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

**IN RE: ACCOUNT OF WILLIAM R. HOFFMAN
DOCKET NO.: 2012-05
CLAIM OF WILLIAM R. HOFFMAN**

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the Proposed Opinion and Recommendation of the Hearing Officer, Claimant's Brief on Exceptions to the Opinion of the Hearing Officer, and PSERS' Objections to Claimant's Brief on Exceptions and Brief Opposing Exceptions.

Essentially, Claimant excepts to the Hearing Officer's Proposed Opinion and Recommendation on the basis that: (1) he believes that the law in effect at the time he rendered the service allowed members to buy service rendered as a graduate assistant; (2) Claimant worked ten months out of a school year for Trenton State College; (3) he was not a graduate assistant, but, rather was hired as an instructor; and (4) his service with Princeton Regional School District plus his service with the Trenton State College is enough to qualify him for at least a full year of out-of-state school service.

We note that Claimant's Exceptions merely reargue issues previously raised in his Brief. These issues have already been adequately addressed by the Hearing Officer. We, therefore, deny Claimant's Exceptions on the basis that: (1) the prohibition on the purchase of service rendered as a graduate assistant has not

changed since he rendered the service in 1971-1972 school year; (2) the record is clear that Claimant worked less than one full school year at Trenton State College; (3) the record is clear that Claimant's relationship with Trenton State College was that of a graduate assistant and not as an employee; and (4) even assuming that his service with the Trenton State College was out-of-state school service, his service with Princeton Regional School District and Trenton State College is non-qualifying part-time service. Indeed, had his service with Princeton Regional School District and Trenton State College been rendered in Pennsylvania, none of the service would be purchasable.

Claimant has requested oral argument before the Board. Section 201.12 of the Board's regulations, 22 Pa. Code § 201.2, provides:

- (a) The right to oral argument is discretionary with the Board and will be granted to the extent the Board believes it will be helpful in enabling the Board to acquire an understanding of and to resolve the issues. When oral argument is granted, the Secretary of the Board will schedule the argument for the next available Board meeting.

The Board does not believe that oral argument is necessary in helping the Board understand and resolve the issues. Claimant's request for oral argument, therefore, is DENIED.

This Board finds appropriate the Hearing Officer's Findings of Fact, Conclusions of Law, Discussion, and Recommendation attached hereto, and we hereby adopt them as our own with the following modification to the reference to the year 1972 on page 4, in Finding of Fact No. 3:

3. Claimant was hired as a teacher with the Princeton Regional School District, teaching from January 1971 to June 1971, a period of six months. (NT 53, 54)

With the above modification, we hereby adopt the Hearing Officer's Proposed Decision as our own, and accordingly:

IT IS HEREBY ORDERED, that Claimant's request to purchase credit for out-of-state school service with the Trenton State College is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: October 4, 2013

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

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

In Re: Account of William R. Hoffman :
Claim of William R. Hoffman : Docket No. 2012-05
:

OPINION AND RECOMMENDATION

Date of Hearing: September 26, 2012.
Hearing Officer: C. Michael Weaver, Esquire
For the Claimant: William R. Hoffman, *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 William R. Hoffman (Claimant) from a decision of the Executive Staff Review Committee (Committee) of the Public School Employees' Retirement System (PSERS) that denied Claimant's request to purchase out-of-state service of time. Claimant was affiliated with Trenton State College (presently named College of New Jersey; "College").

Claimant was notified of the Committee's decision by letter dated February 28, 2012. Claimant was informed that the Committee denied his request because he worked only 6 months of a 10-month contracted school year for the Princeton Regional School District in New Jersey and worked rendered as a graduate assistant at Trenton State College is ineligible for purchase.

Claimant filed a timely request for Administrative Hearing received and date stamped April 18, 2012.

On April 5, 2012, Jennifer A. Mills, Esquire, filed an Answer to Claimant's Request for Administrative Hearing. Thereafter, on July 18, 2012, a hearing notice was issued scheduling a hearing on Claimant's appeal for September 26, 2012, in Harrisburg, PA.

On September 18, 2012, Claimant requested a witness, Kenneth G. Tillman, Ph.D., testify by telephone. The PSERS's counsel filed an answer in opposition to Claimant's motion. An Order Granting Claimant's Motion for Telephonic Testimony was issued September 20, 2012.

