

Mail Date:

Mail Date: OCT 25 2023

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

IN RE: ACCOUNT OF JEANINE ESCH
DOCKET NO. 2020-09
CLAIM OF JEANINE ESCH

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, Jeanine Esch's ("Claimant") Brief to the Hearing Examiner, the Public School Employees' Retirement System's ("PSERS") Brief to the Hearing Examiner, Claimant's Reply Brief, Claimant's Brief on Exceptions ("Exceptions"), and PSERS' Brief Opposing Exceptions.

Claimant excepts to the Hearing Examiner's proposed Opinion and Recommendation to the extent the Hearing Examiner determined that Claimant is ineligible to purchase credit with PSERS pursuant to Section 8304(a) of the Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8304(a), for the service she rendered in Arizona, because she withdrew her employer contributions that were attributed to that service from the out-of-state retirement system. Claimant further excepts, arguing that the Hearing Examiner failed to address her argument that Section 8304(a) is unconstitutional.

Claimant's Exceptions reargue issues previously raised in her post-hearing briefing, which the Hearing Examiner adequately addressed to the extent permissible, understanding that constitutional arguments cannot be addressed in this forum. A few additional points of clarification, however, are warranted.

Preliminarily, the Hearing Examiner correctly concludes that Section 8304(a) prohibits a member from receiving a benefit from both an out-of-state retirement system

and PSERS for the same service — a privilege that is not available to members with only Pennsylvania public school service. See 24 Pa.C.S. §§ 8304, 8102 (def. “creditable nonschool service”); *Account of Thomas E. Kocis*, Docket No. 2020-04, at *8 (PSERB June 27, 2022); *Morris v. Pub. Sch. Employees’ Ret. Sys.*, 538 A.2d 1385, 1388-89 (Pa. Cmwlth. 1988). Claimant’s focus on the formula for calculating a monthly annuity at retirement, divorced from the concept of the funding required to pay the annuity, reflects a general misunderstanding of retirement plans. Employers make contributions to a retirement system to fund future retirement benefits, whether the contributions are made to a defined benefit plan or a defined contribution plan. Therefore, as explained by this Board in *Account of Thomas E. Kocis*, an employee’s receipt of their employer’s contributions from the retirement system constitutes a retirement benefit. Docket No. 2020-04, at *8-*9; see 24 Pa.C.S. §§ 8102 (def. “compensation,” “credited service”), 8328, 8345(a)(4)(iii).

Additionally, contrary to Claimant’s assertions in her Exceptions, the Hearing Examiner’s proposed Opinion and Recommendation does not suggest that a member’s receipt of a paycheck, free lunch, vacation time, or health insurance from their employer would foreclose the member from purchasing credit with PSERS under Section 8304(a). Those items are not retirement benefits received from a retirement system. Nor does the language in Section 8324(a) of the Retirement Code, 24 Pa.C.S. § 8324(a), regarding potential sources of contributions, create an exception to Section 8304(a) or change the nature of an employer’s retirement contributions. Prior to any payment being due PSERS, a member must first show that they are, in fact, eligible to purchase credit under Section 8304(a).

This Board thus finds appropriate the Hearing Examiner’s History, Findings of Fact, Conclusions of Law, Discussion, and Recommendation attached hereto, and we hereby adopt them as our own with the preceding additional points of clarification.

IT IS HEREBY ORDERED, that Claimant's appeal from the determination that she is ineligible to purchase her Arizona out-of-state service is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: 10/20/2023

By: 
Christopher Santa Maria, Chairman

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

Account of Jeanine Esch : Docket No. 2020-09
Claim of Jeanine Esch :

OPINION AND RECOMMENDATION

Date of Hearing: June 8, 2022
Hearing Examiner: Jason C. Giurintano, Esquire
For the Claimant: Trent Echard, Esquire
For PSERS: Dwight Decker, Jr., Esquire

I. HISTORY

This matter is before the Public School Employees' Retirement Board (the "Board") on an appeal filed by Jeanine Esch ("Claimant"). On September 3, 2020, PSERS Executive Staff Review Committee ("ESRC") denied Claimant's request to purchase credit for out-of-state service.¹ Claimant filed an appeal of that decision and requested an administrative hearing on October 1, 2020. Counsel for PSERS filed an Answer to Claimant's appeal on October 21, 2020. On December 28, 2021, Board Secretary Terrill Sanchez appointed a hearing examiner for the administrative hearing in connection with Claimant's appeal.² The Board's Docket Clerk served a Notice of Hearing upon the parties and ultimately scheduled the hearing on Claimant's appeal for June 8, 2022.

