

Mail Date:

MAR 17 2016

Mail Date: _____

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

IN RE: ACCOUNT OF RODNEY D. HAWKINS
DOCKET NO. 2015-17
CLAIM OF RODNEY D. HAWKINS

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 Rodney D. Hawkins's ("Claimant") Appeal and Request for Administrative Hearing 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 December 4, 2015, 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. By letter dated December 4, 2015, PSERS notified Claimant that he had 30 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 January 4, 2016. See 1 Pa. Code §§ 31.11, 31.12 and 33.34. Claimant did not file a response to the motion.

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).

Because Claimant did not respond and, therefore, has not identified any additional facts remaining to be determined at an evidentiary hearing that would be material to the legal issue before the Board in this matter, 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 permitted to elect Class T-F membership after the statutory deadline.

FINDINGS OF FACT

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

1. In November 2014, Claimant rendered his 500th hour of employment and qualified for PSERS membership through his part-time, hourly employment with the Harrisburg City School District.

2. By letter dated November 28, 2014, PSERS mailed to Claimant at [REDACTED] (via first-class mail, postage prepaid) a *T-F Membership Class Election* form, a *Choosing Your Membership Class* handout, and a cover letter. PSERS-1.

3. The November 28, 2014, cover letter to the *T-F Membership Class Election* form provided, in pertinent part, as follows:

Dear Mr. Rodney Hawkins:

Congratulations on becoming a member of the Public School Employees' Retirement System (PSERS). As a member of PSERS, you are required to make contributions which will be withheld from your pay. In addition, each of your Pennsylvania public school employers will make employer contributions toward your PSERS retirement benefit. The amount of money withheld from your pay and the factors used to determine a retirement benefit when you retire are determined by your membership class.

There are two classes of membership (T-E and T-F) that will determine the amount of money withheld from your paychecks and the amount of your retirement benefit when you retire.

You are automatically enrolled as a Class T-E member and need not take any action if you choose to remain as a Class T-E member. As such, your benefit if you retire at your normal retirement age will be your years of service times your final average salary times a 2 percent multiplier. Your employee contributions are subject to change every three years but will not be less than 7.5 percent nor more than 9.5 percent of your salary, based on the investment performance of the Retirement Fund.

If you wish to elect to become a Class T-F member, you must sign and return to PSERS the enclosed *T-F Membership Class Election* (PSRS-1318) form by January 21, 2015. The form must be received by PSERS by that date. As a Class T-F member your benefit if you retire at your normal retirement age will be your years of service times your final average salary times a higher 2.5 percent multiplier. Your employee contributions are subject to change every three years but will not be less than 10.3 percent nor more than 12.3 percent, based on the investment performance of the Retirement Fund.

* * *

At this time you should:

- Review the *Choosing Your Membership Class* handout included in this packet.
- Decide whether you wish to remain a Class T-E member. If you wish to remain a Class T-E member, you do not have to take any action.
- If you wish to elect Class T-F, **PSERS must receive your form by January 21, 2015**. If the form is received after that date, you will remain Class T-E and will not have the opportunity to elect Class T-F in the future.

Your decision to remain Class T-E by doing nothing, or to elect Class T-F by filing the enclosed form, is final and binding.

PSERS-1 (emphasis in original).

4. The November 28, 2014, *T-F Membership Class Election* form notified Claimant that “**PSERS must receive this form by January 21, 2015.**” PSERS-1 (emphasis in original).

5. By letter dated December 28, 2014, PSERS mailed to Claimant at [REDACTED] (via first-class mail, postage prepaid) a follow-up letter, reminding him of the January 21, 2015, deadline to elect Class T-F membership. PSERS-2.

6. The December 28, 2014, letter provided, in pertinent part, as follows:
Dear Mr. Rodney Hawkins:

The Public School Employees’ Retirement System (PSERS) previously sent you a *T-F Membership Class Election* (PSRS-1318) form.

We are providing you this reminder because your decision to remain a Class T-E member, or to change to a Class T-F member, is final and binding. If you wish to remain as a Class T-E member, you do not have to take any action.

If you wish to remain a Class T-E member, you need to do nothing; Class T-E membership is the automatic membership class. If you would like to change your membership to Class T-F, you must do so by January 21, 2015.

* * *

If you wish to elect Class T-F membership, you must file the *T-F Membership Class Election* (PSRS-1318) form no later than January 21, 2015. PSERS sent you a mailing approximately 30 days ago that included a *T-F Membership Class Election* (PSRS-1318) form and an informational handout describing the differences between Class T-E and Class T-F membership.

Please note that in order to elect Class T-F membership, the form must actually be received on or before the due date.

* * *

If you wish to elect Class T-F membership, you must file the *T-F membership Class Election* (PSRS-1318) form no later than January 21, 2015.

* * *

PSERS-2 (emphasis in original).

7. Claimant did not elect Class T-F membership on or before January 21, 2015.

8. By letter dated February 7, 2015, PSERS informed Claimant that he would permanently remain a Class T-E member because he did not elect Class T-F membership by the election deadline. PSERS-3.

9. On March 12, 2015, Claimant appealed the February 7, 2015, determination to the ESRC, in which he asserted, among other things:

1. Yes it is quite true that PSERS sent me a letter around Jan 19th-21st or about that time (twice).
2. I just let time get away from me being busy and forgetful on my part.

PSERS-4.

