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

IN RE: ACCOUNT OF MARCIA S. SCHULMAN
DOCKET NO. 2013-18
CLAIM OF MARCIA S. SCHULMAN

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the Briefs and the Proposed Opinion and Recommendation of the Hearing Examiner. Neither the Claimant nor the Public School Employees' Retirement System filed exceptions in this matter.

This Board finds appropriate the Hearing Examiner's proposed History, Findings of Fact, Conclusions of Law, Discussion, Conclusion, and Recommendation with the following modifications:

1. In Finding of Fact 50, the word "addition" is amended to "additional."
2. On page 19, the citation to "24 Pa.C.S. § 2346(b.1)" is amended to "24 Pa.C.S. § 8346(b.1)."
3. On page 26, the last sentence in the last paragraph is amended, in part, to: "...that rescission of Claimant's retirement was the appropriate course of action, cannot in any manner be transformed into an unfair action for which PSERS is somehow at fault."

With the above modifications, we hereby adopt the Hearing Examiner's Opinion and Recommendation as our own, and accordingly:

IT IS HEREBY ORDERED that Claimant's request that her post-retirement employment with the School District of Philadelphia from June 2008 through June 2012 be deemed an authorized return to service under the Public School Employees' Retirement Code, 24 Pa.C.S. § 8101 et seq., is DENIED and Claimant's Appeal and Request for Administrative Hearing is DISMISSED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: March 11, 2016

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

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

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IN RE:

ACCOUNT OF MARCIA S. SCHULMAN
CLAIM OF MARCIA S. SCHULMAN

DOCKET NO. 2013-18

OPINION AND RECOMMENDATION

Ruth D. Dunnewold
Hearing Officer

Date of Hearing: July 23, 2015
Hearing Officer: Ruth D. Dunnewold
For the Claimant: Kenneth J. Zoldan, Esquire
For PSERS: Kathrin V. Smith, Esquire
Frederick Alcaro, Esquire

HISTORY

This matter is before the Public School Employees' Retirement Board ("Board") on an appeal filed by Marcia S. Schulman ("Claimant") on June 19, 2013. Claimant appealed from a decision of the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS") dated May 21, 2013 ("ESRC denial letter"), that denied Claimant's request that PSERS find Claimant's post-retirement employment with the School District of Philadelphia ("SDP"), from July 2008 through June 2012, to have been an authorized return to service by an annuitant under the Retirement Code, therefore allowing her to continue to receive the annuity based on the return to service provisions of the Retirement Code. On July 9, 2013, PSERS filed its Answer to Claimant's appeal.

By letter dated December 17, 2013, PSERS notified the SDP of Claimant's appeal¹ and explained that the SDP may elect to participate as an intervenor because the SDP, Claimant's former employer, may have a financial interest in the appeal. PSERS' letter directed the SDP to file a petition to intervene no later than December 31, 2013. The SDP did not file a petition to intervene.

By letter dated November 5, 2015,² Ruth D. Dunnewold was appointed by the Board's then-Secretary, Jeffrey B. Clay, to act as Hearing Officer for Claimant's administrative hearing. By letter of the November 5, 2014, the Board's Appeal Docket Clerk notified Claimant that the administrative hearing on her appeal was scheduled for May 27, 2015 in Harrisburg, Pennsylvania. The matter was continued on Claimant's unopposed request for continuance and the Appeal Docket Clerk subsequently rescheduled the hearing for July 23, 2015.

The hearing was held as rescheduled, at PSERS in Harrisburg. Claimant attended the hearing and was represented by Kenneth J. Zoldan, Esquire, while Kathrin V. Smith, Esquire, and Frederick Alcaro,

¹PSERS' letter of December 17, 2013 informed the SDP of seven such appeals, including this Claimant's, and provided the SDP with the opportunity to participate in the appeals by timely filing a single petition to intervene which encompasses any or all of the accounts.

²The hearing examiner received this letter on November 6, 2014, so the year 2015 on the appointment letter is clearly a typographical error.

Esquire, represented PSERS. At the close of the hearing, the parties elected to file post-hearing briefs. Thereafter, the hearing transcript was filed on August 5, 2015, and an Order Establishing Briefing Schedule, dated August 6, 2015, was issued. Claimant filed her Reply Brief, the last brief filed in the matter, on November 9, 2015. Accordingly, the record is closed and the matter is now before the Board for final disposition.

FINDINGS OF FACT

1. In 1970, Marcia S. Schulman (“Claimant”) began employment with the School District of Philadelphia (“SDP”) and at all relevant times thereafter, she was a member of the Public School Employees’ Retirement System (“PSERS”). Exhibit PSERS-5; Notes of Testimony (“NT”) at 79.
2. The SDP is a reporting unit to PSERS. NT at 52 – 53.
3. In July 1999, Claimant took the position of Director of the SDP’s Office of Grants Development and Support (“OGDS”). Exhibit PSERS-13, page 93; NT at 104.
4. After being with the SDP for approximately 38 years, and despite the fact that she loved her job, found it interesting, and could have kept on working as long as the SDP wanted her, in about March 2008, Claimant realized that retiring would pay her the same amount of money as she was earning, and she decided to retire. NT at 83 – 84.
5. In approximately March 2008, Claimant informed her supervisor at the SDP, then-Chief Academic Officer Greg Thornton, that she was planning to retire in July of 2008, and she also sent a letter to the SDP, prior to May 8, 2008, stating her intent to retire. NT at 84, 85, 107, 109.
6. Claimant had told Mr. Thornton several months before her planned retirement date so that he could look for a replacement and she could train the replacement. NT at 85, 107.
7. On May 21, 2008, Claimant attended retirement exit counseling with PSERS at the SDP, during which a PSERS representative reviewed with her the retirement process, including the retirement estimates, the retirement application, the time frames for being paid, health insurance, and restrictions related to working after retirement. Exhibit PSERS-1; Exhibit PSERS-2, page 7; NT at 12, 111.
8. At the May 21, 2008 exit counseling, Claimant signed a Retirement Exit Counseling Checklist which informed her that working for a PSERS employer after retirement would cause her

pension to be frozen except under Act 2004-63, related to emergency or shortage and extracurricular activity. Exhibit PSERS-1.

9. Between March 2008, the time Claimant notified Mr. Thornton and the SDP of her impending July 2008 retirement, and June 2008, the SDP neither recruited nor appointed a replacement for Claimant's position. Exhibit PSERS-24, page 2, first paragraph under "3;" NT at 85, 110.

