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

IN RE: ACCOUNT OF LAURIE L. KRISTINIAK
DOCKET NO. 2014-02
CLAIM OF LAURIE L. KRISTINIAK

OPINION AND ORDER OF THE BOARD

This matter is before the Public School Employees' Retirement Board ("Board") on an appeal filed by Laurie L. Kristiniak ("Claimant") from a decision of the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS") denying Claimant's request to change Claimant's effective date of retirement from October 2, 2012, to June 30, 2012, based on Claimant's claim that she mailed her *Application for Retirement* in April of 2012.

The issue in this matter is whether Claimant is entitled to have the effective date of her retirement made retroactive to the day following her date of termination of service from the School District of Philadelphia (the "District"), i.e., June 30, 2012, absent PSERS receiving any *Application for Retirement* from Claimant prior to October 3, 2012.

The Board has carefully and independently reviewed the entire record of this proceeding, including the Proposed Opinion and Recommendation of the Hearing Examiner, Claimant's Brief on Exceptions to the Opinion of the Hearing

Examiner and PSERS' Brief Opposing Exceptions and hereby issues the following:

FINDINGS OF FACT

1. Claimant became a member of PSERS in 1976, by virtue of her employment with the District. (N.T. 15; Claimant Exhibits A-5 and A-6; PSERS 6 at p. 2; PSERS-7; PSERS-8)

2. On January 26, 2012, PSERS received a PSRS-151 form titled Request for Retirement Estimate from Claimant wherein Claimant requested a retirement estimate based on a tentative retirement date of June 12, 2012. (PSERS-1)

3. The Request for Retirement Estimate form reminds members, including Claimant, of the following:

An Application For Retirement must be filed with PSERS within 90 days of your date of termination for retroactive benefits. Otherwise, your benefit will be effective the date your *Application For Retirement* is received by PSERS.

(PSERS-1)

4. By letter dated February 21, 2012, PSERS provided a Normal Retirement Estimate to Claimant based on a retirement date of June 30, 2012.

(PSERS-2)

5. Claimant was reminded in the February 21, 2012, letter from PSERS of the following critical deadline:

... For a regular retirement, you are required to file an *Application for Retirement* within 90 days after your termination date. If you do not file within 90 days, your

**effective date of retirement will be the date your
Application for Retirement is received by PSERS.**

(PSERS-2)

6. On April 9, 2012, the District received Claimant's Notification of Retirement/Resignation form; Claimant informed the District that she intended to retire on June 30, 2012. (N.T. 15-16; Claimant Exhibit A-5)

7. By letter dated April 10, 2012, the District acknowledged receipt of Claimant's intent to retire on June 30, 2012. (Claimant Exhibit A-6)

8. The District's April 10, 2012, letter also advised Claimant, among other things, to contact PSERS regarding her retirement options and provided Claimant the contact phone number for PSERS' Southeast Regional Office. (Claimant Exhibit A-6)

9. Claimant resides at [REDACTED] (Montgomery County). (N.T. 14, 25; PSERS-1)

10. PSERS' Southeast regional office is located at 605 Louis Drive in Warminster, Pennsylvania, which is approximately twenty (20) minutes from Claimant's home. (N.T. 26, 48, 81)

11. PSERS has eight regional offices around the Commonwealth to assist with foundation meetings and exit meetings. (N.T. 81)

12. Members of PSERS have the ability to sign up for foundations meetings and an exit counseling session when they are preparing to retire. (N.T. 77)

13. A foundations meeting is a large group meeting designed to educate school employees about retirement. (N.T. 77)

14. An exit counseling session is designed to help members of PSERS who are planning to retire with their transition from school service to retirement. (N.T. 77)

15. Members of PSERS become aware of foundation meetings and exit meetings from the PSERS' website or in the PSERS' newsletter. (N.T. 78)

16. Exit meetings are scheduled by appointment. (N.T. 78)

17. Claimant was aware generally that PSERS had regional offices, but did not know that the PSERS had a regional office in Warminster. (N.T. 32)

