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

IN RE: ACCOUNT OF HEATHER GARRISON  
DOCKET NO. 2018-08  
CLAIM OF HEATHER GARRISON

**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 Heather Garrison's ("Claimant") 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 August 30, 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 and 33.36. By letter dated August 30, 2019, PSERS notified Claimant that she had thirty 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 September 30, 2019. See 1 Pa. Code §§ 31.11, 31.12 and 33.34. Claimant requested, and the Board granted, two extensions to the deadline for Claimant's response to PSERS' Motion. On December 30, 2019, Claimant timely 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 Claimant's Reply, she does not dispute the facts set forth in PSERS' proposed Memorandum of Facts nor the exhibits incorporated therein. Claimant also does not identify any additional facts remaining to be determined at an evidentiary hearing that would be material to the legal issue before the Board. Claimant's Reply consists of legal arguments as to why she believes relief is warranted.

The Board has carefully reviewed the entire record in this matter as well as Claimant's Reply and finds that there is not a genuine issue as to any material fact. Accordingly, the Board finds 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 issue of whether the service that Claimant rendered with East Stroudsburg University ("ESU") may be removed from her account with PSERS.

## FINDINGS OF FACT

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

1. In July 1995, Claimant became a PSERS member by virtue of her employment with the Colonial Intermediate Unit 20. (PSERS' Memorandum of Facts, ¶ 1).
2. Claimant terminated employment with the Colonial Intermediate Unit 20 in July 1997. (PSERS' Memorandum of Facts, ¶ 2).
3. In August 1997, Claimant was reenrolled in PSERS through her full-time, salaried employment with the Stroudsburg Area School District ("SASD"). (PSERS' Memorandum of Facts, ¶ 2).
4. During the 2000-2001 through 2004-2005 school years, Claimant was a full-time employee of SASD and an active member of PSERS; SASD reported Claimant to PSERS as having worked either 184 or 185 days in each of those years; and Claimant accumulated one full year of service credit with PSERS for each of those years. (PSERS-2; PSERS' Memorandum of Facts, ¶¶ 3, 4).
5. On December 6, 2016, PSERS received a *Purchase of Former Part-Time Uncredited Service* form ("Purchase of Service Form") from Claimant, identifying the service she rendered with East Stroudsburg University ("ESU") during the 2000-2001 through 2004-2005 school years. (PSERS-1; PSERS' Memorandum of Facts, ¶ 5).
6. On the Purchase of Service Form, Claimant certified that she had "not received credit for this service in any other retirement system." (PSERS-1).
7. The Purchase of Service Form stated as follows: "I request the cost to purchase my former part-time uncredited service. I understand that I am under no obligation to purchase non-qualifying part-time service. After notification of the cost, I will decide whether to complete this purchase." (PSERS-1).

8. ESU, a state-owned educational institution, is a PSERS participating employer, and enrollment in PSERS is mandatory for its employees who qualify for PSERS membership and who do not meet any of the exceptions set forth in Section 8301(a) of the Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8301(a). (PSERS' Memorandum of Facts, ¶ 6).

9. ESU did not report Claimant's service to PSERS at the time it was rendered, and Claimant did not make contributions to PSERS for her service with ESU at the time the service was rendered. (PSERS' Memorandum of Facts, ¶ 8).

10. On May 18, 2017, PSERS mailed Claimant a *Statement of Amount Due* for her part-time service with ESU. The statement informed Claimant that the total amount due for the service was \$8,012.37, and noted as follows: "By law, the total service credit for each school year can never exceed 1.00. For this reason, any service credit on this or any other Statement of Amount Due is added to your account until the service credit for the school year reaches a maximum of 1.00." (PSERS-2).

11. Attached to the May 18, 2017 statement from PSERS was a document reflecting a "breakdown of the service credit(s) and supporting information for only the school year(s) displayed on the accompanying Statement of Amount Due" that included the following information, in pertinent part:

| School Year  | Employer                    | Days   | Service Credit |
|--|-----------------------------|--------|----------------|
| 2000-2001  | STROUDSBURG AREA SD         | 184.00 | 1.00           |
| 2000-2001  | Former Uncredited Part Time | 75.60  | 0.42           |
| 2001-2002  | STROUDSBURG AREA SD         | 184.00 | 1.00           |
| 2001-2002  | Former Uncredited Part Time | 55.80  | 0.31           |
| 2002-2003  | STROUDSBURG AREA SD         | 184.00 | 1.00           |
| 2002-2003  | Former Uncredited Part Time | 82.80  | 0.46           |
| 2003-2004  | STROUDSBURG AREA SD         | 184.00 | 1.00           |
| 2003-2004  | Former Uncredited Part Time | 68.40  | 0.38           |
| 2004-2005  | STROUDSBURG AREA SD         | 185.00 | 1.00           |
| 2004-2005  | Former Uncredited Part Time | 52.20  | 0.29           |
| <b>Total Service Credits for school year(s):</b><br>By law, service credits are limited to a maximum of 1.00 for any individual school year. |                             |        | <b>5.00</b>    |

(PSERS-1).

12. By letter dated August 29, 2017, Claimant informed PSERS that she would like to cancel her purchase of her former uncredited service with ESU. (PSERS-3).
13. By letter dated October 3, 2017, PSERS informed Claimant that she could not rescind the purchase. (PSERS-4).
14. Claimant filed an appeal with PSERS' Executive Staff Review Committee ("ESRC") on October 30, 2017. (PSERS-5).
15. By letter dated March 12, 2018, the ESRC denied Claimant's appeal, determining that the service that Claimant rendered with ESU was qualifying service for which contributions to PSERS were mandatory. Accordingly, the ESRC concluded that Claimant could not rescind the purchase of credit for those years. The ESRC noted that as "a full-time employee of [SASD], [Claimant's] membership in PSERS has been mandatory, and [she] received the maximum of one full year of service credit for each school year from 2000-2001 through 2004-2005." (PSERS-6).
16. On April 10, 2018, Claimant filed an Appeal and Request for Administrative Hearing. (PSERS-7).
17. On April 30, 2018, PSERS filed an Answer. (PSERS-8; PSERS' Memorandum of Facts, ¶ 17).
18. On August 30, 2019, PSERS filed a Motion for Summary Judgment.
19. After two extensions were requested and granted, Claimant timely filed her response to PSERS' Motion on December 30, 2019.
20. The matter is ripe for Board adjudication.

## DISCUSSION

The Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101 et seq., mandates membership for all school employees, including employees of State-owned educational institutions, unless they fit within the following narrow exceptions:

- (1) Any . . . employee of the Department of Education, State-owned educational institutions, community colleges, area vocational-technical schools, technical institutes, or The Pennsylvania State University and who is a member of the State Employees' Retirement System or a member of another retirement program approved by the employer.
- (2) Any school employee who is employed on a per diem or hourly basis for less than 80 full-day sessions or 500 hours in any fiscal year.
- (3) Any officer or employee of a governmental entity who subsequent to December 22, 1965 and prior to July 1, 1975 administers, supervises, or teaches classes financed wholly or in part by the Federal Government so long as he continues in such service.
- (4) Any part-time school employee who has an individual retirement account pursuant to the Federal act of September 2, 1974 (Public Law 93-406, 88 Stat. 829), known as the Employee Retirement Income Security Act of 1974.

24 Pa.C.S. § 8301(a) (emphasis added). Members who qualify for mandatory membership in PSERS are required to make contributions to PSERS for service rendered. 24 Pa.C.S. § 8321(a).

Claimant, as an employee of a State-owned educational institution, did not fit within any of the exceptions to mandatory membership that would have excused her from making contributions in connection with her ESU employment during the relevant years. First, in her Purchase of Service Form, Claimant certified that she did not receive credit for her service at ESU in any other retirement system, thereby ruling out exception (1) to Section 8301(a). Second, Claimant was a full-time school employee of SASD at the same time she worked for ESU, which eliminates exceptions (2) and (4) to

Section 8301(a).<sup>1</sup> Third, Claimant worked at ESU outside the period noted for exception (3) to Section 8301(a). Thus, Claimant's membership in PSERS for the years at issue was mandatory, her service with ESU was qualifying, and she should have been reported to, and contributing to, PSERS during her employment with ESU. See *Account of Beth Ann Shaffer*, Docket No. 2012-46, at \*6 (Aug. 9, 2013) (Because Claimant was a full-time employee at the Shanksville-Stoneycreek School District at the time she rendered the unreported, part-time school service at two other school districts, she was a mandatory PSERS member and she should have been contributing to PSERS for all her service).

