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

IN RE: ACCOUNT OF VALERIE H. WATROUS  
DOCKET NO. 2013-10  
CLAIM OF VALERIE H. WATROUS

**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 Valerie H. Watrous'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 June 13, 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 June 13, 2013, 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 July 15, 2013. 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). "Summary judgment may be entered against a party who does not respond." Pa.R.C.P. 1035.3(d).

Because Claimant did not respond and, therefore, has not identified any additional 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 timely filed an election for Class T-F membership.

### FINDINGS OF FACT

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

1. In September 2011, Claimant began working for the Northwest Tri-County Intermediate Unit #5 as a part-time, hourly employee.
2. In May 2012, Claimant rendered her 500th hour of school service and qualified for membership with PSERS.
3. On May 19, 2012, PSERS mailed to Claimant at **REDACTED** a welcome packet that included a cover letter that stated, among other things, that "you have now qualified for membership in PSERS." (PSERS-1).
4. Claimant received the May 19, 2012 welcome packet and cover letter.

5. By cover letter dated May 19, 2012, PSERS mailed to Claimant at **REDACTED** a *T-F Membership Class Election* form. (PSERS-2).

6. The May 19, 2012 cover letter to the *T-F Membership Class Election* form congratulated Claimant on becoming a member of PSERS and notified Claimant that if she wished "to elect to become a Class T-F member, [she] must sign and return to PSERS the enclosed *T-F Membership Class Election* (PSRS-1318) form by July 13, 2012." (PSERS-2).

7. The May 19, 2012 *T-F Membership Class Election* form notified Claimant that "**PSERS must receive this form by July 13, 2012.** Please note that the form must actually be received on or before the due date if you wish to elect Class T-F membership." (PSERS-2) (emphasis in original).

8. Claimant received the May 19, 2012 *T-F Membership Class Election* form and cover letter.

9. The May 19, 2012 letter that enclosed the *T-F Membership Class Election* form also contained a *Choosing Your Membership Class* handout. (PSERS-3).

10. By letter dated June 19, 2012, PSERS mailed to Claimant at **REDACTED** a follow-up letter, reminding Claimant of the July 13, 2012 deadline to elect Class T-F membership. (PSERS-4).

11. Claimant received the June 19, 2012 reminder letter.

12. The May 19, 2012 cover letters and the June 19, 2012 letter included PSERS' contact information for members who had questions. (PSERS-1, PSERS-2, and PSERS-4).

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

14. By letter dated July 28, 2012, PSERS informed Claimant that she would permanently remain a Class T-E member because she did not elect Class T-F membership by the election deadline. (PSERS-5).

15. On August 27, 2012, Claimant appealed PSERS' determination that she could not elect Class T-F membership to the Executive Staff Review Committee ("ESRC"). (PSERS-6).

16. Between May 19, 2012 and August 27, 2012, Claimant did not call PSERS with any questions regarding Class T-E and T-F membership or the July 13, 2012 election deadline.

17. By letter dated March 5, 2013, the ESRC denied Claimant's request to change her PSERS membership from Class T-E to Class T-F, explaining as follows:

You were enrolled as a Class T-E member of PSERS in May 2012. You had the choice to remain a Class T-E member or to file a *T-F Membership Class Election* form by July 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. (PSERS-7).

18. Claimant filed an appeal and request for administrative hearing on April 3, 2013. (PSERS-8).

19. At all times between May 19, 2012 and April 3, 2013, Claimant's address was **REDACTED**

20. On April 23, 2013, PSERS filed an Answer and New Matter and Notice to Plead. (PSERS-9).

21. PSERS' Answer and New Matter was served on Claimant by regular first class mail in accordance with 1 Pa.Code § 33.32. (See PSERS-9).

22. Claimant was required to plead to PSERS' New Matter within 20 days after service. 1 Pa.Code § 35.35. (See PSERS-9).

23. Claimant did not file a response to PSERS' New Matter.<sup>1</sup>

24. On June 13, 2013, PSERS filed a Motion for Summary Judgment.

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<sup>1</sup> 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.

25. Claimant did not file a response to PSERS' Motion for Summary Judgment.

26. The matter is ripe for Board adjudication.

## DISCUSSION

The Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101 et seq., requires that a person who first becomes a school employee and an active member on or after July 1, 2011 is enrolled in PSERS as a Class T-E member. 24 Pa.C.S. § 8305(d). Such T-E member, however, may elect to become a Class T-F member provided the Class T-E member files a written election with PSERS within 45 days of notification by PSERS. 24 Pa.C.S. §§ 8305(e) and 8305.2(b).<sup>2</sup> An election to become a Class T-F member is irrevocable for all future service, regardless of whether the member terminates service or has a break in service. 24 Pa.C.S. § 8305.2(c). The Retirement Code further mandates that: "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, regardless of whether the member terminates service or has a break in service." 24 Pa.C.S. § 8305.2(d).

