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

IN RE: ACCOUNT OF JACQUELINE RUCHINSKI
DOCKET NO. 2018-06
CLAIM OF JACQUELINE RUCHINSKI

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 Jacqueline Ruchinski'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 ("PSERS' motion) on March 22, 2019 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 March 22, 2019, PSERS notified Claimant that she had 30 days to respond to PSERS' motion under Pa.R.C.P. No. 1035.3. On April 18, 2019, Claimant filed a response ("Claimant's reply").

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 her 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).

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 Claimant’s reply to PSERS’ motion, Claimant admits PSERS’ Memorandum of Facts paragraphs 3, 4, 5, 6, 12, 14, 15, and 16 in their entirety. Therefore, there is no genuine issue of material fact as to the facts averred in those paragraphs. Additionally, by admitting the factual averments in those paragraphs, Claimant admits the authenticity and relevance of the exhibits referenced in them: PSERS-1 (referenced in paragraph 4); PSERS-2 (referenced in paragraph 5); PSERS-3 (referenced in paragraph 6); PSERS-4 (referenced in paragraph 6); PSERS-10 (referenced in paragraph 12); PSERS-12 (referenced in paragraph 14); and PSERS-13 (referenced in paragraph 15).

Similarly, Claimant admits PSERS’ Memorandum of Facts paragraphs 7 and 8 in their entirety. In her response, however, Claimant adds legal argument and additional averments of fact of her own. Claimant’s argument and additional averments of fact do not contradict or dispute PSERS’ averments of fact. Thus, as to the facts that PSERS averred in Memorandum of Facts paragraphs 7 and 8, there is no genuine issue of material fact. Moreover, by admitting paragraphs 7 and 8, Claimant admits the authenticity and relevance of PSERS-5, PSERS-6, PSERS-7, and PSERS-8, which are referenced in the respective paragraphs.

In Claimant's reply, Claimant admits, but denies in part, PSERS' Memorandum of Facts paragraphs 1, 2, and 13. Claimant, however, does not specifically deny any averment of fact in those paragraphs. Rather, Claimant's denials are either argument or formulated as additional averments of fact as to Claimant's knowledge of the Public Employee Pension Forfeiture Act ("Forfeiture Act" or "Act"), 43 P.S. §§ 1311-1315. Claimant does not challenge any of the factual averments contained in the respective paragraphs. Accordingly, there is no genuine issue of material fact with respect to paragraphs 1, 2, and 13.

Claimant denies PSERS' Memorandum of Facts paragraph 9, but she does not deny any specific averment. Instead, her denial is articulated as both an argument and an additional averment of fact that reflects her position on the issue of law to be decided here. It, therefore, does not raise genuine issues of material fact. In PSERS' Memorandum of Facts paragraph 10, PSERS avers that it first learned of Claimant's guilty plea in October 2017; Claimant answers that restitution was paid timely and within 45 days of September 13, 2013. Claimant's answer is not responsive to PSERS' averment and, thus, paragraph 10 is admitted.

Claimant denies PSERS' Memorandum of Facts paragraph 11. Her denial, however, is formulated as an argument and relevancy objection to PSERS' October 31, 2017 letter determination being used as an averment of fact, to the extent that such determination is being offered as a fact or a conclusion of law. Claimant's objection goes to an issue of law, i.e. whether Claimant's pension benefits are forfeitable pursuant to the Forfeiture Act. Therefore, her objections do not raise issues of material fact. Similarly, with respect to Exhibit PSERS-9, Claimant argues only that the exhibit is "not relevant." Thus, there is no genuine issues of material fact with respect to PSERS-9, which is the original PSERS' staff determination that Claimant has appealed to this Board.

Accordingly, the Board finds that there are no disputed material facts that would prevent this Board from considering PSERS' motion. 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 issues of whether Claimant's retirement benefit with PSERS

was forfeited pursuant to the Public Employee Pension Forfeiture Act (“Forfeiture Act” or “Act”), 43 P.S. §§ 1311-1315¹ or, in the alternative, whether PSERS should credit the restitution Claimant paid to the Greater Nanticoke Area School District (“School District”) toward the debt she owes to PSERS for overpaid annuities.

FINDINGS OF FACT

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

1. Jacqueline Ruchinski (“Claimant”) was enrolled in PSERS in September 1998, by virtue of her full-time, salaried employment with the School District. (PSERS’ Memorandum of Facts, ¶ 2).

