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

IN RE: ACCOUNT OF BEATRICE SALAZAR  
DOCKET NO. 2016-09  
CLAIM OF BEATRICE SALAZAR

**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 Beatrice Salazar'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 November 22, 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 November 22, 2016, PSERS notified Claimant that she had 30 days to respond to PSERS' motion under Pa.R.C.P. No. 1035.3. On December 20, 2016, Claimant filed a response.

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).

In responding to PSERS' Motion, Claimant does not dispute any of the facts asserted by PSERS in its Motion or identify 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 thus 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 eligible for a retirement benefit from PSERS.

### **FINDINGS OF FACT**

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

1. Claimant was enrolled in the Public School Employees' Retirement System as a Class T-C member in November 1993 through her employment with the Philadelphia School District.

2. On June 30, 2001, Claimant terminated service with the Philadelphia School District.
3. As of June 30, 2001, Claimant had accrued 7.83 years of service credit. (PSERS-1; PSERS-2; PSERS-3).
4. Claimant did not return to school service in Pennsylvania at any time after June 30, 2001.
5. Claimant's 2003, 2004, and 2005 statements of account identified her service class as "TC" and her contribution rate as "D-6.25." (PSERS-1, PSERS-2, and PSERS-3).
6. The letter "D" before the 6.25% contribution rate on PSERS' statements of account stands for "dual coverage," not Class T-D. See 22 Pa. Code § 211.2 (April 1976 to August 2, 2008); Section 203(2) of the Act of June 1, 1959, P.L. 350, No.77.
7. If an individual was a member of the "dual coverage" group, the member's PSERS retirement benefit would not be reduced by the receipt of Social Security benefits.
8. On September 8, 2015, Claimant submitted a *Request for Retirement Estimate* to PSERS, and PSERS responded with a voicemail informing her that she was not eligible for retirement.
9. On October 26, 2015, Claimant wrote to PSERS asserting that she was a vested, Class T-D member and entitled to a retirement benefit. (PSERS-5).
10. By letter dated May 19, 2016, the ESRC determined that Claimant was not a vested, Class T-D member and explained, among other things, that she was a Class T-C member who was ineligible to elect Class T-D membership because she terminated service prior to July 1, 2001. (PSERS-6).
11. Claimant appealed the ESRC's decision on June 10, 2016. (PSERS-4).
12. On June 29, 2016, PSERS filed an Answer. (PSERS-7).

13. On November 22, 2016, PSERS filed a Motion for Summary Judgment.
14. On December 22, 2016, Claimant filed a response to PSERS' motion.
15. The matter is ripe for Board adjudication.

## DISCUSSION

Pursuant to the Public School Employees' Retirement Code, all employees who entered school service between July 1, 1967 and June 30, 2001 and who were eligible for PSERS membership were designated as Class T-C members and were eligible to vest upon the completion of ten or more years of credited service. See 24 Pa.C.S. § 8305(a) (Class T-C membership), *amended by* Act of May 17, 2001, P.L. 26 ("Act 2001-9") (eff. July 1, 2001). During that period, a "vestee" was defined as a "member with ten or more eligibility points who has terminated school service, has left his accumulated deductions in the fund, and is deferring filing of an application for receipt of an annuity." 24 Pa.C.S. § 8102, *amended by* Act 2001-9; *see also* 24 Pa.C.S. § 8307(b), *amended by* Act 2001-9. A PSERS "vestee" is eligible for a monthly retirement benefit after the termination of employment. See 24 Pa.C.S. § 8307(b).

Claimant was enrolled in PSERS in November 1993 through her employment with the Philadelphia School District. Accordingly, as a matter of law, she was a Class T-C member who required ten or more eligibility points for vesting.<sup>1</sup> When Claimant terminated school service on June 30, 2001, she had 7.83 years of credited service and, therefore, was not a "vestee" under the Retirement Code. Claimant does not dispute that she has only 7.83 years of service credited to her account with PSERS. She has not returned to school service and, consequently, is not eligible for a retirement benefit at this time.

Claimant argues that she is nevertheless entitled to an annuity because, essentially, she never knew of her status or class with PSERS and PSERS' current publications do not provide her with enough information to understand the eligibility

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<sup>1</sup> An active member of PSERS accrues one eligibility point for each year of credited service. 24 Pa.C.S. § 8306.

requirements for a retirement benefit.<sup>2</sup> She demands proof from PSERS that she is a not eligible for a pension.

