

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS**

In the Matter of )  
 )  
F D ) OAH No. 17-1040-TRS  
 ) Agency No. 2017-011  
\_\_\_\_\_ )

**NOTICE TRANSMITTING FINAL DECISION**

Attached is the administrative law judge’s decision in this matter, which became the final agency decision on May 14, 2018 by operation of AS 44.64.060(f).

Judicial review of the 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 after the decision is mailed or otherwise distributed.

DATED June 7, 2018

By: Signed \_\_\_\_\_  
Law Office Assistant  
Office of Administrative Hearings

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**DECISION**

**I. Introduction**

F D retired as a member of the Teachers’ Retirement System (TRS) with 174 days of unused sick leave. By statute, he was entitled to receive TRS service credit for his unused leave if the Division of Retirement and Benefits (Division) received his verified application within twelve months of his appointment to retirement. The application required Mr. D’s last employer, the Matanuska-Susitna Borough School District, to certify his unused sick leave balance.

Mr. D provided the relevant *Claim and Verification of Unused Sick Leave Credit* form to the school district, as required by the Division’s procedure. The school district assured him on two occasions that it would complete and submit the form to the Division on his behalf, as it routinely did for retiring teachers. More than fifteen months after his appointment to retirement, Mr. D learned the Division never received his application. He then submitted a new application, which the Division denied as untimely.

On appeal, the parties agree the Division did not receive Mr. D’s application for unused sick leave credit within one year of his appointment to retirement. Mr. D argued that, under the circumstances, fairness requires the Division to accept his late application and authorize TRS benefits he had earned and was otherwise entitled to receive.

This decision concludes that the Division cannot accept the late-filed application. It has no authority to waive the statutory one-year deadline, and Mr. D did not show that the doctrine of equitable estoppel requires a different result. Although he reasonably relied on the school district’s assurances that it would submit the form on his behalf, the school district’s conduct cannot be attributed to the Division. Therefore, estoppel does not apply and the Division’s decision is affirmed.

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

The Commissioner of Administration is the administrator of TRS.<sup>2</sup> The Division manages TRS on behalf of the Commissioner and for the benefit of participating teachers and

administrators employed in public schools in Alaska.<sup>3</sup> Upon retiring, eligible teachers may receive TRS service credit for their unused sick leave, thereby increasing their retirement benefits.<sup>4</sup> Unused sick leave of 172 days is credited as one full year of TRS service.<sup>5</sup>

F D worked in a TRS-eligible position for twenty-seven years as a teacher for the Matanuska-Susitna Borough School District.<sup>6</sup> He retired after the 2014-2015 school year. During his career, Mr. D made it a goal to retire with a full year of unused sick leave which, if claimed for TRS service credit, would increase his annual pension benefit by approximately 2.5%.<sup>7</sup> To achieve this goal, Mr. D made a number of personal sacrifices. In his last year of work, for example, he cut short the time he spent with his ailing father in order to assure his sick leave balance would total at least 172 days.<sup>8</sup> He also used personal leave before sick leave, a strategy that involved a financial trade-off because unused personal leave can be reimbursed at retirement while unused sick leave is only creditable for TRS service.<sup>9</sup> Mr. D's efforts were successful, and he retired with 174 days of unused sick leave.<sup>10</sup>

Mr. D carefully prepared for his retirement, meeting with Division retirement counselors on three separate occasions: July 11, 2012; August 2, 2013; and March 16, 2015.<sup>11</sup> At each appointment, the counselors provided accurate information regarding the requirements for receiving unused sick leave service credit.<sup>12</sup> As a result of these meetings, Mr. D agrees he understood the importance of submitting the unused sick leave claim form to the Division within one year of retirement.<sup>13</sup>

In preparing to retire, Mr. D received a packet of documents that included a retirement application, retirement application instructions, and the unused sick leave application, entitled *Claim and Verification of Unused Sick Leave Credit*. Unused sick leave claims are initiated by a separate form because the Division does not administer the statute regarding transfer of a

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<sup>1</sup> This matter was submitted for decision on the written record, as permitted by 2 AAC 64.260(a)(2). The material facts are undisputed.

