

Mail Date: MAY - 7 2008

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

IN RE: ACCOUNT OF LARRY L. DONALDSON  
DOCKET NO. 2007-05  
CLAIM OF LARRY L. DONALDSON

**OPINION AND ORDER OF THE BOARD**

The Board has carefully and independently reviewed the entire record of this proceeding, including the Briefs and the Opinion of the Hearing Examiner in the above-referenced matter. We note that neither party filed Exceptions to the Opinion and Recommendation of the Hearing Examiner. The Board finds appropriate the History, Findings of Fact, Discussion, Conclusions of Law, and Recommendation in the Hearing Examiner's Opinion. Accordingly, we hereby adopt the Hearing Examiners' Opinion as our own.

IT IS HEREBY ORDERED that Claimant's request to apply for a disability retirement benefit after the two-year filing period expired is DENIED.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: MAY - 7 2008

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

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

In Re: :  
Account of Larry L. Donaldson, Sr. : Docket No. 2007-05  
Claim of Larry L. Donaldson, Sr. :  
:

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OPINION AND RECOMMENDATION

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Date of Hearing: August 8, 2007  
Hearing Officer: Jackie Wiest Lutz, Esquire  
For the Claimant: Larry L. Donaldson, Sr. *Pro se*  
For PSERS: Jennifer A. Mills, Esquire

## HISTORY

This matter is before the Public School Employees' Retirement Board (Board) on an appeal filed by Larry L. Donaldson (hereinafter, "Claimant") from a February 15, 2007 decision of the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS") that denied Claimant's request to apply for disability benefits after the two-year filing period expired.

Claimant filed a timely Appeal and Request for Administrative Hearing on March 15, 2007. On April 2, 2007, an answer to Claimant's Appeal and Request for Administrative Hearing was filed by Jennifer A. Mills, Assistant Counsel, on behalf of PSERS.

By letter dated May 25, 2007, Claimant was notified that an administrative hearing on his appeal was scheduled for August 8, 2007. The hearing was held as scheduled on August 8, 2007 in Harrisburg, PA before Hearing Officer, Jackie Wiest Lutz, Esquire. Claimant was present at the hearing, *pro se*. Jennifer A. Mills, Esquire represented PSERS.

Upon receipt of the hearing transcript on August 28, 2007, the hearing officer issued a briefing schedule. Pursuant to the briefing schedule, PSERS' brief was due on or before October 4, 2007 and a reply brief was due by Claimant no later than October 19, 2007.

On October 1, 2007, a request was made on behalf of Attorney Mills for a thirty-day extension of the briefing schedule. The request was granted by Order dated October 2, 2007. Under the terms of the extended briefing schedule, PSERS' brief was due

November 5, 2007 and a reply brief was due by Claimant no later than November 20, 2007.

PSERS' brief was timely filed on November 7, 2007; Claimant's reply brief was timely filed on November 20, 1007.

On December 10, 2007, PSERS filed Objections to Claimant's Reply Brief on the basis that Claimant attached exhibits to his Reply Brief that were not made part of the evidentiary record and relied upon statements of fact throughout his brief that are not in evidence. Any reference by Claimant in his Reply Brief to facts and exhibits not in evidence is properly objectionable by PSERS and will not be considered, as they are not part of the evidentiary record.

The matter is now before the Board for final disposition.

## FINDINGS OF FACT

1. Claimant became a member of the Public School Employees' Retirement System (PSERS) on November 29, 1994 by virtue of his employment as a maintenance electrician with the DuBois Area School District (School District). (N.T. 6-7, 49; PSERS' Exhibit 1)
2. Claimant lives at [REDACTED]; however, Claimant's mail is delivered to [REDACTED]. (N.T. 26)
3. Claimant's Enrollment Application lists Claimant's address as: [REDACTED]  
[REDACTED]. (N.T. 50; PSERS' Exhibit 1)
4. When an enrollment application is submitted by a School District to PSERS, PSERS sends the member an enrollment welcome letter and a PSERS Member Handbook to the address that is listed on the member's enrollment application. (N.T. 50)
5. The PSERS Member Handbook that was in existence in November of 1994 when Claimant enrolled in PSERS contains an article pertaining to disability benefits on page 21. (N.T. 50-51; PSERS' Exhibit 2)
6. In order to receive a disability benefit from PSERS, a member must: (1) have five years of service credit; (2) be medically incapable of doing the job for which he/she was hired; and, (3) file an application for disability benefits within two school years of the date that the member last worked for the school district, i.e., earned service credit and paid contributions to the retirement system. (N.T. 51)
7. The article pertaining to disability benefits that appears on page 21 of the PSERS Member Handbook that was sent to Claimant in November of 1994 explains these requirements as follows:

**DISABILITY  
BENEFITS**

**YOUR RESPONSIBILITIES**

If, after five years of credited service, you should become disabled physically, mentally, or accidentally, and are unable to perform the duties for which you are hired by your school employer, you may apply to PSERS for a disability benefit. You must apply to PSERS for disability benefits within two school years following your last day paid by your school employer to be eligible to receive such benefits. . . .

(PSERS' Exhibit 2)

8. Claimant does not recall receiving a PSERS Member Handbook in 1994. (N.T. 29)
9. Subsequent to Claimant's enrollment in PSERS, PSERS sent Claimant various other mailings that contained information relating to disability benefits. (N.T. 58-62; PSERS' Exhibits 8-13)
10. On December 13, 2002, PSERS mailed Claimant an annual Statement of Account – as of June 30, 2002, showing his years of service, service class, contributions, interest and account total; the mailing was addressed to Claimant at his address on file with PSERS: [REDACTED]. (N.T. 58-59; PSERS' Exhibit 8)
11. On November 27, 2003, PSERS mailed Claimant an annual Statement of Account – as of June 30, 2003, showing his years of service, service class, contributions, interest and account total; the mailing was addressed to Claimant at his address on file with PSERS: [REDACTED]. (N.T. 58-59; PSERS' Exhibit 9)
12. On December 23, 2004, PSERS mailed Claimant an annual Statement of Account – as of June 30, 2004, showing his years of service, service class, contributions, interest

and account total; this mailing was addressed to Claimant at: [REDACTED]

[REDACTED]. (N.T. 58-59; PSERS' Exhibit 10)

13. The annual Statements of Account that were mailed to Claimant on December 13, 2002, November 27, 2003 and December 23, 2004 each contain the following statement at the bottom of the account statement:

You meet the five (5) year eligibility requirement to apply for a disability benefit. You must apply for disability benefits within two (2) school years of your last day of service or paid leave. Contact your PSERS regional office for additional information.

If you have questions about this statement, contact the NORTHWEST Regional Office by calling toll-free at 1-888-773-7748 extension 5175; local callers please use 814-437-9845. Your employer is: DUBOIS AREA SD (2763).

(N.T. 59-60; PSERS' Exhibits 8 – 10)

14. Claimant does not recall receiving any statements of account from PSERS. (N.T. 29)

15. On November 30, 2001, PSERS mailed Claimant a cover letter and a "Special Estimate Comparison" that explained the differences between Class T-C and Class T-D membership. The mailing was addressed to Claimant at: [REDACTED]

[REDACTED]. (PSERS' Exhibit 6)

16. On or about December 5, 2001 PSERS mailed an "Act 2001-9 PSERS Membership Class Election Form" to Claimant, addressed to Claimant at: [REDACTED]

[REDACTED]. (PSERS' Exhibit 7)

17. Claimant completed his Membership Class Election Form and elected to change his PSERS membership class from T-C to T-D on December 17, 2001. (N.T. 57-58;

PSERS Exhibit 7)

18. Claimant remembers completing the Act 2001-9 PSERS Membership Class Election Form; however, Claimant thought that this form "had something to do with the union and the elections." (N.T. 30)

19. Although the Membership Class Election Form was mailed to Claimant at his [REDACTED] address, Claimant does not remember receiving any correspondence from PSERS until 2006; Claimant believes that his Membership Class Election Form was "handed out during lunch break." (N.T. 21, 29-30)

20. PSERS sends periodic newsletters known as "PSERS Updates" to retired and active members of PSERS. (N.T. 60)

21. On January 7, 2002, a Winter 2002 PSERS Update was mailed to Claimant, addressed to Claimant at his address on file with PSERS: [REDACTED] [REDACTED]. (N.T. 61; PSERS' Exhibit 11)

22. The Winter 2002 PSERS Update contains an article on page three entitled "Am I Eligible for a PSERS Disability Benefit?" and explains, in pertinent part:

**Under what circumstances am I eligible to receive a PSERS disability benefit?**

- You must have at least five years of credited service.
- You must be mentally or physically incapable of continuing to perform the duties of your job.
- You must apply for a disability benefit within two school years from the last date of service for which contributions were made on your behalf. You are not required by PSERS to resign your position to apply for a disability benefit. Your employer, however, may require resignation.
- You must not be receiving any other retirement benefit from PSERS.

