

Mail Date:

JAN 26 2018

Mail Date: _____

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

IN RE: ACCOUNT OF RAYMOND F. MEDICE
DOCKET NO. 2016-25
CLAIM OF RAYMOND F. MEDICE

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 Raymond F. Medice's ("Claimant") Appeal and Request for Administrative Hearing, which seeks permission to elect Class T-F membership after the statutory deadline, be dismissed because there is no issue of material fact and PSERS is entitled to summary judgment as a matter of law.

PSERS filed its Motion for Summary Judgment on November 20, 2017, 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 20, 2017, PSERS notified Claimant that he 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 December 20, 2017. 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 him 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).

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 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 is no genuine issue as to any material fact. 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 permitted to elect Class T-F membership after the statutory deadline.

FINDINGS OF FACT

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

1. Claimant was first enrolled in PSERS in March 2016 through his full-time hourly employment with the Plum Borough School District (“District”).

2. Pursuant to Section 8305(d) of the Public School Employees’ Retirement Code, 24 Pa.C.S. § 8101, et seq. (“Retirement Code”), Claimant was automatically enrolled in PSERS as a Class T-E member.

3. At all times between May 29, 2016 and November 16, 2016, Claimant’s mailing address was [REDACTED]. (PSERS’ Motion for Summary Judgment at ¶13)

4. By correspondence dated May 29, 2016, PSERS mailed a *T-F Membership Class Election* form, *Choosing Your Membership Class* handout, an “IMPORTANT: Decision Required!” handout, and cover letter to Claimant at [REDACTED]. (PSERS-1)

5. The May 29, 2016 cover letter informed Claimant of his opportunity to elect Class T-F membership:

Dear Mr. Raymond Medice:

Congratulations on becoming a member of the Public School Employees’ Retirement System (PSERS). As a member of PSERS, you are required to make contributions which will be withheld from your pay. In addition, each of your Pennsylvania public school employers will make employer contributions toward your PSERS retirement benefit. The amount of money withheld from your pay and the factors used to determine a retirement benefit when you retire are determined by your membership class.

There are two classes of membership (T-E and T-F) that will determine the amount of money withheld from your paychecks and the amount of your retirement benefit when you retire.

You are automatically enrolled as a Class T-E member and need not take any action if you choose to remain as a Class T-E member. As such, your benefit if you retire at your normal retirement age will be your years of service times your final average salary times a 2 percent multiplier. Your employee contributions are subject to change every three years but will not be less than 7.5 percent nor more than 9.5 percent of your salary, based on the investment performance of the Retirement Fund.

If you wish to elect to become a Class T-F member, you must sign and return to PSERS the enclosed *T-F Membership Class Election* (PSRS-1318) form by July 22, 2016. The form must be received by PSERS by that date. As a Class T-F member your benefit if you retire at your normal retirement age will be your years of service times your final average salary times a higher 2.5 percent multiplier. Your employee contributions are subject to change every three years but will not be less than 10.3 percent nor more than 12.3 percent, based on the investment performance of the Retirement Fund.

* * *

At this time you should:

- Review the *Choosing Your Membership Class* handout included in this packet.
- Decide whether you wish to remain a Class T-E member. If you wish to remain a Class T-E member, you do not have to take any action.
- If you wish to elect Class T-F, **PSERS must receive your form by July 22, 2016.** If the form is received after that date, you will remain Class T-E and will not have the opportunity to elect Class T-F in the future.

Your decision to remain Class T-E by doing nothing, or to elect Class T-F by filing the enclosed form, is final and binding.

(PSERS-1 (emphasis in original))

6. The May 29, 2016 *T-F Membership Class Election* form notified Claimant that **“PSERS must receive this form by July 22, 2016.”** (PSERS-1 (emphasis in original))

7. By correspondence dated June 28, 2016, and mailed to Claimant at [REDACTED], PSERS reminded Claimant of the July 22, 2016 deadline to elect Class T-F membership. (PSERS- 2)

8. The June 28, 2016 letter provided, in pertinent part, as follows:

Dear Mr. Raymond Medice:

The Public School Employees' Retirement System (PSERS) previously sent you a *T-F Membership Class Election* (PSRS-1318) form.

We are providing you this reminder because your decision to remain a Class T-E member, or to change to a Class T-F member, is final and binding. If you wish to remain as a Class T-E member, you do not have to take any action.

If you wish to remain a Class T-E member, you need to do nothing; Class T-E membership is the automatic membership class. If you would like to change your membership to Class T-F, you must do so by July 22, 2016. PSERS sent you a mailing approximately 30 days ago that included a *T-F Membership Class Election* (PSRS-1318) form and an informational handout describing the differences between Class T-E and Class T-F membership.

Please note that in order to elect Class T-F membership, the form must actually be received on or before the due date.

* * *

If you wish to elect Class T-F membership, you must file the *T-F membership Class Election* (PSRS-1318) form no later than July 22, 2016.

* * *

(PSERS-2)

9. PSERS maintains a record of mail that is returned as undeliverable.

(PSERS' Motion for Summary Judgment at ¶14)

10. The May 29, 2016 and June 28, 2016 letters were mailed by PSERS in the normal course of business and were not returned as undeliverable. (PSERS' Motion for Summary Judgment at ¶15)

11. Prior to July 22, 2016, Claimant received PSERS' notice dated May 29, 2016 and June 28, 2016, which informed him of the Class T-F election and his deadline to elect Class T-F membership. (See PSERS-6)

12. Claimant did not elect Class T-F membership on or before July 22, 2016.

13. By letter dated August 6, 2016, and mailed to Claimant at [REDACTED] [REDACTED] PSERS informed Claimant that he would permanently remain a Class T-E member because he did not elect Class T-F membership by the election deadline. (PSERS-3)

14. Claimant received PSERS' August 6, 2016 letter and, on August 23, 2016, he timely appealed PSERS' determination and requested that he be permitted to make an untimely election because PSERS' previous correspondence had become lost in his mail. (PSERS-4)

15. Claimant included with his August 23, 2016 appeal a completed *T-F Membership Class Election* form, which was mailed to Claimant in the June 28, 2016 Class T-F notification.

