

Mail Date: JUN 26 2012

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

IN RE: ACCOUNT OF CRAIG M. HOULISTON  
DOCKET NO. 2011-20  
CLAIM OF CRAIG M. HOULISTON

**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 Craig M. Houliston's ("Claimant") 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 November 10, 2011, 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 November 10, 2011, PSERS notified Claimant that he had thirty days to respond to PSERS's motion under Pa.R.C.P. No. 1035.3. Claimant's response, therefore, had to be filed on or before December 12, 2011. See 1 Pa.Code §§ 31.11, 31.12 and 33.34.

Claimant did not file a response. Rather, by letter sent on December 13, 2011 and received by PSERS on December 15, 2011, Claimant's daughter informed PSERS that Claimant would not respond until after February 27, 2012. In that letter, Claimant's daughter noted that she had passed along PSERS's message to Claimant about the December 12th deadline for a response to the motion.

The Board's regulations specifically 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 such non-moving party 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. See *El Concilio De Los Trabajadores v. Commonwealth*, 484 A.2d 817, 818 (Pa.Cmwlt. 1984).

“Summary judgment may be entered against a party who does not respond.”  
Pa.R.C.P. 1035.3(d).

### **FINDINGS OF FACT**

Based on the Motion for Summary Judgment and the lack of any meaningful response, the Board finds the following facts not in dispute:

1. In September 1965, Claimant became a member of PSERS by virtue of his employment with the Bristol Township School District.
2. On May 13, 2005, PSERS received an Application to Purchase Credit for Part-Time Service from Claimant. Claimant listed service rendered with Pennsylvania State University as a part-time, salaried employee during the school years 1970-1971, 1971-1972, 1973-1974, 1975-1976, 1979-1980, 1980-1981, and 1982-1983. For the school year 1975-1976, Claimant worked from January 1976 to May 1976.
3. On Claimant's application, he certified that he had not received credit for his service with Pennsylvania State University in any other retirement system.
4. On May 4, 2009, PSERS received Claimant's Application for Retirement.
5. Claimant had accumulated 44 years of service credit at the time he terminated school employment. Claimant received one full year of service credit with

PSERS for each school year from 1965 through 2009 for service rendered with the Bristol Township School District and, subsequently, the Scranton School District.

6. On May 12, 2009, PSERS mailed Claimant a Statement of Amount Due for his uncredited, part-time service with Pennsylvania State University. The statement informed Claimant that he owed PSERS \$589.90 for that time, and that he would receive 0.0 years of service credit.

7. On June 4, 2009, Pennsylvania State University paid the employer contributions owed for Claimant's part-time service for the school years 1975-1976, 1979-1980, 1980-1981, and 1982-1983.

8. Claimant filed an appeal with PSERS's Executive Staff Review Committee ("ESRC") on June 22, 2009, requesting that the ESRC remove the purchase of service debt from his retirement benefit.

9. By letter dated May 7, 2010, PSERS sent Claimant his Finalized Retirement Benefit. PSERS informed Claimant that the finalized monthly benefit of \$4,824.32 (gross) reflected a permanent reduction to satisfy the debt of \$589.90 for the purchase of service credit.

10. By letter dated August 31, 2011, the ESRC granted Claimant's appeal request in part, and denied it in part. The ESRC rescinded the portion of Claimant's purchase of part-time service for the years 1970-1971, 1971-1972, and 1973-1974 "because part-time service prior to the passage of Act 96 (Retirement Code) in October 1975 was not permitted and, therefore, not mandatory." With respect to the school years 1975-1976, 1979-1980, 1980-1981, and 1982-1983, the ESRC determined that the service that Claimant rendered with Pennsylvania State University was qualifying and contributions were mandatory. Accordingly, the ESRC concluded that Claimant could not rescind the purchase of credit for those years. The ESRC noted that Claimant would not receive additional service credit for those years because "a member may not earn more than one year of credited service credit for any 12 consecutive months of employment."

11. As a result of the ESRC's determination regarding the years 1970-1971, 1971-1972, and 1973-1974, Claimant's debt was reduced from \$589.90 to \$391.15. Currently, \$3.85 is being deducted from Claimant's monthly benefit. An adjustment to reflect the ESRC's determination will result in an amount less than \$3.85 being deducted from Claimant's monthly benefit going forward.

### DISCUSSION

The Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101 et seq, mandates membership for all school employees unless they fit within the following narrow exceptions:

- (1) Any . . . employee of the . . . Pennsylvania State University *and* who is a member of the State Employees' Retirement System or a member of another retirement program approved by the employer.
- (2) Any school employee who is employed on a per diem or hourly basis for less than 80 full-day sessions or 500 hours in any fiscal year.
- (3) Any officer or employee of a governmental entity who subsequent to December 22, 1965 and prior to July 1, 1975 administers, supervises, or teaches classes financed wholly or in part by the Federal Government so long as he continues in such service.
- (4) Any part-time school employee who has an individual retirement account pursuant to the Federal act of September 2, 1974 (Public Law 93-406, 88 Stat. 829), known as the Employee Retirement Income Security Act of 1974.<sup>1</sup> 24 Pa.C.S. § 8301(a) (emphasis added).

