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

IN RE: ACCOUNT OF DOROTHY A. GAMBARDELLA  
DOCKET NO. 2012-51  
CLAIM OF DOROTHY A. GAMBARDELLA

**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, and Recommendation, attached hereto, and we hereby adopt them as our own. Accordingly:

IT IS HEREBY ORDERED that Claimant's request to change the effective date of her retirement from February 22, 2012, to [REDACTED] is DENIED.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: \_\_\_\_\_

Jan. 21, 2015

By: \_\_\_\_\_

Melva S. Vogler  
Melva S. Vogler, Chairman

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

In Re:

Account of Dorothy A. Gambardella  
Claim of Dorothy A. Gambardella

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Docket No. 2012-51

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PSERB  
EXECUTIVE OFFICE

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OPINION AND RECOMMENDATION

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Date of Hearing: May 14, 2014  
Hearing Officer: Suzanne Rauer, Esquire  
For the Claimant: Dorothy A. Gambardella, *pro se*  
For PSERS: Frederick Alcaro, Esquire

## HISTORY

This matter is before the Public School Employees' Retirement Board (Board) on an appeal filed by Dorothy A. Gambardella (Claimant) from a decision of the Executive Staff Review Committee (Committee) of the Public School Employees' Retirement System (PSERS) that denied Claimant's request to change the effective date of her retirement.

Claimant was notified by correspondence dated November 9, 2012 that the Committee denied her request because Claimant received proper notice that her application must be received within 90 days of the February 5, 2011 correspondence from PSERS advising her that she had reached superannuation age and was eligible for an unreduced benefit if she filed an application for retirement within 90 days of the date of that correspondence. Claimant's application for retirement was filed more than 90 days after the date of PSERS's February 5, 2011 correspondence and therefore her annuity is effective as of the date that her application was filed with PSERS, i.e., February 22, 2012.

On December 7, 2012, Claimant filed an appeal and request for administrative hearing. An administrative hearing was held on May 14, 2014 at 5 North Fifth Street, Harrisburg, PA. Claimant was present at the hearing, *pro se*.<sup>1</sup> Frederick Alcaro, Esquire, appeared at the hearing on behalf of PSERS.

Following the close of testimony, the parties requested the opportunity to file post-hearing briefs.

On June 11, 2014, following receipt of the hearing transcript, a briefing schedule was established, pursuant to which it was acknowledged that Claimant filed her post-hearing brief on May 16, 2014, and established the remaining briefing schedule which required PSERS to file its

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<sup>1</sup> As of the date of the hearing in this matter, Robert M. DiOrio was Claimant's attorney of record with regard to her appeal, but he did not appear at the hearing and Claimant elected to go forward at the hearing without representation. Mr. DiOrio subsequently filed a withdrawal of appearance.

brief no later than July 10, 2014 and Claimant to file her reply brief, if any, no later than July 25, 2014.

PSERS' brief was timely filed on July 10, 2014, and Claimant's reply brief was timely filed on July 23, 2014.

The matter is now before the Board for final disposition.

## FINDINGS OF FACT

1. Claimant Dorothy A. Gambardella (Claimant) is a member of the Public School Employees' Retirement System (PSERS) by virtue of her employment as a literacy teacher with the Delaware County Intermediate Unit (IU), beginning November 5, 1999. (N.T. 24; PSERS' Exhibit 4)

2. This was Claimant's second enrollment in PSERS in that she had previously left service, taken a refund of her accumulated deductions, and, upon her subsequent rehiring with the Delaware County IU in 1999, purchased her time back. (N.T. 24)

3. At the time Claimant left service the second time, she had 9.53 years of service. (N.T. 24; PSERS Exhibits 6 through 12)

4. As of February 5, 2011, Claimant was considered a terminated vested member for purposes of eligibility for retirement benefits from PSERS. (N.T. 10)

5. A terminated vested member of PSERS is a member who meets minimum service requirements but is no longer actively working in a Pennsylvania public school.<sup>2</sup> (N.T. 10)

6. A terminated vested member (vestee) defers filing an application for retirement but leaves accumulated deductions in the fund. (N.T. 10-11; 24 P.S. §8102)

7. At all times material to this matter, Claimant's address of record with PSERS was [REDACTED]. (PSERS Exhibit 4, 5, 6-14; N.T. 46)

8. Claimant was born on [REDACTED]. (N.T. 11)

9. Claimant reached normal retirement age (superannuation) at age 62 on [REDACTED] [REDACTED]. (PSERS Exhibit 1)

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<sup>2</sup>A vested member is a member who meets minimum service requirements, in most cases five years but in some cases it can be ten years. (N.T. 10)

10. Beginning sometime after December 14, 2005 and through sometime after November 10, 2011, Claimant received seven (7) "Statements of Account" mailed to her at [REDACTED], her address of record with PSERS. (N.T. 27-31, 46-47; PSERS-6 through -12)