The hearing on Claimant's appeal convened, as scheduled, at 5 N. 5th Street, Harrisburg, PA 17101 at 10:00 a.m. Dwight Decker, Jr., Esquire, represented PSERS at the hearing. Claimant appeared and was represented by Trent Echard, Esquire. Both parties moved exhibits into evidence.³

Following the close of testimony, both parties requested the opportunity to file post-hearing briefs. Following receipt of the Notes of Testimony ("N.T"), a briefing schedule was established by the Hearing Examiner. Both parties submitted timely briefs and this matter is now ripe for disposition.

¹ Claimant is seeking credit for time spent as teacher in Arizona.

² The Secretary initially appointed Hearing Examiner Ember Jandebour on December 28, 2021. Due to Hearing Examiner Jandebour's retirement, Hearing Examiner Jason Giurintano was appointed on April 15, 2022.

³ Counsel for both parties are to be commended for making redactions in the exhibits to protect Claimant's personal information.

II. FINDINGS OF FACT

Procedural Background

1. Claimant has been enrolled in PSERS since August 2001. (Official Notice- Agency records⁴; N.T. 79).
2. On August 24, 2015, PSERS received an initial Purchase of Out-of-State Service form ("First POSS") from Claimant seeking to purchase out-of-state service for the time she spent as a teacher in Arizona.⁵ (N.T. 47, 68-69, 92-94; PSERS-4).
3. By letter dated September 16, 2015, PSERS rejected the first POSS on the basis that it was missing wage and service information. (N.T. 47, 67, 94-95; PSERS-5; Official Notice- Agency records).

⁴ Official notice of such matters as might be judicially noticed by courts is permissible under the General Rules of Administrative Practice and Procedure, 1 Pa.Code § 35.173, which provides, in pertinent part, as follows:
§ 35.173. Official notice of facts.

Official notice may be taken by the agency head or the presiding officer of such matters as might be judicially noticed by the courts of this Commonwealth, or any matters as to which the agency by reason of its functions is an expert. . . .

1 Pa.Code §35.173.

In *Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A.2d 991 (Pa. Cmwlth. 1987), the Pennsylvania Commonwealth Court explained:

"Official notice" is the administrative counterpart of judicial notice and is the most significant exception to the exclusiveness of the record principle. The doctrine allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency's field and those facts contained in reports and records in the agency's files, in addition to those facts which are obvious and notorious to the average person. Thus, official notice is a broader doctrine than is judicial notice and recognizes the special competence of the administrative agency in its particular field and also recognizes that the agency is a storehouse of information on that field consisting of reports, case files, statistics and other data relevant to its work.

521 A. 2d at 994 n. 6.

⁵ Claimant is seeking credit for time spent teaching at the Arizona School for the Blind from 1987 through 2001. (PSERS-1, 2, 4; Official notice- Agency records). While teaching at that school, she was a member of the Arizona State Retirement System ("ASRS"). (PSERS 1, 4).

4. On April 9, 2018, PSERS received a second Purchase of Out-of-State Service form ("Second POSS") from Claimant that contained the information missing from the first POSS. (Official Notice- Agency records; N.T. 63, 82-86, 93; PSERS-1).
5. By letter dated September 11, 2018, PSERS rejected Claimant's Second POSS on the basis that Claimant rolled over the entirety of her Arizona State Retirement System ("ASRS") account into a 403(b) account with PNC in 2007; a portion of the funds she transferred to the PNC account included **employer contributions**. (PSERS-2; N.T. 82-87, 90-91).
6. PSERS took the position this transfer of *inter alia*, employer contributions from her ASRS account into the PNC 403(b) account constituted a "benefit" from ASRS that disqualified Claimant from purchasing service credit. (PSERS-2; N.T. 82-87, 90-91).
7. Claimant appealed the rejection of the Second POSS to the PSERS ESRC. (N.T. 91).
8. By letter dated September 3, 2020, the ESRC formally denied Claimant's request on the same basis, *i.e.*, she received a retirement benefit that was partially funded by her Arizona employer. (N.T. 91; PSERS-3).
9. Claimant filed a timely appeal of the ESRC denial. (Official Notice- Agency records).

