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

IN RE: ACCOUNT OF MIREK CHMIELEWSKI
DOCKET NO. 2018-20
CLAIM OF MIREK CHMIELEWSKI

OPINION AND ORDER OF THE BOARD

The Public School Employees' Retirement Board ("Board") has carefully and independently reviewed the record of this proceeding, including the Proposed Opinion and Recommendation of the Hearing Examiner. We note that neither party filed Exceptions to the Proposed Opinion and Recommendation. Accordingly, the Board hereby issues the following:

HISTORY

This matter is before the Board on an appeal, filed by Mirek Chmielewski ("Claimant") on November 2, 2018. Claimant appealed from a decision of the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS") dated October 5, 2018 ("ESRC denial letter") that denied Claimant's request to recalculate his estimated retirement benefit using an estimated final average salary that had been identified in his annual statements of account for the school years 2006-07 through 2016-17. On November 20, 2018, PSERS filed its Answer to Claimant's appeal.

By letter dated September 26, 2019, Board Secretary Glen R. Grell appointed Marc A. Moyer as hearing examiner for Claimant's administrative appeal. By letter dated October 2, 2019, the Board's Appeal Docket Clerk notified Claimant that the administrative hearing had been scheduled for January 22, 2020, at the offices of PSERS in Harrisburg. By letter dated February 7, 2020, the hearing was rescheduled for February 27, 2020.¹ The hearing was held as scheduled. Claimant attended the

hearing without legal counsel and represented himself. Assistant Counsel Dwight A. Decker, Jr. represented PSERS. Claimant testified and presented documentary evidence. With a sponsoring witness, PSERS presented its case through documentary evidence. At the close of the hearing, the parties elected to file post-hearing briefs. The hearing transcript was filed on March 5, 2020, and the hearing examiner issued an Order Establishing Briefing Schedule on March 9, 2020. Claimant filed his post-hearing brief on April 9, 2020, and PSERS filed its brief on May 8, 2020. The record closed May 25, 2020, when the due date for Claimant's reply brief passed without him filing anything further. On June 26, 2020, the hearing examiner submitted his Proposed Opinion and Recommendation. Neither party filed exceptions. Accordingly, the matter is now before the Board for final determination.

FINDINGS OF FACT

1. Claimant has been a Class T-D member of PSERS since before June 30, 2004, as an employee of the Capital Area Intermediate Unit. (N.T. 24, PSERS-1)
2. On December 21, 2005, PSERS sent Claimant a *Statement of Account for the year July 1, 2004 – June 30, 2005* reciting that he had 2.20 years of service and an estimated final average salary of \$14,711.28. The *Statement* did not include his estimated retirement benefits, as he did not yet have five years of credited service and had not reached age 62. (PSERS-1)
3. On January 1, 2007, PSERS sent Claimant a *Statement of Account for the year July 1, 2005 – June 30, 2006* reciting that he had 3.20 years of service and an estimated final average salary of \$12,967.17. The *Statement* did not include estimated retirement benefits, as he did not yet have five years of credited service and had not reached age 62. (PSERS-2)
4. For the 2006-07 school year, the Capital Area Intermediate Unit reported to PSERS that it had paid Claimant \$6,674.16 for just three days of work although Claimant had actually worked 81 days. (PSERS-19, PSERS-20, N.T. 73)

¹ By order dated January 23, 2020, the hearing examiner granted Claimant's request and continued the hearing previously scheduled for January 22, 2020.

5. On February 11, 2008, PSERS sent Claimant a *Statement of Account for the year July 1, 2006 – June 30, 2007* reciting that he had 3.22 years of service and an estimated final average salary of \$78,021.69. The *Statement* did not include estimated retirement benefits, as he did not yet have five years of credited service and had not reached age 62. (PSERS-3)

6. Claimant's 2006-07 *Statement of Account* indicated that he worked a total of 3.0 days during the school year for Capital Area Intermediate Unit. (PSERS-3)

7. On November 11, 2008, PSERS sent Claimant a *Statement of Account for the year July 1, 2007 – June 30, 2008* reciting that he had 4.22 years of service and an estimated final average salary of \$79,917.00. The *Statement* did not include estimated retirement benefits, as he did not yet have five years of credited service and had not reached age 62. (PSERS-4)

