



H.F. 1495
(Demmer)

S.F. 1644
(Senjem)

Executive Summary of Commission Staff Materials

Affected Pension Plan: PERA-P&F
Relevant Provisions of Law: Special law
General Nature of Proposal: Request for surviving spouse benefit
Date of Summary: March 2, 2008

Specific Proposed Changes

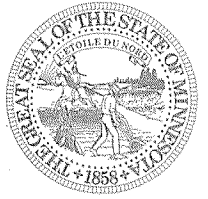
- Provide a PERA-P&F surviving spouse benefit or a benefit based on surviving spouse's own PERA-General Plan service, whichever is greater.

Policy Issues Raised by the Proposed Legislation

1. Ineligible for any PERA-P&F annuity because police officer took refund from the plan.
2. Request for reconsideration, although the Commission reviewed this matter in 2004 and took no action.
3. Requesting PERA Board to reconsider action taken three decades ago, when it concluded the now deceased police officer was not eligible for duty disability because the claimed disability was due to ALS (Lou Gehrig's disease).
4. Cost to PERA-P&F of providing the proposed benefit.
5. Difficulty of determining whether PERA caused harm.
6. Failure to pursue alternative remedies.
7. Employment status of survivor; may have retired.
8. Complex, unusual nature of requested benefit.

Potential Amendments

- H1495-1A requires repayment of refund before any benefit could commence, provides clarity regarding how PERA should compute the benefit; assumes 100 percent joint-and-survivor annuity.
- H1495-2A provides necessary technical changes if survivor has already retired.
- H1495-3A is an alternative to the earlier amendments, provides survivor with the benefits provided by a 2004 delete-all amendment (value of disability benefits, plus joint-and-survivor annuity, effective retroactively).



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Ed Burek, Deputy Director *EB*

RE: H.F. 1495 (Demmer); S.F. 1644 (Senjem): PERA-P&F; Survivor Benefit for Hayfield Police Chief Survivor

DATE: February 29, 2008

Summary of H.F. 1495 (Demmer); S.F. 1644 (Senjem)

H.F. 1495 (Demmer); S.F. 1644 (Senjem) would provide a Public Employees Police and Fire Retirement Plan (PERA-P&F) surviving spouse benefit, if certain conditions are met, to a current PERA member who is the surviving spouse of a deceased PERA-P&F member who:

- (1) Was born on October 10, 1933;
- (2) Was injured on April 29, 1977, while performing duties as the police chief of the city of Hayfield;
- (3) Was denied PERA-P&F disability benefits based on all available evidence and the advice of the Board's medical advisor;
- (4) Received a refund of PERA-P&F employee contributions; and
- (5) Died on March 13, 1999.

The surviving spouse is eligible for the benefit if the Commissioner of Health, following a review of the autopsy results, determines that the deceased police officer was disabled by the April 29, 1977, injury and if payment of a benefit is approved by the PERA Board. Benefits are prospective. If a benefit is paid, then at a later date when the surviving spouse retires from her PERA position, she would continue to receive this survivor benefit in lieu of an annuity computed on her own service, or an annuity based on her own service, whichever is higher.

Public Pension Problem of Kathleen T. Claassen

Commission staff's knowledge of the situation consists of copies of letters and other materials that were received several years ago. In those materials, Kathleen T. Claassen indicates that on April 29, 1977, her now deceased husband Douglas Claassen, who was acting as the police chief for the city of Hayfield, was injured apprehending a driver who was under the influence of drugs. Mrs. Claassen indicates that Mr. Claassen received blows to the neck and lower back during the incident. Following that incident, for a period of approximately one year, Mr. Claassen was treated by a chiropractor for neck and back problems, but the symptoms persisted. In March 1978, Mr. Claassen went to the Mayo Clinic seeking further diagnosis or treatment for the back and neck problems, where he was diagnosed as having amyotrophic lateral sclerosis (ALS, or Lou Gehrig's Disease). The prognosis was that paralysis and death would occur within one year.

Mr. Claassen was covered by the Public Employees Police and Fire Retirement Plan (PERA-P&F) for his service as a police officer. In the late 1970s, Mr. Claassen requested PERA-P&F disability benefits. The PERA Executive Director apparently denied this application, since the letter indicates that sometime in 1978 or 1979, Mr. Claassen, with the help of an attorney, appealed the Executive Director's decision directly to the PERA Board. When the attorney appeared before the Board, he requested a disability benefit for Mr. Claassen based on the ALS diagnosis, rather than due to the injury that occurred on April 29, 1977. The PERA Board rejected the request, probably based on a conclusion that Mr. Claassen was not eligible under PERA law for disability benefits because he had insufficient service to qualify for a benefit if the disability was due to disease that was not job related. Applicable law (Minnesota Statutes 1978, Section 353.656, Subdivision 3) required that a PERA-P&F member have at least five years of PERA-P&F service credit to qualify for a non-duty disability, and Mr. Claassen had less than five years. Given the minimal service credit, Mr. Claassen's only benefit option was to apply for a refund of the employee contributions he had made to PERA-P&F. That refund, approximately \$1,400, presumably was received sometime in 1978 or 1979.

Despite the Mayo Clinic diagnosis of ALS in the late 1970s and estimate that death would occur within one year, Mr. Claassen lived until March 1999. During those intervening years, Mr. Claassen's health problems worsened and he lost the use of his limbs, suffered several heart attacks, and had breathing problems.

Mrs. Claassen claims that an autopsy report following her husband's death supports a conclusion that Mr. Claassen's death was causally related to the work injury that occurred on April 19, 1977. Based on that autopsy report, Mrs. Claassen contacted PERA seeking a survivor pension, payable if she repaid the refund that was received in the late 1970s. PERA staff informed her that action was not possible under existing PERA law and that special legislation would be required.

Mrs. Claassen's letter indicates that Mr. Claassen did receive workers' compensation benefits, but only following litigation. Mr. Claassen retained a lawyer in 1979 or 1980 to assist in obtaining the workers' compensation benefits, which were awarded through a court decision in 1984. The decision was appealed but was upheld by the Minnesota Supreme Court in 1986. Following Mr. Claassen's death, Mrs. Claassen applied for death benefits from the workers' compensation system, which were denied. The difficulty in obtaining various workers' compensation benefits suggests that the autopsy report and other health records may not conclusively link Mr. Claassen's death to a work-related injury.

