


CLERK OF THE COURT

MEMO
KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
815 S. Casino Center Blvd.
Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

REGINALD BINGHAM,
Petitioner/Claimant,

Case No: A-15-714207-J
Dept. No: XXIII

vs.

TUE STATE OF NEVADA,
Respondent.

PUBLIC EMPLOYEES RETIREMENT
SYSTEM,
Administrative Agency.

**PETITIONER'S MEMORANDUM IN SUPPORT OF PETITION
FOR JUDICIAL REVIEW**

COMES NOW, the Petitioner, REGINALD BINGHAM, by and through his undersigned counsel, KIRK T. KENNEDY, ESQ., who files this memorandum in support of his petition for judicial review pursuant to NRS 233B.133.

Petitioner Bingham also moves the Court to grant leave to file his memorandum late pursuant to NRS 233B.133(6). This memorandum was due on or about May 22, 2015, however, Counsel was involved in a jury trial from May 18 to May 22, 2015, which hindered his ability to timely file this Memorandum.

In support hereof, Petitioner relies on the following points and authorities and the

record on appeal on file herein.

Dated this 9th day of June, 2015.

/s/Kirk T. Kennedy
KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
815 S. Casino Center Blvd.
Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner

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II. Statement of the Case:

Reginald Bingham submitted a written request to PERS for a review as to whether he was entitled to PERS disability based benefits after his termination from employment with his former employer, the City of Las Vegas. ROA 034. Thereafter, the PERS Retirement Board initially denied the request for such a review. ROA 002. Bingham sought an appeal of that determination to the Retirement Board, which was allowed and heard on January 21, 2015. ROA 001-003.

The Retirement Board ruled against Bingham and held that he was not eligible for retirement benefits by written decision filed February 18, 2015. Id.

Bingham timely filed his Petition for Judicial Review of the agency decision pursuant to NRS 233B.130-233B.150 on February 20, 2015.

III. Statement of the Issues:

1. Whether the Retirement Board's decision was arbitrary or capricious.
2. Whether the denial decision violated Bingham's rights in its determination and order.

3. Whether the PERS Retirement Board acted in accordance with state law.

IV. Statement of the Facts:

In 2008, Bingham sued his former employer, the City of Las Vegas, in federal court on a claim for violations of the Americans with Disabilities Act (ADA) in federal case number 2:08-cv-01861-JCM. That matter was resolved through a jury trial, wherein the jury returned a verdict for the City of Las Vegas on March 2, 2011. The prior federal lawsuit was solely premised upon the allegations that Bingham was a disabled employee and that the City failed to accommodate his disability under the ADA.

In 2010, prior to his federal jury trial, Bingham was officially terminated by the City. In July, 2010, the City sent a termination letter to Bingham at a former address, which advised Bingham of his official termination date of July 16, 2010. ROA 046. The City's letter also advised Bingham that if he wanted to apply for PERS disability retirement he must do so while still actively employed and that the application must occur before his effective termination date of July 16, 2010. Id.

As set forth in the letter of Bingham's Counsel to PERS from May 20, 2014, Bingham did not receive the City's termination letter at any time prior to July 16, 2010. ROA, 044. Also, the City, which knew Bingham was in litigation and had counsel, did not send the subject termination letter to Bingham's Counsel either. Id. Therefore, Bingham was not able to timely apply for disability benefits through PERS prior to his July 16, 2010, termination effective date, as he was unaware of the process.

In 2012, Bingham contacted PERS about eligibility for disability retirement benefits. PERS responded with a letter dated November 26, 2012, which advised Bingham that he did not timely apply for benefits prior to his termination in July, 2010, and, therefore, he was not eligible for those benefits pursuant to NRS 286.620. ROA 047.

PERS responded to Counsel's May 20, 2014, letter with its letter of June 23, 2014. ROA, 040. PERS indicated that because Bingham did not timely apply, that PERS staff did not have the authority to allow him to apply for disability retirement benefits. Id. The letter did indicate that if PERS staff denied the request, that Bingham could request an appeal of the denial decision to the PERS Board. Id.

1 On July 22, 2014, Bingham's Counsel requested a hearing before the Retirement
2 Board to address Bingham's situation. ROA 034. As a result of that request, the
3 Retirement Board did allow an appeal hearing where Bingham and his Counsel were
4 present to argue their position. ROA 001-003.

5 Bingham argued that because he did not receive timely notice from the City of Las
6 Vegas when he was terminated in July, 2010, of the requirement to file for disability
7 retirement, the Board should provide equitable relief to allow this application to proceed.
8 ROA 002.

9 The Retirement Board did acknowledge that it had the power to correct an "error
10 or inequity" pursuant to NRS 286.190, however, the Board refused to grant any relief to
11 Bingham. ROA 003. The Board ruled that even though Bingham did not receive timely
12 notification from the City about applying for disability benefits before his termination,
13 this event "does not eliminate the statutory requirements as provided by the Retirement
14 Act." Id.

15 **V. Argument:**

16 Under NRS 286.190(3), the PERS Board has the inherent equity power as
17 follows:

18 "adjust the service or correct the records, allowance or benefits of any member, retired
19 employee or beneficiary after an error or inequity has been determined. . ."

20 Under NRS 286.190(4), the term "error or inequity" is defined as "the existence of
21 extenuating circumstances." The relevant statute provides examples of "extenuating
22 circumstances," however, the statutory examples do not limit the total scope of what
23 constitutes an extenuating circumstance sufficient to warrant the Board's power to correct
24 an error or inequity.

25 The undisputed facts in this Petition indicate that Bingham never received timely
26 notification from the City in July, 2010, that (1) he was being terminated and (2) that if he
27 wanted to apply for PERS disability benefits that he needed to do so prior to the July 16,
28 2010, effective date of his termination. Only after the noted dates had run did Bingham
29 finally learn of his termination. The City had delivered the termination letter to an old,

former address and Bingham did not receive it prior to the July 16, 2010, deadline. Additionally, in 2010, the City was still involved in litigation with Bingham in federal court and was aware that Bingham had Counsel, yet the City's Human Resource office did not send the subject letter or copy the letter to his attorney. ROA 044.

The PERS Board has acted in an arbitrary manner and in derogation to Bingham's statutory rights to apply for PERS based disability retirement. Bingham was otherwise eligible to receive disability retirement, if he had only received timely notice of the application requirements prior to the July 16, 2010, termination date.

Bingham met all the statutory criteria to receive this retirement benefit under NRS 286.620. He had a permanent physical disability and he had been with his public employer for longer than 5 years (in fact since 1995). If he had actually received the City's termination letter in a timely manner, then he would have been able to apply for and receive the PERS disability retirement without question.

Bingham seeks judicial relief from this Court to overturn the Board's decision. There is no rational or logical basis to deny Bingham disability retirement benefits based on an error which he did not create. Without fair notice of the requirement to file his application for benefits prior to the termination effective date, Bingham has been clearly harmed and denied a benefit to which he is otherwise entitled by statute.

The Board has statutory power to correct this error, yet its refusal is patently unfair, contrary to due process and in derogation to the mandates of NRS 286.190.

VI. Conclusion:

For all the foregoing reasons, this Petition should be granted and the PERS Board decision denying Bingham the right to apply for disability retirement benefits should be reversed.

Dated this 9th day of June, 2015.

/s/Kirk T. Kennedy
KIRK T. KENNEDY, ESQ.
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VI. Certificate of Service:

I hereby affirm that on this 9th day of June, 2015, I mailed via first class U.S. Mail a copy of the foregoing to the Respondent at the address below:

Jennifer M. Chisel
Deputy Attorney General
100 N. Carson St.
Carson City, NV 89701

W. Chris Wicker, Esq.
6100 Neil Road, Ste. 500
Reno, NV 89511

/s/Kirk T. Kennedy
Law Office of Kirk T. Kennedy, Esq.

AFFIRMATION REGARDING SOCIAL SECURITY NUMBERS

I hereby affirm that the foregoing contains no social security numbers.

Dated this 9th day of June, 2015.

/s/Kirk T. Kennedy
KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
815 S. Casino Center Blvd.
Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner

1 **ANS**

2 **ADAM PAUL LAXALT**

3 **Attorney General**

4 **JENNIFER M. CHISEL**

5 **Deputy Attorney General**

6 **Nevada Bar No. 6680**

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8 **100 North Carson Street**

9 **Carson City, Nevada 89701-4717**

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12 **W. CHRIS WICKER, ESQ.**

13 **Woodburn and Wedge**

14 **6100 Neil Road, Suite 500**

15 **Reno, Nevada 89511**

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 **REGINALD BINGHAM,**

19 **Petitioner,**

20 **vs.**

21 **STATE OF NEVADA,**

22 **Respondent.**

23 **PUBLIC EMPLOYEES' RETIREMENT**
24 **SYSTEM,**

25 **Administrative Agency.**

CASE NO. A-15-714207-J

DEPT. XXIII

ANSWER TO PETITION FOR WRIT OF
MANDAMUS

26 Respondents, the State of Nevada and the Public Employees' Retirement System
27 (PERS), by and through their legal counsel, Adam Paul Laxalt, Nevada State Attorney
28 General, Jennifer Chisel, Deputy Attorney General, and W. Chris Wicker, Woodburn and
29 Wedge, answers Reginald Bingham's (Petitioner) Petition for Writ of Mandamus¹ seeking to
30 compel Respondent PERS to allow Petitioner the right to apply for disability retirement
31 benefits.

32 This Answer is made pursuant to NRS 34.210 and is based on the attached Summary
33 of Facts, Memorandum of Points and Authorities, the Record on Appeal filed with the Court on

34 ¹ Based on the agreement of the parties to this action, as outlined in the Stipulation and Order to Convert
35 Proceedings from Petition for Judicial Review to a Writ of Mandamus Proceeding delivered to the court, the
36 nature of this matter is more properly a Writ of Mandamus and will be treated as such in this and future
37 pleadings.

25

1 April 13, 2015, and all papers and filings on file in this case. Any allegations by Petitioner not
2 expressly admitted in this Answer, are hereby denied.

3 **SUMMARY OF FACTS**

4 For this Court to fairly engage in the determination of whether to issue a Writ of
5 Mandamus, it must have a chronology of events that have taken place related to the denial of
6 Petitioner's request to apply for disability retirement benefits. Included in the Record on
7 Appeal is Administrative Decision 2015-02 which outlines the facts in this case. ROA 001-
8 004.

9 Petitioner was employed with the City of Las Vegas from June 18, 1993, until July 16,
10 2010, when the City terminated his employment. ROA 001. The City of Las Vegas sent a
11 letter to Petitioner, dated July 1, 2010, notifying Petitioner that his employment would be
12 terminated on July 16, 2010, and that if he wanted to pursue disability retirement through
13 PERS, he should do so prior to his termination date. ROA 001; ROA 046. Petitioner did not
14 apply for disability retirement with PERS prior to July 16, 2010. ROA 001. On March 15,
15 2011, Petitioner applied with PERS for service retirement and has been receiving service
16 retirement benefits since March 2011. ROA 001.

17 In November 2012, Petitioner inquired with PERS about disability retirement benefits.
18 On November 26, 2012, PERS informed Petitioner that he was ineligible to apply for disability
19 benefits because Petitioner was no longer employed with a participating public employer as
20 required for eligibility. ROA 001; ROA 051.

21 Counsel for Petitioner sent a letter to PERS on July 22, 2014, requesting a hearing or
22 other review by the PERS Board. ROA 034. On August 27, 2014, a letter from the Nevada
23 Attorney General's Office was sent to Petitioner's counsel indicating that the Board generally
24 does not hear matters when there is a controlling statute as in this case. ROA 032-033.
25 Counsel for Petitioner again requested a hearing by the PERS Board in a letter dated
26 September 29, 2014. ROA 025.

27 The PERS Board heard this matter on January 21, 2015, and voted to deny Petitioner's
28 request for eligibility to apply for disability retirement benefits. ROA 003.

He

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 STANDARD OF REVIEW

3 When a writ of mandamus is used to review the actions of a board which is not subject
4 to the Administrative Procedures Act, the reviewing court examines the record below to
5 determine whether there is substantial evidence to support the decision of the board. The
6 reviewing court shall not substitute its judgment of the facts for that of the board. See *City*
7 *Council of Reno v. Travelers Hotel, Ltd.*, 100 Nev. 436, 439-40, 683 P.2d 960, 961-62 (1984).
8 Although not subject to the Administrative Procedures Act, the decisions of the PERS Board
9 are reviewable by the courts pursuant to the same standard of review applied to other
10 administrative actions. *State ex rel. Dept. of Transp. v. Public Employees' Retirement System*
11 *of Nevada*, 120 Nev. 19, 83 P.3d 815, (Nev. 2004). The court will not "substitute its judgment
12 of the evidence for that of the administrative agency." *Id.* At 23.

13 A writ of mandamus is available "to compel the performance of an
14 act" by an inferior state tribunal, corporation, board, or person, see
15 NRS 34.160, or to control an arbitrary or capricious exercise of
16 discretion. See *Round Hill Gen. Imp. Dist. V. Newman*, 97 Nev.
17 601, 637 P.2d 534 (1981). This court has original jurisdiction to
18 issue writs of mandamus under the Nevada Constitution Article 6,
19 Section 4. See *Ashokan v. State, Dep't of Ins.*, 109 Nev. 662, 667,
20 856 P.2d 244, 247 (1993). Generally, mandamus will not issue if
21 petitioner has a plain, speedy, and adequate remedy in the
22 ordinary course of law. See *State v. Dist. Ct.*, 116 Nev. 953, 11
23 P.3d 1209 (2000). Further, mandamus is an extraordinary remedy,
24 and it is within this court's discretion to determine if a petition will
25 be considered. *Smith v. District Court*, 107 Nev. 674, 677, 818
26 P.2d 849, 851 (1991). When circumstances reveal urgency or
27 strong necessity or an "important issue of law needs clarification
28 and public policy is served by this court's invocation of its original
jurisdiction," we may consider a petition for extraordinary relief,
even if alternative remedies may be available. *Falcke v. Douglas*
County, 116 Nev. 583, 586, 3 P.3d 661, 662-63 (2000); *Business*
Computer Rentals v. State Treas., 114 Nev. 63, 67, 953 P. 2d 15,
(1998).

25 *Employers Ins. Co. of Nevada v. State Bd. Of Exam'rs*, 117 Nev. 249, 252-253, 21 P.3d
26 628, 630 (2001).

27 As set forth below, substantial evidence supports the findings of the PERS Board and
28 this court should deny Petitioner's Writ of Mandamus.

ARGUMENT

A. Mandamus should not be granted in this case

In order to obtain a writ of mandamus, Petitioner must clearly demonstrate that the PERS Board abused its discretion or acted arbitrarily or capriciously in determining whether or not to deny his request to apply for disability retirement benefits. As demonstrated more fully below, it is clear that Respondents acted within the clear meaning of the statute. Further, Petitioner does not dispute that he is outside the statutory requirements for eligibility to apply for disability retirement. Since the statute clearly states that a member of PERS must be employed by a public employer in order to be eligible to apply for disability retirement, the remedy of a writ of mandate is not appropriate and does not satisfy the statutory requirements for a petition for writ of mandate.

Although the PERS Board does have the authority to adjust the service or correct the records, allowance or benefits of any member, retired employee or beneficiary after an error or inequity has been determined, the PERS Board determined that Petitioner did not rely on any erroneous information from PERS. The equity powers of the Board do not extend to accepting a disability retirement application from Petitioner in violation of express statute. For all the foregoing reasons, the petition should be denied.

B. Pursuant to NRS 286.620, Eligibility to Apply for Disability Retirement Benefits Requires the Member be in the Employ of a Participating Public Employer at the Time of Application

Nevada law sets forth the requirements that must be met in order to be eligible to apply for disability retirement with PERS. One of the enumerated requirements is that the member of PERS be in the employ of a participating public employer at the time of application for disability retirement. NRS 286.620(1)(b):

1. *A member of the System who has 5 years or more of service credit and who becomes totally unable to perform the member's current job or any comparable job for which the member is qualified by training and experience, because of injury or mental or physical illness of a permanent nature is eligible to apply for disability retirement if:*

(b) *The member is in the employ of a participating public employer at the time of application for disability retirement*
(Emphasis Added).

