

Mail Date: JAN 28 2010

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

IN RE: ACCOUNT OF DANIEL DAMWEBER
DOCKET NO. 2009-03
CLAIM OF DANIEL DAMWEBER

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the Briefs and the Opinion and Recommendation of the Hearing Examiner in the above-referenced matter. We note that none of the parties filed Exceptions to the Opinion and Recommendation of the Hearing Examiner. The Board finds appropriate the Hearing Examiner's Findings of Fact, Discussion, Conclusions of Law, and Recommendation. Accordingly, we hereby adopt them as our own.

IT IS HEREBY ORDERED that Claimant's request to elect multiple service membership after the December 31, 2003 deadline is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: JAN 28 2010

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

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

IN RE: ACCOUNT OF DANIEL DAMWEBER
DOCKET NO. 2009-03
CLAIM OF DANIEL DAMWEBER

BEFORE: Edward S. Finkelstein, Esquire

HEARING DATE: August 5, 2009

APPEARANCES: Jennifer A. Mills, Esquire
For - Public School Employees' Retirement
System

Daniel Damweber, Pro Se - Claimant

OPINION OF THE HEARING EXAMINER

FINDINGS OF FACT

1. Claimant was enrolled as a member of PSERS in 1988 by virtue of his employment with the Colonial IU-20 and has accumulated approximately twenty-one years of service credit with PSERS. (N.T. 10, 15)¹

2. At all relevant and material times, Claimant was an active member of PSERS and received a full year of credit for school service for the 2000-2001 through 2003-2004 school years and for his many other years as well. (N.T. 34-35, 38-39; PSERS Exhibit 20)

¹Because this appeal, even if successful, would not benefit the Claimant in any manner, and since PSERS has adequately set forth the applicable law, facts and reasoning that is applicable to this case, it would have been a waste of time and money for the Hearing Examiner to prepare his own completely independent recommended decision and Recommendation to the Board

3. In the school years 2000-2001 and 2001-2002, Claimant received an annual salary of approximately \$45,000; \$48,000 in the school year 2002-2003; and \$55,000 in the school year 2003-2004. (N.T. 15-16; PSERS Exhibit 20) Claimant is currently receiving an annual salary of approximately \$60,000. (N.T. 16)

4. Claimant began permanent part-time employment with the Pennsylvania Liquor Control Board ("PLCB") as a liquor store clerk on January 24, 2000. (N.T. 11, 16-17)

5. Claimant worked a minimum of 20 hours per week with the PLCB and earned an annual salary of approximately \$5,000 to \$7,000. (N.T. 17)

6. By virtue of Claimant's employment with the PLCB, Claimant was enrolled in the State Employees' Retirement System (SERS). (N.T. 17)

7. By letter dated February 12, 2001, SERS notified Claimant of his right to elect multiple service membership within thirty days from the date of the letter. (N.T. 18; PSERS Exhibit 1)

8. Claimant checked the box choosing not to elect multiple service membership and acknowledged that in the future he was "prohibited from electing multiple service unless [he has] a break in membership and subsequently become[s] a member in either [SERS]

and therefore he is substantially adopting the PSERS Brief as his Recommendation.

or PSERS for the opportunity to receive a new election period.”
(N.T. 18-19; PSERS Exhibit 1)

9. Claimant terminated his permanent part-time employment with the PLCB on October 14, 2003 and withdrew his contributions and interest from SERS. (N.T. 12, 19)

10. On May 17, 2001, Act 2001-9 was enacted which opened a window for active members of PSERS who were former active members in SERS and whose service credit in SERS had not been converted to service credit in another public pension plan or retirement system in Pennsylvania to elect to become a multiple service member. (N.T. 29, 30; PSERS Exhibits 2-3, 6-13)

11. Act 2001-9 also provided an opportunity for PSERS members to elect a new class, T-D membership class, in order to enhance their benefit levels, and reduced the number of eligibility points for an active or inactive member to become vested in PSERS from 10 years to 5 years. (*Id.*)

12. Under Act 2001-9, the window during which qualified members of PSERS could elect multiple service membership was between July 1, 2001, the effective date of Act 2001-9, and December 31, 2003. (*Id.*)