<sup>2</sup> AS 14.25.003.

<sup>3</sup> AS 14.25.001, .004.

<sup>4</sup> See AS 14.25.115; 4 AAC 15.040(a)(5).

<sup>5</sup> 2 AAC 36.290(d).

<sup>6</sup> D Exhibit 1; Record, pp. 14, 35.

<sup>7</sup> Mr. D calculated that his increased TRS benefit would total nearly \$1,700 per year. Record, pp. 10-13; D Opening Br. and Exhibits 4, 6.

<sup>8</sup> See Record, p. 11-12.

<sup>9</sup> Record, p. 12; 4 AAC 15.040(a)(5).

<sup>10</sup> Record, pp. 14, 35.

<sup>11</sup> Record, pp. 63-65.

<sup>12</sup> Record, pp. 10, 63-65.

<sup>13</sup> Record, pp. 10-13.

teacher's unused sick leave from one school district to the next, so it has no direct access to that information.<sup>14</sup>

The six-page retirement application itself does not address unused sick leave.<sup>15</sup> However, the instructions to the retirement application explain the process for claiming unused sick leave credit. They state in relevant part:

**VI. Unused Sick Leave Credit.** Be sure to send the Supplemental Claim form to your employer for verification. . . . **It is your responsibility to ensure your employer completes the form and submits it to the Division within one year of your retirement date.** Alaska Statute prohibits the crediting of unused sick leave claims received more than one year after your retirement date.<sup>16</sup>

The "Supplemental Claim form" referenced above is the *Claim and Verification of Unused Sick Leave Credit*, which contains two sections. The top section requires the teacher's information and signature, certifying the request for TRS credit as well as the teacher's understanding of the one-year deadline and the timing at which benefit payments begin. The certification block closes with the bolded statement, "**I understand it is my sole personal responsibility to claim my unused sick leave.**"<sup>17</sup> The bottom section of the form must be completed by the teacher's last employer, who is required to verify the employee's name, unused sick leave balance, dates of employment and employer/school district.<sup>18</sup>

On his last work day with the Mat-Su Borough School District, Mr. D took the *Claim and Verification of Unused Sick Leave Credit* form and other retirement papers to the school district office. He wanted to make sure the form was completed and turned in early. He asked an employee in the human resources department to sign and verify his 174 days of unused sick leave, thereby enabling Mr. D to send the form to the Division in Juneau.<sup>19</sup> The employee responded that the school district could not verify unused sick leave until Mr. D's final pay period closed. The worker assured Mr. D that, once the payroll department provided the

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<sup>14</sup> See Record, p. 61.

<sup>15</sup> See, e.g., Record, pp. 42-47.

<sup>16</sup> Record, p. 48 (emphasis in original).

<sup>17</sup> See Record, pp. 14, 35.

<sup>18</sup> Record, pp. 14, 35. The record also includes other informational materials that provide general information to teachers about the unused sick leave credit. The most detailed of these is a January 2013 Division brochure entitled "Your Retirement Benefit Projection," which briefly outlines eligibility requirements and states, "You are responsible for providing the unused sick leave claim form to your employer, assuring that it is completed, and for the form's timely submission to the Division of Retirement and Benefits." Record, p. 52. Other materials explain the credit but are not explicit as to who is responsible for submitting the form to the Division. See Record, p. 54 (TRS Retirement Application Section IX, dated January 2012); Record, pp. 56-61 (TRS Information Handbook dated 2011).