1 Petitioner was no longer employed with a participating public employer as of July 16,
2 2010, when the City of Las Vegas terminated his employment. During the hearing before the
3 PERS Board, counsel for Petitioner acknowledged that Petitioner did not meet the eligibility
4 requirements for application: "Clearly, the statute itself is against us" ROA 007.

5 However, Petitioner argues that because he did not receive notice of the requirement to
6 file his application for disability retirement benefits prior to his termination date, he has been
7 harmed and denied a benefit that he is entitled to by statute. This argument fails because the
8 statute imposes no duty to notify a member of the disability retirement eligibility criteria.
9 Instead, it is the responsibility of a member to inquire about disability retirement benefits.
10 According to Petitioner, he was in litigation with his employer regarding his disability. It was
11 Petitioner's responsibility to contact PERS to obtain information about his disability retirement
12 options.

13 There is nothing in the record to indicate that Petitioner inquired about disability
14 retirement benefits until more than two years after he was terminated from his employment
15 with the City of Las Vegas. In fact, on March 15, 2011, Petitioner applied for service
16 retirement and has received a monthly benefit since that time. ROA 001.

17 Petitioner also argues that he met all the criteria to receive disability retirement benefits
18 and had he received notice, he would have been awarded disability retirement benefits.
19 Whether or not Petitioner would have been awarded disability retirement benefits is unknown
20 at this time. Pursuant to NRS 286.620 and NRS 286.630, the application, which includes
21 proof of disability and other information by the member, the member's employer and the
22 member's immediate supervisor, must be reviewed by the medical advisors designated by the
23 Board. Based on that review, a recommendation to approve or deny the application is made
24 to the Board.

25 Based on the statutory language, the Board has no discretion to deviate from the
26 eligibility requirements for a member of PERS to apply for disability retirement benefits.
27 Therefore, Petitioner's request to now apply for disability retirement benefits after he was
28 already terminated from employment with the City of Las Vegas was properly denied by the

1 Board.

2 C. Authority of the Board under NRS 286.190 to correct an error or inequity only
3 Available when a member detrimentally relied on representations made by PERS.

4 Petitioner also realizes that under the law, he is not eligible to now apply for disability
5 retirement benefits and therefore he is asking that the Board use its authority to grant equity
6 and allow Petitioner to apply for disability retirement benefits at this time. Under
7 NRS 286.190, the Board may adjust the service or correct the records, allowance or benefits
8 of any member, retired employee or beneficiary after an error or inequity has been
9 determined. "Error or inequity" means the existence of extenuating circumstances, including,
10 but not limited to, a member's reasonable and detrimental reliance on representations made
11 by the System or by the public employer pursuant to NRS 286.288 which prove to be
12 erroneous, or the mental incapacity of the member.

13 Petitioner's reliance on the Board's equity authority is misplaced under the
14 circumstances of his case. The Nevada Supreme Court ruled that equity was proper when
15 "the retirement figures communicated by the Board to Byrne were calculated to the penny and
16 to the day, and were expressly given to Byrne to 'enable (him) to plan (his) future retirement.'" *Nevada Public Employees Retirement Board v. Byrne*, 96 Nev. 276, 280, 607 P.2d 1351,
17 1353, (1980). In the *Byrne* case, it was clear that PERS counseled the member and provided
18 benefit statements that were later determined to be greatly overstated.

19 Unlike *Byrne*, PERS made no representations to Petitioner that he relied upon, to his
20 detriment or otherwise, because Petitioner never contacted PERS to inquire about disability
21 retirement. The facts here more closely resemble the facts in *Nevada Public Employees*
22 *Retirement Board v. Smith*, 129 Nev. ___, 310 P.3d 560 (Adv. Op. 65, October 3, 2013). In
23 *Smith*, nothing suggested that PERS gave the member inaccurate information on which the
24 member detrimentally relied and further the member acknowledged that PERS made no
25 misrepresentations. *Id.* at 567.

26 Here, Petitioner waited to inquire about disability retirement until more than two years
27 after his employment was terminated and more than one year after he began receiving regular
28

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1 service retirement benefits. There are no facts indicating that PERS made erroneous
2 representations to Petitioner that he relied upon to his detriment prior to his termination from
3 his employer when he was eligible to apply for disability retirement. For that reason, the
4 Board has no authority under NRS 286.190 to allow Petitioner to now file an application for
5 disability retirement.

6 CONCLUSION

7 Although PERS is sympathetic to Petitioner, the law is clear that Petitioner is not
8 eligible to apply for disability retirement after his position with a participating public employer
9 was terminated. Rather Petitioner's inaction led to the conditions that prevent him from
10 applying for disability retirement benefits. Lack of notice to the Petitioner does not eliminate
11 the statutory requirements especially given there is no duty to notify a member of the
12 requirement to file an application for disability retirement benefits prior to termination of
13 employment. Further, the equity powers of the Board do not extend to accepting a disability
14 retirement application from Petitioner in violation of express statute, particularly when PERS
15 made no representations to Petitioner, erroneous or otherwise, that were relied upon to
16 Petitioner's detriment.

17 DATED this 23rd day of July, 2015.

18 ADAM PAUL LAXALT
19 Attorney General

20 By: 

JENNIFER M. CHISEL
Deputy Attorney General
Nevada Bar No. 6680
Attorney General's Office
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1211
jchisel@ag.nv.gov
Attorneys for Defendant

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding Answer to Petition for Writ of Mandamus, Case No. A-15-714207-J filed in the District Court, Clark County, Nevada does not contain the social security number of any person.

DATED this 23rd day of July, 2015.

ADAM PAUL LAXALT
Attorney General

By: 

JENNIFER M. CHISEL
Deputy Attorney General
Nevada Bar No. 6680
Attorney General's Office
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1211
jchisel@ag.nv.gov
Attorneys for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Answer to Petition for Writ of Mandamus with the Clerk of the Court by using the electronic filing system on the Answer to Petition for Writ of Mandamus this 23rd day of July, 2015.

I certify that the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following unregistered participants:

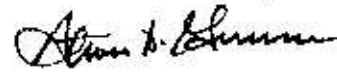
Kirk T. Kennedy, Esq.
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Las Vegas, Nevada 89101

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Employee of the State of Nevada
Office of the Attorney General





CLERK OF THE COURT

SAO
KIRK T. KENNEDY, ESQ.
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815 S. Casino Center Blvd.
Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

REGINALD BINGHAM,
Petitioner/Claimant,

Case No: A-15-714207-I
Dept. No: XXIII

vs.

STATE OF NEVADA,
Respondent,
PUBLIC EMPLOYEES RETIREMENT
SYSTEM,
Administrative Agency.

STIPULATION AND ORDER TO CONVERT PROCEEDINGS FROM
PETITION FOR JUDICIAL REVIEW TO A WRIT OF MANDAMUS
PROCEEDING

IT IS HEREBY STIPULATED AND AGREED, by and between, the Petitioner, REGINALD BINGHAM, by and through his undersigned counsel, KIRK T. KENNEDY, ESQ., and the Respondents, STATE OF NEVADA and PUBLIC EMPLOYEES RETIREMENT SYSTEM, by and through their undersigned counsel, JENNIFER M. CHISEL, Deputy Attorney General, and the firm of Woodburn and Wedge, that the current petition for judicial review proceeding filed by Petitioner under NRS 233B is incorrectly filed and that the proper proceeding to address the Petitioner's issues is a writ of mandamus proceeding.

The parties stipulate to convert the existing proceedings under NRS 233B to a mandamus proceeding under NRS 34.150 et seq.

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Furthermore, the Petitioner's filed Memorandum in Support of Petition for
Judicial Review is agreed to constitute his memorandum in support of this converted writ
of mandamus and that the Petitioner is not required to re-file a further writ or
memorandum in support of his writ of mandamus.

Additionally, the parties stipulate that the Respondent shall have until July 23,
2015, to file its responsive pleading to the Petitioner's filed Memorandum. The Petitioner
shall have until August 6, 2015, to file his reply, if any.

The parties request that a hearing be scheduled on the Court's available calendar
in August, 2015.

KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
815 S. Casino Center Blvd.
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(702) 385-5534
Attorney for Petitioner

Dated: 7/14/15

JENNIFER M. CHISEL
Deputy Attorney General
100 N. Carson St.
Carson City, NV 89701
(775) 684-1211
Attorney for Respondent

Dated: 7/9/15

See page 3

WOODBURN & WEDGE
6100 Neil Road, Ste 500
Reno, NV 89511
(775) 688-3000
Attorney for Respondent

Dated: _____

ORDER

IT IS SO ORDERED.

Dated this 15 day of July, 2015.

DISTRICT COURT JUDGE

JUDGE STEFANY A. MILEY

Furthermore, the Petitioner's filed Memorandum in Support of Petition for
Judicial Review is agreed to constitute his memorandum in support of this converted writ
of mandamus and that the Petitioner is not required to re-file a further writ or
memorandum in support of his writ of mandamus.

Additionally, the parties stipulate that the Respondent shall have until July 23,
2015, to file its responsive pleading to the Petitioner's filed Memorandum. The Petitioner
shall have until August 6, 2015, to file his reply, if any.

The parties request that a hearing be scheduled on the Court's available calendar
in August, 2015.

see page 2
KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
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Attorney for Petitioner

Dated: _____

see page 2
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Attorney for Respondent

Dated: _____

[Signature]
WOODBURN & WEDGE
6100 Neil Road, Ste. 500
Reno, NV 89511
(775) 688-3000
Attorney for Respondent

Dated: 7/9/15

ORDER

IT IS SO ORDERED.

Dated this 15 day of July, 2015.

[Signature]
DISTRICT COURT JUDGE

JUDGE STEFANY A. MILEY

1 RTRAN

COPY

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4 DISTRICT COURT
5 CLARK COUNTY, NEVADA
6

7 REGINALD BINGHAM,

8 Plaintiff,

9 vs.

10 STATE OF NEVADA,

11 Defendant.
12

)
) CASE NO. A714207
)
)

DEPT. NO. XXIII

)
) TRANSCRIPT OF PROCEEDINGS
)
)

13
14 BEFORE THE HONORABLE JAMES BIXLER, SENIOR DISTRICT COURT JUDGE

15 TUESDAY, SEPTEMBER 15, 2015
16

17 NOTICE OF HEARING ON PETITIONER'S WRIT OF MANDAMUS
18

19 APPEARANCES:
20

21 For the Plaintiff:

KIRK T. KENNEDY, ESQ.

22
23 For the Defendant:

WALTER C. WICKER, ESQ.
CHRIS G. NIELSEN, ESQ.

24
25 RECORDED BY: MARIA L. GARIBAY, COURT RECORDER

1 TUESDAY, SEPTEMBER 15, 2015, 9:35 A.M.

2
3 THE MARSHAL: Page 15, A714207, Reginald Bingham versus State of
4 Nevada.

5 THE COURT: Reginald Bingham versus State of Nevada, respondent. This
6 is a writ of mandamus.

7 MR. KENNEDY: Good morning, Your Honor, Kirk Kennedy for Mr. Bingham.
8 Mr. Bingham is actually present today.

9 THE COURT: Good.

10 MR. WICKER: Your Honor, Chris Wicker appearing on behalf of the Public
11 Employees Retirement System.

12 MR. NIELSEN: Good morning, Your Honor, Chris Nielsen appearing on
13 behalf of PERS.

14 THE COURT: All right. So the petitioner is working for -- who is the
15 employer?

16 MR. KENNEDY: City of Las Vegas, Your Honor.

17 THE COURT: City of Las Vegas. He's going through some litigation. He's
18 got some issues. They notify him in July 2010, was it?

19 MR. KENNEDY: Yeah.

20 THE COURT: July 2010, that he's got a termination coming up; but if he's
21 going to be applying for benefits, he has a window of time, a 10-day window or
22 whatever it is.

23 MR. KENNEDY: Yeah, a very small window of time.

24 THE COURT: The letter is mailed to an old address. I wasn't quite sure
25 cause there was a mention made of the fact that he was involved in a litigation

1 involving the city.

2 MR. KENNEDY: Yeah, Your Honor, if I could. Mr. Bingham had been a long
3 time employee of the city since the 1990's. They suffered a worker's comp injury to
4 his knee which resulted in a physical disability that was -- the city did accommodate
5 him for a period of time under the ADA, and then they stopped accommodating him
6 and that resulted in litigation that I was retained on to go through in federal court.

7 So Mr. Bingham was released from his employment, but the city
8 formally terminated him in July 2010 while we were still in litigation. And that's
9 something I referenced in my petition --

10 THE COURT: Right.

11 MR. KENNEDY: -- is that even the letter terminating him referenced that
12 litigation but they never -- they didn't copy my office on the letter. They sent it to an
13 old address and they knew -- the City of Las Vegas knew that he was involved right
14 in the middle of litigation; we were actually waiting for a trial date in front of Judge
15 Mahan in federal court the following year 2011. So as the statute requires under
16 PERS, if you're going to apply for disability retirement, you have to, you know, have
17 a documented permanent disability, 5 years employment.

18 THE COURT: Here's what it boils down to.

19 MR. KENNEDY: Yeah.

20 THE COURT: Wherein does it create an obligation on them to tell him what
21 the law is?

22 MR. KENNEDY: Well, it's about a question of notice where the city -- I don't
23 want to get the Court's to run down the path of liability on the city and things of that
24 type. That's really not what this is all about.

25 THE COURT: All this is about notice. I mean --

1 MR. KENNEDY: Right; yeah. He didn't get adequate notice. But, you know,
2 we know this that you can't apply -- the statute says that you cannot apply for
3 disability retirement if you're not actively employed.

4 THE COURT: Right.

5 MR. KENNEDY: So if he wants to apply for disability retirement, he had to do
6 it before the effective date of his termination which he didn't give the notice, so.

7 THE COURT: But it's two years, two years passes before he does anything.
8 I mean and his reason is I didn't get that letter.

9 MR. KENNEDY: A couple things. I mean we went to the federal trial in
10 February 2011. The federal jury ruled against Mr. Bingham's '88 claim, and so in
11 March 2011 he applied for just regular PERS retirement which he was entitled to.
12 There was some correspondence that subsequently went back and forth.
13 Mr. Bingham wanted me to take a look at it and see whether he could've also
14 applied for disability retirement 'cause there is a difference between regular
15 retirement under PERS and disability retirement. There is a monetary difference in
16 that.

17 There was correspondence that did go back and forth and then
18 ultimately resulted in a hearing in front of the PERS Board which is why we're here.
19 The PERS Board earlier this year denied our request. We are here because the
20 Nevada statute although it's clear that if you're going to get disability retirement you
21 have to do so while you're still employed with your government employer. We agree
22 with that. We acknowledge that. There you can't run from that. But the PERS
23 statutes, the relevant statute is 286.190 does give the board, the PERS Board, the
24 authority to correct an error or an equity. And that's, you know, there's some vague
25 language with that and does define that to include extenuating circumstances.

1 THE COURT: And the question becomes, was there refusal to extend the
2 time by two years to give him a chance to file for disability? Was that arbitrary and
3 capricious, which is basically would have to be in order for me to say they were
4 arbitrary and capricious and they should've exercised their discretion and allow him
5 two extra years to find out that he should've filed two years sooner.

6 MR. KENNEDY: Well, the two years goes by in part because we, you know,
7 there was communication going back and forth then finally resulted in a hearing. So
8 it wasn't like he totally waited two years. And time did go by as correspondence was
9 exchanged until we finally got a hearing. But the fact is whether it was two years,
10 one year or three years, the fact is he does -- if you look at it on paper, had he timely
11 got notice and applied for it, he would've received it. He meets all the statutory
12 requirements. I can affirm you he does. He has the permanent physical injury, the
13 prior 5 years of service. He's been with the city for 20 plus years.

14 So, you know, he has all those requirements met. It's just the fact is he
15 didn't give the proper notice. And so we believe -- it's our contention, the only
16 contention, the only reason we're here is that the first board acted arbitrarily in I
17 would say in a bad faith manner in denying this request. I mean it's -- he meets the
18 requirements and he just didn't give proper notice and we tried to address that with
19 the city and another District Court judge threw that out saying it should've been
20 brought out in the federal case, but all this didn't arise until the federal case was
21 concluded, so he's kind of had doors shut on his face at every opportunity.

