

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2008 CA 0267

MARIE L. WEAVER

VERSUS

STATE OF LOUISIANA,  
SCHOOL EMPLOYEES RETIREMENT SYSTEM

**Judgment Rendered: June 6, 2008**

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Appealed from the  
Nineteenth Judicial District Court  
in and for the Parish of East Baton Rouge  
State of Louisiana  
Docket Number 502,164

Honorable William A. Morvant, Judge

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**BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.**

**HUGHES, J.**

Plaintiff, Marie Weaver, was hired as a school bus operator by the Ouachita Parish School Board at the beginning of the 1994-1995 school year. Sometime thereafter, Ms. Weaver suffered a knee injury that required her to undergo two surgeries and forced her to take “leave” from her job. Apparently, Ms. Weaver never again performed the actual duties of a school bus operator after the 1996-1997 school year, but rather remained on “leave.”<sup>1</sup>

Eventually, Ms. Weaver sought disability retirement benefits from the Louisiana School Employees’ Retirement System (LSERS); however, her request was denied in March 2002. Accordingly, Ms. Weaver filed the present suit against LSERS seeking to recover those benefits.

LSERS subsequently filed a motion for summary judgment arguing that Ms. Weaver was ineligible to receive disability benefits because she lacked the five years of actual credited service required by LSA-R.S. 11:1147. Specifically, LSA-R.S. 11:1147(B)(3)(a) provides, in part:

A person whose system membership began on or before June 30, 2006, applying for a disability benefit shall have five years of actual credited service in order to qualify for a disability benefit. A member shall not use credit earned while receiving workers’ compensation or while on extended leave, special leave, or advanced leave in order to meet the prescribed minimum five-year eligibility requirement....

Appended to LSERS’ motion was an affidavit executed by Ms. Kay Cummings, the manager of LSERS’ Retirement Department Section. Therein, Ms. Cummings stated that Ms. Weaver only had 2.44 years of service credit, which was based on her actual days worked in addition to her days of earned “sick leave.” Stressing that the statute specifically excludes credit earned while on “extended leave,” LSERS argued that, although Ms. Weaver may have been “employed” in

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<sup>1</sup> These facts, gleaned from LSERS’ trial court memorandum, are not disputed by Ms. Weaver. In fact, Ms. Weaver concedes in her brief to this court that the facts in this case are generally uncontested and further argues that this case simply turns on the legal interpretation of LSA-R.S. 11:1147.

excess of five years, she did not meet the statutory requirements entitling her to receive disability benefits because she lacked five years of actual credited service.

Ms. Weaver did not file an opposition to LSERS' motion, but rather filed a cross-motion for summary judgment arguing that she had been "employed" in excess of five years and, therefore, was eligible for disability benefits pursuant to LSA-R.S. 11:1147. However, Ms. Weaver failed to attach any documentary evidence to her motion and/or memorandum, nor did she offer any evidence into the record in support of her motion at the subsequent hearing.<sup>2</sup> Based upon the language in her supporting memorandum, Ms. Weaver apparently conceded that she was on leave without pay and/or extended sick leave for a considerable portion of the relevant period of time. According to the minute entries, the hearing of Ms. Weaver's cross-motion for summary judgment was held on May 14, 2007, after which the trial court denied her motion.<sup>3</sup>

Subsequently, LSERS submitted its motion for summary judgment to the trial court on its memorandum and the attached affidavit of Ms. Cummings, thereby waiving its appearance and opportunity for oral argument. On October 1, 2007, the trial court rendered summary judgment in favor of LSERS, concluding that Ms. Weaver lacked the required five years of creditable service as a member of the retirement system and dismissed her suit with prejudice. A written judgment in accordance with the trial court's ruling was signed on October 16, 2007. From this judgment, Ms. Weaver appeals.

It is axiomatic that a motion for summary judgment should be granted only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact, and that the mover is entitled to judgment as a matter of law. LSA-

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<sup>2</sup> In her supporting memorandum, Ms. Weaver made reference to the deposition of Ms. Cummings, which she contended was attached to her memorandum as an exhibit; however, no such deposition appears in the record before us.

<sup>3</sup> A written judgment memorializing the trial court's denial of Ms. Weaver's motion is absent from the record before us.

C.C.P. art. 966(B); **Independent Fire Insurance Company v. Sunbeam Corporation**, 99-2181, 99-2257, p. 7 (La. 2/29/00), 755 So.2d 226, 230-31. The initial burden of proof is on the moving party. However, on issues for which the moving party will not bear the burden of proof at trial, the moving party's burden of proof on the motion is satisfied by pointing out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, the adverse party must produce factual support sufficient to establish that it will be able to satisfy its evidentiary burden of proof at trial; failure to do so shows there is no genuine issue of material fact. LSA-C.C.P. art. 966(C)(2).

In the present matter, LSERS supported its motion for summary judgment with the affidavit of Ms. Cummings establishing that Ms. Weaver had only 2.44 years of actual credited service. Because she would bear the burden of proof at trial, it was imperative that Ms. Weaver oppose LSERS's motion by offering factual support sufficient to show that she would be able to satisfy her evidentiary burden of proving that she had the minimum five years of actual credited service required by LSA-R.S. 11:1147(B)(3)(a). This she failed to do.<sup>4</sup> Absent any genuine issue of material fact, we conclude that LSERS's was entitled to judgment as a matter of law. Accordingly, we find no error in the trial court's granting of LSERS's motion for summary judgment, and we hereby affirm that judgment in accordance with Uniform Rules-Courts of Appeal 2-16.1.B. All costs of this appeal are assessed to Marie Weaver.

**AFFIRMED.**

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<sup>4</sup> Even if Ms. Weaver had submitted relevant factual support and **assuming**, as she appears to argue, that she was entitled to receive credit for her 30 days of "extended sick leave" pursuant to LSA-R.S. 17:500.2 and the Ouachita Parish School Board Rules, as well as for the additional three days per year of discretionary leave provided for under the Ouachita Parish School Board Rules, we note that this still would have been insufficient, when added to her 2.44 years of credited service, for her to meet the five-year minimum set forth in LSA-R.S. 11:1147(B)(3)(a).