

STATE OF NORTH CAROLINA  
COUNTY OF FORSYTH

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
18 DST 07704

Ritchie Darnell Longworth Petitioner,  v.  State Treasurer of North Carolina Retirement Systems Division Respondent.	<b>FINAL DECISION</b>
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The above-captioned case was heard before the Honorable J. Randall May, Administrative Law Judge, on June 25, 2019, in High Point, North Carolina.

**APPEARANCES**

**For Petitioner:** Robert M. Elliot  
Elliot Morgan Parsonage, PLLC  
426 Old Salem Rd.  
Winston-Salem, N.C. 27101

**For Respondent:** Katherine A. Murphy  
Special Deputy Attorney General  
N.C. Department of Justice  
P.O. Box 629  
Raleigh, N.C. 27602

**EXHIBITS**

**Admitted for Petitioner:**

<u>Exhibit No.</u>	<u>Date</u>	<u>Document</u>
1	11/20/85	Application for membership in Retirement Fund
2	various	High Point Police Department records
4	11/20/85	Application for membership in Retirement Fund
5	none	Excerpt from statute book; LEO overview
6	11/23/13	Service Audit Report

7	04/06/09	Service Audit Report
8	01/20/86	Memorandum to The File (Active)
9	none	Special annuity accounts
10	09/02/99	Notice of Enrollment
11	07/14/99	Notice of Enrollment
12	none	Longworth Account
13	02/23/99	Local Refund Worksheet
15	none	Calculations
20	various	Respondent's discovery production
25	12/19/17	Affidavit of Sally Richardson

**Admitted for Respondent:**

<u>Exhibit No.</u>	<u>Date</u>	<u>Document</u>
3	11/20/85	Enrollment application forms
4	various	Pension contribution records
5	various	Individual 401k funds; BB&T statement
7	various	Retirement benefit (pension) from TSERS
8	various	Retirement benefit (pension) from LGERS
9	01/24/14	Transfer of annuity contributions for additional payment
10	02/07/14	Estimated benefit based on annuity contribution transfer
11	various	Correspondence re: estimated payment
12	03/10/14	Letter re: processing application for transfer

## WITNESSES

**Called by Petitioner:**

Ritchie Longworth  
Thomas Gene Causey  
Sally Richardson

**Called by Respondent:**

Thomas Gene Causey

## ISSUE

Whether Petitioner proved that Respondent erred in its determination that (1) no contributions had been made on Petitioner's behalf to a Law Enforcement Officers' Retirement System ("LEORS") Special Annuity Account prior to January 1, 1986, and (2) therefore, Petitioner was not entitled to application of the "LEORS factors."

**BASED ON** careful consideration of the sworn testimony of witnesses presented at the hearing; documents received and admitted into evidence; and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making these findings, the undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the passage of time; the demeanor of the witness; any interest, bias or prejudice the witness may have; the opportunity of the witness to see, hear, know and remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether such testimony is consistent with all other believable evidence in the case.

## BACKGROUND AND UNDISPUTED FACTS

1. Petitioner, Ritchie Darnell Longworth ("Petitioner" or "Mr. Longworth"), retired as a law enforcement officer effective February 1, 2014. T. p. 43; R. Ex. 8. Mr. Longworth had creditable service both with local government employers and with a State employer, so he was eligible to receive benefits from both the Local Governmental Employees' Retirement System ("LGERS") and the Teachers' and State Employees' Retirement System ("TSERS"). T. pp. 174-177; R. Exs. 7, 8.
2. Respondent, the Retirement Systems Division of the North Carolina Department of State Treasurer ("the Retirement System"), administers the State's retirement systems, including LGERS, TSERS, and the former Law Enforcement Officers Retirement System ("LEORS"), which was merged with LGERS effective January 1, 1986.
3. The former LEORS had two separate components:
  - a. The former LEORS had a pension plan (defined benefits plan) that provided a monthly retirement benefit according to a statutory formula. N.C. Gen. Stat. § 143-166(y) (1983) (repealed by N.C. Sess. Law 1985-479, sec. 196(t)).

