



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

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November 24, 1998

| <u>SPECIAL MASTER'S FINAL REPORT</u> | <u>DATE</u> | <u>COMM</u> | <u>ACTION</u> |
|---|-------------|----------------|---------------|
| The Honorable Toni Jennings President, The Florida Senate Suite 409, The Capitol Tallahassee, Florida 32399-1100 | 11/25/98 | SM GO FR | Unfavorable |

Re: SB 36 - Senator John Dyer
Relief of Lois Hild

THIS IS AN EQUITABLE CLAIM SEEKING PAYMENT OF A MONTHLY RETIREMENT BENEFIT OF \$1,692.72 FOR 106 MONTHS, PLUS ANNUAL COST OF LIVING ADJUSTMENTS, TO THE BENEFICIARY OF A DECEASED MEMBER OF THE FLORIDA RETIREMENT SYSTEM.

FINDINGS OF FACT:

Fred E. Hild, who was employed by Valencia Community College, had a stroke on October 12, 1995. After spending some time recovering Mr. Hild returned to work on a part-time basis, then full-time.

Mr. Hild resigned his position effective July 31, 1996. Mr. Hild, who was a member of the Florida Retirement System, began receiving benefit payments effective August 1996.

In order to determine how retirement benefits are to be paid to a member of the Florida Retirement System (FRS), a member is required to complete and sign in the presence of a notary a form entitled "Option Selection for FRS Members." Four options are presented on this form, but only Option 1 and Option 2 are relevant here.

Option 1 on the form provides for a monthly benefit that is payable only during the retiree's lifetime. Upon the death of the retiree, the monthly benefit stops and the retiree's beneficiary only receives a refund of any contributions paid by the retiree that are in excess of any amount the retiree received in benefits. Option 1 does not provide a continuing benefit to the retiree's beneficiary.

Option 2 provides for a reduced monthly benefit payable during the retiree's lifetime. If the retiree dies before receiving 120 monthly payments, the designated beneficiary will receive the same monthly benefit that the retiree received during his or her life until the monthly benefit payments to both retiree and beneficiary equals 120 monthly payments.

Retirement benefit payments were made to Mr. Hild based upon the selection of Option 1.

Mr. Hild died on September 28, 1997, and retirement benefit payments ceased. No refund for contributions in excess of benefits received was paid to Mr. Hild's beneficiary, his widow Ms. Hild, upon his death.

In response to Ms. Hild's inquiry regarding the continuation of retirement benefits, the Division of Retirement, Department of Management Services, by letter dated June 5, 1998, advised Ms. Hild that her husband had selected Option 1 and that no change to that option was permitted. This letter constituted final agency action and, as such, provided a point of entry to formal administrative hearings.

On July 2, 1998, Ms. Hild, through her attorney, filed a petition for administrative hearing that challenged the Division's determination that the selection of Option 1 could not be modified and requested that Option 2 be substituted by the Division. Ms. Hild's petition asserts that she and Mr. Hild had agreed upon the selection of Option 2 by Mr. Hild.

Further, it is alleged in the petition that Ms. Hild had signed the retirement election form prior to its

completion by her husband and that she had done so because she and her husband believed that Mr. Hild had to complete and execute the form in the presence of a notary. The petition alleges that when Mr. Hild later completed the form, he selected Option 1 instead of Option 2. The selection of Option 1 by Mr. Hild, according to the petition, was due to lack of mental capacity resulting from the stroke that he had suffered a number of months prior to completing the form.

Upon the receipt of the petition for formal administrative proceeding that was filed by the claimant, the Division of Administrative Hearings assigned Administrative Law Judge Mary Clark to hear the case. According to the notice of hearing issued by the administrative law judge, the issue in the case is whether the request to change Mr. Hild's retirement benefit option from Option 1 to Option 2 should be granted.

Judge Clark has scheduled the case for hearing on December 1, 1998.

CONCLUSIONS OF LAW:

Rule 4.81(f), Rules of the Senate, codifies the principle that a claimant should exhaust his or her remedies prior to consideration of a claim by the Senate. That rule states:

The hearing and consideration of a claim, any element of which is pending in litigation, shall be held in abeyance until all judicial activity thereon, including any appellate proceedings, shall have come to rest.

While this rule does not specifically refer to pending administrative proceedings, which are quasi-judicial in nature, nevertheless, the same principles and reasoning that support abeyance of claim's that are in a judicial forum apply to administrative proceedings, as well:

"The legislature generally views all claim bills, especially equitable claims bills, as a claimant's last resort. If alternative resources

of recovery exist, such as workers' compensation or third party liability coverage, then the alternatives must first be fully exhausted. . . ."¹

Ms. Hild has not exhausted her available remedies. The Legislature, by its adoption of ch. 120, F.S., the Administrative Procedure Act, specifically created a process which permits a person who has been substantially affected by final agency action to request and receive a formal hearing in which an administrative law judge makes findings of facts and conclusions of law. Use of the administrative process to resolve disputes and to lessen the burden on courts, and the Legislature, is encouraged. For example, the Florida Tort Claims Act sets up a mandatory procedure for attempted administrative resolution of all tort claims against state government.

The Division's letter of June 5, 1998, that announced that the selection of Option 1 could not be modified, substantially affected the claimant and was final agency action. As a result, the claimant was authorized by law to request a formal administrative hearing on the matter.

Additionally, the claimant is currently pursuing the administrative remedy that is available to her. The claimant filed a request for formal administrative hearing and a formal administrative hearing is scheduled for December 1, 1998. The administrative process will result in a final order that will contain findings of fact, conclusions of law, and a determination regarding changing the retirement option that was selected. If that determination is unfavorable to the claimant, the claimant may pursue an appeal to the district court. If the administrative determination is favorable to the claimant, no additional proceedings, either judicial or legislative, will be necessary.

¹*Legislative Claims Bills: A Practical Guide to a Potent(ial) Remedy* by D. Stephen Kahn. The Florida Bar Journal, April 1988.

Furthermore, the administrative remedy currently being pursued by the claimant is adequate to resolve this claim. The administrative hearing process is a well-established method for resolving disputes between executive agencies and the persons that are substantially affected by agency decision-making, including retirement benefit disputes.

RECOMMENDATIONS:

This case is scheduled for formal administrative hearing at the Division of Administrative Hearings on December 1, 1998. Accordingly, for the reasons stated in the Conclusions of Law, this bill is not yet ripe for legislative consideration. I recommend that until the claimant's available remedies are exhausted that SB 36 be reported UNFAVORABLY.

Respectfully submitted,

James Parker Rhea
Senate Special Master

cc: Senator John Dyer
Faye Blanton, Secretary of the Senate
Marleen Ahearn, House Special Master