On September 26, 2012, the hearing was held as scheduled at 5 North Fifth Street, Harrisburg, PA. Claimant was present at the hearing, *pro se*. Jennifer A. Mills, Esquire, represented PSERS.

Following the close of evidence Attorney Mills requested the right to file a post-hearing brief. Claimant exercised his right to file a brief.

Upon receipt of the hearing transcript, a briefing schedule was issued. Pursuant to the briefing schedule, Claimant was directed to file its brief no later than February 28, 2013.. PSER counsel was instructed to file a brief on or before March 28, 2013. As the party upon whom rests the burden of proof, Claimant was afforded the right to file a reply brief no later than April 18, 2013. The briefing schedule was extended to accommodate Attorney Mill's schedule of leave with concurrence of Claimant.

Claimant's brief was timely filed on February 15, 2012. PSERS' brief was timely filed on March 28, 2013.Claimant filed a Reply Brief on April 15, 2013. PSER'S filed objections on April 17, 2013, to Claimant's Reply Brief

The matter is now before the Board for final disposition.

FINDINGS OF FACT

1. Claimant graduated West Chester University in 1970 where he received a Bachelor Degree in health and physical education. (NT 53)
2. Claimant enrolled in the military, serving active duty from June 1970 through December 1970. (NT 53)
3. Claimant was hired as a teacher with the Princeton Regional School District, teaching from January 1971 to June 1972, a period of six months. (NT 53, 54)
4. Claimant enrolled in the New Jersey Retirement System, contributing for the period time of employment with Princeton Regional School District. (NT 54, 70, 71; Exhibit P-4)
5. With difficulty in securing a full-time teaching position, Claimant matriculated into the graduate program at Trenton State College for the years 1971 to 1972¹. (NT 49, 54, 55; Exhibit P-4)
6. During Claimant's enrollment as a graduate student, he was hired for a part-time work as a graduate assistant with the Trenton State College, teaching physical education classes and assisting varsity coaches, which was reserved for only graduate assistants. (NT 51, 52, 57; Exhibit P-4)
7. Kenneth G. Tillman, Ph.D., was the chair of the Health and Physical Education Department at the Trenton State College from 1969 to 1974 and was head of a graduate assistant program during the time Claimant was enrolled in the graduate program. (NT 95; Exhibits P-7E, P-8A)

¹Trenton State College is presently named College of New Jersey)

8. The graduate program at Trenton State College permitted those enrolled in the advanced program to a stipend for teaching based on a set number of dollars for a set period of time. (NT 89, 90, 96-98; Exhibit P-7E)
9. Dr. Tillman hired Claimant as a graduate assistant under the graduate assistant program to teach physical education classes. (NT 89, 90 101; Exhibit P-4, P-7B, P-7D, P-7E, P-8A, P-8-D, P-8E, P-10)
10. Trenton State College classified Claimant's position as a graduate assistant as part of the graduate assistant program. (NT 56, 96, 97,124, 125; P-4, P-7C, P-7D, P-8B, P-8D)
11. Dr. Tillman stated that Claimant reported to him during the period of time Claimant taught classes at Trenton State College, reviewed lessons plans, observed classes, and reviewed Claimant's grading of students, which Dr. Tillman performed for all full-time and part-time employees as well as the graduate assistant. (NT 100-103)
12. Claimant was not enrolled as a member in the New Jersey Retirement System during the 1971-1972 school year when he was employed as a graduate assistant. (N.T. 60, 124, 131-131; P-4, P-8B, P-8C)
13. Claimant received a master's degree from the Trenton State College on August 10, 1973. (NT 55, 59, 83)
14. Claimant was first enrolled as a member of PSERS in September 1972 by virtue of his employment with the Council Rock School District where he taught health and physical education. (N.T. 50, 55, 60, 61)
15. Claimant is currently a retired member of PSERS. (N.T. 59)

