



H.F. 3311
(Atkins)

S.F. 2469
(Metzen)

Executive Summary of Commission Staff Materials

Affected Pension Plan: PERA-General
Relevant Provisions of Law: Special Law
General Nature of Proposal: Early retirement annuity revocation in favor of a disability benefit application
Date of Summary: March 2, 2008

Specific Proposed Changes

- Permits a St. Paul Public Works Department retiree to revoke his early reduced retirement annuity and apply for a disability benefit.

Policy Issues Raised by the Proposed Legislation

1. Conformity with Commission policy principles.
2. Equitable consideration; extent of PERA's benefit counseling obligation.
3. Appropriateness of annuity application revocation in light of a signed explicit disability benefit waiver.
4. Appropriateness of requested application revocation in light of the time delay in seeking redress.
5. Likelihood of success in obtaining a future PERA-General disability benefit.
6. Precedent.



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Lawrence A. Martin, Executive Director *Lawrence A. Martin*
RE: H.F. 3311 (Atkins); S.F. 2469 (Metzen): PERA-General; Annuity Revocation In Favor of Disability Benefit Application
DATE: March 2, 2008

Summary of H.F. 3311 (Atkins); S.F. 2469 (Metzen)

H.F. 3311 (Atkins); S.F. 2469 (Metzen) permits William L. Klabunder, a resident of West St. Paul, Minnesota, who is a retiree of the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) as a former employee of the Public Works Department of the City of St. Paul, to revoke his early reduced retirement annuity application, to file a disability benefit application and, if determined to have been disabled in 2006, to receive a PERA-General disability benefit on the basis of having not been properly counseled by PERA in 2006.

Public Pension Problem of William L. Klabunder

William L. Klabunder, a resident of West St. Paul, Minnesota, is a 58-year-old former St. Paul Public Works Department employee who suffered employment-related shoulder injuries and stress problems in 2005 and 2006 and who terminated St. Paul city employment and applied for a retirement annuity from the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) on December 12, 2006.

Mr. Klabunder indicates that his decision to retire from PERA-General was made when at a time he was affected by prescribed medications for stress and depression and that PERA failed to provide him with any benefit counseling and failed to provide him with an alternative disability benefit application. Mr. Klabunder believes that he qualified for a PERA-General disability benefit in December 2006, and that the benefit amount difference between a PERA-General disability benefit and a PERA-General reduced early retirement annuity is \$400 per month. Mr. Klabunder further believes that if he had been asked about his employment status in December 2006, when he was on a disability leave, or if he had been provided any benefit counseling by PERA in December 2006, his potential disability benefit eligibility would have been identified and he would have pursued a disability benefit from PERA-General.

Background Information: Comparison of PERA-General Early Reduced Retirement Annuities with PERA-General Disability Benefits. Attachment A provides background information on the differences in the computation of early retirement annuity amounts and disability benefit amounts under the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General).

Discussion and Analysis

H.F. 3311 (Atkins); S.F. 2469 (Metzen) permits William L. Klabunder to revoke a December 2006 retirement annuity application filed with the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) and to apply for a PERA-General disability benefit because PERA failed to meet its obligation to counsel applicants before accepting a retirement application.

The proposed legislation raises several pension and related public policy issues for consideration and discussion by the members of the Legislative Commission on Pensions and Retirement, as follows:

1. Conformity with Commission Policy Principles. The policy issue is the extent to which the requested retirement annuity application revocation conforms with the Commission's Principles of Pension Policy. While there is no specific policy principle providing direct guidance with respect to allowing benefit application revocations, there are three policy principles that relate to somewhat similar situations, the principle permitting deadline waivers only on a case-by-case basis when equity demands a waiver, the principle disallowing requested optional annuity election reopenings, and the principle disallowing requests to repay previously received benefits in order to resume active member status. The specific language of the three principles available by potential analogy are:

II.C.11. Deadline Extensions and Waivers

Deadline extensions or waivers should be permitted only if, on a case-by-case basis, it is determined that there is a sufficient equitable basis for the extension or waiver, the extension or waiver does not involve broader applicability than the pension plan members making the request, and that the extension or waiver is unlikely to constitute an inappropriate precedent for the future.

II.C.13. Reopening Optional Annuity Elections

Reopenings of optional annuity elections should not be permitted.

II.C.15. Repayment of Previously Paid Benefits and Resumptions of Active Member Status

Repayments of previously paid benefits and resumptions of active member status should not be permitted.

All these principles deal with second chance opportunities, but only one principle permits a second chance. Requests for additional time or for dropping deadlines are permitted only in very narrow and meritorious circumstances, but optional annuity election reopening requests and requests to shift back from retired status to active status are disallowed.

