

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2019-000895

Keith E. Turner, ...Respondent,

v.

South Carolina Public Employee Benefit Authority,
South Carolina Retirement Systems, ...Appellant.

RECORD ON APPEAL

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Keith E. Turner,

Petitioner,

vs.

South Carolina Public Employee Benefit
Authority, South Carolina Retirement
Systems,

Respondent.

Docket No. 15-ALJ-30-0586-CC

AMENDED FINAL ORDER

APPEARANCES: For the Petitioner: Keith E. Turner, *Pro se*
For the Respondent: Justin R. Werner, Esquire

STATEMENT OF THE CASE

This matter came before the South Carolina Administrative Law Court (ALC or court) pursuant to S.C. Code Ann. § 9-21-60 (Supp. 2015) upon the request for a contested case hearing filed by Keith Turner (Petitioner). The Petitioner contested the Final Agency Determination issued by South Carolina Public Employee Benefit Authority, South Carolina Retirement Systems (PEBA or Respondent), which determined that the Petitioner received an overpayment of disability retirement benefits in the amount of \$20,537.80, which was his full disability benefit in 2014. The sole issue in this case was whether the Petitioner received an overpayment which he must repay. After the court filed its Final Order and Decision on July 28, 2017, the Department filed a Motion to Alter or Amend the Final Order on August 14, 2017. The court now issues this Amended Final Order, addressing the new issues raised by the Department in its motion and further clarifying the court's position.

FINDINGS OF FACT

Having carefully considered the testimony and the arguments of both sides, this court makes the following Findings of Fact, taking into consideration the burden of proof and the credibility of the witnesses:

The Petitioner worked as a firefighter with the City of Charleston for several years, until he fractured his back during a high-rise fire. The Petitioner applied for disability retirement benefits on February 7, 2014, and was ultimately approved for disability retirement. He retired on

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SC ADMIN. LAW COURT

March 9, 2014, having accrued nearly twelve (12) years of service credit combined in the South Carolina Retirement Systems (SCRS or Retirement Systems) and Police Officer Retirement System (PORS) with an estimated average final compensation (AFC) of \$48,393.89. PEBA uses the AFC to calculate the estimated benefits, which is based on the twelve (12) highest consecutive quarters of salary posted to the system on the date of termination.

Prior to his retirement, the Petitioner consulted City of Charleston human resources personnel concerning the ramifications of taking a private sector job after his disability retirement. He testified that he was informed that as long as his earnings did not exceed his AFC, he would suffer no reduction in disability retirement benefits. The Petitioner testified that he received a job offer in the private sector making approximately \$45,000 a year selling firetrucks. The Petitioner accepted this private sector job because he believed he would still be able to receive his full monthly retirement benefit since it was slightly below his AFC of \$48,393.89. The Petitioner also testified that he worked a second weekend job (teaching security officers) to make extra money.

Two months following his retirement, PEBA sent the Petitioner a document entitled "Notice of Retirement Eligibility and Estimated Benefit," dated May 14, 2014. The document notified the Petitioner of his estimated AFC and his estimated monthly benefit.¹ On that same date, PEBA also sent the Petitioner another document entitled "Information for Retired Members." In a paragraph on page two (2) of this document, PEBA informed the Petitioner:

If you receive disability benefits and return to employment earning less than your Average Final Compensation (AFC), adjusted for inflation, your disability allowance will be reduced to an amount so that your disability benefits plus your earnings equal the amount of your AFC, adjusted for inflation. If your compensation then or anytime thereafter is equal to, or greater than the adjusted AFC, your disability benefits *will be discontinued*. (Emphasis Added).

Almost a year after his retirement, and after he had already received \$20,538 in disability benefits, the Petitioner received another letter from PEBA. The letter, dated February 25, 2015, informed the Petitioner for the first time of his "annual earnings limitation" for the year 2015, which was \$23,114.19--the difference between his AFC for 2015 (\$48,539.07) and his estimated disability retirement allowance for 2015 (\$25,424.88). (Respondent's Exhibit 7). The letter also explained that if he chose to work in 2015, his annual earnings from public or private employment

¹ It was not until October 21, 2014, that PEBA issued another letter to the Petitioner, informing him that his "retirement account had been updated and that the Petitioner's AFC was now \$48,393.89, and his monthly benefit was to be \$1,820.73. (Respondent's Exhibit 4).

could not exceed his "annual earnings limitation" of \$23,114.19, which represents the difference between [his] average final compensation adjusted for inflation (\$48,539.07) and [his] projected disability retirement benefits for 2015 (\$25,424.88).²

The Petitioner became alarmed because the letter also informed him that if his earnings from employment in 2015 exceeded the annual earnings limitation of \$23,114.19, that his disability retirement benefits would be reduced by the amount in excess of the earnings limitation, and that he "would be required to repay any overpayment of disability retirement benefits...." PEBA also requested the Petitioner provide copies of his W-2 statements for 2014. The Petitioner testified at the hearing that this was the first inkling that he might have a problem for 2014, because he had never received any information regarding his 2014 annual earnings limitation. The Petitioner promptly submitted his 2014 W-2 Forms for his 2014 jobs (\$39,808 from ACFT; \$7,680 (American Citadel Guard-job ended in November 2014) which totaled \$47,488. He also submitted a W-2 from a job that ended in January 2014 from the American LaFrance for \$6,790 (American LaFrance-job ended in January 2014 because company closed). He also received a payout for sick leave in February 2014 for \$2,403, as well as disability payments from the PORS (\$17,737.36) and the South Carolina Retirement System (\$2800.44), which totaled \$20,538 in retirement payments. Lastly, he submitted a W-2 Form for a payment from an insurance settlement for \$7,100 received in February 2014.

On April 22, 2015, PEBA's Benefits Payment Department informed the Petitioner in a letter that he was "required by law to repay any overpayment of disability retirement benefits" and that his entire 2014 disability retirement benefit, totaling \$20,537.80 was an overpayment. Specifically, the letter found that the Petitioner's wages for 2014 were \$63,984.60³ and that his "wages" exceeded his Adjusted AFC of \$48,393.89 and, therefore, his full disability benefit in 2014 was an overpayment. The letter informed the Petitioner that he could elect to satisfy this balance with a lump-sum payment or arrange a payment plan. (Respondent's Exhibit 9). Lastly, PEBA informed the Petitioner that since he was "earning a salary that is more than [his] adjusted

² The Petitioner never received any such letter detailing any limitations on earnings for 2014, since it was as late as October 2014, when PEBA finally sent the Petitioner a final AFC and monthly benefit amount.

³ Though the letter from PEBA at Respondent's Exhibit 9 listed a total of \$63,985 in 2014 earnings, it failed to explain how PEBA arrived at that figure.

AFC, [he] was no longer eligible for a monthly annuity” and that PEBA was “suspending [his] disability retirement benefit indefinitely pursuant to S.C. Code Ann. 9-1-1580.” Therefore, the Petitioner has not received a disability retirement payment since April 2015.

The Petitioner immediately challenged the determination that he was overpaid \$20,538 in disability retirement benefits for 2014 and that he must repay that overpayment. In particular, the Petitioner related that it was not until he received the February 2015 letter that informed him of his 2015 annual earnings limitation, he realized that he had been given incorrect information. The only information he had been given prior to that was that his salary from his post-retirement employment could not exceed his AFC. He testified that, had he known the truth, he would have chosen Option B, which was to defer his retirement until he reached retirement age “or my back finally completely gives out.” (R. E. 10). He stated he was still “having major problems with my back as a result of the injury and looking to have to spend \$22,000 out of pocket to fix it or at least try and get below a 3 on the pain scale to make it tolerable.” He also stated “when we lost the retirement this month, it was felt immediately in our house. A total loss of the retirement would devastate our livelihood and financial well-being. Especially since I do not know how long my back will allow me to keep working.” (R.E. 10). He asked the agency if he could be allowed to place his retirement disability into deferment and not have to pay back the \$20,538 under the circumstances. The Petitioner also stated that he did not want to retire, but there was no job in the fire department that he could still perform after his injury.

The Petitioner also argued that he received a great deal of his 2014 income prior to his retirement date of March 9, 2014, and those prior payments were for 1) a disability insurance settlement related to his fractured back, 2) a salary from a company that went out of business in January 2014, and 3) a payout for sick leave/vacation time.

The Petitioner further contended that the calculation of his overpayment of benefits should be adjusted to exclude any income paid to him in 2014 prior to his March 9, 2014, retirement date. Both the Petitioner and the Respondent agreed, at the hearing, that the Petitioner’s pro-rated salary from March 9, 2014 through the end of the year amounted to \$43,470.

On November 30, 2015, PEBA issued its Final Agency Determination (Determination) concluding that the Petitioner was overpaid \$20,537.80 and that he must repay this overpayment. The Determination letter cited to S.C. Code § 9-11-80(4) which regards PORs disability retirees,

which states “if the system certifies that the member’s disability has been removed and that he has regained his earning capacity” then his allowance may be discontinued.

The Determination then referenced S.C. Code § 9-1-1580, which provides for the mechanics of the earnings limitation calculation under the South Carolina Retirement System. That section provided that, if the “disability beneficiary” was reported to be “engaged in or is able to engage in gainful occupation” paying more than the difference between the retirement allowance and the average final compensation, then the “amount of his disability retirement allowance must be reduced to an amount which, together with the amount earnable by him, equals the amount of his average final compensation.”

PEBA informed the Petitioner that not only was he not entitled to receive any disability retirement benefits for that period, but “disability retirement benefits paid in excess of the earnings limitation are overpayments of benefits that may be recouped by PEBA. See *id.* § 9-1-1670(A).” (R.E. 11, Determination). The Determination also listed as its authority for recoupment of the overpayment a New Mexico Court of Appeals case, as well as a New York Superior Court case and an Oregon Court of Appeals retirement case.⁴ The Department’s Determination, for the first time, listed a “pro-rated average final compensation of \$39,378.04” which it calculated using the date of his disability retirement in March 2014. The Determination cited no authority that would allow it to pro-rate the Petitioner’s AFC.

Apart from retirement case law from other states, and S.C. Code Ann. § 9-1-1670(A), PEBA listed no other case law or statutory authority for recoupment of payments. Likewise, PEBA’s Determination did not provide any statutory authority for using a reduced or “pro-rated” average final compensation instead of the “average final compensation” previously listed for the Petitioner at \$48,393.89. PEBA’s “pro-rated” AFC of \$39,378.04 was never mentioned previously in its April 22, 2015, letter to the Petitioner, and appears to be in response to the Petitioner’s arguments that his earnings and/or wages should be pro-rated for 2014 from his retirement date.

At the hearing in this matter, the Petitioner corrected his previously listed total from his May 12, 2015 appeal letter, to a total pro-rated combined salary of \$43,470. At the hearing, the

⁴ *State v. ex rel Pub. Employees Ret. Ass’n v. Longacre*, 33 P. 3d 906, 911 (N.M. Ct. App. 2001); *rev’d on other grounds*, 59 P. 3d 500 (2002). PEBA also argued in this Determination of November 2015, that it has a duty to protect the corpus of the trust, and cited to *City of New York v. Ret. Bd. Of Teachers’ Ret. Sys.*, 455 N.Y.S. 2d 703, 705 (Sup. Ct. 1982), and *Anderson v. Pub. Employees Ret. Bd.*, 895 P. 2d 1377, 1381-82 (Or. Ct. App. 1995).

Respondent agreed that this was the actual pro-rated amount for the Petitioner's 2014 post-retirement earnings.

The Petitioner reiterated that he is currently not able to perform duties as a firefighter, and is still having back problems as a result of the spinal fractures that occurred in the course of the performance of his duties as a firefighter. His decision to retire was not voluntary, and he retired solely because there was no other job he could perform within the fire department. He testified that the job he currently holds involves selling fire trucks and is a "desk job."

This court finds that the Petitioner is without fault concerning any overpayments of PORS disability retirement benefits, and that he has performed no act or omission that resulted in an overpayment of PORS retirement disability payments. Likewise, at no time did the Petitioner fail to disclose material facts, nor did he accept a payment that he knew or should have known to be erroneous.

Respondent offered no testimony from any witnesses. The case file was entered into evidence by the Respondent, without objection, and constituted the Respondent's entire case. There was no evidence or testimony offered that the Petitioner's disability was removed. The Petitioner's AFC in 2014 was \$48,393.89 and his earnings from gainful employment amounted to \$43,470 in 2014 (prorated from March 9, 2014). The Petitioner's disability payment in 2014 was \$20,537.80. The difference between the AFC and retirement allowance (\$20,537.80) was \$27,856.09, also referred to as the annual earnings limitation. This amount, minus the Petitioner's pro-rated 2014 earnings from gainful employment equals \$15,613.91, which was the amount of the overpayment to the Petitioner. Alternatively stated, the amount of the Petitioner's AFC for 2014 minus the earnings from gainful employment (\$43,470), was \$4,923.89, which was the amount the Petitioner could receive in disability payments in 2014. Subtracting this amount (\$4,923.89) from the total disability payment the Petitioner received in 2014 (\$20,537.80) amounted to an overpayment to the Petitioner of \$15,613.91. This amount of overpayment is lower only because of the use of the pro-rated wages earned, which the Respondent agreed to at the hearing.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, this court concludes the following as a matter of law:

This court has jurisdiction over this contested case pursuant to S.C. Code Ann. § 9-21-60 (Supp. 2015), S.C. Code Ann. § 1-23-600(A) (Supp. 2015), and S.C. Code Ann. § 1-23-310 *et seq.* (Supp. 2015). As the moving party in this matter, the Petitioner bears the burden of establishing by a preponderance of the evidence that he is entitled to the relief he seeks from the Retirement Systems. *See Leventis v. S.C. Dep't. of Health & Envtl. Control*, 340 S.C. 118, 132-133, 530 S.E. 2d 643, 651 (Ct. App. 2000). As the fact-finding body, this court must weigh and pass upon the credibility of the evidence presented. *S.C. Cable Television Ass'n v. Southern Bell and Tel. Co.*, 308 S.C. 216, 417 S.E. 2d 586 (1992).

Retirement statutes should be liberally construed in favor of those to be benefitted and the objective sought to be accomplished.” *King v. South Carolina Retirement Systems*, 319 S.C. 373, 461 S.E. 2d 822 (1995). The retirement system is a creature of statute and can only exercise that authority expressly delegated to it or delegated by necessary implication. *Fowler v. Beasley*, 322 S.C. 463, 472 S.E. 2d 630 (1996).

Members of the South Carolina Police Officers’ Retirement Service (PORS) who are “disabled as a result of an injury arising out of and in the course of the performance of the member’s duties . . . may be retired by the retirement board . . . if the system, after a medical examination of the member, certifies that the member is mentally or physically incapacitated for the further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired.” S.C. Code Ann. § 9-11-80(1) (Supp. 2015).

The statutory section that allows for the reduction or discontinuation of a PORS disability retirement allowance is found in S.C. Code Ann. § 9-11-80(1) (Supp. 2014). That section provides that:

Upon determination by the department that member retired on disability is able to reenter the job market and work is available, the retirement system *may adjust the benefit* paid by the system in accordance with Sections 9-1-1580, 9-1-1590, 9-9-60, and 9-11-90. (Emphasis Added).

S.C. Code Ann. § 9-11-80(1) (Supp. 2014).

In more general terms, the mechanics of the annual earnings limitation for all disability retirees is set forth in S.C. Code Ann. § 9-1-1580 (Supp. 2015), which provides:

Should the system report and certify to the Board that the disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation⁵ and should the Board concur in the report, then the amount of his disability retirement allowance must be reduced to an amount which, together with the amount earnable by him, equals the amount of his average final compensation.

S.C. Code Ann. § 9-1-1580 (Supp. 2015).

Neither of the above-listed statutory sections allows for anything other than a reduction of a PORS disability retirement allowance. The Respondent agrees, and cites only to S.C. Code Ann. § 9-1-1670(A) (Supp. 2014) as its statutory authority for recoupment of any overpayment directly from the Petitioner in a lump-sum or a payment plan. This section provides that if:

a change or error in the records results in a member or beneficiary receiving from the system more or less than he would have been entitled to receive had the records been correct the board shall correct the error and, so far as practicable, *adjust the payment* so that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled is paid.

Id (Emphasis Added).

In issues involving statutory construction, the first question is to determine whether the statute's meaning is clear on its face. If the language of the statute is "plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." *Paschal v. State Election Comm'n*, 317 S.C. 434, 436, 454 S.E. 2d 890, 892 (1995). "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.* at 499, 640 S.E.2d at 459.

⁵ See S.C. Code § 9-1-10(4) (Supp. 2015).

Statutory sections which are part of the same general statutory law must be construed together and each one given effect. *S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). However, an agency's interpretation of its own statutes will not be overruled without cogent reasons. *See Read Phosphate Co. v. South Carolina Tax Commission*, 169 S.C. 314, 168 S.E. 722 (1933) and *Marchant v. Hamilton*, 279 S.C. 497, 309 S.E. 2d 781 (1983).

DISCUSSION

PEBA does not argue that the Petitioner's disability has been removed, under the provisions of Section 9-11-80(4), even though it cited this section in its Determination. Instead, it argues that it has overpaid the Petitioner in the amount of \$20,537.80 (the entire amount paid him in 2014), and that it is now entitled to recoup that amount under the provisions of S.C. Code Ann. § 9-1-1310(A) (Supp. 2014) as the trustee of the retirement system, as well as Section 9-1-1670(A). This court disagrees, and finds that though the Petitioner was overpaid \$15,613.91 in 2014 in retirement disability benefits, there is no explicit statutory authority allowing the Respondent to collect repayment of the overpaid funds, other than through an adjustment in future payments. *See* S.C. Code Ann. § 9-1-1670(A) (Supp. 2014).

Annual Earnings Limitation. As a disability retiree, the Petitioner was subject to the annual earnings limitation set forth in S.C. Code Ann. § 9-1-1580. The Petitioner never received specific information concerning his annual earnings limitation for the 2014 year, but when he received the 2015 annual earnings limitation for 2015 on February 25, 2015 (R.E. 7), he became alarmed and promptly took action. Though PEBA did not provide the Petitioner with his annual earnings limitation for 2014, it appears that this would have been an annual earnings from public or private employment in 2014 that was not to exceed \$27,856.09, which was the difference between his 2014 AFC (\$48,393.89) and his 2014 disability retirement benefits (\$20,537.80). Since the Petitioner and PEBA agreed that the Petitioner's pro-rated earnings from gainful occupation (from the time of his retirement in March 2014) for 2014 was \$43,470,⁶ then it appears the overpayment to the Petitioner in 2014 amounted to \$15,613.91, rather than \$20,537.80, as PEBA originally concluded.

⁶ The parties agreed that the Petitioner earned \$6,200 at his employment with Citadel Guard and \$37,187 for his employment with Atlantic Coast Fire Trucks. The Petitioner retired on March 9, 2014.

Statutory Authority for Recoupment of Overpayment. The next question this court must decide is whether PEBA has the authority to recoup the overpayment of \$15,614 by requiring the Petitioner to remit a repayment either in a lump sum amount or through installment payments. This court concludes that though the Respondent may recoup the overpayment by withholding future payments, it has no statutory authority to require the Petitioner repay the overpayment in a lump sum or in installments.

PEBA admits that it has no explicit statutory authority to recoup overpayments from this Petitioner, but argues that it has implicit authority in §§ 9-1-1580 and 9-1-1670(A). These sections, however, only allow for adjustments in the payment through a reduction or discontinuation of the Petitioner's disability retirement allowance. Section 9-1-1580 requires the disability retirement allowance "be reduced to an amount which, together with the amount earnable by him, equals the amount of his average final compensation." This Section further provides that if the amount of the disability retirement allowance "is eliminated as a result of this section for a period of five consecutive years, all rights in and to his disability retirement allowance are revoked."

The Respondent argues its implicit statutory authority for recoupment of the overpayment is found in S.C. Code Ann. § 9-1-1670(A) (Supp. 2014). This section, however, is nearly identical to the above cited statutes, and allows PEBA to "correct the error" and "adjust the payment so that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled is paid." In short, though the Section clearly allows PEBA to correct the error or omission and adjust all future payments accordingly, it does not allow for a recoupment of overpayment as PEBA seeks under the facts of this case. There is no dispute that PEBA has already eliminated retirement disability payments to the Petitioner since April 2015.

This State's retirement system is a creature of statute and can only exercise that authority expressly delegated to it or delegated by necessary implication. *Fowler v. Beasley*, 322 S.C. 463, 472 S.E. 2d 630 (1996). This court finds that Respondent's argument that it has implicit statutory authority is untenable, especially considering that this state has enacted statutes that allow for recovery of benefits and overpayments in other areas. Specifically, S.C. Code Ann. § 41-41-40 allows the Department of Employment and Workforce to obtain a full repayment of unemployment benefits, not only through an adjustment of future benefits, but also allows the Department to attempt to collect the overpayment through the Department of Revenue in accordance with Section 12-56-10, *et. seq.* Likewise, the Department of Health and Human

Services requires recoupment of overpayments against Medicaid providers as well as recipients of benefits. The statutes involving retirement benefits, however, are silent with regard to collection of overpayments in any other way than to adjust future payments.

The Respondent next argues its authority for recoupment also lies “in general trust fund law, as reflected in cases such as *Anderson v. Public Employees Retirement Board*, 134 Or. App. 422, 895 P. 2d 1377 (Ct. of Appeals of Oregon 1995).” What the Respondent ignores, however, is that the cases it cites in support of its position concern other state’s constitutional or statutory authority that differs significantly from South Carolina. In *State v. ex rel Pub. Employees Ret. Ass’n v. Longacre*, 133 N.M. 20, 59 P. 3d 500 (2002), the backdrop of the case involved a purported violation of Article IV, Section 32 of the New Mexico Constitution, which provides in pertinent part:

No obligation or liability of any person, association or corporation held or owned by or owing to the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released, postponed or in any way diminished by the legislature, nor shall any such obligation or liability be extinguished except by the payment thereof into the proper treasury, or by proper proceeding in court.

N.M. Const. art. IV, § 32 (as amended 1958).

The New Mexico Supreme Court examined whether a statute permitting its retirement association to recover overpayments, but only for a period of up to one year prior to the date the error or omission was discovered, was a constitutional statute considering the New Mexico constitutional provision. The court in New Mexico determined that the statute was constitutional, because it was not intended to release obligations or liabilities “held or owned by or owing to the state.” *Id.* at 509, 29. Additionally, to further distinguish New Mexico, that state also has a constitutional provision that requires that the state retirement board hold all funds in the retirement system in trust for its members.⁷ Though the Respondent argues that S.C. Code Ann. § 9-1-1310 supports its general trust law argument, and that the retirement system funds are not funds of the State, but are instead held in trust as provided in Section 9-16-20, this statute relates more to the duties of the Retirement System Investment Commission and its duties of investing, reinvesting and managing the funds. S.C. Code Ann. § 9-1-1310 and § 9-16-20 (Supp. 2014).

⁷ N.M. Const. Article XX. §22. “All funds, assets, proceeds, income, contributions, gifts and payments from any source whatsoever paid into or held by a public employees retirement system created by the laws of this state shall be held by each respective system in a trust fund....”

Likewise, South Carolina, unlike other states, has no statutory provision that gives the Respondent implicit authority to take any and all necessary actions to protect the funds. An Arizona statute, for example, gives that state's retirement board the authority to "do all acts whether expressly or authorized, which may be deemed necessary or proper for the protection of the fund." *See* A.R.S. § 38-803. Similarly, an Oregon statute allows for adjustments through reduction of the monthly payment, but also states that "any person who receives a payment from the PERB and who is not entitled to receive that payment, including a member of the system who receives an overpayment, holds that improperly made payment in trust subject to the boards' recovery of that payment under this section or by a civil action or other proceeding." *See* O.R.S. § 238.715.

In its Motion to Alter or Amend the Final Order, the Respondent delved deeper into this argument that its authority to recoup the funds lies in general trust law. Specifically, it argues at length how the assets of the Retirement Systems are held in trust and how the administration of the Retirement Systems is subject to trust law.⁸ As such, it maintains that PEBA, as trustee and administrator of the Retirement Systems, has the statutory authority to recoup overpayments of the Retirement Systems' trust funds. In support of this argument, the Respondent cites numerous sources asserting a basic trust principle that trustees have a duty to protect and preserve trust assets, which generally includes the duty to bring an action to protect and preserve trust property as necessary. *See* Respondent's Motion to Alter or Amend the Final Order at pp. 5-8.

The Respondent vigorously argues in its motion that because trustees and administrators of trusts have the authority to bring an action or otherwise seek recovery of trust assets, as necessary, to protect and preserve trust property, this entitles PEBA to recover the amount overpaid to the Petitioner in this case. However, the Respondent appears to confuse the authority to seek recovery with the authority to recover. In other words, there is a significant difference between a statutory authority to demand repayment, and the power or standing to bring

⁸ Contrary to the Respondent's assertion that the court "reject[ed] the notion that general principles of trust law apply to the administration of the [Retirement Systems], and [found] that the provisions of the South Carolina Code of Laws that declare that the Retirement Systems' funds are held in trust do not relate to the administration of retirement benefits," the court did no such thing. *See* Respondent's Motion to Alter or Amend the Final Order at p. 1. Rather, the court simply noted that a specific statute utilized by the Respondent in support of its argument that its authority to recover lies in general trust law, S.C. Code Ann. § 9-1-1310, largely concerns the Retirement System Investment Commission's investing and managing guidelines for the funds. Final Order and Decision at p. 11. The court never addressed the applicability of general trust principles to the administration of the Retirement Systems' funds in its Final Order.

a civil suit in a court of general jurisdiction for recovery in law or equity. Nowhere in its Final Order did the court hold that the Retirement Systems' trustees or administrators lack standing or authority to bring a civil suit seeking to correct administrative errors, such as an overpayment of funds. Nevertheless, the precise issue before the court is not whether the Respondent has the ability to seek recovery from the Petitioner for the overpayment but whether PEBA has the statutory authority to demand repayment of the funds. As such, any authority PEBA has under general trust law to seek recovery of improperly dispersed funds is irrelevant to the issue presently before the court.

Moreover, the Respondent also argues in its Motion to Alter or Amend the Final Order that the court's "constricted interpretation of [S.C. Code Ann. § 9-1-167] leads to an absurd result that could affect the fiscal integrity of the [Retirement Systems]" and "would preclude PEBA from recovering overpayments of the [Retirement Systems'] trust funds in all instances where the recipient of the overpayment is not entitled to ongoing benefit payments from the [Retirement] Systems." Respondent's Motion to Alter or Amend the Final Order at p. 11. Accordingly, the Respondent cites new authority in its motion, including three previous decisions from this court, that it argues supports its broader interpretation of S.C. Code Ann. § 9-1-1670.

First, as stated above, the Respondent contends that the court's reading of Section 9-1-1670 could affect the financial soundness of the Retirement Systems, and would act as a bar to recovery in every instance where the recipient is not entitled to ongoing benefit payments. Respondent's Motion to Alter or Amend the Final Order at p. 11. In support of this argument, the Respondent cites *Kennedy v. S.C. Ret. Systems*, in which this court held that the Retirement Systems' statutes should be interpreted based upon the assumption that "the legislature intends to maintain the soundness of the State Retirement System." *Kennedy v. S.C. Ret. Systems*, 345 S.C. 339, 351, 549 S.E.2d 243, 249 (2001). However, the Respondent fails to note that the issue in *Kennedy* was whether retirement benefits, for members as a whole, had been miscalculated to the sum of \$1.177 billion in unfunded liability. To be clear, the court's holding in this case is limited to the specific facts presently before the court. Thus, the court is not saying that PEBA does not have the ability to recover under any circumstances where the recipient of the overpayment is not entitled to ongoing benefit payments from the Retirement Systems, but merely that the Respondent does not have the statutory authority to recover from the Petitioner in this case. Furthermore, as previously stated, the Respondent is free to pursue other legal and equitable remedies under which

recovery may be possible.⁹ As such, there is a significant difference from the implications to PEBA in this case when compared to the substantial sum at issue in *Kennedy*. Therefore, the court does not believe its order in the instant case would have any substantial effect on the soundness of the Retirement Systems or their financial integrity. Moreover, the court does not believe that the narrow holdings contained herein would act as a complete bar to recovery in any circumstance where the recipient of the overpayment is not entitled to ongoing benefit payments from the Retirement Systems.

