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

IN RE: ACCOUNT OF DIANE SADLER
DOCKET NO. 2021-12
CLAIM OF DIANE SADLER

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the proposed Opinion and Recommendation of the Hearing Examiner. We note that neither party filed Exceptions to the proposed Opinion and Recommendation. The Board finds appropriate the proposed Opinion and Recommendation, and, accordingly, we hereby adopt it as our own.

IT IS HEREBY ORDERED that Claimant's request to purchase credit for the out-of-state service she rendered with the New York City Department of Education from September 2002 through June 2005 is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: 12/15/23

By: 
Christopher Santa Maria, Chairman

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

Account of Diane Sadler : Docket No.: 2021-12
Claim of Diane Sadler :

OPINION AND RECOMMENDATION

Date of Hearing: October 5, 2022

Hearing Examiner: Jason C. Giurintano, Esquire

For the Claimant: *Pro se*

For PSERS: Savannah Durham, Esquire

I. HISTORY

This matter is before the Public School Employees' Retirement Board (the "Board") on an appeal filed by Diane Sadler ("Claimant"). On May 3, 2021, PSERS Executive Staff Review Committee ("ESRC") denied Claimant's request to purchase credit for three (3) years¹ of out-of-state service for service in New York.

The basis of the ESRC denial was that Claimant's application to purchase out-of-state service was not received by PSERS while Claimant was still an active member. More specifically, Claimant's request for out-of-state service credit was first received on **September 8, 2020**, Claimant retired and left active service on or about **June 15, 2020**.

Claimant timely filed an appeal of the ESRC decision and requested an administrative hearing. Counsel for PSERS timely filed an Answer to Claimant's appeal. Board Secretary Terrill Sanchez appointed a hearing officer for purposes of an administrative hearing in connection with Claimant's appeal. The Board's Docket Clerk served a Notice of Hearing upon the parties and ultimately scheduled the hearing on Claimant's appeal for October 5, 2022.

The hearing on Claimant's appeal convened, as scheduled, at 5 N. 5th Street, Harrisburg, PA 17101. Savannah Durham, Esquire, represented PSERS at the hearing. Claimant appeared *pro se*. Both parties moved exhibits into evidence.

Following receipt of the Notes of Testimony ("N.T"), a briefing schedule was established by the Hearing Examiner. PSERS submitted a timely brief. Claimant did not file a post-hearing brief nor did she file a reply brief to PSERS' brief.²

¹ Claimant sought to purchase credit for the following school years: 2002-2003, 2003-2004, 2004-2005.

² The deadline for Claimant to file a reply brief was February 6, 2023, thus the record closed on that date.

II. FINDINGS OF FACT

1. On August 27, 2020, Claimant filed an *Application for Retirement* with PSERS, identifying her date of retirement as **June 15, 2020**. (PSERS-10; Official Notice- Agency records³; N.T. 47-48, 82-84).
2. PSERS then processed the *Application for Retirement*, and Claimant began receiving a monthly annuity pursuant to her selection of a maximum single life annuity. (PSERS-10; N.T. 36, 82-84).
3. John Tucker has been employed by PSERS as a Regional Office Administrator for six (6) years and is familiar with the process of purchasing of-of-state service credit. (N.T. 54-55).
4. Terrell Davenport has been employed by PSERS for more than 10 years, is currently a Purchase of Service Supervisor, and is familiar with the process of purchasing of-of-state service credit. (N.T. 86-87).

³ Official notice of such matters as might be judicially noticed by courts is permissible under the General Rules of Administrative Practice and Procedure, 1 Pa.Code § 35.173, which provides, in pertinent part, as follows:
§ 35.173. Official notice of facts.

Official notice may be taken by the agency head or the presiding officer of such matters as might be judicially noticed by the courts of this Commonwealth, or any matters as to which the agency by reason of its functions is an expert. . . .

1 Pa.Code §35.173.

In *Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A.2d 991 (Pa. Cmwlth. 1987), the Pennsylvania Commonwealth Court explained:

“Official notice” is the administrative counterpart of judicial notice and is the most significant exception to the exclusiveness of the record principle. The doctrine allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency’s field and those facts contained in reports and records in the agency’s files, in addition to those facts which are obvious and notorious to the average person. Thus, official notice is a broader doctrine than is judicial notice and recognizes the special competence of the administrative agency in its particular field and also recognizes that the agency is a storehouse of information on that field consisting of reports, case files, statistics and other data relevant to its work.