10. In June 2008, the SDP's then-Chief of School Operations Tomás Hanna asked Claimant to continue to work for the SDP for six months after her planned July 2008 retirement, in order to transition the office and train her as-yet-unnamed replacement, and Claimant agreed to do so. Exhibit PSERS-24, page 2, first paragraph under "3;" NT at 85, 86, 110.

11. When Mr. Hanna asked Claimant, in June 2008, to stay on at the SDP after retiring, Claimant was curious about whether her continued working would affect her pension, but she never inquired with PSERS about it. NT at 86, 133 – 134.

12. Prior to June 26, 2008, Claimant agreed that she would work for the SDP beyond July 1, 2008. NT at 110.

13. On June 26, 2008, SDP's then-Chief of Staff Sean Crowder made a request for 630 hours of extracurricular activity to permit Claimant to continue to work for the SDP beyond July 1, 2008. Exhibit PSERS-24, page 2, second paragraph under "3;" NT at 110.

14. On July 1, 2008, Claimant signed her PSERS Application for Retirement, indicating July 2, 2008 as the effective date of her resignation, and submitted it to PSERS. Exhibit PSERS-2, pages 1 and 8; NT at 87, 112.

15. Although Claimant's Application for Retirement indicated that July 2, 2008, was the effective date of Claimant's resignation, she returned to work at the SDP on July 2, 2008, to a job that was only slightly different, in that she had moved out of her office into a cubicle, no longer opened

mail, and was working part time. Exhibit PSERS-2; Exhibit PSERS-13, page 93 (résumé indicating Claimant's immediate past position lasted from July 1999 to July 2008); NT at 85, 86, 87, 88, 113, 114.

16. Claimant returned to work at the SDP on July 2, 2008 in order to transition her position to an as-yet-unnamed replacement and to keep the office afloat until that occurred; all of her duties were still getting done at that point. Exhibit PSERS-24, page 2, first paragraph under "3;" NT at 85, 89, 114, 115.

17. As of July 2008, Claimant was transitioning her job to her then-Assistant Director, Michael Sonkowsky. NT at 114 – 115.

18. Although no announcement had been made at that point about his taking the position, Mr. Sonkosky had been Claimant's assistant director for about eight years, she had supervised him and worked with him on a regular basis, he was familiar with the department, he was an experienced grant writer, and Claimant believed Mr. Sonkosky to be her likely replacement. NT at 114 – 115, 117 – 118.

19. On July 3, 2008, PSERS received the Application for Retirement which Claimant had signed on July 1, 2008, setting forth Claimant's effective date of resignation as July 2, 2008, and certifying that "all statements made on this application are true and correct" and "I understand that as a retiree, I am not permitted to work in a PA public school except under the emergency personnel shortage and/or extracurricular employment provisions of Act 63 of 2004." Exhibit PSERS-2, pages 1 and 8; NT at 13, 111, 112.

20. Neither the SDP nor Claimant informed PSERS that Claimant had agreed, in June 2008, to continue working for the SDP after July 2, 2008. NT at 20, 133 – 134.

21. After receiving Claimant's Application for Retirement, PSERS processed it and, by letter dated September 3, 2008, notified Claimant that, beginning September 30, 2008, the amount of her initial monthly retirement benefit would be \$5,885.24. Exhibit PSERS-3; NT at 13, 14.

22. PSERS' letter dated September 3, 2008, included the following information:

EMPLOYMENT AFTER RETIREMENT

If you return to work, it is your responsibility to notify the employer that you are a PSERS retiree.

Act 2004-63 permits a PSERS retiree to be employed by a Pennsylvania public school (including charter schools) in an emergency or shortage of personnel and extracurricular situations (certain conditions apply) without loss of the retiree's monthly benefit.

Employers must determine that an emergency or shortage exists and make a "good faith" effort to hire non-retirees first. Please refer to your Retired Member Handbook or PSERS' Web for detailed information.

If a retiree's return to service **does not** qualify under Act 2004-63, the retiree should immediately send a letter to PSERS. This letter should include the retiree's return to service date so that the retiree's monthly benefit may be stopped before an overpayment occurs.

* * *

Exhibit PSERS-3 (emphasis in original).

23. Claimant received and read PSERS' letter dated September 3, 2008, while she continued to work for the SDP OGDS. NT at 125, 126.

24. Claimant was not aware of any efforts that the SDP took to replace her in July, August, September or October 2008. NT at 116.

25. PSERS' Premium Assistance benefit provides annuitants with up to \$100 per month in assistance with out-of-pocket premium expense for a school-sponsored health insurance program. NT at 16.

26. On October 31, 2008, while she continued to work for the SDP, OGDS, Claimant signed a Premium Assistance Election Form and submitted it to PSERS. Exhibit PSERS-4, page 2; NT at 126.

27. On November 7, 2008, PSERS received Claimant's Premium Assistance Election Form and subsequently, Claimant began receiving \$100 a month in premium assistance from PSERS. Exhibit PSERS-4; NT at 16.

28. On October 1, 2008, the SDP, with Lehigh University as a grant partner, was awarded a five-year Philadelphia High School Leadership Project grant ("PHSLP grant"), which called for the hiring of a project or program manager. NT at 38, 128, 130.

29. Sometime after October 1, 2008, Marilyn Perez, the SDP's Deputy Chief for Leadership Development, was named as the project manager for the PHSLP grant. NT at 131.

30. Effective November 1, 2008, Mr. Sonkowsky was appointed as the Acting Director of the OGDS. Exhibit PSERS-13, page 9; Exhibit PSERS-24, page 3, second full paragraph; NT at 118 – 119.

31. For about six months after July 2008, Claimant continued to work for the SDP part time, three days a week from 8:30 a.m. to 4 p.m., to transition the OGDS, until the SDP, by letter dated January 23, 2009, named Mr. Sonkowsky as Director, retroactive to November 1, 2008. Exhibit PSERS-13, page 12; NT at 88, 89 – 90, 114 – 115, 116, 124, 125.

