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

IN RE: ACCOUNT OF SYBIL N. KNIGHT  
DOCKET NO. 2020-02  
CLAIM OF SYBIL N. KNIGHT

**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 Cambridge School District in Massachusetts from September 1998 through June 2006 is DENIED.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: 1/20/23

By:   
Christopher Santa Maria, Chairman

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

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In Re: :  
Account of Sybil N. Knight : Docket No. 2020-02  
Claim of Sybil N. Knight :

OPINION AND RECOMMENDATION

Date of Hearing: March 9, 2022  
Hearing Officer: Monty J. Batson, Esquire  
Claimant, *Pro Se*: Sybil N. Knight  
For PSERS: Cayla B. Jakubowitz, Esquire

## HISTORY

This matter is before the Public-School Employees' Retirement Board on an appeal filed by Sybil N. Knight ("Claimant") from a decision, filed on January 7, 2020, by the Executive Staff Review Committee ("ESRC") of the Public-School Employees' Retirement System ("PSERS") to deny Claimant's request to purchase credit for out-of-state service for the time she worked at the Cambridge School District from September 1998 to June 2006. Claimant's last day of work with the Harrisburg School District was June 30, 2019. On July 22, 2019, PSERS received, via mail, Claimant's completed Purchase of Out-of-State Service form requesting to purchase credit for out-of-state service for the time she worked at the Cambridge School District. Section E of the form was marked "Amended 7/17/19," signed by Shawn Flynn, Service Representative, and dated 7/17/2019. On July 29, 2019, PSERS received, via fax from Shan Flynn, Service Representative for the Massachusetts Teachers' Retirement System, a second copy Claimant's completed Purchase of Out-of-State Service form. The faxed copy contained two Section E of the form. One of the Section E was signed by Shawn Flynn and was dated 4/12/19. The other Section E was marked "Amended 7/17/19," signed by Shawn Flynn, and dated 7/17/2019.

By letters dated July 24, 2019 and August 21, 2019, PSERS informed Claimant that she was ineligible to purchase credit for out-of-state service rendered in Massachusetts because she was no longer an active contributing member of PSERS or a multiple service member active with the State Employees' Retirement System (SERS). The letters also informed Claimant of her right to appeal PSERS' decision. Claimant timely appealed from PSERS' determination. By letter dated January 7, 2020, ESRC denied Claimant's appeal.

On January 31, 2020, Claimant appealed from the ESRC's determination. In support of her appeal, Claimant asserted that she was terminated abruptly by the Harrisburg School District and had

expected to be employed until June 30, 2021, and had therefore, expected to be an active, contributing member of PSERS when her Purchase of Out-of-State form for the time she worked at the Cambridge School District had been submitted. Claimant also asserts that the Cambridge School District had sent in her Purchase of Out-of-State form on or about April 12, 2019. On February 10, 2020, PSERS filed an Answer. On March 9, 2022, the hearing on Claimant's appeal occurred remotely via the Microsoft Teams platform before the undersigned hearing examiner.

Claimant appeared for the hearing, *pro se*, and testified on her own behalf. Claimant moved seven (7) exhibits into evidence. Cayla B. Jakubowitz, Esquire represented PSERS at the hearing. PSERS presented its case through the testimony of PSERS Purchase of Service Unit Supervisor Gayle Neiman. PSERS also moved twenty (20) exhibits into evidence.

On March 31, 2022, the evidentiary record in this matter closed with the filing of Notes of Testimony ("N.T."). By Amended Order dated April 14, 2022, Claimant was directed to file her Post-Hearing Brief by May 3, 2022. PSERS was directed to file its Post-Hearing Brief no later than June 13, 2022. Claimant was directed to file her Reply Brief, if any, no later June 28, 2022. By Order dated April 19, 2022, at the request of Claimant, the undersigned hearing officer issued an Order granting extension of time to file briefs. Claimant was directed to file her Post-Hearing Brief by June 2, 2022. PSERS was directed to file its Reply-Brief no later than July 5, 2022. Claimant was directed to file her Reply Brief, if any, no later July 20, 2022. Claimant filed her brief as directed and both Claimant and PSERS filed their respective reply-briefs as directed. This matter is now before the Board for final disposition.

