

AUG 17 2010

Mail Date: _____

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

IN RE: ACCOUNT OF CAROLIN M. PETKA
DOCKET NO. 2009-25
CLAIM OF CAROLIN M. PETKA

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the Opinion and Recommendation of the Hearing Examiner. We note that neither party filed Exceptions to the Opinion and Recommendation of the Hearing Examiner. The Board finds appropriate the Findings of Fact, Discussion, Conclusions of law, and Recommendation in the Opinion and Recommendation. Accordingly, we hereby adopt the Hearing Examiner's 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 the appeal of Claimant, Carolin M. Petka, is DISMISSED WITH PREJUDICE.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: AUG 17 2010

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

LEGAL OFFICE JUN 10 2010
COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE:

Account of Carolin M. Petka

Claim of Carolin M. Petka

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Docket No. 2009-25

OPINION AND RECOMMENDATION

Date of Hearing: May 12, 2010
Hearing Officer: Sandra W. Stoner, Esquire
For the Claimant: Carolin M. Petka, *pro se* (not present)
For PSERS: David W. Speck, Esquire

Date of Mailing: June 9, 2010

FINDINGS OF FACT

1. On December 18, 2009, the Public School Employees' Retirement Board (hereinafter "the Board") received an appeal and request for an administrative hearing from Carolin M. Petka (hereinafter "Claimant"). (PSERS Exhibit 14.)
2. On March 11, 2010, the Public School Employees' Retirement System (hereinafter "the System") sent a hearing notice to the Claimant advising her that her requested hearing would be held on May 12, 2010, at 1:00 p.m. at the Public School Employees' Retirement System, 5 North Fifth Street, Harrisburg PA 17101. (PSERS Exhibit 15.)
3. This notice advised the Claimant that if she did not appear at the hearing on the date and time scheduled without good cause, the Hearing Officer, upon motion, would recommend to the Board that her appeal be dismissed with prejudice and that the appeal would be terminated and she would not be permitted to raise the appeal issue again to the Board in the future. (PSERS Exhibit 15, pg. 2.)
4. This notice also advised the Claimant how she could reschedule the hearing to a different date if necessary. (PSERS Exhibit 15, pg. 3.)
5. The United States Postal Service Certified Mail Receipt, attached to the hearing notice establishes that Claimant received, on March 13, 2010, timely notice of the date, time and place of the hearing. (PSERS Exhibit 15, pg. 4.)
6. The Claimant's hearing was duly advertised in the Pennsylvania Bulletin on March 27, 2010. (PSERS Exhibit 16.)
7. On April 29, 2010, the System sent the Claimant a reminder notice of her hearing that was scheduled for May 12, 2010 at 1:00 p.m., which reminder notice contained all the information contained in the first notice. (PSERS Exhibit 17.)

8. On May 12, 2010, the undersigned Hearing Officer was present and ready to proceed with the Claimant's hearing, as was counsel for the System, David W. Speck, Esquire. (Transcript, *passim*.)
9. The Claimant failed to appear for her hearing on May 12, 2010 at 1:00 p.m. (Transcript, *passim*.)
10. At no time prior to the hearing, did the Claimant contact the Hearing Officer to request a continuance, change of date or postponement of the hearing.
11. At the commencement of the hearing, those present waited until 1:25 p.m. to open the proceeding, in the event that Claimant was running late. (Transcript, *passim*.)
12. At 1:15 p.m., the Hearing Officer asked Attorney Speck to try to contact Claimant by phone. Atty. Speck called the phone number that Claimant provided on her appeal, but got the voicemail of Carolin M. Petka. Atty. Speck left a message on the voicemail stating that we were convened for the hearing and that the Claimant should call back within five minutes to let us know if she were on her way, running late or intending to come to the hearing. Atty. Speck also stated in the voicemail message that if Claimant had just cause for not appearing, she had ten (10) days in which to file a letter with the Board explaining the reasons why she was unable to attend and that the letter should also be sent to the Hearing Officer. (Transcript, pg.3.)
13. The hearing commenced at 1:25 p.m. without the attendance of or a phone call from the Claimant. (Transcript, *passim*.)
14. After presenting evidence to confirm that Claimant was notified of the date, time and place for her hearing, Atty. Speck, moved to dismiss the Claimant's appeal with prejudice, pursuant to 22 Pa. Code §201.8(a), which provides as follows:

(a) [w]henver 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.

(Transcript, *passim*.)

15. The Claimant failed to contact either the Board or the Hearing Officer, at any time, to explain why she failed to appear at the scheduled hearing. Claimant also failed to reply to the System's Motion to Dismiss with prejudice.

DISCUSSION

The Claimant filed a request for an administrative hearing on the issue of her Effective Date of Retirement. The record establishes that Claimant was twice notified that if she failed to appear for her hearing, her appeal could be dismissed with prejudice. Nevertheless, Claimant did not appear for her scheduled hearing on May 12, 2010 at 1:00 p.m. After waiting approximately 15 minutes, the Hearing Officer asked Atty. Speck to try to call Claimant. Atty. Speck did call Claimant at the phone number she provided on her appeal and left a message asking her to call to advise those present at the hearing whether or not she was on her way. After waiting another 10 minutes, and not hearing from the Claimant, the Hearing Officer proceeded with the hearing in the absence of the Claimant. During the course of the hearing, counsel for the System moved to dismiss, with prejudice, the Claimant's appeal. (Transcript, *passim*.)

Pursuant to the General Rules of Administrative Practice and Procedure, the Claimant had ten (10) days within which to answer or object to the motion to dismiss with prejudice made orally by counsel for the System at the hearing. *See* 1 Pa. Code §35.179. The Claimant was notified of this time requirement in the phone message that was left on her voicemail. The Claimant has failed to file any answer or objection to the Motion to Dismiss with prejudice.

Therefore, pursuant to 22 Pa. Code §201.8(a), it is hereby recommended to the Board that it dismiss the Claimant's appeal with prejudice.

CONCLUSIONS OF LAW

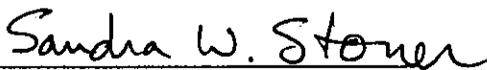
1. The Claimant was given appropriate notice of the hearing scheduled regarding her appeal on the issue of Effective Date of Retirement.
2. The Public School Employees' Retirement System gave the Claimant proper notice of her hearing to be held on May 12, 2010 at 1:30 p.m. at least two times.
3. The Claimant failed to appear at her hearing without good cause and did not request a continuance or file an answer or objection to the motion to dismiss with prejudice her claim, which motion was submitted orally by counsel for the System during the course of the hearing.
4. Pursuant to 22 Pa. Code §201.8(a), it is appropriate for the Board to dismiss Claimant's case with prejudice without considering the merits of her claim.

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE: :
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RECOMMENDATION

AND NOW, this 9th day of June 2010, upon consideration of the foregoing Findings of Fact, Conclusions of Law and Discussion, the Hearing Officer for the Public School Employees' Retirement Board recommends that the appeal filed by Carolin M. Petka should be **DISMISSED**, with prejudice, pursuant to the authority of 22 Pa. Code §201.8(a), due to Claimant's failure, without good cause, to appear for her scheduled hearing.


Sandra W. Stoner, Esquire
Hearing Officer

Date of Mailing: June 9, 2010