Prior Legislative Actions

Language to address Mrs. Claassen's situation was first drafted late in the 2000 Legislative Session but was not introduced. In 2002, H.F. 3536 (Sviggum); S.F. 2716 (Day) was introduced but was not heard. The 2002 bill required a hearing before an administrative law judge, and if the judge concluded that Mr. Claassen's death stemmed from the April 29, 1977, injury, PERA would be mandated to provide the surviving spouse a lump sum payment of the value of the disability benefits that the deceased would have received if a duty-related disability benefit had been provided following the date of the injury. The surviving spouse would also have received a survivor annuity computed as though the deceased had elected a 100 percent joint and survivor annuity prior to death, in addition to whatever benefit she eventually draws based on her own PERA service. In 2004, H.F. 1435 (Demmer); S.F. 1352 (Senjem) was introduced and was quite similar to the current bill with the more modest proposed benefit. The 2004 bill was scheduled for a Commission hearing on February 17, 2004, and the authors requested the Commission to consider a delete-all amendment based on the 2002 bill rather than the bill as introduced. The Commission heard the bill in the form of the delete-all amendment, but took no action.

Discussion and Analysis

H.F. 1495 (Demmer); S.F. 1644 (Senjem) authorizes a review by the Commissioner of Health of the autopsy results. If the Commissioner determines that the deceased police officer was disabled by the April 29, 1977 injury, and if payment of a benefit is approved by the PERA Board, the surviving spouse is eligible for a prospective surviving spouse benefit. If a benefit is paid, then at a later date when the surviving spouse retires from her PERA position, she would continue to receive this survivor benefit in lieu of an annuity computed on her own service, or an annuity based on her own service, whichever is higher.

The issues presented by the bill are complex, and determining whether a legislative remedy is practical is made more difficult by the passage of so many years. H.F. 1495 (Demmer); S.F. 1644 (Senjem) raises the following pension policy issues:

1. Equity Issues.

- One equity issue is that the 2004 Commission heard a proposal for Mrs. Claassen and laid the bill over without action. The current Commission may choose to accept that as an indication of inadequate Commission support for the proposal, and the current Commission may be concerned about the request to reconsider an action on Mrs. Claassen's behalf.
- A second equity issue is whether Mr. or Mrs. Claassen made a serious effort to have the disability/survivor benefit issue reconsidered before Mr. Claassen's death. The 1978 Mayo Clinic diagnosis suggested Mr. Claassen would live for one year, but Mr. Claassen lived for over twenty more years. It seems reasonable that by the early 1980s, Mr. or Mrs. Claassen would have questioned the original medical diagnosis of ALS, or at least the presumption that ALS was the sole source of Mr. Claassen's medical difficulties, and would have sought a reevaluation. If such a reevaluation had occurred, it may have led to a more timely review and reconsideration of the PERA disability determination and other subsequent events. It may be difficult at this time, after nearly thirty years have passed, to obtain details of the PERA Board review back in 1978 or 1979, and other factual information which may be useful for a current reconsideration.

2. Requests for Similar Treatment. The Commission may be concerned that recommending this legislation to pass will lead to other special law requests for similar action. The Commission is being asked to require that the PERA Board reconsider a board decision made over 25 years ago. Other individuals who appealed to PERA's board, or the board of any of the other Minnesota public pension fund, and who had their appeals denied, may seek a legislative mandate that a board reconsider its action.
3. Cost Due to Benefits. The issue is the cost of the proposed benefit. Commission staff does not have an estimate of that cost. Presumably, a cost estimate can be provided by PERA.
4. Actuarial Condition of PERA-P&F. The issue is the current actuarial condition of PERA-P&F, which would be modestly worsened if the bill were to pass. The table below presents the plan's actuarial condition as of June 30, 2007, the date of the most recent actuarial report. The plan had \$287 million in unfunded liability, with a 95 percent funding ratio. However, the plan's contribution requirements considerably exceed the contributions made under law, resulting in a contribution deficiency of over 5.5 percent of payroll. This shortfall is due in part to recently recognized increases in disability utilization. Contribution increases have been approved, to be phased in over the course of several years, to address at least part of this problem.

PERA-P&F 2007		
<u>Membership</u>		
Active Members		10,720
Service Retirees		4,938
Disabilitants		803
Survivors		1,291
Deferred Retirees		1,200
Nonvested Former Members		814
Total Membership		19,766
<u>Funded Status</u>		
Accrued Liability		\$5,669,346,646
Current Assets		<u>\$5,382,707,345</u>
Unfunded Accrued Liability		\$286,639,301
Funding Ratio	94.94%	
<u>Financing Requirements</u>		
Covered Payroll		\$699,841,244
Benefits Payable		\$280,266,868
Normal Cost	22.19%	\$155,328,501
Administrative Expenses	<u>0.10%</u>	<u>\$699,841</u>
Normal Cost & Expense	22.29%	\$156,028,342
Normal Cost & Expense	22.29%	\$156,028,342
Amortization	<u>3.77%</u>	<u>\$26,384,015</u>
Total Requirements	26.06%	\$182,412,357
Employee Contributions	8.20%	\$57,386,982
Employer Contributions	12.30%	\$86,080,473
Employer Add'l Cont.	0.00%	\$0
Direct State Funding	0.00%	\$0
Other Govt. Funding	0.00%	\$0
Administrative Assessment	<u>0.00%</u>	<u>\$0</u>
Total Contributions	20.50%	\$143,467,455
Total Requirements	26.06%	\$182,412,357
Total Contributions	<u>20.50%</u>	<u>\$143,467,455</u>
Deficiency (Surplus)	5.56%	\$38,944,902

5. The Question of Harm by PERA. Any payout from PERA-P&F makes it likely that PERA will oppose the legislation, or will reject any benefit payout if the legislation is passed. PERA may take the position that it did not cause harm to Mr. Claassen or Mrs. Claassen and should not be the party to provide a financial payout. Mrs. Claassen indicated in her letter that Mr. Claassen's attorney, in his dealings with PERA and his presentation before the PERA Board, failed to offer evidence of the work injury. Presumably, the presentation focused entirely on the ALS diagnosis. Since ALS is a disease and is not work-related, and since Mr. Claassen did not have sufficient service credit to qualify for non-duty related PERA-P&F disability benefits, the PERA Board made the right decision given all of the information that was known at that time and that was provided to the Board for consideration.