2. Claimant was an active school employee with the School District from September 1, 1998 until April 19, 2012, her termination date. (PSERS’ Memorandum of Facts, ¶ 3).

3. On June 7, 2012, Claimant filed an *Application for Retirement* with PSERS, choosing the Option 2 monthly annuity and electing not to withdraw her total contributions, in the amount of \$30,405.91, and interest. (PSERS’ Memorandum of Facts, ¶ 4; PSERS-1 at 2 and 4; PSERS-2 at 1).

4. PSERS processed Claimant’s retirement application, and she began receiving a monthly annuity from PSERS effective April 20, 2012. (PSERS’ Memorandum of Facts, ¶ 5; PSERS-2 at 1).

5. On December 3, 2012, Claimant was charged with six felony counts of theft by failure to make required disposition of funds, 18 Pa.C.S. § 3927(a), relating to illegally obtaining funds from the School District during the 2006-2007 through 2011-2012 school years. (PSERS’ Memorandum of Facts, ¶ 6; PSERS-3; PSERS-4).

¹ The Forfeiture Act was amended on March 28, 2019, for crimes committed on or after that date. Because Claimant committed her crimes prior to March 28, 2019, this Board addresses Claimant’s appeal based on the law in place at the time her crimes were committed.

6. Beginning December 21, 2012, Claimant began receiving a monthly annuity (gross) in the amount of \$1,149.74. (PSERS-2 at 1).

7. On July 8, 2013, Claimant pleaded guilty in the Court of Common Pleas of Luzerne County to the six counts of theft by failure to make required disposition of funds. (PSERS' Memorandum of Facts, ¶ 7; PSERS-5; PSERS-6; PSERS-7).

8. As a result of her guilty plea, Claimant was sentenced to one year of probation and was ordered to pay \$19,427.32 in restitution to the School District, which she timely paid. (PSERS' Memorandum of Facts, ¶ 7; PSERS-7; Claimant's reply, ¶ 10).

9. In October 2017, PSERS first learned of the criminal charges brought against Claimant. (PSERS' Memorandum of Facts, ¶¶ 9 and 10; PSERS-11 (Attachment "A")).

10. By letter dated October 31, 2017, PSERS informed Claimant that it had determined that her pension benefits were forfeited under the Public Employee Pension Forfeiture Act, 43 P.S. §§ 1311-1315, as of July 8, 2013; that the retirement benefits she was receiving would be terminated; that she owed PSERS the overpaid monthly retirement benefits she received from July 9, 2013 to October 31, 2017 in the amount of \$58,636.74²; and that PSERS would credit her \$30,405.91 in remaining contributions against the debt owed to PSERS. (PSERS' Memorandum of Facts, ¶ 11; PSERS-9).

11. On November 29, 2017, Claimant appealed PSERS' October 31, 2017 determination to the Executive Staff Review Committee ("ESRC"). (PSERS' Memorandum of Facts, ¶ 12; PSERS-10).

12. The ESRC, by letter dated February 12, 2018, denied Claimant's appeal on the basis that there "are no exceptions to forfeiture and PSERS has no authority to

² Claimant's gross monthly annuity of \$1,149.74 when multiplied by 51 months equals \$58,636.74.

act in a discretionary fashion and not impose the sanctions dictated by the Forfeiture Act.” (PSERS’ Memorandum of Facts, ¶ 13; PSERS-11).

13. On March 12, 2018, Claimant filed an Appeal and Request for Administrative Hearing. (PSERS’ Memorandum of Facts, ¶ 14; PSERS-12).