32. The SDP's regular instructional hours are 8:00 to 3:00 or 8:15 to 2:45, depending on the school. NT at 115.

33. During the period between July 2008 and when the SDP finally appointed Mr. Sonkowsky to be Director of the OGDS in January 2009, Claimant, among other things, retained the Director's signature authority, continued to attend and lead the Director's meetings, including weekly staff meetings, and reviewed and distributed the mail. Exhibit PSERS-13, page 10; Exhibit PSERS-24, page 3; NT at 120, 121, 122, 123.

34. After Mr. Sonkowsky's appointment as Director of the OGDS, Claimant continued to work for the SDP. NT at 127 – 128; Exhibit PSERS-24, pages 3 – 4.

35. Claimant attended a meeting related to the PHSLP grant on February 4, 2009, because Mr. Sonkowsky was unable to attend. Exhibit PSERS-24, page 3; NT at 128, 129.

36. There had been no progress on the PHSLP grant between October and February, so there was a lot of frustration, and at the meeting, after a brief discussion with Dr. George White, Lehigh University's co-principal investigator on the PHSLP grant, Ms. Perez asked Claimant to take over the project manager position because Claimant was intimately familiar with the PHSLP grant. NT at 132, 133.

37. Claimant accepted the project manager position for the PHSLP grant at that time, and she continued in that position until June 2012, reapplying for and being reappointed to the position for each year of the grant between February 2009 and June 2012. NT at 133, 134, 137, 138, 139.

38. Claimant did not execute a contract with the SDP for the project manager position, although she filled out a Request for Extra Curricular, Staff Development, Evening or Summer Activities form ("form 313") in relation to the position. Exhibit PSERS-13, page 13; NT at 135 – 136.

39. Claimant wanted to do the PHSLP grant project manager job; she was aware of no efforts that the SDP took to replace her during the years she had the appointment. NT at 136 – 137, 137 – 138, 139.

40. By letter dated March 15, 2010, PSERS notified Claimant of her finalized monthly retirement benefit of \$6,892.23 (gross), which was based on 35.58 years of school service and a retirement date of July 2, 2008. Exhibit PSERS-5; NT at 17.

41. PSERS' March 15, 2010 letter included the following information:

EMPLOYMENT AFTER RETIREMENT

If you return to work, it is your responsibility to notify the employer that you are a PSERS retiree.

Act 2004-63 permits a PSERS retiree to be employed by a Pennsylvania public school (including charter schools) in an emergency or shortage of personnel and

extracurricular situations (certain conditions apply) without loss of the retiree's monthly benefit.

Employers must determine that an emergency or shortage exists and make a "good faith" effort to hire non-retirees first. Please refer to your *Retired Member Handbook* or PSERS' Web for detailed information.

If a retiree's return to service **does not** qualify under Act 2004-63, the retiree should immediately send a letter to PSERS. This letter should include the retiree's return to service date so that the retiree's monthly benefit may be stopped before an overpayment occurs.

* * *

Exhibit PSERS-5 (emphasis in original).

42. In approximately October 2011, a whistleblower informed PSERS that the SDP was employing 84 annuitants. NT at 18, 20, 31.

43. By letter dated February 6, 2012, PSERS informed the SDP that PSERS had received information that numerous PSERS annuitants were being employed by the SDP, and PSERS requested that the SDP identify the PSERS retirees who were currently working in principal, administrator, secretary or long-term substitute positions. Exhibit PSERS-6; NT at 18 – 19.

44. By emailed correspondence dated February 21, 2012, the SDP provided information which, among other things, identified Claimant as one of the annuitants which the SDP employed. Exhibit PSERS-7; NT at 21.

45. Prior to February 21, 2012, the SDP had not contacted PSERS about employing Claimant after retirement, nor had Claimant informed PSERS that she was working for the SDP. NT at 22.

46. Until receiving the whistleblower's information in late 2011, PSERS did not know that Claimant was working for the SDP after her retirement. *Id.*

47. By letter dated April 4, 2012, PSERS requested from the SDP specific information about each of the employed annuitants, including start date of employment, the nature of the

emergency that led to employment, the SDP's efforts to recruit non-annuitants prior to employing annuitants, the number of applicants for the positions in question, and forms that accompanied the request for payment of each annuitant. Exhibit PSERS-8; NT at 22, 23 – 24.

48. By letter dated April 27, 2012, the SDP informed Claimant about PSERS' inquiries related to annuitants which the SDP employed after retirement. Exhibit PSERS-10; NT at 139 – 140.

49. By letter dated May 3, 2012, the SDP provided to PSERS the requested information pertaining to Claimant, indicating that she had begun her post-retirement work during the 2008 – 2009 school year and, among other things, that Claimant had been managing a grant important to the SDP's mission of growing its own steady supply of well-trained secondary school administrators. Exhibit PSERS-11, page 5; NT at 29.

50. By letter dated October 3, 2012, the SDP provided PSERS with addition information about Claimant's post-retirement employment, stating, among other things, that Claimant "performed the critical task on a part-time basis of training her successor as Director, Grants and Development and Support, Michael Sonkowsky." Exhibit PSERS-13, page 5 n.6.

51. The SDP's October 3, 2012 letter also stated that Claimant "expressed [her] willingness" to execute a contract satisfactory to PSERS that included a waiver of any potential retirement benefits so that she could qualify for an extracurricular appointment. Exhibit PSERS-13, page 5.

52. Despite the SDP's statements in its October 3, 2012 letter, Claimant never executed an extracurricular contract with SDP; she never even discussed it with the SDP. NT at 95.

53. In its October 3, 2012 letter, the SDP provided to PSERS Claimant's salary and service time for the work she performed for the SDP from July 2, 2008 through June 30, 2012. Exhibit PSERS-13, page 8; NT at 52 – 53.

54. By cover letter dated June 13, 2012, Claimant reapplied to the SDP for the PHSLP grant project manager position for the July 1, 2012 – June 30, 2013 school year, but the SDP ultimately informed her, by letter dated June 22, 2012, that it would not be filling the position because Lehigh University had hired someone to manage the last year of the project. Exhibit PSERS-13, pages 92, 97; NT at 141 – 142.

55. Because of PSERS' inquiry about employment of annuitants, and because the SDP determined that Claimant should not apply for the PHSLP grant project manager position, the SDP did not fill the position in June 2012. NT at 142 – 143.

56. By letter dated June 22, 2012, Lehigh University offered Claimant the position of research assistant, which was the same job that Claimant had been doing as the project manager of the PHSLP grant for the SDP. Exhibit PSERS-12; NT at 143.

