

Mail Date: AUG 14 2009

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

IN RE: ACCOUNT OF PETER S. JANNIS
DOCKET NO. 2009-08
CLAIM OF PETER S. JANNIS

OPINION AND ORDER OF THE BOARD

INTRODUCTION

The Public School Employees' Retirement Board (Board) has before it Preliminary Objections filed by the Public School Employees' Retirement System (PSERS) to a Request by Peter S. Jannis (Claimant) for Administrative Hearing in the above-referenced matter. The Preliminary Objections seek the dismissal of the Request for Administrative Hearing for failure to file the request within the period prescribed by 22 Pa.Code § 201.4a(a).

Claimant requests that his employment with the City of Pittsburgh from 1990 to 1993 and from 2000 to 2005 be considered eligible for PSERS membership. While employed in the capacity as a Management Auditor from 1990 to 1993, and as a Chief Accounting Officer from 2000 to 2005, Claimant received compensation from the City of Pittsburgh and was not an employee of a PSERS reporting unit.

Based on the admitted pleadings and PSERS' records, of which the Board may take official notice, the Board makes the following:

FINDINGS OF FACT

1. Claimant worked in the City of Pittsburgh Controller's Office from 1990 to 1993. See Claimant's Answer to the Preliminary Objections at paragraph 1. Copy attached as Exhibit A.

2. In 1993, Claimant's boss, the City/School Controller, transferred him to the Pittsburgh Public Schools Controller's Office where he worked from 1993 to 2000. Exhibit A at paragraph 2.

3. Claimant was enrolled in PSERS on account of his work for the Pittsburgh Public Schools Controller's Office from 1993 to 2000. Exhibit A at paragraph 3.

4. In 2000, the City/School Controller transferred Claimant back to the City of Pittsburgh. Exhibit A at paragraph 4.

5. Claimant received a refund of his contributions and interest for his six plus years of service with a PSERS employer. Exhibit A at paragraph 5.

6. In 2001, PSERS vesting rules changed from ten to five years that would entitle him to vest and receive a retirement benefit from PSERS. Exhibit A at paragraph 6.

7. Because of the 2001 change in PSERS vesting rules, Claimant would like to buy back his time in the PSERS system so that he would have credit for the entire 15 ½ years that he worked for the City/School Controller's office. Exhibit A at paragraph 7.

8. By letter dated November 23, 2005, Claimant requested to be readmitted to PSERS so that he could receive credit for the nine years he worked with the City of

Pittsburgh and six years for the Pittsburgh Public Schools Controller's Office, all the while under the City/School Controller. Exhibit A at paragraph 8.

9. Following additional research, Claimant's request was reviewed by PSERS' Executive Staff Review Committee (ESRC), which denied the request by its letter dated February 27, 2009. Exhibit A at paragraph 9.

10. The ESRC found that Claimant was a City employee for the periods 1990-1993 and 2000-2005. Moreover, he was partially vested in the City of Pittsburgh Municipal Pension Plan and eligible to receive a retirement benefit that has partially been paid by his former employer (the City of Pittsburgh). Exhibit A at paragraph 10.

11. Claimant admits that his employment with the City of Pittsburgh from 1990-1993 and from 2000-2005 is not eligible for PSERS membership. Exhibit A at paragraph 11.

12. The ESRC letter notified Claimant that if he wanted to appeal the denial he must file a request for administrative hearing with PSERS Appeal Docket Administrator within 30 days of the February 27, 2009 date on the ESRC denial letter. Exhibit A at paragraph 12.

13. The ESRC letter was sent by certified mail, return-receipt requested to two addresses in ~~Fla~~ or Claimant: (i) ~~Redacted~~ ~~Redacted~~ and (ii) ~~Redacted~~ ~~Redacted~~ A copy of the ESRC denial letter is attached as Exhibit B.

14. Claimant had until March 30, 2009 to file a request for administrative appeal for a formal adjudication by the agency head. Exhibit A at paragraph 13; Exhibit B.

15. In Claimant's answer to PSERS' preliminary objections, Claimant attached a copy of a United States Postal Service Track & Confirm statement showing delivery of the ESRC denial letter to his Boynton Beach address on April 2, 2009. Exhibit A at paragraphs 12a, 13.

16. Claimant contends that he cannot be held to the 30-day appeal period when he did not receive notice of the ESRC decision until after the appeal period had expired. Exhibit A at paragraph 13.

