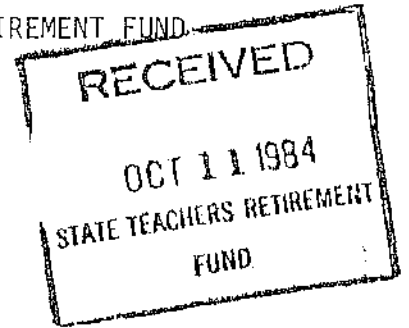


STATE OF INDIANA )  
COUNTY OF MARION )

SS:

BEFORE THE INDIANA STATE  
TEACHERS' RETIREMENT FUND

IN THE MATTER OF THE )  
APPEAL OF )  
PAUL W NESPER )  
TRF # )



HEARING OFFICER'S NOTICE OF FILING

Notice is hereby given that Marsha Harrison, designated hearing officer in the above captioned matter, has presented to and filed with the Board of Trustees of the Indiana State Teachers' Retirement Fund the complete record of proceedings before her together with the following Findings of Fact, Conclusions of Law and recommended Order.

Pursuant to IC 4-22-1-13, written objections to the entry of said Order may be filed within ten (10) days.

The above referenced matter came on to be heard, after due notice, by Marsha Harrison on the 31st day of August, 1984, in the Indiana Department of Insurance Conference Room, 509 State Office Building, Indianapolis, Indiana. The moving party, Paul W. Nesper, appeared in person and by counsel, Robert W. Rund, and the Indiana State Teachers' Retirement Fund was represented by Alfred K.B. Tsang, Deputy Attorney General. Witnesses were sworn, testimony was heard and exhibits were received into evidence.

Based upon said hearing, the hearing officer now makes the following Findings of Fact, Conclusions of Law, and recommended Order:

FINDINGS OF FACT

1. That Paul W. Nesper is a member of the Indiana State Teachers' Retirement Fund (hereafter Fund) and has been a member since 1957.
2. That Paul W. Nesper filed an application For Retirement Benefits with the Fund on or about June 28, 1984.
3. That by letter dated July 9, 1984, the Fund through its Executive Director informed Paul W. Nesper that his years in military service would not be included in calculating his retirement benefits.
4. That Paul W. Nesper timely requested an administrative hearing regarding credit for his years of military service.
5. That Paul W. Nesper received a B.S. in education in Ohio in 1941.
6. That Paul W. Nesper served in the United States Navy on active duty from 1942 until May, 1946.
7. That from 1946 until 1950, Paul W. Nesper was employed by radio stations in Ohio and Michigan.
8. That from 1950 through 1956, Paul W. Nesper was employed in private education in Nebraska.
9. That in 1957, Paul W. Nesper was employed by Ball State University where he was so employed until his retirement in May, 1984.

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10. That Annual Statements of Members Account provided to Paul W. Nesper by the Fund for 1971 through 1983 indicated that his years of military service were being considered as years of creditable service.

11. That Estimates of Retirement Benefits provided to Paul W. Nesper by one of its Retirement Counselors in April, 1983, indicated that his years of military service were being considered as years of creditable service.

12. That in November, 1980, Paul W. Nesper was aware of the change in the Teachers' Retirement Fund law as it related to credit for military service.

13. That in July, 1981, Paul W. Nesper tendered to the Fund [REDACTED] as an assessment for his years of military service.

14. That said amount has been applied to and included in the annuity purchase for Paul W. Nesper's current monthly retirement benefits of [REDACTED]

15. The difference in monthly retirement benefits available from the Fund, as calculated by Paul W. Nesper, between the amount he will now receive and the amount he would receive if he was given credit for his military service, is approximately [REDACTED] per month, so long as either he or his wife survive.

16. That in September, 1983, Paul W. Nesper notified the President of Ball State University of his intention to retire at the end of the 1983-84 school year under the provisions of Ball State University's Early Retirement Plan.

17. That had Paul W. Nesper known that his years of military service would not be included as creditable service in calculating his retirement benefits, he would not have made the decision he did when he did.

CONCLUSIONS OF LAW

1. That the Board of Trustees of the Indiana State Teachers' Retirement Fund has the jurisdiction to issue the final Order in this matter and to determine if Paul W. Nesper is entitled to credit for his years of military service.

2. That Indiana Code Section 21-6.1-4-6, as amended by Acts 1980, P.L. 28, Sec. 13, provides in pertinent part:

(b) This subsection applies to members who retire after June 30, 1980. A member who had completed four (4) years of approved college teacher training before voluntary or involuntary induction into the military services is entitled to credit for that service as if he had begun teaching before the induction. A member who serves in the military, naval, or allied service is considered a teacher and is entitled to the benefits of the fund if:

- (1) for or during the leave of absence he pays into the fund his contributions;
- (2) the member has an honorable discharge; and
- (3) the member returns to active teaching service within eighteen (18) months after the honorable discharge.

3. That because Paul W. Nesper did not return to active teaching service within eighteen (18) months after his honorable discharge in 1946, he is not, by statute, entitled to credit for his years of military service (1942-1946).

4. That members of the Indiana State Teachers' Retirement Fund are charged with knowledge of the Indiana law relating to the Fund and that Paul W. Nesper had specific knowledge of the amendment to IC 21-6.1-4-6 as early as November, 1980.

5. That the Board of Trustees of the Indiana State Teachers' Retirement Fund is bound to follow the law relating to administration of the Fund.

6. That the Indiana State Teachers' Retirement Fund is not estopped to properly apply the law as it relates to calculation of years of creditable service for Paul W. Nesper even though certain erroneous information regarding said years of creditable service was given to Mr. Nesper from time to time after 1980.

RECOMMENDED ORDER


Based upon the foregoing, it is hereby recommended that the Board of Trustees of the Indiana State Teachers' Retirement Fund uphold the decision that member Paul W. Nesper's retirement benefits from the Fund be based upon twenty-seven (27) years of creditable service and that, pursuant to statute, said member is not entitled to creditable service for his four (4) years of military service.

All of which is adopted and recommended by the hearing officer this 4th day of October, 1984.



Marsha Harrison  
Hearing Officer

cc: Paul W. Nesper

  
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