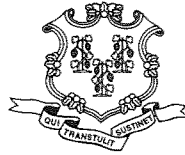


STATE OF CONNECTICUT



AUDITORS OF PUBLIC ACCOUNTS

STATE CAPITOL

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JOHN C. GERAGOSIAN

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June 17, 2015

Governor Dannel P. Malloy
State Capitol
Hartford, Connecticut

Dear Governor Malloy:

Our office received a whistleblower complaint concerning the Office of the State Comptroller's Retirement Services Division, in accordance with Section 4-61dd of the Connecticut General Statutes. During the course of reviewing the complaint, we noted certain matters regarding the administration of state statutes governing the State Employees Retirement System (SERS), specifically those statutes applicable to disability retirement. We consider these matters to constitute a potential breakdown in the safekeeping of SERS resources. In accordance with Section 2-90 of the Connecticut General Statutes, we are reporting these matters to you.

We have the following concerns regarding these matters:

- The division stopped the statutory twenty-four month reviews to determine continued entitlement of disability retirees and did not apply the most recent Medical Examining Board's decisions regarding continued entitlement. These actions could have resulted in millions of dollars of payments to retirees who were no longer entitled to a disability retirement.
- The division failed to follow through completely on the results of investigations by its former legal investigator, which may have resulted in significant amounts paid to retirees who were no longer eligible to receive disability retirement benefits.
- The division failed to investigate the disability status of retirees who did not respond to the annual division survey, which may have resulted in significant amounts paid to retirees who were no longer eligible to receive disability retirement benefits.

- The division currently applies a methodology in calculating the annual benefit for disability retirees who work based on its interpretation of a 1989 arbitration award that essentially eliminates the statutory offset for outside salary or wages. This may have resulted in millions of dollars in disability retirement payments that did not have to be made.

Disability retirement payments will continue under these conditions, unless procedural changes are made for the division to follow in administering disability retirement statutes, or the statutes are clarified so that the division can operate under easily identified requirements.

Twenty-Four Month Statutory Reviews for Continued Entitlement

The Connecticut General Statutes regarding disability retirement state that a SERS member is disabled for the first twenty-four months if he or she is permanently unable to continue rendering the service for which he or she has been employed; disability retirement continues thereafter only if such member is totally disabled for any suitable and comparable job. Although the statutory standard for continued eligibility after twenty-four months requires the member to be totally disabled for any suitable and comparable job, in practice, until October 2012, the standard applied was permanent inability to continue rendering the service for which the retiree had been employed, also termed the own occupation standard. The division initially put the twenty-four month reviews on hold in November 2012, when it began a review of its policies and procedures regarding disability retirements. The review resulted in revised procedures that changed the continued entitlement eligibility standard from the own occupation standard to the statutory suitable and comparable standard.

The division established the definition of a suitable and comparable job as follows:

“Suitable and comparable” can refer to any job that a disability retiree is capable of performing considering his age, education, physical limitations, vocational skill, and experience. “Comparable” generally refers to the ability to earn wages at pre-injury levels: that is, whether the “suitable” occupation has the potential to pay the disability retiree at a comparable (not identical) wage level.

The Medical Examining Board (MEB) decides both the initial disability retirement status and continued entitlement after twenty-four months. The MEB meetings are attended by MEB doctors, division staff, and disability retirees. The first two MEB meetings that included the division’s new definition of suitable and comparable were held on September 27, 2013 and October 11, 2013. The new definition of suitable and comparable applied at those meetings resulted in a significant increase in the denial of benefits when compared to those denied under the own occupation standard. Our review disclosed that the MEB denied benefits to 24 out of 50 disability retirees whose cases were reviewed applying the division’s new definition of a suitable and comparable job. In contrast, during the period of February 2011 through October 2012, under the prior definition of own occupation, only six out of 272 retirees were denied. The continued entitlement meetings were stopped by the division after the October 11, 2013 meeting and have not resumed. Our office was informed that the entitlement reviews were stopped because the determination of the definition of the suitable and comparable standard to be applied

is a collective bargaining issue and the Office of the State Comptroller feels it would be irresponsible to move forward and remove benefits without knowing that the collective bargaining issue has been settled. The State Comptroller has recently attempted to expedite the settlement of this matter by informing the state's labor negotiators (in a May 18, 2015 letter) of his intent to bring this matter to the full State Employees Retirement Commission at its June 2015 meeting scheduled for June 18th.