Second, the Respondent argues that "Section 9-1-1670 does not speak only to the adjustments of future payments due, but more broadly authorizes PEBA to 'adjust the payment' made to a member or beneficiary so far as practicable to ensure the correct amount is paid to the member or beneficiary." Respondent's Motion to Alter or Amend the Final Order at p. 11. Stated another way, the Respondent argues that Section 9-1-1670 impliedly authorizes retroactive adjustments to prior payments. The court declines to accept this argument. The Respondent's forced, unnatural reading of the plain language of Section 9-1-1670 goes beyond what this court is willing to consider. As an initial matter, the court takes the position that prior payments cannot be adjusted due to the fact that they have already been distributed in the original amount. A "retroactive adjustment" could only be accomplished by seeking recovery from a member or beneficiary and, as such, would not be an adjustment of the prior distribution itself but rather a new action for recovery. Moreover, the Respondent requests a lump sum repayment or installments pursuant to a repayment plan for recovery of the overpayment at issue here, which bears no transactional relationship to the original distributions the Petitioner received other than the total amount that is seeking to be recovered. Thus, the "retroactive adjustment" phraseology used by the Respondent is a misnomer. Furthermore, this reading of Section 9-1-1670 runs counter to the previously discussed principles of statutory interpretation. Surely, if the General Assembly intended for recovery of prior distributions, it would more clearly provided for that in the statute. As such, the court declines to accept the Respondent's interpretation of Section 9-1-1670 that allows for "retroactive adjustments."

⁹ Interestingly, although the Respondent seems to reject or ignore the legal and equitable theories it could pursue for the recovery of the overpayments at issue here, the Respondent admits that, while it is not aware of any valid defenses in the instant matter, "an overpaid member or beneficiary . . . may be able to establish a defense in law or equity under his or her specific circumstances that would counsel against the recoupment of overpayments from the member or beneficiary." Respondent's Motion to Alter or Amend the Final Order at p. 13.

The Respondent's final contention in its Motion to Alter or Amend the Final Order concerns three cases from this court that it argues "did not construe[] Section 9-1-1670 to be so narrow in the recovery it allows." Respondent's Motion to Alter or Amend the Final Order at p. 12. These cases are: *Cook v. S.C. Budget & Control Bd.*, Docket No. 11-ALJ-30-0336-CC (S.C. Admin. Law Ct. Dec. 7, 2011), 2011 WL 7119342; *McAlister v. S.C. Pub. Employee Benefit Auth.*, Docket No. 16-ALJ-30-0464-CC (S.C. Admin. Law Ct. Mar. 20, 2017), 2017 WL 1105619; and *Hocin v. S.C. Pub. Employee Benefit Auth.*, Docket No. 15-ALJ-30-0115-CC (S.C. Admin. Law Ct. June 18, 2015), 2015 WL 3929247.¹⁰

In *Cook*, the Petitioner contested a final agency decision, in which it was determined that "deductions were properly being made from [the Petitioner's] benefits to recoup substantial overpayments of disability retirement benefits she received" *Cook* at p. 1. In upholding the final agency decision, the court found that the deductions from the Petitioner's ongoing benefits in accordance with Section 9-1-1670(A) was proper. *See Cook* at pp. 8-10. However, the authority to reduce future benefit payments to recoup overpaid funds is not disputed by the court in the instant case. Moreover, the court in *Cook* did not address to any degree the issue of whether PEBA has the authority to demand repayment of funds in the absence of future benefit payments and, as such, is not relevant to the issue presently before the court.

Further, in *McAlister*, the Petitioner challenged a final agency decision, in which it was determined that the Petitioner received an overpayment of retirement benefits in the amount of \$3,501.78, and that the Petitioner must repay the overpayment. *McAlister* at p. 1. In upholding the final agency decision, the court in *McAlister* found that the "Petitioner must repay the overpayment of

¹⁰ The court would note that while administrative law judges (ALJs) may give due consideration to the decisions and reasoning of other ALJs, their rulings are not binding upon other ALJs. *See, e.g., Schiffner v. Motorola, Inc.*, 697 N.E.2d 868, 871 (Ill. App. Ct. 1998) ("Stare decisis requires courts to follow the decisions of higher courts, but does not bind courts to follow decisions of equal or inferior courts."); *Shook v. State*, 244 S.W.2d 220, 221 (Tex. Crim. App. 1951) ("It is rudimentary that courts are not bound by the decisions of other courts of equal jurisdiction. The power to establish precedent is lodged in courts of superior jurisdiction."); *People v. Hill*, 834 N.Y.S.2d 840, 845 (N.Y. City Crim. Ct. 2007) ("A decision of a court of co-ordinate jurisdiction is not a binding precedent."); *Nationwide Mut. Ins. Co. v. Yungwirth*, 940 A.2d 523, 528 n.5 (Pa. Super. 2008) ("While the Superior Court is bound to give due consideration to the decisions and reasoning of the Commonwealth Court, this Court is not bound to follow such decisions as controlling precedent."). Likewise, trial judges simply are not bound by the rulings of other trial judges. *See State v. Riley*, 698 So.2d 374, 376 n.1 (Fla. Dist. Ct. App. 1997) ("While we understand the trial court's desire to maintain uniformity within the county court, we note that decisions of one county court are not binding precedent on another county court because '[t]rial court's [sic] do not create precedent.'" (internal citation omitted); *see generally* 20 Am. Jur. 2d Courts § 141 (2014). Moreover, the ALC has a specific procedure to create binding precedent. Pursuant to ALC Rule 70, only "en banc decisions by the administrative law judges are binding upon all individual administrative law judges in all subsequent cases" But even *en banc* decisions are not binding if "a majority of the judges determine otherwise."

retirement benefits . . . , pursuant to section 9-1-1790.”¹¹ *McAlister* at pp. 5-6. The court in *McAlister* cites Section 9-1-1670 in concluding that SCRS is required to “act to resolve any error associated with a member’s account, including instances where a member receives an overpayment.” *McAlister* at p. 5. While this court agrees that the court in *McAlister* applied Section 9-1-1670 in accordance with the Respondent’s interpretation, this court finds the decision in *McAlister* unpersuasive. In *McAlister*, there was absolutely no substantive exploration of PEBA’s authority to demand repayment of funds in the absence of future benefit payments to any degree. Rather, the court simply accepted PEBA’s interpretation of the statute without reasoning or questioning.

Likewise, in *Hocin*, the Petitioner contested a final agency decision, in which it was determined that the Petitioner received an overpayment of disability retirement benefits in the amount of \$16,373.33. The sole issue before the court in *Hocin* was “whether [the] Petitioner received an overpayment which must be repaid.” *Hocin* at p. 1. Though the court reduced the Petitioner’s liability, the court held that the Petitioner was required to repay \$7,017.13 in overpayment in installments of at least \$100 per month until the balance is paid off. The court further noted in its order that if the Petitioner’s earning capacity decreased and he became eligible for benefits once again, then “the payments shall cease and [PEBA] may recover any remaining amounts due pursuant to S.C. Code Ann. § 9-1-1670.” *Hocin* at pp. 6-7. Since PEBA’s entitlement to recover the overpayment was not challenged in that case, the question of PEBA’s authority to demand repayment was again not addressed by that court but rather accepted as fact. Further, the statute at issue in the present case, Section 9-1-1670, was not substantively explored by the court in *Hocin* to any extent, including the scope of authority provided by it for PEBA to recover overpayments. In fact, the sole reference to Section 9-1-1670 in *Hocin* seems to imply that the statute is only applicable when the member is actually receiving benefits. Consequently, this court fails to see how *Hocin* bolsters the Respondent’s interpretation of Section 9-1-1670.

Finally, after reviewing the agency file, and the letters listed in the findings of fact, this court concludes that PEBA failed to adequately explain to the Petitioner his earnings

¹¹ As an aside, the court believes the citation to S.C. Code Ann. § 9-1-1790 by the court in *McAlister* as authority for repayment was erroneous. Section 9-1-1790 concerns the earning limitations upon return to covered employment for members of the Retirement Systems and does not contain any language that could arguably be construed as creating an obligation for members to repay overpaid funds. Moreover, the court does not use this statute as authority for repayment of overpaid funds elsewhere in the order.

limitations for 2014.¹² If PEBA had adequately notified the Petitioner of the details concerning his earnings limitations, it likely would have prevented the issue before this court. Given these unique facts, and given that “retirement statutes should be liberally construed in favor of those to be benefitted and the objective sought to be accomplished,” this court declines to find that the Respondent has the authority, in this case, to require the Petitioner to repay the overpayment. *See King v. South Carolina Retirement Systems*, 319 S.C. 373, 461 S.E. 2d 822 (1995). The retirement system is a creature of statute and can only exercise that authority expressly delegated to it or delegated by necessary implication. *Fowler v. Beasley*, 322 S.C. 463, 472 S.E. 2d 630 (1996). In the absence of explicit statutory authority or applicable state case law, this court declines to hold otherwise.

There is no dispute between the parties that the Petitioner has received an overpayment, through no fault of his own, in 2014 in the amount of \$15,613.94. There is also no dispute that the Respondent can take action, just as it did, and adjust and curtail monthly retirement disability payments in the future in accordance with S.C. Code Ann. § 9-1-1670(A). (Supp. 2014). The Respondent, however, has no explicit or implicit statutory authority to compel the Petitioner to repay the overpayment.

ORDER

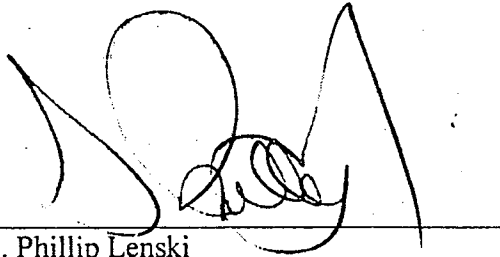
Based upon the foregoing Findings of Fact and Conclusions of Law:

IT IS HEREBY ORDERED that Petitioner was overpaid \$15,613.94 by the Police Officers’ Retirement System for 2014.

IT IS FURTHER ORDERED that in accordance with S.C. Code § 9-1-1670(A), the Respondent shall correct the error and adjust future payments to the Petitioner. However, under the facts of this case, this court holds that the Respondent is without statutory authority to require the Petitioner to repay the overpayment. The Determination that the Petitioner affirmatively repay this amount to the Respondent is **REVERSED**.

¹² The only information PEBA used to argue that it properly informed the Petitioner of the possible recoupment of any overpayment was buried in a form letter inside a paragraph at the bottom of the page on the second page of the form letter. The information made no reference to a repayment requirement, and provided no details unique to the Petitioner. It was not until nearly one year after the Petitioner actually retired that he finally received a detailed earnings limitation letter that specified what he was allowed to earn in 2015. It is also important to note that PEBA never mailed the Petitioner a 2014 earnings limitation letter, even though his retirement occurred in the first three months of 2014.

AND IT IS SO ORDERED.

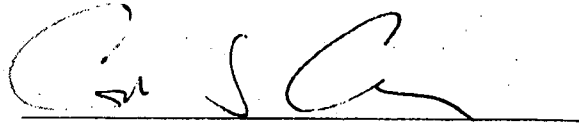
A handwritten signature in black ink, appearing to read 'S. Phillip Lenski', is written over a horizontal line.

S. Phillip Lenski
Administrative Law Judge

May 6, 2019
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Erika S. Easler, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Erika S. Easler
Judicial Law Clerk

May 6, 2016
Columbia, South Carolina

FILED

MAY 06 2019

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Keith E. Turner,

Petitioner,

vs.

South Carolina Public Employee Benefit
Authority, South Carolina Retirement Systems,

Respondent.

Docket No. 15-ALJ-30-0586-CC

FINAL ORDER AND DECISION

FILED

JUL 28 2017

SC ADMIN. LAW COURT

APPEARANCES: For the Petitioner: Keith E. Turner, *Pro se*
For the Respondent: Justin R. Werner, Esquire

STATEMENT OF THE CASE

This matter comes before the South Carolina Administrative Law Court (ALC or court) pursuant to S.C. Code Ann. § 9-21-60 (Supp. 2015) upon the request for a contested case hearing filed by Keith Turner (Petitioner). The Petitioner contests the Final Agency Determination issued by South Carolina Public Employee Benefit Authority, South Carolina Retirement Systems (PEBA or Respondent), which determined that the Petitioner received an overpayment of disability retirement benefits in the amount of \$20,537.80, which was his full disability benefit in 2014. The sole issue in this case is whether the Petitioner received an overpayment which he must repay.

FINDINGS OF FACT

Having carefully considered the testimony and the arguments of both sides, this court makes the following Findings of Fact, taking into consideration the burden of proof and the credibility of the witnesses:

The Petitioner worked as a firefighter with the City of Charleston for several years, until he fractured his back during a high-rise fire. The Petitioner applied for disability retirement benefits on February 7, 2014, and was ultimately approved for disability retirement. He retired on March 9, 2014, having accrued nearly twelve (12) years of service credit combined in the South Carolina Retirement System (SCRS) and Police Officer Retirement System (PORS) with an estimated average final compensation (AFC) of \$48,393.89. PEBA uses the AFC to calculate

the estimated benefits, which is based on the twelve (12) highest consecutive quarters of salary posted to the system on the date of termination.

Prior to his retirement, the Petitioner consulted City of Charleston human resources personnel concerning the ramifications of taking a private sector job after his disability retirement. He testified that he was informed that as long as his earnings did not exceed his AFC, he would suffer no reduction in disability retirement benefits. The Petitioner testified that he received a job offer in the private sector making approximately \$45,000 a year selling firetrucks. The Petitioner accepted this private sector job because he believed he would still be able to receive his full monthly retirement benefit since it was slightly below his AFC of \$48,393.89. The Petitioner also testified that he worked a second weekend job (teaching security officers) to make extra money.

Two months following his retirement, PEBA sent the Petitioner a document entitled "Notice of Retirement Eligibility and Estimated Benefit," dated May 14, 2014. The document notified the Petitioner of his estimated AFC and his estimated monthly benefit.¹ On that same date, PEBA also sent the Petitioner another document entitled "Information for Retired Members." In a paragraph on page two (2) of this document, PEBA informed the Petitioner:

If you receive disability benefits and return to employment earning less than your Average Final Compensation (AFC), adjusted for inflation, your disability allowance will be reduced to an amount so that your disability benefits plus your earnings equal the amount of your AFC, adjusted for inflation. If your compensation then or anytime thereafter is equal to, or greater than the adjusted AFC, your disability benefits *will be discontinued*. (Emphasis Added).

Almost a year after his retirement, and after he had already received \$20,538 in disability benefits, the Petitioner received another letter from PEBA. The letter, dated February 25, 2015, informed the Petitioner for the first time of his "annual earnings limitation" for the year 2015, which was \$23,114.19--the difference between his AFC for 2015 (\$48,539.07) and his estimated disability retirement allowance for 2015 (\$25,424.88). (Respondent's Exhibit 7). The letter also explained that if he chose to work in 2015, his annual earnings from public or private employment could not exceed his "annual earnings limitation" of \$23,114.19, which represents

¹ It was not until October 21, 2014, that PEBA issued another letter to the Petitioner, informing him that his "retirement account had been updated and that the Petitioner's AFC was now \$48,393.89, and his monthly benefit was to be \$1,820.73. (Respondent's Exhibit 4).

the difference between [his] average final compensation adjusted for inflation (\$48,539.07) and [his] projected disability retirement benefits for 2015 (\$25,424.88).²

The Petitioner became alarmed because the letter also informed him that if his earnings from employment in 2015 exceeded the annual earnings limitation of \$23,114.19, that his disability retirement benefits would be reduced by the amount in excess of the earnings limitation, and that he “would be required to repay any overpayment of disability retirement benefits....” PEBA also requested the Petitioner provide copies of his W-2 statements for 2014. The Petitioner testified at the hearing that this was the first inkling that he might have a problem for 2014, because he had never received any information regarding his 2014 annual earnings limitation. The Petitioner promptly submitted his 2014 W-2 Forms for his 2014 jobs (\$39,808 from ACFT; \$7,680 (American Citadel Guard-job ended in November 2014) which totaled \$47,488. He also submitted a W-2 from a job that ended in January 2014 from the American LaFrance for \$6,790 (American LaFrance-job ended in January 2014 because company closed). He also received a payout for sick leave in February 2014 for \$2,403, as well as disability payments from the PORS (\$17,737.36) and the South Carolina Retirement System (\$2800.44), which totaled \$20,538 in retirement payments. Lastly, he submitted a W-2 Form for a payment from an insurance settlement for \$7,100 received in February 2014.

On April 22, 2015, PEBA’s Benefits Payment Department informed the Petitioner in a letter that he was “required by law to repay any overpayment of disability retirement benefits” and that his entire 2014 disability retirement benefit, totaling \$20,537.80 was an overpayment. Specifically, the letter found that the Petitioner’s wages for 2014 were \$63,984.60³ and that his “wages” exceeded his Adjusted AFC of \$48,393.89 and, therefore, his full disability benefit in 2014 was an overpayment. The letter informed the Petitioner that he could elect to satisfy this balance with a lump-sum payment or arrange a payment plan. (Respondent’s Exhibit 9). Lastly, PEBA informed the Petitioner that since he was “earning a salary that is more than [his] adjusted AFC, [he] was no longer eligible for a monthly annuity” and that PEBA was “suspending [his]

² The Petitioner never received any such letter detailing any limitations on earnings for 2014, since it was as late as October 2014, when PEBA finally sent the Petitioner a final AFC and monthly benefit amount.

³ Though the letter from PEBA at Respondent’s Exhibit 9 listed a total of \$63,985 in 2014 earnings, it failed to explain how PEBA arrived at that figure.

disability retirement benefit indefinitely pursuant to S.C. Code Ann. 9-1-1580." Therefore, the Petitioner has not received a disability retirement payment since April 2015.

The Petitioner immediately challenged the determination that he was overpaid \$20,538 in disability retirement benefits for 2014 and that he must repay that overpayment. In particular, the Petitioner related that it was not until he received the February 2015 letter that informed him of his 2015 annual earnings limitation, he realized that he had been given incorrect information. The only information he had been given prior to that was that his salary from his post-retirement employment could not exceed his AFC. He testified that, had he known the truth, he would have chosen Option B, which was to defer his retirement until he reached retirement age "or my back finally completely gives out." (R. E. 10). He stated he was still "having major problems with my back as a result of the injury and looking to have to spend \$22,000 out of pocket to fix it or at least try and get below a 3 on the pain scale to make it tolerable." He also stated "when we lost the retirement this month, it was felt immediately in our house. A total loss of the retirement would devastate our livelihood and financial well-being. Especially since I do not know how long my back will allow me to keep working." (R.E. 10). He asked the agency if he could be allowed to place his retirement disability into deferment and not have to pay back the \$20,538 under the circumstances. The Petitioner also stated that he did not want to retire, but there was no job in the fire department that he could still perform after his injury.

The Petitioner also argued that he received a great deal of his 2014 income prior to his retirement date of March 9, 2014, and those prior payments were for 1) a disability insurance settlement related to his fractured back, 2) a salary from a company that went out of business in January 2014, and 3) a payout for sick leave/vacation time.

The Petitioner further contended that the calculation of his overpayment of benefits should be adjusted to exclude any income paid to him in 2014 prior to his March 9, 2014, retirement date. Both the Petitioner and the Respondent agreed, at the hearing, that the Petitioner's pro-rated salary from March 9, 2014 through the end of the year amounted to \$43,470.

On November 30, 2015, PEBA issued its Final Agency Determination (Determination) concluding that the Petitioner was overpaid \$20,537.80 and that he must repay this overpayment. The Determination letter cited to S.C. Code § 9-11-80(4) which regards PORS disability retirees.

which states “*if the system certifies that the member's disability has been removed and that he has regained his earning capacity*” then his allowance may be discontinued.

The Determination then referenced S.C. Code § 9-1-1580, which provides for the mechanics of the earnings limitation calculation under the South Carolina Retirement System. That section provided that, if the “disability beneficiary” was reported to be “engaged in or is able to engage in gainful occupation” paying more than the difference between the retirement allowance and the average final compensation, then the “amount of his disability retirement allowance must be reduced to an amount which, together with the amount earnable by him, equals the amount of his average final compensation.”

PEBA informed the Petitioner that not only was he not entitled to receive any disability retirement benefits for that period, but “disability retirement benefits paid in excess of the earnings limitation are overpayments of benefits that may be recouped by PEBA. See *id.* § 9-1-1670(A).” (R.E. 11, Determination). The Determination also listed as its authority for recoupment of the overpayment a New Mexico Court of Appeals case, as well as a New York Superior Court case and an Oregon Court of Appeals retirement case.⁴ The Department’s Determination, for the first time, listed a “pro-rated average final compensation of \$39,378.04” which it calculated using the date of his disability retirement in March 2014. The Determination cited no authority that would allow it to pro-rate the Petitioner’s AFC.

Apart from retirement case law from other states, and S.C. Code Ann. § 9-1-1670(A), PEBA listed no other case law or statutory authority for recoupment of payments. Likewise, PEBA’s Determination did not provide any statutory authority for using a reduced or “pro-rated” average final compensation instead of the “average final compensation” previously listed for the Petitioner at \$48,393.89. PEBA’s “pro-rated” AFC of \$39,378.04 was never mentioned previously in its April 22, 2015, letter to the Petitioner, and appears to be in response to the Petitioner’s arguments that his earnings and/or wages should be pro-rated for 2014 from his retirement date.

⁴ *State v. ex rel Pub. Employees Ret. Ass’n v. Longacre*, 33 P. 3d 906, 911 (N.M. Ct. App. 2001); *rev’d on other grounds*, 59 P. 3d 500 (2002). PEBA also argued in this Determination of November 2015, that it has a duty to protect the corpus of the trust, and cited to *City of New York v. Ret. Bd. Of Teachers’ Ret. Sys.*, 455 N.Y.S. 2d 703, 705 (Sup. Ct. 1982), and *Anderson v. Pub. Employees Ret. Bd.*, 895 P. 2d 1377, 1381-82 (Or. Ct. App. 1995).

At the hearing in this matter, the Petitioner corrected his previously listed total from his May 12, 2015 appeal letter, to a total pro-rated combined salary of \$43,470. At the hearing, the Respondent agreed that this was the actual pro-rated amount for the Petitioner's 2014 post-retirement earnings.

The Petitioner reiterated that he is currently not able to perform duties as a firefighter, and is still having back problems as a result of the spinal fractures that occurred in the course of the performance of his duties as a firefighter. His decision to retire was not voluntary, and he retired solely because there was no other job he could perform within the fire department. He testified that the job he currently holds involves selling fire trucks and is a "desk job."

This court finds that the Petitioner is without fault concerning any overpayments of PORS disability retirement benefits, and that he has performed no act or omission that resulted in an overpayment of PORS retirement disability payments. Likewise, at no time did the Petitioner fail to disclose material facts, nor did he accept a payment that he knew or should have known to be erroneous.

Respondent offered no testimony from any witnesses. The case file was entered into evidence by the Respondent, without objection, and constituted the Respondent's entire case. There was no evidence or testimony offered that the Petitioner's disability was removed. The Petitioner's AFC in 2014 was \$48,393.89 and his earnings from gainful employment amounted to \$43,470 in 2014 (prorated from March 9, 2014). The Petitioner's disability payment in 2014 was \$20,537.80. The difference between the AFC and retirement allowance (\$20,537.80) was \$27,856.09, also referred to as the annual earnings limitation. This amount, minus the Petitioner's pro-rated 2014 earnings from gainful employment equals \$15,613.91, which was the amount of the overpayment to the Petitioner. Alternatively stated, the amount of the Petitioner's AFC for 2014 minus the earnings from gainful employment (\$43,470), was \$4,923.89, which was the amount the Petitioner could receive in disability payments in 2014. Subtracting this amount (\$4,923.89) from the total disability payment the Petitioner received in 2014 (\$20,537.80) amounted to an overpayment to the Petitioner of \$15,613.91. This amount of overpayment is lower only because of the use of the pro-rated wages earned, which the Respondent agreed to at the hearing.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, this court concludes the following as a matter of law:

This court has jurisdiction over this contested case pursuant to S.C. Code Ann. § 9-21-60 (Supp. 2015), S.C. Code Ann. § 1-23-600(A) (Supp. 2015), and S.C. Code Ann. § 1-23-310 *et seq.* (Supp. 2015). As the moving party in this matter, the Petitioner bears the burden of establishing by a preponderance of the evidence that he is entitled to the relief he seeks from the Retirement Systems. *See Leventis v. S.C. Dep't. of Health & Envtl. Control*, 340 S.C. 118, 132-133, 530 S.E. 2d 643, 651 (Ct. App. 2000). As the fact-finding body, this court must weigh and pass upon the credibility of the evidence presented. *S.C. Cable Television Ass'n v. Southern Bell and Tel. Co.*, 308 S.C. 216, 417 S.E. 2d 586 (1992).

Retirement statutes should be liberally construed in favor of those to be benefitted and the objective sought to be accomplished.” *King v. South Carolina Retirement Systems*, 319 S.C. 373, 461 S.E. 2d 822 (1995). The retirement system is a creature of statute and can only exercise that authority expressly delegated to it or delegated by necessary implication. *Fowler v. Beasley*, 322 S.C. 463, 472 S.E. 2d 630 (1996).

Members of the South Carolina Police Officers’ Retirement Service (PORS) who are “disabled as a result of an injury arising out of and in the course of the performance of the member’s duties...may be retired by the retirement board...if the system, after a medical examination of the member, certifies that the member is mentally or physically incapacitated for the further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired.” S.C. Code Ann. § 9-11-80(1) (Supp. 2015).

The statutory section that allows for the reduction or discontinuation of a PORS disability retirement allowance is found in S.C. Code Ann. § 9-11-80(1) (Supp. 2014). That section provides that:

Upon determination by the department that member retired on disability is able to reenter the job market and work is available, the retirement system *may adjust the benefit* paid by the system in accordance with Sections 9-1-1580, 9-1-1590, 9-9-60, and 9-11-90. (Emphasis Added).

In more general terms, the mechanics of the annual earnings limitation for all disability retirees is set forth in S.C. Code Ann. § 9-1-1580 (Supp. 2015), which provides:

Should the system report and certify to the Board that the disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation⁵ and should the Board concur in the report, then the amount of his disability retirement allowance must be reduced to an amount which, together with the amount earnable by him, equals the amount of his average final compensation.

S.C. Code Ann. § 9-1-1580 (Supp. 2015).

Neither of the above-listed statutory sections allows for anything other than a reduction of a PORS disability retirement allowance. The Respondent agrees, and cites only to S.C. Code Ann. § 9-1-1670(A) (Supp. 2014) as its statutory authority for recoupment of any overpayment directly from the Petitioner in a lump-sum or a payment plan. This section provides that if:

a change or error in the records results in a member or beneficiary receiving from the system more or less than he would have been entitled to receive had the records been correct the board shall correct the error and, so far as practicable, *adjust the payment* so that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled is paid. (Emphasis Added). *Id.*

In issues involving statutory construction, the first question is to determine whether the statute's meaning is clear on its face. If the language of the statute is "plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." *Paschal v. State Election Comm'n*, 317 S.C. 434, 436, 454 S.E. 2d 890, 892 (1995). "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.* at 499, 640 S.E.2d at 459.

Statutory sections which are part of the same general statutory law must be construed together and each one given effect. *S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). However, an agency's interpretation of its own statutes will not be overruled without cogent reasons. *See Read Phosphate Co. v. South Carolina Tax Commission*, 169 S.C. 314, 168 S.E. 722 (1933) and *Marchant v. Hamilton*, 279 S.C. 497, 309 S.E. 2d 781 (1983).