17. PSERS' records contain the certified mail receipt and return-receipt card, signed by Claimant showing that the item he received on April 2, 2009 was sent by the ESRC to his *Tampa* address. Copies of the Tracking statement, certified mail and return-receipt cards are attached as Exhibit C.

18. PSERS' records also contain the certified mail receipt and return-receipt card, signed by Claimant showing that Claimant received the notice addressed to his *Boynton Beach* residence on March 6, 2009. Copies of the Tracking statement, certified mail and return-receipt cards for the ESRC letter sent to the Boynton Beach address are attached as Exhibit D.

19. PSERS' records show that Claimant received the notice addressed to his Boynton Beach residence on March 6, 2009 as evidenced by his signature on the postal return-receipt card and records of the United States postal service. Exhibit D.

20. Claimant's request for administrative hearing was not received by PSERS in the mail until April 10, 2009. Copy attached as Exhibit E.

DISCUSSION

By letter dated November 23, 2005, Claimant requested to be readmitted to PSERS so that he could receive credit for the nine years he worked with the City of Pittsburgh and six years for the Pittsburgh Public Schools Controller's Office, all the while under the City/School Controller. Claimant's request was reviewed by PSERS' Executive Staff Review Committee (ESRC), which denied the request by its letter dated February 27, 2009.¹

The ESRC letter notified Claimant that if he wanted to appeal the denial he must file a request for administrative hearing with PSERS' Appeal Docket Administrator within 30 days of the February 27, 2009 date on the ESRC denial letter.

The ESRC letter was sent by certified mail, return-receipt requested to two addresses in _____ for Claimant: (1) _____ Redacted _____ Redacted and (2) _____ Redacted _____ Redacted. A copy of the ESRC denial letter is attached as Exhibit A.

¹ Even if Claimant were allowed to proceed on the merits on his claim, he is not eligible to receive credit for his City of Pittsburgh service. Claimant was a City employee for the periods 1990-1993 and 2000-2005. Only an active PSERS member can purchase credit for previous school or creditable non-school service. 24 Pa.C.S. § 8303(c). Claimant was last an active PSERS member from 1993-2000. Moreover, he was partially vested in the City of Pittsburgh Municipal Pension Plan to receive a retirement benefit that has partially been paid by his former employer (the City of Pittsburgh). Under the Retirement Code, an active member cannot receive credit for creditable nonschool service if he is eligible to receive credit for such service under another pension plan, here, the City of Pittsburgh pension plan. 24 Pa.C.S. § 8304(a). Finally, service for a municipality such as the City of Pittsburgh here is not one of the categories of nonschool service for which credit may be eligible under the Retirement Code. 24 Pa.C.S. § 8304(b).

Claimant had until March 30, 2009 to file a request for administrative appeal for a formal adjudication by the agency head. Claimant's request for administrative hearing was not received by PSERS in the mail until April 10, 2009.

PSERS regulations provide that

(a) An adjudicatory benefit appeal and request for administrative hearing from a denial letter from the ESRC must be in writing and received by the Board within 30 days after the date of the ESRC denial letter.

(b) An adjudicatory benefit appeal and request for administrative hearing must be addressed to:

Appeal Docket Administrator
Public School Employees' Retirement Board
P.O. Box 125
Harrisburg, PA 17108-0125

(c) If a claimant fails to appeal a decision of the ESRC to the Board within the prescribed time, the decision of the ESRC is deemed final.

22 Pa. Code § 201.4a (relating to adjudicatory benefit appeal and request for administrative hearing).

In Claimant's Answer to PSERS' Preliminary Objections, Claimant attached a copy of a United States Postal Service Track & Confirm statement showing delivery of the ESRC denial letter to his Boynton Beach address on April 2, 2009. Claimant contends that he cannot be held to the 30-day appeal period when he did not receive notice of the ESRC decision until after the appeal period had expired.

PSERS' records contain the certified mail receipt and return-receipt card, signed by Claimant, showing that the notice he received on April 2, 2009 was sent by the ESRC to his *Tampa* address. Copies of the tracking statement, certified mail and return-receipt cards are attached as Exhibit C. PSERS' records, however, also show unambiguously that Claimant received the notice addressed to his Boynton Beach

residence on March 6, 2009. Copies of the Tracking statement, certified mail and return-receipt cards for the ESRC letter sent to the Boynton Beach address are attached as Exhibit D. The Board may take official notice of these documents that are part of PSERS' docket records. 1 Pa.Code §§ 35.164, 35.173.

