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

IN RE: ACCOUNT OF WILLIAM L. PRIETO
DOCKET NO. 2016-15
CLAIM OF WILLIAM L. PRIETO

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the Briefs and the proposed Opinion and Recommendation of the Hearing Examiner. We note that neither party filed Exceptions to the proposed Opinion and Recommendation.

The Board finds appropriate the Hearing Examiner's History, Findings of Fact, Conclusions of Law, Discussion, and Recommendation, and we hereby adopt them as our own, and accordingly:

IT IS HEREBY ORDERED that Claimant's request to purchase creditable nonschool service for the year he spent as a Midshipman at the United States Naval Academy is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: May 24, 2018

By: Melva S. Vogler
Melva S. Vogler, Chairman

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

In Re: :
Account of William L. Prieto : **Docket No. 2016-15**
Claim of William L. Prieto :

OPINION AND RECOMMENDATION

Date of Hearing: September 20, 2017
Hearing Officer: Marc A. Moyer, Esquire
Claimant, *Pro Se*: William L. Prieto
For PSERS: Kathrin V. Smith, Esquire

HISTORY

This matter is before the Public School Employees' Retirement Board on an appeal filed by William L. Prieto ("Claimant") from a March 31, 2016 decision by the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS") to deny Claimant's request to purchase credit for "creditable nonschool service" in the form of Non-Intervening military service from July 8, 1980 through August 17, 1981, while he was enrolled as a Midshipman at the United States Naval Academy. Claimant has been a PSERS member since approximately January 23, 1986. He submitted a Service Purchase Request form with PSERS on or about July 14, 2014, through which he sought the military service credit. By letter dated September 29, 2014, PSERS informed Claimant of its denial of his request to purchase credit for Non-Intervening Military Service on the ground that Midshipman do not qualify for service credit under the Public School Employees' Retirement Code ("Retirement Code") for any purpose based upon legal precedent. PSERS additionally informed Claimant that a court has noted that a DD-214 does not reflect cadet service as active military service, and that cadets of the military academies do not work in a true bargained-for exchange that would demonstrate an employment relationship. Instead, they primarily seek to fulfill educational requirements.

Claimant timely appealed from PSERS' determination. Thereafter, the ESRC upheld PSERS' decision at its March 31, 2016 meeting. PSERS notified Claimant of the ESRC's decision by letter dated June 6, 2016. By way of explanation, PSERS informed Claimant that the Pennsylvania Commonwealth Court has previously determined that attendance at a military academy does not qualify for purchase of retirement credit because a cadet does not work in the true bargained-for exchange that would evidence an employer/employee relationship. PSERS additionally provided Claimant with a more detailed analysis of the law to which it referred in an attachment to its correspondence.

Claimant appealed from the ESRC's determination on or about July 6, 2016 through which he requested an administrative hearing. In support of his appeal, Claimant asserted that the circumstances of his request are distinguishable from the legal authority cited by PSERS. Claimant additionally asserted that he is entitled to credit for non-intervening military service pursuant to 22 Pa.Code §213.4(d) based upon his receipt of disability compensation benefits related to a service-connected injury he incurred during his active military service as a Midshipman. PSERS filed an Answer on July 26, 2016. A formal administrative hearing on Claimant's appeal occurred on September 20, 2017 before Hearing Officer Marc A. Moyer, Esquire.

Claimant appeared for the hearing, *pro se*, and testified on his own behalf. Claimant moved 25 exhibits into evidence which consisted of Exhibit C-1, Exhibit C-4 through Exhibit C-20 and Exhibit C-25 through Exhibit C-31. The Hearing Officer sustained PSERS' objections to Exhibit 9 through Exhibit 11 (military pay and allowance charts), Exhibit 16 through Exhibit 18 (Temple University, University of Pittsburgh and Penn State mission statements) and Exhibit 20 (compilation of Navy "A schools" created by Claimant). Kathrin V. Smith, Esquire represented PSERS at the hearing. PSERS presented its case through the testimony of PSERS Senior Benefits Manager, Kristen Shelton. PSERS also moved six (4) exhibits into evidence which comprised of Claimant's PSERS Enrollment Application (PSERS-1), Claimant's Service Purchase Request (PSERS-2), September 29, 2014 correspondence from PSERS to Claimant (PSERS-3) and PSERS' June 6, 2016 determination letter. (PSERS 4).

