

Mail Date: JUN 26 2012

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

IN RE: ACCOUNT OF JOHNNIE JORDAN  
DOCKET NO. 2011-09  
CLAIM OF JOHNNIE JORDAN

**OPINION AND ORDER OF THE BOARD**

The Board has carefully and independently reviewed the entire record of this proceeding, including the Proposed Decision and Recommendation of the Hearing Officer. We note that neither party filed Exceptions to the Proposed Decision and Recommendation of the Hearing Officer. The Board finds appropriate the Background, Proposed Findings of Fact, Proposed Conclusions of Law, Discussion and Recommendation in the Proposed Decision and Recommendation. Accordingly, we hereby adopt the Hearing Officer's Proposed Decision and Recommendation as our own.

IT IS HEREBY ORDERED that the Board grants the Public School Employees' Retirement System's Motion to Dismiss, and the appeal of Claimant, Johnnie Jordan, is DISMISSED WITH PREJUDICE.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: June 22, 2012

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

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

**IN RE:                   ACCOUNT OF JOHNNIE JORDAN  
                              DOCKET NO. 2011-09  
                              CLAIM OF JOHNNIE JORDAN**

LEGAL OFFICE APR 23 2012

---

**PROPOSED DECISION AND RECOMMENDATION**

---

HEARING DATE: February 15, 2012

BEFORE:           Lynne M. Mountz, Esquire  
                          Hearing Officer

## BACKGROUND

Johnnie Jordan (hereinafter "Jordan") filed an appeal with the Public School Employees' Retirement Board (hereinafter "Board") from a decision by the Public School Employees' Retirement System (hereinafter "PSERS") regarding the issue of Premium Assistance Overpayment - Financial Hardship.

An administrative hearing regarding Jordan's appeal was originally scheduled for February 22, 2012 before Hearing Officer Lynne Mountz. By Order from Hearing Officer Mountz dated January 10, 2012, the hearing was rescheduled for 1:00 p.m. on February 15, 2012 at PSERS, 5 North Fifth Street, Harrisburg, Pennsylvania. Upon request of PSERS to change the time of the hearing, the Hearing Officer rescheduled the hearing for 10:00 a.m. on February 15, 2012.

The administrative hearing regarding Jordan's appeal was convened at approximately 10:30 a.m. on February 15, 2012 at PSERS, 5 North Fifth Street, Harrisburg, Pennsylvania before Hearing Officer Mountz. Jennifer A. Mills, Esquire (hereinafter "Attorney Mills") appeared at the hearing on behalf of PSERS. Jordan did not appear at the hearing, either in person or through counsel.

Evidence and testimony was limited to Jordan's failure to appear at the hearing. No evidence was presented regarding the merits of the case.

Based upon the testimony and evidence presented at the hearing and all other matters of record, the Hearing Officer enters the following:

**PROPOSED FINDINGS OF FACT**

1. Jordan filed a written appeal on or about May 24, 2011 requesting an administrative hearing before the Board. (Exhibit PSERS-1).
2. In her appeal, Jordan listed her address as: **REDACTED** and her home telephone number as **REDACTED** (Exhibit PSERS-1).
3. Vesna Nelson (hereinafter "Nelson") is employed by PSERS as the Appeal Docket Administrator. (N.T. 4).
4. Nelson's duties include: docketing new appeals, maintaining the appeal docket, mailing scheduling and other hearing information to parties, and creating reports. (N.T. 4).
5. Nelson received Jordan's appeal and request for an administrative hearing on May 26, 2011 and docketed the appeal as 2011-09. (N.T. 4-5; Exhibit PSERS-1).
6. By correspondence dated December 6, 2011, Nelson advised Jordan that an administrative hearing regarding Jordan's appeal on the issue of Premium Assistance Overpayment - Financial Hardship had been scheduled for February 22, 2012 at 1:00 p.m. at PSERS, 5 North Fifth Street, Harrisburg, PA 17101 before Hearing Officer Lynne Mountz. (N.T. 5-6; Exhibit PSERS-2).
7. The December 6, 2011 correspondence provided Jordan with pertinent information regarding the hearing, including the following:

As the claimant, you will have the responsibility to prove the facts necessary to support your claim. You should, therefore, be prepared to submit all the evidence in support of your claim at the hearing.

If you do not appear at the hearing on the date and the time scheduled without good cause, the Hearing Officer, upon motion, will recommend to the Board that your appeal

be dismissed with prejudice. This means that the appeal will be terminated and that you will not be permitted to raise this issue to the Board in the future.

...

Any request to have the hearing rescheduled to a different date, stating the reasons why you need the hearing to be rescheduled, must be made in writing and filed with the Docket Clerk, with a copy to the Hearing Officer. . .

In the event of an emergency request (24 to 48 hours before the scheduled hearing), you should contact the office of the Hearing Officer. If you are not able to reach the office of the Hearing Officer, you may contact [the Appeal Docket Administrator] at (717) 720-4674, to make your request. . . .