2. Equitable Consideration; Extent of PERA's Benefit Counseling Obligation. The policy issue is whether the Public Employees Retirement Association (PERA) has a duty to provide benefit counseling to benefit applications who do not request counseling. If equitable considerations for authorizing an annuity application revocation are the basis for the potential legislation, the principal equitable consideration would be a failure on the part of PERA to meet an affirmative obligation to provide benefit counseling. Any benefit counseling duty would be an application of or an outgrowth of public pension plan fiduciary responsibility principles, which are coded as Minnesota Statutes, Chapter 356A. Minnesota Statutes, Section 356A.02, Subdivision 2, specifies what a public pension plan fiduciary activity is, but does not specifically include benefit counseling in the nine activities on the non-exhaustive statutory list. Other fiduciary responsibility provisions would generally apply to any provided benefit counseling, such as the requirements that activities be carried out without prejudice and in a manner consistent with the plan document, but do not appear to create an affirmative duty to provide benefit counseling. If Mr. Klabunder declined an opportunity to see a benefit counselor or to schedule future benefit counseling, his favorable equitable considerations in this regard would be reduced. Testimony from Mr. Klabunder and from PERA may be necessary to clarify the circumstances of PERA receiving his retirement annuity application.
3. Appropriateness of Annuity Application Revocation in Light of a Signed Explicit Disability Benefit Waiver. The policy issue is the appropriateness of allowing a requested revocation of an early retirement annuity application to allow for a disability benefit application when that signed retirement annuity application contains an explicit waiver of any claim to disability benefits. On the application form, immediately above Mr. Klabunder's apparent signature, the form indicates as a note, in a different typeface, that "[by] accepting/receiving a retirement benefit you are no longer eligible for disability benefits." That waiver statement should have alerted an applicant of the effect of a retirement annuity application to preclude any disability benefits. The waiver statement presumably was added to the form at some time in the past because of prior disputes over the effect of a retirement annuity application on potential disability benefits. If, as Mr. Klabunder appears to claim, he was incapacitated to some considerable degree by the medications he was on for depression and stress, he would have been unable to understand the meaning of the waiver note and may not have been able to competently execute the document at all. In order to decide what weight to give to the disability benefit waiver notice, the Commission may need additional testimony about Mr. Klabunder's state of mind and state of affairs on December 12, 2006.
4. Appropriateness of Requested Application Revocation in Light of the Time Delay in Seeking Redress. The policy issue is the appropriateness of remedial proposed legislation in 2008 for a problem that arose in late 2006. While the interval between the alleged error, on December 12, 2006, and this remedial proposed legislation in 2008 is not large, it also is not as prompt as it could have been. In equitable remedies, timeliness is a key factor and unreasonable delays in seeking a remedy can disqualify a person from obtaining an equitable remedy. The Commission may need to consider whether the remedy was requested in a sufficiently timely fashion.
5. Likelihood of Success in Obtaining a Future PERA-General Disability Benefit. The policy issue is the appropriateness of pursuing the proposed legislation if Mr. Klabunder is less than certain to receive a

future disability benefit from the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) upon revoking his earlier retirement annuity application and submitting a disability benefit application. If Mr. Klabunder was not likely to have been totally and permanently disabled on December 12, 2006, or on the last date of active public employment if that occurred on a different date, the proposed legislation will not achieve Mr. Klabunder's hoped-for result and would be an unwise use of legislative time and effort. The PERA-General disability benefit standard of a total and permanent inability to engage in gainful employment is a difficult standard to meet. The standard is substantially identical to the standard for Social Security disability benefits. If Mr. Klabunder has been successful in obtaining Social Security disability benefits, there would be some reason to believe that he could qualify for a PERA-General disability benefit. If Mr. Klabunder does not qualify for Social Security disability benefits, additional testimony may be needed to allow the Commission to conclude that the proposed legislation will not ultimately be futile.

6. Precedent. The policy issue is whether or not there is previously enacted special legislation that constitutes a non-distinguishable precedent for this request and whether or not this proposed legislation could function as a problematic precedent for additional future legislative proposals. The most closely pertinent prior special legislative precedent would be Laws 2002, Chapter 392, Article 14, Section 3, a special law provision derived from 2002 S.F. 3239 (Pappas); H.F. xxxx, authorizing the revocation of a retirement annuity application by a West St. Paul firefighter to allow for a disability benefit application to be filed with the Public Employees Police and Fire Plan (PERA-P&F). That enactment involved a public safety employee who had a seven-year history of back injuries, who was covered by a retirement plan with a less stringent disability determination standard, and who sought the remedial legislation the legislative session immediately following the requirement annuity application. Whether these factors distinguish the prior special legislation from Mr. Klabunder's situation would be a judgment for the Commission. The enactment of a second piece of special legislation allowing for a revocation of a prior retirement annuity application in order to permit pursuit of a disability benefit application and extending the precedent from a public safety plan to a general employee plan will undoubtedly make similar future requests more likely and make distinguishing those future requests from past potential precedents more difficult.