By Order dated October 4, 2017, Claimant was directed to file his Post-Hearing Brief by October 31, 2016. PSERS was directed to file its Post-Hearing Brief no later than December 6, 2017. The hearing record in this matter closed with the filing of Notes of Testimony ("N.T.") on October 2, 2017,

and the timely filing of the parties' Post-Hearing Briefs. This matter is now before the Public School Employees' Retirement Board for final disposition.

FINDINGS OF FACT

1. Claimant has been a PSERS member since approximately January 23, 1986. (PSERS-1; N.T. 18).
2. Claimant was enrolled as a Midshipman at the United States Naval Academy from July 8, 1980 through August 17, 1981. (Exhibit C-5; N.T. 72).
3. During the period Claimant was enrolled as a Midshipman at the United States Naval Academy, he was on continuous "active duty" in the United States Navy, as the term "active duty" is defined by 10 U.S.C. §101(d)(1) and 37 U.S.C. §101(18). (Exhibit C-7; Exhibit C-8; N.T. 42-43, 72).
4. The United States Naval Academy is, among other things, a four-year undergraduate college whose graduates are awarded a Bachelor of Science Degree upon graduation. (Exhibit C-4; Exhibit C-6; Exhibit C-12; Exhibit C-19; N.T. 72).
5. On or about June 15, 1980, Claimant executed an "Agreement to Serve" upon his admission to the United States Naval Academy. The Agreement to Serve stated, in pertinent part, as follows:

I. **FOR ALL MIDSHIPMEN WHO ARE CITIZENS...OF THE UNITED STATES**

A. In accordance with Title 10, U.S. Code, Section 6959(a), I hereby agree that, unless sooner separated, I will:

1. Complete the course of instruction at the Naval Academy (which includes satisfactorily achieving the required standards of performance in Conduct, Honor, and Military Performance (Aptitude) until the time of appointment as a commissioned officer);

B. Furthermore, as provided by Title 10, U.S. Code, Section 6959(b), I understand that if I do not fulfill this AGREEMENT TO SERVE I may be transferred by the Secretary of the Navy to the Naval Reserve or the Maine Corps Reserve in an appropriate enlisted grad or rating,

and, notwithstanding Title 10, U.S. Code, Section 651, may be ordered to active duty to serve in that grade or rating for such period of time as the Secretary prescribes...

II. FOR ALL MIDSHIPMEN WHO ENTER THE NAVAL ACADEMY DIRECTLY FROM A CIVILIAN STATUS

A. I understand that if I am separated from the Naval Academy or if my resignation therefrom is accepted the following policies are presently applicable

1. Fourth and Third Classmen (3rd and 4th years [sic]) Any Fourth or Third Classman who is separated from the Naval Academy or whose resignation therefrom is accepted will be discharged from the naval service. (A resignation tendered by a Fourth or Third Classman will be accepted [sic] when found to be in the best interest of the naval service).

IV. FOR ALL MIDSHIPMEN

A. I understand that I must satisfactorily complete the following requirements in order to graduate from the Naval Academy and receive a degree:

1. Complete or validate the required professional, general distribution, and majors courses specified in the matrix for the assigned major....Matrices are prepared and revised by cognizant academic departments...

3. Complete or validate a minimum of 140 semester hours with a Cumulative Quality Point Rating (COPR) of at least 2.00....

(Exhibit C-4; N.T. 36).

6. An academic school year at the United States Naval Academy is partitioned into semesters.

(Exhibit C-6; N.T. 74, 82-83).

7. Claimant took classes in General Chemistry I (4 semester hours), Western Society (3 semester hours), Rhetoric and Introduction to Literature (3 semester hours), Introduction to Naval Engineering (2 semester hours), Fundamentals of Naval Science (3 semester hours), Analytic Geometry and Calculus I

(4 semester hours) and physical education during his first semester at the United States Naval Academy. (Exhibit C-6; N.T. 74-75, 83-84).

8. Claimant took classes in Leadership (2 semester hours), American Naval Heritage (3 semester hours), Rhetoric and Introduction to Literature (3 semester hours), Introduction to Computing (2 semester hours), Analytic Geometry and Calculus II (4 semester hours), General Chemistry II (4 semester hours) and physical education during his second semester at the United States Naval Academy. (Exhibit C-6; N.T. 83-84).

9. Claimant's academic courses at the United States Naval Academy were typically conducted Monday through Friday. (N.T. 76, 79, 83).

