



Appeals Committee

Item Number 3 – Open Session

Subject: Consideration of the Proposed Decision: In the Matter of the Option Benefit of: Darryl Bolke

Presenter(s): Jaismin Kaur and Ian Coen

Item Type: Action

Date & Time: November 3, 2022 – 20 minutes

Attachment(s): Attachment 1 – Proposed Decision

PowerPoint(s): None

Item Purpose

The purpose of this item is to consider the proposed decision issued in the above-referenced matter.

Executive Summary

Administrative Law Judge (ALJ) Jessica Wall received evidence at an administrative hearing on August 18, 2022, for the above-referenced matter. On September 12, 2022, ALJ Wall delivered a proposed decision granting Respondent Darryl Bolke’s appeal to stop CalSTRS from correcting his monthly option benefit and recouping overpaid benefits. (Attachment 1)

Mr. Bolke was given the opportunity to submit a written statement in response to the proposed decision, but he did not submit one.

Staff recommends that the Appeals Committee reject the proposed decision and refer the case back to the ALJ to take additional evidence, as further detailed below.

Background

CalSTRS member Shayleen Bolke (“Mrs. Bolke”) began teaching as a full-time teacher at Carlton P. Lightfoot Elementary School in the Etiwanda Elementary School District (“District”) in the fall of 1999. She taught full-time until her daughter’s birth in spring of 2002. Beginning in the summer of 2002 or 2003 and through the spring of 2005, Mrs. Bolke worked in a job share

with another teacher. In the fall of 2005, Mrs. Bolke was diagnosed with stage III breast cancer. She continued the job share rather than return as a full-time teacher until Mrs. Bolke was diagnosed with stage IV cancer in February 2008, and she stopped teaching shortly thereafter.

On January 29, 2010, Mrs. Bolke applied for CalSTRS disability retirement benefits based on her breast cancer diagnosis. She also submitted a Disability Retirement Benefit Election in which she elected the “Option Plan 7,” a 50 percent beneficiary option, and named her husband Respondent Darryl Bolke as her option beneficiary. Pursuant to Education Code section 24300.1, the 50 percent beneficiary option provided that a “modified retirement allowance shall be paid to the member and upon the death of the member, 50 percent of the modified allowance shall continue to be paid to the option beneficiary.”

CalSTRS approved Mrs. Bolke for disability retirement benefits, effective February 1, 2010. Mrs. Bolke’s final compensation was \$3,436.02, calculated pursuant to Education Code section 22134. Her unmodified benefit, had she not elected an option beneficiary, was \$1,718.01, or 50 percent of her final compensation. Her modified benefit, because she elected Mr. Bolke as her 50 percent beneficiary, was \$1,473.71. As such, Mr. Bolke’s option benefit should have been “50 percent of the modified allowance [of \$1,473.71]” upon Mrs. Bolke’s passing. Mrs. Bolke received her correct monthly disability retirement benefits for several months until she passed away on December 19, 2010. Mr. Bolke’s derivative option benefit began accruing on December 20, 2010.

In March 2020, CalSTRS reviewed the calculation of Mr. Bolke’s option benefit and found that in contravention of Education Code section 22134, subdivision (f), his benefit derived from a final compensation of \$4,452.26, which was Mrs. Bolke’s earnable final compensation *not* adjusted by the ratio that her part-time service bore to her full-time service, instead of \$3,436.02, which was her earnable final compensation adjusted by the aforementioned ratio. The use of the higher earnable final compensation amount resulted in an inflated monthly payment to Mr. Bolke of \$1,126.69, rather than \$869.52, which would have been 50 percent of the monthly benefit Mrs. Bolke was receiving. Based on this error, CalSTRS calculated that Mr. Bolke was overpaid \$26,369.02 between December 2010 and March 2020.

CalSTRS corrected the error in April 2020 by adjusting Mr. Bolke’s monthly option benefit to \$869.52 and reducing it by an additional five percent to recoup the overpayment. CalSTRS notified Mr. Bolke on July 15, 2020 and explained that the error resulted from CalSTRS basing the final compensation on \$4,452.26 from Mrs. Bolke’s benefit, instead of \$3,436.02 as required by statute, resulting in the overpayment to Mr. Bolke. It notified Mr. Bolke on December 8, 2020 that the overpayment had been reduced to \$9,035.76 because CalSTRS was limited to collecting overpayments to 36 months prior to the discovery of the error. Mr. Bolke contested that his benefit was calculated in error. Following the internal administrative remedy process, the administrative hearing took place.

