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

IN RE: ACCOUNT OF SHERYL LYN HENRY
DOCKET NO. 2019-07
CLAIM OF SHERYL LYN HENRY

OPINION AND ORDER OF THE BOARD

The 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 purchase non-qualifying part-time service is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: 12/16/22

By: 
Christopher Santa Maria, Chairman

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

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EXECUTIVE OFFICE

In Re,
Account of
Sheryl Lyn Henry

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File No.: 2019-07

OPINION AND RECOMMENDATION

Date of Hearing:	March 23, 2022
Hearing Officer:	Michael T. Foerster, Esquire
Claimant, Self-Represented:	Sheryl Lyn Henry
For PSERS:	Dwight A. Decker, Jr., Esquire

HISTORY

This matter is before the Public School Employees' Retirement Board on an appeal filed by Sheryl Lyn Henry ("Claimant" or "Ms. Henry") from a decision, relayed via May 22, 2019 letter, by the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS" or "the System") to deny Ms. Henry's request to purchase non-qualifying part-time service (colloquially referred to as "NQPT").

Because of 2011 legislation, Ms. Henry had until June 30, 2014, to submit an application for the purchase of such time credit. Claimant filed the relevant form in 2018. PSERS denied Claimant's request as untimely. Claimant timely appealed from PSERS' determination. Thereafter, the ESRC upheld PSERS' decision as stated in its May letter, mentioned above.

Claimant appealed from the ESRC's determination. Hearing on Claimant's appeal occurred on March 23, 2022.

Claimant appeared for the hearing, self-represented, and testified on her own behalf. Claimant entered three exhibits for evidence. Dwight A. Decker, Jr., Esquire, represented PSERS at the hearing. PSERS presented its case through the testimony of PSERS Retirement Technician Supervisor Gail Neiman and PSERS entered fifteen exhibits.

The evidentiary record in this matter closed with the filing of Notes of Testimony ("N.T.") on April 14, 2022. Claimant and PSERS filed Post-Hearing Briefs. This matter is now before the Board for final disposition.

FINDINGS OF FACT

1. Sheryl Lyn Henry has worked intermittently as a substitute teacher for the last 22 years. N.T. 15.
2. Claimant is a vested T-D member of PSERS who continues to work and accrue service as a *per diem* substitute teacher. N.T. 19, 44, 78.
3. During the 2001-2002 school year, Claimant worked 68 days for the Reading School District (“RSD”) as a *per diem* substitute teacher. N.T. 32; PSERS-10.
4. Claimant first qualified for membership in PSERS during the 2002-2003 school year when she worked for the Berks Career & Technology Center. N.T. 57; PSERS-6.
5. During the 2003-2004 school year, Claimant worked 89 days for RSD as a *per diem* substitute teacher. N.T. 32; PSERS-10.
6. Claimant was first reported to PSERS by RSD in the 2005-2006 school year. N.T. 50-52, PSERS-1.
7. On July 1, 2011, Claimant was working for the Brandywine Heights Area School District and was reported to PSERS as an active, contributing Class T-D member of PSERS. N.T. 47.
8. On November 10, 2011, PSERS mailed a letter to Claimant explaining that due to then recent pension legislation she had a limited window of opportunity to purchase NQPT service. N.T. 60-61; PSERS-8.
9. 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-8 (emphasis appeared in the letter and is not added here).

10. The November 10, 2011 letter informed members that PSERS will consider a *Purchase of Former Part-Time Uncredited Service* filed “when you complete your sections of the application..., filed the applications(s) with the employer where the service was rendered, and the employer(s) date stamps your application.” PSERS-8.

11. Despite the language in the preceding paragraph, PSERS accepts a *Purchase of Former Part-Time Uncredited Service* form as filed on the date it was received. N.T. 48.

12. Prior to 2011, employers were not required to report NQPT service to PSERS. N.T. 61-62.

13. Whether an employer reported NQPT service at the time it was rendered does not affect whether a member could purchase the NQPT service. N.T. 62.

14. The *Purchase of Former Part-Time Uncredited Service* form is the form by which a member requests to purchase and an employer reports NQPT service. N.T. 66-67, 76; PSERS-10.

15. Between July 1, 2011, and June 30, 2014, Claimant did not contact PSERS to inquire about purchasing NQPT service. N.T. 62.

16. On April 15, 2018, Claimant filled out and signed a *Purchase of Former Part-Time Uncredited Service* form regarding her service with RSD for the 2001-2002 and 2003-2004 school years. N.T. 30; PSERS-10.

17. On April 18, 2018, Claimant submitted a *Purchase of Former Part-Time Uncredited Service* form regarding her service with RSD for the 2001-2002 and 2003-2004 school years to RSD. N.T. 30; PSERS-10.