11. The Statement of Account for School Year 2004-2005 dated December 14, 2005 described estimated retirement benefits for "Early Retirement as of June 30, 2005 and estimated retirement benefits for "Normal Retirement as of [REDACTED]" (PSERS-6, p. 3)

12. The Statement of Account for School Year 2005-2006 dated December 20, 2006 described estimated retirement benefits for "Early Retirement as of June 30, 2006 and estimated retirement benefits for "Normal Retirement as of [REDACTED]" (PSERS-7, p. 3)

13. The Statement of Account for School Year 2006-2007 dated December 1, 2007 described estimated retirement benefits for Early Retirement as of June 30, 2007 and estimated retirement benefits for Normal Retirement as of [REDACTED]" (PSERS-8, p. 3)

14. The Statement of Account for School Year 2007-2008 dated November 14, 2008 described estimated retirement benefits for Early Retirement as of June 30, 2008 and estimated retirement benefits for Normal Retirement as of [REDACTED]" (PSERS-9, p. 3)

15. The Statement of Account for School Year 2008-2009 dated December 2, 2009 described estimated retirement benefits for Early Retirement as of June 30, 2009

and estimated retirement benefits for Normal Retirement as of [REDACTED]”  
(PSERS-10, p. 3)

16. The Statement of Account for School Year 2009-2010 dated December 3, 2010 described estimated retirement benefits for Normal Retirement as of July 1, 2010.”<sup>3</sup>  
(PSERS-11, p. 3)

17. The Statement of Account for School Year 2010-2011 dated November 10, 2011 described estimated retirement benefits for Normal Retirement as of July 1, 2011.”  
(PSERS-12, p. 3)

18. Claimant admittedly received at least some of the Statements of Account mailed to her at her address of record at [REDACTED]  
[REDACTED] (N.T. 46-47)

19. It is PSERS’ practice to routinely send a letter as notification to terminated vested members of their eligibility to apply for superannuation retirement benefits effective as of the day they reached superannuation age, generally age 62, three to four months before their superannuation date. (N.T. 36)

20. Should the terminated vested member apply for retirement benefits within 90 days after the member reaches superannuation age, the effective retirement date will be the date of attainment of superannuation age. (N.T. 4-5)

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<sup>3</sup> Once Claimant passed her superannuation date, the Statements of Account began to calculate her benefit as of July 1<sup>st</sup>. (PSERS-11 and -12) Section 211.3(g) of the Public School Employees’ Retirement Board’s regulations states: “For the purpose of the Retirement Code, the school year commences on July 1 and ends on June 30 of the following year.”

21. When PSERS moved to its current computer system, the program responsible for sending superannuation letters to terminated vested members was not working properly. (N.T. 11)

22. Approximately 600 terminated vested members did not receive superannuation letters because of the computer glitch. (N.T. 10, 14)

23. On February 5, 2011, PSERS sent superannuation letters to those approximately 600 terminated vested members, advising them that they were entitled to retroactivity to their superannuation date if they filed retirement applications *within 90 days of the date of the letter*, or of their normal retirement date, whichever occurred later. (N.T. 11-12; PSERS Exhibit 1)

24. Filing for retirement benefits after superannuation date results in a reduced retirement benefit. (PSERS Exhibit 1; N.T. 8-9, 12-13)

25. PSERS sent superannuation retirement letters to approximately 600 terminated vested members, including Claimant, on February 5, 2011. (N.T. 11; PSERS Exhibit 1)

26. Claimant's superannuation date was [REDACTED] the date of her 62<sup>nd</sup> birthday. (N.T. 11; PSERS Exhibit 1)

27. In the February 5, 2011 correspondence, Claimant was informed that she had 90 days from the date of that correspondence to file an application for retirement in order to receive retirement benefits retroactive to her "normal retirement date."<sup>4</sup> (PSERS Exhibit 1; N.T. 12)

28. In the February 5, 2011 correspondence, Claimant was further informed that if she did not apply for retirement dates within the 90-day timeframe, her monthly benefit will begin on the date that PSERS received her retirement application or the date specified on her retirement application, whichever is later. (PSERS Exhibit 1; N.T. 13)

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<sup>4</sup> PSERS uses the term "normal retirement date" interchangeably with superannuation date. N.T. 9.



