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

IN RE: ACCOUNT OF JANICE L. JONES
DOCKET NO. 2013-16
CLAIM OF JANICE L. JONES

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 Janice L. Jones'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 November 20, 2014, 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 Order dated December 18, 2014, the Board granted Claimant's unopposed request to extend the deadline for her response to PSERS' motion to December 29, 2014. On December 24, 2014, Claimant 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 her the benefit of all reasonable inferences. *See Thompson*

v. Nason Hospital, 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).

Because 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, 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’s retirement benefits should have ceased as of her 96th full-day session of post-retirement service during the 1999-2000 school year.

FINDINGS OF FACT

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

1. In February 1967, Claimant enrolled with PSERS through her employment with the School District of Philadelphia (“SDP”).
2. On June 26, 1998, Claimant terminated her employment with the SDP.
3. On July 6, 1998, PSERS received Claimant’s “Application for Retirement.”
PSERS-1.

4. PSERS processed Claimant's application and, by letter dated July 29, 1998, informed Claimant of her estimated monthly retirement benefit of \$1,753.65, which would begin on August 31, 1998. The letter included the following information:

EMPLOYMENT AFTER RETIREMENT

In Act 23, of August 5, 1991, an annuitant's return to school service during emergency is defined as "when, in the judgement of the employer, an emergency creates an increase in the work load such that there is serious impairment of service to the public or in the event of a shortage of appropriate subject certified teachers, an annuitant may return to school service for a period not to exceed a 95 full-day session." A half a day or less counts as half a day.

PSERS-2.

5. Claimant received PSERS' July 29, 1998 letter.

6. By letter dated December 14, 1998, PSERS informed Claimant of her finalized, gross monthly retirement benefit of \$2,028.32, which would begin on January 29, 1999. The letter included the following information:

EMPLOYMENT AFTER RETIREMENT

In Act 23, of August 5, 1991, an annuitant's return to school service during an emergency is defined as "when, in the judgement of the employer, an emergency creates an increase in work load such that there is serious impairment of service to the public or in the event of a shortage of appropriate subject certified teachers, an annuitant may return to school service for a period not to exceed a 95 full-day session." A half a day or less counts as half a day.

PSERS-3.

7. On September 1, 1999, Claimant returned to work for the SDP's Facilities Payroll department, and continued in that position through the 2011-2012 school year.

8. PSERS was not informed of Claimant's return to work for the SDP.

9. In 2012, PSERS first learned of Claimant's post-retirement work with the SDP and requested information from the SDP regarding that work.

10. The SDP, a reporting unit of PSERS, provided PSERS with the following service time and salary for Claimant for the 1999-2000 through 2011-2012 school years:

School Year	Hourly Rate	Salary	Service Time
1999-00	\$25.00	\$21,943.75	877.75
2000-01	\$25.00	\$28,150.00	1,126.00
2001-02	\$25.00	\$27,206.25	1,088.25
2002-03	\$25.00	\$33,243.75	1,329.75
2003-04	\$25.00	\$26,212.50	1,048.50
2004-05	\$25.00	\$20,975.00	839.00
2005-06	\$25.00	\$34,475.00	1,379.00
2006-07	\$25.00	\$37,912.50	1,516.50
2007-08	\$25.00	\$34,937.50	1,397.50
2008-09	\$25.00	\$30,487.50	1,219.50
2009-10	\$25.00	\$21,381.25	855.25
2010-11	\$25.00	\$22,856.25	914.25
2011-12	\$20.00	\$16,440.00	822.00

11. Claimant worked for the SDP for more than 95 full-day sessions during the 1999-2000 school year.

12. The SDP did not report Claimant's service or compensation to PSERS when it was earned during the 1999-2000 through 2011-2012 school years.

13. On June 30, 2012, Claimant terminated service with the SDP. PSERS-7; PSERS-8.

14. On November 8, 2012, PSERS informed Claimant that it had "determined [her] post-retirement employment for the SDP was not rendered in an approved capacity as per the PA Retirement Code" and, accordingly, PSERS was stopping Claimant's retirement benefit effective with her November 2012 benefit payment and would consider her as having returned to active employment as of September 1, 1999. In addition, the letter informed Claimant that any "Premium Assistance or Healthcare benefits that you are receiving through PSERS will also end effective November 30, 2012." PSERS noted that it "would calculate the appropriate debits and credits to be placed on [Claimant's] account as a result of [her] return to service." PSERS-5.

