



Appeals Committee

Item Number 3a – Open Session

Subject: Consideration of Proposed Administrative Decision: In the Matter of the Retirement Benefits of: Marlene Finander

Presenter(s): James Lindsay / Ashley E. Lopez-Trotter

Item Type: Action

Date & Time: January 7, 2021 – 15 minutes

Attachment(s): 2

Administrative Law Judge (ALJ) Mary Agnes Matyszewski received evidence at an administrative hearing on November 4, 2020 for the above-referenced matter. The matter was submitted and the record was closed on the date of hearing. On November 16, 2020, ALJ Matyszewski issued a Proposed Decision denying Respondent Marlene Finander's appeal of CalSTRS' determination that she was not entitled to additional service credit and was not entitled to a final compensation calculation based upon service credit of twenty-five or more years (Attachment 1).

POSITIONS OF THE PARTIES

As further detailed in the submitted written statement, Ms. Finander contends that the Appeals Committee should reject the Proposed Decision.

Staff recommends that the Appeals Committee adopt the Proposed Decision with the technical or other minor changes referenced below.

DISCUSSION

Ms. Finander became a CalSTRS member in February 1975 by virtue of her employment with the Los Angeles Unified School District. Over the preceding four months, she had performed some non-qualifying service in the form of substitute teaching for the district. From February 1975 until her retirement in August 2005, Ms. Finander accrued 24.830 years of service credit. The dispute leading to the administrative appeal does not focus on the calculation of her service credit; instead, the dispute focuses on what she believes she was told by a benefits counselor about her non-qualifying service credit available for purchase, her subsequent purchase of the available non-qualifying service credit, and her claim that CalSTRS should now be estopped from denying her twenty-five years of service credit and the one-year final compensation calculation that would result.

Ms. Finander believes that she and her husband met with benefits counselor April Sharp on one occasion only and alleges she was told by Ms. Sharp during that one appointment that, if she paid the exact amount of \$1,272.96, she would have twenty-five years of service credit. CalSTRS' records, however, show that Ms. Finander had three separate benefits counseling sessions. CalSTRS' records reflect that she met with Ms. Sharp in April 2004. The worksheet prepared by Ms. Sharp in advance of the meeting correctly states that Ms. Finander had 24.612 years of service credit at that time. The documentation further indicates that Ms. Finander was significantly late for the appointment causing an inability to prepare any benefit estimate. There is no indication that the subject of non-qualifying service credit or the purchase of such service credit was discussed at the meeting. CalSTRS' records show that Ms. Finander then met with benefits counselor Charles Courdy in May 2004. Various benefit estimates were prepared in conjunction with this meeting based upon various assumptions and information provided by Ms. Finander. The worksheet prepared in advance of the meeting again correctly noted Ms. Finander's 24.612 years of service credit. Certain benefit estimates include additional accrued service credit, significant unused sick leave and the purchase of .388 service credit – an amount that would, if available, lead to total service credit of twenty-five years.

Following the meeting with Mr. Courdy, Ms. Finander submitted a request to purchase non-qualifying service credit in the amount of .388 years. CalSTRS responded to the request stating that she was eligible to purchase only .114 years of non-qualifying service credit and the cost to do so was \$1,272.96. Ms. Finander completed the purchase and received .114 years of service credit; however, that amount was insufficient to bring her to twenty-five years.

CalSTRS' records show that Ms. Finander met a second time with Ms. Sharp in August 2005. The worksheet prepared by Ms. Sharp correctly acknowledges that Ms. Finander remained short of twenty-five years of service credit. Despite being informed at this meeting that she had accrued only 24.809 years of service credit, she submitted her service retirement application less than one week later. A minor reporting adjustment modified her service credit to 24.830, but she ultimately had no unused sick leave and no other adjustments bringing her to twenty-five years. Her final compensation was calculated based upon her highest average compensation earnable for a consecutive 36-month period pursuant to Education Code section 22134.

Shortly after submitting her retirement application, Ms. Finander engaged in communication with CalSTRS' Ombudsman's office seeking explanation of her service credit total. Those contemporaneous communications in 2005 do not allege that Ms. Sharp made any misrepresentations regarding her ability to purchase more service credit or that she would have twenty-five years following the purchase she finalized. Her communications focused on the alleged retaliation and theft of her service credit by the district. Following a delay of more than ten years, Ms. Finander initiated this appeal claiming that she made the service credit purchase because Ms. Sharp specifically stated that she would reach twenty-five years upon the purchase.

