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COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE: ACCOUNT OF PATRICIA A. MUSSARI
DOCKET NO.: 2010-18
CLAIM OF PATRICIA A. MUSSARI

OPINION AND ORDER OF THE BOARD

The Public School Employees' Retirement Board has carefully and independently reviewed the entire record of this proceeding, including the Proposed Opinion and Recommendation of the Hearing Officer. Neither the Claimant nor PSERS filed exceptions in this matter.

The Board generally finds appropriate the History, Findings of Fact, Conclusions of Law, and Recommendation in the Hearing Officer's Proposed Opinion attached hereto with the following modifications:

1. On pages 5-6, first sentence of the Findings of Fact No. 13., the Hearing Officer's statement: "PSERS subsequently mailed another letter to active members of PSERS on May 22, 2001 to explain the urgent need for members to complete the enclosed election form to take advantage of the recent changes to their retirement plan;" is amended to read "PSERS subsequently mailed another letter to active members of PSERS on June 6, 2001 to explain the urgent need for members to complete the enclosed election form to take advantage of the recent changes to their retirement plan;."

2. On page 10, Findings of Fact No. 35, the Hearing Officer's statement: "The Winter 2003 Retirement Chalkboard contained an identical article on its front page regarding Multiple Service as the Fall 2003 Retirement Chalkboard" is amended to read "The Summer 2003 Retirement Chalkboard contained an identical article on its front page regarding Multiple Service as the Fall 2003 Retirement Chalkboard."
3. On page 14, the Hearing Officer's Conclusion of Law No. 5 "Claimant's Application for Multiple Service Membership was not filed until October 2, 2009 and is, therefore, untimely" is amended to read "Claimant's Application to Purchase Credit for Full-Time Service, filed October 2, 2009, is denied because she was not a multiple service member at the time of filing, and her subsequent request to elect multiple service membership is untimely."

With the above modifications we hereby adopt the Hearing Officer's Opinion and Recommendation as our own, and accordingly:

IT IS HEREBY ORDERED that the Claimant's request to elect multiple service membership after the statutorily-imposed deadlines is DENIED as untimely.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: 12/6/2012

By: Melva L. Vogler
Melva Vogler, Chairman

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

In Re: Account of Patricia A. Mussari : Docket No. 2010-18
Claim of Patricia A. Mussari :

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PSERB
EXECUTIVE OFFICE

OPINION AND RECOMMENDATION

Date of Hearing: November 30, 2011
Hearing Officer: Jackie Wiest Lutz, Esquire
For the Claimant: Patricia A. Mussari, *Pro se*
For PSERS: Kathrin Smith, Esquire

HISTORY

This matter is before the Public School Employees' Retirement Board (Board) on an appeal filed by Patricia A. Mussari (hereinafter, "Claimant") from a November 18, 2010 decision of the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS") that denied Claimant's request to elect multiple service membership.

Claimant's appeal was timely filed on December 15, 2010. Thereafter, on January 4, 2011, an answer was filed by Assistant Deputy Chief Counsel, David W. Speck, on behalf of the Public School Employees' Retirement System (PSERS).

On March 17, 2011, Jackie Wiest Lutz, Esquire was appointed by Secretary Jeffrey B. Clay to act as hearing examiner for Claimant's administrative hearing. A hearing notice was subsequently issued by PSERS on March 25, 2011, which scheduled the hearing on Claimant's appeal for July 20, 2011.

On April 27, 2011, David W. Speck, Esquire, withdrew his appearance on behalf of PSERS, and Jennifer A. Mills, Esquire, simultaneously entered her appearance on behalf of PSERS.

On May 24, 2011 and Order Cancelling Hearing was issued by the hearing examiner notifying the parties that the hearing will be re-scheduled in due course. An Order Re-Scheduling Hearing was subsequently issued by the hearing examiner on June 20, 2011; the hearing was re-scheduled for November 8, 2011.

