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**COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

IN RE: ACCOUNT OF GARRETT J. BLASCHAK  
DOCKET NO. 2016-21  
CLAIM OF GARRETT J. BLASCHAK

**OPINION AND ORDER OF THE BOARD**

The Public School Employees' Retirement Board ("Board") has before it a Motion for Summary Judgment filed by the Public School Employees' Retirement System ("PSERS") in the above-referenced administrative appeal requesting that Garrett J. Blaschak's ("Claimant") Appeal and Request for Administrative Hearing be dismissed because there is no issue of material fact and PSERS is entitled to summary judgment as a matter of law.

PSERS filed its Motion for Summary Judgment on September 13, 2017, and served a copy by First Class Mail on Claimant as required by the General Rules of Administrative Practice and Procedure. 1 Pa. Code §§ 33.32, 33.35-33.36. By letter dated September 13, 2017, PSERS notified Claimant that he had 30 days to respond to PSERS' motion under Pa.R.C.P. No. 1035.3. Claimant's response, therefore, had to be filed on or before October 13, 2017. See 1 Pa. Code §§ 31.11, 31.12 and 33.34. Claimant did not file a response to the motion.

Where no factual issues are in dispute, no evidentiary hearing is required under 2 Pa.C.S. § 504. The function of a summary judgment motion is to eliminate the needless use of time and resources of the litigants and the Board in cases where an evidentiary administrative hearing would be a useless formality. See *Liles v. Balmer*, 567 A.2d 691 (Pa. Super. 1989). The Board's regulations authorize the use of summary judgment where there are no genuine issues of material fact. 22 Pa. Code § 201.6(b); Pa.R.C.P. Nos. 1035.1-1035.5. To determine whether the party moving for summary judgment

has met its burden, the Board must examine the record in the light most favorable to the non-moving party and give him the benefit of all reasonable inferences. *See Thompson v. Nason Hosp.*, 535 A.2d 1177, 1178 (Pa. Super. 1988), *aff'd*, 591 A.2d 703 (Pa. 1991). Any doubts regarding the existence of a genuine issue of material fact must be resolved in favor of the non-moving party. *El Concilio De Los Trabajadores v. Commonwealth*, 484 A.2d 817, 818 (Pa. Cmwlth. 1984). "Summary judgment may be entered against a party who does not respond." Pa.R.C.P. 1035.3(d).

In responding to a motion for summary judgment, an adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response identifying "(1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion . . . , or (2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced." Pa.R.C.P. No. 1035.3(a). "An adverse party may supplement the record or set forth the reasons why the party cannot present evidence essential to justify opposition to the motion and any action proposed to be taken by the party to present such evidence." Pa.R.C.P. No. 1035.3(b).

Because Claimant did not respond and, therefore, has not identified any additional facts remaining to be determined at an evidentiary hearing that would be material to the legal issue before the Board in this matter, the Board finds that there is no genuine issue as to any material fact. The Board further finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issue of whether Claimant is permitted to elect Class T-F membership after the statutory deadline.

#### **FINDINGS OF FACT**

Based on the record, the Board finds the following relevant facts not in dispute:

1. Claimant was first enrolled in PSERS in January 2016 as a part-time, per diem substitute teacher and a part-time, salaried coach with the Reynolds School District ("District").

2. Claimant qualified for membership with PSERS when his salaried coaching position was first reported to PSERS through the District's February 2016 work report.

3. Pursuant to Section 8305(d) of the Public School Employees' Retirement Code, 24 Pa.C.S. § 8101, et seq. ("Retirement Code"), Claimant was automatically enrolled in PSERS as a Class T-E member.

4. Claimant's home address from March 1, 2016 through September 29, 2016 was [REDACTED]

5. By correspondence dated March 6, 2016, PSERS mailed a *T-F Membership Class Election Form, Choosing Your Membership Class* handout, an "IMPORTANT: Decision Required!" Handout, and cover letter to Claimant at [REDACTED]

[REDACTED] See PSERS-2.