8. On October 7, 2009, PSERS sent Claimant a *Statement of Account for the year July 1, 2008 – June 30, 2009* reciting that he had 5.22 years of service and an estimated final average salary of \$80,904.04. The *Statement* estimated his monthly retirement benefit without withdrawal as of June 30, 2009 to be \$552.39 as maximum single life annuity and \$538.58 as Option 1. (PSERS-5)

9. The 2008-09 *Statement of Account* notified Claimant: "**Final Average Salary (FAS):** FAS is an average of your three highest school-year salaries. School years with part-time service may be annualized for the benefit calculation. Salaries reported to PSERS are recognized in the school year in which they were earned, not when paid. **Because your salaries have not been audited, your FAS may be overstated.**" (PSERS-5 (emphasis in original))

10. On October 21, 2010, PSERS sent Claimant a *Statement of Account for the year July 1, 2009 – June 30, 2010* reciting that he had 6.21 years of service and an estimated final average salary of \$81,392.52. The *Statement* estimated his monthly retirement benefit without withdrawal as of June 30, 2010 to be \$698.92 as maximum single life annuity and \$679.77 as Option 1. (PSERS-6)

11. The 2009-10 *Statement of Account* notified Claimant: “**Final Average Salary (FAS)**: FAS is an average of your three highest school-year salaries. School years with part-time service may be annualized for the benefit calculation. Salaries reported to PSERS are recognized in the school year in which they were earned, not when paid. **Because your salaries have not been audited, your FAS may be overstated.**” (PSERS-6 (emphasis in original))

12. On November 16, 2011, PSERS sent Claimant a *Statement of Account for the year July 1, 2010 – June 30, 2011* reciting that he had 7.21 years of service and an estimated final average salary of \$81,518.72. The *Statement* estimated his monthly retirement benefit without withdrawal as of June 30, 2011 to be \$859.90 as maximum single life annuity and \$833.85 as Option 1. (PSERS-7)

13. The 2010-11 *Statement of Account* notified Claimant: “**Final Average Salary (FAS)**: FAS is an average of your three highest school-year salaries. School years with part-time service may be annualized for the benefit calculation. Salaries reported to PSERS are recognized in the school year in which they were earned, not when paid. **Because your salaries have not been audited, your FAS may be overstated.**” (PSERS-7 (emphasis in original))

14. On November 14, 2012, PSERS sent Claimant a *Statement of Account for the school year ending June 30, 2012* reciting that he had 8.21 years of service and an estimated final average salary of \$60,053. The *Statement* estimated his monthly retirement benefit without withdrawal as of June 30, 2012 to be \$763 as maximum single life annuity and \$738 as Option 1. (PSERS-8)

15. On October 8, 2013, PSERS sent Claimant a *Statement of Account for the school year ending June 30, 2013* reciting that he had 9.21 years of service and an estimated final average salary of \$60,053. The *Statement* estimated his monthly retirement benefit without withdrawal as of June 30, 2013 to be \$908 as maximum single life annuity and \$874 as Option 1. (PSERS-9)

16. On November 12, 2014, PSERS sent Claimant a *Statement of Account for the school year ending June 30, 2014* reciting that he had 10.21 years of service and an

estimated final average salary of \$64,027. The *Statement* estimated his monthly retirement benefit without withdrawal as of June 30, 2014 to be \$1,128 as maximum single life annuity and \$1,079 as Option 1. (PSERS-10)

17. On October 29, 2015, PSERS sent Claimant a *Statement of Account for the school year ending June 30, 2015* reciting that he had 11.21 years of service and an estimated final average salary of \$65,236. The *Statement* estimated his monthly retirement benefit without withdrawal as of June 30, 2015 to be \$1,344 as maximum single life annuity and \$1,280 as Option 1. (PSERS-11)

18. On November 7, 2016, PSERS sent Claimant a *Statement of Account for the school year ending June 30, 2016* reciting that he had 12.21 years of service and an estimated final average salary of \$65,450. The *Statement* estimated his monthly retirement benefit without withdrawal as of June 30, 2016 to be \$1,567 as maximum single life annuity and \$1,485 as Option 1. (PSERS-12)

19. On November 21, 2017, PSERS sent Claimant a *Statement of Account for the school year ending June 30, 2017* ("2017 *Statement of Account*") reciting that he had 13.21 years of service and an estimated final average salary of \$65,569. The *Statement* estimated his monthly retirement benefit without withdrawal as of June 30, 2017 to be \$1,804 as maximum single life annuity and \$1,701 as Option 1. (PSERS-13)