On September 22, 2011, Jennifer A. Mills, Esquire withdrew her appearance on behalf of PSERS and Kathrin V. Smith, Esquire simultaneously entered her appearance on behalf of PSERS.

On November 7, 2011, the Claimant filed an unopposed request for an emergency continuance of her hearing. An Order Granting Continuance and Re-Scheduling Hearing was issued by the hearing examiner on the same day, which re-scheduled the hearing for November 30, 2011.

The hearing was held as re-scheduled on November 30, 2011 in Harrisburg, PA before the appointed hearing examiner. Claimant was present at the hearing, *pro se*; Kathrin V. Smith, Esquire represented PSERS.

Following the close of evidence, the parties requested and were granted the opportunity to file a post-hearing brief; however, the parties requested that the briefing schedule be delayed until June 2012.

On June 12, 2012, a briefing schedule was established by the hearing examiner. Pursuant to the briefing schedule, Claimants' brief was due on or before June 15, 2012; PSERS' brief was due on or before July 16, 2012; and, a reply brief, if any, was due by Claimant no later than July 31, 2012.

Both parties filed timely briefs; however, Claimant did not file a reply brief.

The matter is now before the Board for final disposition.

FINDINGS OF FACT

1. Patricia A. Mussari (“Claimant”) was first enrolled in PSERS on November 1, 1982. (N.T. 11)¹
2. Prior to 1982, Claimant was employed with the Scranton State General Hospital from January 1971 to September or October of 1972. (N.T. 35-36, 50; PSERS’ Exhibit 13)
3. During Claimant’s employment with the Scranton State General Hospital, the Claimant was a member of the State Employees’ Retirement System (“SERS”).
4. When Claimant terminated her service with the Scranton State General Hospital, she requested and received a full refund of her contributions and interest from SERS. (N.T. 39-40, 50)
5. Multiple service membership combines non-concurrent service credited with SERS and PSERS. (N.T. 10)
6. On May 17, 2001, Act 2001-9 (“Act 9”) was signed into law. (Official Notice)
7. Act 9 opened a window for active members of PSERS who were former active members in the State Employees’ Retirement System (SERS) and whose service credit in SERS had not been converted to service credited in another public pension plan or retirement system in Pennsylvania to elect to become a multiple service member. (Official Notice)
8. Act 9 also provided an opportunity for PSERS members to elect a new class T-D membership class in order to enhance their benefit levels, and reduced

¹ “N.T” refers to “notes of testimony” from the November 30, 2011 hearing on Claimant’s appeal.

- the number of eligibility points for an active or inactive member to become vested in PSERS from 10 years to 5 years. (Official Notice)
9. Under Act 9, the window during which qualified members of PSERS could elect multiple service membership and class T-D membership was between July 1, 2001, the effective date of Act 9, and December 31, 2003. (N.T. 11; Official Notice)
 10. Prior to the enactment of Act 9, Claimant did not elect multiple service membership upon her initial enrollment in PSERS. (N.T. 36)
 11. In May of 2001, PSERS sent a "Summary of Legislation" letter to acting contributing members of PSERS to notify members, *inter alia*, of the new T-D membership class and the new window from July 1, 2001 until December 31, 2003 to elect multiple service membership. (N.T. 11-12; PSERS' Exhibits 1 and 2)
 12. The "Summary of Legislation" letter notified members, in pertinent part, as follows:
 3. Effective July 1, 2011, the opportunity to elect Multiple Service membership (members who elect to combine benefits in the PSERS and the State Employees' Retirement System) will be expanded.
 - a. Current members, who have not already elected Multiple Service membership, will have a window from July 1, 2001 through December 31, 2003, to apply for multiple service membership.

...