57. Claimant accepted the position with Lehigh University on June 26, 2012. Exhibit PSERS-12; NT at 144.

58. By letter dated November 8, 2012, PSERS notified Claimant, among other things, of PSERS' determination that Claimant's post-retirement employment with the SDP was not rendered in an approved capacity under the Retirement Code; that PSERS was stopping Claimant's retirement benefit effective with Claimant's November 2012 benefit payment and rescinding Claimant's retirement because she did not have a break in service prior to returning to employment with the SDP; and that PSERS was calculating the appropriate debits and credits to be placed on Claimant's account as a result of her return to active employment. Exhibit PSERS-14; NT at 40 – 41.

59. Claimant received a monthly annuity from PSERS from July 2008 through November 2012. NT at 46 – 47.

60. By letter dated November 14, 2012, PSERS informed Claimant that she owed PSERS \$349,253.58 for the overpayment of monthly benefits, \$179,021.41 in contributions and interest, and \$5,200 for the overpayment of premium assistance. Exhibit PSERS-15; NT at 48,

61. On November 21, 2012, Claimant filed a second Application for Retirement with PSERS, indicating her effective date of resignation as June 30, 2012. Exhibit PSERS-16; NT at 49.

62. PSERS processed Claimant's second Application for Retirement and, by letter dated December 20, 2012, notified Claimant of her finalized monthly retirement benefit in the amount of \$4,919.83, comprising an actuarial reduction for the \$528,274.99 in debt that she owed PSERS for the monthly benefits she received after her return to service date and the \$12,228.21 that she owed PSERS for an additional 3.58 years of service credit she had accrued based on her post-retirement work. Exhibit PSERS-19; NT at 51 – 52, 54.

63. Claimant's premium assistance debt of \$5,200 was not mentioned in PSERS' December 20, 2012 letter, because PSERS recoups that overpayment separately, by withholding payment of subsequent premium assistance dollar for dollar, until the debt has been recouped. NT at 54 – 55.

64. Claimant reapplied for premium assistance from PSERS on January 28, 2013, and is receiving premium assistance on a monthly basis, with her \$100 a month benefit being applied to her overpayment debt. Exhibit PSERS-20; NT at 55 – 56.

65. On February 8, 2013, PSERS received Claimant's appeal of PSERS' November 8, 2012 determination rescinding her retirement. Exhibit PSERS-21; NT at 56.

66. In Claimant's appeal, Claimant informed PSERS for the first time that her initial return to work for the SDP was allegedly to train her replacement and that it had been arranged with the SDP in June 2008, prior to her July 2008 retirement date. Exhibit PSERS-21; NT 57 – 58.

67. By letter dated February 13, 2013, the SDP provided PSERS with additional documentation related to the post-retirement employment of annuitants, which the ESRC would have had before it when the ESRC considered Claimant's appeal. Exhibit PSERS-22; NT at 58, 61..

68. By letter dated May 21, 2013, the Executive Staff Review Committee ("ESRC") denied Claimant's appeal. Exhibit PSERS-23; NT at 60.

69. By Appeal and Request for Administrative Hearing filed June 19, 2013, Claimant appealed the ESRC's decision. Exhibit PSERS-24; NT at 63.

70. On July 9, 2013, PSERS filed its Answer to Claimant's appeal. Exhibit PSERS-25.

71. A hearing on the appeal was held on July 23, 2015, before Hearing Examiner Ruth D. Dunnewold. NT at 5 and *passim*.

72. Claimant was present at the hearing, was represented by counsel, had the opportunity to be heard, cross-examine witnesses, and make a closing statement for the record, and Claimant filed post-hearing briefs in support of her appeal. *Id.*

CONCLUSIONS OF LAW

1. Claimant was afforded notice and an opportunity to be heard in connection with her appeal. Findings of Fact 71, 72.

2. Claimant did not have a bona fide break in service between her retirement on July 1, 2008 and her continued employment by the SDP beginning July 2, 2008, so she did not have a termination of service, or retirement, at that time, and consequently, was not then eligible to become an annuitant. Findings of Fact 5 – 57.

3. Claimant's continued employment by the SDP beginning July 2, 2008 was not in an authorized capacity under the Retirement Code, because her position was not an extracurricular position within the meaning of the Retirement Code. Findings of Fact 5 – 57.

4. Because Claimant did not have a termination of service and bona fide retirement in July 2008, Claimant was not eligible to become an annuitant, and PSERS properly rescinded Claimant's July 2, 2008 retirement. Findings of Fact 5 – 57.

DISCUSSION

An active or inactive member of PSERS who attains superannuation age is entitled to receive a superannuation annuity upon termination of service and the filing of a proper application. *See* Public School Employees' Retirement Code, 24 Pa.C.S. § 8101 et seq. ("Retirement Code"), 24 Pa.C.S. § 8307(a). The Retirement Code defines "date of termination of service" as

[t]he last date of service for which pickup contributions are made for an active member or, in the case of an inactive member, the effective date of his resignation or the date his employment is formally discontinued by his employer or two years following the last day of service for which contributions were made, whichever is earliest.

24 Pa.C.S. § 8102. School service is "service rendered as a school employee," and a "school employee" is defined, in pertinent part, as a person "engaged in work relating to a public school. . . for which work he is receiving regular remuneration as an. . . employee." *Id.* Additionally, the Retirement Code defines an "annuitant" as "[a]ny member on or after the effective date of retirement until his annuity is terminated." *Id.* If an annuitant returns to school service, the Retirement Code mandates that the annuity cease, 24 Pa.C.S. § 8346(a), and any annuity payments that the annuitant receives on or after the date of the return to school service shall be returned to PSERS, with statutorily-determined interest. 24 Pa.C.S. § 8346(a.1).

In this case, based on the above-cited provisions of the Retirement Code, because Claimant indicated to PSERS a retirement date of July 1, 2008, but Claimant then continued working for the SDP on July 2, 2008, without an apparent break in service, PSERS determined that Claimant never had a termination of service, and consequently, Claimant never properly became an annuitant. Because Claimant continued to both be employed by the SDP and to receive annuity payments from PSERS, PSERS also determined that all of the annuity payments Claimant received after her retirement and throughout the course of her continued employment by the SDP must be returned to PSERS, via the rescission of Claimant's retirement.

