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

IN RE: ACCOUNT OF GWENDOLYN E. CARUSONE
DOCKET NO. 2013-29
CLAIM OF GWENDOLYN E. CARUSONE

OPINION AND ORDER OF THE BOARD

The Public School Employees' Retirement Board ("Board") has before it a Motion for Summary Judgment filed by the Public School Employees' Retirement System ("PSERS") in the above-referenced administrative appeal requesting that Gwendolyn E. Carusone's ("Claimant") Appeal and Request for Administrative Hearing be denied because there is no issue of material fact and PSERS is entitled to a summary judgment as a matter of law.

PSERS filed its Motion for Summary Judgment on March 18, 2015, and served a copy by First-Class Mail on Claimant as required by the General Rules of Administrative Practice and Procedure. 1 Pa. Code §§ 33.32, 33.35-33.36. By letter dated March 18, 2015, PSERS notified Claimant that she had 30 days to respond to PSERS' motion under Pa.R.C.P. No. 1035.3. Claimant's response, therefore, had to be filed on or before April 17, 2015. See 1 Pa. Code §§ 31.11, 31.12 and 33.34. Claimant, who is represented by counsel, did not file a response.

Where no factual issues are in dispute, no evidentiary hearing is required under 2 Pa.C.S. § 504. The function of a summary judgment motion is to eliminate the needless use of time and resources of the litigants and the Board in cases where an evidentiary administrative hearing would be a useless formality. See *Liles v. Balmer*, 567 A.2d 691 (Pa. Super. 1989). The Board's regulations authorize the use of summary judgment where there are no genuine issues of material fact. 22 Pa. Code § 201.6(b); Pa.R.C.P. Nos. 1035.1-1035.5. To determine whether the party moving for summary judgment has met its burden, the Board must examine the record in the light most favorable to the

non-moving party and give her the benefit of all reasonable inferences. See *Thompson v. Nason Hospital*, 535 A.2d 1177, 1178 (Pa. Super. 1988), *aff'd*, 591 A.2d 703 (Pa. 1991). Any doubts regarding the existence of a genuine issue of material fact must be resolved in favor of the non-moving party. *El Concilio De Los Trabajadores v. Commonwealth*, 484 A.2d 817, 818 (Pa. Cmwlt. 1984).

In responding to a motion for summary judgment, an adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response identifying “(1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion . . . , or (2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.” Pa.R.C.P. No. 1035.3(a). “An adverse party may supplement the record or set forth the reasons why the party cannot present evidence essential to justify opposition to the motion and any action proposed to be taken by the party to present such evidence.” Pa.R.C.P. No. 1035.3(b).

Because Claimant has not identified any facts remaining to be determined at an evidentiary hearing that would be material to the legal issues before the Board in this matter, the Board finds that there are no disputed material facts. The Board further finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issues of whether Claimant is eligible for a retirement benefit and whether she was eligible to purchase service credit in February 2012.

FINDINGS OF FACT

Based on the record, the Board finds the following relevant facts not in dispute:

1. Claimant was born on [REDACTED]
2. In September 2003, Claimant enrolled with PSERS through her employment with the Bald Eagle Area School District (“Bald Eagle”).
3. Claimant qualified for PSERS membership during each of the 2003-2004, 2004-2005, 2005-2006, and 2006-2007 school years.

4. On April 12, 2006, PSERS received an "Application to Purchase Credit for Part-Time Service" for Claimant that identified service with Bald Eagle during the 1974-1975 and 1975-1976 school years. PSERS-1.

5. On September 13, 2006, PSERS received an "Application to Purchase Credit for Part-Time Service" for Claimant that identified service with the Bellefonte Area School District ("Bellefonte") for the 2003-2004, 2004-2005, and 2005-2006 school years. PSERS-2.

6. On December 12, 2006, PSERS received an "Application to Purchase Credit for Part-Time Service" for Claimant that identified service with the Penns Valley Area School District for the 1975-1976, 1976-1977, 2003-2004, 2004-2005, and 2005-2006 school years. PSERS-3.

7. In response to Claimant's April 12, 2006, September 13, 2006, and December 12, 2006, applications, PSERS mailed Claimant:

(a) a "Statement of Amount Due" dated November 18, 2009, for the purchase of 1.81 years of former uncredited part-time service for the 1974-1975, 1975-1976, 2004-2005, and 2005-2006 school years; and

(b) a "Statement of Amount Due" dated November 18, 2009, for the purchase of 0.26 years of non-qualified part-time service for the 1976-1977 and 2003-2004 school years.