## FINDINGS OF FACT

1. Claimant began employment with the Harrisburg School District in 2006. (PSERS Exhibit -1; N.T. 28, 47).
2. Claimant's employment with the Harrisburg School District was terminated effective June 30, 2019. (Claimant Exhibit -5; N.T. 28, 42-43, 48, 53).
3. An "active member" under the Retirement Code is defined as "a school employee for whom pickup contributions are being made to the fund or for whom such contributions otherwise required for current school service are not being made solely by reason of any provision of this part relating to the limitations...". (24 Pa.C.S.A. §8102).
4. A member is required to purchase out-of-state service prior to his/her last date of paid service, while he/she is an active contributing member of PSERS. (24 Pa.C.S.A. §8102. PSERS Exhibit -2; N.T. 55-56).
5. PSERS must receive the application to purchase service credit while the applicant is an active, contributing member. (N.T. 72, 73, 76-77).

### Pre- Termination of Service Information

6. Claimant enrolled in PSERS in 2006. (N.T. 47).
7. Upon enrollment in PSERS, Claimant was mailed a document titled "Important Information." This document informed Claimant, "Only as an active contributing member of PSERS, are you eligible to purchase numerous types of service." (PSERS Exhibit-7; N.T. 67, 68).
8. In 2006, PSERS also mailed Claimant a copy of the PSERS *Active Member Handbook*, that states, "If you are an active member of PSERS, you may be eligible to apply to purchase service credit." (PSERS Exhibit-8; N.T. 70).

9. In June 2007, PSERS sent Claimant an updated *Active Member Handbook* that stated, “Active members of PSERS are eligible to apply to purchase service credit. PSERS must receive your purchase of service applications while you are an active contributing member.” (PSERS Exhibit-9; N.T. 72).

10. From 2012 to 2019, PSERS maintained an updated Active member Handbook on its website and was available by mail to members upon request. (PSERS Exhibit-10; N.T. 73).

11. The 2012 Active Member Handbook state, “Active members of PSERS are eligible to apply to purchase service credit. PSERS must receive your purchase of service application(s) while you are an active contributing member.” (PSERS Exhibit-10; N.T. 73).

12. Each year, PSERS mails the document, “*Statement of Account*” to its members, which provides members, among other things, information on how much service credit they currently have with PSERS. (PSERS Exhibits-11 - 20; N.T. 74).

13. PSERS provided Claimant annual *Statement of Account* for school years 2006-2011, which indicated under the heading “Special Notes”, “All requests to purchase service credit must be filed while you are a qualified contributing member”. (PSERS Exhibit 15; N.T. 74-77).

14. PSERS provided Claimant annual *Statement of Account* for school years 2011- 2014 which indicated under the heading “Special Notes”, “All requests to purchase service credit must be filed while you are a qualified contributing member and within the prescribed time frame.” (PSERS Exhibits 16-18; NT 74-77).

15. PSERS provided Claimant the annual *Statement of Account* for school year 2014-15 which provided, “All requests to purchase service credit must be filed while you are a qualified contributing member and within the prescribed time frame.” (PSERS Exhibit-19; N.T. 74-77).

16. PSERS provided Claimant the annual *Statement of Account* for the school year 2015-16 that provided, "All requests to purchase service credit must be filed while you are an active, contributing member and within the prescribed time frame." (PSERS Exhibit-20; N.T. 74-77).

17. In or about 2017-18, Claimant met with her financial person and was informed that she would have to submit the request to purchase service to PSERS while she was actively working. (N.T. 40-41).

18. Claimant received the *Guidelines For Completing Your Purchase of Out-of-State Service* with the Purchase of Out-of-State Service form. (PSERS Exhibit-2; N.T. 54).

19. The *Guidelines For Completing Your Purchase of Out-of-State Service* advises members, in part, that to purchase out-of-state service, the member must be an active, contributing member of PSERS or a multiple service member, active within the State Employees' Retirement System. (PSERS Exhibit-2; N.T. 55-56).

