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

**IN RE: ACCOUNT OF ANNMARIE B. TEDRICK
DOCKET NO.: 2012-44
CLAIM OF ANNMARIE B. TEDRICK**

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, requesting that Annmarie B. Tedrick's ("Claimant") 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 September 26, 2014, and served a copy 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 September 26, 2014, PSERS notified Claimant that she had 30 days to respond to PSERS' motion under Pa. R.C.P. No. 1035.3. Claimant's response, therefore, had to be filed on or before October 27, 2014. See 1 Pa. Code §§ 31.11, 31.12, and 33.34. Claimant did not file a response to the motion.

Where no factual issues are in dispute, no evidentiary hearing is required under 2 Pa.C.S. § 504. The function of a summary judgment motion is to eliminate the needless use of time and resources of the litigants and the Board in cases where an evidentiary administrative hearing would be a useless formality. See *Liles v. Balmer*, 567 A.2d 691 (Pa. Super. 1989). 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 her 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. Cmwlth. 1984).

In responding to a motion for summary judgment, an adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response identifying “(1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion . . . , or (2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.” Pa.R.C.P. No. 1035.3(a). “An adverse party may supplement the record or set forth the reasons why the party cannot present evidence essential to justify opposition to the motion and any action proposed to be taken by the party to present such evidence.” Pa.R.C.P. No. 1035.3(b).

Because Claimant has not filed a response to PSERS’ Motion for Summary Judgment identifying 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 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 is eligible to purchase previous school service.

FINDINGS OF FACT

Based on the record, the Board finds the following relevant facts not in dispute:

1. During the 2009-2010 school year, Claimant was assaulted while working for the School District of Philadelphia (“SDP”) and sustained work related injuries. (PSERS-1, p. 2)
2. Claimant subsequently began receiving workers’ compensation benefits for such injuries. *Id.*

3. On January 16, 2010, SDP reported to PSERS that Claimant was placed on a non-contributing leave of absence as of January 16, 2010.
4. Claimant's service with SDP was subsequently terminated on June 30, 2010.
5. During the time Claimant was on a non-contributing leave of absence, neither Claimant nor SDP submitted contributions to PSERS; nor were contributions withheld from the workers' compensation benefits Claimant was receiving. PSERS also did not credit Claimant with any school service while she was on a non-contributing leave of absence.
6. On August 18, 2010, Claimant attended a Retirement Exit Counseling session. (See PSERS-3)
7. On September 8, 2010, PSERS received a PSRS-8, *Application for Retirement*, from Claimant dated August 18, 2010. (PSERS-4)
8. By letter dated October 5, 2010, PSERS notified Claimant of her initial retirement benefit based on a termination date of June 30, 2010, and an effective date of retirement of July 1, 2010. (PSERS-5)
9. By letter dated November 15, 2010, PSERS notified Claimant of her finalized retirement benefit based on 8.98 years of credited service, a termination date of June 30, 2010, and an effective date of retirement of July 1, 2010. (PSERS-6)
10. On November 23, 2010, PSERS received a packet from Claimant containing: (1) a letter from Claimant dated November 18, 2010 (PSERS-7a); (2) a letter dated November 9, 2010, from Laura Orsatti Weissflog of Genesis Family Counseling; (3) a letter dated October 28, 2010, from SDP to Claimant (PSERS-7b); (4) a letter dated October 25, 2010, from Burton Weiss, M.D.; (5) a PSRS-696 form, *Application to Return Withdrawn Contributions* (PSERS-7c) for service rendered from August 1973 through June 1974; and (6) a PSRS-27 form, *Purchase of Former Full-Time Uncredited*

Service, requesting to purchase service with SDP during the 2009-2010 school year (PSERS-7d).

11. SDP did not complete Section E, "Employer Certification," on the PSRS-27 form, *Purchase of Former Full-Time Uncredited Service* (PSERS-7d, p. 2); rather, SDP stated in the October 28, 2010, letter that:

Our records indicate that you were on Workers' Compensation (WC) before being dismissed from the School District of Philadelphia.

In order to purchase the time while out on WC you must return to work for the School District of Philadelphia. Therefore, there is nothing for you to purchase.

(PSERS-7b)

12. By letter dated December 22, 2010, PSERS denied Claimant's request to purchase service from January 15, 2010, to June 30, 2010, and return previously withdrawn contributions for service rendered from August 1973 through June 1974 because Claimant was not an active member at the time she submitted the November 23, 2010, requests. (PSERS-8)

13. On January 19, 2011, Claimant filed an appeal with PSERS' Executive Staff Review Committee ("ESRC") requesting that PSERS process her request to purchase service from January 15, 2010, to June 30, 2010, and to return previously withdrawn contributions for service rendered from August 1973 through June 1974 (PSERS-9)

14. By letter dated August 23, 2012, the ESRC denied Claimant's requests to purchase service from January 15, 2010, to June 30, 2010, and return previously withdrawn contributions for service rendered from August 1973 through June 1974 because Claimant was not an active member at the time she submitted her requests to purchase service. (PSERS-10)

15. Claimant filed an Appeal and Request for Administrative Hearing before this Board on September 28, 2012. (PSERS-1)

16. On October 15, 2012, PSERS filed its Answer to Claimant's Appeal and Request for Administrative Hearing. (PSERS-2).
17. On September 26, 2014, PSERS filed a Motion for Summary Judgment.
18. This matter is ripe for Board adjudication.