PSERS-9 and PSERS-10.

8. During the 2006-2007 school year, Claimant rendered 139.50 days and 6.00 hours of school service (i.e., 74.00 days with Bald Eagle and 65.50 days and 6.00 hours with Bellefonte).

9. Claimant was reported to PSERS as a part-time, per diem and part-time, hourly employee during the 2006-2007 school year.

10. By correspondence dated November 4, 2007, PSERS sent Claimant a "Statement of Account for School Year 2006-2007" reflecting that she had earned 0.78

years of service during the 2006-2007 school year and had a total of 1.83 years of service credit with PSERS. PSERS-4.

11. During the 2007-2008 school year, Claimant rendered 3.50 days and 91.00 hours of school service.

12. By correspondence dated November 26, 2008, PSERS sent Claimant a "Statement of Account for School Year 2007-2008" reflecting that she had earned no additional service credit with PSERS during the 2007-2008 school year. PSERS-5.

13. By letter dated January 14, 2009, PSERS informed Claimant that she had not qualified for membership with PSERS during the 2007-2008 school year and that it would return her contributions. PSERS-6.

14. During the 2008-2009 school year, Claimant rendered no school service.

15. By correspondence dated October 1, 2009, PSERS sent Claimant a "Statement of Account for School Year 2008-2009" reflecting that she had earned no additional service credit with PSERS for the 2008-2009 school year. PSERS-7.

16. During the 2009-2010 school year, Claimant rendered 21.00 days of school service with Bald Eagle.

17. By correspondence dated September 17, 2010, PSERS sent Claimant a "Statement of Account for School Year 2009-2010" reflecting that she had earned no additional service credit with PSERS for the 2009-2010 year. PSERS-8.

18. By letter dated January 28, 2011, PSERS informed Claimant that she had not qualified for PSERS membership during the 2009-2010 school year and that it would return her contributions. PSERS-11.

19. During the 2010-2011 school year, Claimant rendered no school service.

20. By correspondence dated September 16, 2011, PSERS sent Claimant a "Statement of Account for School Year 2010-2011" reflecting that she had earned no additional service credit with PSERS for the 2010-2011 school year. PSERS-12.

21. During the 2011-2012 school year, Claimant rendered 22.00 days of service with Bald Eagle.

22. On February 24, 2012, Claimant submitted a "Purchase of Former Part-Time Uncredited Service" form to PSERS identifying service with Bald Eagle for the 2007-2008 and 2009-2010 school years. PSERS-13.

23. On August 28, 2012, PSERS mailed Claimant a "Statement of Amount Due" for the purchase of 0.13 of a year of non-qualifying part-time service credit covering the 2007-2008 and 2009-2010 school years. PSERS-14.

24. By correspondence dated September 27, 2012, PSERS sent Claimant a "Statement of Account for School Year Ending June 30, 2012" reflecting that she had earned no additional service credit with PSERS for the 2011-2012 school year. PSERS-15.

25. The statement dated September 27, 2012, included Claimant's estimated retirement benefits. PSERS-15.

26. On October 22, 2012, Claimant filed a "Request for Retirement Estimate" with PSERS. PSERS-16.

27. By letter dated November 8, 2012, after receiving salary information from an employer for which contributions were not previously withheld, PSERS mailed Claimant a "Statement of Amount Due" for 0.02 of a year of former uncredited part-time service credit covering the 2004-2005 and 2005-2006 school years. PSERS-17.

28. By cover letter dated December 3, 2012, PSERS sent Claimant a "Normal Retirement Estimate." PSERS-18.

29. By letter dated February 2, 2013, PSERS informed Claimant that she had not qualified for PSERS membership during the 2011-2012 school year and that it would return her contributions. PSERS-19.

30. By three letters dated February 14, 2013, PSERS informed Claimant that, while reviewing her account, PSERS discovered an error in the processing of her

purchases. To correct the error, the non-qualifying part-time purchases processed on November 18, 2009, and August 28, 2012, had been voided. PSERS-20, PSERS-21, and PSERS-22.

31. In connection with the void, the 0.13 of service credit requested in 2012 for the 2007-2008 and 2009-2010 school years and the 0.26 of service credit for non-qualifying part-time service requested in 2006 for the 2003-2004 and 1976-1977 school years were removed from Claimant's account, leaving Claimant with a total of 3.66 service credits.