6. The March 6, 2016 cover letter informed Claimant of his opportunity to elect Class T-F membership:

Dear Mr. Garrett Blaschak:

Congratulations on becoming a member of the Public School Employees' Retirement System (PSERS). As a member of PSERS, you are required to make contributions which will be withheld from your pay. In addition, each of your Pennsylvania public school employers will make employer contributions toward your PSERS retirement benefit. The amount of money withheld from your pay and the factors used to determine a retirement benefit when you retire are determined by your membership class.

There are two classes of membership (T-E and T-F) that will determine the amount of money withheld from your paychecks and the amount of your retirement benefit when you retire.

You are automatically enrolled as a Class T-E member and need not take any action if you choose to remain as a Class T-E member. As such, your benefit if you retire at your normal retirement age will be your years of service times your final average salary times a 2 percent multiplier. Your employee contributions are subject to change every three years but will not be less than 7.5 percent nor more than 9.5 percent of your salary, based on the investment performance of the Retirement Fund.

If you wish to elect to become a Class T-F member, you must sign and return to PSERS the enclosed *T-F Membership Class Election* (PSRS-1318) form by April 29, 2016. The form must be received by PSERS by that date. As a Class T-F member your benefit if you retire at your normal retirement age will be your years of service times your final average salary times a higher of 2.5 percent multiplier. Your employee contributions are subject to change every three years but will not be less than 10.3 percent nor more than 12.3 percent, based on the investment performance of the Retirement Fund.

\* \* \*

At this time you should:

- Review the *Choosing Your Membership Class* handout included in this packet.
- Decide whether you wish to remain a Class T-E member. If you wish to remain a Class T-E member, you do not have to take any action.
- If you wish to elect Class T-F, **PSERS must receive your form by April 29, 2016**. If the form is received after that date, you will remain Class T-E and will not have the opportunity to elect Class T-F in the future.

**Your decision to remain Class T-E by doing nothing, or to elect Class T-F by filing the enclosed form, is final and binding.**

See PSERS-2 (emphasis in original).

7. The March 6, 2016 *T-F Membership Class Election* form notified Claimant that “**PSERS must receive this form by April 29, 2016.**” See PSERS-2 (emphasis in original).

8. By correspondence dated April 5, 2016, and mailed to Claimant at [REDACTED]

[REDACTED] PSERS reminded Claimant of the April 29, 2016 deadline to elect Class T-F membership. See PSERS- 3.

9. The April 5, 2016 letter provided, in pertinent part, as follows:

Dear Mr. Garrett Blaschak:

The Public School Employees' Retirement System (PSERS) previously sent you a *T-F Membership Class Election* (PSRS-1318) form.

We are providing you this reminder because your decision to remain a Class T-E member, or to change to a Class T-F member, is final and binding. If you wish to remain as a Class T-E member, you do not have to take any action.

If you wish to remain a Class T-E member, you need to do nothing; Class T-E membership is the automatic membership class. If you would like to change your membership to Class T-F, you must do so by April 29, 2016. PSERS sent you a mailing approximately 30 days ago that included a *T-F Membership Class Election* (PSRS-1318) form and an informational handout describing the differences between Class T-E and Class T-F membership.

Please note that in order to elect Class T-F membership, the form must actually be received on or before the due date.

\* \* \*

If you wish to elect Class T-F membership, you must file the *T-F membership Class Election* (PSRS-1318) form no later than April 29, 2016.

\* \* \*

See PSERS-3 (emphasis in original).

10. Prior to April 29, 2016, Claimant received PSERS' correspondence dated March 6, 2016 and April 5, 2016, which informed him of the Class T-F election and his deadline to elect Class T-F membership.

11. Claimant did not elect Class T-F membership on or before April 29, 2016.

12. By letter dated May 14, 2016, and mailed to Claimant at [REDACTED] [REDACTED] PSERS informed Claimant that he would permanently remain a Class T-E member because he did not elect Class T-F membership by the election deadline. See PSERS-4.

