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

IN RE: ACCOUNT OF CHRISTIAN MILLER
DOCKET NO. 2012-52
CLAIM OF CHRISTIAN MILLER

OPINION AND ORDER OF THE BOARD

The Public School Employees' Retirement Board ("Board") has before it a Motion for Summary Judgment filed by the Public School Employees' Retirement System ("PSERS") in the above-referenced administrative appeal. The issue in this appeal is whether to grant Christian Miller's ("Claimant") untimely request to elect Class T-F membership with PSERS. PSERS requests that Claimant's Appeal and Request for Administrative Hearing be dismissed because there is no issue of material fact and PSERS is entitled to a summary judgment as a matter of law.

PSERS filed its Motion for Summary Judgment on February 26, 2013, and served a copy by First Class Mail on Claimant as required by the General Rules of Administrative Practice and Procedure. 1 Pa.Code §§ 33.32, 33.35-33.36. By letter dated February 26, 2013, PSERS notified Claimant that he had thirty days to respond to PSERS's motion under Pa.R.C.P. No. 1035.3. Claimant's response, therefore, had to be filed on or before March 28, 2013. See 1 Pa.Code §§ 31.11, 31.12 and 33.34. Claimant did not file a response.

The Board's regulations authorize the use of summary judgment where there are no genuine issues of material fact. 22 Pa.Code § 201.6(b); Pa.R.C.P. Nos. 1035.1-1035.5. To determine whether the party moving for summary judgment has met its burden, the Board must examine the record in the light most favorable to the non-moving party and give him the benefit of all reasonable inferences. See *Thompson v. Nason Hosp.*, 535 A.2d 1177, 1178 (Pa.Super. 1988), *aff'd*, 591 A.2d 703 (Pa. 1991).

Any doubts regarding the existence of a genuine issue of material fact must be resolved in favor of the non-moving party. *El Concilio De Los Trabajadores v. Commonwealth*, 484 A.2d 817, 818 (Pa.Cmwth. 1984).

“Summary judgment may be entered against a party who does not respond.”
Pa.R.C.P. 1035.3(d).

Claimant has not identified any facts remaining to be determined at an evidentiary hearing that would be material to the legal issue before the Board in this matter. The Board thus finds that there are no disputed material facts. The Board further finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issue of whether Claimant timely filed an election for Class T-F membership.

FINDINGS OF FACT

Based on PSERS’ Motion for Summary Judgment, the Board finds the following facts not in dispute:

1. Claimant was first enrolled in PSERS on February 13, 2012 through his part-time salaried employment with I-LEAD Charter School.
2. At the time of Claimant’s enrollment, Claimant’s mailing address was
REDACTED
3. PSERS mailed Claimant a welcome packet on February 19, 2012 that included a cover letter that stated that “you have now qualified for membership in PSERS.”
4. The February 19, 2012 welcome packet and cover letter were mailed to Claimant at
REDACTED
5. Claimant received the February 19, 2012 welcome packet and cover letter.

6. By letter dated February 19, 2012, PSERS mailed to Claimant at
REDACTED a *T-F Membership Class Election* form and cover letter.

7. The February 19, 2012 cover letter to the *T-F Membership Class Election* form provided, in pertinent part, as follows:

Dear Mr. Christian Miller:

Congratulations on becoming a member of the Public School Employees' Retirement System (PSERS).

* * *

There are two classes of membership (T-E and T-F) that will determine the amount of money withheld from your paychecks and the amount of your retirement benefit when you retire.

You are automatically enrolled as a Class T-E member and need not take any action if you choose to remain as a Class T-E member. As such, your benefit if you retire at your normal retirement age will be your years of service times your final average salary times a 2 percent multiplier. Your employee contributions are subject to change every three years but will not be less than 7.5 percent nor more than 9.5 percent of your salary, based on the investment performance of the Retirement Fund.

If you wish to elect to become a Class T-F member, you must sign and return to PSERS the enclosed *T-F Membership Class Election* (PSRS-1318) form by April 13, 2012. The form must be received by PSERS by that date. As a Class T-F member your benefit if you retire at your normal retirement age will be your years of service times your final average salary times a higher of 2.5 percent multiplier. Your employee contributions are subject to change every three years but will not be less than 10.3 percent nor more than 12.3 percent, based on the investment performance of the Retirement Fund.

* * *

Your decision to remain Class T-E by doing nothing, or to elect Class T-F by filing the enclosed form, is final and binding. (Emphasis in original).

8. The February 19, 2012 *T-F Membership Class Election* form notified Claimant that PSERS "must receive this form by April 13, 2012."

9. The *T-F Membership Class Election* form also explained that by choosing Class T-F membership, Claimant would be "increasing [his] retirement benefit multiplier from 2.0 percent to 2.5 percent of [his] final average salary for each year of credited PSERS service."

10. Claimant received the February 19, 2012 *T-F Membership Class Election* form.

11. By letter dated March 19, 2012, PSERS mailed to Claimant at **REDACTED** a follow-up letter, reminding Claimant of the deadline to elect Class T-F membership.

12. The March 19, 2012 letter provided, in pertinent part, as follows:

Dear Mr. Christian Miller:

* * *

We are providing you this reminder because your decision to remain a Class T-E member, or to change to a Class T-F member, is final and binding. If you wish to remain as a Class T-E member, you do not have to take any action.

