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

IN RE: ACCOUNT OF JOHN P. MURPHY
DOCKET NO. 2016-03
CLAIM OF JOHN P. MURPHY

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 John P. Murphy's ("Claimant") Appeal and Request for Administrative Hearing, which seeks permission to purchase non-qualifying part-time ("NQPT") service after the statutory deadline, 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 December 5, 2017, 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 December 5, 2017, 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 January 4, 2018. 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 is no genuine issue as to any material fact. 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 NQPT service after the statutory deadline.

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 October 1992 through his part-time salaried employment with the Keystone Oaks School District ("Keystone District"). (PSERS' Motion for Summary Judgment at ¶ 1)

2. On April 1, 1999, Claimant submitted to PSERS an *Application to Purchase Credit for Part-Time Service (in Pennsylvania Public Schools)* ("1999 Application"), requesting to purchase part-time service rendered for the Keystone Oaks School District ("Keystone District") during the 1989-1990, 1990-1991, 1991-1992, and 1992-1993 school years. (PSERS-1)

3. On January 13, 2000, PSERS mailed Claimant a *Statement of Amount Due*, indicating that Claimant owed \$355.43 for the purchase of 0.55 years of part-time service during the 1990-1991 and 1992-1993 school years. This purchase was for qualifying time where Claimant did work at least eighty (80) days during the school year. (PSERS-2)

4. During this period of time, due to a pending lawsuit challenging the validity of a Board policy to permit active members to purchase non-qualifying part-time ("NQPT") service, implementation of the policy was delayed. Accordingly, PSERS delayed processing Claimant's request to purchase NQPT service rendered for the Keystone District during the 1989-1990 and 1991-1992 school years. (PSERS' Motion for Summary Judgment at ¶ 5)

5. On February 28, 2005, PSERS advised Claimant that the Pennsylvania Supreme Court upheld the Board policy allowing active PSERS members to purchase NQPT service. PSERS indicated that it had previously received Claimant's application to purchase NQPT service from the Keystone District, but PSERS advised, "If you have NQPT service with other employers to report, you must file a separate *Application* with each employer." The letter enclosed an *Application* for Claimant's convenience. (PSERS-3)

6. By letter dated April 2, 2007, PSERS advised Claimant that it would process his 1999 Application, but due to an unusually heavy workload, the processing time would be longer than originally estimated. (PSERS-4)

7. On May 3, 2010, PSERS mailed Claimant a *Statement of Amount Due*, indicating that Claimant owed \$619.44 for the purchase of 0.58 years of NQPT service during the 1989-1990 and 1991-1992 school years. This Statement was generated based on the previous Application Claimant had filed relating to the Keystone District. (PSERS-5)

8. On June 30, 2011, the General Assembly amended the Retirement Code, to create a three-year deadline, from June 30, 2011 to June 30, 2014, for the purchase of NQPT service by active PSERS members. 24 Pa.C.S. § 8303(d).

9. By letter dated November 10, 2011, PSERS mailed to Claimant at [REDACTED] (via first class mail, postage prepaid) a letter, advising Claimant that due to new legislation, "your window to purchase NQPT service expires on June 30, 2014." (PSERS-6)

10. In November 2011, Claimant's mailing address was [REDACTED] (PSERS' Motion for Summary Judgment at ¶ 11)

11. PSERS maintains a record of mail that is returned as undeliverable. (PSERS' Motion for Summary Judgment at ¶ 12)

12. The November 10, 2011 letter, which PSERS mailed to Claimant in the normal course of business, was not returned to PSERS as undeliverable. (PSERS' Motion for Summary Judgment at ¶ 13)

13. Following the mailing of this notice, on May 5, 2012, PSERS received a check from Claimant for \$578.63 for the purchase of his NQPT service with the Keystone District. (PSERS' Motion for Summary Judgment at ¶ 14)

14. By letter dated March 12, 2012, PSERS advised Claimant that he owed an additional \$40.81 in interest. (PSERS-7)

15. On May 19, 2012, Claimant submitted to PSERS a check for \$40.81 for the unpaid interest on his purchase of NQPT service with the Keystone District. (PSERS' Motion for Summary Judgment at ¶ 16)

16. Prior to the June 30, 2014 deadline to purchase NQPT service, Claimant did not request to purchase service as a substitute teacher for the South Allegheny School District ("South Allegheny District"). (PSERS' Motion for Summary Judgment at ¶ 17)

17. On February 26, 2015, eight months after the statutory deadline, PSERS received a *Purchase of Former Part-Time Uncredited Service* application ("2015 Application") from Claimant, in which he requested to purchase part-time service rendered for the South Allegheny District during the 1989-1990, 1990-1991, and 1991-1992 school years. (PSERS-8)

18. Prior to receipt of the 2015 Application, neither Claimant nor the South Allegheny District reported Claimant's NQPT service to PSERS. (PSERS' Motion for Summary Judgment at ¶ 19)

19. PSERS processed Claimant's request for the 1990-1991 and 1991-1992 school years as qualifying school service because, in combination with the service rendered for the Keystone District, Claimant worked at least eighty (80) days during these school years. (PSERS' Motion for Summary Judgment at ¶ 20)

20. Claimant rendered only 26 days of service for the South Allegheny District during the 1989-1990 school year, which, even in combination with the 44.5 days rendered for the Keystone District, does not constitute qualifying time. (PSERS-1); (PSERS-8)

21. By letter dated March 3, 2015, PSERS advised Claimant that his request to purchase credit for his NQPT service during the 1989-1990 school year was denied because his application was not filed with his employer by the June 30, 2014 deadline. (PSERS-9)

22. On March 13, 2015, Claimant appealed PSERS' determination, raising various equitable arguments as to why the filing deadline should be extended. (PSERS-10)

