

Mail Date: MAR 20 2009

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

IN RE: ACCOUNT OF LAWRENCE A. DALLA BETTA
DOCKET NO. 2008-17
CLAIM OF LAWRENCE A. DALLA BETTA

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the Proposed Opinion and Recommendation of the Hearing Examiner. We note that neither party filed Exceptions to the Proposed Opinion and Recommendation of the Hearing Examiner. The Board finds appropriate the Procedural Background and Recommendation in the Proposed Opinion and Recommendation. Accordingly, we hereby adopt the Hearing Examiner's Proposed 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 that the appeal of Claimant, Lawrence A. Dalla Betta, is DISMISSED WITH PREJUDICE.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: MAR 20 2009

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

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

IN RE:

Account of Lawrence A. Dalla Betta
Claim of Lawrence A. Dalla Betta

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Docket No. 2008-17

OPINION AND RECOMMENDATION

Date of Hearing: November 5, 2008
Hearing Officer: Jackie Wiest Lutz, Esquire
For the Claimant: Lawrence A. Dalla Betta, *pro se* (not present)
For PSERS: David W. Speck, Esquire

Procedural Background:

This matter is before the Public School Employees' Retirement Board (Board) on an appeal filed by Lawrence A. Dalla Betta (Claimant) from a decision of the Executive Staff Review Committee of the Public School Employees' Retirement System (PSERS), which denied Claimant's request for Class T-D membership/Reinstatement of Premium Assistance.

Claimant's appeal was filed on May 2, 2008. (PSERS' Exhibit 2). On August 4, 2008, a hearing notice was issued scheduling a hearing on Claimant's appeal for November 5, 2008, commencing at 1:00 p.m. at PSERS, 5 North Fifth Street, Harrisburg, PA 17101. (PSERS' Exhibit 3). A "reminder" notice of the hearing was sent to Claimant on October 23, 2008. (PSERS' Exhibit 5).

Notice setting forth the date, time and location of the hearing was published in the Pennsylvania Bulletin on August 23, 2008 (PSERS' Exhibit 4).

On November 5, 2008, the hearing on Claimant's appeal was held as scheduled in the fifth floor conference room of PSERS. David W. Speck, Esquire, was present at the hearing on behalf of PSERS. Claimant did not appear for his scheduled hearing.

Discussion:

At the hearing, Attorney Speck moved to dismiss Claimant's appeal without considering the merits of his claim under the authority of 22 Pa. Code § 201.8 for Claimant's failure to appear for his scheduled hearing without good cause. Section 201.8 of the regulations provides as follows:

§ 201.8. Dismissal for nonappearance

(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.

(b) This section supplements 1 Pa. Code §§35.125, 35.187 and 35.205 (relating to order of procedure; authority delegated to presiding officers; and contents of proposed reports).
22 Pa. Code §201.9.

(Transcript, pgs. 6-7).

The August 4, 2008 hearing notice specifically notified Claimant as follows:

Any request for a continuance of the hearing date must be made in writing to the Hearing Examiner stating the reasons for the rescheduling of the hearing. Please forward a copy of your request to the Retirement System, which may oppose your request. In the event of an emergency request (24 to 48 hours) you may contact Cindy Bolton at . . . or me at the number listed on the top of the front page, to make your request. If your request is granted, your appeal will then be assigned the first available date on the hearing calendar.

(PSERS' Exhibit 3)

The Domestic Return Receipt that is attached to the hearing notice (PSERS' Exhibit 3) establishes that Claimant received timely notice of the date, time and place of the hearing on August 6, 2008. (Transcript, *passim*).

At the commencement of the hearing, the Hearing Officer noted for the record that the hearing was scheduled to commence at 1:00 p.m. and that, as of 1:19 p.m. Claimant had not appeared for his hearing. The Hearing Officer further stated that she received no communications from the Claimant requesting a continuance of his hearing.

(Transcript, *passim*)

Upon inquiry by the Hearing Officer, Attorney Speck represented that Claimant left a message on the docket clerk's voicemail that morning, stating that he could not be

present at the hearing. Attorney Speck then represented that after listening to Claimant's voicemail message, he contacted the Claimant to determine if Claimant could elaborate more as to why he was unable to attend the hearing. Claimant simply advised Attorney Speck that he was not prepared. (Transcript, p. 4)

Under these circumstances, it is recommended that the Board grant PSERS' request to dismiss Claimant's appeal under the authority of 22 Pa. Code §201.8 for Claimant's failure to appear for his scheduled hearing without good cause.

The following recommendation is made:

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

IN RE:

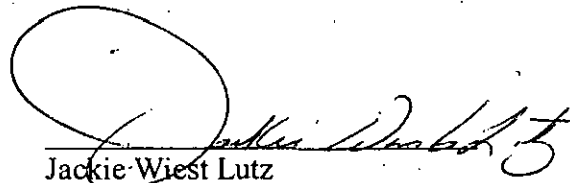
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RECOMMENDATION

AND NOW, this 5th day of December, 2008, the Hearing Officer for the Public School Employees' Retirement System recommends that the appeal filed by Lawrence A. Dalla Betta be **DISMISSED**, with prejudice, under the authority of 22 Pa. Code §201.8, due to Claimant's failure, without good cause, to appear for his scheduled hearing.


Jackie Wiest Lutz
Hearing Officer

Date of Mailing: December 5, 2008