13. Following the enactment of Act 2001-9, PSERS sent a “Summary of Legislation” letter to active contributing members of PSERS and a cover letter which included an Act 2001-9 election form to notify members, *inter alia*, of the new T-D

membership class and the new window from July 1, 2001 until December 31, 2003 to elect multiple service membership. (N.T. 30-32; PSERS Exhibit 2 and 3)

14. The *Summary of Legislation* letter and the cover letter which included an Act 2001-9 election form were sent to active and contributing members via first class mail, pre-sorted.² (N.T. 31-32)

15. Claimant was among the active members of PSERS who was sent the *Summary of Legislation* letter and the additional cover letter which included the Act 2001-9 election form. (N.T. 31; PSERS Exhibit 2 and 3)

16. The *Summary of Legislation* letter contained the following information with respect to the extended opportunity to elect multiple service membership:

3. Effective July 1, 2001, the opportunity to elect Multiple Service membership (members who elect to combine benefits in the PSERS and the State Employees' Retirement System) will be expanded.

a. Current members, who have not already elected Multiple Service membership, will have a window from July 1, 2001 through December 31, 2003, to apply for multiple service membership.

b. Any payment due for multiple service membership can now be satisfied through the debt plan, which is available for other types of purchase of service credit at PSERS.

²Presorted means it was sorted by zip code prior to being sent to the Post Office for mailing. (N.T. 31)

(PSERS Exhibit 2) (Emphasis in original)

17. Page 3 of the cover letter to the Act 2001-9 election form contained the following information with respect to the extended opportunity to elect multiple service membership:

Window for Multiple Service Membership

Multiple Service membership combines nonconcurrent service credited with SERS and PSERS. Examples of SERS service include employment with a Commonwealth agency (such as employment with the PA Departments of Welfare, Transportation, Health, Labor and Industry), a state owned educational institution, Pennsylvania State University, or a community college.

- If you are an **active** member of PSERS on July 1, 2001, and are not a Multiple Service member, although you had or have SERS covered service, Act 9 provides a window to elect Multiple Service membership. PSERS must receive your request for Multiple Service membership between July 1, 2001 and December 31, 2003. **If you terminate employment before December 31, 2003, you must submit your request prior to the date of termination.** Also, if you are retiring this year and wish to elect multiple service, you must remain in **active** service on or after July 1, 2001, to take advantage of the new window.
- If you need to purchase prior service to gain multiple service credit, you may now use the actuarial debt plan as a payment plan. The debt is applied to the equity in your retirement account. It does not affect your current contributions and interest. When you retire, your monthly retirement payment will be adjusted to pay for the purchase over the lifetime of the benefit. Although a portion of your monthly benefit

pays the debt, adding service credit to your account usually increases the amount of your monthly retirement benefit.

If you have or had employment covered under SERS and you want to combine state and school service credit, you should use the enclosed *PSERS Membership Class Election Form* to request further information on Multiple Service membership. PSERS will mail additional information about becoming a Multiple Service member to you.

(PSERS Exhibit 3) (Emphasis in original)

18. The Act 2001-9 election form contained a box for members to either elect to change to T-D Class or elect Not to change from T-C Class and a separate box to request multiple service information. (PSERS Exhibit 3)

19. When a member checked the box on the Act 2001-9 election form to request multiple service information, PSERS sent additional multiple service information and an *Application for Multiple Service Membership* to the member via first class mail with a self addressed envelope. (N.T. 33; PSERS Exhibit 5)

20. Claimant checked the box requesting multiple service information when he completed his Act 2001-9 election form. (N.T. 21-22; PSERS Exhibit 4)

21. On July 20, 2001, PSERS mailed Claimant a letter with additional multiple service information along with an *Application for Multiple Service Membership*. (N.T. 33; PSERS Exhibit 5)

22. The July 20, 2001 letter contained the following information pertaining to the opportunity to elect multiple service membership:

If the completed application is not received by **December 31, 2003, or prior to your termination from school employment, whichever is earlier**, your request for Multiple Service membership will be voided and you will not be eligible to request Multiple Service membership unless you have a break in school service.

If you have any questions, please contact the Member Service Center by calling toll free 1-888-773-7748 (Harrisburg local callers, please use 787-8540). For your convenience, the Member Service Center is staffed each business day from 7:30 a.m. to 5:00 p.m.