(PSERS' Exhibit 1)
 13. PSERS subsequently mailed another letter to active members of PSERS on May 22, 2001 to explain the urgent need for members to complete the

enclosed election form to take advantage of the recent changes to their retirement plan; this letter included the Act 9 election form and also contained information on the new window to elect multiple service membership; page 3 of the letter notified members, *inter alia*:

Window for Multiple Service Membership

Multiple Service membership combines nonconcurrent service credited with SERS and PSERS. Examples of SERS service include employment with a Commonwealth agency (such as employment with the PA Departments of Welfare, Transportation, Health, Labor and Industry), a state owned educational institution, Pennsylvania State University, or a community college.

- If you are an active member of PSERS on July 1, 2001, and are not a Multiple Service member, although you had or have SERS covered service, Act 9 provides a window to elect Multiple Service membership. PSERS must receive your request for Multiple Service membership between July 1, 2001 and December 31, 2003. . . .

(N.T. 14-16; PSERS' Exhibit 2)

14. Claimant was among the active members of PSERS who was sent the *Summary of Legislation* letter and the additional cover letter which included the Act 9 election form; both letters were mailed by PSERS to Claimant by first class mail, addressed to Claimant at her address on file with PSERS.

(N.T. 10-14, 17, 49; PSERS Exhibits 1 and 2)

15. The Act 9 election form contained a box at the bottom of the form for members to check to request multiple service information. (PSERS Exhibit 2)
16. The procedure in place at PSERS in 2001-2003 regarding the Act 9 election forms was that any member who checked the multiple service box on the Act 9 election form and mailed it back to PSERS would have received a letter

- from PSERS, along with an application to elect multiple service membership. (N.T. 16)
17. Claimant received the Act 9 election form that was sent to her by PSERS and signed and dated the form on August 9, 2001, electing to change to T-D class membership. (N.T. 17-19; PSERS' Exhibit 3)
 18. Claimant did not check the box on the Act 9 election form to request multiple service information. (N.T. 19; PSERS Exhibit 3)
 19. After mailing the Act 9 election forms to active members, PSERS continued to notify and remind members of the new T-D membership class and the new window from July 1, 2001 until December 31, 2003 to elect multiple service membership through various other forms of communications. (N.T. 11)
 20. A Retirement Chalkboard is a news publication bulletin that PSERS sends to all active members of PSERS. (N.T. 19)
 21. Retirement Chalkboard publications are mailed to PSERS members through presorted standard third class mail, which is a form of bulk mail. (PSERS' Exhibits 4, 8, 9 and 12)
 22. The Summer 2001 Retirement Chalkboard contains a two-page article devoted to an overview of Act 9; page two of the article contains a section entitled "Multiple Service Election Re-opened" and explains, in pertinent part:

Multiple Service membership combines service credited with SERS and PSERS. Examples of SERS service include employment with a Commonwealth agency (such as employment with the PA Departments of Welfare, Transportation, Health, Labor and Industry), a state owned educational institution, Pennsylvania State University, or a community college.

If you are an active member of PSERS on July 1, 2001, and had SERS covered service and did not previously elect Multiple Service, Act 9 provides a window to elect Multiple Service membership. PSERS must receive your request for Multiple Service membership between July 1, 2001 and December 31, 2003. . . .

(N.T. 20; PSERS Exhibit 4)

23. Records on file with PSERS show that Claimant was among the list of active members of PSERS who was mailed a copy of the Summer 2001 Retirement Chalkboard. (N.T. 20-21; PSERS' Exhibit 4)
24. The Fall 2001 Retirement Chalkboard contains an article on the first page entitled, "Multiple Service Election Re-Opened" that reads as follows:

Multiple Service Election Re-Opened

If you were an active member of PSERS on July 1, 2001, and had SERS covered service and did not previously elect Multiple Service, Act 9 provides a window period to elect Multiple Service membership.

Multiple Service membership combines service credited with SERS (State Employees' Retirement System) and PSERS. Examples of SERS service include employment with a Commonwealth agency (such as employment with the PA Departments of Welfare, Transportation, Health, Labor and Industry), a state owned educational institution, Pennsylvania State University, or a community college.

