

Mail Date:

JAN 22 2015

Mail Date: _____

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

IN RE: ACCOUNT OF DONALD G. BAILEY
DOCKET NO. 2012-49
CLAIM OF DONALD G. BAILEY

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the Briefs and the Hearing Examiner's proposed Opinion and Recommendation. No exceptions to the proposed Opinion and Recommendation were filed.

The Board finds appropriate the Hearing Examiner's History, Findings of Fact, Conclusions of Law, Discussion, Conclusion, and Recommendation, attached hereto, and we hereby adopt them as our own. Accordingly:

IT IS HEREBY ORDERED that:

1. Claimant's request that the Board reinstate .52 of a year of service for service that he rendered as a student is DENIED; and
2. Claimant's request that the Board waive the adjustment that removed from his account .52 of a year of service, which had been sold in error, is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: Jan. 21, 2015

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

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

IN RE:

**ACCOUNT OF DONALD G. BAILEY
CLAIM OF DONALD G. BAILEY**

:
:
:
:
:
:
:

DOCKET NO. 2012-49

OPINION AND RECOMMENDATION

**Ruth D. Dunnewold
Hearing Officer**

**Date of Hearing: July 16, 2014
Hearing Officer: Ruth D. Dunnewold
For the Claimant: Joseph R. Green, Esquire
For PSERS: Kathrin V. Smith, Esquire, Assistant Deputy Chief Counsel**

HISTORY

This matter is before the Public School Employees' Retirement Board ("Board") on an appeal filed by Donald G. Bailey ("Claimant") on December 4, 2012, from a decision of the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS") dated November 20, 2012 ("ESRC denial letter"), denying Claimant's request that the Board waive a service adjustment that removed .52 of a year of service, which had been sold in error, from his account. On December 11, 2012, Kathrin V. Smith, Assistant Deputy Chief Counsel, filed an Answer on behalf of PSERS.

By letter dated March 10, 2014, PSERS notified California University of Pennsylvania ("Cal U") of Claimant's appeal and explained that Cal U may elect to participate as an intervenor in any hearing on Claimant's appeal because Cal U, whom Claimant had identified as his former employer, may have a financial interest in the appeal. PSERS' letter directed Cal U to file a petition to intervene no later than March 20, 2014. Cal U did not file any petition to intervene.

By letter dated March 18, 2014, Ruth D. Dunnewold was appointed by the Board's Secretary, Jeffrey B. Clay, to act as Hearing Officer for Claimant's administrative hearing. By letter of the same date, the Board's Appeal Docket Clerk notified Claimant that the administrative hearing on his appeal was scheduled for May 7, 2014 in Harrisburg, PA. By Continuance Request forwarded March 31, 2014, Claimant, through his counsel, Joseph R. Green, Esquire, requested a continuance, to which PSERS did not object. Accordingly, by Order Granting Claimant's Request for Continuance and Rescheduling Hearing dated April 8, 2014, the hearing was continued and rescheduled, to occur on July 16, 2014. On June 23, 2014, the Board's Appeal Docket Clerk sent a reminder notice of the hearing to Claimant, through counsel.

The hearing was held as scheduled at the Public School Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101. Claimant attended the hearing and was represented

by Attorney Green, while Attorney Smith represented PSERS. At the close of the hearing, Claimant elected to do a closing argument instead of a brief, while PSERS elected to do both. Thereafter, the hearing transcript was filed on July 22, 2014, and an Order Establishing Briefing Schedule, dated July 23, 2014, was issued, acknowledging Claimant's waiver of the filing of an initial brief, directing PSERS to file its post-hearing brief by close of business on August 22, 2014, and directing Claimant to file his post-hearing brief in response, if any, by September 22, 2014.

PSERS filed its post-hearing brief on August 22, 2014. Claimant filed his post-hearing brief on September 22, 2014. Accordingly, the record is closed and the matter is now before the Board for final disposition.

FINDINGS OF FACT

1. During the 1971 – 1972 and 1972 – 1973 school years, Claimant was a full time undergraduate student at the California University of Pennsylvania (“Cal U”). Notes of Testimony (“NT”) at 11, 21.
2. Claimant attended Cal U as a full time student, majoring in elementary education, with the goal of becoming a teacher. NT at 11, 24.
3. Claimant testified that he believes he filled out PHEAA forms to receive PHEAA money and another grant to assist in paying for his education at Cal U, based on financial need, gauged by what his parents earned, but he does not recall for certain, because that was 40 years ago. NT at 32, 33.
4. While Claimant was living in the dorm at Cal U, he saw an advertisement on the wall, on the main floor of the dorm, for employment as a resident assistant or hall monitor. NT at 24, 25.
5. A resident assistant was in charge of the entire hall, while hall monitors had duties on a single floor within the hall each night, from 10 p.m. to 2 a.m., which duties comprised making sure there were no problems on the floor, that no girls sneaked in or out, and that no guys brought girls in. NT at 12, 13, 22, 23, 24.
6. Claimant testified that he believes living in the dorm was a requirement of being a resident assistant or hall monitor, but he is not certain. NT at 25.
7. Because Claimant was broke and had no money, he decided to work as a resident assistant or hall monitor; his primary reason for taking the job was that he didn’t have very much money, and basically, to survive, he needed extra money. NT at 13, 26.
8. Claimant testified that he does not recall if he had to fill out any financial aid forms to get the job as a resident assistant or hall monitor, and added that, as far as he is aware, he did not need a certain number of course credits or a certain GPA to hold either position, although he did recall that he had to have an interview. NT at 28, 32.

9. Claimant testified that, as far as he knows, the resident assistant or hall monitor position was open to anyone who was a part time or full time student. NT at 13.

10. Claimant was hired as a resident assistant or hall monitor and worked as such at Cal U during the 1971 – 1972 and 1972 – 1973 school years. PSERS-1 at section D; NT at 23.

11. The position as a resident assistant or hall monitor paid Claimant \$1.60 an hour, which Claimant testified he believes was minimum wage at the time, and from which, Claimant assumes, both social security and taxes were withheld. NT at 12, 26.

12. Being a resident assistant or hall monitor had nothing to do with Claimant's classes, nor did it provide Claimant with a tuition reduction or break, academic credit, free room or board, a stipend toward his room and board, or a discount on tuition, books or other materials. NT at 13, 25, 26, 27.