32. During the 2012-2013 school year, Claimant rendered 28.00 days of service with Bald Eagle.

33. By correspondence dated October 14, 2013, PSERS sent Claimant a "Statement of Account for School Year Ending June 30, 2013" reflecting that she had earned no additional service credit with PSERS for the 2012-2013 school year. PSERS-23.

34. The "Statement of Account for School Year Ending June 30, 2013" included Claimant's estimated retirement benefits. PSERS-23.

35. During the 2007-2008 through 2012-2013 school years, Claimant was reported to PSERS as either a part-time, per diem employee or a part-time, hourly employee by the school districts for which she performed service.

36. On March 6, 2013, Claimant filed an "Application for Retirement" with PSERS. PSERS-24.

37. Claimant is credited with a total of 3.66 years of service with PSERS.

38. Claimant is a Class T-D member of PSERS.

39. On March 15, 2013, Claimant appealed PSERS' February 14, 2013, determinations that informed her that PSERS had voided her purchases of service dated November 18, 2009, and August 28, 2012.

40. By letter dated April 8, 2013, PSERS informed Claimant that because she did not have enough years of service credit and had not attained age 62 in her last year of qualifying service (2006-2007), she was not eligible to receive a retirement benefit. See PSERS-25.

41. Claimant appealed PSERS' April 8, 2013, determination.

42. By letter dated November 8, 2013, the Executive Staff Review Committee ("ESRC") denied Claimant's appeal stating, in pertinent part, as follows:

You last rendered qualifying school service during the 2006-2007 school year. All of the subsequent school years you worked from 2007-2008 through 2012-2013 have been non-qualifying. You were, therefore, not an active member when you applied to purchase 0.13 years of service credit in February 2012, and this application cannot be processed. Further, due to two years of non-qualifying service, you had a break in membership at the end of the 2008-2009 school year. If a Class T-D member terminates service prior to superannuation age (62) and prior to vesting (attaining 5 years of service credit) then that member becomes a "nonmember" who is not eligible for a retirement benefit. You did not attain age 62 until [REDACTED], and as a "nonmember," you are not eligible to receive a retirement benefit.

PSERS-26 (emphasis in original).

43. Bald Eagle reported Claimant's termination date to PSERS as June 30, 2013.

44. Claimant's last day of qualifying school service was in June 2007.

45. Claimant was an inactive member of PSERS from July 1, 2007, through June 30, 2009.

46. On December 9, 2013, Claimant filed an Appeal and Request for Administrative Hearing, identifying Kristin Scipione, Esq., as her attorney. PSERS-27.

47. On December 23, 2013, PSERS filed an Answer. PSERS-28.

48. By letter dated February 2, 2014, PSERS informed Claimant that she had not qualified for membership with PSERS during the 2012-2013 school year and that it would return her contributions. PSERS-29.

- 49. On March 18, 2015, PSERS filed a Motion for Summary Judgment.
- 50. Claimant did not file a response to PSERS' motion.
- 51. The matter is ripe for Board adjudication.

DISCUSSION

Claimant appeals the ESRC's determination that she is not eligible for a superannuation annuity. Pursuant to the Public School Employees' Retirement Code ("Retirement Code") and PSERS' duly promulgated Rules and Regulations, an "active or inactive member who attains superannuation age shall be entitled to receive a superannuation annuity upon termination of service and filing of a proper application" if the member has at least one eligibility point with PSERS. 24 Pa.C.S. § 8307(a); 22 Pa. Code § 213.7(a); *see also* 24 Pa.C.S. § 8342(a); 24 Pa.C.S. § 8345.

Section 8102 of the Retirement Code provides the following pertinent definitions:

Active member. A school employee for whom pickup contributions are being made to the fund

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

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.

Superannuation or normal retirement age.

Class of service	Age
T-C and T-D	62 or age 60 provided the member has at least 30 eligibility points or any age upon accrual of 35 eligibility points

24 Pa.C.S. § 8102.

Prior to November 23, 2010, a school employee who was employed on an hourly or per diem basis had to qualify each fiscal year for membership in PSERS by either working 80 full days or 500 hours. See 24 Pa.C.S. § 8301(a)(2) (amended Nov. 23, 2010, P.L. 834 (Act No. 120)). If the employee did not qualify during a fiscal year, membership in PSERS was prohibited for that year and PSERS would return the member's contributions. See 24 Pa.C.S. § 8301(b); PSERS-6; PSERS-11; PSERS-19; PSERS-29.