521 A. 2d at 994 n. 6.

5. On **September 8, 2020**, PSERS received an incomplete *Purchase of Out-of-State Service* form (“first POSS”) for Claimant, *i.e.*, PSERS received only Page 3 of the form. (PSERS-11; N.T. 90-92).
6. A POSS form consists of a total of three (3) pages; within those pages are several sections labeled “A” through “G.” (Official Notice- Agency records; PSERS-13).
7. Prior to **September 8, 2020**, PSERS had never received any POSS forms from Claimant. (PSERS-11; N.T. 90-92).
8. By letter dated **September 11, 2020**, PSERS informed Claimant that she was ineligible to purchase the service because she was no longer an active, contributing member of PSERS. (PSERS-12; N.T. 49, 92-94).
9. On or before **October 15, 2020**, the deadline to appeal that initial decision, Claimant filed a timely appeal of that letter to the ESRC. (Official Notice- Agency records; N.T. 49, 94).
10. On **January 22, 2021**, while her appeal to the ESRC was still ongoing, PSERS received a second POSS form (“second POSS”) from Claimant requesting to purchase credit for the following three (3) school years of out-of-state service in New York: 2002-2003, 2003-2004, 2004-2005. (PSERS-13, Section D; N.T. 96-97).
11. The second POSS was the only complete POSS PSERS had received from Claimant, although its various sections were signed/dated on different dates. (N.T. 100; PSERS-13).
12. Sections A and B of the second POSS were signed/dated on **February 18, 2020**. (PSERS-13, Sections A and B; N.T. 50, 97).

13. Sections D and E of Claimant's second POSS were signed/dated on **August 12, 2020**.⁴ (PSERS-13, Sections D and E; N.T. 97).
14. Sections F and G of Claimant's second POSS were signed/dated on **December 18, 2020**. (PSERS-13, Sections F and G; N.T. 98).
15. PSERS did not process the **January 22, 2021**, second POSS, because it was received after Claimant had terminated her active membership in PSERS. (N.T. 96).
16. When PSERS received the second POSS on **January 22, 2021**, Claimant had already filed an appeal to the ESRC based upon the denial of the first POSS. (N.T. 100).
17. Prior to her retirement, Claimant had the opportunity to be made aware that she needed to apply to purchase service credit while an active, contributing member of PSERS.⁵ (PSERS-6; PSERS-7; PSERS-8; PSERS-9; N.T. 38, 42, 76-79, 81).

Procedural Due Process

18. By letter dated **May 3, 2021**, the ESRC denied Claimant's appeal. (PSERS-14; N.T. 51, 100-101).
19. On **June 1, 2021**, Claimant appealed the ESRC's decision. (N.T. 39, 63, 101).

⁴ The New York City Department of Education certified the three years of service that were rendered by Claimant. (PSERS-13, Section D; N.T. 97). The three years of service certified by the New York City Department of Education was approximately the same amount of service time that was identified in the incomplete Purchase of Out-of-State Service form submitted on September 8, 2020. (N.T. 97-98).

⁵ As will be noted more fully below, although the Hearing Officer finds as a matter of fact that Claimant had the opportunity to be made aware that she needed to apply to purchase service credit while an active member, Claimant's subjective knowledge, or lack thereof, is not the basis for this decision- the black letter of the Retirement Code is. To the extent Claimant's position can be construed as suggesting she is entitled to relief because, in her subjective belief, PSERS did not sufficiently explain the provisions Retirement Code to her, any such contention is dismissed in turn. It is common sense and axiomatic that an individual's subjective lack of knowledge of a statute, Retirement Code or otherwise, cannot be a basis for a statute not applying to that individual. Put simply whether Claimant attended 2 retirement seminars or 200 seminars, read 1 PSERS newsletter, or 100 newsletters, she is still bound by the strictures of the Retirement Code. Had this evidence not been introduced, the Hearing Officer would have still found in favor of PSERS.

20. On **June 17, 2021**, PSERS filed an Answer to Claimant's appeal. (Official Notice- Agency records).

21. On **October 5, 2022**, an administrative hearing was held before Hearing Examiner Jason Giurintano, Esq. Claimant appeared *pro se*, and she had an opportunity to testify, examine witnesses, and offer evidence. (N.T., *passim*).