At the hearing, CalSTRS staff member Ian Coen testified that CalSTRS reviewed Mrs. Bolke’s earnings and service credit reported by the employer to determine that she was employed part-time during a portion of her employment. He also testified as to how CalSTRS calculates disability retirement benefits. Mr. Bolke testified as to his recollection of Mrs. Bolke’s work history and the timeline of CalSTRS’ efforts to collect overpayments. He testified that a CalSTRS disability case analyst told him in December 2010 that Mrs. Bolke qualified as a full-time teacher and her benefits should be calculated based on earnable final compensation. Mr. Bolke contended that an error did not occur in calculating his option benefit, and therefore there was no overpayment. Mr. Bolke also raised arguments resembling constructive notice, equitable estoppel, laches, and denial of due process.

ALJ Wall held that CalSTRS did not provide sufficient evidence to prove, by a preponderance of the evidence, that Mrs. Bolke was a part-time teacher, that using \$4,452.26 as Mrs. Bolke’s final compensation for Mr. Bolke’s option benefit calculation was an error, and that Mr. Bolke was overpaid. ALJ Wall found that CalSTRS did not provide evidence about the length of time, factors, and formula it used to determine whether Mrs. Bolke was a part-time teacher. Accordingly, ALJ Wall granted Mr. Bolke’s appeal to stop CalSTRS from correcting his option benefit and recouping overpaid benefits.

Recommendation

Pursuant to Government Code section 11517, subdivision (c)(2)(D), staff recommends that the Appeals Committee reject the proposed decision and refer the case to the same administrative law judge if reasonably available, otherwise to another administrative law judge on staff of the Office of Administrative Hearings, to take additional evidence on the following:

1. Whether Mrs. Bolke’s disability retirement benefit was correctly calculated pursuant to Education Code sections 22134 and 24106(a); and
2. Whether Mr. Bolke’s option benefit, which is derivative of Mrs. Bolke’s retirement benefit, was correctly adjusted in March 2020 pursuant to Education Code section 24300.1(a)(3) and if so, whether CalSTRS was entitled to recoup the identified overpayments.

Should the Appeals Committee instead move to adopt the proposed decision, staff recommends making the following technical or other minor changes pursuant to Government Code section 11517(c)(2)(C):

1. On page 2, paragraph 2, line 3, add “to” between “progressed” and “Stage IV.”
2. On page 2, paragraph 3, line 1, change “accepted” to “approved.”
3. On page 3, paragraph 4, lines 3 to 4, delete “and member’s daughter.”

4. On page 3, paragraph 5, line 7, change “\$26,369.03” to “\$26,369.02.”
5. On page 5, paragraph 9, line 1, change “September 2020” to “March 2021.”
6. On page 7, paragraph 12, line 1, change “he” to “Complainant.”
7. On page 7, paragraph 13, line 6, change “determination” to “Determination.”
8. On page 7, paragraph 14, lines 2 to 3, change “March 7, 2010” to “form received on March 8, 2010, the.”
9. On page 8, paragraph 14, line 1, change “March 8, 2010” to “form received on March 8, 2010, the.”
10. On page 8, paragraph 14, line 11, change, “employee” to “equivalent.”
11. On page 8, paragraph 14, line 13, change “0.5” to “0.50.”
12. On page 10, paragraph 21, line 3, change “February” to “January.”
13. On page 11, paragraph 21, line 1, add “service” before “retire.”
14. On page 15, paragraph 4, line 2, change “plan” to “Plan.”
15. On page 15, paragraph 5, line 3, change “with” to “[w]ith.”
16. On page 16, paragraph 7, line 8, change “compensable service” to “creditable service for which compensation is payable to the member.”

Strategic Plan Linkage: Goal 1 (trusted stewards) to ensure a well-governed, financially sound trust fund

Board Policy Linkage: Section 7.C. [Guidelines for Consideration of Proposed Decisions in Appeals](#)