**How do I apply for a disability benefit?**

Contact your PSERS regional representative for counseling and assistance completing the necessary forms. The packet you will need to request is:



- PSERS Disability Packet  
(PSERS' Exhibit 11)

23. On December 17, 2002, a Winter 2003 PSERS Update was mailed to Claimant, addressed to Claimant at his address on file with PSERS: [REDACTED]

[REDACTED]. (N.T. 61-62; PSERS' Exhibit 12)

24. The Winter 2003 PSERS Update contains an article pertaining to disability benefits on page three of the publication which is identical to the article that was published in the Winter 2002 PSERS Update. (PSERS' Exhibit 12)

25. In or around October of 2003, Claimant sustained an injury during the course of his employment at the School District while erecting a 40-foot steel light pole; the pole fell on top of Claimant, "taking out his right side." (N.T. 7-8)

26. Claimant was seen by various doctors and was eventually determined to be "100 percent" disabled. (N.T. 7-12)

27. Claimant's last day of paid service with the School District was in October of 2003; at that time, Claimant had 9.26 years of service credit with PSERS. (N.T. 54; PSERS' Exhibit 4)

28. On January 6, 2005, a Winter 2005 PSERS Update was mailed to Claimant, addressed to Claimant at: [REDACTED]. (N.T. 62; PSERS' Exhibit 13)

29. The Winter 2005 PSERS Update contains an article pertaining to disability benefits on page three of the publication which is identical to the articles that were published in the Winter 2002 and Winter 2003 PSERS Updates. (PSERS' Exhibit 13)

30. Claimant does not recall receiving any type of publications from PSERS. (N.T. 30)

31. On October 2, 2006, Claimant met with Donald P. Gregory, a retirement counselor for PSERS at PSERS' Northwest Regional Office, and completed an Application for Retirement; Claimant listed his address on his Application for Retirement as [REDACTED] (N.T. 52-53; PSERS' Exhibit 3)

32. Claimant inquired about disability benefits during his retirement counseling session but was informed that he had missed the two-year filing period to apply for disability benefits. (N.T. 13)

33. The deadline for Claimant to file for a disability benefit was June 30, 2006. (N.T. 54)

34. Prior to 2005, neither Claimant nor his wife was aware of any problems with respect to mail not being delivered to them. (N.T. 31, 46)

35. In or around May of 2006, Larry Lynn Donaldson, Jr., Claimant's son, moved from Claimant's address at [REDACTED] to [REDACTED] [REDACTED]. (N.T. 44, 46)

36. After Larry Lynn Donaldson, Jr. moved from his parent's address to his new address, Claimant's mail occasionally got delivered to his son's address. (N.T. 46)

37. PSERS maintains records of any returned mail from the post office in the official file of each member. (N.T. 62)

38. Claimant's official file maintained by PSERS contains no returned mail from the post office. (N.T. 62)

39. A "Source Document" is a document that is completed by PSERS' staff and maintained in a member's file to document phone conversations between staff members of PSERS and other individuals to verify member information. (N.T. 63)