13. Claimant had no written employment contract with Cal U related to his position as a resident assistant or hall monitor, nor did he receive written performance evaluations, health insurance, life insurance, dental or eye insurance, paid vacation days, sick leave or personal leave. NT at 26, 27 – 28.

14. Cal U is a reporting unit of PSERS, but Cal U did not enroll Claimant as a member of PSERS during the 1971 – 1972 or 1972 – 1973 school years. NT at 43.

15. Claimant did not work as a resident assistant or hall monitor at Cal U after the 1972 – 1973 school year because he went to summer school and then was a student teacher in Somerset in the fall of 1973. NT at 24.

16. Claimant testified that he is not sure if, as a resident or hall monitor, he was a work study student or not; initially, he testified that he was not a work study student, but subsequently, he testified he believes he was a work study student based on the fact that a letter Cal U provided indicated the position was a work study position. NT at 29, 30, 31, 32.

17. Claimant testified that he does not believe that the resident assistant or hall monitor position was based on financial need, and while he took the position because he needed the job for financial reasons, it was not part of a financial aid package through Cal U. NT at 13, 26, 30, 32 – 33.

18. Claimant testified that he believes there were two types of work study at Cal U, one based on financial need, which would provide a student with work study if the student qualified financially, and another based on Cal U's need to fill a position, which he believes a student would have to qualify for, one way or another, in order to get a position; he did not believe a student would be able to qualify for the position if the student had "a high financial standing." NT at 30, 31, 32.

19. Claimant graduated from Cal U in 1973 and obtained a job as an elementary teacher in the Forest Hills School District, at which time Claimant enrolled with PSERS through Forest Hills School District, his employer; he eventually became superintendent of schools in that district. NT at 6, 21, 24, 39.

20. In October 2005, while Claimant was an active member of PSERS, Claimant filed with PSERS an Application to Purchase Credit for Part-Time Service ("Service Credit Purchase Application"), seeking to purchase service credit based on his work at Cal U in the 1971 – 1972 and 1972 – 1973 school years. Exhibit PSERS-1; NT at 42 – 43.

21. The general requirements for purchasing credits for part time service in a Pennsylvania school are (1) the member must be active within PSERS; (2) the member must be employed by a reporting unit of PSERS; and (3) the position must qualify for purchase. NT at 42.

22. Prior to February 27, 2014, PSERS had a Business Rule in effect, POS-2012-01.2 ("Business Rule"), which established the rule that "[r]etirement credit for work performed as a student is generally not eligible for purchase, because such service is often tied to conditions that make the service not part of a true employer/employee relationship." Exhibit PSERS-12.

23. The Business Rule provided examples of such conditions, indicating that they include, but are not limited to, service performed:

- as part of a financial aid package (e.g. work study, etc.)
- in exchange for a tuition or housing waiver
- as part of the student's curriculum
- in exchange for academic credit
- as a Graduate or Resident Assistant.

Id.

24. The Business Rule also provided that the “member has the responsibility to provide proof that these conditions did not exist.” *Id.*

25. The effective date of the Business Rule was before 1999, and while it was revised, approved on February 27, 2014, and renumbered as POS-2012-01.3, it had nonetheless been in effect in 2005 and 2010. Exhibit PSERS-12; NT at 58.

26. The Business Rule served as a guideline for PSERS' employees to follow in daily procedures, and reflected PSERS' interpretation of the Retirement Code. Exhibit PSERS-12; NT at 57 – 58.

27. Claimant completed parts A, B and C of the Service Credit Purchase Application, indicating that “resident asst.” was the position he held and for which he was requesting to receive credit. Exhibit PSERS-1; NT at 12, 22, 74.

28. Prior to submitting his Service Credit Purchase Application to PSERS, Claimant submitted it to Cal U, which filled out section D, indicating “California University of Pennsylvania” as Claimant's “Employer Where Service Was Rendered” in school years 1971 and 1972. Exhibit PSERS-1; NT at 22.

29. In 2005, PSERS converted to a new retirement process system, plus, at that time, a non-qualifying part time project, which generated over 60,000 applications that had to be processed, was

ending; consequently, there was a five-year delay in processing Claimant's Service Credit Purchase Application. NT at 45.

30. By letter dated January 23, 2010, PSERS sent Claimant an informational letter in response to Claimant's Service Credit Purchase Application, requesting more information about Claimant's position with Cal U, as follows:

In order for PSERS to process your request, you must provide PSERS with documentation regarding your position: the position was in no way a part of any financial aid package; the position was not available to students only was open to any qualified person; and the documentation must prove that your relationship was solely that of an employee/employer. Social Security documents often prove most helpful in making that decision. . . .

Exhibit PSERS-2; NT at 44.

31. PSERS' January 23, 2010 letter sought documentation that Claimant's position was in no way part of any financial aid package because there are different funds and ways for paying personnel, including through the Comptroller's Office and the Office of the Governor, neither of which is a reporting unit of PSERS; for that reason, if either of them paid Claimant, Claimant would not be eligible to purchase credit for part time service in a Pennsylvania school. NT at 42, 44, 45, 46 – 47.

32. PSERS' January 23, 2010 letter suggested that Social Security documents often prove helpful because the entity which paid Claimant would be listed as the employer in appropriate Social Security records, and knowing what entity paid him could help determine his eligibility to purchase service credit with PSERS. NT at 45, 46, 47.

33. By letter dated February 10, 2010, in an attempt to prove that Claimant was entitled to purchase part time credit, in the amount of .52 of a year, Claimant responded to PSERS' January 23, 2010 letter, providing the dates and times worked at Cal U, the amount of wages paid, and a letter from James Ahearn, Director of Payroll at Cal U ("Ahearn letter"). Exhibit PSERS-3; NT at 7, 9, 10, 49.

34. The Ahearn letter was a form letter which Cal U has sent to PSERS many times under different signatures, with exactly the same verbiage in all cases, stating, in pertinent part, as follows:

To Whom It May Concern:

This letter is regarding documentation needed as proof for former employees wishing to purchase part-time credit for their hours worked at California University.

The relationship with our work study students is solely that of an employee/employer. Our work study students do not receive tuition credits. They are paid on an hourly basis for their work.

Prior to January 1, 1994, the payroll records are held by the Commonwealth of Pennsylvania. Therefore, we would not know what the employee's title was. We do not have any information prior to January 1, 1994.

