

Mail Date: 1/29/2013

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

IN RE: ACCOUNT OF JOAN A. JORDAN  
DOCKET NO.: 2012-08  
CLAIM OF JOAN A. JORDAN

**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 Joan A. Jordan's ("Claimant") 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 5, 2012, and served a copy on Claimant as required by the General Rules of Administrative Practice and Procedure. 1 Pa.Code §§ 33.32, 33.35, 33.36. On November 29, 2012, Claimant filed her response to PSERS's Motion.

The Board's regulations specifically 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 such non-moving party 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. See *El Concilio De Los Trabajadores v. Commonwealth*, 484 A.2d 817, 818 (Pa.Cmwlt. 1984).

## FINDINGS OF FACT

Because Claimant has not denied the facts contained in PSERS's Motion for Summary Judgment and upon review of the pleadings filed in this matter and Claimant's response to PSERS's Motion for Summary Judgment, the Board finds the following relevant facts not in dispute:

1. Claimant has been a PSERS member on and off since 1967. Claimant most recently enrolled with PSERS in 2001.
2. By letter dated May 14, 2001, PSERS sent Claimant via first class mail a PSERS Member Handbook that stated, among other things, that purchases of service had to be made while a member was active: "If you are an active contributing member of the Public School Employes' Retirement System (PSERS) . . . , you may be eligible to apply to purchase service. \* \* \* **Applications must be filed while you are an active contributing member. Part-time hourly and per diem employes must be in active member status to apply.**" (Emphasis in original).
3. On or about December 9, 2001, Claimant elected to remain a T-C class member.
4. By letter dated September 28, 2005, PSERS sent Claimant via first class mail an Active Member Handbook that also stated that purchases of service had to be made while a member was active:

### **Applying for Additional Service Credit**

If you are an active member of PSERS, you may be eligible to apply to purchase service credit.

\* \* \*

**Applications must be filed while you are an active member. Part-time hourly and per diem employees must meet the 80 day/500 hour requirement in the school year in which PSERS receives your request to be considered an active member eligible to purchase service credit.**

### **Types of Service Eligible for Purchase**

Following are the types of school and non-school service you may be eligible to purchase as an active public school employee. Please refer to the PSERS pamphlet "*Let's Talk About Purchasing Credit for Service*",

publication #9640, or the PSERS website at [www.psers.state.pa.us](http://www.psers.state.pa.us) for further details regarding each type of purchase and its respective cost.

### **School Service**

- Return of Refund
- Former Uncredited Full-Time School Service
- Former Uncredited Part-Time Service

\* \* \*

(Emphasis in original).

5. On or about August 31, 2007, Claimant terminated her employment with the Lackawanna Trail School District.
6. Claimant did not attend a PSERS's retirement counseling session.
7. On October 25, 2007, PSERS received an Application to Purchase Credit for Part-Time Service from Claimant that identified service with Abington Heights School District for the 1980-1981 through 1986-1987 school years.
8. On November 15, 2007, PSERS received an Application to Purchase Credit for Part-Time Service from Claimant that identified service with Tunkhannock Area School District for the 1979-1980 through 1992-1993 and 1996-1997 through 2000-2001 school years.
9. On February 25, 2008, PSERS received an Application to Purchase Credit for Part-Time Service from Claimant that identified service with Lackawanna Trail School District for the 1981-1982, 1984-1985, and 1997-1998 through 2000-2001 school years.
10. The applications contained the following note in the instructions: **"The application must be received by the employer or PSERS while you are an active contributing member."** (Emphasis in original).
11. PSERS received all three applications after Claimant had terminated school service and was no longer an active contributing member of PSERS.
12. The October 25, 2007 Application to Purchase Credit for Part-Time Service was received by the Abington Heights School District on October 12, 2007.
13. The November 15, 2007 Application to Purchase Credit for Part-Time Service was received by the Tunkhannock Area School District on October 16, 2007.

14. The February 25, 2008 Application to Purchase Credit for Part-Time Service does not contain the date that it was received by the Lackawanna Trail School District. Claimant, however, signed the application on October 11, 2007.
15. The applications instruct that a member complete the applications, including the "Member Certification" section, prior to submitting it to his or her employer.
16. All three applications were submitted to the respective school districts after Claimant had terminated service and was no longer an active contributing member of PSERS.
17. By letter dated October 29, 2010, PSERS denied Claimant's requests to purchase credit for part-time service.
18. Claimant timely appealed PSERS's October 29, 2010 determination to the Executive Staff Review Committee ("ESRC").
19. By letter dated April 2, 2012, the ESRC denied Claimant's requests to purchase credit for part-time service rendered during the school years 1980-1981, 1989-1990, 1992-1993, and 1996-1997 because: (a) PSERS had not received the requests while Claimant was an active contributing member; and (b) Claimant had rendered fewer than 80 days of service during those school years and, therefore, it was not qualifying service. The ESRC, however, granted Claimant's requests with respect to the school years 1981-1982 through 1988-1989, 1990-1991 through 1991-1992, and 1997-1998 through 2000-2001, as Claimant had rendered qualifying part-time service of at least 80 days during those school years and service, therefore, should have been reported to PSERS.
20. Claimant filed an appeal of the ESRC's decision on June 1, 2012.
21. On June 21, 2012, Kathrin V. Smith, Assistant Deputy Chief Counsel, filed an Answer and New Matter on PSERS's behalf.
22. On July 6, 2012, Claimant filed a response to PSERS's New Matter.
23. On November 5, 2012, PSERS filed a Motion for Summary Judgment.
24. On November 29, 2012, Claimant filed her response to PSERS' Motion for Summary Judgment.
25. This matter is ripe for Board adjudication.