20. Claimant received all his *Statements of Account*. (N.T. 30-34)

21. *Statements of Account* rely on information provided by the school employer, and that information is not routinely audited by PSERS. (N.T. 80-81)

22. Claimant's last day of active work for the Capital Area Intermediate Unit was in August 2017. (N.T. 82)

23. Claimant was on family medical leave from August 2017 through November 2017. (N.T. 35-36)

24. On November 22, 2017, Claimant called PSERS and requested a retirement estimate with a tentative retirement date of December 1, 2017. (N.T. 36, 43, 78-79,

PSERS-15)

25. At the time he requested a retirement estimate, Claimant knew that his annual salary was between \$22,000 and \$23,000. (N.T. 46)

26. Claimant never earned more than \$30,510 in any school year. (N.T. 78)

27. Claimant knew that he worked more than three days for the Capital Area Intermediate Unit during the 2006-07 school year. (N.T. 26-27)

28. In processing Claimant's request for an estimate, Claimant's final average salary was audited and PSERS detected an error for the 2006-07 school year in that the Capital Area Intermediate Unit reported only three days of work instead of 81 days for the amount he was paid, grossly overinflating the estimated final average salary in Claimant's *Statements of Account*. (N.T. 73-74, 76)

29. Despite annualizing Claimant's pay for the school years that Claimant worked less than full-time (2002-03, 2005-06, 2006-07, 2012-13 and 2017-18), Claimant's three highest paid years are \$30,510.00, \$22,570.10, and \$21,574.00 in the school years 2013-14, 2014-15, and 2016-17, respectively. (PSERS-19, PSERS-20)

30. Claimant's estimated final average salary is \$24,884.70. (N.T. 64, PSERS-20)

31. By letter dated January 24, 2018, PSERS provided Claimant with a *Normal Retirement Estimate* assuming a final average salary of \$24,885 and 12.94 years of service and estimating his monthly retirement benefit without withdrawal to be \$670 as maximum single life annuity and \$630 as Option 1. (PSERS-16)

32. In response to Claimant's request, by letter dated March 16, 2018, PSERS explained to Claimant that the discrepancy in estimated retirement benefits between his 2017 *Statement of Account* and the *Normal Retirement Estimate* was caused by Claimant's employer having inaccurately reported earnings of \$6,674 for just three days of work in the 2006-07 school year. PSERS also explained that, when preparing Claimant's *Normal Retirement Estimate*, it discovered Claimant's employer's error and corrected the

number of days Claimant worked in the 2006-07 school year to 81. (N.T. 38-39, PSERS-17)

33. Claimant appealed PSERS' March 16, 2018 determination to the ESRC. (N.T. 22, 39-40)

34. Claimant has not submitted an *Application for Retirement* to PSERS. (N.T. 70)

35. By letter dated October 5, 2018, the ESRC denied Claimant's request to adjust the corrected final average salary, because, although an incorrect estimated final average salary had been used in the various annual *Statements of Account*, PSERS had used the correct estimated final average salary in the retirement benefit estimate. Because Claimant's highest annual salary was \$30,510, the ESRC stated that it was unreasonable for Claimant to rely upon an assumed final average salary of \$60,503 in the most recent *Statement of Account*. (PSERS-18 at 1)

36. On October 22, 2018, PSERS sent Claimant a *Statement of Account for the school year ending June 30, 2018* ("2018 *Statement of Account*") reciting that he had 12.94 years of service and an estimated final average salary of \$24,884. The statement estimates his monthly retirement benefit without withdrawal as of June 30, 2018 to be \$671 as maximum single life annuity and \$629 as Option 1. (PSERS-14)

37. On November 2, 2018, Claimant filed an Appeal and Request for Administrative Hearing. (Official notice of filings of record)

38. On November 20, 2018, PSERS filed its Answer to Claimant's Appeal and Request for Administrative Hearing. (PSERS' Records)

39. A hearing on the appeal was held on February 27, 2020, before the hearing examiner. (N.T. *passim*; Dkt. No. 2018-20)

40. Claimant was present for his hearing, represented himself, and had the opportunity to be heard, present evidence on his own behalf, cross-examine witnesses, make a closing statement for the record, and file a post-hearing brief in support of his

appeal. (N.T. *passim*; Dkt. No. 2018-20)

CONCLUSIONS OF LAW

1. Claimant was afforded notice and an opportunity to be heard in connection with his appeal. (Findings of Fact (“F.O.F.”) 36 – 40)

2. Claimant has the burden of proving the facts he alleges in support of his claim. See *Wingert v. State Employees’ Ret. Bd.*, 589 A.2d 269, 271 (Pa. Cmwlth. 1991); *Frantz v. State Employees Ret. Bd.*, 560 A.2d 284, 285 (Pa. Cmwlth. 1989).

