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

IN RE: ACCOUNT OF ANNE H. MILLER
DOCKET NO. 2020-01
CLAIM OF ANNE H. MILLER

OPINION AND ORDER OF THE BOARD

This matter is before the Public School Employees' Retirement Board ("Board") on an appeal filed by Anne H. Miller ("Claimant") from a decision of the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS") that denied Claimant's application to purchase credit with PSERS for non-qualifying, part-time ("NQPT") school service because it was untimely filed.

Claimant asserts that her application should be deemed as timely filed, because she *mailed* the application to the Pennsylvania school district where she rendered the NQPT service prior to the statutory deadline of June 30, 2014. PSERS maintains that a purchase of NQPT service application must be *received* by PSERS or the Pennsylvania school district where the service was rendered prior to the deadline, and there is no evidence that either entity received it before June 30, 2014.

The Board has carefully and independently reviewed the entire record of this proceeding, including the proposed Opinion and Recommendation of the Hearing Examiner ("HEO"), Claimant's response to the HEO ("Claimant's exceptions"), and PSERS' Brief on Exceptions ("PSERS' exceptions"), and hereby issues the following¹:

FINDINGS OF FACT

1. At all relevant times, Anne H. Miller ("Claimant") was a member of PSERS. Notes of Testimony (Notes of Testimony ("N.T.)) *passim*.

¹ The Board may adopt or reject, in whole or in part, the proposed opinion and recommendation of the Hearing Examiner or issue its own opinion and order. 22 Pa. Code § 201.11(c).

2. Claimant was an active contributing Class T-D member of PSERS on July 1, 2011. (N.T. 90).

3. On November 10, 2011, PSERS mailed a letter to Claimant explaining that due to recent pension legislation she had a limited window of opportunity to purchase NQPT Pennsylvania public school service. (N.T. 91-93; PSERS-1).

4. The November 10, 2011 letter stated, in pertinent part:

Because you were an active member on July 1, 2011, your window to purchase NQPT service expires on June 30, 2014. If you do not have any NQPT service to purchase or you have already purchased your previously acquired NQPT service, there is nothing more that you need to do.

If you wish to purchase NQPT service, you must be an active contributing member and you must submit your application prior to June 30, 2014. You will never have another opportunity to apply to purchase NQPT service beyond this date. If you have terminated your public school employment, retired or are no longer an active member, you are not eligible to apply for NQPT service unless you become an active contributing member.

(PSERS-1 (emphasis in original)).

5. The November 10, 2011 letter informed Claimant that PSERS will consider a *Purchase of Former Part-Time Uncredited Service* filed “when you complete your sections of the application..., file the applications(s) with the employer where the service was rendered, and the employer(s) date stamps your application.” (PSERS-1).

6. Claimant knew that the deadline to file an application to purchase credit for NQPT service with PSERS was June 30, 2014. (N.T. 24-25, 55-56, 63-64, 74-77, 91-93).

7. PSERS accepts a *Purchase of Former Part-Time Uncredited Service* form as filed on the date the Pennsylvania public school employer certifies it was received. (N.T. 101, 110).

8. Sometime in 2014, Claimant filled out, to some extent, the employee portion of a *Purchase of Former Part-Time Uncredited Service*. (N.T. 63).

9. Claimant thinks she mailed a partially completed *Purchase of Former Part-Time Uncredited Service* form to the Upper Dublin School District (“UDSD”) in 2014. (N.T. 17, 74).

10. Claimant did not send, by certified mail, a *Purchase of Former Part-Time Uncredited Service* form to UDSD in 2014. (N.T. 74).
11. UDSD did not complete a *Purchase of Former Part-Time Uncredited Service* form from Claimant in 2014. (N.T. 41, 63).
12. Claimant did not receive anything back from UDSD. (N.T. 75).
13. Claimant did not contact UDSD or PSERS in 2014, to determine whether either received a *Purchase of Former Part-Time Uncredited Service* form from her. (N.T. 75, 97-98).
14. In 2019, Claimant learned that the *Purchase of Former Part-Time Uncredited Service* form that she thinks she mailed in 2014 was not received by UDSD in 2014. (N.T. 41).
15. In 2019, Claimant sent four *Purchase of Former Part-Time Uncredited Service* forms to UDSD or PSERS. (N.T. 41, 100-111; PSERS-2(a) – (d)).
16. UDSD first received a *Purchase of Former Part-Time Uncredited Service* form from Claimant on March 18, 2019. (N.T. 101; PSERS-2(a)).
17. On April 17, 2019, PSERS received the *Purchase of Former Part-Time Uncredited Service* form that was received by UDSD on March 18, 2019. (N.T. 100; PSERS-2(a)).
18. PSERS did not process Claimant's *Purchase of Former Part-Time Uncredited Service* form that the UDSD received on March 18, 2019, because the form was not filed by the June 30, 2014 deadline and it was missing the necessary employment information. (N.T. 101-102; PSERS-2(a)).
19. PSERS later received two additional incomplete *Purchase of Former Part-Time Uncredited Service* forms for Claimant on June 5, 2019 and June 20, 2019 that were not processed because they were not filed by the June 30, 2014 deadline and they were incomplete. (N.T. 103-107; PSERS-2(b) – (c)).
20. The first time PSERS received a completed *Purchase of Former Part-Time Uncredited Service* form for Claimant was on June 24, 2019. (N.T. 108-110; PSERS-2(d)).

