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

IN RE: ACCOUNT OF C.S.  
DOCKET NO. 2015-04  
CLAIM OF C.S.

**OPINION AND ORDER OF THE BOARD**

The Board has carefully and independently reviewed the entire record of this proceeding, including the Briefs and the proposed Opinion and Recommendation of the Hearing Examiner. We note that neither party filed Exceptions to the proposed Opinion and Recommendation. The Board finds appropriate the History, Findings of Fact, Conclusions of Law, Discussion, and Recommendation with the following modifications:

1. Finding of Fact 2, is amended to read: "Claimant first became a member of PSERS in 2004 when she was enrolled by Bristol Township as a "Lun/Play monitor" and then continued membership, also in 2004, when she became employed by the Bucks County intermediate unit, as a van driver for special needs students. (N.T. 11, 60-61; PSERS' Exhibits 1, 10-17, and 20)."

2. On page 15, footnote 4 is amended to read: "Regulations of the Public School Employees' Retirement Board 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)."

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 to have her *Application for Disability Retirement*, submitted on September 10, 2014, be considered timely filed is DENIED.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: March 8, 2019

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

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PSERB  
EXECUTIVE OFFICE

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

**In Re:**

**Account of C [REDACTED] S [REDACTED]**

**Claim of C [REDACTED] S [REDACTED]**

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**Docket No. 2015-04**

**MMS No.:**

**PSER-2015-SLAP-000007**

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**OPINION AND RECOMMENDATION**

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**Date of Hearing: June 20, 2018**  
**Hearing Officer: Jackie Wiest Lutz, Esquire**  
**For the Claimant: Joan A. Feinstein, Esquire**  
**For PSERS: Dwight A. Decker, Jr., Esquire**

## HISTORY

This matter is before the Public School Employees' Retirement Board (Board) on an appeal filed by C [REDACTED] S [REDACTED] ("Claimant") from a February 6, 2015 decision of the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS"), which denied Claimant's request to apply for disability benefits after the two-year filing period for doing so expired.

Claimant's *Appeal and Request for Administrative Hearing* was timely filed on February 23, 2015. On March 5, 2015 Daniel D. Brigham, Assistant Counsel, filed an *Answer* to Claimant's appeal on behalf of PSERS.

On March 20, 2015, a *Substitution of Counsel Without Leave of Court* was filed by Jennifer A. Mills, Assistant Counsel, entering her appearance on behalf of PSERS, and withdrawing the appearance of Daniel D. Brigham, Esquire.

On February 6, 2017, 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 July 12, 2017.

The hearing on Claimant's appeal was continued and re-scheduled twice, at the request of the Claimant's attorney, owing to unforeseen medical issues. In the interim, on April 5, 2018, Dwight A. Decker, Jr., entered his appearance on behalf of PSERS.

On April 6, 2018, PSERS' Appeal Docket Clerk notified Claimant that an administrative hearing on her appeal was re-scheduled for June 20, 2018, commencing at 1:30 p.m. at 5 N. 5<sup>th</sup> Street, Harrisburg, PA.

The administrative hearing on Claimant's appeal was held as scheduled on June 20, 2018 at the designated time and place before the appointed hearing examiner. Claimant was present for her hearing and was represented by Joan A. Feinstein, Esquire. Dwight A. Decker, Jr., Esquire represented PSERS.

Upon receipt of the hearing transcript, the hearing officer issued a briefing schedule on July 9, 2018. Pursuant to the briefing schedule, Claimant's brief was due on or before August 8, 2018; a brief on behalf of PSERS was due on or before September 7, 2018; and a reply brief was due by Claimant no later than September 24, 2018.

On August 3, 2018, Attorney Feinstein requested an unopposed extension of 30 days to file Claimant's brief.

On August 7, 2018, the Hearing Officer issued an *Order Granting Modification of Briefing Schedule*. Pursuant to the terms of this briefing schedule, Claimant's brief was timely filed on September 7, 2018, and PSERS' brief was timely filed on October 5, 2018. Although Claimant was granted the right to file a reply brief by October 24, 2018, Claimant did not file a reply brief. The record therefore closed on October 24, 2018.

The matter is now before the Board for final disposition.