In her post-hearing briefs in support of her appeal from PSERS' determination, Claimant basically articulated the following three arguments: (1) she had a break in service after retiring and before returning to work, so she had a bona fide retirement and no rescission of her benefits should occur; (2) her return to service after her retirement in July 2008 was permissible because it was for an "extracurricular position," as defined in the Retirement Code at 24 Pa.C.S. § 8346(b.1), and it was therefore a return to work at the SDP in an authorized capacity; and (3) it would be highly inequitable and grossly unfair to penalize her for her return to work after retirement.

Break in service/bona fide retirement

The Retirement Code states that a member of the retirement system is entitled to receive an annuity "upon termination of service." 24 Pa. C.S. § 8307(a); *see also Baillie v. Public School Employee's Retirement Board*, 993 A.2d 944, 951 (Pa. Cmwlth. 2010) ("*Baillie*"). Moreover, in *Account of Dr. John K. Baillie*, PSERS Docket No. 2008-01 (June 18, 2009) ("*Account of Baillie*"), the case which led to the appeal under consideration in *Baillie*, 993 A.2d 944, the Board indicated that the issue of whether Baillie's return to service was in reality a continuation of his previous service with his employer "is very fact-based and does not lend itself to the enumeration of broad general policies." *Account of Baillie* at 47. Therefore, if an examination of the facts indicates that a member of the retirement system has never effected a termination of service, then that member is *not* entitled to receive an annuity.

The Commonwealth Court in *Baillie* closely examined the facts in that case and compared them to the facts in *Estate of Frank B. Fry v. Commissioner of Internal Revenue*, 19 T.C. 461 (T.C. 1952), *aff'd*, 205 F.2d 517 (3d Cir. 1953), citing *Fry* as "instructive on what is meant by termination of service." *Baillie* at 951. In *Fry*, the claimant/annuitant continued to consult for his former employer and draw a salary for his services after taking his lump sum retirement benefit. Based upon those facts, the tax court found that the claimant/annuitant had never severed his connection with his employer. The

Commonwealth Court found the facts in *Fry* to be analogous to the facts in *Baillie*, where Baillie finished his work week on Friday and returned to work on Monday, without any interruption to his work, but took his annuity from PSERS. Based on that similarity, the Commonwealth Court found that Baillie never separated from the employer and consequently, no termination of service ever occurred.

Similarly, the Board in *Account of Cathy E. Robertson*, Docket No. 2014-10 (Opinion and Order of the Board dated October 7, 2015) ("*Robertson*"),³ found no termination of service, taking into account the facts that Robertson, by prearrangement with her employer, had re-commenced working for that employer only two days after her purported retirement, *Robertson* at 15, 17, and that she specifically returned to train her replacement, continuing to render the same duties, but to a lesser degree, after her supposed retirement. *Robertson* at 17.

The *Fry*, *Baillie* and *Robertson* facts are strikingly similar to the facts in this case. Like Fry, Baillie and Robertson, Claimant continued to consult and render services to the SDP, her purported "former employer," and to draw a salary for her services, after applying for and receiving her retirement benefit from PSERS. Moreover, like Baillie, Claimant agreed, prior to actually retiring, that she would continue working for the SDP after her specified retirement date. Just like Baillie, Claimant finished her work day one day and returned to work on the next business day. Just like Baillie, Claimant continued to work without any interruption. Therefore, just like Baillie, Claimant did not have a termination in service in July 2008.

There is no way to distinguish these facts from the facts in *Fry*, *Baillie* and *Robertson*. The only conclusion to be reached, then, is the same conclusion reached in those cases: Claimant did not effect a termination of service because Claimant never severed her connection with her employer. *See Baillie* at 951, *quoting Fry* at 464; *see also Robertson* at 16. Claimant was, therefore, not entitled to receive an

³See <[http://www.psers.state.pa.us/content/board/adjudications/2015/10/Robertson%20\(2014-10\)_Web%20\(Na%20Redactions\).pdf](http://www.psers.state.pa.us/content/board/adjudications/2015/10/Robertson%20(2014-10)_Web%20(Na%20Redactions).pdf)>.

annuity under 24 Pa. C.S. § 8307(a). Accordingly, PSERS' rescission of her retirement was the appropriate course of action.

Claimant attempts to distinguish the *Baillie* case by arguing that, in *Baillie*, "the annuitant/claimant had schemed to double dip in regard to his PSERS pension and employment income, which is why the Commonwealth Court rejected his claim." Reply Brief of Claimant Marcia S. Schulman ("Claimant's Reply Brief") at 2. However, in making such an argument, Claimant takes a portion of the *Baillie* decision out of context, conveniently overlooking the fact that *Baillie* raised four issues for the Commonwealth Court's consideration, not all of which have been raised in the extant matter.

The issue in *Baillie* that gave rise to the Commonwealth Court's use of the "double dip" language upon which Claimant relies was the contention that *Baillie*'s return to service did not fall into the emergency exception set forth in the Retirement Code at 24 Pa.C.S. § 8346(b). In deciding that issue, the Commonwealth Court ruled that, because *Baillie* himself schemed to create a so-called "emergency" by retiring in the middle of his employment contract, it would violate the statutory prohibition against double dipping to permit *Baillie* to "retire" on Friday and return to work on Monday as an annuitant under an emergency contract. Since Claimant has not asserted the emergency provision of the Retirement Code, § 8346(b), applied to her continuing employment with the SDP, that portion of the *Baillie* decision which addresses the purposeful creation of an emergency in a scheme to double dip is inapplicable to these facts. As discussed above, however, the portion of the *Baillie* decision which examines what constitutes a true termination of service is fully applicable.

Claimant also argues that PSERS "has demonstrably failed to prove that there was no break in service for" Claimant. Claimant's Reply Brief at 2. However, in this matter, Claimant bears the burden of establishing the facts upon which she relies in order to prevail. *C.f. Gierschick v. State Employees' Ret.*

Bd., 778 A.2d 778, 780 (Pa. Cmwlth. 1999);⁴ *Hughes v. Com., Public Sch. Employees' Retirement Bd.*, 662 A.2d 701 (Pa. Cmwlth. 1995); *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991). Therefore, it was not PSERS' burden to prove that Claimant had no break in service. Rather, it was Claimant's burden to prove by a preponderance of the evidence⁵ that she *did* have a break in service. She has failed to meet that burden.