Exhibit PSERS-3; NT at 49.

35. Claimant testified that he does not think he followed up on Ahearn's letter by trying to obtain payroll records from the Commonwealth, but he is not positive. NT at 33.

36. Claimant did not present any pay statements, detailed Social Security statements, or any other documentation identifying his employer or who was funding his work study position. NT at 27, 33 – 34; Record, *passim*.

37. On May 28, 2010, PSERS sent Claimant two separate informational letters about the purchase of a total of .52 of a year of service credit, indicating that PSERS had processed Claimant's 2005 Service Credit Purchase Application; each letter covered the fiscal year and type of service credit being purchased, and indicated, among other things, the amount of service credited for that year, the amount due for the contributions for that service, and the payment options for the purchase. Exhibits PSERS-4 and PSERS-5; NT at 10, 51 – 52.

38. The total cost of Claimant's purchase of the .52 of a year of service credit for his work at Cal U was \$183.52. Exhibits PSERS-4 and PSERS-5.

39. Claimant made no out-of-pocket payment for the service credit purchase, but chose to have it applied to his retirement through an actuarial reduction of the monthly benefit. NT at 52.

40. On May 2, 2011, PSERS received Claimant's Application for Retirement ("Retirement Application"), which PSERS processed, making Claimant a PSERS annuitant with a retirement date of July 30, 2011. Exhibit PSERS-6; NT at 52 – 53, 54.

41. PSERS sent Claimant an informational letter, dated September 12, 2011, which informed him, among other things, of his chosen retirement option; the fact that it had been processed; the amount of his service credit, 38.64 years; and the amount of his monthly annuity; in Claimant's case, since there was an actuarial debt related to his service credit purchase, the informational letter also showed the debt amount. Exhibit PSERS-7; NT at 53, 54.

42. The September 12, 2011 informational letter also notified Claimant that his final average salary was \$149,164.78, and that the total debt amount for his service credit purchase was \$190.30. Exhibit PSERS-7; NT at 53 – 54.

43. The inclusion of the .52 of a year from Cal U in Claimant's retirement package increased Claimant's monthly retirement benefit by approximately \$112 a month. NT at 11.

44. Approximately a year after PSERS granted Claimant retirement benefits, PSERS reviewed his retirement package, which is typical activity by PSERS in any case in which it receives additional information that would affect an account that has already been processed; the record does not reflect what additional information led to the review in Claimant's case. NT at 62.

45. PSERS' review of Claimant's retirement package revealed that PSERS had processed Claimant's 2005 Service Credit Purchase Application in error. NT at 51, 55.

46. By letter dated May 31, 2012, PSERS notified Claimant, among other things, that a review of his account had determined that he was not eligible to purchase service credit for his work at Cal U because he was employed as a student resident assistant in a work study program, and indicated that PSERS had made an adjustment to Claimant's retirement account, subtracting the .52 of a year of service and reducing the amount of his monthly gross benefit accordingly, retroactive to the date of his

retirement, from \$10,114.91 to \$9,967.21. Exhibit PSERS-8; Exhibit PSERS-9; NT at 15, 16, 17, 55 – 56.

47. PSERS' May 31, 2012 letter also advised Claimant of his right to appeal the decision to PSERS' Executive Staff Review Committee ("ESRC"). Exhibit PSERS-8.

48. By letter dated June 2012, PSERS advised Claimant of the change in his monthly benefit, which would be effective June 30, 2012; Claimant's gross benefit went down, but Claimant did not lose any eligibility for benefits with PSERS as a result of the adjustment. Exhibit PSERS-9; NT at 56.

49. On June 11, 2012, PSERS received a letter from Claimant ("appeal letter"), appealing the May 31, 2012 decision to the ESRC. Exhibit PSERS-10; NT at 17, 56, 57.

50. In his appeal letter, Claimant indicated that his position with Cal U was a "hall monitor," rather than a "resident assistant," which was the first time he had used the term "hall monitor." Exhibit PSERS-10, NT at 23, 57.

51. The ESRC denied Claimant's appeal and notified him of the denial by letter dated November 20, 2012. Exhibit PSERS-11; NT at 18, 57.

52. On December 4, 2012, Claimant filed an Appeal and Request for Administrative Hearing, asking the Board to reinstate his approval to purchase .52 of a year of service credit related to his employment at Cal U. Docket No. 2012-49.

53. A hearing on the appeal was held on July 16, 2014, before Hearing Examiner Ruth D. Dunnewold. NT, *passim*.

54. Claimant was present and represented by counsel at the hearing, and had the opportunity to be heard, cross-examine witnesses, make a closing statement for the record, and file a post-hearing brief in support of his appeal. NT at 4 and *passim*.

CONCLUSIONS OF LAW

1. Claimant was afforded notice and an opportunity to be heard in connection with his appeal. Finding of Fact 54.

2. PSERS is a creature of statute which derives its authority from the provisions of the Public School Employees' Retirement Code, 24 Pa.C.S. § 8101 et seq. ("Retirement Code"), and its members have only those rights created by the Retirement Code. *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001); *Bittenbender v. State Employees' Retirement Board*,¹ 622 A.2d 403 (Pa. Cmwlth. 1992).

3. Claimant has failed to meet his burden of proving that he was rendering "school service" as a "school employee," as defined by the Retirement Code and interpreted by PSERS, when he worked at Cal U in a work study position as a resident assistant or hall monitor in the 1971 – 1972 and 1972 – 1973 school years. Findings of Fact 1 – 46.

4. Claimant is not entitled to purchase service credit with PSERS for his position at Cal U in a work study position as a resident assistant or hall monitor in the 1971 – 1972 and 1972 – 1973 school years. *See* 24 Pa.C.S. § 8102 (definitions of "public school," "school employee," and "school service"); 24 Pa.C.S. § 8303(c) (related to purchase of previous creditable service) and (d) (related to purchase of previous noncreditable service); Exhibit PSERS-12; *Simmonds v. State Employee's Retirement System*, 696 A.2d 801, 803 – 840 (Pa. 1997); *Donovan v. The State Employees' Retirement System*, 701 A.2d 310 (Pa. Cmwlth. 1997).

¹Cases interpreting provisions of the State Employees' Retirement Code "are equally applicable in deciding issues arising under similar or identical provisions" of the Retirement Code. *Krill v. Pub. Sch. Employees' Ret. Bd.*, 713 A.2d 132, 134 n.3 (Pa. Cmwlth. 1998).