PSERS must receive your request for Multiple Service membership between July 1, 2001 and December 31, 2003. If you terminate employment before December 31, 2003, you must submit your request prior to the date of termination.

(N.T. 23-24; PSERS' Exhibit 6)

25. Claimant was an active member of PSERS during the Fall of 2001. (N.T. 24)
26. The Fall 2001 Retirement Chalkboard was sent by PSERS to all active members of PSERS. (N.T. 24)

27. The Spring 2002 Retirement Chalkboard also contains an article on the front page entitled "Multiple Service Election Re-Opened;" the article in this publication contains substantially similar content and information as the article that appeared in the Summer 2001 Retirement Chalkboard. (N.T. 26-28; PSERS' Exhibit 8)
28. Records on file with PSERS show that Claimant was among the list of active members of PSERS who was mailed a copy of the Spring 2002 Retirement Chalkboard. (N.T. 27-28; PSERS Exhibit 8)
29. The Fall 2002 Retirement Chalkboard contains a similar article pertaining to "Multiple Service Election Re-Opened" on page 2 of the publication. (N.T. 28-29; PSERS' Exhibit 9)
30. Records on file with PSERS show that Claimant was among the list of active members of PSERS who was mailed a copy of the Fall 2002 Retirement Chalkboard. (N.T. 29; PSERS Exhibit 9)
31. The Summer 2003 Retirement Chalkboard, like the Spring 2002 Retirement Chalkboard, contains an article on the front page entitled "Multiple Service Election Re-Opened;" the article in this publication contains substantially similar content and information as the article that appeared in the Summer 2001 Retirement Chalkboard. (N.T. 32; PSERS' Exhibit 11)
32. Records on file with PSERS show that Claimant was among the list of active members of PSERS who was mailed a copy of the Summer 2003 Retirement Chalkboard. (N.T. 33; PSERS' Exhibit 11)

33. The Fall 2003 Retirement Chalkboard contains a more urgent article on its front page, entitled, "Deadline Approaching for Multiple Service Election."

This article contains the following information:

Deadline Approaching for Multiple Service Election

Multiple Service allows you to combine Pennsylvania state and school service that will enhance your retirement benefit. If you became a member of PSERS after October 2, 1975, and wish to combine this service with State Employees' Retirement System (SERS) service (for example, employment with the Department of Public Welfare, Department of Labor and Industry, Department of Transportation, etc.) **you must request Multiple Service in writing within 365 days of employment with your school employer or by December 31, 2003, whichever is later.**

This is your only opportunity to elect Multiple Service unless you have a break in service. Your contributions and interest will continue to earn interest as long as you remain active in either of the two Systems. Your record of service, contributions, and interest will remain separate in each System until you terminate service in both Systems and apply for a refund or retirement.

If you terminate employment before December 31, 2003, you must submit your request to elect Multiple Service prior to your termination date.

(N.T. 34; PSERS' Exhibit 12)

34. The Fall 2003 Retirement Chalkboard was mailed by PSERS to all of its active membership; Claimant was an active member of PSERS during the Fall of 2003. (N.T. 34)
35. The Winter 2003 Retirement Chalkboard contained an identical article on its front page regarding Multiple Service as the Fall 2003 Retirement Chalkboard. (N.T. 30; PSERS' Exhibit 10)