18. Claimant is aware of what an exit counseling session is, but did not request or attend any exit meeting with a PSERS' representative. (N.T. 26-27; Exhibit PSERS-4)

19. Claimant did attend Philadelphia Federation of Teachers ("PFT") health and welfare meetings prior to her retirement, where retirement scenarios and pensions were discussed. (N.T. 15, 27)

20. Claimant also attended an exit interview with the PFT on her last day of school. (N.T. 27)

21. Claimant was the individual at the District to bring in speakers to the District to alert and inform teachers of the procedures they needed to follow for retirement. (N.T. 15)

22. Claimant attended a social security retirement meeting prior to her retirement. (N.T. 15)

23. On April 10, 2012, Claimant had a meeting with her financial advisor, Thomas Quay, at her home in Flourtown, PA. (N.T. 16, 38-39)

24. Claimant's husband, Bruce Kristiniak, was present for the April 10, 2012, meeting. (N.T. 45)

25. Claimant obtained a copy of a PSERS' *Application for Retirement* (PSRS-8 form) from Mr. Quay because he brought a copy to their April 10, 2012, meeting at Claimant's home. (N.T. 28)¹

26. On April 10, 2012, Mr. Quay assisted Claimant to coordinate an application for whole life insurance with MetLife, to provide guidance about her retirement with the District (including Claimant's 403(b) program through her school district), and to help Claimant to complete her *Application for Retirement* to be submitted to PSERS. (N.T. 16-17, 39, 41-43; Claimant Exhibit A-2)

27. Mr. Quay has assisted other teachers over the course of seventeen (17) years to complete their Applications for Retirement. (N.T. 43-44)

28. Mr. Quay provided Claimant with the address of where to mail her *Application for Retirement* to PSERS, which was the address of PSERS as indicated on the application form in April 2012; Mr. Quay did not recall at the time of the hearing whether the address Claimant was to mail her *Application for Retirement* was to a street address or a P.O. Box address for PSERS. (N.T. 39-40)

29. As Mr. Quay was leaving Claimant's home on April 10, 2012, he heard Claimant state she was going to the post office to mail her *Application for Retirement* to PSERS, but Mr. Quay did not go with Claimant to the Post Office

¹ Members can obtain a copy of a retirement application by calling PSERS and requesting a copy by mail or by downloading a copy from PSERS' website. (N.T. 78)

and, therefore, did not personally observe her mailing her *Application for Retirement*. (N.T. 39-41)

30. Claimant's husband also heard Claimant indicate she was going to the post office to mail her *Application for Retirement* and observed Claimant drive off to go to the post office in her car after he and Claimant escorted Mr. Quay to his car. (N.T. 46)

31. Claimant drove to the post office after her April 10, 2012, meeting at her home with Mr. Quay and her husband, which is located only one half mile from her home or about thirty (30) seconds to one minute from her home. (N.T. 18, 22, 47; Exhibit A-4)

32. Claimant's husband did not go to the post office with her and, therefore, did not personally see Claimant mail her *Application for Retirement*. (N.T. 47-48)

33. Claimant testified that she mailed her *Application for Retirement* on April 10, 2012, to PSERS, by handing it to a postal worker at the post office. (N.T. 18-19, 31; PSERS-7)

34. Claimant's husband was home when Claimant returned from the post office on April 10, 2012. (N.T. 46)

35. When Claimant returned home from the post office on April 10, 2012, she texted her friends to inform them that she sent in her *Application for Retirement* by stating in effect "I did it. Done." (N.T. 22)

36. Claimant told her husband upon her return from the post office on April 10, 2012, that she accomplished her goal to retire and Claimant's husband

observed Claimant texting her friends to inform them that her paperwork for retirement was done. (N.T. 46-47)

37. On June 29, 2012, Claimant terminated her employment with the District after rendering 35.42 years of service. (N.T. 15; Claimant Exhibit A-5; Claimant Exhibit A-6; PSERS-2; PSERS-3; PSERS-6 at p. 2; PSERS-8 at p. 1 and at Attachment A)