(PSERS Exhibit 5) (Emphasis in original)

23. A Retirement Chalkboard is a news publication that PSERS sends to all active members of PSERS through presorted standard third class mail, which is a form of bulk mail. (N.T. 33-34)

24. Every Retirement Chalkboard that was published during the 18-month window to elect multiple service membership contained an article devoted to multiple service, and the deadline for electing multiple service membership. (PSERS Exhibits 6-10, 12-13)

25. The Summer 2001 Retirement Chalkboard contains a two-page article devoted to an overview of Act 2001-9; page two of the article contains a section entitled "Multiple Service Election Re-opened" and explains, in pertinent part:

Multiple Service membership combines service credited with SERS and PSERS. Examples of SERS service include employment with a Commonwealth agency (such as employment with the PA Departments of Welfare, Transportation, Health, Labor and Industry), a state owned educational institution, Pennsylvania State University, or a community college.

If you are an active member of PSERS on July 1, 2001, and had SERS covered service and did not previously elect Multiple Service, Act 9 provides a window to elect Multiple Service membership. PSERS must receive your request for Multiple Service membership between July 1, 2001 and December 31, 2003. . .

(PSERS Exhibit 6)

26. Records on file with PSERS show that Claimant was among the list of active members of PSERS to whom was mailed a copy of the Summer 2001 Retirement Chalkboard. (N.T. 33-34; PSERS Exhibit 6)

27. The Fall 2001, Spring 2002 and Summer 2002 Retirement Chalkboards also contain an article on the front page entitled "Multiple Service Election Re-Opened;" the articles in each publication contain substantially similar content and information as the article that appeared in the Summer 2001 Retirement Chalkboard. (PSERS Exhibits 7, 8, 9)

28. The Fall 2002 and Summer 2003 Retirement Chalkboards, likewise, contain similar articles pertaining to "Multiple Service Election Re-Opened." (PSERS Exhibits 10 and 12)

29. Records on file with PSERS show that Claimant was among the list of active members of PSERS to whom was mailed a

copy of the Fall 2002 and Summer 2003 Retirement Chalkboard.

(N.T. 33-34; PSERS Exhibits 10 and 12)

30. The Fall 2003 Retirement Chalkboard contains a more urgent article on its front page, entitled, "Deadline Approaching for Multiple Service Election." This article contains the following information:

Deadline Approaching for Multiple Service Election

Multiple Service allows you to combine Pennsylvania state and school service that will enhance your retirement benefit. If you became a member of PSERS after October 2, 1975, and wish to combine this service with State Employees' Retirement System (SERS) service (for example, employment with the Department of Public Welfare, Department of Labor and Industry, Department of Transportation, etc.) **you must request Multiple Service in writing within 365 days of employment with your school employer or by December 31, 2003, whichever is later.**

This is your only opportunity to elect Multiple Service unless you have a break in service. Your contributions and interest will continue to earn interest as long as you remain active in either of the two Systems. Your record of service, contributions, and interest will remain separate in each System until you terminate service in both Systems and apply for a refund or retirement.

If you terminate employment before December 31, 2003, you must submit your request to elect Multiple Service prior to your termination date.

(PSERS Exhibit 13) (Emphasis in original)

31. Records on file with PSERS show that Claimant was among the list of active members of PSERS who was mailed a copy of the Fall 2003 Retirement Chalkboard. (N.T. 33-34; PSERS Exhibit 13)

32. In the Winter of 2002, PSERS also mailed a publication entitled "PSERS Update" to all retired and active members of PSERS; similar to the Retirement Chalkboards, the Winter 2002 PSERS Update contained an article entitled "Multiple Service Election Re-Opened." (PSERS Exhibit 11)

33. Records on file with PSERS show that Claimant was among the list of retired and active members of PSERS to whom was mailed a copy of the Winter of 2002 PSERS Update. (N.T. 33-34; PSERS Exhibit 11)

34. Claimant's current address is identical to the address on file with PSERS where the *Summary of Legislation* letter, the cover letter which included the Act 2001-9 election form, the Retirement Chalkboard publications and the PSERS Update were mailed to Claimant. (N.T. 33-34; PSERS Exhibits 2, 3, 5, 6, 8,10, [PSERS] 11, 12, and 13)

35. Claimant does not recall receiving the *Summary of Legislation* letter, the cover letter which included the Act 2001-9 election form, the Retirement Chalkboard publications or the PSERS Update in the mail (N.T. 20-23).