29. PSERS' February 5, 2011 correspondence to Claimant was mailed to Claimant at her address of record with PSERS, [REDACTED]

[REDACTED] on February 10, 2011. (N.T. 10, 20; PSERS Exhibit 2 at p. 12)

30. The February 5, 2011 correspondence to Claimant was not received back by PSERS from the U.S. Postal Service as undeliverable. (N.T. 20-21)

31. On February 22, 2012, Claimant filed an *Application for Retirement* with PSERS. (N.T. 26; PSERS-5)

32. Prior to the time Claimant filed her *Application for Retirement* on February 22, 2012, PSERS had not received any other Application for Retirement from Claimant. (N.T. 26)

33. Following Claimant's submission of her *Application for Retirement*, and after her telephone conversation with Pam Reitz from PSERS who explained the February 5, 2011 PSERS correspondence to her, Claimant filed an appeal with the Executive Staff Review Committee (ESRC) for retroactive benefits to [REDACTED] [REDACTED]. (N.T. 32, 39; PSERS-13)

34. By letter dated November 9, 2012, the ESRC denied Claimant's request to change the effective date of her retirement because the ESRC determined that Claimant received proper notice that her application must have been received within 90 days of the February 5, 2011 letter to qualify for retroactivity to [REDACTED]. (PSERS-13; N.T. 32-33)

35. Claimant filed an Appeal and Request for Administrative Hearing on the above issue. (PSERS-14; N.T. 34)

36. An administrative hearing on the above issue was held on May 14, 2014 before Hearing Examiner Suzanne Rauer, Esq. (Transcript, *passim*)

37. Claimant was present at the hearing, pro se,<sup>5</sup> and had the right to testify and present evidence in support of her appeal and to cross examine witnesses. (Transcript, *passim*)

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<sup>5</sup> Robert M. DiOrio was Claimant's attorney of record as of the date of the hearing. Claimant, however, chose to go forward at the hearing without her attorney, and Mr. DiOrio has since filed his withdrawal of appearance.

## CONCLUSIONS OF LAW

1. Claimant bears the burden of establishing those facts upon which she relies in order to prevail. *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991).

2. Claimant was afforded an opportunity to be heard in connection with her appeal. (Findings of Fact Nos. 35-37)

3. The Retirement Code requires that the Board provide notice within 90 days of a member reaching superannuation age that the member is eligible to apply for an unreduced annuity within 90 days of attainment of superannuation age and that, if the member does so apply, the effective date of retirement will be the date of attainment of superannuation age, but that if the member does not so apply but defers an application to a later date, the effective date of retirement will be the date of filing the application. 24 Pa.C.S. §8505(f).

4. PSERS satisfied the notice requirement of 24 Pa.C.S. §8505(f) by notifying Claimant by first class mail sent to her last known address, [REDACTED] [REDACTED], which mail was not returned as undeliverable, that she had attained superannuation age and had 90 days to file for retirement to preserve a retroactive effective date of retirement of her 62<sup>nd</sup> birthday. (Findings of Fact Nos. 17-32)

5. Claimant failed to meet the requirements of 24 Pa.C.S. §8507(h) by not filing for retirement within 90 days of being notified by PSERS that she was eligible to apply for an unreduced benefit. (Findings of Fact Nos. 31-32)

6. Claimant is not entitled to receive annuity payments retroactive to her superannuation date of [REDACTED]. (Findings of Fact Nos. 1-32)

## DISCUSSION

Claimant is requesting the Board to grant her request to change the effective date of her retirement from February 22, 2012, the date PSERS received Claimant's *Application for Retirement*, to [REDACTED], the date of Claimant's 62<sup>nd</sup> birthday or superannuation date. Claimant seeks this relief because she alleges she never received the February 5, 2011 correspondence from PSERS advising her that she had 90 days from the date of the correspondence to receive an unreduced benefit retroactive to her superannuation date. (N.T. 38, 39, 43)

The Retirement Code provides as follows:

**§8505. Duties of board regarding applications and elections of members.**

\* \* \*

**(f) Notification to vestees approaching superannuation age.--**

The board shall notify each vestee in writing 90 days prior to his attainment of superannuation age that he shall apply for his annuity within 90 days of attainment of superannuation age; that, if he does so apply, his effective date of retirement will be the date of attainment of superannuation age; that, if he does not so apply but defers his application to a later date, his effective date of retirement will be the date of filing the application or the date specified on the application, whichever is later, and that, if he does not file an application within seven years after attaining superannuation age, he shall be deemed to have elected to receive his accumulated deductions upon attainment of superannuation age.

24 Pa.C.S. § 8505(f). A terminated vested member must be given 90 days' notice, prior to obtaining superannuation age, that she is required to file an application for retirement within 90 days of attainment of superannuation age in order to have an effective date of retirement as of the date of attainment of superannuation age, and that if she does not so apply, then the effective date of her retirement will be the date of filing the application or

the date specified on the application, whichever is later.<sup>6</sup> Because the Retirement Code does not prescribe a specific method of notice under Section 8505(f), notice is effectuated when it is mailed via first class mail to the member's last known address and is not returned as undeliverable. *See Higgins v. Public School Employees' Retirement System*, 736 A.2d 745, 753 (Pa.Cmwlt. 1999); *Tyson v. Public School Employees' Retirement System*, 737 A.2d 325 (Pa.Cmwlt. 1999). While Claimant has criticized PSERS' use of first class mail to deliver such notice to terminated vested members, this notice requirement was met in the instant case.