38. At some point after Claimant's termination, but during the summer of 2012, Claimant checked on-line at PSERS' website, but did not see anything online about new retirees; Claimant also called PSERS three times, where a recording told her that the next paycheck date for both new retirees and existing retirees was Friday, September 28, 2012. (N.T. 19-20, 29; Claimant's Exhibit)

39. Claimant made no contact with PSERS between Tuesday, April 10, 2012, and Friday, September 28, 2012, to find out if her *Application for Retirement* was received by PSERS. (N.T. 18-20, 28, 80)

40. There was no indication or note in Claimant's PSERS file prior to October 2012 that Claimant called PSERS inquiring about the status of her retirement application. (N.T. 80)

41. When Claimant did not receive a retirement check on Friday, September 28, 2012, she called PSERS the following Monday on October 1, 2012, inquiring about the status of her *Application for Retirement*. (N.T. 20)

42. During Claimant's October 1, 2012, call to PSERS, Claimant was informed by a representative from PSERS that its office had no information or record of receiving Claimant's *Application for Retirement*. (N.T. 20)

43. After discovering that PSERS did not have an *Application for Retirement* on file for Claimant, on October 3, 2012, Claimant faxed an *Application for Retirement* to PSERS. (N.T. 20-21, 79; PSERS-3 and PSERS-7)

44. On October 3, 2012, PSERS also received by facsimile a cover letter from Claimant, dated October 2, 2012, regarding her *Application for Retirement*, stating that her “original seemed to have not made it to your offices.” (PSERS-4)

45. On October 9, 2012, Claimant faxed to PSERS a copy of page 8 of her *Application for Retirement*, which showed under the “Member Certification” section that Claimant signed her application on October 2, 2012. (N.T. 20-21; PSERS-5)

46. The mail center at PSERS headquarters, which is located at 5 North 5th Street, Harrisburg, Pennsylvania, 17101, receives PSERS’ mail on a daily basis. (N.T. 62)

47. Mail received in the mail center is sorted, distributed, and in many instances, is imaged. (N.T. 63)

48. In April of 2012, a staff member at the PSERS picks up PSERS mail at the Federal Square Post Office in Harrisburg, PA, at 7:00 a.m. in the morning, for mail addressed to the P.O. Box number of PSERS. (N.T. 63, 73-74)

49. The address to send an *Application for Retirement* to PSERS before August 2012 was identified on the application as a post office box number for PSERS, which staff of PSERS picks up at the post office in the Federal Building. (N.T. 73-74)

50. Once the mail is received by PSERS, the mail is sorted (flats, large envelopes, and regular), with regular mail sorted physically by a staff member of PSERS. (N.T. 65)

51. Mail items which are directed towards human resources, marked private and confidential are placed in a separate pile and are not opened by staff in the mail room. (N.T. 65)

52. Most mail is run through an opener, which among other things, counts the pieces of mail received. (N.T. 65)

53. Then, all mail that is opened is taken to sorting tables, and date-stamped. (N.T. 65)

54. Once the mail is date-stamped, it is either placed directly in the corresponding business unit bin to be sent to that part of the agency or sent to the imaging department, which is in a connected room to the mail room. (N.T. 66)

55. Once the mail designated for imaging is complete, it is also placed in the corresponding business unit bin to be sent to that part of the agency. (N.T. 66-67)

56. A retirement application is doc-typed "0008" in the imaging department. (N.T. 67)

57. With a retirement application, the document is also checked for a social security number and that the application is complete; if it is complete, it is considered a "complete number 8." (N.T. 67)

58. A "T-patch," which is a piece of paper, separates one application from the next application, when it is being scanned. (N.T. 67)

59. Once a retirement application is scanned, it then goes through a validation process, which includes making sure each image of each scanned page of an application is clear, blank pages are omitted, and to make sure no two people are on the same account. (N.T. 68-69)

60. After the validation process, the "V3 system" (PSERS in-house computer system) will send a retirement application to workflow, where the application is then sent to the retirement unit and assigned to a retirement representative. (N.T. 69)

61. At the end of each working day, staff in PSERS' mail room check for any loose mail underneath the opener, tables, or any other location in the mail room to make sure nothing is missed. (N.T. 70)