⁵ See S.C. Code § 9-1-10(4) (Supp. 2015).

169 S.C. 314, 168 S.E. 722 (1933) and *Marchant v. Hamilton*, 279 S.C. 497, 309 S.E. 2d 781 (1983).

DISCUSSION

PEBA does not argue that the Petitioner's disability has been removed, under the provisions of Section 9-11-80(4), even though it cited this section in its Determination. Instead, it argues that it has overpaid the Petitioner in the amount of \$20,537.80 (the entire amount paid him in 2014), and that it is now entitled to recoup that amount under the provisions of S.C. Code Ann. § 9-1-1310(A) (Supp. 2014) as the trustee of the retirement system, as well as Section 9-1-1670(A). This court disagrees, and finds that though the Petitioner was overpaid \$15,613.91 in 2014 in retirement disability benefits, there is no explicit statutory authority allowing the Respondent to collect repayment of the overpaid funds, other than through an adjustment in future payments. *See* S.C. Code Ann. § 9-1-1670(A) (Supp. 2014).

Annual Earnings Limitation. As a disability retiree, the Petitioner was subject to the annual earnings limitation set forth in S.C. Code Ann. § 9-1-1580. The Petitioner never received specific information concerning his annual earnings limitation for the 2014 year, but when he received the 2015 annual earnings limitation for 2015 on February 25, 2015 ((R.E. 7), he became alarmed and promptly took action. Though PEBA did not provide the Petitioner with his annual earnings limitation for 2014, it appears that this would have been an annual earnings from public or private employment in 2014 that was not to exceed \$27,856.09, which was the difference between his 2014 AFC (\$48,393.89) and his 2014 disability retirement benefits (\$20,537.80). Since the Petitioner and PEBA agreed that the Petitioner's pro-rated earnings from gainful occupation (from the time of his retirement in March 2014) for 2014 was \$43,470,⁶ then it appears the overpayment to the Petitioner in 2014 amounted to \$15,613.91, rather than \$20,537.80, as PEBA originally concluded.

Statutory Authority for Recoupment of Overpayment. The next question this court must decide is whether PEBA has the authority to recoup the overpayment of \$15,614 by requiring the Petitioner to remit a repayment either in a lump sum amount or through installment payments. This court concludes that though the Respondent may recoup the overpayment by

⁶ The parties agreed that the Petitioner earned \$6,200 at his employment with Citadel Guard and \$37,187 for his employment with Atlantic Coast Fire Trucks. The Petitioner retired on March 9, 2014.

withholding future payments, it has no statutory authority to require the Petitioner repay the overpayment in a lump sum or in installments.

PEBA admits that it has no explicit statutory authority to recoup overpayments from this Petitioner, but argues that it has implicit authority in §§ 9-1-1580 and 9-1-1670(A). These sections, however, only allow for adjustments in the payment through a reduction or discontinuation of the Petitioner's disability retirement allowance. Section 9-1-1580 requires the disability retirement allowance "be reduced to an amount which, together with the amount earnable by him, equals the amount of his average final compensation." This Section further provides that if the amount of the disability retirement allowance "is eliminated as a result of this section for a period of five consecutive years, all rights in and to his disability retirement allowance are revoked."

The Respondent argues its implicit statutory authority for recoupment of the overpayment is found in S.C. Code Ann. § 9-1-1670(A) (Supp. 2014). This section, however, is nearly identical to the above cited statutes, and allows PEBA to "correct the error" and "adjust the payment so that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled is paid." In short, though the Section clearly allows PEBA to correct the error or omission and adjust all future payments accordingly, it does not allow for a recoupment of overpayment as PEBA seeks under the facts of this case. There is no dispute that PEBA has already eliminated retirement disability payments to the Petitioner since April 2015.

This State's retirement system is a creature of statute and can only exercise that authority expressly delegated to it or delegated by necessary implication. *Fowler v. Beasley*, 322 S.C. 463, 472 S.E. 2d 630 (1996). This court finds that Respondent's argument that it has implicit statutory authority is untenable, especially considering that this state has enacted statutes that allow for recovery of benefits and overpayments in other areas. Specifically, S.C. Code Ann. § 41-41-40 allows the Department of Employment and Workforce to obtain a full repayment of unemployment benefits, not only through an adjustment of future benefits, but also allows the Department to attempt to collect the overpayment through the Department of Revenue in accordance with Section 12-56-10, *et. seq.* Likewise, the Department of Health and Human Services requires recoupment of overpayments against Medicaid providers as well as recipients of benefits. The statutes involving retirement benefits, however, are silent with regard to collection of overpayments in any other way than to adjust future payments.

The Respondent next argues its authority for recoupment also lies “in general trust fund law, as reflected in cases such as *Anderson v. Public Employees Retirement Board*, 134 Or. App. 422, 895 P. 2d 1377 (Ct. of Appeals of Oregon 1995).” What the Respondent ignores, however, is that the cases it cites in support of its position concern other state’s constitutional or statutory authority that differs significantly from South Carolina. In *State v. ex rel Pub. Employees Ret. Ass’n v. Longacre*, 133 N.M. 20, 59 P. 3d 500 (2002), the backdrop of the case involved a purported violation of Article IV, Section 32 of the New Mexico Constitution, which provides in pertinent part:

No obligation or liability of any person, association or corporation held or owned by or owing to the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released, postponed or in any way diminished by the legislature, nor shall any such obligation or liability be extinguished except by the payment thereof into the proper treasury, or by proper proceeding in court.
N.M. Const. art. IV, § 32 (as amended 1958).

The New Mexico Supreme Court examined whether a statute permitting its retirement association to recover overpayments, but only for a period of up to one year prior to the date the error or omission was discovered, was a constitutional statute considering the New Mexico constitutional provision. The court in New Mexico determined that the statute was constitutional, because it was not intended to release obligations or liabilities “held or owned by or owing to the state.” *Id.* at 509, 29. Additionally, to further distinguish New Mexico, that state also has a constitutional provision that requires that the state retirement board hold all funds in the retirement system in trust for its members.⁷ Though the Respondent argues that S.C. Code Ann. § 9-1-1310 supports its general trust law argument, and that the retirement system funds are not funds of the State, but are instead held in trust as provided in Section 9-16-20, this statute relates more to the duties of the Retirement System Investment Commission and its duties of investing, reinvesting and managing the funds. S.C. Code Ann. § 9-1-1310 and § 9-16-20 (Supp. 2014).

Likewise, South Carolina, unlike other states, has no statutory provision that gives the Respondent implicit authority to take any and all necessary actions to protect the funds. An

⁷ N.M. Const. Article XX, §22. “All funds, assets, proceeds, income, contributions, gifts and payments from any source whatsoever paid into or held by a public employees retirement system created by the laws of this state shall be held by each respective system in a trust fund....”

Arizona statute, for example, gives that state's retirement board the authority to "do all acts whether expressly or authorized, which may be deemed necessary or proper for the protection of the fund." See A.R.S. § 38-803. Similarly, an Oregon statute allows for adjustments through reduction of the monthly payment, but also states that "any person who receives a payment from the PERB and who is not entitled to receive that payment, including a member of the system who receives an overpayment, holds that improperly made payment in trust subject to the boards' recovery of that payment under this section or by a civil action or other proceeding." See O.R.S. § 238.715.

Furthermore, after reviewing the agency file, and the letters listed in the findings of fact, this court concludes that PEBA failed to adequately explain to the Petitioner his earnings limitations for 2014.⁸ If PEBA had adequately notified the Petitioner of the details concerning his earnings limitations, it might have prevented this very issue before this court. Given these unique facts, and given that "retirement statutes should be liberally construed in favor of those to be benefitted and the objective sought to be accomplished," this court declines to find that the Respondent has the authority, in this case, to require the Petitioner to repay the overpayment. See *King v. South Carolina Retirement Systems*, 319 S.C. 373, 461 S.E. 2d 822 (1995). The retirement system is a creature of statute and can only exercise that authority expressly delegated to it or delegated by necessary implication. *Fowler v. Beasley*, 322 S.C. 463, 472 S.E. 2d 630 (1996). In the absence of explicit statutory authority or applicable state case law, this court declines to hold otherwise.

There is no dispute between the parties that the Petitioner has received an overpayment, through no fault of his own, in 2014 in the amount of \$15,613.94. There is also no dispute that the Respondent can take action, just as it did, and adjust and curtail monthly retirement disability payments in the future in accordance with S.C. Code Ann. § 9-1-1670(A). (Supp. 2014). The Respondent, however, has no explicit or implicit statutory authority to compel the Petitioner to repay the overpayment.

⁸ The only information PEBA used to argue that it properly informed the Petitioner of the possible recoupment of any overpayment was buried in a form letter inside a paragraph at the bottom of the page of the second page. The information made no reference to a repayment requirement, and provided no details unique to the Petitioner. It was not until nearly one (1) year after the Petitioner actually retired, that he finally received a detailed earnings limitation letter that specified what he was allowed to earn in 2015. It is also important to note that PEBA never mailed the Petitioner a 2014 earnings limitation letter, even though his retirement occurred in the first three (3) months of 2014.

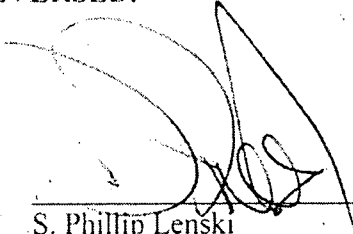
ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law:

IT IS HEREBY ORDERED that Petitioner was overpaid \$15,613.94 by the Police Officers' Retirement System for 2014.

IT IS FURTHER ORDERED that in accordance with S.C. Code § 9-1-1670(A), the Respondent shall correct the error and adjust future payments to the Petitioner. However, under the facts of this case, this court holds that the Respondent is without statutory authority to require the Petitioner to repay the overpayment. The Determination that the Petitioner affirmatively repay this amount to the Respondent is **REVERSED**.

AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

July 28, 2017
Columbia, South Carolina

CLERK OF COURT
This is to certify that the undersigned has read the case
numbered 28927 and the above entitled matter upon all
documents filed and has caused a copy thereof
to be filed with the State not postage paid or in the emergency
M. 28927 (to the parties) or their attorney(s).
The 28927

J. U. Moran
Clerk of Court

August 14, 2017

By Email and U.S. Mail

The Honorable S. Phillip Lenski
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: Keith E. Turner v. S.C. Public Employee Benefit Authority, S.C. Retirement Systems, Docket No. 15-ALJ-30-0586-CC

Dear Judge Lenski:

Enclosed for filing please find Respondent's Motion to Alter or Amend the Final Order and Decision issued in the above-referenced matter on July 28, 2017, and an accompanying Certificate of Service.

If you have any questions regarding this matter, feel free to call me at (803) 737-6894.

Sincerely,



Justin R. Werner
Deputy General Counsel

Enclosures

cc: Keith E. Turner

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Keith E. Turner,

Petitioner,

v.

South Carolina Public Employee Benefit
Authority, South Carolina Retirement
Systems,

Respondent.

MOTION TO ALTER OR AMEND
FINAL ORDER

DOCKET NO. 15-ALJ-30-0586-CC

By a Final Order and Decision issued in the above-captioned matter on July 28, 2017, and served on the parties by email that same day, the Court found that Petitioner Keith E. Turner had exceeded the annual earnings limitation applicable to his receipt of disability retirement benefits from the South Carolina Retirement Systems in 2014, such that he had received an overpayment of benefits in the amount of \$15,613.91 for that year. However, in the Order, the Court further concluded that Respondent South Carolina Public Employee Benefit Authority ("PEBA") has no statutory authority to seek recoupment of the overpayment of benefits from Petitioner, other than the ability to adjust any future benefit payments due to Petitioner. Pursuant to ALC Rule 29(D) and Rule 59(e), SCRCF, Respondent PEBA hereby files the following Motion to Alter or Amend that Final Order and Decision so that it accurately reflects PEBA's statutory authority to recoup overpayments of benefits made from the retirement trust funds it administers.

DISCUSSION

I. The Assets of the South Carolina Retirement Systems are held in Trust and the Administration of the Systems is subject to Trust Law

The Final Order and Decision in this matter rejects the notion that general principles of trust law apply to the administration of the South Carolina Retirement Systems, and finds that the provisions of the South Carolina Code of Laws that declare that the Retirement Systems' funds are held in trust do not relate to the administration of retirement benefits, but "relate[] more to the duties . . . of investing, reinvesting and managing the funds." Final Order and Decision at 11.

As set out below, these conclusions of law misapprehend the legal status of the South Carolina Retirement Systems under the South Carolina Constitution and Code of Laws, and the Final Order and Decision should be amended to correctly reflect that the assets of the South Carolina Retirement Systems are held in trust and that the administration of the Systems is subject to principles of trust law.

A. The Assets of the Retirement Systems are Held in Trust

There is no question under South Carolina law that the assets of the South Carolina Retirement Systems are held in trust for all purposes, including the administration of retirement benefits as well as the investment of the Systems' assets. At the most fundamental level, the South Carolina Constitution places the assets of the South Carolina Retirement Systems in trust, providing that all "[a]ssets and funds established, created and accruing for the purpose of paying obligations to members of the several retirement systems of the State and political subdivisions shall not be diverted or used for any other purpose." S.C. Const. art. X, § 16. The South Carolina Code of Laws, in turn, specifies that "[t]he funds and assets of the various state retirement systems are not funds of the State, but are instead held in trust as provided in Section 9-16-20," S.C. Code Ann. § 9-1-1310(C) (Supp. 2016), and that "[a]ll assets of a retirement system are held in trust," *id.* § 9-16-20(A). See also *id.* § 9-16-20(C) ("The board shall hold the assets of the retirement systems in a group trust[.]"). Consistent with the Retirement Systems' funds being held in trust, the Code of Laws designates the PEBA Board of Directors as the statutory trustees of the Retirement Systems' funds. *Id.* § 9-1-1310(A) ("The South Carolina Public Employee Benefit Authority . . . are cotrustees of the retirement system . . . in performing the functions imposed on them by law in the governance of the Retirement System."); *id.* § 9-16-10(9) (defining the "trustee" of the Retirement Systems as "the Board of Directors of the South Carolina Public Employee Benefit Authority"); *id.* § 9-12-10(1) (defining the "Board" for the qualified excess benefit arrangement statutes as "the Board of Directors of the South Carolina Public Employee Benefit Authority acting as trustee of the retirement systems"). And, as trustees, PEBA is given full responsibility for the management and administration of the Retirement Systems, with the sole exception of the investment authority delegated to the South Carolina Retirement System Investment Commission. See *id.* §§ 9-1-20 (Supp. 2016), 9-8-20 (Supp. 2016), 9-9-20 (1986), 9-10-20(B) (Supp. 2016), 9-11-20(1) (1986).

Construing these provisions, the South Carolina Attorney General's Office has recognized that the General Assembly has created a statutory trust for the assets of the Retirement Systems, under which the statutory trustees hold legal title to the Systems' assets on behalf of and in trust for the beneficiaries of the trust and have been charged with the administration of the Systems. See Op. S.C. Att'y Gen. of Nov. 16, 2011 (issued to Robert L. Borden), 2011 WL 6120331, at 11 ("Section 9-16-20 does make it clear that '[a]ll assets of a retirement system are held in trust.'"), id. at 16 ("[T]he General Assembly has established the structure for the administration of the State Retirement System, which constitutes a statutory trust."), id. at 16 (recognizing that the statutory trustees of the Retirement Systems hold "the 'legal title' to such assets on behalf of and in trust for the beneficiaries of the trust" and that the Retirement Systems "are placed under the administration" of those trustees); Op. S.C. Att'y Gen. of Apr. 20, 2012 (issued to The Honorable Curtis M. Loftis, Jr.), 2012 WL 1561869, at 1, 2 (same).¹ That the assets of the Retirement Systems are held in trust by law and are subject to administration by the statutorily designated trustees has also been recognized by the South Carolina Supreme Court, see Hamiter v. Ret. Div. of the S.C. Budget & Control Bd., 326 S.C. 93, 96-97, 484 S.E.2d 586, 587-88 (1997); see also Op. S.C. Att'y Gen. of Nov. 16, 2011, 2011 WL 6120331, at 13, and by the South Carolina Administrative Law Court, see McAlister v. S.C. Pub. Employee Benefit Auth., Docket No. 16-ALJ-30-0464-CC (S.C. Admin. Law Ct. Mar. 20, 2017), 2017 WL 1105619, at 4 (recognizing the assets of the Retirement Systems as being held in trust and PEBA's role as trustee of those assets pursuant to Sections 9-1-1310(A) and (C) of the Code of Laws); Cook v. S.C. Budget & Control Bd., Docket No. 11-ALJ-30-0336-CC (S.C. Admin. Law Ct. Dec. 7, 2011), 2011 WL 7119342, at 7 (same). Courts in other jurisdictions have likewise had little trouble in finding that similar statutory public pension plans are "a classic example of a 'statutory' trust" and are subject to the administration of the designated trustees, both "[b]y the very use of the term 'Trustee,' as well as by the allocation of responsibilities to them." Dadisman v. Moore, 384 S.E.2d 816, 821-22 (W. Va. 1989).

¹ Because these opinions pre-date the passage of Act 278 of 2012, the opinions discuss the State Budget and Control Board as the statutory trustees of the Retirement Systems. However, nothing in the transfer of trusteeship over the Retirement Systems from the Budget and Control Board to the PEBA Board in Act 278 of 2012 or in Act 13 of 2017 would affect the conclusions reached by the Attorney General's Office in those opinions.

It is important to emphasize that recognition of the Retirement Systems' funds as trust funds is no mere technicality or legal formality. A finding by a court that the Retirement Systems' assets are not held fully in trust for all purposes, including benefit administration, would not only threaten critical protections for those assets as being held separate and apart from the other funds of the State, but would also jeopardize the tax advantages the Retirement Systems enjoy under the Internal Revenue Code as qualified plans. See 26 I.R.C. § 401(a)(2); 26 C.F.R. § 1.401-1(a)(3); 26 C.F.R. § 1.401-2 (all providing that a pension plan must be established as a "qualified trust" in order to meet the requirements for tax-deferred status). The tax consequences alone of a finding that the Retirement Systems' assets are not fully protected as trust funds would be catastrophic.

B. The Administration of the Retirement Systems is subject to Principles of Trust Law

By explicitly placing the assets of the Retirement Systems in trust under the administration of the PEBA Board as trustees, the General Assembly has directed that the administration of the Retirement Systems be subject to general principles of trust law. In addressing the question of what responsibilities were granted to the statutory trustees of the Retirement Systems by virtue of their status as trustees, the Attorney General's Office has concluded that:

[W]e believe a court would determine that the duties of the . . . Board as "trustee" would be in keeping with the usual and customary duties imposed upon a trustee under the common law, South Carolina statutes and general authorities. It is well recognized in South Carolina that there is a presumption that the common law remains in full force, absent a clear change by an unambiguous statute.

Op. S.C. Att'y Gen. of Nov. 11, 2011, 2011 WL 6120331, at 12. In that same opinion, the Attorney General's Office further noted that the South Carolina Supreme Court in Hamiter had "recognized that general principles of trust law are applicable to the . . . Board's duties as trustee" of the Retirement Systems. Id. at 13. In short, the Attorney General's Office has twice concluded that the statutory trustee of the Retirement Systems "has been placed 'in a fiduciary relationship' with the trust and its participants," and that, "[a]s trustee, the Board possesses all common law responsibilities as trustee, in addition to its statutory duties." Id. at 16; Op. S.C. Att'y Gen. of Apr. 20, 2012, 2012 WL 1561869, at 3 (same). Cf., e.g., Dadisman, 384 S.E.2d at 822, 826. Further, as noted above, the application of general principles of trust law to the

administration of the Retirement Systems has also been recognized by the Administrative Law Court. See McAlister, 2017 WL 1105619, at 4; Cook, 2011 WL 7119342, at 7. By the very nature of the statutory trust established for the Retirement Systems' assets, the administration of those trust funds is subject to general principles of trust law and is unlike many other State programs that are not subject to such rules.

The Final Order and Decision in this matter should be amended to hold, in accordance with South Carolina law, that the assets of the South Carolina Retirement Systems are held in trust for all purposes and that the administration of the Systems is subject to principles of trust law.

II. As Trustee and Administrator of the Retirement Systems, PEBA has the Statutory Authority to Recoup Overpayments of Retirement Systems' Trust Funds

Flowing from the failure to properly recognize the nature of PEBA's trusteeship of the Retirement Systems' funds, the Final Order and Decision in this matter finds that PEBA has no statutory authority "to collect repayment of overpaid funds, other than through an adjustment in future payments." Final Order and Decision at 9; see also id. at 10 (stating that PEBA "has no statutory authority to require [that] the Petitioner repay the overpayment in a lump sum or installments"); id. at 12 (stating that PEBA "has no explicit or implicit statutory authority to compel the Petitioner to repay the overpayment"). As set forth below, this finding fails to recognize PEBA's inherent statutory powers as trustee and administrator of the Retirement Systems' trust funds and is based upon an unduly constricted interpretation of Section 9-1-1670 of the South Carolina Code of Laws. The Final Order and Decision should be amended to hold that PEBA has broad statutory authority to recoup overpayments made from the Retirement Systems' trust funds and, in particular, that PEBA's authority to seek recovery of such overpayments is not limited solely to offsetting overpayments against any future benefits due.

A. *PEBA's Inherent Statutory Authority to Recover Overpayments*

By designating PEBA as the trustee and administrator of the Retirement Systems' trust funds, the General Assembly has granted PEBA the inherent statutory authority to recover overpayments of trust funds, including overpayments made to trust beneficiaries. See Op. S.C. Att'y Gen. of Nov. 16, 2011, 2011 WL 6120331, at 16 ("As trustee, the Board possesses all common law responsibilities as trustee, in addition to its statutory duties.").

1. General Power of a Trustee to Protect Trust Property

One of the most fundamental powers, and duties, of a trustee is the responsibility to collect and protect the property subject to the trust. This responsibility includes taking reasonable steps to enforce claims to recoup monies due to the trust and to defend actions that could result in a loss of trust assets. This authority, and duty, of a trustee to collect and preserve trust funds is universally recognized in the common law and statutory law of trusts, including

- the Restatement of Trusts, see Restatement (Third) of Trusts § 76(2) (Am. Law Inst. 2007) (“In administering the trust, the trustee’s responsibilities include performance of the following functions: . . . (b) collecting and protecting trust property[.]”); id. § 76 cmt. d (stating that “[t]he duty of protecting the trust estate includes taking reasonable steps to enforce or realize on other claims held by the trust and to defend actions that may result in a loss to the trust estate,” including a duty to “bring such actions as a prudent person would for the protection and preservation of trust property”),
- the Uniform Trust Code, see Unif. Trust Code § 809 (Unif. Law Comm’n 2000) (“A trustee shall take reasonable steps to take control of and protect the trust property.”); id. § 811 (“A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.”); id. § 812 (“A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee[.]”); id. § 816 (“[A] trustee may: (1) collect trust property . . . [and] (24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property[.]”),²
- the South Carolina Trust Code, see S.C. Code Ann. § 62-7-809 (Supp. 2016) (“A trustee shall take reasonable steps to take control of and protect the trust property.”); id. § 62-7-811 (“A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.”); id. § 62-7-816(1), (24) (“[A] trustee may: (1) collect trust property . . . [and] (24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property[.]”), and,
- the leading commentaries on the law of trusts, see George Gleason Bogert & George Taylor Bogert, The Law of Trusts and Trustees § 541 (Rev. 2d ed. 1993) (“The trustee has the

² The Comment to Section 816 of the Uniform Trust Code recognizes that “[t]he power to collect trust property is an incident of the trustee’s duty to administer the trust” and is related to the trustee’s duties “to enforce claims as provided in Section 811, the successful prosecution of which can result in collection of trust property” and “to collect trust property from a former trustee or other person holding trust property.” Id. § 816 cmt.

duty to collect and preserve the property made subject to the trust.”); id. § 582 (Rev. 2d ed. 1980) (“The trustee has a duty to protect the trust property[.]”); id. § 592 (“As part of the process of assuming control of the trust property, the trustee has the duty of collecting choses in action which are a part of the trust estate.”); id. § 594 (stating that “[t]he powers of the trustee naturally include the authority to maintain such suits and actions as are necessary to the execution of the trust and incident to the powers expressly or impliedly granted,” including the power to bring “a suit to follow trust property” and “to collect debts due himself as trustee,” among other actions); see also, e.g., Austin Wakeman Scott, William Franklin Fratcher & Mark L. Ascher, Scott & Ascher on Trusts §§ 17.7, 17.8, and 17.9 (5th ed. 2007) (recognizing the duty of the trustee to take reasonable steps to secure and keep control of trust property, preserve the trust property, and enforce all claims held by the trust).³

These authorities further recognize that this responsibility of the trustee to collect trust property and pursue claims for monies that belong to the trust includes the power, and duty, to maintain a claim against a beneficiary of the trust who has received trust property to which he is not entitled. See, e.g., Restatement (Third) of Trusts § 104 cmt. g(3) (“[I]f a beneficiary receives trust property to which the beneficiary is not entitled (whether or not . . . resulting from a breach of trust, and without regard to whether the beneficiary knew the distribution was improper), the beneficiary is liable to the trust for the improper distribution, except to the extent that a defense to restitution applies.”); Bogert & Bogert, supra, § 592 (“If the trustee holds a claim against the beneficiary he has a duty to collect it[.]”); Scott, Fratcher & Ascher, supra, § 25.2 (discussing the liability of a beneficiary to the trust estate generally). While this responsibility to collect improper trust payments made to a beneficiary includes the authority to offset the debt against the beneficiary’s interest in the trust property, it is not limited to that means of collection, and the trustee may pursue a beneficiary’s non-trust property in order to collect amounts owed to the trust. See, e.g., Bogert & Bogert, supra, § 814 (stating that, if a trustee has made “an improper payment to a beneficiary, the trustee can recover it from him, either out of his non-trust property or from sums later due the beneficiary under the trust”); Scott, Fratcher & Ascher, supra, § 25.2.4 (recognizing that an overpayment of trust funds made to a beneficiary may be collected by

³ As a general matter, the basic powers of a trustee are very broadly framed as encompassing all powers over the trust property that a legally competent, unmarried individual would have over individually owned property. See, e.g., S.C. Code Ann. § 62-7-815(a)(2)(A); Restatement (Third) of Trusts § 85(1)(a).

offsetting the overpayment against the beneficiary's interest in the trust or by recouping the overpayment directly from the beneficiary).

In short, as the statutory trustee and administrator of the Retirement Systems' trust fund, PEBA not only has the right, but also the duty, to protect the Retirement Systems' trust funds by recovering overpayments of benefits. See, e.g., McAlister, 2017 WL 1105619, at 4 ("Further, as the trustee of the assets of the Retirement Systems, Respondent has the right and the duty to protect the trust by recovering overpayments of benefits."); Cook, 2011 WL 7119342, at 7 ("[A]s recognized in both the mandatory language of Section 9-1-1670(A) and in basic retirement trust law, the trustees of the Police Officers' Retirement System may not simply ignore an overpayment of benefits, but have a fiduciary duty 'to recover the overpayment as simply, expeditiously and inexpensively as possible.'").

2. General Power of a Governmental Body to Recover Mistaken Payments

Beyond the authority granted to PEBA under trust law to recoup overpayments of benefits from the Retirement Systems, PEBA also has the inherent statutory authority as the governmental agency charged with the responsibility for the administration of the Retirement Systems to recoup any mistaken payments of public benefits. Importantly, courts have routinely recognized that this authority to recover erroneous payments is not contingent upon specific statutory authorization, but is inherent in the powers held by the administrator of the benefits in question. As explained by the New Jersey Supreme Court in a case involving overpayments of welfare benefits:

A county welfare board has been given the general power to sue and be sued. While [the applicable statute] does not specifically provide for the recovery of overpayments of AFDC assistance, such power must be implied in the delegation of authority to administer the program. The welfare board is authorized to make payments only in amounts authorized by law. When an overpayment has been made, the public interest requires that the board have the power to seek out the recipient and recover the amount of the overpayment if the person has the means or ability to repay. The right and the power to seek to recoup benefits illegally paid, unless specifically prohibited, is inherent in the delegation of authority to administer the program.