- b. The former LEORS had special annuity accounts, which provided for supplemental income at retirement derived from the contributions made to the special annuity account, N.C. Gen. Stat. § 143-166.03(c) (1983) (repealed by N.C. Sess. Law 1985-479, sec. 196(t)). T. pp. 74-77.
4. Employers sent contributions for the two components of the former LEORS (the pension and the special annuity accounts) to the Retirement System separately, and the Retirement System kept records of the two components separately. T. p. 77.
5. By legislation enacted in 1985, the Legislature abolished LEORS. N.C. Sess. Law 1985-479, sec. 196(t).
6. Effective January 1, 1986, with respect to pensions, any law enforcement officers employed by local governmental agencies who had participated in LEORS became members of LGERS. N.C. Sess. Law 1985-479, secs. 196(t), 196(u), 196(v).
7. Effective January 1, 1986, the accumulated contributions in any LEORS special annuity accounts were transferred to the Supplemental Retirement Income Plan. N.C. Sess. Law 1985-479, secs. 196(t), 196(u), 196(v).
8. A law enforcement officer who had funds in a LEORS special annuity account prior to January 1, 1986, was entitled upon retirement to transfer funds from his or her special annuity account to the Retirement System for an additional retirement benefit. See N.C. Gen. Stat. § 143-166.03(c) (1983) (repealed by N.C. Sess. Law 1985-479, sec. 196(t)). The Retirement System calculated the amount of the additional retirement benefit according to a formula that involved actuarial factors (“the LEORS factors”). Later, other law enforcement officers, not just those who had been participants in LEORS, became eligible for such an additional benefit. Specifically, law enforcement officers who had vested as of June 30, 2010, were eligible at the time of retirement to transfer funds from the Supplemental Retirement Income Plan (401(k)) to the Retirement System for an additional benefit. N.C. Gen. Stat. § 135-5(m1). The additional benefit for the non-LEORS officers, however, was calculated using a different set of actuarial factors from the LEORS factors. P. Ex. 15; T. pp. 82-89, 164, 171-72, 180, 182.
9. At the time of his retirement, Mr. Longworth elected to have funds transferred from his 401(k) to the Retirement System to provide an additional benefit. T. 177-78; R. Exs. 9, 10.
10. Mr. Longworth had vested as a law enforcement officer prior to June 30, 2010. T. p. 114. Therefore, the Retirement System determined that he was entitled to have his additional transfer benefit calculated according to N.C. Gen. Stat. § 135-5(m1).
11. After being informed of the Retirement System’s calculations of his benefits, Mr. Longworth disputed the calculation of the additional benefit resulting from the transfer of funds from his 401(k). Mr. Longworth contended that he was entitled to the more favorable calculation of the transfer benefit accorded to former members of LEORS. See Petitioner’s

Prehearing Statements, filed by Petitioner on February 4, 2019; T. pp. 44-46; R. Ex. 11; see also P. Ex. 15.

12. The Retirement System has consistently maintained that an employee must have had contributions made on his or her behalf to a special annuity account under LEORS in order to have the right to the use of the LEORS factors in the calculation associated with the special annuity accounts. T. pp. 69-70, 74-75, 89. The Retirement System had no record of any contributions having been made on Mr. Longworth's behalf prior to January 1, 1986; therefore, the Retirement System denied Mr. Longworth's request to have a new calculation made of his transfer benefit based on the LEORS factors. See Prehearing Statement and Document Constituting Agency Action (letter dated October 29, 2018, from Patrick Kinlaw to Ritchie D. Longworth) filed by Respondent on February 4, 2019.
13. In response to the Retirement System's Final Agency Decision, Mr. Longworth initiated this contested case on December 21, 2018. See Petition for a Contested Case Hearing.
14. The parties do not have a dispute with respect to the pension issue. Although the Retirement System does not have records of contributions made on Mr. Longworth's behalf into the pension fund, a decision was made in the past to give Mr. Longworth service credit for the time he was employed with the High Point Police Department. T. pp. 93, 125.
15. However, with respect to the special annuity account issue, the Retirement System does have a record showing a zero balance for Mr. Longworth; and has, therefore, taken the position that Mr. Longworth is not entitled to the benefits associated with having had a LEORS special annuity account. This is the issue to be resolved.

