



State of Wisconsin
Department of Employee Trust Funds
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SECRETARY

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Correspondence Memorandum

Date: August 25, 2017
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 or recently concluded legal cases involving the Department of Employee Trust Funds (ETF) and the three 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 August 25, 2017, there are three cases that involve the retirement boards or ETF.

Case No. 1:

Issue – Uniform Benefits offered through the State of Wisconsin Group Health Benefit Program contains an exclusion for “Procedures, services and supplies related to surgery and sex hormones associated with gender reassignment.” The issue in this litigation is whether that exclusion violates Title VII of the Civil Rights Act of 1964, the Equal Protection Clause of the 14th Amendment of the U.S. Constitution and the Patient Protection and Affordable Care Act.

Reviewed and approved by Robert J. Conlin, Secretary

Electronically Signed 9/7/17

Board	Mtg Date	Item #
JM	9.21.17	4H

Summary – ETF, the GIB, and ETF Secretary Conlin, among others, are named defendants in a complaint filed in the United States District Court for the Western District of Wisconsin. The plaintiffs are two Wisconsin Retirement System members who are represented by the American Civil Liberties Union.

Status – The complaint was filed on April 7, 2017. On June 22, 2017, the state moved to dismiss various plaintiffs from the lawsuit.

Attorney – DOJ attorney.

Case No. 2:

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 filed an action in Waukesha County Circuit Court challenging LIRC's decision. The complaint names the employer, LIRC and ETF as defendants. The Waukesha County Circuit Court ruled in favor of the employer and upheld the denial of duty disability benefits. On February 12, 2016, the member appealed the decision to the Wisconsin Court of Appeals.

Status – On July 12, 2017, the Court of Appeals issued a decision upholding LIRC's ruling that denied duty disability benefits. The appellant did not attempt to appeal to the Wisconsin Supreme Court. The case is closed.

Attorney – DOJ attorney.

Case No. 3:

Issue – Whether ETF erred in its determination that: 1) a member passed away in the same month as her duty disability effective date, so there is no benefit payable to the estate; and 2) in order for a death benefit to be payable to a surviving spouse or domestic partner, the member must have been married to the spouse or in a domestic partnership on her qualifying date, as determined by ETF.

Summary – On August 2, 2016, the surviving spouse of a member filed a Petition for Judicial Review in Dane County Circuit Court to appeal a final decision by the Wisconsin Retirement Board that upheld ETF's denial. Both ETF and the Board are respondents in the case.

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Status – On January 30, 2017, the court denied the Petition for Judicial Review and affirmed the final decision of the Wisconsin Retirement Board. The surviving spouse then appealed to the Wisconsin Court of Appeals. The parties have completed the briefing process and a decision is pending.

Attorney – DOJ attorney.

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