15. Claimant received monthly retirement benefits from PSERS from August 1998 through October 2012. PSERS-2; PSERS-5.

16. Between September 1, 1999, and November 8, 2012, Claimant did not contact PSERS to inquire as to whether her post-retirement work for the SDP would endanger her status as an annuitant.

17. By "Statement of Amount Due" dated November 16, 2012, PSERS informed Claimant that she owed PSERS \$34,347.52 for the following 11.86 years of unreported and uncredited service that she had rendered with the SDP during the 1999-2000 through 2011-2012 school years:

School Year	Number of Years	Amount Due
1999-00	0.80	\$2,262.10
2000-01	1.00	\$2,790.27
2001-02	0.99	\$3,111.61
2002-03	1.00	\$3,655.89
2003-04	0.95	\$2,771.78
2004-05	0.76	\$2,132.64
2005-06	1.00	\$3,370.44
2006-07	1.00	\$3,563.95
2007-08	1.00	\$3,157.97
2008-09	1.00	\$2,649.75
2009-10	0.78	\$1,786.83
2010-11	0.83	\$1,836.63
2011-12	0.75	\$1,257.66

PSERS-6.

18. On December 17, 2012, PSERS received an "Application for Retirement" from Claimant. PSERS-7.

19. PSERS processed Claimant's application and, by corrected letter sent on February 19, 2013, notified Claimant of her finalized gross monthly retirement benefit of \$1,531.37 and informed her that she was overpaid \$336,321.80 in benefit payments after her return to service date. PSERS-8.

20. Claimant appealed PSERS' November 8, 2012 determination that she returned to service to the Executive Staff Review Committee ("ESRC").

21. By letter dated May 21, 2013, the ESRC denied Claimant's appeal, finding that Claimant returned to service on September 1, 1999, in a non-emergency capacity. PSERS-9.

22. On June 20, 2013, Claimant filed an Appeal and Request for Administrative Hearing. PSERS-4.

23. On July 3, 2013, PSERS filed an Answer. PSERS-10.

24. By letter dated December 17, 2013, the Appeal Docket Administrator notified the SDP of Claimant's appeal and informed it that it could file a petition to intervene if it wanted to participate; the SDP did not petition to intervene.

25. On March 6, 2014, Kenneth J. Zoldan, Esq., entered his appearance in this appeal for Claimant.

26. An administrative hearing is scheduled for this matter on March 18, 2015.

27. On November 20, 2014, PSERS filed a Motion for Summary Judgment.

28. By Order dated December 18, 2014, the Board granted Claimant's unopposed request to extend the deadline for her response to PSERS' motion to December 29, 2014.

29. On December 24, 2014, Claimant filed a response to PSERS' motion.

30. The matter is ripe for Board adjudication.

DISCUSSION

On June 26, 1998, Claimant terminated her employment with the SDP after approximately 31.42 years of service. PSERS-3. Shortly thereafter, Claimant applied for retirement and began receiving a monthly annuity from PSERS. PSERS-1; PSERS-2. On September 1, 1999, Claimant began working for the SDP again, unbeknownst to PSERS. At the time, Claimant was an annuitant of PSERS. An “annuitant” is defined as any “member on or after the effective date of retirement until his annuity is terminated.” 24 Pa.C.S. § 8102.

The Public School Employees’ Retirement Code (“Retirement Code”), 24 Pa.C.S. § 8101, et. seq., prohibits a member from being an active member and an annuitant simultaneously. If an annuitant returns to school service, Section 8346(a) directs that his or her annuity is to cease:

If an annuitant returns to school service . . . any annuity payable to him under this part shall cease and in the case of an annuity other than a disability annuity the present value of such annuity, adjusted for full coverage in the case of a joint coverage member who makes the appropriate back contributions for full coverage, shall be frozen as of the date such annuity ceases.