Claimant's Claim

10. Claimant began working for the Arizona State School for the Deaf and Blind in 1986. (N.T. 14, 20).
11. From August 1986 to 2001, Claimant worked as a teacher for the Arizona State School for the Deaf and Blind, accumulating 12 years and 5 months of service with the Arizona State Retirement System. (PSERS-1; N.T. 14, 20, 22-24).
12. While working for the Arizona State School for the Deaf and Blind, Claimant paid into ASRS, for which contributions were deducted from her paycheck. (N.T. 15).

13. **The Arizona State School for the Deaf and Blind, i.e., Claimant's employer and a government entity, also made contributions ("employer contributions") to the Arizona State Retirement System on Claimant's behalf.** (N.T. 23-24).

14. In 2001, Claimant moved back to Pennsylvania and began working for the Allegheny Intermediate Unit as an itinerant teacher of the deaf at Pine-Richland School District in Allegheny County. (N.T. 20, 24-26).

15. Claimant was first enrolled in PSERS in August of 2001. (N.T. 79; Official Notice-Agency records).

16. From 2001 to the present, Claimant continued to work for either the Allegheny Intermediate Unit or the Pine-Richland School District and is currently an active, vested, class T-D member of PSERS. (Official Notice-Agency records; N.T. 25, 61, 79, 81).

17. In 2007, Claimant rolled over the entirety of her ASRS retirement account into a 403(b) account with PNC Bank; this sum included both employee **and employer** contributions. (N.T. 32-33, 60, 86; Claimant's Exhibit-9; PSERS-1).

18. The funds transferred from ASRS remain with PNC bank. (N.T. 36, 60-61).

Procedural Due Process

19. On September 3, 2020, the ESRC denied Claimant's request. (N.T. 91; PSERS-3).

20. Claimant timely filed an Appeal and Request for Administrative Hearing. (Official notice-Agency records).

21. A hearing was held on June 8, 2022, before Hearing Examiner, Jason C. Giurintano, Esq. (N.T., *passim*).

22. Claimant was represented by counsel, appeared, and had the opportunity to testify, examine witnesses, and offer evidence. (N.T., *passim*).

III. CONCLUSIONS OF LAW

1. The Board has jurisdiction to hear this appeal. (Findings of Fact No. 1).
2. Claimant was afforded an opportunity to be heard in connection with her appeal.

(Findings of Fact Nos. 19-22).

3. Claimant has the burden of proof in this proceeding. *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991); 22 Pa. Code §§ 201.12(d), 201.10, and 201.8(a).

4. PSERS is a creature of statute and derives its authority from the provisions of the Public School Employees' Retirement Code (the "Code"), 24 Pa.C.S. § 8101, *et seq.*

5. PSERS has no authority to grant rights beyond those specifically set forth in the Retirement Code. *Hughes v. Public School Employees' Retirement Board*, 662 A. 2d 701 (Pa. Cmwlth. 1995), *petition for allowance of appeal denied*, 542 Pa. 678, 668 A.2d 1139 (1995).

6. Claimant has only those rights recognized by the Retirement Code and none beyond. *Bittenbender v. State Employees' Ret. Bd.*, 622 A.2d 403, 405 (Pa. Cmwlth. 1992).

7. To purchase out-of-state service credit with PSERS, a member cannot be otherwise eligible to receive any employer-funded retirement benefits for that service. 24 Pa.C.S. §§ 8304.⁶

⁶ § 8304. Creditable nonschool service

(a) Eligibility.--An active member or a multiple service member who is an active member of the State Employees' Retirement System shall be eligible to receive Class T-C, Class T-E, Class T-F, Class T-G or Class T-H service credit for creditable nonschool service and Class T-D, Class T-E, Class T-F, Class T-G or Class T-H service for intervening military service, provided the member becomes a Class T-D member pursuant to section 8305.1 (relating to election to become a Class T-D member) or Class T-F member pursuant to section 8305.2 (relating to election to become a Class T-F member) or 8305 (relating to classes of service) or Class T-H service pursuant to section 8305.3 (relating to election to become a Class T-H member), as set forth in subsection (b) **provided that 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 or by any private employer, or a retirement program approved by the employer in accordance with section 8301(a)(1) (relating to mandatory and optional membership), and further provided that such service is certified by the previous employer and the manner of payment of the amount due is agreed upon by the member, the employer, and the board.**

8. When a member withdraws **employer contributions** from a sister state's retirement system, regardless of whether that withdrawal was voluntary or was required by that other state, the member receives a "benefit" presently and in the future through the use of the withdrawn funds. 24 Pa.C.S. § 8304(a).