DISCUSSION

Section 8303(c) of the Public School Employees' Retirement Code ("Retirement Code") states that "[e]very *active member* of the system or a multiple service member who is an active member of the State Employees' Retirement System on or after the effective date of this part may purchase credit and receive eligibility points . . ." for previous school service. 24 Pa.C.S. § 8303 (c) (emphasis added). An active member is defined as "a school employee for whom pick-up contributions are being made to the fund . . ." 24 Pa.C.S. § 8102. The term "school employee" is defined as "[a]ny person engaged in work relating to a public school for any governmental entity and for which work he is receiving regular remuneration as an officer, administrator or employee excluding, however, any independent contractor or a person compensated on a fee basis." 24 Pa.C.S. § 8102.

By operation of law, Claimant's status as an active member ended at the time she terminated service. See *Lawrie v. PSERB*, 595 A.2d 753 (Pa. Cmwlth. 1991). It is undisputed that Claimant's requests to purchase service were submitted after her termination date of June 30, 2010. Because Claimant was terminated from service with SDP as of June 30, 2010, Claimant was no longer an active member of PSERS when she requested to purchase service.

Claimant argues in her appeal, however, that her request should be processed because she was precluded from returning to active service due to the "sudden and/or emergency nature" of her injuries that required her to retire rather than return to active service. (See PSERS-1) Claimant's equitable argument cannot be considered by this Board.

While a member is entitled to a liberal construction of the Retirement Code, Claimant has only those rights created by the Retirement Code and none beyond. See generally, *Burris v. SERB*, 745 A.2d 704 (Pa. Cmwlth. 2000); *Bittenbender v. SERB*, 622 A.2d 403 (Pa. Cmwlth. 1992); *Hughes v. PSERB*, 662 A.2d 701 (Pa. Cmwlth. 1995), *allocatur denied*, 668 A.2d 1139 (Pa. 1996). The "active member" eligibility is

mandatory and cannot be waived. The Board, therefore, must apply the definition of “active member” in the Retirement Code when determining Claimant’s eligibility to purchase service credit after her termination date. Upon Claimant’s termination from employment, she no longer qualified as an “active member,” because she was not engaged in school work, receiving regular remuneration, and no contributions were being made to PSERS on her behalf.¹ Claimant’s request to purchase service after June 30, 2010, when she was not an active member is, therefore, untimely as a matter of law. Neither PSERS nor the Board is authorized to enlarge the statutory time frame in which a member must file an application to purchase service. *Forman v. PSERB*, 778 A.2d 778 (Pa. Cmwlth. 2001). The Board, therefore, is precluded from taking an untimely application and deeming it as timely filed. *Forman, id.*; *Finnegan v. PSERB*, 560 A.2 848 (Pa. Cmwlth. 1898), *aff’d* 591 A.2d 1053 (Pa. 1991).

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 Claimant is eligible to purchase previous school service.² Accordingly, PSERS’ Motion for Summary Judgment is GRANTED and Claimant’s Appeal and Request for Administrative Hearing is DENIED.

¹ As of January 16, 2010, SDP reported Claimant on a non-contributing leave of absence during which contributions were not submitted by Claimant or SDP; nor were contributions withheld from the workers’ compensation benefits Claimant received. Preliminarily, PSERS properly did not credit Claimant with any school service between January 16, 2010, and June 30, 2010.

² PSERS notes in its motion that Claimant did not specifically appeal the ESRC’s determination that Claimant was not eligible to purchase previously refunded service rendered from 1972 through 1974. PSERS asserts that Claimant has, therefore, waived her right to appeal that part of the determination. PSERS correctly notes, however, that the analysis of Claimant’s eligibility to purchase previously refunded service follows the same analysis of her request to purchase service rendered on a non-contributing leave of absence, i.e., that Claimant must have been an active member at the time she requested to purchase previously refunded service. The facts show that both of Claimant’s requests to purchase service were submitted together in November 2010, well after her termination of service on June 30, 2010. Whether preserved or not, Claimant’s request to purchase previously refunded service was not made while Claimant was an active member. Accordingly, Claimant is precluded from purchasing such service.

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

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ORDER

AND NOW, upon consideration of Claimant's Appeal and Request for Administrative Hearing and PSERS' 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(b), as no genuine issue of material fact exists and PSERS is entitled to judgment as a matter of law. Accordingly, this Board denies Claimant's request to purchase previous school service submitted after her effective date of termination of June 30, 2010.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated:

Jan. 21, 2015

By:

Melva S. Vogler
Melva S. Vogler, Chairman