36. Records on file with PSERS show that Claimant was among the list of active members of PSERS who was mailed a copy of the Winter 2003 Retirement Chalkboard. (N.T. 31; PSERS' Exhibit 10)
37. Every Retirement Chalkboard that was published during the 18-month window to elect multiple service membership contained an article devoted to multiple service, and the deadline for electing multiple service membership. (PSERS' Exhibits 4, 6, 8, 9, 11 and 12)
38. In the Winter of 2002 and the Winter of 2003, PSERS also mailed a publication entitled "PSERS Update" to all retired and active members of PSERS; similar to the Retirement Chalkboards, both PSERS Update publications contained articles entitled "Multiple Service Election Re-Opened." (N.T. 24-25, 30; PSERS Exhibits 7 and 10)
39. Records on file with PSERS show that Claimant was among the list of active members of PSERS who was mailed a copy of the Winter of 2002 and Winter of 2003 PSERS Update. (N.T. 25, 31; PSERS Exhibits 7 and 10)
40. In addition to Retirement Chalkboard publications and PSERS Updates, PSERS also mailed a copy of an Active Member Handbook to its active members in June of 2002; the Active Member Handbook discusses multiple service on page 14 and also mentions the December 31, 2003 deadline for applying for multiple service membership. (N.T. 21-22; PSERS' Exhibit 5)
41. Records on file with PSERS show that Claimant was among the list of active members of PSERS who was mailed a copy of the Active Member Handbook. (N.T. 22; PSERS' Exhibit 5)

42. Claimant's current address is identical to the address on file with PSERS where Retirement Chalkboard publications and PSERS Updates were mailed to Claimant. (N. T. 49; PSERS' Exhibits 4, 6-12)
43. Claimant has lived at her current address for 19 years; mail is delivered to her home mailbox. (N.T. 49)
44. PSERS maintains a record of mail that is returned as undeliverable in every member's file; Claimant's file does not contain any mail that was sent to her by PSERS that was returned as undeliverable. (N.T. 38-39)
45. Claimant recalls receiving "some literature coming in with the word PSERS at the top;" however, she did not read the literature that came in because she assumed its applied to teachers and, therefore, did not pay much attention to it. (N.T. 47, 52)
46. On October 2, 2009, Claimant filed with PSERS an Application to Purchase Credit for Full-Time Service, seeking to purchase service credit that she earned while employed with the Scranton State General Hospital from January 1971 to September or October of 1972; this was the first time that Claimant requested multiple service membership. (N.T. 35-36; PSERS' Exhibit 13)
47. By correspondence dated November 18, 2010, Jeffrey B. Clay, Executive Director of PSERS, notified Claimant that the Executive Staff Review Committee ("ESRC") of PSERS reviewed her request to elect multiple service membership at its November 2, 2010 meeting, but, denied her request because she did not file her application within the timeframe allowed by law. (N.T. 37-38; PSERS' Exhibit 14)

48. Claimant was notified of her right to appeal the decision of the ESRC to the Public School Employees' Retirement Board by requesting an administrative hearing. (N.T. 38; PSERS' Exhibit 14)
49. Claimant filed a timely appeal from the decision of the ESRC. (Official Notice – PSERS' records)
50. An administrative hearing on Claimant's appeal was held on November 30, 2011. (*Transcript, passim*)
51. Claimant was present at the hearing, *pro se*, and had the right to testify and present evidence and to file a post-hearing brief in support of her appeal. (*Transcript, passim*; Official Notice – PSERS' records)

CONCLUSIONS OF LAW

1. Claimant was afforded an opportunity to be heard in connection with her appeal. (Transcript, *passim*; Findings of Fact Nos. 46-51)
2. Claimant has the burden of proof in this proceeding. *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991).
3. The Act of May 17, 2001, P.L. 26, No. 9 ("Act 9") opened a window between July 1, 2001 and December 31, 2003 for active members of PSERS who entered the system prior to 2001 to elect multiple service membership. 24 Pa. C.S. §8507(c).
4. As an active member of PSERS on July 1, 2001, Claimant had until December 31, 2003 to elect to become a multiple service member. 24 Pa. C.S. §8507(c).
5. Claimant's Application for Multiple Service Membership was not filed until October 2, 2009 and is, therefore, untimely. (Findings of Fact Nos. 1-47)
6. The authority of the Board to grant or deny Claimant's request to elect Multiple Service is limited to the provisions of the Retirement Code; the Board has no authority to grant rights beyond those specifically set forth in the Retirement Code. *Burris v. State Employees' Retirement Board*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees' Retirement Board*, 622 A.2d 403 (Pa. Cmwlth. 1992).
7. Claimant is not entitled to elect multiple service membership at this time. (Findings of Fact Nos. 1-47)

DISCUSSION

Act 9 opened a window for any active member of PSERS who was formerly an active member in the State Employees' Retirement System (SERS) and whose service credit in SERS had not been converted to service credited in another public pension plan or retirement system in the Commonwealth to elect to become a multiple service member.² Under Act 9, qualified members of PSERS could elect multiple service membership between July 1, 2001 and December 31, 2003.