20. Claimant is not a multiple service member under the Retirement Code. (N.T. 56).

#### **Requests for Purchase of Service Credit**

21. Out-of-State Service is the service performed at a public school in another state of the United States. The application for purchase of such service has three portions that are to be completed by the employee, the out-of-state employer, and the out-of-state retirement system. (PSERS Exhibit-2)

22. On March 5, 2019, Claimant completed and signed her portion of the three page Purchase of Out-of-State Service form, which are Sections A and B and sent the form to the Cambridge School District. (Claimant Exhibit-2, pg. 1; N.T. 30-31).<sup>1</sup>

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<sup>1</sup> PSERS' Purchase of Out-of-State Service form consists of 3 pages. On page one is Section A - Member Information, and Section B - Member Certification. On page 2 is Section C - Employment Information and Section D - Employer Certification. On page 3 is Section E - Retirement Information, Section F - Contributory Plan, Section G - Non-Contributory Plan or Optional Plan, and Section H - Retirement System Certification. (PSERS Exhibit-1).

23. The Cambridge School District completed and signed Sections C and D of the purchase of out-of-state service form on March 14, 2019 and sent the form at some point thereafter to the Massachusetts Teachers' Retirement System. (Claimant Exhibit-2, pg. 2).

24. On March 18, 2019, the Massachusetts Teachers' Retirement System received Claimant's Out-of-State Service application. (Claimant Exhibit – 1).

25. Subsequently, Sections E, F, and H (page 3) of Claimant's Purchase of Out-of-State Service paperwork was completed and signed by Shawn Flynn, a Service Representative for the Massachusetts Teachers' Retirement System, and dated 4/12/19. (Claimant Exhibit– 2, pg. 3; PSERS Exhibit 4, N.T. 32).

26. It was Claimant's understanding that upon completing the relevant portion of the Purchase of Out-of-State Service form, Mr. Flynn, from the Massachusetts Teachers' Retirement System, was to send it directly to PSERS. (Claimant Exhibit-1; N.T. 31).

27. Mr. Flynn mailed a copy of the completed Purchase of Out-of-State Service paperwork to Claimant, which was signed by Mr. Flynn and dated 4/12/2019. (Claimant Exhibit – 2).

28. Claimant received from Mr. Flynn the completed Purchase of Out-of-State Service paperwork, which was signed by Mr. Flynn and dated 4/12/2019. (N.T. 32; Claimant Exhibit - 2).

29. At no time did Claimant send a copy of the completed Purchase of Out-of-State Service paperwork she received, which was signed by Mr. Flynn and dated 4/12/2019, to PSERS. (N.T. 32).

30. Claimant received a letter from the Harrisburg School District, dated June 28, 2019, informing her that her employment with the school district was being terminated effective June 30, 2019. (Claimant Exhibit – 5).

31. PSERS maintains a business record of documents received. (N.T. 53).



32. PSERS did not receive Claimant's completed Purchase of Out-of-State Service paperwork before Claimant's employment was terminated on June 30, 2019. (N.T. 53, 60).

### **Post-Termination Events**

33. On July 17, 2019, Claimant reached out to Mr. Flynn after noticing an error was made with respect to the number of years served. (N.T. 18; Claimant Exhibit-1).

34. Section E of Claimant's Purchase of Out-of-State Service paperwork that was completed by Mr. Flynn listed only six years of service when Claimant had in fact served for 8 years. (Claimant Exhibits-1 & 2).

35. On July 17, 2019, Mr. Flynn once again completed the Massachusetts Teachers' Retirement System's portion of Claimant's Purchase of Out-of-State form (page 3), where he corrected the number of years of service in Section E, wrote "Amended 7/17/19" on the top of Section E, and signed Section H and dated it 7/17/19. (Claimant Exhibit- 3).

36. At some point, Mr. Flynn mailed Claimant's completed Purchase of Out-of-State Service for the Cambridge School District to PSERS. (PSERS Exhibit-1).

37. PSERS has a system wherein they stamp the receipt date of a document at the top of a document if it comes in via mail, and for documents received through fax, they have the date and time stamped on them. (N.T. 78).

38. On July 22, 2019, PSERS received, via mail, Claimant's completed Purchase of Out-of-State Service for the Cambridge School District and stamped "Received July 22, 2019 2 P.S.E.R.S." on each page. (PSERS Exhibit -1; N.T. 49).

39. The completed Purchase of Out-of-State Service paperwork received by PSERS, via mail, consisted of Sections A and B (page 1) signed by Claimant and dated March 5, 2019; Sections C and D (page 2) signed by the payroll manager for Cambridge Public Schools and dated March 13, 2019; and

Sections E, F, G, and H (page 3) signed by Shawn Flynn and dated 7/17/2019 with “Amended 7/17/2019” at the top of Section E. (PSERS Exhibit-1).