<sup>19</sup> Record, pp. 3, 10-12, 17, 23-24.

necessary information, the school district would verify his unused sick leave and submit the form to the Division on his behalf. Relying on the worker's assurance that this was standard procedure and the school district routinely handled all retiring teachers' unused sick leave forms, Mr. D left his form with the human resources department.<sup>20</sup>

On June 29, 2015, the Division received Mr. D's retirement application. It specified a retirement date of July 1, 2015.<sup>21</sup> On July 24, 2015, it sent Mr. D a notice confirming his appointment to retirement, effective July 1, 2015, and summarizing his TRS retirement benefits.<sup>22</sup> The notice cautioned, "Please read this carefully. If you think there is an error or that you may have selected a benefit that is not listed in this letter, contact the Division of Retirement and Benefits immediately."<sup>23</sup> On the subject of unused sick leave, the notice advised that the Division had not received a *Claim and Verification of Unused Sick Leave Credit* form. It stated in relevant part:

Your *Claim and Verification of Unused Sick Leave Credit* has not been received. If you wish to receive credit for your unused sick leave, your claim must be verified and received by us within one year from your retirement effective date.<sup>24</sup>

Mr. D responded almost immediately. He called the Division on July 28, 2015, to inquire about the unused sick leave credit.<sup>25</sup> The Division confirmed it had not received an application, and it advised him to contact the Mat-Su Borough School District to confirm if and when the school district had sent it.<sup>26</sup>

Mr. D then followed up with the school district. School district staff again assured him the form was being completed and the school district would submit it to the Division. He was told not worry about it; it was being taken care of.<sup>27</sup> The Division does not dispute this summary of the school district's statements, and they are accepted as more likely than not true.<sup>28</sup>

Trusting that the school district had fulfilled its promise, Mr. D did not contact either the school district or the Division again for more than a year. He explained this delay as reasonable because he trusted in the school district's assurances and expertise. He also knew his monthly

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<sup>20</sup> Record, pp. 10-12, 17, 23-24. Other cases have noted that, more often than not, it is the employer who submits the completed form. See *In re R.D.C.*, OAH No. 09-0682-TRS, p. 2 (Office of Administrative Hearings 2010) (citing testimony of Kathy Lea, Retirement Benefits Manager).

<sup>21</sup> Record, p. 42.

<sup>22</sup> Record, pp. 39-40.

<sup>23</sup> Record, p. 39 (emphasis omitted).

<sup>24</sup> Record, p. 40.

<sup>25</sup> Record, pp. 8, 23; Division Exhibit A.

<sup>26</sup> Record, pp. 8, 23; Division Exhibit A.

<sup>27</sup> Record, pp. 3, 10-12, 17, 23-24.

<sup>28</sup> Division brief, p. 9 (Division does not dispute any of the facts presented by Mr. D).

retirement checks would not reflect an added TRS benefit for a full year, because payments only begin after a period of time equal to the unused sick leave balance has passed, so his unchanged pension checks caused no concern.<sup>29</sup>

When he did not see a benefit adjustment in his August and September 2016 pension checks, Mr. D realized there may have been a problem. He contacted the Division on or around October 11, 2016, to inquire why he was not receiving compensation for 174 days of unused sick leave, despite having waited the requisite year. A Division benefits technician explained that the Division had not received an application for unused sick leave credit.<sup>30</sup>

Mr. D responded that the form had been submitted by his employer. The technician then contacted the Mat-Su Borough School District to request assistance locating the document.<sup>31</sup> The school district responded that it did not have an unused sick leave claim form on file for Mr. D.<sup>32</sup> With the technician's encouragement, it created a new form on October 14, 2016, verifying 174 days of unused sick leave at retirement. Mr. D signed and submitted the application to the Division the same day, and the Division's technician stated he would process the claim and add the benefit to Mr. D's case.<sup>33</sup>

Despite an extensive search, the school district never located any evidence of Mr. D's first unused sick leave claim form.<sup>34</sup> The school district's normal practice is to retain a copy of each submitted application in the member's personnel file, stamped "emailed" and dated as of the date of submission.<sup>35</sup> Because the school district had no record of Mr. D's form, the parties agree the employer did not submit it to the Division within a year of his appointment to retirement.<sup>36</sup> Presumably, the school district lost or misplaced the form Mr. D left with its human resources department on his last day of work in 2015.

After it received Mr. D's October 2016 *Claim and Verification of Unused Sick Leave Credit* form, the Division processed it and issued one pension payment to Mr. D that included benefits based on his unused sick leave.<sup>37</sup> However, the Division subsequently reviewed the case and concluded it had paid the benefit in error. On December 14, 2016, it informed Mr. D it

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<sup>29</sup> See AS 14.25.115(c). Record, pp. 10-12, 17, 23-24.