36. Claimant claims that he did not elect multiple service by the deadline because he was told by other employees at the liquor store where he was working that he would have to terminate either his state or school service to elect multiple service. (N.T. 26-27)

37. Claimant was eligible to elect multiple service membership between July 1, 2001 and December 31, 2003 because he was an active contributing member and was not required to terminate school or state service before becoming eligible to apply for multiple service membership. (N.T. 29 and 35³)

38. Claimant acknowledges that he did not elect multiple service by the deadline set forth in Act 2001-9. (N.T. 26)

39. Claimant did not contact PSERS during the relevant time period to verify the information told to him by the employees at the liquor store. (N.T. 25-27)

40. Claimant has lived at his current address of Redacted Redacted Redacted Redacted for 23 years. (N.T. 19-20)

41. PSERS keeps track of all undeliverable mail that, if received, would be placed in the member's file. (N.T. 41)

42. Claimant's file with PSERS does not show that any mail that was sent to Claimant by PSERS was returned as undeliverable. (*Id.*)

43. On February 13, 2006, Claimant filed an *Application for Multiple Service Membership* with PSERS to request multiple service with the PLCB for the period between January 24, 2000 through October 14, 2003 when Claimant worked as a liquor store clerk. (N.T. 23-24, 35; PSERS Exhibit 14)

44. On February 22, 2006, PSERS notified Claimant that his request to elect multiple service membership was untimely and, therefore, denied. (N.T. 24, 36; PSERS Exhibit 15)

45. Claimant was notified of his right to appeal the February 22, 2006 denial of his request to elect multiple service membership to the Executive Staff Review Committee (ESRC) by March 27, 2006. (PSERS Exhibit 15)

46. Claimant did not appeal to the ESRC by March 27, 2006; rather Claimant filed a second *Application for Multiple Service Membership* with PSERS on November 26, 2007 again requesting multiple service with the PLCB for the period between January 24, 2000 through October 14, 2003. (N.T. 24, 36-37; PSERS Exhibit 16)

47. Claimant filed a third *Application for Multiple Service Membership* with PSERS on March 31, 2008 again requesting multiple service with the PLCB for the period between January 21, 2000 through October 14, 2003. (N.T. 24, 36-37; PSERS Exhibit 17)

³The transcript states "June 1" rather than "July 1". Whether it was

48. On December 17, 2008, PSERS notified Claimant that his request to elect multiple service membership was untimely and, therefore, denied. (N.T. 36-37; PSERS Exhibit 18)

49. Claimant appealed the December 17, 2008 denial to the ESRC. On February 27, 2009, ESRC denied Claimant's request to elect multiple service because such request was untimely. (N.T. 37; PSERS Exhibit 19)

50. An administrative hearing on Claimant's appeal was held on August 5, 2009 before independent Hearing Officer, Edward Finkelstein, Esquire. (PSERS Exhibits 21 and 22; N.T. 1)

51. Claimant was present at the hearing, pro se, and had the right to testify and present evidence in support of his appeal, which he did, and to cross examine witnesses.

(Transcript, *passim*)

DISCUSSION

It is well settled that Claimant bears the burden of establishing the facts necessary to sustain his claim. See *Gierschick v. State Employees' Retirement Board*, 733 A.2d 29 at 32 (Pa. Cmwlth. 1999); See also, *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991). While a member is entitled to a liberal construction of the Retirement Code, he has only those rights created by the retirement statutes and

a misstatement or a mistype, the statutory window began July 1, 2001.

none beyond. *Burriss v. State Employees' Retirement Board*, 745 A.2d 704 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees' Retirement Board*, 622 A.2d 403 (Pa. Cmwlth. 1992); *Hughes v. Public School Employees' Retirement Board*, 662 A.2d 701 (Pa. Cmwlth. 1995), *allocatur denied*, 668 A.2d 1139 (Pa. 1996). The agency must construe its enabling statute according to its plain meaning and in such a manner as to give effect to all of its provisions. 1 Pa. C.S. §1921(a), (b). PSERS has no authority to grant rights beyond those specifically set forth in the Retirement Code. *Forman v. Public School Employees' Retirement Board*, 778 A.2d 778 (Pa. Cmwlth. 2001).