### **FINDINGS OF FACT**

The evidence presented at the hearing establishes the following:

16. Mr. Longworth was hired by the High Point Police Department ("the HPPD") in November 1985. According to City of High Point records, Mr. Longworth's first day of work was November 24, 1985, and he resigned on November 29, 1985. P. Ex. 2.
17. On November 20, 1985, before his first day of work with the HPPD, Mr. Longworth filled out an application form to become a member of LEORS. The Retirement System processed his application form; opened an account and assigned an account number; and provided a membership card. The application form is stamped as "acknowledged" by LEORS on December 11, 1985. T. pp. 24-25; P. Ex.1; R. Ex. 3.
18. The Retirement System acknowledges that an account was created for Mr. Longworth, for both pension contributions and contributions to a special annuity account. However, the Retirement System never received any contributions from High Point or Mr. Longworth for either the pension or the special annuity account. T. pp. 113-14, 118-19, 122, 159-61, 164.

19. The Retirement System encouraged prospective employees and employers to fill out forms in advance so that the Retirement System would have an employee's information before contributions came in. However, the Retirement System did not consider the completed and accepted application form to trigger benefits; rather, it was necessary that contributions be made in order for the employee to be entitled to receive benefits. T. pp. 115, 119-22.
20. Mr. Longworth began working for the Town of Kernersville as a law enforcement officer on January 1, 1986. T. pp. 40-41. The Retirement System received the first employer contributions in February 1986. T. pp. 129, 167. Mr. Longworth continued working in law enforcement, either for a local government employer or for the State, until he retired in February 2014. T. pp. 40-43.
21. Mr. Longworth was unable to testify that he contributed to a special annuity account while employed by the HPPD. T. p. 52. He admitted that his 401(k) was from 1986. T. p. 44. Mr. Longworth did contribute to the High Point Police Pension and Disability Fund, which was administered by the City of High Point. He requested a refund of his contributions and received them. P. Ex. 2; T. pp. 37-38, 57.
22. The only evidence Mr. Longworth produced regarding contributions made on his behalf by High Point was his testimony that he remembered his sergeant telling him that one of the deductions taken from his check was for State retirement. T. pp. 30, 56-57. Mr. Longworth did not understand the codes that explained what the deductions from his check were for, and he did not recall any details about the deductions made from his check, including the amounts or whether there were deductions for the regular pension, the special annuity, or both. Mr. Longworth's memory and the paper-writings that he received were some indicia of what led to this belief; however, they were insufficient to carry this burden. T. pp. 57-59.
23. The Retirement System, on the other hand, produced evidence that contributions had not been made to a special annuity account. Thomas Causey, the Interim Director of the Retirement Systems Division, testified about the efforts made to locate any records of such contributions, and he testified that no such records were ever found. Mr. Causey also testified that, in particular, records showing the transfer of balances from special annuity accounts to the Supplemental Retirement Account (401(k)) managed by BB&T demonstrated that Mr. Longworth had a zero balance in the special annuity account that had been set up for him. T. pp. 75-76, 96-101, 130-32, 155-63; R. Exs. 4, 5.
24. The Retirement System managed the special annuity accounts until LEORS was abolished, at which time the assets were transferred to BB&T, who managed the Supplemental Retirement Income accounts, which was a 401(k) plan. T. p. 161; see N.C. Gen. Stat. § 143-166.50(e).
25. The Retirement System has a record, dated May 1986, which shows all the contributions held in special annuity accounts as of that date. This record shows a zero balance for Mr. Longworth. The zero balance is confirmed by a BB&T account statement for Mr.