At the hearing, Ms. Finander presented her own testimony and that of her husband asserting that she only had one in-person meeting with a benefits counselor. She denied meeting with Mr. Courdy at all or Ms. Sharp on a second occasion. She and her husband testified that Ms. Sharp was able during the meeting to determine the exact amount of service credit available for purchase

and the price in order to obtain twenty-five years of service credit. CalSTRS presented testimony and documentary evidence that Ms. Finander attended three benefits counseling sessions and that Ms. Sharp could not have made the representations alleged because the documents relating to the first meeting do not reference a service credit purchase and no estimates were prepared. By the time she met the second time with Ms. Sharp, the .114 service credit purchase had already been consummated. CalSTRS presented evidence that Ms. Finander was informed at all times that she had not achieved an aggregate service credit total of at least twenty-five years.

ALJ Matyszewski found that Ms. Finander's claims were not supported by the evidence. Specifically, she found that the evidence did not establish that Ms. Sharp made improper representations or that CalSTRS misled her regarding her service credit total. ALJ Matyszewski, therefore, ruled that Ms. Finander's service credit total is accurate and that her final compensation must be calculated utilizing her highest consecutive 36-month period of compensation earnable pursuant to Education Code section 22134. ALJ Matyszewski further ruled that CalSTRS is not estopped from implementing the proper calculation. Accordingly, ALJ Matyszewski denied Ms. Finander's appeal in its entirety and upheld CalSTRS' determination regarding her benefits.

WRITTEN STATEMENT FROM MEMBER

Ms. Finander submitted a written statement in response to the Proposed Decision requesting that the committee reject the Proposed Decision (Attachment 2). She attempted to include a document in support of her position that was neither introduced nor admitted as evidence during the hearing; however, since the committee cannot take additional evidence at this time pursuant to Government Code section 11517, the attachment is not included. Ms. Finander's statement does not change staff's recommendation that the committee adopt the Proposed Decision with the technical or other minor changes referenced below.

STAFF RECOMMENDATIONS

Staff recommends that the Appeals Committee adopt the Proposed Decision with the following technical and minor changes:

1. On page 2, Summary, line 4, change "earned" to "earnable."
2. On page 2, Summary, line 5, change "she" to "it."
3. On page 2, Summary, line 8, change "earned" to "earnable."
4. On page 4, paragraph 8, line 5, change "May 20, 2004" to "April 20, 2004."
5. On page 10, paragraph 18, line 13, change "May 20, 2004" to "April 20, 2004."
6. On page 15, paragraph 26, line 1, change "July 17, 2005" to "September 17, 2005."
7. On page 20, paragraph 35, line 1, change "April 18, 2018" to "December 14, 2018."
8. On page 20, paragraph 35, line 15, change "April 22, 2005" to "August 22, 2005."

ATTACHMENTS

Attachment 1: Proposed Decision

Attachment 2: Written Statement of Marlene Finander

Evaluation of Causes for Denial

11. Cause for Denial of Ms. Finander's appeal was established pursuant to Education Code section 22134. Ms. Finander retired with less than 25 years of service credit. CalSTRS correctly calculated her final compensation using the highest average annual compensation earnable during any period of 36 consecutive months.

12. Cause for Denial of Ms. Finander's appeal was established because Ms. Finander failed to demonstrate there were any errors or omissions to correct as allowed by Education Code section 22308, subdivision (a).

ORDER

The appeal filed by Marlene Finander challenging CalSTRS's denial of her request to have her benefits recalculated is dismissed. Ms. Finander's Final Compensation and Service Credit were correctly calculated. Her claims against CalSTRS and its attorneys are unfounded.

DATE: November 16, 2020


Mary Agnes Matyszewski (Nov 16, 2020 14:45 PST)

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

MARLENE FINANDER

Redacted, Redacted

e-m: Redacted

DT: December 9, 2020 / TO: Appeals Committee, CAL-STRS

RE: **TIMELY FILED [per C.C.P. 1010.6(4)(A): Appeal]**: CASE # STRS20180032, OAH # 2019091079

RE: Letter from Jessica Ramirez, dated November 18, 2020

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APPEAL JURISDICTION

[NOTE-A] General **Procedural** Jurisdiction: CA Govt. Code 11517;

Applicable part: 2nd sentence of sub-section (a) and sub-section (c);

PRIMARY requested action: sub-sub-section (2)(E) thereunder:

Reject ALJ report/RE-DECIDE appeal (*) more about this at end of this appeal

[NOTE-B] **Substantive** Jurisdiction(s): **FIDUCIARY DUTIES** owed to members:

CA Educ. Code(s) 22250 and 26002

[NOTE-C] Additional MAJOR **substantive** jurisdiction(s): CA Educ. Code(s) 22308

[Adjustment of Errors] and 22010 **[Erroneous Statements]**

[NOTE-D] Enclosed statement: 5.p. limit per Ms. Ramirez' letter includes the **MAJOR** relevant re-affirmed one-page attachment from LAUSD [this is NOT new information, it is in your files]