## FINDINGS OF FACT

1. Claimant has resided at [REDACTED] for 24 years (“address of record”). (N.T.<sup>1</sup> 10-11, 41)
2. Claimant first became a member of PSERS in 2004, when she became employed by the Bucks County intermediate unit, as a van driver for special needs students. (N.T. 11; PSERS’ Exhibits 10 – 17, and 20)
3. PSERS mails a letter to every school employee when they become a member of PSERS (“new member letter”), which includes information about, *inter alia*, multiple service membership and annual *Statements of Account*, and encloses a *Beneficiary Nomination* form and *Member Handbook* for the employee that outlines PSERS benefits. (N.T. 60-61; PSERS’ Exhibit 1)
4. PSERS mailed Claimant a new member letter and *Active Member Handbook* on September 6, 2004, addressed to Claimant at her address of record. (N.T. 60-62; PSERS’ Exhibits 1, 2 and 3)
5. The *Active Member Handbook* contains a section on *Disability Retirement* and *Disability Options* on pages 16-17, which provides, in pertinent part:

Sometimes illness or other factors prohibit you from performing the work that you were hired to do. This disability could be physical or mental. If this is the case, then you may be eligible to receive a disability benefit. You need to meet all three of the following requirements to apply for a disability benefit.

- You must have at least five years of credited service with PSERS.
- You must apply to PSERS for disability benefits within **two school years** from the last day of service or paid leave.

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<sup>1</sup> “N.T.” refers to “notes of testimony” from the June 20, 2018 administrative hearing.

- You must provide medical documentation which proves you are unable to do your job due to a disability.

...

(PSERS' Exhibit 2)

6. Claimant does not remember receiving her new member letter and *Active Member Handbook*, but concedes that her name and address appear on the new member letter.

(N.T. 42)

7. PSERS mails active members and retired members educational newsletters, known as "*Retirement Chalkboards*" and "Active & Retirement Member Newsletters" (hereinafter, "newsletter") to provide them with information about important deadlines, changes, and developments in the law or retirement policy. (N.T. 64)

8. PSERS mailed Claimant a Summer 2008, Winter 2008, Winter 2009, Winter 2010, and Winter 2011 newsletter addressed to Claimant at her address of record. (N.T. 64-65; PSERS' Exhibits 4 through 9)

9. The Summer 2008 newsletter contains a lead article on the first page entitled, "Top 10 Things to Remember About Your PSERS Benefit" which provides, in relevant part:

...

Below are the Top 10 issues PSERS is frequently questioned about by active and retired members. Please take some time and review the following issues. In some instances if these issues are not addressed, there can be significant consequences for you and your family.

...

**6. Apply for disability benefits within two school years of your last day of service or paid leave, whichever is later.** When a disability occurs, there may be many stressful events happening in your life, and you may not be thinking about a disability retirement from PSERS. If you, however, are no longer earning qualified credited service,

you may be eligible for a disability retirement from PSERS, but you must apply to PSERS within two school years of your last day of service or paid leave or you will lose that right. You must have at least 5 years of credited service to be eligible to apply.

(PSERS Exhibit 4)

10. The Winter 2009 newsletter contains an article on page 5 entitled “Disability Benefit Eligibility,” which relevantly provides:

The PSERS disability retirement benefit is an actual retirement benefit. . . .

A member who is granted a disability retirement benefit by PSERS will receive a monthly retirement benefit payment for as long as the member is deemed disabled.

Disability retirement 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.

**To be eligible, you must:**

- Have at least five years of credited service.
- Be mentally or physically incapable of continuing to perform the duties of your job.
- Apply for a disability benefit within **two school years** from the day you last earned service credit and had contributions withheld. . . .