5. Claimant has not suffered an “undue hardship” which would permit the Board to exercise its discretion and grant Claimant a waiver of the adjustment to his retirement account. 24 Pa.C.S. § 8303.1(a); 24 Pa.C.S. § 8534(b); 22 Pa. Code § 213.3a(a); Findings of Fact 37 – 46, 48.

DISCUSSION

In this case, Claimant in 2005 requested to purchase service credit for the time he worked as a resident assistant or hall monitor at Cal U while he was enrolled there as a full time student in the early 1970s. PSERS initially processed Claimant's request and it was incorporated into his retirement benefit when he retired in 2011. However, after a review of Claimant's retirement account in 2012, PSERS determined that the purchase had been erroneous, and notified Claimant that it was correcting the error by adjusting his retirement account to remove the .52 of a year of service that had been added previously. Claimant appealed that adjustment.

An active member of PSERS may purchase credit and receive eligibility points toward retirement for previous creditable or noncreditable "school service" under 24 Pa.C.S. § 8303(c) and (d).² The general requirements for purchasing credits for part time service in a Pennsylvania school are (1)

²Those subsections provide as follows:

24 Pa.C.S. § 8303. Eligibility points for retention and reinstatement of service credits.

* * *

(c) *Purchase of previous creditable service.*—Every active member of the system or a multiple service member who is an active member of the State Employees' Retirement System on or after the effective date of this part may purchase credit and receive eligibility points:

(1) as a member of Class T-C, Class T-E or Class T-F for previous creditable school service or creditable nonschool service; or

(2) as a member of Class T-D for previous creditable school service, provided the member elects to become a Class T-D member pursuant to section 8305.1 (relating to election to become a Class T-D member);

upon written agreement by the member and the board as to the manner of payment of the amount due for credit for such service; except, that any purchase for reinstatement of service credit shall be for all service previously credited.

(d) *Purchase of previous noncreditable service.*—Class T-C and Class T-D members who are active members on the effective date of this subsection shall have three years from the effective date of this subsection to file a written application with the board to purchase any previous noncreditable school service. Class T-C and Class T-D members who are not active members on the effective date of this subsection but who become active members after the effective date of this subsection and Class T-E and Class T-F members shall have 365 days from entry into the system to file a written application with the board to purchase any previous noncreditable school service.

* * *

the member must be active within PSERS; (2) the member must be employed by a reporting unit of PSERS; and (3) the position must qualify for purchase. NT at 42. Claimant was an active member of PSERS in 2005, when he applied to purchase service credit for his work at Cal U, NT at 43, and Cal U is a reporting unit of PSERS, *id.*, so those two requirements are not at issue. Rather, the issue here is whether Claimant's part-time work as a resident assistant or hall monitor at Cal U is "previous school service" performed by a "school employee," which would make him eligible to purchase service credit with PSERS.

The Retirement Code defines "school service" as "[s]ervice rendered as a school employee" 24 Pa.C.S. § 8102.³ It defines "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

³The Retirement Code provides the following pertinent definitions:

24 Pa.C.S. § 8102. Definitions.

The following words and phrases when used in this part shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

"Public school." --Any or all classes or schools within this Commonwealth conducted under the order and superintendence of the Department of Education including, but not limited to: all educational classes of any employer charged with the responsibility of public education within this Commonwealth as well as those classes financed wholly or in part by the Federal Government, State-owned colleges and universities, the Pennsylvania State University, community colleges, area vocational-technical schools, intermediate units, the State Board of Education, Scotland School for Veterans' Children, Thaddeus Stevens State School of Technology, and the Pennsylvania State Oral School for the Deaf.

* * *

"School employee." --Any 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.

* * *

"School service." --Service rendered as a school employee.

* * *

officer, administrator or employee. . .” *Id.* The definition of “public school” includes State-owned colleges and universities. *Id.*

In cases of doubt, it is the Board’s duty to determine whether a person is a school employee within the meaning of the Retirement Code. 22 Pa. Code §215.5(d)(3); *see also Perry v. State Employees’ Ret. Sys.*, 872 A.2d 273, 278 (Pa. Cmwlth. 2005) (it is up to the Board to determine who is eligible for membership in SERS pursuant to the Retirement Code and the relevant regulations). And an agency’s interpretation of a statute is entitled to great weight and shall be overturned or disregarded only if its construction is clearly erroneous. *Hawkins v. Pa. Housing Finance Agency*, 595 A.2d 712, 714 (Pa. Cmwlth. 1991); *see Laurito vs. Pub. Sch. Employees’ Ret. Bd.*, 606 A.2d 609, 611 (Pa. Cmwlth. 1992).

Prior to 1999, PSERS adopted the rule, enunciated in *Simmonds v. State Employee’s Retirement System*, 696 A.2d 801, 803 – 804 (Pa. 1997), that if service is to fall within the definition of “school service,” the person who provides it must be an employee in the bargained-for exchange that exists in typical employment relationships.” *Id.*; *see also, by way of example, Account/Claim of Denenberg*, Docket No. 2000-04 (Opinion and Order of the Board dated May 14, 2001); and PSERS Business Rule POS-2013-01.2 (revised, approved on February 27, 2014, and renumbered as POS-2012-01.3). Though *Simmonds* was a State Employees’ Retirement System (“SERS”) case, it is equally applicable in deciding issues arising under similar or identical provisions of the Retirement Code. *See Krill, supra.* Based on *Simmonds*, PSERS interprets “school service” to exclude service performed as a student, including service performed as a resident assistant or hall monitor, as part of a work study program. Exhibit PSERS-12; NT at 48, 57, 74. Accordingly, this case must be analyzed in accordance with *Simmonds* and PSERS Business Rule POS-2013-01.2/ POS-2012-01.3.

