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

IN RE: ACCOUNT OF BARBARA BESS-PASHAK
DOCKET NO. 2017-01
CLAIM OF BARBARA BESS-PASHAK

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 Barbara Bess-Pashak'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 December 7, 2018, 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 December 7, 2018, PSERS notified Claimant that she had 30 days to respond to PSERS' motion under Pa.R.C.P. No. 1035.3. Claimant did not file 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. 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).

Claimant did not respond to PSERS' motion and, therefore, she has not disputed any of the facts set forth therein. Nor has Claimant 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. Consequently, 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 as an employee of West Philadelphia Youth Counseling Center ("WPYCC") from September 1982 through March 1984.

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 April 1984 through her employment with the School District of Philadelphia ("SDP").
2. On March 28, 2016, PSERS received a letter from Claimant regarding her interest in purchasing service credit with PSERS for the work she rendered from

September 1982 to March 1984 as a science teacher at the West Philadelphia Youth Counseling Center ("WPYCC"). (PSERS-1).

3. From September 1982 to March 1984, Claimant was an employee of WPYCC. (PSERS-1 and PSERS-2).

4. WPYCC was a private, non-profit entity that was under contract with SDP to provide alternative school services to students with behavioral issues. (PSERS-1, PSERS-2, and PSERS-4).

5. The WPYCC is not, and never has been, a reporting unit of PSERS, and its employees are not eligible for membership with PSERS. (PSERS-4; PSERS-5).

6. By letter dated April 11, 2016, PSERS notified Claimant that her "service at WPYCC cannot be purchased because it is not a PSERS-participating employer." (PSERS-3).

7. On April 25, 2016, Claimant appealed PSERS' determination. (PSERS-4).

8. The Executive Staff Review Committee ("ESRC"), by letter dated December 7, 2016, denied Claimant's appeal on the basis that the service she rendered at WPYCC, which is a private entity, 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-5).

9. On January 3, 2017, Claimant filed an *Appeal and Request for Administrative Hearing*. (PSERS-2).

10. On January 19, 2017, PSERS filed an Answer. (PSERS-6).

11. On December 7, 2018, PSERS filed a Motion for Summary Judgment.

12. Claimant did not file a response to PSERS' motion.

13. 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 employment from September 1982 to March 1984 as an employee of West Philadelphia Youth Counseling Center ("WPYCC"), 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 WPYCC employee during the relevant time period. Nor does she dispute that WPYCC is not a "governmental entity," a "public school," or an "employer," as defined by the Retirement Code. Rather, she claims that she is eligible for credit because the School District of Philadelphia ("SDP") contracted with WPYCC to provide educational and counseling services to students from SDP who had behavioral issues. 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. Pub. Sch. Employees' Ret. Bd.*, 636 A.2d 268 (Pa. Cmwlth. 1993); *Cain v. Pub. Sch. Employes' Ret. Sys.*, 651 A.2d 660 (Pa. Cmwlth. 1994); *Account of Karl R. Scheibenhofer*, Docket No. 2013-02 (PSERB Oct. 4, 2013); *Account of Diane M. Zeiger*, Docket No. 2016-14 (PSERB March 13, 2017).

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 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 neither a “governmental entity” nor a reporting unit of PSERS, this Board concluded that the member was not a “school employee” who was eligible for credit with PSERS. *Id.* at *8.

Likewise, in the *Account of Diane M. Zeiger*, this Board rejected a member’s request for service credit with PSERS for the time she worked for Tri-County OIC, a private entity that is not a reporting unit of PSERS. Docket No. 2016-14 at *5. Without disputing that Tri-County OIC was a private entity, the member argued that she should

receive service credit because Tri-County OIC was funded by federal, state, and local funds, and she was performing duties that were equivalent to a public school teacher's duties. *Id.* Nevertheless, this Board held that the member was not entitled to receive service credit because the member's work for Tri-County OIC was not "school service." *Id.* at *4-6.

Similar to the claimants in the above-referenced cases, Claimant is seeking to purchase credit with PSERS for service that she performed as an employee of a private entity. Because WPYCC 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's employer contracted with SDP to provide educational and counseling services to students from SDP who had behavioral issues 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 WPYCC. 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 from September 1982 through March 1984 as an employee of West Philadelphia Youth Counseling Center.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: March 8, 2019

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