

Mail Date: JAN 28 2009

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

IN RE: ACCOUNT OF JOANNE M. KEGLOVITS
DOCKET NO. 2007-26
CLAIM OF JOANNE M. KEGLOVITS

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the Pre-hearing Orders; and 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 Adjudication. 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, Joanne M. Keglovits, is DISMISSED WITH PREJUDICE.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: JAN 28 2009

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

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD



LEGAL OFFICE NOV 18 2008

IN RE: Account of Joanne M. Keglovits
Docket No. 2007-26
Claim of Joanne M. Keglovits

BEFORE: Lynne M. Mountz, Esquire
Hearing Examiner

HEARING DATE: October 22, 2008

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

PROPOSED DECISION AND ORDER

Introduction

Joanne M. Keglovits (Claimant) appealed the decision of the Public School Employees' Retirement System (PSERS) to deny her request to purchase out-of-state service. An administrative hearing regarding this issue was scheduled for and convened on October 22, 2008.

Claimant did not appear at the hearing, either in person or through counsel. PSERS was present at the hearing and represented by 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. Claimant's administrative hearing regarding the issue of Purchase of Service was originally scheduled for May 14, 2008. (PSERS Ex. 1; N.T. 4).
2. By letter dated April 23, 2008, PSERS sent Claimant an amended notice of the hearing scheduled for May 14, 2008. Claimant received the notice. (PSERS Ex. 2; N.T. 4).
3. On May 9, 2008, PSERS mailed Claimant a "reminder" copy of the notice of hearing scheduled for May 14, 2008. (PSERS Ex. 3; N.T. 4).
4. By letter dated May 12, 2008 and sent to PSERS by facsimile, Claimant requested a continuance of her hearing on May 14th due to a family emergency. (PSERS Ex. 4; N.T. 4).
5. By letter dated May 13, 2008, the Hearing Examiner granted Claimant's request for a continuance and rescheduled the hearing for:

Date: October 22, 2008
Time: 1:00 p.m.
Place: Public School Employees' Retirement System
5 North Fifth Street
Harrisburg, PA 17101

(PSERS Ex. 5; N.T. 4-5).

6. Claimant's hearing date of October 22, 2008 was published in the *Pennsylvania Bulletin* on August 23, 2008. (PSERS Ex. 6; N.T. 5).
7. Claimant sent a letter dated September 28, 2008 to the Hearing Examiner, with a copy to PSERS' Counsel, in which she stated: "I would like to

request a continuance of the above case. At this time I request that no date for this hearing be scheduled.” (PSERS Ex. 7; N.T. 5).

8. By letter dated October 3, 2008, to the Hearing Examiner and copied to Claimant, PSERS’ Counsel objected to the continuance request. (PSERS Ex. 8; N.T. 5).
9. In his October 3, 2008 letter, PSERS’ Counsel noted that Claimant had not provided any reason for her request and simply wanted a general continuance without rescheduling the hearing. (PSERS Ex. 8).
10. PSERS’ Counsel specifically stated in his October 3, 2008 letter: “I also give notice to Ms. Keglovits that if you [the Hearing Examiner] deny the continuance, and she does not appear at the hearing, I will make a motion to dismiss her claim for failure to prosecute it in a timely fashion.” (PSERS Ex. 8).
11. By letter dated October 9, 2008 to the Hearing Examiner, with a copy to PSERS’ Counsel, Claimant requested that PSERS’ Counsel provide her with examples of the previous Hearing Examiner’s¹ recommendations “against the agency” in order to be able to prepare for her case. (PSERS Ex. 9; N.T. 5).
12. In her October 9, 2008 letter, Claimant wrote that her reason for requesting a general continuance “is that times have changed” and she was continuing to work as a school nurse for the foreseeable future “which makes this appeal somewhat moot.” Claimant added that “upon my retirement should the

¹ The undersigned Hearing Examiner was appointed to hear this case after Claimant expressed concern that a Hearing Examiner previously appointed might have a conflict of interest.

circumstances change I would like to be able to pursue this application for credit for out-of-state service.” (PSERS Ex. 9; N.T. 5-6).

13. By Order issued October 9, 2008 and mailed to the parties the same date, the Hearing Examiner denied Claimant’s request for a continuance of the hearing scheduled for October 22, 2008. (PSERS Ex. 11; N.T. 6).
14. By letter dated October 10, 2008 to the Hearing Examiner, with a copy to Claimant, PSERS’ Counsel requested that the Hearing Examiner leave her denial of Claimant’s request to continue the hearing as it stands. (PSERS Ex. 10).
15. In his October 10, 2008 letter to the Hearing Examiner, PSERS’ Counsel specifically stated: “By copy of this letter to Ms. Keglovits, I notify her that if she fails to appear for the hearing I will make a motion to dismiss her claim pursuant to 22 Pa.Code § 201.8 (relating to dismissal for nonappearance).” (PSERS Ex. 10).
16. Claimant received proper notice of the date, time and place of her hearing.
17. Claimant’s request for a continuance of the hearing was denied by the Hearing Examiner on October 9, 2008.
18. Claimant did not request a reconsideration of the Hearing Examiner’s Order denying her request for a continuance.
19. The Hearing Examiner’s Order issued October 9, 2008 denying the continuance request was never modified, amended or withdrawn.

20. PSERS Counsel specifically advised Claimant in writing on two occasions that if she failed to appear at the hearing he would move to dismiss her claim.
21. Claimant's hearing was convened at approximately 1:20 p.m. on October 22, 2008 at PSERS, 5 North Fifth Street, Harrisburg, PA. (N.T. 3).
22. Claimant did not appear at the hearing, either in person or through counsel. (N.T. 3).
23. Claimant did not contact PSERS on October 22, 2008 to indicate that she would be delayed in arriving at the hearing. (N.T. 7).
24. Claimant presented no evidence in support of her claim during the hearing on October 22, 2008.
25. Claimant knowingly waived her right to present evidence in support of her claim.
26. PSERS was prepared to present evidence with respect to the merits of its case during the hearing of October 22, 2008. (N.T. 3).
27. No evidence with respect to the merits was received by the Hearing Examiner during the hearing on October 22, 2008.
28. PSERS' Counsel made a Motion to Dismiss Claimant's Claim during the hearing on October 22, 2008. (N.T. 7).

Proposed Conclusions of Law

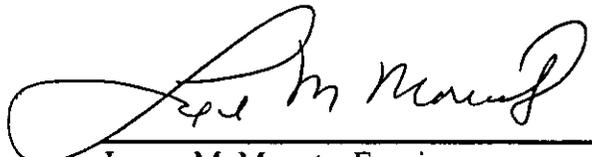
1. Claimant was properly notified of the date, time and place for her administrative hearing.
2. Claimant was properly notified that her request for a continuance was denied by the Hearing Examiner.
3. Claimant had the burden of establishing facts upon which she relied in order to be granted the relief 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 Joanne M. Keglovits to Purchase Service.

Respectfully submitted,

Dated: November 14, 2008



Lynne M. Mountz, Esquire
Hearing Examiner