21. UDSD certified but did not date the *Purchase of Former Part-Time Uncredited Service* form for Claimant that PSERS received on June 24, 2019. (N.T. 109-110; PSERS-2(d)).
22. The June 24, 2019 *Purchase of Former Part-Time Uncredited Service* form was filled out by Claimant in June 2019. (N.T. 41-45; PSERS-2(d)).
23. PSERS did not process the June 24, 2019 *Purchase of Former Part-Time Uncredited Service* form, because it was received after the June 30, 2014 deadline. (N.T. 109; PSERS-2(d)).
24. By letter dated July 8, 2019, PSERS notified Claimant that her request to purchase NQPT service was denied because it was not received by the June 30, 2014 deadline. (N.T. 81-82; PSERS-3).
25. After receiving notice that her request to purchase NQPT service was denied, Claimant appealed the determination to PSERS' Executive Staff Review Committee ("ESRC"). (N.T. 84).
26. By letter dated January 7, 2020, the ESRC denied Claimant's request to deem her *Purchase of Former Part-Time Uncredited Service* form as timely filed. (N.T. 84, 111-113; PSERS-4).
27. Claimant filed an appeal from the ESRC's determination on January 15, 2020, through which she requested an administrative hearing. (Official Notice-agency records).
28. PSERS filed its Answer to Claimant's Appeal on February 3, 2020. (Official Notice-agency records).
29. Claimant was served with all pleadings, orders and notices filed of record in this matter, and she participated at the November 18, 2020 hearing, *pro se*, through which she was provided the opportunity to testify, examine witnesses, and offer evidence. (N.T. *passim*).

CONCLUSIONS OF LAW

1. The rights of PSERS members are derived solely from the provisions of the Public School Employees' Retirement Code ("Retirement Code"), 24 Pa. C.S. § 8101, et. seq. See *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001).

2. The Board's authority to grant or deny Claimant's request is limited to the provisions of the Retirement Code, and the Board has no authority to grant Claimant rights beyond those specifically set forth in the law. See *Forman*, 778 A.2d at 780; *Burris v. State Employees' Ret. Bd.*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees' Ret. Bd.*, 622 A.2d 403, 405 (Pa. Cmwlth. 1992).
3. Claimant's window to purchase NQPT service expired on June 30, 2014. See 24 Pa.C.S. § 8303(d); (Findings of Fact ("F.O.F.") 2-4).
4. The General Rules of Administrative Practice and Procedure, 1 Pa. Code § 31.1, et seq., apply to the activities of and proceedings before PSERS and the Board, except as otherwise provided in the Board's rules and regulations. 22 Pa. Code § 201.1.
5. The General Rules of Administrative Practice and Procedure dictate that the timeliness of any document filed with a Commonwealth agency, such as PSERS, is governed by the actual receipt of the document, rather than the date of mailing. 1 Pa. Code § 31.11; see *Harasty v. Pub. Sch. Employees' Ret. Bd.*, 945 A.2d 783, 787-88 (Pa. Cmwlth. 2008).
6. Claimant failed to satisfy her burden of showing that either PSERS or her Pennsylvania school employer received her application to purchase credit with PSERS for NQPT service on or before the June 30, 2014 deadline. (F.O.F. 2-21).
7. Claimant has been afforded reasonable notice of the grounds upon which PSERS denied her requests to purchase out-of-state service credit, and she has been provided an adequate opportunity to be heard in this proceeding. (F.O.F. 23-29).