The testimony in this matter was convincing. It is PSERS' practice to routinely send a letter as notification to terminated vested members of their eligibility to apply for superannuation retirement benefits effective as of the day they reached superannuation age, generally at age 62, three to four months before their superannuation date, as required by the Retirement Code at Section 8505(f). When PSERS moved to its current computer system, the program responsible for sending superannuation letters to terminated vested members was not working properly. Approximately 600 terminated vested members did not receive superannuation letters. When PSERS discovered that a number of terminated vested employees did not receive the superannuation notice as required in Section 8505 of the Retirement Code, PSERS sent superannuation letters to those 600 terminated vested members on February 5, 2011, advising them that they were entitled to retroactivity to their superannuation date if they filed retirement applications *within 90 days of the date of the letter*, or of their normal retirement date, whichever occurred later. PSERS sent superannuation retirement letters to those 600 terminated vested

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<sup>6</sup> The Retirement Code defines "vestee" in pertinent part 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. § 8102.

members, including Claimant, on February 5, 2011. In the February 5, 2011 correspondence, Claimant was informed that she had 90 days from the date of that correspondence to file an application for retirement in order to receive retirement benefits retroactive to her normal retirement date of [REDACTED]. In the February 5, 2011 correspondence, Claimant was further informed that if she did not apply for retirement dates within the 90-day timeframe, her monthly benefit will begin on the date that PSERS receives her retirement application or the date specified on her retirement application, whichever is later. PSERS' February 5, 2011 correspondence to Claimant was mailed to Claimant at her address of record with PSERS, [REDACTED] [REDACTED] on February 10, 2011, and was not returned as undeliverable to PSERS.

It is Claimant's position that she never received the February 5, 2011 correspondence from PSERS, and that if she had she would have "jumped at the chance to have had that coming in." (N.T. 44) While it is acknowledged that Claimant is in the difficult position of proving a negative, there is no corroborating evidence to support Claimant's claim. In fact, the weight of the evidence suggests otherwise. The evidence presented by PSERS overwhelmingly shows that the February 5, 2011 correspondence was in fact mailed to Claimant. Whether Claimant failed to receive it, which is unlikely in that PSERS did not receive the correspondence back from the U.S. Postal Service as undeliverable, or simply overlooked it, the fact remains that PSERS fulfilled its obligation under the Retirement Code at Section 8505(f) by mailing the notification letter to Claimant at her last address of record with PSERS, which was also Claimant's address of residence at the time the correspondence was mailed to her and remained her address of evidence at the time of the hearing in this matter. In addition, Claimant conceded that she received several Statements of Account from PSERS mailed to that same address. Those

Statements of Account listed her "Normal Retirement as of [REDACTED]." As PSERS argued, Claimant had to have known that [REDACTED] was her 62<sup>nd</sup> birthday. That she may have chosen not to pay attention to retirement information mailed by PSERS prior to actually contemplating retirement does not change the outcome in this matter. Claimant did not file an application for retirement until February 22, 2012, well beyond the 90-day timeframe. Accordingly, PSERS determined her effective date of retirement to be the date PSERS actually received her application, February 22, 2012, rather than the date she attained superannuation age, [REDACTED]. This is the appropriate outcome under the Retirement Act.

Given that the record in this matter reveals that PSERS provided Claimant with notification of superannuation retirement benefits, and that Claimant's Application for Retirement was filed *more than 90 days after* the date of that notification, February 5, 2011, Claimant's annuity is effective as of the date that her application was filed with PSERS, February 22, 2012. The Board has no authority to grant Claimant's request to change the effective date of her retirement to [REDACTED]. *Hughes v. Public School Employees' Retirement Board*, 662 A. 2d 701 (Pa. Cmwlth. 1995), *petition for allowance of appeal denied*, 542 Pa. 678, 668 A.2d 1139 (1995) (PSERS has no authority to grant rights beyond those specifically set forth in the Retirement Code).

Accordingly, the following recommendation will be made to the Board:



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

**In Re:**

**Account of Dorothy A. Gambardella**

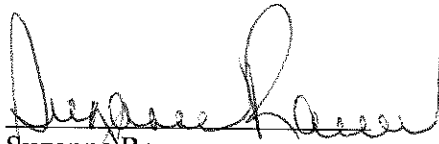
**Claim of Dorothy A. Gambardella**

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**Docket No. 2012-51**

**RECOMMENDATION**

**AND NOW**, this 4th day of November, 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 Claimant's request to change the effective date of her retirement from February 22, 2012 to [REDACTED] be **DENIED**.

  
Suzanne Rauer  
Hearing Examiner

Dated: November 4, 2014