40. Wendy Stevens (Stevens) is an appeals administrator in PSERS' Bureau of Benefits Administration. (N.T. 63)
41. Claimant's official file maintained by PSERS contains a source document which indicates that Stevens contacted the [REDACTED] Postal Office on January 18, 2007 and spoke with a woman named "Toni" to confirm that PSERS has the correct address for Claimant. (N.T. 63; PSERS' Exhibit 14)
42. At the time that the inquiry was made on January 18, 2007, PSERS had two addresses on file for Claimant: (1) [REDACTED]; and, (2) [REDACTED]. (N.T. 64)
43. The Postal Office, through "Toni" verified with Stevens that either form of the address, i.e., street and/or P.O. Box is and has been Claimant's correct address and that mail that is addressed to Claimant at either address would get delivered to him. (N.T. 64; PSERS' Exhibit 14)
44. Nancy Wingert (Wingert) is the Assistant Bureau Director for PSERS' Bureau of Business Benefits and Administration. (N.T. 56)
45. On or before December 14, 2006, Wingert inquired of the School District if they would be willing to reclassify the first year of Claimant's unpaid non-contributing special sick leave to a contributing special sick leave so that Claimant's application for disability benefits could be deemed to be timely filed. (N.T. 56)
46. By letter dated December 14, 2006, the School District notified Wingert that it will not consider the payment of its share of retirement benefits for the period October 2003 through October 2004 for the purchase of service by Claimant. (N.T. 51; PSERS' Exhibit 5)

47. Prior to February 15, 2007, Claimant filed a request with PSERS to apply for disability benefits after the two-year filing period expired. (Official Notice)
48. By letter dated February 15, 2007, Claimant was notified of the decision of PSERS' Executive Staff Review Committee (ESRC) to deny his request to apply for disability benefits after the two-year filing period. (PSERS' Exhibit 15)
49. Claimant was notified of his right to appeal the decision of the ESRC by requesting an administrative hearing within 30 days of the date of the denial letter. (PSERS' Exhibit 15)
50. Claimant filed a timely appeal and Request for Administrative Hearing, which was received by PSERS on March 15, 2007. (Official Notice)
51. An administrative hearing on Claimant's appeal was held on August 8, 2007. (PSERS' Exhibits 16 and 17; Transcript, *passim*)
52. Claimant was present at the hearing, *pro se*. (Transcript, *passim*)

### CONCLUSIONS OF LAW

1. Claimant was afforded an opportunity to be heard in connection with his appeal.  
(Findings of Fact Nos. 48-52)
2. Claimant has the burden of proof in this proceeding. *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991).
3. Claimant has failed to proffer convincing evidence or arguments to support his appeal. (Findings of Fact Nos. 1-48)
4. Claimant is not entitled to apply for disability benefits because the time period for Claimant to have done so expired. (Findings of Fact Nos. 1-48)

## DISCUSSION

Claimant is asking the Board to permit him to apply for disability benefits despite his untimely application on the basis that Claimant was never notified by PSERS or the School District about a two-year time limitation within which to apply for disability benefits. In essence, Claimant is asking that the Board consider his request to apply for disability benefits *nunc pro tunc*.<sup>1</sup> Unfortunately, there is no support in the record for Claimant's position.

*Nunc pro tunc* relief is generally available to participants only in instances where there is a showing that a late filing is the result of fraud, a breakdown in the court system, or negligence on the part of a third party. *Forman v. Public School Employees' Retirement Board*, 778 A.2d 778 (Pa. Cmwlth. 2001) (citing *Bass v. Commonwealth*, 485 Pa. 256, 401 A.2d 1133 (1979)). The record is devoid of any evidence of fraud, a breakdown in the system or negligence on the part of a third party.

Although Claimant insists that he was never informed of the two-year filing deadline for disability benefits and claims he knew nothing about PSERS until he was handed an Act 2001-9 PSERS Membership Class Election Form election form "at the maintenance shop during lunch break," (N.T. 21) Claimant's testimony is simply not credible.

The record is replete with evidence of various mailings that were sent to Claimant from PSERS throughout Claimant's employment with the School District. In addition to a PSERS Member Handbook that PSERS mails to every member upon their enrollment

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<sup>1</sup> Lat. Now for then. A phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect, i.e., with the same effect as if regularly done. Black's Law Dictionary, (Sixth Edition 1990).

in the system<sup>2</sup>, the evidence reveals that Claimant was sent annual statements of account from PSERS showing his years of service, his service class, contributions, interest and account totals. The three statements of account that are in evidence each contain a note at the bottom of the page that reads:

You meet the five (5) year eligibility requirement to apply for a disability benefit. You must apply for disability benefits within two (2) school years of your last day of service or paid leave. Contact your PSERS regional office for additional information.