10. Claimant's courses at the United States Naval Academy were taught by military professors. He took examinations in his classes, he was assigned grades and he received undergraduate college credit for many of his classes. (Exhibit C-6; N.T. 81-82).

11. Claimant had an academic major, Oceanography, while he was enrolled at the United States Naval Academy. (N.T. 84).

12. Claimant's daily schedule at the United States Naval Academy typically included designated study time from 8:00 p.m. to 11:00 p.m. (N.T. 80, 83).

13. The United States Naval Academy has athletic teams whose members are comprised exclusively of Midshipmen. Naval Academy athletic teams competed against collegiate athletic teams. (N.T. 85-86).

14. Claimant competed on the United States Naval Academy Rifle Team as a Midshipman. (N.T. 86).

15. Midshipmen at the United States Naval Academy were required to go out on a training cruise after the completion of their first academic year as part of their military training. (N.T. 96).

16. Claimant did not did not go out on a cruise prior to his separation from the United States Naval Academy. (N.T. 96).
17. Claimant separated from the United States Naval Academy, effective August 17, 1981, due to his failure to satisfy core academic standards. (Exhibit C-5; N.T. 88-89).
18. Claimant was injured on approximately September 29, 1980, while he was enrolled as a Midshipman at the United States Naval Academy. (N.T. 40, 89-90).
19. Claimant was awarded disability benefits, effective the day after his separation from the United States Naval Academy. (Exhibit C-28; N.T. 89).
20. Claimant did not serve in the United States Navy or the United States Marine Corps following his separation from the United States Naval Academy based upon his separation after one year of attendance. (Exhibit C-4; N.T. 90-91).
21. Claimant did not have a military pay grade as a Midshipman at the United States Naval Academy. (Exhibit C-5; N.T. 92).
22. Claimant used the payments he received as a Midshipman for books, uniforms, laundry and other necessities. (N.T. 92).
23. Claimant enrolled at Shippensburg University in January 1982, following his separation from the United States Naval Academy. (N.T. 93).
24. Claimant graduated from Shippensburg University in December 1985 with a Bachelor of Science Degree in Biology. (N.T. 93).
25. Claimant was able to transfer some of the academic credits he earned at the United States Naval Academy towards his undergraduate degree from Shippensburg University. (N.T. 93).
26. Claimant obtained employment as a science teacher with the Chambersburg Area School District in January 1986, after he graduated from Shippensburg University. (N.T. 94).

27. Claimant's attendance at the United States Naval Academy served an educational purpose. (Exhibit 4; Exhibit 6, Exhibit 12, Exhibit 19; N.T. 36, 72, 74, 76, 79, 80-86, 88-89, 92-93, 96).

28. Claimant enrolled in PSERS in January 1986, during his full-time employment with Chambersburg Area School District. (PSERS 1; N.T. 18).

29. Claimant submitted a Service Purchase Request form with PSERS on or about July 18, 2014, through which he sought non-intervening active military service credit for the period he was enrolled as a Midshipman at the United States Naval Academy from July 8, 1980 through August 17, 1981. (PSERS-2; N.T. 18-20).

30. By letter dated September 29, 2014, PSERS informed Claimant of its denial of his request to purchase credit for Non-Intervening military service, in part, on the following grounds:

The Court has confirmed that service as a cadet does not qualify for service credit for any purpose. In addition, the Court has noted that the DD-214 does not reflect cadet service as active military service. Cadets of Military Academies do not go to work in the true bargained for exchange that would be evidence as an employment relationship; they are primarily seeking to full fill [sic] educational requirements...

(PSERS-3; N.T. 22-24).

31. Claimant appealed from PSERS' determination to its Executive Staff Review Committee. (N.T. 24).

32. The ESRC upheld PSERS' determination at its March 31, 2016 meeting. PSERS notified Claimant of the ESRC's decision by letter dated June 6, 2016. (PSERS 4 N.T. 24-25).

33. The ESRC based its denial of Claimant's Application on the following grounds:

The Committee denied your request. The Commonwealth Court has previously determined that attendance at a military academy does not qualify for purchase of retirement credit, because a cadet does not work in the true bargained-for exchange that would evidence an employer/employee relationship. You are, therefore, ineligible to purchase retirement credit for time spent as a midshipman at the United States Naval Academy. A more detailed analysis of the law is included

with this letter as Attachment “A” for your use or that of your legal counsel.

PSERS provided Claimant with a more detailed analysis of the law to which it referred in attachment “A” to its correspondence. (PSERS 4; N.T. 24-26).

