

AUG 13 2012

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE: ACCOUNT OF LEONARD WURST
DOCKET NO. 2012-04
CLAIM OF LEONARD WURST

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 Leonard Wurst's (Claimant) Request for Administrative Hearing be dismissed because there is no issue of material fact, and that PSERS is entitled to a summary judgment as a matter of law.

PSERS filed its Motion for Summary Judgment on June 15, 2012, 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 15, 2012, 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, 2012. 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). While the General Rules of Administrative Practice and Procedure prevent the entry of summary judgment by the hearing officer, it does not preclude such action by the Board. 1 Pa.Code § 35.180; see also *United Healthcare Benefits Trust v. Ins. Comm'r of Pa.*, 620 A.2d 81 (Pa.Cmwth. 1993).

To defeat a motion for summary judgment, the non-moving party has to show only that a dispute of material fact exists. In determining 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, giving such non-moving party 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. See *El Concilio De Los Trabajadores v. Commonwealth*, 484 A.2d 817, 818 (Pa.Cmwlth. 1984).

FINDINGS OF FACT

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

1. On March 23, 1995, Claimant attended a PSERS Benefit Counseling Session during which it was explained to him the different payment options available under the Public School Employees' Retirement Code, 24 Pa.C.S. § 8101 et seq. (Retirement Code).
2. By *Application for Retirement* dated March 31, 1995, Claimant retired effective March 30, 1995, and elected an Option 2 survivor annuity, naming his spouse, Dolores J. Wurst, as his survivor annuitant.
3. At the time of retirement, Claimant knew that under an Option 2 he would receive a monthly annuity for the remainder of his life, and upon his death, his survivor annuitant would receive the same monthly annuity for the remainder of her life.
4. On October 4, 2011, Claimant filed a request with PSERS to change his option election due to economic hardship.
5. Claimant's wife and survivor annuitant, Dolores J. Wurst, is still living.

6. Since March 30, 1995, Claimant's marital status has not changed and he continues to be married to his survivor annuitant, Dolores J. Wurst.

7. Claimant understands the contractual agreement he has with the Board.

8. On February 28, 2012, the Executive Staff Review Committee denied Claimant's request to change his option because his survivor annuitant did not predecease him and his marital status had not changed.

DISCUSSION

When a member retires and elects a retirement option, the member enters into a contract with the Board. See *Bowers v. State Employees' Retirement Board*, 371 A.2d 1040 (Pa.Cmwlt. 1977); *Ogden v. Public School Employees' Retirement Board*, 27 Pa.D.&C.2d 151 (C.P. Dauphin 1961), *aff'd*, 182 A.2d 228 (Pa.Super 1962) (*per curiam*). The Retirement Code only permits a member to re-elect a retirement option if: (1) the member's marital status changes subsequent to his retirement or (2) his survivor annuitant predeceases him. 24 Pa.C.S. § 8507(j); 22 Pa.Code 215.7(h)(2).

Claimant does not meet any of the conditions that would permit a change. Since the time of his election, Claimant's marital status has not changed and his survivor annuitant has not predeceased him. The fact that the original election of an Option 2 benefit is no longer financially viable is not a reason that the Retirement Code or its attendant regulations recognizes for the re-election of a benefit payment plan. Consequently, Claimant is not eligible under the Retirement Code to re-elect an option.^[1]

¹ In 1998, the Board promulgated section 213.45 of its attendant Rules and Regulations to the Retirement Code, 22 Pa.Code § 213.45, which allows an annuitant to change the final terms of the benefit payment plan by filing a written intent with PSERS within 30 days of receipt of the initial benefit letter. This regulation, however, is not applicable because Claimant retired prior to 1998.

The Board has no authority to grant rights beyond those specifically set forth in the Retirement Law. *Forman v. Public School Employees' Retirement Board*, 778 A.2d 778 (Pa.Cmwth. 2001). The statutory scheme expressly requires a triggering event before a member can re-elect an option. Because there are no material issues of fact in dispute, the legal issue may be decided on the merits without an evidentiary hearing. Accordingly, PSERS' Motion for Summary Judgment is GRANTED and Claimant's Request for Administrative Hearing is DENIED.

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PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

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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 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. Accordingly, this Board denies Claimant's request to change his retirement option.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: Aug. 9 20, 12

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