22 I totally respect the respondent's position that, you know, if you look at
23 the statute you know, he didn't timely comply with it. So here we are. The question
24 is, did the first board act in arbitrary or capricious manner by denying this individual
25 the right to apply for this benefit that he does qualify for? And we're asking the

1 Court to give him that opportunity. And there it is.

2 THE COURT: I would give him that opportunity. If I was considering this from
3 the board's perspective, I probably would have cut him a break. But the question
4 before me is by them, not exercising their discretion and not giving him that two year
5 break, did they act arbitrary and capricious? The answer is no. they didn't. They
6 made a considered judgment. They exercised their discretion and it was not
7 arbitrary and capricious. So your petition is denied.

8 Did you guys want to say something?

9 MR. WICKER: Your Honor, I've learned not to.

10 MR. KENNEDY: They'd probably plan something here. They don't need to
11 say anything.

12 MR. WICKER: I've learned not to snatch victory from defeat, so. Or defeat
13 from victory. So thank you.

14 MR. NIELSEN: Thank you, Your Honor.

15 THE COURT: Well, you guys prepare an order.

16 MR. KENNEDY: I'd like to go sign off on the order.

17 MR. WICKER: Yes.

18 MR. KENNEDY: Thank you, Your Honor.

19 PROCEEDINGS CONCLUDED AT 9:42 A.M.


20 * * * * *

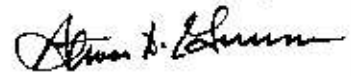
21
22 ATTEST: I do hereby certify that I have truly and correctly transcribed the
23 audio/video recording in the above-entitled case to the best of my ability.

23

24

25


MARIA L. GARIBAY
Court Recorder/Transcriber



CLERK OF THE COURT

1 **NOTICE**

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7 Telephone: (775) 688-3000
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12 Carson City, NV 89703
13 Telephone: (775) 687-4200

14 *Attorneys for the Public Employees'*
15 *Retirement System*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 **REGINALD BINGHAM,**

19 **Petitioner,**

20 **vs.**

21 **STATE OF NEVADA,**

22 **Respondent.**

23 **PUBLIC EMPLOYEES' RETIREMENT**
24 **SYSTEM,**

25 **Administrative Agency.**

Case No. A-15-714207-J

Dept. No. XXIII

NOTICE OF ENTRY OF ORDER

26 **TO:** Petitioner, REGINALD BINGHAM, and his counsel of record:

27 **PLEASE TAKE NOTICE** that on the 3rd day of February, 2016, the above-entitled
28 Court entered the Order Denying Petitioner's Petition for Writ of Mandamus, attached hereto
as Exhibit "1."

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1 CERTIFICATE OF SERVICE

2 I certify that I am an employee of Woodburn and Wedge, and I caused to be sent via
3 electronic mail, through the Court's filing system, a true and correct copy of the foregoing
4 NOTICE OF ENTRY OF ORDER, addressed as follows

5 Kirk Kennedy
6 815 South Casino Center Blvd.
7 Las Vegas, NV 89101

8 Chris Nielsen
9 693 W. Nye Lane
Carson City, NV 89703

10 DATED this 5th day of February, 2016.

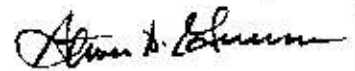
11 By: /s/ Kelly N. Weaver
12 Kelly N. Weaver

EXHIBITS TO NOTICE OF ENTRY OF ORDER

Exhibit 1: Order Denying Petitioner's Petition for Writ of Mandamus, February 3, 2016.

EXHIBIT J

EXHIBIT 1



CLERK OF THE COURT

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13 *Attorneys for the Public Employees'*
14 *Retirement System*

15 DISTRICT COURT
16 CLARK COUNTY, NEVADA

17 REGINALD BINGHAM,

18 Petitioner,

19 vs.

20 STATE OF NEVADA,

21 Respondent.

22 PUBLIC EMPLOYEES' RETIREMENT
23 SYSTEM,

24 Administrative Agency.

CASE NO. A-15-714207-J

DEPT. XXIII

**ORDER DENYING PETITIONER'S
PETITION FOR WRIT OF MANDAMUS**

25 Petitioner, REGINALD BINGHAM, filed a Petition for Judicial Review on February 20, 2015,
26 and filed a Stipulation and Order to Convert Proceedings from Petition for Judicial Review to a Writ of
27 Mandamus Proceeding on July 24, 2015. The Hearing on the Petition for Writ of Mandamus was held
28 on September 15, 2015. Appearing for the Petitioner was Kirk Kennedy, and appearing for
Administrative Agency, PUBLIC EMPLOYEES' RETIREMENT SYSTEM ("PERS"), was W. Chris
Wicker of Woodburn and Wedge.

Mr. Bingham was terminated from employment with the City of Las Vegas on July 16, 2010. He

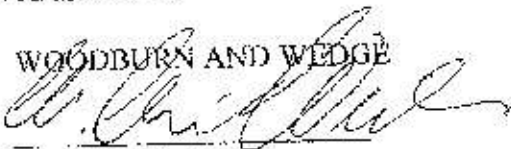
1 started to collect retirement benefits on March 15, 2011. Mr. Bingham inquired about disability benefits
2 in November 2012, and PERS sent him a letter, dated November 26, 2012 stating he was not eligible
3 for disability retirement benefits due to being terminated from employment in July 2010. On May 20,
4 2014, Mr. Bingham's attorney sent a letter to PERS requesting that Mr. Bingham be considered eligible
5 to apply for disability benefits. PERS denied the request and Mr. Bingham appealed to the PERS Board.
6 The PERS Board denied the appeal on February 18, 2015. Mr. Bingham then timely filed for judicial
7 review.

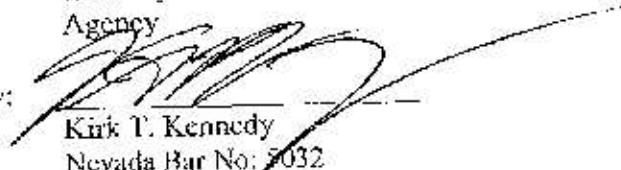
8 After full briefing, at the hearing, the Court indicated he had reached a decision. The Court
9 found that it was two years before Petitioner took any action, or made a claim after the City of Las
10 Vegas terminated his employment. This Court found that pursuant to NRS 286.620, in order for the
11 Petitioner to be eligible to apply for disability retirement with PERS he had to be a member of PERS
12 through a participating public employer at the time of application for disability retirement. Petitioner
13 was no longer employed with a participating public employer as of July 16, 2010, when the City of Las
14 Vegas terminated his employment. Therefore, Petitioner was not eligible to apply for disability
15 retirement with PERS.

16 Therefore, IT IS HEREBY ORDERED that this Court orders that the Petition for Writ of
17 Mandamus is hereby DENIED.

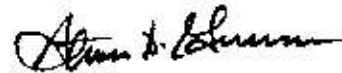
18
19 By: 
20 Honorable District Court Judge

21 Approved as to form:

22 By: 
23 W. Chris Wicker
24 Nevada Bar No. 1037
25 Attorney for Administrative
Agency

26 By: 
27 Kirk T. Kennedy
28 Nevada Bar No. 5032
Attorney for Petitioner

JUDGE STEFANY A. MILEY



CLERK OF THE COURT

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KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
815 S. Casino Center Blvd.
Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

REGINALD BINGHAM,)	Case No: A-15-714207-J
)	Dept. No: XXIII
Petitioner/Claimant,)	
)	
vs.)	
)	
STATE OF NEVADA,)	
)	
Respondent,)	
)	
PUBLIC EMPLOYEES RETIREMENT)	
SYSTEM,)	
)	
Administrative Agency.)	

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN, that the Petitioner, REGINALD BINGHAM, by and through his undersigned counsel, KIRK T. KENNEDY, ESQ., files this notice of appeal to the Nevada Supreme Court from the order denying petitioner's petition for writ of mandamus, filed on February 3, 2016, and served by notice of entry of order on February 5, 2016. See Attached.

Dated this 4th day of March, 2016.

/s/Kirk T. Kennedy
KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
815 S. Casino Center Blvd.
Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner

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CERTIFICATE OF SERVICE

I hereby affirm that on this 4th day of March, 2016, I mailed via first class U.S.

Mail a copy of the foregoing to:

W. Chris Wicker, Esq.
6100 Neil Road, Ste. 500
Reno, NV 89511

Chris Nielsen, Esq.
693 W. Nye Lane
Carson City, NV 89703

/s/Kirk T. Kennedy
Law Office of Kirk T. Kennedy, Esq.

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AFFIRMATION REGARDING SOCIAL SECURITY NUMBERS

I hereby affirm that this document contains no social security numbers.

Dated this 4th day of March, 2016.

/s/Kirk T. Kennedy
KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
815 S. Casino Center Blvd.
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(702) 385-5534
Attorney for Petitioner

IN THE COURT OF APPEALS FOR THE STATE OF NEVADA

REGINALD BINGHAM,

Appellant,

vs.

STATE OF NEVADA; PUBLIC
EMPLOYEES RETIREMENT
SYSTEM,

Respondents.

No. 69927

Electronically Filed
Aug 02 2016 10:15 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S APPENDIX, VOLUME 1

KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
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W. CHRIS WICKER, ESQ.
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6100 Neil Road, Ste. 500
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(775) 688-3000
Attorney for Respondent

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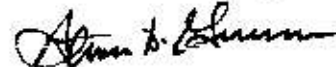
CERTIFICATE OF SERVICE

I hereby affirm that on this 3rd day of August, 2016, I mailed via first class U.S. Mail a copy of the foregoing Appendix to the Respondent at the address below:

W. Chris Wicker, Esq.
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Reno, NV 89511

Chris Nielson, Esq.
693 W. Nye Lane
Carson City, NV 89703

/s/Kirk T. Kennedy
Law Office of Kirk T. Kennedy



CLERK OF THE COURT

1 **PET**
2 KIRK T. KENNEDY, ESQ.
3 Nevada Bar No: 5032
4 815 S. Casino Center Blvd.
5 Las Vegas, NV 89101
6 (702) 385-5534
7 Attorney for Claimant/Petitioner
8 REGINALD BINGHAM

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 REGINALD BINGHAM,
13
14 Petitioner/Claimant,

Case No: A- 15 - 714207 - J
Dept. No. XX111

15 vs.

16 STATE OF NEVADA,

17 Respondent,

18 PUBLIC EMPLOYEES RETIREMENT
19 SYSTEM,
20 Administrative Agency.

21 **PETITION FOR JUDICIAL REVIEW**

22 COMES NOW, the Petitioner/Claimant, REGINALD BINGHAM, by and
23 through his undersigned counsel, KIRK T. KENNEDY, ESQ., who hereby files this
24 petition for judicial review, pursuant to N.R.S. 233B.130 through 233B.150, for review
25 of the administrative agency decision entered on or about January 21, 2015, by the
26 Public Employees Retirement System related to Petitioner's claims of entitlement to
27 disability based PERS benefits.
28

4

In support hereof, Petitioner would rely on the following points and authorities.

DATED this 19th day of February, 2015.

/s/Kirk T. Kennedy
KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
815 S. Casino Center Blvd.
Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner

POINTS AND AUTHORITIES

I. Procedural Background:

On or about January 21, 2015, the Public Employees Retirement System entered its order which denied Petitioner's request for consideration to allow him disability based retirement benefits. Pursuant to N.R.S. 233B.130, Petitioner asserts that he is an aggrieved party who is entitled to have this final, administrative agency determination reviewed by the district court as a petition for judicial review. Petitioner seeks this review because the administrative decision was clearly erroneous and/or arbitrary and capricious and/or an abuse of discretion and/or in violation of statutory provisions, N.R.S. 233B.135(3)(a)(d)(e) and (f).

The issues to be reviewed through this process include, but may not be limited to, (1) whether the agency's determination was arbitrary and capricious; (2) whether the decision violated the Petitioners' rights in its determination and order and (3) whether PERS acted in accordance with state law.

In light of the requirements of N.R.S. 233B.131 for the transmittal of the entire agency record within 30 days after service of this petition upon the agency, Petitioner would request that this Court set a final hearing date for this matter which will allow sufficient time for the Petitioner to review the record and submit the appropriate

memorandum of points and authorities per N.R.S. 233B.133(1).

DATED this 19th day of February, 2015.

/s/Kirk T. Kennedy
KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
815 S. Casino Center Blvd.
Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby affirm that on this 20th day of February, 2015, I mailed a copy of the foregoing Petition for Judicial Review to the Respondents at the addresses below:

Public Employees Retirement System
693 W. Nye Lane
Carson City, NV 89703

Office of the Attorney General
100 N. Carson St.
Carson City, NV 89701

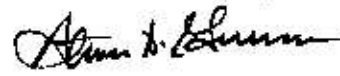
/s/Kirk T. Kennedy
Employee of Kirk T. Kennedy, Esq.

AFFIRMATION REGARDING SOCIAL SECURITY NUMBERS

I hereby affirm that the foregoing document contains no social security numbers in compliance with Nevada law.

DATED this 19th day of February, 2015.

/s/Kirk T. Kennedy
KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
815 S. Casino Center Blvd.
Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner



CLERK OF THE COURT

ERRATA
KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
815 S. Casino Center Blvd.
Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner

**DISTRICT COURT
CLARK COUNTY, NEVADA**

REGINALD BINGHAM,
Petitioner/Claimant,
vs.
STATE OF NEVADA,
Respondent,
PUBLIC EMPLOYEES RETIREMENT
SYSTEM,
Administrative Agency.

Case No: A-15-714207-J
Dept. No: XXIII

ERRATA TO PETITION FOR JUDICIAL REVIEW

COMES NOW, the Petitioner, REGINALD BINGHAM, by and through his undersigned counsel, KIRK T. KENNEDY, ESQ., who hereby files this errata to his filed Petition for Judicial Review to include the following:

1. Copy of Administrative Decision 2015-02, attached.

Dated this 12th day of March, 2015.

/s/ Kirk T. Kennedy
KIRK T. KENNEDY, ESQ.
Nevada Bar No: 5032
815 S. Casino Center Blvd.
Las Vegas, NV 89101
(702) 385-5534
Attorney for Petitioner

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CERTIFICATE OF SERVICE

I hereby affirm that on this 12th day of March, 2015, I mailed via first class U.S.

Mail a copy of the foregoing to:

Public Employees Retirement System
693 W. Nye Lane
Carson City, NV 89703

Jennifer M. Chisel
Deputy Attorney General
Office of the Attorney General
100 N. Carson St.
Carson City, NV 89701

/s/Kirk T. Kennedy
Employee of Kirk T. Kennedy, Esq.

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AFFIRMATION REGARDING SOCIAL SECURITY NUMBERS

I hereby affirm that this document contains no social security numbers.

Dated this 12th day of March, 2015.

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(702) 385-5534
Attorney for Petitioner

BEFORE THE BOARD OF TRUSTEES OF THE
PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF Nevada

In the Matter of:

REGINALD BINGHAM,

Petitioner.

ADMINISTRATIVE DECISION 2015-02

Findings of Fact, Conclusions of
Law and Decision

This matter came before the Retirement Board for hearing at a regularly scheduled and duly noticed meeting conducted on January 21, 2015. Attorney Kirk T. Kennedy personally appeared on Reginald Bingham's behalf. Mr. Kennedy presented testimony, evidence and argument. PERS Staff presented testimony, evidence and argument on the matter. After hearing all evidence and argument, and being fully advised on the matter, the Public Employees' Retirement System (hereafter "PERS" or "System") Retirement Board issued the following findings of fact, conclusions of law and decision.

FINDINGS OF FACT

Mr. Bingham requested that the Retirement Board consider him eligible to apply for disability retirement benefits.

Mr. Bingham was employed with the City of Las Vegas ("Employer") on June 18, 1993 and was terminated from his position on July 16, 2010. The Employer sent Mr. Bingham a letter dated July 1, 2010 (the "Letter") to inform him of his termination and that if he wanted to pursue disability retirement through PERS, he must do so prior to his termination date of July 16, 2010. Mr. Bingham claims that he never received the Letter.

