



State's Attorney's Office

Kimberlee J. Hegvik
State's Attorney

MEMORANDUM

To: County Commission

From: Kimberlee J Hegvik, Cass County State's Attorney
Kate Naumann, Assistant State's Attorney

Date: October 1, 2024

Subject: Update on Deputy Nathan Boerboom Military Leave Retirement Credit Request

Deputy Nathan Boerboom has been employed by Cass County since November 15, 2010. He was deployed for military duty in 2011, 2012, 2017, and 2023. After each deployment Deputy Boerboom was reemployed by the County. Under the Uniformed Service Employment and Reemployment Rights Act (USERRA), a service member is entitled to their employer's pension benefits for the months of deployment if certain requirements are met.

Deputy Boerboom alleged he did not receive the appropriate employer contributions to his NDPERS account after reemployment after his deployments in 2011, 2012, and 2017. Deputy Boerboom requested the County purchase service credit for him to make up his pension benefits for the months of service when he was deployed. The matter went before the Commission on March 18th, 2024. After considering the testimony of Deputy Boerboom, Ms. Peters, and the legal opinion of the State's Attorney's Office that the County had no obligation to grant the request, the Commission voted to deny Deputy Boerboom's request for purchase of service credit.

Deputy Boerboom subsequently filed a claim with the U.S. Department of Labor ("DOL"). Through the investigation process, the County learned that because there was no required employee contribution during the 2011 deployment, under USERRA Mr. Boerboom was entitled to service credit and employer contributions to his NDPERS account for that deployment period. However, because an employee contribution was required in 2012 and 2017, and Mr. Boerboom did not timely contribute his portion to his account, he was not entitled to service credit and employer contributions for those periods of deployment.

The DOL provided a draft Settlement Agreement and Release. Under the terms of the agreement, the County would acknowledge it is obligated to make pension contributions so that Deputy Boerboom's pension benefits will be the same as if he had been continuously employed by the County during his 2011 deployment. The preliminary estimate provided by NDPERS to restore Deputy Boerboom's pension benefits is \$1,074.76. If the County agrees to make the appropriate contributions, the final amount of which will be provided by NDPERS at a later date, and Deputy Boerboom agrees to the amount, his claim will be considered closed by the DOL. Under the terms of the agreement, Deputy Boerboom would agree not to institute or pursue any civil action against the County regarding its failure to make pension contributions for his 2011 deployment.

SUGGESTED MOTION: Move to approve Settlement Agreement and Release as provided by the DOL.

CASE NUMBER: ND-2024-00002-50-G

COMPLAINANT: Nathan Boerboom

RESPONDENT: Cass County Government

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT and RELEASE is made and entered into between Nathan Boerboom (Complainant) and Cass County Government (Respondent), who agree and stipulate as follows:

WHEREAS, Nathan Boerboom has filed a claim with the United States Department of Labor, Veterans' Employment and Training Service, alleging the following:

Cass County failed to make the pension contribution attributable to the complainant's period of military service no later than ninety days after the date of reemployment occurred on December 15, 2011, in violation of 38 U.S.C. 4318 and 20 C.F.R. 1002.262-265 of the Uniformed Services Employment and Reemployment Rights Act, 38, U.S.C. § 4301, et. seq; and

WHEREAS the Respondent substantiates failure to make pension contributions attributable to the complainant's period of military service (April 2, 2011 to August 19, 2011) ninety days after the date of reemployment of September 15, 2011 in violation of aforementioned Act; and

WHEREAS, both parties now wish to settle this case without the necessity of litigation;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

- A. Respondent agrees to make pension contributions attributable to the complainant's period of military service from April 2, 2011 to August 19, 2011 so that the complainant's pension benefit will be the same as though he or she had remained continuously employed during the period of service.
- B. The Complainant agrees to have VETS Case No: ND-2024-00002-50-G closed as identified above and agrees not to institute or pursue any civil action under the Uniformed Services Employment and Reemployment Rights Act of 1994 against the Respondent, its agents, employees or successors as a result of failure to make pension contributions attributable to the complainant's period of military service (April 2, 2011 to August 19, 2011) ninety days after the date of reemployment of September 15, 2011.
- C. Failure to comply with the terms of this agreement authorizes the claimant to request the Veterans' Employment and Training Service re-open the case for further investigation or to seek private counsel in resolving this dispute.
- D. It is understood that this agreement does not constitute and shall not be construed as an admission of liability or wrongdoing by the agency with respect to the appellant's claims.

E. The terms and facts of settlement are generally confidential; However, nothing in this Agreement is intended to or shall prevent, impede or interfere with Complainant providing truthful testimony and information in the course of an investigation or proceeding authorized by law and conducted by an agency of the United States.

Chad Peterson, Cass County Government

By: _____

Dated: _____

Nathan Boerboom

By: _____

Dated: _____