

**Mail Date:**

**JAN 27 2021**

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

IN RE: ACCOUNT OF LAURI A. WATKINS  
DOCKET NO. 2019-04  
CLAIM OF LAURI A. WATKINS

**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 Corrected Memorandum Proposed Opinion and Recommendation of the Hearing Examiner. We note that neither party filed Exceptions. The Board finds appropriate the Corrected Memorandum Proposed Opinion and Recommendation with the following modifications:

1. On the last line of page 1, "up motion" is corrected to "upon motion."
2. On the second line of page 2, "letter dated August 19, 2020" is amended to read, "letters dated August 19, 2020 and August 26, 2020."
3. On the sixth and seventh lines of page 3, the citation to *First National Bank of Pike County* is corrected to "*First National Bank of Pike County v. Dept. of Banking*, 300 A.2d 823, 824 (Pa. Cmwlt. 1973)."
4. On the twelfth line of page 3, "more the appeal forward" is corrected to "move the appeal forward."
5. The third and fourth sentences of the first full paragraph on page 4 are amended to read, "Claimant was previously notified that she could request a continuance; she never did so. Claimant was further notified that if she failed to appear for the hearing without good cause, the hearing officer, upon motion, would recommend dismissing her appeal."

With the above modifications, we hereby adopt the Hearing Examiner's Corrected Memorandum Proposed Opinion and Recommendation as our own and, accordingly:

IT IS HEREBY ORDERED that Claimant Lauri A. Watkins's request to change her effective date of retirement is DENIED.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: 1/14/21

By:   
Christopher SantaMaria, Chairman

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

**IN RE:** :  
: **Docket No. 2019-04**  
**Account of LAURI A. WATKINS** :  
**Claim of LAURI A. WATKINS** :

**CORRECTED MEMORANDUM PROPOSED OPINION**

This matter is before the Public School Employees' Retirement Board ("Board") on an appeal filed by Lauri A. Watkins ("Claimant") on April 24, 2019. Claimant appealed from a decision of the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS") dated March 28, 2019, that denied Claimant's request to change the effective date of her retirement. On May 13, 2019, PSERS filed its Answer to Claimant's appeal. By letter dated July 1, 2020, the Board's Secretary Glen R. Grell appointed the undersigned hearing officer to act as hearing officer for Claimant's administrative hearing.

By letter dated July 1, 2020, the Board's Appeal Docket Clerk notified Claimant that the administrative hearing on her appeal was scheduled for September 16, 2020, beginning at 10:00 a.m. at PSERS' facility in Harrisburg, Pennsylvania. This letter notified Claimant that, "Any request for a continuance of the hearing must be made in writing and filed with the Docket Clerk, with a copy to the Hearing Examiner and counsel for the Retirement System" and that, "In the event of an emergency request for continuance (24 to 48 hours before the scheduled hearing), you may contact me [by telephone] to make your request." The letter also notified Claimant that, "If your request to reschedule is not granted by the Hearing Examiner and you do not appear at the hearing, the Hearing Examiner, upon motion, will recommend to the Board that your appeal be dismissed with prejudice." This letter further notified Claimant that, "If you do not appear at the hearing on the date and the time scheduled without good cause, the Hearing Examiner, up motion,

will recommend to the Board that your appeal be dismissed with prejudice.” Additionally, by letter dated August 19, 2020, the Docket Clerk reminded Claimant of the hearing scheduled for September 16, 2020.

Claimant did not request a continuance. (N.T. 5). The hearing was held as scheduled at PSERS in Harrisburg on September 16, 2020, before the undersigned hearing officer. Claimant did not attend the hearing nor did anyone else attend on her behalf. (N.T. 3). Dwight A. Decker, Jr., Esquire, Assistant Counsel, represented PSERS. The hearing was delayed and began at 10:24 a.m. waiting to see if Claimant would arrive. (N.T. 3). PSERS presented the testimony of its Appeal Docket Clerk to establish any communications with Claimant. On September 10, 2020, the Docket Clerk reached Claimant by telephone and, in response to the indication she might want to postpone, told Claimant that she would have to contact PSERS counsel and also file a request with the Docket Clerk to request a continuance. (N.T. 6). Claimant never followed up, and on September 14 the Docket Clerk again telephoned Claimant and left a voice mail informing her that the hearing remained scheduled for September 16 and requesting she contact the Docket Clerk if she wanted to request a continuance. (N.T. 6). Claimant did not subsequently contact the Docket Clerk. (N.T. 6). Based upon Claimant’s failure to appear for the hearing, PSERS moved to dismiss the appeal. The hearing concluded at 10:31 a.m. without Claimant arriving or contacting the PSERS office. Claimant has not subsequently filed a request to reopen the record or made any other filing. In the absence of briefs, the record was closed on September 24, 2020, with the filing of the hearing transcript.

Claimant appealed from the denial of her request to change the effective date of her retirement from the date that her application for retirement was received by PSERS to the date of her termination from employment. It is well established that Claimant bears the burden of

establishing the facts necessary to sustain her claim. *Gierschick v. State Employees' Retirement Board*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999); *Wingert v. State Employees' Ret. Bd.*, 589 A.2d 269, 271 (Pa. Cmwlth. 1991).