34. Claimant filed an appeal from the ESRC’s determination on or about July 6, 2016, through which he requested an administrative hearing. (N.T. 26; Official Notice-agency records¹).

35. PSERS filed its Answer to Claimant’s Appeal on July 26, 2016. (Official Notice-agency records).

36. Claimant was served with all pleadings, orders and notices filed of record in this matter, and he participated in the September 20, 2017 hearing, *pro se*, through which he was provided the opportunity to testify, examine witnesses, and offer evidence. (N.T. 4-102).

¹ Official notice of such matters as might be judicially noticed by courts is permissible under the General Rules of Administrative Practice and Procedure, 1 Pa.Code §35.173, which provides, in pertinent part, as follows:

§35.173. Official notice of facts.

Official notice may be taken by the agency head or the presiding officer of such matters as might be judicially noticed by the courts of this Commonwealth, or any matters as to which the agency by reason of its functions is an expert. . . .

1 Pa.Code §35.173. In *Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A.2d 991 (Pa. Cmwlth. 1987), the Commonwealth Court explained:

“Official notice” is the administrative counterpart of judicial notice and is the most significant exception to the exclusiveness of the record principle. The doctrine allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency’s field and those facts contained in reports and records in the agency’s files, in addition to those facts which are obvious and notorious to the average person. Thus, official notice is a broader doctrine than is judicial notice and recognizes the special competence of the administrative agency in its particular field and also recognizes that the agency is a storehouse of information on that field consisting of reports, case files, statistics and other data relevant to its work.

521 A.2d at 994 n. 6.

CONCLUSIONS OF LAW

1. PSERS is derived by statute, and the rights of its members arise solely from the provisions of the Public School Employees' Retirement Code ("Retirement Code"). 24 Pa.C.S.A. §8101 *et. seq.*; *Forman v. Public School Employees' Retirement Board*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001).
2. The authority of the Board to grant or deny Claimant's request is limited to the provisions of the Retirement Code, and the Board has no authority to grant Claimant rights beyond those specifically set forth in the Retirement Code. *Forman, infra*; *Burriss v. State Employees' Retirement Board*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees' Retirement Board*, 622 A.2d 403, 405 (Pa. Cmwlth. 1992).
3. Claimant bears the burden of proving that he is entitled to the service credit for which he has applied under the Retirement Code. *Gierschick v. State Employees' Retirement Board*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999); *Wingert v. State Employees' Retirement Board*, 589 A.2d 269, 271 (Pa. Cmwlth. 1991).
4. Claimant has failed in his burden of showing that he authorized to purchase credit towards retirement for previous creditable nonschool service in the form of non-intervening military service under the Retirement Code at 24 Pa.C.S. §8304 and 22 Pa.Code §213.4 by virtue of his enrollment as a Midshipman at the United States Naval Academy. (Finding of Fact, Nos. 2-27). See also, *Schneider v. Public School Employees' Retirement Board*, 146 A.3d 802, 811 (Pa. Cmwlth. 2016); *Simmonds v. State Employees' Retirement System*, 696 A.2d 801, 803 (Pa. 1997); *Donovan v. State Employees Retirement System*, 701 A.2d 310, 313 (Pa. Cmwlth. 1997).
5. Claimant has failed in his burden of showing that he authorized to purchase credit towards retirement for previous creditable non-school service in the form of non-intervening military service under the Retirement Code at 24 Pa.C.S.A. §8304 and 22 Pa.Code §213.4(d) based upon his receipt of

disability compensation for a service-connected injury he incurred as a Midshipman at the United States Naval Academy. (Finding of Fact, Nos. 2-27). See also, *Schneider v. Public School Employees' Retirement Board*, 146 A.3d 802, 811 (Pa. Cmwlth. 2016); *Simmonds v. State Employees' Retirement System*, 696 A.2d 801, 803 (Pa. 1997); *Donovan v. State Employees Retirement System*, 701 A.2d 310, 313 (Pa. Cmwlth. 1997).

6. Claimant has been afforded reasonable notice of the grounds upon which PSERS denied his claim, and he has been provided an adequate opportunity to be heard in this proceeding. (Finding of Fact, Nos. 28-36).