40. PSERS conveyed to Claimant by letter dated July 24, 2019, that she was ineligible to purchase the service since she was no longer an active, contributing member of PSERS. The letter also gave her instructions on how to appeal the decision. (PSERS Exhibit-3; N.T. 57).

41. After receiving PSERS’ correspondence denying her request to purchase out-of-state service from the Cambridge School district, Claimant reached out to Mr. Flynn. (Claimant Exhibit-1).

42. On July 29, 2019, Mr. Flynn sent PSERS a seven-page fax, which included a one-page letter from Mr. Flynn to PSERS and Claimant’s completed Purchase of Out-of-State Service form, which consisted of pages 1 and 2- and two-page 3s. (PSERS Exhibit-4).

43. The first page 3 incorrectly listed six years of service in Section E, was signed by Mr. Flynn and dated 4/12/19, and the second page 3 correctly listed eight years of service in Section E, was signed by Mr. Flynn and dated 7/17/2019 with “Amended 7/17/2019” at the top of Section E. (PSERS Exhibit-4).<sup>2</sup>

44. On July 29, 2019, PSERS received the faxed documentation sent by Mr. Flynn. (PSERS Exhibit 4; N.T. 57-58).

45. PSERS once again sent a letter to Claimant dated August 21, 2019, which indicated that Claimant was ineligible to purchase out-of-state service because she was not an active contributing member of PSERS or a multiple service member active with the State Employees’ Retirement System (SERS) and was informed of her appeal rights. (PSERS Exhibit- 5).

46. PSERS does not require the out-of-state retirement system to send in the application. (N.T. 53,77-78).

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<sup>2</sup> PSERS raised a hearsay objection to the admittance of the letter of attestation from Mr. Flynn in Claimant’s Exhibit 1. (N.T. 16). The letter was admitted into evidence, and it was indicated that it would be given the weight it was due. (N.T. 17).

47. Claimant could have submitted the completed Purchase of Out-of-State Service paperwork, dated April 12, 2019, she received from Mr. Flynn to PSERS herself. (N.T. 53,77-78).

48. Prior to June 30, 2019, Claimant never called PSERS to verify the receipt of her completed Purchase of Out-of-State Service form dated April 12, 2019. (N.T. 54).

49. Claimant appealed PSERS' denial of her request to purchase out-of-state service to the Executive Staff Review Committee. (N.T. 38, 61).

50. By letter dated January 7, 2020, the ESRC denied Claimant's appeal. (PSERS Exhibit- 6; N.T. 38,62).

51. On January 31, 2020, Claimant appealed the ESRC's decision. (Official Notice-agency records).<sup>3</sup>

52. On February 10, 2020. PSERS filed an Answer to Claimant's appeal. (Official Notice-agency records).

53. On March 9, 2022, at 10:00 a.m., a formal administrative hearing regarding Claimant's appeal was held remotely via the Microsoft Teams platform. (N.T. 5).

54. Claimant appeared for the hearing, *pro se*, and testified on her own behalf. Claimant moved seven (7) exhibits into evidence. (N.T. 5, *passim*).

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<sup>3</sup> 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. See, also, *Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A.2d 991, 994 n. 6 (Pa. Cmwlth. 1987).

55. Cayla B. Jakubowitz, Esquire represented PSERS at the hearing. PSERS presented its case through the testimony of PSERS Purchase of Service Unit Supervisor Gayle Neiman. PSERS also moved twenty (20) exhibits into evidence. (N.T. 6, 46, *passim*).

56. Claimant was served with all pleadings, orders and notices filed of record in this matter, and was provided the opportunity to testify on her own behalf, offer exhibits into evidence, and cross-examine PSERS' witnesses at the formal administrative hearing held on March 9, 2022. (N.T., *passim*).

## CONCLUSIONS OF LAW

1. The rights of PSERS members are derived solely from the provisions of the Public School Employees' Retirement Code ("Retirement Code"). 24 Pa.C.S.A. §8101 *et. seq.*; *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001).

2. The authority of the Board to grant or deny Claimant's request is limited to the provisions of the Retirement Code, and the Board has no authority to grant Claimant rights beyond those specifically set forth in the Retirement Code. *Forman, supra*; *Burris v. State Employees' Retirement Board*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees' Retirement Board*, 622 A.2d 403, 405 (Pa. Cmwlth. 1992).