(PSERS Exhibit 6)

11. The Winter 2010 and Winter 2011 newsletters contained substantially similar articles pertaining to disability benefits on pages 5 and 12, respectively. (PSERS Exhibits 7 and 8)

12. Claimant remembers receiving documents in the mail resembling PSERS’ Exhibit 4 (the Summer 2008 newsletter). (N.T. 43-44)



13. PSERS also 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; and how much service and salary was reported by the employer in the current school year, etc. (N.T. 66-67)

14. On December 8, 2005, PSERS mailed Claimant a *Statement of Account for School Year 2004-2005* showing that credits were reported by Claimant's employer and that contributions were applied to Claimant's account. (N.T. 66-67; PSERS' Exhibit 10)

15. The *Statement of Account for School Year 2004-2005* contained information on Disability Retirement benefits, explaining, *inter alia*, that members who are granted a disability benefit will receive a monthly benefit payment for as long as the member is deemed disabled. (PSERS' Exhibit 10)

16. On January 11, 2007, PSERS mailed Claimant a *Statement of Account for School Year 2005-2006* showing that credits were reported by Claimant's employer and that contributions were applied to Claimant's account. (N.T. 66-67; PSERS' Exhibit 11)

17. The *Statement of Account for School Year 2005-2006* contained more detailed information on Disability Retirement benefits, explaining, *inter alia*, that members who have five or more years of service and become physically or mentally disabled may be eligible for a disability benefit, and that there is a two-year time limitation in which to apply. (PSERS' Exhibit 11)

18. On December 18, 2007, November 10, 2008, October 30, 2009, November 12, 2010, and October 22, 2011 PSERS mailed Claimant Statements of Account for School Years 2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011 showing that

credits were reported by Claimant's employer and that contributions were applied to Claimant's account. (N.T. 66-67; PSERS' Exhibits 12 through 16)

19. Each of these Statements of Account contained information on Disability Retirement benefits. (PSERS' Exhibits 12-16)

20. Claimant remembers receiving annual Statements of Account from PSERS. (N.T. 45)

21. PSERS maintains a record of returned mail within a member's files; no mail was returned from Claimant. (N.T. 88)

22. On April 6, 2011, Claimant was involved in a motor vehicle accident on her way to pick up two of her special-needs students, when a driver of another vehicle smashed into the back of Claimant's work van. (N.T. 15)

23. After the accident, Claimant was taken to St. Mary's Hospital for her injuries. (N.T. 16-17)

24. Following her hospitalization, Claimant received medical treatment for her injuries through Workers' Compensation. (N.T. 17-19)

25. Claimant was released to go back to work after her accident but when she attempted to do so, and got in her van to go pick up her students, she did not feel safe, so she called her employer to report that she did not feel comfortable driving anymore, and went back home. (N.T. 19-20)

26. Following her accident, Claimant underwent surgery and physical therapy, saw a pain management doctor, and was placed on various medications, which left her dazed. (N.T. 18-20, 29-31)

27. Claimant slept most of the time, and was dependent on her children and her husband to care for her. (N.T. 26)
28. Claimant continues to have pumping pain in her arm and shoulder today; she can no longer sleep at night, and has a constant tremor in her hand that makes it difficult to sign her name. (N.T. 29)
29. Claimant cannot go out to eat in public because she throws food while trying to use utensils. (N.T. 29)
30. PSERS has no record of Claimant working any time after April 5, 2011. (N.T. 75, 89)
31. On April 9, 2014, Claimant contacted PSERS by phone to request a regular and disability retirement estimate. (N.T. 48, 67-69)
32. Claimant's status at the Bucks County IU in April of 2014 was unpaid leave of absence. (N.T. 83-85; PSERS' Exhibit 17)
33. PSERS' staff prepared an early retirement estimate for Claimant, which was mailed to Claimant on May 5, 2014; a disability retirement estimate was not prepared by PSERS' staff because Claimant did not apply for disability retirement benefits within two school years of her last day of service or paid leave. (N.T. 70-71; PSERS' Exhibits 17 and 18)
34. On September 10, 2014, Claimant filed an *Application for Disability Retirement*. (N.T. 49-50, 73-74; PSERS' Exhibit 19)
35. By letter dated September 19, 2014, PSERS denied Claimant's *Application for Disability Retirement*, explaining, in pertinent part, as follows:

... Your employer, Bucks County IU, has submitted your last day of active contributing service as April 5, 2011.

Unfortunately, to be eligible for a disability annuity, a member must file an application within 2 years from the end of the school year of their last day of active, contributing service. Your deadline to apply for disability retirement was June 30<sup>th</sup>, 2014.<sup>2</sup>

For this reason, your disability application has been denied.

...