III. CONCLUSIONS OF LAW

1. The Board has jurisdiction to hear this appeal. (Findings of Fact No. 1-2).
2. Claimant was afforded an opportunity to be heard in connection with her appeal. (Findings of Fact Nos. 18-21).
3. Claimant has the burden of proof in this proceeding. *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991); 22 Pa. Code §§ 201.12(d), 201.10, and 201.8(a).
4. PSERS is a creature of statute and derives its authority from the provisions of the Public School Employees' Retirement Code (the "Retirement Code"), 24 Pa.C.S. § 8101, *et seq.*
5. PSERS has no authority to grant rights beyond those specifically set forth in the Retirement Code. *Hughes v. Public School Employees' Retirement Board*, 662 A. 2d 701 (Pa. Cmwlth. 1995), *petition for allowance of appeal denied*, 542 Pa. 678, 668 A.2d 1139 (1995).
6. Claimant has only those rights recognized by the Retirement Code and none beyond. *Bittenbender v. State Employees' Ret. Bd.*, 622 A.2d 403, 405 (Pa. Cmwlth. 1992).
7. Claimant is not eligible to purchase and receive credit for the out-of-state service she rendered in New York, because she did not submit an application to PSERS while she was an active member. (Findings of Fact Nos. 18-21).
8. An "active member" of PSERS may purchase credit and receive eligibility points toward retirement for previous creditable nonschool service. 24 Pa.C.S. § 8304(a).
9. The Retirement Code defines "active member" as a "school employee for whom pickup contributions are being made to the fund." 24 Pa.C.S. § 8102.
10. The Retirement Code defines "creditable nonschool service" as "[s]ervice other than service as a school employee for which an active member may obtain credit" and includes

“[s]ervice in any public school or public educational institution in any state other than this Commonwealth or in any territory or area under the jurisdiction of the United States[.]” 24 Pa.C.S. §§ 8102, 8304(b).

11. Claimant has failed to proffer sufficient evidence in support of her appeal.
(Findings of Fact Nos. 1-21).

IV. DISCUSSION

Factually, there is little in dispute in this case. Claimant is seeking credit for out-of-state service for roughly 2 years and 11 months for time spent teaching in New York. More specifically, she is seeking to purchase credit for the following three (3) school years: 2002-2003, 2003-2004, and 2004-2005. However, for reasons more fully set forth below, the statutory scheme of the Retirement Code as it applies to this appeal is fairly straightforward and the Hearing Officer is bound to concur with PSERS' position.

Claim Procedural Background

On August 27, 2020, Claimant filed an Application for Retirement with PSERS, identifying her date of retirement as June 15, 2020. PSERS then processed the Application for Retirement, and Claimant began receiving a monthly annuity pursuant to her selection of a maximum single life annuity. On September 8, 2020, nearly 3 months after her retirement date, PSERS received the first POSS, although that document was incomplete, *i.e.*, PSERS received only page 3 of the form. Prior to September 8, 2020, PSERS had never received any POSS forms from Claimant.

By letter dated September 11, 2020, PSERS informed Claimant that she was ineligible to purchase the service because she was no longer an active, contributing member of PSERS at the time she submitted her POSS. In other words, PSERS takes the position that the Retirement Code requires a POSS to be filed while a member is still "active," *i.e.*, prior to retirement. As the ESRC noted in denying her appeal, Claimant had already retired by the time she submitted her first POSS. Claimant filed a timely appeal of that determination to the ESRC.

On January 22, 2021, while her appeal to the ESRC regarding the denial of the first POSS was still ongoing, Claimant submitted a second POSS form. Although this second POSS was complete to the extent that sections A-G were signed and dated, *none of those dates were prior to*

Claimant's June 15, 2020, retirement. Thus, the second POSS did nothing to correct the deficiency contained in the first POSS. Put simply, the second POSS was also submitted when Claimant was no longer active.

Burden

Claimant bears the burden of establishing the relief she seeks under Pennsylvania's Public School Employees' Retirement Code, 24 Pa.C.S.A. §8101 *et. Seq.* See, *L. Draper v. PSERS*, 2012 WL 8681657 at *1 (Pa. Cmwlth. October 26, 2012). See also *Gierschick v. State Employee's Retirement Board*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999); *Wingert v. State Employees' Retirement Board*, 589 A.2d 269, 271 (Pa. Cmwlth. 1991). Claimant must satisfy his burden by a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A. 2d 600 (Pa. Cmwlth. 1990), *appeal denied*, 529 Pa. 654, 602 A. 2d 863 (1992). "A preponderance of the evidence is "such proof as leads the fact-finder. . . to find that the existence of a contested fact is more probable than its nonexistence." *Sigafoos v. Pennsylvania Bd. of Probation and Parole*, 503 A. 2d 1076 (Pa. Cmwlth. 1986). Claimant's burden of proof has also been described as a 'more likely than not standard', or evidence that is sufficient to tip the mythical scales in her favor. *Agostino v. Township of Collier*, 968 A. 2d 258 (Pa. Cmwlth. 2009).