On March 15, 2011, Mr. Bingham applied for service retirement and has received a monthly benefit since that time. In November 2012, Mr. Bingham inquired about disability retirement benefits in which PERS informed him that he was not eligible to apply for disability benefits pursuant to NRS 286.620. Mr. Bingham had been terminated from his employment and had not submitted a disability application to PERS prior to that termination.

///

1 Mr. Bingham's attorney sent a letter dated July 22, 2014 requesting a hearing or other
2 review by the Board regarding the matter. On August 27, 2014, a letter from the Nevada
3 Attorney General's Office was sent to Mr. Bingham's attorney that provided that the Board
4 does not generally hear matters where there is a controlling statute. Pursuant to a letter dated
5 September 29, 2014, Mr. Bingham's attorney expressed that Mr. Bingham still desired that the
6 matter be heard by the Board.

7 This matter was first presented to the Retirement Board at the November 2014 Board
8 meeting as a staff denial. Pursuant to the request of Board Member Audrey Noriega, an
9 appeal of the matter was brought before the Retirement Board at the January 21, 2015
10 meeting.

11 Mr. Kennedy argued that the Retirement Board should allow Mr. Bingham to be
12 considered for disability retirement as Mr. Bingham was not properly informed of the disability
13 process as the Letter was not timely received by Mr. Bingham or Mr. Kennedy. Mr. Kennedy
14 argued that the Board has equitable power to grant Mr. Bingham the right to apply for
15 disability retirement benefits based on the extenuating circumstances.

16 **ANALYSIS and CONCLUSIONS OF LAW**

17 PERS staff does not have the authority to consider a retiree or a terminated employee
18 for disability retirement as established by the Retirement Act. However, NRS 286.190(3)
19 provides that the Board may:

20 Adjust the service or correct the records, allowance or benefits of
21 any member, retired employee or beneficiary after an error or
22 inequity has been determined, and require repayment of any
money determined to have been paid by the System in error, if the
money was paid within 6 years before demand for its repayment

23 Additionally, NRS 286 190(4) provides as follows:

24 As used in this section, "error or inequity" means the existence of
25 extenuating circumstances, including, but not limited to, a
26 member's reasonable and detrimental reliance on representations
made by the System or by the public employer pursuant to NRS
286.288 which prove to be erroneous, or the mental incapacity of
27 the member.

28 NRS 286.190(4).

1 In this case, Mr. Bingham did not rely on any erroneous information provided by PERS.
2 Mr. Bingham did not apply for disability retirement as provided by the Retirement Act.
3 NRS 286.620 sets forth the criteria for applying for disability retirement benefits. One of the
4 statutory requirements is that a member be "in the employ of a participating public employer at
5 the time of application for disability retirement." NRS 286.620(1)(b). Mr. Bingham had been
6 terminated from his employment and had not submitted a disability application to PERS prior
7 to that termination. Mr. Bingham not receiving the Letter from the Employer regarding
8 applying for disability does not eliminate the statutory requirements as provided by the
9 Retirement Act.

10 DECISION

11 Reginald Bingham's appeal to the Retirement Board is hereby DENIED to be
12 considered eligible to apply for disability retirement benefits.

13 IT IS SO ORDERED.

14 Dated this 18 day of February, 2015.

15
16 PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF
NEVADA, RETIREMENT BOARD

17
18
19 By: 

20 MARK R. VINCENT
Chairman

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Public Employees' Retirement System of Nevada and on this 26th day of February, 2015, I served a true and correct copy of the foregoing, **ADMINISTRATIVE DECISION, 2015-02** via U.S. Mail as follows:

Kirk T. Kennedy, Esq.
Attorney for Reginald Bingham
815 S. Casino Center Blvd.
Las Vegas, NV 89101

Janet Young
An Employee of the
Public Employees' Retirement System of Nevada

Attorney General's Office
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Carson City, Nevada 89701-4717

ROA

ADAM PAUL LAXALT

Attorney General

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(775) 684-1211

jchisel@ag.nv.gov

Attorneys for Respondent

DISTRICT COURT
CLARK COUNTY, NEVADA

REGINALD BINGHAM,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

PUBLIC EMPLOYEES' RETIREMENT
SYSTEM,

Administrative Agency.

CASE NO. A-15-714207-J

DEPT. XXIII

RECORD ON APPEAL

ADAM PAUL LAXALT

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6100 Neil Road, Suite 500

Reno, Nevada 89511

Attorneys for Administrative Agency

13

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding Record on Appeal, Case No. A-15-714207-J filed in the District Court, Clark County, Nevada does not contain the social security number of any person.

DATED this 13th day of April, 2015.

ADAM PAUL LAXALT
Attorney General

By: 

JENNIFER M. CHISEL
Deputy Attorney General
Nevada Bar No. 6680
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Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Notice of Record on Appeal with the Clerk of the Court by using the electronic filing system on the 13th day of April, 2015.

I certify that the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following unregistered participants:

Kirk T. Kennedy, Esq.
815 South Casino Center Boulevard
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Woodburn and Wedge
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Reno, Nevada 89511



Employee of the State of Nevada
Office of the Attorney General

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ADAM PAUL LAXALT

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DISTRICT COURT
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REGINALD BINGHAM,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

PUBLIC EMPLOYEES' RETIREMENT
SYSTEM,

Administrative Agency.

CASE NO. A-15-714207-J

DEPT. XXIII

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4.	Memorandum to Retirement Board dated January 9, 2015	023-030
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- 1 6. Letter to Kirk T. Kennedy, Esq. dated August 27, 2014 from 032-033
the Office of the Attorney General
- 2 7. Letter to Cheryl Price, PERS dated July 22, 2014 from 034-041
Kirk T. Kennedy, Esq.
- 3 8. Letter to Kirk Kennedy dated June 23, 2014 from Cheryl 042-043
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- 4 9. Letter to the Retirement Board dated May 20, 2014 from 044-047
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- 5 10. Letter to Kennedy Law Office dated July 16, 2013 from 048
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- 6 11. Letter to NV PERS dated June 26, 2013 from Kirk T. 049-050
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- 7 12. Letter to Reginald Bingham dated November 26, 2012 051
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BEFORE THE BOARD OF TRUSTEES OF THE
PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF Nevada

In the Matter of:

REGINALD BINGHAM,

Petitioner.

ADMINISTRATIVE DECISION 2015-02

Findings of Fact, Conclusions of
Law and Decision

This matter came before the Retirement Board for hearing at a regularly scheduled and duly noticed meeting conducted on January 21, 2015. Attorney Kirk T. Kennedy personally appeared on Reginald Bingham's behalf. Mr. Kennedy presented testimony, evidence and argument. PERS Staff presented testimony, evidence and argument on the matter. After hearing all evidence and argument, and being fully advised on the matter, the Public Employees' Retirement System (hereafter "PERS" or "System") Retirement Board issued the following findings of fact, conclusions of law and decision.

FINDINGS OF FACT

Mr. Bingham requested that the Retirement Board consider him eligible to apply for disability retirement benefits.

Mr. Bingham was employed with the City of Las Vegas ("Employer") on June 18, 1993 and was terminated from his position on July 16, 2010. The Employer sent Mr. Bingham a letter dated July 1, 2010 (the "Letter") to inform him of his termination and that if he wanted to pursue disability retirement through PERS, he must do so prior to his termination date of July 16, 2010. Mr. Bingham claims that he never received the Letter.

On March 15, 2011, Mr. Bingham applied for service retirement and has received a monthly benefit since that time. In November 2012, Mr. Bingham inquired about disability retirement benefits in which PERS informed him that he was not eligible to apply for disability benefits pursuant to NRS 286.620. Mr. Bingham had been terminated from his employment and had not submitted a disability application to PERS prior to that termination.

///

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Attorney General's Office
100 N. Carson Street
Carson City, Nevada 89601-4714

1 Mr. Bingham's attorney sent a letter dated July 22, 2014 requesting a hearing or other
2 review by the Board regarding the matter. On August 27, 2014, a letter from the Nevada
3 Attorney General's Office was sent to Mr. Bingham's attorney that provided that the Board
4 does not generally hear matters where there is a controlling statute. Pursuant to a letter dated
5 September 29, 2014, Mr. Bingham's attorney expressed that Mr. Bingham still desired that the
6 matter be heard by the Board.

7 This matter was first presented to the Retirement Board at the November 2014 Board
8 meeting as a staff denial. Pursuant to the request of Board Member Audrey Noriega, an
9 appeal of the matter was brought before the Retirement Board at the January 21, 2015
10 meeting.

11 Mr. Kennedy argued that the Retirement Board should allow Mr. Bingham to be
12 considered for disability retirement as Mr. Bingham was not properly informed of the disability
13 process as the Letter was not timely received by Mr. Bingham or Mr. Kennedy. Mr. Kennedy
14 argued that the Board has equitable power to grant Mr. Bingham the right to apply for
15 disability retirement benefits based on the extenuating circumstances.

16 **ANALYSIS and CONCLUSIONS OF LAW**

17 PERS staff does not have the authority to consider a retiree or a terminated employee
18 for disability retirement as established by the Retirement Act. However, NRS 286.190(3)
19 provides that the Board may:

20 Adjust the service or correct the records, allowance or benefits of
21 any member, retired employee or beneficiary after an error or
22 inequity has been determined, and require repayment of any
money determined to have been paid by the System in error, if the
money was paid within 6 years before demand for its repayment.

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25 extenuating circumstances, including, but not limited to, a
26 member's reasonable and detrimental reliance on representations
made by the System or by the public employer pursuant to NRS
27 286.288 which prove to be erroneous, or the mental incapacity of
the member.

28 NRS 286.190(4).

1 In this case, Mr. Bingham did not rely on any erroneous information provided by PERS.
2 Mr. Bingham did not apply for disability retirement as provided by the Retirement Act.
3 NRS 286.620 sets forth the criteria for applying for disability retirement benefits. One of the
4 statutory requirements is that a member be "in the employ of a participating public employer at
5 the time of application for disability retirement." NRS 286.620(1)(b). Mr. Bingham had been
6 terminated from his employment and had not submitted a disability application to PERS prior
7 to that termination. Mr. Bingham not receiving the Letter from the Employer regarding
8 applying for disability does not eliminate the statutory requirements as provided by the
9 Retirement Act.

10 **DECISION**

11 Reginald Bingham's appeal to the Retirement Board is hereby DENIED to be
12 considered eligible to apply for disability retirement benefits.

13 IT IS SO ORDERED.

14 Dated this 18 day of February, 2015.

15
16 PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF
NEVADA, RETIREMENT BOARD

17
18
19 By: 

20 MARK R. VINCENT
Chairman

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Public Employees' Retirement System of Nevada and on this 26th day of February, 2015, I served a true and correct copy of the foregoing, **ADMINISTRATIVE DECISION, 2015-02** via U.S. Mail as follows:

Kirk T. Kennedy, Esq.
Attorney for Reginald Bingham
815 S. Casino Center Blvd.
Las Vegas, NV 89101


An Employee of the
Public Employees' Retirement System of Nevada

Attorney General's Office
100 N. Carson Street
Carson City, Nevada 89201-4717

January 21, 2015
Meeting of the Public Employees' Retirement Board
Agenda Item 9.1
Appeal of Reginald Bingham regarding his eligibility for Disability Retirement

Cheryl Price, PERS Operations Officer:

Okay, we'll start the first one, Reginald Bingham. On May 20th, 2014, Mr. Reginald Bingham through his attorney, Kirk Kennedy, Esq., sent a letter to PERS requesting that Mr. Bingham be considered eligible to apply for disability retirement benefits. Mr. Bingham had inquired about disability retirement benefits in November of 2012 and that prompted a staff denial. Um, a letter was sent to him November 26, 2012, saying that he was ineligible to apply for disability retirement. He was, uh, terminated from the City of Las Vegas July 16th of 2010, and Mr. Bingham started to collect his service retirement benefits on March 15th, 2011. He, um, just a little background, Mr. Bingham was hired by the City of Las Vegas on June 18th, 1993. He was evidently involved in some litigation with the City of Las Vegas which was resolved through a jury trial in February of 2011. He was terminated from his position July 16th of 2010. Um, a letter was sent to Mr. Bingham July 1st of 2010, informing him that he was going to be terminated and if he wanted to apply for disability retirement benefits he needed to contact PERS prior to his termination on July 16th, 2010. Um, per NRS 286.620 subsection 1, only members in the employ of a participating public employer may apply for disability retirement benefits. Um, the staff denial was presented to him via letter in November and also another letter, um, in, I believe, September or October of this year. I'm sorry, June 23rd, 2014, of this year. Staff does not feel that there was an error or inequity that occurred in this case. Uh, Mr. Bingham was not legally eligible to apply for the disability retirement because as a service retiree he is no longer a member and not in the public employ of a participating public employer and Mr. Bingham could have contacted the PERS office himself prior to termination of his employment to inquire about disability retirement benefits. Staff is recommending a motion denying Mr. Bingham's request for eligibility to apply for disability retirement benefits. And I believe Mr. Bingham and his attorney are here and would like to address the Board.

Kirk Kennedy, Esq., Attorney for Reginald Bingham.:

Thank you. Good afternoon. My name is Kirk Kennedy, Nevada Bar No. 5032, and Mr. Bingham is present. I, _____ I appreciate the Board giving us this opportunity to, uh, address this matter to, uh, see if we can get the, essentially the equity discretionary power of this Board to allow Mr. Bingham a disability retirement benefit under PERS. Uh, just by way of quick background, uh, Mr. Bingham was a city employee as a painter from 1993 to approximately late 2007. In 2003 he suffered a work-related injury to his knee. This injury was so severe that the City of Las Vegas actually accommodated him under the Americans with Disabilities Act for several years until approximately the end of 2007. They did a, uh, a fresh fitness for duty evaluation on the job and position and they decided that they could no longer or they would no longer accommodate him and his disability so as of late 2007 he was no longer technically working physically with the City as the City felt it could no longer accommodate that disability,

uh, due to some changes on the job and position. In 2008 Mr. Bingham attempted some re-training, uh, but was unsuccessful, uh, as offered by the City and technically his job status sort of stayed as if he wasn't formally terminated and that sort of lingered on for a several, couple, two or three years thereafter. In the meantime Mr. Bingham had filed a complaint with the Nevada Equal Rights Commission alleging ADA, Americans with Disabilities Act, discrimination. He had hired my office and I was representing him throughout the 2008, 2009, 10, all the way to the jury trial we had in federal court in front of Judge Mahan in February 2011. And therein this is the issue, that, that, I know the statute says, the statute says if you want PERS disability retirement you got to apply for it before your separation date. The statute is very clear on that. But this, this is what happened, the letter, I actually have copies of, is actually attached to my letter that I originally sent to PERS, this is the letter, the notification, the July 1st letter 2010 from HR of the City of Las Vegas to Mr. Bingham. Now, what came about in this letter is what's missing, uh, first of all, this is right in the middle of the litigation, I see many of the Board you do have this, this is right in the middle of the litigation I had going on, on behalf of Mr. Bingham, with the City of Las Vegas. Proof of that as you see in the first full paragraph the HR Department says is referencing that the City Attorney Phil Byrnes advised that summary judgment was denied on our case and because of that the trial case will go forward. The City chose then to formally terminate and separate Mr. Bingham's employment. That's why this letter was generated. The problem had been that Mr. Bingham had been in litigation for, by that time, at least two years we were in litigation in federal court, they mailed this to an address the City had, uh, back in 2007. Mr. Bingham had moved to a new address in March 2010. He had been living at that new address for approximately four months when this letter came out. Mr. Bingham never received timely notice of this letter and you'll notice at the bottom of the letter what you don't see, cc to Kirk Kennedy, Attorney at Law. My office wasn't notified of this and they knew he was in litigation, they knew he had an attorney, they knew all communication when you are in litigation generally goes through the attorneys, either through the City Attorney's office or through my office. That's generally how it's done when you have lawyers in the picture. And in this case the City took this action, prepared this letter, separated him from employment. Mr. Bingham actually didn't find out, I can remember finding out later, I think, in August or September and talking with the City Attorney that they had actually separated him and fired him formally terminated him. We ultimately did the jury trial in federal court in February 2011. The jury ruled against his claim and that's why in March 2011 he formally applied for his regular PERS. Uh, I think he, he has the years of service and the permanent injury and worked for a public employer for qualifications for disability retirement but he couldn't apply for that specific one because the statute that we are dealing with here in Nevada says he has to still be working there. And this letter does advise him that if you want to apply for disability retirement you need to do something before July 16th 2010. All of that would have happened if poor Mr. Bingham had received this letter, had I received this letter, had anybody of consequence received this letter, no one did. This, this whole argument that we are presenting in front of you is one on basically lack of notice. The statute is fine as long as you have notice of the requirements. Mr. Bingham was not given adequate notice by the City of Las Vegas. I don't know why. Clearly, the HR Department knew he was in litigation, they knew he had an attorney. Phil Byrnes, the City Attorney, who I know very well, knew that uh of my existence. We'd been fighting the case now in federal court for a couple years. I don't know why, it may be through negligence or oversight, the City didn't just notify my office with this very same letter on July 1st of 2010 and then Mr. Bingham could have timely applied for disability retirement. Instead he applied for, uh,

his normal PERS retirement. We believe there is a significant difference between the two benefit amounts. Uh, Mr. Bingham still suffers from the injury, he has not been able to find work, he has been under enormous hardship, so we are here essentially pleading to the Board under the equity power that you do have under 286.193 uh, that the, subsection 3, that allows this Board to consider in its discretion whether to grant this equitable relief and that's why we're here. Clearly, the statute itself is against us other than the equity power this Board has and so based on these unique and extenuating circumstances we are asking the Board to, uh, grant this relief and to grant Mr. Bingham, who does on paper qualify for disability PERS retirement, to formally go through the process and apply for it and if determined that he is acceptable to grant him retroactive benefits all the way back to July 2010 termination date with the City. If there are any questions, sir.