13. Claimant received PSERS' May 14, 2016 letter and, on June 15, 2016, he timely appealed PSERS' determination and requested that he be permitted to make an untimely election because: (1) he accepted a full-time teaching position in Ohio prior to the Class T-F election deadline and, therefore, did not believe he was eligible for a PSERS' retirement; and (2) he was "instructed by the union representative at the school district [he] did not need to select a plan until [he] was employed full time." See PSERS-5.

14. By letter dated August 30, 2016, the ESRC denied Claimant's appeal, explaining that the T-F election correspondence was sent to Claimant's last known address on file with PSERS. See PSERS-6.

15. On September 29, 2016, Claimant appealed the ESRC's decision. See PSERS-7.

16. On October 12, 2016, PSERS filed its Answer and New Matter. See PSERS-1.

17. Claimant did not respond to PSERS' New Matter.

18. On September 13, 2017, PSERS filed a Motion for Summary Judgment.

19. Claimant did not file a response to PSERS' Motion.

20. This matter is ripe for Board adjudication.

## DISCUSSION

The Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101 et seq., requires that a person who first becomes a school employee and an active member on or after July 1, 2011 is enrolled in PSERS as a Class T-E member. 24 Pa.C.S. § 8305(d). Such T-E member, however, may elect to become a Class T-F member provided the Class T-E member files a written election with PSERS within 45 days of notification by PSERS. 24 Pa.C.S. §§ 8305(e) and 8305.2(b).<sup>1</sup> If a member fails to timely file an election to become a Class T-F member, the Retirement Code mandates that "the member shall be enrolled as a member of Class T-E and the member shall never be able to elect Class T-F service, regardless of whether the member terminates service or has a break in service." 24 Pa.C.S. § 8305.2(d). Thus, there are no exceptions to the Class T-F election deadline.

Claimant first enrolled in PSERS in January 2016 as a part-time, per diem substitute teacher and a part-time, salaried coach with the Reynolds School District ("District"). He subsequently qualified for membership in February 2016 and on March 6, 2016, PSERS mailed Claimant a *T-F Membership Class Election Form, Choosing Your Membership Class* handout, an "IMPORTANT: Decision Required!" Handout, and cover letter. The cover letter congratulated Claimant on becoming a PSERS member, explained the differences between Class T-F and T-E membership, and notified him of the April 29, 2016 deadline to elect Class T-F membership. The enclosed election form also notified Claimant of the deadline. On April 5, 2016, PSERS sent a follow-up letter to Claimant reminding him of the deadline. Claimant did not elect Class T-F membership on or before the April 29, 2016 deadline.

Claimant does not dispute that PSERS mailed, and that he timely received, the statutorily-required Class T-F election notice. Nor does he dispute that he failed to elect Class T-F membership on or before the statutory deadline. Rather, Claimant asks that

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<sup>1</sup> Class T-E membership provides a benefit accrual rate of 2% and a contribution rate of at least 7.5%. Class T-F membership provides a benefit accrual rate of 2.5% and a contribution rate of at least 10.3%. 24 Pa.C.S. § 8102 (definitions of "basic contribution rate" and "standard single life annuity").

he be permitted to make an untimely election because: (1) he accepted a full-time teaching position in Ohio prior to the Class T-F election deadline and, therefore, did not believe he was eligible for a PSERS' retirement; and (2) he was "instructed by the union representative at the school district [he] did not need to select a plan until [he] was employed full time." See PSERS-7. Claimant's appeal must be denied as a matter of law.

The March 6, 2016 and April 5, 2016 letters that PSERS sent to Claimant properly notified him that he qualified for membership with PSERS, that he had the opportunity to elect Class T-F membership, and that the deadline to make such election was April 29, 2016. Claimant has never averred that he did not receive the notices, that he was unaware of the deadline, or that the notices provided to him were insufficient. Claimant's mistaken belief that he was not eligible to make an election because he later gained employment in Ohio does not provide grounds to allow Claimant to make an untimely election.