It is well established that the requirements of due process of law apply to administrative proceedings. *First National Bank of Pike County v. Department of Banking and Bank of Matamoras, Intervening*, 300 A.2d 832, 824 (Pa. Cmwlth. 1973). Due process requires that a person be provided notice and an opportunity to be heard prior to an adjudication affecting that person's rights. *Goetz v. Department of Environmental Resources*, 613 A.2d 65, 67 (Pa. Cmwlth. 1992), *appeal denied*, 533 Pa. 663, 625 A.2d 1196 (1993); *Celane v. Commonwealth, Insurance Commissioner*, 415 A.2d 130, 132 (Pa. Cmwlth. 1980). The courts have recognized the inherent power of agencies to control their own dockets through the dismissal of appeals where parties have failed to comply with a rule or order and where parties have failed to move the appeal forward. *Barr Street Corp. v. Dept. of Public Welfare*, 881 A.2d 1278, 1284-85 (Pa. Cmwlth. 2005). Dismissal of an administrative appeal upon the appellant's failure to prosecute the appeal or failure to appear at a hearing without good cause and to comply with multiple orders issued by the tribunal does not violate due process. *Goetz* 613 A.2d at 67; *Burch v. Dept. of Pub. Welfare*, 815 A.2d 1143, 1145-46 (Pa. Cmwlth. 1993); *Fountain Capital Fund, Inc. v. Pennsylvania Securities Commission*, 948 A.2d 208, 214 (Pa. Cmwlth. 2008).

After the hearing was called to order and as provided in 1 Pa. Code §§ 35.177, 35.178, 35.180 (relating to scope and contents of motions; presentation of motions; action on motions)<sup>1</sup>

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<sup>1</sup> Consistent with the provisions of 1 Pa. Code § 35.187(7) (presiding officer has authority to dispose of procedural matters but not before proposed report to dispose of motion made during hearing to dismiss proceedings), the hearing officer deferred ruling upon the motion until this memorandum opinion and recommendation. The hearing officer took the motion under advisement to give Claimant the opportunity to communicate with the agency concerning anything that may have caused her failure to appear. (N.T. 8).

PSERS moved to dismiss Claimant's appeal upon her failure to appear at the scheduled hearing.

Its regulations provide:

**§ 201.8. Dismissal for nonappearance.**

(a) **Whenever a claimant fails to appear**, either in person or through counsel, for a scheduled hearing **without good cause, the hearing examiner will issue a recommendation to dismiss the case**, without considering the merits of the claim.

(b) This section supplements 1 Pa. Code §§ 35.125, 35.187 and 35.205 (relating to order of procedure; authority delegated to presiding officers; and contents of proposed reports).

22 Pa. Code § 201.8 (emphasis supplied).

As described above, neither Claimant nor an attorney representing her appeared at the hearing on September 16, 2020. Claimant was well aware of the hearing scheduled for that date, as the Docket Clerk had mailed two notices to Claimant and had spoken on the telephone with her about the scheduled hearing. Claimant was previously notified that if she could request a continuance; she never did so. Claimant was further notified that if she failure to appear for the hearing without good cause the hearing officer, upon motion, would recommend dismissing her appeal. Without requesting a continuance, Claimant did not appear for the hearing. Claimant has not subsequently explained her failure to appear, nor has she requested that the record be reopened.

Accordingly, it is appropriate for the hearing examiner to recommend that Claimant's appeal be dismissed with prejudice without consideration of the merits. *See, Draper v. Public School Employees' Retirement System*, 2012 WL 8681657 (Pa. Cmwlth., docket no. 872 C.D. 2012, issued Oct. 26, 2012) (unreported memorandum opinion) (PSERB properly dismissed appeal where claimant failed to appear at hearing and thus failed to carry burden of proof as matter of law and failed to establish good cause for failure to appear).

Based upon the foregoing, the following recommendation will be made to the Board.

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

**IN RE:** :  
: **Docket No. 2019-04**  
**Account of LAURI A. WATKINS** :  
**Claim of LAURI A. WATKINS** :

**CORRECTED<sup>2</sup> RECOMMENDATION**

**AND NOW**, this 12<sup>th</sup> day of **November, 2020**, upon consideration of the foregoing findings of fact, conclusions of law and discussion, the Hearing Officer for the Public School Employees' Retirement Board recommends that the Board: **DISMISS** Claimant's administrative appeal.

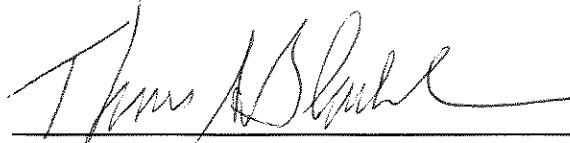
A party may file exceptions to this proposed opinion and recommendation in accordance with 1 Pa. Code §§ 35.211 and 35.212 (relating to procedure to except to proposed report; and content and form of briefs on exceptions). 22 Pa. Code § 201.11(d). Exceptions shall be filed with the below-noted Appeal Docket Clerk and must be received by December 14, 2020, 30 days after the mailing date of this proposed opinion and recommendation. *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 Public School Employees' Retirement Board ("PSERB") will rule upon the exceptions; PSERB may adopt or reject, in whole or in part, or supplement the proposed opinion and recommendation

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<sup>2</sup> The memorandum opinion and recommendation was originally issued on October 19, 2020 but mailed to Claimant an incorrect address. No changes have been made other than correcting Claimant's mailing address, revising the dates of issuance and mailing and deadline to file exceptions, and identifying this as a corrected proposed memorandum 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 memorandum opinion and recommendation to the Appeal Docket Clerk and the parties.



**Thomas A. Blackburn**  
**Hearing Officer**

*Claimant:*

Ms. Lauri A. Watkins



*For PSERS:*

Dwight A. Decker, Jr., Assistant Counsel  
Public School Employees' Retirement System  
Office of Chief Counsel  
5 N 5TH Street  
Harrisburg, PA 17101

*Docket Clerk:*  
*(with original)*

Ms. Julie Vitale  
Office of Chief Counsel  
5 N. 5<sup>th</sup> Street  
Harrisburg, PA 17101-1905

*Date of mailing:*

11/12/2020