Claimant enrolled with PSERS in September 2003, and she qualified for PSERS membership during each of the 2003-2004 through 2006-2007 school years. Claimant did not qualify for PSERS membership after the 2006-2007 school year, having rendered no school service during the 2008-2009 and 2010-2011 school years and less than the required 80 days or 500 hours of hourly or per diem school service during the 2007-2008, 2009-2010, 2011-2012, and 2012-2013 school years. See PSERS-5; PSERS-7; PSERS-8; PSERS-12; PSERS-15; PSERS-23; *see also* PSERS-6; PSERS-11; PSERS-19; PSERS-29. For the years that she rendered school service, but not enough for PSERS membership, PSERS sent Claimant a letter informing her of that fact and returning the contributions that she had made to PSERS. See PSERS-6; PSERS-11; PSERS-19; PSERS-29.

On March 6, 2013, Claimant filed an "Application for Retirement" with PSERS. PSERS-24. Shortly thereafter, PSERS informed Claimant that, because she did not have enough years of service credit and had not attained age 62 in her last year of qualifying service (2006-2007), she was not eligible to receive a retirement benefit. PSERS-25. The ESRC affirmed PSERS' determination. PSERS-26. Claimant appeals the ESRC's decision, arguing that she is eligible for a benefit because she was 62 and had at least one year of service when she applied for retirement in March 2013. PSERS-27.

Although Claimant was more than 62 years old when she applied for retirement with PSERS, she was not an active or inactive member at the time. Claimant was last an "active member" of PSERS during the 2006-2007 school year, and she was an "inactive member" of PSERS during the 2007-2008 and 2008-2009 school years, i.e., the two school years following the last school year during which Claimant made contributions as

an active member.¹ Claimant was a non-member during the 2009-2010, 2011-2012, and 2012-2013 school years. See 24 Pa.C.S. § 8102; see also *Imdorf v. Public School Employees' Retirement System*, 638 A.2d 502, 504-505 (Pa. Cmwlth. 1994); *Lawrie v. Public School Employees' Retirement Board*, 595 A.2d 753, 756 (Pa. Cmwlth. 1991). As a non-member, Claimant was not eligible for a superannuation annuity when she applied for it in 2013. For the same reason, she was not eligible when she turned 62 in 2011.

Claimant also is not eligible for an annuity as a Class T-D vestee, because she does not have five or more eligibility points. 24 Pa.C.S. § 8307(b); see 24 Pa.C.S. § 8308 (any Class T-D member who terminates school service with five or more eligibility points is entitled to vest his retirement benefits until attainment of superannuation age); 24 Pa.C.S. § 8102 (defining "vestee" as a "member with five or more eligibility points who has terminated school service, has left his accumulated deductions in the fund and is deferring filing of an application for receipt of an annuity"); 24 Pa.C.S. § 8342(a); 24 Pa.C.S. § 8345. She has 3.66 eligibility points.²

Claimant asserts, nonetheless, that she is entitled to a benefit because PSERS led her to believe, through several communications, that she was eligible for retirement. She cites to an unidentified PSERS' handbook, the retirement estimates in her statements of account for the 2011-2012 and 2012-2013 school years (PSERS-15 and PSERS-23), and the "Normal Retirement Estimate" that PSERS sent her, which is dated December 3, 2012 (PSERS-18).

Initially, the PSERS handbook to which Claimant refers informed her that "[y]ou may receive a normal retirement benefit when you terminate public school employment and if. You are age 62 with at least one full year of credited service." PSERS-27 (emphasis added). Claimant, however, was not age 62 when she terminated public

¹ For purposes of the Retirement Code, a school year "commences on July 1 and ends on June 30 of the following year." 22 Pa. Code § 211.3(g).

² As PSERS notes in its papers, even if Claimant were credited with all of the service that she has requested to purchase over the years, she would have a total of only 4.05 eligibility points and she would still not have enough to vest and qualify for an annuity.

school employment. See 24 Pa.C.S. § 8102; 24 Pa.C.S. § 8307; 22 Pa. Code § 213.7(a).

“Date of termination of school service” is defined in the Retirement Code as follows:

- The last date of service for which pickup contributions are made for an active member or,
- in the case of an inactive member,
 - the effective date of his resignation or
 - the date his employment is formally discontinued by his employer or
 - two years following the last day of service for which contributions were made, *whichever is earlier*.