Longworth showing a zero balance as of July 1, 1986. T. pp. 96-99, 159-63, 184-85; P. Ex. 9; R. Ex. 5.

26. In addition, there is evidence in the record that only officers who were not participants in other plans participated in the High Point Police Pension and Disability Fund. Mr. Longworth was a participant in the High Point fund. T. p. 31.
  - a. Petitioner introduced into evidence the affidavit of Ms. Richardson, who is employed by the City of High Point as a human resources benefits specialist. Ms. Richardson's affidavit included an excerpt of the City of High Point's Comprehensive Annual Financial Report, which is dated June 30, 1986. On page 23 of this report is the following statement regarding the High Point Policemen's Pension and Disability Fund: "All police officers not participating in other retirement plans are covered by this pension and disability fund." P. Ex. 25 (emphasis added). Ms. Richardson was not familiar with the High Point plan or the report and could not testify about them. T. pp. 146-49.
  - b. Mr. Causey testified that the City of High Point was not a full participating member in the LEORS special annuity accounts. He explained that officers who had been members of LEORS before being employed by High Point could remain in LEORS, but that new officers were required to participate in the High Point retirement system instead of LEORS. T. pp. 80-82.
27. In the face of the Retirement System's documentary evidence, Mr. Longworth's memory of a conversation that took place over 30 years ago is insufficient to carry his burden of proof.
28. Furthermore, Mr. Longworth's memories of events that are over 30 years old are subject to question. For example:
  - a. Mr. Longworth testified that he worked for the HPPD until the first or second week of December 1985, although the documents from his personnel record in High Point show that he resigned on November 29, 1985. T. p. 28; P. Ex. 2 (second page); P. Ex. 25.
  - b. Mr. Longworth testified that he was sure the November 29 resignation date was incorrect because he remembered working one five-day shift, followed by three days off; then working another five-day shift, followed by another break of three or four days; then coming back for a third shift, and resigning after about three to four days into that third shift period. T. p. 28. It is undisputed that Mr. Longworth's first day of work was November 24, 1985. Thus, under the scenario he described, his first shift lasted through November 28, and his first break lasted through December 1; his second shift lasted through December 6, and his second break lasted through December 9 or 10; and he resigned during the period between December 12 and December 15. On cross-examination, Mr. Longworth insisted that he worked two full shifts before resigning. T. pp. 52-56. However,

his request for a return of contributions to the High Point pension fund is dated November 29, 1985, and it was initialed as approved on December 2, 1985. T. p. 38; P. Ex. 2 (fifth page). It is not credible that his supervisor would approve a return of benefits before Mr. Longworth had resigned. It is more consistent with the documentary evidence that Mr. Longworth resigned in November.

- c. Finally, in a letter that Mr. Longworth wrote to the Retirement System in March 2009, Mr. Longworth evidently forgot that he had ever worked for the HPPD, stating: “From the start of service until August 22, 1987, I was employed with the Town of Kernersville as a police officer.” T. pp. 125-26; P. Ex. 20 (Bates-stamp no. 0161). His memories could only have faded in the ten years between the writing of this letter where he had forgotten that he worked in High Point and his testimony at trial relating details of a conversation with his supervisor about deductions.
29. While the date of Mr. Longworth’s resignation from the HPPD is not material to the resolution of this case, the reliability of his memory is. The Undersigned does not doubt Mr. Longworth’s sincerity regarding his memories, but questions regarding the accuracy of those memories go to the credibility of Mr. Longworth’s testimony that State deductions were taken from his check from the HPPD.
  30. Petitioner attempted to raise doubt regarding the Retirement System’s evidence that it had not received any contributions on Mr. Longworth’s behalf prior to January 1, 1986. For example:
    - a. Petitioner produced evidence that during his employment with employers other than the HPPD, contributions came to the Retirement System with an incorrect social security number so that a dummy account had to be created until he was identified as the employee for whom the contributions had been made. T. pp. 103-07; P. Exs. 10, 11. However, these dummy accounts were only created for pension account contributions, not for special annuity accounts. T. pp. 76-77.
    - b. Petitioner also presented evidence that he contended showed that employees of the Retirement System considered Mr. Longworth to be a member of LEORS. For example, Petitioner presented a memorandum from Stanley Moore directed to Petitioner regarding the former LEORS. P. Ex. 8. However, Mr. Causey testified that the memorandum from Stanley Moore was a mass-generated letter that went to everyone with a LEORS account; there was not an evaluation done of all the accounts to see who had contributions and service. T. pp. 93-95, 122-23.