DISCUSSION

This matter involves an appeal from a March 31, 2016 decision by the PSERS' Executive Staff Review Committee to deny Claimant's request to purchase service credit for the time he was enrolled as a Midshipman at the United States Naval Academy from July 8, 1980 through August 17, 1981. By letter dated June 6, 2016, PSERS informed Claimant that it had denied his request on the following grounds:

...The Commonwealth Court has previously determined that attendance at a military academy does not qualify for purchase of retirement credit, because a cadet does not work in the true bargained-for exchange that would evidence an employer/employee relationship. You are, therefore, ineligible to purchase retirement credit for time spent as a midshipman at the United States Naval Academy. A more detailed analysis of the law is included with this letter as Attachment "A" for your use or that of your legal counsel.

PSERS provided Claimant with a more detailed analysis of the law to which it referred in its correspondence, including its analysis of the Commonwealth Court's opinion in *Donovan v. State Employees Retirement System*, 701 A.2d 310, 313 (Pa. Cmwlth. 1997).

As the party appealing from the determination of the PSERS' Executive Review Committee, Claimant bears the burden of establishing that he is entitled to the service credit he seeks under

Pennsylvania's Public School Employees' Retirement Code, 24 Pa.C.S.A. § 8101 *et. seq.* *Gierschick v. State Employees' Retirement Board*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999); *Wingert v. State Employees' Retirement Board*, 589 A.2d 269, 271 (Pa. Cmwlth. 1991). The degree of proof required by Claimant to establish his case is a preponderance of the evidence. *Suber v. Pennsylvania Commission on Crime and Delinquency, Deputy Sheriff's Education and Training Board*, 885 A.2d 678, 681-83 (Pa. Cmwlth. 2005); *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *app. den.*, 602 A.2d 863 (Pa. 1992). A preponderance of the evidence is "such proof as leads the factfinder. . . to find that the existence of a contested fact is more probable than its nonexistence" through evidence which is substantial and legally credible. *A.B. v. Slippery Rock Area School District*, 906 A.2d 674 (Pa. Cmwlth. 2006); *Lansberry*, 578 A.2d at 601-602; *Sigafoos v. Pennsylvania Board of Probation and Parole*, 503 A. 2d 1076, 1079 (Pa. Cmwlth. 1986).

Statutory/Regulatory Framework

It is well established that a claimant's right to benefits under the Retirement Code is strictly limited to those specifically set forth by the Code. *See, Forman v. Public School Employees' Retirement Board*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001); *Burriss v. State Employees' Retirement Board*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees' Retirement Board*, 622 A.2d 403, 405 (Pa. Cmwlth. 1992). Moreover, PSERS is required to construe its enabling statute according to its plain meaning and in such a manner as to give effect to all of its provisions. 1 Pa.C.S.A. §1921(a), (b). An active member of PSERS may purchase "creditable nonschool service" under certain circumstances, including military service other than intervening military service. 24 Pa.C.S.A. §8304(b)(2). Military service is defined under the Code as "all active military service for which a member has received a discharge other than an undesirable, bad conduct, or dishonorable discharge." 24 Pa.C.S.A. §8102. The

Board's Regulations similarly address "creditable nonschool service" as it pertains to an active member's ability to purchase creditable nonschool service credit based upon active military service:

§213.4 Creditable nonschool service

(d) An active member may purchase other military service, of a nonintervening nature, not exceeding 5 years, for service rendered only to the armed forces of the United States before the member commenced his most recent school employment. An active member who is receiving disability compensation based on a service-connected injury or illness as a result of active military service shall be eligible for credit for intervening or nonintervening military service.

22 Pa.Code §213.4(d).

In this case, the record unequivocally demonstrates that Claimant was on active military duty during the period was enrolled as a Midshipman at the United States Naval Academy (the "Naval Academy"), from July 8, 1980 through August 17, 1981. The record equally shows that Claimant was injured during his active military service, and that he has been awarded disability benefits for his injuries since approximately August 18, 1981. Accordingly, the issues to be addressed through the present appeal are whether Claimant is entitled to purchase the non-school service credit he seeks based solely upon his active duty military service as a Midshipman at the Naval Academy or, alternatively, whether the Retirement Code permits him to purchase such credit based upon the disability he incurred while he was enrolled at the Naval Academy.

