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

IN RE: ACCOUNT OF TINA P. STEPTER
DOCKET NO. 2015-08
CLAIM OF TINA P. STEPTER

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 Tina P. Stepter's ("Claimant") Appeal and Request for Administrative Hearing requesting to purchase out-of-state service be dismissed because there is no issue of material fact and PSERS is entitled to summary judgment as a matter of law.

PSERS filed its Motion for Summary Judgment on March 29, 2016, 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 March 29, 2016, 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 April 28, 2016. 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 purchase out-of-state service.

FINDINGS OF FACT

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

1. Claimant was first enrolled in PSERS in September 1995 by virtue of her employment with the Norristown Area School District.
2. On February 24, 2014, Claimant filed a PSRS-278 “Purchase of Out-of-State Service” form with PSERS requesting to purchase 4 ½ months of out-of-state

service rendered with the Houston I.S.D./North Forest I.S.D. in Houston, Texas.

(PSERS-1)

3. Section C of the PSRS-278 was completed by the Records Clerk of the Houston I.S.D./North Forest I.S.D. who certified that Claimant rendered service for 106 days at 8 hours per day from September 27, 1982, through May 18, 1983, calculated to equal 4 ½ months out of a 10 month school year. (PSERS-1 at p. 2)

4. Section E of the PSRS-278 was completed by a Benefits Specialist at the Teacher Retirement System of Texas who certified that Claimant was never enrolled in the retirement system for service rendered from September 27, 1982, through May 18, 1983. (PSERS-1 at p. 3)

5. Based on the information provided on the PSRS-278, PSERS denied Claimant's request by letter dated March 11, 2014, stating that Claimant was not eligible to purchase the service because she did not render "at least one complete public school year of out-of-state service;" and advised Claimant of her right to appeal the determination to PSERS' Executive Staff Review Committee ("ESRC"). (PSERS-2)

6. Claimant appealed the March 11, 2014, determination to the ESRC by letter dated March 24, 2014, requesting that PSERS "reframe (sic) from denying [her] request to purchase credit for 'out of state'" because she was "still awaiting additional responses from the school district which should give [her] the 10 months [she] need[s] to be eligible." (PSERS-3)

7. On May 27, 2015, the ESRC advised Claimant that her appeal was denied stating that the "Public School Employees' Retirement Code requires that out-of-state school service must have been for a period of at least one school year to be eligible for

purchase of service credit with PSERS” and, because Claimant rendered only 4.5 months out of a 10 month school year, she did not meet the statutory requirements to purchase such time. (PSERS-4)

8. Claimant filed an appeal and request for an administrative hearing on June 1, 2015, asserting only that she was “[g]athering documentation that shows length of service meets PSERS standards.” (PSERS-5)

9. On March 29, 2016, PSERS filed a Motion for Summary Judgment.

10. Claimant did not file a response to PSERS’ motion.

11. This matter is ripe for Board adjudication.

DISCUSSION

The Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101 et seq., permits an active member of PSERS to purchase service credit "for creditable nonschool service" rendered "in any public school or public educational institution in any state other than this Commonwealth." 24 Pa. C.S. §§ 8304 (a) and (b)(3). The Retirement Code, however, contains restrictions on the purchase of such service stating in pertinent part that the "[s]ervice listed in subsection (b)(3) and (4) must have been for a period of at least one school year and credit for such service shall be limited to the lesser of 12 years or the number of years of school service credited in the system." 24 Pa. C.S. § 8304(c), *see also* 22 Pa. Code § 213.4(f). Section 8102 of the Retirement Code defines a "school year" as "[t]he 12-month period which the governmental entity uses for purposes of administration regardless of the actual time during which a member renders service." 24 Pa.C.S. §8102. The Retirement Code also requires the employing institution to verify such service. 24 Pa. C.S. §8304(a)¹.

Claimant requests the opportunity to purchase out-of-state service rendered with the Houston I.S.D./North Forest I.S.D. from September 27, 1982, through May 18, 1983. To be eligible to purchase such service, Claimant must have rendered service with the Houston I.S.D./North Forest I.S.D. for at least "one school year." *See*, 24 Pa. C.S. § 8304(c). The employer certified, however, that, during the 1982-1983 school year, Claimant rendered only 106 days or 4 ½ months out of a 10 month school year. (PSERS-1 at p. 2) Thus, Claimant is not eligible to purchase this service with PSERS.

Although the Board must liberally administer the system, it does not have the authority to circumvent an express provision of law. *Forman v. Public Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001). While a member is entitled to a liberal construction of the Retirement Code, she has only those rights created by the

¹ Section 8304(a), 24 Pa.C.S. § 8304, states in pertinent part:

(a) *Eligibility.*--An active member or a multiple service member who is an active member of the State Employees' Retirement System shall be eligible to receive . . . service credit for creditable nonschool service . . . , provided that such service is certified by the previous employer and the manner of payment of the amount due is agreed upon by the member, the employer, and the board.

retirement statute and none beyond. See generally, *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), *allocatur denied*, 668 A.2d 1139 (Pa. 1996). 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' Retirement System*, 863 A.2d 43, 47 (Pa. Cmwlth. 2004).²

Thus, there is no exception, statutory or otherwise, to the requirement that Claimant must have rendered at least one school year to purchase out-of-state service with the Houston I.S.D./North Forest I.S.D. See, *Account of William R. Hoffman*, Docket No. 2012-05 (PSERB October 4, 2013). 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 is eligible to purchase out-of-state service with the Houston I.S.D./North Forest I.S.D. Accordingly, PSERS' Motion for Summary Judgment is GRANTED, and Claimant's Appeal and Request for Administrative Hearing is DENIED.

² Cases 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. Public School Employees' Retirement Board*, 713 A.2d 132, 134 n.3 (Pa. Cmwlth. 1998).

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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 purchase out-of-state service with the Houston I.S.D./North Forest I.S.D. rendered during the 1982-1983 school year.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: June 10, 2016

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