In September 2011, Claimant began working for the Northwest Tri-County Intermediate Unit #5 as a part-time, hourly employee. In May 2012, Claimant rendered her 500th hour of school service and qualified for PSERS membership. See 24 Pa.C.S. § 8301 (a)(2) (PSERS membership is mandatory for, among others, school employees who are employed on a per diem or hourly basis for more than 500 hours in any fiscal year). On May 19, 2012, PSERS sent Claimant: (1) a cover letter and welcome packet informing her that she had qualified for membership in PSERS; and (2) a cover letter and *T-F Membership Class Election* form informing her of Class T-F membership and notifying her that she could elect such membership by filing the election form on or before July 13, 2012. Claimant did not elect Class T-F membership on or before July 13, 2012.

Claimant does not dispute that she failed to elect Class T-F membership prior to the statutory deadline. Nor does she assert that she failed to receive notice of the July

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<sup>2</sup> Class T-E membership provides a benefit accrual rate of 2% and a contribution rate of at least 7 1/2%. Class T-F membership provides a benefit accrual rate of 2.5% and a contribution rate of at least 10.30%. 24 Pa.C.S. §8102 (definitions of "basic contribution rate" and "standard single life annuity").

13, 2012 deadline. Rather, Claimant asks that she be permitted to make an untimely election because: (1) she was only working part-time when the original paperwork was sent, and she plans to work more hours and possibly full-time in the future; (2) she did not have any representation or advisors at the time PSERS sent the original paperwork; and (3) she filed a timely appeal with the Board.

Preliminarily, in correspondence dated May and June 2012, PSERS informed Claimant of the opportunity to elect Class T-F membership and explained the differences between Class T-E and Class T-F membership. (See PSERS-2; PSERS-3; PSERS-4). That correspondence notified Claimant that she would not be able to elect Class T-F membership after July 13, 2012. PSERS warned her that if she did not make a timely election, her decision to remain a Class T-E member was final and binding. Claimant admits to receiving the "original paperwork," and she does not deny that she received the other correspondence from PSERS regarding Class T-F membership. Nevertheless, Claimant failed to elect Class T-F on or before July 12, 2012. Consequently, Claimant is prohibited from electing Class T-F membership now. See 24 Pa.C.S. § 8305.2(d).

Claimant asserts that she did not have any representation or advisors when she received the "original paperwork." In its May and June 2012 correspondence, however, PSERS provided Claimant with its contact information in the event she had questions. Claimant never availed herself of PSERS' services. Instead, she waited until after the July 12, 2012 deadline had passed to ask another district employee about class membership. (PSERS-6). Claimant's failure to educate herself prior to the election deadline and the fact that she may not have known that she could be working more in the future (and, therefore, that it may be advantageous for her to elect Class T-F membership (see PSERS-6)) are not grounds for granting her appeal. Indeed, although the Board must liberally administer the system, it does not have the authority to deem a late-filed Class T-F membership election as timely. See *Allen v. Public Sch. Employees' Ret. Bd.*, 848 A.2d 1031, 1033 (Pa.Cmwth. 2004); *Forman v. Public Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa.Cmwth. 2001); see also *Harasty v. Public Sch. Employees' Ret. Bd.*, 945 A.2d 783, 788 (Pa.Cmwth. 2008). Such action would be

tantamount to circumventing the express language of the Retirement Code of which the Board cannot do. *Dowler v. Public Sch. Employees' Ret. Bd.*, 620 A.2d 639 (Pa.Cmwlt. 1993); *Marinucci v. State Employees' Ret. Sys.*, 863 A. 2d 43 (Pa.Cmwlt. 2004). Thus, there is no exception, statutory or otherwise, to the deadline for electing Class T-F membership. See *Harasty*, 945 A.2d at 788.

Nor does the Board have the authority to deem Claimant's election timely on the ground that she filed her appeal with the Board on time. Claimant's timely appeal does not cure her failure to file her *T-F Membership Class Election* form prior to the statutory deadline.

Accordingly, Claimant's appeal must be dismissed.

#### **CONCLUSION**

To elect Class T-F membership, a member 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 must elect to become a member of Class T-F within 45 days of notification by PSERS. As a matter of law, there is no exception to the deadline for electing Class T-F membership. Claimant received notification of the statutory deadline, but failed to file her election on time. Claimant's appeal, therefore, does not contain any facts, which, if proven, would form a basis for granting her appeal. Because there does not appear to be a disputed issue of relevant fact, the Board may address the legal arguments of the parties without the need for an administrative hearing.

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, the facts set forth in PSERS' New Matter are deemed admitted, 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 the facts set forth in PSERS' New Matter are deemed admitted, PSERS' Motion for Summary Judgment is GRANTED, and Claimant's Appeal and Request for Administrative Hearing is DISMISSED in accordance 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. As a result, this Board denies Claimant's request to elect Class T-F membership after the statutory deadline.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: August 7, 2013

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