3. The preponderance of evidence standard is the correct burden of proof to be applied in this administrative action. See *Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *petition for allowance of appeal denied*, 602 A.2d 863 (Pa. 1992); *Suber v. Pennsylvania Commission on Crime and Delinquency, Deputy Sheriff’s Education and Training Bd.*, 885 A.2d 678, 681-82 (Pa. Cmwlth. 2005).

4. The preponderance of evidence standard has been explained as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Sigafoos v. Pennsylvania Bd. of Probation and Parole*, 503 A.2d 1076, 1079 (Pa. Cmwlth. 1986).

5. PSERS is a creature of statute and PSERS’ members have only those rights recognized by the Public School Employees’ Retirement Code, 24 Pa.C.S. § 8101 et seq. (“Retirement Code”) and none beyond. See *Bittenbender v. State Employees’ Ret. Bd.*, 622 A.2d 403, 405 (Pa. Cmwlth. 1992); *Burriss v. State Employees’ Ret. Bd.*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000); 24 Pa.C.S. § 8101 et seq.

6. Section 8102 of the Retirement Code defines the term “Final average salary” to mean “the highest average compensation received as an active member during any three nonoverlapping periods of 12 consecutive months with the compensation for part-time service being annualized on the basis of the fractional portion of the school year for which credit is received....” 24 Pa.C.S. § 8102.

7. Claimant's estimated final average salary shown on his *Normal Retirement Estimate* was correctly calculated in accordance with the Retirement Code's definition of final average salary. (F.O.F. 1 – 36)

8. The Board is required to correct errors in its records. 24 Pa.C.S. § 8534(b).

9. Claimant has failed to proffer sufficient evidence to support his appeal. (F.O.F. 1 – 36)

DISCUSSION

In this matter, Claimant requested a retirement estimate from PSERS, but the resulting estimate was lower than the estimates provided in Claimant's prior *Statements of Account*. In response to Claimant's inquiry regarding the lower estimate, PSERS explained that the *Statements of Account* had an inaccurate estimated final average salary because Claimant's employer erroneously reported to PSERS only three days that Claimant worked during the 2006-07 school year. Claimant requested that PSERS recalculate his estimated retirement benefit using the higher estimated final average salary from the *Statements of Account*. Claimant's request was denied, leading to this appeal, in which he requests the same remedy.

It is well established that Claimant bears the burden of establishing the facts necessary to sustain his claim. See *Gierschick v. State Employees' Ret. Bd.*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999); *Wingert*, 589 A.2d at 271². Further, it is well established that PSERS is a creature of the Legislature and its members only have those rights created by the Retirement Code and none beyond. See, e.g., *Burris*, 745 A.2d at 706; *Bittenbender*, 622 A.2d at 405; *Hughes v. Pub. Sch. Employees' Ret. Bd.*, 662 A.2d 701, 706 (Pa. Cmwlth. 1995), *allocatur denied*, 668 A.2d 1139 (Pa. 1996). While a member is entitled to a liberal construction of the Retirement Code, PSERS has no authority to grant rights

² 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).

beyond those specifically set forth in the Retirement Code. *Bittenbender*, 622 A.2d at 405; *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 779 (Pa. Cmwlth. 2001).

Under the Retirement Code, the monthly retirement benefit for a Class T-D member is determined by first calculating the member's "maximum single life annuity" by taking the member's final average salary and multiplying it by the member's years of service and then by the membership class multiplier of 2.5%. 24 Pa.C.S. § 8102 (definition of "standard single life annuity") and 8342 (maximum single life annuity). A higher final average salary generally equates to a higher monthly benefit. *See id.* The Retirement Code defines the term "final average salary," in pertinent part, as follows:

"Final average salary."