62. The process of mail sorting at PSERS headquarters, as identified above, was in place during 2012. (N.T. 70)

63. In the account verification center of PSERS, when a retirement application is received, before the application is processed, the retiree's account is reviewed to make sure all requested information is supplied, including from the retiree's employer, to make sure the application is processed properly. (N.T. 76-77)

64. PSERS has no record of receiving an *Application for Retirement* from Claimant prior to October 3, 2012. (N.T. 79; PSERS-8)

65. Claimant had her home address as the return address on the envelope which held her April 10, 2012, *Application for Retirement*. (N.T. 21)

66. Claimant's *Application for Retirement* was never returned to her as undeliverable. (N.T. 21-22)

67. Claimant does not recall PSERS' address to where she sent her *Application for Retirement* in April of 2012. (N.T. 33-34)

68. Claimant did not send her *Application for Retirement* by Certified Mail. (N.T. 18, 24, 31-32)

69. Claimant did not request a proof of mailing when she went to the post office on April 10, 2012, to mail her *Application for Retirement*. (N.T. 32)

70. Claimant did not contact PSERS to inquire about whether or not she could drop her *Application for Retirement* off at the regional office in Warminster. (N.T. 32)

71. Claimant does not have a copy of her *Application for Retirement* that she completed on April 10, 2012, with Mr. Quay. (N.T. 32-33)

72. Ninety (90) days from Saturday, June 30, 2012, is Friday, September 28, 2012. (Official Notice; Dkt. No. 2014-02)

73. October 3, 2012, the date of receipt by PSERS of Claimant's *Application for Retirement*, was more than ninety (90) days following Claimant's date of termination of service, i.e., June 29, 2012. (N.T. 80)

74. By correspondence dated October 11, 2012, PSERS notified Claimant of her finalized retirement benefit with an effective date of retirement as

October 3, 2012, the date PSERS received Claimant's *Application of Retirement*.
(PSERS-6)

75. By letter dated October 25, 2012, and received by PSERS on November 1, 2012, Claimant filed an appeal and requested clarification from the Executive Staff Review Committee ("ESRC") regarding her retirement date.
(PSERS-7)

76. By correspondence dated December 6, 2013, the ESRC denied Claimant's request to change the effective date of her retirement to the day following her termination date from service because she failed to provide sufficient evidence that her application was received by PSERS prior to October 3, 2012. (PSERS-8)

77. On January 6, 2014, Claimant appealed the ESRC denial and requested a hearing. (Board Records)

78. On January 13, 2014, PSERS, through its counsel, Jennifer Mills, filed an Answer in response to Claimant's appeal. (Board Records)

79. By correspondence dated August 21, 2014, Jeffrey B. Clay, former Secretary for the Board, notified Maria Battista, Esquire, that she had been appointed the Hearing Examiner in this matter. (Dkt. No. 2014-02)

80. By correspondence dated August 21, 2014, Claimant was notified that an administrative hearing was scheduled for January 22, 2015, at 1:00 p.m. (Dkt. No. 2014-02)

81. An administrative hearing on Claimant's appeal was held on January 14, 2015, before Hearing Examiner Battista. (N.T. *passim*; Dkt. No. 2014-02)

82. Claimant was present for her hearing, testified on her own behalf and provided the testimony of other witnesses, cross-examined witnesses, and had the opportunity to file a post-hearing brief and reply brief in support of her appeal. (N.T., *passim*; Dkt. No. 2014-02)

CONCLUSIONS OF LAW

1. Claimant was afforded an opportunity to be heard in connection with her appeal. (Findings of Fact 75-82)

2. Claimant has the burden of proving the facts she alleges in support of her claim. *Wingert v. State Employees' Retirement Board*, 589 A. 2d 269 (Pa. Cmwlth. 1991); *Frantz v. State Employees Retirement Board*, 560 A. 2d 284 (Pa. Cmwlth. 1989).