Redding v. Burlington County Welfare Bd., 323 A.2d 477, 480 (N.J. 1974); see also, e.g., Am. Nat'l Bank & Trust Co. v. U.S., 23 Cl. Ct. 542, 547 (Cl. Ct. 1991) ("Established law clearly provides that the Government may recover funds which its agents have wrongfully, erroneously, or illegally paid. No statute is necessary to authorize the Government to sue in such a case."); Cross v. Elected Officials Ret. Plan, 325 P.3d 1001, 1007 (Ariz. Ct. App. 2014) (declining to narrowly construe a retirement system's error correction statute to preclude recoupment of certain overpayments, stating that the court "will not infer such a limitation, particularly when the general rule is that public bodies may recover monies mistakenly paid, whether the mistake is one of fact or law"); City of New York v. Ret. Bd. of the Teachers' Ret. System of the City of New York, 455 N.Y.S.2d 703, 705 (N.Y. Spec. Term 1982) (holding that the power of the trustees of a retirement system to recoup payments made in error "need not rest on specific statutory authority"); cf., e.g., Op. S.C. Att'y Gen. of May 12, 1983, 1983 WL 181882 ("General law indicates that public agencies may recover public funds paid under mistake of fact to another public agency.").

Under basic trust law and the law of public benefit agencies, PEBA has the inherent statutory authority and responsibility as trustee and administrator of the Retirement Systems to recover overpayments of benefits made from the Systems.

B. PEBA's Authority to Recoup Overpayments pursuant to Section 9-1-1670

In addition to PEBA's inherent statutory authority to recover overpayments of benefits from the Retirement Systems' trust funds, PEBA has express statutory authority under Section 9-1-1670 of the Code of Laws to recoup monies in order to correct an error that results in an individual receiving more benefits from the Systems than he is entitled to. See S.C. Code Ann. § 9-1-1670(A) (Supp. 2016). However, the Final Order and Decision in this matter found that, "though [Section 9-1-1670(A)] clearly allows PEBA to correct the error or omission and adjust all future payments accordingly, it does not allow for a recoupment of overpayment as PEBA seeks." Final Order and Decision at 10. This finding is the result of an unduly constricted reading of Section 9-1-1670 that would lead to the absurd result of leaving PEBA powerless to recoup mistaken payments of trust funds in many instances. The Final Order and Decision should be amended to correct that finding.

Although the South Carolina Supreme Court has acknowledged that the statutes governing the Retirement Systems "should be liberally construed in favor of those to be

benefited and the objects sought to be accomplished,” King v. S.C. Ret. Systems, 319 S.C. 373, 376, 461 S.E.2d 822, 822 (1995), the Court has also recognized that the Retirement Systems are “administered under an elaborate statutory and constitutional scheme designed to protect the independence, integrity and actuarial soundness of the funds,” Wehle v. S.C. Ret. System, 363 S.C. 394, 399, 611 S.E.2d 240, 242 (2005), and that the Retirement Systems’ statutes should be interpreted based upon the assumption that “the legislature intends to maintain the soundness of the State Retirement System,” Kennedy v. S.C. Ret. System, 345 S.C. 339, 351, 549 S.E.2d 243, 249 (2001). In particular, the Court has found that a liberal construction of the Retirement Systems’ statutes should be rejected if that interpretation would lead to an absurd result that jeopardizes the fiscal integrity of the Retirement Systems. Id. at 351-52, 249-50 (rejecting an interpretation of the statutory provisions related to the calculation of a member’s average final compensation that would damage the fiscal integrity of the Retirement Systems). Further, as discussed at length above, these statutes should also be construed in light of the nature of the Retirement Systems as being held in trust and subject to general principles of trust law. See Op. S.C. Att’y Gen. of Nov. 16, 2011, 2011 WL 6120331, at 12 (“[W]e believe a court would determine that the duties of the . . . Board as ‘trustee’ would be in keeping with the usual and customary duties imposed upon a trustee under the common law, South Carolina statutes and general authorities.”).

With that backdrop in mind, Section 9-1-1670(A) provides that

If a change or error in the records results in a member or beneficiary receiving from the system more or less than he would have been entitled to receive had the records been correct, the board shall correct the error and, so far as practicable, adjust the payment so that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled is paid.

S.C. Code Ann. § 9-1-1670(A). This section has two operative clauses. First, the section provides that, if updated records reveal that a member or beneficiary has received more benefits than he is entitled to receive from the Retirement Systems, PEBA “shall correct the error.” Id. That is, in keeping with the trust law discussed above, PEBA is directed by Section 9-1-1670 to take reasonable steps to correct an overpayment of benefits made to a member or beneficiary. Second, the section provides that, where such an error has occurred, PEBA may “adjust the payment” made to the member or beneficiary, “so far as practicable,” to ensure that the benefit

“to which the member or beneficiary was correctly entitled is paid.” Id. Where the member or beneficiary is entitled to ongoing or additional benefit payments, this adjustment to correct for an overpayment of benefits is most conveniently accomplished by making deductions from future benefit payments to recoup the amount overpaid. However, where an overpayment is made to a member or beneficiary who is not entitled to any additional benefit payments, such as upon a refund of contributions paid to a member or a lump-sum death claim paid to a beneficiary, it is no longer “practicable” to recoup that overpayment through deductions from future payments that do not exist, and the overpayment must be recovered directly from the overpaid member or beneficiary. In that instance, the adjustment to the payment authorized by Section 9-1-1670 is not an adjustment to future annuity payments, but a retroactive, corrective adjustment to the payment already made to the member or beneficiary. Recoupment by offsets against future benefit payments may also be impracticable where the amount of the overpayment to be recouped far exceeds any future benefit payments due, such that deductions from those payments will not recover the amount due in a reasonable time. In such cases, it may prudent to both make deductions from future benefits due and seek recovery directly from the overpaid member or beneficiary.

The construction of Section 9-1-1670 in the Final Order and Decision in this matter would preclude recovery of overpayments of Retirement Systems’ benefits by any means other than adjustments to future benefits due. As a textual matter, this construction reads a temporal requirement into Section 9-1-1670 that is not found in the plain language of the statute. Section 9-1-1670 does not speak only to the adjustment of future payments due, but more broadly authorizes PEBA to “adjust the payment” made to a member or beneficiary so far as practicable to ensure the correct amount is paid to the member or beneficiary. In short, nothing in the plain language of Section 9-1-1670 limits the adjustments in payments authorized by that section only to adjustments of prospective payments or precludes retroactive adjustments to prior payments made to members or beneficiaries, so long as the adjustment is practicable. Further, and most importantly, this constricted interpretation of Section 9-1-1670 leads to an absurd result that could affect the fiscal integrity of the Retirement Systems. As noted above, this restrictive construction of Section 9-1-1670 would preclude PEBA from recovering overpayments of Retirement Systems’ trust funds in all instances where the recipient of the overpayment is not entitled to ongoing benefit payments from the Systems. For example, under that construction,

PEBA would have no statutory authority to recover overpayments of trust funds from a member who receives an overpayment of benefits as part of a refund of contributions upon termination of covered employment, a beneficiary who receives an overpayment of benefits in a lump-sum death benefit paid upon a member's death, or a member who receives an overpayment of disability retirement benefits but is no longer entitled to receive disability benefits. It would be an absurd reading of Section 9-1-1670, and the Retirement Code generally, to conclude that a member or beneficiary who receives an overpayment of benefits in such circumstances cannot be compelled to repay the Retirement Systems' trust fund for the benefits that he was not entitled under the law to receive. While the inability to recoup such overpayments may not render the Retirement Systems actuarially unsound, the construction of Section 9-1-1670 to preclude such recovery plainly affects the fiscal integrity of the Retirement Systems' trust funds and cannot be squared with "the objects sought to be accomplished" by the error correction provisions of Section 9-1-1670. See King, 319 S.C. at 376, 461 S.E.2d at 822.

Notably, in at least three prior cases before the Administrative Law Court, the court has not construed Section 9-1-1670 to be so narrow in the recovery it allows. See McAlister, 2017 WL 1105619, at 4; Cook, 2011 WL 7119342, at 7; Hocin v. S.C. Pub. Employee Benefit Auth., Docket No. 15-ALJ-30-0115-CC (S.C. Admin. Law Ct. June 18, 2015), 2015 WL 3929247, at 5. In particular, in two of those cases, the court specifically required a member to repay an overpayment of benefits to the Retirement Systems directly from the member's assets and not solely from deductions from future payments. See McAlister, 2017 WL 1105619, at 4; Hocin, 2015 WL 3929247, at 5. Courts in other jurisdictions have likewise been unwilling to narrowly circumscribe the authority of retirement plan trustees to seek recovery of overpayments of benefits. See, e.g., Cross, 325 P.3d at 1007 (declining to limit the circumstances under which the retirement plan could correct errors resulting in overpayments); City of New York, 455 N.Y.S.2d at 705 (holding that the retirement plan trustees had broad, inherent powers, and duties, to recover overpayments "as simply, expeditiously and inexpensively as possible").

In the case at hand, Petitioner received an overpayment of disability retirement benefits in the amount of \$15,613.91 in 2014. Final Order and Decision at 6. And, Petitioner is not currently entitled to the receipt of disability retirement benefits from the Retirement Systems because he has gained an earnings capacity from gainful employment that exceeds his inflation-adjusted average final compensation. See S.C. Code Ann. §§ 9-1-1580, 9-11-80(4) (Supp.

2016).⁴ Accordingly, the suspension of Petitioner's disability retirement benefits for 2015 going forward was not intended to, and does not, recoup any amount of the overpayment of benefits he received in 2014, but is a measure to ensure that he does not receive future overpayments of benefits. Respondent's Exhibit #9 ("Since you are earning a salary that is more than your adjusted AFC, you are no longer eligible for a monthly annuity. Based upon your earnings during calendar year 2014, PEBA is suspending your disability retirement benefit indefinitely pursuant to S.C. Code Ann. 9-1-1580."). In fact, it is because Petitioner is not currently entitled to future disability retirement benefits that PEBA sought to recover the overpayment of benefits he received in 2014 from Petitioner directly, rather than through deductions from future benefit payments. However, the Final Order and Decision in this matter concludes that PEBA does not have such authority and would render PEBA unable to recover the overpayment of retirement benefits Petitioner received from the Retirement Systems' trust fund. For all of the reasons set out above, this conclusion fails to properly account for PEBA's inherent statutory powers as trustee and administrator of the Retirement Systems and its express statutory powers under Section 9-1-1670 of the Code of Laws. Therefore, the Final Order and Decision should be amended to hold that PEBA has broad statutory authority to recoup overpayments made from the Retirement Systems' trust funds and, in particular, that PEBA's authority to seek recovery of such overpayments is not limited solely to offsetting overpayments against any future benefits due. Correspondingly, the Final Order and Decision should also be amended to require Petitioner to repay the overpayment of benefits he received in 2014 to the Retirement Systems' trust fund on a reasonable repayment schedule.

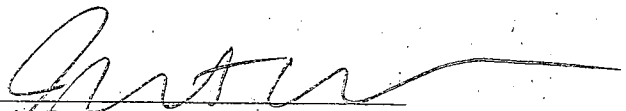
It should be noted that this corrected holding would not mean that the Retirement Systems' trust funds would be entitled to recovery of overpayments in every instance. Although PEBA is not aware of any valid defenses in the instant matter, an overpaid member or beneficiary in any particular case may be able to establish a defense in law or equity under his or her specific circumstances that would counsel against the recoupment of overpayments from the member or beneficiary. See, e.g., Restatement (Third) of Trusts § 104 cmt. g(3). Rather, the

⁴ As found in the Final Order and Decision, Petitioner had earnings from a gainful occupation of \$43,470 for the ten months between March 2014 and the end of that year. Final Order and Decision at 6. Those earnings would result in earnings on an annual basis of approximately \$52,164 going forward. For 2015, Petitioner's inflation-adjusted average final compensation was \$48,539.07. Respondent's Exhibit #7.

amended holding would simply reflect that PEBA, as trustee and administrator of the Retirement Systems, has the statutory authority to seek such recovery on behalf of the trust funds, whether through deductions from future benefits due or through direct recovery from overpaid individuals.

MOTION

Therefore, Respondent PEBA respectfully requests that the Court's Final Order and Decision in this matter dated July 28, 2017, be amended as, and for the reasons, set out above.



Justin R. Werner
Deputy General Counsel
South Carolina Public Employee Benefit Authority
202 Arbor Lake Drive
Columbia, SC 29223
Telephone: (803) 737-6894
E-mail: jwerner@peba.sc.gov

August 14, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Keith E. Turner,

Petitioner,

v.

South Carolina Public Employee Benefit
Authority, South Carolina Retirement
Systems,

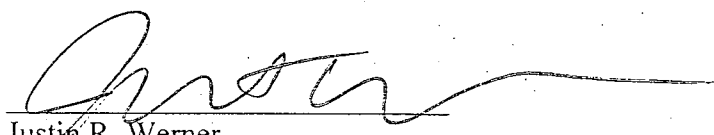
Respondent.

CERTIFICATE OF SERVICE

DOCKET NO. 15-ALJ-30-0586-CC

I hereby certify that I am the attorney for the Respondent in the above-captioned matter and that, on this date, I served a copy of the foregoing Motion to Alter or Amend Final Order on all parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows:

Keith E. Turner
216 Two Pond Loop
Ladson, SC 29456



Justin R. Werner
Deputy General Counsel
South Carolina Public Employee Benefit Authority
202 Arbor Lake Drive
Columbia, SC 29223
Telephone: (803) 737-6894

August 14, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

RECEIVED

JAN 19 2016

PEBA LEGAL

Keith E. Turner,

Petitioner,

vs.

South Carolina Public Benefit Authority,
South Carolina Retirement Systems,

Respondent.

NOTICE OF ASSIGNMENT
(Contested Case)

DOCKET NO. 15-ALJ-30-0586-CC

NOTICE IS GIVEN that a request for a contested case hearing was filed on December 29, 2015. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2014), the **Honorable S. Phillip Lenski**, Administrative Law Judge, has been assigned to preside in this matter. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550.

Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scalc.net.

A copy of any document or any other item filed with the Court shall be sent to all other parties at the time of filing. If a mailing address changes, or if an address is incorrect, the Court must be notified immediately of the correct address.

This the fourteenth day of January, 2016.

Ralph King Anderson, III
Chief Administrative Law Judge

By: _____

Jana E. Shealy
Jana E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

FILED

JAN 14 2016

SC ADMIN. LAW COURT

**South Carolina Administrative Law Court (SC ALC)
Request for Contested Case Hearing FORM**

Last Name: <u>Turner</u>		First: <u>Keith</u>	Middle: <u>E</u>	☒ Mr. ☐ Miss ☐ Mrs. ☐ Ms.	Docket No. (To Be Completed by ALC)
Mailing Address: <u>216 Two Pond Loop</u>		City: <u>Ladson</u>		State and Zip: <u>SC 29456</u>	
Home Number: <u>843-871-5327</u>	Work Number: <u>843-3434768</u>	Cell Number:		*E-Mail Address: <u>KACTurner100@gmail.com</u>	

*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

REPRESENTATION

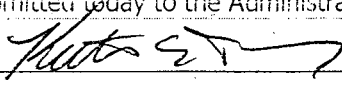
Are you representing yourself? ☐ Yes ☒ No		If No, please complete the following:	
Are you represented by an Attorney? ☒ Yes ☐ No		Are you represented by a CPA? ☐ Yes ☐ No	
Name of Attorney: <u>TBD</u>		Name of CPA:	
Mailing Address:		Mailing Address:	
City, State and Zip:		City, State and Zip:	
Work Number, Cell Number and E-mail Address:		Work Number, Cell Number and E-mail Address:	

CASE INFORMATION

RECEIVED

Name of the Agency that issued the decision: <u>PEBA</u> (Example – Dept. of Revenue, Dept. of Insurance, DHEC)		JAN 04 2016
In order to have your case processed, you must attach the agency decision. Is it attached? ☒ Yes ☐ No		PEBA LEGAL
Date the decision was issued: <u>Nov. 30, 2015</u>		Date the decision was received: <u>Dec 03, 2015</u>
Please provide a brief statement regarding why the hearing is being requested and the relief sought:		

Payment via ☒ Check ☐ Money Order ☐ Cash for \$ 50.00 (applicable **filing fee pursuant to** ALC Rule 71) is being submitted today to the Administrative Law Court via ☐ U.S. Postal Service ☐ Hand-delivery

<u></u> X Your Signature or Signature of Attorney/CPA	<u>12-28-15</u> Date
--	-------------------------

CERTIFICATE OF SERVICE (MUST BE COMPLETED)

Your Name:	Date:	City:	State:
------------	-------	-------	--------

I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing **on all other parties** to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):

Name and/or Agency	Address	City, State and Zip
--------------------	---------	---------------------

Name and/or Agency	Address	City, State and Zip
--------------------	---------	---------------------

X Your Signature or Signature of Attorney/CPA	Date
--	------

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 15-ALJ-30-0586-CC

Keith E. Turner,)
)
Petitioners,)
)
v.)
)
South Carolina Public Employee)
Benefit Authority,)
)
Respondent.)
-----)

ADMINISTRATIVE HEARING

Thursday, June 16, 2016
10:14 a.m. - 11:11 a.m.

COPY

The administrative hearing before the Honorable Sebastien Phillip Lenski, was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 16th day of June 2016, before Cortney N. Glover, Court Reporter and Notary Public in and for the State of South Carolina.



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(803) 252-3445 / (800) 822-0896

APPEARANCES

Keith E. Turner, Pro Se

Justin R. Werner, Esquire
 South Carolina Public Employee
 Benefit Authority
 202 Arbor Lake Drive
 Columbia, South Carolina 29223
 Attorney for SC Public Employee
 Benefit Authority

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CLOSING ARGUMENTS:

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EXHIBITS

(Petitioner's Exhibits 1 through 7 and Respondent's Exhibits 1 through 11 were marked prior to the hearing.)

Petitioner's Exhibit Number 1 4, 22
 (February 25, 2015, Letter from PEBA)
 Petitioner's Exhibit Number 2 4
 (Letter From the City of Charleston)
 Petitioner's Exhibit Number 3 4, 22
 (Long-Term Disability Information)
 Petitioner's Exhibit Number 4 4, 22
 (E-Mail Correspondence)
 Petitioner's Exhibit Number 5 4
 (Correspondence from the City of Charleston)



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Petitioner's Exhibit Number 6	4
(Notes - Not Admitted)	
Petitioner's Exhibit Number 7	4,22
(New Position Offer)	
Respondent's Exhibit Number 1	4,5
(Correspondence From Respondent)	
Respondent's Exhibit Number 2	4,5,23
(Estimated Benefit Letter)	
Respondent's Exhibit Number 3	4,5
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Respondent's Exhibit Number 4	4,5
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Respondent's Exhibit Number 5	4,5,23
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Respondent's Exhibit Number 6	4,5
(1099/W-2/YTD Inquiries Reflecting Benefits in 2014)	
Respondent's Exhibit Number 7	4,5
(Annual Earnings Limitation Letter)	
Respondent's Exhibit Number 8	4,5
(W-2 Forms)	
Respondent's Exhibit Number 9	4,5
(Annual Calculation for Year)	
Respondent's Exhibit Number 10	4,5
(Petitioner's Appeal Letter)	
Respondent's Exhibit Number 11	4,5
(Final Decision on Retirement Calculation)	

(The original exhibits were retained by the Court.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Court and the South Carolina Rules of Civil Procedure.



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1 (Petitioner's Exhibits 1 through 7 and Respondent's
2 Exhibits 1 through 11 were marked prior to the
3 hearing.)

4 CALL TO ORDER:

5 THE COURT: Good morning, everyone. I am Phil
6 Lenski, the administrative law judge assigned
7 to this matter. And this is the matter of
8 Keith Turner, Petitioner, versus the South
9 Carolina Public Employee Benefit Authority.
10 That's the retirement system, respondent,
11 Docket Number 15-ALJ-30-0586-CC. It's the 16th
12 of June.

13 Let's see, on behalf of the petitioner today,
14 Mr. Turner, you're representing yourself; is
15 that right, sir?

16 MR. TURNER: Yes, sir.

17 THE COURT: How are you?

18 MR. TURNER: I'm okay.

19 THE COURT: Probably other places you'd rather be,
20 right? Otherwise okay?

21 MR. TURNER: (Nods head.)

22 THE COURT: Yes, sir. All right. And on behalf of
23 the respondent, we have Mr. Werner. How are
24 you doing, sir?

25 MR. TURNER: Doing well.



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1 THE COURT: Good to see you again. All right.
2 Gentlemen, before we get going, do we have any
3 preliminary matters, motions, anything like
4 that that we need to take up?

5 MR. WERNER: No. We have stipulated to the
6 respondent's exhibits so ---

7 THE COURT: Okay.

8 MR. WERNER: --- if the Court would like, we can go
9 ahead and admit those now.

10 THE COURT: Okay. All right. Mr. Turner, you've
11 seen what the Department -- or what PEBA wants
12 to put in, the retirement system wants to put
13 in?

14 MR. TURNER: Yes, sir.

15 THE COURT: And you don't have any objection to any
16 of those documents?

17 MR. TURNER: No, sir.

18 THE COURT: Okay. There being no objection to
19 the -- you've marked just one exhibit or ...

20 MR. WERNER: Oh, no. 1 through 11.

21 THE COURT: 1 through 11. There being no objection
22 to Exhibits 1 through 11, those are admitted at
23 this time.

24 (Respondent's Exhibit Numbers 1 through 11 were
25 admitted into evidence.)



1 THE COURT: Okay. Thank you. Anything else?

2 MR. WERNER: No. He has some exhibits as well.
3 We're gonna go through those.

4 THE COURT: Okay. That's fine.

5 MR. WERNER: Nothing further.

6 THE COURT: Okay. Thank you. Gentlemen, opening
7 statements? Did you have any -- it's just a
8 brief opening statement you want to give to
9 kind of lay out your casework. You don't have
10 to. Don't feel compelled to do that, but it's
11 your opportunity if you wish to do so.

12 OPENING STATEMENT BY THE PETITIONER:

13 MR. TURNER: That's fine. With this entire thing,
14 I've never tried to manipulate any type of
15 systems. In fact, the first time being inside
16 the courtroom since 2000, just for a traffic
17 ticket. Everything that I did is based upon
18 decisions made from information given to me by
19 the people that are supposed to know what
20 they're saying. Unfortunately, it wasn't until
21 the following year after the retirement --
22 no -- when I received a letter from PEBA in
23 plain English instead of lawyer speak and
24 technical terms that I knew I was in trouble.
25 From that moment on, I've been trying to put



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1 everything on the table, even offering to say,
2 look, I'll take a third of the responsibility
3 for what happened.

4 However, you know, I made all my life decisions
5 on how I'm gonna support my family based upon
6 the information that was given to me by the
7 people that are supposed to know. And I'm not
8 gonna dispute any of this out there. Yes, I
9 made more than was supposed to be made, now
10 that I know that. Unfortunately, beforehand it
11 was all through information from a member of
12 PEBA and from my HR department. When I didn't
13 know exactly what the terminology meant, I
14 asked them questions, was offered a job, asked
15 if I could take that job and still be in good
16 standing. I was told yes. I did. And a year
17 later, I found out that now my family's in
18 trouble. So everything I have is basically
19 trying to now show that I wasn't trying to
20 manipulate the system. It was made off of the
21 information that was given to me. And I feel
22 that, you know, at this point, other than, you
23 know, my good standings as a citizen and being
24 a public servant my entire life, that I'm being
25 financially punished for breaking my back on



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1 the job at a fire. And what they give you to
2 live on actually would come down to \$845 every
3 two weeks I'm supposed to support my family on.
4 So that's what basically I'm gonna lay out and
5 show.

6 THE COURT: Thank you, sir. Mr. Werner?

7 OPENING STATEMENT BY THE RESPONDENT:

8 MR. WERNER: Thank you, your Honor. And I will -- I
9 think this is the first case we've had before
10 you involving the disability retiree earnings
11 limitation, so I may take just a moment to kind
12 of explain how that works to set the table for
13 us here. I'm trying to get somewhat
14 sophisticated here and put it on the screen
15 even.

16 So what you have in the statute in Section
17 9-11-80, Subparagraph 4 and Section 9-1-1580 of
18 the Code of Laws is a earnings limitation for
19 disability retirees from the retirement system.
20 And basically what that limitation says is
21 you're entitled to a disability benefit to the
22 extent that that benefit plus your earnings
23 from gainful occupation or a capacity to earn
24 from gainful occupation does not exceed your
25 average final compensation. And your average



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1 final compensation is a part of your retirement
2 benefit calculation that basically captures
3 your highest three year -- consecutive three
4 years of salary. And so I'll refer to that
5 as -- average final compensation as your AFC.
6 And that -- as you go forward after you retire,
7 that AFC can be adjusted upward for inflation
8 and doing this representation in subsequent
9 years. First year, of course, you've got that
10 AFC is what it is. And so an example of how
11 this works sort of in a graphical format is
12 here on this -- in this chart, if you can read
13 it. And I can hand it out because it's a
14 little fuzzy.

15 But if your AFC was \$40,000 and, let's say, the
16 maximum yearly benefit that you're receiving
17 for your disability retirement allowance is
18 \$22,000 a year, and that first column shows you
19 could earn up to \$18,000 without affecting your
20 receipt of that benefit. So that difference
21 between your AFC and the benefit you're
22 receiving, you can earn in that -- anywhere in
23 that window, and it won't cause any kind of
24 reduction to your benefit. So that's the other
25 \$18,000 window in this scenario.



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1 So in that first example when it says full
2 benefit, you know, if the member goes out and
3 earns \$15,000 after retiring, they can receive
4 their full \$22,000 retirement benefit with no
5 reduction because, again, the \$22,000 in
6 benefits plus the \$15,000 in earnings is below
7 the \$40,000 AFC threshold.

8 Now, if that member were to actually, instead
9 of earning 15,000, went out and earned -- got
10 a new job earning \$30,000 a year, this next
11 column, you see there's a reduced benefit. So
12 now you're entitled to a benefit would only be
13 \$10,000 because your earnings are now from
14 \$30,000 plus the \$10,000 in benefits gets you
15 back to that \$40,000 AFC cap essentially.

16 In the last column we have a scenario where a
17 member goes out and earns -- has earnings from
18 gainful occupation that exceed their average
19 final compensation. Here they made \$42,000
20 from outside employment. Well, in that
21 scenario, there's no benefit due because now,
22 again, the difference between the AFC and
23 the -- you know, and the earnings is, you
24 know -- it's a negative number there. So no
25 benefit is due in that scenario.



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1 So that's how the limitation works. And what
2 you'll see today, I think, from the evidence is
3 that what happened for Mr. Turner in 2014 was
4 he fell into that last category where his
5 earnings from gainful occupation exceeded his
6 average final compensation such that no benefit
7 was due under the statutes. And so essentially
8 it becomes sort of a math -- it's just a math
9 problem. It's an equation. You look at the
10 AFC. You look at the earnings. And there's no
11 dispute about those earnings. It tells -- the
12 law tells you what benefit is due for that
13 year.

14 THE COURT: All right. Thank you very much,
15 Mr. Werner.

16 Mr. Turner, sir, this is your opportunity to
17 present your case. So it might be best, sir,
18 if -- let's just go ahead and get you sworn in
19 now 'cause I'm sure you're just gonna be
20 talking to me, right, and presenting whatever
21 evidence you may have. So if you would go
22 ahead and raise your right hand and be sworn in
23 my the court reporter.

24 KEITH E. TURNER, having been duly sworn, testifies
25 as follows:



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1 THE COURT: Mr. Warner, I'm inclined to let
2 Mr. Turner just go ahead and present from his
3 seat there, if that's all right with you.