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THE FOLLOWING DESCRIBES IGNORED AND BROKEN STATUTES BY CAL-STRS AGAINST ME:

[1] Referring first to the LAUSD attachment [NOTE-D, above]: this proof of **RE**-confirmation of information that has been in CAL-STRS' files for fifteen (15) years: **I WAS A FULL-TIME TEACHER FOR TWENTY-SEVEN (27) YEARS** from 1979-2005. Additionally, I was a part-time teacher at LAUSD from March-June 1979. Cal-Strs itself recognizes in its own document dated 08/12/2004 adding service credit saying I was "paid in full." IN ADDITION, see the internal Cal-Strs e-mail dated Aug. 14, 2017 from Patti Clark to Yolanda Rivera, cc: Tom Barrett, with my own e-mail attached thereto [same date] which included added information needed to correct Cal-Strs errors re my **corrected** highest salary years [exh. # AA-0035-0036 = CS exh.# Disco. 0313-0314, **it was my choice but not done.**

MARLENE FINANDER

DT: DECEMBER 9, 2020; TO: CAL-STRS APPEALS COMMITTEE [THIS IS PAGE 2]

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Cal-Strs says cross-referencing to document form # SR 0554 (Re. 12/96) dated Nov. 30, 2005, the document titled "Employment Termination and Sick Leave Report" [my exh. # AA-0044 = CS exhibit # "Disco. 0347] there is checked the box in front of this mostly pre-printed form sentence:

"[x] **Final compensation salary reduction** I certify that because of a reduction in school funds, the above member's salary was reduced during the following school year(s) 92 / 93, this member is eligible to use any three non-consecutive years for final compensation."

THIS WAS NOT DONE by Cal-Strs. Per Cal. Educ. Code 22134.5, my FIRST HIGHEST year of

Compensation: 2003-2004: \$67,687.20 IGNORED BY CAL-STRS. [CS's own exh. "Disco." 0343]; MY SECOND AND THIRD HIGHEST YEARS were any 2 of 3 years (1997-2000): \$67,500: my exh. # AA-0035 = CS exh # "Disco. 0313": my e-m portion of this combined 2 documents on page one, # par. [1]. MY FIRST CHOICE OF LEGAL RIGHTS WAS IGNORED [\$67,687.20]; for 2 years \$67.500 was ignored. I am requesting the corrected figures of \$67,687.20 and \$67.500 as my yearly compensation for mylife-time retirement pension benefits [+ all COLAs] and all the back moneys which are due to me.

[2] My **RECORD of PUBLIC SERVICE** to the students and people of California contradicts document after document after document in CAL-STRS' file which claims that I did not even earn 25 years of such public service ... **THIS IS FALSE**. Yet, as NOT contradicted by Cal-Strs ever, was my Nov. 4, 2020 hearing testimony re my ADDITIONAL RISK-TO-MY-LIFE YEARS of FULL-TIME teaching service to the "At Risk students" in LAUSD. See my 8-page letter dated Aug. 2, 2018 with crucial information regarding this LIFE-THREATENING teaching assignment, and the YET ADDED ADDITIONAL Special Services to LAUSD and its students in the "Youth Who are Neglected, Delinquent, or at Risk of Dropping Out" program for FOUR YEARS [after school hours of more service to LAUSD and the people of Calif. 8 hrs./week. Yet even more ADDITIONAL service NOT recognized by Cal-Strs: My teaching at Orange Coast College for two years [Aug. 2, 2018 letter]. FINALLY: **The risk to my life WAS REAL:** in May 2001, several youths burst into my At-Risk classroom with baseball bats looking to kill me, asking the Assistant "where is Mrs. Finander?" [I believe that they were sent by the mother of a student who wrote that she was going to kill me; I suspect that it was because I suspended her son and called her at work]. Luckily, I happened to be out that day. [note: another day, a student was brandishing a knife in class; **DO I DESERVE RESPECT INSTEAD OF DIS-RESPECT?**

MARLENE FINANDER

DT: DECEMBER 9, 2020

TO: CAL-STRS APPEAL COMMITTEE [THIS IS PAGE 3]

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[3] Does FIDUCARY DUTY [Cal. Educ. Codes 22250 and 26002] AND FAIRNESS TO ME MEAN