Mere misunderstanding of membership options does not excuse a member from the statutory deadline under the Retirement Code; nor does it entitle a member to relief. See *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001) (citing *McGovern v. State Employees' Ret. Bd.*, 517 A.2d 523, 526 (Pa. 1986)). Although the Board must liberally administer the system, it does not have the authority to deem a late-filed Class T-F membership election as timely. *Id.*; see also *Account of Christian Miller*, Docket No. 2012-52 (PSERB May 1, 2013); *Account of Adam D. Smith*, Docket No. 2015-06 (PSERB Aug. 7, 2015); *Account of Andrew Lyle*, Docket No. 2014-18 (PSERB Jun. 14, 2016); see generally *Allen v. Public Sch. Employees' Ret. Bd.*, 848 A.2d 1031, 1033 (Pa. Cmwlth. 2004); *Harasty v. Public Sch. Employees' Ret. Bd.*, 945 A.2d 783, 788 (Pa. Cmwlth. 2008). Such action would be tantamount to circumventing the express language of the Retirement Code, which the Board cannot do. See *Forman*, 778 A.2d at 780; *Marinucci v. State Employees' Ret. Sys.*, 863 A. 2d 43 (Pa. Cmwlth. 2004). There is no exception, statutory or otherwise, to the deadline for electing Class T-F membership, and, thus, the Board is not authorized to grant Claimant



the relief he requests because it is not specifically entitled to do so by the Retirement Code.

With respect to his second claim, even if a union representative provided Claimant with information that was contradictory to PSERS' direct communications, PSERS is not bound by a third party's mistake. See *Account of Andrew Lyle*, Docket No. 2014-18 (PSERB Jun. 14, 2016). Indeed, the Board cannot be estopped from applying the Retirement Code even when a PSERS' employee provides the wrong advice to a member, because to do so would be tantamount to giving employee errors the effect of amending the substance of a statute. See *Finnegan v. Commonwealth*, 560 A.2d 848, 851 (Pa. Cmwlth. 1989), *aff'd w/o op.*, 591 A.2d 1053 (Pa. 1991); *Tyson v. Pub. Sch. Employes' Ret. Sys.*, 737 A.2d 325, 328 (Pa. Cmwlth. 1999) (citing *Finnegan*). Moreover, the evidence shows that Claimant was sent communications from PSERS that correctly explained his membership options and the time period in which to elect. Claimant does not dispute receiving such notices, and, therefore, notice requirements were satisfied.

Here, there is no dispute that PSERS provided Claimant with the correct information through the March 6, 2016 and April 5, 2016 mailings. Claimant's decision to rely on any incorrect representation made by a third party does not authorize the Board to grant Claimant the equitable relief he requests. Accordingly, Claimant's appeal must be dismissed as a matter of law.

### **CONCLUSION**

For the above-stated reasons, the Board finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issue of whether to accept Claimant's untimely request to elect Class T-F membership with PSERS. Accordingly, PSERS' Motion for Summary Judgment is GRANTED, and Claimant's Appeal and Request for Administrative Hearing is DENIED.

**COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

IN RE: ACCOUNT OF GARRETT J. BLASCHAK  
DOCKET NO. 2016-21  
CLAIM OF GARRETT J. BLASCHAK

**ORDER**

AND NOW, upon consideration of Claimant's Request for Administrative Hearing and PSERS' Motion for Summary Judgment:

IT IS HEREBY ORDERED, that PSERS' Motion for Summary Judgment is GRANTED, and Claimant's Appeal and Request for Administrative Hearing is DISMISSED in accordance with 22 Pa. Code § 201.6(c), as no genuine issue of material fact exists and PSERS is entitled to judgment as a matter of law. As a result, this Board denies Claimant's request to elect Class T-F membership after the statutory deadline.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: 12-8-17

By:   
Nathan Mains, Vice Chairman