In the *Simmonds* case, the Pennsylvania Supreme Court addressed the analogous issue of who is a “state employee” under the State Employees’ Retirement Code. The *Simmonds* Court, in the context of a graduate student’s request for credit in SERS based on her work as a graduate student, analyzed the

relationship between Penn State and the graduate student, who was a medical resident at the Penn State University Medical Center. The Court focused on the purpose of the clinical programs in which the medical resident was enrolled, and for which Penn State paid her a stipend, and reasoned that the medical resident was not primarily seeking monetary gain, but rather, was attempting to fulfill education requirements, so the “bargained-for exchange that exists in typical employment relationships” did not exist. *Id.*, 696 A.2d at 803 – 804. For that reason, the Court affirmed the decision of the State Employees’ Retirement Board, which had determined that, “although medical residents were clothed with indicia of employee status, the purpose of residencies, internships and fellowships was to further [their] education.” *Id.*, 696 A.2d at 802.

Additionally, the Court enunciated strong public policy reasons in *Simmonds* as additional support for its determination, finding that

the purpose and intent of the Retirement Code is not served by considering medical residents as state employees. . . . the essential purpose of offering retirement benefits is to attract employees by offering individuals a more attractive compensation package. . . . retirement benefits would not be desired by prospective residents since they are most often significantly in debt and would not want any portion of their stipend withheld. Also, the classification of medical residents as state employees would increase the financial burden of state institutions where the residents serve because the hospitals would be required to fund retirement accounts of individuals who are essentially their students. There would also exist the additional administrative burden on SERS to enroll individuals in the system who would generally be employed by the state institution for only one year.

Id., 696 A.2d at 804.

Several months later, in *Donovan v. The State Employees’ Retirement System*, 701 A.2d 310 (Pa. Cmwlth. 1997), the Commonwealth Court expanded on the Supreme Court’s determination in *Simmonds*, ruling that *Simmonds* “sends a clear message” that a court must examine the purpose of the program in which a student is enrolled in order to determine if the student is an employee within the meaning of the Retirement Code. *Donovan*, 701 A.2d at 313. In making such an examination, the Commonwealth Court determined that, where a claimant is primarily seeking to fulfill educational

requirements, the work incidental to that goal is not work in the true bargained for exchange that would evidence an employment relationship. *Id.*

Subsequently, the Board adopted the *Simmonds* and *Donovan* rationale and elaborated on the public policies supporting it, explaining that the adverse economic impact on a university if it has to make unbudgeted retirement contributions for students; the adverse economic impact on the retirement system if students were granted retirement credit; and the adverse administrative impact on the University and PSERS if students have to be enrolled and unenrolled in the retirement system all support the denial of retirement credit for students. *See Account/Claim of Denenberg*, Docket No. 2000-04 (Opinion and Order of the Board dated May 14, 2001), at 18 – 22. In this particular case, PSERS and its ESRC followed the *Simmonds* and *Donovan* decisions in denying Claimant's request that PSERS waive the service adjustment that removed his .52 year of service related to his student work at Cal U. *See* Exhibit PSERS-11.

In this matter, Claimant bears the burden of establishing the facts upon which he relies in order to prevail. *C.f. Gierschick v. State Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 1999); *Hughes v. Com., Public Sch. Employees' Retirement Bd.*, 662 A.2d 701 (Pa. Cmwlth. 1995); *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991). Therefore, it was Claimant's burden to prove by a preponderance of the evidence⁴ that, contrary to the norm for student work, his employment at Cal U was work in the true bargained for exchange that would evidence an employment relationship.

Simmonds and *Donovan* both apply here, so an examination of the evidence, to determine the true purpose of Claimant's work as a resident assistant or hall monitor at Cal U, is warranted. The

⁴The degree of proof required to establish a case before an administrative tribunal in an action of this nature is a preponderance of the evidence, which is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the Claimant's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1950); *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

evidence indicates that Claimant attended Cal U as a full time student, majoring in elementary education, with the goal of becoming a teacher. NT at 11, 24. Based on his financial need, as established by his parents' earnings, he received PHEAA money and another grant to assist in paying for his education at Cal U. NT at 32, 33. However, he decided to work as a resident assistant or hall monitor because he was broke and needed extra money to survive. NT at 13, 26. While he took the position for these financial reasons, *id.*, and was a work study student, NT at 29, 30, 31, 32, the position was not part of a formal financial aid package through Cal U. NT at 13, 26, 30, 32 – 33. Also, Claimant testified to his belief that, to get the position, a student would have to have an interview, would have to be a student, and would have to qualify for it, and a high financial standing would disqualify a student from getting the job. NT at 13, 28, 30, 31, 32. It follows logically, from Claimant's testimony, that financial need was the reason Claimant took the position and financial need helped to determine if a student would get the position.

Indeed, the fact that Claimant received PHEAA money in order to assist in paying for his education indicates that his purpose at Cal U was not primarily to seek monetary gain, but to fulfill educational requirements toward his career goal. From the facts summarized above, it is also logical to conclude that, though Claimant, as a resident assistant or hall monitor, was clothed with indicia of employee status, the purpose of his job was to help defray his educational expenses so he could survive while he was in school furthering his education. Claimant's purpose in working in the student work position was to be able to remain, fundamentally, a student and to fulfill his educational requirements, rather than to earn a livelihood. As such, the job was a form of financial aid, even if it was not a part of a formal financial aid package.

So Claimant's work as a resident assistant or hall monitor, whatever its title,⁵ was incidental to the goal of fulfilling his educational requirements. Based on the *Simmonds/Donovan*-type analysis of Claimant's purpose in working as a resident assistant/hall monitor, then, the facts indicate that Claimant did not work in the true bargained for exchange that would evidence an employment relationship, so he was not a "school employee" within the meaning of the Retirement Code.

Moreover, the same adverse impacts enunciated in the applicable appellate decisions and in prior decisions of PSERS exist in this case as well. These same public policies come into play when an individual like Claimant seeks service credit for work study done as an undergraduate student simply in order to earn enough money to stay in school. The essential purpose of offering retirement benefits, i.e. the goal of attracting employees by offering individuals a more attractive compensation package, *see Simmonds, supra*, 696 A.2d at 804, is in no way at play in such a case, for the student (as Claimant did) seeks and takes the job out of the need to supplement his finances so he can remain in school. Nor would an undergraduate desire, or perhaps even be thinking about, retirement benefits, since he has not yet begun his career of choice and may be taking on substantial debt to pay for his education. *Id.* And as was true in Claimant's case, he needed the minimum wage job to survive in school, so it is unlikely he would want any portion of that minimum wage withheld as a retirement contribution. *Id.*

Also, as was true in the *Denenberg* case previously decided by PSERS, the classification of undergraduate work study students as school employees would increase the financial burden of the university which the undergraduate attends, because the institution would be required to fund retirement accounts of individuals who are their students. And that same additional administrative burden would be placed on PSERS to enroll individuals in the system who would generally be employed by the state

⁵Claimant himself testified that there was no real difference between the positions, except perhaps as to the scope of their duties, NT at 12, 23, and the *Simmonds* rationale applies here regardless of the name assigned to the position because, based on the determinations in *Simmonds* and *Donovan*, it is not the name of the position that is important, it is the true nature of the relationship between the student and the university.

institution for only a year or, at most, the duration of their schooling. These are all the same public policies which militated against the medical resident in *Simmonds*, and there is no logical reason to differentiate between Claimant, as an undergraduate, and the medical resident at the heart of *Simmonds*.