9. Claimant's rollover of her Arizona employer contributions constitutes a "benefit" that disqualifies her from purchasing her Arizona service. (Findings of Fact Nos. 1-22).

10. Claimant has failed to proffer sufficient evidence in support of her appeal. (Findings of Fact Nos. 1-22).

IV. DISCUSSION

At the outset, it should be noted that Claimant's position is understandable. This is an individual who has dedicated her life to the profession of teaching. She in good faith believed the "rollover" of her ASRS account into a 403(b) account with PNC would not affect her ability to purchase credit for out-of-state service. However, for reasons more fully set forth below, the Hearing Examiner is bound by the statutory scheme of the Code and therefore concurs with PSERS' position. Further, it is beyond the Hearing Examiner and Board's authority to rule upon Claimant's federal/state constitutional claims.⁷

Factually, there is little in dispute in this case. Neither party disputes that Claimant started working for the Arizona State School for the Deaf and Blind in 1986, ultimately accumulating 12 years and 5 months of service with the ASRS. While working for the Arizona State School for the Deaf and Blind, Claimant paid into ASRS, for which contributions were deducted from her paycheck. Concurrently, the Arizona State School for the Deaf and Blind, *i.e.*, Claimant's employer and a government entity, also made employer contributions to the Arizona State Retirement System on Claimant's behalf.

In 2001, Claimant moved to Pennsylvania and began working for the Allegheny Intermediate Unit as a teacher of the deaf at Pine-Richland School District in Allegheny County. Claimant was first enrolled in PSERS in August of 2001, and to date remains an active, vested, class T-D member of PSERS. In 2007, Claimant rolled over her entire ASRS retirement account into a 403(b) plan with PNC bank; this sum included both her employee **and her employer's** contributions. Ultimately, it is not these underlying facts that are at issue; it is the import of these facts when applied to the Code.

⁷ These constitutional claims will be preserved for any potential appellate court review.

Burden

As the appellant, Claimant bears the burden of establishing the relief she seeks under Pennsylvania's Public School Employees' Retirement Code, 24 Pa.C.S.A. §8101 *et. Seq.* See, *L. Draper v. PSERS*, 2012 WL 8681657 at *1 (Pa. Cmwlth. October 26, 2012). See also *Gierschick v. State Employee's Retirement Board*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999); *Wingert v. State Employes' Retirement Board*, 589 A.2d 269, 271 (Pa. Cmwlth. 1991). Claimant must satisfy his burden by a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A. 2d 600 (Pa. Cmwlth. 1990), *appeal denied*, 529 Pa. 654, 602 A. 2d 863 (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." *Sigafoos v. Pennsylvania Bd. of Probation and Parole*, 503 A. 2d 1076 (Pa. Cmwlth. 1986). Claimant's burden of proof has also been described as a 'more likely than not standard', or evidence that is sufficient to tip the mythical scales in her favor. *Agostino v. Township of Collier*, 968 A. 2d 258 (Pa. Cmwlth. 2009).

The Credibility of Witnesses and Weight of the Evidence

In an administrative proceeding, the fact finder determines questions of the credibility of witnesses and the weight of the evidence. *See e.g., Nepa v. Department of Public Welfare*, 551 A.2d 354 (Pa. Cmwlth. 1988) (determination of the credibility of witnesses in health care providers' appeal is the province of the fact finder). In weighing any evidence, a factfinder "may rely on his or her experience [and] common sense" to arrive at a proper conclusion. *Commonwealth v. Segida*, 985 A.2d 871, 879 (Pa. 2009). *See also, Summers v. Certainteed Corp.*, 997 A.2d 1152, 1161 (Pa. 2010) ("The credibility of witnesses, professional or lay and the weight to be given their testimony is strictly within the proper province of the trier of fact.").

