

April 5, 2018

BY CERTIFIED MAIL; RETURN RECEIPT REQUESTED

Brian O'Malley
Pension Plan Administrator
I.B. of T. Union Local 710 Pension Fund
9000 West 187th Street
Mokena, IL 60448

Re: Stephanie [REDACTED]
[REDACTED] TN [REDACTED]
Kerry [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Dear Mr. O'Malley:

Please be advised that Stephanie [REDACTED] has requested the assistance of the Pension Action Center with respect to the issue of her entitlement to survivor pension benefits pursuant to the Teamsters Pension Plan ("the Plan"). **This letter is a claim for benefits due to Ms. [REDACTED] pursuant to the Teamsters Pension Plan.**

Statement of Facts

Ms. [REDACTED]'s ex-husband, Kerry [REDACTED], worked in covered employment as a member of Teamsters Local 710 from 1992 to October 1, 2014. This office received a letter from Brian O'Malley, Plan Administrator, stating that Mr. [REDACTED] "retired with an Early Retirement Pension effective October 1, 2014, in the amount of \$2,379.00" paid as a single life annuity. The letter, dated March 16, 2018, is enclosed as Exhibit A.

Mr. and Ms. [REDACTED] were divorced on December 4, 2014. A copy of the Judgment for Dissolution of Marriage dated December 4, 2014 is enclosed as Exhibit B. Two days later, on December 6, 2014, Mr. [REDACTED] completed paperwork to commence his early retirement pension as a single-life annuity, effective as of October 1, 2014. A copy of the Joint and Survivor Pension Election Form dated December 4, 2014 and signed December 6, 2014 is enclosed as Exhibit C. On the election form, Mr. [REDACTED] stated that he was not married.

The annuity start date for Mr. ██████'s pension was October 1, 2014. See Exhibits A and C. On that date, Mr. and Ms. ██████ were still lawfully married. They were not divorced until December 4, 2014. See Exhibit B. Ms. ██████ has never received a benefit from the Plan.

Argument

Ms. ██████ is entitled to a survivor benefit under the Employee Retirement Income Security Act (“ERISA”) and the Retirement Equity Act (“REA”).

The annuity starting date is key in determining whether Ms. ██████ was required to give her consent to Mr. ██████ electing a single life annuity. Throughout 29 U.S.C. § 1055, the “Requirement of Joint and Survivor Annuity and Preretirement Survivor Annuity”, a spouse’s or surviving spouse’s benefit is discussed in terms of the annuity starting date. Annuity starting date is defined as “the first day of the first period for which an amount is payable as an annuity.” See 29 U.S.C. § 1055(h)(2)(A)(i). § 1055(a)(1) clearly states that “in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant shall be provided in the form of a qualified joint and survivor annuity”. See 29 U.S.C. § 1055(a)(1). § 1055(c)(7)(A) states that for a spouse to waive the joint and survivor annuity form of benefit, such election must be made during “the 180-day period ending on the annuity starting date”. See § 1055(c)(7)(A) (“For purposes of this subsection, the term ‘applicable election period’ means – in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 180-day period ending on the annuity starting date.”). In outlining the marriage requirements for a qualified joint and survivor annuity form, § 1055(f)(1)(A) states that “the participant and spouse [must have] been married throughout the 1-year period ending on the earlier of – the participant’s annuity starting date”. See § 1055(f)(1)(A).

Here, the Plan itself admits that Mr. ██████'s annuity starting date was October 1, 2014, the first day Mr. ██████ was entitled to an annuity in accordance with § 1055(h)(2)(A)(i). See Exhibit A. At the time of Mr. ██████'s annuity starting date, he had been married for at least one year to Ms. ██████, in accordance with § 1055(f)(1)(A). See Exhibit B. However, the Plan permitted Mr. ██████ to receive his pension as of October 1, 2014 in the single life annuity form without a signed and notarized waiver from Ms. ██████ dated within the 180-day period before the annuity starting date, in violation of § 1055(c)(7)(A). See Exhibit C.