Only one timely notice is necessary for the administrative appeal period to run. *Higgins v. Public School Employees' Retirement System*, 736 A.2d 745, 752-53 (Pa. Cmwlth. 1999). The *Higgins* Court held that, for administrative actions such as that here, due process notice requirements "are satisfied when proper notice of the action is *mailed* to an interested party's last known address." *Higgins* at 753 (emphasis added by court)(citation omitted). Claimant received the notice addressed to his Boynton Beach residence on March 6, 2009 as evidenced by his signature on the postal return-receipt card and records of the United States postal service. Exhibit D.

Claimant failed to appeal the decision of the ESRC within the prescribed 30 day period, and the decision of the ESRC is deemed final.

PSERS regulations further provide that:

(a) *Preliminary objections*. The System may, before filing an answer, file preliminary objections directly with the Board. The preliminary objections will conform to Pa.R.C.P. No. 1028 (relating to preliminary objections).

22 Pa. Code § 201.6(a).

Pa.R.C.P. No. 1028(a)(2) provides that preliminary objections may be filed for failure of a pleading to conform to law or rule of court. Pa.R.C.P. No. 1028(a)(2). Here, Claimant has failed to meet the regulatory requirement that his request for administrative hearing be filed within 30 days of the date of the ESRC denial letter.

Consequently, PSERS' preliminary objections to Claimant's untimely Request for Administrative Hearing must be sustained, and Claimant's administrative appeal must be dismissed.

CONCLUSIONS OF LAW

1. PSERS regulations provide that

(a) An adjudicatory benefit appeal and request for administrative hearing from a denial letter from the ESRC must be in writing and received by the Board within 30 days after the date of the ESRC denial letter.

(b) An adjudicatory benefit appeal and request for administrative hearing must be addressed to:

Appeal Docket Administrator
Public School Employees' Retirement Board
P.O. Box 125
Harrisburg, PA 17108-0125

(c) If a claimant fails to appeal a decision of the ESRC to the Board within the prescribed time, the decision of the ESRC is deemed final.

22 Pa. Code § 201.4a (relating to adjudicatory benefit appeal and request for administrative hearing).

2. Claimant failed to appeal the decision of the ESRC within the prescribed 30-day period, and the decision of the ESRC is deemed final.

3. PSERS regulations further provide that

(a) *Preliminary objections.* The System may, before filing an answer, file preliminary objections directly with the Board. The preliminary objections will conform to Pa.R.C.P. No. 1028 (relating to preliminary objections).

22 Pa. Code § 201.6(a).

4. Pa.R.C.P. No. 1028(a)(2) provides that preliminary objections may be filed for failure of a pleading to conform to law or rule of court. Pa.R.C.P. No. 1028(a)(2).

5. Only one timely notice is necessary for the administrative appeal period to run. *Higgins v. Public School Employees' Retirement System*, 736 A.2d 745, 752-53 (Pa. Cmwlth. 1999).

6. The Board may take official notice of documents on file with PSERS. 1 Pa.Code §§ 33.164, 35.173.

7. Claimant has failed to meet the regulatory requirement that his request for administrative hearing be filed within 30 days of the date of the ESRC denial letter.

8. Consequently, PSERS' preliminary objections to Claimant's untimely Request for Administrative Hearing must be sustained, and Claimant's administrative appeal must be dismissed.

DETERMINATION

For the above stated reasons, the Preliminary Objections submitted by PSERS are sustained and the Claimant's Request for an Administrative Hearing is denied for Claimant's failure to file the request within the period prescribed by 22 Pa.Code § 201.4a(a).

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

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ORDER

AND NOW, upon consideration of Claimant's Request for an
Administrative Hearing and PSERS' Preliminary Objections thereto;

IT IS HEREBY ORDERED that PSERS' Preliminary Objections are
sustained and Claimant's Request for an Administrative Hearing is DISMISSED for
failure to file the request within the period prescribed by 22 Pa.Code § 201.4a(a), and as
a result, this Board cannot grant relief for the submitted claim.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

DATED: AUG 14 2009

BY: Melva S. Vogler
Melva S. Vogler, Chairman