16. By letter dated November 9, 2016, the ESRC denied Claimant's appeal, explaining that PSERS did not receive a completed *T-F Membership Class Election* form from Claimant by the statutory deadline. (PSERS-5)

17. On November 16, 2016, Claimant appealed the ESRC's decision asserting, in part, that the "initial correspondence [was] lost in **my mail at home**," he "did not understand [the] significance of A-TE or TF [sic] class membership," and he had been overwhelmed with new hire paperwork at the District. (PSERS-6 (emphasis added))

18. On November 30, 2016, PSERS filed its Answer. (PSERS-7)
19. On November 20, 2017, PSERS filed a Motion for Summary Judgment.
20. Claimant did not file a response to PSERS' Motion.
21. This 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).¹ If a member fails to timely file an election to become a Class T-F member, the Retirement Code mandates that "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). Thus, there are no exceptions to the Class T-F election deadline.

Claimant first enrolled in PSERS in March 2016 as a full-time hourly employee with the District, and on May 29, 2016, PSERS mailed Claimant a *T-F Membership Class Election Form*, a *Choosing Your Membership Class* handout, an "IMPORTANT: Decision Required!" handout, and cover letter. The cover letter congratulated Claimant on becoming a PSERS member, explained the differences between Class T-F and T-E membership, and notified him of the July 22, 2016 deadline to elect Class T-F membership. The enclosed election form also notified Claimant of the deadline. On June 28, 2016, PSERS sent a follow-up letter to Claimant reminding him of the

¹ Class T-E membership provides a benefit accrual rate of 2% and a contribution rate of at least 7.5%. Class T-F membership provides a benefit accrual rate of 2.5% and a contribution rate of at least 10.3%. 24 Pa.C.S. § 8102 (definitions of "basic contribution rate" and "standard single life annuity").

deadline. Claimant did not elect Class T-F membership on or before the July 22, 2016 deadline.

Claimant does not dispute that PSERS mailed, and that he timely received, the statutorily-required Class T-F election notice. Nor does he dispute that he failed to elect Class T-F membership on or before the statutory deadline. Rather, Claimant asks that he be permitted to make an untimely election because: (1) PSERS' initial correspondence was lost in his "mail at home"; (2) he did not understand the significance of the class membership; and (3) he was overwhelmed with new hire paperwork. See PSERS-6. Claimant's appeal must be denied as a matter of law.

Misplacing the Class T-F notification that is otherwise timely received is not grounds to extend the statutory deadline for electing Class T-F membership. 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. *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001); see also *Account of Christian Miller*, Docket No. 2012-52 (PSERB May 1, 2013); *Account of Adam D. Smith*, Docket No. 2015-06 (PSERB Aug. 7, 2015); *Account of Andrew Lyle*, Docket No. 2014-18 (PSERB Jun. 14, 2016); see generally *Allen v. Public Sch. Employees' Ret. Bd.*, 848 A.2d 1031, 1033 (Pa. Cmwlth. 2004); *Harasty v. Public Sch. Employees' Ret. Bd.*, 945 A.2d 783, 788 (Pa. Cmwlth. 2008). Such action would be tantamount to circumventing the express language of the Retirement Code, which the Board cannot do. See *Forman*, 778 A.2d at 780; *Marinucci v. State Employees' Ret. Sys.*, 863 A. 2d 43 (Pa. Cmwlth. 2004). There is no exception, statutory or otherwise, to the deadline for electing Class T-F membership, and, thus, the Board is not authorized to grant Claimant the relief he requests because it is not specifically entitled to do so by the Retirement Code.

Further, mere misunderstanding of membership options similarly does not excuse a member from the statutory deadline under the Retirement Code; nor does it entitle a member to relief. See *Forman*, 778 A.2d at 780 (citing *McGovern v. State Employees' Ret. Bd.*, 517 A.2d 523, 526 (Pa. 1986)). Becoming overwhelmed with new hire paperwork further does not create grounds to extend the statutory deadline. See generally *Account of Rodney D. Hawkins*, Docket No. 2015-17 (PSERB Mar. 17, 2016).

Indeed, Claimant has never averred that he did not receive the notices or that the notices provided to him were insufficient. Nonetheless, the May 29, 2016 and June 28, 2016 letters that PSERS sent to Claimant properly notified him that he was a member of PSERS, that he had the opportunity to elect Class T-F membership, and that the deadline to make such election was July 22, 2016. Claimant's assertions that the initial correspondence was lost in the mail at his home, that he did not understand the significance of the election, and that he was overwhelmed with new hire paperwork, do not provide grounds to allow Claimant to make an untimely election.

Here, there is no dispute that PSERS provided Claimant with notice of the Class T-F membership election deadline through the May 29, 2016 and June 28, 2016 mailings. Accordingly, Claimant's appeal must be dismissed as a matter of law.

CONCLUSION

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, 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**

IN RE: ACCOUNT OF RAYMOND F. MEDICE
DOCKET NO. 2016-25
CLAIM OF RAYMOND F. MEDICE

ORDER

AND NOW, upon consideration of Claimant's 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 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: Jan. 18, 2018

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