Extracurricular position/authorized capacity

Because the evidence indicates that Claimant never severed her relationship with the SDP and, concomitantly, never had a break in service or a bona fide retirement, it was not possible for her to return to employment with the SDP. Her continued employment, without a break, made a return to work impossible. Even if her continued employment with the SDP after her July 1, 2008 retirement date could be considered a return to work, the facts do not support the finding that Claimant's work qualified as an authorized return to work under the extracurricular exemption in the Retirement Code.

The provision which authorizes an annuitant's return to school service in an extracurricular position is found at 24 Pa.C.S. § 2346(b.1), which provides, in pertinent part, as follows:

(b.1) Return to school service in an extracurricular position.

(1) An annuitant may be employed under separate contract by a public school or charter school in an extracurricular position performed primarily outside regular instructional hours and not part of mandated curriculum without loss of annuity. Neither the annuitant nor the employer shall make contributions to the member's savings account or State accumulation account respectively for such service. Further, such contract shall contain a waiver whereby the annuitant waives any potential retirement benefits that could arise from the contract and releases the employer and the board from any liability for such benefits.

⁴Cases interpreting provisions of the State Employees' Retirement Code "are equally applicable in deciding issues arising under similar or identical provisions" of the Retirement Code. *Krill v. Pub. Sch. Employes' Ret. Bd.*, 713 A.2d 132, 134 n.3 (Pa. Cmwlth. 1998).

⁵The degree of proof required to establish a case before an administrative tribunal in an action of this nature is a preponderance of the evidence, which is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the Claimant's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1950); *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

Based on this language, there are four elements which must exist for an annuitant's employment to be considered employment in an extracurricular position that meets the statutory language of, and therefore, is properly authorized by, the Retirement Code, so that the annuitant can be re-employed without loss of annuity. Those elements are the following:

- (1) The annuitant shall be employed under a separate contract.
- (2) The work shall be performed primarily outside regular instructional hours.
- (3) The work shall not be part of the mandated curriculum.
- (4) The contract shall contain a waiver whereby the annuitant waives any potential retirement benefits that could arise from the contract and releases the employer and the board from any liability for such benefits.

24 Pa.C.S. § 8346(b.1).

In this case, there is no evidence to indicate that Claimant ever executed a separate contract, so the first element is missing. And since there is no existing separate contract, there is nothing containing the waiver and release required under the fourth element. Moreover, Claimant's hours were from 8:30 to 4:30, NT at 88, and the SDP's regular instructional hours are 8:00 to 3:00 or 8:15 to 2:45, depending on the school. NT at 115. She was, therefore, performing her work primarily within regular instructional hours, so the second element is not present. With three of the four elements missing, the evidence clearly supports the conclusion that Claimant did not meet the statutory elements for being employed in an extracurricular position without loss of annuity. Accordingly, Claimant's argument to the contrary is not supported by the facts in the record. She has again failed to meet her burden.

Claimant also argues that her work for the SDP, related to the PHSLP grant, was not a return to service in that, because the last year of it was paid for by Lehigh University, rather than by the SDP, it did not constitute work for the SDP in an unauthorized capacity. In making this argument, Claimant completely overlooks the fact that she accepted the project manager position for the PHSLP grant in February 2009, and continued in that position until June 2012, reapplying *to the SDP* for and being reappointed to the position *by the SDP* for each year of the

grant between February 2009 and June 2012. And although Claimant did not execute a contract with the SDP for the PHSLP grant project manager position, she did fill out Request for Extra Curricular, Staff Development, Evening or Summer Activities forms for the SDP in relation to the position.

It was only in 2012, when Claimant reapplied *to the SDP* for the PHSLP grant project manager position for the July 1, 2012 – June 30, 2013 school year, that the SDP ultimately informed her that it would not be filling the position because Lehigh University had hired someone to manage the last year of the project. Moreover, Claimant testified that the SDP did not fill the position in June 2012 precisely because of PSERS' inquiry to the SDP about employment of annuitants, as well as because the SDP determined that Claimant should not apply for the PHSLP grant project manager position. And then, by letter dated June 22, 2012, Lehigh University offered Claimant the position of research assistant, which was the same job that Claimant had been doing as the project manager of the PHSLP grant for the SDP. Claimant accepted that position with Lehigh University on June 26, 2012, and signed a written contract to that effect.

Therefore, it was only in 2012 that the SDP rejected Claimant's application for the position, and the SDP only took that course of action because PSERS had begun its inquiry about the SDP's employment of annuitants, including Claimant. And it was only in 2012 that Lehigh University actually hired Claimant. Only in 2012 did Lehigh University, an entity other than the SDP, actually execute a contract with Claimant, hiring her for the position. To say that Claimant was an employee of Lehigh University, rather than the SDP, prior to that, is to completely rewrite the facts and is simply not true. In fact, if Claimant actually had applied to, been hired by, and signed a contract with Lehigh University to be the PHSLP grant project

manager for each of those earlier grant years, Claimant would probably not be here now. The problem is, she didn't do that. There is nothing she can do to change that history.

Inequitable and unfair

Claimant also argues that (1) because neither she nor the SDP made any actual contributions to PSERS on Claimant's behalf for the service she rendered to the SDP from July 2, 2008 to her second retirement in 2012; (2) because Claimant has no intention of ever pursuing a claim for additional retirement benefits after her initial July 2008 retirement; (3) because the SDP represented that Claimant was at all times relevant willing to execute the waiver required by the Retirement Code for a return to service in an extracurricular position; and (4) because of her nearly 40 years of service to the SDP, it would be "highly inequitable" to deny Claimant's request for full restoration of her PSERS benefits as of the date of her initial retirement from the SDP in July 2008. *See* Claimant's letter brief, second page. Similarly, she argues that, because PSERS delayed in telling her in a timely manner that it did not consider her 2008 retirement to be a bona fide retirement after a break in service, it would be "grossly unfair" to penalize Claimant by the rescission of her retirement benefits. *See* Claimant's Reply Brief at 3.

These arguments essentially maintain that PSERS should exercise equity powers to fashion a remedy for Claimant that is not found within the Retirement Code. But Claimant cannot prevail in this argument, because, while a retirement system must be liberally administered in favor of its members, *Marinucci v. State Employees' Retirement Board*, 863 A.2d 43 (Pa. Cmwlth. 2004), "a liberal administration of the retirement system does not permit the board to circumvent the express language of the Code" *Id.*, quoting *Dowler v. Public School Employees' Retirement Board*, 620 A.2d 639, 644 (Pa. Cmwlth. 1993). The Retirement Code contains no statutory language authorizing the Board to exercise any sort of equity powers in order to achieve the goal of fairness when considering an appeal.

