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

IN RE: ACCOUNT OF D.R.
DOCKET NO. 2016-08
CLAIM OF D.R.

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the proposed Hearing Examiner's proposed Opinion and Recommendation. No exceptions to the proposed Opinion and Recommendation were filed.

The Board finds appropriate the Hearing Examiner's History, Findings of Fact, Conclusions of Law, Discussion, and proposed Opinion and Recommendation with the following modifications:

1. On page two, the following paragraph is inserted in chronological order:
"On October 14, 2016, PSERS filed a Motion for Summary Judgment. Claimant responded to PSERS' motion on October 21, 2016, requesting that the Board schedule an administrative hearing. By Order dated December 7, 2016, the Board granted Claimant's request for an administrative hearing."
2. In paragraph 27 of the Findings of Fact, the first sentence should read:
"On October 2, 2014, PSERS mailed Claimant a *Statement of Account For School Year ending June 30, 2014.*"
3. In paragraph 9 of the Conclusions of Law, the citation is amended to include a reference to 24 Pa.C.S. § 8307(c).
4. In paragraph 10 of the Conclusions of Law, the citation is amended to 22 Pa. Code §211.3(g).

5. On page 14, footnote 3 is amended to read: "The Board's Rules and Regulations provide: "For the purpose of the Retirement Code, the school year commences on July 1 and ends on June 30 of the following year. 22 Pa. Code §211.3(g)."
6. On page 17, the following paragraph is amended as follows:

Despite PSERS' various notifications to Claimant in her statements of account; PSERS' letter dated March 28, 2011; and PSERS' cover letters dated October 23, 2012, which accompanied Claimant's retirement estimates, Claimant did not file her *Application for Disability Retirement* until November 3, 2015, one year and four months beyond the statutory deadline for doing so.

With the above modifications, we hereby adopt the Hearing Examiner's Opinion and Recommendation as our own, and accordingly:

IT IS HEREBY ORDERED that Claimant's request that she be permitted to apply for disability benefits after the two-year filing period expired is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: 12-8-17

By: 
Nathan Mains, Vice Chairman

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PSERB
EXECUTIVE OFFICE

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

**In Re:
Account of D.R.
Claim of D.R.**

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Docket No. 2016-08

OPINION AND RECOMMENDATION

Date of Hearing: May 4, 2017
Hearing Officer: Jackie Wiest Lutz, Esquire
For the Claimant: Mark T. Sophocles, Esquire
For PSERS: Kathrin V. Smith, Esquire

HISTORY

This matter is before the Public School Employees' Retirement Board (Board) on an appeal filed by D.R. (hereinafter, "Claimant") from a May 19, 2016 decision of the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS") that denied Claimant's request to apply for disability benefits after the two-year filing period expired.

Claimant's *Appeal and Request for Administrative Hearing* was timely filed on May 31, 2016. Thereafter, on June 13, 2016, Kathrin V. Smith, Assistant Deputy Chief Counsel, filed an *Answer* on behalf of PSERS.

On December 9, 2016, Glen R. Grell, Secretary to the Board, appointed Jackie Wiest Lutz to act as hearing examiner for Claimant's administrative hearing. On the same date, PSERS' Appeal Docket Clerk notified Claimant that an administrative hearing on her appeal was scheduled for February 22, 2017.

On February 22, 2017, upon the request of Claimant, the hearing examiner conducted a telephonic pre-hearing conference with the parties in lieu of a hearing, during which time it was agreed that Claimant shall be permitted to testify and participate telephonically during her hearing, once re-scheduled, subject to enumerated terms and conditions.

On March 3, 2017, PSERS' Appeal Docket Clerk notified Claimant, through her attorney, Mark T. Sophocles, Esquire, that her administrative hearing was rescheduled for May 4, 2017, commencing at 1:00 p.m.