This supports an argument that PERA did not err in its actions, did not cause harm, and should not be required to provide any financial settlement if financial compensation is deemed to be justified.

6. Alternative Remedies. The issue is the existence of alternative remedies. Several alternative remedies are, or at least were, available. The diagnosis by the Mayo Clinic may have been incorrect. If there was a misdiagnosis that resulted in lost or delayed receipt of workers' compensation benefits and loss of PERA-P&F disability benefits, an alternative to legislative action would have been timely litigation against the Mayo Clinic for financial harm stemming from its diagnosis. Mrs. Claassen also indicated in correspondence that the Claassen's were very dissatisfied with the actions of their attorney in his presentation to the PERA Board and some form of compensation for harm may have been available from the attorney. The Claassen's also had an option of appealing the PERA Board decision to the courts.
7. Refund Concerns/Multiple Benefits. Mr. Claassen received a refund of his PERA-P&F employee contributions. Under PERA law, that action terminates any right to any other PERA-P&F benefit. If Mrs. Claassen is to now receive some form of annuity related to Mr. Claassen's service, the Commission may wish to consider requiring that the refund be repaid with interest before any other form of benefit can commence.
8. Unusual Form of Benefit/Complaint Legitimized. The benefits provided by the bill are unusual. The 2004 delete-all amendment considered by the 2004 Commission was an effort to provide Mrs. Claassen with the type of benefits which would have been provided to Mr. Claassen (disability benefits) and later to his surviving spouse (a surviving spouse annuity) if he had been declared to be duty-disabled in the late 1970s and had selected a joint and survivor annuity. In contrast, the present bill would provide only a surviving spouse annuity assuming Mr. Claassen had elected a 100 percent joint and survivor annuity shortly before his death, effective prospectively following passage of the bill, and it would require Mrs. Claassen to decide between that survivor annuity and a benefit based on her own PERA-covered service when she retires. Requiring her to forgo a benefit based on her own service would be most unusual. While the more modest benefit amounts provided by the current bill may lessen opposition by lowering the cost to PERA-P&F, the Commission may be concerned that providing any form of benefit under this bill will serve to legitimize the complaint, leading to future requests for a larger benefit entitlement.
9. Current Employment Status of the Survivor. The issue is the current status of the survivor. The drafting of H.F. 1495 presumes that Mrs. Claassen has not terminated from PERA-covered employment, or at least has not commenced receipt of her own PERA annuity. If she has retired, the bill (page 2, lines 17 to 20) may need revision. Also, if she is retired, the Commission might view that as an equity factor not in her favor, and as an indication that there is insufficient financial need to warrant further Commission consideration of the bill. The Commission rarely addresses complaints of individuals who have already retired. The act of retiring suggests that the individual felt sufficiently financially secure to retire, despite the uncertainty of not knowing whether the Legislature would provide the remedy (with its higher annuity) that the individual seeks.

Potential Amendments for Commission Consideration

Amendment H1495-1A provides clarity regarding how PERA should compute the annuity provided by the bill. This amendment specifies that the individual would receive the second half of a 100 percent joint and survivor annuity computed as though the deceased had been declared to be a duty disabilitant by the PERA Board and had elected a 100 percent joint and survivor annuity. The joint and survivor annuity is prospective, commencing on the effective date. The amendment also requires repayment of the refund received by Mr. Claassen in the late 1970s, with interest, to avoid providing a double benefit or payment to a survivor when the deceased had no rights under the plan. Under Minnesota public pension plan laws, accepting a refund voids any further rights in the plan. If the Commission does not want the refund language, the Commission can remove Subdivision 5 from the amendment.

Amendment H1495-2A, which could be used with Amendment H1495-1A, addresses the necessary technical changes needed if Mrs. Claassen has already retired.

Amendment H1495-3A, an alternative to either of the earlier amendments, would provide Mrs. Claassen with the benefits provided under the 2004 delete-all amendment (value of the disability benefits, plus the joint and survivor annuity, effective retroactively), if the requirements in subdivision 4 of the bill are met.

the employing subdivision by the means and in the manner provided in section 353.28.

Subd. 4. The head of each department of the various governmental subdivisions is hereby directed to cause employee contributions to be deducted in the manner and subject to the terms provided in section 353.27, subdivision 4.

Subd. 5. [Repealed, 1973 c 753 s 85]

Subd. 6. All contributions shall be credited to the fund and all interest and other income of the fund shall be credited to said fund. The retirement fund shall be disbursed only for the purposes herein provided. The expenses of said fund and the annuities herein provided upon retirement shall be paid from said fund.

[1959 c 650 s 33; 1965 c 714 s 6-8; Ex1967 c 53 s 6-8; 1971 c 297 s 5; 1973 c 753 s 69,70]

353.651 RETIREMENT ANNUITY UPON SEPARATION FROM PUBLIC SERVICE. Subdivision 1. Age and allowable service requirements. Upon separation from public service, any police officer or fire fighter member who has attained the age of at least 55 years and who received credit for not less than ten years of allowable service is entitled upon application to a retirement annuity. Such retirement annuity is known as the "normal" retirement annuity.

Subd. 2. Average salary. In calculating the annuity under subdivision 3, "average salary" means an amount equivalent to the average of the highest salary earned as a police officer or fire fighter upon which employee contributions were paid for any five successive years of allowable service.

Subd. 3. Retirement annuity formula. The average salary as defined in subdivision 2, multiplied by two and one-half percent per year of allowable service for the first 20 years and two percent per year of allowable service thereafter, shall determine the amount of the "normal" retirement annuity. If the member has earned allowable service for performing services other than those of a police officer or fire fighter, the annuity representing such service shall be computed in accordance with sections 353.29 and 353.30.

