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

IN RE: ACCOUNT OF ADAM D. SMITH  
DOCKET NO. 2015-06  
CLAIM OF ADAM D. SMITH

**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 Adam D. Smith'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 June 16, 2015, 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 June 16, 2015, PSERS notified Claimant that he 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 July 16, 2015. 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 him 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).

In responding to a motion for summary judgment, an adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response identifying "(1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion . . . , or (2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced." Pa.R.C.P. No. 1035.3(a). "An adverse party may supplement the record or set forth the reasons why the party cannot present evidence essential to justify opposition to the motion and any action proposed to be taken by the party to present such evidence." Pa.R.C.P. No. 1035.3(b).

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 issue of whether Claimant is permitted to elect Class T-F membership after the statutory deadline.

### **FINDINGS OF FACT**

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

1. In May 2014, Claimant rendered his 80th day of employment and qualified for PSERS membership through his part-time employment with Shaler Area School District.
2. By letter dated June 1, 2014, PSERS mailed to Claimant at [REDACTED] [REDACTED] (via first-class mail, postage prepaid) a *T-F Membership Class*

*Election form, a Choosing Your Membership Class handout, and a cover letter.*  
PSERS-1.

3. The June 1, 2014, cover letter to the *T-F Membership Class Election* form provided, in pertinent part, as follows:

Dear Mr. Adam Smith:

Congratulations on becoming a member of the Public School Employees' Retirement System (PSERS). As a member of PSERS, you are required to make contributions which will be withheld from your pay. In addition, each of your Pennsylvania public school employers will make employer contributions toward your PSERS retirement benefit. The amount of money withheld from your pay and the factors used to determine a retirement benefit when you retire are determined by your membership class.

There are two classes of membership (T-E and T-F) that will determine the amount of money withheld from your paychecks and the amount of your retirement benefit when you retire.

You are automatically enrolled as a Class T-E member and need not take any action if you choose to remain as a Class T-E member. As such, your benefit if you retire at your normal retirement age will be your years of service times your final average salary times a 2 percent multiplier. Your employee contributions are subject to change every three years but will not be less than 7.5 percent nor more than 9.5 percent of your salary, based on the investment performance of the Retirement Fund.

If you wish to elect to become a Class T-F member, you must sign and return to PSERS the enclosed *T-F Membership Class Election* (PSRS-1318) form by July 26, 2014. The form must be received by PSERS by that date. As a Class T-F member your benefit if you retire at your normal retirement age will be your years of service times your final average salary times a higher 2.5 percent multiplier. Your employee contributions are subject to change every three years but will not be less than 10.3 percent nor more than 12.3 percent, based on the investment performance of the Retirement Fund.

\* \* \*

At this time you should:

- Review the *Choosing Your Membership Class* handout included in this packet.

- Decide whether you wish to remain a Class T-E member. If you wish to remain a Class T-E member, you do not have to take any action.
- If you wish to elect Class T-F, **PSERS must receive your form by July 26, 2014.** If the form is received after that date, you will remain Class T-E and will not have the opportunity to elect Class T-F in the future.

**Your decision to remain Class T-E by doing nothing, or to elect Class T-F by filing the enclosed form, is final and binding.**

PSERS-1 (emphasis in original).

4. The June 1, 2014, *T-F Membership Class Election* form notified Claimant that “**PSERS must receive this form by July 26, 2014.**” PSERS-1 (emphasis in original).

5. By letter dated July 2, 2014, PSERS mailed to Claimant at [REDACTED] (via first-class mail, postage prepaid) a follow-up letter, reminding him of the deadline to elect Class T-F membership. PSERS-2.

6. The July 2, 2014, letter provided, in pertinent part, as follows:

Dear Mr. Adam Smith:

The Public School Employees’ Retirement System (PSERS) previously sent you a *T-F Membership Class Election* (PSRS-1318) form.

We are providing you this reminder because your decision to remain a Class T-E member, or to change to a Class T-F member, is final and binding. If you wish to remain as a Class T-E member, you do not have to take any action.

If you wish to remain a Class T-E member, you need to do nothing; Class T-E membership is the automatic membership class. If you would like to change your membership to Class T-F, you must do so by July 26, 2014.

\* \* \*

If you wish to elect Class T-F membership, you must file the *T-F Membership Class Election* (PSRS-1318) form no later than July 26, 2014.

\* \* \*

PSERS-2.

7. The June 1, 2014, and July 2, 2014, letters included PSERS' contact information for members who had questions. See PSERS-1; PSERS-2.

8. Sometime between June 1, 2014, and July 26, 2014, Claimant decided "to choose the Class T-E membership" with PSERS. See PSERS-3.

9. Claimant did not elect Class T-F membership on or before July 26, 2014.

10. By letter dated August 9, 2014, PSERS informed Claimant that he would "permanently remain a Class T-E member because [he] did not elect Class T-F membership by the election deadline." PSERS-4.

11. On September 5, 2014, Claimant appealed the August 9, 2014, determination to the ESRC, asserting that he had reconsidered his personal finances and had "decided to switch [his] membership from Class T-E to Class T-F." PSERS-3.

12. By letter dated April 2, 2015, the ESRC denied Claimant's request to change his PSERS membership from Class T-E to Class T-F, explaining as follows:

You were enrolled as a Class T-E member of PSERS in May 2014. You had the choice to remain a Class T-E member or to file a *T-F Membership Class Election* form by July 26, 2014. PSERS did not receive a completed *T-F Membership Class Election* form from you. PSERS does not have the authority to permit a member to elect Class T-F membership after the statutorily prescribed deadline. You will, therefore, permanently remain a Class T-E member.

PSERS-5.

13. Claimant appealed the ESRC's decision on May 4, 2015. PSERS-6.

14. At all times between June 1, 2014, and May 4, 2015, Claimant's mailing address was [REDACTED]

15. The June 1, 2014, and July 2, 2014, letters, which PSERS mailed to Claimant in its normal course of business, were not returned to PSERS as undeliverable.

16. On May 6, 2015, PSERS filed an Answer. PSERS-7.

17. On June 16, 2015, PSERS filed a Motion for Summary Judgment.

18. Claimant did not file a response to PSERS' motion.

19. The matter is ripe for Board adjudication.

## DISCUSSION

The Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101 et seq., requires that a person who first becomes a school employee and an active member on or after July 1, 2011, is enrolled in PSERS as a Class T-E member. 24 Pa.C.S. § 8305(d). Such T-E member, however, may elect to become a Class T-F member provided the Class T-E member files a written election with PSERS within 45 days of notification by PSERS. 24 Pa.C.S. §§ 8305(e) and 8305.2(b).<sup>1</sup> If a member fails to timely file an election to become a Class T-F member, the Retirement Code mandates that "the member shall be enrolled as a member of Class T-E and the member shall never be able to elect Class T-F service, regardless of whether the member terminates service or has a break in service." 24 Pa.C.S. § 8305.2(d).

In May 2014, Claimant rendered his 80th day of employment and qualified for PSERS membership through his part-time employment with Shaler Area School District. See 24 Pa.C.S. § 8301 (a)(2) (PSERS membership is mandatory for, among others, school employees who are employed on a per diem or hourly basis for 80 full-day sessions or more during any fiscal year). On June 1, 2014, PSERS sent Claimant a cover letter and *T-F Membership Class Election* form informing him of Class T-F membership and notifying him that he could elect such membership by filing the election form on or before July 26, 2014. Claimant "decided to choose the Class T-E membership," and did not elect Class T-F membership on or before July 26, 2014. PSERS-3.

Claimant now asks that he be permitted to make an untimely Class T-F membership election because: (1) he has been paying into PSERS; and (2) he believes he is a Class T-F member. See PSERS-6. Claimant's appeal must be denied as a matter of law.

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<sup>1</sup> Class T-E membership provides a benefit accrual rate of 2% and a contribution rate of at least 7.5%. Class T-F membership provides a benefit accrual rate of 2.5% and a contribution rate of at least 10.3%. 24 Pa.C.S. § 8102 (definitions of "basic contribution rate" and "standard single life annuity").

Preliminarily, Claimant has never asserted that PSERS failed to notify him of the T-F election deadline or that he was unaware of the deadline. Nor has he ever asserted that he attempted to file a timely election. In fact, he admitted to PSERS that he chose Class T-E membership, but later reconsidered his finances and “decided to switch [his] membership[.]” PSERS-3. Regardless, the Retirement Code and its application to the facts here are clear.

Section 8305.2(b) provides that a member “must elect to become a Class T-F member by filing a written election with the board within 45 days of notification by the board that such member is eligible for such election.” 24 Pa.C.S. § 8305.2(b). If a member fails to do so, the Retirement Code unequivocally states that “the member shall be enrolled as a member of Class T-E and the member *shall never* be able to elect Class T-F service[.]” 24 Pa.C.S. § 8305.2(d) (emphasis added). Claimant, indisputably, was notified of his opportunity to elect Class T-F membership and the associated July 26, 2014, deadline, and he admittedly failed to make the election in a timely manner. He did not request Class T-F membership with PSERS until September 5, 2014. See PSERS-3.

Although the Board must liberally administer the system, it does not have the authority to deem a late-filed Class T-F membership election as timely. See *Allen v. Public Sch. Employees’ Ret. Bd.*, 848 A.2d 1031, 1033 (Pa. Cmwlth. 2004); *Forman v. Public Sch. Employees’ Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001); see also *Harasty v. Public Sch. Employees’ Ret. Bd.*, 945 A.2d 783, 788 (Pa. Cmwlth. 2008). Such action would be tantamount to circumventing the express language of the Retirement Code, which the Board cannot do. *Dowler v. Public Sch. Employees’ Ret. Bd.*, 620 A.2d 639 (Pa. Cmwlth. 1993); *Marinucci v. State Employees’ Ret. Sys.*, 863 A.2d 43 (Pa. Cmwlth. 2004). Thus, there is no exception, statutory or otherwise, to the deadline for electing Class T-F membership. See *Harasty*, 945 A.2d at 788.

Accordingly, Claimant’s appeal must be dismissed.

## **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 issue of whether to accept Claimant's untimely request to elect Class T-F membership with PSERS. Accordingly, PSERS' Motion for Summary Judgment is GRANTED, and Claimant's Appeal and Request for Administrative Hearing is DENIED.

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

IN RE: ACCOUNT OF ADAM D. SMITH  
DOCKET NO. 2015-06  
CLAIM OF ADAM D. SMITH

**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 Appeal and Request for Administrative Hearing is DISMISSED in accordance with 22 Pa. Code § 201.6(c), as no genuine issue of material fact exists and PSERS is entitled to judgment as a matter of law. As a result, this Board denies Claimant's request to elect Class T-F membership after the statutory deadline.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: August 6, 2015

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