4 MR. WERNER: That's fine, yeah.

5 THE COURT: Do you think you can pick that up,
6 ma'am?

7 COURT REPORTER: I should be able to.

8 THE COURT: Okay. If you have any difficulty, let
9 me know.

10 Otherwise, you come up here and testify from
11 the witness stand, but you might be more
12 comfortable right there.

13 NARRATIVE TESTIMONY:

14 MR. TURNER: Okay. With what he was -- Mr. Warner
15 was talking about with the AFC and how they
16 all -- it's calculated, since this has all come
17 to light, I definitely understand it now.
18 However, when I first got injured, came back on
19 the job, reinjured it, and they put me on, they
20 said they were gonna retire me, you know,
21 there's a lot of things going through your
22 head. You don't understand all of the lingo.
23 It's just like, you know, if I tried to explain
24 to a novice how to do a .99 mathematical
25 calculation for a 2,000-year cold war shot, you



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1 wouldn't know what I was talking about.

2 It's like talking about Coriolis effect and
3 everything else like that, you wouldn't know.

4 If I started talking about pontification on a
5 cascade fire, it would be Greek to somebody
6 that doesn't know how to put out a fire. If I
7 started talking about a rapid sequence
8 induction, an RSI to put you in a chemical coma
9 to keep you from seizing while I'm doing
10 compressions while you're having a heart attack
11 and a seizure at the same time, you wouldn't
12 know what I was talking about.

13 If you have a question about that, you're
14 supposed to ask the people and have them try to
15 explain it into plain English. Well, when I
16 asked the questions about what all this meant,
17 because it was all in language that I was -- it
18 might as well have been written in Greek. When
19 I got the letter the following year, this was
20 the first time that anything was given to me in
21 plain English that actually said this is how
22 much you can earn at a job and still keep your
23 retirement in good standing. Which is actually
24 Exhibit 1.

25 Prior to that, everything else, all it said,



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1 all the paperwork in the world that I got from
2 the time I started doing my exit interviews and
3 started doing the estimates, the only word that
4 was on here was AFC of 47,000 or 48,000. So in
5 between me doing all the exit interviews and
6 picking up a new job, when I was offered the
7 job, I went back in to HR and I called Ms. Lucy
8 from the retirement system and I said, I'm
9 being offered a job. The pay is flexible. If
10 I know that my AFC is 48,000 whatever, if I
11 accept the job at \$45,000 a year, is my
12 retirement gonna be -- going to be in good
13 standing? Am I still gonna be able to receive
14 my checks and be in good standing? 'Cause if
15 not, I need to put it in a deferment and not
16 touch it 'til I can make a living enough to be
17 able to pay the bills for my family. And they
18 said, no, at \$45,000 a year, you're good.
19 You'll still be able to get your checks.
20 You're retirement will be in good standing.
21 Not just from one person, from two different
22 people from HR and one person from PEBA. So
23 taking that information, I accepted the job at
24 what it was, 'cause nothing I had in the
25 paperwork I had up until that point said any



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1 differently in plain English. And when I read
2 it and I didn't understand it, I asked the
3 people that were supposed to know. I would
4 never intentionally put my family at a
5 financial risk. And when I did the math on
6 what they were offering and seeing the list of
7 mistakes -- now, granted most of the mistakes
8 were not by PEBA but by the City of Charleston
9 and the HR department, other than the one phone
10 call I made I checked on the amount.

11 But it all comes down to, if you actually do
12 the math, they expect you to live off of \$845
13 every two weeks. Because they said that my
14 retirement was gonna be approximately \$2,000 a
15 month. But when they messed up on the health
16 insurance, they said, oh, you know, we're gonna
17 give you the health insurance, and then eight
18 months later said, I'm sorry. We made an audit
19 error. We're gonna have to take that from you.
20 But we'll offer you this other insurance for
21 \$1500 a month. So if my retirement's \$2,000 a
22 month and they want me to pay 1500 a month for
23 retirement insurance, that leaves me with \$500
24 a month plus what was left over from the AFC
25 coming out to 461 a week before taxes. How am



1 I supposed to make a living like that?

2 I would never put my family at risk. I was
3 taking the information I had that was given to
4 me the first time correctly, put the retirement
5 into deferment, and tried to pick up a job that
6 actually has health benefits, health insurance,
7 and everything else going forward. But with
8 the AFC, the way I understand it now, when
9 they're saying that I was only able to get a
10 job making 23,114, where is there a job making
11 \$23,000 a year that has benefits? It doesn't
12 exist.

13 And everybody knows that all firemen have to
14 have second jobs to support 'cause we don't get
15 paid that much. You know, one day on, two days
16 off. And you're not being paid -- guess what?
17 We have second jobs. So my entire life was
18 based upon two incomes. And I broke my back.
19 Now, I had to go down to one income. Looking
20 at this, I had to make due with what we got.
21 I took part of my settlement and paid off
22 everything I could to be able to live on a
23 lower income. So when I moved everything to
24 where I could live on that lower income, it was
25 based upon the information that was given to



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1 me. So I accepted a position based upon that
2 information.

3 Now, a year later, they want me to pay back
4 \$21,000 because I was given misinformation and
5 take away my retirement that I earned, having
6 a whole host of mistakes made along the way
7 that was found out after the fact. That's why
8 in the prehearing statement I said I'll bear a
9 third of the responsibility. There is no way
10 I could -- I should be held 100 percent liable
11 for all this, have the retirement taken from
12 me, and not be able to afford, you know, to
13 feed my family, pay the mortgage. Everything
14 that I'm doing now with reduced salary I'm
15 working on, I'm pulling from our -- what is
16 left of retirement now and my son's college
17 fund to pay the bills because it's on less
18 income.

19 You know, I now work for the United States
20 Postal Service, but it's noncareer for the
21 first four to six years at 16.55 an hour. You
22 know, there's not much call for a 44-year-old
23 with a broken back with the jobs I had as a
24 firefighter, EMT, and former Marine infantry
25 recon scout sniper. It's not much call in the



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1 civilian world because I'm not able to do that
2 job anymore. Due to the injury that I
3 sustained at an actual high-rise fire, I'm now
4 being financially punished, my family and I,
5 for the rest of my life, based upon
6 misinformation and the thought that somebody
7 can live on \$845 every two weeks after all the
8 taxes, your health insurance, and everything
9 else is taken out.

10 So outside of what's going on here, maybe the
11 whole system needs to be looked at, especially
12 for firefighters. But when it comes to this,
13 I did nothing intentionally. Everything was
14 based upon the information that I was given by
15 the people that are supposed to know. And some
16 of the exhibits I have, it shows the one that's
17 in plain English, basically when I knew I was
18 in trouble. Everything else beforehand never
19 says anything in plain English about what I'm
20 allowed to make. Everything was in a language
21 I didn't understand. And I asked the questions
22 of who is supposed to know.

23 **THE COURT:** Okay. So with regard to those documents
24 you have in your hand, would you like to
25 introduce those into the record? The only way



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1 I can consider them is if they're introduced
2 into the record.

3 MR. TURNER: And I -- and this isn't everything, but
4 it's most everything. And some of it is
5 showing where they were calculating how much I
6 made. Shouldn't have been in there. Some of
7 it in July of 2014, I was given my settlement
8 from the disability from the previous injury in
9 2012. They counted it into my salary. I
10 didn't get the check for eight to nine months,
11 and all of a sudden, they're gonna count it
12 into that annual earnings to jack up the amount
13 that I'm being penalized out -- I retired
14 March 9th of 2014. Everything prior to that
15 shouldn't have been counted, but it was.

16 I don't know how that system is supposed to
17 work if someone retires mid year and you're
18 gonna say you can only make \$23,000 for that
19 year. But we're gonna count the entire year.
20 Well, if I make \$65,000 a year before I got
21 hurt, how are you gonna add that to what I'm
22 supposed to make for the rest of the year and
23 take away the retirement due me?

24 THE COURT: Okay. Mr. Turner, what I'd ask you to
25 do is to show what you want the Court to



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1 consider to Mr. Werner. And let's let
2 Mr. Warner take a look at it and see if he has
3 any objections to these things coming into the
4 record and for the Court to consider it.

5 MR. WERNER: I have no objection to Number 1 coming
6 in. I have no objection to Number 3. I don't
7 have any objection to Number 4.

8 MR. TURNER: Do you want me to explain that one?

9 MR. WERNER: That's when the ---

10 MR. TURNER: That's the -- where I was working with
11 them and they shut the company down, showing
12 the date. And then all pay that I got after
13 that was all the severance and all the ---

14 MR. WERNER: Yeah.

15 MR. TURNER: --- the sick and annual leave for the
16 payout that was counted towards it.

17 MR. WERNER: No objection to Number 7. Your Honor,
18 I do have an objection to Number 2 and Number
19 5, simply because they're not relevant. They
20 have to do with the -- his retiree health
21 insurance eligibility and some discussions with
22 his HR department and the City of Charleston
23 about that. They really don't have any
24 relevance for determining anything about his
25 earnings limitation, and so I don't think that



1 they belong in the evidence in this case. It's
2 purely on the relevance ground. And he's
3 mentioned some of the -- you know, his issues
4 with them already in his testimony, but I don't
5 know that these really -- you know, we don't
6 have all the contacts. We have something from
7 the -- kind of the context for them. These are
8 the -- we have an e-mail from their attorney
9 and some other things. I just -- but more
10 relevancy as the main ground but obviously lack
11 of authentication and things like that as well.
12 And I've not seen these until today.

13 THE COURT: It's 2 and 5?

14 MR. WERNER: 2 and 5.

15 THE COURT: And that's -- oh, go ahead.

16 MR. WERNER: I'm sorry. And then Number 6, I
17 believe are some notes that Mr. Turner took,
18 and I would object to them unless he wants to
19 add -- maybe offer some more testimony in
20 explaining what these notes are.

21 THE COURT: Okay.

22 MR. WERNER: If not, I will object to it. I don't
23 know what it is and what it's purporting to be
24 and how it's relevant.

25 THE COURT: All right. So let's go through this.



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1 The ones that you -- the retirement system does
2 not object to 1, 3, 4, 6 -- no -- 7 and 8? 1,
3 3, 4, 7, and 8?

4 MR. WERNER: 1, 3, 4, and 7.

5 THE COURT: 1, 3, 4, and 7?

6 MR. WERNER: Yes.

7 THE COURT: Okay. 1, 3, 4, and 7. All right.

8 Those are admitted without objection.

9 MR. WERNER: Yes.

10 (Petitioner's Exhibit Numbers 1, 3, 4, and 7 were
11 admitted into evidence.)

12 THE COURT: All right. As to 2 and 5, Mr. Turner,
13 just -- you see the ones that are marked 2 and
14 5 there? What are those, and why are you
15 offering them?

16 MR. TURNER: Because this is showing the -- a long
17 line of the mistakes or the misinformation that
18 was given to me that I based all my decisions
19 upon for taking the job, for moving on with my
20 financial future and well being of the family.
21 It's showing the history of mistakes made. So
22 it wasn't just one little mistake. It wasn't
23 somebody giving me one piece of information.
24 There's multiple mistakes, and it's showing
25 some of the mistakes that were made that I have



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1 copies of that's showing that they were giving
2 me misinformation that I made my decision to
3 take the job on that affected this entire --
4 all the income.

5 **THE COURT:** So Documents 2 and 5 must be some kind
6 of correspondence you received from ---

7 **MR. TURNER:** From the City of Charleston and the
8 board.

9 **THE COURT:** And but they don't relate specifically
10 to your retirement benefits; is that right?

11 **MR. TURNER:** Well, they did because this is what I
12 based my decision upon, taking the job that
13 made me go over what they said the earnings
14 were.

15 **THE COURT:** Okay. I'm gonna go ahead and let those
16 documents in, Mr. Warner, 2 and 5. So I'll go
17 ahead and consider those over the objections of
18 the retirement system.

19 (Respondent's Exhibit Numbers 2 and 5 were admitted
20 into evidence.)

21 **THE COURT:** And then Number 6, those are some notes
22 that you took; is that right, sir?

23 **MR. TURNER:** Yes. These are notes that were taken
24 as I was, you know, on the phone with different
25 people, Ms. Lucy. And the main reason I put



1 this in there 'cause I have the number and the
2 extension and the name of the person I talked
3 to at PEBA when I asked the question about the
4 job. And the little noticing on is it okay to
5 accept a job at \$45,000 a year? Yes. And then
6 also on February 10 when I asked Kay Cross,
7 Tiffany, and Candace with the City, am I able
8 to take that job? Yes. And ---

9 **THE COURT:** I understand. But you know that unless
10 those individuals were here today to testify or
11 we had some kind of an affidavit with them
12 stipulated to by the parties, I can't consider
13 just the fact that you wrote the phone number
14 down. I mean, it's all hearsay, what you're
15 saying ---

16 **MR. TURNER:** Uh-huh.

17 **THE COURT:** --- outside of them being here to tell
18 the Court those very things ---

19 **MR. TURNER:** Okay.

20 **THE COURT:** --- that they give you that information
21 advice. I'm not saying that you're not telling
22 me the truth, sir. I'm not, in any way, shape,
23 or form, trying to say that. I'm just saying
24 that the rules of evidence prohibit me --
25 prohibit this court from considering anything



1 that happened outside of this courtroom unless
2 the parties agreed to it.

3 And I understand that you had conversations and
4 you can certainly tell me that you did, but the
5 nature of those conversations and what people
6 told you, there's very little I could do with
7 that unless those people were here to testify
8 what they said.

9 MR. TURNER: Right.

10 THE COURT: So I'm gonna go ahead and sustain the
11 objection on that, that document that contains
12 your notes. That's Exhibit Number 6. But
13 everything else I'll admit and I'll consider.

14 MR. TURNER: Okay.

15 THE COURT: Did you want to talk about those
16 exhibits, or did you want to go through those
17 and just kind of tell me what each one was
18 or -- it might help.

19 MR. TURNER: I can actually do that. So Exhibit 1
20 is the letter that I received after I turned
21 in, you know, my W-2s and everything that I had
22 to PEBA, and it's a letter that I received from
23 them. Actually this is the letter that I
24 received before I even sent everything in. I
25 guess the February -- and maybe Mr. Werner can



1 elaborate more -- in February of each year is
2 when they send out the letters to everybody
3 that's on the system with the actual plain
4 English number of how much you can make if you
5 have a second job -- if you have a job to
6 sustain -- or to help you along financially.

7 So when I received that letter -- and
8 there's -- Ms. Talanthea [ph] is the person
9 that I called at PEBA who was the supervisor,
10 'cause I asked to talk to a manager
11 immediately. So as soon as I received this
12 letter, I knew I was in trouble. This is the
13 first plain English letter I received.

14 THE COURT: And that's Exhibit Number 1, and that's
15 the letter you received in February of 2015?

16 MR. TURNER: Yes. February 25th.

17 THE COURT: Okay. All right.

18 MR. WERNER: Exhibit 2 is the -- one of the letters
19 I received from the City of Charleston noting
20 where they said, you know, we're notifying you
21 of a discrepancy that we discovered during
22 audit of your retiree medical plan, is when
23 they took away my health -- retiree health
24 insurance, which also financially -- 'cause
25 they said, well, we're sorry that we made this



1 mistake that we offered it to you, but what we
2 can do it try to get you a reduced plan of
3 \$1500 a month. Well, my retirement's 2,000 a
4 month, and now you're gonna give me a, you
5 know, well, here's for your trouble -- here's
6 \$1500 a month for health insurance since we
7 made a mistake.

8 All right. Number 3 is showing when the
9 long-term disability payoff that I received is
10 the \$7100 payout that got -- that was
11 calculated in my yearly total that really
12 shouldn't have. The injury was in 2012. I had
13 all the surgeries, retired in March of 2009.
14 And because I received -- it finally, you know,
15 took them that long to pay me out, the
16 disability settlement, that got counted towards
17 my AFC for the year.

18 THE COURT: So you received that payment in 2014,
19 but it was for the injury you sustained in
20 2012 -- or '11?

21 MR. TURNER: Yes, sir. 2012.

22 THE COURT: '12, '12. I beg your pardon. Okay.

23 MR. WERNER: And it's kind of their explanation of
24 how everything goes, showing that. There was
25 no way that should have been calculated into



1 that AFC.

2 **THE COURT:** All right.

3 **MR. TURNER:** Exhibit 4, is one of the e-mails that I
4 received from Tiffany Pinckney, who's the HR
5 benefits coordinator, which is the one that
6 gave me most of my misinformation. And this is
7 one of the ones when I received this e-mail
8 from her in January 24th when I was -- started
9 retirement procedure is where she started
10 talking about here's where we have as your
11 estimate, and this is one of the ones where it
12 had all the things about deferred contribution,
13 nondeferred contribution, total contribution
14 plus interest, and all these other things that
15 I didn't know about when I went in and asked
16 for a meeting for her to explain this. And at
17 that time, I was being offered the new
18 position, which is actually from Exhibit 7,
19 when I lost the previous job that also the
20 money that I received prior to March 9th, which
21 was my official retirement date when they paid
22 out the sick pay, annual pay, and all the pay
23 that I received should not have been counted
24 because it was all -- it's from a job that I
25 lost January 17th.



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1 In fact, just last year we finally won our
2 warrant act from the job January 17th. Is that
3 gonna be counted against me from something that
4 goes back that far prior to me retiring?

5 And then Exhibit 5 is more -- it's more of the
6 copies of mistakes that the City made that I
7 made my decisions upon, even going back is when
8 I said I wanted to -- prior to retiring, I
9 wanted to buy my military time I had because it
10 said in the employee handbook that you can.
11 And then the City's lawyer came back, said, no,
12 you can't. We've never done that. But it's in
13 the employee handbook. But it's one -- it's
14 another one of those mistakes of misinformation
15 that I was given that I based my decisions
16 upon. So it's showing more mistakes. So those
17 are explained.

18 THE COURT: Okay. Thank you very much, Mr. Turner.

19 Did you have anything else?

20 MR. TURNER: No, sir.

21 THE COURT: All right. Thank you, sir.

22 Do you have any questions for Mr. Turner?

23 MR. WERNER: Just a couple, your Honor, to clarify a
24 few things.

25 THE COURT: And, Mr. Turner, just answer any



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1 questions that Mr. Werner has for you.

2 MR. TURNER: Yes, sir.

3 MR. WERNER - CROSS-EXAMINATION BY MR. WERNER:

4 Q: I'm gonna hand you what's, you know, marked and
5 admitted as Respondent's Number 3. If you --
6 could you turn to the second page of that
7 exhibit and look at the paragraph entitled
8 Disability Retirement. Would you agree that
9 the first several sentences of that paragraph
10 explain how the disability retiree earnings
11 limitation works?

12 A: Right. Now that I see this, I'm reading that,
13 yeah, this one explains it a little bit better.

14 Q: And that document was sent to you in -- on May
15 14th of 2014 along with the estimated benefit
16 letter, Exhibit Number 2? Go back to Exhibit
17 Number 2. Those are all documents that we sent
18 to you in May 2014, correct?

19 A: Right. But this doesn't -- once again, when
20 you read these, there's nothing in plain
21 English that gives a number of what you can
22 make, which is where I had the questions. And
23 this was sent to me in May after I had already
24 taken the position and left the City.

25 Q: All right. And then let me also ask you



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1 about -- we've talked about what earnings from
2 2014 should count toward the limit. Let me
3 direct you to Respondent's Exhibit Number 8.
4 And there's a W-2 from American Civil Guard,
5 reflecting \$7600 roughly that was paid to you
6 in 2014?

7 A: Correct.

8 Q: And then on page number 2, there's a W-2 from
9 Atlantic Coast Fire Trucks that reflects
10 \$39,800 paid to you in 2014?

11 A: Correct.

12 Q: And you would agree that both of those --
13 income from both of those sources should count
14 towards your earnings limitation for the year?

15 A: Except for the moneys prior to March 9th when
16 my official retirement came into effect.

17 Q: So we discussed earlier that the first -- on
18 page 1 there, the American Civil Guard you
19 worked there from basically January through
20 November?

21 A: November 28th.

22 Q: So 11 months total. You retired at the very
23 beginning of March, so basically nine months of
24 that would have been post-retirement?

25 A: Correct.



1 Q: Correct. Okay. So nine months of that 11
2 months of earnings ---

3 A: Should count.

4 Q: --- is post-retirement, or that should count?
5 Okay.

6 Flipping to page 2 for the earnings from
7 Atlantic Coast Fire Trucks, I believe you
8 indicated earlier that you worked there from
9 roughly the middle of February ---

10 A: Right.

11 Q: --- 2014 through the remainder of the entire
12 year?

13 A: Correct.

14 Q: So, and again, you retired about two weeks
15 after that?

16 A: So two checks.

17 Q: So -- right. So the period from the -- so that
18 39,000 reflects earnings from middle of
19 February to the remainder of the year. Post-
20 retirement would have been beginning of March
21 through the remainder of the year? And that
22 portion ---

23 A: Right. That would have been two checks that
24 wouldn't have counted.

25 Q: Okay. Okay. And then let me just refer you to



1 Respondent's Exhibit Number 10. This is your
2 appeal. And then on page 2 down there toward
3 the bottom, what we just discussed is what's
4 reflected there, that you say the American
5 Civil Guard and the Atlantic Coast Fire Trucks
6 income what you researched should be counted
7 towards your ---

8 A: Right.

9 Q: --- earnings limitation and that the other
10 disability payouts and things like that should
11 not be counted?

12 A: Right.

13 Q: Now, that was your position. So the total was
14 that 47,487?

15 A: Right. The only thing is I did not take
16 out ---

17 Q: Prorate.

18 A: --- there was a prorate. 'Cause that's where
19 you guys were counting.

20 Q: Right.

21 A: Not taking the prorated. So that would have
22 actually probably been 43 to 44 -- probably
23 about 44,000 maybe. And then a few thousand
24 off.

25 Q: Yeah.



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1 A: Which is ---

2 Q: And by my scratched math that we did. If we
3 took 911, so the American Civil Guard, it's
4 about \$6200 -- 6283 if you take the similar
5 proration for the Atlantic Coast Fire Trucks,
6 it ends up being about 37,187 so roughly
7 speaking is about \$43,470. So that would be an
8 appropriate representation of your post-
9 retirement earnings from gainful occupation
10 from 2014?

11 A: Correct.

12 Q: Okay.

13 A: Not the 63,000 like they said I made.

14 Q: Right. But 43,000 -- forty-three and a half
15 thousand would be an appropriate number?

16 A: Correct.

17 Q: Okay. Let me ask you a couple things about
18 some of your exhibits. I just want to -- I
19 believe you made this clear, but I want to just
20 clear this up here. The discussions, the
21 mistakes that were made that you described in
22 your Exhibits Number 2 and Number 5, those have
23 to do with the amount of the health insurance
24 premiums that the City was asking you to pay,
25 no, correct?



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1 A: Right.

2 Q: None of those documents have anything to do
3 with correspondence with PEBA, advice from
4 PEBA, decisions made by PEBA, decisions made by
5 the City of Charleston?

6 A: Correct.

7 Q: Okay.

8 MR. WERNER: Bear with me, your Honor, just for a
9 second.

10 THE COURT: That's fine.

11 MR. WERNER: That's all I have, your Honor. Thank
12 you.

13 THE COURT: All right. From that, Mr. Turner, is
14 there anything you wanted to clarify? 'Cause
15 normally this would be a chance for redirect
16 examination. But since you're sort of
17 presenting testimony, did you want to say
18 anything to clarify any -- from the questions
19 that Mr. Warner asked you?

20 MR. TURNER: Yes. I just to say that the 43,000
21 that we came to, you know, the 63,000 that they
22 first started hitting me with ---

23 THE COURT: Yes, sir.

24 MR. TURNER: --- yes, I absolutely agree ---

25 THE COURT: Right.



1 MR. TURNER: --- that that should be the total.

2 That's the prorated amount ---

3 THE COURT: Right.

4 MR. TURNER: --- from my retirement.

5 THE COURT: Right.

6 MR. TURNER: That's an accurate number.

7 THE COURT: Okay.

8 MR. TURNER: Which goes back into being well under

9 what I was told that I can make. That shows --

10 I mean, that just shows that this is what I

11 based everything upon, is that number that I

12 was told.

13 THE COURT: What did you believe you could make,
14 sir?

15 MR. TURNER: A maximum of -- it was like \$48,000.

16 THE COURT: And you would still get your full
17 benefit?

18 MR. TURNER: Yes.

19 THE COURT: That was your impression of the
20 situation upon your return?

21 MR. TURNER: Yes. Once I asked all the questions,
22 because I didn't understand the language,
23 that's exactly what I understood it 'cause
24 that's exactly what I was told.

25 THE COURT: all right. Anything else?



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1 MR. TURNER: No, sir.

2 THE COURT: Thank you very much. At this time, I
3 guess you rest your case?

4 MR. TURNER: Yes, sir.

5 THE COURT: Okay. You're finished presenting what
6 you want to Court to consider, right?

7 MR. TURNER: Yes.

8 THE COURT: You have anything else? Okay. I just
9 want to make sure we're done 'cause I'm gonna
10 let Mr. Warner go next, okay?

11 MR. TURNER: Okay.

12 THE COURT: Okay. Mr. Warner?

13 MR. WERNER: Your Honor, our case is just the
14 exhibits we already had admitted into evidence.

15 THE COURT: Okay. All right. You've seen those
16 exhibits, Mr. Turner?

17 MR. TURNER: Yes, sir.

18 THE COURT: That Mr. Warner just admitted -- that
19 have already been admitted. And Mr. Warner's
20 position is basically the Department's case --
21 the retirement system's case is contained
22 within those documents. Because he's just
23 really gonna present that for this Court to
24 consider and everything else. Did you want to
25 say anything about those documents that have



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1 already been admitted that you agreed to ---

2 MR. TURNER: No. Other than going forward, they
3 might want to -- things about putting things
4 into plain English for people that -- like me,
5 didn't understand the lawyer speech, the
6 technological terms. And when you -- when they
7 do retire, give them something in plain
8 English. And if they retire mid year, they
9 still need a letter like this so this doesn't
10 happen again. 'Cause it's destroying families
11 and destroying people's lives 'cause they're
12 making decisions based upon information and not
13 in plain English. There was no deception and
14 no manipulation of the system here. And so,
15 no, I don't disagree with ---

16 THE COURT: Right. I understand what you're saying.
17 I just wanted to make -- give you an
18 opportunity since this is the department's case
19 at this point, the retirement system's case and
20 anything you wanted to say as to the documents.
21 I'll go ahead and give you the opportunity.

22 MR. TURNER: Other than, you know, I mean, if we're
23 in agreeance about it definitely should not be
24 \$63,000 is what they came up with for the
25 total, it should be the adjusted amount because



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1 I got paid in 2014 for something that happened
2 in 2012 should not count towards what they're
3 trying to penalize me for.

4 THE COURT: Okay. Thank you, sir. I'm just gonna
5 look at these for a second, Mr. Werner.

6 MR. WERNER: Okay.

7 THE COURT: Okay. At this point, and I guess we're
8 ready for closing arguments. And, again, don't
9 feel compelled to give a closing argument.
10 I've been listening very carefully to
11 everything you've said, Mr. Turner. But if you
12 want to sum anything up, this would be an
13 opportunity. That's in the rules. This is the
14 time when closing arguments are made. So if
15 you want to say anything?

16 CLOSING ARGUMENT BY THE PETITIONER:

17 MR. TURNER: Okay. I mean, the only thing I have to
18 say in closing is I admit that there were
19 mistakes made, even on my part when it comes to
20 maybe I should have hired a lawyer to take a
21 look at all this stuff from the very in the
22 very beginning because it was in a language
23 that was foreign to me. For that part, just
24 like I said in the prehearing statement, I'll
25 bear some of the responsibility.



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1 But there is no way that I should be
2 financially punished for the rest of my life
3 for getting hurt on the job, and there is no
4 way that my retirement should be taken from me
5 for a mistake that was not all me. That's why
6 I said in the prehearing statement I'm willing
7 to bear a third of the responsibility and then
8 take my retirement and put it into deferment to
9 where I don't lose what retirement I have at 44
10 and trying to start over.

