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

IN RE: ACCOUNT OF J.H.
DOCKET NO. 2018-16
CLAIM OF J.H.

OPINION AND ORDER OF THE BOARD

The Public School Employees' Retirement Board ("Board") has carefully and independently reviewed the entire record of this proceeding, including 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 proposed Opinion and Recommendation and, accordingly, we hereby adopt it as our own.

IT IS HEREBY ORDERED that Claimant's request to reinstate his disability supplement is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: 6/11/21

By: 
Christopher SantaMaria, Chairman

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE:

ACCOUNT OF J [REDACTED] H [REDACTED]
CLAIM OF J [REDACTED] H [REDACTED]

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DOCKET NO. 2018-16

PROPOSED OPINION AND RECOMMENDATION

Thomas A. Blackburn
Hearing Officer

Date of Hearing: September 10, 2020
Hearing Officer: Thomas A. Blackburn
Claimant: J [REDACTED] H [REDACTED], *Pro se*
For PSERS: Cayla B. Jakubowitz, Esquire

HISTORY

This matter is before the Public School Employees' Retirement Board ("Board") on an appeal, filed by J [REDACTED] H [REDACTED] ("Claimant") on August 6, 2018. Claimant appealed from a decision of the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS"), that denied Claimant's appeal of the denial of his Application to Re-apply for Renewal of Disability Benefits. On August 27, 2018, PSERS filed its Answer to Claimant's appeal.

By letter dated January 4, 2019, Board Secretary Glen R. Grell appointed hearing examiner Ruth D. Dunnewold to act as hearing officer for Claimant's administrative appeal hearing. By letter dated January 4, 2019, the Board's Appeal Docket Clerk notified Claimant that the administrative hearing had been scheduled for April 11, 2019 at the offices of PSERS in Harrisburg. On March 27, 2019, PSERS requested a six-month continuance and represented that Claimant agrees with the request. By order dated April 1, 2019, the hearing officer granted the requested continuance.

By letter dated August 13, 2020, the Board's Appeal Docket Clerk notified Claimant that the administrative hearing had been rescheduled for September 10, 2020 beginning at 12:00 p.m. at the offices of PSERS in Harrisburg before the undersigned hearing officer.¹ The hearing was held as scheduled. Claimant attended the hearing without legal counsel and knowingly and voluntarily waived his right to counsel and represented himself. Assistant counsel Cayla B. Jakubowitz represented PSERS. Claimant testified on his own behalf but did not present any other evidence. PSERS presented its case through documentary evidence and the testimony of a retirement administrator, an expert witness in geriatric psychiatry and an expert witness in physical

¹ By letter dated June 5, 2020, the Board Secretary appointed the undersigned to act as hearing officer.

medicine. At the close of the hearing, the parties elected to file post-hearing briefs. The hearing transcript was filed on September 28, 2020, and the hearing officer issued an Order Establishing Briefing Schedule on October 1, 2020. After receiving an extension, Claimant filed his post-hearing brief on November 23, 2020, and PSERS filed its brief on December 22, 2020. The record closed January 8, 2020, when the due date for Claimant to file a reply brief passed without him filing anything further. Accordingly, the matter is now before the Board for final disposition.

FINDINGS OF FACT

1. On March 14, 2005, Claimant applied for disability retirement from his employment with [REDACTED] School District. (PSERS-1)
2. To support Claimant's disability, his primary care physician diagnosed Claimant with "Adjustment Disorder w[ith] mixed emotional features (per psychologist)," depression/anxiety, sleep apnea, hyperlipidemia, and obesity. (PSERS-2 at 2)
3. In evaluating Claimant's ability to perform the duties required by his public school employment, his physician opined "some impairment may be expected due to depression, anxiety, impaired concentration. Further elaboration from psychologist." (PSERS-2 at 2)
4. Claimant's physician expressed no opinion as to whether Claimant's diagnosed sleep apnea, hyperlipidemia or obesity affected Claimant's ability to perform the duties required by his public school employment. (*See*, PSERS-2)
5. Claimant never asserted that he suffered from any conditions other than included in this medical documentation of exhibit PSERS-2. (N.T. 138)
6. By letter dated March 24, 2005, PSERS notified Claimant that it had approved for six month his application for a disability benefit but he will have to re-apply for any subsequent period. (N.T. 138-39, 141, PSERS-4)
7. Claimant reapplied and PSERS approved subsequent one-year periods of disability from 2006 through 2016. (N.T. 142)
8. On January 27, 2017, Claimant submitted to PSERS an Application to Reapply for Renewal of Disability Benefits. (N.T. 143, PSERS-5)
9. Claimant's treating physician certified that Claimant is unable to perform his job as outlined in the job description. (PSERS-5 at 2)

10. To support continuing disability, Claimant's treating physician diagnosed Claimant with Attention Deficit Disorder, hyperlipidemia, obesity and type II diabetes. (N.T. 145, PSERS-5 at 2)

11. In the opinion of Claimant's treating physician, Claimant "has difficulty with his concentration [and] obesity which prevents his fulfillments of duties with public school employment." (PSERS-5 at 2)

12. In reviewing an application for renewal of disability retirement, PSERS considers only those condition of the initial disability, because the renewal is a continuation of the initial disability. (N.T. 146-47)

13. By letter dated February 14, 2017, PSERS notified Claimant that its medical examiner had reviewed the medical documentation that was submitted with Claimant's application but in order to properly evaluate the application it needed additional information from a psychiatrist including a Psychiatric Disability Determination form and review of the provided job description and detailed evaluation of Claimant's ability to perform the duties required in that position. (N.T. 147-48, PSERS-6)

14. By letter dated June 22, 2017, PSERS notified Claimant that it had not received any information requested in its letter of February 14, 2017, requested the information again, and notified Claimant that if it did not receive that information by September 30, 2017, his application would be finally denied and the disability supplement portion of his benefit would be terminated and his pension would be converted into early or normal retirement as appropriate. (N.T. 154, PSERS-7)

15. By letter dated August 15, 2017, PSERS notified Claimant that it had not received any information requested in its letters of February 14 and June 22, 2017, requested the

information again, and notified Claimant that if it did not receive that information by September 30, 2017, his application would be finally denied and the disability supplement portion of his benefit would be terminated and his pension would be converted into early or normal retirement as appropriate. (N.T. 155-56, PSERS-8)

16. On September 29, 2017, PSERS received from [REDACTED], DNP, CRNP a *Psychiatric Disability Determination* on behalf of Claimant. (N.T. 157, PSERS-9)

17. In response to the question of whether Claimant suffers from a psychiatric disorder, for his assessment of Claimant Dr. [REDACTED] wrote:

1. Depression, unspecified: amotivated at times, minimal isolative behavior, [] sadness at times. He does not meet criteria for major depressive disorder.
2. Anxiety, unspecified: worries often, noted rumination, however; does not meet criteria for generalized anxiety disorder.
3. Attention deficient disorder: no noted hyperactivity. He does show deficits with attention to detail, memory, and maintaining concentration for long periods of time.

(PSERS-9 at 3)

18. Dr. [REDACTED] assessed Claimant as “high functioning with minimal symptoms.”

(PSERS-9 at 4)

19. In response to the question of whether Claimant has a psychiatric disorder that causes an impairment which prevents Claimant from performing his work duties, Dr. [REDACTED] wrote, “His current psychiatric disorders do not prevent him from an adequate job performance, in my purview.” (PSERS-9 at 5)

20. Dr. [REDACTED] found Claimant to have no impairment with regards to ability to perform daily activities of living such as personal hygiene, cleaning, preparing meals or maintaining a residence; ability to attend meetings; ability to drive or use public transportation; ability to maintain eye contact and engage others in a socially appropriate manner; ability to interact with family members; ability to interact with friends and neighbors; ability to interact

with coworkers; ability to adjust to everyday social settings; ability to listen to and comply with suggestions as a way to improve behavior or performance; ability to arrive to work on time and conform to work schedule; ability to make simple work-related decisions; and ability to process information concerning work duties. (PSERS-9 at 6)

21. Dr. [REDACTED] found Claimant to have mild impairment – occasionally has some problems but is generally able to function in this area – with regards to ability to sustain attention long enough to complete tasks such as reading, watching TV or preparing a meal. (PSERS-9 at 6)

22. Dr. [REDACTED] opined, “There is no evident reason [Claimant] cannot work a job appropriate for his skillset or otherwise” and noted that Claimant’s “prognosis is very good with maintained treatment (medication compliance and psychotherapy).” (PSERS-9 at 5)

23. Claimant did not submit any additional medical documents to PSERS. (N.T. 164)

24. Douglas A. Ockrymiek, DO is licensed to practice as an osteopathic physician and is board-certified in adult and geriatric psychiatry by the American Board of Psychiatry & Neurology and as a family physician by the American Board of Family Medicine. (N.T. 182, PSERS-11 at 1)