The fact that Mr. ██████ waited to sign his benefit election form until two days after he and Ms. ██████ were formally divorced does not negate the Plan’s requirement to obtain a waiver of the joint and survivor annuity form of benefit because the annuity starting date was October 1, 2014. The Plan permitted Mr. ██████ to receive retroactive pension payments to

October 1, 2014 in the single-life annuity form of benefit. At all times during the months of October and November of 2014, until December 4, 2014, Mr. [REDACTED] was still legally married to Stephanie [REDACTED]. She therefore had an automatic right to a 50% joint and survivor benefit which could only be waived through strict compliance with Section 205 of ERISA. Ms. [REDACTED] did not waive that right. Clearly, the Plan is in violation of ERISA for commencing payment in a single-life annuity form of benefit and for permitting retroactive payment in a single life annuity form of benefit from October 1, 2014 to December 4, 2014 when Mr. [REDACTED] and Ms. [REDACTED] were legally married.

The Plan is acting in violation of its own Plan Document.

Section 5.03(a) of the International Brother of Teamsters Local 710 Pension Plan effective January 2010 states that “[a]ll Pensions shall be paid in the form of a 50% Joint and Survivor Benefit (unless either the 75% or 100% option is chosen) unless the Participant has filed with the Trustees in writing a timely rejection of that form of Pension, subject to all of the conditions of this Section.” A copy of this section is enclosed as Exhibit D. Section 5.03(b) outlines such a “timely rejection”.

No rejection shall be effective unless the Spouse of the Participant has consented in writing to such rejection and acknowledged the effect thereof, and such consent is witnessed by a Notary Public. No consent shall be required if it has been established by the Trustees that there is no Spouse or the Spouse cannot be located or if such consent cannot be obtained for extenuating reasons satisfactory to the Trustees. A Participant and his or her Spouse may reject the Joint and Survivor Pension (or revoke a previous rejection) at any time before the Annuity Starting Date. **To be timely, the rejection and any required consent must be filed with the Trustees before the Annuity Starting Date**, except that it may be filed later if within 90 days of the date the Participant was notified by the Trustees of the effect of the Joint and Survivor Pension, but in any event no more than 90 days before the Annuity Starting Date and no later than 30 days (except as otherwise provided) before the Annuity Starting Date. The Participant may file a new waiver or revoke a previous waiver at any time during the 90-day election period.

See Exhibit D at Section 5.03(b).

Here, Ms. [REDACTED] never consented in writing to a rejection of the joint and survivor benefit. The provision relating to instances in which no consent may be required does not apply to this case because Ms. [REDACTED] was able to be located at all times relevant to this matter, and there is no evidence of extenuating circumstances being provided to the Trustees by Mr. [REDACTED].

The annuity starting date is October 1, 2014. See Exhibits A and C. In accordance with the Plan Document, Mr. and Ms. ██████████ were required to file a rejection of the joint and survivor form of benefit within 90 days but no later than 30 days before the annuity starting date. Here, no rejection of the joint and survivor form of benefit was ever filed in the 90 days before October 1, 2014. Therefore, in accordance with the Plan, as well as ERISA, Ms. ██████████ is entitled to a joint and survivor pension as a timely rejection of the joint and survivor form of benefit was never filed with the Plan.

Ms. ██████████'s survivor benefit vested at the annuity starting date, October 1, 2014.

Courts have previously held that a survivor benefit irrevocably vests at the annuity starting date. See *Vanderkam v. Pension Benefit Guaranty Corporation*, 943 F.Supp.2d 130, 138 (D.C. Cir. May 7, 2013) (“...the Appeals Board reached its determination by relying upon decision from the Fourth, Fifth, and Ninth Circuits, all of which ‘have found that a survivor benefit irrevocably vests in the beneficiary at the [annuity starting date] and cannot be reassigned thereafter by a [domestic relations order].’”). The Ninth Circuit held “that QJSA surviving spouse benefits irrevocably vest in the participant’s spouse at the time of the annuity start date...and may not be reassigned to a subsequent spouse.” See *Carmona v. Carmona*, 603 F.3d 1041, 1048 (9th Cir. May 4, 2010). Similarly, the Fifth Circuit held that a participant’s “pension benefits irrevocably vested in [his spouse] on the date of his retirement[.]” See *Rivers v. Central and South West Corp.*, 186 F.3d 681, 683-84 (5th Cir. Sept. 7, 1999). Further, the Fourth Circuit concluded that in accordance with the Retirement Equity Act, “Surviving Spouse Benefits may be paid to a spouse who was married to the participant on the date of the participant’s retirement, regardless of whether that spouse is married to the participant on the date of the participant’s death.” See *Hopkins v. AT & T Global Information Solutions Co.*, 105 F.3d 153, 156 (4th Cir. Jan. 24, 1997).