ANYTHING? Cal-Strs did not honor it. This evil-spirited contradiction of both the legislative public policy of this state and **just plain moral decency** 100% flies in the face of the **DUTY OWED TO ME as an INTENDED BENEFICIARY of FIDUCIARY DUTY** by the very Fiduciary entity --- CAL-STRS --- to which this absolute obligation applies (Educ. Codes 22250 and 26002) for which Educ. Code 22308 is the 100% APPLICABLE CORRECTION authority to grant my earned Cal-Strs retirement benefits. These Fiduciary Duties owed to me were **given NO respect and completely ignored by the ALJ in her report to Cal-Strs.** With these observations, in fact, the decision rendered in this case reveals a distinctive under-current of attitude. My further understanding is that as the underdog, I was unfairly denied my rights. CAL-STRS representatives REPEATEDLY disagreed with each other and tossed around numerous figures in order to confuse me. Yet Cal-Strs documents state that I am paid in full. The fact that your officials could not agree among themselves over and over is a miscarriage of justice to me, which flies in the face of the FIDUCARY DUTY OWED TO ME per Cal. Educ. Codes 22250 and 26002 and needs immediate correction within your authority per Cal. Educ. Code 22308. Also, Cal. Educ. C. 22010 is 100% relevant because of the repeated over and over errors and mis-statements and lack of internal calculation agreements by Cal-Strs staff ... which then qualifies as so legally grossly negligent that it equals intentional mis-statements [Cal. Educ. Code 22010].

[4] Here is how my Cal-Strs benefits were **DIABOLICALLY** mis-calculated ... what a plan against an innocent retiree! CAL-STRS knowingly hired an outsider of Cal-Strs ... a grossly incompetent representative who "**GUARANTEED**" to me THREE TIMES that my deposit of EXACTLY \$1,272.96 additional moneys by check to CAL-STRS **would result in me being PROPERLY CREDITED WITH 25YEARS service credit** [still 2 years less than 27 years FULL TIME TEACHING AND THE MANY YEARS OF ADDITIONAL TEACHING AT LAUSD AND ORANGE COAST COLLEGE AND ANAHEIM SCHOOL DISTRICT, AND HUNTINGTON BEACH HIGH SCHOOL DISTRICT AND SANTA ANA UNIFIED SCHOOL DISTRICT]. Where is the credit for ALL THESE YEARS OF SERVICE? Why would I use a figure such as \$1,272,96 If it was not quoted as a correct figure by April Sharp ... for correctly qualifying for AT LEAST 25 years of service compensation credit at my highest yearly salary?

MARLENE FINANDER

DT: DECEMBER 9, 2020 TO: CAL-STRS APPEAL COMMITTEE [THIS IS PAGE 4]

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[5] Cal-Strs outside attorneys Axelbaum and Brudigam ignored my request to detail April Sharp's qualifications. The attys. also ignored my request for identifying the relationship between this "outside" [non-Cal-Strs employee] "counselor" and CAL-STRS until finally, many months later, on page 314 out of 360 pages of Discovery documents sent to me by Cal-Strs' attorneys, her position as an employee of LA County Office of Education was finally listed in such small font-type size that it actually required me to use a magnifying glass to see --- confirming how much time AFTER THE FACT that CAL-STRS attorneys tried to hide this crucial information. THE REASON WAS: SHE WAS NOT A TRAINED COUNSELOR, OR CAL-STRS OFFICIAL IN ANY WAY WHATSOEVER. This slyly legal step on the part of Cal-Strs once again, EASILY qualifies as IGNORING BOTH the FIDUCIARY DUTY action in my favor [per Cal. Educ. C.(s) 22250 and 26002] via this Appeals Committee using its authority per Cal. Educ. C. 22308 to correct THIS INJUSTICE horribly and wrongly foisted upon me [see, once again, my 8-page letter to Cal-Strs dated Aug. 2, 2018 for details]. However, Cal-Strs' attorneys Axelbaum and Brudigam repeatedly defended April Sharp, though she had no qualifications whatsoever for this crucial responsibility for my pension benefits. Further Axelbaum shouted at me that the April Sharp anecdotal never happened; he accused me of this over and over and continued accusations and shouting at me. THESE ARE THE KINDS OF ATTORNEYS THAT CAL-STRS HIRES. I realize that you would rather ASSIGN FAR MORE money to attorneys who bully and demean innocent retirees than assigning the correct retirement benefits to me. Referring to 2 non-existent meetings introduced by Axelbaum I observed my signature and printed-name appear on a document from a Mr. Cordley; the printing is not mine; the signature originally appeared on a different document and it was reproduced for his document. The written date on the document was not of my writing. Axelbaum assigned my attendance at two meetings with a Mr. Cordley but I NEVER EVEN MET HIM, EVER. MOST NOTABLY: per my Aug. 2, 2018 letter: April Sharp admitted that she was NOT a specially qualified' financial advisor but a teacher just trying to earn some extra money and then said: "that's the way they [CAL-STRS] do things.," [my exh # AA-0024, par.2]. THIS IS/WAS GROSSLY OUTRAGEOUS TO ME. I retired from LAUSD due to unexpected VIOLENCE directed to me ... and possible future violence to me. An LAUSD official could not protect me. I was not safe, I would never be safe.

../s/.. MARLENE R. FINANDER [see also 1 p. attachment]