As the preceding findings of fact disclose, Act 2001-9 opened a window for any active member of PSERS who was formerly an active member in the SERS and whose service credit in SERS had not been converted to service credited in another public pension plan or retirement system in the Commonwealth to elect to become a multiple service member.⁴ Under Act 2001-9,

⁴Section 29 of Act 2001-9, as it applies to Claimant and others similarly situated provides:

Section 29. Notwithstanding the limitation contained in 24 Pa. C.S. §8507(c), any active member of the Public School Employees' Retirement System who was formerly an active member in the State Employees' Retirement System and whose service credit in the State Employees' Retirement System has not been converted to service credited in another public pension plan or retirement system in this Commonwealth may elect to become a multiple service member on or before December 31, 2003.

Previous to Act 2001-9, section 8507(c) of the Retirement Code only allowed such members 30 days to make this election.

qualified members of PSERS could elect multiple service membership between July 1, 2001 and December 31, 2003.

Claimant's appeal centers around what Claimant believes was misinformation given by employees at the liquor store where he worked. Claimant testified that the reason he did not request multiple service membership prior to February 13, 2006 is not because he was not aware of the window to elect but because he was under the wrong assumption that he had to first terminate either his school or state service in order to apply. Claimant testified, however, that he did not verify this information with PSERS. Indeed, the record reflects that Claimant was not required to terminate school or state service before becoming eligible to apply for multiple service membership. Claimant was, in fact, eligible to elect multiple service membership between July 1, 2001 and December 31, 2003 because he was an active contributing member of PSERS. Even if Claimant relied upon the information that he had to terminate service before electing, Claimant did terminate his state service with the PLCB on October 14, 2003, two months prior to the deadline.

The evidence shows that Claimant was sent numerous communications/publications from PSERS that explained the requirements to elect multiple service membership. The first communication that Claimant was sent was the *Summary of Legislation* letter and the Act 2001-9 election form and its

accompanying cover letter, which explained the window for multiple service membership. These two communications explain what multiple service membership is, and provide information to members about the window, between July 1, 2001 and December 31, 2003, to elect multiple service membership. The Act 2001-9 election form, which accompanied these mailings, contained a specific section for members to "check" if they had service under SERS and to request additional information. The record reflects that PSERS also sent Retirement Chalkboard publications and the PSERS Update to its members, including Claimant, throughout the 18-month window to remind members of their opportunity to elect multiple service membership. The evidence reveals that commencing with the Summer 2001 edition of the Retirement Chalkboard and continuing throughout the 18-month window to elect multiple service membership, PSERS mailed at least eight separate communications/publications to Claimant (PSERS Exhibits 6-13). Every one of these communications/publications contained an article devoted to multiple service membership and the deadline for electing multiple service membership.

Claimant denies receiving these publications; however, the fact that Claimant returned the June 6, 2001 Class T-D election form is clear evidence that Claimant at least received PSERS Exhibit 3, the cover letter and Class T-D election form wherein

page 3 of the cover letter contained information with respect to the opportunity to elect multiple service membership. (Findings of Fact No. 17; PSERS Exhibit 3 and 4) PSERS then sent additional multiple service information to Claimant via first class mail along with an *Application for Multiple Service Membership*.

Because the Retirement Code does not specify the manner in which notice must be given, notice sent by first class mail in the ordinary course of business is presumed to be sufficient notice under the law. *Tyson v. Public School Employees' Retirement System*, 737 A.2d 325 (Pa. Cmwlth. 1999). Notice requirements are satisfied when proper notice of the action is mailed to an interested party's last known address. *Milford Twp. Board of Supervisors v. Department of Environmental Resources*, 644 A.2d 217, 219 (Pa. Cmwlth. 1994). PSERS satisfied the requirement of providing notice by the eleven mailings it sent to Claimant regarding the election and deadline to elect multiple service membership, three of which were sent via first-class mail. (PSERS Exhibits 2, 3, 5-14)

Furthermore, the Board is precluded from taking an untimely application and deeming it as timely filed. *Forman v. Public School Employees' Retirement Board*, 778 A.2d 778 (Pa. Cmwlth. 2001); *Allen v. Public School Employees' Retirement Board*, 848 A.2d 1031 (Pa. Cmwlth. 2004). In *Allen*, Claimant Allen

requested that she be allowed to file for Class T-D service past the statutory deadline (December 31, 2001 for Class T-D election), based on the fact that her chaotic divorce had led her to forget the deadline. In denying her request, the Court held that the Retirement Code does not provide the Board with the authority to deem an untimely application as timely filed. *Id.*, citing, *Forman v. PSERB*. The Court held that the Board is actually precluded from taking such action, because it is not specifically entitled to do so by the Retirement Code. *Id.*