DISCUSSION

It is well settled that Claimant bears the burden of establishing that she is entitled to the service credit she seeks under the Retirement Code. See *Gierschick v. State Employees' Ret. Bd.*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999); *Wingert v. State Employees' Ret. Bd.*, 589 A.2d 269, 271 (Pa. Cmwlth. 1991); see also 22 Pa. Code §§ 201.8(a), 201.10, 201.12(d). The degree of proof required by Claimant to establish her case is a preponderance of the evidence. See *Suber v. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678, 683 (Pa. Cmwlth. 2005); *Samuel J. Lansberry, Inc. v. Pa. Pub. Utility Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). 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” through evidence which is substantial and legally credible. *A.B. v. Slippery Rock Area Sch. Dist.*, 906 A.2d 674, 677 n.5 (Pa. Cmwlth. 2006) (quoting *Sigafoos v. Pa. Bd. of Probation and Parole*, 503 A.2d 1076, 1079 (Pa. Cmwlth. 1986)); see *Samuel J. Lansberry, Inc.*, 578 A.2d at 601-602.

It also is well established that PSERS is a creature of the Legislature and its members only have those rights created by the Retirement Code and none beyond. See *Forman*, 778 A.2d at 780; *Burris*, 745 A.2d at 706; *Bittenbender*, 622 A.2d at 405. Additionally, PSERS is required to construe its enabling statute according to its plain meaning and in such a manner as to give effect to all of its provisions. 1 Pa.C.S. § 1921(a), (b).

Regarding the purchase of credit with PSERS for NQPT service, the Retirement Code states, in pertinent part:

Class T-C and Class T-D members who are active members on the effective date of this 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.

24 Pa.C.S. § 8303(d) (emphasis added). The effective date of Section 8303(d) was July 1, 2011. See Pa. Pub. Act No. 120, § 29 (Nov. 23, 2010). Thus, Claimant, who is a Class T-D member of PSERS and who was active on July 1, 2011, had until June 30, 2014, to file her request to purchase NQPT service. See 24 Pa.C.S. § 8303(d); (F.O.F. 2).

The General Rules of Administrative Practice and Procedure, which apply to the activities and proceedings of PSERS and the Board, dictate that the timeliness of any document filed with PSERS or the Board is governed by the actual receipt of the document, rather than the date of mailing:

§ 31.11. Timely filing required.

Pleadings, submittals or other documents required or permitted to be filed under this part, the regulations of the agency or any other provision of law shall be received for filing at the office of the agency within the time limits, if any, for the filing. The date of receipt at the office of the agency and not the date of deposit in the mails is determinative.

1 Pa. Code § 31.11; see *Harasty*, 945 A.2d at 787-788 (“It was [claimant]’s burden to prove not just mailing but receipt.”); see also *Account of Laurie L. Kristiniak*, Docket No. 2014-02 (PSERB Dec. 9, 2015); *Estate of Wilson v. State Employees’ Ret. Bd.*, 219 A.3d 1141 (Pa. 2019). Based on the Board’s rules and regulations and the General Rules of Administrative Practice and Procedure, therefore, Claimant must establish that PSERS or, in the case of an application to purchase credit for NQPT service with PSERS, the Pennsylvania school district where she rendered service factually *received* her application on or before June 30, 2014. See 1 Pa. Code § 31.11; 22 Pa. Code § 201.1; (F.O.F. 5-7).

The record establishes that Claimant knew the deadline to file her application to purchase credit for NQPT service with PSERS was June 30, 2014, and that PSERS had informed her that the application would be considered filed when she completed her sections of the application, “file[d] the application(s) with the employer where the service was rendered, and the employer(s) date stamps your application.” ((F.O.F. 2-6); PSERS-1 (emphasis added)). The record further establishes that PSERS first received a completed *Purchase of Former Part-Time Uncredited Service* form for Claimant on June 24, 2019, and that UDSD first received Claimant’s form on March 18, 2019. (Findings of Fact 15, 19). No evidence was presented that either entity *received* Claimant’s application on or before the deadline of June 30, 2014. Without more, Claimant’s case falls short of carrying her burden to prove timely *receipt*. The date she mailed the application, regardless of when that occurred, is irrelevant. No liberal administration of PSERS permits the Board to circumvent the express language of the Retirement Code and grant Claimant the relief she requests. See *Dowler v. Public Sch. Employees’ Ret. Bd.*, 620 A.2d 639, 644 (Pa. Cmwlth. 1993); *Marinucci v. State Employees’ Ret. Sys.*, 863 A.2d 43, 47 (Pa. Cmwlth. 2004).

CONCLUSION

Based on all the above, the facts of record support the conclusion that PSERS properly denied Claimant’s application to purchase credit with PSERS for NQPT school service because it was untimely filed. It was duty-bound to do so. In addition, the Retirement Code does not authorize the Board to deem an untimely application as timely filed.

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AND NOW, upon consideration of the entire record in this matter, IT IS HEREBY ORDERED THAT Claimant's request to deem her request to purchase credit for non-qualifying part-time ("NQPT") service as timely filed is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: 8/6/21

By: 
Christopher SantaMaria, Chairman