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

IN RE: ACCOUNT OF TANA REIFF  
DOCKET NO. 2017-17  
CLAIM OF TANA REIFF

**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 Tana Reiff'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 July 10, 2019, 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 July 10, 2019, PSERS notified Claimant that she had 30 days to respond to PSERS' motion under Pa.R.C.P. No. 1035.3. On July 31, 2019, Claimant filed a response ("Claimant's Reply").

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).

In Claimant's Reply, she does not dispute the facts set forth in PSERS' proposed Memorandum of Facts. Nor does Claimant identify 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. Claimant's Reply consists of legal arguments as to why she believes equitable relief is warranted.

The Board has carefully reviewed the entire record in this matter as well as Claimant's Reply and finds that there is not a genuine issue as to any material fact. Accordingly, the Board finds that there are no disputed material facts that would prevent this Board from considering PSERS' motion. 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 eligible for premium assistance.

### **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 1973.

2. Claimant is a Class T-D member of PSERS.
3. Claimant terminated school service in 2011 at age 59, when she was laid off by the Tuscarora Intermediate Unit 11 ("IU 11"). (PSERS-1; PSERS-2; Claimant's Reply).
4. After her termination from IU 11 in 2011, Claimant did not return to public school employment. (PSERS-1; Claimant's Reply).
5. On July 3, 2013, Claimant retired with PSERS. (PSERS-3; Claimant's Reply).
6. As of July 3, 2013, Claimant was 62 years old and had accrued 23.75 years of credited service with PSERS. (PSERS-2; PSERS-3; Claimant's Reply).
7. In 2016, at age 65, Claimant enrolled in the Health Options Plan ("HOP") Medicare Supplement. (PSERS-2; Claimant's Reply).
8. After enrolling in HOP, Claimant contacted HOP regarding premium assistance and she was informed she was not eligible for it. (PSERS-1; PSERS-2; Claimant's Reply).
9. On September 8, 2016, Claimant appealed PSERS' determination that she is not eligible for premium assistance. (PSERS-1).
10. The Executive Staff Review Committee ("ESRC"), by letter dated September 25, 2017, denied Claimant's appeal on the basis that she does not meet the eligibility requirements for premium assistance because she "terminated school employment prior to age 62 with less than 24.5 years of credited service." (PSERS-4).
11. On October 24, 2017, Claimant filed an Appeal and Request for Administrative Hearing. (PSERS-2).
12. On November 13, 2017, PSERS filed an Answer. (PSERS-5).
13. On July 10, 2019, PSERS filed a Motion for Summary Judgment.

14. On July 31, 2019, Claimant filed her response to PSERS' motion.
15. The matter is ripe for Board adjudication.

### DISCUSSION

The Retirement Code established the premium assistance program, which provides a supplemental monthly payment to be used toward the purchase of basic health insurance. See 24 Pa.C.S. § 8509. Premium assistance is only available to "eligible annuitants." 24 Pa.C.S. § 8509(c). The Retirement Code defines "eligible annuitants" as:

1. All current and prospective annuitants with 24½ or more eligibility points and all current and prospective disability annuitants; or
2. Beginning January 1, 1995, members with 15 or more eligibility points who terminated or who terminate school service on or after attaining superannuation retirement age and who are annuitants with an effective date of retirement after superannuation age.

24 Pa.C.S. § 8102 (emphasis added). "Superannuation or normal retirement age" for Class T-D members, including Claimant, is defined in the Retirement Code as age 62, age 60 with 30 eligibility points, or any age upon accrual of 35 eligibility points. *Id.* An active member accrues one eligibility point for each year of credited service as a member of PSERS. 24 Pa.C.S. § 8306(a). "Date of termination of service" is defined, in relevant part, as the latest of "the last day of service for which pickup contributions are made" or the date "employment is formally discontinued by [the member's] employer." 24 Pa.C.S. § 8102.

While a PSERS member is entitled to a liberal construction of the Retirement Code, she has only those rights created by the retirement statute and none beyond. See, e.g., *Burris v. State Employees' Ret. Bd.*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees' Ret. Bd.*, 622 A.2d 403, 405 (Pa. Cmwlth. 1992). Here, Claimant does not dispute that she terminated school service in 2011 with 23.75

eligibility points<sup>1</sup> and prior to attaining her superannuation age of 62. Therefore, as a matter of law, she does not meet the Retirement Code's definition of an eligible annuitant and she is not eligible for premium assistance. 24 Pa.C.S. § 8102; see *Claim of Barbara W. VanHorn*, Docket No. 2006-13 (PSERB Dec. 11, 2006) (Claimant was not eligible for premium assistance because she was age 58 and had 23.14 years of service at termination of school service). Claimant maintains that her involuntary termination from the IU 11 should be an eligibility consideration, but the Retirement Code's definitions of "eligible annuitants" and "date of termination" do not distinguish between voluntary and involuntary terminations. 24 Pa.C.S. § 8102.

Claimant requests that the Board should make an exception for her because, in 2016, she received misleading information from HOP that made her believe she only needed 15 eligibility points to be eligible for premium assistance. It is well established, however, that the statutory provisions of the Retirement Code strictly apply even when the results appear unfair or the member may not have been provided adequate or correct information. *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778 (Pa. Cmwlth. 2001); *Finnegan v. Pub. Sch. Employees' Ret. Bd.*, 560 A.2d 848, 852 (Pa. Cmwlth. 1989), *aff'd*, 591 A.2d 1053 (Pa. 1991); *Marinucci v. State Employees' Ret. Sys.*, 863 A.2d 43, 47 (Pa. Cmwlth. 2004); *Cosgrove v. State Employees' Ret. Bd.*, 665 A.2d 870 (Pa. Cmwlth. 1995); *Bittenbender*, 622 A.2d 403.<sup>2</sup> Accordingly, the Board is not authorized to create an exception to the Retirement Code for Claimant. Moreover, Claimant's eligibility points and her age at termination were established prior to her

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<sup>1</sup> In Claimant's Reply, she requests for the first time -- as alternative relief -- that she be permitted to file an application with PSERS to purchase non-school service and make up the difference in eligibility points so that she becomes eligible for premium assistance. The Retirement Code, however, does not permit annuitants to apply to purchase service. 24 Pa.C.S. §§ 8303, 8304; see *Trakes v. Pub. Sch. Employees' Ret. Sys.*, 768 A.2d 357, 364-65 (Pa. Cmwlth. 2001); *Account of Ruth Elaine King*, Docket No. 2018-02 (PSERB Aug. 16, 2019).

<sup>2</sup> Cases interpreting provisions of the State Employees' Retirement Code "are equally applicable in deciding issues arising under similar or identical provisions" of the Retirement Code. *Krill v. Pub. Sch. Employees' Ret. Bd.*, 713 A.2d 132, 134 n.3 (Pa. Cmwlth. 1998).

retirement in 2013 and before she reviewed the misleading publication from HOP in 2016.

### **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 eligible for premium assistance. Accordingly, PSERS' Motion for Summary Judgment is GRANTED, and Claimant's Appeal and Request for Administrative Hearing is DENIED.

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PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

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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 be deemed eligible for premium assistance.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: October 11, 2019

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