(N.T. 75-76; PSERS' Exhibit 20)

36. Claimant was notified of her right to appeal PSERS' decision by writing to the ESRC, setting forth the basis of her appeal, the relief she is requesting, and a complete statement of why the ESRC should grant her request. (PSERS' Exhibit 20)

37. Claimant appealed PSERS' decision to the ESRC. (N.T. 51)

38. By letter dated February 6, 2015, the ESRC denied Claimant's request to apply for disability benefits, relevantly explaining:

An application for disability benefits must be made within two years of a member's last day of service or paid leave. Your last day of paid school service was April 5, 2011. Your eligibility period was, therefore, April 6, 2011 through June 30, 2013, but you did not request a *Disability Retirement Estimate* until April 10, 2014, and you did not submit an *Application for Disability Retirement* until September 10, 2014. PSERS cannot waive provisions of positive law, including time limitations imposed by the Retirement Code. . . .

(PSERS' Exhibit 21)

39. 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 21)

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<sup>2</sup> PSERS' Retirement Administrator testified that "2014" was a typographical error; the letter should have said "June 30, 2013", which was two fiscal school years from Claimant's last day of active, contributing service. (N.T. 76)

40. On February 23, 2015, Claimant filed a timely *Appeal and Request for Administrative Hearing*. (Official Notice<sup>3</sup> – PSERS’ Docket)

41. An administrative hearing on Claimant’s appeal was held on June 20, 2018, commencing at 1:30 p.m., at PSERS headquarters, 5 North 5<sup>th</sup> Street, Harrisburg, PA 17101. (Transcript, *passim*)

42. Claimant appeared for her hearing, was represented by counsel, and had an opportunity to be heard in accordance with the Administrative Agency Law, 2 Pa. C.S. § 504. (Transcript, *passim*)

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<sup>3</sup> Official notice of such matters as might be judicially noticed by courts is permissible under the General Rules of Administrative Practice and Procedure, 1 Pa. Code §31.1 *et. seq.*, at §35.173, which provides, in pertinent part, as follows:

§35.173. Official notice of facts.

Official notice may be taken by the agency head or the presiding officer of such matters as might be judicially noticed by the courts of this Commonwealth, or any matters as to which the agency by reason of its functions is an expert. . . .

1 Pa. Code §35.173.

Official notice is also permitted under case law. *See, for example, Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A. 2d 991 (Pa. Cmwlth. 1987), in which the Commonwealth Court explained:

“Official notice” is the administrative counterpart of judicial notice and is the most significant exception to the exclusiveness of the record principle. The doctrine allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency’s field and those facts contained in reports and records in the agency’s files, in addition to those facts which are obvious and notorious to the average person. Thus, official notice is a broader doctrine than is judicial notice and recognizes the special competence of the administrative agency in its particular field and also recognizes that the agency is a storehouse of information on that field consisting of reports, case files, statistics and other data relevant to its work.

521 A. 2d at 994 n. 6.

## 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. 34-42)
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. Employees' 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 and 8307(c); *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. 22 Pa. Code §211.3(g).
11. Claimant’s last full day of work for the Bucks County IU, and her last day for which she was paid, made contributions to PSERS, and was an “active member” was April 5, 2011. (Findings of Fact Nos. 2, 22-30, 32, 34-35)
12. Claimant’s deadline to apply for disability benefits with PSERS as an “inactive member” was June 30, 2013. (Findings of Fact Nos. 2, 22-30, 32, 34-35)
13. Claimant’s *Application for Disability Retirement* is untimely. (Findings of Fact Nos. 2, 22-30, 32, 34-35)
14. Claimant has failed to proffer sufficient evidence or argument in support of her appeal. (Findings of Fact Nos. 1- 42; 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 retirement benefits beyond the statutory requirement that an application for disability benefits must be made within two years of a member's last day of service or paid leave.

### **A. BURDEN OF PROOF**

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). The degree of proof required to establish a case before an administrative tribunal in an action of this nature is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the Claimant's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1950). The Claimant therefore has the burden of proving that she is entitled to apply for disability benefits beyond the two-year statutory period for doing so with evidence that is substantial and legally credible, not by mere "suspicion" or by only a "scintilla" of evidence. *Lansberry*, 578 A.2d at 602.

