

After 32 years on the job, **Donna Utke** celebrated her last workday at the Milwaukee Public Library on April 12 with a party thrown by her longtime co-workers.

The librarian, however, had not retired, according to the Employees' Retirement System.

Utke died May 19 -- before her final 28 hours of accumulated time had been paid out -- making her designated beneficiary ineligible for a pension. The Pension Review Board is not required to hear an appeal, according to a decision by the city attorney's office.

The beneficiary, Tanya Smith, instead will receive a death benefit of \$90,400, either as a lump sum or a monthly annuity. That is likely to be substantially less than the estimated pension of \$1,328 a month, 75% of the pension **Utke** would have received had she lived only days longer.

"I think it's awful for 28 hours to nullify nearly 32 years of work for the city," Smith said.

Utke, 68, appeared to be in fine health, traveling with Smith and other friends to Hawaii after her final days as a staff member at the Milwaukee Public Library.

"She was fine until she got this terrible, terrible headache," Smith said. "It turned out to be a cerebral hemorrhage."

Smith, younger but in ill health, is able to work only part time. The two were longtime friends, sharing a home.

"She wanted me to be secure, and I'm not going to be," Smith said. "One big medical bill could eat up the lump sum benefit."

Robert Haney, an attorney representing Smith, said a formal legal claim would be filed for the pension. Should the claim be denied, a lawsuit will be filed in Milwaukee County Circuit Court, he said.

One retirement system employee said it wouldn't matter if "it were 28 minutes," Smith said. She would not be considered eligible for the pension until **Utke's** official retirement date of May 25.

The only exception under pension rules is for the beneficiaries of Milwaukee police officers. Firefighters and other employees have no such right, according to a clarification sought by the Employees' Retirement System from the Milwaukee city attorney's office.

Grant F. Langley, city attorney, declined to comment on the specifics of the case. He said that although his office is charged with representing the Employees' Retirement System, it is considered "a separate political entity" from the city.

"I anticipate litigation," he said. "I'm not going to comment on the facts."

Questions, few answers

The case raises questions about the practice of how retirement dates are set and what is at stake for employees and their families, Haney said.

Any spouse or other beneficiary of a city employee who dies between the last day of work and the first day of official retirement could end up without a pension, he said.

Utke wanted to retire in April, and began the necessary paperwork weeks earlier. The May 25 retirement date was based on when 248 hours of vacation and about 28 hours of compensation time would be paid out.

"So this is not a matter of the employee still needing to put in hours of work, because she had already put in those hours of work," Haney said.

"The compensation time is a benefit that she had already earned and accumulated," he said. "They got the value of her work -- her overtime -- and the compensation shows up later, which is to the benefit of the city."

Employees do have options, including taking immediate lump sums, rather than delaying official retirement dates, said Anne M. Bahr, executive director for the Employees' Retirement System.

"Employees who retire cannot retire until their last day on the payroll," Bahr said, who said that longer service usually improves pension benefits for retired employees.

"Is this a case that happens frequently? Absolutely not," she said. "It's a very unfortunate situation, and I would say it's extremely rare."

Richard Abelson, executive director of American Federation of State, County and Municipal Employees District Council 48, said he was not familiar with the specific situation, but he said that it would be important to review the matter.

In **Utke's** case, she could have retired years earlier, and her beneficiary would have received the pension. She could have taken vacation time earlier, or refused compensation time, Haney said.

"Basically, what the city is saying is, if you want to be a dedicated worker and work longer, we will punish your loved ones for your dedication -- in this case a few hours' worth of comp time," he said.

The added irony for Smith is that **Utke** never planned to stop working at the library.

"She had it all arranged to volunteer in the humanities section once or twice a week," Smith said. "They had a desk for her and everything. She just loved her job."

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