11 You know, it's the mistakes made by those who
12 should have known better that's devastating my
13 family and me and my financial well being. So,
14 yes, I'll bear a third of the responsibility
15 and then take it and put it into deferment or
16 adjust the AFC to where I can actually earn a
17 decent living enough to get a job that pays
18 benefits, not try to live on 800 some-odd
19 dollars every two weeks. 'Cause that's what
20 basically their AFC comes out to be after the
21 taxes, paying for insurance that you have to
22 have is they want you to live on 800 some-odd
23 dollars every two weeks. It's not something
24 that somebody that has spent 22 years in public
25 service deserves. After eight and a half years



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1 in the Marine Corps, serving with distinction,
2 American [indiscernible] promoted, after
3 almost, you know, 13 with the City of
4 Charleston Fire Department where I was
5 Firefighter of the Year, coming up on the
6 anniversary Saturday of the Charleston Nine,
7 which was part of my crew, this is what we get?
8 This is the best the State has to offer of
9 retirement? It's an injustice if it stands.
10 That's all I have.

11 THE COURT: Thank you very much, sir. Mr. Werner?

12 MR. WERNER: Thank you, your Honor.

13 CLOSING ARGUMENT BY THE RESPONDENT:

14 MR. WERNER: I also need to, you know, unpack
15 several things here. First, you know, what
16 we're not talking about, I mean, obviously, the
17 calculation and benefit amount itself, again,
18 that's not what we're talking about. That's a
19 form that's in the statute, you know, whether
20 the disability benefits are adequate or not is
21 obviously a completely separate issue for
22 anything we're, you know, talking about here
23 today. And doesn't really factor in, you know,
24 this calculation of how the earnings limitation
25 worked. Your benefit is that formula. There's



1 a multiplier, your years of service times your
2 average final compensation. It usually gives
3 you about half of what you were making, your
4 AFC. It's a little bit closer to 54 percent,
5 around 52 percent, but roughly, but roughly the
6 full career gives you about half of what you
7 would make. So that said, obviously if you
8 retired, it's a little bit more than half of
9 what you were making before. Again, all that's
10 separate from anything that we're talking about
11 here today as far as in issue.

12 Another thing to kind of unpack here is, you
13 know, a lot of what I heard today was mostly
14 about mistakes and problematic advice given by
15 the City of Charleston's HR department, about
16 a lot of exhibits about how the City was
17 determining whether the -- you know, they were
18 gonna fund part of his health insurance
19 premiums or not, fund part of those health
20 insurance premiums, what kind of credit he had
21 toward getting those. Again, all if that is
22 nothing that has to do with anything that PEBA
23 was involved in. That's purely a local
24 decision. And, again, that's not advice that
25 PEBA was, you know, involved in giving or



1 assisting with. All were purely local City of
2 Charleston HR decisions and discussions. So we
3 can -- you know, it may have been problematic;
4 may have not been problematic. I don't know.
5 But, again, it's got nothing to do with the
6 decisions -- you know, the decision made here
7 today about whether his earnings exceeded the
8 earnings limitation for the year.

9 And we really don't have anything in the record
10 to indicate on that issue on his earnings
11 limitations, the disability retiree, which that
12 is the one point that we are talking about here
13 today. On that issue, there's nothing really
14 to indicate that PEBA gave incorrect advice.
15 If you look at Respondent's Exhibit Number 1,
16 you'll see the employer calling us in January
17 of 2014. And our customer service rep said --
18 explained to that -- Tiffany at the employer --
19 how the disability earnings limitation was
20 calculated. It's the difference between your
21 AFC and your annual disability income, that
22 graph we showed earlier. So she explained it
23 exactly what it would look like and provided
24 benefit estimates to the City on that point.
25 Again, and then if you look at Respondent's



1 Exhibit Number 3. It's a document titled
2 Information for Retired Members. This goes out
3 to all folks when retire on either service or
4 disability and explains a lot of things about
5 their benefits.

6 On the second page of that document, the
7 disability retirees, there's a paragraph about
8 the disability retirement benefit. And it
9 explains to them that if you are getting
10 disability and you return to employment, you
11 know, earning less than your average final
12 compensation, your disability allowance will be
13 reduced to an amount so that your disability
14 benefits plus your earnings equal the amount of
15 your AFC. Same calculation we talked about
16 earlier. I think that's fairly plain language.
17 The second sentence said, if your
18 compensation -- again right there after -- goes
19 over your adjusted AFC, your disability
20 benefits will be discontinued. Again, I think
21 that's pretty clear. Your compensation goes
22 over your AFC, your benefits are discontinued.
23 So that -- and that document was provided to
24 Mr. Turner at the same time we notified him of
25 his approval for his retirement. And that came



1 from PEBA.

2 And then once somebody retires, they get the
3 more detailed letter upon retirement. We do
4 send an annual earning limitation letter, as he
5 notes. And that's Plaintiff's Exhibit 7. I
6 think possibly his Exhibit Number 1, that's a
7 letter we send out in February of every year
8 that just kind of tells people, makes it a
9 little more concrete. It gives a dollar amount
10 to say this is your AFC for this year. This is
11 your -- you know, benefit you're gonna receive
12 this year. So here's your -- here's that delta
13 for you. So we do that as well.

14 But, again, that initial letter for folks upon
15 retirement also, again, tells them -- it
16 doesn't have a dollar amount. It's 'cause,
17 again, we try to estimate the benefit.
18 Nothing's been finalized. It's a little
19 premature to try and pull it down to just a
20 single dollar. But it tells you if you earn
21 less than your AFC, we're gonna reduce it to
22 make sure it doesn't exceed. If you're
23 exceeding your AFC, it will discontinue. Those
24 are two points I think are fairly clearly
25 explained in that notice to retired members.



1 And so what we're left with, as Mr. Turner
2 acknowledged, he had earnings of -- you know,
3 if we prorate all this to after his date of
4 retirement, so we break 2014 up and he had two
5 months or so before retirement in March and
6 then from March to the rest of the year he had
7 retired, if we prorate that calculation. And
8 I'll admit, yeah, the initial decision,
9 Respondent's Exhibit Number 9, looks at the
10 whole year. This normally -- it's an annual
11 concept. We look at the whole year. But
12 because the retirement date during the year,
13 our final decision, Respondent's Exhibit Number
14 11, if you look at page 4 of that, that
15 discussion there, it says, okay, that's
16 prorated as your request.

17 And let's prorate and look at what were your
18 earnings. What was your AFC for the portion of
19 the year that you were retired? So if you
20 prorate the AFC for that part of the year, it's
21 about \$39,378. The benefits he received that
22 part of the year were \$20,538. So that would
23 have given him about \$18,840 he could have
24 earned the rest of that year and not exceeded
25 the statutory earnings limitation.



1 Unfortunately, as he testified and his
2 documents reflect, he earned about \$43,500
3 during that portion of the year, an amount
4 which not only exceeds the limitation but
5 exceeds the AFC, such that no disability
6 benefit was due for the remainder of the year.
7 And, again, the calculation of the benefit
8 amount, the amount that you're entitled to,
9 it's a formula base that's set out in the
10 statute. It's essentially a math problem.
11 What's your average comp compensation? What
12 are your earnings? What's -- you know, how
13 much -- and so that's what you're entitled to.
14 And if you get more than what you're entitled
15 to, it's overpayment under the law that, you
16 know, you can't have a trust fund, a protected
17 trust fund by recouping overpayments.
18 So we're certainly sympathetic to -- you know,
19 we're not privy to -- I don't know what his HR
20 department told him, what kind of conversations
21 they had, where it went, what the nuances were.
22 I don't know if they were inaccurate. You
23 know, that's certainly unfortunate. I don't --
24 those didn't come from PEBA, and those don't
25 give us a basis for not recouping overpayments



1 of benefits that are protecting overpayments
2 under the law. These are benefits that were
3 not entitled to be paid out because they were
4 in excess of the earnings limitation.

5 And so we do protect that trust fund by
6 recouping overpayments. So, again, certainly
7 sympathetic to the problems he might have had
8 with the City of Charleston's HR department.
9 Certainly, I'd just let you know that we're not
10 catching a dispersion. There's certainly no
11 allegation he was intentionally trying to, you
12 know, cheat the system, gain the system, double
13 up. No. No one's alleging anything like that.
14 Again, it's a math problem. It's what were the
15 earnings? What was your AFC? Okay. What did
16 that provide for how much benefit you can
17 receive? In this case, you know, because the
18 earnings were in excess of the AFC, you know,
19 that dollar amount of zero, it's an overpayment
20 under the law, you know, we recoup that
21 overpayment as best we can, hence our decisions
22 and hence why we're here today.

23 The other thing to keep in mind too with that
24 recouping of those benefits is honestly we
25 don't keep people at the gate how they can pay



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1 it back. We don't demand that you pay it back
2 all at once, but you can. We'd certainly
3 appreciate that. But we set up payment plans.
4 We'll spread it out, you know, within reason.
5 But we'll spread it out and make sure that, you
6 know, people can repay overpayments in a way
7 that, you know, works best for them. And so we
8 try and do that. We do that kind of stuff
9 every day in our payroll department.

10 So we're not trying to press you hard and say
11 you've got to give this \$20,000 back
12 immediately. It's owed back to us. We'll have
13 to recoup it, but we can work, you know, with
14 him on how to do that in a way that hopefully
15 that will fit his -- him and gets it back to
16 the trust fund in a timely and a reasonable way
17 as well.

18 So, again, that's where we were. And I think
19 a lot of what we heard about is the City of
20 Charleston's mistakes. When you look at the
21 PEBA file, it's a more cut-and-dry form. It's
22 a math equation in a lot of ways. It just
23 comes down to a math equation. We're not -- we
24 don't dispute the earnings, and we know what
25 the AFC is, and it that -- it gives you that



1 result, there was an overpayment that needs to
2 be paid back.

3 Thank you, your Honor. That's all I have.

4 THE COURT: Thank you. All right. Gentlemen, I
5 have everything I think I need to make a
6 decision. I'm gonna take everything back, and
7 I'm gonna consider everything, and I'll render
8 a written decision just as quickly as possible
9 on this matter. I appreciate you both being so
10 professional and polite in this matter.

11 You did a very good job with concluding
12 instruction, Mr. Turner. And I do want to tell
13 you from the bottom of my heart, thank you very
14 much for your service to our nation, and thank
15 you very much for your service to the City of
16 Charleston. Thank you very much.

17 (There being nothing further, the administrative
18 hearing concluded at 11:11 a.m.)
19
20
21
22
23
24
25



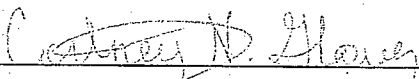
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CERTIFICATE

This is to certify that the within hearing consisting of fifty (50) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on June 26, 2019.


Cortney N. Glover
Court Reporter

Notary Public for South Carolina
My Commission Expires: December 1, 2025



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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Keith E. Turner,)
)
 Petitioner,)
)
 v.)
)
 South Carolina Public Employee Benefit)
 Authority, South Carolina Retirement)
 Systems,)
)
 Respondent.)
 _____)

RESPONDENT'S EXHIBIT LIST

DOCKET NO. 15-ALJ-30-0586-CC

<u>Exhibit No.</u>	<u>Description</u>
--------------------	--------------------

- | | |
|-----|--|
| 1. | Contact Log with Petitioner's Employer dated January 27, 2014 (1 page). |
| 2. | Notice of Retirement Eligibility and Estimated Benefit, and Estimated Benefit Worksheet, dated May 14, 2014 (3 pages). |
| 3. | Information for Retired Members dated May 14, 2014 (2 pages). |
| 4. | Finalized Benefits letter to Petitioner dated October 21, 2014 (2 pages). |
| 5. | Contact Log with Petitioner dated November 7, 2014 (1 page). |
| 6. | 1099/W2/YTD Inquiries reflecting the retirement benefits paid to Petitioner in 2014 (2 pages). |
| 7. | Earnings Limitation letter to Petitioner dated February 25, 2015 (1 page). |
| 8. | W-2 and 1099 Forms submitted by Petitioner reflecting 2014 income (8 pages). |
| 9. | Letter from PEBA to Petitioner dated April 22, 2015 (1 page). |
| 10. | Letter of Appeal submitted to PEBA by Petitioner dated May 12, 2015 (3 pages). |
| 11. | Final Agency Determination No. 15-020 issued November 30, 2015 (5 pages) |

RCS105N1
Jun 15,16

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D)

SSN : 5322

Name: KEITH TURNER

Phone : (843) 577 - 0123

216 TWO POND LOOP
LADSON SC 29456

*Reason : CONSULTATION-D_

Start Time : 12:03:12

Call Length: 00:10:49

Call Date : 01 27 2014

CS Rep: JASMINE LOMAS

Dept: CSCC

Last Updated by: RLOMAJ on: 01-27-2014

Notes :

EXP TO TIFFANY P. 710.06 HOW DISA EL IS CALCULATED DIFF IN AFC AND ANNUAL
DISABILITY INCOME
RAN DISABILITY BE USING CURRENT SVC FOR 02/27/14 DOR. ADV OPT A AMT, MAILED
TO MBR PER HER REQUEST.

Direct Command:

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---
confm help retrn quit prev next bkwrđ frwrđ left right main
Contact log displayed successfully



South Carolina Retirement Systems

THIS DOCUMENT CONTAINS IMPORTANT INFORMATION ABOUT YOUR BENEFITS. DO NOT DISCARD.

NOTICE OF RETIREMENT ELIGIBILITY AND ESTIMATED BENEFIT

KEITH TURNER
216 TWO POND LOOP
LADSON SC 29456

SSN: XXX-XX-5322
Appl ID: XXXXX5322-2-4-1
System: PORS
Type: Disability
Date: May 14, 2014

The South Carolina Retirement Systems has approved your claim for disability retirement as a member of the Police Officers Retirement System. However, your claim was approved with the stipulation that it be reevaluated on 05/01/2017 to determine if your medical condition has improved. We will send you the appropriate materials for completion approximately one month before that date. Please review the following information carefully:

Effective Date of Retirement	03/09/2014
Payment Option Selected	Option A - Standard, maximum benefit
Estimated Earned & Purchased Service	07 years 08 months 00 days
Estimated Disability Service Projection	13 years 04 months 29 days
Estimated Total Service Credit	21 years 00 months 29 days
Estimated AFC	\$ 47,369.20
Estimated Full Monthly Benefit	\$ 1,780.77

If you believe any of the above information is incorrect, please contact us without delay. Doing so will prevent unnecessary problems with your retirement account and allow you to begin receiving retirement benefits as soon as possible. We have enclosed a worksheet so that you might better understand our estimated benefit calculation.

If you decide not to retire on the effective date shown above, please notify us in writing immediately. We will then cancel your retirement application or adjust your retirement date, service credit, and monthly benefit accordingly.

Please call SCRS Customer Service at 1-800-868-9002 or (803) 737-6800 if you have any further questions or would like further information about your retirement process.

Enclosure

SC Public Employee Benefit Authority • South Carolina Retirement Systems

202 Arbor Lake Drive • Post Office Box 11960 • Columbia, South Carolina 29211

803-737-6800 • 800-868-9002

/RPBRAD
Form 6327 Rev 7/19/2012



South Carolina Retirement Systems

ESTIMATED BENEFIT WORKSHEET

KEITH TURNER

SSN: XXX-XX-5322
Appl ID: XXXXX5322-2-4-1
System: PORS
Type: Disability
Date: May 14, 2014

AVERAGE FINAL COMPENSATION (AFC):

Your average final compensation, which is used to calculate your estimated benefit, is typically based on the 12 highest consecutive quarters of salary **posted to our system on the date your application was received**. These quarters, which have not yet been audited, are shown below:

Worksheet Status.. Estimate

Qtr	FYear	Salary
Sep	2011	13527.18
Jun	2011	10906.65
Mar	2011	11521.29
Dec	2010	13531.98
Sep	2010	12470.68
Jun	2010	11676.47
Mar	2010	10305.33
Dec	2009	12753.46
Sep	2009	13251.68
Jun	2009	9799.26
Mar	2009	11564.54
Dec	2008	10799.08

Calculation: 142,107.60 / 3 years = AFC of 47,369.20

Upon receipt of final information and verification of quarterly earnings from your employer, adjustments may be required to the amounts used for AFC purposes, including the dollar amount of unused annual leave as permitted by law and reported by your employer.

SERVICE CREDIT:

Your estimated benefit does not include service credit for any unused sick leave. After retirement, your service credit will be adjusted to reflect unused sick leave as permitted by law and reported by your employer. When we finalize your account, we will adjust your service credit and benefit accordingly.

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FINALIZING YOUR ACCOUNT:

It will typically take a minimum of 90 days to finalize your account, assuming you and your employer submit all required information in a timely manner. During peak season (July and January) or periods with an unexpectedly large number of retirees, finalization may take somewhat longer. Once your final benefit is determined, any difference (positive or negative) between your estimated benefit and final benefit will be retroactively applied to your date of retirement.

FIRST BENEFIT CHECK:

If your date of retirement is any date other than the first of the month, your first check will not be for the same amount as the estimated monthly benefit shown on the Notice of Retirement Eligibility and Estimated Benefit. Rather, it will be a prorated portion based on the number of days in that month that you were actually retired. For example, if your retirement date is the fifteenth of the month (and the month has 31 days), your first check will be for 17/31 of the amount of your estimated monthly benefit, reflecting the 17 days in that month that you are actually retired.

Checks are issued on the last business day of each month and cover that month's retirement. Checks are not issued in advance.

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Form 6329 Rev 04-01-2011

South Carolina Retirement Systems

THIS DOCUMENT CONTAINS IMPORTANT INFORMATION ABOUT YOUR BENEFITS. DO NOT DISCARD.

INFORMATION FOR RETIRED MEMBERS

KEITH TURNER
216 TWO POND LOOP
LADSON SC 29456

SSN: XXX-XX-5322
Appl ID: XXXXX5322-2-4-1
System: PORS
Type: Disability
Date: May 14, 2014

Below you will find some very important information which you should know prior to receiving your first annuity payment. Please review this information carefully and retain it for your records. If you have any questions regarding this letter or require assistance with any other retirement matter, please contact Customer Service at 1-800-868-9002 or 803-737-6800.

Method of Payment

The method of payment may not be changed once benefit payments have begun. If, however, you have a change in marital status, within one year you have the right to revoke the nomination and elect a new beneficiary and/or form of monthly payment. A retired member's form of monthly payment may not be changed more than twice and other restrictions may apply. Please contact our office if you need additional information.

Benefit Taxes

When monthly benefits are paid to you, amounts are subject to federal income tax. If you are a resident of South Carolina, your benefits are also subject to SC state income tax. Each year, a retiree may deduct up to \$3,000 of RETIREMENT INCOME or \$10,000 of RETIREMENT INCOME at age 65. Furthermore, South Carolina taxpayers 65 years old or older may claim a \$15,000 calendar year income tax deduction against ANY SOURCE OF TAXABLE INCOME. However, this deduction is reduced by the amount of your retirement deduction claimed so that the total income tax deduction allowed is limited to \$15,000. Taxpayers reaching their 65th birthday by December 31 can claim the higher deduction. If you are already age 65 and have previously elected to take a deduction on retirement income of \$3,000 or \$10,000 (based on your age at the time you started taking the retirement deduction) you can claim an additional amount that would bring your total tax deduction to \$15,000. Additional information may be obtained from the South Carolina Department of Revenue at 803-898-5709. Retirees not living in South Carolina should check with the tax commission in the state in which they live to determine if benefits are taxable.

Tax Withheld

Taxes are withheld according to your instructions; however if you make no election, federal regulations require we withhold federal taxes based on a status of married with three exemptions. You may be required to file estimated taxes each quarter if you do not have taxes withheld. Check with the Internal Revenue Service, your accountant or tax advisor if you have questions regarding your tax liability. Forms are available to withhold or to make changes to the amount withheld. To request forms, please call our Customer Service Department.

Returning to Work

A retired member who has been retired for at least thirty (30) consecutive days may return to employment covered by the system but an earnings limit applies.

SC Public Employee Benefit Authority • South Carolina Retirement Systems

202 Arbor Lake Drive • Post Office Box 11960 • Columbia, South Carolina 29211

803-737-6800 • 800-868-9002



KEITH TURNER

Page: 2
SSN: XXX-XX-5322
Appl ID: XXXXX5322-2-4-1
System: PORS
Type: Disability
Date: May 14, 2014

Cost of Living Increases

Your retirement benefit may be periodically increased to reflect a cost of living adjustment. To qualify, you must be on our retirement payroll for a complete fiscal year, July 1 through June 30, before you are eligible for this increase. Restrictions apply for members taking early retirement. Increases are granted subject to the availability of funds as determined by the actuary and approved by the SC Budget and Control Board.

Other Information

If it becomes necessary for someone to endorse your checks or handle your affairs, please provide a certified true copy of legal papers notifying our office of the change.

Retiree Incidental Death Benefit

If you have at least 10 years of service, are not a retired contributing member of SCRS or PORS and your most recent employer was covered by the Incidental Death Benefit Program, at your death your beneficiary(ies) will receive a one time payment based on your years of retirement service credit. If you are a retired member of SCRS or PORS who has returned to work for a covered employer, upon your death your beneficiary(ies) will receive a one time payment equivalent to one year's salary.

Insurance

The Employee Insurance Program (EIP) is available to answer questions about your insurance coverage. The mailing address is: Employee Insurance Program, PO Box 11661, Columbia, SC 29211. You may telephone 803-734-0678 for assistance.

Monthly Annuity Payments

Monthly benefits are mailed, or electronically deposited, the last business day of the month. If you do not receive your check within five (5) business days, call our Customer Service Department. You can help avoid your check being delayed by enrolling in direct deposit. We strongly encourage all retirees to sign up for automatic deposit so you do not have to worry about mail delays, getting to the bank to cash or deposit your check, misplacing your check or having it stolen while you are away from home or on vacation. Once you are enrolled in the program, you will only receive a stub when the net amount of your deposit changes or if there is a change to your bank account information. Changes typically occur in January when the tax withholding tables are updated and in July when the cost of living increases are granted.

Disability Retirement

If you receive disability benefits and return to employment earning less than your Average Final Compensation (AFC), adjusted for inflation, your disability allowance will be reduced to an amount so that your disability benefits plus your earnings equal the amount of your AFC, adjusted for inflation. If your compensation then or anytime thereafter is equal to, or greater than the adjusted AFC, your disability benefits will be discontinued. If employment is with an employer who is covered by the SC Retirement Systems, you will be required to rejoin the System and become an active contributing member. If the disability retirement allowance is eliminated as a result of employment in the private sector for a period of five consecutive years, all rights in and to your disability retirement allowance are revoked. Upon reaching service retirement eligibility requirements, you will be entitled to receive a deferred retirement allowance based on the AFC and creditable service at the date of disability retirement. Please contact our office if you have questions about the amount you may earn.

Long Term Disability

If you receive Long Term Disability benefits, before returning to employment, contact the Standard Insurance Company Group Benefits Department at 1-800-628-9696.

SC Public Employee Benefit Authority • South Carolina Retirement Systems

202 Arbor Lake Drive • Post Office Box 11960 • Columbia, South Carolina 29211

803-737-6800 • 800-868-9002

South Carolina
PUBLIC EMPLOYEE BENEFIT AUTHORITY

PEBA

Peggy G. Boykin, CPA
Executive Director
Retirement Benefits

October 21, 2014

KEITH TURNER
216 TWO POND LOOP
LADSON SC 29456

RE: XXX-XX-5322
Police Officers Retirement System

Dear Payee:

We are pleased to provide information regarding the monthly benefit check you are to receive from the South Carolina Retirement Systems. Your retirement account has been updated and current information is listed below.

The check you receive this month may be more, or less, than the normal monthly benefit amount you are to receive. Your normal monthly benefit amount is \$1,820.73.

Following is a summary of current information regarding your retirement benefits.

Status of Account:	Finalized Benefit
Type of Retirement:	Disability
Date of Retirement:	03-09-2014
Service Credit:	7 years, 8 months, 6 days
Monthly Benefit:	\$1,820.73

You selected the maximum benefit formula which provides the largest monthly benefit available to be paid to you as a retired member for your life. If you should die prior to recovering the total amount of your contributions plus interest, the balance of your account will be refunded in one payment to the designated beneficiary(ies).

Contributions-Tax Paid:	0.00
Contributions-Deferred	21,136.36
Interest:	<u>3,718.16</u>
Total Contributions plus Interest	\$ 24,854.52



Your AFC reflects the 12 highest consecutive quarters of salary posted through your date of termination, including the dollar amount of unused annual leave as permitted by law and reported by your employer.

QTR	Year	Salary		
Dec	2011	\$ 12,569.88	Current Salary	\$ 48,967.00
Sep	2011	13,527.18	Paid Leave Days	6.92
Jun	2011	10,906.65	Leave allowed	\$ 2,607.07
Mar	2011	11,521.29		
Dec	2010	13,531.98		
Sep	2010	12,470.68		
Jun	2010	11,676.47		
Mar	2010	10,305.33		
Dec	2009	12,753.46		
Sep	2009	13,251.68		
Jun	2009	9,799.26		
Mar	2009	11,564.54		

AFC \$ 48,393.89

Beneficiary selection for lump sum payment:
ALICIA A W TURNER

Beneficiary selection for retiree Incidental Death Program:
ALICIA A W TURNER

The Retirement Systems is committed to serving members promptly and efficiently. If you have any questions or need additional information regarding your retirement benefits, you may call our Customer Service at (803) 737-6800 or toll free in SC at (800) 868-9002.

Sincerely,

Benefit Payments Department

RCS105N1
Jun 15,16

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D) : 5322
SSN : 5322
Phone : () -
Name: KEITH TURNER
216 TWO POND LOOP
LADSON SC 29456

*Reason : BENE PAYROLL_____

Start Time : 10:43:00
Call Length: 00:04:28
Call Date : 11 07 2014

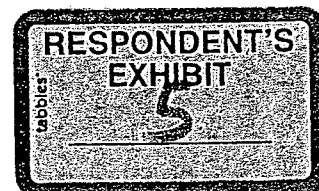
CS Rep: LUCY PARKER Dept: CSCC
Last Updated by: RPARKL on: 11-07-2014

Notes :

EL FOR PORS IS FROM THE GROSS EARNED INCOME NOT THENET EARNED INCOME_____

Direct Command: _____

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---
confm help retrn quit prev next bkwrđ frwrđ left right main
Contact log displayed successfully



1099/W2/YTD InquiryPayee: 5322 KEITH TURNER PORS RetirementClient: 5322 Seq: 1

Year: 2014

Payment Type: Annuity Benefit

Seq: 1

1099 Information

Locked: 01-21-2015

Record Status: C

Taxpayer ID: -5322

Record Number: 2815451

Taxpayer Name: TURNER KEITH

Type:

Tin Type: 2

Gross Distribution: 17,737.36

IRS Name Control: TURN

Exclusion: 0.00

Distribution Code: 7

Pre-Tax Amount: 0.00

Distribution Pct: 0

Taxable Amount: 17,737.36

Total Distribution:

Federal Tax: 844.70

Address Type: COR

State Tax: 0.00

Tax Amt Not Determined:

Nondeferred Amount: 0.00

YTD Totals

TERI Deferred Amt: 0.00

Gross Distribution: 17,737.36

Fed Tax: 844.70

State Tax: 0.00

Exclusion: 0.00

Taxable Amt: 17,737.36

Receivables:

Garnishments:

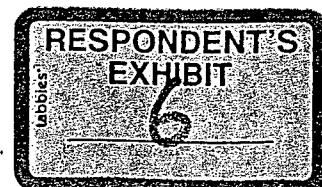
Deductions: 844.70 FEDERAL WITHHOLDING

Net Amount: 16,892.66

Links

Show 1099 Address

Last Update: 01-21-2015 16:49 Update User: RPS603PA Date Added: 05-15-2014 User Added: RPSOPR



1099/W2/YTD InquiryPayee: 5322 KEITH TURNER SCRS RetirementClient: 5322 Seq: 1

Year: 2014

Payment Type: Annuity Benefit

Seq: 1

1099 Information

Locked: 01-21-2015	Record Status: C
Taxpayer ID: -5322	Record Number: 2815450
Taxpayer Name: TURNER KEITH	Type:
Tin Type: 2	Gross Distribution: 2,800.44
IRS Name Control: TURN	Exclusion: 0.00
Distribution Code: 7	Pre-Tax Amount: 0.00
Distribution Pct: 0	Taxable Amount: 2,800.44
Total Distribution:	Federal Tax: 0.00
Address Type: COR	State Tax: 0.00
	Tax Amt Not Determined:
	Nondeferred Amount: 0.00

YTD Totals

TERI Deferred Amt:	0.00
Gross Distribution:	2,800.44
Fed Tax:	0.00
State Tax:	0.00
Exclusion:	0.00
Taxable Amt:	2,800.44
Receivables:	
Garnishments:	
Deductions:	
Net Amount:	2,800.44

Links

Show 1099 Address

Last Update: 01-21-2015 16:49 Update User: RPS603PA Date Added: 05-15-2014 User Added: RPSOPR

South Carolina
PUBLIC EMPLOYEE BENEFIT AUTHORITY

PEBA

Peggy G. Boykin, CPA
Executive Director
Retirement Benefits

February 25, 2015

KEITH TURNER
216 TWO POND LOOP
LADSON SC 29456

Re: XXX-XX-5322 PORS & SCRS

Dear Retiree:

As a disability retiree, if you choose to work, an annual earnings limitation will apply. Your annual earnings from public or private employment in 2015 cannot exceed \$23,114.19, the difference between your average final compensation adjusted for inflation (\$48,539.07) and your projected disability retirement benefits for 2015 (\$25,424.88).