* * *

If you would like to change your membership to Class T-F, you must do so by April 13, 2012.

* * *

If you retire at your normal retirement age, your benefit as a Class T-E member will be your years of services times your final average salary times a 2 percent multiplier. Your employee contributions are subject to change every three years but will be not less than 7.5 percent nor more than 9.5 percent, based on the investment performance of the Retirement Fund.

If you sign and file the Class T-F membership election, your benefit if you retire at your normal retirement age will be your years of service times your final average salary **times a higher 2.5 percent multiplier. Your employee contributions are subject to change every three years but will not be less than 10.3 percent nor more than 12.3 percent**, based on the investment performance of the Retirement Fund. (Emphasis in original).

13. Claimant received the March 19, 2012 reminder letter.

14. The February 19, 2012 cover letters and the March 19, 2012 letter included PSERS' contact information for members who had questions.

15. Claimant did not elect Class T-F membership on or before April 13, 2012.

16. By letter dated April 28, 2012, PSERS informed Claimant that he would permanently remain a Class T-E member because he did not elect Class T-F membership by the election deadline.

17. Claimant timely appealed the April 28, 2012 determination to the Executive Staff Review Committee ("ESRC").

18. By letter dated November 9, 2012, the ESRC denied Claimant's request to change his PSERS membership from Class T-E Locked to Class T-F explaining as follows:

You were enrolled as a Class T-E member of PSERS in February 2012. You had the choice to remain a Class T-E member or to file a *T-F Membership Class Election* form by April [13], 2012. PSERS did not receive a completed *T-F Membership Class Election* form from you. You will, therefore, permanently remain a Class T-E member.

19. At all times between February 13, 2012 and December 4, 2012, Claimant's mailing address was **REDACTED**

20. Claimant timely appealed the ESRC's decision on December 7, 2012.

21. On December 13, 2012, PSERS filed an Answer and New Matter and Notice to Plead.

22. Claimant did not file a response to PSERS' New Matter.¹

¹ Claimant did not respond to PSERS' New Matter and, therefore, the facts set forth in the New Matter may be deemed admitted. See 1 Pa. Code §§ 35.35 and 35.39.

23. An administrative hearing is not yet scheduled in this matter.

24. The matter is ripe for Board adjudication.

DISCUSSION

The Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101 et seq, provides that a "person who first becomes a school employee and an active member . . . on or after [July 1, 2011] and who is eligible to become a Class T-E member may elect to become a member of Class T-F." 24 Pa.C.S. §8305.2(a). A member, however, "must elect to become a Class T-F member by filing a written election with the board within 45 days of notification by the board that such member is eligible for such election." 24 Pa.C.S. §8305.2(b). "If a member fails to timely file an election to become a Class T-F member, then the member shall be enrolled as a member of Class T-E and the member shall never be able to elect Class T-F service[.]" 24 Pa.C.S. §8305.2(d). Thus, there are no exceptions to the Class T-F election deadline.

Claimant does not dispute that he failed to elect Class T-F membership prior to the April 13, 2012 deadline. Nor does Claimant assert that he failed to receive notice of the deadline. Rather, Claimant asserts that he should be permitted to make the election because he did not believe that he qualified for membership in PSERS, as he had not yet worked 500 hours or 80 days.

Preliminarily, the February 19th letters that PSERS sent to Claimant notified him that he "qualified for membership in PSERS" and was a PSERS member and eligible to elect Class T-F membership if he did so by April 13, 2012. In March 2012, PSERS sent Claimant another letter reminding him that if he wanted to change his membership to Class T-F, he had to do so by April 13, 2012. The letter warned him that he would remain a Class T-E member if he did nothing. Any assertion, therefore, that Claimant did not understand that he was a PSERS member and subject to the April 13, 2012 deadline is highly unlikely. Regardless, as discussed above, the Board is not authorized to accept a late-filed T-F election even if Claimant had that misunderstanding. Indeed, although the Board must liberally administer the system, it

does not have authority to circumvent the express language of the Retirement Code. See *Allen v. Public School Employees' Ret. Bd.*, 848 A.2d 1031, 1033 (Pa.Cmwlth. 2004); *Forman v. Public School Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa.Cmwlth. 2001); see also *Harasty v. Public School Employees' Ret. Bd.*, 945 A.2d 783, 788 (Pa.Cmwlth. 2008).

For the above stated reasons, the Board finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issue of whether to accept Claimant's untimely request to elect Class T-F membership with PSERS. Accordingly, PSERS' Motion for Summary Judgment is GRANTED and Claimant's Appeal and Request for Administrative Hearing is DENIED.

COMMONWEALTH OF PENNSYLVANIA

PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

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ORDER

AND NOW, upon consideration of Claimant's Request for Administrative Hearing and PSERS's Motion for Summary Judgment:

IT IS HEREBY ORDERED, that PSERS' Motion for Summary Judgment is GRANTED, and Claimant's Appeal and Request for Administrative Hearing is DISMISSED in compliance with 22 Pa.Code § 201.6(c), as no genuine issue of material fact exists and PSERS is entitled to judgment as a matter of law.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: April 26, 2013

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