Based on all of the above, Claimant did not meet his burden of proving that his employment at Cal U was work in the true bargained for exchange that would evidence an employment relationship. As summarized above, he failed to demonstrate that the primary purpose of his relationship with Cal U was financial gain, rather than to fulfill education requirements. Rather, the evidence indicated that he attended Cal U as a full time student in order to become a teacher, a goal he ultimately achieved. Contrary to Claimant's assertions that he was a school employee, the evidence indicated that Claimant's work as a resident assistant/hall monitor did not have the elements to it that true school employees' work would have, in that Claimant had no written employment contract with Cal U related to his position as a resident assistant or hall monitor, nor did he receive written performance evaluations, health insurance, life insurance, dental or eye insurance, paid vacation days, sick leave or personal leave.

In his brief, Claimant relies heavily on the Ahearn letter to support his assertion that Cal U's relationship with its work study students was "solely that of an employee/employer." Claimant Donald G. Bailey's Brief to the Hearing Officer at unnumbered page 5. Aside from the Ahearn letter, a form letter from Cal U that PSERS' employee had seen multiple times under multiple signatures, Claimant presented no other documentation that supports his testimony that his relationship with Cal U was anything other than employee/employer. The Ahearn letter was not sufficient to meet Claimant's burden of proof, not just because it was a form letter, but also because it specifically referred to Cal U's relationship with its "work study students," Exhibit PSERS-3, second page, thereby confirming the fact that Claimant's job *was* work study.

Moreover, the Ahearn letter is not helpful to Claimant because it is hearsay, in that it is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in

evidence to prove the truth of the matter asserted. *See* Pa.R.E. 801(c). While the Ahearn letter was admitted into the record without any objection from any party, hearsay evidence admitted without objection may support a finding only if it is corroborated by other competent evidence in the record, and a finding of fact based solely on hearsay will not stand. *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976); *see also Shapiro v. State Board of Accountancy*, 856 A.2d 864, 872 (Pa. Cmwlth. 2004). In this case, the only evidence to corroborate the Ahearn letter's statements was Claimant's testimony, and as discussed below in detail, Claimant's testimony is unreliable. Additionally, Claimant's testimony rested primarily on the Ahearn letter, rather than on his own understanding of the relationship between himself and Cal U. But the Ahearn letter contains no information specific to Claimant's work at Cal U at all. Claimant's testimony is not, therefore, other competent evidence in the record which supports the hearsay in the Ahearn letter, and the Ahearn letter cannot, therefore, support a finding of fact. It is, accordingly, of no evidentiary value.

Nor does the fact that his position as a resident assistant/hall monitor was work study tip the evidentiary scales in Claimant's favor. After the Supreme and Commonwealth Courts issued the *Simmonds* and *Donovan* decisions in 1997, and sometime prior to 1999, PSERS adopted Business Rule POS-2013-01.2. (This Business Rule later was revised, approved on February 27, 2014, and renumbered as POS-2012-01.3). *See* Exhibit PSERS-12. That Business Rule provides, in pertinent part, as follows:

Retirement credit for work performed as a student is generally not eligible for purchase, because such service is often tied to conditions that make the service not part of a true employer/employee relationship. Examples of such conditions include, but are not limited to, service performed:

- as part of a financial aid package (e.g. **work study**, etc.)
- in exchange for a tuition or housing waiver
- as part of the student's curriculum
- in exchange for academic credit
- as a Graduate or **Resident Assistant**

The member has the responsibility to provide proof that these conditions did not exist. Such proof **may** come from the employer, or may be supplied by the member from their collection of employment history documents.

Exhibit PSERS-12 (emphasis added). This Business Rule serves as a guideline for PSERS' employees to follow in daily procedures, and reflects PSERS' interpretation of the Retirement Code. It clearly indicates that service performed as work study would generally not be eligible for purchase, and furthermore, makes it clear that the member has the burden of proving otherwise. *Id.*

In this case, Claimant's testimony indicated that he took the resident assistant/hall monitor position for extra money so he could survive while he was in school, training to achieve his ultimate career goal of becoming a teacher. For that reason, the work study job was, as already discussed above, financial *assistance* even if it was not formally a part of a financial aid *package*. Given these facts, Claimant has not demonstrated by a preponderance of the evidence that PSERS' interpretation of the Retirement Code, as set forth in the Business Rule, is clearly erroneous and should be overturned.

Claimant also failed to meet his burden in demonstrating that Cal U was actually his employer (i.e. the entity that paid him), when he worked as a resident assistant/hall monitor. PSERS' January 23, 2010 letter to Claimant suggested that Social Security documents often prove helpful; the letter made that suggestion because the entity which paid Claimant would be listed as the employer in appropriate Social Security records, and knowing what entity paid him could help determine his eligibility to purchase service credit with PSERS. NT at 45, 46, 47. The uncontradicted evidence from PSERS indicates that there are different funds and ways for paying student personnel, including through the Comptroller's Office and the Office of the Governor; if either of those entities paid Claimant, he would not be eligible to participate in PSERS, because neither of them is a reporting unit of PSERS. NT at 42, 44, 45, 46 – 47. And according to the Ahearn letter, Cal U had no payroll records related to Claimant's employment, so the Ahearn letter does not provide any evidence as to who paid Claimant; it certainly does not indicate that Cal U paid him. From all this, it is clear that, to determine if Claimant's service

was eligible for purchase, it was necessary to know what entity paid Claimant. But the record does not reflect that information, so Claimant failed in his burden.