14. On April 2, 2018, PSERS filed an Answer. (PSERS’ Memorandum of Facts, ¶ 15; PSERS-13).

15. On March 22, 2019, PSERS filed a Motion for Summary Judgment.

16. On April 18, 2019, Claimant filed a response to PSERS’ motion.

17. The matter is ripe for Board Adjudication.

DISCUSSION

The Forfeiture Act, 43 P.S. §§ 1311-1315, disqualifies public officials and public employees from receiving retirement benefits if they have been convicted of or pleaded guilty or no contest to any of the "crimes related to public office or public employment" enumerated in 43 P.S. § 1312. The Forfeiture Act defines the terms "public official" and "public employee" as "any person who is elected or appointed to any public office or employment ... including but not limited to any person who has so acted and is otherwise entitled to or is receiving retirement benefits. . . ." 43 P.S. § 1312. The term includes "all persons who are members of any retirement system funded in whole or in part by the Commonwealth or any political subdivision." *Id.* The Forfeiture Act mandates forfeiture once a triggering conviction or guilty plea to a covered offense occurs; it leaves no discretion to an administrative agency. 43 P.S. § 1313(b); *see Agpar v. State Employees' Ret. Sys.*, 655 A.2d 185, 189 (Pa. Cmwlth. 1994); *Account of Cynthia Wilson*, Docket No. 2011-23 (PSERB April 30, 2012) (citing *Gierschick v. State Employees' Ret. Bd.* 733 A.2d 29 (Pa. Cmwlth. 1999)); *Appeal of Evelyn Cortez*, Docket No. 2017-04 (PSERB May 23, 2019). This Board, therefore, must enforce the Act's proscriptions.

Claimant does not dispute that the crime to which she pled guilty on July 8, 2013, is covered by the Forfeiture Act. Section 1312 of the Forfeiture Act defines "crimes related to

public office or public employment” to include theft by failure to make required disposition of funds, 18 Pa.C.S. § 3927(a). In addition, Claimant does not dispute that the criminal charges to which she pled guilty were based on allegations of criminal activity she committed in her capacity as School District employee during the 2006-2007 through 2011-2012 school years. Rather, Claimant argues that her pension should be reinstated because she had no knowledge of the Forfeiture Act; she cooperated with authorities throughout the criminal investigation; she paid restitution in full and completed probation; and she was suffering from medical and psychological problems at the time. None of these arguments, however, change the Forfeiture Act’s mandate that Claimant’s pension with PSERS be forfeited.

Claimant’s assertion that she lacked knowledge, and was not given notice, of the Forfeiture Act is not a basis to reinstate her pension or to forgive the overpaid annuity debt that Claimant owes to PSERS. The Act compels the forfeiture of a public employee’s pension upon entry of a guilty plea. 43 P.S. § 1313(b). The Act contains no exceptions or allowance for delay:

The benefits shall be forfeited upon entry of a plea of guilty or no defense or upon initial conviction and no payment or partial payment shall be made during the pendency of an appeal. If a verdict of not guilty is rendered or the indictment or criminal information finally dismissed, then the public official or public employee shall be reinstated as a member of the pension fund or system and shall be entitled to all benefits including those accruing during the period of forfeiture if any.

43 P.S. § 1313(b) (emphasis added). Thus, Claimant’s knowledge as to the consequence of her guilty plea on her pension with PSERS is immaterial. See 43 P.S. § 1313(a), (b); see generally *Commonwealth v. Abraham*, 62 A.3d 343 (Pa. 2012).

Furthermore, with the enactment of the Forfeiture Act in 1978, all public employees were put on notice that unfaithful service could jeopardize their pension. *Commonwealth ex. rel. Zimmerman v. Officers and Employees Ret. Bd.*, 469 A.2d 141, 143 (Pa. 1983). The Act is void of any provision requiring the School District, PSERS, or this Board to notify a public employee of the Act’s provisions. See 43 P.S. §§ 1311-1315; see generally *Trakes v. Pub. Sch. Employes’ Ret. Sys.*, 768 A.2d 357, 367 (Pa. Cmwlth. 2001). It is

similarly void of any requirement that a prosecutor or even defense counsel notify a defendant of the Forfeiture Act. See *id.* When Claimant accepted employment with the School District, she implicitly agreed to perform her job without violating the Forfeiture Act. See 43 P.S. § 1313(c); *Shiomos v. State Employees' Ret. Bd.*, 626 A.2d 158, 162 (Pa. 1993); *Agpar*, 655 A.2d at 188. Her purported lack of awareness of the Act, therefore, does not keep her from being subject to its mandates. See 43 P.S. § 1313(a), (b); see generally *Abraham*, 62 A.3d at 352 (concluding that criminal defense counsel is not ineffective for failing to advise his client of the collateral consequences of a guilty plea, i.e., a pension forfeiture).

