

Ombudsman's Determination

Applicant	Mrs R
Scheme	Teachers' Pension Scheme (the Scheme)
Respondent	Teachers' Pensions (TP)

Outcome

1. I do not uphold Mrs R's complaint and no further action is required by TP.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs R has complained that she has been refused an enhanced pension under Regulation 107(a) of Teachers' Pensions Regulations 2010, (**the Regulations**), which states a person must apply for ill health pension within six months of leaving pensionable service to receive the enhanced incapacity benefit.
4. Mrs R says that the Department of Education (**DoE**), acting for the Secretary of State, should consider allowing an extension of the six months' time limit and award her the enhanced incapacity benefits.

Background information, including submissions from the parties

5. Mrs R worked for Southside Tyneside College until 30 June 2010, when she accepted voluntary redundancy as she was unable to carry out her duties due to suffering from fibromyalgia.
6. Following her redundancy, from November 2010 until May 2011, she worked part-time in a teaching position at St Aidan's School in Sunderland.
7. In October 2012 Mrs R took up employment at Sunderland University Foundation Campus. Due to her illness she resigned in December 2012.
8. Mrs R applied for ill-health retirement on 21 April 2013.
9. Mrs R stated 30 June 2010, as her last day of pensionable employment on the ill-health retirement application form she completed.

10. TP received information from Sunderland Local Authority that she was in pensionable employment with them until 20 May 2011.
11. Mrs R was informed by TP that she was not entitled to receive an enhanced incapacity pension as she was an 'out of service' teacher at the time she applied for her ill-health pension and as such she was eligible for un-enhanced benefits based on her accrued service only.
12. Mrs R complained to the DoE through its internal dispute resolution process. The DoE stated that in order for a member to be considered for enhanced incapacity benefit, the written application must be made within six months of leaving pensionable employment or within six months of the end of the period of absence from pensionable employment covered by pension contributions, or before the end of the period of agreed non-pensionable leave or career break.
13. The DoE stated that as Mrs R applied for ill-health retirement on 21 April 2013 and her application was accepted on appeal on 13 May 2013. This meant she was out of pensionable employment for more than six months.
14. The DoE said that in order for Mrs R to be considered under the appropriate conditions in force at the time, she would have had to submit her application by 20 November 2011.
15. The decision maker said due to the length of time passed between Mrs R leaving pensionable employment and applying for ill-health retirement, and the fact that she was employed in the meantime, the DoE was unable to apply any discretion under regulation 133 to extend the six month timescale.
16. In its formal response to this Office, TP has said that Mrs R did not meet condition 3 (Schedule paragraph 7(4) (a)) of the Regulations and so her application was treated as being made when she was not in pensionable employment. This is because, according to Regulation 65 of the Regulations, conditions 1, 2, and 3 of 'Case C' must apply. (Schedule 7 paragraph 3) says that the member must:
 - “1. provide evidence to show that they are permanently 'incapacitated' (Regulation 107). According to the definition in the Regulations, a person is 'incapacitated' while 'unfit by reason of illness or injury and despite appropriate medical treatment to serve as a teacher....’
 2. have been in pensionable employment immediately before becoming permanently incapacitated;
 3. have applied within six months after leaving pensionable employment.”
17. TP further said under regulation 65, in order for someone to obtain enhanced benefits, the medical evidence must show that in addition to being incapacitated, the persons 'ability to carry out any work is impaired by more than 90%, and it is likely to be impaired by more than 90% permanently.'

18. TP added that where a person is not in pensionable employment immediately before becoming permanently incapacitated, they must show the ability to carry out any work is impaired by 90%, and is likely to be impaired by more than 90% permanently in order to obtain (un-enhanced) ill health retirement benefits.
19. TP did not uphold Mrs R's complaint and said that it does not have discretion to extend the time allowed for an application as it is for the DoE, acting for the Secretary of State, and it has declined the request.

Adjudicator's Opinion

20. Mrs R's complaint was considered by one of our Adjudicators who concluded that no further action was required by TP. The Adjudicator's findings are summarised briefly below:-
 - TP relied on condition 3 (Schedule 7 paragraph 3(4) (a) of the Regulations in asserting its right to not grant enhanced benefits. As Mrs R ill-health retirement application was made six months after she left pensionable employment she was not entitled to enhanced benefits.
 - Mrs R did not meet condition 3 (Schedule 7 paragraph 3 (4) (a)) of the Regulations, and so TP treated her application as being made when she was not in pensionable employment. In addition, Mrs R had to show that her ability to carry out any work was impaired by more than 90% and was likely to be impaired by more than 90% permanently. As she continued to work after her pensionable employment she would have been unable to submit such an application. This is because under the Regulations, incapacitated means being unfit by reason of illness or injury and despite appropriate medical treatment, to serve as a teacher. Mrs R has said that she continued to work after she left pensionable employment. Therefore, it would appear that she had the ability to carry out some work.
 - As Mrs R was still teaching it would be difficult to conclude that Mrs R's ability to work was permanently incapacitated by more than 90%.
 - Given the time that has passed between Mrs R leaving pensionable employment and applying for ill-health retirement, and in view of the fact that she was employed in the interim teaching, TP and the DoE have not acted in maladministration by refusing to extend the time limit in this case.
21. Mrs R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms R provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs R for completeness.

Ombudsman's decision

22. Mrs R has said that the application of Regulation 107(a) was discriminatory towards her. I appreciate that the new amended regulation allows for application for ill-health retirements to be treated as in service if made within two years, however Mrs R applied for ill-health retirement before the new amendment came in to force.
23. Mrs R should have made her application by 20 November 2011, which was six months after she left pensionable employment. I note that she actually applied on 21 April 2013 which is 23 months after her pensionable employment ended. Between the date Mrs R left her pensionable employment and the date of applying for her ill-health retirement I have seen no evidence of her contacting TP in an attempt to discuss her options or make TP aware of her condition. As such TP and DoE acted reasonably in refusing to extend the time limit and I do not consider it discriminatory.
24. Mrs R has said that she did not work for around a year and half after leaving her pensionable employment and once she went back to work in October 2012 she left after two months. She has said she reduced her hours and took longer recovery breaks, however by working reduced hours it would suggest that she was able to carry out some work and so I agree with TP's assessment that Mrs R was unable to meet the criteria of being more than 90% permanently incapacitated.
25. Therefore, I do not uphold Mrs R's complaint.

Anthony Arter

Pensions Ombudsman
22 March 2017