“Equity,” in the context of the law and judicial proceedings, has a specific technical meaning.

It means

recourse to principles of justice to correct or supplement the law as applied to particular circumstances; specif., the judicial prevention of hardship that would otherwise ensue. . [for example,] <the judge decided the case by equity because the statute did not fully address the issues>.

BLACK’S LAW DICTIONARY 656 (10th ed. 2014). However, the Commonwealth Court in *Marinucci* held that the Board has no authority to grant equitable relief in contravention of the statutory mandates of the Retirement Code. *Marinucci, supra*, 863 A.2d at 47, citing *Rowan v. Pennsylvania State Employees’ Retirement Board*, 685 A.2d 238, 240 (Pa. Cmwlt. 1996). That means that “[t]he Retirement Code cannot be revised by the courts [or by the Board] to achieve equitable results.” *Marinucci, supra*, 863 A.2d at 47, citing *Mager v. State Employees’ Retirement Board*, 849 A.2d 287, 292 – 293 (Pa. Cmwlt. 2004) (*Mager*, in turn, citing *Jones v. State Employees’ Retirement Board*, 830 A.2d 607 (Pa. Cmwlt. 2003), *petition for allowance of appeal denied*, 847 A.2d 1289 (Pa. 2004)).

PSERS is a creature of statute, and the employee has *only* those rights created by the statute and none beyond it. *Forman Public School Employees’ Retirement Board*, 778 A.2d 778, 780 (Pa. Cmwlt. 2001); *Marinucci, supra*, 863 A.2d at 47. Because the Retirement Code does not confer any equity powers on the Board, not even the liberal administration of the retirement system in favor of its members can permit the Board to circumvent the express language of the Retirement Code, so the Board has no equity powers by which it may provide an employee with a right that the Retirement Code does not explicitly provide. *Marinucci, supra*, 863 A.2d at 47. It follows that Claimant cannot succeed in her appeal on the basis of her equity or fairness arguments.

Even if the Retirement Code had conferred equity powers on the Board, the evidence does not support the SDP’s representation that Claimant was, at all relevant times, willing to execute the waiver required by the Retirement Code for a return to service in an extracurricular position. Claimant

testified quite clearly that she never had any discussion with the SDP of her willingness, for purposes of qualifying for an extracurricular position exemption, to execute a contract satisfactory to PSERS, which would include a waiver of potential benefits. In Claimant's own words about any such discussion: "No, it did not happen." NT at 95. Therefore, even if the Board could exercise equity powers under the Retirement Code which would allow the mere *willingness to execute* the waiver required by the Retirement Code as an appropriate substitute for *actual execution* of such a waiver, the evidence does not support a finding that Claimant was willing to execute such a waiver or that she discussed it with the SDP.

For the same reason – lack of equity powers - no weight can be given to Claimant's two related arguments, i.e. that neither she nor the SDP made any actual contributions to PSERS on Claimant's behalf for the service she rendered to the SDP from July 2, 2008 to her second retirement in 2012, and that Claimant has no intention of ever pursuing a claim for additional retirement benefits after her initial July 2008 retirement. The Retirement Code mandates membership in PSERS for members who have not terminated service with a participating employer, *see* 24 Pa.C.S. § 8301(a);⁶ mandates the making of contributions to the retirement fund on behalf of each active member for current service,

⁶§ 8301. **Mandatory and optional membership.**

(a) Mandatory membership. –

Membership in the system shall be mandatory as of the effective date of employment for all school employees except the following:

(1) Any officer or employee of the Department of Education, State-owned educational institutions, community colleges, area vocational-technical schools, technical institutes, or 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 not a member of the system and who is employed on a per diem or hourly basis for less than 80 full-day sessions or 500 hours in any fiscal year or annuitant who returns to school service under the provisions of section 8346(b) (relating to termination of annuities).

(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.

see 24 Pa.C.S. §§ 8321(a)⁷ and 8327(a);⁸ and allows annuitants to return to service only in very limited, statutorily-defined circumstances. See 24 Pa.C.S. § 8346(b) and (b.1).⁹ As already discussed above, Claimant did not have a break in service or a bona fide retirement, which means she never returned to service in any of the limited, statutorily-defined circumstances. Instead, she remained an active member, and all the mandates set forth in §§ 8301, 8321 and 8327 still pertained to her and to her employer, the SDP. Even if the Board had equity powers, it could not exercise them to contravene

⁷§ 8321. **Regular member contributions for current service.**

(a) **General. –**

Regular member contributions shall be made to the fund on behalf of each active member for current service except for any period of current service in which the making of such contributions has ceased solely by reason of any provision of this part relating to the limitations under IRC § 401(a)(17) or 415(b).

* * *

⁸§ 8327. **Payments by employers**

(a) **General rule. –**

Each employer, including the Commonwealth as employer of employees of the Department of Education, State-owned colleges and universities, Thaddeus Stevens College of Technology, Western Pennsylvania School for the Deaf, Scotland School for Veterans' Children, and the Pennsylvania State University, shall make payments to the fund each quarter in an amount equal to one-half the sum of the percentages, as determined under section 8328 (relating to actuarial cost method), applied to the total compensation during the pay periods in the preceding quarter of all its employees who were members of the system during such period, including members on activated military service leave. In the event a member on activated military service leave does not return to service for the necessary time or receives an undesirable, bad conduct or dishonorable discharge or does not elect to receive credit for activated military service under section 8302(b.1)(3) (relating to credited school service), the contributions made by the employer on behalf of such member shall be returned with valuation interest upon application by the employer.

* * *

⁹§ 8346. **Termination of annuities.**

* * *

(b) **Return to school service during emergency. –**

When, in the judgment of the employer, an emergency creates an increase in the work load such that there is serious impairment of service to the public or in the event of a shortage of appropriate subject certified teachers or other personnel, an annuitant may be returned to school service for a period not to extend beyond the school year during which the emergency or shortage occurs, without loss of his annuity. The annuitant shall not be entitled to earn any credited service, and no contributions may be made by the annuitant, the employer or the Commonwealth on account of such employment.