The failure to conduct twenty-four month entitlement reviews for such an extended period has most likely resulted in considerable payments in disability retirement benefits to retirees who were no longer eligible to receive them. This is particularly true if the division's new definition of a suitable and comparable job is applied.

Our review disclosed that the division did not process the decisions made at the September 27 and October 11, 2013 MEB meetings, pending the resolution of the collective bargaining issue; thus the benefits for the retirees that were denied at those meetings were allowed to continue. At the September 27th meeting, nine retirees were denied. Disability retirement payments made to them for the period from October 31, 2013 through April 30, 2015, totaled \$417,307.

At the October 11th meeting, 15 retirees were denied. However, due to an administrative oversight, they were not notified of the scheduled meeting, and thus were not present. The benefits for any retiree who was denied at that meeting could not be taken away until they were given the proper opportunity to respond to the denial. They were supposed to be given that opportunity at a meeting that was to be scheduled in December 2013. The division never scheduled that meeting. As of April 30, 2015, they were still collecting disability retirement benefits, which for the period from January 31, 2014 through April 30, 2015, totaled \$638,167. The benefits were allowed to continue because of the question of whether the proper interpretation of a suitable and comparable job was applied.

There are currently over 500 retirees who have been receiving disability retirement benefits for over two years and have not had a 24-month review for continued entitlement, including 164 retirees who have been receiving such benefits for over four years. Two retirees have been receiving benefits for over eight years without a 24-month review.

Retirement Division Investigation Results

Our review of the whistleblower complaint disclosed that the division's former legal investigator cited numerous retirees receiving disability retirement and health benefits who had earnings from working and whose disability statuses were not pursued further. The division did not attempt to determine whether their retirement benefits should be discontinued, mainly due to whether the job they have meets the suitable and comparable standard. We note that there are statutes that require disability retirement income to end when and if the disability ends. It is clear that those in question are not totally disabled from working, thus it would appear reasonable to pursue such cases to the point of determining whether the retirees are no longer disabled. The table below shows examples of some of the retirees with the highest level of outside income, that the division's former legal investigator cited as gainfully employed, and whose disability retirement benefits continued to be provided without question. We intentionally omitted the retiree names.

**Disability Retirees with Significant Outside Earnings
Whose Disability Status have not been Reevaluated**

Year	Years of Service at Retirement	Yearly Salary at Retirement	Yearly Outside Earnings	CT State Disability Yearly Pension
2013	13yrs-4mos	\$47,284.67	\$183,446.00	\$33,479.76
2012	7yrs-3mos	\$43,566.12	\$175,220.00	\$28,678.80
2013	3yrs-1mos	\$44,730.44	\$146,329.00	\$33,443.40
2012	9yrs-11mos	\$49,753.13	\$137,506.00	\$48,394.56
2012	16yrs-3mos	\$182,133.04	\$121,048.00	\$105,569.52
2013	15yrs-9mos	\$37,670.62	\$120,819.22	\$37,485.24
2013	12yrs-5mos	\$39,018.54	\$111,689.52	\$29,112.12
2013	7yrs-1mos	\$33,607.18	\$104,700.00	\$32,884.80
2012	12yrs-4mos	\$74,129.01	\$104,397.00	\$37,418.88
2013	14yrs-1mos	\$44,255.73	\$100,308.00	\$31,392.48

