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

IN RE: ACCOUNT OF EVANGELINE A. RONSTADT
 DOCKET NO. 2011-16
 CLAIM OF EVANGELINE A. RONSTADT

OPINION AND ORDER OF THE BOARD

The Public School Employees' Retirement Board ("Board") has carefully and independently reviewed the entire record of this proceeding, including the pleadings, transcript, exhibits, briefs, the Public School Employee Retirement System's ("PSERS") Brief on Exceptions, and the proposed Opinion and Recommendation of the Hearing Officer. Evangeline A. Ronstadt ("Claimant") did not file exceptions to the proposed Opinion and Recommendation, and she did not file a response to PSERS' exceptions.

The Board agrees with the Hearing Officer's overall conclusion that Claimant is not eligible to receive and purchase the eight years of out-of-state service credit that she seeks. The Board, however, also agrees with PSERS' exceptions. The Board finds that the proposed findings of fact are not all supported by the record or relevant and that the Hearing Officer improperly raised and addressed an alleged miscounseling claim that was not raised by

Claimant. Accordingly, based on its independent review, the Board finds as follows¹:

FINDINGS OF FACT

1. Claimant enrolled in PSERS in September 1967 by virtue of her employment with the Washington School District. (N.T. 16; see PSERS-1F; N.T. 74).
2. Claimant was employed as a teacher with the Washington School District from 1967 to 2009. (N.T. 6, 16).
3. In 1976, Claimant contacted PSERS about purchasing out-of-state service credit. (N.T. 11-12; PSERS-1C).
4. By cover letter dated June 17, 1976, PSERS provided Claimant with four *Application for Credit* forms “for the purchase of your former out-of-state service”. The cover letter informed Claimant that, after she returned the forms to PSERS, PSERS would “prepare the necessary billing indicating the amount due in order to purchase [the] eight years of out-of-state service.” (PSERS-1C).
5. On or about March 2, 1987, PSERS received four *Application for Credit* forms from Claimant. Three of the forms identified the following out-of-state school service in Minnesota: (a) one year in Truman, Minnesota (1961-1962); (b) three years in Le Sueur, Minnesota (1962-1963; 1963-1964; 1964-1965); and (c) two years in Circle Pines, Minnesota (1965-1966 and 1966-1967). (PSERS-1C; N.T. 9-10, 22, 24, and 26). The fourth form identified two years of out-of-state school service in Terry, Montana (1959-1960 and 1960-1961). (Claimant 1, p. 1).

¹ The Board may adopt or reject, in whole or in part, the proposed opinion and recommendation of the Hearing Examiner or issue its own opinion and order. 22 Pa.Code § 201.11(c).

6. PSERS requires a *Certification of Out-of-State Service* form to process an application for out-of-state credit to ensure that the member has withdrawn their contributions from their former, out-of-state retirement system and is not receiving double credit for the service. (N.T. 69-70, 73; see also N.T. 84).

7. On December 14, 1988, PSERS received a *Certification of Out-of-State Service* form completed by the Minnesota Teachers Retirement Association and stamped it "ACK Date December 14, 1988 POS." The certification confirmed that Claimant had withdrawn her contributions and was not "eligible to receive a retirement benefit from [Minnesota's] system now or in the future[.]" (PSERS-1E).

8. The "POS" in the stamp refers to PSERS' purchase of service section and indicates when the document was received. (N.T. 68-69).

9. PSERS' routine business practice is to stamp documents when received. (N.T. 59).

10. The Minnesota official signed and dated the *Certification of Out-of-State Service* form on December 8, 1988. (PSERS-1E).

11. Claimant presented a *Certification of Out-of-State Service* form for Montana at the September 5, 2012 administrative hearing. (Claimant 1, p. 2).

12. The Montana *Certification of Out-of-State Service* form, as presented at the administrative hearing, was attached to the March 2, 1987 *Application for Credit* form from Montana. (Claimant 1).

13. Montana's retirement system purportedly signed the *Certification of Out-of-State Service* form on August 26, 1988. (Claimant 1, p. 2).