<sup>30</sup> Record, pp. 16, 24.

<sup>31</sup> Record, p. 16-17.

<sup>32</sup> Record, pp. 16-17, 35.

<sup>33</sup> Record, pp. 16-17, 35.

<sup>34</sup> Record, p. 37.

<sup>35</sup> *Id.*

<sup>36</sup> See Division Br., p. 11; D Opening Br., D statement at oral argument.

<sup>37</sup> Record, pp. 12, 30, 32-33; D Exhibit 6 (pension statement for November 2016).

would remove the unused sick leave service credit, because it had not received his application within one year of his retirement date.<sup>38</sup> By letter dated January 18, 2017, the Division formally notified Mr. D of this decision, and it requested repayment of the previously-issued benefit.<sup>39</sup> After exhausting his appeal rights within the Division, Mr. D's appeal was referred to the Office of Administrative Hearings for a formal hearing.<sup>40</sup>

The parties agree there are no issues of material fact in dispute, and they submitted the case for decision on written briefs. Oral argument took place on March 2, 2018. Mr. D represented himself. Assistant Attorney General Kevin Dilg represented the Division. All submitted documents were admitted to the record, which closed on March 2, 2018.

### **III. Discussion**

An eligible member of TRS is entitled to a monthly pension benefit that increases as the member's credited TRS service increases, pursuant to a formula set out in statute.<sup>41</sup> The member's unused sick leave is not reimbursable, but upon retiring, a teacher may receive TRS credit for the unused leave on a day-for-day basis, thereby increasing the member's retirement benefit.<sup>42</sup>

#### *A. Statutory One-Year Application Requirement*

To obtain TRS service credit for unused sick leave, Alaska Statute 14.25.115(a) sets a clear application deadline, stating "a teacher must apply to the administrator no later than one year after appointment to retirement."<sup>43</sup> Subject to the one-year deadline (among other requirements), unused sick leave credit benefits accrue from the first day of the month after all of the following are satisfied:

- (1) the teacher meets the eligibility requirements set out in AS 14.25.115;
- (2) the teacher's written application for unused sick leave credit is received and verified by the administrator; and
- (3) a period of time has elapsed since the date of appointment to retirement equal to the amount of verified unused sick leave.<sup>44</sup>

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<sup>38</sup> Record, pp. 12, 30, 32-33; Division Exhibit B.

<sup>39</sup> Record, p. 32-33.

<sup>40</sup> See Record, pp. 3-19.

<sup>41</sup> AS 14.25.110(d).

<sup>42</sup> See AS 14.25.115; 4 AAC 15.040(a)(5).

<sup>43</sup> According to the Division, this statutory time limit was necessary to promote actuarial certainty of trust fund liabilities and avoid unfunded liabilities. It also notes that unused sick leave credit is available to eligible members, even though they make no TRS contributions for that service time.

<sup>44</sup> AS 14.25.115(c).

Like the statute, Division regulations also specify that a TRS member must apply “to the administrator” for the unused sick leave service credit.<sup>45</sup> The application must include a certified statement from the teacher’s last employer, verifying the unused sick leave balance at retirement.<sup>46</sup>

Division regulations distinguish between documents submitted to a teacher’s employer and documents submitted to the Division (or TRS administrator). They expressly provide that submissions filed with an employer are not deemed filed with the Division.<sup>47</sup> Rather, a valid filing with the Division or TRS administrator is effected only if and when the employer forwards the submission to the Division or Commissioner of Administration, as appropriate.<sup>48</sup>

In this case, Mr. D did not validly file his unused sick leave application when he left it with his employer. There is no dispute that the Division did not receive the *Claim and Verification of Unused Sick Leave Credit* form until October 2016, more than fifteen months after his appointment to retirement. Under the plain language of AS 14.25.115(a), the application was not timely received, and Mr. D therefore was not eligible for TRS service credit based on unused sick leave.