The administrative hearing on Claimant's appeal was held as scheduled on May 4, 2017, in Harrisburg, PA before the appointed hearing examiner. Claimant participated in

the hearing telephonically, and was represented by Mark T. Sophocles, Esquire, who was present in person at the hearing. Kathrin V. Smith, Esquire represented PSERS.

Upon receipt of the hearing transcript, the hearing officer issued a briefing schedule on May 25, 2017. Pursuant to the briefing schedule, PSERS' brief was due on or before June 26, 2017¹ and a reply brief was due by Claimant no later than July 11, 2017.

PSERS' brief was timely filed on June 26, 2017. A reply brief was not filed on behalf of Claimant.

The matter is now before the Board for final disposition.

¹ At the conclusion of the hearing, Counsel for Claimant waived his right to file an initial brief.

FINDINGS OF FACT

1. Claimant resides at [REDACTED], where she has resided at for approximately 15 years (“address of record”). (N.T.² 9, 33)
2. Claimant first became a member of PSERS in September 2001, when she became employed as a cafeteria worker with the Whitehall-Coplay School District (School District). (N.T. 33-34)
3. PSERS provides its members with annual statements of account to assist members with keeping track of how many years of service they have; their contributions; their interest as of the end of the previous school year; how much service and salary was reported by the employer in the current school year, etc. (N.T. 79)
4. Statements of account are mailed by PSERS by first-class mail to the member’s address of record with PSERS; when first-class mail is returned as undeliverable, PSERS maintains a record of those notifications within the member’s file. (N.T. 78)
5. On October 4, 2009, PSERS mailed Claimant a *Statement of Account for School Year 2008-2009*; the statement of account contained information pertaining to disability benefits on page 3, which provided, in pertinent part, as follows:

Disability Retirement: A disability benefit is an actual retirement benefit. It is not an insurance policy that supplements your salary while you are unable to work. A member who is granted a disability benefit will receive a monthly benefit payment for as long as the member is deemed disabled. Disability benefits may be granted on a long-or short-term basis and may be reviewed at any time. Benefits are subject to approval, denial or renewal based on your medical information. *You need to meet all three of the following requirements to apply for a disability benefit:*

- *Have at least 5 years of credited service with PSERS*
- *Apply to PSERS for disability benefits within 2 school years from the last day of service or paid leave*

² “N.T.” refers to “notes of testimony” from the May 4, 2017 administrative hearing.

- ***Provide medical documentation which proves that you are unable to do your job due to a disability.***

(N.T. 34, 77-78; PSERS' Exhibit 1)

6. Claimant received her *Statement of Account for School Year 2008-2009* but does not recall if she read the statement. (N.T. 35)

7. On October 3, 2010, PSERS mailed Claimant a *Statement of Account for School Year 2009-2010*; this statement of account contained the same information pertaining to disability benefits on page 3 as the statement of account for School Year 2008-2009.

(N.T. 36, 80-81; PSERS' Exhibit 2)

8. Claimant received her *Statement of Account for School Year 2009-2010* but does not recall if she read the statement. (N.T. 36)

9. Claimant was placed on leave without pay with the School District on January 27, 2011. (N.T. 37, 83)

10. By letter dated March 28, 2011, addressed to Claimant at her address of record, PSERS notified Claimant that her employer, WHITEHALL-COPLAY SD, reported her as being on a *Leave Without Pay*. (N.T. 37-38, 81-82; PSERS' Exhibit 3)

11. The March 28, 2011 letter notified Claimant that if she went on a leave of absence because she is disabled, there is a limited time in which she may elect a Disability

Retirement Benefit; Claimant was notified, in pertinent part:

- You must apply for a Disability Retirement Benefit within two school years of the last day for which your employer paid you.
- You must have at least five years of credited service.
- You must be mentally or physically incapable of continuing to perform the duties required in your present employment.

(PSERS Exhibit 3)

12. On October 18, 2011, PSERS mailed Claimant a *Statement of Account for School Year 2010-2011*; this statement of account contained the same information pertaining to disability benefits on page 3 as the statements of account for School Years 2008-2009 and 2009-2010. (N.T. 86-87; PSERS' Exhibit 4)

13. Claimant returned to active service on November 29, 2011. (N.T. 84)

14. Claimant's last day of work with the School District was February 9, 2012. (N.T. 12, 41, 83-85, 90)

15. Under the Retirement Code, a member who is actively working in a Pennsylvania public school must contribute a set percentage of their salary to PSERS; the money is withheld for them by their employer and is submitted to PSERS by their employer. (N.T. 85)

16. The School District did not report to PSERS any salary or service for Claimant after February 9, 2012, and Claimant did not make any contributions to PSERS after February 9, 2012. (N.T. 84-86)

17. Even though Claimant's last day of work with the School District was February 9, 2012, Claimant believed that she was still employed as an active employee and that the School District was holding her position for her because she was on a substitute standby list. (N.T. 14-15)

18. On August 23, 2012, PSERS received a completed *Request for Retirement Estimate* form from Claimant; Claimant listed her tentative date of retirement as "2012 ?," and her current employment status as "terminated." (N.T. 42-43, 87; PSERS' Exhibit 5)

19. A request for retirement estimate is not a mechanism for a member to apply for a disability retirement; the form clearly states: "THIS FORM IS NOT AN APPLICATION FOR RETIREMENT." (N.T. 88; PSERS' Exhibit 5)

20. To apply for disability retirement, a member must complete a disability retirement application within two school years of the last day paid by the school employer, and provide medical information from their physician and a job description from their employer. (N.T. 88, 90)

21. On October 16, 2012, PSERS mailed Claimant a *Statement of Account for School Year Ending June 30, 2012*; this statement of account contained the following information pertaining to disability benefits:

Disability

A disability benefit is a retirement benefit, not an insurance policy. In order to qualify for a disability retirement, you must provide medical information and be certified by an independent medical examiner retained by PSERS that you are physically or mentally incapable of performing current job duties. You must also have at least five years of credited service with PSERS and apply for PSERS disability benefits within two school years of the last day paid by the school employer. If you choose to apply for a disability retirement benefit, you must be on an unpaid leave of absence or terminate all public school employment; the method of removing you from active school service is at the discretion of the employer(s).

(N.T. 90; PSERS' Exhibit 6)

22. On October 23, 2012, PSERS provided Claimant with a disability retirement estimate and an early retirement estimate based upon the information provided on the August 23, 2012 *Request for Retirement Estimate* completed by Claimant. (N.T. 92, 98; PSERS' Exhibits 7 and 8)

23. Both retirement estimates comprising PSERS' Exhibits 7 and 8 contain the following information: "For a disability retirement, you must file an *Application for*

Disability Retirement within the two school years following your last day of qualified service or paid leave, whichever is later, and you must be disabled at the time of application.” (PSERS’ Exhibits 7 and 8)

24. On June 13, 2013, PSERS received another *Request for Retirement Estimate* from Claimant in which Claimant listed her current employment status as “terminated;” requested both a regular and disability retirement estimate; and listed a tentative date of retirement of March 1, 2012. (N.T. 31, 51-52, 98-99; PSERS’ Exhibit 9)

25. By letter dated June 22, 2013 addressed to Claimant at her address of record, PSERS notified Claimant that her estimate request was being returned to her because PSERS had already provided her with two estimates within the past 12 months. (N.T. 99-100; PSERS’ Exhibit 10)

26. On October 14, 2013, PSERS mailed Claimant a *Statement of Account for School Year Ending June 30, 2013*; this statement of account showed that no wages, contributions or service was reported to PSERS for Claimant during the 2012-2013 school year. (N.T. 55, 101-103; PSERS’ Exhibit 11)

27. On October 2, 2014, PSERS mailed Claimant a *Statement of Account for School Year Ending June 30, 2013*; this statement of account also showed that no wages, contributions or service was reported to PSERS for Claimant during the 2013-2014 school year. (N.T. 56, 103-104; PSERS’ Exhibit 12)

28. In 2015, after conferring with her doctor, Claimant “decided to take her disability claim” because she could no longer function properly, and her legs were bad. (N.T. 14-15)

29. Claimant completed an *Application for Disability Retirement* on November 3, 2015, which was received by PSERS on the same date. (N.T. 32, 106; PSERS Exhibit 14)

30. As of November 3, 2015, Claimant was beyond the deadline to apply for a disability retirement. (N.T. 105)

31. Claimant's *Application for Disability Retirement* was not processed by PSERS because the deadline for Claimant to have filed an *Application for Disability Retirement* was June 30, 2014. (N.T. 106-107; PSERS' Exhibit 14)

32. Claimant attended an exit counseling session with a PSERS' representative on November 3, 2015; Claimant was advised during her counseling session that she is not eligible for a disability retirement because her termination date was more than two (2) full school years ago. (N.T. 33; PSERS' Exhibit 13)

33. By letter dated November 5, 2015, PSERS notified Claimant that her application for disability retirement was received by PSERS but, as discussed with her counselor on November 3, 2015, Claimant is not eligible for disability retirement because her termination date of 2/9/2012 is within the 2012 school year, which ended 6/30/2012, and Claimant had two years from that date to apply, i.e., 6/30/2014. (N.T. 107; PSERS' Exhibit 15)

34. On March 31, 2016, PSERS' Executive Staff Review Committee ("ESRC") reviewed Claimant's request to apply for disability benefits and, likewise, determined that Claimant was ineligible to apply for a disability benefit; Claimant was notified by letter dated May 19, 2016, in pertinent part as follows:

. . . For a disability retirement, a member must file an *Application for Disability Retirement* within the two school years following the member's last day of qualified service or paid leave, whichever is later. Your last recorded day of paid school service was February 9, 2012; therefore, your

deadline to apply for disability benefits was June 30, 2014. PSERS did not receive your *Application for Disability Retirement* until November 3, 2015. You are, therefore, ineligible to apply for a disability benefit. . . .

(PSERS' Exhibit 16)

35. Claimant was notified of her right to appeal the decision of the ESRC by filing an appeal and request for administrative hearing within 30 days. (PSERS' Exhibit 16)

36. On May 31, 2016, Claimant filed a timely appeal and requested an administrative hearing. (PSERS' Exhibit 17)

37. An administrative hearing on Claimant's appeal was held on May 4, 2017.

(Transcript, *passim*)

38. Owing to Claimant's disability, Claimant was permitted to participate telephonically during her hearing, and was represented by Mark T. Sophocles, Esquire, who appeared personally at the hearing. (Transcript, *passim*)

CONCLUSIONS OF LAW

1. Claimant was afforded an opportunity to be heard, in accordance with the Administrative Agency Law, 2 Pa. C.S. §504. (Findings of Fact Nos. 33-38)
2. Claimant has the burden of proof in this proceeding. *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991); *Gierschick v. State Employees' Ret. Bd.*, 733 A. 2d 29, 32 (Pa. Cmwlth. 1999).
3. The burden of proof before an administrative tribunal is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A. 2d 600 (Pa. Cmwlth. 1990), *appeal denied*, 529 Pa. 654, 602 A. 2d 863 (1992).
4. A preponderance of the evidence is "such proof as leads the fact-finder. . . to find that the existence of a contested fact is more probable than its nonexistence." *Sigafoos v. Pa. Bd. of Probation and Parole*, 503 A. 2d 1076, 1079 (Pa. Cmwlth. 1986).
5. PSERS is a creature of the legislature and its members have only those rights created by the Public School Employees' Retirement Code, 24 Pa. C.S. §§8101, *et. seq.*, ("Retirement Code"); *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A. 2d 778, 780 (Pa. Cmwlth. 2001).
6. Only an "active member" or an "inactive member" of PSERS is eligible for a disability retirement benefit. 24 Pa. C.S. §8307(c); *Trakes v. Pub. Sch. Employes' Ret. Sys.*, 768 A. 2d 357, 364 (Pa. Cmwlth. 2001).
7. An "active member" is a "school employee for whom pickup contributions are being made to the fund;" active member status requires "actual work for which compensation is paid." 24 Pa. C.S. §8102; *Trakes*, at 363.