3. The preponderance of the evidence standard is the correct burden of proof to be applied in this administrative action. *Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A. 2d 600 (Pa. Cmwlth. 1990), *petition for allowance of appeal denied*, 602 A. 2d 863 (Pa. 1998); *Suber v. Pennsylvania Commission on Crime and Delinquency, Deputy Sheriff's Education and Training Board*, 885 A. 2d 678 (Pa. Cmwlth. 2005).

4. The preponderance of the evidence standard has been explained as "such proof as leads the fact-finder. . . to find that the existence of a contested fact is more probable than its nonexistence." *Sigafoos v. Pennsylvania Board of Probation and Parole*, 503 A. 2d 1076, 1079 (Pa. Cmwlth. 1986).

5. PSERS is a creature of statute and PSERS' members have only those rights recognized by the Public School Employees' Retirement Code ("Retirement Code") and none beyond. *Bittenbender v. State Employees' Retirement Board*, 622 A.2d 403 (Pa. Cmwlth. 1992); *Burriss v. State Employees' Retirement Board*, 745 A. 2d 704 (Pa. Cmwlth. 2000); 24 Pa.C.S. § 8101 et seq.

6. The “effective date of retirement,” as defined by the Retirement Code, is “[t]he first day following the date of termination of service of a member if he has properly filed an application for an annuity with 90 days of such date or: “(1) [i]n the case of a member who applies for an annuity subsequent to 90 days after termination of service, the date of filing such application or the date specified on the application, whichever is later.” 24 Pa.C.S. § 8102.

7. PSERS must receive an *Application for Retirement* from a member within ninety (90) days of the member’s date of termination of service in order for a member’s date of termination of service to be used for purposes of receiving retirement checks. 24 Pa. C.S. § 8102; 1 Pa. Code § 31.11; *see also Harasty v. Public Sch. Employees’ Ret. Bd.*, 589 A.2d 783, 787-788 (Pa. Cmwlth. 2008).

8. Claimant has failed in her burden to establish that PSERS received her *Application for Retirement* within ninety (90) days following her date of termination of service, i.e., June 29, 2012, or by September 28, 2012. (Findings of Fact 1-76)

9. Under the Retirement Code, Claimant is not entitled to have her effective date of retirement retroactive to the day following her date of termination of service because October 3, 2012, the date PSERS received Claimant’s *Application for Retirement*, is beyond the statutory 90-day period. (Findings of Fact 1-76; 24 Pa.C.S. § 8102)

DISCUSSION

It is well settled that Claimant bears the burden of establishing the facts necessary to sustain her claim. See *Gierschick v. State Employees' Retirement Board*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999); *Wingert v. State Employees' Retirement Board*, 589 A.2d 269, 271 (Pa. Cmwlth. 1991). Further, it is well established that the PSERS is a creature of the Legislature and its members only have those rights created by the Retirement Code and none beyond. See, e.g., *Burris v. State Employees' Retirement Board*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees' Retirement Board*, 622 A.2d 403, 405 (Pa. Cmwlth. 1992); *Hughes v. Public School Employees' Retirement Board*, 662 A.2d 701, 706 (Pa. Cmwlth. 1995), *allocator denied*, 668 A.2d 1139 (Pa. 1996). While a member is entitled to a liberal construction of the Retirement Code, PSERS has no authority to grant rights beyond those specifically set forth in the Retirement Code. *Bittenbender*, 622 A.2d at 405; *Forman v. Public School Employees' Retirement Board*, 778 A.2d 778, 779 (Pa. Cmwlth. 2001).

Under the Retirement Code, a PSERS member who desires to have his or her effective date of retirement be the day following the date of termination of service must ensure that PSERS receives his or her *Application for Retirement* within ninety (90) days from the member's date of termination of service. 24 Pa.C.S. § 8102. The relevant provision of the Retirement Code states as follows:

“Effective date of retirement.” The first day following the date of termination of service of a member if he has properly filed an application for an annuity within 90 days of such date or:

(1) In the case of a member who applies for an annuity subsequent to 90 days after termination of service, the date of filing such

application or the date specified on the application, whichever is later.

