



STATE OF WISCONSIN
Department of Employee Trust Funds
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DATE: June 1, 2015
TO: Employee Trust Funds Board
Teachers Retirement Board
Wisconsin Retirement Board
FROM: David H. Nispel, General Counsel
Dan Hayes, Attorney
SUBJECT: Status of Pending Legal Cases

This memo is for informational purposes only. No Board action is required.

This memorandum is presented quarterly to inform board members about the status of pending legal cases involving the Department of Employee Trust Funds (ETF) and the various retirement boards. In order to maintain Wisconsin Retirement System (WRS) member confidentiality, the names of the parties and case numbers are not identified in this memorandum.

The purpose of the memorandum is to inform Board members of litigation in which the Boards and/or ETF are parties, not to provide legal advice concerning the cases listed. If there are any questions about a particular case, we will provide you with the name of the attorney handling it.

As of June 1, 2015, there are two pending cases and one recently concluded case that involve the various retirement boards and ETF.

Case No. 1:

Issue – Whether an individual WRS member is eligible for duty disability benefits under s. 40.65 of the Wisconsin Statutes.

Summary – ETF denied a WRS member's claim for duty disability benefits because the employer failed to certify that the injury was duty-related. The member appealed the denial, and it was overturned by the Administrative Law Judge (ALJ). The employer appealed that decision to the Labor and Industry Review Commission (LIRC). LIRC overturned the ALJ's decision and reinstated the denial. On April, 24, 2015, the member

Reviewed and approved by Robert J. Conlin, Secretary

Electronically signed 6/4/15

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filed an action in Waukesha County Circuit Court challenging LIRC's decision. The complaint names the employer, LIRC and ETF as defendants.

Status – The case is in the early stages of litigation. All three defendants have filed answers to the complaint.

Attorney – DOJ attorney.

Case No. 2:

Issue – Which party is entitled under the applicable law to the life insurance and retirement death benefits of the deceased WRS member?

Summary – The wife and sister of the deceased are involved in litigation to determine who is legally entitled to the life insurance and retirement death benefits. ETF was named as a defendant in an effort to prevent the death benefits from being paid. ETF informed the parties and the court that no payments will be made until the case is resolved.

Status – On October 8, 2014, the judge issued a final judgment. It orders the establishment of two trusts to be funded with life insurance proceeds: 1) \$110,000 educational trust for the wife, and 2) \$100,000 educational and medical trust for the daughter of the sister. All remaining life insurance proceeds and the deceased's entire WRS retirement account were awarded to the sister as a survivor. On November 21, 2014, the wife appealed the decision, and the parties are filing legal briefs in the Wisconsin Court of Appeals – District 3.

Attorney – DOJ attorney.

Case No. 3:

Issues – 1) Whether the ETF Board must adjust the date each petitioner should have been reported as a participating employee; 2) whether the seven-year statute of limitation was applicable to the petitioners; and 3) whether the ETF Board had the authority to require the employer to pay the employee contribution for the petitioners.

Summary – A group of employees appealed an employer's determination that they were independent contractors and, as such, unable to participate in the WRS. The Administrative Law Judge and ETF Board found that the employees were participating employees in the WRS. However, the Board also determined that the employees must pay their employee contribution for the time period prior to the effective date of 2011 Wisconsin Act 10 and that the seven year statute of limitations applied and barred WRS participation before the seven year period prior to the appeals. The employees appealed that decision to the Dane County Circuit Court.

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Status – The case was dismissed by the Circuit Court on February 21, 2014, on procedural grounds, and the plaintiffs filed an appeal. The Court of Appeals affirmed the dismissal on January 22, 2015. The plaintiffs filed a Petition to Review with the Wisconsin Supreme Court, which was denied on May 11, 2015. The case is now closed. Currently, there are 45 similarly situated appellants whose cases have not been heard by an Administrative Law Judge. Discussions are underway regarding which cases to refer to the Division of Hearings and Appeals.

Attorney – DOJ attorney.

Staff will be available at the Board meeting to answer questions.