

patients were billed for medical services rendered by physicians at the college of medicine. Plaintiff's income from the practice plan was subject to deductions for Social Security. On April 1, 2002, plaintiff retired from defendants' employment under a medical disability.

{¶ 3} Plaintiff asserts that the practice plan was, in essence, a part of the university, and that therefore for purposes of retirement, the income which he received from the plan should have been included by STRS in calculating his "final average salary." Defendants assert that only the board of STRS has the authority to determine whether all or part of state teachers' income should be included in calculations for retirement purposes, and that this court lacks jurisdiction to determine whether STRS correctly calculated plaintiff's retirement income.

{¶ 4} Leslie Jay Ord, (f.k.a. Dotolo), testified that she was the director of benefits administration at STRS. Ord testified that plaintiff sent her a letter in 2003, wherein he asked her to calculate what his retirement income would be if the additional compensation from the practice plan were included in the calculation of his final average salary. (Defendants' Exhibit A.) Ord sent plaintiff a response, wherein she stated, in pertinent part:

{¶ 5} "After review by the general counsel for STRS Ohio, it appears that Ohio University handles practice plan earnings correctly and consistently under STRS Ohio policies. Retirement contributions generally may not be made on payments that represent compensation from private clients or patients. Pursuant to section 3307.24 of the Revised Code, STRS Ohio has long denied contributions on payments disbursed by an employer but reimbursed from non-public funds. Because practice plan income represents insurance payments or direct payment by the patients you attended,

that income would not be earnings eligible for retirement contribution." (Defendant's Exhibit B.)

{¶ 6} In *State ex rel. Horvath v. State Teachers Retirement Bd.*, 83 Ohio St.3d 67, at 73-74, 1998-Ohio-424, the Supreme Court of Ohio made the following observations about STRS: "*** mandatory teacher contributions to the STRS result from economic legislation designed to benefit retired and disabled public school teachers and their survivors and beneficiaries and, when placed in the fund, lose their character as private property. See R.C. 3307.03. Grants made from STRS funds, *** constitute statutory benefits. Accordingly, the nature and extent of a contributor's protected property rights in the STRS are determined solely by the statutes that govern the system." (Footnote and citations omitted.)

{¶ 7} R.C. 3307.24 states:

{¶ 8} "The state teachers retirement board may deny the right to contribute or the right to become members to any class of teachers whose compensation is partly paid by the state, *** and it may also make optional with teachers in any such class their right to contribute, or their right to individual entrance into membership.

{¶ 9} "The state teachers retirement board may at any time deny the right to contribute or the right to membership to any teacher whose compensation, though disbursed by an employer, is reimbursed to the employer, in whole or in part, from other than public funds."

{¶ 10} R.C. 3307.01(L) contains the statutory definition of the term "compensation." That section provides in relevant part as follows:

{¶ 11} "(3) The retirement board shall determine by rule both of the following:

{¶ 12} "(a) Whether particular forms of earnings are included in any of the categories enumerated in this division;

{¶ 13} "(b) Whether any form of earnings not enumerated in this division is to be included in compensation.

{¶ 14} "Decisions of the board made under this division shall be final."

{¶ 15} R.C. 3307.501 (E) states:

{¶ 16} "The state teachers retirement board shall adopt rules establishing criteria and procedures for administering this division.

{¶ 17} "The board shall notify each applicant for retirement of any amount excluded from the applicant's compensation in accordance with division (B) of this section and of the procedures established by the board for requesting a hearing on this exclusion.

{¶ 18} "Any applicant for retirement who has had any amount excluded from the applicant's compensation in accordance with division (B) of this section *may request a hearing* on this exclusion. Upon receiving such a request, the board shall determine in accordance with its criteria and procedures whether, for good cause as determined by the board, all or any portion of any amount excluded from the applicant's compensation in accordance with division (B) of this section, up to a maximum of seventy-five hundred dollars, is to be included in the determination of final average salary under division (C) of this section. *Any determination of the board under this division shall be final.*" (Emphasis added.)

{¶ 19} Pursuant to R.C. 3307.501(E) where an employee believes that part of his compensation has been wrongfully excluded from the calculation of the employee's retirement benefits, the employee's remedy is to request a hearing before the STRS board. Defendants' Exhibits A and B show that plaintiff contacted an employee of STRS with his version of how his benefits should have been calculated;

however, there is no evidence to suggest that he requested a hearing pursuant to the statute.

{¶ 20} Generally, plaintiff cannot substitute a civil action against his employer for a statutorily created right of appeal to STRS. See *State ex rel. Shumway v. State Teachers Retirement Bd.* (1996), 114 Ohio App.3d 280; *State ex rel. Swartzlander v. State Teachers Retirement Bd.* (1996), 117 Ohio App.3d 131.

{¶ 21} Although plaintiff asserts various causes of action in his complaint, all of plaintiff's claims turn on whether his earnings from the practice plan were wrongfully excluded from STRS contribution. Upon review of the relevant statutes and the evidence presented at trial, the court finds that STRS excluded plaintiff's income from the practice plan in calculating his retirement benefits, and that plaintiff's remedy was to request a hearing pursuant to R.C. 3307.501(E). Therefore, the court finds that it lacks jurisdiction to determine this issue. Assuming, arguendo, that this court were to have jurisdiction over any of the claims raised in plaintiff's complaint, the court finds that plaintiff has failed to prove that defendants breached any duty of care, contractual or otherwise, that they owed to plaintiff. As an aside, there is no dispute that defendants made the required contributions to STRS that were attributable to plaintiff's salary as a university professor. Accordingly, judgment shall be rendered in favor of defendants.

IN THE COURT OF CLAIMS OF OHIO

www.cco.state.oh.us

DR. JOHN WOLF, et al. :

Plaintiffs : CASE NO. 2004-08545