Attachment A

Background Information on PERA-General Early Reduced Retirement Annuities Compared to PERA-General Disability Benefits

In General. Under Minnesota Statutes, Chapter 353, Minnesota public employees who are under the normal retirement age, who terminate public employment, and who seek to receive a benefit may be entitled to a reduced early retirement annuity from the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) or a PERA-General disability benefit. The two potential benefit coverages differ in their qualification requirements and in their benefit amount calculation.

PERA-General Early Reduced Retirement Annuity. A public employee who terminates active public employment at or after age 55 but before age 65 (pre-1989 hires) or age 66 (post-1988 hires) with at least three years of service credit may elect to receive a reduced early retirement annuity. The reduced early retirement annuity is a percentage of the employee's highest five successive years' average salary and will be the greater amount produced by two different calculation methods:

| Method 1 (Step Rate Formula) | Method 2 (Level Formula) |
|--|---|
| <p>Method 1. For each of the first 10 years of service, the retiree earns 1.2 percent of the average salary and for each year of service exceeding 10 years, the retiree earns 1.7 percent of the average salary. The Rule of 90 allows early retirement with no reduction of your pension if the sum of your age and years and months of service totals at least 90. If the total of age and service does not total 90 or the retiree is not age 65, the benefit will be reduced by three percent for each year under age 65 (or from age 62 with 30 or more years of service.)</p> <p>For a retiree with 25 years of service and a high five-year average salary of \$35,000, under this method, the base (full) retirement benefit is calculated first and then the early retirement reduction is calculated, as follows:</p> <p><u>Base benefit:</u> $1.2\% \times \text{First 10 Years} = 12.0\%$ $1.7\% \times 15 \text{ Additional Years} = 25.5\%$ $12.0\% + 25.5\% = 37.5\%$</p> <p>$37.5\% \times \\$35,000 = \\$13,125$ (\$1,093.75 per month)</p> <p><u>Reduction:</u> $65 - 55 = 10 \text{ Years}$ $3\% \times 10 \text{ Years} = 30\%$</p> <p>$30\% \times \\$1,093.75 = \\$328.13$</p> <p style="margin-left: 20px;">\$1,093.75 $- \underline{328.13}$ (30% reduction) $\\$ \ 765.62$ (monthly pension)</p> <p style="text-align: center;">Early Reduced Retirement Annuity Payable: \$765.62 per month</p> | <p>Method 2. For each year of service, the retiree earns 1.7 percent of the average salary. There is an actuarial reduction, which is about 6 percent per year, for each year you retire prior to full retirement age for Social Security benefits (to a maximum age 66). The Rule of 90 does not apply when this formula is used.</p> <p>For a retiree with 25 years of service and a high five-year average salary of \$35,000, under this method, the base (full) retirement benefit is calculated first and then the early retirement reduction is calculated, as follows:</p> <p><u>Base benefit:</u> $1.7\% \times 25 \text{ Years} = 42.5\%$</p> <p>$42.5\% \times \\$35,000 = \\$14,875$ (\$1,239.58 per month)</p> <p><u>Reduction:</u> Based on life expectancy tables for age 55, the early retirement reduction is 49.31 percent.</p> <p>$49.31\% \times \\$1,239.58 = \\611.24</p> <p style="margin-left: 20px;">\$1,239.58 $- \underline{611.24}$ (49.31% reduction) $\\$ \ 628.34$ (monthly pension)</p> |

PERA-General Disability Benefit. A public employee who terminates active public employment before age 65 with at least three years of service credit, if unable to engage in any substantial gainful activity by reason of a medically determinable long-term physical or mental impairment, may elect to receive a disability benefit.

The disability benefit is the retirement annuity application to the former public employee based on the service rendered to the date of termination without reduction for early (before age 65 or before Rule of 90 age) retirement.

For a disability with 25 years of service and a high five-year average salary of \$35,000, the disability benefit will be based on the level formula retirement annuity calculation method, calculated as follows:

$$1.7\% \times 25 \text{ Years} = 42.5\%$$

$$42.5\% \times \$35,000 = \$14,875 \text{ (\$1,239.58 per month)}$$

Total and Permanent Disability Benefit Payable: \$1,239.58 per month

For a former public employee with some physical or mental impairment to continued employment, the person would be advantaged if the person could qualify for a disability benefit from PERA-General rather than an early reduced retirement annuity. However, because a total and permanent disability is a severe standard of incapacity, not every former public employee with an illness or an injury will qualify for a PERA-General disability benefit.