[1973 c 753 s 71; 1974 c 229 s 19; 1977 c 429 s 34]

353.654 [Repealed, 1973 c 753 s 85]

353.655 [Repealed, 1973 c 753 s 85]

353.656 DISABILITY BENEFITS. Subdivision 1. In line of duty; computation of benefits. Any member of the police and fire fund less than 55 years of age, who shall become disabled and physically unfit to perform his duties as a police officer or fire fighter subsequent to June 30, 1973, as a direct result of an injury, sickness, or other disability incurred in or arising out of any act of duty, which shall render him physically or mentally unable to perform his duties as a police officer or fire fighter, shall receive disability benefits during the period of such disability. The benefits shall be in an amount equal to 50 percent of the "average salary" pursuant to subdivision 3 plus an additional two percent of said "average salary" for each year of service in excess of 20. Should disability under this subdivision occur before the member has at least five years of allowable service credit in the police and fire fund, the disability benefit shall be computed on the "average salary" from which deductions were made for contribution to the police and fire fund.

Subd. 2. Benefits paid under workers' compensation law. If a member, as described in subdivision 1, is injured under circumstances which entitle him to receive benefits under the workers' compensation law, he shall receive the same benefits as provided in subdivision 1, less the amount paid to him in weekly benefits under the workers' compensation law, after deduction of amount of attorney fees, authorized under applicable workers' compensation laws, paid by a disabliant.

Subd. 3. After June 30, 1973, any member who becomes disabled after not less than five years of allowable service, before reaching the age of 55, because of sickness or injury occurring while not on duty as a police officer or fire fighter, and by reason thereof the member is unable to perform his duties, shall be entitled to receive a disability benefit. The benefit shall be in the same amount and paid in the same manner as if the member were 55 years of age at the date of his disability and the benefit were paid pursuant to section 353.651. Should disability under this clause occur after five but in less than ten years allowable service, the disability benefit shall be the same as though the member had at least ten years service.

Subd. 4. No member shall receive any disability benefit payment when there remains to his credit unused annual leave or sick leave or under any other circumstances, when during the period of disability there has been no impairment of his salary and should such member resume a gainful occupation and his earnings are less than his salary at the date of disability or the salary currently paid for similar positions, the association shall continue the disability benefit in an amount which when added to such earnings does not exceed his salary at the date of disability or the salary currently paid for similar positions, whichever is higher, provided the disability benefit in such case does not exceed the disability benefit originally allowed.

Subd. 5. No disability benefit payment shall be made except upon adequate proof furnished to the association of the existence of such disability, and during the time when any such benefits are being paid, the association shall have the right, at reasonable times, to require the disabled member to submit proof of the continuance of the disability claimed.

Subd. 6. Retirement status at age 55. All disability benefits payable under this section shall terminate when the disabled firefighter or police officer becomes 55 years of age. Thereafter, retirement benefits shall be paid to the disabled firefighter or police officer in the same amount as the disability benefits which he was previously receiving. Any disabled person who becomes age 55 after June 30, 1973, shall have his annuity computed in accordance with the law in effect upon attainment of age 55. Prior to reaching age 55, a disabled person may select an optional annuity pursuant to section 353.30, subdivision 3.

[1971 c 297 s 3; 1973 c 753 s 72-74; 1975 c 102 s 20,21; 1975 c 359 s 23; 1976 c 329 s 28; 1977 c 429 s 63; 1978 c 796 s 38]

353.657 SURVIVOR BENEFITS. Subdivision 1. In the event any member of the police and fire fund shall die from any cause, the association shall grant survivor benefits to any surviving spouse who was residing with him at the time of his death and who was married to him for a period of at least one year, and to a dependent child or children, unmarried and under the age of 18 years. The spouse and child or children shall be entitled to monthly benefits as provided in the following subdivisions.

Subd. 2. The spouse, for life or until remarriage, shall receive a monthly benefit equal to 30 percent of the member's average monthly salary earned as a police officer or fire fighter on which employee contributions were paid over the last full six months of allowable service preceding death.

Subd. 2a. If a member who has attained the age of at least 55 years and has credit for not less than 20 years allowable service dies before public service has terminated, or if an employee who has filed a valid application for an annuity or disability benefit prior to termination of public service dies before the annuity or benefit has become payable, notwithstanding any designation of beneficiary to the contrary, the surviving spouse may elect to receive, in lieu of a refund with interest provided in section 353.32, subdivision 1, or survivor benefits otherwise payable pursuant to subdivisions 1 and 2, an annuity equal to the 50 percent joint and survivor annuity which the member could have qualified for on the date of death, computed as provided in sections 353.651, subdivisions 2 and 3, and 353.30, subdivision 3. No payment shall accrue beyond the end of the month in which entitlement to such annuity has terminated. An amount equal to the excess, if any, of the accumulated contributions which were credited to the account of the deceased employee over and above the total of the annuities paid and payable to the surviving spouse shall be paid to the deceased member's last designated beneficiary or, if none, to the legal representative of the estate of such deceased member. Any member may request in writing that this subdivision not apply and that payment be made only to the designated beneficiary, as otherwise provided by this chapter.

Subd. 3. Each dependent child, until the child reaches the age of 18 years, shall receive a monthly benefit equal to ten percent of the member's average monthly salary earned as a police officer or fire fighter on which employee contributions were paid over the last full six months of allowable service preceding death. Payments for the benefit of any qualified dependent child under the age of 18 years shall be made to the surviving parent, or if there be none, to the legal guardian of such child. The maximum monthly benefit for any one family shall not exceed \$450, and the minimum benefit per family shall not be less than 30 percent of the member's said average salary, subject to the aforementioned maximum.

line of duty related

non-duty related

February 22, 2000

Re: Public Employee's Retirement Association – Widow/Survivor Benefits
Member: Douglas Claassen, [REDACTED] DOB: 10/10/33

Dear

On April 29, 1977, my late husband, Douglas Claassen, in the course of his employment as Police Chief of the City of Hayfield, suffered a spinal injury as a result of blows he received to his neck and lower back when he apprehended an erratic driver who was under the influence of drugs. From April 29, 1977 until March, Doug obtained treatment from a chiropractor for his neck and back symptoms. His symptoms persisted and in March, 1978, he was misdiagnosed by the Mayo Clinic as having ALS (Lou Gehrig's Disease). The prognosis was that Doug would be paralyzed within 6 months and would die within a year.

