

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS**

In the Matter of: )  
 )  
 N C )  
\_\_\_\_\_ )

OAH No. 14-1706-TRS  
Agency No. 2014-012

**DECISION**

**I. Introduction**

K C retired as a member of the Teachers’ Retirement System (TRS) in 1987. He died in March 2013, leaving behind his wife, N C. Ms. C then began receiving a 50% surviving spouse’s retirement pension under the 1% supplemental contribution program. In July 2014, Ms. C notified TRS that she believed she should be receiving a 75% pension rather than 50%. TRS declined to change her retirement benefits.

Ms. C appealed, arguing that Mr. C’s retirement application elected a 75% survivor option, rather than the 50% surviving spouse option.

TRS filed a motion for summary adjudication, which was denied. The case went to evidentiary hearing on January 7, 2015.

This decision finds that Mr. C made a specific election for Ms. C to receive a 50% surviving spouse’s retirement pension under the 1% supplemental contribution program when he applied for retirement. Ms. C’s appeal is denied.

**II. Background Facts<sup>1</sup>**

N C is the widow of K C, a member of the Teachers’ Retirement System (TRS). Mr. C began his participation in TRS in 1969.<sup>2</sup> At that time, the applicable statutes provided that the spouse of a retired person, who elected the 1% supplemental contribution option, and who had made those contributions for a one-year period prior to his death, would receive full retirement benefits and the surviving spouse would receive a 50% spouse’s pension after his death.<sup>3</sup> On July 1, 1977, the law changed and increased the minimum contribution period to five years.<sup>4</sup>

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<sup>1</sup> The following facts were established by a preponderance of the evidence.

<sup>2</sup> Ex. 1 (Division Motion for Summary Adjudication).

<sup>3</sup> Former AS 14.25.055 and AS 14.25.164 (*See* Ex. A, pp. 3 – 4 for a copy of the versions of those statutes in effect in 1969, when Mr. C’s participation in TRS began). *Also see* Ex. B, p. 5 (1973 TRS Information Handbook); Ex. C, p. 5 (1973 - 1974 TRS Information Handbook); Ex. D, pp. 2, 5 (1975 TRS Information Handbook); Ex. E, pp. 2, 5 (TRS Information Handbook effective July 1, 1976).

<sup>4</sup> Larry Davis’s testimony; AS 14.25.164 (*See* Ex. F, p. 9 for a copy of the statute revision that took effect on July 1, 1977). The five-year minimum contribution period has been retained in the applicable statute, AS 14.25.164(a), since 1977.

This change was reflected in the TRS Information Handbooks beginning in 1980.<sup>5</sup> The minimum five-year contribution period has not changed since 1977.

Mr. C married N (T) C on August 27, 1982.<sup>6</sup> Although he had previously declined participation in the supplemental contribution program,<sup>7</sup> Mr. C elected the supplemental contribution option effective October 21, 1982.<sup>8</sup> That retirement planning option could only be revoked or waived in writing.<sup>9</sup> Mr. C did not subsequently revoke or waive the supplemental contribution option.<sup>10</sup>

Mr. C applied for retirement in April 1987, indicating that he was intending to retire effective July 1, 1987. The retirement application form Mr. C completed contained two options for survivor benefits as follows:

- I have contributed to the 1% supplemental contribution program and I am entitled to continuing survivor benefits.
- I have not participated in the 1% supplemental contribution program and elect the survivor benefit I have initialed below:
  - 75 % Joint Survivor Option  50% Joint Survivor Option  66<sup>2</sup>/<sub>3</sub> Last Survivor Option<sup>11</sup>

Mr. C selected the first option, checking the box indicating that he had contributed to the 1% supplemental contribution program. However, he circled the language “I am entitled to” and directly above the circled language, he handwrote “? Married short of 5 yrs.” He did not select the second option, which would have indicated that he had not participated in the 1% supplemental contribution program. He also checked the box, which was only available to someone who had not participated in the 1% supplemental contribution program, electing a 75% Joint Survivor Option. His elections showed as follows:

- I have contributed to the 1% supplemental contribution program and **I am entitled ? Married short of 5 years** to continuing survivor benefits.
- I have not participated in the 1% supplemental contribution program and elect the survivor benefit I have initialed below:
  - 75 % Joint Survivor Option  50% Joint Survivor Option  66<sup>2</sup>/<sub>3</sub> Last Survivor Option<sup>12</sup>

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<sup>5</sup> Ex. G, pp. 5 – 6 (July 1, 1980 TRS Information Booklet); Ex. H, p. 6 (May 1, 1983 TRS Information Booklet); Ex. I, p. 4 (April 1, 1985 TRS Information Booklet); Ex. J, p. 4 (July 1, 1986 TRS Information Handbook).

