

AUG 17 2010

Mail Date: \_\_\_\_\_

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

IN RE: ACCOUNT OF CHARLES P. GRIFFIN  
DOCKET NO. 2009-23  
CLAIM OF CHARLES P. GRIFFIN

**OPINION AND ORDER OF THE BOARD**

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

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

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: AUG 17 2010

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

LEGAL OFFICE MAY 12 2010

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE: ACCOUNT OF CHARLES P. GRIFFIN  
DOCKET NO. 2009-23  
CLAIM OF CHARLES P. GRIFFIN

BEFORE: Edward S. Finkelstein, Esquire

HEARING DATE: April 28, 2010

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

Charles P. Griffin, Pro Se - Claimant

OPINION OF THE HEARING EXAMINER

FINDINGS OF FACT

1. On November 23, 2009 the Public School Employees' Retirement Board received an appeal and request for an administrative hearing from Charles P. Griffin (Claimant). (PSERS Exhibit 1)

2. On March 9, 2010 the Public School Employees' Retirement System sent a hearing notice to the Claimant advising him that his requested hearing would be held on April 28, 2010 at 2:30 p.m. at the Public School Employees' Retirement System, 5 N. 5<sup>th</sup> Street, Harrisburg, PA. This notice advised the Claimant that if he did not appear at the hearing on the date and time scheduled without good cause, the Hearing Officer, upon Motion, would recommend to the Board that his appeal be

dismissed with prejudice and that the appeal would be terminated and he would not be permitted to raise the appeal issue again to the Board in the future. (PSERS Exhibit 2)

3. On April 13, 2010 Public School Employees' Retirement System sent the Claimant a reminder notice of his hearing that was scheduled for April 28, 2010 at 2:30 p.m. (PSERS Exhibit 3)

4. The Claimant's hearing was duly advertised in the *Pennsylvania Bulletin*. (PSERS Exhibit 4)

5. On April 28, 2010 the undersigned Hearing Officer was present and ready to proceed with the Claimant's hearing as was counsel for the System.

6. The Claimant failed to appear for his hearing on April 28, 2010 at 2:30 p.m. nor did the Claimant contact the Hearing Officer to request any continuance of the hearing.

7. The Claimant's hearing began without the attendance of the Claimant and counsel for the Public School Employees' Retirement System moved to dismiss the Claimant's appeal with prejudice pursuant to 22 Pa. Code §201.8(a) which provides as follows:

(a) 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.

8. The Claimant failed to reply to the Public School Employees' Retirement System's Motion to Dismiss with prejudice.

## DISCUSSION

**ISSUE:** Should the Claimant's appeal be dismissed with prejudice?

The Claimant filed a request for an administrative hearing requesting that he receive .07 years of additional credited service as a result of an alleged error in reporting his service during the 1976-77 school year. The Public School Employees' Retirement System sent the Claimant a hearing notice on March 9, 2010 scheduling a hearing for him regarding his appeal to be held at the offices of the Public School Employees' Retirement System, 5 N. 5<sup>th</sup> Street, Harrisburg, PA on April 28, 2010 at 2:30 p.m. A follow-up reminder notice of the hearing was sent to the Claimant on April 13, 2010 and the hearing was properly advertised in the *Pennsylvania Bulletin*.

At the appointed time for the Claimant's hearing, April 28, 2010 at 2:30 p.m., the Claimant failed to appear and after waiting 10-15 minutes, the Hearing Examiner proceeded with the hearing in the absence of the Claimant. During the course of this hearing, counsel for the Public School Employees' Retirement System moved to dismiss the Claimant's request for

the additional .07 years of credited service with prejudice pursuant to 22 Pa. Code §201.8.

Pursuant to the General Rules of Administrative Practice and Procedure, particularly 1 Pa. Code §35.179, the Claimant had ten (10) days within which time to answer or object to the Motion to Dismiss with prejudice made orally by counsel for PSERS at the hearing. The Claimant has failed to file any answer or objection to the Motion to Dismiss with prejudice. Therefore, pursuant to 22 Pa. Code §201.8(a), the Hearing Examiner is hereby going to recommend to the Public School Employees' Retirement Board that it dismiss the Claimant's appeal and request for additional .07 years of credited service.

#### CONCLUSIONS OF LAW

1. The Claimant was given appropriate notice of the hearing scheduled regarding his appeal of a denial by the Public School Employees' Retirement System of his request for an additional .07 years of credited service for service rendered during the 1976-77 school year.

2. The Claimant received proper notice of his hearing at least two times by the Public School Employees Retirement System to be held on April 28, 2010 at 2:30 p.m.

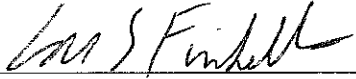
3. Since the Claimant failed to appear at his hearing without good cause and did not request a continuance or file an

answer or objection to the Motion to Dismiss his claim with prejudice submitted orally by counsel for the Public School Employees' Retirement System during the course of the hearing, it is appropriate, pursuant to 22 Pa. Code §201.8(a) for the Board to dismiss his case with prejudice without considering the merits of his claim.

**RECOMMENDATION**

The Public School Employees' Retirement Board shall dismiss the Claimant's appeal with prejudice.

Dated: 5/11/10

  
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Edward S. Finkelstein  
Hearing Examiner