3. Claimant has failed to meet her burden of showing that she was an active participating member of PSERS, entitled to purchase out-of-state service for work Claimant performed at the Cambridge School District, at the time PSERS received her completed Purchase of Out-of-State Service form. (Finding of Fact, Nos. 2-5, 22, 32, 35, 37, 38, 40, 43, 45; Pa.C.S.A. §§8102, 8304; 1 Pa. Code §31.11).

4. Claimant has been afforded reasonable notice of the grounds upon which PSERS denied her requests to purchase out-of-state service credit, and she has been provided an adequate opportunity to be heard in this proceeding. (Findings of Fact, Nos. 40, 43, 46-51, 53).

## DISCUSSION

This matter involves an appeal from a January 7, 2020 decision by the PSERS' Executive Staff Review Committee ("ESRC") to deny Claimant's request to purchase out-of-state service credits for her service with the Cambridge School District from September 1998 to June 2006. By letter dated July 24, 2019, PSERS informed Claimant that it had denied her request on the following grounds:

You must be an active contributing member of PSERS or a multiple service member active with the State Employee Retirement System (SERS) to purchase credit for service. According to our records, you do not meet this eligibility requirement.

On August 21, 2019, PSERS once again informed Claimant via letter that it had denied her request on the following grounds:

You must be an active contributing member of PSERS or a multiple service member active with the State Employee Retirement System (SERS) to purchase credit for service. According to our records, you do not meet this eligibility requirement.

Claimant argues that at the time of filling the Purchase of Out-of-State Service form in March 2019, she was expecting to be employed by the Harrisburg School District until June 30, 2021. Her service was unexpectedly terminated on June 28, 2019, and the termination was made effective June 30, 2019. She further argues that if the service representative sent out the completed Purchase of Out-of-State Service form that incorrectly listed six years of service and was dated April 12, 2019, to both her and PSERS, and she received her copy, PSERS should have received theirs too.

As the party appealing from the determination of the PSERS' ESRC, Claimant bears the burden of establishing that she is entitled to the service credit she seeks under Pennsylvania's Public-School Employees' Retirement Code, 24 Pa.C.S.A. §8101 *et. seq.*; *Gierschick v. State Employees' Retirement Board*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999); *Wingert v. State Employees' Retirement Board*, 589 A.2d 269, 271 (Pa. Cmwlth. 1991). The degree of proof required by Claimant to establish

her case is a preponderance of the evidence. *Suber v. Pennsylvania Commission on Crime and Delinquency, Deputy Sheriff's Education and Training Board*, 885 A.2d 678, 681-83 (Pa. Cmwlth. 2005); *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *app. den.*, 602 A.2d 863 (Pa. 1992). A preponderance of the evidence is "such proof as leads the factfinder... to find that the existence of a contested fact is more probable than its nonexistence" through evidence which is substantial and legally credible. *A.B. v. Slippery Rock Area School District*, 906 A.2d 674 (Pa. Cmwlth. 2006); *Lansberry*, 578 A.2d at 601-602; *Sigafoos v. Pennsylvania Board of Probation and Parole*, 503 A. 2d 1076, 1079 (Pa. Cmwlth. 1986).

### **Statutory/Regulatory Framework**

It is established that members of PSERS have only those rights created by the Public-School Employees' Retirement Code, 24 Pa. C.S.A. § 8101 et seq., and none beyond. *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001). Moreover, PSERS is required to 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.A. §1921(a), (b).

Claimant's ability to receive out-of-state service credit is addressed by the Retirement Code at 24 Pa.C.S.A. §8304 which provides, in pertinent part, as follows:

- (a) **Eligibility.**--An active member or a multiple service member who is an active member of the State Employees' Retirement System shall be eligible to receive Class T-C, Class T-E, Class T-F, Class T-G or Class T-H service credit for creditable nonschool service... as set forth in subsection (b) provided that he is not entitled to receive, eligible to receive now or in the future, or is receiving retirement benefits for such service under a retirement system administered and wholly or partially paid for by any other governmental agency or by any private employer, or a retirement program approved by the employer in accordance with section 8301(a)(1) (relating to mandatory and optional membership), and further provided that such service is certified by the previous employer and the manner of payment of the amount due is agreed upon by the member, the employer, and the board.

