UFCW Unions and Participating Employers Pension Fund

Appeals
First Quarter 2022

Pension			Employer	Union
P22/107-8238	Disability Pension Benefit & Recalculation of Credit	1-2		

NAME: **SS#:**

United Food and Commercial Workers Unions and Participating Employers Pension Fund

EMPLOYER:	Magruder	**LOCAL:**	400
DATE OF HIRE:	September 10, 1998	**STATUS:**	**Employment in a Union Job Classification Ended, March 1, 2008**

ISSUE: Disability Pension Benefit and Recalculation of Credit #P22/107-8238

FUND RULE:

"**Article II - Participation**

Section 2.4. Except as provided under Section 2.3, a Participant shall cease to be a Participant: [...]

(b) Upon termination of Covered Employment or discharge or resignation or upon failure to return to work at the end of any period of layoff or leave of absence that the Employer has granted the Participant in accordance with the Collective Bargaining Agreement, except as provided herein, provided that a Participant shall continue to be a Participant until he shall incur a Break in Service Year. [...]"

(UFCW Unions and Participating Employers Pension Plan Document, As Amended and Restated, Effective January 1, 2014)

"**Article IV - Pension Benefits**

Section 4.6. Effective January 1, 1999, for Employees who earn an Hour of Service after that date, each Participant who accrued five (5) years of Vesting Service upon termination of employment shall be eligible for a Deferred Vested Pension to commence at age sixty-five (65) or upon application, whichever date is later. The amount of this Deferred Vested Retirement Pension shall be equal to his Accrued Monthly Pension as of the date he ceased to be a Participant. [...]

Section 4.7. Each Participant who has ***at least ten (10) years of Credited Service*** and has furnished evidence that, ***prior to his termination of Covered Employment, he was Totally and Permanently Disabled, as defined in Section 4.8***, shall be eligible for a Disability Pension. His Disability Retirement Date shall be the first day of the sixth (6th) calendar month following the calendar month in which he became disabled, provided he has met all of the required conditions for receiving a Disability Pension, but in no event prior to the time that income replacement benefits under the Health and Welfare provision of the applicable Collective Bargaining Agreement have ended. [...]

Section 4.8. Total and Permanent Disability for the purpose of this Plan means total disability as a result of bodily injury or disease such that the Participant is prevented thereby from engaging in any occupation or employment and with respect to which it appears probable that such disability will be permanent and continuous during the remainder of the Participant's lifetime. ***The Trustees shall determine the existence of Total and Permanent Disability solely on the Participant's qualification or nonqualification for a disability income benefit under the Federal Social Security Act, as of the effective date of his disability award from Social Security***."

(UFCW Unions and Participating Employers Pension Plan Document, As Amended and Restated, Effective January 1, 2014) (emphasis added)

SUMMARY: Appeal Received: February 4, 2022

The **participant** is appealing the denial of a Disability Pension benefit, and the calculation of her Credited Service during her period of employment with Magruder. The participant states in summary that she worked at Magruder from September 1998 until they went out of business permanently in January 2013, and that it is false information that her employment terminated in 2008. The participant further states that she was employed by Safeway in September 2013 (in a job classification covered under the Bakers Union & FELRA Pension Fund), and remained there until she was awarded Social Security Disability benefits effective April 2017. Lastly, the participant states that she has more than 10 years of Vesting Service, by her calculation.

Fund records indicate that the participant was hired by Magruder on September 10, 1998 and her Covered Employment in a Union job classification ended effective March 1, 2008. The Fund office did not receive any pension contributions on behalf of the participant after February 2008. The participant accrued a total of nine (9.0) years of Credited Service and nine (9.0) years of Vesting Service during this period. It was noted that the participant did not earn any Credited or Vesting Service for the year 2008 because she did not work the minimum number of hours in that calendar year, in Covered Employment, to earn any credit. The Fund office mailed a letter to the participant on January 5, 2012, advising in part, that it had been notified that her Covered Employment terminated and she would be eligible to collect a Deferred Vested Pension benefit payable at age 65. That letter further advised the participant of her Credited and Vesting Service calculation as of that time. Note: Magruder withdrew from the UFCW Unions and Participating Employers Pension Fund as of January 17, 2013.

The Fund office received a copy of the participant's Social Security Administration Notice of Award on June 19, 2017, dated March 13, 2017, indicating that the Social Security Administration found her to be disabled under their rules on November 1, 2016, and she was awarded monthly disability benefits beginning April 2017. The participant indicated at that time that she was requesting retirement benefits through the Fund.

After a review of her file, it was noted that the participant's employment with a UFCW Unions and Participating Employers Pension Fund Contributing Employer had terminated prior to November 1, 2016. The Fund office mailed a letter to the participant on June 21, 2017, advising that she was not eligible for a Disability Pension benefit under the UFCW Unions and Participating Employers Pension Fund because she did not qualify for a disability income benefit under the Federal Social Security Act prior to the termination of her Covered Employment with a UFCW Unions and Participating Employers Pension Fund Contributing Employer. That letter further reminded the participant that she would be eligible to collect a Deferred Vested Pension benefit at age 65.

Four years later, the Fund office received a completed pension application from the participant on October 8, 2021, indicating that she was applying for a Disability Pension benefit (at age 60). A review of the participant's Union enrollment record with UFCW Local 400 at that time did not support that the participant was a member of UFCW Local 400 between 1998 and 2013. The Fund office mailed a letter to the participant on January 27, 2022, reiterating that a Disability Pension benefit was denied because she did not qualify for a disability income benefit under the Federal Social Security Act prior to the termination of her Covered Employment under the UFCW Unions and Participating Employers Pension Fund.

Request #1: Allowance of a Disability Pension Benefit

ACTION: **Approved** ☐ **Denied** ☐ **Tabled** ☐

Request #2: Recalculation of Credited and Vesting Service to Include the Period from March 2008 through January 2013

ACTION: **Approved** ☐ **Denied** ☐ **Tabled** ☐

COMMENTS: