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

**IN RE: ACCOUNT OF SUSAN S. OSGOOD
DOCKET NO. 2012-42
CLAIM OF SUSAN S. OSGOOD**

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the Briefs, the Opinion and Recommendation of the Hearing Examiner, Claimant's Brief on Exceptions to the Opinion and Recommendation of the Hearing Examiner, and PSERS' Brief Opposing Claimant's Exceptions.

The issue in this appeal is whether to grant Susan S. Osgood's ("Claimant") request to elect Multiple Service membership to allow her to purchase previously refunded state service rendered with the Pennsylvania State University ("PSU") from May 1973 until February 1982. The Hearing Examiner recommends that Claimant's request should be denied because PSERS properly notified Claimant of her right to elect Multiple Service membership after the enactment of the Act of May 17, 2001, P.L. 26, No. 9 ("Act 2001-9") and Claimant failed to do so.

Claimant excepts to the Hearing Examiner's Opinion and Recommendation on the basis that: (1) the Hearing Examiner allegedly misapplied the applicable law in this matter and (2) the notice Claimant admits to receiving when she elected Class T-D membership did not mention employment with an educational entity.

Claimant merely reargues issues previously raised in her brief that were already adequately addressed by the Hearing Examiner. Accordingly, the Board generally finds appropriate the Hearing Examiner's Findings of Fact, Conclusions of Law, and Discussion, attached hereto, with the following modifications:

11. The *Summary of Legislation* letter and the additional cover letter which included the Act 2001-9 election form were was sent in May 2001 to Claimant at her address of [REDACTED], by first class mail, postage prepaid, and was not returned to PSERS as undeliverable. (N.T. 49-51; PSERS Exhibit 5b)
12. In June 2001, a third party contractor with PSERS, Election.com, sent a "Summary of Legislation" letter to active contributing members of PSERS, ~~together with a cover letter~~ which included an Act 2001-9 election form, to notify members, *inter alia*, of the new T-D membership class and the new window from July 1, 2001 until December 31, 2003 to elect multiple service membership. (N.T. 52-53; PSERS Exhibit 6a and Claimant Exhibit O-B)
13. Claimant was among the active members of PSERS who was sent the ~~Summary of Legislation letter and the additional cover letter~~ in June 2001, which included the Act 2001-9 election form. (N.T. 53-54; PSERS Exhibit 6b)
15. The *Summary of Legislation* letter contained the following information with respect to the extended opportunity to elect multiple service membership:
 - 3. Effective July 1, 2001, the opportunity to elect Multiple Service membership (members who elect to combine benefits in the PSERS and the State Employees' Retirement System) will be expanded.**
 - a. Current members, who have not already elected Multiple Service membership, will have a window from July 1, 2001 through December 31, 2003, to apply for multiple service membership.
 - b. Any payment due for multiple service membership can now be satisfied through the debt plan, which is available for other types of purchase of service credit at PSERS.

(Claimant's Exhibit O-BA)

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

IT IS HEREBY ORDERED that Claimant's request to elect Multiple Service membership is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: October 7, 2014

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

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

In Re: Account of Susan S. Osgood : Docket No. 2012-42
Claim of Susan S. Osgood :

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EXECUTIVE OFFICE

OPINION AND RECOMMENDATION

Date of Hearing: October 30, 2013
Hearing Examiner: Suzanne Rauer, Esquire
For the Claimant: Kathryn L. Simpson, Esquire
For PSERS: Jennifer A. Mills, Esquire

HISTORY

This matter is before the Public School Employees' Retirement Board (Board) on an appeal filed by Susan S. Osgood (Claimant) from a July 31, 2012 decision of the Executive Staff Review Committee (ESRC) of the Public School Employees' Retirement System (PSERS) that denied Claimant's request to elect multiple service membership after December 31, 2003.

On August 29, 2012, Claimant requested an extension to September 20, 2012 to file her appeal, and the Board by Order dated September 4, 2012 granted that request for an extension of time. Claimant's appeal was timely filed on September 20, 2012. Thereafter, on October 9, 2012, an answer was filed by Assistant Counsel Jennifer A. Mills, on behalf of the Public School Employees' Retirement System (PSERS).