**(b) Limitations on nonschool service.** --Creditable nonschool service credit shall be limited to:

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(3) Service in any public school or public educational institution in any state other than this Commonwealth...

24 Pa.C.S.A. §8304 (emphasis added). Stated otherwise, a PSERS member must be an “active member” to be eligible for out-of-state service credit.

The Retirement Code defines an “active member” as “a school employee for whom pickup contributions are being made to the fund...” 24 Pa.C.S.A. §8102. “Creditable nonschool service” is defined by the Retirement Code as “service other than service as a school employee for which an active member may obtain credit in the system. 24 Pa.C.S.A. §8102. Because pickup contributions are not made to the fund on behalf of non-active members, they are no longer eligible to purchase out-of-state service after an active member terminates school service. See, 24 Pa.C.S.A. §8102 (definition of “date of termination of service” as “the last day of service for which pickup contributions are made for an active member” or “the last day of service for which mandatory pickup participant contributions are made for an active participant”). See also, *In re: Account of Joan A. Jordan*, Docket No. 2012-08 (PSERB January 29, 2013); *In re: Account of Evangeline A. Ronstadt*, Docket No. 2011-16 PSERB May 1, 2013).

The Retirement Code also provides that, “Notice by publication, including, but not limited to, newsletters, newspapers, forms, first class mail, letters, manuals and electronic notice, including, but not limited to, e-mail or publicly accessible Internet websites, distributed or made available to members in a manner reasonably calculated to give actual notice of the provisions of this part that require notice to members shall be deemed sufficient notice for all purposes.” 24 Pa. C.S.A. § 8103.1.



## Analysis

In this case, the record unequivocally shows that Claimant's last day of employment with the Harrisburg School District was June 30, 2019. Accordingly, Claimant was no longer an "active member" of PSERS after that date. The findings of fact establish that July 22, 2019 was the earliest date PSERS received Claimant's completed Purchase of Out-of-State Service form via mail. The completed Purchase of Out-of-State Service paperwork received by PSERS, via mail, consisted of Sections A and B (page 1) signed by Claimant and dated March 5, 2019; Sections C and D (page 2) signed by the payroll manager for Cambridge Public Schools and dated March 13, 2019; and Sections E, F, G, and H (page 3) signed by Shawn Flynn and dated 7/17/2019 with "Amended 7/17/2019" at the top of Section E. PSERS conveyed to Claimant by letter dated July 24, 2019, that she was ineligible to purchase the service since she was no longer an active, contributing member of PSERS.

After receiving PSERS' correspondence denying her request to purchase out-of-state service from the Cambridge School district, Claimant reached out to Mr. Flynn. On July 29, 2019, Mr. Flynn sent PSERS a seven-page fax, which included a one-page letter from Mr. Flynn and Claimant's completed Purchase of Out-of-State Service form, which consisted of pages 1 and 2- and two-page 3s. The first page 3 incorrectly listed six years of service in Section E, was signed by Mr. Flynn and dated 4/12/19, and the second page 3 correctly listed eight years of service in Section E, was signed by Mr. Flynn and dated 7/17/2019 with "Amended 7/17/2019" at the top of Section E. PSERS once again sent a letter to Claimant dated August 21, 2019, which indicated that Claimant was ineligible to purchase out-of-state service because she was not an active contributing member of PSERS or a multiple service member active with the State Employees' Retirement System (SERS).

Claimant argues that her termination was unexpected, and that at the time of her filling out the application; she intended to remain employed by the Harrisburg School District until June 30, 2021.

Accepting Claimant's statement as true, the law does not provide an exception for unexpected terminations. Claimant's intent at the time of application, that she would be employed till June 30, 2021, is irrelevant. (N.T. 25).

Claimant next argues that Mr. Flynn's statement in a letter that was admitted into evidence, over PSERS' objection, should be used as evidence to prove that her application was timely submitted. (Claimant reply-brief). Unfortunately, Claimant's argument is misplaced. To use the statements in Mr. Flynn's letter to PSERS in such a way is exactly what the rule against hearsay prohibits.<sup>4</sup> To purchase out-of-state service from PSERS, a member must be an "active member" of PSERS or a multiple service member who is an active member of SERS. 24 Pa C.S.A. § 8304; 24 Pa. C.S.A. § 8102. An "active member" is a "school employee for whom pickup contributions are being made to the fund..." 24 Pa. C. S.A. § 8101. Once a member terminates school service, they are not an active member, pickup contributions are not made on their behalf to the fund, and they are no longer eligible to purchase out-of-state service.