8. An “inactive member” is a “member for whom no pickup contributions are being made. . . who has accumulated deductions standing to his credit in the fund and for whom contributions have been made within the last two school years. . . .” 24 Pa. C.S. §8102.
9. An inactive member of PSERS has two school years from the date the member last worked and made contributions to PSERS to file for a disability retirement. 24 Pa. C.S. §8102; *Trakes*, at 364.
10. For purposes of the Retirement Code, the school year commences on July 1 and ends on June 30 of the following year. 28 Pa. Code§211.3(g).
11. Claimant’s last day of work for the School District, and her last day for which she was paid, made contributions to PSERS, and was an “active member” was February 9, 2012. (Findings of Fact Nos. 14, 16)
12. Claimant’s deadline to apply for disability benefits with PSERS as an “inactive member” was June 30, 2014. (Findings of Fact Nos. 3-14, 20-23, 26-27, 29-33)
13. Claimant’s disability retirement application is untimely. (Findings of Fact Nos. 14, 16, 20, 29-30)
14. Claimant has failed to proffer sufficient evidence or argument in support of her appeal. (Findings of Fact Nos. 1- 37; Transcript, *passim*)

DISCUSSION

Claimant filed this appeal to request the Board to reverse the decision of the ESRC, which denied her request to apply for disability benefits.

Claimant acknowledges that her last day of work for the School District was February 9, 2012, but argues that her *Application for Disability Retirement* should be deemed timely filed because she was still on the substitute/standby list to be called back to work *after February 9, 2012*, and was not even considering a disability retirement application at that time. Claimant testified that she still, in fact, received calls from people in 2014 to come into work, but was unable to do so because of doctor's appointments or therapy. Claimant further testified that up until late 2015, when her doctor advised her that he did not think it was a good idea to be working anymore, she had every intention of going back to work, which is why she did not apply for a disability retirement prior to November 3, 2015. Counsel for Claimant implores the Board to grant a "special exception" and "some sort of deference" to Claimant under these circumstances because she, in good faith, "tried to soldier on and work and remain active" but could not. (Transcript, p. 131)

Claimant is not entitled to the relief that she seeks. The Retirement Code sets forth the eligibility requirements for a disability annuity. PSERS' members have only those rights created by the Retirement Code, *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A. 2d 778, 780 (Pa. Cmwlth. 2001), and the Board similarly has no authority to grant rights beyond those specifically set forth in the Retirement Code. *Forman*, (citing, *Hughes v. Public School Employees' Retirement Board*, 662 A. 2d 701 (Pa. Cmwlth),

petition for allowance of appeal denied, 542 Pa. 678, 668 A. 2d 1139 (1995). The

relevant provisions of the Retirement Code provide as follows:

§8102. Definition.

...
“Active member.” – a school employee for whom pickup contributions are being made to the fund. . . .

...
“Inactive member.” A member for whom no pickup contributions are being made to the fund. . . who has accumulated deductions standing to his credit in the fund and for whom contributions have been made within the last two school years. . . .”

“School year.” – The 12-month period which the governmental entity uses for purposes of administration regardless of the actual time during which a member renders service.³

§8307. Eligibility for annuities.

...
(c) Disability annuity. - -

An active or inactive member who has credit for at least five years of service shall, upon filing of a proper application, be entitled to a disability annuity if he becomes mentally or physically incapable of continuing to perform the duties for which he is employed and qualifies for an annuity in accordance with the provisions of section 8505(c)(1) (relating to duties of board regarding applications and elections of members and participants).