#### *B. Doctrine of Equitable Estoppel*

There are no statutory exceptions to the one-year filing deadline. However, the Alaska Supreme Court has held that the doctrine of equitable estoppel can prevent the Division from rejecting a late-filed application under certain circumstances.<sup>49</sup> In *Crum v. Stalnakar*, it stated that equitable estoppel can apply against the government and in favor of a private party if four elements are present:

- (1) the governmental body asserts a position by conduct or words;
- (2) the private party acts in reasonable reliance on the assertion;
- (3) the private party suffers prejudice; and
- (4) estoppel serves the interest of justice so as to limit public injury.<sup>50</sup>

As the appealing party, Mr. D bears the burden of making this showing by a preponderance of the evidence.<sup>51</sup> Despite the unfortunate facts of this case, he does not satisfy the first requirement.

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<sup>45</sup> 2 AAC 36.290(a).

<sup>46</sup> 2 AAC 36.290(a), (c).

<sup>47</sup> 2 AAC 36.092(b).

<sup>48</sup> *Id.*

<sup>49</sup> *Crum v. Stalnakar*, 936 P.2d 1254, 1256 (Alaska 1997). See also *In re L.R.H.*, OAH No. 12-0094-TRS (Office of Administrative Hearings 2012); *In re R.D.C.*, OAH No. 09-0682-TRS (Office of Administrative Hearings 2010).

<sup>50</sup> *Crum*, 936 P.2d at 1256.



### 1. First Element of Estoppel

The first question is whether the Division asserted a position by conduct or words. As clarified by other cases, conduct can include a failure to act, if the Division had a duty to respond, and words can include silence, if the Division had a duty to speak.<sup>52</sup> In *Crum*, for instance, the Division asserted a position by failing to provide Mr. Crum with a form for claiming unused sick leave, despite its obligation to do so under its own regulations and policy. The Division's confusing informational materials also incorrectly suggested that the employer, rather than the employee, bore the burden of completing and filing the necessary forms.<sup>53</sup>

Similarly, in *In re L.R.H.*, the Division asserted a position by words and silence. There, a Division retirement counselor informed the teacher he had nothing more to do to complete the retirement process, without addressing the topic of unused sick leave.<sup>54</sup> In light of the timing and purpose of the counselor's meeting with the teacher, the counselor's expertise and role in the retirement process, and the teacher's direct questions seeking guidance on remaining steps, the Division asserted a position on which the teacher reasonably relied. This included the counselor's statement that the process was complete and corresponding silence regarding unused sick leave, when the circumstances had created an obligation to speak.

In this case, Mr. D agrees the Division provided him with accurate information before he retired and at each interaction during the year after his appointment to retirement. It informed him of the one-year time limit for submitting unused sick leave applications numerous times. It provided the proper forms and instructions. It accurately informed him in its July 24, 2015 appointment letter that it had not received his application. During the July 28, 2015 telephone call, it repeated that it had not received the application, and it appropriately advised Mr. D to follow-up with the school district since he had left the form in the school district's hands.

Mr. D does not point to any conduct by the Division (or a governmental body in privity with the Division) either before he retired or within twelve months of retiring that confused him about the status of his application, that led him to believe the process was complete, or that caused him to think the school district was responsible for submitting the form. Rather, he points

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<sup>51</sup> 2 AAC 64.290(e). Mr. D did not specifically argue he should prevail under equitable estoppel, but his fairness and shared responsibility arguments raise the issue.

<sup>52</sup> *Crum*, 936 P.2d at 1256; *In re. L.R.H.*, OAH No. 12-0094-TRS (Office of Administrative Hearings 2012).

<sup>53</sup> *Crum*, 936 P.2d at 1258.

to conduct by his former employer, the school district, who erroneously assured him on two different occasions that it would submit his verified application to the Division. Mr. D's harm flows directly from the employer's failure to fulfill this promise.