Claimant's arguments that the Forfeiture Act should not apply to her because she cooperated with authorities throughout the criminal investigation, she paid restitution and completed probation, and she suffered from medical and psychological problems are also unavailing. None of these reasons asserted by Claimant release her from the mandates of the Forfeiture Act. Claimant's fulfillment of the criminal penalties of her crimes does not halt the consequences of the Forfeiture Act on her pension. "[P]ension forfeiture is a non-punitive, civil consequence of a criminal conviction, independent of the criminal process." *Abraham*, 62 A.3d at 349. The Act also does not authorize the Board to consider Claimant's health or her cooperation during the criminal investigation. See 43 P.S. § 1311-1315.

Claimant argues, in the alternative, that PSERS should credit the amount of restitution that she paid to the School District toward the debt she owes to PSERS for overpaid monthly annuities.³ See PSERS-12 at Section E. The debt she owes PSERS, however, is distinct from the restitution that the Court ordered Claimant to pay to the School District. See generally *Scarantino v. Public Sch. Employees' Ret. Bd.*, 68 A.3d 375, 385 (Pa. Cmwlth. 2012), *appeal denied*, 79 A.3d 1100 (Pa. 2013) (distinguishing

³ In Claimant's reply, she appears to try to impute the School District's knowledge of her criminal proceedings to PSERS. As the exhibits show, however, PSERS was not involved in the criminal proceedings. Nor does the Forfeiture Act contain any requirement that a School District notify PSERS of a pending case. Regardless, even if PSERS had known of the criminal proceedings, that knowledge would not be a basis for pension reinstatement.

the \$15,000 fine and term of imprisonment imposed in petitioner's federal criminal proceedings from the forfeiture of his pension); 18 Pa.C.S. § 1106(h) (defining "restitution" as the "return of the property of the victim or payments in cash or the equivalent thereof pursuant to an order of court"). The forfeiture of Claimant's pension was not a criminal fine imposed for her offenses; rather, it was a separate, civil consequence of Claimant's breach of her employment contract and her agreement to perform the term of her public service without violating the Forfeiture Act. *Abraham*, 62 A.3d at 349; *Scarantino*, 68 A.3d at 385.

The debt that Claimant owes PSERS represents the forfeited monthly retirement benefits that Claimant received from PSERS after her guilty plea on July 8, 2013 and through October 2017. The debt has no relation to the amounts Claimant stole from the School District during the 2006-2007 through 2011-2012 school years. By pleading guilty July 8, 2013, Claimant was no longer entitled to any benefits from PSERS as a matter of law. 43 P.S. § 1313(b). By accepting monthly annuity payments from PSERS for more than four years following forfeiture, Claimant owes PSERS a debt of \$58,636.74. Neither the Forfeiture Act nor the Retirement Code authorizes PSERS or this Board to demand that the School District pay the restitution Claimant owed the School District to PSERS to satisfy a separate debt that Claimant owes PSERS. Accordingly, PSERS properly credited only the \$30,405.91 in contributions, which Claimant elected to keep with PSERS at retirement, against Claimant's debt for the overpaid annuities. *See generally* 24 Pa.C.S. § 8534(b). The remaining debt owed to PSERS is \$28,230.83.

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's pension benefits with PSERS can be reinstated or, in the alternative, whether the restitution amount Claimant paid to the School District in her criminal proceedings should be credited to the amount she owes PSERS for the monthly retirement benefits she received after her guilty plea. Accordingly, PSERS'

Motion for Summary Judgment is GRANTED, and Claimants' Appeal and Request for Administrative Hearing is DENIED.

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

IN RE: ACCOUNT OF JACQUELINE RUCHINSKI
DOCKET NO. 2018-06
CLAIM OF JACQUELINE RUCHINSKI

ORDER

AND NOW, upon consideration of Claimant's Request for Administrative Hearing and the Public School Employees' Retirement System's ("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 PSERS reinstate her benefits that have been forfeited by operation of law under the Public Employee Pension Forfeiture Act, 43 P.S. §§ 1311-1315, and denies Claimant's alternative request to credit the amount that she paid in restitution to the Greater Nanticoke Area School District in connection with her criminal proceedings to the debt that she owes PSERS for overpaid monthly retirement benefits. The Board affirms PSERS' determination that Claimant's pension was forfeited as of July 8, 2013, and its determination that Claimant owes PSERS the remaining balance of overpaid retirement benefits in the amount of \$28,230.83.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: August 9, 2019

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