On May 9, 2013, C. Michael Weaver, Esquire was appointed by Secretary Jeffrey B. Clay to act as hearing examiner for Claimant's administrative hearing. A hearing notice was also issued on May 9, 2013, which scheduled the hearing on Claimant's appeal for July 24, 2013. On July 15, 2013, Claimant requested a continuance of the July 24, 2013 hearing to give her an opportunity to retain counsel to represent her, and Claimant's request for a continuance was granted on that same date. The administrative hearing was rescheduled for September 17, 2013, but on September 13, 2013 Claimant again requested a continuance of the hearing, stating that she had just retained counsel who needed more time to prepare. Claimant's request for continuance was granted, and the administrative hearing was rescheduled for October 30, 2013 in Harrisburg, Pennsylvania, before Hearing Examiner Suzanne Rauer. Jennifer A. Mills, Esquire was present at the hearing on behalf of PSERS. Kathryn L. Simpson, Esquire was present at the hearing on behalf of Claimant, who was also present.

Following the close of evidence and receipt of the hearing transcript, a briefing schedule was established by the hearing examiner. Pursuant to the briefing schedule, Claimant's brief was due on or before January 13, 2014; PSERS' brief was due on or before February 12, 2014; and, Claimant's reply brief, if any, was due on or before February 27, 2014. All briefs were timely filed.

The matter is now before the Board for final disposition.

FINDINGS OF FACT

1. At all relevant and material times, Claimant was an active member of the Public School Employees Retirement System; Claimant was employed as a public teacher at Gateway School District from August 1988 until her retirement on January 15, 2011. (N.T. 9; Transcript, *passim*)
2. Prior to 1988, Claimant was employed with Pennsylvania State University from May 1973 until February 1982. (PSERS-1; N.T. 8, 21-22)
3. During her employment with Pennsylvania State University, Claimant was a member of the State Employees' Retirement System (SERS). (PSERS-1; N.T. 8, 41-42)
4. On May 17, 2001, Act 2001-9 was enacted as an amendment to the Retirement Code. (Official Notice)
5. Act 2001-9 opened a window for active members of PSERS who were former active members in SERS and whose service credit in SERS had not been converted to service credited in another public pension plan or retirement system in Pennsylvania to elect to become a multiple service member. (Official Notice)
6. Act 2001-9 also provided an opportunity for PSERS members to elect a new Class T-D membership in order to enhance their benefit levels, and reduced the number of eligibility points for an active or inactive member to become vested in PSERS from 10 years to 5 years. (Official Notice)
7. Under Act 2001-9, the window during which qualified members of PSERS could elect Class T-D membership was between July 1, 2001, the effective date of Act 2001-9, and December 31, 2001. (Official Notice)

8. Under Act 2001-9, the window during which qualified members of PSERS could elect multiple service membership was between July 1, 2001, the effective date of Act 2001-9, and December 31, 2003. (Official Notice)
9. Following the enactment of Act 2001-9, PSERS in May 2001 sent a "Summary of Legislation" letter to active contributing members of PSERS. (PSERS Exhibit 5a and Claimant Exhibit O-A)
10. Claimant was among the active members of PSERS who was sent the *Summary of Legislation* letter. (PSERS Exhibit 5a and Claimant Exhibit O-A; N.T. 9, 48-50)
11. The *Summary of Legislation* letter and the additional cover letter which included the Act 2001-9 election form were sent in May 2001 to Claimant at her address of [REDACTED] [REDACTED], by first class mail, postage prepaid, and was not returned to PSERS as undeliverable. (N.T. 49-51; PSERS Exhibit 5b)
12. In June 2001, a third party contractor with PSERS, Election.com, sent a "Summary of Legislation" letter to active contributing members of PSERS, together with a cover letter which included an Act 2001-9 election form, to notify members, *inter alia*, of the new T-D membership class and the new window from July 1, 2001 until December 31, 2003 to elect multiple service membership. (N.T. 52-53; PSERS Exhibit 6a and Claimant Exhibit O-B)
13. Claimant was among the active members of PSERS who was sent the *Summary of Legislation* letter and the additional cover letter which included the Act 2001-9 election form. (N.T. 53-54; PSERS Exhibit 6b)
14. The *Summary of Legislation* letter and the additional cover letter which included the Act 2001-9 election form were sent in June 2001 to Claimant at her address of [REDACTED]

[REDACTED], by first class mail, postage prepaid, and was not returned to PSERS as undeliverable. (N.T. 52-54, 51, 55; PSERS Exhibit 6b)

15. The *Summary of Legislation* letter contained the following information with respect to the extended opportunity to elect multiple service membership:

3. Effective July 1, 2001, the opportunity to elect Multiple Service membership (members who elect to combine benefits in the PSERS and the State Employees' Retirement System) will be expanded.

a. Current members, who have not already elected Multiple Service membership, will have a window from July 1, 2001 through December 31, 2003, to apply for multiple service membership.

b. Any payment due for multiple service membership can now be satisfied through the debt plan, which is available for other types of purchase of service credit at PSERS.

(Claimant's Exhibit O-B)

16. Page 3 of the cover letter to the Act 2001-9 election form contained the following information with respect to the extended opportunity to elect multiple service membership:

Window for Multiple Service Membership

Multiple Service membership combines nonconcurrent service credited with SERS and PSERS. Examples of SERS service include employment with a Commonwealth agency (such as employment with the PA Departments of Welfare, Transportation, Health, Labor and Industry), a state owned educational institution, Pennsylvania State University, or a community college.

- If you are an **active** member of PSERS on July 1, 2001, and are not a Multiple Service member, although you had or have SERS covered service, Act 9 provides a window to elect

Multiple Service membership. PSERS must receive your request for Multiple Service membership between July 1, 2001 and December 31, 2003. **If you terminate employment before December 31, 2003, you must submit your request prior to the date of termination.** Also, if you are retiring this year and wish to elect multiple service, you must remain in **active** service on or after July 1, 2001, to take advantage of the new window.

- If you need to purchase prior service to gain multiple service credit, you may now use the actuarial debt plan as a payment plan. The debt is applied to the equity in your retirement account. It does not affect your current contributions and interest. When you retire, your monthly retirement payment will be adjusted to pay for the purchase over the lifetime of the benefit. Although a portion of your monthly benefit pays the debt, adding service credit to your account usually increases the amount of your monthly retirement benefit.

If you have or had employment covered under SERS and you want to combine state and school service credit, you should use the enclosed *PSERS Membership Class Election Form* to request further information on Multiple Service membership. PSERS will mail additional information about becoming a Multiple Service member to you.

(PSERS Exhibit 6a; Claimant's O-B)

17. The Act 2001-9 election form contained a box for members to either elect to change to T-D Class or elect not to change from T-C Class and a separate box to request multiple service information. (PSERS Exhibit 6a; Claimant's Exhibit O-B)
18. In September 2001, third party contractor Election.com, on behalf of PSERS, sent a "SECOND NOTICE" letter to active contributing members of PSERS who had not responded to the previous mailings regarding Act 2001-9 election of Class T-D membership and the open window for multiple service membership election. (N.T. 54; PSERS Exhibit 7a and Claimant Exhibit O-C)

19. The September 2001 mailing by Elections.com was mailed to Claimant at her address at [REDACTED], by first class mail, postage prepaid, and was not returned to PSERS as undeliverable. (N.T. 55; PSERS Exhibit 7b)
20. On November 30, 2001, PSERS mailed a reminder letter to Claimant regarding her lack of response to previous mailings outlining the Act 2001-9 election of Class T-D membership, and included an Act 2001-9 PSERS Membership Class Election Form which also included a check box to request Multiple Service Information. (N.T. 55-56; PSERS Exhibit 8 and Claimant Exhibit O-D)
21. The November 30, 2001 PSERS mailing was mailed to Claimant at her address at [REDACTED], by first class mail, postage prepaid, and was not returned to PSERS as undeliverable. (N.T. 55-56; PSERS Exhibit 8 and Claimant's Exhibit O-D)
22. In December 2001, PSERS mailed a "FINAL NOTICE" to Claimant regarding her lack of response to previous mailings outlining the Act 2001-9 election of Class T-D membership, and reminding Claimant that she had until December 31, 2001 to elect Class T-D membership. (N.T. 56-57; PSERS Exhibit 9a and Claimant Exhibit O-E)
23. The December 2001 PSERS mailing was mailed to Claimant at her address at [REDACTED], by first class mail, postage prepaid, and was not returned to PSERS as undeliverable. (PSERS Exhibit 9b; N.T. 55)
24. On December 20, 2001, PSERS received Claimant's completed Act 2001-9 PSERS Membership Class Election Form, in which Claimant elected to change to Class T-D

membership but *did not* check the box on that form to request Multiple Service Information. (Claimant Exhibit O-F; N.T. 62)