16. To purchase out-of-state service with PSERS a member must be an active member of PSERS, complete an application to purchase such service and submit a certification from the out-of-state employer and the out-of-state retirement system. (NT 117)
17. A member is not permitted to purchase in-state or out-of-state service if the service is rendered as a graduate assistant because the graduate assistant is deemed to retain student status to further their education and is not considered to be an employee of the school. (N.T. 118, 119, 120; P-3)
18. A member is not permitted to purchase out-of-state service if the total rendered was for less than one full school year. (N.T. 126-130; P-6)
19. A member is not permitted to purchase out-of-state service unless the out-of-state retirement system authenticates such service. (NT 123, 124, 138)
20. For service rendered prior to July 1, 1976, a member is deemed to have worked one school year for an out-of-state employer if the member works at least 180 days or 1100 hours, or if the contract is for at least 9 months. (NT 129, 130, 144; P-6)
21. A member can purchase part-time out-of-state service where the total out-of-state service, regardless of when it was rendered, totals a least one school year. NT 144, 145; P-6).
22. A full school year in New Jersey is defined requiring an employee to work at least nine months. (NT 129, 130)
23. On August 1, 1996, PSERS received a "*Certification of out-of State Service*", application from Claimant ("First Application") requesting to purchase service with the Trenton State College as a graduate Assistant from September 1, 1971 through June 30,

1972. The First Application stated that Claimant provided full-time service as a graduate assistant totaling ten months. (NT 61-63; P-1)

24. The August 1995 PSRS-278 form was filled out by Charles Hill, a professor and chairman for Trenton State College. (NT 62, 63; P-1)

25. On August 21, 1996, PSERS notified Claimant that his service rendered with the Trenton State College as a graduate assistant was not purchasable because he was not a full-time contracted employee. (NT 64,65; P-2)

26. On April 26, 2010, PSERS received a "Purchase of Out-of-State Service" application ("Second Application") from Claimant requesting to purchase service with the Trenton State College from September 1, 1971 through June 30, 1972, with an employment history record from the Trenton State College. (NT 65-67; P-4)

27. The Second Application states that from 1971-1972 Claimant worked ro the Trenton State college eight and one half months out of an eight month school year. (NT 66, 67; P-4)

28. The employment history attached to the Second Application lists Claimant as a graduate assistant during the relevant time period receiving \$2.00 per hour up to a maximum of \$1,000. (NT 67, 68; P-4)

29. On May 6, 2010, PSERS again denied Claimant's request to purchase service with the Trenton State College from September 1, 1971 through June 30, 1972 because Claimant did not render a full school year. (NT 68, 69; P-5)

30. On June 4, 2010, PSERS received a faxed packet of documents from Claimant including a "Purchase of Out-of -State-Service" application ("Third Application") requesting to purchase service with the Trenton State College from September 1, 1971

through June 30, 1972, a May 28, 2010 letter from Kenneth G. Tillman stating the Claimant was hired as a graduate assistant to teach physical education classes and assist varsity coaches and a letter dated May 27, 2010 from the New Jersey Department of the Treasury regarding unclaimed funds among an assortment of other documents. (NT 71; P-7 et al.)

31. The Third Application was altered by Claimant to state that Claimant worked ten and one half months out of a ten month school year rather than eight and one half months out of an eight month school year as certified by Charles Hill in the Second Application. (NT 75, 76; P-4A, P-7C).

32. On June 9, 2010, PSERS received a packet from Claimant containing among an assortment of documents a "Purchase of Out-of-State Service" application ("Fourth Application") from Claimant requesting to purchase service with The Trenton State College from September 1, 1971 through June 30, 1972, and a June 4, 2010, letter from Susan Spadaro, stating the New Jersey Division of Pensions and Benefits does not have a record for claimant in any New Jersey Retirement System while he was employed at the Trenton State College for the 1971-1972 school year. (NT 76, 77; P-8 et al)

33. The Fourth Application states that Claimant worked eight and one half months out of an eight month school year contrasting with the ten and one half months out of a ten month school year as stated on the Third Application. (NT 78; P-7C, P-8B)

34. By letter dated June 30, 2010, PSERS denied Claimant's request to purchase out-of-state service with the Trenton State College from September 1, 1971 through June 30, 1972 because Claimant was employed as a graduate Assistant. Claimant was again given appeal rights to the ESRC. (NT 79, 80; P-9)