Mandatory members are required to make contributions to PSERS for service rendered. 24 Pa.C.S. § 8321(a).

Claimant does not fit within any of the exceptions to mandatory membership that would have excused him from making contributions in connection with his Pennsylvania State University employment during the relevant years. First, Claimant certified in his Application to Purchase Credit for Part-Time Service that he did not receive credit for his service at Pennsylvania State University in any other retirement system. Second,

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<sup>1</sup> Subsection (a)(4) was added to 24 Pa.C.S. § 8301(a) in 1976.

Claimant was a full-time school employee of the Scranton School District at the time he worked for Pennsylvania State University.<sup>2</sup> Third, Claimant worked at Pennsylvania State University from January 1976 to May 1976, which is outside the period noted for exception (3). Thus, Claimant should have been contributing to PSERS during his employment with Pennsylvania State University.

Pursuant to Section 8534(b) of the Retirement Code, the Board is required to remedy errors in PSERS's records and adjust payments to members accordingly:

**Adjustment of errors.** -- Should any change or mistake in records result in any member . . . receiving from the system more or less than he would have been entitled to receive had the records been correct, then regardless of the intentional or unintentional nature of the error and upon the discovery of such error, *the board shall correct the error and so far as practicable shall adjust the payments* which may be made for and to such person in such a manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid. 24 Pa.C.S. § 8534(b) (emphasis added.)

Thus, PSERS did not err in adjusting Claimant's retirement benefits to satisfy his debt.

The Board may, however, waive an adjustment under Section 8534 in narrow circumstances, but those circumstances do not apply here. To be eligible for a waiver, Claimant must show, among other things, that "the adjustment or portion of the adjustment will cause undue hardship[.]" 24 Pa.C.S. § 8303.1(a). To qualify for "undue hardship," the adjustment must either: (1) cause a reduction in excess of 5% of the monthly annuity; or (2) result in the member losing eligibility for a benefit other than an annuity. 22 Pa.Code § 213.3a. The reduction to Claimant's monthly annuity payment (i.e., an amount less than \$3.85) is significantly less than 5% of Claimant's monthly annuity of \$4,824.32 (gross), and Claimant has lost no benefit. Consequently, the Board may not waive the adjustment. 24 Pa.C.S. § 8303.1(a); 22 Pa.Code § 213.3a.

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<sup>2</sup> The Retirement Code defines "school employee" 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 employee excluding, however, any independent contractor or a person compensated on a fee basis." 24 Pa.C.S. § 8102.

The Board also may not grant Claimant service credit for his time with Pennsylvania State University. The Retirement Code provides that “[i]n no case shall a member receive more than one year of credited service for any 12 consecutive months[.]” 24 Pa.C.S. § 8302(a). Section 8306(a) of the Retirement Code similarly states “[a]n active member of the system shall accrue one eligibility point for each year of credited service as a member of the school or State retirement system.” 24 Pa.C.S. § 8306. The Retirement Code thus prohibits a member from receiving more than one year of service credit during a twelve month period, regardless of the number of days worked in the twelve month period or the number of school employers. See *Account of Murray A. Neepser*, Docket No. 2011-14 (October 11, 2011). Claimant received one full year of service credit with PSERS for each school year from 1965 through 2009 for service rendered with the Bristol Township School District and, subsequently, the Scranton School District. Accordingly, the Board cannot grant Claimant additional service time for his concurrent employment with Pennsylvania State University during the school years 1975-1976, 1979-1980, 1980-1981, and 1982-1983.

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 the debt for part-time service that Claimant rendered with the Pennsylvania State University during the school years 1975-1976, 1979-1980, 1980-1981, and 1982-1983 should be removed from his retirement benefit. The Board also finds that, alternatively, summary judgment is appropriate on the basis that Claimant failed to file a timely response to PSERS’s Motion for Summary Judgment. Accordingly, PSERS’s Motion for Summary Judgment is GRANTED and Claimant’s Request for Administrative Hearing is DENIED.

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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 PSERS's Motion for Summary Judgment is GRANTED, and Claimant's 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 and, alternatively, because Claimant failed to file a timely response to PSERS's Motion for Summary Judgment. Accordingly, this Board denies Claimant's request that the debt for part-time service that Claimant rendered with the Pennsylvania State University during the school years 1975-1976, 1979-1980, 1980-1981, and 1982-1983 be removed from his retirement benefit.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: June 22, 2012

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