24 Pa. C.S. §8307(c).

Because Claimant’s last day of work for the School District, and her last day for which she was an “active member,” i.e., paid and made contributions to PSERS, was February 9, 2012, *after February 9, 2012*, Claimant became an “inactive member.” As an

³ Regulations of the Department of Education provide: “For the purpose of the Retirement Code, the school year commences on July 1 and ends on June 30 of the following year.” 28 Pa. Code §211.3(g).

“inactive member,” Claimant had until June 30, 2014 (two school years)⁴ to apply for a disability retirement.

The evidence reveals that Claimant was placed on leave without pay by the School District on January 27, 2011. Prior to January 27, 2011, PSERS mailed Claimant statements of account on October 4, 2009 and October 3, 2010 for School Years 2008-2009 and 2009-2010. Claimant admits that she received these statements, but does not recall if she read them. The statements of account contained information pertaining to disability benefits as follows:

Disability Retirement: A disability benefit is an actual retirement benefit. It is not an insurance policy that supplements your salary while you are unable to work. A member who is granted a disability benefit will receive a monthly benefit payment for as long as the member is deemed disabled. Disability benefits may be granted on a long-or short-term basis and may be reviewed at any time. Benefits are subject to approval, denial or renewal based on your medical information. *You need to meet all three of the following requirements to apply for a disability benefit:*

- *Have at least 5 years of credited service with PSERS*
- *Apply to PSERS for disability benefits within 2 school years from the last day of service or paid leave*
- *Provide medical documentation which proves that you are unable to do your job due to a disability.*

(PSERS’ Exhibits 1 and 2)

After Claimant was placed on leave without pay, PSERS mailed Claimant a letter approximately two months later (March 28, 2011) to notify her that if she went on a leave of absence because she is disabled, there is a limited time in which she may elect a Disability Retirement Benefit. (PSERS’ Exhibit 3) Claimant was notified, at that time, that she must apply for a Disability Retirement Benefit within two school years of the last day for which her employer paid her. Although Claimant went back to work for the

⁴ See, footnote #3.

School District for a short period of time in January and February 2012, *after February 9, 2012*, the School District reported no salary, service or contributions for Claimant, and Claimant became, by definition, an “inactive member.”

The evidence reveals that after Claimant ceased being an active member with the School District in February 2012, Claimant, on two separate occasions, i.e., August 16, 2012 and June 9, 2013, submitted requests for retirement estimates to PSERS. The forms completed by Claimant clearly state: “THIS FORM IS NOT AN APPLICATION FOR RETIREMENT.” On the August 16, 2012 request for retirement estimate, Claimant listed her current work status as “terminated,” but also placed an “x” with a question mark (?) in the box adjacent to “Unpaid Leave,” and listed her tentative date of retirement as “2012?”

In response to Claimant’s August 16, 2012 request for a retirement estimate, PSERS sent Claimant two separate estimates, with cover letters dated October 23, 2012. One estimate was a regular retirement estimate (PSERS’ Exhibit 7), and the other was a disability retirement estimate (PSERS’ Exhibit 8). Both cover letters contain information for disability retirements and regular retirements. With respect to disability retirements, the cover letter states:

For a disability retirement, you must file an *Application for Disability Retirement* within the two school years following your last day of qualified service or paid leave, whichever is later, and you must be disabled at the time of application.

(PSERS’ Exhibits 7 and 8)

In the interim, on October 16, 2012, PSERS also mailed Claimant a statement of account for the school year ending June 30, 2012, which contained the following information pertaining to disability benefits:

Disability

A disability benefit is a retirement benefit, not an insurance policy. In order to qualify for a disability retirement, you must provide medical information and be certified by an independent medical examiner retained by PSERS that you are physically or mentally incapable of performing current job duties. You must also have at least five years of credited service with PSERS and apply for PSERS disability benefits within two school years of the last day paid by the school employer. If you choose to apply for a disability retirement benefit, you must be on an unpaid leave of absence or terminate all public school employment; the method of removing you from active school service is at the discretion of the employer(s).