(Exhibit PSERS-2).

8. Nelson mailed the December 6, 2011 Hearing Notice to Jordan by both certified and regular (first class) mail to the address Jordan had provided in her appeal request: **REDACTED**

**REDACTED**

(N.T. 5-7; Exhibit PSERS-2).

9. The certified mail was returned to PSERS as "unclaimed". (N.T. 7-8; Exhibits PSERS 2 and 3).
10. Nelson receives notice when first-class mail she sends is returned to PSERS for any reason. Nelson received no notice that the first-class mail sent to Jordan had been returned. (N.T. 8).
11. After the certified mail sent to Jordan had been returned to PSERS, Nelson tried unsuccessfully to reach Jordan by telephone to make sure that the mail had been sent to the proper address. Nelson was able to only get a ring tone and could not leave a message. (N.T. 9).
12. Nelson also requested a report by Equifax Service to verify Jordan's address. (N.T. 8-9).

13. Jordan's address from 1998 through January 13, 2012, the date of the request, was listed in the Equifax Report as: **REDACTED** (N.T. 8-10; Exhibit PSERS-4).

14. By correspondence dated January 10, 2012 to Jordan, and copied to Attorney Mills, the Hearing Officer advised Jordan that her administrative hearing had been rescheduled. The correspondence provided, in relevant part:

... **Please be advised that the date of your hearing has been changed.**

Enclosed please find a copy of an Order which has **rescheduled the hearing date for your appeal from February 22, 2012 to February 15, 2012.**

(Exhibit PSERS-5). (Emphasis in original).

15. The Hearing Officer issued an Order on January 10, 2012 which was enclosed with the correspondence of the same date to Jordan which provided, in part:

... **The hearing is rescheduled as follows:**

**Date: February 15, 2012**  
**Time: 1:00 p.m.**  
**Place: Public School Employees' Retirement System**  
**Harrisburg, PA 17101**

All other information and requirements set forth in the hearing notice dated December 6, 2011 remain in effect.

(Exhibit PSERS-5). (Emphasis in original).

16. The Hearing Officer mailed the correspondence and Order to the parties by first class mail. The correspondence and Order were mailed to Jordan at the following address:

**REDACTED**

Γ. 10-11; Exhibit PSERS-5).

17. The January 10, 2012 correspondence and Order mailed to Jordan were not returned to the Hearing Officer and there was no indication that the mail could not be delivered or that it was not received. (N.T. 11).
18. By correspondence dated January 19, 2012 to the Hearing Officer, and copied to Jordan, Attorney Mills requested that the time of the hearing regarding Jordan's appeal be changed from 1:00 p.m. to 10:00 a.m. on February 15, 2012 due to a conflict with witness scheduling. In her correspondence, Attorney Mills indicated that she had attempted to reach Jordan by telephone regarding the request, but was unable to reach her or leave a message. (N.T. 10; Exhibit PSERS-6).
19. The copy of the January 19, 2012 correspondence which was sent to Jordan was mailed to the address set forth in her appeal and was not returned to PSERS as undeliverable. (N.T. 12-13).
20. Prior to acting upon PSERS' request to reschedule the time of Jordan's hearing, the Hearing Officer asked Nelson to first attempt to contact Jordan by telephone. Nelson was unable to reach Jordan by telephone. (N.T. 11-12).
21. By correspondence dated January 24, 2012 to Jordan, and copied to Attorney Mills, the Hearing Officer forwarded a copy of PSERS' request to change the time of the hearing and issued an Amended Hearing Notice. The Amended Hearing Notice provided, in part:
- . . . Your hearing will be held: **February 15, 2012 at 10:00 a.m. at the Public School Employees' Retirement System, 5 North Fifth Street, Harrisburg, PA 17101.**
- If you have any questions regarding this matter, it is essential that you contact Vesna Nelson, Appeal Docket Administrator, at 717-720-4674 as soon as possible.
- (Exhibit PSERS-7). (Emphasis in original).

22. The Amended Hearing Notice was sent to Jordan by first class mail to the address on record, **REDACTED**, and was not returned as being undeliverable. (N.T. 11).
23. Jordan did not contact Nelson in response to the Amended Hearing Notice. (N.T. 12).
24. The administrative hearing regarding Jordan's appeal was convened at 10:33 a.m. on February 15, 2012 at the Public School Employees' Retirement System, Harrisburg, PA 17101. (N.T., *passim*).
25. Jordan did not appear in person or through counsel at any time throughout the hearing. (N.T., *passim*).
26. PSERS moved to dismiss Jordan's appeal without considering the merits for her failure to appear for the scheduled administrative hearing without good cause pursuant to 22 Pa. Code § 201.8. (N.T. 13).
27. The Hearing Officer closed the record at 10:50 a.m. on February 15, 2012 without taking evidence on the merits. (N.T. 13).



### **PROPOSED CONCLUSIONS OF LAW**

1. The Public School Employees' Retirement Board has jurisdiction over this matter. (Findings of Fact Nos. 1-27).
2. Orders, notices and other documents originating with an agency shall be served by the office of the agency by mailing a copy thereof to the person to be served. 1 Pa. Code § 33.31.
3. Notice of the date, time and hearing of the administrative hearing regarding Jordan's appeal was provided to Jordan. (Findings of Fact Nos. 6-22).
4. During the administrative hearing, Jordan had the burden of establishing facts upon which she relied in order to be granted the relief she requested. *See, Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991).
5. Jordan failed to appear for the scheduled hearing regarding her appeal without good cause. (Findings of Fact Nos. 1-25).
6. Whenever a claimant fails to appear, either in person or through counsel, for a scheduled hearing without good cause, the hearing examiner will issue a recommendation to dismiss the case, without considering the merits of the claim. 22 Pa. Code § 201.8.

## DISCUSSION

Jordan filed the instant appeal before the Board in May 2011. In her appeal request she listed both her current address and a home telephone number.

PSERS sent correspondence dated December 6, 2011 to Jordan providing her with notice of the date, time and place of her administrative hearing. Importantly, the correspondence also included relevant information regarding the hearing process including the procedure for requesting a continuance. Moreover, Jordan was specifically notified in the correspondence that her appeal could be dismissed with prejudice if she failed to appear at the hearing without good cause.

The December 6, 2011 correspondence from PSERS was sent by both certified and first class mail to the address Jordan had provided in her appeal. The certified mail was returned to PSERS as unclaimed, not as undeliverable. The first class mail was not returned to PSERS.

By Order dated January 10, 2012, the Hearing Officer rescheduled the date of Jordan's hearing from February 22, 2012 to February 15, 2012. The Order along with correspondence was mailed to Jordan by first class mail at the address provided in Jordan's appeal. The first class mail was not returned to the Hearing Officer as being undeliverable.

PSERS' Appeal Docket Administrator, Vesna Nelson, was concerned that the certified mail had been returned, especially since the hearing was going to be rescheduled. Accordingly, she made several attempts to call Jordan using the telephone number Jordan had provided. No one answered the phone and there was no answering machine or means of leaving a message at that number. When she could not reach Jordan by telephone, Nelson verified Jordan's

address using Equifax. The Equifax Report established that the address that PSERS had on file was in fact Jordan's current address.

By correspondence dated January 19, 2012 to the Hearing Officer and copied to Jordan, Attorney Mills, Counsel for PSERS, requested that the time of Jordan's hearing on February 15, 2012 be changed from 1:00 p.m. to 10:00 a.m. Attorney Mills indicated in the correspondence that she had unsuccessfully attempted to telephone Jordan regarding the request.

The Hearing Officer requested Nelson to again try and contact Jordan by telephone before rescheduling the hearing a second time. Nelson could not reach Jordan by telephone. The Hearing Officer issued an Amended Notice of Hearing on January 24, 2012 rescheduling Jordan's hearing as requested by PSERS. The Hearing Officer specifically advised Jordan to contact Nelson if she had any questions regarding the Amended Notice of Hearing.

All correspondence from PSERS and the Hearing Officer was sent to Jordan by first class mail at the address she provided on her appeal request and that had been verified through Equifax. None of the first class mail was returned to the sender as being undeliverable. It is therefore concluded that the mail was delivered to the address that Jordan provided as her home address.

Jordan had notice of the date, time and place of her hearing. She had notice of the procedure for requesting a continuance. Jordan was specifically advised of the necessity to appear at the hearing and present facts in support of her appeal. Jordan was provided with Nelson's telephone number if she had any questions regarding the hearing or the schedule.

Jordan failed to appear at the hearing in person or through counsel. She did not request a continuance, indicate that she would be delayed or otherwise explain her absence. Jordan's

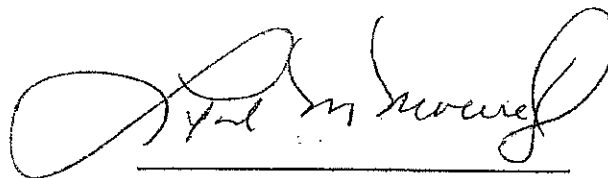
failure to appear at the hearing is without good cause. Pursuant to 22 Pa. Code § 201.8, the

Hearing Officer issues the following:

**RECOMMENDATION**

It is recommended that the Public School Employees' Retirement Board issue an Order  
DISMISSING the appeal of Johnnie Jordan WITH PREJUDICE.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lynne M. Mountz". The signature is written in black ink and is positioned above a horizontal line.

Lynne M. Mountz, Esquire  
Hearing Officer

Dated: April 20, 2012