25. Following *voir dire*, Dr. Ockrymiek was qualified to testify as an expert in adult and geriatric psychiatry. (N.T. 185)

26. Dr. Ockrymiek reviewed Claimant’s 2017 renewal application with the supporting documentation and determined that Claimant did not meet the criteria for a continued disability and recommended that the application be denied. (N.T. 188-89, 190-91)

27. In Dr. Ockrymiek’s opinion, the psychiatric records provided by Claimant do not show any impairment that would prevent him from working as a physical education teacher,

because the symptoms are too mild. (N.T. 201-02, 204-05)

28. In Dr. Ockrymiek's opinion, Claimant did not meet the requirements for continued disability from being able to perform his prior public school employment in 2017 when he filed the renewal application. (N.T. 206-07)

29. Nothing in Claimant's testimony at the hearing change Dr. Ockrymiek's opinion that Claimant does not meet the requirements for continued disability. (N.T. 207)

30. John E. Dougherty, III, DO is licensed to practice as an osteopathic physician and is board-certified in family practice by the American College of Osteopathic Family Physicians. (N.T. 233, PSERS-12 at 1)

31. Following *voir dire*, Dr. O'Donnell was qualified to testify as an expert in internal medicine. (N.T. 234-35)

32. In Dr. Dougherty's opinion, none of Claimant's medical problems were disabling to show continued disability in 2017. (N.T. 237)

33. By itself hyperlipidemia is not a disabling condition, though if left untreated there could be long-term complications. (N.T. 239)

34. Untreated sleep apnea is a serious problem and may have consequences such as trouble concentrating but diagnosed and treated is not a disabling condition. (N.T. 241)

35. The medical records associated with Claimant's initial application for a disability retirement do not show that Claimant's obesity prevented him from working in 2005. (N.T. 239)

36. Dr. Dougherty found no physical disability of Claimant. (N.T. 248)

37. Claimant's testimony at the hearing did not change any of Dr. Dougherty's opinions. (N.T. 248-49)

38. By letter dated October 31, 2017, PSERS notified Claimant that its medical

examiners had reviewed his *Psychiatric Disability Determination* including the medical documentation and denied his request for a disability benefit because it found that Claimant is no longer medically eligible for a disability, as the *Psychiatric Disability Determination* recites that Claimant's "current psychiatric disorders do not prevent [him] from adequate job performance" and his diagnosis of adjustment disorder with mixed emotional features, anxiety and depression have mild to no symptoms and do not disable Claimant from performing his duties as a physical education teacher. (N.T. 160-62, PSERS-10)

39. Claimant appealed PSERS' October 31, 2017, determination to the ESRC and, after review, the ESRC denied the appeal. (N.T. 163-64)

40. On August 6, 2018, Claimant filed an Appeal and Request for Administrative Hearing. (N.T. 164, Official notice of filings of record²)

41. On August 27, 2018, PSERS filed its Answer to Claimant's Appeal and Request for Administrative Hearing. (PSERS Records)

42. A hearing on the appeal was held on September 10, 2020, before the undersigned

²Under the General Rules of Administrative Practice and Procedure ("General Rules"), 1 Pa. Code § 31.1 *et seq.*, at 1 Pa. Code § 35.125(d)(1),

[t]he applications (including attached exhibits), complaints, orders to show cause and answers thereto and similar formal documents upon which hearings are fixed shall, without further action, be considered as parts of the record as pleadings.

However, under subsection (d)(2) of the same rule, "[i]n no event, except in the case of a noncontested proceeding, may the pleadings be considered as evidence of fact other than that of the filing thereof unless offered and received in evidence in under this part." 1 Pa. Code § 35.125(d)(2). Based on this rule, Claimant's Appeal and Request for Administrative Hearing filed May 14, 2018 is a part of the record as a pleading, but it is not evidence of any facts except its own filing unless it has been offered and received in evidence, which Claimant's Appeal and Request for Administrative Hearing was not. *See* NT at 91 – 93.