The Undersigned does not find the evidence discussed above to have significant evidentiary value regarding whether contributions were made on Petitioner’s behalf to a LEORS special annuity account. Furthermore, Mr. Longworth is the party with the burden of proof to establish that he is entitled to the benefits by virtue of having contributed to the fund; it is not the Retirement System’s burden to establish that no contributions were made.

31. The Undersigned finds as a fact that no contributions were made on behalf of Petitioner to a former LEORS special annuity account prior to January 1, 1986.

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact, the Undersigned concludes as follows:

1. The parties are properly before the Office of Administrative Hearings and the Office of Administrative Hearings has subject matter jurisdiction over the matters raised in this contested case.
2. To the extent that the Findings of Fact contain Conclusions of Law, or that any Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels. Peters v. Pennington, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011).
3. As the Petitioner, Mr. Longworth has the burden of proof to establish his claim.
4. Prior to its repeal, Article 12 of the North Carolina General Statutes, entitled “Law-Enforcement Officers’ Retirement System,” provided: “In order for an officer to be eligible for retirement benefits under this Article, he shall contribute into the fund herein created . . . .” N.C. Gen. Stat. § 143-166(i) (1983) (repealed by N.C. Sess. Law 1985-479, sec. 196(t)) (emphasis added). This is the triggering event.
5. With respect to the special annuity, Article 12 provided that “any county, city, town, or political subdivision thereof (hereinafter referred to as an employer), and any member, may elect to pay special contributions to be credited to designated individual accounts of members of the Retirement System, in addition to any contributions as otherwise required by this Article, to provide annuities to members payable at retirement and throughout life which are in addition to the basic service and disability retirement allowances.” N.C. Gen. Stat. § 143-166.03(a) (1983) (repealed by N.C. Sess. Law 1985-479, sec. 196(t)) (emphasis added); see also P. Ex. 5.
6. Under the law governing LEORS, the payment by the Retirement System of retirement benefits and special annuity payments was contingent on contributions (emphasis added) being made by the employee or on the employee’s behalf. The other indicia referred to were not a triggering event to consummate Petitioner’s burden to prove that he was entitled to this additional benefit. In particular, a law enforcement officer is only entitled to the calculation of an additional retirement benefit using the preferential LEORS factors if that officer had contributions made on his behalf to a LEORS special annuity account prior to the dissolution of LEORS on January 1, 1986.
7. The Undersigned concludes that in order for Mr. Longworth to be entitled to use of the favorable LEORS factors, contributions would have had to have been made to a LEORS special annuity account on behalf of Mr. Longworth.

8. Based on the Undersigned's finding that Mr. Longworth failed to prove that any contributions were made on his behalf to a special annuity account prior to January 1, 1986, the Undersigned concludes that Mr. Longworth is not entitled to have the additional retirement benefit calculated using the LEORS factors.
9. Therefore, the Undersigned concludes that the Retirement System did not err in its calculation of Petitioner's retirement benefits, including the calculation of the additional retirement benefit.

BASED ON the above Conclusions of Law, the Undersigned issues the following:

### **FINAL DECISION**

Petitioner did not carry his burden of proof to establish that contributions were made on his behalf to a special annuity account under the former Law Enforcement Officers Retirement System. Therefore, Respondent's calculation of Petitioner's retirement benefits is **AFFIRMED**.

### **NOTICE OF APPEAL**

**This is a Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

**IT IS SO ORDERED.**

This the 28th day of October, 2019.



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J Randall May  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 28th day of October, 2019.



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