35. On July 19, 2010, Claimant appealed PSERS' denial to the ESRC. (NT 80, 81; P-10)
36. By letter dated February 28, 2012, the ESRC denied Claimant's request to purchase out-of-state service with the Trenton State College from September 1, 1971 through June 30, 1972 because (1) Claimant was employed as a graduate assistant and (2) Claimant did not render a full year of school service. (NT 82; P-11)
37. An administrative hearing on Claimant's appeal was held on September 26, 2012. (*Transcript, passim*)
38. 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. 1-38)
2. Claimant has the burden of proof in this proceeding. *Wingert v. State Employes' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991)
3. Section 8304 of the Retirement Code, 24 Pa. C.S. § 8304, permits an active member of PSERS to purchase service credit "for creditable nonschool service" rendered "in any public school or public educational institution in any state other than this Commonwealth" 24 Pa. C.S. § 8304(a) and (b)(3).
4. Section 213.4(f) of the Board's promulgated regulations, 22 Pa. Code § 213.4, states in pertinent part: "[n]onschool service may be purchased by an active member who was a teacher or instructor in a public school or public educational institution in a state other than this Commonwealth... The nonschool service rendered shall be for not less than 1 full year." 22 Pa. Code § 213.4
5. Section 8102 of the Retirement Code, 24 Pa.C.S. §8102, defines a "school employee" as "[a]ny person engaged in work relating to a public school for any governmental entity and for which work he is receiving regular remuneration as an officer, administrator or employee excluding, however, any independent contractor or a person compensated on a fee basis.". 24 Pa.C.S. § 8102
6. The Retirement Code specifically requires that a member must purchase a minimum of "at least one school year" of out-of-state service in any given purchase, and

that the member's prior employer certify to PSERS the service sought to be purchased.

24 Pa.C.S. § 8304 (a) and (c).

7. The Trenton State College certified to PSERS that the service sought to be purchased was rendered by Claimant as a graduate assistant and that Claimant worked less than one full year of school service. (Findings of Fact nos. 6-10)

8. Claimant's work with the Trenton State College was as a graduate assistant during the 1971-1972 school year. (Findings of Fact nos. 6-11)

9. Claimant's service as a graduate assistant at Trenton State College is not purchasable as "creditable nonschool service," rendering Claimant ineligible to purchase this out-of-state service as a graduate assistant. *Simmonds v. State employees' Retirement System*, 696 A.2d 801 (Pa. 1997) (Findings of Fact nos. 17, 23-34)

10. A member applying for credit for out-of-state service must work for "at least one school year" as required in Section 8304(c) only if the service rendered totals at least one year of service credit. 24 Pa. C.S. § 8304(c)

11. A "school year" is defined in the Retirement Code as "the 12-month period which the governmental entity uses for purposes of administration regardless of the actual time during which a member renders service." 24 Pa.C.S. § 8102.

12. Claimant's service with the Trenton State College amounts to less than the minimum required by law rendering him for purchasing out-of -state service. (Findings of Fact nos. 20-34)

13. Claimant has failed to proffer sufficient evidence to support his appeal. (Findings of Fact nos. 1-38)

DISCUSSION

The Board must determine whether sufficient evidence exists that Claimant qualifies to purchase out-of-state service credit for work as a graduate assistant at the Trenton State College in New Jersey during the school year 1971-1972. The Claimant under Pennsylvania law bears the burden of proving the facts requisite to establish his claim. *See Gierschick v. State Employes' Retirement Board*, 733 A.2d 29 at 32 (Pa Cmwlth. 1999); *Wingert v. State Employes' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1999) PSERS is a creature of statute and derives its authority from the provisions of the Public School Employees Retirement Code. 24 Pa.C.S. §8101 et seq. While a member is entitled to a liberal construction of the Retirement Code, he has only those rights created by the retirement statutes and none beyond. *Burris v. State Employes' Retirement Board*, 745 A.2d 704 (Pa. Cmwlth. 2000); *Bittenbender v. State Employes' Retirement Board*, 622 A.2d 403 (Pa Cmwlth. 1992); *Hughes v. Public School Employes' Retirement Board*, 662 A.2d 701 (Pa Cmwlth. 1995) *allocator denied*, 668 A2d. 1139 (Pa. 1996) The agency must construe its enabling statute according to its plain meaning and in such a manner as to give effect to all of its provisions. 1 Ps. C.S. §1921(a), (b). PSERS has no authority to grant rights beyond those specifically set forth in the Retirement Code. *Forman v. Public School Employes' Retirement Boards*, 778 A.2d 778 (Pa Cmwlth. 2001) The interpretation of statutory language rendered by the administrative agency overseeing the implementation of that statute is entitled to great deference. *Winlow-Quattlebaum v. Md. Ins. Group*, 561 Pa. 629, 752 A2d. 878, 881 (Pa. 2000).