Also, under the General Rules at 1 Pa. Code § 31.1 *et seq.*, at 1 Pa. Code § 35.173, a licensing board may take official notice of its own records. *See also Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A.2d 991 (Pa. Cmwlth. 1987) (the doctrine of official notice allows an agency to take official notice of, among other things, reports and records in the agency's files). Therefore, these two rules allow official notice to be taken of the documents filed as pleadings in this matter. Official notice of any further such filings will be denoted by a citation to "PSERS Records."

hearing officer. (N.T. *passim*; Dkt. No. 2018-16)

43. Claimant was present for his hearing, represented himself, and had the opportunity to be heard, present evidence on his own behalf, cross-examine witnesses, make a closing statement for the record, and file a post-hearing brief in support of his appeal. (N.T. *passim*; Dkt. No. 2018-16)

CONCLUSIONS OF LAW

1. PSERS is a creature of statute and derives its authority from the provisions of 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)

2. Members of PSERS have only those rights recognized by statute and none beyond. *Bittenbender v. State Employees' Ret. Bd.*,³ 622 A.2d 403 (Pa. Cmwlth. 1992)

3. Claimant bears the burden of establishing the facts necessary to sustain his claim.

See, Gierschick v. State Employees' Ret. Bd., 733 A.2d 29, 32 (Pa. Cmwlth. 1999); *see also,*

Wingert v. State Employees' Ret. Bd., 589 A.2d 269, 271 (Pa. Cmwlth. 1991)

4. Claimant was afforded notice and an opportunity to be heard in connection with his appeal. (Findings of Fact 8, 38-43)

5. Claimant is not psychiatrically or physically disabled from performing his prior public school employment as physical education teacher, and at the time he filed his 2017 Renewal Application, Claimant was able to return to that prior public school employment.

(Findings of Fact 1-43)

6. Claimant has failed to demonstrate by a preponderance of the evidence that he is disabled from public school employment based upon continuation of his prior disability and that his 2017 Renewal Application for a disability retirement should be granted. (Findings of Fact

1-43)

7. Claimant is not disabled from public school employment. (Findings of Fact 1-43)

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

DISCUSSION

This matter arises under section 8307 of the Public School Employees' Retirement Code, 24 Pa.C.S. §§ 8101-8547 ("Retirement Code"), which provides as follows with regard to eligibility for a disability annuity:

§ 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 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 Retirement Code further provides that "the member shall have the burden of establishing continued disability." 24 Pa.C.S. § 8508(d).

Claimant bears the burden of proof in this proceeding. *Gierschick v. State Employees' Retirement Board*, 733 A.2d 29 (Pa. Cmwlth. 1999), *petition for allowance of appeal denied*, 751 A.2d 194 (Pa. 2000); *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991). Claimant must prove his case by a preponderance of the evidence, *Lansberry v. Pennsylvania Public Utilities Commission*, 578 A.2d 600 (Pa. Cmwlth. 1990), *petition for allowance of appeal denied*, 602 A.2d 863 (Pa. 1992), which has been described as evidence of sufficient weight to "tip the scales on the side of the plaintiff." *Se-Ling Hosiery v. Margulies*, 70 A.2d 854, 856 (Pa. 1960).

In this matter, Claimant applied for a disability retirement benefit in 2005. In evaluating Claimant's ability to perform the duties required by his public school employment, his physician opined "some impairment may be expected due to depression, anxiety, impaired concentration. Further elaboration from psychologist." Although his primary care physician diagnosed

Claimant with “Adjustment Disorder w[ith] mixed emotional features (per psychologist),” depression/anxiety, sleep apnea, hyperlipidemia, and obesity, only the psychiatric conditions were provided as bases for disability from performing his public school employment. Claimant’s physician expressed no opinion as to whether Claimant’s diagnosed sleep apnea, hyperlipidemia or obesity affected Claimant’s ability to perform the duties required by his public school employment. Claimant never asserted that he suffered from any conditions other than included in this medical documentation. PSERS approved Claimant’s disability retirement but noted the approval was temporary and that Claimant would have to re-apply periodically. Claimant did so from 2006 through 2016 and was approved each time.

In 2017 Claimant again applied to renew his disability retirement. As part of its review, PSERS required additional documentation of Claimant’s psychiatric condition. Eventually, Claimant had a *Psychiatric Disability Determination* submitted on his behalf by nurse-practitioner [REDACTED], DNP, CRNP. Dr. [REDACTED] diagnosed Claimant with anxiety, unspecified and depression, unspecified, as well as attention deficit disorder with no noted hyperactivity. Dr. [REDACTED] assessed Claimant as “high functioning with minimal symptoms.” In response to the question of whether Claimant has a psychiatric disorder that causes an impairment which prevents Claimant from performing his work duties, Dr. [REDACTED] wrote, “His current psychiatric disorders do not prevent him from an adequate job performance, in my purview.” Dr. [REDACTED] found Claimant to have no impairment with regards to ability to perform daily activities of living such as personal hygiene, cleaning, preparing meals or maintaining a residence; ability to attend meetings; ability to drive or use public transportation; ability to maintain eye contact and engage others in a socially appropriate manner; ability to interact with family members; ability to interact with friends and neighbors; ability to interact with coworkers;