24 Pa.C.S. § 8346 (a) (1999-2000); see *Account of David J. Petrosky*, Docket No. 2004-34, at 10 (PSERB March 14, 2006).¹

During the 1999-2000 school year, the Retirement Code contained a limited exception to the return to service rule. A PSERS annuitant could perform school service for up to 95 full-day sessions during an emergency:

Return to school service during emergency.--When, in the judgement of the employer, an emergency creates an increase in the work load such that there is serious impairment of service to the public or in the event of a shortage of appropriate subject certified teachers, *an annuitant may be*

¹ “School service” is defined as “[s]ervice rendered as a school employee,” and a “school employee” is defined as any “person engaged in work relating to a public school for any governmental entity and for which work he is receiving regular remuneration as an officer, administrator or employee....” 24 Pa.C.S. § 8102.

returned to school service for a period not to exceed 95 full-day sessions in any school year without loss of his annuity. In computing the number of days an annuitant has returned to school service, any amount of time less than one-half of a day shall be counted as one-half of a day.

24 Pa.C.S. § 8346(b) (emphasis added); see 24 Pa.C.S. § 8301(a)(2).² If an annuitant worked more than the 95 days permitted, the annuitant's annuity was to cease by operation of law with the present value of the annuity being frozen. 24 Pa.C.S. § 8346 (a) (1999-2000). It did not matter whether the school district's emergency extended beyond the 95 days. To begin receiving a retirement benefit again, the member had to terminate school service and re-apply for an annuity. See 24 Pa.C.S. §§ 8307 and 8342(a); see also 24 Pa.C.S. § 8346(c), (d).

The material facts are not in dispute in this matter. In July 1998, Claimant applied for retirement with PSERS. PSERS-1. By letters dated July 29, 1998, and December 14, 1998, PSERS informed Claimant of her retirement benefits and warned her that she could return to school service in an emergency for a period not to exceed 95 full-day sessions. PSERS-2; PSERS-3. Claimant admits receiving PSERS' July 29, 1998 letter, and she does not deny receiving the December 14, 1998 letter.

In September 1999, Claimant went back to work for the SDP. Claimant began receiving payment for her work with the SDP while she continued to collect her monthly annuity from PSERS. According to the SDP, Claimant worked for thirteen school years, providing the following service and earning the following amounts:

School Year	Hourly Rate	Salary	Service Time
1999-00	\$25.00	\$21,943.75	877.75

² Effective July 4, 2004, the Retirement Code was amended to provide that an annuitant could not return to service for a period extending beyond the school year during which the emergency occurred without losing their annuity. 24 Pa.C.S. § 8346(b) (amended, Act 2004-63, P.L. 504, § 1, eff. July 4, 2004)). On December 30, 2002, a second exception to the return to service rule was added to the Retirement Code for an extracurricular position, which requires a separate contract that includes a "waiver whereby the annuitant waives any potential retirement benefits that could arise from the contract and releases the employer and the board from any liability for such benefits." See 24 Pa.C.S. § 8346(b)(1) (added, Act 2002-234, P.L. 2082, § 1, retroactive to July 1, 2001). Both of these amendments post-date the 1999-2000 school year and are not at issue here.

School Year	Hourly Rate	Salary	Service Time
2000-01	\$25.00	\$28,150.00	1,126.00
2001-02	\$25.00	\$27,206.25	1,088.25
2002-03	\$25.00	\$33,243.75	1,329.75
2003-04	\$25.00	\$26,212.50	1,048.50
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2005-06	\$25.00	\$34,475.00	1,379.00
2006-07	\$25.00	\$37,912.50	1,516.50
2007-08	\$25.00	\$34,937.50	1,397.50
2008-09	\$25.00	\$30,487.50	1,219.50
2009-10	\$25.00	\$21,381.25	855.25
2010-11	\$25.00	\$22,856.25	914.25
2011-12	\$20.00	\$16,440.00	822.00

The SDP did not report this service and compensation to PSERS when it was earned. Only after PSERS learned for the first time in 2012 that Claimant was working for the SDP, and after PSERS requested information from the SDP regarding Claimant's work, did the SDP report this information.

After receiving the information regarding Claimant's post-retirement service, on November 8, 2012, PSERS informed Claimant that the service "was not rendered in an approved capacity as per the PA Retirement Code" and, accordingly, PSERS was stopping Claimant's retirement benefit effective with her November 2012 benefit payment and would consider her as having returned to active employment as of September 1, 1999. PSERS-5. PSERS also informed Claimant that any Premium Assistance or Healthcare benefits that she was receiving through PSERS would end effective November 30, 2012. PSERS-5. PSERS calculated that Claimant owed PSERS \$336,321.80, which was the amount she was overpaid in retirement benefits after her return to service. PSERS-8. In addition, PSERS added 11.86 years of service to Claimant's account, charging her \$34,347.52 for that service. PSERS-6.

