

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DST 15268

Ruby J. Edmondson,)
 Petitioner,)
))
 vs)
))
Department of Treasurer,)
 Respondent,)

FINAL DECISION

On November 5, 2013, Administrative Law Judge Selina M. Brooks heard this contested case in Charlotte, North Carolina.

APPEARANCES

For Petitioner: *Pro se*

For Respondent: Robert M. Curran
 Special Deputy Attorney General

ISSUE

Whether Respondent correctly determined that, for purposes of calculating Petitioner's creditable service at retirement, Petitioner cannot receive additional creditable service for unused sick leave days from employment which ended more than 5 years prior to her date of retirement.

APPLICABLE STATUTES AND RULES

N.C.G.S. § 135-4(e).

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: June 2005 Paystub from Charlotte-Mecklenburg Schools

For Respondent: Ret. Form 6 Claiming Your Monthly Retirement Benefit

WITNESSES

For Petitioner: Petitioner

For Respondent: Garry Austin, Retirement Systems Division

FINDINGS OF FACT

1. Petitioner was a member of the Teachers' and State Employees' Retirement System ("TSERS"), prior to the effective date of her retirement on October 1, 2012. Her last day of employment with Charlotte-Mecklenburg Schools ("CMS"), and her last month of contributing membership service in the TSERS, was June 2005.

2. At the time she left her employment with CMS, Petitioner had a balance of 74.5 days of unused sick leave standing to her credit with CMS.

3. Petitioner's last day of employment with CMS was more than 5 years prior to her effective date of retirement of October 1, 2012.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case, and the parties received proper notice of the hearing in this matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. N.C.G.S. § 135-4(e) provides that:

(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of service certified on his prior service certificate; and if he has sick leave standing to his credit upon retirement on or after July 1, 1971, one month of credit for each 20 days or portion thereof, but not less than one hour; sick leave shall not be counted in computing creditable service for the purpose of determining eligibility for disability retirement or for a vested deferred allowance. Creditable service for unused sick leave shall be allowed only for sick leave accrued monthly during employment under a duly adopted sick leave policy and for which the member may be able to take credits and be paid for sick leave without restriction. **However, in no instance shall unused sick leave be credited to a member's account at retirement if the member's last day of actual service is more than five years prior to the effective date of the member's retirement.**

....

N.C.G.S. § 135-4(e) (emphasis added).

3. Petitioner's last day of actual service, for purposes of N.C.G.S. § 135-4(e), was the last day that she was a "teacher" and a contributing member in the TSERS, which occurred in June 2005. N.C.G.S. § 135-1(23). Because Petitioner's last day of actual service was more than 5 years prior to her effective date of retirement, any unused sick leave which Petitioner may have had with CMS cannot be used to increase the amount of her creditable service in the TSERS.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby ORDERS that whatever unused sick leave Petitioner had standing to her credit at the time she left her employment with CMS cannot be used in the computation of her monthly benefit.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 8th day of November, 2013.

Selina M. Brooks
Administrative Law Judge