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

IN RE: ACCOUNT OF DIANE M. ZEIGER
DOCKET NO. 2016-14
CLAIM OF DIANE M. ZEIGER

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 Diane M. Zeiger's ("Claimant") Appeal and Request for Administrative Hearing be dismissed because there is no issue of material fact and PSERS is entitled to a summary judgment as a matter of law.

PSERS filed its Motion for Summary Judgment on October 25, 2016, 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 October 25, 2016, PSERS notified Claimant that she had 30 days to respond to PSERS' motion under Pa.R.C.P. No. 1035.3. On November 28, 2016, Claimant filed a response.

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 her 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. Cmwlt. 1984).

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).

In responding to PSERS’ Motion, Claimant asserts that she “was not given the opportunity to participate in PSERS at the time [she] was employed at Tri-County O.I.C.” (Response of Claimant, Diane M. Zeiger, at 2.) Claimant essentially argues that because she taught “individuals who often experienced academic difficulties for which specialized instruction and emotional support was required . . . for successful completion of the GED program” she is entitled to contribute to PSERS during the “period that [she] performed the services of math instructor for Tri-County O.I. C. from March to November of 1980.” *Id.* at 1. Because Claimant has not disputed any facts asserted by PSERS in its Motion or 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 are no disputed material facts. 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 entitled to receive service credit with PSERS for service rendered with Tri-County Opportunities Industrialization Center (“Tri-County OIC”) between March 1980 and November 1980.

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 October 1993 through her employment with the West Shore School District.
2. On June 18, 2015, Claimant filed a *Purchase of Former Part-Time Uncredited Service* application identifying part-time, hourly service as a math instructor for the general equivalency diploma (“GED”) program at Tri-County OIC from March 1980 to November 1980. (PSERS-1).
3. From March 1980 to November 1980, Claimant was an employee of Tri-County OIC. (PSERS-1 and PSERS-3)
4. As an employee of the Tri-County OIC, Claimant taught mathematics classes to adults in preparation for their GED testing in Pennsylvania. (PSERS-1).
5. By letter dated June 23, 2015, PSERS notified Claimant that her “service at Tri-County OIC cannot be purchased because it is not a PSERS-participating employer.” (PSERS-2).
6. On July 13, 2015, Claimant appealed PSERS’ determination. (PSERS-3).
7. The Executive Staff Review Committee (“ESRC”), by letter dated June 9, 2016, denied Claimant’s appeal on the basis that the service she rendered at the Tri-County OIC, which is a non-profit adult education organization, is not eligible for purchase because it is not a “governmental entity,” a “public school,” or an “employer,” as defined by the Public School Employees’ Retirement Code, 24 Pa.C.S. § 8101 (“Retirement Code”). (PSERS-4).
8. The Tri-County OIC is a private, non-profit entity. (PSERS-4).
9. The Tri-County OIC is not, and never has been, a reporting unit of PSERS, and its employees are not eligible for membership with PSERS. (PSERS-3; PSERS-4).

10. On July 1, 2016, Claimant filed an *Appeal and Request for Administrative Hearing*. (PSERS-5).
11. On July 15, 2016, PSERS filed an Answer. (PSERS-6).
12. On October 25, 2016, PSERS filed a Motion for Summary Judgment.
13. On November 28, 2016, Claimant filed a response to PSERS' motion.
14. The matter is ripe for Board adjudication.

DISCUSSION

The issue on appeal is whether Claimant is entitled to receive service credit with PSERS for her part-time, hourly employment from March 1980 through November 1980 as an employee of the Tri-County OIC, a private entity that is not a reporting unit of PSERS.

The Retirement Code permits an active member of PSERS to purchase credit for previous "school service," which is defined, in pertinent part, as "service rendered as a school employee." 24 Pa.C.S. §§ 8102, 8303. The Retirement Code defines "school employee" as any person "engaged in work relating to a public school for any governmental entity," and the term "governmental entity" as a "Board of school directors, board of public education, intermediate unit board of directors, area vocational-technical board, any governing board of any agency or authority created by them, and the Commonwealth." 24 Pa.C.S. § 8102. "Employer" is defined as any "governmental entity directly responsible for the employment and payment of the school employee and charged with the responsibility of providing public education within this Commonwealth...." 24 Pa.C.S. § 8102; see 22 Pa. Code § 211.2.