Sometime in 1978-1979, Doug appeared before the PERA Board with his attorney Mr. Sieffert, to apply for disability benefits. Mr. Sieffert offered evidence of the diagnosis of ALS and the prognosis of Doug's death within one year, but failed to offer evidence of the work injury. PERA denied benefits based on the diagnosis of ALS, which is a disease, rather than an injury. They further stated that Doug did not have enough time in to qualify for benefits due to disease. Attorney Sieffert advised us that our only alternative would be to withdraw Doug's fund balance, which was approximately \$1400.

In approximately 1979-1980 Doug retained Charles Bird of Rochester, Minnesota to assist in obtaining workers' compensation benefits. In 1984 Judge Murray awarded disability benefits. This decision was appealed and was ultimately upheld by the Minnesota Supreme Court in 1986. Doug received disability benefits until his death on March 13, 1999.

Doug's injury caused him to gradually lose use of his extremities and interfere with his major organ functions. He was confined to a wheelchair and suffered several heart attacks and severe breathing problems. Upon his death in March, 1999, the autopsy revealed that Doug's cause of death was causally related to the original work injury of April 29, 1977. Based on the autopsy report, I contacted PERA regarding widow/survivors benefits to inquire if funds were repaid, plus interest, would survivor's benefits be available to me. I was advised that current statutes provide only for repayment by eligible members, while they are still alive. I was advised that my only alternative would be to seek special legislation to allow a survivor to repay the funds, plus interest.

I then contacted Charles Westin of PEPSA, who advised that I would need to send my request for special legislation to you, my representative. Mr. Westin offered his help for the research of this matter.

My husband was never able to purchase life insurance after his injury. After his death, workers' compensations benefits ended, and Social Security ultimately determined that my income was too high to receive survivor benefits. I have applied for death benefits through Workers' Compensation, and that matter is currently in litigation. In the meantime, although I am working full-time, I am finding it hard to meet my monthly obligations. I would appreciate your assistance in introducing legislation to allow me to repay, with interest, Doug's PERA fund balance, thereby allowing me to obtain survivor's benefits. If I can be of further assistance, you may contact me during the day at (507) 635-6203 or in the evening at (507) 477-2425.

Sincerely,

DOUG'S PERA EMPLOYMENT HISTORY:

Kathy Claassen
PERA Member

Hayfield, MN 55940

cc: Charles Westin, PEPSA

1974-1978 PT & FT Deputy-Dodge County Sheriff's Office
1974-1975 PT & FT Police Officer – City of Claremont
1975-1977 PT & FT Police Officer – City of Hayfield
7/1/77 City of Hayfield Contracted to Dodge County Sheriff's
Office for law enforcement protection, including the
above member.

LCP & R APR 26 2001

May 23, 2000

I received your correspondence, including the two drafts. I delayed getting back to you until the pending litigation with Worker's Comp was finalized. Enclosed you will find a copy of the results.

The amount agreed on was in place of monthly payments. I plan on paying off a large mortgage that we had on the house, then to reside it, replace the furnace and all of the other things that are needed. My current plans are to sell my home and move to the Kasson area making it closer to work and the area where my children and grandchildren live.

I know when an officer is killed on the street how tragic it is to the family that has to go through it. The only bearable part in this instance is that the officer's pain has ended. However, watching someone suffer, gradually die and to know that there is nothing you can do except to try to make life as comfortable as possible, does bring its own form of grief. We were fortunate to have Doug's upbeat personality. His philosophy was always that if you're dealt a lemon, then you make lemonade. This may have made it easier for the family, but not for him. There were tests that they made him endure, such as putting needles down through his tongue and turning up the electricity to monitor activity on a machine in an effort to prove that he had a disease, rather than an injury. It was a horrifying experience, along with many other similar tests.

After we left the meeting with the PERA Board and receiving their denial, based on the fact that it was considered a disease, was the one time that Doug felt so let down. He had lost his income, all medical bills were being denied because each one thought it was the other's responsibility, we were receiving phone calls and threats on past due medical bills, not to mention the pain, disabilities and ultimately death, that he was already dealing with.

Our daily lives can seem so secure and in an instant be changed forever.

Thanks for all your help in pursuing this for me

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathy".

5-23-00

CLARIFICATION: PERA Retirement Funds - Douglas Claassen

At the time of the PERA hearing, our attorney did mention about the injury on 4-29-77.

Then, the attorney stated that Doug had been at the Mayo Clinic and they had determined that he had ALS, with death expected in approximately a year.

The attorney did not actively pursue the injury issue and that part was dropped.

Having retained the attorney to represent us at the hearing, we did not feel that it would be appropriate to start an argument with him in front of the board.

We had no idea the case would be presented in this manner. After leaving the hearing that day, we both knew in our minds what the Board's decision would be.

In a later discussion with the attorney, after the denial had been received, he advised us that the only option at this point, would be to withdraw the funds.


Kathy Claassen

RECEIVED MAY - 5 2000

STATE OF MINNESOTA
WORKERS' COMPENSATION DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
443 Lafayette Road
St. Paul, Minnesota 55155

File No.:
Record No.: 7192F

AWARD ON STIPULATION

Douglas Claassen,
by Kathleen T. Claassen,

Deceased Employee,
Petitioner,

vs.

City of Hayfield,

Employer,

and

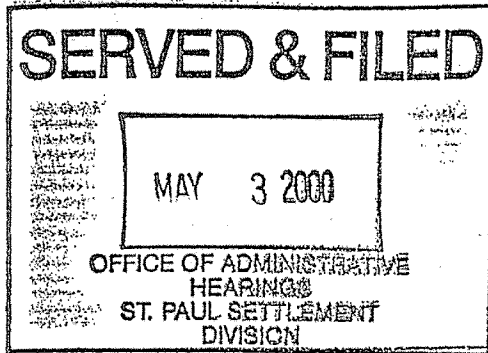
MIGA,

Insurer,

and

PEAK Administration Services,

Intervenor.