### **B. CLAIMANT'S ARGUMENT**

Claimant argues that the "statute should not toll" in her case until she was *competently* able to complete her paperwork or until she could provide the required medical documents to prove that she was unable to perform her job. Claimant further



argues that PSERS failed to send any official notice to her of her right to apply for disability benefits. For reasons that follow, these arguments fail.

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 has no discretion or 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 Retirement Code, which establishes the eligibility requirements for a disability annuity, contains no exceptions. The Retirement Code relevantly provides 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.<sup>4</sup>

**§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

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<sup>4</sup> 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." 24 Pa. Code §211.3(g).

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).

The evidence reveals that Claimant's employer, Bucks County IU, submitted her last day of active contributing service to PSERS as April 5, 2011. Because Claimant's last day of work for the IU, and her last day for which she was an "active member," i.e., paid and made contributions to PSERS, was April 5, 2011, *after April 5, 2011*, Claimant became an "inactive member." As an "inactive member," Claimant had until June 30, 2013 (two school years) to apply for a disability retirement benefit.

The evidence is undisputed that following Claimant's accident on April 6, 2011, Claimant suffered injuries requiring that she undergo surgery and physical therapy. Claimant testified that she was placed on various medications, which left her dazed, and she slept most of the time. Claimant testified that to this day, her back is always swollen and hurts. According to Claimant, emotionally, it has not been fun:

It always feels like something's pumping in my arm all the time. I have pain through my shoulder. I can't sleep at night anymore. I have accidentally hit my husband. I don't want to go out to eat no more, because I throw food when it goes, and I'm trying to pick it up. It's very hard to go through the day knowing when my grandchildren, they grew up at my home, they lived at my home. And my granddaughter is now 8, turning 9. And when we go out, and if I have to sign something, she figured it out, which I never could, because I cannot, everyone says to switch. I cannot switch to my left hand. I've tried. And my granddaughter now grabs the top of the pen to hold it, and at least it looks like my name now.

(N.T. 29)

However, Claimant presented no evidence to establish that she was mentally “incompetent” during the period that she was eligible to apply for a disability retirement; in fact, Claimant offered no medical testimony at all.

Even if Claimant had presented evidence supporting her contention that her mental and/or physical health made her incapable of comprehending the significance of the application deadline, it would not change the outcome in this matter. This is true for two reasons.

First, the sections 8102 and 8307(c) of the Retirement Code are clear, and in no way ambiguous. When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. Statutory Construction Act of 1972, 1 Pa. C.S. § 1501 *et seq.*, at 1 Pa. C.S. § 1921(b). The rules of statutory construction therefore dictate that sections 8102 and 8307(c) cannot be interpreted in such a way as to disregard its clear language. To carve out an exception to sections 8102 and 8307(c) for members, like Claimant, who fail to timely complete an application for disability or provide the required medical documents, would be to revise what the Retirement Code says, and only the Legislature has the power to make such revisions. *Marinucci v. State Employees’ Retirement System*, 863 A.2d 43, 48 (Pa. Cmwlth. 2004).<sup>5</sup>

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<sup>5</sup>*Marinucci* involves the State Employees’ Retirement Code, but is factually similar to the case *judice*, except that Marinucci, a member of the State Employees’ Retirement System, telephoned and sent various letters and information to her SERS retirement counselor, to inquire about disability retirement benefits, before the two-year deadline for applying for disability benefits expired. Like Claimant, Marinucci, never submitted an actual application for disability retirement benefits within the requisite statutory timeframe. When the SERS’ Board denied Claimant’s request for disability benefits, Claimant appealed to Commonwealth Court and argued that the Board erred because she complied with the Code in that she initiated the application process by sending letters and documents to her Retirement Counselor. However, the Court disagreed, stating:

Second, the Commonwealth Court has long acknowledged that the Retirement Code does not require that PSERS specifically notify its members of the two-year restriction on their inactive member status in 24 Pa. C.S. §8102. *Trakes v. Public Sch. Employees' Retirement Sys.*, 768 A. 2d 357 (Pa. Cmwlth. 2001). Even so, the evidence reveals that when Claimant first became a member of PSERS, PSERS mailed Claimant an *Active Member Handbook* on September 6, 2004, which clearly explains the requirements for Disability Retirement and Disability Options. The *Active Member Handbook* explains:

Sometimes illness or other factors prohibit you from performing the work that you were hired to do. This disability could be physical or mental. If this is the case, then you may be eligible to receive a disability benefit. You need to meet all three of the following requirements to apply for a disability benefit.