(1) for purposes of calculating annuities and benefits from the system attributable to a class of service other than Class T-G and Class T-H, the highest average compensation received as an active member during any three nonoverlapping periods of 12 consecutive months with the compensation for part-time service being annualized on the basis of the fractional portion of the school year for which credit is received....

24 Pa.C.S. § 8102. The statutory definitions of compensation, importantly, are restrictive to preserve the actuarial integrity of the retirement fund by preventing the artificial inflation of retirement benefits. *See Christiana v. Pub. Sch. Employees' Ret. Bd.*, 669 A.2d 940, 944 (Pa. 1996) (quoting *Dowler v. Pub. Sch. Employees' Ret. Bd.*, 620 A.2d 639, 642 (Pa. Cmwlth. 1993); *Laurito v. Pub. Sch. Employees' Ret. Bd.*, 606 A.2d 609, 611 (Pa. Cmwlth. 1992)).

As established by the findings of fact, Claimant is a Class T-D member of PSERS and he last worked for the Capital Area Intermediate Unit in August 2017. For the school years 2004-05 and 2005-06, PSERS provided Claimant with an estimated final average salary of \$14,711.28 and \$12,967.17, respectively, in his *Statements of Account*. During the 2006-07 school year, the Capital Area Intermediate Unit incorrectly reported to PSERS the number of days that Claimant worked, which resulted in PSERS providing Claimant with an inflated, estimated final average salary of \$78,021.69 in his *Statement of Account* for that school year. Continuing to rely upon the employer's error in reporting, PSERS

then provided estimated final average salaries of \$79,917, \$80,904, \$81,393, \$81,519, \$60,053, \$60,053, \$64,027, \$65,236, \$65,450, and \$65,569 for the subsequent school years through the 2016-17 school year. Based on the incorrect reporting, as of June 30, 2017, Claimant's monthly maximum single life annuity without withdrawals was estimated as \$1,804 and Option 1 as \$1,701.

On November 22, 2017, Claimant requested a retirement estimate from PSERS. (F.O.F. 24) While preparing the estimate, PSERS discovered the error in the employer's reporting for the 2006-07 school year and corrected it.³ (F.O.F. 31 and 32) PSERS then correctly calculated Claimant's estimated final average salary using his three highest years of compensation, i.e., \$30,510.00 in 2013-14, \$22,570.10 in 2014-15, and \$21,574.00 in 2016-17. (F.O.F. 29); see 24 Pa.C.S. § 8102 (def. "final average salary"). On October 22, 2018, PSERS also sent Claimant the 2018 *Statement of Account* that identified his estimated final average salary as \$24,884. (F.O.F. 36)

Claimant does not challenge the accuracy of PSERS' calculation of his final average salary in the *Normal Retirement Estimate* or the 2018 *Statement of Account*. Instead, Claimant argues that PSERS should be required to use the higher, estimated final average salary that was contained in the 2017 *Statement of Account* because he claims that he made plans in reliance upon the retirement benefits estimated therein. Claimant's argument must be rejected.

Preliminarily, should any change or mistake in records result in any member receiving from PSERS more or less than he would have been entitled to receive had the records been correct, then regardless of the intentional or unintentional nature of the error and upon the discovery of such error, the Retirement Code directs that PSERS correct the error and, so far as practicable, adjust the payments which may be made in such a manner that the actuarial equivalent of the benefit to which the member was correctly entitled shall be paid. 24 Pa.C.S. § 8534(b). PSERS is bound to follow the intent of the

³ PSERS has no duty to audit a member's account until after the member retires and final salary and service information has been reported from the employer. *Hughes*, 662 A.2d at 706, n.8 (citing 24 Pa.C.S. § 8505(g)). Nevertheless, PSERS discovered the error in Claimant's record prior to his retirement.

General Assembly in administering the provisions of the Retirement Code; thus, if PSERS' records contain an error, the Board is duty bound, under the Retirement Code, to correct the mistake. *Hughes*, 662 A.2d at 706. Consequently, upon discovering that Claimant's employer reported the incorrect number of days that Claimant worked during the 2006-07 school year, PSERS properly corrected its records to reflect Claimant's actual service. See 24 Pa.C.S. § 8534(b); see generally 24 Pa.C.S. § 8302(a) ("Computation of credited service"). By correcting the number of days of service, Claimant's final average salary can be correctly calculated when he actually retires.