Factual Background:

On July 19, 2012, Claimant was informed by letter that the ESRC denied his request to purchase out-of-state service with the Trenton State College from September 1, 1971 through June 30, 1972 because (1) Claimant was employed as a graduate assistant and (2) claimant did not render a full year of school service. Upon receipt of Claimant's denial of the credit for out-of-state service by ESRC, he timely appealed the decision, which brought the matter to hearing.

Claimant first applied on August 1, 1996, for out- of- state service by filing a "*Certification of Out-of-State Service*" ("First Application"). He requested to purchase service for the time he spent at Trenton State College as a Graduate Assistant from September 1, 1971 through June 30, 1972. This First Application stated that Claimant provided full-time service as a graduate assistant totaling ten months. The August 1995 PSRS-278 form was filled out by Charles Hill, a professor and chairman for Trenton State College. On August 21, 1995, PSERS notified Claimant that his service rendered with the Trenton State College as a graduate assistant was not purchasable because he was not a full-time contracted employee.

Claimant made a second application on April 26, 2010, for "Purchase of Out-of-State Service" (Second Application) requesting to purchase service with the Trenton State College from September 1, 1971 through June 30, 1972, with an employment history record from the Trenton State College. The employment history attached to the Second Application lists Claimant as a graduate assistant during the relevant time period, having been paid \$2.00 per hour up to a maximum of \$1,000. On May 6, 2010, PSERS

again denied Claimant's request to purchase service for time affiliated with Trenton State College because he did not render a full school year.

On June 4, 2010, PSERS received a faxed packet of documents from Claimant including a "Purchase of Out-of-State-Service" application ("Third Application") requesting to purchase service with the Trenton State College from September 1, 1971 through June 30, 1972, a letter from Kenneth G. Tillman, stating the Claimant was hired as a graduate assistant to teach physical education classes and assist varsity coaches and a letter dated May 27, 2010 from the New Jersey Department of the Treasury regarding unclaimed funds, among an assortment of other documents.

On June 9, 2010, PSERS received another packet of documents from Claimant containing among a mélange of documents, a "Purchase of Out-of-State Service" application ("Fourth Application") from Claimant requesting to purchase service with the Trenton State College from September 1, 1971 through June 30, 1972, and a June 4, 2010, letter from Susan Spadaro, stating the New Jersey Division of Pensions and Benefits does not have a record for claimant in any New Jersey Retirement System while he was employed at the Trenton State College for the 1971-1972 school year. In response to the Fourth Application, PSERS denied Claimant's request to purchase out-of-state service with the Trenton State College because claimant was employed as a graduate assistant. He was given appeal rights to the ESRC.

On July 19, 2010, Claimant appealed PSERS' denial to the ESRC. By letter dated February 28, 2012, the ESRC denied Claimant's request to purchase out-of-state service for time at Trenton State College based on his graduate assistant status and failure

to render a full year of school service. This denial was appealed by Claimant, which constitutes the present matter.

Discussion

Claimant testified on his own behalf. He graduated from West Chester University in 1970 where he received a Bachelor Degree in Health and Physical Education. Following graduation from university, Claimant enrolled in the military as a marine, serving active duty from June 1970 through December 1970. Claimant secured a teaching position with the Princeton Regional School District, working from January 1971 to June 1971. Based on employment with Princeton Regional School District, he enrolled in the New Jersey Retirement System, contributing for the period of time served with the school district.

Unable to secure full time teaching position, Claimant matriculated to the graduate program at Trenton State College for the years 1971 to 1972. During his tenure as a graduate assistant, he worked part-time for the Trenton State College, teaching physical education classes and assisting varsity coaches, such positions being reserved for graduate assistants. Claimant contends that he was employed by Trenton State College as an employee, working a full school year of 10 months. He testified that he did not receive a stipend from the college as a graduate assistant. Claimant received a master's degree from Trenton State College on August 10, 1973. Claimant first enrolled as a member of PSERS in September 1972 by virtue of his employment with the Council Rock School District where he taught health and physical education. Claimant is currently a retired member of PSERS.