10. On September 22, 2015, the ESRC denied Claimant's request to change his PSERS membership from Class T-E to Class T-F, explaining that PSERS did not receive a completed *T-F Membership Class Election* form from him, and does not have the authority to permit a member to elect Class T-F membership after the statutorily prescribed deadline. PSERS-5.

11. Claimant appealed the ESRC's decision on October 22, 2015, identifying his address in his appeal papers as [REDACTED]. PSERS-6.

12. At all times between November 28, 2014, and October 22, 2015, Claimant's mailing address was [REDACTED].

13. The November 28, 2014, and December 28, 2014, letters, which PSERS mailed to Claimant in its normal course of business, were not returned to PSERS as undeliverable.

14. On October 26, 2015, PSERS filed an Answer. PSERS-7.

15. On December 4, 2015, PSERS filed a Motion for Summary Judgment.

16. Claimant did not file a response to PSERS' motion.

17. The matter is ripe for Board adjudication.

DISCUSSION

The Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101 et seq., requires that a person who first becomes a school employee and an active member on or after July 1, 2011, is enrolled in PSERS as a Class T-E member. 24 Pa.C.S. § 8305(d). Such T-E member, however, may elect to become a Class T-F member provided the Class T-E member files a written election with PSERS within 45 days of notification by PSERS. 24 Pa.C.S. §§ 8305(e) and 8305.2(b).¹ If a member fails to timely file an election to become a Class T-F member, the Retirement Code mandates that "the member shall be enrolled as a member of Class T-E and the member shall never be able to elect Class T-F service, regardless of whether the member terminates service or has a break in service." 24 Pa.C.S. § 8305.2(d).

In November 2014, Claimant rendered his 500th hour of employment and qualified for PSERS membership through his part-time, hourly employment with the Harrisburg City School District. See 24 Pa.C.S. § 8301 (a)(2) (PSERS membership is mandatory for, among others, school employees who are employed on a per diem or hourly basis for 500 hours or more during any fiscal year). On November 28, 2014, PSERS sent Claimant a cover letter and *T-F Membership Class Election* form informing him of Class T-F membership and notifying him that he could elect such membership by filing the election form on or before January 21, 2015. On December 28, 2014, PSERS sent Claimant a follow-up letter, reminding him of the January 21, 2015, deadline. Claimant did not elect Class T-F membership on or before January 21, 2015.

Claimant, without asserting any facts to support his appeal, asks that he be permitted to make an untimely Class T-F membership election because it would provide him with financial stability in his later years. See PSERS-6. Claimant's appeal must be denied as a matter of law.

¹ Class T-E membership provides a benefit accrual rate of 2% and a contribution rate of at least 7.5%. Class T-F membership provides a benefit accrual rate of 2.5% and a contribution rate of at least 10.3%. 24 Pa.C.S. § 8102 (definitions of "basic contribution rate" and "standard single life annuity").

Preliminarily, Claimant has never asserted that PSERS failed to notify him of the T-F election deadline or that he was unaware of the deadline. Nor has he ever asserted that he attempted to file a timely election. In fact, he has stated only that it is “quite true that PSERS sent me a letter around Jan 19th- 21st or about that time (twice),” but that he “let time get away from” him. PSERS-4. Regardless, the Retirement Code and its application to the facts here are clear.

Section 8305.2(b) provides that a member “must elect to become a Class T-F member by filing a written election with the board within 45 days of notification by the board that such member is eligible for such election.” 24 Pa.C.S. § 8305.2(b). If a member fails to do so, the Retirement Code unequivocally states that “the member shall be enrolled as a member of Class T-E and the member *shall never* be able to elect Class T-F service[.]” 24 Pa.C.S. § 8305.2(d) (emphasis added). Claimant was notified of his opportunity to elect Class T-F membership and the associated January 21, 2015, deadline, and he failed to make the election in a timely manner. He did not request Class T-F membership with PSERS until March 12, 2015. See PSERS-4.

Although the Board must liberally administer the system, it does not have the authority to deem a late-filed Class T-F membership election as timely. See *Allen v. Public Sch. Employees’ Ret. Bd.*, 848 A.2d 1031, 1033 (Pa. Cmwlth. 2004); *Forman v. Public Sch. Employees’ Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001); see also *Harasty v. Public Sch. Employees’ Ret. Bd.*, 945 A.2d 783, 788 (Pa. Cmwlth. 2008). Such action would be tantamount to circumventing the express language of the Retirement Code, which the Board cannot do. *Dowler v. Public Sch. Employes’ Ret. Bd.*, 620 A.2d 639 (Pa. Cmwlth. 1993); *Marinucci v. State Employees’ Ret. Sys.*, 863 A.2d 43 (Pa. Cmwlth. 2004). Thus, there is no exception, statutory or otherwise, to the deadline for electing Class T-F membership. See *Harasty*, 945 A.2d at 788.

Accordingly, Claimant’s appeal must be dismissed.

CONCLUSION

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 to accept Claimant's untimely request to elect Class T-F membership with PSERS. Accordingly, PSERS' Motion for Summary Judgment is GRANTED, and Claimant's Appeal and Request for Administrative Hearing is DENIED.

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

IN RE: ACCOUNT OF RODNEY D. HAWKINS
DOCKET NO. 2015-17
CLAIM OF RODNEY D. HAWKINS

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 to elect Class T-F membership after the statutory deadline.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: March 11, 2016

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