Analysis

The facts of this case are closely analogous to those presented in *Donovan v. State Employees' Retirement System*, 701 A.2d 310 (Pa. Cmwlth. 1997) where the Pennsylvania Commonwealth Court addressed a similar appeal from a decision of the Pennsylvania State Employees' Retirement Board ("SERB") which denied a claimant's request to purchase credit for the time he attended the United

States Military Academy at West Point as a cadet.² In that case, the claimant graduated from West Point with a Bachelor of Science degree and was commissioned as a second lieutenant in the United States Army. As with the Claimant in this case, the claimant in *Donovan* sought to purchase credit from the SERS for the time he attended the Academy. The SERB ultimately denied the claimant's request pursuant to provisions of the State Employees' Retirement Code similar to those applicable to this case. *Id.* at 311.

The claimant in *Donovan* appealed from the SERB's decision and argued that the Board erred in concluding that service as a West Point Cadet was not active service in accordance with the State Employees' Retirement Code. *Donovan*, 701 A.2d at 312. On appeal to the Commonwealth Court, SERB argued that federal law at the time did not consider the member's tenure as a West Point Cadet to be active military service based, in part, upon federal statutes and the member's DD 214. *Id.* at 312. Accordingly, SERB asserted that the member was not entitled to service credit for his time at the Military Academy under Pennsylvania's State Employees' Retirement Code.

Notwithstanding the arguments made by the SERB in *Donovan*, the Commonwealth Court affirmed SERB's denial of service credit for the member based principally upon the Pennsylvania Supreme Court's earlier decisions in *Simmonds v. State Employees' Retirement System*, 696 A.2d 801, 803 (Pa. 1997) and *Philadelphia Association of Interns and Residents v. Albert Einstein Medical Center*, 369 A.2d 711 (Pa. 1976) in which the Supreme Court found that the claimants in those cases did not work in a true bargained-for exchange that would evidence an employment relationship. *Donovan*, 701 A.2d at 313. The Commonwealth Court in *Donovan* found that the Pennsylvania Supreme Court had sent "a clear message" in *Simmonds* and *Philadelphia Association of Interns and Residents* that any request for service credit under the Retirement Code for time served as a military academy

²Cases interpreting provisions of the State Employees' Retirement Code "are equally applicable in deciding issues arising under similar or identical provisions" of the Public School Employees' Retirement Code. *Krill v. Public School Employees' Retirement Board*, 713 A.2d 132, 143 n. 3 (Pa. Cmwlth. 1998).

Cadet/Midshipman must be examined in the context of the purpose of the program in which the Cadet/Midshipman was enrolled. *Donovan*, 701 A.2d at 313. Based upon that consideration, the Commonwealth Court expressly found that the time served by the claimant as a West Point Cadet was not subject to purchase under the State Employees' Retirement Code because

Donovan's four years at the Academy also served an educational purpose so that he could take his place as a member of the active military service in a position as a commissioned officer. Without his bachelor's degree from the Academy, the claimant's commissioned officer status upon entry into active military service would not have been assured.

Id. Thus, the Court in *Donovan* considered the purpose of the claimant's enrollment at West Point to be determinative of his eligibility to purchase service credit under the Retirement Code, rather than whether the Cadet was on active duty at the time of his enrollment.

In *Simmonds v. State Employees' Retirement System*, 696 A.2d 801, 803 (Pa. 1997), the Pennsylvania Supreme Court denied a claim for PSERS service credit by a medical resident at the Milton S. Hershey Medical Center of the Pennsylvania State University based upon its determination that the claimant had primarily entered into the residency program for educational and certification purposes, rather than for the purpose of seeking employment. *Id.* In *Simmonds*, the claimant was enrolled in the University's residency program for the particular purpose of obtaining a certification in Oncology. Like the Claimant in this case, the resident/claimant in *Simmonds* received monetary payment to cover her expenses in addition to having received limited employee benefits. *Simmonds*, 696 A.2d at 802. The resident, thereafter, became an assistant professor at the Medical Center, enrolled in the SERS and sought to purchase state credit for the one year of service she performed during her residency. *Id.*

The State Employees' Retirement Board denied the claimant's request to purchase service credit. *Simmonds*, 696 A.2d at 802. The Commonwealth Court reversed the SERB's decision after holding that

medical residents were state employees. On appeal, the Pennsylvania Supreme Court reversed the decision of the Commonwealth Court and reinstated the SERB's decision based, in principal part, upon finding that the claimant had enrolled in an accredited educational program to ensure that she obtained the education and training required by the accrediting organization as a prerequisite to her certification. *Simmonds*, 696 A.2d at 803-804. When affirming SERB's decision, the Supreme Court determined that "although medical residents were clothed with indicia of employee status, the purpose of residencies, internships and fellowships was to further education." *Id.* at 802. Because the claimant was enrolled in the Medical Center's residency program for educational purposes, the Supreme Court concluded that the stipend the claimant received in exchange for the medical services she provided was not the type of bargained-for exchange that existed in a typical employment relationship. *Simmonds*, 696 A.2d at 803-804.

