

Mail Date: AUG 14 2009

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

IN RE: ACCOUNT OF FRANCES C. SWARTZ (D)  
DOCKET NO. 2008-15  
CLAIM OF CHARLOTTE MACIAS

**OPINION AND ORDER OF THE BOARD**

The Board has carefully and independently reviewed the entire record of this proceeding, including the Proposed Decision and Order of the Hearing Examiner. We note that neither party filed Exceptions to the Proposed Decision and Order of the Hearing Examiner. The Board finds appropriate the Introduction, Proposed Findings of Fact, Proposed Conclusions of Law, and Recommendation in the Proposed Decision and Order. Accordingly, we hereby adopt the Hearing Examiner's Proposed Decision and Order as our own.

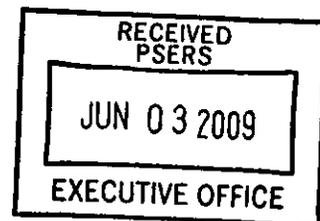
IT IS HEREBY ORDERED that the Board grants the Public School Employees' Retirement System's Motion to Dismiss and that the appeal of Claimant, Charlotte Macias, is DISMISSED WITH PREJUDICE.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: AUG 14 2009

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

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



**IN RE:** Account of Frances C. Swartz (D)  
Docket No. 2008-15  
Claim of Charlotte Macias

**BEFORE:** Lynne M. Mountz, Esquire  
Hearing Examiner

**HEARING DATE:** April 8, 2009

**APPEARANCES:** For the Public School Employees' Retirement System:  
David W. Speck, Esquire

For the Intervenor:  
Eugene Swartz, Pro Se

**PROPOSED DECISION AND ORDER**

Introduction

Charlotte Macias (Claimant) appealed the decision of the Public School Employees' Retirement System (PSERS) to pay out the death benefit from the retirement account of Frances C. Swartz (Decedent) to Eugene Swartz (Intervenor) as the sole beneficiary. An administrative hearing regarding this issue was scheduled for and convened on April 8, 2009.

PSERS was present at the hearing and represented by Attorney David W. Speck. Intervenor appeared and represented himself at the hearing. Claimant did not appear at the hearing, either in person or through counsel.

PSERS presented evidence regarding the procedural history of the case, including the hearing notice provided to Claimant. No evidence regarding the merits of

the case was placed into the record. PSERS made a Motion to Dismiss Claimant's appeal based upon her failure to appear at the hearing.

Based upon the evidence presented at the hearing and all other matters of record, the Hearing Examiner enters the following:

Proposed Findings of Fact

1. By certified letter dated December 19, 2008, PSERS provided notice to Claimant that an administrative hearing, requested on the issue of Contested Death Benefit, had been scheduled as follows:

Date: April 8, 2009  
Time: 1:00 p.m.  
Place: Public School Employees' Retirement System  
5 North Fifth Street  
Harrisburg, PA 17101

(PSERS Ex. 8; N.T. 5-6).

2. A certified mail receipt bearing the signature of Charlotte Macias with a delivery date of December 24, 2008 was returned to PSERS. (PSERS Ex. 8; N.T. 6).
3. Claimant's hearing date of April 8, 2009 was published in the *Pennsylvania Bulletin, Vol. 39, No. 1* on January 3, 2009. (PSERS Ex. 9; N.T. 6).
4. Claimant received proper notice of the date, time and place of her hearing.
5. Claimant's hearing was convened at approximately 1:17 p.m. on April 8, 2009 at PSERS, 5 North Fifth Street, Harrisburg, PA. (N.T. 4).
6. Claimant did not appear at the hearing, either in person or through counsel. (N.T. 4).

7. Prior to opening the record, the Hearing Examiner placed a telephone call to the telephone number which was believed to be the current number for Claimant. No one answered the telephone call. (N.T. 4).
8. The Hearing Examiner placed a second telephone call to a different number which Claimant had provided to PSERS. No one answered this telephone call. (N.T. 4).
9. Claimant did not contact PSERS regarding the scheduled hearing. (N.T. 6).
10. The December 19, 2008 letter which provided Claimant with notice of the date, time and place of the administrative hearing also listed the name, address and telephone number of the Hearing Examiner and instructions for requesting a continuance of the hearing. (PSERS Ex. 8).
11. Claimant did not request a continuance from the Hearing Examiner nor provide any indication that she would be delayed or unable to attend the hearing. (N.T. 7).
12. Claimant presented no evidence in support of her claim during the hearing on April 8, 2009.
13. Claimant knowingly waived her right to present evidence in support of her claim.
14. PSERS appeared at the hearing and was prepared to present evidence with respect to the merits of its case during the hearing of April 8, 2009. (N.T. 4-5).
15. Intervenor appeared at the hearing and was prepared to proceed. (N.T. 4-5, 9).

16. No evidence with respect to the merits was received by the Hearing Examiner during the hearing on April 8, 2009.
17. PSERS' Counsel made a Motion to Dismiss Claimant's Claim during the hearing on April 8, 2009. (N.T. 7-8).

Proposed Conclusions of Law

1. Claimant was properly notified of the date, time and place for her administrative hearing.
2. Claimant was properly notified of the procedure to request a continuance.
3. Claimant had the burden of establishing facts upon which she relied in order to be granted the relief requested. *See, Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa.Cmwlth. 1991).
4. Claimant failed to appear at the hearing and thereby waived her right to present evidence in support of her claim.
5. Claimant failed to carry her burden of proof at the administrative hearing.
6. Claimant failed to appear at the hearing without good cause.
7. Whenever a claimant fails to appear, either in person or through counsel, for a scheduled hearing without good cause, the hearing examiner will issue a recommendation to dismiss the case, without considering the merits of the claim. 22 Pa.Code § 201.8 (a).
8. Counsel for PSERS appropriately moved to dismiss Claimant's appeal with prejudice.

9. Claimant's appeal should be dismissed with prejudice for failure to appear at the administrative hearing without good cause and prosecute her claim.

**RECOMMENDATION**

It is recommended that the Public School Employees' Retirement Board DISMISS WITH PREJUDICE the Claim of Charlotte Macias with respect to the Death Benefit pay-out on the retirement account of Frances C. Swartz (Deceased).

Respectfully submitted,

Dated:

*June 3, 2009*



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Lynne M. Mountz, Esquire  
Hearing Examiner