14. The Montana *Certification of Out-of-State Service* form does not contain a PSERS' stamp or any other indication that PSERS received it. (Claimant 1, p. 2).

15. As of the date of the administrative hearing, PSERS had no record of Claimant submitting a *Certification of Out-of-State Service* form for her Montana service. (N.T. 84; see PSERS-1A-G).

16. After receiving the Minnesota Teachers Retirement Association's *Certification of Out-of-State Service* form on August 26, 1988, PSERS processed Claimant's applications for six years of service in Minnesota for the school years 1961-1967. (PSERS-1F, 2; N.T. 70-75).

17. On March 10, 1989, PSERS sent Claimant a *Statement of Amount Due* for her service in Minnesota. (PSERS-2; see PSERS-1F; N.T. 75-76, 80-81).

18. Claimant received the March 10, 1989 *Statement of Amount Due*, as evidenced by her submission of that statement in her July 29, 2009 appeal to PSERS. (PSERS-2; N.T. 29, 31, 79).

19. The cover letter to the March 10, 1989 *Statement of Amount Due* provided, in part, as follows:

Enclosed is a "Statement of Amount Due" for your out-of-state service. If you elect to purchase this service, either in a lump sum or through authorized payroll deductions, please read the following, sign, and return to the Public School Employees' Retirement System with your "Statement of Amount Due." If you have questions, please contact us at 717-783-1494.

YOUR OUT-OF-STATE REQUEST CANNOT BE PROCESSED WITHOUT THIS FORM. (PSERS-2).

20. Claimant did not sign or return the March 10, 1989 cover letter to PSERS. (N.T. 80; see N.T. 12-13).

21. The March 10, 1989 *Statement of Amount Due* identified six years of service for Claimant from 1961-1967. (PSERS-2; see also PSERS-1F, N.T. 32-33, 81-82).

22. The *Statement of Amount Due* and its cover letter instructed Claimant that she could purchase the six years of service "by a single lump sum payment or by payroll deductions." (PSERS-2; N.T. 80).

23. The *Statement of Amount Due* indicated that a lump sum payment must be submitted within ninety days of billing. (PSERS-2; N.T. 76, 102).

24. The *Statement of Amount Due* also gave the Claimant the option of purchasing the service with monthly deductions from her pay on plans from anywhere from 12 months to 72 months. The *Statement of Amount Due* indicated that Claimant was required to submit a payment plan within thirty days. (PSERS-2; N.T. 76, 103).

25. Claimant did not respond to the March 10, 1989 *Statement of Amount Due*. (N.T. 12, 13, 31, 82).

26. Claimant did not make any payment to PSERS to purchase any of her out-of-state credit. (N.T. 31-32, 82-83).

27. In 1989, if a PSERS member applied to purchase service credit, but did not make a lump sum payment within ninety days or execute a payment plan with their employer within thirty days, PSERS' office of fiscal management voided the member's application. (N.T. 76, 82).

28. PSERS, having not received any communications or payments from Claimant, voided out Claimant's *Statement of Amount Due* on August 7, 1989. (PSERS-1F; see N.T. 76-77, 82-83, 103-104).

29. To purchase service after a void, an active member had to "[e]ither re-submit the applications or notify PSERS that they had applications on file that they would like to have processed." (N.T. 77, 78)

30. Between December 20, 2002 and December 2, 2008, Claimant received and read seven *Statements of Account* from PSERS reflecting that PSERS only credited her with her school service in Pennsylvania. (PSERS-3 through 9; N.T. 36-38).

31. Claimant did not contact PSERS regarding her out-of-state service after receiving any of the *Statements of Account*. (N.T. 38).

32. On April 27, 2009, Claimant attended a PSERS' retirement exit counseling session that was conducted by Kevin Moczan and Jason Kosior, PSERS' counselors. (PSERS-14, 15; N.T. 18, 42, 110-11, 113, 133).

33. Claimant did not recognize either PSERS counselor at the administrative hearing. (N.T. 7).

34. There is a standard outline of topics for PSERS' retirement exit counseling sessions that counselors are required to follow. (N.T. 108, 112-14, 132-33).

