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

IN RE: ACCOUNT OF THOMAS E. KOCIS
DOCKET NO. 2020-04
CLAIM OF THOMAS E. KOCIS

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 Thomas E. Kocis's ("Claimant") appeal be dismissed because there is no issue of material fact, and PSERS is entitled to summary judgment as a matter of law.

PSERS filed its Motion for Summary Judgment on March 21, 2022, and served a copy by First Class Mail on Claimant as is required by the General Rules of Administrative Practice and Procedure. 1 Pa. Code §§ 33.32, 33.35-33.36. By letter that same day, March 21, 2022, PSERS notified Claimant that he 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 April 20, 2022. See 1 Pa. Code §§ 31.11, 31.12, and 33.34. On April 20, 2022, 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).

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 response, he does not dispute the fact that he withdrew both his contributions and his employer's contributions from the out-of-state retirement system. (Claimant's Reply Brief, p. 1). Thus, the Board solely must address the legal question of whether a member may purchase credit for out-of-state service with PSERS if they have previously withdrawn employer contributions for that service from the out-of-state system.

The Board has carefully reviewed the entire record in this matter as well as Claimant's reply brief and finds that there is no genuine issue as to any material fact. The Board further 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 Claimant is prohibited from purchasing credit for out-of-state service under the Retirement Code because he withdrew employer contributions for that service from the out-of-state system.

FINDINGS OF FACT

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

1. During the 2016-2017 school year, Claimant became a PSERS member by virtue of his employment with the Connellsville Area School District ("District"). (PSERS' Memorandum of Facts, ¶ 1).
2. Claimant is a PSERS Class T-F member based on his class election after enrolling in PSERS. (PSERS-1; PSERS' Memorandum of Facts, ¶ 2).
3. PSERS created and maintains a *Purchase of Out-of-State Service* form, PSRS-278 (5/2014), which members complete to request, and provide PSERS with necessary information to determine eligibility for, the purchase of out-of-state service. (PSERS-2; PSERS' Memorandum of Facts, ¶ 5).
4. On September 10, 2018, PSERS received a *Purchase of Out-of-State Service* form for Claimant, identifying service rendered with West Virginia University from June 6, 2011 through August 4, 2016. (PSERS-2; PSERS' Memorandum of Facts, ¶ 4; Claimant's Reply Brief, p. 1).
5. On the *Purchase of Out-of-State Service* form, Claimant certified:

I certify that I am ineligible now and in the future to receive an annuity from any other private or public pension fund based on my out-of-state service. If I was eligible to receive a retirement benefit from any other private or public pension fund based on my out-of-state service, I have withdrawn my contributions and interest and closed my out-of-state account. If I participated in a non-contributory system, I am ineligible to receive a retirement benefit.

(PSERS-2, p. 1; Claimant's Reply Brief, p. 1).
6. On Claimant's completed *Purchase of Out-of-State Service* form, the recordkeeper for the West Virginia retirement plan certified that Claimant was in a "Contributory" plan and he had withdrawn both his contributions and his employer's

contributions from the out-of-state retirement plan. (PSERS-2, p. 3; PSERS' Memorandum of Facts, ¶ 7; Claimant's Reply Brief, p. 1).

7. On September 18, 2018, PSERS mailed Claimant a letter indicating that his request to purchase out-of-state service was denied because he had withdrawn the employer retirement contributions. (PSERS-3; PSERS' Memorandum of Facts, ¶ 8).

8. Claimant filed an appeal with PSERS' Executive Staff Review Committee ("ESRC") on October 22, 2018. (PSERS-4; PSERS' Memorandum of Facts, ¶ 9).

9. Subsequently, on January 3, 2019, Claimant terminated service with the District. (PSERS' Memorandum of Facts, ¶ 10).

10. Claimant has 2.41 years of service credit with PSERS. (PSERS-5; PSERS' Memorandum of Facts, ¶ 11).

11. By letter dated January 7, 2020, the ESRC denied Claimant's appeal, determining that Claimant had received a government-funded retirement benefit for his service with West Virginia University, and therefore, he could not purchase the same service with PSERS. (PSERS-6; PSERS' Memorandum of Facts, ¶ 12).

12. On February 7, 2020, Claimant filed an Appeal and Request for Administrative Hearing. (PSERS-7; PSERS' Memorandum of Facts, ¶ 13).

13. On February 21, 2020, PSERS filed an Answer. (PSERS-8; PSERS' Memorandum of Facts, ¶ 14).

14. On March 21, 2022, PSERS filed a Motion for Summary Judgment.

15. Claimant timely filed his response to PSERS' Motion on April 20, 2022.

16. The matter is ripe for Board adjudication.

DISCUSSION

Service credit with PSERS under the Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101 et seq., is an important component of the retirement calculation. 24 Pa.C.S. § 8342. For vested members of PSERS, generally, more service credit will equate to a higher monthly annuity in retirement. *Id.* Furthermore, service credit is necessary to meet eligibility thresholds, such as vesting requirements. 24 Pa.C.S. §§ 8342, 8102 (def. "Vestee"). For example, Class T-F members of PSERS must have ten or more eligibility points to vest.¹ 24 Pa.C.S. § 8102 (def. "Vestee").

Members earn service credit with PSERS through working for Pennsylvania public schools. See 24 Pa.C.S. § 8302. Additionally, under limited circumstances, one of which is certain out-of-state service, members may purchase additional service credit with PSERS. See 24 Pa.C.S. §§ 8304, 8102 (def. "creditable nonschool service"). The purchase of credit for out-of-state service, however, is a limited benefit only available under specific circumstances, and the Retirement Code expressly prohibits a member from purchasing credit if he is eligible for another government-funded retirement benefit relating to that same service; specifically, the purchase is disallowed unless:

. . . he is not entitled to receive, eligible to receive now or in the future, or is receiving retirement benefits for such service under a retirement system administered and wholly or partially paid for by any other governmental agency[.]

24 Pa.C.S. § 8304(a). As the Commonwealth Court explained in *Morris v. Public School Employees' Retirement System*, the Legislature's intent, with respect to the limiting language used in Section 8304(a), was to "prevent individuals from receiving credit in two retirement systems for the same service." 538 A.2d 1385, 1389 (Pa. Cmwlth. 1988) (internal quotations omitted). The prohibition of a duplicate benefit in Section 8304(a) mirrors the law applicable to PSERS members working in Pennsylvania who receive only one government-funded retirement benefit for their service.

¹ "Eligibility points" are defined, in pertinent part, as points accrued by an active member for credited service. 24 Pa.C.S. § 8102 (def. "Eligibility points").

Claimant requests to purchase out-of-state service credit with PSERS for time he worked at West Virginia University from June 6, 2011 through August 4, 2016. PSERS denied the request, determining that because he withdrew *both employee and employer* contributions relating to that service, he did not meet the requirement of the Retirement Code that, to purchase service credit with PSERS, a member cannot be eligible for a government-funded retirement benefit for that same service. Claimant appeals, arguing that because he *already withdrew* the employer contributions, he is no longer eligible for another government-funded benefit, and he can now purchase the credit with PSERS. The sole question before the Board, therefore, is whether a member can purchase credit for out-of-state service with PSERS despite having already received *employer* contributions from the out-of-state retirement plan for that same service.²

Claimant relies on Section B, Member Certification, in PSERS' *Purchase of Out-of-State Service* form, PSRS-278 (5/2014). Claimant argues that Section B of the form did not indicate that he could not purchase the service if he withdrew employer contributions. (See PSERS-2, p. 1; Claimant's Reply Brief, p. 1). The certification, however, is limited to three bullets; the member affirms:

I request the cost to purchase service credit for out-of-state service.

I certify that I am ineligible now and in the future to receive an annuity from any other private or public pension fund based on my out-of-state service. If I was eligible to receive a retirement benefit from any other private or public pension fund based on my out-of-state service, I have withdrawn my contributions and interest and closed my out-of-state account. If I participated in a non-contributory system, I am ineligible to receive a retirement benefit.

² Of note, on January 3, 2019, Claimant terminated Pennsylvania public school employment with 2.41 years of service credit with PSERS. (PSERS-5; PSERS' Memorandum of Facts, ¶¶ 10-11). Because Claimant has less service credit with PSERS than the amount of out-of-state service he has requested to purchase, even if eligible, he would nonetheless be limited in the amount of the purchase "to the lesser of 12 years or the number of years of school service credited in the system." 24 Pa.C.S. § 8304. Thus, even if Claimant purchased the service, he would not be vested in his pension and would be ineligible for a monthly annuity at retirement. (PSERS-1; PSERS' Memorandum of Facts, ¶ 2); 24 Pa.C.S. §§ 8342, 8102 (def. "Vestee").

I certify that all statements made on this application are true and correct. Any falsifications of this certification may subject you to contempt of court or to criminal liability under 18 Pa. C.S.A. Section 4904 (Unsworn Falsifications to Authorities).

(PSERS-2, p. 1).

This Member Certification is one of eight sections on a three-page form. The Member Certification is not a stand-alone document, and it does not guarantee that the service can be purchased if the certification is signed. The Member Certification says nothing about eligibility. In fact, most of the legal requirements for purchasing out-of-state service are not included within the certification itself. For example, requirements for such a purchase include: 1) the member must be an active member of PSERS or a multiple service member active with the State Employees' Retirement System; 2) service must have been rendered in a public school or public educational institution; 3) service must have been rendered in a state of the United States of America other than Pennsylvania; 4) the member cannot be eligible for any government-funded retirement benefit for the service; 5) the service must be certified by the out-of-state employer; 6) payment must be agreed upon; 7) the member must have rendered at least one year of out-of-state service; and 8) credit "shall be limited to the lesser of 12 years or the number of years of school service credited in the system." 24 Pa.C.S. § 8304. Thus, the form as a *whole* elicits the information PSERS needs to review the request, and the certification affirms that the form as a *whole* is correct.