Claimant called as a witness on his behalf, Kenneth G. Tillman, Ph.D., chair of the Health and Physical Education Department from 1969 to 1973, during the time Claimant was enrolled in the graduate program. Dr. Tillman testified that Trenton State College permitted those enrolled in the advanced program to a stipend for teaching based on a set number of dollars for a set period of time. The witness testified that Claimant was not in the graduate assistant program when teaching classes at Trenton State College, but on cross-examination admitted that he had forgotten this fact until reminded by the Claimant in preparation for testimony. He further testified that Claimant was hired as a graduate assistant under the graduate assistant program to teach physical education classes.

PSERS , in support of its case, called Steven M. Wolf, retirement administrator, to testify. He testified to the procedures and protocols for securing qualified credit for out-of-state service to be accredited for PSERS. Specifically, he testified that time as a graduate assistant or a graduate student with an institution of higher learning, may not be counted as time credited for purposes of calculating pension figures for credit purchase. He noted that PSERS did not receive an employment contract between Trenton State College and the Claimant. Mr. Wolf referenced PSERS's Business Rule that excludes graduate students, medical residents, or students under a work-study program from utilizing time with an institution for purchasing service for pension calculations. The witness stated that the New Jersey Retirement System's time of service did not match the Claimant's time of service with Trenton State College.

Mr. Wolf also testified to Claimant's failure to verify the requisite time of service, in order to qualify for consideration to purchase out-of-state service. The one-year rule

requires that a claimant must work a full year of service. Claimant could not document a full year of service. Mr. Wolf's testimony in addition to the admission of 11 exhibits was offered by PSERS in support of its case.

Classification of Employment Status

Under the Retirement Code an active member of PSERS may purchase service credit "for an public school or public educational institution in any state other than this Commonwealth," 24 Pa. C.S. §§8304(a) and (b). Creditable nonschool service is defined as "Service as a school employee for which an active member may obtain credit," 24 Pa. C.S. §8102. Duly promulgated regulations clearly state that, "nonschool service may be purchased by an active member who was a teacher or instructor in a public school or public educational institution in a state other than this Commonwealth, 22 Pa. Code § 213.4. There is no dispute that the Claimant is an active member of PSERS, thereby qualifying him for application for out-of-state service. . .

Claimant seeks credit for the period of time he received remuneration for teaching and coaching at Trenton State College in September 1971 to June 1972. Claimant's time at Trenton State College was as a graduate assistant as evidenced by the multiple applications supplied by Claimant and verification forms completed by Trenton State College as the employing educational institution. Claimant stated that he could not secure a teaching position and enrolled in the graduate program at Trenton State College. This fact was corroborated by Dr. Tillman, who headed the program during Claimant's affiliation with the college. Furthermore, the graduate assistant program, established by Dr. Tillman was designed to provide financial support within the educational institution to the graduate students. Claimant was paid an hourly wage with a maximum cap.

Claimant had worked for 6 month at Princeton Regional School District in 19711972, which qualified him for participation in the New Jersey Retirement System. However, there is no evidence that the New Jersey Retirement System qualified Claimant for participation for his time at Trenton State College as graduate assistant. A review of the evidence is persuasive that Claimant was a graduate assistant at the time he received monies for teaching and coaching at Trenton State College.

In *Simmonds v. State Employees' Retirement System*, 696 A.2d 801(Pa. 1997) a medical resident at Hershey Medical Center of Pennsylvania State University sought to obtain credit for time served during the residency under the SERS Code. The Supreme Court rationalized that a medical student clothed with the indicia of employee status, the purpose of the residency negates their employee status. The Court explained that students did not work at the medical center in a true bargaining relationship with the putative employer as exists in true employer-employee relationship.

The *Simmonds* case rationale has been adopted by PSERS as reflected in the PSERS Business Rule POS-2012-01 School – Student Eligibility in PSERS. Where an individual's affiliation with an educational institution is as a student, the individual is deemed to retain the student status for purposes of pension eligibility. The Claimant falls within this category as a graduate student at Trenton State College. His service in teaching and coaching was incumbent on his matriculation in the graduate assistant program.