Claimant's appeal centers on what Claimant characterizes as "lack of adequate notice regarding the concept of multiple service membership."³ Relying on *Jenkins-Papa v. State Employees' Retirement Board*, 768 A.2d 407, (Pa. Cmwlth. 2001), Claimant argues that notice by way of newsletter is inadequate where the employee never before received notice of the right to elect multiple service membership. However, *Jenkins-Papa* is inapposite. Notice is not the issue here.

Jenkins-Papa dealt with a provision of the State Employees' Retirement Code that provides that an active member who was formerly an active member in PSERS may elect to become a multiple service member no later than thirty days after becoming an active member. 71 Pa. C.S. §5907. In *Jenkins-Papa*, Jenkins-Papa informed SERS on

² Section 29 of Act 9, as it applies to Claimant provides:

Section 29. Notwithstanding the limitation contained in 24 Pa. C.S. §8507(c), any active member of the Public School Employees' Retirement System who was formerly an active member in the State Employees' Retirement System and whose service credit in the State Employees' Retirement System has not been converted to service credited in another public pension plan or retirement system in this Commonwealth may elect to become a multiple service member on or before December 31, 2003.

Previous to Act 9, section 8507(c) of the Retirement Code only allowed members only 30 days to make this election.

³ Brief of Patricia A. Mussari, p. 1.

her application for membership that she had never been a member of PSERS, when, in fact, she was, for a brief period, between March and September of 1976 and February and March of 1977, when she worked for an Intermediate Unit. Had Jenkins-Papa indicated on her application that she had been a member of PSERS, SERS would have mailed her a notice informing her of her right to purchase multiple service membership. Like Claimant, Jenkins-Papa received at least one SERS Members Handbook, but, she never read anything in the manual about multiple service because she was only 18 years old and retirement was "way off in the future."

Between 1984 and June 30, 1985, SERS created a grace period to allow members who had failed to elect multiple service within 30 days of their entry into the system to do so. *SERS gave notice of the grace period to its members through a Winter 1984 Newsletter publication.*

Jenkins-Papa first learned during a retirement counseling session of her right to elect multiple service credit for the service she rendered between March and September of 1976 and February and March of 1977 at the Intermediate Unit. She subsequently applied for multiple service credit, but, SERS denied her request. On appeal, a hearing examiner recommended that the State Employees' Retirement Board (Board) grant Jenkins-Papa's request to elect multiple service because of SERS' failure to provide Claimant with adequate notice of the grace period. The Board disagreed and denied Claimant's request on the basis that she willfully failed to inform SERS that she had prior school service and therefore she forfeited her right to elect multiple service membership based on that prior service.

On appeal, Commonwealth Court reversed. Citing *Higgins v. Public School Employees' Retirement System*, 736 A. 2d 745 (Pa. Cmwlth. 1999), the Court held that notice of the grace period by newsletter is inadequate *where the employee never before received notice of the right to elect multiple service membership.*

Here, unlike *Jenkins-Papa*, the evidence reveals that in May of 2001, PSERS mailed a "Summary of Legislation" letter to acting contributing members of PSERS to notify members, *inter alia*, of the new T-D membership class *and the new window from July 1, 2001 until December 31, 2003 to elect multiple service membership.* The letter notified members, in pertinent part, as follows:

3. Effective July 1, 2011, the opportunity to elect Multiple Service membership (members who elect to combine benefits in the PSERS and the State Employees' Retirement System) will be expanded.

a. Current members, who have not already elected Multiple Service membership, will have a window from July 1, 2001 through December 31, 2003, to apply for multiple service membership.