25. Had Claimant requested Multiple Service Information as part of Claimant's completed Act 2001-9 PSERS Membership Class Election Form, PSERS would have at some time in the following twelve months notified Claimant of the steps required to elect multiple service and provided the Multiple Service Election Form. (N.T. 62)
26. When a member, like Claimant, did not check the box on the Act 2001-9 election form to request multiple service information, PSERS did not send additional multiple service information to the member. (N.T. 62-63)
27. A Retirement Chalkboard is a news publication that PSERS sends to all active members of PSERS through U.S. Postal Service bulk mailing. (N.T. 57)
28. Every Retirement Chalkboard that was published during the 18-month window to elect multiple service membership contained an article devoted to multiple service, and the deadline for electing multiple service membership. (PSERS Exhibits 10a, 11a, 12a, 13a, 14a)
29. The Summer 2001 Retirement Chalkboard contains a two-page article devoted to an overview of Act 2001-9; page two of the article contains a section entitled "Multiple Service Election Re-opened" and explains, in pertinent part:

Multiple Service membership combines service credited with SERS and PSERS. Examples of SERS service include employment with a Commonwealth agency (such as employment with the PA Departments of Welfare, Transportation, Health, Labor and Industry), a state owned educational institution, Pennsylvania State University, or a community college.

If you are an active member of PSERS on July 1, 2001, and had SERS covered service and did not previously elect Multiple

Service, Act 9 provides a window to elect Multiple Service membership. PSERS must receive your request for Multiple Service membership between July 1, 2001 and December 31, 2003. . . .

(PSERS Exhibit 10a; N.T. 57-58)

30. Records on file with PSERS show that Claimant was among the list of active members of PSERS who was mailed a copy of the Summer 2001 Retirement Chalkboard. (PSERS Exhibit 10b; N.T. 58)
31. The Fall 2001, Spring 2002 and Summer 2002 Retirement Chalkboards contained an article on the front page entitled "Multiple Service Election Re-Opened," which contain substantially similar content and information as the article that appeared in the Summer 2001 Retirement Chalkboard. (PSERS Exhibits 11a, 12a and 13a; N.T. 58-60)
32. Records on file with PSERS show that Claimant was among the list of active members of PSERS who was mailed a copy of the Fall 2001, Spring 2002 and Summer 2002 Retirement Chalkboards. (PSERS Exhibits 11b, 12b and 13b; N.T. 59-60)
33. The Fall 2002 and Summer 2003 Retirement Chalkboards contained similar articles pertaining to "Multiple Service Election Re-Opened." (PSERS Exhibits 14a, and 16a)
34. Records on file with PSERS show that Claimant was among the list of active members of PSERS who was mailed a copy of the Fall 2002 and Summer 2003 Retirement Chalkboards. (PSERS Exhibits 14b and 16b; N.T. 60, 61)
35. The Fall 2003 Retirement Chalkboard contained a more urgent article on its front page, entitled, "Deadline Approaching for Multiple Service Election," which contained the following information:

Deadline Approaching for Multiple Service Election

Multiple Service allows you to combine Pennsylvania state and school service that will enhance your retirement benefit. If you became a member of PSERS after October 2, 1975, and wish to combine this service with State Employees' Retirement System (SERS) service (for example, employment with the Department of Public Welfare, Department of Labor and Industry, Department of Transportation, etc.) **you must request Multiple Service in writing within 365 days of employment with your school employer or by December 31, 2003, whichever is later.**

This is your only opportunity to elect Multiple Service unless you have a break in service. Your contributions and interest will continue to earn interest as long as you remain active in either of the two Systems. Your record of service, contributions, and interest will remain separate in each System until you terminate service in both Systems and apply for a refund or retirement.

If you terminate employment before December 31, 2003, you must submit your request to elect Multiple Service prior to your termination date.

(PSERS Exhibit 17a)

36. Records on file with PSERS show that Claimant was among the list of active members of PSERS who was mailed a copy of the Fall 2003 Retirement Chalkboard.