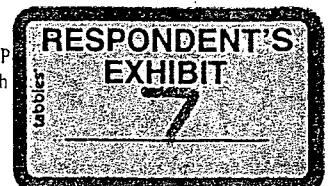
If you were gainfully employed for calendar year 2014, please provide our office with a copy of your W-2 statement(s). For calendar year 2015, if your earnings exceed \$23,114.19, your 2015 disability retirement benefits will be reduced by the amount in excess of the earnings limitation. You are required by law to repay any overpayment of disability retirement benefits; therefore, you should notify us immediately if you return to work and think you will exceed the earnings limitation during the year. If you accept a job with a salary that exceeds your adjusted average final compensation, your benefits will be terminated, and if this employer is covered under the SC Retirement Systems, then you must become an active contributing member again. Please contact our office immediately if this occurs. If you are working for a non-covered employer and your benefits are eliminated for a period of 5 consecutive years, your rights to disability benefits are revoked.

Once you reach age 55, any wages earned will not affect your PORS monthly benefit; however, if you are hired by an employer who is covered under the SC Retirement Systems, you must be retired for at least 30 days before you return to work.

Please contact Customer Service at 803-737-6800 or 1-800-868-9002 (in-state only) if you have any questions or need further assistance.

Sincerely,

Benefits Payroll Department



5322

22222 Void ☐		a Employee's social security number 5322		OMB No 1545-0008	
b Employer identification number (EIN) 72-1073383		1 Wages, tips, other compensation 7680.00		2 Federal income tax withheld	
c Employer's name, address, and ZIP code AMERICAN CITADEL GUARD INC PO BOX 1827 LAKE CHARLES, LA 70602-1827		3 Social security wages 7680.00		4 Social security tax withheld 476.16	
		5 Medicare wages and tips 7680.00		6 Medicare tax withheld 111.36	
		7 Social security tips		8 Allocated tips	
d Control number 50-0010462		9		10 Dependent care benefits	
e Employee's name, address, and ZIP code KEITH TURNER 216 TWO POND LOOP LADSON SC 29456-6918		11 Nonqualified plans		12a See instructions for box 12	
		13 Statutory employee ☐ Retiree ☐ Third-party sick pay ☐		12b	
		14 Other		12c	
				12d	
15 State SC	Employer's state ID number 25372972-8	16 State wages, tips, etc. 7680.00	17 State income tax 136.08	18 Local wages, tips, etc.	19 Local income tax
				20 Locality name	

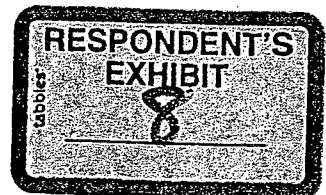
Form **W-2** Wage and Tax Statement
Copy 1—For State, City, or Local Tax Department
Copy D—For Employer

2014

Department of the Treasury—Internal Revenue Service
For Privacy Act and Paperwork Reduction Act Notice, see separate instructions

LW201

5204



Department of the Treasury—Internal Revenue Service

d. Control number	1. Wages, tips, other compensation	2. Federal income tax withheld
1-00000105	39807 71	2998 74
OMB No. 1545-0008	3. Social security wages	4. Social security tax withheld
	39807 71	2468 13
	5. Medicare wages and tips	6. Medicare tax withheld
	39807 71	577 30

e. Employer's name, address, and ZIP code
Atlantic Coast Fire Trucks, LLC
37 Stonington Dr
Murrells Inlet, SC 29576-7045

7. Social security tips	8. Allocated tips	9. Other
10. Dependent care benefits	11. Nonqualified plans	12a
12b		12c

d. Employer identification number (EIN)	e. Employee's social security number
45-4005171	5322490

13. Statutory rate	14. Other

f. Employee's first name and initial
Keith E. Turner
216 Two Pond Loop
Ladson, SC 29456

g. Employee's address, and ZIP code
2014 SC 295771873

15. State	16. State wages, tips, etc.
SC	99807 71

17. State income tax	18. Local income tax
2075 29	

19. Local income tax	20. Local income tax

W-2 Statement
Copy C-For
EMPLOYEE'S RECORDS
(See Notice to Employees on
back of Copy B)

d. Control number	1. Wages, tips, other compensation	2. Federal income tax withheld
1-00000105	39807 71	2998 74
OMB No. 1545-0008	3. Social security wages	4. Social security tax withheld
	39807 71	2468 13
	5. Medicare wages and tips	6. Medicare tax withheld
	39807 71	577 30

e. Employer's name, address, and ZIP code
Atlantic Coast Fire Trucks, LLC
37 Stonington Dr
Murrells Inlet, SC 29576-7045

7. Social security tips	8. Allocated tips	9. Other
10. Dependent care benefits	11. Nonqualified plans	12a
12b		12c

d. Employer identification number (EIN)	e. Employee's social security number
45-4005171	5322490

13. Statutory rate	14. Other

f. Employee's first name and initial
Keith E. Turner
216 Two Pond Loop
Ladson, SC 29456

g. Employee's address, and ZIP code
2014 SC 295771873

15. State	16. State wages, tips, etc.
SC	99807 71

17. State income tax	18. Local income tax
2075 29	

19. Local income tax	20. Local income tax

W-2 Wage and Tax
Statement
Copy B-To Be Filed
With Employee's
FEDERAL Tax Return

Copy 8--To Be Filed With Employee's FEDERAL Tax Return		38-2099803 OMB No. 1545-0008	
a Employee's soc sec no	1 Wages, tips, other comp	2 Fed income tax withheld	
-5322	6789.82	1277.90	
b Employer ID number (EIN)	3 Social security wages	4 Soc sec tax withheld	
20-3680664	6789.82	420.97	
	5 Medicare wages and tips	6 Medicare tax withheld	
	6789.82	98.45	
c Employer's name, address, and ZIP code AMERICAN LAFRANCE LLC 1090 NEWTON WAY SUMMERVILLE SC 29483			
d Control number QH341A10000074			
e Employee's name, address, and ZIP code KEITH TURNER 216 TWO POND LOOP LADSON SC 29456			
7 Social security tips	8 Allocated tips	9	
10 Dependent care benefits	11 Nonqualified plans	12a Code See inst for box 12	
13 Statutory employee	14 Other	12b Code	
Retirement plan		12c Code	
Third-party sick pay		12d Code	
SC	25486690-7	6789.82	425.63
15 State Employer's state ID no	16 State wages, tips, etc	17 State income tax	
18 Local wages, tips, etc	19 Local income tax	20 Locality name	

Form W-2 Wage and Tax Statement 2014 Dept of the Treasury -- IRS
This information is being furnished to the Internal Revenue Service

4 BW24UP NTF 2575818

This information is being furnished to IRS. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable & you fail to report it.

Copy C--For EMPLOYEE'S RECORDS (See Notice to Employee)		38-2099803 OMB No. 1545-0008	
a Employee's soc sec no	1 Wages, tips, other comp	2 Fed income tax withheld	
-5322	6789.82	1277.90	
b Employer ID number (EIN)	3 Social security wages	4 Soc sec tax withheld	
20-3680664	6789.82	420.97	
	5 Medicare wages and tips	6 Medicare tax withheld	
	6789.82	98.45	
c Employer's name, address, and ZIP code AMERICAN LAFRANCE LLC 1090 NEWTON WAY SUMMERVILLE SC 29483			
d Control number QH341A10000074			
e Employee's name, address, and ZIP code KEITH TURNER 216 TWO POND LOOP LADSON SC 29456			
7 Social security tips	8 Allocated tips	9	
10 Dependent care benefits	11 Nonqualified plans	12a Code See inst for box 12	
13 Statutory employee	14 Other	12b Code	
Retirement plan		12c Code	
Third-party sick pay		12d Code	
SC	25486690-7	6789.82	425.83
15 State Employer's state ID no	16 State wages, tips, etc	17 State income tax	
18 Local wages, tips, etc	19 Local income tax	20 Locality name	

Form W-2 Wage and Tax Statement 2014 Dept of the Treasury -- IRS

Copy 2--To Be Filed With Employee's State, City, or Local Income Tax Return		38-2099803 OMB No. 1545-0008	
a Employee's soc sec no	1 Wages, tips, other comp	2 Fed income tax withheld	
-5322	6789.82	1277.90	
b Employer ID number (EIN)	3 Social security wages	4 Soc sec tax withheld	
20-3680664	6789.82	420.97	
	5 Medicare wages and tips	6 Medicare tax withheld	
	6789.82	98.45	
c Employer's name, address, and ZIP code AMERICAN LAFRANCE LLC 1090 NEWTON WAY SUMMERVILLE SC 29483			
d Control number QH341A10000074			
e Employee's name, address, and ZIP code KEITH TURNER 216 TWO POND LOOP LADSON SC 29456			
7 Social security tips	8 Allocated tips	9	
10 Dependent care benefits	11 Nonqualified plans	12a Code	
13 Statutory employee	14 Other	12b Code	
Retirement plan		12c Code	
Third-party sick pay		12d Code	
SC	25486690-7	6789.82	425.93
15 State Employer's state ID no	16 State wages, tips, etc	17 State income tax	
18 Local wages, tips, etc	19 Local income tax	20 Locality name	

Form W-2 Wage and Tax Statement 2014 Dept of the Treasury -- IRS

Copyright 2014 Greatland/Neico

Copy 2--To Be Filed With Employee's State, City, or Local Income Tax Return		38-2099803 OMB No. 1545-0008	
a Employee's soc sec no	1 Wages, tips, other comp	2 Fed income tax withheld	
-5322	6789.82	1277.90	
b Employer ID number (EIN)	3 Social security wages	4 Soc sec tax withheld	
20-3680664	6789.82	420.97	
	5 Medicare wages and tips	6 Medicare tax withheld	
	6789.82	98.45	
c Employer's name, address, and ZIP code AMERICAN LAFRANCE LLC 1090 NEWTON WAY SUMMERVILLE SC 29483			
d Control number QH341A10000074			
e Employee's name, address, and ZIP code KEITH TURNER 216 TWO POND LOOP LADSON SC 29456			
7 Social security tips	8 Allocated tips	9	
10 Dependent care benefits	11 Nonqualified plans	12a Code	
13 Statutory employee	14 Other	12b Code	
Retirement plan		12c Code	
Third-party sick pay		12d Code	
SC	25486690-7	6789.82	425.83
15 State Employer's state ID no	16 State wages, tips, etc	17 State income tax	
18 Local wages, tips, etc	19 Local income tax	20 Locality name	

Form W-2 Wage and Tax Statement 2014 Dept of the Treasury -- IRS

33940 00			
1 Gross distribution	2a Taxable amount		
2c Taxable amount not determined Total tax/portion	X	3 Capital gain (included in total tax)	
4 Fed income tax withheld	5	6	
PAYERS name & address (20 boxes code & county) SC STATE FIREFIGHTERS' ASSOCIATION 121 WESTPARK BOULEVARD COLUMBIA SC 29210			
PAYERS federal ID number 57-6119677		6	
7 Date of contribution	8 Other	9a	
C		%	
9b Total employee contributions	10 Amount allocable to IRA within 5 years		
11 1st year of design Roth contrib	12 State tax withheld		
13 State/Payers state no.	14 State distribution		
KETH E TURNER 316 TWO FOND LOOP LADSON SC 29456			
RECIPIENTS name, address, ID number and county		CORRECTED ☐	
15 Local use return	16 Name of locality	17 Local use return	
RECIPIENTS ID number XXX-YX-5322		Account number (see inst 1) SC03arleson0224A	
Distributions From Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs Insurance Contracts, etc Copy 2			
File this copy with your state, city or local income tax return, when required		Form 1099-R 2014	

[illegible]

Copy B To Be Filed With Employee's FEDERAL Tax Return			2014	OMB No. 1545-0008
a Employee's soc. sec. no.	1 Wages, tips, other compensation	2 Federal income tax withheld		
5322	2402 68	391 68		
b Employer ID no. (EIN)	3 Social security wages	4 Social security tax withheld		
576000226	2607 07	161 64		
	5 Medicare wages and tips	6 Medicare tax withheld		
	2607 07	37 80		
c Employer's name, address, and ZIP code				
City of Charleston 0001 PO Box 304 E036632 Charleston, SC 29402-0304				
d Control number 00000000282				
e Employee's name, address, and ZIP code				
KEITH E TURNER 216 TWO POND LOOP LADSON, SC 29456				
7 Social security tips	8 Allocated tips	9		
10 Dependent care benefits	11 Nonqualified plans	12a Code See inst. for box 12		
13 Statutory employee	14 Other	12b Code		
Retirement plan X		12c Code		
Third-party sick pay		12d Code		
SC 25030535	2402 68	153 45		
15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax		
18 Local wages, tips, etc.	19 Local income tax	20 Locality name		

Form W-2 Wage and Tax Statement Dept. of the Treasury - IRS 38-2099803
For Privacy Act and Paperwork Reduction Act Notice see separate instructions.

Copy 2 To Be Filed With Employee's State, City or Local Income Tax Return			2014	OMB No. 1545-0008
a Employee's soc. sec. no.	1 Wages, tips, other compensation	2 Federal income tax withheld		
5322	2402 68	391 68		
b Employer ID no. (EIN)	3 Social security wages	4 Social security tax withheld		
576000226	2607 07	161 64		
	5 Medicare wages and tips	6 Medicare tax withheld		
	2607 07	37 80		
c Employer's name, address, and ZIP code				
City of Charleston 0001 PO Box 304 E036632 Charleston, SC 29402-0304				
d Control number 00000000282				
e Employee's name, address, and ZIP code				
KEITH E TURNER 216 TWO POND LOOP LADSON, SC 29456				
7 Social security tips	8 Allocated tips	9		
10 Dependent care benefits	11 Nonqualified plans	12a Code See inst. for box 12		
13 Statutory employee	14 Other	12b Code		
Retirement plan X		12c Code		
Third-party sick pay		12d Code		
SC 25030535	2402 68	153 45		
15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax		
18 Local wages, tips, etc.	19 Local income tax	20 Locality name		

Form W-2 Wage and Tax Statement Dept. of the Treasury - IRS 38-2099803
For Privacy Act and Paperwork Reduction Act Notice see separate instructions.

Copy C For EMPLOYEE'S RECORDS (See Notice to Employee on back of Copy B.)			2014	OMB No. 1545-0008
a Employee's soc. sec. no.	1 Wages, tips, other compensation	2 Federal income tax withheld		
5322	2402 68	391 68		
b Employer ID no. (EIN)	3 Social security wages	4 Social security tax withheld		
576000226	2607 07	161 64		
	5 Medicare wages and tips	6 Medicare tax withheld		
	2607 07	37 80		
c Employer's name, address, and ZIP code				
City of Charleston 0001 PO Box 304 E036632 Charleston, SC 29402-0304				
d Control number 00000000282				
e Employee's name, address, and ZIP code				
KEITH E TURNER 216 TWO POND LOOP LADSON, SC 29456				
7 Social security tips	8 Allocated tips	9		
10 Dependent care benefits	11 Nonqualified plans	12a Code See inst. for box 12		
13 Statutory employee	14 Other	12b Code		
Retirement plan X		12c Code		
Third-party sick pay		12d Code		
SC 25030535	2402 68	153 45		
15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax		
18 Local wages, tips, etc.	19 Local income tax	20 Locality name		

Form W-2 Wage and Tax Statement Dept. of the Treasury - IRS 38-2099803
For Privacy Act and Paperwork Reduction Act Notice see separate instructions.

Copy 2 To Be Filed With Employee's State, City or Local Income Tax Return			2014	OMB No. 1545-0008
a Employee's soc. sec. no.	1 Wages, tips, other compensation	2 Federal income tax withheld		
5322	2402 68	391 68		
b Employer ID no. (EIN)	3 Social security wages	4 Social security tax withheld		
576000226	2607 07	161 64		
	5 Medicare wages and tips	6 Medicare tax withheld		
	2607 07	37 80		
c Employer's name, address, and ZIP code				
City of Charleston 0001 PO Box 304 E036632 Charleston, SC 29402-0304				
d Control number 00000000282				
e Employee's name, address, and ZIP code				
KEITH E TURNER 216 TWO POND LOOP LADSON, SC 29456				
7 Social security tips	8 Allocated tips	9		
10 Dependent care benefits	11 Nonqualified plans	12a Code See inst. for box 12		
13 Statutory employee	14 Other	12b Code		
Retirement plan X		12c Code		
Third-party sick pay		12d Code		
SC 25030535	2402 68	153 45		
15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax		
18 Local wages, tips, etc.	19 Local income tax	20 Locality name		

Form W-2 Wage and Tax Statement Dept. of the Treasury - IRS 38-2099803
For Privacy Act and Paperwork Reduction Act Notice see separate instructions.
BW24UPER NTF 25/0999A

ITEM # LW24UPD

b Employer identification number (EIN) 38-1082080		12a See instructions for box 12		1 Wages, tips, other compensation 7100.00		2 Federal income tax withheld	
c Employer's name, address, and ZIP code SUN LIFE ASSUR CO OF CANADA ONE SUN LIFE EXECUTIVE PARK WELLESLEY HILLS MA 02481		12b \$		3 Social security wages		4 Social security tax withheld	
		12c \$		5 Medicare wages and tips		6 Medicare tax withheld	
		12d \$		7 Social security tips		8 Allocated tips	
e Employee's first name and initial Last name KEITH TURNER 216 TWO POND LOOP LADSON SC 29456 6918		12e \$		9		10 Dependent care benefits	
		12f \$		11 Nonqualified plans		13	
		12g \$		14 Other		15	
f Employee's address and ZIP code 15 State Employer's state ID number SC 25251166-0		16 State wages, tips, etc 7100.00		17 State income tax		18 Local wages, tips, etc	
						19 Local income tax	
						20 Locality name	

Form W-2 Wage and Tax Statement 2014 Department of the Treasury-Internal Revenue Service OMB # 1545-0008 Copy B To Be Filed With Employee's FEDERAL Tax Return

b Employer identification number (EIN) 38-1082080		12a See instructions for box 12		1 Wages, tips, other compensation 7100.00		2 Federal income tax withheld	
c Employer's name, address, and ZIP code SUN LIFE ASSUR CO OF CANADA ONE SUN LIFE EXECUTIVE PARK WELLESLEY HILLS MA 02481		12b \$		3 Social security wages		4 Social security tax withheld	
		12c \$		5 Medicare wages and tips		6 Medicare tax withheld	
		12d \$		7 Social security tips		8 Allocated tips	
e Employee's first name and initial Last name 0054174 0131B 0 432 AUTO 01-0 0701 29456-691816 KEITH TURNER 216 TWO POND LOOP LADSON SC 29456 6918		12e \$		9		10 Dependent care benefits	
		12f \$		11 Nonqualified plans		13	
		12g \$		14 Other		15	
f Employee's address and ZIP code 15 State Employer's state ID number SC 25251166-0		16 State wages, tips, etc 7100.00		17 State income tax		18 Local wages, tips, etc	
						19 Local income tax	
						20 Locality name	

Form W-2 Wage and Tax Statement 2014 Department of the Treasury-Internal Revenue Service OMB # 1545-0008 Copy 2 To Be Filed With Employee's State, City, or Local Income Tax Return

b Employer identification number (EIN) 38-1082080		12a See instructions for box 12		1 Wages, tips, other compensation 7100.00		2 Federal income tax withheld	
c Employer's name, address, and ZIP code SUN LIFE ASSUR CO OF CANADA ONE SUN LIFE EXECUTIVE PARK WELLESLEY HILLS MA 02481		12b \$		3 Social security wages		4 Social security tax withheld	
		12c \$		5 Medicare wages and tips		6 Medicare tax withheld	
		12d \$		7 Social security tips		8 Allocated tips	
e Employee's first name and initial Last name KEITH TURNER 216 TWO POND LOOP LADSON SC 29456 6918		12e \$		9		10 Dependent care benefits	
		12f \$		11 Nonqualified plans		13	
		12g \$		14 Other		15	
f Employee's address and ZIP code 15 State Employer's state ID number SC 25251166-0		16 State wages, tips, etc 7100.00		17 State income tax		18 Local wages, tips, etc	
						19 Local income tax	
						20 Locality name	

Form W-2 Wage and Tax Statement 2014 Department of the Treasury-Internal Revenue Service OMB # 1545-0008 Copy 2 To Be Filed With Employee's State, City, or Local Income Tax Return

b Employer identification number (EIN) 38-1082080		12a See instructions for box 12		1 Wages, tips, other compensation 7100.00		2 Federal income tax withheld	
c Employer's name, address, and ZIP code SUN LIFE ASSUR CO OF CANADA ONE SUN LIFE EXECUTIVE PARK WELLESLEY HILLS MA 02481		12b \$		3 Social security wages		4 Social security tax withheld	
		12c \$		5 Medicare wages and tips		6 Medicare tax withheld	
		12d \$		7 Social security tips		8 Allocated tips	
e Employee's first name and initial Last name KEITH TURNER 216 TWO POND LOOP LADSON SC 29456 6918		12e \$		9		10 Dependent care benefits	
		12f \$		11 Nonqualified plans		13	
		12g \$		14 Other		15	
f Employee's address and ZIP code 15 State Employer's state ID number SC 25251166-0		16 State wages, tips, etc 7100.00		17 State income tax		18 Local wages, tips, etc	
						19 Local income tax	
						20 Locality name	

Form W-2 Wage and Tax Statement 2014 Department of the Treasury-Internal Revenue Service OMB # 1545-0008 Copy C For EMPLOYEE'S RECORDS (See Notice to Employee on back)

Form 1099-R

OMB No. 1545-0119

CORRECTED (if checked)

2014

1 Gross distribution	2a Taxable amount
17,737.36	17,737.36
2b Taxable amount not determined	Total distribution

Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

PAYER'S name Street address City or town province or state country and ZIP or foreign postal code
 S C POLICE OFFICERS
 RETIREMENT SYSTEM
 PO BOX 11960
 COLUMBIA, SC 29211-1960

PAYER'S federal identification number	RECIPIENT'S identification number
57-6041552	XXX-XX-5322
3 Capital gain (included in box 2a)	4 Federal income tax withheld
	844.70
5 Employee contributions/Designated Roth contributions or insurance premiums	6 Net unrealized appreciation in employer's securities
	7
7 Distribution code(s) IRA/SEP/SIMPLE	8 Other
9a Your percentage of total distribution	9b Total employee contributions

RECIPIENT'S name Street address (including apt. no.) City or town province or state country and ZIP or foreign postal code

KEITH TURNER
 216 TWO POND LOOP
 LADSON SC 29456

Account number (see instructions)

10 Amount allocable to IRS within 5 years	11 1st year of decr. Roth contrib.
12 State tax withheld	13 State/Payer's state no.
00	SC 25254192-2
14 State Distribution	15 Local tax withheld
	16 Name of locality
	17 Local distribution

Copy B Report this income on your federal tax return. If this form shows federal income tax withheld in box 4, attach this copy to your return. This information is being furnished to the Internal Revenue Service.



S C. Public Employee Benefit Authority
 Retirement Benefits
 P O Box 11960
 Columbia, SC 29211-1960

Instructions for Recipient (Continued)

T. Roth IRA distribution, exception applies

U. Dividend distribution from ESOP under sec. 404(k)

Note: This distribution is not eligible for rollover

W. Charges or payments for purchasing qualified long-term care insurance contracts under combined arrangements

If the IRA/SEP/SIMPLE box is checked, you have received a traditional IRA, SEP or SIMPLE distribution

Box 8. If you received an annuity contract as part of a distribution, the value of the contract is shown. It is not taxable when you receive it and should not be included in boxes 1 and 2a. When you receive periodic payments from the annuity contract, they are taxable at that time. If the distribution is made to more than one person, the percentage of the annuity contract distributed to you is also shown. You will need this information if you use the 10-year tax option (Form 4972). If charges were made for qualified long-term care insurance contracts under combined arrangements, the amount or the reduction in the investment (but not below zero) in the annuity or life insurance contract is reported here.

Box 9a. If a total distribution was made to more than one person, the percentage you received is shown.

Box 9b. For a life annuity from a qualified plan or from a section 403(b) plan (with after tax contributions), an amount may be shown for the employee's total investment in the contract. It is used to compute the taxable part of the distribution. See Pub. 575.

Box 10. If an amount is reported in this box, see the instructions for Forms 5329 and Pub. 575.

Box 11. The first year you made a contribution to the designated Roth account reported on this form is shown in this box.

Boxes 12-17. If state or local income tax was withheld from the distribution, boxes 14 and 17 may show the part of the distribution subject to state and/or local tax.

Future Developments. For the latest information about developments related to Form 1099-R and its instructions, such as legislation enacted after they were published, go to www.irs.gov/form1099r.

Additional information You may want to see

Form W-4P, Withholding Certificate for Pension or Annuity Payments

Form 4972, Tax on Lump-Sum Distributions

Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts

Form 8806, Nondeductible IRAs

Pub. 560, Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)

Pub. 571, Tax-Sheltered Annuity Plans (403(b) Plans)

Pub. 575, Pension and Annuity Income

Pub. 590, Individual Retirement Arrangements (IRAs)

Pub. 721, Tax Guide to U.S. Civil Service Retirement Benefits

Pub. 939, General Rule for Pensions and Annuities

Pub. 969, Health Savings Account and other Tax-Favored Health Plans

Form 1099-R

OMB No. 1545-0119

CORRECTED (if checked)

2014

1 Gross distribution	2a Taxable amount
17,737.36	17,737.36
2b Taxable amount not determined	Total distribution

Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

PAYER'S name Street address City or town province or state country and ZIP or foreign postal code
 S C POLICE OFFICERS
 RETIREMENT SYSTEM
 PO BOX 11960
 COLUMBIA, SC 29211-1960

PAYER'S federal identification number	RECIPIENT'S identification number
57-6041552	XXX-XX-5322
3 Capital gain (included in box 2a)	4 Federal income tax withheld
	844.70
5 Employee contributions/Designated Roth contributions or insurance premiums	6 Net unrealized appreciation in employer's securities
	7
7 Distribution code(s) IRA/SEP/SIMPLE	8 Other
9a Your percentage of total distribution	9b Total employee contributions

RECIPIENT'S name Street address (including apt. no.) City or town province or state country and ZIP or foreign postal code

KEITH TURNER
 216 TWO POND LOOP
 LADSON SC 29456

Account number (see instructions)

10 Amount allocable to IRS within 5 years	11 1st year of decr. Roth contrib.
12 State tax withheld	13 State/Payer's state no.
00	SC 25254192-2
14 State Distribution	15 Local tax withheld
	16 Name of locality
	17 Local distribution

Copy 2 File this copy with your state, city, or local income tax return, when required.