Laws 2002, Chapter 392, Article 14, Section 3

Sec. 3. [PUBLIC EMPLOYEES POLICE AND FIRE PLAN; RECISION OF ANNUITY APPLICATION IN FAVOR OF DISABILITY BENEFIT APPLICATION.]

(a) Notwithstanding Minnesota Statutes, section 353.29, subdivision 7, or any other law to the contrary, an eligible person described in paragraph (b) may revoke an application for a retirement annuity from the public employees police and fire plan and may file an application for a disability benefit from the public employees police and fire plan, effective the first day of the month following the approval of the disability application under Minnesota Statutes, section 353.33, subdivisions 2 and 4.

(b) An eligible person is a person who:

(1) was born on August 6, 1949;

(2) was employed for 27 years with the city of West St. Paul fire department;

(3) terminated employment with the city of West St. Paul on January 31, 2001;

(4) filed six "first report of injury" documents for back injuries with the city of West St. Paul between June 1984 and December 2000;

(5) requested rescision of his public employees police and fire plan retirement annuity on February 16, 2001, and tendered a personal check repaying the initial annuity amount; and

(6) unsuccessfully appealed to the public employees retirement association board of trustees on May 10, 2001, for authority to rescind a retirement annuity application and to apply for a disability benefit.

according to him,

he was not given
any Counseling
(they didn't even ask him
if he was on a disability
(which he was) ^{HE WAS ON} ZOLUFT/ DRUGS
means a difference of \$400 per month



Minnesota Senate
President Jim Metzen and staff

FAYE E SPARKS
Room 322
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651-296-4175
fax: 651-225-7580
faye.sparks@senate.mn
cell: 651-983-7639

lady at front desk
gave him the paperwork -
no one talked to him.

He signed it at the
bank.

talked to Lance
La Fromke
355-2034
PERA
12-10-02

Call 612-335-1535

Thanks
Larry

He claims he should
have been advised as
to his options, etc.

He also says he was
"out of it"
when he signed.

William ~~651-276-1011~~

PART F—SPOUSE INFORMATION Complete only if you are married Notarized signature of your spouse is to validate spouse's acknowledgment of your retirement benefit

| | | |
|---------------------------|-------|------------------------|
| Spouse's Name | | Date of Birth |
| Address—Number and Street | | Social Security Number |
| City | State | Zip Code |

PART G—APPLICATION FOR DIRECT DEPOSIT Financial Institution Information—Attach a deposit slip or voided check to verify information below If you have questions concerning the information below, contact your financial institution

| | |
|---|--|
| 1 Depositor Account Number [REDACTED] | 2 Type of Account <input type="checkbox"/> Checking <input checked="" type="checkbox"/> Savings |
| 3 Financial Organization BANK CHEROKEE Name of Financial Institution 6002 S. SMITH AVE Address SAINT PAUL, MN 55306 Address (651) 227-7071 Telephone of Institution | 4 Joint Account Holders Name: Address: Address: Social Security Number: |
| 5 Routing Number [REDACTED] | 6 Branch Designation (if applicable) |

PART H—SIGNATURE AND NOTARY OF PERA MEMBER REQUIRED IF MARRIED, SIGNATURE OF SPOUSE REQUIRED, NOTARY PREFERRED Note if spouse's signature is not notarized, spouse will receive a copy of the application and be required to sign a return receipt certified mail card

FOR COMPLETION BY NOTARY

Signature(s) Witnessed (Please check one)
 Applicant Only Applicant & Spouse

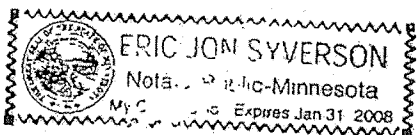
Subscribed and sworn to before me this
12th Day of DECEMBER, Year 2006

[Signature]
 Signature of Notary

Notary Public of RAMSEY County

My Commission Expires 1/31/2008

(Seal Required)



FOR COMPLETION BY PERA MEMBER

I have read and understand the information on this application and understand that my selection is for a retirement benefit, and that the benefit option selection is irrevocable and cannot be changed as of the date PERA issues my first payment by check or direct deposit I have indicated my preference regarding how my benefit is to be treated for purposes of federal and state income tax withholding

Note By accepting/receiving a retirement benefit you are no longer eligible for disability benefits

William Klumholz
 Signature of Applicant

DECEMBER 12th, 2006
 Date Signed

FOR COMPLETION BY MEMBER'S SPOUSE

I hereby acknowledge the benefit selection made by my spouse

 Signature of Applicant's Spouse

 Date Signed