(PSERS Exhibit 17b; N.T. 61)

37. In the Winter of 2002 PSERS also mailed a publication entitled "PSERS UPDATE" to all retired and active members of PSERS; similar to the Retirement Chalkboards, the Winter 2002 PSERS UPDATE contained an article entitled "Multiple Service Election Opened." (PSERS Exhibit 15a)

38. Records on file with PSERS show that Claimant was among the list of retired and active members of PSERS who was mailed a copy of the Winter of 2002 PSERS UPDATE. (PSERS Exhibit 15b; N.T. 60-61)
39. Claimant's current address is identical to the address on file with PSERS where Retirement Chalkboard publications and PSERS UPDATE were mailed to Claimant. (N. T. 7, 24; PSERS Exhibits 10-17)
40. Claimant has lived at her current address for 20 years. (N.T. 7)
41. Claimant does not recall receiving the May 2001, June 21001 and September 2001 PSERS mailings regarding the Act 2001-9 election of Class T-D membership and the open window for multiple service membership election. (N.T. 24-27)
42. Claimant does not recall receiving Retirement Chalkboards and PSERS UPDATE in the mail, and admitted that she "may have deemed them not relevant to me because I wasn't anywhere near retirement." (N.T. 32-34)
43. Claimant does not recall receiving any information from PSERS that advised her about the limited window for multiple service membership election. (N.T. 20)
44. Claimant acknowledges that she received Statements of Account from PSERS on an annual basis at her address of record with PSERS. (N.T. 29)
45. Claimant did not check the box requesting multiple service information when she completed her Act 2001-9 Class T-D election form. (N.T. 13-14; Claimant Exhibit O-F)
46. Claimant was under the belief from other teachers with whom she worked that that a PSERS member must purchase service prior to retirement. (N.T. 29-30)

47. On December 22, 2010, Claimant filed an application for Purchase of Former Full-Time Uncredited Service for the time she was employed at Pennsylvania State University from 1973 through 1982. (N.T. 13-14, 21-22, 39; PSERS Exhibit 1)
48. During her employment with Pennsylvania State University, Claimant was a member of SERS. (PSERS Exhibit 1; N.T. 41-44)
49. When Claimant terminated service with Pennsylvania State University in 1982, Claimant requested and received a full refund of her contributions and interest of approximately \$3,000 from SERS. (PSERS Exhibit 1; N.T. 9, 22, 30)
50. On February 25, 2011, PSERS sent notification to Claimant that after reviewing her December 22, 2010 Application to Purchase Credit for Full-Time Service for service with Pennsylvania State University for the years 1973-1982, PSERS determined that she was not eligible to purchase that service because she was enrolled in SERS during the time in question. (PSERS Exhibit 2; N.T. 41-43)
51. Claimant was notified of her right to appeal the denial of her Application to Purchase Credit for Full-Time Service to the PSERS ESRC. (PSERS Exhibit 2)
52. Claimant appealed the denial by correspondence received by the ESRC on March 25, 2011, and by correspondence dated July 31, 2012 the ESRC notified Claimant that her appeal was considered at its July 3, 2012 meeting and that they denied her request to elect multiple service membership because she was a member of SERS during her employment with Pennsylvania State University and did not file a timely application to elect multiple service. (PSERS Exhibits 3 and 4)
53. Claimant filed an appeal from the decision of the ESRC and requested an administrative hearing. (Board records)

54. An administrative hearing on Claimant's appeal was held on October 30, 2013.
(Transcript, *passim*)
55. Claimant was present at the hearing, was represented by counsel, and had the right to testify and present evidence and to cross examine witnesses, and to file a post-hearing brief in support of her appeal. (Transcript, *passim*; Board records)

CONCLUSIONS OF LAW

1. Claimant was afforded an opportunity to be heard in connection with her appeal. (Findings of Fact Nos. 53-55)
2. Claimant has the burden of proof in this proceeding. *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991).
3. As an active member of PSERS on July 1, 2001, Claimant had until on or before December 31, 2003 to elect to become a multiple service member. (Findings of Fact Nos. 1-7; 24 Pa. C.S. §8507(c)).
4. Claimant's Application for Purchase of Former Full-Time Uncredited Service was not filed until December 22, 2010 and is, therefore, untimely. (Findings of Fact No. 46)
5. Claimant is not entitled to elect multiple service membership at this time. (Findings of Fact Nos. 1-55)