Thank you very much. I'm sorry. Thank you.

Mark Vincent:

I was just going to ask staff and I don't see where PERS has, uh, the Board has any ability to deal with this in terms of an error or inequity on the part of PERS.

Kimberly Okezie, Deputy Attorney General:

What I would say to that, Mr. Chairman, if I may, is that this Board is governed by the Retirement Act which is, uh, 286, Chapter 286 of NRS. You have a statute that's specifically on point, 286.620, that a member has to be in the employ of an employer at the time that they submit the retirement application. That was not done. Your equitable power, yes you have equitable power, however, you know it's, it's limited to adjust the service or correct the record allowing the benefits of any member, retiree, employer, beneficiary, after an error or inequity has been determined. Um, why you have _____. I'm not sure that this _____. Second, was there an error or inequity that occurred, I would submit to this Board that there is no statute on point that requires this Board to provide notice or no statute on point that provides even the employer to provide notice. So, with regards to being able to retire with disability, so with that I'm not sure that this Board has the power to _____.

Rusty McAllister:

Mr. Chairman, could I speak. Um, you know I've got the thing that sticks in my, my mind here that that makes me question is, one, so, uh, I mean I can understand Mr. Bingham if he left the, he moved and went _____. We are talking three years time, um, but Mr. Kennedy representing him and you already indicated that you, your office received no notification from the City of Las Vegas that he had been terminated or was going to be terminated.

Kirk Kennedy, Esq.:

It was actually a surprise when I actually found out that post July of 2010.

Rusty McAllister:

Does the City, on a termination notice like this, do they send, do they keep, I mean is it certified mail, is this receipt of, receipt of, I mean I get what you are saying Kimberly, that, that we don't have _____ but it's like you can't make decisions if you don't know what's coming your way. How can you make a logical, informed decision about your options and I'm assuming that there is a four percent per year penalty that he has basically had because he took a, started collecting a benefit early because he's disabled without the ability to apply for a disability retirement that we afford to people, as we know, we just discussed the disability policy, we have afforded to a lot of people for a lot of reasons who filed in timely fashion. I'm assuming that Mr., it's tough to assume, but, but Mr. Bingham would've had the option certainly to do that had he known.

Mark Vincent:

I can also argue that it would've been Mr. Bingham's responsibility to notify his employer that he had moved, otherwise how's the employer suppose to know how to reach him so...

Rusty McAllister:

I'm assuming all communications going through Mr. Kennedy and Mr. Kennedy's his legal representation.

Mark Vincent:

I don't know that there is any requirement to do that. (silence) Audrey.

Audrey Noriega:

Might I just add that given some some deals that we just recently addressed that came before the Board, it was very clearly determined that the employee has just as much of a responsibility to do their follow through as the employer does.

Rusty McAllister:

Along with those appeals we made adjustments to the penalties for the employees too.

Audrey Noriega:

We didn't adjust the penalty we just adjusted the payment.

Multiple voices/comments at one time

Audrey Noriega:

But we did not override the statute or the responsibility.

Rusty McAllister:

You are correct. But we made the payment so de minimis that it would not be a huge financial impact to those employees or former employees.

Audrey Noriega:

In this case if we, as a Board, I, this is just my opinion nothing more, if we as a Board chose to not recommend staff or not follow staff's recommendation and allow someone after the fact, because that's really what this is, to apply for disability retirement when at no time prior to that and from what I'm understanding for many years prior he did have an illness or an injury that was prohibiting him from being able to effectively do his job because he was covered under ADA and stuff, at some point for many years prior there were many opportunities to obtain disability information.

Mark Vincent:

I'd like to make another comment on the two cases that we were just talking about, we had an extensive discussion here in the Board. Boardroom about the employers responsibility and how really if there, if Mr. Bingham was harmed because the City didn't do something properly, then this course of action should be against the City not against, not against PERS. We talked about that in that particular case as well quite extensively.

Rusty McAllister:

And with those previous employees and the previous appeals, we did not recommend to those employees that they go file suit against the State of Nevada, their employer. We basically took it upon ourselves to help them.

Audrey Noriega:

Because...

Mark Vincent:

I'm not sure that's entirely accurate.

Audrey Noriega:

I don't know but...

Mark Vincent:

There's a lot of discussion but...

Audrey Noriega:

I did argue pretty strongly that I felt that the employer was just as responsible in the other situation ...

???

I agree.

Audrey Noriega:

Granted we didn't have anything we the Board could _____ to that.

???

I agree.

Audrey Noriega:

In this situation of a disability though, I really do think it's much more cut and dried. And that when you...

Rusty McAllister:

I would respectfully disagree.

Audrey Noriega:

Why?

Rusty McAllister:

Over the course of time, uh, my experience over the course of time with the workers' compensation system in the State of Nevada, and especially with employers, we passed law years ago requiring them to send, because what we were having was they were, they said we sent stuff out in a timely fashion when in fact the employee never received it, they would deny a claim and the employee would never know about it. We changed the law back then, back in 2001 2003, requiring employers to send a certificate of mailing just to prove that they sent it because they weren't doing it. They argued that, uh, certified mail was too expensive but they would pay for a certificate of mailing on stuff because third party administrators for workers' compensation and employers were taking it upon themselves to affect the lives of injured employees. So we changed the law.

Audrey Noriega:

I am really familiar with the workers' comp issue.

Mark Vincent:

David, you had your finger up.

David Olsen:

Yeah, _____ NRS 286.190 that's in our packet says our error and inequity section has to do with the reliance on something done by, by PERS and I don't see where we made any the System hasn't made any representations that were incorrect.

Mark Vincent:

That's sort of my point.

Kirk Kennedy, Esq.:

If I may, actually the statute says reliance or representations made by the System or by the public employer. So the statute is putting that either against PERS and or against the public employer. In this case the City of Las Vegas. We're not arguing that PERS did anything wrong; we're arguing that the City _____ notice and the statute clearly references the public employer may have that exposure for failing to in this case give that proper notice. I'm sorry. I didn't mean to speak out of turn.

Kimberly Okezie, Deputy Attorney General:

If I may Mr. Chairman, it does also reference NRS 286.288 which states, the last, the last it looks like the last sentence there, the System is responsible for any inaccurate or misleading information provided to any person or agency by an officer or employee of the System but is not responsible for inaccurate or misleading information provided by an officer or employee of a participating public employer or any other person.

Mark Vincent:

Any other comments? Questions?

Chris Collins:

I just have a comment Mr. Chairman. I have a tremendous amount of sympathy for Mr. Bingham but I do, is there a policy within the City of Las Vegas that you have to keep informing them of where you reside?

Mark Vincent:

I don't know.

Chris Collins:

Okay. I know we have one where I am employed and we have to have an address and a phone number in all files. So, I mean if the letter was sent to the wrong...

Mark Vincent:

I mean off the top of my head it would be silly for an employer not to have a policy where it says that you have to keep us informed of your address otherwise we can't correspond with you but

...

Multiple voices/comments at one time

Chris Collins:

When Mr. Bingham filed for his PERS benefits in 2011, he was already terminated but that's when he should have made his argument as to a disability retirement, not, not in 2015. I probably could've supported it in 2011; I mean I sit here today and I don't see how I can support that.

Mark Vincent:

Anything else?

Kirk Kennedy, Esq.:

Could I just add one, one last thing?

Mark Vincent:

Sure, go ahead.

Kirk Kennedy, Esq.:

To answer Board Member Collins' question about the timing of this, after the jury trial result in federal court, we appealed that to the Ninth Circuit, so we were still in limbo appealing the Ninth Circuit decision. That case at the Ninth Circuit, that's a two year ordeal. We didn't get a result back from the Ninth Circuit, which denied our appeal, until I want to say in early 2013 if I'm not mistaken. Around the same time, shortly after that is when we started looking at what other avenues were out there and so we were still thinking that perhaps the Ninth Circuit would overturn what happened in federal court and we'd still have action so to speak on his disability case, his ADA case. That's why he didn't, uh, at that time, even if he applied in March 2011, I hear the same argument that he didn't apply for it before he was separated, but the argument is still there, but if you're wondering how much the time that's gone by, in 2013 we got the appeal result, and there is the lingering question why didn't we sue the City. Actually I did sue the City,

the packet right here, and the City of Las Vegas argued in district court in front of Judge Nancy Allf in Department 27 and, uh, earlier this year, that oh no these claims are related to the disability claim so you're precluded on the concept of res judicata. In other words, this should have been the federal case which we already had the federal trial and, in other words, nobody, every door is closed for Mr. Bingham. So we can't go back to the City. The courts denied that effort, we've been to federal court and a jury has heard his ADA claim and for different reasons found against him. The Ninth Circuit upheld that and so that sort of brought us here. Uh, perhaps I could've, we could've gotten on this a little earlier than 2014, May 2014 is when I first brought this to PERS' attention. I think, what it was, was I was waiting for a result on the state case. In fact, that decision came down in, I think, late April or early May 2014 and after that, that's when I wrote the letter to the PERS Board staff. If you are wondering about the gap in time, that's it. For what it's worth, there it is, there is a few cents.

Mark Vincent:

Appreciate it. Anything else? Anyone want to make a motion?

Kathy Ong:

Motion to follow staff's recommendation.

Vote took place.

These minutes are a draft subject to approval by the Retirement Board
at their regular meeting.

PUBLIC EMPLOYEES' RETIREMENT BOARD EDUCATION SESSION AND
MEETING MINUTES FOR

Wednesday, January 21, 2015

The agenda for this meeting was mailed to every public employer, the news media, and other groups and individuals as requested.

January 21, 2015
Education Session

The Retirement Board Education Session of the Public Employees' Retirement Board meeting was called to order by Chairman Vincent at 10:00 a.m., January 21, 2015, in the PERS' Board Room, 5820 South Eastern Avenue, Suite 220, Las Vegas. Members present: Mark Vincent, Chris Collins, Kathy Ong, Al Martincz, Rusty McAllister, Audrey Noriega and David Olsen. Members absent: None.

1. PUBLIC COMMENT

There were no public comments offered.

2. EDUCATION TOPIC

2.1 Staff reviewed PERS' investment philosophy with the Retirement Board.

3. PUBLIC COMMENT

There were no public comments offered.

4. RECESS

Chairman Vincent recessed the meeting at 11:34 a.m.

January 21, 2015
Board Meeting

The Retirement Board meeting of the Public Employees' Retirement Board was called to order by Chairman Vincent at 12:03 p.m., on January 21, 2015, in the PERS' Board Room, 5820 South Eastern Avenue, Suite 220, Las Vegas. Members present: Mark Vincent, Chris Collins, Kathy Ong, Al Martinez, David Olsen, Audrey Noriega and Rusty McAllister. Members absent: None.

1. PUBLIC COMMENT

There were no public comments offered.

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ROA 014

2. DISABILITIES

- 2.1 For the record, David Olsen disclosed that Yvonne Pontsler either works or worked for the same employer as himself but he did not feel that would impair his vote. Chris Collins disclosed that Jennifer Blasko, Heather McCleery, Jeannette Hartzell, and William Oettinger either work or worked for the same employer as himself but he did not feel that would impair his vote. Al Martinez disclosed that Desiree Brown, Martha Detloff, Donald Hauth, Mark McNeely, Guy Robb, and Charlene Shea either work or worked for the same employer as himself and one individual is known to him but Mr. Martinez did not feel that would impair his vote. Audrey Noriega disclosed that Suzzie Bradshaw, Lydia Godje, Patricia Robledo, Beverly Smith, Joyce Williams, and Mary Carpi all work or worked for the same employer as herself and one individual is known to her but she did not feel that would impair her vote. Mark Vincent disclosed that Raymond Caswell, Randy Gray, Tracie Mathis, and Ingrid Williams all work or worked for the same employer as himself but he did not feel that would impair his vote. Rusty McAllister disclosed that Randy Gray and Tracie Mathis both work or worked for the same employer as himself but he did not feel that would impair his vote.

On motion of Kathy Ong, the Retirement Board voted unanimously to:

1. Approve permanent and total disability retirement for: Lolita Belton, Jennifer Blasko, Suzzie Bradshaw, Nickey Brooks, Desiree Brown, Raymond Caswell, Bradd Davidson, Martha Detloff, Bryan Dickson, Kathryn Elverum, Lydia Godje, Randy Gray, Donald Hauth, Dena LeGros, Tracie Mathis, Heather McCleery, Mark McNeely, Carol Murphy, Christopher Myers, Jayne Peters, Yvonne Pontsler, Guy Robb, Bettie Robertson, Patricia Robledo, Charlene Shea, Debra Sizemore, Douglas Steward, Diana Valencia, Yemane Weldeyesus, Ingrid Williams, and Shawn Wood.
2. Approve reemployment requests by disability recipients: Richard Batic, Jeannette Hartzell, Angelina Jefferson-Das, David Kohlmeier, William Oettinger, Beverly Smith, Joyce Williamson, and Keyotta Wilson-Porche.
3. Deny the reemployment request by disability recipient Mary Carpi.

3. INVESTMENTS

- 3.1 Staff reviewed the selection process for an investment consultant to conduct a Second Opinion Review on PERS' Investment Program. This review is required by Board policy to be conducted every 10 years. Staff is recommending the Retirement Board retain Wilshire Associates to perform the review. On motion of Kathy Ong, the Retirement Board voted unanimously to retain Wilshire Associates for the purpose of performing a Second Opinion Review of PERS' investment program.

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- 3.2 There were no recommended changes to the Interim Investment Directives for PERS', LRS, and JRS funds.

4. BOARD

- 4.1 Michelle Hilcher of Cortex Applied Research presented the results of the Board's annual self-assessment report for fiscal year 2014. After discussion, on motion of Rusty McAllister, the Retirement Board voted unanimously to accept the Board Self-Assessment Report for Fiscal Year 2014, as submitted.
- 4.2 Michelle Hilcher of Cortex Applied Research presented the annual Retirement Board Governance Compliance Report for Fiscal Year 2014. After discussion, on motion of Kathy Ong, the Retirement Board voted unanimously to accept the 2014 Governance Report prepared by Cortex Applied Research, Inc., as submitted.
- 4.3 On motion of Kathy Ong, the Retirement Board voted 6-yeas and 1-abstention to approve the minutes of the Retirement Board education session and board meeting held December 10, 2014, as submitted. Mark Vincent abstained from voting on this item as he was not present at the December 10, 2014, meeting.
- 4.4 There were no recommended changes to the Retirement Board meeting dates.
- 4.5 On motion of Chris Collins the Retirement Board voted unanimously to change the March Retirement Board education topic from *Private Real Estate* to *Police and Firefighters' Retirement Fund Advisory Committee Review*.