The information pertaining to outside yearly earnings was obtained from annual disability retirement surveys, which the State Employees Retirement Commission authorizes the division to send to each disability retiree regarding health and work status. While it is noted that there were some disability retirements discontinued as a result of reviews based on survey information or information from other sources, most of those identified by the division's former legal investigator were not pursued for further action. The failure of the division to follow through completely on the disability status of retirees who report outside income from working may have resulted in payments to disability retirees who are no longer eligible to receive them. The amounts of those payments could be significant. Because investigations were discontinued prior to determining whether the retirees' disability did in fact end, disability fraud could have occurred and gone undetected.

We noted one retiree, who was cited by the division's former investigator in a summary evaluation report dated August 14, 2014, with a base salary of \$44,730 when initially approved for a disability retirement, which was effective in 2001. The report indicates that the MEB conducted its 24-month review at a 2005 meeting, and determined the retiree was still entitled to a disability retirement. The summary report indicates that the retiree has been working since 2001, and had reported earnings in the annual surveys sent to the division of \$792,789 in the 2008 survey; \$521,452 in the 2009 survey; \$651,123 in the 2010 survey; and considerable amounts in the 2011, 2012 and 2013 surveys. The report also indicates that the retiree continues to receive full disability retirement benefits. In light of this retiree's significant outside earnings, it would have been reasonable to reevaluate their disability status.

Non-Responders to the Annual Surveys

We were informed that there are hundreds of disability retirees who do not respond to the annual surveys. We were told that those who do not respond after a second request are not pursued further. We reviewed the division's lists of retirees who did not respond to the surveys and found

that between 2012 and 2014, the number of retirees who did not respond increased each year: in 2012, there were 171 non-responders; in 2013, there were 237; and in 2014, there were 266. Reviewing the disability status of retirees who do not respond to the annual surveys should be a priority in determining whether disability retirement benefits should continue. We reviewed selected retirees who did not respond to the annual surveys and found several who earned outside income and continued to receive disability retirement benefits. The failure of the division to follow through completely on the disability status of these retirees may result in continued payments to disability retirees who are no longer entitled to receive them, and the amounts of those payments could be significant. Statutory changes, such as allowing for the assessment of penalties or discontinuance of benefits until a response is received, should be considered.

Offsets of Disability Retirement Benefits for Earnings from Outside Employment

The division has not reduced the benefit amounts of disability retirees who have significant outside earned salary or wages. While such retirees may be eligible for continued disability benefits, there is a question of whether those benefits should be subject to a statutory reduction because of those outside earnings. Those statutory reductions would have resulted in millions of dollars less in disability retirement payments. These payments will continue unless there is a change in the division's calculation methodology.

Our review disclosed that the methodology the division uses essentially eliminates the statutory offset provision from the calculations that are done to determine the annual disability payments to be made to retirees who also have outside earned salary or wages. We were told that the methodology the division follows resulted from the pension arbitration award that was signed September 8, 1989 (The Interest Arbitration award between the State of Connecticut and SEBAC regarding the Connecticut State Employees Retirement System), and that this methodology has been applied since. The arbitration award, specifically *Issue #25: Guarantee minimum disability coverage*, created a minimum floor of sixty-percent of the retiree's salary at retirement, including Social Security and Workers' Compensation payments, when a person goes out on disability retirement. At the time, the actuaries agreed the cost would be \$325,000.

