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

IN RE: ACCOUNT OF JOSEPH C. ABRAHAM
DOCKET NO. 2009-02
CLAIM OF JOSEPH C. ABRAHAM

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 Joseph C. Abraham's ("Claimant") Appeal and Request for Administrative Hearing be dismissed because there is no issue of material fact and PSERS is entitled to a summary judgment as a matter of law.

PSERS filed its Motion for Summary Judgment on May 19, 2009, and served a copy by First-Class Mail on Claimant as required by the General Rules of Administrative Practice and Procedure. 1 Pa. Code §§ 33.32, 33.35-33.36. On May 29, 2009, Claimant filed a Motion to Stay Consideration, which was subsequently granted, because Claimant had petitioned the Allegheny County Court of Common Pleas for relief under the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S. § 9543, et seq. Following Claimant's exhaustion of the appeals process and the conclusion of Claimant's legal proceedings, the Board notified Claimant that he had 30 days to respond to PSERS' motion under Pa.R.C.P. No. 1035.3, i.e., September 14, 2015.

On September 14, 2015, Claimant filed a letter with the Board, claiming that he had filed a Motion to Stay Consideration of PSERS' Motion for Summary Judgment on September 1, 2015, because he filed a Motion for Pardon with Pennsylvania Governor Tom Wolf. The record, however, does not reflect that Claimant filed a Motion to Stay Consideration on or about September 1, 2015, with the Board. Nonetheless, such request would have been denied. A request for a pardon does not act as a stay to the

final disposition of his criminal charges. Accordingly, the Board finds that this matter is ripe for disposition.¹

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). "Summary judgment may be entered against a party who does not respond." Pa.R.C.P. 1035.3(d).

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).

Claimant was employed by the Pittsburgh School District from on or about October 1, 1993, through on or about March 24, 2008. On or about May 19, 2008, a criminal information was filed in the Allegheny County Court of Common Pleas, at

¹ Should Claimant's Motion for Pardon be granted by the governor, Claimant may again bring his request before the Board for consideration.

Docket No. CP-02-CR-0005423-2008, by the District Attorney's office charging Claimant with several offenses relating to acts committed against one of his students. (Exhibit A) On December 8, 2008, Claimant pled guilty to Counts 2 and 3 of the criminal information, relating to corruption of minors in violation of 18 Pa.C.S. § 6301(a)(1) and indecent assault of person less than 16 years of age in violation of 18 Pa.C.S. § 3126(a)(8). (Exhibit A, pp. 2, 6, 8 and Exhibit B) Because 18 Pa.C.S. § 3126(a)(8) is an offense covered by Public Employee Pension Forfeiture Act (Pension Forfeiture Act), 43 P.S. §§ 1311-1315, and Claimant committed such offense through his public office against a student, all benefits otherwise payable from his pension benefit thereafter were forfeited. (Exhibit C)

Claimant has not identified any facts remaining to be determined at an evidentiary hearing that would be material to the legal issue before the Board in this matter. Accordingly, the Board finds that there are no disputed material facts. 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 entitled to receive the benefits that have been forfeited by operation of law under the Pension Forfeiture Act.

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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 Appeal and Request for Administrative Hearing is DISMISSED in accordance with 22 Pa. Code § 201.6(c), as no genuine issue of material fact exists and PSERS is entitled to judgment as a matter of law. As a result, this Board denies Claimant's request that PSERS reinstate Claimant's benefits that have been forfeited by operation of law under the Pension Forfeiture Act.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: October 6, 2015

By: Melva S. Vogler
Melva S. Vogler, Chairman