Though the school district and the Division are both public entities, there are important differences in their respective authorities. Most significantly, as TRS administrator, the Division of Retirement and Benefits has no oversight or control over the conduct or assertions of school district employees. There is no privity between Mr. D's former employer and the Division.<sup>55</sup> Therefore, the Division cannot be held accountable for the miscommunication between Mr. D and school district staff. The Division is simply not responsible for the school district's unfulfilled promise.<sup>56</sup>

For this reason, the facts of Mr. D's case are distinguishable from those in the *Crum* and *In re L.R.H.* cases. This case bears more similarity to the conduct at issue in *In re R.D.C.*, a case in which the Division was not estopped to deny a late unused sick leave application. There, the retiring teacher argued that he submitted his unused sick leave form to his school district's payroll contractor. The contractor failed to forward the verified form to the Division within the time allowed.<sup>57</sup> As in this case, the Division's appointment letter notified the teacher that the Division had not received the form. The teacher then called the payroll processor, who assured him it had faxed in the form and the matter would be taken care of. The teacher did not verify the contractor's performance with the Division. The teacher did not contend that the Division misled him in any way; he argued he should not be penalized for the lack of communication between the Division and the school district to ensure the form was received. The *In re R.D.C.* decision found no evidence the Division had asserted a position on which the teacher reasonably relied. Even assuming the Division had implied that it was sufficient to submit the form to the employer, the teacher could no longer reasonably rely on that implied representation after the Division's appointment letter specifically notified the teacher it had not received an unused sick leave application.

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<sup>54</sup> *In re L.R.H.*, OAH No. 12-0094-TRS (Office of Administrative Hearings 2012).

<sup>55</sup> *See Holmberg v. State, Div. of Risk Management*, 796 P.2d 823, 827-28 (Alaska 1990); *Palmer v. Municipality of Anchorage*, 65 P.3d 832 (Alaska 2003). *See also In re R.S.*, Teacher's Retirement Board Decision 02-04 (June 3, 2002) (in the record as Division Attachment 1).

<sup>56</sup> Nothing in the record suggests that the Division caused Mr. D to believe the school district was the Division's agent, nor is there evidence that the Division failed to clarify its relationship after becoming aware that Mr. D held such a belief. Therefore, principles of apparent authority and estoppel to deny agency are not at issue. *Cf. Hawaiian Paradise Park Corp. v. Friendly Broad. Co.*, 414 F.2d 750, 756 (9<sup>th</sup> Cir. 1969).

<sup>57</sup> *In re R.D.C.*, OAH No. 09-0682-TRS (Office of Administrative Hearings 2010).

Here, Mr. D did call the Division after receiving his appointment letter. He explained his intent to claim the unused sick leave credit, and the Division's technician provided information on completing the application process. While this conversation may have put the Division on notice of Mr. D's intention, it was not sufficient to shift the burden of following-up or ensuring a completed filing to the Division. As of late July 2015, Mr. D still had eleven months to complete the filing. Nothing in the telephone conversation notified the Division of an obvious discrepancy requiring further Division action or clarification.<sup>58</sup> To the extent the call resulted in an assertion by the Division, the assertion clarified that the form was not submitted until received by the Division. Therefore, Mr. D was advised to follow up with the school district to locate and submit his application. This assertion did not cause Mr. D's harm and it does not satisfy the first requirement for estoppel.

Like the teacher in *In re R.D.C.*, Mr. D argues that the process for claiming unused sick leave credit is flawed, and the Division shares responsibility for the miscommunication in his case. He asserts it could simplify the process and avoid errors like his employer's if it communicated directly with school districts. Then, teachers would not have to serve as intermediaries and they would not be held accountable for their employers' errors. He did not argue that the existing form is inadequate to fulfill the Division's obligations under AS 14.25.115, however, or that the Division's procedure is inconsistent with statutory and regulatory requirements. Therefore, even if the Division could adopt a different process, nothing in the record suggests it is required to do so.

## 2. The Division's October 2016 Conduct

Upon learning of Mr. D's circumstances in October 2016, a Division technician encouraged him to submit a new unused sick leave application. The technician stated he would then authorize the benefit. After receiving the new application on October 14, 2016, the Division processed it and paid TRS benefits in November 2016 based on Mr. D's unused sick leave. It discovered the error by mid-December, after Mr. D called to inquire about back-benefits, and it stopped the payments immediately. Mr. D asserts the Division should be bound by its acceptance and processing of the late application.