...
(PSERS' Exhibit 1)

Very shortly thereafter, on May 22, 2001, PSERS mailed another letter to active members of PSERS to explain the urgent need for members to complete the enclosed election form to take advantage of the recent changes to their retirement plan. This letter not only included the Act 9 election form, but, also included information on the new window to elect multiple service membership. Page 3 of the letter notified members, *inter alia*:

Window for Multiple Service Membership

Multiple Service membership combines nonconcurrent service credited with SERS and PSERS. Examples of

SERS service include employment with a Commonwealth agency (such as employment with the PA Departments of Welfare, Transportation, Health, Labor and Industry), a state owned educational institution, Pennsylvania State University, or a community college.

- If you are an **active** member of PSERS on July 1, 2001, and are not a Multiple Service member, although you had or have SERS covered service, Act 9 provides a window to elect Multiple Service membership. PSERS must receive your request for Multiple Service membership between July 1, 2001 and December 31, 2003. . . .

(PSERS' Exhibit 2)

Records on file with PSERS and maintained in the ordinary course of business show that both letters were mailed by PSERS to Claimant *by first class mail, addressed to Claimant at her address on file with PSERS*. It is undisputed that Claimant received the Act 9 election form that was included with the May 22, 2001 mailing, as she signed it on August 9, 2001, electing to change to T-D class membership. (PSERS' Exhibit 3) Claimant need only be notified of the requirement to elect multiple service membership once under the Retirement Code. *Higgins, supra.* at 752.

The evidence reflects, irrefutably, that during the 18-month window to elect multiple service membership, PSERS also sent quarterly Retirement Chalkboard publications to its active members. Every Retirement Chalkboard publication that was mailed by PSERS to its active members during this time period contained an article devoted to multiple service membership, and the deadline for electing multiple service membership. (PSERS' Exhibits 4, 6, 8, 9, 11 and 12) In addition to Retirement Chalkboard publications, PSERS' Update publications were mailed to active members of PSERS during this same 18-month window, as well as an Active Member Handbook.

Notably, here, unlike in *Jenkins-Papa*, Claimant does not dispute that she received these publications. She testified:

I did not read the literature that came in. I didn't even know of [sic] what it pertained to, because being a nurse within the school system I always thought that this applied to teachers. So, therefore, I just never bothered to read any of the literature that did come in. Whether I got all the literature or not, I really cannot say one way or the other because I didn't pay much attention to it.

(Transcript, p. 47, lines. 16-23)

The statutory window to elect multiple service membership under Act 9 was from July 1, 2001 through December 31, 2003. The evidence conclusively establishes that PSERS provided both actual and constructive notice of the new election period to Claimant through various means. Claimant was provided with the necessary information to timely elect multiple service membership. Claimant simply did not avail herself of the information or the opportunity to do so.

Under these facts, Claimant has failed in her burden to present sufficient evidence or argument to support her appeal. *Wingert v. State Employes' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991).

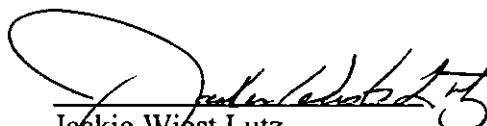
The following recommendation will therefore be made:

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

In Re: Account of Patricia A. Mussari : Docket No. 2010-18
Claim of Patricia A. Mussari :
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RECOMMENDATION

AND NOW, this 9th day of October 2012, upon consideration of the foregoing Findings of Fact, Conclusions of Law and Discussion, the hearing examiner for the Public School Employees' Retirement System recommends that Claimant's request to elect multiple service membership should be denied, as untimely.



Jackie Wiest Lutz
Hearing Examiner

Date of Mailing: October 9, 2012