DISCUSSION

It is well settled in Pennsylvania that Claimant bears the burden of establishing the facts necessary to sustain her claim. *See Gierschick v. State Employees' Retirement Board*, 733 A.2d 29 (Pa. Cmwlth. 1999); *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991). While a member is entitled to a liberal construction of the Retirement Code, she has only those rights created by the retirement statutes and none beyond. *Burris v. State Employees' Retirement Board*, 745 A.2d 704 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees' Retirement Board*, 622 A.2d 403 (Pa. Cmwlth. 1992); *Hughes v. Public School Employees' Retirement Board*, 662 A.2d 701 (Pa. Cmwlth. 1995), *allocator denied*, 668 A.2d 1139 (Pa. 1996). The agency must 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. §1921(a), (b). PSERS has no authority to grant rights beyond those specifically set forth in the Retirement Code. *Forman v. Public School Employees' Retirement Board*, 778 A.2d 778 (Pa. Cmwlth. 2001).

As the preceding findings of fact disclose, Act 2001-9 opened a window for any active member of PSERS who was formerly an active member in SERS and whose service credit in SERS had not been converted to service credited in another public pension plan or retirement system in the Commonwealth to elect to become a multiple service member.¹ Under Act 2001-9,

¹ Section 29 of Act 2001-9, as it applies to Claimant and others similarly situated provides:

Section 29. Notwithstanding the limitation contained in 24 Pa. C.S. §8507(c), any active member of the Public School Employees' Retirement System who was formerly an active member in the State Employees' Retirement System and whose service credit in the State Employees' Retirement System has not been converted to service credited in another public pension plan or retirement system in this Commonwealth may elect to become a multiple service member on or before December 31, 2003.

Previous to Act 2001-9, section 8507(c) of the Retirement Code only allowed such members 30 days to make this election.

qualified members of PSERS could elect multiple service membership between July 1, 2001 and December 31, 2003.

With Act 2001-9, the Retirement Code was amended to allow members to elect Class T-D membership, which included an increase in the multiplier at an increased cost to the member in the form of a one percent contribution rate increase, as well as reducing the vesting period from ten years to five years and affording members the opportunity to elect Multiple Service membership during a window that was opened from July 1, 2001 through December 31, 2003. (N.T. 38) PSERS presented the testimony of John Tucker, who worked for PSERS from September 1996 to March 1999, and from February 2002 to the present, and at the time of the hearing in this matter was Communications Manager, Field Services Division for PSERS's Bureau of Communications and Counseling. Mr. Tucker testified, *inter alia*, that PSERS sent out to its members, including Claimant, five separate notices of their opportunity to elect Class T-D membership by December 31, 2001, as well as notice of the window during which they could elect multiple service membership. Following the close of the Class T-D membership election period on December 31, 2001, PSERS continued to advise its members via multiple newsletters of the window for electing multiple service membership between July 1, 2001 and December 31, 2003.

By application received by PSERS on December 20, 2001, Claimant elected Class T-D membership, but did not check the box *on the same form* to request information regarding multiple service membership. It is Claimant's position that she did not receive the first three mailings from PSERS or its election.com following the passage of Act 2001-9, and did not receive any of the newsletters sent to her by PSERS. Claimant also argued that PSERS did not define "Multiple Service Membership" in any of the mailings to its members.

Claimant testified that she has lived at her current address for twenty years, and that her current address is in fact her address of record with PSERS. Claimant further testified that she did not know during her employment with Pennsylvania State University that she was a member of SERS, but only that she was a member of a retirement system. (N.T. 8, 23) When she left employment with Pennsylvania State University, Claimant refunded her contributions to SERS plus interest. (N.T. 9, 22) Claimant did not request multiple service membership prior to December 22, 2010 because she was under the mistaken impression from other teachers with whom she worked that she could purchase service at any time before she retired. (N.T. 29-30)

Claimant's appeal centers on her claim that she did not receive any of the information PSERS sent to its members regarding multiple service membership, and that PSERS failed to define multiple service membership on the form Claimant did receive from PSERS, which she completed to elect Class T-D membership. It is Claimant's position that she did not know and was not informed that she was eligible for multiple service membership through her employment by Pennsylvania State University and her membership in SERS.