(PSERS' Exhibit 6)

Despite PSERS' various notifications to Claimant in her statements of account; PSERS' letter dated March 28, 2011; and PSERS' cover letters dated October 23, 2012, which accompanied Claimant's retirement estimates, Claimant did not file her *Application for Disability Retirement* until November 3, 2015, four months beyond the statutory deadline for doing so. It is unfortunate that Claimant did not inquire about disability benefits until November 3, 2015, when she completed her. Her reason for not doing so is laudable. However, as counsel for PSERS aptly states:

A member's inactive membership status ends two school years after she stops working, thus imposing a deadline for the inactive member to file a disability application with PSERS. . . . There is no exception – equitable or otherwise – to that deadline. . . . The Commonwealth Court made this clear in *Trakes*, when it stated that PSERS could not be estopped from applying the two-year, inactive member status deadline for filing a disability application even if PSERS makes a misrepresentation to the claimant, which is not the case here. (Brief of PSERS, p. 14)

Moreover, although the law bars relief, the record here also does not support it. Claimant asserts that she fell through the cracks and that the process was complex and convoluted, but the record shows that, in reality, she deliberately waited to file her application until November 2015 because she had intended to go back to work and it was not until after the deadline that she believed she would not be able to do so. . . . Hindsight, however, is not a basis for relief. *See generally Marron v. State Employees' Ret. Bd.*, 544 A. 2d 1095, 1098 (Pa. Cmwlth. 1988). ("Even

though hindsight now may indicate that in view of the events that transpired after the election was made, that [another option] was preferable, we cannot reverse the hands of time.”)
(Brief of PSERS, p. 15)

Although PSERS has no statutory obligation to notify members of the two-year restriction on their inactive member status, *Trakes v. Public School Employees' Retirement System*, 768 A. 2d 357 (Pa. Cmwlth. 2001), *allocator denied*, 568 Pa. 623, 792 A. 2d 1256 (2001), the record reveals that PSERS provided notice to Claimant of her entitlement to disability benefits and of the time period within which to apply for such benefits on many occasions. Claimant did not avail herself of the information that was provided to her.

Claimant has the burden of proof in this proceeding. *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991); *Gierschick v. State Employees' Ret. Bd.*, 733 A. 2d 29, 32 (Pa. Cmwlth. 1999). Claimant has failed in her burden to proffer convincing evidence or arguments to support her appeal. The following recommendation will therefore be made to the Board:

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

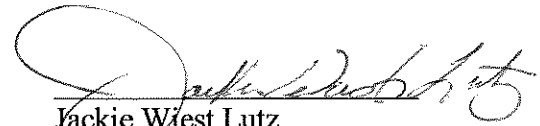
In Re:
Account of D.R.
Claim of D.R.

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Docket No. 2016-08

RECOMMENDATION

AND NOW, this 15th day of September 2017, upon consideration of the foregoing Findings of Fact, Conclusions of Law, and Discussion, the Hearing Officer recommends that the Board **AFFIRM** the decision of the Executive Staff Review Committee dated May 19, 2016 that denied Claimant's request to apply for disability benefits after the two-year filing period expired, and **DISMISS** Claimant's appeal.


Jackie Wiest Lutz
Chief Hearing Officer

For the Claimant: Mark T. Sophocles, Esquire
21 Industrial Blvd., Ste. 201
Paoli, PA 19301

For PSERS: Kathrin V. Smith, Esquire
Assistant Deputy Chief Counsel
Public School Employees' Retirement System
5 North 5th Street
Harrisburg, PA 17101

Docket Clerk: Laura Vitale
Public School Employees' Retirement System
5 North 5th Street
Harrisburg, PA 17101

Date of Mailing: September 15, 2017