

HARDSHIP APPEAL WITHDRAWAL REQUEST

Case No. 12-03	
Current Bi-Weekly Deferral	\$0
Current Account Balance	\$12,257
Requested Withdrawal Amount	Full withdrawal
Financial Emergency/Unforeseen Event	Pending son's court hearing

Recommendation:

Staff recommends that the Board of Deferred Compensation Administration approve the hardship application in Case No. 12-03 for a full withdrawal.

Findings:

Deferred Compensation Plan participants file hardship applications with the Plan Administrator, Great-West Retirement Services. Participants who are denied by Great-West are informed they can appeal that decision to the Board of Deferred Compensation Administration. Great-West is presently processing approximately 550 hardship applications annually, approving on average 95% of all applications.

The applicant submitted a hardship application to Great-West for assistance with paying the remaining balance owed to the attorney representing her son in an upcoming appellate court hearing. Great-West denied the applicant's request stating that legal expenses are not a defined reason for which Great-West is authorized to approve. The applicant is appealing the denial to the Board.

Participants may obtain hardship withdrawals if they suffer an unforeseeable emergency that causes extreme financial hardship. An unforeseeable emergency is a severe financial hardship of the participant resulting from an illness or accident, loss of the participant's property due to casualty or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. Under Internal Revenue Service (IRS) guidelines, a hardship application must not exceed the amount reasonably necessary to satisfy the emergency need.

The applicant is appealing to the Board for a hardship withdrawal in order to pay the legal retainer fee balance to secure adequate legal representation at an upcoming appellate court hearing case for her son. The applicant's son is her sole dependent and beneficiary of her Deferred Compensation account.

The applicant stated that the conviction and charges in her son's case are extreme in nature and could potentially result in life imprisonment.

The first question is whether the applicant has established a financial emergency. On September 23, 2011, the applicant received a letter from her son's attorney requesting \$25,000 as a retainer with additional attorney fees and investigation fees as well as costs needed to complete the pre-trial and trial. The applicant has already paid \$12,000 to date from her own resources and is requesting her entire Deferred Compensation account balance to pay the remainder owed to attorney by the due

date of November 1, 2012. Based on this information, staff finds that the applicant has established that she has a financial emergency.

The second question is whether the applicant has exhausted all available alternatives. The applicant has already taken out two loans from the Deferred Compensation Plan. The first loan was taken on July 13, 2009 in the amount of \$5,050 and the second loan was taken on July 6, 2010 for \$1,700. As a result, the applicant has already exhausted her loan opportunities. The applicant has liquidated all of her savings and is unable to obtain a loan due to her credit rating and high debt to income ratios. The applicant has also made the necessary arrangements to cancel all contributions. Based on this, staff finds that the applicant has exhausted all available alternatives.

The final question is whether the applicant has established an unforeseen or unavoidable event. The applicant's son, who staff has verified is a dependent of the applicant, has been accused of a crime and is currently awaiting trial. In previous cases, the Board has taken the position that expenses associated with criminal proceedings may be viewed as unforeseen if a court has not yet reached a determination of guilt or innocence. Given all this, staff finds an unforeseen event has been established.

Staff does not concur with Great-West's finding that the applicant's legal expenses for her dependent son is not a valid basis for hardship withdrawal. First, it should be noted that this finding is based on an internal Great-West policy and no Internal Revenue Service guidance prohibits approval for legal bills involving criminal charges against the participant, participant's spouse, participants dependent claimed on a tax return, or the participant's primary beneficiary. Second, when hardships were being processed by City staff and the Board, the Board had approved applications for legal expenses incurred to represent a participant's dependent.

The Board had approved a partial hardship withdrawal in the amount of \$7,500 (net) at the April 17, 2007 Board meeting for a similar case that involved a participant's son's legal expenses awaiting trial. As a result, staff is recommending approval of \$11,000 (net) for the additional amount needed to pay the attorney for the remaining balance owed to represent her son in an upcoming appellate court hearing.

The applicant's financial summary is shown on Attachment A.

Submitted by:

Natasha Gameroz

Reviewed by:

Steven Montagna

Approved by:

Alejandrina Basquez

Attachment A

<u>Regular Monthly Expenses</u>	<u>Monthly</u>	<u>Annual</u>	<u>Balance</u>	<u>Verified</u>	<u>Past Due</u>
Mortgage w/impounds	\$ 1,890	\$ 22,680		N	N
Federal/State Income Taxes/Medicare	\$ 708	\$ 8,501	\$ -	Y	N
Auto Insurance	\$ 100	\$ 1,200		N	N
Auto Registration	\$ 40	\$ 480	\$ -	N/A	N
Medical/Dental Insurance	\$ -	\$ -	\$ -	N/A	N/A
Union Dues	\$ 53	\$ 633		N/A	N/A
Life/Disability Insurance	\$ 113	\$ 1,358		N/A	N/A
City Employees' Club	\$ 58	\$ 691		N/A	N/A
Retirement	\$ 771	\$ 9,251	\$ -	N/A	N/A
Food, Clothing, Household	\$ 150	\$ 1,800	\$ -	N/A	N/A
Utilities (Phone, Water, Gas, etc.)	\$ 550	\$ 6,600	\$ -	N/A	N/A
Auto (Gas, Maintenance, etc.)	\$ 600	\$ 7,200	\$ -	N/A	N/A
Total Regular Expenses	\$ 5,033	\$ 60,395	\$ -	\$ -	\$ -

<u>Debt/Loan Payments</u>	<u>Monthly</u>	<u>Annual</u>	<u>Balance</u>	<u>Verified</u>	<u>Past Due</u>
L.A. Credit Union (Auto Loan)	\$ 426	\$ 5,112		N	N
Best Buy	\$ 49	\$ 588	\$ 3,092	N	N
Macy's	\$ 59	\$ 708	\$ 1,795	N	N
JC Penney's	\$ 59	\$ 708	\$ 1,818	N	N
Credit Union - LOC	\$ 405	\$ 4,860	\$ 13,450	N	N
Debt Consolidation - Credit Arbitrators	\$ 915	\$ 10,980	\$ 30,000	N	N
Orchard (Mastercard)	\$ 25	\$ 300	\$ 689	N	N
Deferred Comp. Loans	\$ 126	\$ 1,511	\$ 3,031	Y	N
Total Debt Payments	\$ 2,064	\$ 24,767	\$ 53,875		\$ -
Total Regular Expenses	\$ 7,097	\$ 85,162	\$ 53,875		\$ -

Current Income

Participant's Income	\$ 7,008	\$ 84,099			
Total Income --->	\$ 7,008	\$ 84,099			
Difference	\$ (89)				

Assets

Checking Account	\$ 80				
Savings Account	\$ 2				
Home (appraised/estimated)	\$ 250,000				
Automobile	\$ 10,000				
Total Assets --->	\$ 260,082				