18. RSD completed the *Purchase of Former Part-Time Uncredited Service* form regarding Claimant's service with RSD for the 2001-2002 and 2003-2004 school years on May 3, 2018, and returned the form to Claimant. N.T. 30, 67; PSERS-10.
19. PSERS received Claimant's *Purchase of Former Part-Time Uncredited Service* form regarding her RSD service, for the 2001-2002 and 2003-2004 school years, on May 14, 2018. N.T. 66; PSERS-10.
20. After receiving Claimant's form, PSERS processed it wherein Claimant received credit for the 2003-2004 school year because that time was *qualifying* and, therefore, mandatory. N.T. 67-70; PSERS-10, 12.
21. Claimant's service for the 2001-2002 school year could not be purchased because it was NQPT service and the request to purchase it was received in 2018—after the June 30, 2014 deadline. N.T. 66-68; PSERS-10.
22. By letter dated November 5, 2018, PSERS notified Claimant that her request to purchase NQPT service for 2001 - 2002 was denied because it was not received by the June 30, 2014 deadline. N.T. 71-72; PSERS-14.
23. After receiving notice that her request to purchase NQPT service was denied, Claimant appealed the determination to PSERS' ESRC. N.T. 72.
24. By letter dated May 22, 2019, the ESRC denied Claimant's request because her *Purchase of Former Part-Time Uncredited Service* form was not filed by the June 30, 2014 deadline. N.T. 73; PSERS-15.
25. Claimant filed her appeal. Docket.

26. Claimant was served with all pleadings, orders and notices filed of record in this matter, and she participated at the hearing through which she was provided the opportunity to testify, examine witnesses, and offer evidence. Docket; 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.*; *Forman v. Public School Employees' Retirement Board*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001).
2. The authority of the Board 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 Retirement Code. *Forman, supra*; *Burris v. State Employees' Retirement Board*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees' Retirement Board*, 622 A.2d 403, 405 (Pa. Cmwlth. 1992).
3. Claimant's window to purchase NQPT service expired on June 30, 2014. Findings of Fact, Nos. 2 and 7.
4. Claimant failed to satisfy her burden of showing that she completed her sections of the application..., filed the applications with her employer where the service was rendered, and the employer date stamped her application. Finding of Fact, Nos. 1-19.
5. 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. Finding of Fact, Nos. 20-26.

DISCUSSION

This is an administrative appeal from the denial of Claimant's request to purchase NQPT. For the following reasons, the hearing officer recommends that the Board deny the appeal.

Burden of Proof

As the party appealing from the determination of the PSERS' Executive Review Committee, Claimant bore the burden of establishing that she is entitled to the service credit she seeks under Pennsylvania's Public School Employees' Retirement Code, 24 Pa. C.S.A. §8101 *et seq.* ("Retirement Code"); *Gierschick v. State Employees' Retirement Board*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999); *Wingert v. State Employees' Retirement Board*, 589 A.2d 269, 271 (Pa. Cmwlth. 1991). The degree of proof required by Claimant to establish her case is a preponderance of the evidence. *Suber v. Pennsylvania Commission on Crime and Delinquency, Deputy Sheriff's Education and Training Board*, 885 A.2d 678, 681-83 (Pa. Cmwlth. 2005); *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *app. den.*, 602 A.2d 863 (Pa. 1992). 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 School District*, 906 A. 2d 674 (Pa. Cmwlth. 2006); *Lansberry*, 578 A.2d at 601-602; *Sigafoos v. Pennsylvania Board of Probation and Parole*, 503 A. 2d 1076, 1079 (Pa. Cmwlth. 1986).

Statutory/Regulatory Framework

It is well established that a retiree's right to benefits under the Retirement Code is strictly limited to those specifically set forth by the Code. *See Forman v. Public School Employes'*

Retirement Board, 778 A.2d 778, 780 (Pa. Cmwlth. 2001); *Burris v. State Employees' Retirement Board*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees' Retirement Board*, 622 A.2d 403, 405 (Pa. Cmwlth. 1992). Moreover, 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). PSERS was created by the legislature and can grant no rights beyond those specifically set forth in the Retirement Code. *Hughes v. Public Sch. Employees' Ret. Bd.*, 662 A.2d 701, 705 (Pa. Cmwlth. 1995).

Regarding the purchase of 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). The effective date of this subsection was July 1, 2011. *See* the act containing, *inter alia*, §8303 making the legislation effective, Pa. Pub. Act No. 120, at § 29 (Nov. 23, 2010).

Thus, Claimant, who is a Class T-D member of PSERS and who was active on July 1, 2011 (Finding of Fact No. 7), had until June 30, 2014, to file her request to purchase prior NQPT service. Conclusion of Law No. 3. Ms. Henry filed her request to purchase the relevant NQPT service on April 15, 2018. That is after the statutory deadline. The Board simply does not have the prerogative to look past such clearly written legislation.

For the foregoing reasons, the following Recommendation appends:

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

In Re,
Account of
Sheryl Lyn Henry

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File No.: 2019-07

RECOMMENDATION

AND NOW, this 22nd day of September, 2022, upon consideration of the foregoing Findings of Fact, Conclusions of Law, and Discussion the Hearing Officer for the Public School Employees' Retirement System recommends that Claimant's appeal from the May 22, 2019 decision of the PSERS' Executive Staff Review Committee be **DENIED**.

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 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 Board will rule upon the exceptions; the Board 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.

M Foerster

Michael T. Foerster
Hearing Officer

Claimant: Sheryl Lyn Henry
Redacted

For PSERS: Dwight A. Decker, Esquire
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Harrisburg, PA 17101

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Date of Mailing: 9/22/22