If you have questions about this statement, contact the NORTHWEST Regional Office by calling toll-free at 1-888-773-7748 extension 5175; local callers please use 814-437-9845. Your employer is: DUBOIS AREA SD (2763).

(PSERS' Exhibits 8 – 10)

Claimant's statements of account for 2002 and 2003 were mailed to Claimant at [REDACTED], the address appearing on Claimant's Enrollment Application. Claimant's statement of account for 2003 was mailed to Claimant at his street address of [REDACTED]. The record reveals that PSERS confirmed with the [REDACTED] Postal Office on January 18, 2007 that either form of the address, i.e., street and/or post office box is and has been

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<sup>2</sup> The PSERS Member Handbook that was in existence when Claimant enrolled in PSERS contains an article on page 21 pertaining to disability benefits which reads:

**DISABILITY  
BENEFITS**

**YOUR RESPONSIBILITIES**

If, after five years of credited service, you should become disabled physically, mentally, or accidentally, and are unable to perform the duties for which you are hired by your school employer, you may apply to PSERS for a disability benefit. You must apply to PSERS for disability benefits within two school years following your last day paid by your school employer to be eligible to receive such benefits. . . .

(PSERS' Exhibit 2)

Claimant's correct address, and that mail that is addressed Claimant at either address will be delivered to him.

In addition to annual statements of account, the evidence reveals that PSERS also sent Claimant several newsletters prior to his retirement (PSERS Updates), which contained articles pertaining to disability benefits. The three PSERS Updates that are in evidence (PSERS' Exhibits 11-13) contain identical articles entitled, "Am I Eligible for a PSERS Disability Benefit?" and provide the following explanation:

**Under what circumstances am I eligible to receive a PSERS disability benefit?**

- You must have at least five years of credited service.
- You must be mentally or physically incapable of continuing to perform the duties of your job.
- You must apply for a disability benefit within two school years from the last date of service for which contributions were made on your behalf. You are not required by PSERS to resign your position to apply for a disability benefit. Your employer, however, may require resignation.
- You must not be receiving any other retirement benefit from PSERS.

**How do I apply for a disability benefit?**

Contact your PSERS regional representative for counseling and assistance completing the necessary forms. The packet you will need to request is:

- PSERS Disability Packet

(PSERS' Exhibit 11)

Similar to Claimant's statements of account, the Winter 2002 and 2003 PSERS Updates were mailed to Claimant at his post office box address; the Winter 2005 PSERS Update was mailed to Claimant at his street address.

Despite the notification contained within these various mailings, Claimant defends by claiming that he has no recollection of receiving any of these mailings.

Claimant testified that he has complained to his postmaster "at least 10 times" about not



receiving mail. (N.T. 21) According to Claimant, he first began complaining to his postmaster about not receiving mail in 2005 because he wasn't receiving bills. Later, in 2006, when Claimant's son moved from his address at [REDACTED], [REDACTED] to [REDACTED], Claimant contends that his mail occasionally got delivered to his son's address.<sup>3</sup>

However, Claimant also testified that he was handed his Act 2001-9 Membership Class Election Form at the maintenance shop during lunch break. Testimony such as this calls into question Claimant's credibility because a time-sensitive document such as this that is personally addressed to Claimant would not have been sent to the School District to be handed out to Claimant during his lunch break.<sup>4</sup> In addition, the record reveals that *prior to 2005*, neither Claimant nor his wife was aware of any problems with respect to mail not being delivered to them. (N.T. 31, 46) Yet, *prior to 2005*, at least six separate mailings were sent by PSERS to Claimant that contained information about disability benefits and the two-school-year time requirement within which to apply for disability benefits.<sup>5</sup> Under the "mailbox rule" proof of mailing raises a presumption that the mailed item reached its destination by due course of mail; the presumption is not nullified solely by testimony denying receipt of the item mailed. *Whitmore vs. Dwelling House Ins. Co.*, 148 Pa. 405, 23 A. 1131 (1892); *Beehan v. Supreme Lodge*, 215 Pa. 627, 64 A. 792

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<sup>3</sup> Claimant's son, Larry Lynn Donaldson, Jr., is named after Claimant.

