January 23, 2008, affirming a decision issued on September 19, 2007, to categorize certain periods of his employment as temporary service instead of membership service. Upon further investigation, the Division of Retirement and Benefits ("the division") determined that Mr. J. was correct, and that the administrator's decision had been in error. The division moved to dismiss the case; Mr. J. objected, arguing for a final decision on the merits. The parties then agreed that summary adjudication in Mr. J.'s favor was an appropriate resolution, and they jointly moved on the record that the case be resolved in this manner. The parties' motion for summary adjudication is granted. The periods of employment in question shall be regarded as membership service.

**II. Facts**

The facts are not in dispute. The division prepared a summary of the facts on April 24, 2008, that it submitted to the record. This summary, quoted below in its entirety, accurately states the facts:

R.J. is currently a PERS member employed by the Fairbanks North Star Borough (FNSB). Periodically between July 18, 1988, and August 9, 1993, he worked for the FNSB in a position the employer, at the time, excluded from PERS. In a 1993 audit the division questioned the employer's exclusion of several positions. In response the employer submitted additional information about employees filling these positions. R.J. was one of those employees.

In a memorandum dated September 9, 1994, the FNSB provided information about 10 of the employees in question. In a letter dated March 9, 1995, the employer provided information about two remaining employees. This second letter included information about Mr. J. and his employment between July 18, 1988, and August 9, 1993. In response, the division wrote a letter to Mr. J. dated July 27, 1995, informing him of his retroactive enrollment in PERS from July 18, 1988, to August 9, 1993. All FNSB employees reported to the division in these two correspondences were treated in the same manner (i.e., retroactive enrollment in PERS for the time the FNSB had previously excluded from PERS). In response, Mr. J. provided employee contributions and the FNSB provided employer contributions for the retroactive enrollment.

On January 24, 2007, the division received a verification of service form from the FNSB for Mr. J. The form identified Mr. J.'s employment from 1988 to 1993 as temporary time and claimed he did not enter PERS until August 10, 1993. The details of the 1993 audit (and subsequent retroactive enrollment) were unknown at the time and the division corrected Mr. J.'s service history in accordance with the information provided by the employer on the verification of service form. Mr. J. was notified of the correction and told he could claim the time as temporary service.

Mr. J. did not agree with the division's adjustment and wrote a letter dated October 3, 2007, requesting his service be reinstated consistent with the 1995 retroactive enrollment. His letter referred to his employer's provision of employment records in 1995 and identified Kay Gouyton, division auditor, as one of the individuals involved in the situation. Relying on the information provided on the verification of service and the division records archived on microfiche, a response was sent on January 23, 2008, under the administrator's signature, upholding the change and granting appeal rights to Mr. J. should he wish to pursue the matter with OAH. He submitted an appeal form on February 27, 2008, and the matter was transmitted to OAH.

As part of the appeal preparation process the 1993 audit records were reviewed and the matter was brought to the attention of Kay Gouyton. Through this research it was determined the 1995 retroactive enrollment was done correctly and the subsequent correction in 2007, which reversed that enrollment, was done in error.

The total amount of service time that Mr. J. accumulated during the period in question is 1.27213 years. If the time is counted as temporary service time, it will positively affect Mr. J.'s retirement payment, but it will not affect certain other factors, the most significant being the point at which Mr. J. becomes eligible for retirement. If the time is counted as membership time, Mr. J. will be eligible to retire sooner.

### **III. Discussion**

The parties have jointly moved for summary adjudication. In an administrative adjudication, an evidentiary hearing is not required when there is no dispute over the facts that are material to the issues raised in the case.<sup>1</sup> Because there are no material issues of fact in dispute, summary adjudication is appropriate.

While this case has the appearance of a legal dispute, the issue is actually factual: whether the employer had categorized Mr. J.'s periodic employment as membership or temporary service. There has been no dispute in this case about whether the time *should* be regarded as one or the other kinds of service, or what the result of the categorization would be. The legal issues that determine whether the time should be temporary or membership service

<sup>1</sup> 2 A A C 64.250; *Douglas v. Alaska*, 880 P.2d 113 (Alaska 1994); *Church v. Alaska*, 973 P.2d 1125 (Alaska 1999).  
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have been addressed and resolved by the employer. The question in this case has simply been what the employer concluded. Because the parties now agree that the service time in question has been correctly identified by the employer as membership time, there are no further issues to be resolved.

**IV. Conclusion**

The parties' motion for summary adjudication is granted. The parties are in agreement that Mr. J.'s accumulated service for periods between July 18, 1988, and August 9, 1993 are properly credited as membership time. The division shall adjust Mr. J.'s account accordingly.

DATED this 18th day of July, 2008.

By: Dale Whitney  
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 18th day of August, 2008.

By: Dale Whitney  
Administrative Law Judge

The undersigned certifies that this is a true and correct copy of the original and that on this date an exact copy of the foregoing was provided to the following individuals:

Case Parties  
8/18/08