ability to adjust to everyday social settings; ability to listen to and comply with suggestions as a way to improve behavior or performance; ability to arrive to work on time and conform to work schedule; ability to make simple work-related decisions; and ability to process information concerning work duties. Dr. [REDACTED] found Claimant to have mild impairment – occasionally has some problems but is generally able to function in this area – with regards to ability to sustain attention long enough to complete tasks such as reading, watching TV or preparing a meal. Dr. [REDACTED] opined, “There is no evident reason [Claimant] cannot work a job appropriate for his skillset or otherwise” and noted that Claimant’s “prognosis is very good with maintained treatment (medication compliance and psychotherapy).” Claimant did not submit any additional medical documents to PSERS.

At the hearing, Claimant’s sole evidence was his own testimony. PSERS, on the other hand, offered into evidence the testimony of Doctors Dougherty and Ockrymiek, two of PSERS’ medical examiners, who reviewed Claimant’s file and all of the medical records he submitted in order to determine if his medical conditions, as documented in his 2017 Renewal Application, warranted a finding of a disability. Both medical examiners were qualified as experts, and both testified about the content of the medical evidence that Claimant presented. Dr. Ockrymiek testified as to Claimant’s mental status, while Dr. Dougherty testified as to Claimant’s physical status. Both concluded, after reviewing all of the available medical evidence, that said evidence was insufficient to support a finding that Claimant is disabled, either mentally or physically, from performing his prior public school employment as a physical education teacher.

In Dr. Ockrymiek’s opinion, the psychiatric records provided by Claimant do not show any impairment that would prevent him from working as a physical education teacher, because the symptoms are too mild. In Dr. Ockrymiek’s opinion, Claimant did not meet the requirements for

continued disability from being able to perform his prior public school employment in 2017 when he filed the renewal application. In Dr. Dougherty's opinion, none of Claimant's medical problems were disabling to show continued disability in 2017. Dr. Dougherty found no physical disability of Claimant. The hearing officer finds these expert witnesses to be credible and persuasive.

This testimony by PSERS' medical examiners revolved around the medical documentation Claimant had presented to PSERS before ever getting to the hearing; they found it deficient. At the hearing, which was a *de novo*, or brand new, proceeding, Claimant had the opportunity to present appropriate medical evidence, perhaps new medical evidence, to support his disability claim. But he presented no medical evidence whatsoever. Rather, he simply gave his own account of his symptoms and treatment. While PSERS placed into the record the *Psychiatric Disability Determination* that Dr. ██████ submitted on Claimant's behalf, PSERS' medical examiners both testified extensively about the shortcomings of the information on that form and the other medical records they reviewed as part of Claimant's 2017 Renewal Application. Notwithstanding the certification of Claimant's treating physician on the 2017 Renewal Application that Claimant is unable to perform his job as outlined in the job description, Dr. ██████—upon whom Claimant relied to support disability based upon psychiatric conditions—essentially opined in the *Psychiatric Disability Determination* that Claimant was not disabled by any psychiatric condition.

Claimant argues that he is disabled and goes through the many physical and mental challenges that he experiences. While Claimant certainly may testify as to his symptoms and treatment, this argument is based upon no more than Claimant's subjective personal opinions of his health. To the extent this testimony conflicts with the medical records presented, the hearing officer rejects Claimant's testimony. Although the hearing was his opportunity to do so,

Claimant presented no expert medical evidence⁴ to contradict the expert witnesses presented by PSERS and the assessment and evaluation submitted by the psychiatric provider in supplement of Claimant's application. Appropriate medical evidence is required in order to establish disability. *See*, 22 Pa. Code § 213.44(a) (active or inactive member applying for disability annuity shall submit appropriate medical evidence). *See also*, *Santini v. Civil Service Commission of the City of Phila.*, 432 A.2d 301, 303 (Pa. Cmwlth. 1981) (claimant's lay testimony about non-obvious cause of back injury without corroborating medical evidence could not overcome contrary medical evidence introduced at hearing). Without appropriate medical evidence establishing that Claimant is disabled for one or more of the reasons accepted in approving his initial disability application, the hearing officer does not reject the competent and credible expert medical evidence presented by PSERS establishing that Claimant is not so disabled.