Claimant filed an Appeal and Request for Administrative Hearing, requesting that the Board reverse PSERS' November 8, 2012 determination that she returned to service during the 1999-2000 school year. PSERS-4. She asked that the Board remove any debits or deductions placed on her account due to the return and reinstate her premium assistance or health-care benefits. *Id.* She asserted that she returned to

work for the SDP initially because of the Y2K alarm and the implementation of a new computerized payroll system, and that the extension of her employment “was deemed necessary based on various factors which included hiring freezes, deaths, illnesses, retirements, budget constraints and general lack of interest by other potential employees.” *Id.* Claimant, therefore, asked the Board to reverse PSERS’ determination on the basis that she rendered all of her post-retirement service in an emergency capacity.

On November 20, 2014, PSERS filed a motion for summary judgment, claiming that, regardless of whether an emergency existed in 1999-2000 when Claimant first returned to work with the SDP or whether it continued, the Retirement Code limited Claimant’s emergency service to 95-days.³ PSERS maintains that Claimant exceeded the 95 full-day sessions of work permitted during the 1999-2000 school year and thus returned to service as a matter of law, which should have resulted in the cessation of her annuity on her 96th day of service and reenrollment with PSERS. PSERS asserts that Claimant was not entitled to receive an annuity from that point forward.

Claimant, in response, does not deny that she worked for more than the 95 full-day sessions permitted under the Retirement Code.⁴ Nor does she deny receiving PSERS’ July 29, 1998 letter that informed her that “an annuitant may be returned to school service for a period not to exceed 95 full-day sessions” during an emergency. Rather, she requests that the Board grant her equitable relief because: (1) the July 29, 1998 letter did not notify her of the consequences of working beyond the 95-day period; and (2) she was under the belief, based on what the SDP had told her, that she was performing service on an emergency basis. She claims that she committed an “innocent mistake of law” and that PSERS is being unjustly enriched.

³ The Board assumes, as PSERS requests for purposes of its motion for summary judgment, that Claimant’s first 95 full-day sessions of post-retirement work during the 1999-2000 school year were rendered in an emergency capacity.

⁴ Claimant worked the equivalent of 0.8 years of service (877.75/1,100 hours) or 144 full-day sessions (0.8 x 180 days) during the 1999-2000 school year. See 24 Pa.C.S. § 8302; 22 Pa. Code § 213.2.

Preliminarily, and as stated above, the Retirement Code prohibited Claimant, an annuitant, from providing emergency service to the SDP for more than 95 full-day sessions during the 1999-2000 school year even if the SDP's emergency extended beyond that time. Thus, regardless of the reasons Claimant initially began her post-retirement work in September 1999 with the SDP or continued it, her annuity should have ceased as a matter of law on her 96th day of service. See 24 Pa.C.S. § 8346 (a); *Account of David J. Petrosky*, Docket No. 2004-34, at 10 ("Claimant's annuity should have ceased as of the 96th day of his return to school service, November 17, 1999, through the end of his service, April 12, 2000."). From her 96th day of service during the 1999-2000 school year until her subsequent discontinuance of service and retirement in 2012, she was not entitled to an annuity. She should not have been receiving a monthly benefit from PSERS at the same time she was providing school service and receiving income from the school district from which she retired. See *generally* 26 C.F.R. § 1.401-1(a)(2)(i) ("A qualified pension . . . plan is a definite written program and arrangement . . . established and maintained by an employer. . . to provide for the livelihood of employees . . . *after retirement*["]) (Emphasis added); 26 C.F.R. §1.401(b)(1)(i) ("A pension plan within the meaning of section 401(a) is a plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to his employees over a period of years, usually for life, *after retirement*.") (Emphasis added). The Retirement Code expressly prohibits such double-dipping. 24 Pa.C.S. § 8346 (a); see *Baillie v. Public School Employees' Retirement Board*, 993 A.2d 944, 947 (Pa. Cmwlth. 2010).