The Credibility of Witnesses and Weight of the Evidence

In an administrative proceeding, the fact finder determines questions of the credibility of witnesses and the weight of the evidence. *See e.g., Nepa v. Department of Public Welfare*, 551 A.2d 354 (Pa. Cmwlth. 1988) (determination of the credibility of witnesses in health care providers' appeal is the province of the fact finder). In weighing any evidence, a factfinder "may rely on his or her experience [and] common sense" to arrive at a proper conclusion. *Commonwealth v. Segida*, 985 A.2d 871, 879 (Pa. 2009). *See also, Summers v. Certainteed Corp.*,

997 A.2d 1152, 1161 (Pa. 2010) (“The credibility of witnesses, professional or lay and the weight to be given their testimony is strictly within the proper province of the trier of fact.”).

In that regard, the Hearing Officer found the testimony of Claimant credible, however even assuming, *arguendo*, all her testimony was believed, it would not change the outcome here. The Hearing Examiner found PSERS’ witnesses credible as well.

Claimant is not Entitled to Purchase Credit for her Service in New York

PSERS administers the retirement system for Pennsylvania public school employees. 24 Pa.C.S. § 8101, *et seq.* PSERS is a creature of the legislature and its members have only those rights created by the Retirement Code and none beyond. *See Forman v. Pub. Sch. Employees’ Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001).

The Code permits, in limited circumstances, an “active member” of PSERS to purchase credit and receive eligibility points toward retirement for previous “creditable nonschool service.” 24 Pa.C.S. § 8304(a). The Retirement Code defines “active member” as a “school employee for whom pickup contributions are being made to the fund.” 24 Pa.C.S. § 8102. The Retirement Code defines “creditable nonschool service” as “[s]ervice other than service as a school employee for which an active member may obtain credit” and includes “[s]ervice in any public school or public educational institution in any state other than this Commonwealth or in any territory or area under the jurisdiction of the United States[.]” 24 Pa.C.S. §§ 8102, 8304(b). Out-of-state service includes, *inter alia*, service rendered in public schools outside of Pennsylvania. 24 Pa.C.S. § 8304(b)(3). That purchase is limited to a lesser of 12 years or the number of years of school service credited in the system. 24 Pa.C.S. § 8304(c).

In other words, the Retirement Code permits a member, *e.g.*, Claimant, to purchase credit for out-of-state service in certain circumstances. However, that service must be purchased while

a member is still active. Here, there is no dispute that on the dates Claimant filed both (i) her incomplete first POSS and (ii) her complete second POSS, she had already been retired for months, and therefore was not considered an “active member” under the Retirement Code. Given the rather straightforward scheme of the Retirement Code in this regard, and a lack of case law suggesting it should be interpreted as something other than what it plainly states, Claimant is not entitled to relief on this basis alone.

To the extent Claimant’s position can be construed as suggesting she is entitled to relief because, in her *subjective* belief, PSERS did not sufficiently explain the provisions of the Retirement Code to her, any such contention is dismissed in turn. Counsel for PSERS was workmanlike and thorough in placing comprehensive evidence on the record that tended to show Claimant was made aware of the relevant provisions of the Retirement Code for years prior to her retirement (see, e.g., PSERS-1 through PSERS-9), however, such evidence is not the basis of this decision. It is common sense and axiomatic that an individual’s *subjective* lack of knowledge of a statute, Retirement Code or otherwise, cannot be a basis for that statute not applying to that individual. Whether Claimant attended 2 PSERS retirement seminars or 200 seminars, read 1 PSERS newsletter, or 100 newsletters, she is still bound by the strictures of the Retirement Code. Although PSERS makes substantial and significant efforts to *educate* its members about the Retirement Code, it cannot reasonably be expected to know whether that information has been subjectively *retained* by an individual member, and if so, to what extent.

Based upon the foregoing findings of fact, conclusions of law, and discussion, the following proposed order shall issue:

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

Account of Diane Sadler : **Docket No.: 2021-12**
Claim of Diane Sadler :

RECOMMENDATION

AND NOW, this 18th day of April 2023, upon consideration of the foregoing Findings of Fact, Conclusions of Law and Discussion, the Hearing Officer for the Public School Employees' Retirement System recommends that Claimant's appeal should be **DENIED** and the decision of PSERS be **AFFIRMED**.

s/ Jason Giurintano

**Jason C. Giurintano, Esquire
Hearing Examiner**

Claimant:

Diane Sadler

Redacted

For PSERS:

Savannah Durham, Esquire
Public School Employees' Retirement System
5 North Fifth Street
Harrisburg, PA 17101

Docket Clerk:

Julie Vitale | Appeal Docket Administrator
Public School Employees' Retirement Board
5 N 5th Street | Harrisburg, PA 17101-1905

Date of Mailing:

4/18/23