Although the record shows that the Claimant in this case was on active military duty during the period of his enrollment at the Naval Academy, and that his attendance at the Naval Academy was intended to prepare him to ultimately enter naval service, the foregoing legal authority clearly establishes that Claimant's eligibility to purchase military service credit is determined by the purpose of the program in which Claimant was enrolled as a Midshipman. Because the purpose of Claimant's enrollment at the Naval Academy was educational in nature, Pennsylvania law clearly precludes him from purchasing creditable non-school service as non-intervening military service. *Simmonds v. State Employees' Retirement System*, 696 A.2d 801, 803 (Pa. 1997); *Donovan v. State Employees' Retirement System*, 701 A.2d 310 (Pa. Cmwlth. 1997). See also, *Schneider v. Public School Employees' Retirement Board*, 146 A.3d 802, 812 (Pa. Cmwlth. 2016).

Against the weight of the foregoing legal authority, Claimant has failed to establish why the Commonwealth Court's analysis in *Donovan* is inapplicable to this case in terms of whether the purpose

of his enrollment at the Naval Academy was educational in nature. Claimant has also failed to factually demonstrate by a preponderance of the evidence that the purpose of his enrollment at the Naval Academy was not educational or how his enrollment was materially different from that of the West Point Cadet in *Donovan*. Instead, the record in this case clearly establishes that, like the Cadet in *Donovan*, the purpose for Claimant's enrollment at the Naval Academy was largely educational.

Claimant testified at the hearing that the Naval Academy is a four-year undergraduate college whose graduates are awarded a Bachelor of Science Degree upon graduation. The documents moved into evidence by Claimant also describe the Naval Academy in that manner. The record also shows that Claimant's academic school year at the Naval Academy was partitioned into academic semesters, much like civilian educational institutions. The Agreement to Serve executed by Claimant also expressly acknowledged that he was required to complete or validate the required professional, general distribution, and courses in his assigned major and that he complete a minimum of 140 semester hours with a Cumulative Quality Point Rating (COPR) of at least 2.00 in order to graduate.

In this case, Claimant's academic major was Oceanography. Claimant's course of study at the Naval Academy consisted of General Chemistry I and II, Western Society, Rhetoric and Introduction to Literature, Analytic Geometry and Calculus II, Introduction to Computing, physical education, Leadership, Introduction to Naval Engineering, and Fundamentals of Naval Science. Of the 37 credit hours Claimant completed, only 10 credit hours specifically related to naval education. Claimant also took examinations in his classes, was assigned grades for each of his classes and he received undergraduate college credit for many of the classes. Indeed, Claimant applied several of the credits he earned at the Naval Academy towards the Bachelor of Science Degree in Biology he earned at Shippensburg University. To the extent Claimant received monetary payment during the period of his enrollment, he admittedly used the money for books, uniforms, laundry and other necessities at the

Academy. Such payments, therefore, do not negate or otherwise change the educational purpose of Claimant's attendance at the Naval Academy.

Claimant's inclusion of the Naval Academy into a list of other Navy "A" Schools in an attempt to establish the military, rather than educational purpose of the Naval Academy is similarly unavailing. Claimant has not produced any substantive evidence regarding the nature of the training provided at any of the "A" schools he has identified. Assuming each of the schools Claimant identified as Navy "A" schools do, in fact, conduct specialized military training, the Navy's similar classification of the Naval Academy as a Navy "A" school, in unto itself, simply does not change the educational nature and purpose of the Naval Academy. Nor is the Navy's designation determinative of how the schools are to be considered under the Retirement Code.

Because the record in this case demonstrates that Claimant's time at the Naval Academy served an educational purpose so that he could take his place as a member in the active naval service as a commissioned officer, and that without his bachelor's degree from the Naval Academy his commissioned officer status in the Navy was not assured, the ESRC correctly found that the purpose of his enrollment as a Midshipman was educational. That determination, in turn, led the ESRC to properly conclude that the Claimant's enrollment at the Naval Academy was not in the context of a bargained-for exchange that exists in typical employment relationships for which Claimant could be considered to have provided creditable non-school service in the form of non-intervening military service under the Retirement Code consistent with the well-established legal precedent set forth herein.