<sup>6</sup> Ex. 3 (Division Motion for Summary Adjudication).

<sup>7</sup> Ex. 2 (Division Motion for Summary Adjudication).

<sup>8</sup> Agency Record, p. 33.

<sup>9</sup> AS 14.25.055.

<sup>10</sup> Larry Davis’s testimony.

<sup>11</sup> Agency Record, p. 16.

Ms. C did not help her husband fill out the retirement application. She was unable to recall whether she had discussed the retirement application with him.<sup>13</sup>

After the Division of Retirement & Benefits (Division), which handles the day to day administration of TRS, received Mr. C's retirement application, it sent him a form letter, dated April 30, 1987, notifying him that his retirement would be effective July 1, 1987. That form letter contained handwritten language in the "Additional comments" section stating that "[y]our benefit will reflect the 1% supplemental option. You have contributed for the required amount of time. The spouse's pension is not spouse specific."<sup>14</sup> A copy of an employee handbook page, stating that the required contribution period was one year, was attached to that letter.<sup>15</sup>

The Division then sent Mr. C another letter, dated July 14, 1987, informing him that his normal monthly benefit amount was \$1,625.98, and that it would increase to \$1,711.36 effective January 1, 1988.<sup>16</sup> That same letter notified him:

Because you participated in the 1% supplemental option, your spouse and dependent children will be eligible for a survivor's allowance in the event of your death. . . . A spouse's pension equal to 50% of the retirement benefit you were receiving will be paid to your spouse when there are no dependent children.<sup>17</sup>

Mr. C began receiving full retirement benefits beginning in July 1987. In November 2006, Mr. C inquired regarding the amount of his wife's benefits if he passed away. The Division notified him that the base retirement would reduce from \$1,711.27 to \$855.68, and the post-retirement pension adjustment amount (PRPA) would be reduced from \$939.69 to \$469.97.<sup>18</sup> There is no evidence in the record showing that Mr. C objected to, or responded in any manner to, any of TRS's correspondence.

Mr. C passed away on March 26, 2013. When Mr. C passed away, he was receiving \$3,318.51 in retirement benefits (\$1,711.27 base pay, COLA \$171.13, and \$1,256.11 PRPA).<sup>19</sup> On April 11, 2013, the Division wrote Ms. C and notified her that her monthly benefit amount would consist of a survivor's benefit of \$855.68 and a PRPA of \$628.09, representing a 50%

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<sup>12</sup> The boldface language is the language circled by Mr. C on the application form. The italicized language is the language handwritten in by Mr. C on the application form. See Agency Record, p. 16.

<sup>13</sup> Ms. C's testimony on this point was that she did not help Mr. C fill out the application. When asked if she discussed it with him, she did not answer the question directly, but stated that Mr. C had been a bachelor for a long time prior to their marriage and was used to doing things for himself. She also thought that he had filled the application out while he was at work. Hearing Recording at 34:50 – 36:00.

<sup>14</sup> Agency Record, pp. 24, 26.

<sup>15</sup> Agency Record, pp. 26 – 27.

<sup>16</sup> Agency Record, pp. 29 – 30.

<sup>17</sup> Agency Record, p. 30.