Based on all of the above, the facts of record support the conclusion that Claimant originally qualified for a disability benefit only upon the psychiatric conditions and not upon any of the physical conditions noted. The facts of record further support the conclusion that Claimant is no longer disabled from those psychiatric conditions.

Claimant notes that the denial of his disability retirement has significantly reduced the amount of his pension benefit. As PSERS had notified him, Claimant's retirement has been converted to early retirement, as he had not reached superannuation age at the time of his termination from employment. Despite this apparent hardship, PSERS cannot grant a disability annuity to a member who is not disabled. *See*, 24 Pa.C.S. § 8308(c) (member shall be entitled to disability annuity if he becomes mentally or physically incapable of continuing to perform the

⁴ Throughout his brief, Claimant asserts that his medical providers believe Claimant is disabled. The hearing officer rejects this hearsay testimony presented for the first time in a post-hearing brief.

duties for which he is employed and qualifies for an annuity in accordance with the Retirement Code). No liberal administration of the retirement system permits the Board to circumvent the express language of the Retirement Code and grant Claimant relief not authorized by the Retirement Code. *Dowler v. Public Sch. Employes' Ret. Bd.*, 620 A.2d 639, 644 (Pa. Cmwlth. 1993); *Marinucci v. State Employees' Ret. Sys.*, 863 A.2d 43, 47 (Pa. Cmwlth. 2004). This financial hardship to Claimant is not grounds to approve his application for disability retirement where Claimant is not disabled.

Finally, Claimant argues that he believed he would be entitled to the disability retirement for the rest of his life and that if he had known in 2005 that his disability benefit could later be denied, he would have taken action other than applying for a disability retirement. Assuming such an argument could be legally valid, the hearing officer rejects its factual premise. At his retirement counselling session, Claimant was alerted that there would be an annual review and his disability must be certified with updated medical reports for an undefined time period. (Exhibit PSERS-11). And upon being approved for a disability benefit, Claimant was notified that the approval was for a limited period of time and that he would have to reapply. (Exhibit PSERS-4). Yet, Claimant applied for and accepted the disability retirement. The hearing officer rejects as not credible Claimant's assertion that he would not have sought disability retirement if he had known he could later be determined to no longer be disabled.

Based upon all of the foregoing, the following recommendation will be made to the Board:

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

IN RE:

ACCOUNT OF J [REDACTED] H [REDACTED]
CLAIM OF J [REDACTED] H [REDACTED]

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DOCKET NO. 2018-16

RECOMMENDATION

AND NOW, this 10th day of February, 2021, upon consideration of the foregoing findings of fact, conclusions of law and discussion, the Hearing Officer for the Public School Employees' Retirement Board ("PSERB") recommends that the Board DENY Claimant's appeal of the Denial of his 2017 Application to Re-apply for Renewal of Disability Benefits and resultant conversion of his retirement benefits to early retirement.

A party may file exceptions to this proposed opinion and recommendation in accordance with 1 Pa. Code §§ 35.211 and 35.212 (relating to procedure to except to proposed report; and content and form of briefs on exceptions). 22 Pa. Code § 201.11(d). Exceptions shall be filed with the below-noted Appeal Docket Administrator and must be received by March 12, 2021, 30 days after the mailing date of this proposed opinion and memorandum. See, 1 Pa. Code § 35.211 (participant desiring to appeal to the agency head shall, within 30 days after the service of a copy of a proposed report or such other time as may be fixed by the agency head, file exceptions to the proposed report or part thereof in brief on exceptions; brief opposing exceptions may be filed in response to briefs on exceptions within 20 days after the time limited for the filing of briefs on exceptions or such other time as may be fixed by the agency head). If exceptions are filed, the PSERB will rule upon the exceptions; PSERB may adopt or reject, in whole or in part, or supplement the proposed opinion and recommendation or issue its own opinion and order, whether or not exceptions to the proposed opinion and recommendation are filed by any party. .

22 Pa. Code § 201.11(c).

A legal assistant for the Office of Hearing Examiners will distribute this proposed opinion and recommendation to the Appeal Docket Administrator and the parties.



Thomas A. Blackburn
Hearing Officer

Claimant:

Mr. J [REDACTED] H [REDACTED]
[REDACTED]

For PSERS:

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Date of mailing:

2/10/21