Here, Mr. ██████████’s annuity start date is October 1, 2014. See Exhibits A and C. Mr. and Ms. ██████████ were still married on October 1, 2014. See Exhibit B. Therefore, Ms. ██████████’s joint and surviving spouse benefits irrevocably vested on October 1, 2014 and cannot be subsequently divested because of the couple’s divorce on December 4, 2014.

Conclusion

For the reasons outlined above, we request that Ms. ██████████ be paid her survivor pension as of the date of Mr. ██████████’s death, January 17, 2018, and for the remainder of her life. If there is any paperwork which must be completed by Ms. ██████████ in order for pension payments to commence, please forward it to me immediately. I am enclosing a signed Release from Ms. ██████████ authorizing the release of information regarding her pension to the Pension Action Center as Exhibit F.

Please direct any written response to me at: Sophie Esquier, Pension Action Center, Gerontology Institute, Univ. of Massachusetts Boston, 100 Morrissey Blvd., Boston, MA 02125. If you have any questions regarding this request, please do not hesitate to contact me at 617-287-7309 or sophie.esquier@umb.edu.

Thank you for your attention to this matter.

Sincerely,

Sophie Esquier, J.D.
Legal Fellow

Enclosures: A: Letter from Brian O'Malley, Plan Administrator, Local 710 Health, Welfare, and Pension Funds, dated March 16, 2018
B: Judgment for Dissolution of Marriage, dated December 4, 2014
C: Joint and Survivor Pension Election Form, dated December 6, 2014
D: International Brotherhood of Teamsters Local 710 Pension Plan Section 5.03, effective January 2010
E: Release Form
cc: Stephanie [REDACTED]

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
UNION LOCAL NO. 710 PENSION FUND

Joint and Survivor Pension Election Form

December 4, 2014

Name: KERRY [REDACTED]

SSN : XXX-XX-[REDACTED]

Effective Date of Pension: October 1, 2014

I have read the description of the Joint and Survivor Pension and I understand the terms, conditions and financial effects on my benefits under our Pension Plan.

I understand that my pension will be paid on the basis of a Joint and Survivor Pension unless I and my spouse specifically request to the contrary. I have indicated my choice below by checking one of the following:

A I elect NOT to have my pension payable on the basis of a Joint and Survivor Pension.

B I ELECT to have my pension payable on the basis of a Joint and 50% Survivor Pension.

C I ELECT to have my pension payable on the basis of a Joint and 75% Survivor Pension.

D I ELECT to have my pension payable on the basis of a Joint and 100% Survivor Pension.

E I am NOT MARRIED and will not be married when I retire. (Please notify Administrator if you do get married before retirement.)

F I am unable to obtain the consent of my spouse because I do not know the whereabouts of my spouse. (You must file an affidavit regarding absence or unavailability of spouse which will be given you upon request.)

I understand the Joint and Survivor is in place of all other Pensions and Benefits.

This form must be signed by the Participant and the Spouse. Fill in the following:

Signature: [REDACTED] Date Signed: 12-4-2014

Date of Birth: [REDACTED] Social Security Number: [REDACTED]

Signature of Spouse: _____ Date Signed: _____

Date of Birth: _____ Social Security Number: _____

If the participant elects NOT to have his pension payable on the basis of a Joint and Survivor Pension, the spouse's signature must be witnessed by a Notary Public.

Subscribed and sworn before me this 6 day of December, 2014

Notary Public Maria Negron My commission expires May 7, 2018

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PENSION FUND
LOCAL 710