24 Pa.C.S. § 8102. By default, when PSERS receives an *Application for Retirement* beyond ninety (90) days from the date of termination of service, the member's effective date of retirement becomes the date of PSERS' receipt of such application. *Id.* Hence, failure of a member to ensure that PSERS receives his or her *Application for Retirement* within ninety (90) from date of termination of service forecloses any opportunity by the member to have the effective date of his/her retirement coincide with the member's termination of service. See, e.g., *Account of Ruth A. Landry*, Docket No. 2009-07 (PSERB August 17, 2010).

Claimant contends that she never worried about the ninety (90) day period because she mailed her *Application of Retirement* well in advance of her actual retirement date. Specifically, Claimant maintains that she mailed her *Application for Retirement* on April 10, 2012, by handing it to a postal worker, after meeting with her financial advisor, Mr. Quay, to coordinate her whole life insurance based on her election on how to receive her annuity (retirement checks). Claimant further maintains that she had no reason to know that her *Application for Retirement* was not received by the PSERS because it was not sent back to her as undeliverable, and her address was the return address on the envelope which held her *Application for Retirement*. Claimant posits, therefore, that the first opportunity she had to know there was a problem with PSERS receiving her *Application for Retirement* was when she did not receive her first check on Friday, September 28, 2012. Claimant then called PSERS on Monday, October

1, 2012, to discover that PSERS had no record of her *Application for Retirement* being received. As a result, Claimant completed another *Application for Retirement* and faxed it to PSERS on October 3, 2012, with her signature page to follow on October 9, 2012, dated October 2, 2012.

PSERS contends that there is no record of PSERS receiving Claimant's *Application for Retirement* that she claims she mailed on April 10, 2012. Rather, PSERS first received an *Application for Retirement* from Claimant on October 3, 2012, dated October 2, 2012. Because October 3, 2012, is beyond the ninety (90) day window from June 30, 2012, PSERS maintains that Claimant's "effective date of retirement" is October 3, 2012. PSERS further maintains that Claimant's assumption that the mail was delivered is not a basis for relief. Essentially, PSERS argues that Claimant "did everything BUT confirm that her application was actually received and was being processed by PSERS." (PSERS Brief at p. 12)

The General Rules of Administrative Practice and Procedure ("GRAPP") dictate that the timeliness of any document filed with a Commonwealth agency, such as PSERS, is governed by the *actual receipt* of the document, rather than the date of mailing:

§ 31.11. Timely filing required.

Pleadings, submittals or other documents required or permitted to be filed under this part, the regulations of the agency or any other provision of law shall be received for filing at the office of the agency within the time limits, if any, for the filing. The date of receipt at the office of the agency and not the date of deposit in the mails is determinative.

1 Pa. Code § 31.11; see also *Harasty v. Public Sch. Employees' Ret. Bd.*, 945 A.2d 783, 787-788 (Pa. Cmwlth. 2008). Based on the GRAPP, therefore, Claimant must establish that PSERS actually received her *Application for Retirement* prior to September 28, 2012.

Claimant presented evidence of that a meeting took place at Claimant's home on April 10, 2012, to coordinate Claimant's whole life insurance policy with her election to receive her retirement benefit, that Mr. Quay assisted Claimant with completing her *Application for Retirement* on that date, and that both Mr. Quay and Claimant's husband heard Claimant say she was going to the post office immediately following the meeting to mail her application. Claimant's husband, Mr. Kristiniak, also observed Claimant drive off and was present in their home when Claimant returned from the post office, which is only about thirty seconds to one minute from their house, at which time Claimant told her husband that it was done and that she texted her friends about her completing the process of applying for her retirement. Neither Mr. Kristiniak nor Mr. Quay, however, personally saw Claimant mail the *Application for Retirement*. Claimant did not maintain a copy of the *Application for Retirement* from April 10, 2012, nor did she send the *Application for Retirement* by certified mail or request a proof of mailing.