35. At the April 27, 2009 session, Messrs. Moczan and Kosior explained to the members in attendance how their retirement benefit is calculated. (N.T. 113-16, 137-39).

36. Mr. Moczan testified that, at exit counseling sessions, “we clearly explain to [members] that the higher their final average salary is and the more years of service they have the greater that their pension is.” (N.T. 114; *see also* N.T. 116).

37. Messrs. Moczan and Kosior discussed the purchase of out-of state service at the April 27, 2009 session. (N.T. 120-21, 128, 136-37).

38. Messrs. Moczan and Kosior informed the members at the April 27, 2009 session that they have to apply to purchase service while they are active, contributing members. (N.T. 116, 125-26, 127, 128, 135-36; PSERS-15).

39. Mr. Moczan testified that “[w]e tell them the benefit of purchasing service because the more years you have the greater that your pension is.” (N.T. 116).

40. Claimant did not ask any questions at the April 27, 2009 exit counseling session, and she did not meet one-on-one with any of the counselors after the session. (N.T. 46).

41. After attending the group counseling session on April 27, 2009, the Claimant had an understanding that forty years of service was the maximum service that a retiring member could have credit for. (N.T. 11).

42. Neither Mr. Moczan nor Mr. Kosior made any statements to Claimant at the April 27, 2009 session regarding forty years of service. (N.T. 121, 127, 133, 134, 137).

43. Messrs. Moczan and Mr. Kosior testified separately that questions regarding forty years of service to generate 100% salary upon retirement generally come up in telephone calls. (N.T. 121, 122, 134).

44. Mr. Moczan testified that he gets questions over the telephone as to how a member can receive a hundred percent of their final average salary and he informs them that, among other things, they need to have forty years of service as a Class T-D member. (N.T. 121-122).

45. A member who retires with more than forty years of service can get more than 100% of their final average salary, subject to the Internal Revenue Service's 415(b) limit. (N.T. 109, 121-22).

46. Between April 27, 2009 and May 22, 2009, Claimant requested a retirement estimate from PSERS. (PSERS-10; N.T. 90-91).

47. By letter dated May 22, 2009, PSERS provided Claimant with a *Normal Retirement Estimate* that indicated that she was credited with forty-two years of service (that is, the amount of her school service in Pennsylvania). (PSERS-11; N.T. 40-41, 93-94).

48. Claimant testified that, when she received the estimate, "I made sure I got credit for all the years in the state." (N.T. 41).

49. Claimant's last day of school service was June 8, 2009. (PSERS-12, 13).

50. After Claimant's last day of service, she went to PSERS' South Side location for assistance with filling out retirement-related forms. (Compare N.T. 7 (noting June 9, 2009 as the date she went to the South Side), with Appeal and

Request for Administrative Hearing (noting July, 2009 as when she went to the South Side)).

51. During the South Side counseling session, Claimant informed a PSERS' employee that she had out-of-state service credit for which she had previously applied. (See N.T. 8, 11).

52. Claimant testified that the employee told her that she should have applied to purchase her out-of-state credit earlier. (See N.T. 8).

53. Claimant testified that she was then told that she could appeal that determination. (N.T. 8).

54. On July 9, 2009, Claimant appealed PSERS' decision to not credit her with eight years of out-of-state service to the Executive Staff Review Committee ("ESRC"). (PSERS-2).

55. By letter dated July 19, 2011, PSERS advised Claimant that the Executive Staff Review Committee had reviewed her request to purchase her out-of-state service credit and denied her request to do so and informed her that she could file a written request for a formal administrative hearing. (PSERS-13).

56. On August 14, 2009, PSERS received Claimant's retirement application. (PSERS-12).

57. An administrative hearing was held before hearing examiner Edward S. Finkelstein, Esquire on September 5, 2012. (Transcript, *passim*).

58. Claimant was present at the hearing, *pro se*, and had the right to testify and present evidence in support of her appeal and to cross examine witnesses. (Transcript, *passim*).

