

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LATOYA A. HAYWARD,)
)
 Plaintiff,)
)
 v.) No.
)
 COUNTY EMPLOYEES' AND OFFICERS') Judge
 ANNUITY AND BENEFIT FUND OF)
 COOK COUNTY, and COUNTY OF COOK,)
 ILLINOIS,)

Defendants.

COMPLAINT

Plaintiff, LaToya A. Hayward (“Hayward”), by Gary S. Shapiro, United States Attorney for the Northern District of Illinois, for her civil action against Defendants County Employees’ Annuity and Benefit Fund of Cook County (“Cook County Pension Fund”) and County of Cook, Illinois (“Cook County”), alleges as follows:

1. This civil action is brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301, *et seq.* (“USERRA” or “Act”).

Jurisdiction and Venue

2. This court has jurisdiction over the subject matter of this action pursuant to 38 U.S.C. § 4323(b).

3. Venue is proper in this district under 38 U.S.C. § 4323(c)(2) and 28 U.S.C. § 1391(b)(2). Defendants Cook County Pension Fund and Cook County (collectively “Defendants”) maintain places of business in this district, and a substantial part of the events giving rise to the claims in this action occurred in this district.

Parties

4. Hayward resides in Chicago, Illinois, which is within the jurisdiction of this court.

5. The Cook County Pension Fund is a defined benefit plan created by an act of the Illinois State Legislature to provide retirement and disability benefits to qualified employees of Cook County. The Retirement Board of the Cook County Pension Fund administers the benefits provided. The Cook County Pension Fund is a retirement savings plan authorized by 26 U.S.C. § 401(a) that provides benefits to those that meet the eligibility requirements.

6. Cook County is a municipal corporation, duly incorporated under the laws of the State of Illinois.

Factual Allegations

7. Hayward joined the United States Army Reserve on April 1, 1992, training as an administrative specialist. Hayward was commissioned as an officer on September 11, 2001, and she currently holds the rank of captain.

8. In November 2005, Hayward was hired as a nurse educator at John H. Stroger, Jr. Hospital (“Stroger Hospital”), which is owned and operated by Cook County.

9. One of the benefits made available to Hayward as an employee of Stroger Hospital was participation in the Cook County Pension Fund. In order to participate, employees must make a mandatory 8 ½% contribution per paycheck on a pre-tax basis. The employer makes a 13% contribution to the fund on behalf of the employee. Upon retirement, a qualified employee receives an annuity for life based on the employee’s salary in the years prior to retirement.

10. Hayward received orders to report for active duty in the United States Army on June 16, 2009, effective on or about July 27, 2009. Her initial orders covered one year of active

duty, which was later extended by an additional year. In advance of her tour of duty, Hayward gave notice of her upcoming deployment to management at Stroger Hospital.

11. During Hayward's period of active service, she was mobilized as a nurse case manager at Walter Reed Hospital as part of the Warrior Transition Brigade.

12. Hayward was honorably released from active duty on or about July 26, 2011.

13. Hayward promptly sought reemployment with Stroger Hospital, and Stroger Hospital timely reinstated her on or about October 24, 2011.

14. Prior to returning to work, Hayward contacted the Cook County Pension Fund to inquire as to the process to pay into her pension for the two years and ninety days of her active military service. Hayward was told to mail in her DD214 form and a letter stating her return date.

15. Hayward mailed the requested documents to the Cook County Pension Fund and received a phone call from the Cook County Pension Fund notifying her that she was not eligible to pay into her pension for the 90-day period between her release from active duty and her application for reemployment, and that the employee contributions for the two-year period of her active military service would be subject to a 3% interest fee. This phone call was followed by a letter dated November 29, 2011, from the Director of Benefits for the Cook County Pension Fund notifying and confirming to Hayward that she would be allowed to make up contributions to the pension fund only for the period of her military service (July 27, 2009, through July 26, 2011); that the payment for this period was \$13,638.28, which represented 8 ½% of the salary Hayward would have earned while on military leave plus a 3% interest fee; and that this amount would accrue at a rate of 3% per annum until payment is made in full.

16. On March 14, 2012, Hayward filed a USERRA claim with the Veterans' Employment and Training Service requesting assistance to exercise her rights under USERRA as it relates to the pension benefits of a uniformed service member.

17. The Department of Labor's Solicitor's office contacted the Cook County Pension Fund on or about May 29, 2012, informing it that Hayward's allegations were meritorious, and the matter was referred to the Department of Justice at the request of Hayward.

Claim for Relief

18. Hayward incorporates the allegations set forth in paragraphs 1 through 17.

19. Under USERRA, defendants were required to treat Hayward as not having incurred a break in service by reason of her military leave with respect to Cook County's pension fund. USERRA further mandates that Hayward's pension benefits continued to accrue while she was on military service, and entitles her to make "makeup" contributions upon reemployment for payments that were missed during her military service and receive the employer's matching contribution.

20. USERRA expressly states that an employee is not required or permitted to make up a missed contribution in an amount that exceeds that amount the servicemember would have contributed had he or she remained continuously employed. USERRA's implementing regulations expressly state that this prohibition forbids charging a servicemember interest. 20 CFR § 1002.263.

21. Defendants violated USERRA by requiring Hayward to pay a 3 % interest fee if she wished to pay into her pension for her period of her military service.

22. Defendants further violated USERRA by refusing to allow Hayward to make "makeup" contributions for the 90 days period following her discharge from active service.

Under USERRA, Hayward had up to 90 days to seek reemployment upon her release from active duty, and USERRA mandates that this time be treated as continuous service with Cook County for purposes of determining her participation, vesting, and accrual of pension benefits.

Prayer for Relief

WHEREFORE, Hayward prays that this court grant the following relief:

A. Declare that defendants' failure or refusal to properly allow Hayward to pay into her pension without a 3% interest fee and for the entire period of her service was unlawful and in violation of USERRA;

B. Order defendants to comply fully with the provisions of USERRA by requiring Cook County Pension Fund and Cook County to allow Hayward to pay into her pension for the entire period of her military service, including the 90 period between her military discharge and application for reemployment, and without a 3% interest fee;

C. Award Hayward costs and prejudgment interest on the amount of lost pension benefits found due;

D. Enjoin defendants Cook County Pension Fund and Cook County from taking any action in violation of USERRA; and

E. Grant Hayward such additional relief as may be just and proper, together with her costs in this action.

Date: April 17, 2013

Respectfully submitted,

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