<sup>4</sup> Claimant also testified that he thought that his Act 2001-9 Membership Class Election Form had something to do with unions and elections. This, too, suggests that Claimant does not pay particular attention to documents that he *does* acknowledge receiving.

<sup>5</sup> These mailing included personally addressed mailings, such as Claimant's annual Statements of Account, and bulk mailings, such as the PSERS Updates. However, under *Trakes v. Public School Employees' Retirement System*, 768 A.2d 357 (Pa. Cmwlth. 2001), *allocatur denied*, 568 Pa. 623, 792 A.2d 1256 (2001), Commonwealth Court expressly recognized that the Retirement Code does not require that PSERS specifically notify its members of the two-year restriction on their inactive member status.

(1906); *In re Cameron Estate*, 388 Pa. 25, 130 A.2d 173 (1957); *Sheehan v. Workmen's Compensation Appeal Board (Supermarkets General)*, 600 A.2d 633 (Pa. Cmwlth. 1991), *appeal denied*, 530 Pa. 663, 609 A.2d 170 (1992); *Ercolani vs. Department of Transportation, Bureau of Driver Licensing*, 922 A.2d 1034(Pa. Cmwlth. 2007).

Even assuming *arguendo* that Claimant received none of PSERS' mailings and that such factor would warrant the grant of the requested relief, it has long been recognized that the Board has no authority to grant rights beyond those specifically set forth in the Retirement Code. *Hughes v. Public School Employees' Retirement Board*, 662 A.2d 701 (Pa. Cmwlth.), *petition for allowance of appeal denied*, 542 Pa. 256, 401 A.2d 1133 (1979); *Forman v. PSERB*, 778 A.2d 778 (Pa. Cmwlth. 2001) (PSERB has no authority to re-open a legislatively crafted retirement window and allow an untimely application to be "deemed" timely filed).

Section 8307 (c) of the Retirement Code provides, in pertinent part:

(c) Disability annuity. - - An active or inactive member who has credit for at least five years of service shall, upon filing of a proper application, be entitled to a disability annuity if he becomes mentally or physically incapable of continuing to perform the duties for which he is employed and qualified for an annuity in accordance with the provisions of section 8505(c)(1)(relating to duties of board regarding applications and elections of members).

24 Pa. C.S. §8307(c).

The essential language in section 8307(c) is "active or inactive member." By definition, an "active member" is "a school employee for whom pickup contributions are being made to the fund." 24 Pa. C.S. §8102. An "Inactive member" is:

A member for whom no pickup contributions are being made. . . who has accumulated deductions standing to his credit in the fund and for whom contributions have been made within the last two school years . . . .

24 Pa. C.S. §8102.

Claimant ceased being an active member of PSERS in October of 2003, because pickup contributions were no longer being made to the fund. Because members who are no longer active members are classified as inactive members for a period of two years, Claimant had until June 30, 2006 (the end of the school year in which he last worked plus two years) to apply for a disability benefit. Unfortunately, Claimant did not inquire about disability benefits until October 2, 2006, when he completed his Application for Retirement.

Although PSERS has no statutory obligation to notify members of the two-year restriction on their inactive member status,<sup>6</sup> the record reveals that PSERS provided both actual and constructive notice to Claimant of his entitlement to disability benefits and of the time period within which to apply for such benefits. Claimant simply did not avail himself of the information that was provided to him.

Claimant has the burden of proof in this proceeding. *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991). Claimant has failed to proffer convincing evidence or arguments to support his appeal. The following recommendation will therefore be made to the Board:

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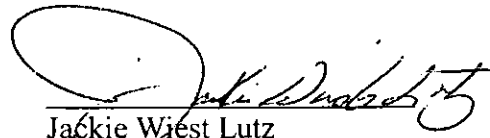
<sup>6</sup> See, footnote #5.

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

In Re: :  
Account of Larry L. Donaldson, Sr. : Docket No. 2007-05  
Claim of Larry L. Donaldson, Sr. :  
:

RECOMMENDATION

AND NOW, this 18<sup>th</sup> day of January, 2008, 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 the Board **affirm** the decision of the Executive Staff Review Committee dated February 15, 2007 that denied Claimant's request to apply for disability benefits after the two-year filing period expired.

  
Jackie Wiest Lutz  
Hearing Officer

Date of Mailing: January 18, 2008