In that regard, the Hearing Examiner found the testimony of Claimant credible, however even assuming, *arguendo*, all her testimony was believed, it would not change the outcome here. The Hearing Examiner found the PSERS' witness credible as well.

Claimant is not Entitled to Purchase Credit for her Service in Arizona

PSERS administers the retirement system for Pennsylvania public school employees. 24 Pa.C.S. § 8101, *et seq.* PSERS is a creature of the legislature and its members have only those rights created by the Retirement Code and none beyond. *See Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001).

The Code permits, in limited circumstances, members to purchase credit for out-of-state service. 24 Pa.C.S. § 8304. Out-of-state service includes, *inter alia*, service rendered in public schools outside of Pennsylvania. 24 Pa.C.S. § 8304(b)(3). That purchase is limited to the lesser of 12 years or the number of years of school service credited in the system. 24 Pa.C.S. § 8304(c).

Pursuant to the Code, one of the prerequisites to purchasing out-of-state service credit is that the member seeking to purchase “[i]s 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 or by any private employer, or a retirement program...” 24 Pa.C.S. § 8304.

As a general matter, an **employer's** contributions to an individual employee's retirement account constitutes a benefit received by that employee. 24 Pa.C.S. § 8304(a). In plain English, the pot of money in that individual's retirement account has now increased because the employer has contributed to it. The employee now has something of value s/he otherwise would not, *i.e.*, additional funds in the retirement account, and those additional funds are provided by the employer.

Notwithstanding the attendant constitutional issues raised by Claimant, the present appeal hinges upon whether Claimant's withdrawal of money from her ASRS account –a pot of money that included both employee **and employer** contributions– and transferring it into a 403(b) plan with PNC constitutes her receiving a “benefit” that was funded by an out-of-state government entity, thereby precluding her from purchasing the 12 years of Arizona service credit.

PSERS here correctly takes the position that Claimant indeed received a government-funded retirement benefit relating to her out-of-state service. At the moment Claimant rolled the entirety of the ASRS retirement account into a private PNC account, a government employer benefit *i.e.*, the employer's contributions, immediately accrued to her benefit.⁸ Even if another state's retirement system or law *required*⁹ a member to withdraw employer contributions, that member is still receiving a “benefit” inasmuch as they have those funds available to them for current and future use.¹⁰ 24 Pa.C.S. § 8304(a). Notwithstanding any Arizona law or policy requiring persons similarly situated to Claimant to withdraw employers' contributions, the Board is bound to adhere to *its* controlling Pennsylvania statutes– even if Claimant believes it will lead to an unfair result to her.

Any contention by Claimant to the effect of “but I did not spend the money, it is in a 403(b)” is not a factor for consideration and is not sufficient to change the nature of her Arizona employer's

⁸ The Board precedent here is that it is the **employer**, not employee, contributions that constitute an employer retirement benefit, and withdrawal of same disqualifies the purchase of the service related to that benefit. In re *Account of Thomas E. Kocis*, Docket No. 2020-04 (PSERB June 27, 2022); In re *Account of Cathy J. Hing*, Docket No. 2007-21 (PSERB Sept. 30, 2008).

⁹ Although not a perfect analogy, employers who provide leave to employees may have a “use it or lose it” policy. In other words, the employer may require the employee to use leave time or cash it out. If the employee uses this leave or cashes it out, this does not mean that said employee did not receive a “benefit” from his/her employer in the form of leave time.

¹⁰ Even if a member is not actively managing or spending said funds, those funds are still providing a benefit- they are earning interest and being invested while they remain in the 403(b). That ongoing interest accrual and increase in value of the 403(b) certainly is an ongoing benefit that continues to inure to Claimant.

contributions to something other than an employer benefit. In other words, “what” a person does with employer benefits/contributions once those funds leave the custody of the sister state’s retirement system is immaterial. Whether the government employers’ contributions are immediately rolled over into a financially sound investment vehicle or instead gambled away, where the money goes is not a factor to be contemplated pursuant to the statutory scheme of the Code. In other words, it is of no consequence that Plaintiff “rolled over” the money and it remains with the PNC account. The instant the Arizona **employer** contributions left the ASRS account, regardless of those funds’ final destination, Claimant received an employer “benefit” and therefore is disqualified pursuant to 24 Pa.C.S. § 8304 from purchasing the corresponding service time.