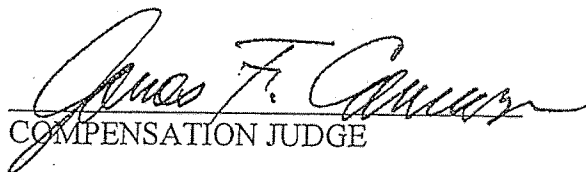


The parties hereto have waived their rights to a formal hearing and have submitted a Stipulation for Settlement to the Workers' Compensation Division on April 27, 2000.

Pursuant to the provisions of M.S. 176.521, this Stipulation for Settlement upon review is found to be fair, reasonable and in conformity with the Minnesota Workers' Compensation Law. Pursuant to this review by the Compensation Judge, the Compensation Judge finds the Award in conformity with the Workers' Compensation Law and finds the settlement to be reasonable.

NOW, THEREFORE, IT IS HEREBY ORDERED that payment shall be made in accordance with the terms and provisions set forth in the Stipulation for Settlement, which terms and provisions are incorporated herein by reference, and, that payment shall be made within 14 days of

IT IS FURTHER ORDERED that when payment has been made and proof of the payment is filed with the Workers' Compensation Division of the Department of Labor and Industry, it shall constitute a settlement of the respective claims of the parties as provided for by the terms and provisions of the Stipulation for Settlement, at which time the Claim Petition and Petition for Intervention filed herein are dismissed.


COMPENSATION JUDGE

Dated at St. Paul, Minnesota this

1st day of May, 2000.

570750

STATE OF MINNESOTA
WORKERS' COMPENSATION DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
443 Lafayette Road
St. Paul, Minnesota 55155

File No.:
Record No.: 7192F

STIPULATION FOR SETTLEMENT

Douglas Claassen,	Deceased Employee,
by Kathleen T. Claassen,	Petitioner,
vs.	
City of Hayfield,	Employer,
and	
MIGA,	Insurer,
and	
PEAK Administration Services,	Intervenor.

The parties herein, having waived their rights to a formal hearing, do hereby stipulate and agree to the following compromised settlement:

I.

That incorporated by reference into this Stipulation for Settlement is any previous Findings and Order of the Workers' Compensation Division and/or the Workers' Compensation Court of Appeals as well as any Stipulation and Award on Stipulation which is incorporated by reference into this Stipulation for Settlement.

II.

That the Employee continued to receive permanent total disability benefits pursuant to statute until his death on March 13, 1999.

III.

That as of March 13, 1999, the Employee had a dependent spouse, Kathleen T. Claassen who had dependency status pursuant to M.S. 176.111.

IV.

That it is the claim and contention of the Petitioner herein that the Employee's death of March 13, 1999 was substantially caused by the effects of the work injury of April 29, 1977 and therefore, the Petitioner herein seeks dependency benefits pursuant to M.S. 176.111 as appropriate.

V.

That the funeral expense incurred as a result of the Employee's death of March 13, 1999 was approximately \$9,800.00.

VI.

That the Petitioner claims and contends that she incurred out-of-pocket medical expenses of approximately \$2,000.00 and seeks reimbursement from the Employer and Insurer for said out-of-pocket medical expenses incurred herein.

VII.

That it is the claim and contention of the Employer and Insurer that the Employee's death of March 13, 1999 was not substantially caused by the effects of the work injury of April 30, 1977 and therefore, this Employer and Insurer have denied primary liability.

VIII.

That the Petitioner was receiving Social Security benefits in the sum of approximately \$1,000.00 per month. Said benefits discontinued in January of 2000 but were to be reinitiated as appropriate later this year.

IX.

That the Petitioner has been represented throughout these proceedings by Attorney Charles Bird and has entered into a contingency fee agreement pursuant to M.S. 176.081, subd. 1.

X.

That in preparation for litigation Attorney Bird has incurred certain costs which were reasonable and necessary and said costs shall be reimbursed to Attorney Bird assuming they are reasonable and necessary.

XI.

That PEAK Administration Services has intervened in this action and has been advised of all negotiations leading to this Stipulation for Settlement.

XII.

That in order to resolve the disputes of the parties as heretofore outlined the parties, having waived their rights to a formal hearing, do hereby stipulate and agree to the following compromised settlement:

1. That the Employer and Insurer admit primary liability for the death of the Employee with the Employer and Insurer admitting that the Employee's death of March 13, 1999 was substantially caused by the effects of the work injury of April 29, 1977.
2. That the Employer and Insurer agree to pay, and the Petitioner agrees to accept in one lump sum, \$115,000.00 and that when this payment is made to the Petitioner by the Employer and Insurer herein, it will then constitute a full, final and complete settlement of any and all claims under the Workers' Compensation Act which the Petitioner/Dependent may have as a result of the Employee's injury of April 29, 1977 and the subsequent death on March 13, 1999 and shall fully and forever discharge the Employer and Insurer from any liability whatsoever under the Workers' Compensation Act as it pertains to dependency benefits which the Petitioner may be entitled pursuant to M.S. 176.111 and shall fully and forever discharge the Employer and Insurer from any further liability whatsoever under the Workers' Compensation Act as it pertains to the Employee's work injury of April 30, 1977 and subsequent death occurring on or about March 13, 1999. The Petitioner understands that she is

fully and forever discharging the Employer and Insurer and consents to the terms and conditions of this Stipulation for Settlement realizing that she is fully and forever discharging the Employer and Insurer from any further liability whatsoever as it pertains to dependency benefits pursuant to M.S. 176.111.

3. That the Employer and Insurer agree to reimburse the Petitioner \$7,500.00 as and for reimbursement for funeral expenses incurred, with said reimbursement being the maximum amount allowed by statute. In addition, the Employer and Insurer agree to reimburse the Petitioner for out-of-pocket medical expenses in the approximate sum of \$2,000.00. The Employer and Insurer shall be entitled to verification of said out-of-pocket expenses before reimbursement will be effectuated. When these reimbursements are made to the Petitioner by the Employer and Insurer herein, it will then constitute a full, final and complete settlement of any and all claims for funeral expense reimbursement and for out-of-pocket medical expense reimbursement, with the Employer and Insurer being fully and forever discharged from any further liability whatsoever under the Workers' Compensation Act as it pertains to these expenses herein.
4. That from the compensation being paid to the Employee as described above, the Employer and Insurer shall withhold and pay to Attorney Charles Bird \$13,000.00 as and for reasonable attorney's fees. All parties stipulate and agree that said attorney's fee is reasonable and in accordance with M.S. 176.081, subd. 1 and all parties waive their rights to object to said fee pursuant to the ten-day rule. Partial reimbursement of attorney's fees pursuant to M.S. 176.081, subd. 7 are hereby waived, with the Employer and Insurer agreeing to reimburse Attorney Bird for any and all reasonable taxable costs incurred in preparation for litigation.
5. That the Employer and Insurer agree to pay, and PEAK Administration Services agrees to accept in one lump sum, \$67,500.00 and that when this reimbursement is made by the Employer and Insurer to said Intervenor herein, it will then constitute a full, final and complete settlement of any and all claims for reimbursement which said Intervenor may have as against the Petitioner and/or the Employer and Insurer herein.