24 Pa.C.S. § 8102 (emphasis added). Claimant was an “inactive member” of PSERS from July 1, 2007, through June 30, 2009. As an “inactive member,” her “date of termination of school service” was in June 2009 (that is, two years following her last day of service in June 2007 for which she made contributions as an active member).³ Claimant turned age 62 in 2011. Thus, she was not 62 when she terminated public school employment. To read the handbook as Claimant requests would invalidate the Retirement Code’s requirement that a Class T-D member attain at least five eligibility points to vest and qualify for a retirement benefit, because any past member of PSERS with one eligibility point would be entitled to a lifelong retirement benefit when they reached 62.

With respect to the estimates that PSERS provided to Claimant, they cannot override the Retirement Code’s eligibility requirements. Indeed, it is well established that the statutory mandates of the Retirement Code apply, even when a PSERS member may not have been provided adequate or correct information. *Tyson v. Public School Employees’ Retirement System*, 737 A.2d 325, 328 (Pa. Cmwlth. 1999); *Finnegan v. Public School Employees’ Retirement Board*, 560 A.2d 848, 852 (Pa. Cmwlth. 1989), *aff’d without op.*, 591 A.2d 1053 (Pa. 1991); *Cosgrove v. State Employees’ Retirement Board*, 665 A.2d 870, 874 (Pa. Cmwlth. 1995); *Account of Nancy C. Bowers*, Docket No. 2012-45, at *18-19 (PSERB June 16, 2004).

³ Claimant’s employment appears to have been formally discontinued on June 30, 2013, but that date is not her “date of termination of school service” because it is after June 2009.

In *Finnegan*, PSERS erroneously informed a member that she could purchase 15 years of out-of-state service credit which would have provided the member with 30 years of active service. *Finnegan*, 560 A.2d at 849. The member relied on that information and made an irrevocable decision to retire. The Retirement Code, however, restricted such purchases to 12 years. *Id.* As a result, the member received far smaller retirement benefits than she expected. On appeal, the Commonwealth Court affirmed PSERS' determination that the member was not permitted to purchase additional service credit because doing so would be tantamount to impermissibly permitting PSERS' employees to amend the statute. *Id.* at 851. Citing to *Finnegan*, the Commonwealth Court reached the same conclusion in *Cosgrove*, where it found that the statutory language of the Retirement Code prevents retirees from changing their retirement benefit elections, even under circumstances where members may have been misled by inadequate counseling by the State Employees' Retirement System. *Cosgrove*, 665 A.2d at 874.

The Retirement Code sets forth the requirements that must be met for a PSERS member to receive an annuity. Any statements that PSERS made or failed to make to Claimant that led her to believe she was entitled to an annuity cannot override the Retirement Code's directives and, therefore, equitable relief is not available here.

Claimant also appears to appeal the ESRC's determination that she was not eligible to purchase previously noncreditable school service when she applied for it in February 2012. See PSERS-27. Pursuant to the Retirement Code, only Class T-D members "who are active members" are eligible to purchase previously noncreditable school service. 24 Pa.C.S. § 8303(d). As discussed above, Claimant was not an "active member" of PSERS in February 2012 and, accordingly, she was not eligible to purchase the credit that she requested. See *id.*; see also *Account of Joan Jordan*, Docket No. 2012-08 (PSERB Jan. 29, 2013); *Account of Evangeline A. Ronstadt*, Docket No. 2011-16 (PSERB May 1, 2013).

CONCLUSION

For the above-stated reasons, the Board finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issues of whether Claimant is eligible for a retirement benefit and whether Claimant was eligible in February 2012 to purchase service credit with PSERS. Accordingly, PSERS' Motion for Summary Judgment is GRANTED, and Claimant's Appeal and Request for Administrative Hearing is DISMISSED.

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

IN RE: ACCOUNT OF GWENDOLYN E. CARUSONE
DOCKET NO. 2013-29
CLAIM OF GWENDOLYN E. CARUSONE

ORDER

AND NOW, upon consideration of Claimant's Request for Administrative Hearing and PSERS' Motion for Summary Judgment:

IT IS HEREBY ORDERED, that PSERS' Motion for Summary Judgment is GRANTED, and Claimant's Appeal and Request for Administrative Hearing is DISMISSED in accordance with 22 Pa. Code § 201.6(c), as no genuine issue of material fact exists and PSERS is entitled to judgment as a matter of law.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: June 11, 2015

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