23. The ESRC, by letter dated February 3, 2016, denied Claimant's appeal, explaining that Claimant could not purchase NQPT service beyond the statutory deadline. (PSERS-11)

24. On February 29, 2016, Claimant appealed the ESRC's decision asserting, in part: that he was busy caring for his family, earning two master degrees, and teaching Advanced Placement European History; he was unaware of the deadline and had no evil intent; he should be able to purchase this time because PSERS members can purchase prior military service; and everyone makes mistakes. (PSERS-12)

25. On March 18, 2016, PSERS filed its Answer. (PSERS-13)

26. On December 5, 2017, PSERS filed a Motion for Summary Judgment.

27. Claimant did not file a response to PSERS' Motion.

28. This matter is ripe for Board adjudication.

DISCUSSION

The Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101 et seq., was amended on June 30, 2011 to limit the purchase of NQPT service. 24 Pa.C.S. § 8303(d). Section 8303(d) provides, in relevant part:

Class T-C and Class T-D members who are active members on the effective date of the subsection shall have three years from the effective date of this subsection to file a written application with the board to purchase any previous noncreditable school service. . . .

Id. Because Claimant was a PSERS member as of June 30, 2011, he would have needed to file an application by June 30, 2014, to purchase NQPT service.

Claimant first enrolled in PSERS in October 1992 as a part-time salaried employee with the Keystone District. On April 1, 1999, Claimant submitted to PSERS an application to purchase NQPT service rendered during the 1989-1993 school years for the Keystone District. PSERS immediately processed Claimant's application as to the 1990-1991 and 1992-1993 school years, because this time was mandatory qualifying time. PSERS subsequently processed the application as to the 1989-1990

and 1991-1992 school years. Claimant submitted checks for the purchase of this time on May 5 and May 19, 2012.

On November 10, 2011, PSERS advised Claimant that due to an amendment to the Retirement Code, any application to purchase NQPT service needed to be submitted by June 30, 2014. On February 26, 2015, eight months after the statutory deadline, Claimant submitted an application to purchase service rendered during the 1989-1992 school years for the South Allegheny District. PSERS processed the request for the 1990-1991 and 1991-1992 school years as qualifying time because Claimant rendered concurrent qualifying time with the Keystone District. PSERS denied the request for the 26 days rendered during the 1989-1990 school year, however, because this time was NQPT service, and the application was filed after the statutory deadline.

Claimant does not dispute that his application to purchase NQPT service for the South Allegheny District was submitted after the statutory deadline, that PSERS mailed him a November 10, 2011 notice of the June 30, 2014 deadline to file an application to purchase NQPT service, and that he did timely purchase NQPT service rendered for the Keystone District. Rather, Claimant argues that for equitable reasons, PSERS should extend the statutory deadline and allow his untimely request to purchase NQPT service rendered for the South Allegheny District.

Claimant argues that he was busy during the three-year window caring for his family, earning two master degrees, and teaching Advanced Placement European History. This Board has already determined that being busy does not create grounds to extend statutory deadlines. *See Account of Rodney D. Hawkins*, Docket No. 2015-17 (PSERB Mar. 17, 2016) (finding that letting time get away when busy does not create grounds to file an untimely Class T-F membership election). Although the Board must liberally administer the system, it does not have authority to waive the statutory deadline to purchase NQPT service. *See Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001); *Marinucci v. State Employees' Ret. Sys.*, 863 A.2d 43, 47 (Pa. Cmwlth. 2004). Such action would be tantamount to circumventing the express language of the Retirement Code, which the Board cannot do. *See Forman*, 778 A.2d

at 780; *Marinucci*, 863 A. 2d at 47. There is no exception, statutory or otherwise, to the deadline for purchasing NQPT service, and, thus, the Board is not authorized to grant Claimant the relief he requests.

Claimant further argues that he was unaware of the deadline and had no evil intent. This Board has already determined, however, that a claimant's failure to educate himself is not grounds to expand a statutory deadline. See *Account of Valerie H. Watrous*, Docket No. 2013-10 (PSERB Aug. 9, 2013) ("Claimant's failure to educate herself prior to the election deadline . . . [is] not grounds for granting her appeal."). Claimant's allegation that he had no evil intent is similarly not grounds to modify the statutory deadline.

Claimant's comparison to the purchase of military service is also not grounds to extend the statutory deadline to purchase NQPT service. Claimant's pension benefit, including the right to purchase service, is a product of legislation, and he has no rights or benefits beyond those specifically set forth in the Retirement Code. See *Allen v. Pub. Sch. Employees' Ret. Bd.*, 848 A.2d 1031, 1033 (Pa. Cmwlth. 2004). There are specific restrictions on the purchase of military service under the Retirement Code, just as there are limits on the purchase of NQPT service. See 24 Pa.C.S. § 8304. PSERS would be equally unable to modify the restrictions on the purchase of military service as it would be unable to modify the restrictions on the purchase of NQPT service.

Finally, Claimant asserts that everyone makes mistakes. Nonetheless, PSERS has no ability to grant rights beyond what the statute provides. See *Forman*, 778 A.2d at 780.

Claimant timely purchased NQPT service for time worked for the Keystone District during the 1989-1990 school year, but failed to timely purchase NQPT service for time worked during the South Allegheny District for that same year. Because equitable relief is not available and Claimant did not act by the statutory deadline, Claimant's appeal must be dismissed as a matter of law.

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's untimely request to purchase NQPT service. 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 JOHN P. MURPHY
DOCKET NO. 2016-03
CLAIM OF JOHN P. MURPHY

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 NQPT service after the statutory deadline.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: March 9, 2018

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