Assuming arguendo that Mr. Flynn's statements made in his correspondence to PSERS fall within an exception to the rule against hearsay, as Claimant theorizes in her reply-brief, Mr. Flynn's statements do not aid Claimant.<sup>5</sup> The date PSERS receives a completed application is determinative. 1

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<sup>4</sup> According to the Pennsylvania Rule of Evidence (Pa.R.E.) Hearsay means a statement (oral assertion, written assertion, or nonverbal conduct) that a Declarant (person who made the statement) does not make while testifying at the current trial or hearing offered into evidence by a party to prove the truth of the matter asserted. 225 Pa. Code Rule 801(c); *Heddings v. Steele*, 514 Pa. 56. Additionally, Pa.R.E. 802 provides that hearsay is not admissible unless some exception applies. 225 Pa. Code Rule 802. The rule in *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366 (Pa. 1976), holds that in an administrative proceeding in Pennsylvania Hearsay evidence, properly objected to, is not competent evidence to support a finding of the Board. That rule has been applied repeatedly to administrative hearings on the merits and was reaffirmed by a majority opinion of the state supreme court in *Joyce v. Workers' Compensation Appeal Board (Ogden/Allied Maintenance)*, 680 A.2d 855, 859-60 (Pa. 1996). To the extent that Claimant offered Mr. Flynn's out of court statements contained in his correspondence with PSERS to prove the matter asserted, the statements are hearsay. As a result, Mr. Flynn's statements could not be used as the basis for making a finding of fact.

<sup>5</sup> Pa.R.E. 803. **Exceptions to the Rule Against Hearsay – Regardless of Whether the Declarant is available as a witness.** The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness: **(3) Then-Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not

Pa. Code. § 31.11. As an agency of the Commonwealth, the PSERS administrative procedures are governed by the General Rules of Administrative Practice and Procedure except for certain exceptions. 1 Pa. Code. § 31.11 governs the timely filing of documents and provides that, “Pleadings, submittals or other documents required or permitted to be filed under this part, the regulations of the agency or any other provision of law shall be received for filing at the office of the agency within the time limits, if any, for the filing. The date of receipt at the office of the agency and not the date of deposit in the mails is determinative.” See also *Estate of Wilson by Killinger v. State Employees' Retirement Board*, 656 Pa. 151, 167 (2019) (found that where GRAPP was adopted by an administrative agency, the mailbox-rule does not apply). At best Mr. Flynn’s statements in his correspondence to PSERS can only be used to establish that on 4/12/19, Mr. Flynn filled out Claimant’s Purchase of Out-of-State Service form and mailed a copy to both Claimant as well as PSERS. The date that a form is completed and the date it is sent are irrelevant, only the date of receipt by PSERS is relevant for consideration of purchase of out-of-state service. Such a date must be prior to the member’s termination of service.

The plain letter of the law is very clear that eligibility for purchase of credit for out-of-state service is determined based on the time of receipt of the application by PSERS. The uncontroverted evidence presented at the hearing is that PSERS first received Claimant’s completed Purchase of Out-of-State Service form to purchase out of state service from the Cambridge School District on July 22, 2019.

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including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant’s will. 225 Pa. Code Rule 803(3). There are ordinarily three instances in which the state of mind exception is applicable. First, the exception may apply to prove the declarant’s state of mind when that state of mind is an issue directly related to a claim or defense in the case. See *Commonwealth v. Laich*, 777 A.2d 1057 (Pa. 2001). Second, the exception can apply to demonstrate that a declarant did a particular act that was in conformity with his or her statement after having made the statement. See *Commonwealth v. Riggins*, 386 A.2d 520 (Pa. 1978). Finally, an out of court statement related to the person’s memory or belief is admissible in the limited instance where it relates to the “execution, revocation, identification or terms of the declarant’s will.” Pa.R.E. 803(3).

By that time, Claimant's employment with the Harrisburg School District had been terminated. Claimant was no longer an active contributing member of PSERS, making her ineligible for the purchase.