Claimant alleges that she should be permitted to cancel the credit and the associated debt for her service with ESU, because she filed the Purchase of Service Form with PSERS only to investigate whether adding the service to her PSERS account would be advantageous. She claims that the following language, as set forth in the form, indicates that a purchase is optional and supports cancellation of the credit: "I request the cost to purchase my former part-time uncredited service. I understand that I am under no obligation to purchase non-qualifying part-time service. After notification of the cost, I will decide whether to complete this purchase." (PSERS-1). The language on the form, however, states that there is no obligation to purchase "non-qualifying" part-time service. The form does not state that there is no obligation regarding "qualifying" service and, for the reasons explained above, the service Claimant rendered with ESU was "qualifying" service.

Moreover, even if the Purchase of Service Form was not clear, it is well established that the statutory provisions of the Retirement Code strictly apply even when the member may not have been provided adequate or correct information. *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778 (Pa. Cmwlth. 2001); *Finnegan v. Pub. Sch. Employees' Ret. Bd.*, 560 A.2d 848, 852 (Pa. Cmwlth. 1989), *aff'd*, 591 A.2d

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<sup>1</sup> The Retirement Code defines "school employee" as "[a]ny person engaged in work relating to a public school for any governmental entity and for which work he is receiving regular remuneration as an officer, administrator employee excluding, however, any independent contractor or a person compensated on a fee basis." 24 Pa.C.S. § 8102. "Public school" is defined to include "State-owned colleges and universities." *Id.*

1053 (Pa. 1991); *Marinucci v. State Employees' Ret. Sys.*, 863 A.2d 43, 47 (Pa. Cmwlth. 2004); *Cosgrove v. State Employees' Ret. Bd.*, 665 A.2d 870 (Pa. Cmwlth. 1995); *Bittenbender v. State Employees' Ret. Bd.*, 622 A.2d 403 (Pa. Cmwlth. 1992).<sup>2</sup>

The Retirement Code does not give a mandatory PSERS member a choice as to whether qualifying service is included in her account. The Board is thus not authorized to create an exception for Claimant. See *Account of Beth Ann Shaffer*, Docket No. 2012-46, at \*7. In fact, the Board is required to remedy errors in PSERS' records:

**Adjustment of errors.** -- Should any change or mistake in records result in any member . . . receiving from the system more or less than he would have been entitled to receive had the records been correct, then regardless of the intentional or unintentional nature of the error and upon the discovery of such error, *the board shall correct the error....*

24 Pa.C.S. § 8534(b).

The Board also may not grant Claimant service credit for her time with ESU. The Retirement Code provides that “[i]n no case shall a member receive more than one year of credited service for any 12 consecutive months[.]” 24 Pa.C.S. § 8302(a). Section 8306(a) of the Retirement Code similarly states “[a]n active member of the system shall accrue one eligibility point for each year of credited service as a member of the school or State retirement system.” 24 Pa.C.S. § 8306. The Retirement Code thus prohibits a member from receiving more than one year of service credit during a twelve month period, regardless of the number of days worked in the twelve month period or the number of school employers. See *Account of Beth Ann Shaffer*, Docket No. 2012-46, at \*8; *Account of Murray A. Neeper*, Docket No. 2011-14 (October 11, 2011). Claimant received one full year of service credit with PSERS for each school year from 2000-2001 through 2004-2005 for service rendered with SASD. Accordingly, the Board cannot grant Claimant additional service time for her concurrent, qualifying employment with ESU during those same years.

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



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 the service that Claimant rendered with the ESU during the school years 2000-2001 through 2004-2005 and the associated debt should be removed from her account. Accordingly, PSERS' Motion for Summary Judgment is GRANTED and Claimant's Request for Administrative Hearing is DENIED.

**COMMONWEALTH OF PENNSYLVANIA**

**PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

IN RE: ACCOUNT OF HEATHER GARRISON  
DOCKET NO. 2018-08  
CLAIM OF HEATHER GARRISON

**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 Request for Administrative Hearing is DISMISSED in compliance with 22 Pa.Code § 201.6(b), as no genuine issue of material fact exists and PSERS is entitled to judgment as a matter of law. Accordingly, this Board denies Claimant's request that the credit for the service she rendered with the East Stroudsburg University during the school years 2000-2001, 2001-2002, 2002-2003, 2003-2004, and 2004-2005 and the associated debt be removed from her retirement benefit.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: March 6, 2020

By:   
Christopher SantaMaria, Chairman