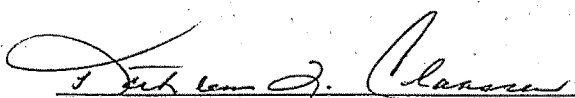
XIII.

That by this settlement it shall be deemed to be a settlement pursuant to the terms and conditions of the Stipulation as heretofore outlined.

WHEREFORE, the parties herein pray for an Order from the Workers' Compensation Division approving the foregoing Stipulation for Settlement and furthermore pray that the Claim

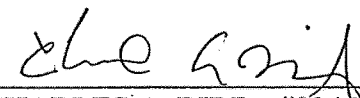
Petition filed by the Petitioner herein, and the Petition for Intervention filed by the Intervenor herein,
be the same and hereby be dismissed in all respects.

Dated: 4-24-00


KATHLEEN T. CLAASSEN, Petitioner and
Dependent Spouse of Deceased Employee


BIRD & JACOBSEN

Dated: 4-24-00

By: 
CHARLES A. BIRD #8345
Attorneys for Petitioner
305 Ironwood Square
300 Third Avenue S.E.
Rochester, Minnesota 55904
(507) 282-1503

COUSINEAU, McGUIRE & ANDERSON,
CHARTERED

Dated: 4/19/00

By: 
JAMES R. WALDHAUSER #113773
Attorneys for Employer and Insurer
600 Travelers Express Tower
1550 Utica Avenue South
Minneapolis, Minnesota 55416-5318
(612) 546-8400

PEAK ADMINISTRATIVE SERVICES

Dated: 4-25-00

By: 

LARRY FARRAR # 0267533

Counsel for Intervenor

2100 Ford Parkway

Suite 250

St. Paul, Minnesota 55116-1813

(651) 690-9500

570689

1.1 moves to amend H.F. No. 1495; S.F. No., as follows:

1.2 Page 1, line 20, before "An" insert "Notwithstanding any law to the contrary, "

1.3 Page 1, line 21, after "had" insert "been declared to be a duty-related disabilitant by
1.4 the Public Employees Retirement Association board on September 6, 1978, and had "

1.5 Page 1, line 22, delete "accrued from" and insert "is the second half of this joint and
1.6 survivor annuity, except that no monthly benefits or lump sum equivalent are payable for
1.7 any period before "

1.8 Page 1, line 23, after "payments" insert "on or after the effective date and "

1.9 Page 2, after line 24, insert:

1.10 "Subd. 5. **Mandatory repayment of a refund.** Notwithstanding the death of
1.11 the police officer and any other requirements of Minnesota Statutes, section 353.35,
1.12 subdivision 1, to the contrary, the surviving spouse specified in subdivision 2 is authorized
1.13 to repay the refund referred to in that subdivision under procedures specified in Minnesota
1.14 Statutes, section 353.35 subdivision 1. The authority otherwise provided by this section is
1.15 voided if that refund, with applicable interest, is not repaid."

- 1.1 moves to amend H.F. No. 1495; S.F. No., as follows:
- 1.2 Page 2, line 17, delete everything after "(c)"
- 1.3 Page 2, line 18, delete "age, whichever is sooner" and insert "If the eligible individual
- 1.4 has commenced receipt of an annuity from the Public Employees Retirement Association"
- 1.5 Page 2, line 20, after "that" insert "same"

1.1 moves to amend H.F. No. 1495; S.F. No., as follows:

1.2 Page 1, delete subdivisions 1 to 3 and insert:

1.3 "Subdivision 1. **Application.** An eligible individual under subdivision 2 is eligible
1.4 to receive the benefit specified in subdivision 3 upon satisfying requirements specified
1.5 in subdivisions 4 and 5.

1.6 Subd. 2. **Eligibility** An eligible individual is a surviving spouse of a deceased
1.7 previous member of the Public Employees Retirement Association police and fire plan
1.8 who:

1.9 (1) was born on October 10, 1933;

1.10 (2) was injured on April 29, 1977, while performing duties as the chief of police
1.11 for the city of Hayfield;

1.12 (3) was diagnosed in March 1978 as having amyotrophic lateral sclerosis;

1.13 (4) received a refund of employee contributions to the Public Employees Retirement
1.14 Association police and fire plan; and

1.15 (5) died on March 13, 1999, from conditions resulting from the April 29, 1977,
1.16 injury.

1.17 Subd. 3. **Benefit amount.** (a) The benefit amount is the amount specified in
1.18 paragraph (b) plus the amount specified in paragraph (c).

1.19 (b) The executive director of the Public Employees Retirement Association must
1.20 compute the present value, on the first of the month following the date all requirements
1.21 under subdivisions 4 and 5 are satisfied, of duty-related disability benefits assuming that
1.22 the Public Employees Retirement Association board had concluded that the deceased
1.23 chief of police for the city of Hayfield, as described in subdivision 2, met the requirements
1.24 of Minnesota Statutes 1978, section 353.656, subdivision 1, for disability benefits due
1.25 to duty-related injury. The computation must assume that the disability benefit would
1.26 have been paid from the first of the month following the determination of the Public
1.27 Employees Retirement Association board that the deceased chief of police for the city of

2.1 Hayfield, described in subdivision 2, met the requirements of Minnesota Statutes 1978
2.2 section 353.656, subdivision 1, until the individual's death on March 13, 1999. The
2.3 computation must include any increases or other adjustments payable under the Minnesota
2.4 postretirement investment fund or its predecessor fund or funds. The disability benefits
2.5 assumed in the computation must be reduced by any workers' compensation benefits paid
2.6 or payable, if required under applicable law. The executive director must subtract, from
2.7 the present value, the present value of the refund plus any applicable interest that was paid
2.8 to the now deceased employee. The computations under this paragraph must assume 8.5
2.9 percent interest, compounded annually. The computations must also assume election of
2.10 a 100 percent joint and survivor optional annuity at the earliest opportunity authorized
2.11 under Public Employees Retirement Association law or administrative procedure. The
2.12 amount determined under this paragraph is payable on the first of the month following the
2.13 date all requirements under subdivisions 4 and 5 are satisfied.