DISCUSSION

The Public School Employees' Retirement Code ("Retirement Code"), 24 Pa. C.S. §8101 et seq., unequivocally provides that only an "active member" shall be eligible to receive credit for out-of-state service provided, among other things, that the member is not receiving or eligible to receive retirement benefits from an out-of-state retirement system:

An active member . . . shall be eligible to receive Class T-C . . . service credit for creditable nonschool service . . . as set forth in subsection (b) provided that he is not entitled to receive, eligible to receive now or in the future, or is receiving retirement benefits for such service under a retirement system administered and wholly or partially paid for by any other governmental agency . . . and further provided that such service is certified by the previous employer and the manner of payment of the amount due is agreed upon by the member, the employer, and the board.

24 Pa.C.S. § 8304 (a).² "Active member" is defined, in pertinent part, as a "school employee for whom pickup contributions are being made to the fund."

24 Pa.C.S. § 8102. "School employee" is defined, in pertinent part, as any "person engaged in work relating to a public school for any governmental entity and for which work he is receiving regular remuneration as an . . . employee[.]" *Id.* Thus, once a member terminates school service and is no longer making contributions to PSERS, he or she is ineligible to apply for and receive out-of-state service credit.

Before July 1, 2001, an active member could purchase out-of-state service credit by making a lump sum payment to PSERS "within 90 days" or by having the

² See also 22 Pa. Code § 213.4(a) ("Creditable nonschool service may be purchased only by an active member[.]"); 22 Pa.Code § 213.4(f) ("Nonschool service may be purchased by an active member who was a teacher" in a public school in a state other than this Commonwealth.); 24 Pa.C.S. § 8503(c) ("Purchase of credit for previous service. -- Upon receipt of an application from an active member . . . , the board shall determine and certify to the member the amount required to be paid by the member.).

amount “amortized with statutory interest through salary deductions.” 24 Pa.C.S. § 8324(d) (1975). In December 1988, Claimant completed her request to purchase out-of-state credit for six years of service in Minnesota³ On March 10, 1989, PSERS mailed Claimant a *Statement of Amount Due* that: (1) identified the amount that she owed if she wanted to purchase the credit; and (2) notified her that she had ninety days to make a lump sum payment or thirty days to submit a payment plan for salary deductions. The cover letter to the statement warned Claimant that her request “CANNOT BE PROCESSED” unless PSERS received a response. (PSERS-2). Claimant received this correspondence, but took no action. Having received no response, PSERS properly voided Claimant’s request to purchase her Minnesota service in August 1989.

Twenty years later and after she terminated school service in June 2009, Claimant inquired with PSERS as to her out-of-state service. Claimant was

³ Claimant asserts that she also completed her application to purchase credit for her out-of-state service in Montana. PSERS claims that she did not complete her application because she did not submit the required *Certification of Out-of-State Service* form from Montana’s retirement system. Claimant bears the burden of establishing the facts necessary to sustain her claim. See *Gierschick v. State Employees’ Ret. Bd.*, 733 A.2d 29, 32 (Pa.Cmwith. 1999); see also *Wingert v. State Employees’ Ret. Bd.*, 589 A.2d 269, 271 (Pa.Cmwith. 1991). At the administrative hearing, Claimant produced a two-page exhibit that was marked “Claimant 1” as proof that she filed a *Certification of Out-of-State Service* form from Montana with PSERS. Page 1 of the exhibit is Claimant’s *Application for Credit* form that identifies former school service in Terry, Montana. PSERS received page 1 on March 2, 1987, as evidenced by the PSERS’ March 2, 1987 “received” stamp. (This is the same date that PSERS received Claimant’s *Application for Credit* forms for Minnesota.) Page 2 of the exhibit is the second page of a *Certification of Out-of-State Service* form -- a separate form. There is no “received” or “POS” stamp on page 2 that would indicate that PSERS received it. Although Claimant presented page 1 and 2 as one document, it is factually impossible for PSERS to have received both pages on March 2, 1987. The certification at page 2 appears to have been completed by Montana’s retirement system on August 26, 1988, which is more than a year after March 2, 1987. Thus, the exhibit marked Claimant 1 fails to establish that Claimant filed a *Certification of Out-of-State Service* form for her Montana service with PSERS.

informed that she was no longer eligible to purchase out-of-state service credit because she was not an active member. Claimant appeals that determination.