In reviewing Issue #25 of the award, it appears the minimum floor amount was created to protect retirees who go out on a disability retirement with a minimal amount of service time and do not earn outside salary or wages. Those retirees would be unaffected by the statutes applicable to disability retirees who do earn outside salary or wages. There was nothing in the discussion information included in the arbitration award to indicate that there was any intention to eliminate the statutory offset provisions for disability retirees who earn outside salary or wages. Furthermore, the minimal cost cited by the arbitrator suggests that the elimination of the statutory offsets for retirees who earn outside salary or wages was not intended. The \$325,000 cost cited in the award appears to reflect only the increase in the disability retirement benefits that would have been paid prior to the arbitration award, as compared to the minimum amount to be paid under the arbitration award. Also, there is a statutory maximum benefit, which appears to include earnings from outside earned salary or wages; however, the division's calculations do not consider those outside earnings as part of the benefit. Instead, the division applies any outside earned salary or wages as a reduction to the benefit amount it should pay, which almost

always results in the minimum sixty-percent floor amount being paid, since that is what the division considers to be the greater benefit.

It is noted that the statutes concerning this matter are complex, and when combined with the arbitration award language, which has not been codified, are sometimes contradicting and unclear. It is also noted that under current law, when an agreement is in conflict with state statutes, the provisions of the agreement supersede the statute (CGS 5-278(e)), and the current agreement's provisions are in place until a subsequent agreement is negotiated. Although the division's calculation methodology may be acceptable, we believe it is important to disclose the additional costs that result from its application. Our review of the work that was done by the division's former legal investigator covering the 2012 and 2013 years disclosed 57 retirees who had considerable outside earnings, none of whom had their benefits offset as a result of those earnings. Because the offsets were not applied, it is estimated that an additional \$1,436,767 was paid to those 57 retirees.

Conclusion

Our review of the whistleblower complaint is continuing and will result in a report to the Office of the Attorney General, as required under Section 4-61dd of the General Statutes.

Meanwhile, we recommend that the items listed below be considered.

- The General Statutes should be amended to provide a clear definition of a suitable and comparable job that is to be applied in determining continued entitlement to disability retirement benefits. The Office of the State Comptroller has deemed this to be a collective bargaining issue, and has stopped the continued entitlement reviews pending an agreed-upon definition to apply to these cases. It is not known when those reviews will resume. The cost of delaying those reviews has most likely resulted in disability benefits being provided to retirees who were not entitled to them, and the amounts could be significant. We were told that the Office of the State Comptroller has been in frequent contact with the negotiating parties, but no conclusive results have been achieved.
- The statutes relating to offsets of outside earned salary or wages should be reviewed and clarified. The methodology the division applies in its disability retirement benefit calculations is based on an interpretation of statutory language included in the 1989 arbitration award that was never codified. This methodology essentially eliminates the use of any offsets of outside earned salary or wages to reduce the benefit payments SERS makes. The division's interpretation may have resulted in millions of dollars in payments from SERS which would not have been required had the offsets been applied. Because the division has been applying this methodology consistently since the arbitration award was approved, specific statutory changes may be necessary.
- Enact statutory language that permits the retirement commission to refer suspected instances of disability retirement fraud to the Office of the Chief State's Attorney for investigation.

- Enact statutory language regarding the annual disability retirement surveys that allow the division to discontinue benefit payments to a disability retiree who does not respond to the survey, and resume them once a properly completed survey is received.
- Enact statutory language that allows for the division to order Independent Medical Examinations (IMEs) as it deems appropriate. IMEs should be required for SERS disability retirees who do not respond to the annual survey requests. The MEB should be required to review the matter within a minimal time period after the results of the IMEs are obtained.
- Enact statutory language that requires formal regulations be adopted that are applicable to administering the SERS disability statutes. Such regulations should provide straightforward guidance for the retirement division to conduct its business.

We stand ready to offer any further information you may require regarding these issues.

Sincerely,



John C. Geragosian
Auditor of Public Accounts



Robert M. Ward
Auditor of Public Accounts

JCG;RMW:dm

cc: Comptroller Kevin Lembo
Peter L. Adomeit, Chair, State Employees Retirement Commission
Attorney General George C. Jepsen
Treasurer Denise L. Nappier
Clerk of the Senate
Clerk of the House
Legislative Program Review and Investigations Committee
Stephen R. Eckels, Deputy State Auditor