PSERS countered such evidence with testimony detailing the procedure for ensuring that mail received at the PSERS headquarters is not lost or misplaced. The procedure in place in April of 2012 for mail received to the P.O. Box number of the PSERS included a staff picking up the mail at the Federal Square Post office at seven o'clock in the morning, separating the mail based on

size, reviewing each piece of mail, assigning a document type to the document, scanning the document, validating the document, uploading the document to the V-3 computer system, and then assigning the application for retirement to a retirement representative of the PSERS. Therefore, from point of pick-up of mail addressed to the P.O. Box number at the Federal Square Post office through the mail process in place at the PSERS, the PSERS staff goes through a detailed process to ensure that all mail is accounted for and sent to the proper department within the PSERS.

Claimant had ninety (90) days from June 30, 2012, or until September 28, 2012, to ensure that PSERS *received her Application for Retirement*. Claimant did not meet that September 28, 2012, deadline. It was not until a few days later, on October 3, 2012, that PSERS received Claimant's faxed copy of an *Application for Retirement*, that was signed on October 2, 2012. By that point, the ninety-day period had expired. To prevail, Claimant must show that PSERS actually received her application within the 90-day period as required by the Retirement Code. Claimant has failed in her burden.

Claimant argues alternatively that she should not be penalized for trusting the United States Postal Service to deliver her *Application for Retirement* when she had it weighed for proper postage and handed it to the postal worker, months in advance of the ninety-day deadline and over two months in advance of her date of termination of service. (N.T. 18-19) Claimant, in essence, is saying that but for the negligence of someone other than Claimant, her *Application for Retirement* would have been received by the PSERS prior to the expiration of the

90-day period from her date of termination. Such a claim is basically a request for *nunc pro tunc* relief that is only available if the untimely filing was the result of fraud, a breakdown in the courts, or negligence on the part of a third party. *Forman* at 780, citing, *Bass v. Commonwealth*, 401 A.2d 1133 (Pa. 1979).

Preliminarily, Claimant presented no actual evidence of fraud, breakdown or negligence that would justify the granting of *nunc pro tunc* relief. *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991) (holding that the burden of proof and persuasion is on the claimant). Even if she had, the Board does not have the authority under the Retirement Code to deem her *Application for Retirement* as received within 90 days of her date of termination of service based on her testimony that she mailed it in April of 2012. The Retirement Code, as discussed above, mandates that a member must file an application within 90 days of termination to receive a retirement date effective the day after termination. If a member fails to do so, the retirement date is the date the application is received. The Retirement Code is thus clear, and there is no exception (equitable or otherwise) to the 90-day time period. Although the Board must liberally administer the system, it does not have the authority to circumvent the express language of the Retirement Code. See *Forman* at 780 (Pa.Cmwlth. 2001); *Marinucci v. State Employees' Ret. Sys.*, 863 A.2d 43, 47 (Pa.Cmwlth. 2004). "When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S. § 1921(b). It remains for the legislature, not the Board, to amend the Retirement Code to address Claimant's circumstances. *Marinucci v. State*

Employees' Ret. Sys., 863 A.2d 43, 47 (Pa. Cmwlth. 2004). The Board has no authority to “re-open” a legislatively crafted window of time (the 90-day period) to retroactively allow Claimant’s filing to be “deemed” filed within 90 days of her date of termination of service. No liberal administration of PSERS permits the Board to circumvent the express language of the Retirement Code and grant Claimant the relief she requests. See *Dowler v. Public Sch. Employees’ Ret. Bd.*, 620 A.2d 639, 644 (Pa. Cmwlth. 1993); *Marinucci*, 863 A.2d at 47.²

² Moreover, Claimant could have ensured that her *Application for Retirement* was received by PSERS through a number of methods, e.g., by mailing the application by certified/overnight mail or calling and speaking with a PSERS staff member before the expiration of 90 days to confirm PSERS received the application.

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

IN RE: ACCOUNT OF LAURIE L. KRISTINIAK
DOCKET NO. 2014-02
CLAIM OF LAURIE L. KRISTINIAK

ORDER

AND NOW, upon consideration of the entire record in this matter, IT
IS HEREBY ORDERED THAT Claimant's request to change her effective date of
retirement from October 2, 2012, to June 30, 2012, is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: December 8, 2015

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