Claimant does not dispute that she was no longer an "active member" at the time of her 2009 inquiry. Rather, Claimant argues that the Board should nevertheless allow her to purchase her eight years of out-of-state service because she was miscounseled at an April 27, 2009 retirement exit counseling session. Specifically, Claimant asserts that she left that session with the understanding that forty years of service was the maximum number of years that she could accrue for retirement purposes. (N.T. 11; Appeal and Request for Administrative Hearing). Claimant also asserts that she was not counseled on how to purchase out-of-state service at that session "and, therefore, she was told that forty years was all that matters." (Appeal and Request for Administrative Hearing). For the reasons set forth below, the Board finds that Claimant was not miscounseled.

First, Claimant's credibility as to what was allegedly said at the April 27, 2009 session and by who is questionable. Claimant's description of what she was told changes, and it is unclear what Claimant was told regarding forty years. It is also unclear who told her what she alleges she was told, as Claimant failed to recognize either counselor in attendance at the administrative hearing. PSERS' counselors' testimony, on the other hand, was clear and unwavering. Messrs. Moczan and Kosior are certain that they did not say anything to Claimant regarding forty years at the April 27, 2009 session. (N.T. 121, 127, 133, 134, 137). They generally answer questions regarding forty years over the telephone. (N.T. 121, 122, 134).

Second, Claimant's testimony as to what was said at the April 27, 2009 session is also questionable given her statement that she "was not given information to purchase out-of-state service." (Appeal and Request for Administrative Hearing). As both counselors testified, they discuss out-of-state service at every exit counseling session.⁴ (See N.T. 108, 112-114, 120-121, 128, 132-133, 136-137). A member's failure to hear what a PSERS' counselor is explaining does not equate to miscounseling.

Even had Claimant been miscounseled, however, she would not be entitled to relief as she was no longer an "active member" of PSERS when she inquired about her out-of-state service in 2009. The Retirement Code directs that only "active members" are eligible to receive credit for out-of-state service, and the Board does not have the authority to grant rights beyond those specifically set forth therein. *Forman v. Public School Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa.Cmwlt. 2001).

Claimant, citing to the June 17, 1976 letter, asserts in her brief that she had no reason to believe she needed to do more after filing her applications with PSERS that verified her out-of-state employment. See Claimant's Letter Brief at 1. The June 17, 1976 letter, however, informs Claimant that once she has completed her applications for the purchase of out-of-state service, PSERS will "prepare the necessary billing indicating the amount due in order to purchase [the] eight years of

⁴ "Evidence ... of the routine practice of an organization, whether corroborated or not ... is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the ... routine practice." Pa.R.E. 406; see also *Hoffman v. State Employees' Ret. Bd.*, 915 A.2d 674, 680 (Pa.Cmwlt. 2006).

out-of-state service.” (PSERS-1C.) The letter does not state or imply that no further action by Claimant is required.

Moreover, after Claimant submitted the certification for her Minnesota service in December 1988, PSERS sent Claimant a *Statement of Amount Due* that notified her that there were deadlines for making a purchase. She was warned that her out-of-state request could not be processed unless she responded. (PSERS-2). Claimant received this correspondence, but failed to take any action. In the ensuing years, Claimant received and read seven *Statements of Account* from PSERS that did not include any of her requested out-of-state service credit, but she still took no action. (PSERS-3 through 9; N.T. 38).

Claimant’s assertion that she had no reason to believe that she needed to do more is unreasonable under the circumstances and not a basis for relief.⁵ Claimant’s failure to inquire about her out-of-state applications for credit for twenty years is also unreasonable. See *Costello v. State Employees’ Ret. Bd.*, 596 A.2d 260, 263 (Pa.Cmwth.1991) (rejecting petitioner’s untimely request to purchase multiple service credit because, among other reasons, the deadline to purchase the credit was clearly set forth on her billing statement and she waited five years to make inquiries); *Krevsky v. State Employees’ Ret. System*, No. 2705 C.D. 1992 (Pa.Cmwth. June 18, 1993) (denying petitioner’s untimely request to purchase