5. ACCOUNTING

- 5.1 Staff reviewed the Budget Variance Report. On motion of Kathy Ong, the Retirement Board voted unanimously of those present to accept the Budget Variance Report, as submitted. Mark Vincent was absent for this vote.

6. ADMINISTRATION

- 6.1 Staff reviewed the proposed modifications to PERS' Official Policies dated September 2012 and requested authorization to notify employers of the proposed changes. Most of the changes discussed were to improve our policies on the process for disability retirement. Chairman Vincent thanked Rusty McAllister, Chris Collins, and David Olsen for participating on the Sub-Committee that reviewed PERS' Disability Program. Sub-Committee Chairman thanked the staff and his fellow Board members for their time and energy expended on the review of PERS' Disability Program. On motion of Rusty McAllister, the Retirement Board voted unanimously to authorize staff to notify employers of the proposed modifications to PERS' Official Policies dated September 2012 in accordance with NRS 286.200.

- 6.2 No action was taken on this item.

7. LEGISLATION

- 7.1 Prefiled Assembly Bill 3 - this bill increases the Retirement Board from 7 members to 9 members and was requested by Assemblyman Kirner. Staff reviewed the legislative history of the number of Board members and membership composition of the Retirement Board. After discussion, on motion of Kathy Ong, the Retirement Board voted unanimously to adopt a position in opposition to Assembly Bill 3, as submitted.
- 7.2 Prefiled Senate Bill 12 - this bill changes the PERS' Assistant Investment Officer title to PERS' Chief Financial Officer and was requested by PERS. On motion of Kathy Ong, the Retirement Board voted unanimously to adopt a position in support of Senate Bill 12, as submitted.
- 7.3 Prefiled Senate Bill 69 - this bill provides that if a member of the Judicial Retirement System is age 55 and has at least 22 years of service they may retire, removes the sunset designation for critical labor shortage in the Senior Judge Program, and reduces the minimum required period before the acceptance of employment of 6 months to 90 days after the effective date of the retirement of the justice or judge. This bill was requested by the Nevada Supreme Court. After discussion, the Retirement Board deferred action on this item until staff could work with the Chief Justice Hardesty on the costs associated with these changes to the Judicial Retirement System.
- 7.4 Staff provided the following update for the 2015 legislative session:
1. BDR #682 Assembly Government Affairs - Revises provisions governing the membership of the Public Employees' Retirement Board. This BDR was added to staff's tracking list.
 2. BDR #384 - Public Employees' Retirement System - Revises provision governing the Public Employees' Retirement System. This BDR was withdrawn from the BDR list.
 3. BDR #185 has become prefiled Assembly Bill 3.
 4. BDR #385 has become prefiled Senate Bill 12.
 5. BDR #496 has become prefiled Senate Bill 69.

8. RATIFICATION AGENDA

On motion of Kathy Ong, the Retirement Board voted unanimously to approve all items on the Ratification Agenda, as submitted:

- 8.1 Approve the Administrative Fund disbursements.
- 8.2 Approve the personnel action taken since the last report.

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ROA 017

- 8.3 Approve the Phase-In Agreement between Truckee Meadows Community College and Lucy Davis effective January 1, 2015.

9. APPEALS

- 9.1 Staff provided the background information on Mr. Reginald Bingham's appeal for disability retirement eligibility. Mr. Bingham was employed by the City of Las Vegas from June 1993 until July 2010. A letter was sent to Mr. Bingham by the City of Las Vegas on July 1, 2010, informing Mr. Bingham of his termination and that if he wanted to pursue disability retirement through PERS, he must do so prior to his termination on July 16, 2010. The nature of Mr. Bingham's disability is not known to PERS. Mr. Bingham applied for service retirement on March 15, 2011 and he has been receiving a monthly benefit ever since. In November 2012, Mr. Bingham inquired about disability retirement benefits and a letter from PERS informed him that he was ineligible to apply for disability benefits because pursuant to NRS 286.620(1), only members in the employ of a participating public employer may apply for disability retirement benefits.

Mr. Bingham's attorney Kirk Kennedy addressed the Board regarding Mr. Bingham's timing and history of contacting PERS on disability retirement. Mr. Bingham had been involved in legal action against his employer and reported that Mr. Bingham had never received the July 1, 2010 letter from his employer. This is the letter that explained to Mr. Bingham that he needed to apply for disability retirement from PERS prior to his termination on July 16, 2010. Mr. Kennedy also mentioned that the legal case Mr. Bingham was involved in was not settled until 2012.

The Board asked the Deputy Attorney General what latitude the statutes offered for Mr. Bingham's appeal. The Deputy Attorney General responded that the statute is clear and unbiased that in order to apply for disability retirement an individual must be currently employed by a public employer. Mr. Bingham has not been employed by a public employer since his separation from the City of Las Vegas in 2010. In this regard, Mr. Bingham is not eligible to apply for disability retirement.

After discussion, on motion of Kathy Ong, the Retirement Board voted unanimously to deny Mr. Bingham's request for eligibility to apply for disability retirement.

- 9.2 Staff provided the background information on Ms. Kathy Dunne's appeal for a waiver on her benefit overpayment accounts receivable. In September 2014 an audit of Ms. Dunne's account was conducted and it was discovered that a substantial overpayment of her benefit had occurred due to her reemployment as a teacher with the Clark County School District. Ms. Dunne retired on February 2, 2006, with over 15 years of service. Ms. Dunne reenrolled into a PERS' eligible position effective August 20, 2008. NRS 286.525 states: "A retired employee who accepts employment in a position eligible for membership may enroll in the System as of the effective date of employment. As of the date of enrollment: (a) 35

The retired employee forfeits all retirement allowances for the duration of that employment." Also, the employer and the retired employee did not notify the System in writing within 10-days per NRS 286.520(2) which states: "The retired employee and the employer shall notify the System: (a) within 10-days after the first day of an employment." Neither Ms. Dunne nor her employer notified the System of her reemployment.

Based on this information, it was determined that Ms. Dunne's PERS' benefit had been overpaid from September 1, 2008 through August 21, 2012 in the gross amount of \$70,541.58. Evidently Ms. Dunne was under the impression that she was working under a critical need position as a science teacher. Unfortunately, Ms. Dunne did not qualify for the critical need position due to her retiring in 2006 with an early retirement reduction. NRS 286.523 (2)(a) exempts a retiree from reemployment restrictions as long as the retiree is filling a position of critical need and as long as their retirement benefit has not been actuarially reduced. Ms. Dunne's benefit was actuarially reduced as she was not fully eligible to retire.

Ms. Dunne explained to the Board that she understood from her employer that she was filling a critical needs position as a science teacher and that she could continue to receive her benefit because of this. Her employer knew that she had retired and was coming back to work. She was not aware that she had to notify PERS when she returned to work.

During discussions with Ms. Dunne at the meeting it was determined that she has since suspended her retirement benefit payment and is currently working for the Clark County School District. The Board directed staff to meet with Ms. Dunne to review her account and present all her options once she retires so she can be aware of the possible scenarios. Staff is happy to work with Ms. Dunne and counsel her on her account.

For the record, Audrey Noriega disclosed that she has no personal involvement with Ms. Dunne's case but it does involve the same employer as herself.

- 9.3 Staff provided the background information on Ms. Donna Marinch's appeal for a reimbursement of her purchase of service funds in the amount of \$3,599.83. Ms. Marinch began working for the Clark County School District as a teacher on January 24, 1983. Her goal was to work until she had at least 30-years of service credit in order to retire without an early retirement deduction. She was counseled on several occasions since 2010 that her 30-year date would be September 12, 2013, provided that all her reporting from her employer is accurate and current, and that she continue to earn full time service and have no periods of leave without pay.

During the preliminary calculation of Ms. Marinch's retirement benefit, it was discovered that her service credit was overstated in her first year of employment. The reporting was misinterpreted and it was not understood at the time that Ms. Marinch was a full-time teacher who was hired in the middle of a school year where she received service credit based on her hire date and contract with the

Clark County School District. Instead the reporting was interpreted as a part-time employee. Ms. Marinch's termination date was October 4, 2013. Due to Ms. Marinch's termination date and the application of her contract payout, her effective date of retirement was November 15, 2013. With this effective date of retirement, Ms. Marinch was 1-month and 5-days short of 30-years. Upon notification of these account details, Ms. Marinch purchased 1-month and 5-days for an amount of \$3,599.83 in order to achieve 30-years of service credit and retire without an early retirement reduction. Ms. Marinch has since requested PERS' reimburse her purchase amount due to the error.

Ms. Marinch's request to refund her purchase in the amount of \$3,599.83, directly conflicts with the provisions of the Retirement Act. Refund of contributions may only be made under the authority of NRS 286.430. Under this statute only members may refund contributions. Retirees are no longer members. In addition, this section requires that all membership rights and service credit are cancelled upon a refund. This would no longer entitle Ms. Marinch to a retirement allowance.

Ms. Marinch addressed the Retirement Board saying that she did not know where the error occurred and wondered why she had to pay for the error. Staff responded that the error occurred in 1983 and staff is not sure if the error occurred by the employer or by PERS. It was during a time before the current computer system and it was an interpretation error. When Ms. Marinch retired the errors were found and corrected in her account which is why she purchased to 30-years so she would retire without a reduction.

For the record, Audrey Noriega disclosed that she has personal involvement with this case and for that reason she will abstain from the vote.

After discussion, on motion of Mark Vincent, the Retirement Board voted 6-years and 1-abstention to deny Ms. Marinch's request for the reimbursement of her purchase of service credit in the amount of \$3,599.83.

10. DENIALS

11. REPORTS

12. PUBLIC COMMENT

- 12.1 Laura Leavitt of AFSCME Local 4041 Retiree Chapter provided the following public comment on PERS' legislative items:

"AB 3- Opposed, SB 12-Neutral as Written, SB 69-Neutral as Written"

She then read the following statement into the record:

"The PERS Board has had a long tradition of public employee supervision of the public trust. If private individuals are placed on the PERS Board through the ultimate passage of AB 3, the potential for conflicts of interests could arise, marring the historical record of able stewardship by former and current public employees in managing what has come to be known as one of the most stable such retirement funds in the country; <http://www.nasra.org/Files/State-Specific/Nevada/Nevada1311.pdf> (See initial overview conclusion at page 6)."

- 12.2 The Deputy Attorney General announced to the Board that this was going to be her final Retirement Board meeting as she has taken a new position as Juvenile Master. She thanked the Board for the opportunity to work with them and appreciates the time she has spent as PERS' Deputy Attorney General.

12.3 Administrative Report by Staff:

- Executive Officer:
1. The Executive Officer mentioned that she had met with the Treasurer and with Assemblyman Kirner separately regarding the 2015 Legislative Session. Both meetings went very well.
 2. The Executive Officer reported that she met with the Governor's Deputy Chief of Staff, Chris Nielsen, to discuss the status of PERS and the meeting went very well.
 3. The Executive Officer stated that PERS' Budget will be heard in the Senate Finance Committee on February 5th at 8:00 am and in the Assembly Ways and Means Committee on February 9th at 8:00 am.
 4. The Executive Officer mentioned that PERS' Executive Staff met with the LCB Analysts assigned to Senate Government Affairs and Assembly Government Affairs and that the meeting went very well.
 5. The Executive Officer reported that she will meet with Segal Consulting next week for a planning meeting that will include preliminary review of GASB 68 on employer statements.
 6. The Executive Officer stated that she will be discussing PERS' Deputy Attorney General's position with the AG's office tomorrow. She thanked Kim Okezie for her service to the PERS' Board, Staff, members and beneficiaries and wished her well in her new position.

12.4 Comments or questions from the Retirement Board members:

- | | |
|----------------|---|
| Mark Vincent: | 1. Chairman Vincent thanked Kim Okezie for her continued service and dedication to the Board and staff. He wished her the best of luck in her new position. |
| Chris Collins: | 1. Vice-Chairman Collins mentioned that board member Rusty McAllister and himself will be staying up in Carson City during the 2015 Legislative Session. |

13. ADJOURNMENT

The meeting was adjourned by Chairman Vincent at 3:04 p.m.

The following is the time schedule for the meeting:

The Retirement Board education session held on January 21, 2015, was called to order at 10:00 a.m. by Chairman Vincent and recessed at 11:34 a.m. The January 21, 2015, Retirement Board meeting was called to order at 12:03 p.m. by Chairman Vincent and adjourned at 3:04 p.m. by Chairman Vincent.

Retirement Board

Mark R. Vincent
Chairman
Chris Collins
Vice Chairman

Al Martinez
Rusty McAllister
Audrey Noriega
David Olsen
Katherine Gung

Executive Staff

Tina M. J. ...
Executive Officer

Cheryl Price
Operations Officer

Steve Edmondson
Investment Officer

Memorandum

To: Retirement Board

From: Staff

Date: January 9, 2015

Re: Disability Eligibility – Reginald Bingham

On May 20, 2014, Mr. Reginald Bingham through his attorney, Kirk T. Kennedy, Esq., sent a letter to PERS requesting that Mr. Bingham be considered eligible to apply for disability retirement benefits. Mr. Bingham had inquired about disability retirement benefits in November of 2012 and was sent a letter on November 26, 2012 that he was not eligible for disability retirement benefits due to being terminated from his employment with the City of Las Vegas on July 16, 2010. Also, Mr. Bingham started to collect his service retirement benefits on March 15, 2011.

Mr. Bingham was hired by the City of Las Vegas on June 18, 1993. He worked as a painter and utility worker. Evidently, Mr. Bingham was involved in litigation with the City of Las Vegas which was resolved through a jury trial in February 2011. Mr. Bingham was terminated from his position with the City of Las Vegas on July 16, 2010. A letter from the City of Las Vegas to Mr. Bingham was sent on July 1, 2010 informing Mr. Bingham of his termination and that if he wanted to pursue disability retirement through PERS, he must do so prior to his termination on July 16, 2010. The nature of Mr. Bingham's disability is not known.

Mr. Bingham applied for service retirement on March 15, 2011 and he has been receiving a monthly benefit ever since. In November of 2012, Mr. Bingham inquired about disability retirement benefits and a letter from PERS informed him that he was ineligible to apply for disability benefits because, pursuant to NRS 286.620(1), only members in the employ of a participating public employer may apply for disability retirement benefits.

NRS 286.190(3) provides that the Public Employees' Retirement Board may:

Adjust the service or correct the records, allowance or benefits of any member, retired employee or beneficiary after an error or inequity has been determined, and require repayment of any money determined to have been paid by the System in error, if the money was paid within 6 years before demand of its repayment.

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Toll Free: 1-866-473-7768 Website: www.nypers.org

Retirement Board Memorandum
Appeal of Reginald Bingham

January 9, 2015
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NRS 286.190(4) provides:

As used in this section, "error or inequity" means the existence of extenuating circumstances, including, but not limited to, a member's reasonable and detrimental reliance on representations made by the System or by the public employer pursuant to NRS 286.288 which prove to be erroneous, or the mental incapacity of the member.

Staff does not feel there was an error or inequity that occurred in this case. Mr. Bingham is not legally eligible to apply for disability retirement because, as a service retiree, he is no longer a member, and he is not in the employ of a participating public employer. Mr. Bingham was notified by his employer regarding his termination and the need to apply for disability retirement benefits if he so chose prior to his termination date. Also, Mr. Bingham could have contacted the PERS office himself prior to the termination of his employment to inquire about disability retirement benefits.

RECOMMENDATION: Motion denying Mr. Bingham's request for eligibility to apply for disability retirement benefits.