Claimant argued that in order to prevail, PSERS was required to prove that the correspondence in question were actually mailed. Claimant further argues, citing *Jensen v. McCorkell*, 26 A. 366, 367 (Pa. 1893)(citation omitted), that Pennsylvania recognizes the mailbox rule, which provides that "depositing in the post office a properly addressed, prepaid letter raises a natural presumption, founded in common experience, that it reached its destination by due course of mail." To trigger the presumption of receipt, however, PSERS, "who is seeking the benefit of the presumption must adduce evidentiary proof that the letter was signed in the usual course of business **and** placed in the regular place of mailing." *Geise v. Nationwide Life and Annuity Co. of America*, 939 A.2d 409, 425 (Pa. Super. 2007) (emphasis added). It is

Claimant's position that PSERS has "adduced no evidence that would satisfy its burden." (Brief of Susan S. Osgood at p.12) There can be no presumption that a letter was received unless actual mailing is established. "A presumption that a letter was received cannot be based upon a presumption that the letter was properly mailed. A presumption cannot be based upon a presumption." *Geise at 425*. Claimant argues that PSERS presented testimony from John Tucker, who had no personal knowledge of the process of mailing, and who was not even employed by PSERS at the time the letters were sent. Mr. Tucker "simply testified that nothing was returned in connection with the mailings." (Brief of Susan S. Osgood at p.13) Claimant further argued that the correspondence from PSERS contained no information that would have alerted Claimant that her Pennsylvania State University service would fall under the multiple service credit and that she had a limited window of opportunity within which to elect multiple service membership. (N.T. 14,19-20)

Preliminarily, PSERS argued that Section 201.9 of the Board's duly promulgated regulations, at 22 Pa. Code §201.9, provides as follows:

* * *

(b) Any subordinate officer who has access to the System's records, and has knowledge regarding the identity and mode of preparation of the records prepared by the System and the filing with, and maintenance of records by the System in the regular course of the System's business will be qualified to identify any documents or other records on file with the System in any hearing and to testify regarding the documents or other records.

Consequently, PSERS argued that whether Mr. Tucker was employed by PSERS during the relevant time period is immaterial if Mr. Tucker has: (1) access to PSERS' records; and (2) knowledge regarding the identity, mode of preparation, filing and maintenance of the records by PSERS. Mr. Tucker testified that, through his re-employment with PSERS

beginning in February 2002, Mr. Tucker became familiar with Act 9 as well as the notices and mailings that were sent to members regarding Act 9 by reviewing thousands of accounts over the last eleven years and the documentation that members returned to PSERS. (N.T. 38; 49) Mr. Tucker also testified that he reviewed Claimant's file maintained by PSERS. (N.T. 39)

PSERS also disputed Claimant's assertion that PSERS was required to present testimony from election.com regarding that company's mailing procedures in 2001 as it related to the Act 2001-9 notices and that the Act 2001-9 notices were actually mailed. The significance of the mailbox rule is the necessity to establish some point at which notice is deemed complete. Under the mailbox rule, in order for the presumption of receipt of a letter to be triggered, "the party who is seeking the benefit of the presumption must adduce evidentiary proof that the letter was signed in the usual course of business and placed in the regular place of mailing." *Commonwealth of Pennsylvania v. Thomas*, 814 A.2d 754 (Pa. Super. 2002). As Pennsylvania courts have explained "evidence of actual mailing is not required," *Commonwealth Dep't of Transp. v. Brayman Constr. Corp.*, 513 A.2d 562, 566 (Pa. Cmwlth. 1986), but "when a letter has been written and signed in the usual course of business and placed in the regular place of mailing, evidence of the *custom of the establishment as to the mailing of such letters is receivable as evidence that it was duly mailed.*" *Christie v. Open Pantry Food Marts Inc. of Delaware Valley*, 352 A.2d 165, 166-67 (Pa. Super. 1975) (emphasis added). *See also Geise v. Nationwide Life and Annuity Co. of America*, 939 A.2d 409, 424 (Pa. Super. 2007). PSERS argued that Mr. Tucker's testimony was based on his personal knowledge of the