Claimant asserts the Board should grant her equitable relief because PSERS informed her of the 95-day limit, but failed to notify her of the consequences of working more than 95 days. The Retirement Code, however, sets forth when PSERS is required to provide statutory notice and it does not require notification to an annuitant of the consequences of a return to service. Compare 24 Pa.C.S. § 8346(a) (no notification required regarding return to service) with 24 Pa.C.S. § 8505(f) (notification to vestees approaching superannuation age) and (l) (notification of class T-F membership). Thus, PSERS was not required to notify Claimant that her annuity would stop if she returned to service for more than the 95 full-day sessions permitted, and its failure to provide

such notice is not a basis for granting Claimant's appeal. See *Trakes v. Public School Employees' Retirement System*, 768 A.2d 357, 367 (Pa. Cmwlth. 2001) (PSERS was not required to notify the claimant of the two-year restriction on inactive membership because the Retirement Code did not require such notification).

Claimant asserts that equitable relief also is warranted because the SDP assured her that her post-retirement work was on an emergency basis.⁵ She attaches an August 13, 2012, letter from Andrew M. Rosen as "Exhibit A" in support of her argument that the SDP believed her post-retirement service was being performed on an emergency basis. Although the letter is hearsay and not competent evidence, consideration of the letter would not change the result. Again, regardless of the actuality of and/or duration of the SDP's emergency, the Retirement Code prohibited Claimant from working for more than 95 full-day sessions during the emergency. Thus, whether the SDP's claimed emergency lasted 95 days or thirteen school years is not material.

In addition, the SDP's representations to Claimant regarding her post-retirement work cannot preclude the application of the Retirement Code's directive that Claimant's annuity was to cease as a matter of law on her 96 full-day session of work. It is well established that the statutory mandates of the Retirement Code apply, even when a PSERS member may not have been provided adequate or correct information from PSERS, her employer, or a third party. *Tyson v. Public School Employees' Retirement System*, 737 A.2d 325, 328 (Pa. Cmwlth. 1999); *Finnegan v. Public School Employees' Retirement Board*, 560 A.2d 848, 852 (Pa. Cmwlth. 1989), *aff'd without op.*, 591 A.2d 1053 (Pa. 1991); *Cosgrove v. State Employees' Retirement Board*, 665 A.2d 870, 874 (Pa. Cmwlth. 1995).

In *Finnegan*, PSERS erroneously informed a member that she could purchase fifteen years of out-of-state service credit which would have provided the member with

⁵ On summary judgment, the Board must examine the record in the light most favorable to Claimant and give her the benefit of all reasonable inferences. The Board, therefore, assumes Claimant's assertions regarding the District's assurances are true and accurate.

30 years of active service. *Finnegan*, 560 A.2d at 849. The member relied on that information and made an irrevocable decision to retire. The Retirement Code, however, restricted such purchases to twelve years. *Id.* As a result, the member received far smaller retirement benefits than she expected. On appeal, the Commonwealth Court affirmed PSERS' determination that the member was not permitted to purchase additional service credit because doing so would be tantamount to impermissibly permitting PSERS' employees to amend the statute. *Id.* at 851. Citing to *Finnegan*, the Commonwealth Court reached the same conclusion in *Cosgrove*, where it found that the statutory language of the Retirement Code prevents retirees from changing their retirement benefit elections, even under circumstances where members may have been misled by inadequate counseling by the State Employees' Retirement System. *Cosgrove*, 665 A.2d at 874.

In this case, upholding PSERS' decision is even more compelling than in *Finnegan* or *Cosgrove*, as the SDP made the alleged misleading representations to Claimant. There is no assertion that PSERS provided Claimant with inaccurate information. In fact, PSERS informed Claimant that she could not work more than 95 days in an emergency capacity while retired in its July 29, 1998, and December 14, 1998 correspondence; PSERS did not know of Claimant's return to work until 2012; and Claimant never inquired with PSERS as to whether her post-retirement work was permissible. Regardless, Pennsylvania law makes clear that a misrepresentation cannot negate or otherwise usurp the provisions of the Retirement Code. The Retirement Code plainly prohibited Claimant from working more than 95 full-day sessions as an annuitant during an emergency in the 1999-2000 school year, and the Board is not authorized to grant Claimant the relief she seeks because it conflicts with the statutory mandates of the Retirement Code. *See Marinucci v. State Employees' Retirement System*, 863 A.2d 43, 47 (Pa. Cmwlth. 2004).