2.14 (c) An annuity is payable to the eligible individual under subdivision 2, computed
2.15 assuming the deceased police officer had elected a 100 percent joint and survivor annuity.
2.16 The annuity accrues from April 1, 1999. Any amounts representing monthly annuity
2.17 payments prior to the date all requirements under subdivision 4 are met are payable as a
2.18 lump sum amount, including 8.5 percent interest compounded annually, payable on the
2.19 first of the month following the date all requirements under subdivision 4 are met. The
2.20 executive director is authorized to transfer assets representing the full actuarial reserves
2.21 for the annuity authorized under this paragraph from the Public Employees Retirement
2.22 Association police and fire fund to the Minnesota postretirement investment fund.

2.23 Subd. 4. **Mandatory repayment of a refund.** Notwithstanding the death of
2.24 the police officer and any other requirements of Minnesota Statutes, section 353.35,
2.25 subdivision 1, to the contrary, the surviving spouse specified in subdivision 2 is authorized
2.26 to repay the refund referred to in that subdivision under procedures specified in Minnesota
2.27 Statutes, section 353.35 subdivision 1. The authority otherwise provided by this section is
2.28 voided if that refund, with applicable interest, is not repaid."

2.29 Page 2, line 5, delete "4" and insert "5"

2.30 Page 2, line 18, before "benefit" insert "survivor"

2.31 Page 2, line 20, after the underscored period insert "If the eligible individual
2.32 has already commenced receipt of an annuity from the Public Employees Retirement
2.33 Association, that annuity shall terminate if the survivor annuity under subdivision 3,
2.34 paragraph (c), provides a higher benefit amount. If the individual's retirement annuity is
2.35 greater than the surviving spouse benefit under subdivision 3, paragraph (c), the surviving
2.36 spouse benefit is voided."

3.1 Amend the title accordingly

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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. 1495

March 1, 2007

Authored by Demmer

The bill was read for the first time and referred to the Committee on Governmental Operations, Reform, Technology and Elections

1.1 A bill for an act
1.2 relating to retirement; Public Employees Retirement Association police and fire
1.3 plan; authorizing survivor benefit for the survivor of a deceased member.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. **SURVIVOR BENEFIT FOR DECEASED PUBLIC EMPLOYEES**
1.6 **RETIREMENT ASSOCIATION POLICE AND FIRE PLAN MEMBER.**

1.7 Subdivision 1. **Application.** An eligible individual under subdivision 2 is eligible to
1.8 receive the benefit specified in subdivision 3 upon satisfying requirements specified in
1.9 subdivision 4.

1.10 Subd. 2. **Eligibility.** An eligible individual is a member of the Public Employees
1.11 Retirement Association general plan and a surviving spouse of a deceased previous
1.12 member of the Public Employees Retirement Association police and fire plan who: (1)
1.13 was born on October 10, 1933; (2) was injured on April 29, 1977, while performing
1.14 duties as the chief of police for the city of Hayfield; (3) applied for disability benefits on
1.15 April 17, 1978; (4) was denied disability benefits by the Public Employees Retirement
1.16 Association board of trustees based on all available medical evidence and the advice of
1.17 the board's medical advisor on September 6, 1978; (5) received a refund of employee
1.18 contributions to the Public Employees Retirement Association police and fire plan; and (6)
1.19 died on March 13, 1999.

1.20 Subd. 3. **Benefit amount.** An annuity is payable to the eligible individual under
1.21 subdivision 2, computed assuming the deceased police officer had elected a 100 percent
1.22 joint-and-survivor annuity. The annuity accrues from the effective date of this section.
1.23 Any amounts representing monthly annuity payments prior to the date all requirements
1.24 under subdivision 4 are met are payable as a lump sum amount payable on the first

2.1 of the month following the date all requirements under subdivision 4 are met. The
 2.2 executive director is authorized to transfer assets representing the full actuarial reserves
 2.3 for the annuity authorized under this subdivision from the Public Employees Retirement
 2.4 Association police and fire fund to the Minnesota postretirement investment fund.

2.5 Subd. 4. **Commissioner of health review; other requirements.** (a) The
 2.6 commissioner of health shall review the autopsy of the deceased previous member and
 2.7 all related medical records provided by the eligible individual, to determine whether the
 2.8 previous member of the Public Employees Retirement Association police and fire fund
 2.9 plan described in subdivision 2 would have been disabled as a result of the April 29, 1977,
 2.10 injury. The findings of the commissioner are subject to further administrative or judicial
 2.11 review or appeal. The findings must be filed with the executive director of the Public
 2.12 Employees Retirement Association, the eligible individual under subdivision 2, and the
 2.13 executive director of the Legislative Commission on Pensions and Retirement.

2.14 (b) Benefits are payable under this section if the board of trustees approves payment
 2.15 after considering the determination of the commissioner of health within 60 days of
 2.16 receiving the commissioner's determination under this section.

2.17 (c) When the eligible individual applies for retirement or reaches normal retirement
 2.18 age, whichever is sooner, the benefit payable to the individual shall be the higher of
 2.19 the survivor benefit payable under this section or the individual's retirement benefit
 2.20 determined at that time.

2.21 (d) The eligible individual under subdivision 2 must provide the executive director
 2.22 of the Public Employees Retirement Association with all relevant documentation to verify
 2.23 that all remaining eligibility requirements in this section are satisfied and with any other
 2.24 applicable information that the executive director may request.

2.25 **Sec. 2. EFFECTIVE DATE.**

2.26 Section 1 is effective the day following final enactment.