Claimant does not dispute that she was a Tri-County OIC employee during the relevant time period. Nor does she dispute that that Tri-County OIC is not a "governmental entity," a "public school," or an "employer," as defined by the Retirement

Code.¹ Rather, she claims that she should nevertheless receive credit because she was performing duties that were equivalent to a public high school teacher's duties and because she was not given the opportunity to participate in PSERS while she was working for Tri-County OIC. She also asserts that she should receive credit because Tri-County OIC was funded by federal, state, and local funds. The type of work that Claimant performed and the funding for that work, however, are not determinative in this appeal. To be eligible to purchase service credit, Claimant must show that she was engaged in work relating to a "public school" for a "governmental entity." See 24 Pa.C.S. §§ 8102, 8301(a); *Golebieski v. Public School Employees' Retirement Board*, 636 A.2d 268 (Pa. Cmwlth. 1993); *Cain v. Public School Employees' Retirement System*, 651 A.2d 660 (Pa. Cmwlth. 1994); *Account of Karl R. Scheibenhofer*, Docket No. 2013-02 (PSERB Oct. 4, 2013).

In *Cain*, for example, two PSERS members requested that they be given credit for the period of time they worked as teachers and administrators at the Main Line School and Hall Manor School, which are approved private schools in Pennsylvania and are partially reimbursed by the Department of Education ("DOE") for expenses incurred in educating "exceptional" students from local school districts. 651 A.2d 661. The Commonwealth Court held that the members were not eligible for service because they were not employed by a governmental entity. *Id.* at 662. In addition, although the private schools were subject to comprehensive DOE regulations, the Court noted that the schools are not under the "order and superintendence" of that agency. *Id.* The Court concluded that the schools were, therefore, distinct from "public schools." *Id.*

In *Golebieski*, the claimant was an employee of a private entity, but his job duties included teaching physical and health education to public school students and physical education at a private school. 636 A.2d at 269. He reported the students' grades, and he was required to follow a class schedule and curriculum established by the school

¹ Claimant requests that she be "grandfathered" in and receive credit under PSERS "regulations" from 1980. The relevant provisions of the Retirement Code and the Board's Rules and Regulations, however, have remained unchanged since enacted. Such regulations have never permitted this type of purchase and Claimant has not substantiated her argument throughout this appeal to provide further insight into her position.

district. *Id.* Nevertheless, the Commonwealth Court held that he was not eligible for service credit with PSERS because his employment relationship was with the private employer, not a governmental entity. *Id.* at 271.

In the *Account of Karl R. Scheibenhofer*, this Board rejected a similar request by a member for the time he worked for the Youth Services Agency (“YSA”). Docket No. 2013-02. YSA was an agency that contracted directly with community schools to provide services to “at risk” youth from the school districts. *Id.* at *4. YSA followed the guidelines and curriculum of the local school district, and the students were able to graduate with a diploma from their local school upon completion of YSA’s program. *Id.* Regardless, because YSA was not a “governmental entity” and a reporting unit of PSERS, the member was not a “school employee” who was eligible for credit with PSERS. *Id.* at *8.

Similar to the claimants in the above-referenced cases, the service Claimant is seeking to purchase with PSERS is service Claimant performed as an employee of Tri-County OIC. Because Tri-County OIC is not a “government entity,” its employees are not “school employees” and are not permitted to purchase the service under the Retirement Code. The fact that Claimant may have been teaching high school math to the GED students, that the GED students were bussed to a local school district for testing, or that her employer received state or federal funding does not transform her service to “school service.”

Accordingly, Claimant’s appeal must be dismissed.

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 Claimant is entitled to receive service credit with PSERS for the service she rendered as an employee of Tri-County OIC. Accordingly, PSERS’ Motion for Summary Judgment is GRANTED, and Claimant’s Appeal and Request for Administrative Hearing is DENIED.

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ORDER

AND NOW, upon consideration of Claimant's Appeal and 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(b), 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 purchase the service she rendered between March 1980 and November 1980 as an employee of Tri-County Opportunities Industrialization Center.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: March 10, 2017

By: Melva S. Vogler
Melva Vogler, Chairman