process utilized by PSERS in notifying its members of Act 2001-9 and the documentary evidence maintained by PSERS. Mr. Tucker explained that due to the volume of the work involved and PSERS' resources, PSERS used an independent contractor, election.com, to send certain correspondence and election forms concerning Act 2001-9 to its members by first class mail. (N.T. 52) Mr. Tucker also testified that PSERS sent to election.com the name and address of the members who were to receive communications regarding Act 2001-9. (N.T. 52-53) Mr. Tucker explained that PSERS maintains proof of that sharing of information with election.com in microfiche format, listing all of the members and their address and the date of when the information was sent. (N.T. 53, 54-55) Mr. Tucker further stated that any mail sent by election.com that was returned as undeliverable was returned to PSERS and documented in the member's file. (N.T. 55-56) After reviewing Claimant's file, Mr. Tucker found no evidence to suggest that the Act 2001-9 notices sent to Claimant did not follow PSERS' normal mailing process, including those notices sent by election.com. (N.T. 74-75)

PSERS has more than adequately proven that each of the Act 2001-9 notices were initiated, generated, printed and mailed to Claimant at her address of record with PSERS, in a timely fashion and in the normal course of PSERS business in accordance with PSERS' standard business practice. None of the Act 2001-9 mailings to Claimant were returned to PSERS as undeliverable. Claimant presented no evidence that election.com failed to properly produce and mail the two Act 2001-9 mailings for which it was responsible. The only evidence adduced at hearing to support Claimant's claim that she did not receive the Act 2001-9 mailings from PSERS or election.com was Claimant's own unsubstantiated testimony. Given Claimant's

admission at several points during her testimony that she did not contact PSERS and did not or would not pay attention to information provided in PSERS newsletters regarding multiple service election because she had no plans to retire and was under the mistaken impression that she could purchase service at any time prior to retirement (N.T. 30, 32), and the evidence presented by PSERS as to the Act 2001-9 mailings and the newsletter follow-ups between May 2001 and December 31, 2003, it is reasonable to find that the mailings were in fact received but regrettably not given proper weight by Claimant. That she received, completed and returned her Class T-D membership election form in a timely manner only serves to support that finding. That Claimant did not request additional information about multiple service membership on that same form² merely supports her testimony that she believed she had until she retired to buy back her Pennsylvania State University service.

The statutory window to elect multiple service membership under Act 2001-9 was from July 1, 2001 through December 31, 2003. PSERS provided both actual and constructive notice of the new election period to Claimant through various means. It is unfortunate that Claimant mistakenly believed that she had until the time of her retirement to purchase her Pennsylvania State University service, a mistaken belief that could have been corrected had she requested additional information from PSERS. Claimant was provided with the necessary information to

² The Class T-D election form completed by Claimant included the following check box:

Multiple Service Information Request (Optional)

Check this block if you believe you have or had service under the State Employees' Retirement System (SERS), for example, Health and Welfare, Department of Labor and Industry, PennDOT. PSERS will mail additional information about combining your PSERS and SERS service to become a Multiple Service member. If you are currently a Multiple Service Member, do not request this information. (PSERS Exhibit 18; Claimant Exhibit O-F)

timely elect multiple service membership. Claimant simply did not avail herself of the information or the opportunity to do so.

Claimant has the burden of proof in this proceeding. *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991). Claimant has not proffered sufficient evidence to support her appeal.

The following recommendation will therefore be made:

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

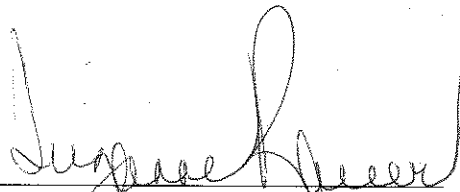
In Re: Account of Susan S. Osgood : Docket No. 2012-42
Claim of Susan S. Osgood :

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PSERB
EXECUTIVE OFFICE

RECOMMENDATION

AND NOW, this 22nd day of May, 2014, upon consideration of the foregoing Findings of Fact, Conclusions of Law and Discussion, the hearing examiner for the Public School Employees' Retirement System recommends that Claimant's request to elect multiple service membership after the December 31, 2003 deadline for doing so should be denied, as untimely.



Suzanne Rauer
Hearing Examiner

Date of Mailing: May 22, 2014