⁵ At the administrative hearing, Claimant testified that, in 1976, she learned from other teachers that she could wait until her retirement to buy back her time and it would not cost a lump sum, but would be “divied up.” (See N.T. 20-21). To the extent Claimant had that understanding from comments made in 1976, it was not from PSERS. In 1976, PSERS did not offer the option of deferring purchase of service payments until school termination. Deferred payments did not become an option under the Retirement Code until July 1, 2001. See 24 Pa.C.S. § 8324. In addition, as discussed above, by correspondence dated March 10, 1989, PSERS made clear to Claimant that she could purchase her out-of-state service through a lump sum payment within ninety days or by selecting a payment plan within thirty days to have the cost deducted from her paycheck. No other payment options were offered.

multiple service credit because, among other reasons, PSERS sent the petitioner a bill that indicated payment was due by early April 1987, but petitioner did not make inquiries until 1988, which was beyond the reasonable time for inquiries).

CONCLUSIONS OF LAW

1. PSERS is a creature of the legislature and its members have only those rights created by the Public School Employees' Retirement Code, 24 Pa. C.S. §8101 et seq. *Forman*, 778 A.2d at 780.
2. The Public School Employees' Retirement Board has no authority to grant rights to members beyond those specifically set forth in the Retirement Code. *See id.*
3. A claimant bears the burden of establishing the facts necessary to sustain her claim. *See Gierschick*, 733 A.2d at 32; *see also Wingert*, 589 A.2d at 271.
4. Only an "active member" of PSERS "shall be eligible to receive" or purchase nonschool service credit, provided that: (a) the member is not entitled to receive, eligible to receive now or in the future, or is receiving retirement benefits for such service under a retirement system administered and wholly or partially paid for by any other governmental agency; (b) the member's services are certified by the previous employer; and (c) the manner of payment of the amount due is agreed upon by the member, the employer, and the board. 24 Pa.C.S. § 8304(a), (b)(3); 22 Pa.Code § 213.4(a), (f); *see also* 24 Pa.C.S. § 8503(c); 24 Pa.C.S. § 8507(d).

5. The Retirement Code defines “active member,” in pertinent part, as a “school employee for whom pickup contributions are being made to the fund.” 24 Pa.C.S. § 8102.

6. “School employee” is defined, in pertinent part, as any “person engaged in work relating to a public school for any governmental entity and for which work he is receiving regular remuneration as an . . . employee[.]” *Id.*

7. Claimant terminated school service on June 8, 2009, and she was no longer an “active member” of PSERS after that date.

8. Prior to July 1, 2001, a member could purchase out-of-state service credit by either making a lump sum payment to PSERS “within 90 days” or having the amount “amortized with statutory interest through salary deductions.” 24 Pa.C.S. § 8324(d) (1989).

9. On August 7, 1989, PSERS properly voided Claimant’s December 1988 request to purchase Minnesota, out-of-state service credit for the school years 1961-1967.

10. Claimant failed to re-apply to purchase her Minnesota, out-of-state service with PSERS while she was an active member.

11. Claimant never completed her request to purchase credit for her service with Montana because she did not submit a *Certification of Out-of-State Service* form from Montana’s retirement system to PSERS.

12. Claimant was not advised by a PSERS’ counselor that the most credit that she could receive toward retirement was forty years of service.

13. At the April 27, 2009 retirement exit counseling session, PSERS’s

counselors discussed the purchase of out-of-state service credit.

14. Claimant's assertion that she thought that she did all that she was required to do after filing her applications to purchase credit for out-of-state service is unreasonable, and her delay in following up on her applications with PSERS is unreasonable.

15. Claimant is not eligible to purchase and receive credit for her out-of-state service.

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE: ACCOUNT OF EVANGELINE A. RONSTADT
DOCKET NO. 2011-16
CLAIM OF EVANGELINE A. RONSTADT

BOARD OPINION AND ORDER OF THE BOARD

AND NOW, upon consideration of the entire record in this matter, IT
IS HEREBY ORDERED THAT Claimant's request to purchase service and
receive credit for prior out-of-state school service in Minnesota and Montana for
the school years 1959 through 1967 is denied.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: April 26, 2013

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