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

IN RE: ACCOUNT OF BETH ANN SHAFFER
DOCKET NO.: 2012-46
CLAIM OF BETH ANN SHAFFER

OPINION AND ORDER OF THE BOARD

The Public School Employees' Retirement Board ("Board") has before it a Motion for Summary Judgment filed by the Public School Employees' Retirement System ("PSERS") in the above-referenced administrative appeal requesting that Beth Ann Shaffer's ("Claimant") Appeal and Request for Administrative Hearing be dismissed because there is no issue of material fact and PSERS is entitled to a summary judgment as a matter of law.

PSERS filed its Motion for Summary Judgment on May 20, 2013, and served a copy by First Class Mail on Claimant as required by the General Rules of Administrative Practice and Procedure. 1 Pa.Code §§ 33.32, 33.35-33.36. By letter dated May 20, 2013, PSERS notified Claimant that she had 30 days to respond to PSERS' motion under Pa.R.C.P. No. 1035.3. Claimant's response, therefore, had to be filed on or before June 19, 2013. See 1 Pa.Code §§ 31.11, 31.12 and 33.34. Claimant did not file a response to the motion.

Where no factual issues are in dispute, no evidentiary hearing is required under 2 Pa.C.S. § 504. The function of a summary judgment motion is to eliminate the needless use of time and resources of the litigants and the Board in cases where an evidentiary administrative hearing would be a useless formality. See *Liles v. Balmer*, 567 A.2d 691 (Pa.Super. 1989). The Board's regulations authorize the use of summary judgment where there are no genuine issues of material fact. 22 Pa.Code § 201.6(b); Pa.R.C.P. Nos. 1035.1-1035.5. To determine whether the party moving for summary judgment has met its burden, the Board must examine the record in the light most favorable to the

non-moving party and give her the benefit of all reasonable inferences. See *Thompson v. Nason Hosp.*, 535 A.2d 1177, 1178 (Pa.Super. 1988), *aff'd*, 591 A.2d 703 (Pa. 1991). Any doubts regarding the existence of a genuine issue of material fact must be resolved in favor of the non-moving party. *El Concilio De Los Trabajadores v. Commonwealth*, 484 A.2d 817, 818 (Pa.Cmwlth. 1984). "Summary judgment may be entered against a party who does not respond." Pa.R.C.P. 1035.3(d).

Because Claimant did not respond and, therefore, has not identified any additional facts remaining to be determined at an evidentiary hearing that would be material to the legal issue before the Board in this matter, the Board finds that there are no disputed material facts.

The Board further finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issues presented on appeal.

FINDINGS OF FACT

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

1. Claimant became a member of PSERS in August 1993.
2. Claimant has earned one full year of service credit with PSERS for each school year since 1993-1994.
3. Claimant is an active member of PSERS.
4. On September 7, 2007, PSERS received an *Application to Purchase Credit for Part-Time Service* from Claimant, listing service rendered with the Appalachia Intermediate Unit #8 during the school years 2005-2006 through 2007-2008. (PSERS-1).
5. Claimant was a full-time employee of the Shanksville-Stoneycreek School District and an active member of PSERS when she rendered part-time service at the Appalachia Intermediate Unit #8 during the school years 2005-2006 through 2007-2008.

6. Claimant's part-time service with the Appalachia Intermediate Unit #8 was not reported to PSERS at the time service was rendered.

7. Claimant did not make contributions to PSERS for her part-time service with the Appalachia Intermediate Unit #8 at the time service was rendered.

8. By letter dated September 11, 2007, PSERS notified Claimant that it had received her purchase of service application.

9. On November 10, 2008, PSERS received an *Application to Purchase Credit for Part-Time Service* from Claimant, listing service rendered with the Somerset Area School District during the school years 2003-2004 through 2007-2008. (PSERS-2).

10. Claimant was a full-time employee of the Shanksville-Stoneycreek School District and an active member of PSERS when she rendered part-time service at the Somerset Area School District during the school years 2003-2004 through 2007-2008.

11. Claimant's part-time service with the Somerset Area School District was not reported to PSERS at the time service was rendered.

12. Claimant did not make contributions to PSERS for her part-time service with the Somerset Area School District at the time service was rendered.

13. By letter dated November 12, 2008, PSERS notified Claimant that it had received her purchase of service application.

14. On February 15, 2011, PSERS mailed Claimant a *Statement of Amount Due* for the former, uncredited part-time service rendered during the school year 2003-2004. The *Statement of Amount Due* indicated that: (a) Claimant owed PSERS \$464.19; and (b) Claimant would receive 0.0 years of service credit for that time. (PSERS-3 at p. 2).

15. On February 17, 2011, PSERS mailed Claimant a *Statement of Amount Due* for the former, uncredited part-time service rendered during the school years 2004-2005, 2005-2006, and 2006-2007. The *Statement of Amount Due* indicated that: (a)

Claimant owed PSERS \$1,890.82; and (b) Claimant would receive 0.0 years of service credit for that time. (PSERS-3 at p. 3).

16. On February 22, 2011, PSERS mailed Claimant a *Statement of Amount Due* for the former, uncredited part-time service rendered during the school years 2005-2006, 2006-2007, 2007-2008, and 2008-2009. The *Statement of Amount Due* indicated that: (a) Claimant owed PSERS \$518.83; and (b) Claimant would receive 0.0 years of service credit for that time. (PSERS-3 at p. 4).

17. On March 24, 2011, the Appalachia Intermediate Unit #8 paid the employer contributions that it owed for Claimant's part-time service.

18. On March 29, 2011, the Somerset Area School District paid the employer contributions that it owed for Claimant's part-time service.

19. On April 15, 2011, Claimant informed PSERS that she would like to withdraw her applications to purchase part-time service. She stated that she was a full-time employee at Shanksville-Stoneycreek School District when she rendered the part-time service and she was not aware that she would not earn additional years of service for that time. (PSERS-3).

20. By letter dated April 18, 2011, PSERS informed Claimant that she could not rescind her applications.

21. On April 29, 2011, Claimant filed an appeal with the Executive Staff Review Committee ("ESRC"). (PSERS-4).

22. By letter dated October 5, 2012, the ESRC denied Claimant's appeal stating as follows:

You worked full time during the 1993-1994 through 2011-2012 school years. [You] received one full year of service credit for each of these school years. You also worked part-time for two other schools during the 2003-2004 through 2007-2008 school years. By law, a member may not earn more than one year of credited service for any 12 consecutive months of employment. Because all of the service you rendered for the other two schools was qualifying, contributions are mandatory. (PSERS-5).

23. On November 5, 2012, Claimant filed an appeal and request for administrative hearing. (PSERS-6).
24. On November 21, 2012, PSERS filed an Answer. (PSERS-7).
25. On May 20, 2013, PSERS filed a Motion for Summary Judgment.
26. By letter dated May 20, 2013, PSERS notified Claimant that she had 30 days to respond to PSERS' motion under Pa.R.C.P. No. 1035.3.
27. Claimant did not file a response to PSERS' Motion for Summary Judgment.
28. This matter is ripe for Board adjudication.

DISCUSSION

The Public School Employee's Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101 et seq., mandates membership for all school employees unless they fit within a few narrow exceptions. See 24 Pa. C.S. § 8301. "School employee" is defined as any person "engaged in work relating to a public school for any governmental entity and for which he is receiving regular remuneration as an . . . employee[.]" 24 Pa.C.S. § 8102. Claimant was a full-time employee of the Shanksville-Stoneycreek School District at the time she rendered the unreported, part-time school service at Somerset Area School District and the Appalachia Intermediate Unit #8 during the school years 2003-2004 through 2007-2008. Claimant was also a mandatory, active member of PSERS at that time.

Pursuant to the Retirement Code, mandatory members are required to make contributions to PSERS for service rendered. See 24 Pa.C.S. § 8321(a); see also 24 Pa.C.S. § 8323(a). Thus, Claimant should have been contributing to PSERS during her part-time employment with the Somerset Area School District and the Appalachia Intermediate Unit #8.

Claimant asserts that she should not have to make the mandatory contributions owed for the part-time service at issue because payroll deductions for that service were beyond her control. Whether Claimant or the school districts are at fault for failing to report Claimant's part-time service to PSERS and failing to deduct the necessary contributions, however, is not a reason under the Retirement Code to exempt Claimant from making the required contributions. PSERS is a creature of statute and derives its authority from the provisions of the Retirement Code. 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' Ret. Bd.*, 745 A.2d 704, 706 (Pa.Cmwlth. 2000); *Bittenbender v. State Employees' Ret. Bd.*, 622 A.2d 403, 405 (Pa.Cmwlth. 1992). The Board, therefore, is not authorized to grant relief if it would conflict with the statutory mandates of the Retirement Code. See, e.g., *Marinucci v. State Employees' Ret. Sys.*, 863 A.2d 43, 47 (Pa.Cmwlth. 2004). As discussed above,

the Retirement Code mandates member contributions. 24 Pa.C.S. § 8321(a). Consequently, the Board is not authorized to grant the relief Claimant seeks.

Claimant argues, alternatively, that the school districts should be held responsible for the contributions that she owes. PSERS' Rules and Regulations, however, provide that Somerset Area School District and the Appalachia Intermediate Unit #8 are liable only for their portion of the contributions:

[C]reditable school . . . service shall be purchased entirely by the member, except in the following cases:

(1) In the case of former uncredited school service, when an employer has failed to credit service through administrative error, the employer is required to pay its share of the contributions for the service, although the active member is responsible for the member's share.

22 Pa.Code § 213.24(a); see generally 24 Pa.C.S. § 8327(a) (payments by employers). Thus, the Board is not authorized to order the employers to pay more than their share of the contributions owed.

Claimant also asserts that she should not have to pay the contributions owed because she will not have a financial gain. Ostensibly, Claimant takes issue with the fact that she is required to make contributions for the part-time service at issue, but will not gain any service credit for doing so. This argument is without merit.

Preliminarily, Claimant did not make the mandatory contributions previously only because she was not reported to PSERS. Claimant's assertion that she should be excused from making the contributions now because she will not financially gain from making contributions that she was legally required to make before is, therefore, rejected. As stated above, the Retirement Code requires that mandatory members make contributions to PSERS for service rendered. See 24 Pa.C.S. § 8321(a); see also 24 Pa.C.S. § 8323(a). To grant Claimant the relief that she seeks in this case would be tantamount to circumventing the express language of the Retirement Code of which the Board cannot do. See *Dowler v. Public School Employees' Ret. Bd.*, 620 A.2d 639, 644 (Pa.Cmwlth. 1993); *Marinucci*, 863 A.2d at 47. Nor is the Board authorized to forgive the interest that has accrued on the contributions owed. See 24 Pa.C.S. § 8323(a).

With respect to service credit, the Retirement Code provides that “[i]n no case shall a member receive more than one year of credited service for any 12 consecutive months[.]” 24 Pa.C.S. § 8302(a). Section 8306(a) of the Retirement Code similarly states “[a]n active member of the system shall accrue one eligibility point for each year of credited service as a member of the school or State retirement system.” 24 Pa.C.S. § 8306. The Retirement Code thus prohibits a member from receiving more than one year of service credit during a twelve month period, regardless of the number of days worked in the twelve month period or the number of school employers. See *Account of Murray A. Neeper*, Docket No. 2011-14 (October 11, 2011). Claimant earned one full year of service credit with PSERS for each school year since 1993-1994. Accordingly, the Board cannot grant Claimant additional service time for her part-time employment with the Somerset Area School District and the Appalachia Intermediate Unit #8 during the school years 2003-2004 through 2007-2008. See 24 Pa.C.S. §§ 8302(a) and 8306.

CONCLUSION

For the above stated reasons, the Board finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issues of whether the Board should forgive the mandatory contributions and interest that Claimant owes PSERS as a result of the unreported, qualifying part-time service that she rendered during the 2003-2004 through 2007-2008 school years or whether the Board should require the Somerset Area School District and the Appalachia Intermediate Unit #8 to pay the contributions that Claimant owes. The Board also finds that, alternatively, summary judgment is appropriate on the basis that Claimant failed to file a timely response to PSERS' Motion for Summary Judgment. Accordingly, PSERS' Motion for Summary Judgment is GRANTED and Claimant's Request for Administrative Hearing is DENIED.

COMMONWEALTH OF PENNSYLVANIA

PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

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DOCKET NO.: 2012-46
CLAIM OF BETH ANN SHAFFER

ORDER

AND NOW, upon consideration of Claimant's Request for Administrative Hearing and PSERS' Motion for Summary Judgment:

IT IS HEREBY ORDERED, that PSERS' Motion for Summary Judgment is GRANTED, and Claimant's Request for Administrative Hearing is DISMISSED in compliance with 22 Pa.Code § 201.6(b), as no genuine issue of material fact exists and PSERS is entitled to judgment as a matter of law and, alternatively, because Claimant failed to file a timely response to PSERS' Motion for Summary Judgment. Accordingly, this Board denies Claimant's request that the Board forgive the mandatory contributions that she owes PSERS as a result of the unreported, qualifying part-time service that she rendered during the 2003-2004 through 2007-2008 school years and denies Claimant's request that the Board require the Somerset Area School District and the Appalachia Intermediate Unit #8 to pay the contributions owed.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: August 7, 2013

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