For the reasons discussed previously, the late filing rendered Mr. D ineligible for unused sick leave credit as a matter of law. In the absence of conduct by the Division on which Mr. D

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<sup>58</sup> Cf. *In re D.E.W.*,<sup>2</sup> OAH No. 07-0142-TRS at 18 (Office of Administrative Hearings 2008) (the Division was estopped to deny a long-term care election due to its failure to contact the retiree regarding an "obvious

reasonably relied before the one-year deadline passed, he could not reasonably rely on its October 2016 conduct as an indication that his application satisfied the eligibility requirements.<sup>59</sup> Since there is no evidence of prior conduct by the Division meeting the first element of equitable estoppel, the Division had no authority to accept Mr. D's application in October 2016. Its mistaken processing of the late application does not prevent it from correcting the error.

### 3. Other Elements of Estoppel

Even though the first element of estoppel is not satisfied, the other elements are addressed in order to provide complete factual findings. If a reviewing court were to determine that the school district's assertions somehow are binding on the Division, the second element of equitable estoppel asks whether Mr. D's reliance on those assurances was reasonable. There is mixed evidence on this issue.

On one hand, Mr. D knew the importance of submitting the form to the Division within a year of retirement. He knew his monthly pension checks would be unhelpful in confirming whether this had happened within a year. By July 28, 2015, well after the close of his final pay period, he knew the school district had not fulfilled its first promise to submit the form on his behalf. This raises a question about the reasonableness of relying on the district's second assurance without confirming its action before a year had passed.

On the other hand, Mr. D had good reason to trust his employer's familiarity with the unused sick leave process. The school district assured him that it routinely submitted the form for retiring teachers, and it was standard operating procedure to leave the form in its hands. He had no reason to question these assertions or to doubt his employer's reliability. Further, to the extent there had been a miscommunication regarding the school district's first promise to submit the form, Mr. D could reasonably believe he had resolved the problem after speaking to the employer a second time in late July 2015 and again hearing the employer's reassurances.

If the conduct at issue satisfied the first element of estoppel, I conclude that Mr. D's reliance on his employer's statements was reasonable. On this issue, his reliance and resulting prejudice are similar to that of the teachers in the *Crum* and *In re L.R.H.* cases. Mr. D reasonably trusted in the school district's expertise and repeated assurances in response to his direct

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discrepancy" in her retirement application).

<sup>59</sup> *Flisock v. State, Div. of Retirement & Benefits*, 818 P.2d 640, 644 n.5 (Alaska 1991) (the Division's misinterpretation of clear statutory language does not create a vested right in that interpretation); *Whaley v. State*, 438 P.2d 718, 720 (Alaska 1968) (statements by state officer that conflicted with explicit legal rule were unauthorized and could not estop the state from applying the law).

questions, and his corresponding failure to verify the submission of his application should be viewed in that light.

The third element assesses whether Mr. D suffered prejudice as a result of his reliance on the assertions at issue. His resulting harm is clearly evidenced by his lost TRS service and associated monetary benefits.

The fourth element asks whether estoppel serves the interest of justice so as to limit public injury. If all other elements have been established, this one is also satisfied. Mr. D's receipt of the benefits to which he was otherwise entitled would serve the interests of justice.

#### **IV. Conclusion**

The Division did not receive Mr. D's *Claim and Verification of Unused Sick Leave Credit* form until October 2016, more than fifteen months after his appointment to retirement on July 1, 2015. The application did not meet the mandatory one-year deadline, which is set by statute.

The Division could be prevented from denying the late application, but only if Mr. D showed that all four elements of equitable estoppel are satisfied. He did not establish the first element. Although he reasonably relied to his detriment on his former employer's assertions that it would timely submit the form to the Division, the school district's unfulfilled promises cannot be attributed to the Division. Therefore, they do not estop the Division.

As unfortunate as these circumstances are, this means the Division correctly denied Mr. D's late-filed application. Its decision is affirmed.

DATED: March 28, 2018

By: Signed  
Kathryn Swiderski  
Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]