### Equitable Estoppel Analysis

Finally, Claimant argues in her post-hearing brief that statements made to her by Mr. Flynn regarding him having sent her completed Purchase of Out-of-State Service form to PSERS induced her to take no further action on confirming if PSERS received it. The elements of estoppel are: (1) an inducement of a party to believe that certain facts exist, (2) an act of justifiable reliance upon that belief, and (3) a detriment to the party as a result. *Novelty Knitting Mills, Inc. v. Siskind*, 500 Pa. 432, 457 A.2d 502 (1983). In the case *sub judice*, there is no evidence to prove that Claimant was induced in any way by PSERS, or anyone authorized by PSERS, to believe that her completed Purchase of Out-of-State form from the Cambridge School District had been timely received by PSERS while Claimant was an active contributing member of PSERS. Even if Claimant believed that Mr. Flynn sent the application to PSERS, it was incumbent upon Claimant to ensure that PSERS received it while Claimant was an active contributing member. PSERS cannot be held responsible for statements made by Mr. Flynn.

Claimant had ample notice from PSERS as to when the Purchase of Out-of-State Service form had to be received by PSERS to be considered eligible.

The record shows that through the years 2006 to 2016, PSERS provided Claimant with annual *Statement of Account* documents that informed her of the eligibility requirement for purchase of service credit. In the annual *Statement of Account* from 2006 to 2010, it stated, "All requests to purchase service credit must be filed while you are a qualified contributing member".

The annual *Statement of Account* for school years 2011 through 2014 stated, "All requests to purchase service credit must be filed while you are a qualified contributing member and within the prescribed time frame." For the school year 2014-15, PSERS provided Claimant with an annual

*Statement of Account* that stated, "All requests to purchase service credit must be filed while you are a qualified contributing member and within the prescribed time frame".

For the year 2015-16 the annual *Statement of Account* established that, "All requests to purchase service credit must be filed while you are an active, contributing member and within the prescribed time frame".

In addition to these documents, the Purchase of Out-of-State Service form comes with *Guidelines for Completing Your Purchase of Out-of-State service* that holds in pertinent part that for members to purchase out-of-state service, the member must be an active contributing member of PSERS or a multiple service member, active with the State Employees' Retirement System.

After reviewing the evidence of record and the post-hearing briefs submitted in this matter, Claimant has failed to prove by a preponderance of the evidence that her application to purchase out of state service from the Cambridge School District was received by PSERS on or before June 30, 2019; the last day Claimant was an active contributing member of PSERS. As a result, the following Recommendation shall be issued:

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

**In Re:**

**Account of Sybil N. Knight**

**Claim of Sybil N. Knight**

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**Docket No. 2020-02**

**RECOMMENDATION**

**AND NOW**, this 4<sup>th</sup> day of **October 2022**, 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 of the PSERS' Executive Staff Review Committee decision, dated January 7, 2020, be **DENIED**.

A party may file exceptions to this proposed opinion and recommendation in accordance with 1 Pa. Code §§ 35.211 and 35.212 (relating to procedure to except to proposed report; and content and form of briefs on exceptions). 22 Pa. Code § 201.11(d). **Exceptions shall be filed with the below-noted Appeal Docket Administrator and must be received by Wednesday, November 3, 2022**, 30 days after the mailing date of this proposed opinion and memorandum. *See*, 1 Pa. Code § 35.211 (participant desiring to appeal to the agency head shall, within 30 days after the service of a copy of a proposed report or such other time as may be fixed by the agency head, file exceptions to the proposed report or part thereof in brief on exceptions; brief opposing exceptions may be filed in response to briefs on exceptions within 20 days after the time limited for the filing of briefs on exceptions or such other time as may be fixed by the agency head). If exceptions are filed, the Board will rule upon the exceptions; the Board may adopt or reject, in whole or in part, or supplement the proposed opinion and recommendation or issue its own opinion and order, whether exceptions to the proposed opinion and recommendation are filed by any party. 22 Pa. Code § 201.11(c).

A legal assistant for the Office of Hearing Examiners will distribute this proposed opinion and recommendation to the Appeal Docket Administrator and the parties.

/s/ Monty J. Batson  
Monty J. Batson, Esquire  
Hearing Officer

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**Date of Mailing:** 10/5/22