Claimant alternatively seeks non-intervening military service credit under the Retirement Code at 22 Pa.Code §213.4(d) based upon the disability benefits he receives in connection with the injuries he sustained as a Midshipman. Through his request, Claimant essentially asserts that his disability constitutes an exception to his inability to purchase service credit as set forth above. Although the

Retirement Code at Section 213.4 states that “[a]n active member who is receiving disability compensation based on a service-connected injury or illness as a result of active military service shall be eligible for credit for intervening or nonintervening military service”, that provision must be construed in the context of the remaining portion of Section 213.4, and in the context of the remaining portions of the Retirement Code (statutes and parts of statutes are *pari materia* when they relate to the same person or things and, as such, they should be construed together). See, *Burris v. State Employes’ Retirement Board*, 745 A.2d 704, 707 (Pa. Cmwlth. 2000)(citing to 1 Pa.C.S.A. §1932(a); *Philadelphia Gas Works to the Use of the City of Philadelphia v. Commonwealth*, 741 A.2d 841 (Pa. Cmwlth. 1999).

It is equally well established that “[e]very statute shall be construed, if possible, to give effect to all its provisions.” 1 Pa.C.S. §1921(a). For that reason, it is to be presumed “[t]hat the General Assembly intends the entire statute to be effective and certain.” 1 Pa.C.S. §1922(2). In determining the General Assembly’s intent, we are to presume that the legislators have not intended an absurd or unreasonable result, and that they intend to favor the public interest as against any private interest. 1 Pa.C.S. §1922(1) and (5). See also, *Whalen v. Commonwealth of Pennsylvania, Department of Transportation*, 32 A.3d 677, 679 (Pa. 2011).

In this case, Claimant’s request to purchase non-intervening military service credit based upon his disability where Pennsylvania law precludes him from purchasing such credit would require reading the selected provision of the Retirement Code relied upon by Claimant in isolation from its other provisions, including the specific provision in which it is contained. PSERS correctly notes that should Claimant’s interpretation of the Retirement Code be accepted, it would lead to an absurd result in that Naval Academy Midshipmen who successfully complete the Academy would not be permitted to purchase non-intervening service credit for their years at the Naval Academy under existing law, but that Midshipmen who prematurely separated from the Academy based upon a disability would be permitted

to purchase non-school service credit for the same period they were enrolled at the Academy. Claimant has offered no credible argument, legal or otherwise, for why the nature of his “service” under the Retirement Code should be converted from that which is not subject to credit to that which is subject to credit solely by virtue of his disability. Accordingly, a proper reading of the Regulation, in its entirety, necessarily requires that the “service” associated with a “service-connected injury” be the same type of service for which non-intervening military service credit may be purchased under the Retirement Code.

Claimant’s request for a disability exception to the employer/employee requirement is further undermined under the principle of *expressio unius est exclusion alterius* whereby the express mention of a specific matter in a statute implies the exclusion of others not mentioned. *Burris*, 745 A.2d at 709. Within the provisions of the Retirement Code identifying eligibility for creditable non-school service, and limitations on non-school service in particular, the Retirement Code at 24 Pa.C.S. §8304(b)(8) specifically permits the purchase of credit for training as a student while in the United States Cadet Nurse Corps. See also, 22 Pa.Code §213.4(g). Significantly however, no such exception exists in the context of non-intervening military service which is addressed under that same section of the Retirement Code. Accordingly, this Hearing Officer does find that such an exception can be read into the Retirement Code. For the foregoing reasons, the following Recommendation shall be issued:

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

In Re:

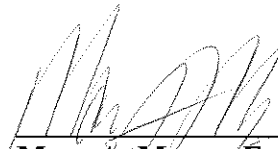
**Account of William L. Prieto
Claim of William L. Prieto**

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Docket No. 2016-15

RECOMMENDATION

AND NOW, this **2nd** day of **February 2018**, upon consideration of the foregoing Findings of Fact, Conclusions of Law and Discussion, the Hearing Officer for the Public School Employees' Retirement System recommends that Claimant's appeal from the March 31, 2016 decision of the PSERS' Executive Staff Review Committee be **DENIED**.



**Marc A. Moyer, Esquire
Hearing Officer**

Claimant:

William L. Prieto


For PSERS:

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Public School Employees' Retirement System
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Date of Mailing:

2/5/18