

Opinion No. 59-149

September 22, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Mr. John C. Hays Executive Secretary Public Employees Retirement Board P. O. Box 2237 Santa Fe, New Mexico

{*226} Receipt is acknowledged of your letter of recent date in which you request an opinion as to whether or not Mr. Bickers is entitled to be given credit for the period from March 1, 1956 to March 1, 1958.

It is the opinion of this office that Mr. Bickers is not entitled to service credit for the period from March 1, 1956 to March 1, 1958.

It appears that Mr. Bickers, a former employee of the State Highway Department and a member of the Public Employees Retirement Association of New Mexico, was injured accidentally on November 22, 1955. Mr. Bickers had some annual leave coming as well as sick leave and on March 1, 1956 he was dropped from the payroll of the New Mexico State Highway Department.

Under § 5-5-1, N.M.S.A., 1953 Compilation (P.S.), under the heading "definitions", is found the following:

"O. 'Contributing service' means service rendered on or after August 1, 1947, as a contributing member."

Paragraph 4 of § 5-5-6, N.M.S.A., 1953 Compilation (P.S.), reads as follows:

"4. Except as otherwise provided in section 5-5-1 through 5-5-23 New Mexico Statutes Annotated, 1953 Compilation (being Laws 1953, chapter 162), as amended from time to time, should any member separate from the services of an affiliated public employer, for reasons other than becoming an annuitant, he shall thereupon cease to be a member, and the total service credited to him, at the date of his said separation from service, shall be forfeited by him. In the event the said person is reemployed by an affiliated public employer he shall again become a contributing member of the association, and the total service forfeited by him, at the time of his said last separation from service, shall be restored to his credit: Provided, that the said member returns to the employees' savings fund the full amount of accumulated deductions he may have previously withdrawn therefrom, together with regular interest computed from the date of withdrawal to the date or dates of repayment. In the event a member becomes an annuitant, by reason of his retirement, he shall thereupon cease to be a member for so long as he shall be an annuitant; but if said person is thereafter again employed by a public employer which is or which thereafter becomes an affiliated public employer, said person shall again become a contributing member upon such employment or affiliation,

whichever last occurs, for the period of such employment, for the limited purpose of acquiring additional service credit and {*}227} permitting recomputation of his annuity, without change of option or election, upon termination of such employment. No person who is required again to become a contributing member pursuant to this section may exempt himself from membership in the association."

Under the wording of the above quoted statute, Mr. Bickers, when he separated from the service, forfeited his service credit for the reason that he was not a contributing member during the years 1956 to 1958. It is inherent in the Act that a person must be an employee of an affiliated public employer to be eligible for the benefits conferred by the Act, including any recomputation of time.

It, therefore, follows that our conclusion must be that Mr. Bickers is not entitled to service credit for the period from March 1, 1956 to March 1, 1958.

Hilario Rubio

Assistant Attorney General