## DISCUSSION

The Public School Employees' Retirement Code ("Retirement Code"), 24 Pa. C.S. § 8101 et seq., provides that "[e]very *active member* of the system or a multiple service member who is an *active member* of the State Employees' Retirement System on or after the effective date of this part may purchase credit and receive eligibility points . . ." for previous school service. 24 Pa.C.S. § 8303(c)(1) (2007) (emphasis added). "Active member" is defined as "a school employee for whom pick-up contributions are being made to the fund . . ." 24 Pa.C.S. § 8102. The term "school employee" is defined as "[a]ny 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 excluding, however, any independent contractor or a person compensated on a fee basis." 24 Pa.C.S. § 8102. Thus, once a school employee terminates school service, he or she is no longer eligible to purchase service credit.

Claimant does not dispute that her applications to purchase credit for non-qualifying, part-time service for the school years 1980-1981, 1989-1990, 1992-1993, and 1996-1997 were filed with PSERS after she terminated school service and was no longer an "active member" of PSERS. Nor does she dispute that she submitted the applications to the relevant employers for completion after she terminated school service. Rather, Claimant argues that her applications should nevertheless be accepted because she was a "conscientious" employee who "fully supported Pennsylvania Public Education." The Retirement Code, however, does not provide exceptions to the requirement that a member be an "active member" at the time they apply to purchase service credit. Nor does the Board have the authority to grant rights beyond those specifically set forth in the Retirement Code and, therefore, create such an exception. See *Forman v. Public School Employees' Retirement Board*, 778 A.2d 778, 780 (Pa.Cmwth. 2001); see also *Marinucci v. State Employees' Retirement System*, 863 A.2d 43, 47 (Pa.Cmwth. 2004).

Claimant also requests that the Board accept her applications because she "had no intention to retire" and thus "didn't inquire as to future obligations or attend any retirement seminar." She states that she "had no idea all [the information] had to be

submitted prior to [her] last day of employment,” and asks “[w]ho looks into this [information] until he or she is ready to pack it in.” Claimant does not claim, however, that PSERS had a duty to notify her of any requirement or that it failed to do so. The evidence shows, and Claimant does not dispute, that PSERS sent member handbooks to Claimant via first class mail on May 14, 2001 and September 28, 2005 that informed members of the requirement that an application for the purchase of service credit be filed while a member is active. The evidence also shows that Claimant chose not to attend a PSERS’s retirement counseling seminar, and that the applications for credit themselves informed Claimant that they “must be received by the employer or PSERS while you are an active contributing member.”

Claimant notes that “[e]ven the school district was unaware of this policy or they would have informed me.” Claimant, however, does not contend that the school district failed in any duty. As Claimant has not asserted or established that her failure to file her applications while an active member of PSERS was the result of fraud, a breakdown in the courts, or the negligence of a third party, *nunc pro tunc* relief is not available. See *Forman*, 778 A.2d at 780 (citing *Bass v. Commonwealth*, 401 A.2d 1133 (Pa. 1979)). Even if Claimant had made such an allegation, however, relief would not be available here because the Board is not authorized to process an application to purchase credit from a member who is not an “active member.” See *id.* The “retirement system is a creature of the legislature and its members have only those rights created by the retirement benefit statutes.” *Id.*

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 is eligible to purchase non-qualifying, part-time credit for the service she rendered with three school districts during the school years 1980-1981, 1989-1990, 1992-1993, and 1996-1997. Accordingly, PSERS’s Motion for Summary Judgment is GRANTED and Claimant’s Request for Administrative Hearing is DENIED.

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

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**ORDER**

AND NOW, upon consideration of Claimant's Request for Administrative Hearing, PSERS's Motion for Summary Judgment and Claimant's Response to PSERS's Motion for Summary Judgment:

IT IS HEREBY ORDERED, that PSERS's Motion for Summary Judgment is GRANTED, and Claimant's Request for Administrative Hearing is DISMISSED in compliance with 22 Pa.Code § 201.6(b), as no genuine issue of material fact exists and PSERS is entitled to judgment as a matter of law. Accordingly, this Board denies Claimant's request to purchase non-qualifying, part-time credit for the service she rendered with three school districts during the school years 1980-1981, 1989-1990, 1992-1993, and 1996-1997.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: 1/25/2013

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