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10-7-2008

CARROLL GATES, Petitioner

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**BEFORE THE BOARD OF TRUSTEES OF THE TENNESSEE CONSOLIDATED  
RETIREMENT SYSTEM**

**IN THE MATTER OF:** )  
 ) **DOCKET NO. 23.02-096320J**  
**CARROLL GATES,** )  
**Petitioner** )

**INITIAL ORDER**

This matter pends on cross motions for summary judgement, and has been submitted for decision on the basis of the record. There is no dispute regarding any material fact. The issue in this contested case is how the attorney’s fee paid in a worker compensation case figures into the calculation of the amount of accidental disability retirement benefits. Both parties have been ably represented by counsel, and the matter is ripe for decision.

After consideration of the record, it is determined that the calculation of benefits as made by the Tennessee Consolidated Retirement System (TCRS) is correct, and therefore it is ORDERED that the retirement benefits be those calculated by the TCRS. This determination is based upon the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. The City of Newport (Newport), Tennessee became a participating employer in the TCRS in July of 1976.

2. Petitioner, Carroll Gates, became employed by Newport in May of 1988, and was a member of the Retirement System throughout that employment.

3. As a result of an on the job accident, Petitioner filed for worker compensation benefits and for accidental disability retirement benefits.

4. An Agreed Order was entered awarding Petitioner permanent partial disability benefits in the amount of \$100,000.00 for his worker compensation claim. Attorney's fees of \$20,000.00 were approved in the same order. Effectively, Petitioner's recovery on his worker compensation claim was \$80,000.00. It seems likely that payment was made by check, one to the Petitioner and one to the attorney.

5. Petitioner was approved for accidental disability retirement benefits by TCRS because of his work related disability. His benefit was reduced by TCRS based on the award of the \$100,000.00 in permanent partial disability benefits. The parties do not dispute that the calculation of the benefit amount was correct for the figure of \$100,000.00. The dispute is whether the figure of \$100,000.00 should have been used at all. Petitioner contends that the figure that should have been used in the calculation of his benefit was \$80,000.00, the amount he actually received for his permanent partial disability benefits on his worker compensation claim after allowing for the deduction of the \$20,000.00 attorney's fee.

## CONCLUSIONS OF LAW

1. T.C.A. § 8-36-502(c)(1)(C) provides in pertinent part that when a member “is receiving payments from the division of claims administration worker’s compensation, the disability retirement allowance payable under this section shall be reduced so that the member’s disability allowance, together with payments from the divisions of claims administration and workers’ compensation, does not exceed seventy-five percent (75%) of the member’s average final compensation.”

2. T.C.A. § 8-36-503 provides: “for the purposes of integrating division of claims administration or workers’ compensation payments with the disability retirement allowance provided herein, compensation shall include any payments made by the division of claims administration or workers’ compensation, except payments made for hospital or medical expenses.”

3. Summary judgement is appropriate in a matter where there is no dispute of material fact and a party is entitled to judgment as a matter of law.

3. This issue is whether the member’s benefit should be reduced on the basis of the money actually received by him in his workers’ compensation case, that is, his net; or reduced by the amount paid, which would include the attorney’s fee. Petitioner argues that the payments made and actually received by the Petitioner constitute \$80,000.00. In this he is correct. The statute, however, clearly states that the benefit will be reduced by

“payments made by ..... workers’ compensation.” “Received” is not part of the statute. Thus, the plain language of the statute requires the calculation be made on the basis of the amounts paid, not the amounts received.

4. Petitioner argues that this calculation of benefits penalizes him for seeking counsel in a legal matter, and that, therefore, these fees should not be included in calculating his allowance. The Legislature specifically excluded some sums from this calculation. The statute provides that payments made for hospital or medical expenses shall not be used in reducing, or integrating, the allowance. When the Legislature provides specific exemptions to a statute, and does not provide for others, the clear implication is that the Legislature did not intend for there to be others. *Southern v. Beeler*, 195 S.W.2d 857 (Tenn. 1946).

4. Petitioner argues that the statute should be liberally construed. Again, the clear intent of the Legislature is that these amounts be considered. Petitioner further urges that the result is unconscionable. It is for the Legislature to determine how to disburse the taxpayer’s funds.

5. Finally, in interpreting a statute, the interpretation given to that statute by the agency which administers it is entitled to deference, at least if that interpretation is one of long standing. *Estrin v. W.F. Moss*, 430 S.W.2d 345 (Tenn. 1968). The presumption is that the Legislature may amend the statute to correct an erroneous interpretation, at least where the interpretation is one of long standing, and therefore known. In fact, there was an attempt to amend the statute to specifically provide for

attorneys' fees to be excluded from the calculation of the allowance in 2007. The Legislature did not pass the amendment.

6. It is clear that the Legislature intended that attorneys' fees be included in the amounts by which allowances are to be reduced, by the plain wording of the statute, the omission of an exception for attorneys' fees among the other exceptions, the interpretation of the statute by the agency charged with administering it, and the failure of the proposed amendment in the Legislature. Therefore, the Tennessee Consolidated Retirement System is entitled to summary judgment as a matter of law.

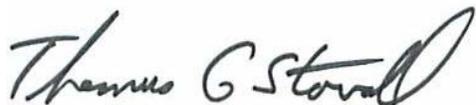
7. Therefore, it is determined that the calculation of benefits as made by the Tennessee Consolidated Retirement System (TCRS) is correct, and it is ORDERED that the retirement benefits be those calculated by the TCRS.

This order entered and effective this 7th day of October, 2008.

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Marion P. Wall  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 7th day of October, 2008.



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Thomas G. Stovall, Director  
Administrative Procedures Division

