

Mail Date: OCT. 12 2010

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

IN RE: ACCOUNT OF JOEL FETTERMAN
DOCKET NO. 2009-22
CLAIM OF JOEL FETTERMAN

OPINION AND ORDER OF THE BOARD

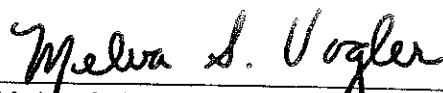
The Board has carefully and independently reviewed the entire record of this proceeding, including the Opinion and Recommendation of the Hearing Examiner. We note that neither party filed Exceptions to the Opinion and Recommendation of the Hearing Examiner. The Board finds appropriate the Findings of Fact, Discussion, Conclusions of Law and Recommendation in the Opinion and Recommendation. Accordingly, we hereby adopt the Hearing Examiner's Opinion and Recommendation as our own.

IT IS HEREBY ORDERED that the Board grants the Public School Employees' Retirement System's Motion to Dismiss, and the appeal of Claimant, Joel Fetterman, is DISMISSED WITH PREJUDICE.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: OCT 12 2010

By:


Melva S. Vogler, Chairman

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE: ACCOUNT OF JOEL FETTERMAN
DOCKET NO. 2009-22
CLAIM OF JOEL FETTERMAN

BEFORE: Edward S. Finkelstein, Esquire

HEARING DATE: July 14, 2010

APPEARANCES: Jennifer A. Mills, Esquire
For - Public School Employees' Retirement
System

Joel Fetterman, Pro Se - Claimant

OPINION OF THE HEARING EXAMINER

FINDINGS OF FACT

1. On October 13, 2009 the Public School Employees' Retirement Board legal office received an Appeal and Request for an Administrative Hearing from Joel Fetterman (Claimant). (PSERS Exhibit 9)

2. On March 25, 2010 the Public School Employees' Retirement System Appeal Docket Clerk, Mary Myers, sent a hearing notice to the Claimant advising him that his requested hearing would be held on July 14, 2010 at 1:00 p.m. at the Public School Employees' Retirement System, 5 N. 5th Street, Harrisburg, PA. (PSERS Exhibit 7)

3. The aforesaid hearing notice (PSERS Exhibit 7) was sent to the Claimant by Certified Mail and the Certified Mail Return

Receipt Card was signed by Barbara J. Fetterman on April 7, 2010 evidencing receipt of the hearing notice by the Claimant.

(PSRES Exhibit 7)

4. The hearing notice, PSERS Exhibit 7, advised the Claimant that if he did not appear at the hearing on the date and time scheduled without good cause, the Hearing Examiner, upon Motion, would recommend to the Board that his appeal be dismissed with prejudice. He was further advised that would mean that his appeal would be terminated and he would not be permitted to raise the issue of buying multiple service credit to the Board in the future. (PSERS Exhibits 7, 9)

5. On June 24, 2010, the Public School Employees' Retirement System sent the Claimant a reminder notice of his hearing that was scheduled for July 14, 2010 at 1:00 p.m.

(PSERS Exhibit 7)

6. The Claimant's hearing was duly advertised in the *Pennsylvania Bulletin*. (PSERS Exhibit 8)

7. On July 14, 2010 the undersigned Hearing Examiner was present and ready to proceed with the Claimant's hearing as was counsel for the System.

8. The Claimant failed to appear for his hearing on July 14, 2010 at 1:00 p.m. and did not contact the Hearing Examiner to request any continuance of the hearing.

9. At the beginning of the hearing on July 14, 2010, the Hearing Examiner telephoned the Claimant at the telephone number he provided in his Appeal, Redacted, and the telephone was answered by an answering machine. The Hearing Examiner left the Claimant a message that if he did not call in within 15 minutes, his hearing would proceed in his absence.

10. The Claimant did not call in to the Hearing Examiner within the 15 minutes and the hearing continued without the attendance of the Claimant but with the participation of counsel for the Public School Employees' Retirement System who moved to dismiss the Claimant's appeal with prejudice pursuant to 22 Pa. Code §201.8(a) which provides as follows:

(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.

11. Counsel for PSERS also cited as authority for its motion to dismiss, 1 Pa. Code §§35.177, 35.180 and 35.187(7).

12. The Claimant failed to reply to the Public School Employees' Retirement System's Motion to Dismiss with prejudice.

ISSUE: Should the Claimant's appeal be dismissed with prejudice?

DISCUSSION

The Claimant filed a request to buy credit for multiple service time and asserted in his appeal that he did not respond to his first opportunity to do so and was requesting another chance. The Public School Employees' Retirement System filed an Answer to the Claimant's appeal. (PSERS Exhibit 10) A hearing notice was sent to the Claimant on March 25, 2010 scheduling a hearing for him regarding his appeal to be held at the offices of the Public School Employees' Retirement System, 5 N. 5th Street, Harrisburg, PA on July 14, 2010 at 1:00 p.m. This notice was sent by certified mail to the Claimant and the certified mail was accepted on behalf of the Claimant by Barbara J. Fetterman on April 7, 2010. A follow-up reminder notice of the hearing was sent to the Claimant on June 24, 2010 by regular mail and the hearing was properly advertised in the *Pennsylvania Bulletin*.

At the appointed time for the Claimant's hearing, July 14, 2010 at 1:00 p.m., the Claimant failed to appear. The Hearing Examiner then telephoned the Claimant at the telephone number he provided in his appeal, Redacted and the telephone was

answered by an answering machine. The Hearing Examiner left the Claimant a message that if he did not call back within 15 minutes, his hearing would proceed in his absence. The Claimant failed to return the telephone call and the hearing proceeded. During the course of the hearing, counsel for the Public School Employees' Retirement System moved to dismiss the Claimant's request for the opportunity to purchase multiple service credit with prejudice pursuant to 22 Pa. Code §201.8 and 1 Pa. Code §§35.177, 35.180 and 35.187(7).

Pursuant to the General Rules of Administrative Practice and Procedure, particularly 1 Pa. Code §35.179, the Claimant had ten (10) days within which time to answer or object to the Motion to Dismiss with prejudice made orally by counsel for PSERS at the hearing. The Claimant has failed to file any answer or objection to the Motion to Dismiss with prejudice. Therefore, pursuant to 22 Pa. Code §201.8(a), the Hearing Examiner is hereby going to recommend to the Public School Employees' Retirement Board that it dismiss the Claimant's appeal and request for the opportunity to again purchase multiple service credit.

CONCLUSIONS OF LAW

1. The Claimant was given appropriate notice of the hearing scheduled regarding his appeal of a denial to permit purchase of multiple service credit.


2. The Claimant received proper notice of his hearing at least two times by the Public School Employees Retirement System to be held on July 14, 2010 at 1:00 p.m.

3. Since the Claimant failed to appear at his hearing without good cause and did not request a continuance or file an answer or objection to the Motion to Dismiss his claim with prejudice submitted orally by counsel for the Public School Employees' Retirement System during the course of the hearing, it is appropriate, pursuant to 22 Pa. Code §201.8(a) for the Board to dismiss his appeal with prejudice without considering the merits of his claim.

RECOMMENDATION

The Public School Employees' Retirement Board shall dismiss the Claimant's appeal with prejudice.

Dated: July 27, 2010


Edward S. Finkelstein
Hearing Examiner