(b.1) **Return to school service in an extracurricular position.**

(1) An annuitant may be employed under separate contract by a public school or charter school in an extracurricular position performed primarily outside regular instructional hours and not part of mandated curriculum without loss of annuity. Neither the annuitant nor the employer shall make contributions to the member's savings account or State accumulation account respectively for such service. Further, such contract shall contain a waiver whereby the annuitant waives any potential retirement benefits that could arise from the contract and releases the employer and the board from any liability for such benefits.

(2) Nothing in this subsection shall be construed to abridge or limit any rights provided under a collective bargaining agreement or any rights provided under the act of July 23, 1970 (P.L.563, No.195), known as the Public Employe Relations Act.

(3) For purposes of this subsection, the term "extracurricular position" means a contract position filled by an annuitant that is separate from the established academic course structure, including the position of athletic director.

* * *

the statutory mandates of the Retirement Code. *Marinucci*, 863 A.2d at 47. Accordingly, neither Claimant nor the SDP had the option of making actual contributions to PSERS on Claimant's behalf for the service she rendered to the SDP from July 2, 2008 to her second retirement in 2012; the Retirement Code mandated it. This also means that it is irrelevant whether Claimant had any intention of ever pursuing a claim for additional retirement benefits related to her continued employment after July 2, 2008. Her intent does not matter in light of the statutory mandates.

Claimant's last equity/fairness argument is that it would be unfair to penalize her because PSERS delayed in telling her in a timely manner that it did not consider her 2008 retirement to be a bona fide retirement after a break in service. Claimant's Reply Brief at 3. There is no merit whatsoever to this argument. The only way PSERS can find out whether a school district is employing annuitants is through information provided by the employer, by the annuitant, or by a whistleblower. A whistleblower was the source of the information which PSERS received in this case. Neither Claimant nor the SDP ever contacted PSERS about Claimant's continued employment with the SDP after her July 2008 "retirement." Therefore, until the whistleblower brought Claimant's continued post-retirement employment to PSERS' attention in late 2011, *see* NT at 18, 20, 31, PSERS never knew about Claimant's continued employment, and had no reason to know about it.

After receiving the whistleblower information, in order to avoid prematurely stopping any annuitant's annuity, NT at 20, PSERS then took reasonable steps to confirm whether or not Claimant was working properly as an annuitant after retirement or not. That is why PSERS did not notify Claimant of its decision to rescind her retirement until 2012. PSERS' unwitting ignorance, subsequent caution in researching and confirming the whistleblower information, and ultimate determination, in accordance with the statutory mandates of the Retirement Code, that rescission of Claimant's retirement was the appropriate course of action, cannot in no manner be transformed into an unfair action for which PSERS is somehow at fault.

Nor was PSERS at fault for failing to make Claimant aware of “what was required of her.” Claimant’s Reply Brief at 3. To the contrary, PSERS had previously provided Claimant with two letters, one dated September 3, 2008 (Exhibit PSERS-3) and the second dated March 15, 2010 (Exhibit PSERS-5), which specifically outlined rule pertaining to returning to work after retiring. As part of those rules, the two letters indicated that returns to work under extracurricular situations were permitted, but that “certain conditions apply,” referred to the possibility that a retiree’s return to service might not qualify as a situation in which the annuitant could continue to receive her annuity, and referred the retiree to the Retired Member Handbook and to PSERS’ website for more detailed information. Despite the fact that Claimant read at least the September 3, 2008 letter, and despite the fact that she wondered whether returning to work might affect her retirement, Claimant did not avail herself of further information from PSERS. Her inaction cannot be laid at PSERS’ feet. Based on all of this, Claimant’s equity/fairness argument cannot be credited.

CONCLUSION

Based on all of the above, the facts of record support the conclusion that Claimant had no true retirement because there was no break in service and because she intended, prior to her stated retirement date, to continue her employment with the SDP.

Under section 8521(e) of the Retirement Code, 24 Pa.C.S. § 8521(e), PSERS and its Board “stand in a fiduciary relationship to the members of the system regarding the investments and disbursements of any of the moneys of the fund.” *Baillie, supra*, 993 A.2d at 949. Additionally, under the Retirement Code, PSERS is responsible for the “uniform administration” of the public school employees’ retirement system. *Id.*, citing 24 Pa.C.S. § 8502(h). The Retirement Code also “requires PSERS to correct all intentional or unintentional errors in members’ accounts,” which means “PSERS has the duty correct errors made by public school employers and to make actuarial adjustments to an individual member’s benefit payments.” *Baillie, supra*, 993 A.2d at 950, citing 24 Pa.C.S. § 8534(b). It follows that PSERS was correct in making actuarial adjustments to Claimant’s account, as a rescission, based on the uninterrupted continuation of school service and the lack of a true retirement. Likewise, PSERS was correct in denying Claimant’s claim for full restoration of her PSERS benefits as of the date of her initial retirement from the SDP in July 2008.

Accordingly, the following recommendation will be made to the Board:

DEC 15 2015

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

PSERB
EXECUTIVE OFFICE

IN RE:

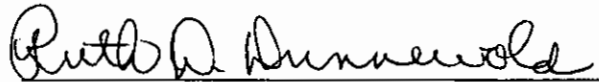
ACCOUNT OF MARCIA S. SCHULMAN
CLAIM OF MARCIA S. SCHULMAN

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DOCKET NO. 2013-18

RECOMMENDATION

AND NOW, this 15th day of December, 2015, upon consideration of the foregoing findings of fact, conclusions of law and discussion, the Hearing Officer for the Public School Employees' Retirement Board recommends that the Board (1) DENY Claimant's request for full restoration of her PSERS benefits as of the date of her initial retirement from the School District of Philadelphia in July 2008 and (2) DISMISS Claimant's administrative appeal.



Ruth D. Dunnewold
Hearing Officer

For Claimant: Kenneth J. Zoldan, Esquire
ZOLDAN ASSOCIATES, LLC
Two Bala Plaza, Ste. 300
Bala Cynwyd, PA 19004

For PSERS: Frederick Alcaro, Esquire, Assistant Counsel
Kathrin V. Smith, Esquire, Assistant Deputy Chief Counsel
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM
5 North 5th St.
Harrisburg, PA 17101

Docket Clerk: Laura Vitale, Appeal Docket Clerk
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD
5 N. 5th St.
Harrisburg, PA 17101

Date of mailing: 12/15/15