On that issue, Claimant argued the PSERS did not tell him that he needed proof of who paid him, so he did not know that was an issue. However, PSERS' January 23, 2010 letter to Claimant told him plainly that he should provide documentation that proves his relationship with Cal U was that of an employee/employer. Exhibit PSERS-2. One element of an employee/employer relationship is that the employer pays the employee, so that letter did inform Claimant of what he would be required to prove. Moreover, Claimant secured the representation of counsel, who was certainly capable of discovering the *Simmonds* and *Donovan* cases, which provide guidance to a member in Claimant's position, in terms of what factors would be considered in determining the eligibility of his student work for later service credit purchase. Nonetheless, the only document which Claimant provided at the hearing which was any different from the documentation he had previously provided to PSERS was Exhibit A-1, a Social Security statement evidencing the amount of Claimant's taxed Social Security and Medicare earnings from 1968 through 2009, but nothing else. Exhibit A-1 does not advance Claimant's case. Claimant cannot lay the blame for this failure of proof at PSERS' door.

Additionally, Claimant's testimony was unreliable, as was some of his documentation, another reason he did not meet his burden of proof. This unreliability rests on several grounds, first of which is the self-serving nature of some of the evidence. For example, in his initial Application to Purchase Credit for Part-Time Service, Claimant wrote "resident asst." under the heading "Position(s) Held Each Year." Exhibit PSERS-1. When PSERS notified him, in a letter dated May 31, 2012, that he was not eligible to purchase service rendered with Cal U because he "was employed as a student resident assistant in a work study program," Exhibit PSERS-8, a determination based on the earlier information which Claimant had provided, Claimant changed the name of his position, for the first time asserting that he had been "working as a Hall Monitor, not a resident assistant." Exhibit PSERS-10. This change

suggests that, in the face of being told he had to prove he was not a resident assistant, Claimant found it expedient to rename his position in order to support his appeal. And while, as stated above, the title of his position is irrelevant in light of the analysis which the *Simmonds* and *Donovan* cases require, Claimant's shift in titles makes him an unreliable witness because it suggests that he has backpedaled and changed the facts to suit his purpose.

Similarly, Claimant's testimony is unreliable because it was internally inconsistent. Initially, in response to the question, "Were you a work study student?" Claimant responded "No." NT at 29. However, he then testified that, based on what the Ahearn letter said, his position *was* a work study position. NT at 29 – 30. This suggests that he was trying to mold his testimony to fit the evidence after testifying inconsistently; it is an additional indication of his unreliability. In the same vein, Claimant's inconsistency as to what his job title was – "resident assistant" or "hall monitor" – shows either memory deficiency or an opportunistic and self-serving attempt to escape the job title "resident assistant" because PSERS had already determined a "resident assistant" position to be ineligible. Regardless of fact that the title is irrelevant under the *Simmonds* and *Donovan* analysis, *supra*, Claimant obviously thought it was relevant, and the inconsistency that resulted calls his reliability into further question.

Claimant's testimony was also inconsistent on the issue of whether his job constituted financial aid or not. On the one hand, he testified, as he asserts in his brief, that his employment was not part of the financial aid *package* he received for attendance at Cal U. NT at 33. On the other hand, he testified that he took the position for financial reasons, NT at 13, which indicates the position was a form of financial aid. Not only is this testimony inconsistent, but it also demonstrates another instance of Claimant molding the facts in his favor.

Another reason Claimant is not a reliable witness is that much of his testimony was speculative, reflecting deficiencies in his recollection and memories of what happened 40 years ago. As already mentioned, he waffled about what his title was, NT at 22, which could have been a memory defect rather

than an attempt to manipulate the facts to favor him. Also, he could not recall if he had to fill out any financial aid forms to get his job as a resident assistant/hall monitor, nor could he recall from whom he received grants to attend Cal U, because, he testified, it was 40 years ago. NT at 32. Nonetheless, he speculated, saying he “would think” you would have to qualify one way or another to get a position. NT at 32. In fact, he freely speculated throughout his testimony: He testified that he “believes” living in the dorm was a requirement of being a resident assistant or hall monitor, but he is not certain. NT at 25. He testified that he was not aware of the requirements to become a resident assistant, other than going through an interview, but he stated he was sure a freshman college student could be one if the university had no one else available. NT at 28. In other words, he did not know the actual answer about a freshman’s eligibility for the position, but he freely speculated about it.

Likewise, he testified that “as far as he knows,” a hall monitor position was open to anyone, whether it be a part-time or full-time student. NT at 13. Using the phrase “as far as I know” suggests that he actually doesn’t know; therefore, such statements cannot be considered reliable. Claimant also testified that “work study, the best I can recall, was based on financial need,” although he also testified that his position was considered work study but was not based on financial need. NT at 30. His phrasing – that it was the best he could recall – again suggests that he doesn’t actually know; it also evidences an additional inconsistency. And in response to a question about whether he had to fill out financial aid forms to get his job as a resident assistant or hall monitor, Claimant stated he could not recall, but stated, “I would think you would probably have to qualify one way or another to be able to get a position.” NT at 32. Again, Claimant stated, very specifically, that he does not recall a fact, and then speculated about what the fact might be. It is not trustworthy testimony.

Even with regard to more recent events, Claimant’s testimony was unreliable. When asked if he attempted to obtain the pre-1994 payroll records referenced in the Ahearn letter from the Commonwealth, the questions and his answers were as follows:

Q On page 2 [of Exhibit PSERS-3], Mr. Ahearn states: "Prior to January 1, 1994, the payroll records are held by the Commonwealth of Pennsylvania."

Did you attempt to obtain those payroll records from the Commonwealth?

A I'm not – I don't think I did, but I think I made a phone call and they said they wouldn't be available. That's as far as my attempt was.

Q Are you sure you made that phone call or do you just think you did?

A I'm not positive, because you guys had me running around in circles.

NT at 33. This testimony clearly demonstrates Claimant's uncertainty about something that happened in 2005, and that uncertainty, when coupled with the other memory deficiencies described above, especially his statement that he doesn't recall because "[w]e're 40-some years ago," NT at 32, calls into further question the reliability of his testimony about facts from the 1971 – 1972 and 1972 – 1973 school years. All of Claimant's speculations cannot tip the evidentiary scale in his direction, because speculation is not the same thing as fact.

In his brief, Claimant did not discuss the *Simmonds* and *Donovan* cases at all, either to attempt to distinguish them or to challenge their applicability. Therefore, Claimant's brief does not advance his position in any coherent manner.