To the extent Claimant’s position can be construed as she is entitled to relief because she was advised by a financial planner to roll the ASRS account into a 403(b), such contention is dismissed in turn. Financial advice provided by a third party is not binding on PSERS, nor is said advice sufficient to obviate the requirements of the Code.

Claimant also argues that because she rolled over her ASRS account in 2007, she is not “eligible to receive now or in the future, or is receiving retirement benefits for such service” as contemplated in 24 Pa.C.S. § 8304. In other words, Claimant is making a temporal argument regarding the word “now” in 24 Pa.C.S. § 8304. She appears to suggest that because she withdrew her employer contributions in 2007, she is not “now,” as of the time of her application to purchase out-of-state service credit, eligible to receive an employer benefit. Translated another way: “Because I emptied the entirety of my ASRS retirement account in 2007 and placed it in a non-ASRS account *before* I applied with PSERS to purchase out-of-state credit, (i) I am not ‘now’ entitled to an employer benefit, and/or (ii) I am not entitled to an employer benefit in the future and/or (iii) I am not currently receiving employer benefits.”

Such an interpretation of the Code is not only illogical but, if adopted, would create a moral hazard to sidestep the statutory guardrails in place by incentivizing those seeking credit to drain their out-of-state retirement accounts of employer contributions *before* submitting an application to PSERS to purchase out-of-state credit.¹¹ In that instance, an applicant would certainly take the position of “I am not ‘now,’ as of the very moment of submitting this application, entitled to a benefit because I already emptied the account of employer contributions prior to submitting this application” therefore I am entitled to credit. Such an interpretation would surely open the door to individuals double-dipping and receiving out-of-state credit in ways the General Assembly did not intend.

As PSERS suggests, had Claimant only withdrawn her own contributions, and not her employer’s, she would have been permitted to purchase service. Employee contributions are the employees’ funds and are not a government-funded retirement benefit. Accordingly, members may withdraw their contributions from the out-of-state system and purchase the service with PSERS. *Barcus v. State Employees’ Ret. Bd.*, 463 A.2d 490, 491 (Pa. Cmwlth. 1983); *see also Cook v. Pub. Sch. Employees’ Ret. Bd.*, 507 A.2d 911, 912 (Pa. Cmwlth. 1986) (holding that a PSERS member, like a SERS member, can purchase out-of-state service with PSERS if they withdraw their own contributions from the out-of-state system, regardless of whether they would have been eligible for an annuity if they left their contributions with that system). As soon as a member withdraws employer contributions, or directs that they be withdrawn from the retirement account and placed in a private account, the member is in receipt of a government-funded retirement benefit.

Constitutional Issues

¹¹ The Hearing Examiner concurs with PSERS’ position that with the enactment of the Code, the General Assembly intended to prevent members from receiving two retirement benefits for the same service.

Although Claimant here raises various constitutional issues, it is noted that neither the Hearing Examiner nor the Board has the authority to rule on whether a statute violates the Pennsylvania and/or United States Constitutions. *Ruszin v. Department Of Labor & Industry, Bureau of Workers' Compensation and Bethlehem Steel Corporation and USX Corporation*, 675 A.2d 366 (Pa. Cmwlth 1996); *see also Department of General Services v. Board of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005). Thus, Claimant's constitutional issues and PSERS' response will not be addressed here, however, they are preserved for appellate court review, if necessary.

Based upon the foregoing findings of fact, conclusions of law, and discussion, the following proposed order shall issue:

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

Account of Jeanine Esch : **Docket No. 2020-09**
Claim of Jeanine Esch :

RECOMMENDATION

AND NOW, this 24th day of January 2023, 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 should be **DENIED** and the decision of PSERS be **AFFIRMED**.

s/Jason Giurintano

**Jason C. Giurintano, Esquire
Hearing Examiner**

Claimant:

Trent Echard, Esquire
ECHARD MARQUETTE, P.C.
4773 WILLIAM FLYNN HIGHWAY
Allison Park, PA 15101

For PSERS:

Dwight Decker, Jr., Esquire
Public School Employees' Retirement System
5 North Fifth Street
Harrisburg, PA 17101

Docket Clerk:

Julie Vitale | Appeal Docket Administrator
Public School Employees' Retirement Board
5 N 5th Street | Harrisburg, PA 17101-1905

Date of Mailing:

1/24/23