What appears to have occurred, is that the liquor store employees advised Claimant against applying because they knew that Claimant would not be eligible to receive any additional service credit during the time period of January 24, 2000 through October 14, 2003 because he already received one full year of service credit with PSERS during the same time period.¹ (N.T. 40, 42-43) Additionally, the salaries Claimant received from the PLCB during the relevant time period, when combined with his school salary during the same period, would not be used in the computation of Claimant's final average salary at the time of retirement because it would not qualify in computing his highest average compensation. (N.T. 40-42; 24 Pa. C.S. §8102) Consequently, even if Claimant were to prevail in this appeal, he would receive no benefit from combining his state and school service. Rather, Claimant would be responsible for payment of a

debt (for the purchase of multiple service credit) that would not enhance his retirement benefit with PSERS.

CONCLUSIONS OF LAW

1. PSERS is a creature of statute and derives its authority from the provisions of the Public School Employees' Retirement Code. 24 Pa.C.S. §8101 et seq.

2. Claimant has only those rights recognized by statute and none beyond. *Bittenbender v. State Employees' Retirement Board*, 622 A.2d 403 (Pa. Cmwlth. 1992).

3. Claimant bears the burden of establishing those facts upon which he relies in order to prevail. *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991).

4. Claimant was afforded an opportunity to be heard in connection with his appeal (Findings of Fact Nos. 49-51)

5. As an active member of PSERS on July 1, 2001, Claimant had until on or before December 31, 2003 to elect to become a multiple service member. (Findings of Fact Nos. 1-2, 10, 12-34, 37; 24 Pa.C.S. §8507(c))

6. Claimant's *Application for Multiple Service Membership* was not filed until February 13, 2006, and most recently on March 31, 2008, and is, therefore, untimely. (Findings of Fact No. 38, 43, 46)

7. Claimant is not entitled to elect multiple service membership at this time. (Findings of Fact Nos. 1-49)

8. Notice requirements regarding administrative action are satisfied when proper notice of the action is mailed to an interested party's last known address. *Milford Twp. Board of Supervisors v. Department of Environmental Resources*, 644 A.2d 217, 219 (Pa. Cmwlth. 1994).

9. Notice sent by first class mail in the ordinary course of business is presumed to be sufficient notice under the law. *Tyson v. PSERS*, 737 A.2d 325 (Pa. Cmwlth. 1999).

10. No member of PSERS can receive more than one year of retirement credit in a year.

11. If Claimant's request would have been granted for him to receive multiple service credit for his employment at the Pennsylvania Liquor Control Board, he would have received more than one year of retirement credit in PSERS in one year which is not permitted under the Retirement Code although he would have been billed for the multiple service credit he was seeking.

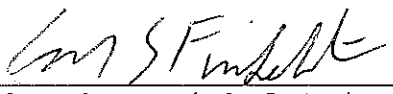
RECOMMENDATION

The statutory window to elect multiple service membership under Act 9 of 2001 was from July 1, 2001 through December 31, 2003. PSERS provided both actual and constructive notice of the new election period and eligibility requirements to Claimant

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through various means. Claimant mistakenly believed that he had to terminate service with the PLCB before he could apply for multiple service membership; however, none of the communications/publications that PSERS sent to Claimant contained such information or instruction. Regardless, Claimant did, in fact, terminate his state service prior to the statutory deadline of December 31, 2003. Claimant simply did not avail himself of the information or the opportunity to request multiple service credit from PSERS. The burden of proof and persuasion is on the Claimant. *Wingert v. State Employees' Retirement Board*, 138 Pa. Cmwlth. 43, 589 A.2d 269 (1991). Claimant was provided with the necessary information to timely elect multiple service membership. Fortunately for Claimant, he failed to do so by the statutory deadline or he would have wasted his money. Therefore, Claimant's request to purchase multiple service membership for his employment with the Pennsylvania Liquor Control Board should be denied by the Board and the Claimant's appeal dismissed.

Dated: November 24, 2009


Edward S. Finkelstein
Hearing Examiner