Initially, the burden in this matter rests with Claimant, not PSERS. See, e.g., *Gierschick v. State Employees' Retirement Board*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999).<sup>3</sup> Claimant must show that she was eligible to vest and is, therefore, entitled to a benefit now. Act 2001-9 essentially provided two ways for Claimant to have vested with PSERS. For the reasons explained above, that is a legal impossibility. At all times Claimant was an active member of PSERS and making member contributions, the requirement to vest under the Retirement Code was ten years of credited service or more. Act 2001-9 reduced the years for vesting from ten to five for all members, but required a member to be active on July 1, 2001:

Section 36.1. The amendment of the definition of "vestee" in 24 Pa.C.S. §§ 8102, 8307, 8308, 8345(a) and 8507(g) shall apply to all members of the School Employees' Retirement System who are active or inactive on leave without pay on the effective date of this section, and to any former school employee who is a multiple service member, is a State Employee and is a member of the State Employees' Retirement System on the effective date of this section.

(emphasis added). The effective date of the change in the definition of "vestee" was July 1, 2001. See Act 2001-9, Operative Provisions, Section 39(5). ("The remainder of this act shall take effect upon July 1, 2001, or immediately, whichever is later.") Claimant was not active on July 1, 2001 and was not on a leave without pay. Therefore, the five-year vesting period is not applicable or available to Claimant.

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<sup>2</sup> Claimant initially argued on appeal that she was a Class T-D member because her 1997 pay check issued by the School District of Philadelphia contained the letter "D," but she has since withdrawn that argument. As PSERS correctly notes in its Motion for Summary Judgment, Class T-D membership did not exist until July 1, 2001 and, therefore, Claimant's 1997 could not have signified Class T-D membership.

<sup>3</sup> Cases interpreting State Employees' Retirement Code provisions "are equally applicable in deciding issues arising under similar or identical provisions" of the Retirement Code. *Krill v. Pub. Sch. Employees' Ret. Bd.*, 713 A.2d 132, 134 n.3 (Pa. Cmwlth. 1998).

Act 2001-9 also required that Claimant be active on both June 30, 2001 and July 1, 2001 to be eligible for Class T-D membership, which provides for a five-year vesting:

(b) *Transitional rule.* --For the purposes of the transition:

(1) In determining whether a member, other than a disability annuitant who returns to school service after June 30, 2001, upon termination of the disability annuity, who is not a school employee or a State employee on June 30, 2001, and July 1, 2001, and who has previous school service, has the five eligibility points required by the definition of "vestee" in sections 8102 (relating to definitions), 8307 (relating to eligibility for annuities), 8308 (relating to eligibility for vesting) and 8345 (relating to member's options), only eligibility points earned by performing credited school service, USERA leave or credited State service after June 30, 2001, shall be counted until such member earns one eligibility point by performing credited school service or credited State service after June 30, 2001, at which time all eligibility points as determined under subsection (a) shall be counted.

24 Pa.C.S. § 8306(b)(1). Claimant was not active on both June 30, 2001 and July 1, 2001. Claimant also has not returned to active membership after her termination on June 30, 2001. Thus, Claimant is not eligible for Class T-D membership and, therefore, not eligible to vest.

To the extent Claimant argues PSERS' current publications do not contain enough information for her to understand the vesting requirements, the result does not change. It is well established that statutory mandates of the Retirement Code apply, even when a PSERS member may have not been provided adequate or correct information from PSERS, her employer, or a third party. *Tyson v. Public School Employees' Retirement System*, 737 A.2d 325, 328 (Pa. Cmwlth. 1999); *Finnegan v. Public School Employees' Retirement Board*, 560 A.2d 848, 852 (Pa. Cmwlth. 1989), *aff'd without op.*, 591 A.2d 1053 (Pa. 1991); *Cosgrove v. State Employees' Retirement Board*, 665 A.2d 870, 874 (Pa. Cmwlth. 1995). Therefore, Claimant may not use PSERS' current publications as a basis for applying provisions of the Retirement Code that did not exist when she was an active member.

In summary, during the period November, 1993 through June, 2001, the Retirement Code placed all school employees who became members of PSERS in

Class T-C and mandated that those employees obtain ten or more years of credited service to vest. A five year vesting period simply did not exist during that period of time, and Claimant cannot change the law by claiming ignorance.

### **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 Claimant is eligible for a retirement benefit. 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 BEATRICE SALAZAR  
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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 that she be deemed eligible for a retirement benefit.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: March 10, 2017

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