Based on all of the above, Claimant produced insufficient evidence to meet his burden of proof, and so his appeal cannot be sustained. This means that the evidence is not sufficient to overturn PSERS' determination that it erroneously allowed Claimant to purchase the .52 year of service credit related to his work study job at Cal U.

Under the Retirement Code, the Board is duty-bound to correct errors in a member's record upon discovering them, and to adjust payments accordingly, 24 Pa.C.S. § 8534(b),⁶ although the Board *may*

⁶24 Pa.C.S. § 8534. Fraud and adjustment of errors.

* * *

(footnote continued on next page)

waive an adjustment under section 8534(b) if (1) the adjustment or portion of the adjustment will cause undue hardship to the member, beneficiary or survivor annuitant; (2) the adjustment was not the result of erroneous information supplied by the member, beneficiary or survivor annuitant; (3) the member had no knowledge or notice of the error before adjustment was made, and the member, beneficiary or survivor annuitant took action with respect to their benefits based on erroneous information provided by the system; and (4) the member, beneficiary or survivor annuitant had no reasonable grounds to believe the erroneous information was incorrect before the adjustment was made. 24 Pa.C.S. § 8303.1(a).⁷ The use of the term “may” in section 8303.1(a) indicates that the waiver is discretionary with the Board.

In its regulations at 22 Pa. Code § 213.3a(a),⁸ the Board defines “undue hardship,” which is used in subsection (1) of section 8303.1(a), as either an adjustment that causes a reduction in excess of 5% of

(b) *Adjustment of errors.* – Should any change or mistake in records result in any member, beneficiary, or survivor annuitant receiving from the system more or less than he would have been entitled to receive had the records been correct, then regardless of the intentional or unintentional nature of the error and upon the discovery of such error, the board shall correct the error and so far as practicable shall adjust the payments which may be made for and to such person in such a manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

⁷**24 Pa.C.S. § 8303.1. Waiver of adjustments.**

(a) *Allowance.* –Upon appeal by an affected member, beneficiary or survivor annuitant, the board may waive an adjustment or any portion of an adjustment made under section 8534(b) (relating to fraud and adjustment of errors) if in the opinion of the board or the board's designated representative:

- (1) the adjustment or portion of the adjustment will cause undue hardship to the member, beneficiary or survivor annuitant;
- (2) the adjustment was not the result of erroneous information supplied by the member, beneficiary or survivor annuitant;
- (3) the member had no knowledge or notice of the error before adjustment was made, and the member, beneficiary or survivor annuitant took action with respect to their benefits based on erroneous information provided by the system; and
- (4) the member, beneficiary or survivor annuitant had no reasonable grounds to believe the erroneous information was incorrect before the adjustment was made.

* * *

⁸**22 Pa. Code § 213.3a. Waiver of adjustments.**

(footnote continued on next page)

the monthly annuity, or an adjustment that results in the member's losing eligibility for a benefit other than an annuity. 22 Pa. Code § 213.3a(a)(1) and (2). In this case, upon discovering that it had erroneously processed Claimant's 2005 Service Credit Purchase Application, NT at 51, 55, PSERS corrected Claimant's retirement account, as required by statute, subtracting the .52 of a year of service and reducing the amount of his monthly gross benefit accordingly, retroactive to the date of his retirement, from \$10,114.91 to \$9,967.21. Exhibit PSERS-8; Exhibit PSERS-9; NT at 55 – 56.

The evidence at the hearing indicated that Claimant did not lose any eligibility for benefits with PSERS as a result of the adjustment. Exhibit PSERS-9; NT at 56. Moreover, the reduction in Claimant's monthly annuity, from \$10,114.91 to \$9,967.21, Exhibit PSERS-8; Exhibit PSERS-9; NT at 55 – 56, a difference of \$147.70, amounted to a 1.46% reduction of Claimant's monthly benefit. Therefore, neither of the criteria that determines the existence of an "undue hardship," as the Board's regulations define it, has been demonstrated by the record. Claimant has not, therefore, suffered the "undue hardship" which would permit the Board to exercise its discretion and grant him a waiver of the adjustment to his retirement account.

(a) To find that an adjustment made under section 8534(b) of the Retirement Code (relating to fraud and adjustment of errors) meets the undue hardship test under section 8303.1(a)(1) of the Retirement Code (relating to waiver of adjustments), the Board requires that either:

- (1) The adjustment causes a reduction in excess of 5% of the monthly annuity.
- (2) The adjustment results in the member losing eligibility for a benefit other than an annuity.

* * *

CONCLUSION

Given the decisions in *Simmonds* and *Donovan* and the close parallels between those cases and the case at hand, PSERS' interpretation of the Retirement Code, as set forth in the Business Rule and as applied to Claimant, cannot be considered erroneous. Rather, PSERS appropriately applied its Business Rule and the relevant case law in determining that Claimant was not entitled to purchase service credit with PSERS for a work study position he held as a student, and PSERS acted appropriately in correcting its error by making the required adjustment to Claimant's retirement account. Moreover, Claimant does not meet the criteria for a discretionary waiver of the adjustment to his retirement account. Accordingly, Claimant has failed to meet his burden, and the following recommendation will be made to the Board:

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

IN RE:

ACCOUNT OF DONALD G. BAILEY
CLAIM OF DONALD G. BAILEY

:
:
:
:
:
:

DOCKET NO. 2012-49

RECOMMENDATION

AND NOW, this 31st day of **October, 2014**, upon consideration of the foregoing findings of fact, conclusions of law and discussion, the Hearing Officer for the Public School Employees' Retirement Board recommends that the Board (1) **DENY** Claimant's request that the Board waive a service adjustment that removed from his account .52 of a year of service, which had been sold in error, and (2) **DISMISS** Claimant's administrative appeal.



Ruth D. Dunnewold
Hearing Officer

For Claimant: Joseph R. Green, Esquire
334 Bloomfield St
Johnstown, PA 15904

For PSERS: Kathrin V. Smith, Esquire, Assistant Deputy Chief Counsel
COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM
5 North 5th St.
Harrisburg, PA 17101

Docket Clerk: Sandy Kurtz, Appeal Docket Clerk
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD
5 N. 5th St.
Harrisburg, PA 17101

Date of mailing: 10/31/14