CONFIDENTIAL

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July 22, 2014

Attn: Cheryl Price
Operations Officer
NV PERS
693 W. Nye Lane
Carson City, NV 89705

RE: Appeal Request for Board Review- Reginald Bingham

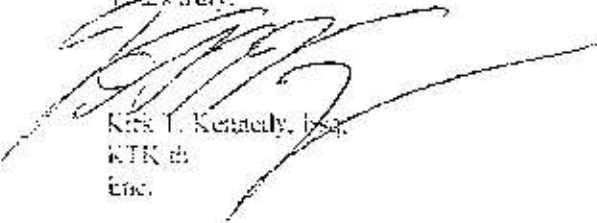
Dear Board:

Previously, I sent the enclosed letter dated May 20, 2014, to request the Board's assistance to review the matter of whether Mr. Reginald Bingham is eligible for a disability retirement award following his termination with the City of Las Vegas. In response to my letter to the Board, I received the enclosed letter dated June 23, which sets forth the official position of NV PERS regarding my client's request.

Given the content of the June 23 letter, I would again request a hearing or other review before the Board so that I may set forth my client's claim to disability retirement benefits and to seek equitable relief for his situation.

Kindly confirm that the Board will entertain this request and advise my office of any proposed hearing date or appeal procedure. Thank you.

Yours truly,


Kirk T. Kennedy, Esq.
KTK:th
Enc.

RECEIVED

JUL 23 2014

PERSONNEL

515 S. Clark Center Blvd., Las Vegas, NV 89101 • Phone: (702) 477-0330 • Fax: (702) 477-0331



May 20, 2014

Retirement Board
NV PERS
693 W. Nye Lane
Carson City, NV 89703

RE: Request for Board Intervention and Hearing

Dear NV PERS Board:

I am counsel for Mr. Reginald Bingham, a former City of Las Vegas employee, who has received his PERS retirement benefits since March, 2011. Mr. Bingham was previously involved in litigation against the City related to his claims of disability discrimination under the Americans with Disabilities Act, said litigation resolved through a jury trial in February, 2011. Mr. Bingham is disabled, and remains so, from a work related injury in 2007.

While his case was pending in federal court, the City of Las Vegas terminated his employment in July, 2010. They sent him the accompanying letter dated July 1, 2010, which advised him of his termination date of July 16, 2010, and that he must apply for PERS disability retirement before his separation. See, July 1 Letter, attached.

Mr. Bingham did not timely receive this advisement letter from the City, as he had changed residence addresses. The City also did not copy my office with this letter or put me on notice of the requirements to apply for disability retirement. Given that Mr. Bingham did not receive the attached letter, he was not aware nor advised of the requirements to apply for disability based retirement *before* his July 16, 2010, termination from the City.

In November, 2012, upon his inquiry, NV PERS sent Mr. Bingham a letter indicating that since he did not apply for the disability retirement before his termination from the City, he was not eligible for disability retirement under NRS 286.620. See PERS Letter, 11/26/12, attached.

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JUL 24 2014

PERS of Nevada


815 S. Casino Center Blvd. • Las Vegas, NV 89101 • Phone: 702-385-5534 • Facsimile: 702-385-1869

Due to the failure of the City to properly notify him or his counsel about the requirements to file for disability retirement before his termination, Mr. Bingham has suffered greatly and has been wrongfully denied the ability to apply for and receive disability retirement. Mr. Bingham qualifies for disability retirement consideration, however since he did not apply for it prior to his termination, PERS has taken the position that he is prohibited.

Under NRS 286.190(3), the NV PERS Retirement Board has the inherent authority and discretion to correct errors or inequities related to a service member's benefits and entitlement to such benefits. On behalf of Mr. Bingham, we would request that the Board allow a hearing or other process to present our case and request that Mr. Bingham be granted the right to receive disability retirement benefits based on his extenuating circumstances.

I would appreciate a response within the next ten days regarding the process to request a hearing before the Board and any other procedural requirements to obtain equitable relief from the Board for Mr. Bingham's situation based on the authority granted under NRS 286.190(3). Thank you.

Yours truly,



Kirk T. Kennedy, Esq.
KTK/th
Enc.

cc: Reginald Bingham

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JUL 24 2014

PERS of Nevada

Retirement Board

Mark R. Vernon
Chairman
Chris Collins
Vice Chairman

Al Mathews
Randy McAllister
Audrey Noriega
David Olson
Katherine Ong



Executive Staff

Tina M. Leiss
Executive Officer

Cheryl Price
Operations Officer

Steve Edmundo
Investment Officer

June 23, 2014

Kirk Kennedy, Esq.
815 Casino Center Blvd.
Las Vegas, NV 89101

Dear Mr. Kennedy:

I am in receipt of your letter dated May 20, 2014, regarding Reginald Bingham and the request for Board Intervention and Hearing. A review of the file indicates that Mr. Bingham terminated his employment with the City of Las Vegas July 16, 2010. It is the responsibility of the member or their employer to contact PERS in order to inquire about disability retirement eligibility.

NRS 286.620 states that members who are unable to perform their job duties due to a permanent physical or mental illness may apply for disability retirement if the member has 5 years of service and the member is still in the employ of a Nevada public employer at the time of application for disability retirement benefits. Disability retirement benefits are calculated as if the member is age eligible for regular retirement benefits and therefore, there is no reduction for age.

Mr. Bingham became an inactive member of PERS due to his termination with the City of Las Vegas on July 16, 2010. Mr. Bingham also applied for retirement benefits effective on March 15, 2011 where his benefit was reduced for early retirement prior to age 60 at that time. Mr. Bingham is not eligible to apply for disability retirement benefits after the date of termination with a Nevada public employer.

PERS staff does not have the authority to allow Mr. Bingham to apply for disability retirement benefits due to his ineligibility. However, any person whose request has been denied by staff may request an appeal of the decision to the PERS Board. Claims of error or inequity shall be submitted by the Board if there is a compelling reason that an error or inequity exists. Error or inequity means the existence of extenuating circumstances including, but not limited to, a member's reasonable and detrimental reliance on representations made by the system or by the public employer that prove to be erroneous.

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JUL 24 2014

PERS of Nevada

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At Kirk Kennedy
June 23, 2014
Page 2

If you wish to pursue an appeal to the PERS board, please submit a letter to the system regarding the error or inequity that has occurred and what action you wish the Board to take on your client's behalf.

Should you have any questions, please contact me at 1-866-473-7768, ext. 222.

Sincerely,



Cheryl Price
Operations Officer

RECEIVED

JUL 24 2014

PERS of Nevada

Retirement Board

Mark R. Vincent
Chairman
Chris Collins
Mike Barrault

A. Klutner
Randy McAllister
Andrew Nierges
David Olson
Katherine Ong



Executive Staff

Tim M. Lewis
Executive Director

Cheryl Price
Operations Officer

Steve Edmunds
Investment Officer

January 7, 2015

Reginald Bingham
10622 Gibbous Moon Drive
Las Vegas, Nevada 89129

Dear Mr. Bingham:

This letter is in regard to your appeal being presented to the PERS Board at their January 21, 2015, meeting at our Las Vegas office, located at 5820 South Eastern Avenue, Suite 220. Please plan to be at the PERS office at 1:00 p.m. This item will be presented to the PERS Board between 1:00 p.m. and 2:00 p.m.

Should you have any further questions, please contact our office at (775) 687-4200.

Sincerely,

Cheryl Price
Operations Officer

cc: Kirk T. Kennedy, Esq.

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Toll Free: 1-866-473-7768

Website: www.nvpers.org

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ROA 031



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

Thorn M. Gover
Acting Chief of Staff

August 27, 2014

Via United States Mail

Kirk T. Kennedy, Esq.
Kennedy Law Offices
815 S. Casino Center Blvd.
Las Vegas, Nevada 89101

Re: Reginald Bingham – Appeal Request

Dear Mr. Kennedy:

I am legal counsel for the Public Employees' Retirement System of Nevada ("PERS" and the "System"). I am in receipt of your letter dated July 22, 2014 requesting an appeal on behalf of Reginald Bingham. This letter is in response to that request and our conversation on August 26, 2014.

PERS is a constitutionally created trust fund and is governed by Chapter 286 of the Nevada Revised Statutes ("NRS") and the policies of PERS. The Board for PERS has equitable power under NRS 286.190. However, the Board can only consider appeals and grant relief if it is not in violation of the law. Mr. Bingham did not apply for disability retirement prior to termination of employment and is therefore barred by statute from applying for disability under NRS 286.620.

The Board generally does not consider appeals where there is a controlling statute on the matter. However, should you still desire to pursue an appeal to the Board, please let me know.

Kirk T. Kennedy, Esq.
August 27, 2014
Page 2

Thank you for your time and consideration in this matter.

CATHERINE CORTEZ MASTO
Attorney General

By: 
KIMBERLY A. OKEZIE
Deputy Attorney General
Bureau of Government Affairs
and Natural Resources
(775) 684-1270

KAO:sg
Cc: Tina Leiss

50
ROA 033



July 22, 2014

Attn: Cheryl Price
Operations Officer
NV PERS
693 W. Nye Lane
Carson City, NV 89703

RE: Appeal Request for Board Review- Reginald Bingham

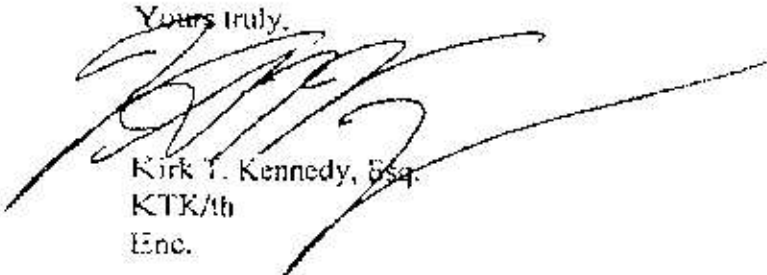
Dear Board:

Previously, I sent the enclosed letter dated May 20, 2014, to request the Board's assistance to review the matter of whether Mr. Reginald Bingham is eligible for a disability retirement award following his termination with the City of Las Vegas. In response to my letter to the Board, I received the enclosed letter dated June 23, which sets forth the official position of NV PERS regarding my client's request.

Given the content of the June 23 letter, I would again request a hearing or other review before the Board so that I may set forth my client's claim to disability retirement benefits and to seek equitable relief for his situation.

Kindly confirm that the Board will entertain this request and advise my office of any proposed hearing date or appeal procedure. Thank you.

Yours truly,



Kirk T. Kennedy, Esq.
KTK/th
Enc.

RECEIVED

JUL 24 2014

PERS of Nevada

815 S. Casino Center Blvd. • Las Vegas, NV 89101 • Phone: 702-385-5534 • Facsimile: 702-385-1869

51
ROA 034



May 20, 2014

Retirement Board
NV PERS
693 W. Nye Lane
Carson City, NV 89703

RE: Request for Board Intervention and Hearing

Dear NV PERS Board:

I am counsel for Mr. Reginald Bingham, a former City of Las Vegas employee, who has received his PERS retirement benefits since March, 2011. Mr. Bingham was previously involved in litigation against the City related to his claims of disability discrimination under the Americans with Disabilities Act, said litigation resolved through a jury trial in February, 2011. Mr. Bingham is disabled, and remains so, from a work related injury in 2007.

While his case was pending in federal court, the City of Las Vegas terminated his employment in July, 2010. They sent him the accompanying letter dated July 1, 2010, which advised him of his termination date of July 16, 2010, and that he must apply for PERS disability retirement before his separation. See, July 1 Letter, attached.

Mr. Bingham did not timely receive this advisement letter from the City, as he had changed residence addresses. The City also did not copy my office with this letter or put me on notice of the requirements to apply for disability retirement. Given that Mr. Bingham did not receive the attached letter, he was not aware nor advised of the requirements to apply for disability based retirement *before* his July 16, 2010, termination from the City.

In November, 2012, upon his inquiry, NV PERS sent Mr. Bingham a letter indicating that since he did not apply for the disability retirement before his termination from the City, he was not eligible for disability retirement under NRS 286.620. See PERS Letter, 11/26/12, attached.

Page 1 of 2

RECEIVED

JUL 24 2014

PERS of Nevada

815 S. Casino Center Blvd. • Las Vegas, NV 89101 • Phone: 702-385-5534 • Facsimile: 702-385-1869

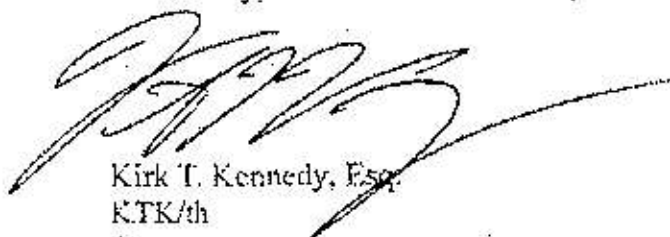
ROA 035

Due to the failure of the City to properly notify him or his counsel about the requirements to file for disability retirement before his termination, Mr. Bingham has suffered greatly and has been wrongfully denied the ability to apply for and receive disability retirement. Mr. Bingham qualifies for disability retirement consideration, however since he did not apply for it prior to his termination, PERS has taken the position that he is prohibited.

Under NRS 286.190(3), the NV PERS Retirement Board has the inherent authority and discretion to correct errors or inequities related to a service member's benefits and entitlement to such benefits. On behalf of Mr. Bingham, we would request that the Board allow a hearing or other process to present our case and request that Mr. Bingham be granted the right to receive disability retirement benefits based on his extenuating circumstances.

I would appreciate a response within the next ten days regarding the process to request a hearing before the Board and any other procedural requirements to obtain equitable relief from the Board for Mr. Bingham's situation based on the authority granted under NRS 286.190(3). Thank you.

Yours truly,



Kirk T. Kennedy, Esq.
KTK/th
Enc.

cc: Reginald Bingham

RECEIVED

JUL 24 2014

PERS of Nevada

ROA 036



LAS VEGAS CITY COUNCIL

OSCAR B. GOODMAN
MAYOR

GARY REESE
MAYOR PRO TEM

STEVE WOLFSON

LOIS TARKANIAN

STEVEN D. ROSS

RICKI Y. BARLOW

STAVROS S. ANTHONY

ELIZABETH N. FRETWELL
CITY MANAGER

F. CLAUDE ITT ENUS
HUMAN RESOURCES DIRECTOR

CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.6316
TTY 702.386.9108
www.lasvegashomepage.gov

July 1, 2010

Reginald Bingham
6205 Belgium Dr.
Las Vegas, NV 89122

Dear Mr. Bingham,

We have attempted to reach you by telephone without success.

City Attorney Phil Brynes was informed by the court that your motion for summary judgment has been denied. Therefore, we have been instructed to move forward to separate you from employment with the City of Las Vegas.

The effective date of separation is **July 16, 2010**. You must be in active employment status to apply for disability retirement. If that is an option you will pursue, you must apply at the PERS office, located 5820 South Eastern Avenue, Suite 220, Las Vegas, NV 89119 or 7455 W. Washington Ave., Suite 150, Las Vegas, NV 89128 on or before July 16, 2010.

Questions regarding your insurance benefits should be directed to Candace Mbaye at 229.5039.

Our records indicate you were issued four keys and an ID badge which you agreed to return at the time of your separation of employment. Attached is a summary which includes the replacement fees, in the event you do not return the items.

Please contact me at 229.4758 as soon as you receive this notice to make arrangements to come in for processing out.

If no contact is made, we will separate you administratively, effective **July 16, 2010** and send you a final statement of what is owed to the City of Las Vegas.

Thank you,

Lori Petsco
Personnel Services Administrator
Human Resources
City of Las Vegas

RECEIVED

JUL 24 2014

PERS of Nevada

54
Printed with environmental friendly ink
FM-0135-01-10 SS

ROA 037

Retirement Board

Mary R. Vincent
Chairman
Kathy Wilson
Vice Chairman

Chris Collier
Dan Mangino
Rusty McAllister
David Olson
Katherine Ong



Executive Staff

Dana K. Blyden
Executive Officer

Tina M. Lenz
Operations Officer

Vacant
Investment Officer

November 26, 2012

Reginald Bingham
10622 Gibbous Moon Drive
Las Vegas, NV 89129

Dear Mr. Bingham:

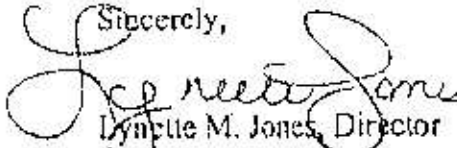
We received your request for information regarding the eligibility rules for our disability retirement program.