Length of Time of Service

The Retirement Code requires a member to have worked for at least one school year of out-of-state service, which requires verification by the employing institution. 24 Pa. C.S. §§8304(a) and (c). PSERS holds out-of-state service request to the same standard as it applies to in-state applications for part-time work. *Pennsylvania School Boards Association, Inc. v. Commonwealth of Pennsylvania, Public School Employees Retirement System*, 863 A.2d 432 (Pa. 2004). A policy statement was issued reflecting this position. Policy Statement, “Determining Eligibility and Calculation Service Credit for Purchase of Out-of-Service,” as amended April 29, 2005”, provides as follows:

To be eligible to purchase credit for service in any public school or public educational institution outside of Pennsylvania, the member must have worked for a period of at least one year. Credit for out-of-state service is calculated using the same standards as in-state service. The following defines the one-year requirement and the calculation of service credit.

Section 8102 defines a “School year” as “The 12-month period which the governmental entity uses for purposes of administration regardless of the actual time during which a member renders service.” 24 Pa.C.S. §8102. The focused employment in this matter is the period of time Claimant was working at Trenton State College as a graduate assistant. Claimant’s three out-of-service application reflect his work as consisting of eight and a half month period, which was completed by the institution, Trenton State College. Claimant filed four applications for out-of-state service over a 16 year span of time. The third application differed as to the time period Claimant worked at Trenton State College. The third application indicated that the period of time Claimant worked as ten and a half months of service at Trenton State College. Upon examination of Exhibit 7C, it is apparent that the document had been modified, altering

the number 8 to a number 10. On cross-examination, Claimant readily admitted that he altered the number to reflect his belief that he was employees for a ten and a half month period of time. Claimant explained that the service occurred so many years ago the employees had no personal memory of his tenure and he corrected the document to reflect his actual service in 1971 and 1972. Eight and a half months of service does not constitute a full year of work in New Jersey.

The documentary evidence as verified by Trenton State College supports the proposition that Claimant was not hired as a full-time teacher because his compensation was \$2.00 per hour up to a total compensation figure of \$1,000. This pay scale is not representative of a full-time employed teacher or instructor at an educational institution. This level of financial compensation exemplifies an amount constitution a stipend paid to a graduate assistant.

Again, the failure of the New Jersey Retirement System to verify Claimant's contribution to the system corroborates that he was not a full-time employee of Trenton State College, but served in a part-time capacity. His participation with the retirement system was based solely on limited tenure with the Princeton Regional School District in New Jersey.

The executive staff Review Committee denied Claimant's request to purchase credit for out-of-state service stating, in pertinent part:

"The Committee denied your request. You have not met the Requirement of rendering at least one full year of out-of-state Service, because you worked only 6 months of a 10-month Contracted school year for the Princeton Regional School District in New Jersey. Moreover, work rendered as a graduate assistant is Ineligible for purchase..." (PSERS' Exhibit 11)

The Claimant failed to substantiate that the findings, considerations and conclusions of the Executive Staff Review Committee were not credible and accurate, which resulted in the denial of his request to purchase out-of-state service from Trenton State College. Firstly, PSERS cogently presented compelling evidence that the Claimant was a graduate assistant with Trenton State College, teaching and coaching on a part-time basis in the capacity of a graduate assistant for minimum remuneration. Secondly, the documentary evidence clearly establishes that Claimant received pay for his teaching and coaching services for an eight and a half month period of time, which does not qualify as a full year of service as required by the Retirement Code. Claimant does not qualify to purchase credit under either his employment classification or having met the length of time worked.

Claimant has the burden of proof in this proceeding. Claimant has failed to proffer sufficient evidence to support his appeal. Accordingly, the following recommendation will be made to the Board:

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

In Re: Account of William R. Hoffman :
Claim of William R. Hoffman : Docket No. 2012-05

RECOMMENDATION

AND NOW, this 2nd day of August 2013, 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 Claimant's request to purchase credit for out-of-state service be **DENIED**.

C. Michael Weaver
Hearing Examiner

Dated: August 2, 2013