<sup>18</sup> Agency Record, pp. 35 – 36.

survivor benefit. In addition, she was also potentially eligible for an Alaska COLA payment.<sup>20</sup> Ms. C wrote to the Division on July 19, 2014, claiming that she should be receiving 75% of Mr. C's retirement rather than 50%.<sup>21</sup> The Division denied Ms. C's claim that she should be receiving 75%.<sup>22</sup> Ms. C then filed this appeal.<sup>23</sup>

### III. Discussion

When Mr. C applied for retirement in 1987, he had two mutually exclusive options to provide for his wife. The first was to continue with the supplemental contribution option, which he had elected in 1982, and which he had not waived or revoked. The other was to select a reduced benefit for his lifetime and with his surviving spouse to receive a fixed percentage (75%, 66 $\frac{2}{3}$ %, or 50%) of that reduced benefit for her lifetime; this option is not available to a person who elected to participate in the supplemental contribution option.<sup>24</sup> Mr. C could therefore (1) elect to receive his full retirement payment, and for his wife to receive 50% of that retirement payment as a surviving spouse, because he had participated in the supplemental contribution program, or (2) elect to receive a reduced retirement payment in return for his wife receiving a certain percentage of that reduced retirement payment. However, in order to elect the second option, which would allow his spouse to receive 75% of his reduced retirement payment, Mr. C would have first had to revoke or waive his election to participate in the supplemental contribution program.

Mr. C did not revoke or waive his election to participate in the supplemental contribution program. A strict construction of the applicable statutes would therefore mean that Ms. C is completely precluded from seeking to change her retirement payment amount from the 50% of Mr. C's unreduced retirement payment, the supplemental contribution option, to 75% of what would have been Mr. C's reduced retirement payment. However, Mr. C's completion of the retirement application form, with its dual indications that he was a participant in the supplemental contribution program and that he wished to select the 75% surviving spouse option gives rise to a factual question regarding Mr. C's intent.

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<sup>19</sup> Ex. 9, p. 13 (Division Motion for Summary Adjudication).

<sup>20</sup> Ex. 7, p. 1 (Division Motion for Summary Adjudication).

<sup>21</sup> Agency Record, p. 9.

<sup>22</sup> Agency Record, pp. 6 – 7.

<sup>23</sup> Agency Record, p. 2.

<sup>24</sup> AS 14.25.167(a). "Benefits payable under this section are in place of benefits payable under . . . AS 14.25.164." AS 14.25.164(b) is the statute that authorizes a 50% retirement benefit payment to the surviving spouse of a member who has participated in the supplemental contribution program.

Mr. C's application, with its circled language of "I am entitled" followed by "? married short of 5 yrs" shows that it is more likely than not that he was aware that, as of the time of his retirement application, there was a minimum five-year contribution period, and that he was uncertain as to whether he qualified for the 1% supplemental contribution option. Given Mr. C's uncertainty regarding whether he qualified for the 1% supplemental contribution option, it is more likely than not that election of the 75% joint survivor option, an option not available to someone who had participated in the 1% supplemental contribution program, was Mr. C's backup plan, and his primary choice was the election of the 1% supplemental contribution plan. There is no contrary evidence in the record, including Ms. C's testimony, from which to infer that Mr. C's intent was otherwise. There is further factual support for this conclusion in that the record does not contain any evidence that Mr. C either objected to, or responded in any manner to, any of TRS's correspondence regarding his placement in the 1% supplemental contribution option retirement category. Because Mr. C intended to select the supplemental 1% contribution plan option for his retirement, TRS's action in providing Ms. C, his surviving spouse, a 50% surviving spouse retirement pension, rather than a 75% joint survivor pension, is upheld.<sup>25</sup>

#### **IV. Conclusion**

Ms. C is the party who requested the hearing to challenge her receipt of a 50% surviving spouse's retirement pension. As the requesting party, she has the burden of proof by a preponderance of the evidence.<sup>26</sup> She did not satisfy her burden. Instead, the evidence shows that it is more likely than not that Mr. C intended to select a 50% surviving spouse's retirement benefit option. Ms. C's appeal is therefore denied.

DATED this 6<sup>th</sup> day of February, 2015.

By: Signed  
Lawrence A. Pederson  
Administrative Law Judge

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<sup>25</sup> Ms. C raised an equitable estoppel argument. TRS raised a laches argument. It is not necessary to address either of those arguments, inasmuch as this decision makes a factual finding regarding Mr. C's intent which is fully dispositive. Nonetheless, it should be noted that there is no express or implicit erroneous representation by the Division on which an estoppel could be established.

<sup>26</sup> 2 AAC 64.290(e).

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 6<sup>th</sup> day of March, 2015.

By: Signed  
Signature  
Lawrence A. Pederson  
Name  
Administrative Law Judge  
Title

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