- You must have at least five years of credited service with PSERS.
- You must apply to PSERS for disability benefits within **two school years** from the last day of service or paid leave.

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SERS is a creature of legislation which provides for various contributions and choices for the pensioner upon retirement. *Bittenbender v. State Employees' Retirement Board*, 154 Pa. Commw. 11, 622 A. 2d 403, 405 (Pa. Cmwlth. 1992). "Thus, an employee has only those rights created by statute and none beyond it." *Id.* Although we must liberally administer the retirement system in favor of its members, "a liberal administration of the retirement system does not permit the board to circumvent the express language of the Code. . . ." (citation omitted). The Board has no authority to grant equitable relief in contravention of the statutory mandates of the Retirement Code. *Rowan v. Pennsylvania State Employees' Retirement Board*, 685 A. 2d 238, 240 (Pa. Cmwlth. 1996). "The Retirement Code cannot be revised by the courts to achieve equitable results." *Mager v. State Employees' Retirement Board*, 849 A. 2d 287, 292-293 (Pa. Cmwlth. 2004) (citing *Jones v. State Employees' Retirement Board*, 830 A. 2d 607 (Pa. Cmwlth. 2003), *petition for allowance of appeal denied*, 577 Pa. 728, 847 A. 2d 1289 (2004)).

*Marinucci*, at 47.

- You must provide medical documentation which proves you are unable to do your job due to a disability.

(PSERS' Exhibit 2)

In addition, the evidence reveals that prior to Claimant's last day of active contributing service on April 5, 2011, PSERS mailed Claimant and other active and retired members of PSERS *annual* newsletters that contained information on when and how to apply for disability benefits. PSERS also mailed Claimant annual statements of account which contained information on Disability Retirement benefits. Claimant did not apply for disability retirement until nearly 15 months after the deadline for doing so expired.

C. CONCLUSION

Claimant ceased being an active member of PSERS in April 2011 when pickup contributions were no longer being paid to the fund. Because members who are no longer active members are classified as inactive members for a period of two years, Claimant had until June 30, 2013 (the end of the school year in which she last worked plus two years) to apply for a disability benefit. Unfortunately, Claimant did not apply for disability retirement benefits until September 10, 2014, when she ultimately completed an *Application for Disability Retirement*.

Although PSERS has no statutory obligation to notify members of the two-year restriction on their inactive member status, the record reveals that PSERS provided both actual and constructive notice to Claimant of her entitlement to disability benefits and of the time period within which to apply for such benefits. Claimant simply did not avail herself of the information that was provided to her.

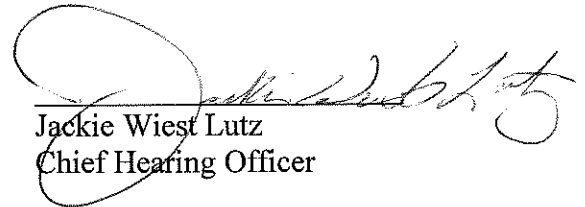
Claimant has failed to satisfy her burden of proof. Accordingly, the following recommendation will be made to the Board:

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

<b>In Re:</b>	:	
<b>Account of C</b> [REDACTED] <b>S</b> [REDACTED]	:	<b>Docket No. 2015-04</b>
<b>Claim of C</b> [REDACTED] <b>S</b> [REDACTED]	:	<b>MMS No.:</b>
	:	<b>PSER-2015-SLAP-000007</b>

**RECOMMENDATION**

**AND NOW**, this 5<sup>th</sup> day of December 2018, upon consideration of the foregoing Findings of Fact, Conclusions of Law, and Discussion, the Hearing Officer recommends that the Board **DENY** Claimant's request to apply for disability benefits beyond the two-year statutory period of her last day of service or paid leave, and **DISMISS** Claimant's appeal.

  
Jackie Wiest Lutz  
Chief Hearing Officer

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Harrisburg, PA 17101

Date of Mailing: December 6 2018