Claimant, however, asserts that he relied on the inflated estimated final average salary and the corresponding inflated estimated retirement benefit contained in his earlier *Statements of Account*. Claimant is essentially requesting equitable relief, but such relief is not an available remedy under the Retirement Code. See *Finnegan v. Pub. School Employes' Ret. Bd.*, 560 A.2d 848, 851 (Pa. Cmwlth. 1989), *aff'd*, 591 A.2d 1053 (Pa. 1991). Furthermore, estoppel applies to government agencies only in limited situations when an agency has "intentionally or negligently misrepresented some material fact, knowing or having reason to know that another person will justifiably rely on that misrepresentation, and where that other person has been induced to act to his detriment because he did justifiably rely on that misrepresentation." *Costello v. State Employes' Ret. Bd.*, 596 A.2d 260, 262 (Pa. Cmwlth 1991) (citation omitted). The elements of estoppel must be proven by clear and convincing evidence. See

Police Pension Fund Ass'n Bd. v. Hess, 562 A.2d 391, 394 (Pa. Cmwlth. 1989) (citation omitted). Here, Claimant's asserted reliance is not credible or reasonable.

Claimant's last day of active service was in August 2017 due to a family medical leave that lasted through November 2017. (F.O.F. 22 and 23) Claimant did not request a retirement estimate from PSERS until November 2017, when PSERS provided him with the correct estimated benefit using the correct final average salary. Claimant presented no credible evidence that he relied on the inflated final average salary or inflated estimated retirement benefit when he stopped actively working to be placed on a family medical leave. Nor did he file an *Application for Retirement*. Rather, Claimant was aware or should have been aware that the final average salary contained in his *Statements of*

Account was inflated. In 2005 and 2006, Claimant received *Statements of Account* from PSERS identifying an estimated final average salary under \$15,000. (F.O.F. 2 and 3) In the next *Statement of Account* for the 2006-07 school year, Claimant's estimated final average salary increased exponentially to \$78,021.69 while only listing three days of service. (F.O.F. 5 and 6) Claimant knew that he earned no more than \$6,674.16 during the 2006-07 school year, and he knew that he worked *more* than the three days that were reflected in that *Statement of Account*. (F.O.F. 25 and 27) Indeed, he admits that he never earned more than \$30,510 in any school year. (F.O.F. 26) Thus, it was not credible or reasonable for Claimant to believe that the inflated final average salary was correct for any of the years following the 2006-07 *Statement of Account* or that he was entitled to receive the corresponding inflated monthly benefit at retirement. Moreover, the 2009 through 2011 *Statements of Account* all warned Claimant that the "estimated final average" salary may be overstated because the earnings information had not been audited. (F.O.F. 9, 11, and 13)

Thus, it was not reasonable for Claimant to believe that the greatly inflated estimates were accurate, and it was Claimant's burden to see that it was corrected before making any retirement decisions. *See Hughes*, 662 A.2d at 707. As the Commonwealth Court stated in *Hughes*, the "annual statements sent to each member provide the member with the information necessary for the member to review the accuracy of PSERS records. . . [t]he burden is upon the member to be certain that PSERS records are accurate before the member retires." *Id.* Claimant's argument that PSERS should pay erroneous *estimated* benefits based on a clearly erroneous final average salary and service credit would result in an astronomically inflated benefit that would violate the plain terms of the Retirement Code and provide Claimant with a windfall.

CONCLUSION

Based on all of the above, the facts of record support the conclusion that PSERS properly corrected its records to reflect the correct number of days that Claimant worked during the 2006-07 school year. It was duty-bound to do so. In addition, the Retirement Code does not authorize the Board to provide Claimant with future retirement benefits that are based upon an employer's erroneous reporting of service.

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE: ACCOUNT OF MIREK CHMIELEWSKI
DOCKET NO. 2018-20
CLAIM OF MIREK CHMIELEWSKI

OPINION AND ORDER OF THE BOARD

AND NOW, upon consideration of the entire record in this matter, IT IS
HEREBY ORDERED THAT Claimant's request to recalculate his estimated retirement
benefit using an estimated final average salary that had been identified in his annual
statements of account for the school years 2006-07 through 2016-17 is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: 12/03/2020

By: 
Christopher SantaMaria, Chairman