Form 1099-R

OMB No. 1545-0119

CORRECTED (if checked)

2014

1 Gross distribution	2a Taxable amount
17,737.36	17,737.36
2b Taxable amount not determined	Total distribution

Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

PAYER'S name Street address City or town province or state country and ZIP or foreign postal code
 S C POLICE OFFICERS
 RETIREMENT SYSTEM
 PO BOX 11960
 COLUMBIA, SC 29211-1960

PAYER'S federal identification number	RECIPIENT'S identification number
57-6041552	XXX-XX-5322
3 Capital gain (included in box 2a)	4 Federal income tax withheld
	844.70
5 Employee contributions/Designated Roth contributions or insurance premiums	6 Net unrealized appreciation in employer's securities
	7
7 Distribution code(s) IRA/SEP/SIMPLE	8 Other
9a Your percentage of total distribution	9b Total employee contributions

RECIPIENT'S name Street address (including apt. no.) City or town province or state country and ZIP or foreign postal code

KEITH TURNER
 216 TWO POND LOOP
 LADSON SC 29456

Account number (see instructions)

10 Amount allocable to IRS within 5 years	11 1st year of decr. Roth contrib.
12 State tax withheld	13 State/Payer's state no.
00	SC 25254192-2
14 State Distribution	15 Local tax withheld
	16 Name of locality
	17 Local distribution

Copy C For Recipient's Records
 This information is being furnished to the Internal Revenue Service (Keep for your records).

Form 1099-R

OMB No. 1545-0119

CORRECTED (if checked)

2014

1 Gross distribution	2a Taxable amount
2,800.44	2,800.44
2b Taxable amount not determined	Total distribution

Distributions From
Pensions, Annuities,
Retirement or
Profit-Sharing
Plans, IRAs,
Insurance
Contracts, etc

PAYER'S name, street address, city or town, province or state, country, and ZIP or foreign postal code
SOUTH CAROLINA
RETIREMENT SYSTEM
PO BOX 11960
COLUMBIA, SC 29211-1960

PAYER'S federal identification number

57-6042472

RECIPIENT'S identification number

XXX-XX-5322

3 Capital gain (included in box 2a)

00

4 Federal income tax withheld

00

5 Employee contributions/ Designated Roth contributions or insurance premiums

6 Net unrealized appreciation in employer's securities

7

7 Distribution code(s)

7

8 Other

%

9a Your percentage of total distribution

%

9b Total employee contributions

%

RECIPIENT'S name, street address (including apt. no.), city or town, province or state, country, and ZIP or foreign postal code

KEITH TURNER
216 TWO POND LOOP
LADSON SC 29456

Account number (see instructions)

10 Amount allocable to IRS within 5 years

11 1st year of design Roth contrib

12 State tax withheld

00

13 State/Payer's state no

SC 25254074-5

14 State Distribution

15 Local tax withheld

16 Name of locality

17 Local distribution

Copy B Report this income on your federal tax return. If this form shows federal income tax withheld in box 4, attach this copy to your return. This information is being furnished to the Internal Revenue Service.



S C Public Employee Benefit Authority

Retirement Benefits

P O Box 11960

Columbia, SC 29211-1960

Instructions for Recipient (Continued)

T - Roth IRA distribution - exception applies

U - Dividend distribution from ESOP under sec. 404(k)

Note: This distribution is not eligible for rollover.

W - Charges or payments for purchasing qualified long-term care insurance contracts under combined arrangements

If the IRA/SEP/SIMPLE box is checked, you have received a traditional IRA/SEP or SIMPLE distribution.

Box 8 If you received an annuity contract as part of a distribution, the value of the contract is shown. It is not taxable when you receive it and should not be included in boxes 1 and 2a. When you receive periodic payments from the annuity contract, they are taxable at that time. If the distribution is made to more than one person, the percentage of the annuity contract distributed to you is also shown. You will need this information if you use the 10-year tax option (Form 4972). If charges were made for qualified long-term care insurance contracts under combined arrangements, the amount of the reduction in the investment (but not below zero) in the annuity or life insurance contract is reported here.

Box 9a If a total distribution was made to more than one person, the percentage you received is shown.

Box 9b For a life annuity from a qualified plan or from a section 403(b) plan (with after-tax contributions), an amount may be shown for the employee's total investment in the contract. It is used to compute the taxable part of the distribution. See Pub. 575.

Box 10 If an amount is reported in this box, see the instructions for Forms 5529 and Pub. 575.

Box 11 The first year you made a contribution to the designated Roth account reported on this form is shown in this box.

Boxes 12-17 If state or local income tax was withheld from the distribution, boxes 14 and 17 may show the part of the distribution subject to state and/or local tax.

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Form 4972, Tax on Lump-Sum Distributions

Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts, Form 8866, Nondeductible IRAs

Pub. 560, Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)

Pub. 571, Tax Sheltered Annuity Plans (403(b) Plans)

Pub. 575, Pension and Annuity Income

Pub. 590, Individual Retirement Arrangements (IRAs)

Pub. 721, Tax Guide to U.S. Civil Service Retirement Benefits

Pub. 939, General Rule for Pensions and Annuities

Pub. 969, Health Savings Account and other Tax-Favored Health Plans

Form 1099-R

OMB No. 1545-0119

CORRECTED (if checked)

2014

1 Gross distribution	2a Taxable amount
2,800.44	2,800.44
2b Taxable amount not determined	Total distribution

Distributions From
Pensions, Annuities,
Retirement or
Profit-Sharing
Plans, IRAs,
Insurance
Contracts, etc

PAYER'S name, street address, city or town, province or state, country, and ZIP or foreign postal code
SOUTH CAROLINA
RETIREMENT SYSTEM
PO BOX 11960
COLUMBIA, SC 29211-1960

PAYER'S federal identification number

57-6042472

RECIPIENT'S identification number

XXX-XX-5322

3 Capital gain (included in box 2a)

00

4 Federal income tax withheld

00

5 Employee contributions/ Designated Roth contributions or insurance premiums

6 Net unrealized appreciation in employer's securities

7

7 Distribution code(s)

7

8 Other

%

9a Your percentage of total distribution

%

9b Total employee contributions

%

RECIPIENT'S name, street address (including apt. no.), city or town, province or state, country, and ZIP or foreign postal code

KEITH TURNER
216 TWO POND LOOP
LADSON SC 29456

Account number (see instructions)

10 Amount allocable to IRS within 5 years

11 1st year of design Roth contrib

12 State tax withheld

00

13 State/Payer's state no

SC 25254074-5

14 State Distribution

15 Local tax withheld

16 Name of locality

17 Local distribution

Copy 2 File this copy with your state, city, or local income tax return, when required.

Department of the Treasury
Internal Revenue Service

Form 1099-R

OMB No. 1545-0119

CORRECTED (if checked)

2014

1 Gross distribution	2a Taxable amount
2,800.44	2,800.44
2b Taxable amount not determined	Total distribution

Distributions From
Pensions, Annuities,
Retirement or
Profit-Sharing
Plans, IRAs,
Insurance
Contracts, etc

PAYER'S name, street address, city or town, province or state, country, and ZIP or foreign postal code

SOUTH CAROLINA
RETIREMENT SYSTEM
PO BOX 11960
COLUMBIA, SC 29211-1960

PAYER'S federal identification number

57-6042472

RECIPIENT'S identification number

XXX-XX-5322

3 Capital gain (included in box 2a)

00

4 Federal income tax withheld

00

5 Employee contributions/ Designated Roth contributions or insurance premiums

6 Net unrealized appreciation in employer's securities

7

7 Distribution code(s)

7

8 Other

%

9a Your percentage of total distribution

%

9b Total employee contributions

%

RECIPIENT'S name, street address (including apt. no.), city or town, province or state, country, and ZIP or foreign postal code

KEITH TURNER
216 TWO POND LOOP
LADSON SC 29456

Account number (see instructions)

10 Amount allocable to IRS within 5 years

11 1st year of design Roth contrib

12 State tax withheld

00

13 State/Payer's state no

SC 25254074-5

14 State Distribution

15 Local tax withheld

16 Name of locality

17 Local distribution

Copy C For Recipient's Records

This information is being furnished to the Internal Revenue Service. Internal Revenue Service (Keep for your records)

South Carolina
PUBLIC EMPLOYEE BENEFIT AUTHORITY

PEBA

Peggy G. Boykin, CPA
Executive Director
Retirement Benefits

April 22, 2015

Keith Turner
216 Two Pond Loop
Ladson SC 29456

Re XXX-XX-5322 PORS & SCRS

Dear Mr. Turner

As a disability retiree, you have been advised by the Public Employee Benefit Authority that your earnings are subject to an annual earnings limitation. PEBA sends you a letter in February or March of each year explaining that your earnings plus your annual disability retirement benefit cannot exceed your Adjusted Average Final Compensation (AFC). As such, if your annual earnings are greater than your Adjusted AFC, you are not entitled to any disability retirement benefits for the year.

You received a disability retirement benefit during 2014 totaling \$20,537.80. PEBA recently learned that your wages of \$63,984.60 for 2014 exceeded your Adjusted AFC of \$48,393.89 for that year; therefore, your full disability benefit in 2014 was an overpayment.

You are required by law to repay any overpayment of disability retirement benefits. Please remit reimbursement of \$20,537.80 which is the amount of overpayment for 2014 to our office as soon as possible to correct your account. A return envelope is enclosed for your convenience should you elect to satisfy this balance with a lump-sum payment. If you prefer to pay this amount in installments, you must contact our office as soon as possible to arrange a payment schedule.

Since you are earning a salary that is more than your adjusted AFC, you are no longer eligible for a monthly annuity. Based on your earnings during calendar year 2014, PEBA is suspending your disability retirement benefit indefinitely pursuant to S.C. Code Ann. 9-1-1580.

If the disability retirement allowance is eliminated as a result of this section for a period of five consecutive years, all rights in and to your disability retirement allowance are revoked. You then are entitled to a deferred retirement allowance as provided in Section 9-1-1650 based upon your average final compensation and creditable service at your date of disability retirement. S.C. Code Ann. 9-1-1580.

If you disagree with this decision, you may file a written claim with Director Boykin, within one year of the date of this letter. If you believe this is an error or if you require assistance, please contact Customer Service at 803-737-6800 or 1-800-868-9002 (in-state only).

Sincerely,

Benefit Payments Department

Street Address
202 Arbor Lake Drive
Columbia, South Carolina 29223

www.retirement.sc.gov
803-737-6800
800-868-9002 (within S.C. only)

Columbia, South



5322

Letter of Appeal for Disability Retirement

Keith E Turner (last 4 ssn 5322)

May 12, 2015

216 Two Pond Loop

Ladson, SC 29456

843-343-4768

Hooch03@gmail.com

Re xxx-xx-5322 PORS & SCRS

RECEIVED

MAY 14 2015

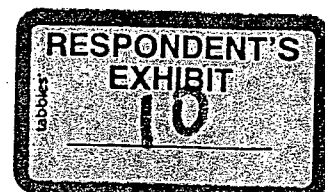
PEBA LEGAL

To whom it may concern,

I have recently been notified that my disability retirement has been canceled due to exceeding my AFC. Please allow this letter to serve as my formal appeal of the cancelation of my disability retirement. I feel that I was given the wrong information by both my former employer's H R office and by a member of PEBA in February when I was being processed for medical retirement. Also, I would like to go over the amount that should have been calculated for the 2014's earnings as I feel that those are wrong as well.

While I was being processed for medical retirement I found, later of course, that some (3 major points) of the information that I based my future life on as well as my family's financial stability on was VERY wrong and I am now the one who is paying the price as well as my family. While Ms Tiffany Pinckney was going over all my paperwork for retirement, I asked as many questions as I could. Anything I did not understand, I relied on the H R office to give me the correct information since it would affect my well being. Early in February I had a meeting with Ms Pinckney to go over the PORS/PEBA retirement estimates for my AFC and to ask about a job that I was offered, specifically the salary that they are offering me. I asked many times, "if I was to accept a job paying \$45,000.00 a year, will I still be able to receive my retirement checks"? At that time all the paperwork had the estimated AFC of \$47,369.00 (Final AFC for 2014 ended up being \$48,393.89). Ms Pinckney said that "Yes, I would still be good as long as my salary did not go over the AFC amount with the new job, I would continue to receive my retirement checks. That the AFC amount did not include the checks for retirement." So I accepted the job at the given salary and worked for the rest of 2014 in that job and a side weekend job teaching security officers. The 2 jobs I had for 2014 that should have been counted towards my 2014 earnings (Which we will discuss further later in this letter) ended up totaling \$47,487.71 putting me under the total I was told I had to stay under.

In March of 2015, I received a letter stating that my 2015 earnings limitation was \$23,114.19 for a AFC total of \$48,539.07. I immediately went into a state of panic, just then realizing that I was given incorrect information. I called and spoke with Mrs Palenthia immediately to discuss what had happened and to give her the information needed to help me with this situation. She had me email her my 2014 W-2's and said once those were evaluated, I would be notified that there was a discrepancy.



and that my retirement check would cease. Then I could file a letter of appeal. I did so, and am now pleading my case and asking that my family and I not be punished for going off of misinformation given to us by the ones entrusted to "Protect" employees.

One of the other mistakes that they made was my family health insurance. I received a letter 7 months after retirement canceling my family's health insurance due to them making a mistake in offering it to me in the first place! They said I needed 15 years of service to be offered retirement insurance. Even though I was injured on the job and had just under that required amount. I even asked prior to being retired about buying my military time. I had 8 1/2 years in the U.S. Marines, Honorably discharged as an E-6. Even though it says in our employee handbook that we can BUY up to 6 years of our military time, which would have put me at almost 20 years for retirement, I was told NO! Then in just a letter, not even a phone call, they canceled my family health insurance.

Another mistake made by the H.R. individual is I was told that they would have all the forms I needed to collect all my retirement that was due me. When I was on the phone with a PEBA employee, Lucy, she asked why I had not file for my SCRS retirement. I only had been given the files needed for PORS. I had split time and H.R. did not let me know that I had to file for that separately.

There were numerous other mistakes that they had made during the entire time from when I initially broke my back on a high-rise fire to now. I feel as though that even though I was an exemplary employee, having never been in trouble on the job, always tried to be a model employee, I was being PUNISHED for getting hurt on the job both personally and financially. Especially with the AFC not counting in a FIRE FIGHTERS 2nd job, knowing that 95% of all firefighters have to have a 2nd job to have a decent quality of life due to the low pay we receive.

In my email to Palenthia that included my W-2's, I would like a chance to speak about them. Most of the W-2's were from before my retirement date. Only 2 of them went past March 2014. Below is the list of the ones that should not be counted and the last dates of recite of pay.

- | | | | |
|----------------------|---------|---------------------------------------|-----------|
| • City of Charleston | 2402.68 | Payout for Sick-Leave / Vacation Time | 2-2014 |
| • American LaFrance | 6789.82 | Company Closed, payout of time | 1-27-2014 |
| • Sunlife Assur | 7100.00 | Disability Insurance Settlement | 2-2014 |

These two should be the ones that should have been counted according to the information I was given and to what I set my financial profile goals for 2014.

- | | | | |
|--|-----------|--|---------|
| • American Citadel Guard | 7680.00 | 2014 pay, last day of employment | 11-2014 |
| • Atlantic Coast Fire Trucks | 39,807.71 | The job offered at 45k a year I spoke of | |
| • Totaling for 2014 should have been \$47,487.71 | | | |

The other pay that I received for 2014 was my retirement checks that I was told did not count towards my AFC total.

If I would have been given the correct information in the beginning, I would have taken option B, putting my retirement into deferment until I reach retirement age or my back finally completely gives out. I am

still having major problems with my back as a result of the injury and looking at having to spend 22,000 dollars out of pocket to fix it or at least try and get below a 3 on the 0-10 pain scale to make it tolerable. It currently never is below a 5. I still have to take pain medication daily and every couple months get trigger point injection in my back to keep working.

I would rather have my AFC re-evaluated using my tax information from 2010-2013 to raise my AFC to what I was told it was going to be. When we lost the retirement this past month, it was felt immediately in our house. A total loss of the retirement would devastate our lively hood and financial well being, especially since I do not know how long my back will allow me to keep working.

If raising the AFC is not an option, I would ask that I be given the option to place it in deferment and not have to pay back the \$20,537.80 due to this is truly not my fault. I trusted the H R office and was led astray. We should not be punished for this, especially since I know of 2-3 Chiefs that were given the option of retiring with full pay instead of getting fired for actions that were borderline criminal. They get to collect full retirement pay and benefits for committing very immoral acts and I get punished for what? Being a model employee, breaking my back in 3 places fighting a high-rise apartment fire, fighting like hell and beating the odds to make it back on the job, re-opening 2 discs 6 months later saving a patient who was beaten with baseball bats by 2 men and thrown into a retention pond.

Please remember, I did not want to retire! I asked the chief if there was any job I could do to stay in the department. I love the fire service so much that I took a job that keeps me in touch with it selling fire trucks. Never once was I a malingerer, one that tried to milk the system or take advantage of it. I never even tried to sue or ask for a settlement from the first injury. I just want to be able to work and support my family and see that the 8 ½ years with the U S Marines and the 13 years with the Charleston Fire Department wasn't all for not come true retirement time!

With kind consideration and a plea for help,

Keith E Turner

Keith E. Turner



FINAL AGENCY DETERMINATION

NO. 15-020

In Re Keith E Turner, SSN XXX-XX-5322

This Final Agency Determination is issued in accordance with the South Carolina Retirement Systems Claims Procedures Act set out at S.C. Code Ann. §§ 9-21-10 et seq. (Supp. 2014) and the South Carolina Retirement Systems Claims Procedure (2005). In this matter, Claimant Keith E. Turner ("Claimant") seeks review of the determination by the South Carolina Public Employee Benefit Authority ("PEBA") that he received an overpayment of disability retirement benefits in the amount of \$20,537.80 for 2014.

BACKGROUND

Claimant Keith Turner is a forty-three-year-old retired member of the South Carolina Police Officers' Retirement System ("PORS") and the South Carolina Retirement System ("SCRS"), who retired on a disability retirement allowance from employment as a fire engineer with the City of Charleston on March 9, 2014, as a result of injuries to his back. At the time of his retirement, Claimant had accrued approximately 11 years and 7 months of service credit combined in SCRS and PORS and had earned an average final compensation of \$48,393.89.

Prior to Claimant's retirement, Claimant's employer contacted PEBA in January 2014 for information on how the disability retiree earnings limitation is calculated. In that call, PEBA's customer service representative explained that the disability retiree earnings limitation is calculated as the difference between the retiree's average final compensation and the retiree's annual disability allowance. Claimant subsequently applied for disability retirement benefits on February 7, 2014. Upon approval for those benefits, in a document entitled "Information for Retired Members" attached to the estimated benefits letters mailed to Claimant on May 14, 2014, Claimant was notified that, as a disability retiree:

If you receive disability benefits and return to employment earning less than your Average Final Compensation (AFC), adjusted for inflation, your disability allowance will be reduced to an amount so that your disability benefits plus your earnings equal the amount of your AFC adjusted for inflation. If your



compensation then or anytime thereafter is equal to, or greater than the adjusted AFC, your disability benefits will be discontinued

In a call to PEBA on November 7, 2014, Claimant was informed that the disability retiree earnings limitation was calculated based upon his gross earned income, not net income

By a letter dated February 25, 2015, Claimant was provided with information regarding his disability earnings limitation for 2015, including a calculation of the expected amount of that limitation for the 2015 calendar year based upon the difference between his inflation-adjusted average final compensation and projected disability retirement benefits for the year. Upon receipt of that letter, Claimant contacted PEBA by telephone in several calls on March 2, 2015, to inquire about the calculation of his earnings limitation. During those calls, Claimant explained that he had understood, based upon his conversations with human resources personnel at his former employer and PEBA customer service representatives, that his disability retirement benefits would not be affected so long as his earnings from gainful employment did not exceed his average final compensation. In response to the letter and his calls with PEBA, Claimant also forwarded copies of all of his W-2 and 1099 forms for income he received in 2014 to PEBA for review.

The W-2 and 1099 forms submitted by Claimant reflected that he had income from a number of sources during 2014, including \$7,680.00 from American Citadel Guard, Inc., \$2,402.68 from the City of Charleston, \$6,789.82 from American LaFrance, Inc., \$33,040.55 from the South Carolina State Firefighters' Association, \$39,807.71 from Atlantic Coast Fire Trucks, LLC, and \$7,100.00 from Sun Life Assurance Co., in addition to his disability retirement benefits totaling \$20,537.80 from SCRS and PORS. By a letter dated April 22, 2015, PEBA notified Claimant that, because his income in 2014 exceeded his average final compensation, he was not entitled to any disability retirement benefits for 2014 and the entire \$20,537.80 he had received in disability retirement benefits during the year was an overpayment of benefits that must be repaid.

By a letter received May 12, 2015, Claimant submitted an appeal of the calculation of his overpayment of benefits to PEBA. This Final Agency Determination is issued in response to that request for review.

DISCUSSION

In this matter, Claimant challenges the determination that he was overpaid \$20,537.80 in disability retirement benefits for 2014 and that he must repay that overpayment. In particular, Claimant contends that he should not be required to repay any overpayment of benefits because he

was misinformed by his employer regarding how his disability retiree earnings limitation was calculated. In addition, Claimant further contends that the calculation of his overpayment of benefits should be adjusted to exclude any income paid to him in 2014 prior to his March 9, 2014 retirement date. However, as set forth below, I find that PEBA properly determined that Claimant was overpaid \$20,537.80 in disability retirement benefits for 2014 and that the overpayment must be recouped from Claimant.

The earnings limitation for disability retirees under the South Carolina Police Officers' Retirement System is found in S.C. Code Ann. § 9-11-80(4) (Supp. 2014). That section provides, in relevant part,

If the system certifies that the member's disability has been removed and that he has regained his earning capacity, his disability retirement allowance may be discontinued, or if the disability has been partly removed and his earning capacity regained in part, the disability retirement allowance may be reduced proportionately. The determination of the Board as to any disputed question, after due consideration accorded to the member, is conclusive.

Id. The mechanics of this earnings limitation calculation are set out more specifically in S.C. Code Ann. § 9-1-1580 (Supp. 2014), which provides for the disability retiree earning limitation under the South Carolina Retirement System:

Should the system report and certify to the Board that the disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation and should the Board concur in the report, then the amount of his disability retirement allowance must be reduced to an amount which, together with the amount earnable by him, equals the amount of his average final compensation.

Id., see also S.C. Code Ann. § 9-9-67 (Supp. 2014) (setting out the earnings limitation for disability retirees under the Retirement System for Members of the General Assembly). This section also provides that the average final compensation used in the calculation of this earnings limitation may be adjusted annually to account for inflation. Id. § 9-1-1580. Therefore, under the Retirement Code, a disability retiree may return to gainful employment and earn up to the difference between his average final compensation as adjusted for inflation and the amount of his disability retirement allowance without affecting his disability benefits. However, if a disability retiree's earnings exceed that limitation, the amount of his disability benefit must be reduced so that the sum of his earnings and his disability benefits does not exceed his adjusted average final compensation. Consequently, if a disability retiree returns to gainful employment that pays *more* than his adjusted

average final compensation, he will not be entitled to receive any disability retirement benefits for any year in which his earnings exceed his adjusted average final compensation. Further, any disability retirement benefits paid in excess of the earnings limitation for disability retirees are overpayments of benefits that may be recouped by PEBA. See id. § 9-1-1670(A).

In the instant matter, Claimant's earnings in 2014 exceeded his average final compensation for that year such that any disability retirement benefits paid to him for that year constituted an overpayment of benefits. As Claimant notes in his appeal, the letter notifying Claimant of his overpayment of benefits compared Claimant's income for all of 2014 to his full, annual average final compensation. However, even if this comparison is done based only upon the portion of 2014 after his retirement on March 9, 2014, as Claimant requests, the full amount of the disability benefits paid to him in 2014 was still an overpayment. In particular, according to Claimant's appeal letter, the only income he earned from gainful employment after his March 9, 2014 retirement date was the \$39,807.71 he earned from Atlantic Coast Fire Trucks and the \$7,680.00 he earned from American Citadel Guard, for a total of \$47,487.71 in earnings during the portion of 2014 after his disability retirement. This \$47,487.71 in earnings exceeded Claimant's prorated average final compensation of \$39,378.04 for the portion of 2014 after his disability retirement by \$8,109.67. Accordingly, because he had an earning capacity that equaled or exceeded his average final compensation during 2014, Claimant was not entitled to receive any disability retirement benefits for that year. Therefore, the entire \$20,537.80 in disability retirement benefits paid to Claimant in 2014 after his retirement on March 9, 2014, was an overpayment of benefits that must be collected by PEBA.

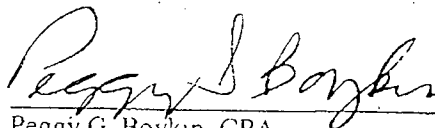
Unfortunately, Claimant's contention that his employer misinformed him regarding how his disability retiree earnings limitation was calculated does not affect this determination.¹ As described above, by statute, any amount of a disability retirement allowance paid to a disability retiree that, when added to his wages earned, exceeds his average final compensation constitutes an overpayment of benefits. Any such overpayment of disability retirement benefits is a benefit

¹ It should be noted that the record does not reflect that PEBA provided Claimant or his employer with any incorrect information concerning the calculation of his disability retiree earnings limitation. Specifically, in both the call with Claimant's employer in January 2014 and in the Information for Retired Members document sent to Claimant upon approval of his retirement, PEBA clearly explained that Claimant's earnings limitation is the difference between his average final compensation and his disability retirement benefits.

the disability retiree is not entitled to retain See, e.g., State ex rel. Pub. Employees Ret. Ass'n v. Longacre, 33 P 3d 906, 911 (N.M. Ct. App. 2001) ("To state the obvious, retirees have no legal right to receive benefit overpayments"), rev'd on other grounds, 59 P 3d 500 (2002) (N.M.). Furthermore, as the trustee of the funds and assets of SCRS and PORS, PLBA not only has the right, but also the duty, to protect the corpus of the trust by recovering any such overpayments of benefits. See S.C. Code Ann. § 9-1-1310(A), (C) (Supp. 2014), see also, e.g., City of New York v. Ret. Bd. of Teachers' Ret. Sys., 455 N.Y.S.2d 703, 705 (Sup. Ct. 1982), Anderson v. Pub. Employees Ret. Bd., 895 P.2d 1377, 1381-82 (Or. Ct. App. 1995). Thus, while PEBA regrets that Claimant may not have been given satisfactory advice regarding his disability retiree earnings limitation by his employer, it cannot ignore the statutory limitations set out in Sections 9-1-1580 and 9-11-80(4) regarding the amount of retirement allowance a disability retiree is entitled to receive and allow Claimant to retain an overpayment of benefits from the trust fund to which he is not entitled.

CONCLUSION

For the reasons set forth above, I find that PEBA properly determined that Claimant was overpaid \$20,537.80 in disability retirement benefits in 2014 and that the overpayment may be recouped from Claimant.



Peggy G. Boykin, CPA
Executive Director

November 30 2015
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Appellate Case No. 2019-000895

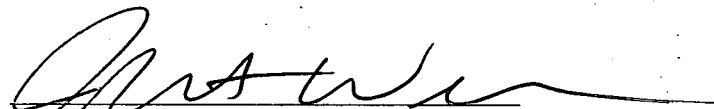
Keith E. Turner, ...Respondent,

v.

South Carolina Public Employee Benefit Authority,
South Carolina Retirement Systems,.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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December 16, 2019

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