The Member Certification does not state that the member will be allowed to purchase service credit if the three certification bullets are met, and the remaining sections of the form would be superfluous if Section B contained the only necessary inquiry. Regardless, to the extent Claimant argues the form is ambiguous, or even incorrect, 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. See *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001); *Finnegan v. Pub. Sch. Employes' Ret. Bd.*, 560 A.2d 848, 852 (Pa. Cmwlth. 1989), *aff'd w/o op.*, 591 A.2d 1053 (Pa. 1991); *Marinucci v. State Employees' Ret. Sys.*, 863 A.2d 43, 47 (Pa. Cmwlth. 2004); *Cosgrove v. State Employes' Ret. Bd.*,

665 A.2d 870, 873-74 (Pa. Cmwlth. 1995); *Bittenbender v. State Employees' Ret. Bd.*, 622 A.2d 403, 405 (Pa. Cmwlth. 1992).³ Therefore, the relevant discussion is the statutory language of the Retirement Code, not the Member Certification on the *Purchase of Out-of-State Service* form.

The Board previously addressed a similar scenario, where a member who had prior service in a noncontributory system, withdrew employer contributions and then requested to purchase credit for the out-of-state service with PSERS. See *In re Account of Cathy J. Hing*, Docket No. 2007-21, at *4 (PSERB Sept. 30, 2008). The Board determined that creating different purchase rules for members based on the timing of payment of the retirement benefit would be nonsensical:

While Claimant could argue that she had already received her benefits, and thus is not *currently* eligible to receive them now or in the future, such an argument would be nonsensical. The purpose of the prohibition against buying prior service where the employee is already entitled to a retirement is obvious . . . to prevent a double benefit from the same service.

Id. (emphasis in original). A withdrawal of employer contributions is a retirement benefit. *Id.* *4-5. Thus, a lump-sum return of employer contributions forecloses the purchase of service with PSERS as a matter of law. *Id.* at *6, Conclusions of Law # 5.

The Board sees no rational reason to distinguish between members based on the *timing* of receipt of control over the government-funded retirement benefit. By withdrawing employer contributions, Claimant *is receiving* a government-funded retirement benefit, now and in the future, through the use of the funds. For purposes of the Retirement Code, it is irrelevant whether the benefit is paid in a monthly annuity, a lump sum, installment payments, a defined benefit, or a defined contribution with investment earnings. Whether employer contributions rest in the out-of-state system for that system's control until future distribution to the member, or whether they are paid

³ 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. Pub. Sch. Employees' Ret. Bd.*, 713 A.2d 132, 134 n.3 (Pa. Cmwlth. 1998).

presently to the member for the member's control for present and future use, the member is still receiving a government-funded benefit. If a member receives a government-funded benefit, they may not also purchase the service credit with PSERS. *See contra Barcus v. State Employees' Ret. Bd.*, 463 A.2d 490, 491 (Pa. Cmwith. 1983); *Cook v. Pub. Sch. Employees' Ret. Bd.*, 507 A.2d 911, 912 (Pa. Cmwith. 1986) (members may purchase service if they only withdraw employee contributions). Members thus cannot circumvent the prohibition on a duplicate benefit by withdrawing their out-of-state retirement benefit in a lump sum withdrawal and then purchasing credit toward a second retirement benefit with PSERS for that same service. *See Morris*, 538 A.2d at 1387.

Importantly, the purchase of out-of-state service is an optional benefit that no member is required to select. When new members with out-of-state service join PSERS, they maintain the rights they had prior to enrolling. If the terms of the out-of-state retirement are such that it is beneficial or mandatory to take that government-funded benefit instead of purchasing the service in Pennsylvania, the member is never required to relinquish an out-of-state benefit and purchase the service credit. To purchase credit, however, members must adhere to the legal requirements of the Retirement Code. Members may not receive two government-funded retirement benefits for the same service.

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 Claimant may purchase out-of-state service for his time worked at West Virginia University. Accordingly, PSERS' Motion for Summary Judgment is GRANTED and Claimant's Request to Purchase Out-Of-State Service is DENIED.

COMMONWEALTH OF PENNSYLVANIA

PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE: ACCOUNT OF THOMAS E. KOCIS
DOCKET NO. 2020-04
CLAIM OF THOMAS E. KOCIS

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 to purchase service credit with PSERS for time worked at West Virginia University.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: 6/17/22

By: 
Christopher SantaMaria, Chairman