Claimant asserts that she committed an "innocent mistake of law" that warrants equitable relief. Claimant, however, admits that she received PSERS' July 29, 1998 letter and does not deny receiving PSERS' December 14, 1998 letter. Therefore, she knew that, under Act 23, she could not return to school service during an emergency for

more than 95 full-day sessions. PSERS-2; PSERS-3. The fact that she did not understand the consequence of ignoring the law does not excuse her lack of compliance with it in the first instance. Claimant maintains that PSERS will be unjustly enriched if the Board does not reverse PSERS' determination. As stated above, however, Claimant was not entitled to retirement benefits as of her 96th day of service. Yet, she continued to receive such benefits because neither she nor the SDP apprised PSERS that she had returned to service. PSERS is merely recouping the amounts that it overpaid to Claimant over the course of the thirteen school years during which Claimant continued to accept retirement benefits that were not due her at the same time she worked for and accepted compensation from the SDP without PSERS' knowledge. PSERS is not being unjustly enriched. More importantly, equitable relief is not available here – whether on the grounds of unjust enrichment or mistake of law – because such relief would conflict with Section 8346(a) of the Retirement Code. See generally *Estate of Harry Rosenstein v. Public School Employees' Retirement System*, 685 A.2d 624, 627 (Pa. Cmwlth. 1996); *Finnegan*, 560 A.2d at 850. As the Commonwealth Court has recognized, the "Retirement Board lacks authority to grant equitable relief in conflict with the statutory mandates of the Retirement Code, and this Court may not revise the Code to achieve equitable results." *Barringer v. State Employees' Retirement Board*, 987 A.2d 163, 165 (Pa. Cmwlth. 2009).⁶

Consequently, Claimant returned to school service during the 1999-2000 school year and, as of her 96th full-day session of work, her annuity should have ceased as a matter of law with the present value of her annuity being frozen. Having continued to provide school service to the SDP for the following twelve school years, accruing between 822.00 and 1,516.50 hours of service during each of those years, Claimant was not eligible for a retirement annuity. She became eligible again only when she terminated school service with the SDP in 2012 and reapplied for retirement. Claimant also was not eligible for PSERS' health insurance premium assistance program after her 95th full-day

⁶ Claimant asserts that whether she committed an innocent mistake of law is a genuine issue of material fact requiring an administrative hearing. As explained above, however, equitable relief on that basis is not available and Claimant admits to being informed of the 95-day time limit for a return. Accordingly, summary judgment is appropriate.

session of service, as it is available only to annuitants. See 24 Pa.C.S. § 8509(b), (c) and § 8102 (def. “participating eligible annuitants”). Claimant thus owes PSERS all amounts that she was overpaid in annuity payments after her 95th full-day session of work for the SDP in 1999-2000 through November 2012 plus statutory interest. Claimant also owes all amounts that she was overpaid in premium assistance. She need not, however, remit the annuity and premium assistance payments that she received from PSERS during the limited, 95-day window when she first returned to service with the SDP during the 1999-2000 school year.

Because Claimant rendered qualified service in every year that she worked for the SDP from 1999-2000 through 2011-2012, PSERS also properly credited her account with the years of service from her 96th day of work in 1999-2000 to her last day of work during the 2011-2012 school year and correctly charged her the amount owed for that service. See 24 Pa.C.S. § 8301(a) (mandating PSERS membership for, among others: (1) hourly employees who work more than 80 full-day sessions or 500 hours during a school year; and (2) annuitants who return to school service beyond the time permitted under the provisions of Section 8346(b)). Claimant is not, however, to be credited with service for the first 95 full-day sessions of work during the 1999-2000 school year and she is not required to remit the amount that was associated with just those days.

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 Claimant’s retirement benefits should have ceased as of her 96th full-day session of post-retirement service during the 1999-2000 school year. 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 JANICE L. JONES
DOCKET NO. 2013-16
CLAIM OF JANICE L. JONES

ORDER

AND NOW, upon consideration of Claimant's Request for Administrative Hearing and PSERS's 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, Claimant is required to: (1) return retirement benefits paid from her 96th full-day session of post-retirement work during the 1999-2000 school year through November 2012; and (2) remit all amounts owed for the unreported and uncredited service that she rendered from her 96 full-day session of employment during the 1999-2000 school year until her subsequent discontinuance of service in June 2012.

Claimant's account should be adjusted to reflect this Opinion and Order.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: Jan. 21, 2015

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