

May 16, 2012

To: Fresno County Employees Retirement Association and Retirement
Assistant Administrator Becky Van Wyk

From: Sandra Hernandez, Retiree

To Whom It May Concern, I retired in June, 2010. At the time of my retirement, I was not aware or I may have inadvertently overlooked my option to access the Social Security Advancement option. However at this time, I am in need of receiving these funds and humbly requests that you consider allowing me to do so. I have been living abroad since my retirement and it would be of great assistance to me. Please consider this request and if you have any questions or concerns, do not hesitate to contact me at [REDACTED]

Sandra Hernandez

Sandra Hernandez

cc: Eulalio Gomez, chair

Becky,

Frankie has met with Ms. Hernandez & presented calculations. She wants her request to be presented to the Board. See Frankie's notes, attached.

ms

5/24/12

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Fresno County Employees
Retirement Association

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July 9, 2012

Board of Retirement
Fresno County Employees' Retirement
Association
1111 H Street
Fresno, CA 93721

Re: Member Sandra Hernandez's Request For TAO After Retirement

To the Board of Retirement:

Member Sandra Hernandez retired in June 2010. She has recently requested that FCERA staff grant her a Temporary Annuity Option ("TAO"), even though she did not timely elect a TAO before retirement.

CERL section 31810 provides:

A member who retires for service prior to the age of becoming eligible for retirement payments under the federal system and who at the time of retiring is fully insured under the federal system, may, with the approval of the Retirement Board, elect to have his retirement allowance increased prior to such eligible age and reduced after such age by amounts which have equivalent actuarial values. This modification is for the purpose of coordinating a member's retirement allowance with benefits receivable from the federal system.

It is our understanding that the Board historically has required a member to make an election to receive a TAO prior to retirement. Although section 31810 does not expressly state this point (and there are no published cases that cite section 31810), we believe that the Board's historical reading of section 31810 is reasonable. We believe that the purpose of the TAO is to temporarily increase retirement allowances, starting with the first one. If the election is not made before the first allowance check is paid, it cannot be increased accordingly. Further, a contrary reading of section 31810 would be administratively burdensome for FCERA staff and would allow members to "self-select" based on post-retirement developments (i.e., if they become sick and therefore decide to receive as much as possible as soon as possible). The FCERA Member Handbook explains that members should request the necessary information from the Social Security Administration at least six months before retirement and that the actuarial calculations are based on the member's age at retirement. Finally, section 31810 requires the Board's approval, which we believe provides authority to the Board to implement reasonable and uniformly applied conditions, such as requiring a member to elect a TAO prior to retirement.

Based on its historical application of section 31810, FCERA has included the discussion of the TAO as part of the retirement counseling process. The applicable "FCERA Checklist for Service Retirement Counseling Session," which is signed by Ms. Hernandez, indicates that the retirement counselor discussed the TAO with Ms. Hernandez. There is a notation of "Yes/No" next to that item and another

notation that states "visit SSA to get current statement." It is our understanding from the retirement counselor that these notes indicate that Ms. Hernandez was advised of the TAO option, but expressed uncertainty at the time of the counseling session as to whether she wanted to elect a TAO.

Pursuant to the Board's Policy Regarding Administrative Proceedings And Appeals To The Board ("Hearings Policy"), FCERA staff has tentatively denied Ms. Hernandez's request to elect a TAO, since she did not make that election prior to retirement. Under the Hearings Policy, however, Ms. Hernandez has a right to appeal that denial to the Board.

The question before the Board at this stage is whether Ms. Hernandez was adequately advised of her TAO rights before she retired. As explained in *Hittle v. Santa Barbara County Employees Retirement Assn.* (1985) 39 Cal.3d 374, 389-90, a member's waiver of right "is not legally effective unless it appears that the party executing it had been fully informed of the existence of that right, its meaning, the effect of the 'waiver' presented to him, and his full understanding of the explanation. The first requirement of any waiver of statutory or constitutional rights, of course, is that it be knowingly and intelligently made."

Thus, if the Board determines that FCERA staff did not adequately inform Ms. Hernandez of her right to elect a TAO prior to her retirement and Ms. Hernandez did not unreasonably delay in seeking a TAO, then we believe the Board should grant her request to elect a TAO. On the other hand, if the Board finds that FCERA staff did adequately inform Ms. Hernandez of her right to elect a TAO prior to her retirement and/or Ms. Hernandez unreasonably delayed in seeking a TAO, then we see no basis to deviate from the Board's ordinary policy of allowing such an election only prior to retirement.

At this stage, we recommend that the Board first determine whether Ms. Hernandez is contending that she was not adequately advised of her right to elect a TAO prior to retirement. If she does not make that contention, then there are no facts to resolve and we believe the Board should deny her request without further proceedings. See Hearings Policy Section (C)(2)(B). If, however, Ms. Hernandez contends that she was not adequately advised of her right to elect a TAO, then we believe it would be appropriate for the Board to establish a process for the Board to make factual determinations regarding the adequacy of the TAO information that FCERA staff provided to Ms. Hernandez prior to her retirement, and whether she unreasonably delayed seeking a TAO. See Hearings Policy Section (C)(2)(C).

We understand that Ms. Hernandez will attend the July 18, 2012 meeting to make her case to the Board on this subject. We will also be present at the July 18, 2012 meeting to further advise the Board, as to any necessary next steps in this process.

Very truly yours,


Jeffrey R. Meeger