NRS 286.620 states that members who are unable to perform their job duties due to a permanent physical or mental illness may apply for disability retirement if the member has 5 years of service and the member is still in the employ of a Nevada public employer at the time of application for disability retirement benefits. Disability retirement benefits are calculated the same as regular retirement benefits; however, the reduction for early retirement is waived in this case.

Our records indicate that you terminated from your position with the City of Las Vegas on July 16, 2010 and became an inactive member until you applied for regular retirement benefits effective on March 15, 2011. Your benefit was reduced for early retirement as you were under the age of 60 at that time. You were not eligible to apply for disability retirement after your termination in July 2010. Please be advised that PERS statute does not allow members to change from regular retirement to disability retirement after the date of a member's termination of employment.

Please contact our office if you have further questions regarding the above information.

Sincerely,


Lynette M. Jones, Director
Member and Retiree Services

RECEIVED

JUL 24 2014

PERS of Nevada

5820 S. Eastern Avenue, Suite 220
Las Vegas, NV 89119
(702) 486-3900
Fax: (702) 678-6934

593 W. Nye Lane
Carson City, NV 89703
(775) 687-4200
Fax: (775) 687-5131

7455 W. Washington Avenue, Suite 151
Las Vegas, NV 89128
(702) 486-3900
Fax: (702) 304-0092

ROA 038

RECEIVED

JUL 24 2014

PERS of Nevada

56
ROA 039

Retirement Board

Mark R. Vincent
Chairman
Chris Collins
Vice Chairman

Al Martinez
Rusty McAllister
Andrey Noriega
David Olson
Katherine Ong

**Executive Staff**

Tim M. Leiss
Executive Officer

Cheryl Price
Operations Officer

Steve Edmundson
Investment Officer

June 23, 2014

Kirk Kennedy, Esq.
815 Casino Center Blvd.
Las Vegas, NV 89101

Dear Mr. Kennedy:

I am in receipt of your letter dated May 20, 2014, regarding Reginald Bingham and the request for Board intervention and Hearing. A review of the file indicates that Mr. Bingham terminated his employment with the City of Las Vegas July 16, 2010. It is the responsibility of the member or their employer to contact PERS in order to inquire about disability retirement eligibility.

NRS 286.620 states that members who are unable to perform their job duties due to a permanent physical or mental illness may apply for disability retirement if the member has 5 years of service and the member is still in the employ of a Nevada public employer at the time of application for disability retirement benefits. Disability retirement benefits are calculated as if the member is age eligible for regular retirement benefits and therefore, there is no reduction for age.

Mr. Bingham became an inactive member of PERS due to his termination with the City of Las Vegas on July 16, 2010. Mr. Bingham also applied for retirement benefits effective on March 15, 2011 where his benefit was reduced for early retirement prior to age 60 at that time. Mr. Bingham is not eligible to apply for disability retirement benefits after the date of termination with a Nevada public employer.

PERS staff does not have the authority to allow Mr. Bingham to apply for disability retirement benefits due to his ineligibility. However, any person whose request has been denied by staff may request an appeal of the decision to the PERS Board. Claims of error or inequity shall be submitted by the Board if there is a compelling reason that an error or inequity exists. Error or inequity means the existence of extenuating circumstances including, but not limited to, a member's reasonable and detrimental reliance on representations made by the system or by the public employer that prove to be erroneous.

RECEIVED

JUL 24 2014

PERS of Nevada

5520 S. Eastern Avenue, Suite 220
Las Vegas, NV 89119
(702) 486-3990
Fax: (702) 678-6934

693 W. Nye Lane
Carson City, NV 89703
(775) 687-4200
Fax: (775) 687-5131

7455 W. Washington Avenue, Suite 150
Las Vegas, NV 89128
(702) 486-3900
Fax: (702) 304-0697

Toll Free: 1-866-473-7768

Website: www.nvpers.org

ROA 040

If you wish to pursue an appeal to the PERS board, please submit a letter to the system regarding the error or inequity that has occurred and what action you wish the Board to take on your client's behalf.

Should you have any questions, please contact me at 1-866-473-7768, ext. 222.

Sincerely,



Cheryl Price
Operations Officer

RECEIVED

JUL 24 2014

PERS of Nevada

58
ROA 041



June 23, 2014

Kirk Kennedy, Esq.
815 Casino Center Blvd.
Las Vegas, NV 89101

Dear Mr. Kennedy:

I am in receipt of your letter dated May 20, 2014, regarding Reginald Bingham and the request for Board Intervention and Hearing. A review of the file indicates that Mr. Bingham terminated his employment with the City of Las Vegas July 16, 2010. It is the responsibility of the member or their employer to contact PERS in order to inquire about disability retirement eligibility.

NRS 286.620 states that members who are unable to perform their job duties due to a permanent physical or mental illness may apply for disability retirement if the member has 5 years of service and the member is still in the employ of a Nevada public employer at the time of application for disability retirement benefits. Disability retirement benefits are calculated as if the member is age eligible for regular retirement benefits and therefore, there is no reduction for age.

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If you wish to pursue an appeal to the PERS board, please submit a letter to the system regarding the error or inequity that has occurred and what action you wish the Board to take on your client's behalf.

Should you have any questions, please contact me at 1-866-473-7768, ext. 222.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl Price". The signature is fluid and cursive, with the first name "Cheryl" and last name "Price" clearly distinguishable.

Cheryl Price
Operations Officer

60

ROA 043



RECEIVED

MAY 22 2014

PERS of Nevada

May 20, 2014

Retirement Board
NV PERS
693 W. Nye Lane
Carson City, NV 89703

RE: Request for Board Intervention and Hearing

Dear NV PERS Board:

I am counsel for Mr. Reginald Bingham, a former City of Las Vegas employee, who has received his PERS retirement benefits since March, 2011. Mr. Bingham was previously involved in litigation against the City related to his claims of disability discrimination under the Americans with Disabilities Act, said litigation resolved through a jury trial in February, 2011. Mr. Bingham is disabled, and remains so, from a work related injury in 2007.

While his case was pending in federal court, the City of Las Vegas terminated his employment in July, 2010. They sent him the accompanying letter dated July 1, 2010, which advised him of his termination date of July 16, 2010, and that he must apply for PERS disability retirement before his separation. See, July 1 Letter, attached.

Mr. Bingham did not timely receive this advisement letter from the City, as he had changed residence addresses. The City also did not copy my office with this letter or put me on notice of the requirements to apply for disability retirement. Given that Mr. Bingham did not receive the attached letter, he was not aware nor advised of the requirements to apply for disability based retirement *before* his July 16, 2010, termination from the City.

In November, 2012, upon his inquiry, NV PERS sent Mr. Bingham a letter indicating that since he did not apply for the disability retirement before his termination from the City, he was not eligible for disability retirement under NRS 286.620. See PERS Letter, 11/26/12, attached.

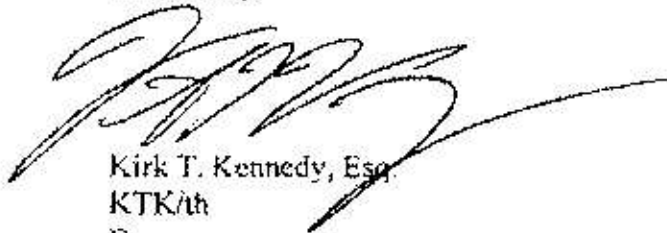
Page 1 of 2

Due to the failure of the City to properly notify him or his counsel about the requirements to file for disability retirement before his termination, Mr. Bingham has suffered greatly and has been wrongfully denied the ability to apply for and receive disability retirement. Mr. Bingham qualifies for disability retirement consideration, however since he did not apply for it prior to his termination, PERS has taken the position that he is prohibited.

Under NRS 286.190(3), the NV PERS Retirement Board has the inherent authority and discretion to correct errors or inequities related to a service member's benefits and entitlement to such benefits. On behalf of Mr. Bingham, we would request that the Board allow a hearing or other process to present our case and request that Mr. Bingham be granted the right to receive disability retirement benefits based on his extenuating circumstances.

I would appreciate a response within the next ten days regarding the process to request a hearing before the Board and any other procedural requirements to obtain equitable relief from the Board for Mr. Bingham's situation based on the authority granted under NRS 286.190(3). Thank you.

Yours truly,



Kirk T. Kennedy, Esq.
KTK/th
Enc.

cc: Reginald Bingham



LAS VEGAS CITY COUNCIL

OSCAR B. GOODMAN
MAYOR

GARY REESE
MAYOR PRO TEM

STEVE WOLFSON
LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW
STAVROS S. ANTHONY

ELIZABETH N. FRETWELL
CITY MANAGER

F. CLAUDETTE ENLIS
HUMAN RESOURCES DIRECTOR

CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.6316
TTY 702.380.9108
www.lasvegascitynevada.gov

July 1, 2010

Reginald Bingham
6205 Belgium Dr.
Las Vegas, NV 89122

Dear Mr. Bingham,

We have attempted to reach you by telephone without success.

City Attorney Phil Brynes was informed by the court that your motion for summary judgment has been denied. Therefore, we have been instructed to move forward to separate you from employment with the City of Las Vegas.

The effective date of separation is **July 16, 2010**. You must be in active employment status to apply for disability retirement. If that is an option you will pursue, you must apply at the PERS office, located 5820 South Eastern Avenue, Suite 220, Las Vegas, NV 89119 or 7455 W. Washington Ave., Suite 150, Las Vegas, NV 89128 on or before July 16, 2010.

Questions regarding your Insurance benefits should be directed to Candace Mbaye at 229.5039.

Our records indicate you were issued four keys and an ID badge which you agreed to return at the time of your separation of employment. Attached is a summary which includes the replacement fees. In the event you do not return the items.

Please contact me at 229.4758 as soon as you receive this notice to make arrangements to come in for processing out.

If no contact is made, we will separate you administratively, effective **July 16, 2010** and send you a final statement of what is owed to the City of Las Vegas.

Thank you,

Lori Petsco
Personnel Services Administrator
Human Resources
City of Las Vegas

Retirement Board

Mark R. Vincent
Chairman
Dorcas Green
Vice Chairman

Chris Collins
Bart Mangino
Rusty McAllister
David Olsen
Katherine Ong



Executive Staff

Dana K. Bilyeu
Executive Officer

Tina M. Leiss
Operations Officer

Vacant
Investment Officer

November 26, 2012

Reginald Bingham
10622 Gibbous Moon Drive
Las Vegas, NV 89129

Dear Mr. Bingham:

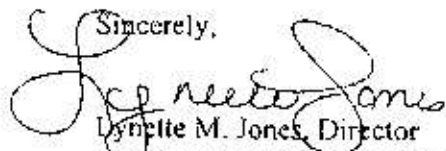
We received your request for information regarding the eligibility rules for our disability retirement program.

NRS 286.620 states that members who are unable to perform their job duties due to a permanent physical or mental illness may apply for disability retirement if the member has 5 years of service and the member is still in the employ of a Nevada public employer at the time of application for disability retirement benefits. Disability retirement benefits are calculated the same as regular retirement benefits; however, the reduction for early retirement is waived in this case.

Our records indicate that you terminated from your position with the City of Las Vegas on July 16, 2010 and became an inactive member until you applied for regular retirement benefits effective on March 15, 2011. Your benefit was reduced for early retirement as you were under the age of 60 at that time. You were not eligible to apply for disability retirement after your termination in July 2010. Please be advised that PERS statute does not allow members to change from regular retirement to disability retirement after the date of a member's termination of employment.

Please contact our office if you have further questions regarding the above information.

Sincerely,


Lynette M. Jones, Director
Member and Retiree Services

3820 S. Eastern Avenue, Suite 220
Las Vegas, NV 89119
(702) 486-3900
Fax: (702) 678-6924

693 W. Nye Lane
Carson City, NV 89703
(775) 687-4100
Fax: (775) 687-5131

7455 W. Washington Avenue, Suite 130
Las Vegas, NV 89128
(702) 486-3900
Fax: (702) 304-0697

Toll Free: 1-866-473-7768

Website: www.nvpers.org

64
ROA 047

Retirement Board

Mark R. Vucum
Chairman
James Green
Vice Chairman

Chris Coates
Bart T. Mangino
Rusty McAllister
David Olsen
Katherine Ong



Executive Staff

Dana K. Blyden
Executive Officer

Tina M. Lewis
Operations Officer

Steve Edmundson
Investment Officer

July 16, 2013

Kennedy Law Office
Kirk Kennedy, Esq.
815 S. Casino Center Blvd.
Las Vegas, NV 89101

Re: PERS Account Records of Reginald Bingham

Dear Mr. Kennedy:

Per your request, enclosed are true and exact copies of the entire retirement file from the account of Mr. Reginald Bingham maintained at the Public Employees' Retirement System of Nevada.

Should you have any questions, please contact me at (775) 687-4200, ext. 227.

Sincerely,

Cindy Yagon, Manager
Production Services Division

Enclosures

5820 S. Eastern Avenue, Suite 220
Las Vegas, NV 89119
(702) 486-3900
Fax: (702) 678-6934

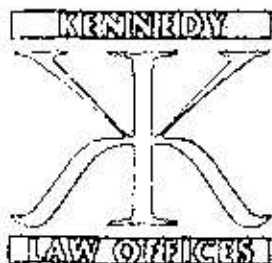
693 W. Nye Lane
Carson City, NV 89703
(775) 687-4200
Fax: (775) 687-3131

7455 W. Washington Avenue, Suite 150
Las Vegas, NV 89128
(702) 486-3900
Fax: (702) 304-0697

Toll Free: 1-866-473-7768

Website: www.nvpers.org

65
ROA 048



June 26, 2013

NV PERS

Attn: Legal

5820 S. Eastern Ave., Ste. 220

Las Vegas, NV 89119

RE: PERS Account of Reginald Bingham

Dear PERS:

I am counsel for Mr. Reginald Bingham, who receives retirement benefits from PERS. I would request your assistance to receive a copy of his complete PERS file, including all documents related to his 2011 application for benefits and any related documents PERS received from his former employer, the City of Las Vegas.

Enclosed, please find Mr. Bingham's authorization for release of records to my office. Kindly provide the requested copies within the next ten days. Thank you.

Yours truly,

Kirk T. Kennedy, Esq.

KTK/th

Enc.

RECEIVED
JUN 27 2013
LVE PERS
JUL 01 2013
PERS OF NEVADA

LAW OFFICE OF
KIRK T. KENNEDY
ATTORNEY AT LAW
815 S. CASINO CENTER BLVD.
LAS VEGAS, NV 89101
TEL: (702) 385-5534
FAX: (702) 385-1868

GENERAL AUTHORIZATION FOR RELEASE

TO WHOM IT MAY CONCERN:

This will authorize the Law Office of Kirk T. Kennedy, Esq., to examine and copy any and all medical, employment, police and SCOPE background information, worker's compensation, disability and all other records, items, photographs and other documents in your possession.

You are also authorized to mail to the bearer of this authorization, copies of all records and documents requested.

This authorization is valid and in full compliance with the laws of the State of Nevada. Any and all previous authorizations are revoked.


Reginald Bingham

SOCIAL SECURITY NUMBER

8/18/64
Date of Birth

RECEIVED
JUL 01 2013
PERS OF NEVADA

67
ROA 050

Retirement Board

Mark R. Vincent
Chairman
James Green
Vice Chairman

Chris Collins
Bob Mangano
Kathy McAllister
David Olson
Kathleen Ong



Executive Staff

Dana K. Shiver
Executive Officer

Tim M. Leiss
Operations Officer

Vacant
Investment Officer

November 26, 2012

Reginald Bingham
10622 Gibbous Moon Drive
Las Vegas, NV 89129

Dear Mr. Bingham:

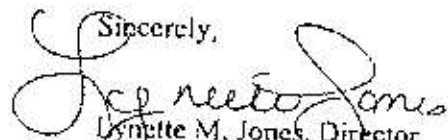
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Please contact our office if you have further questions regarding the above information.

Sincerely,



Lynette M. Jones, Director
Member and Retiree Services

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Las Vegas, NV 89119
(702) 486-3900
Fax: (702) 678-6534

693 W. Nye Lane
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Las Vegas, NV 89128
(702) 486-3900
Fax: (702) 304-0897

Toll Free: 1-866-473-7768 Website: www.nvpers.org


ROA 051