

Mail Date: OCT 11, 2011

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

IN RE: ACCOUNT OF MURRAY A. NEEPER  
DOCKET NO. 2011-14  
CLAIM OF MURRAY A. NEEPER

**ORDER**

The Public School Employees' Retirement Board ("Board") has before it a Motion to Dismiss filed by the Public School Employees' Retirement System ("PSERS") in the above-referenced administrative appeal. PSERS' Motion to Dismiss requests that Murray A. Neeper's ("Claimant") Request for Administrative Hearing on the issue of receiving more than one year of credited service per school year be dismissed for legal insufficiency appearing on the face of the request.

PSERS filed its Answer and Motion to Dismiss on July 29, 2011, and served a copy by First Class Mail on Claimant, as required by the General Rules of Administrative Practice and Procedure and this Board's regulations. 1 Pa. Code §§ 33.32, 33.35-33.36; 22 Pa. Code §§ 201.1, 201.3.

By Order dated August 12, 2011, the Board granted Claimant's request for an extension of time to file a response to PSERS' Motion to Dismiss, which was timely received on September 16, 2011.

Section 35.54 of the Rules of Administrative Practice and Procedure, 1 Pa. Code § 35.54, authorizes a respondent to file with its answer a motion to dismiss a complaint because of legal insufficiency appearing on the face of the complaint. In the

absence of disputed material facts, the Board has the authority to decide the legal issues in dispute without an evidentiary hearing. *United Healthcare Benefits Trust v. Insurance Commission of Pennsylvania*, 620 A.2d 81 (Pa. Cmwlth. 1993); *Mellinger v. Department of Community Affairs*, 533 A.2d 1119 (Pa. Cmwlth. 1987).

Further, the Administrative Agency Law, 2 Pa.C.S. § 101 et seq., provides that, while the parties generally must be given the opportunity to submit briefs prior to an adjudication by a Commonwealth agency, the decision whether to hear oral argument is discretionary with the agency. 2 Pa. C.S. § 506. Therefore, the Board may properly decide PSERS' Motion based on the pleadings alone.

During the 1978-1979 through 1983-1984 school years, Claimant worked full-time with the Indiana Area School District. He received one full year of service credit for each school year for his full time employment with the Indiana Area School District. Also during the 1978-1979 through 1983-1984 school years, Claimant worked part-time for the Indiana University of Pennsylvania. Claimant is requesting to receive an additional year of credited service for each school year he worked part-time for the Indiana University of Pennsylvania.

Claimant argues that he is entitled to receive service credit in excess of one year of credited service per school year because he performed school service for two separate school employers, worked at different times and locations and had distinct job responsibilities. Claimant also argues that because other school employees who provide school service solely to either a school district or a college receive a full year of credited service, Claimant should also receive one full year of credited service for *each* employment.

The Public School Employee's Retirement Code, 24 Pa.C.S. §8101 et seq. ("Retirement Code"), provides that "a full-time salaried school employee shall receive one year of credit for each school year or the corresponding fraction thereof, in accordance with the proportion of the full school year for which the required regular member contributions have been made. . . . In no case shall a member receive more than one year of credited service for any 12 consecutive months." 24 Pa.C.S. § 8302(a) (emphasis added). Section 8306(a) of the Retirement Code, 24 Pa.C.S. §8306(a), states "[a]n active member of the system shall accrue one eligibility point for each year of credited service as a member of the school or State retirement system." (emphasis added)

The law in this matter is clear. Sections 8302(a) and 8306(a) of the Retirement Code prohibit Claimant from receiving more than one year of credited service for any twelve consecutive months of employment, regardless of the number of days worked in the one year period and regardless of the number of school employers.

Claimant further alleges that failure to credit him with one full year of service for each employment is discriminatory and arbitrary. Although constitutional arguments may, and sometimes must, be raised at the level of administrative adjudication in order to preserve the right to raise them on appeal, the determination of the constitutionality of a provision in the Retirement Code is not a function the Board possesses. *Borough of Greentree v. Board of Property Assessments, Appeals & Review*, 328 A.2d 819 (Pa. 1974). *Newlin Corp. v. Commonwealth, Dept. of Environmental Resources*, 579 A.2d 996 (Pa. Cmwith. 1990).

The material facts at issue in this appeal are not in dispute. In the absence of disputed material facts, this Board has the authority to decide the legal issues in dispute without an evidentiary hearing. *United Healthcare Benefits Trust v. Insurance Commissioner of Pennsylvania*, 620 A.2d 81 (Pa. Cmwlth. 1993); *Mellinger v. Department of Community Affairs*, 533 A.2d 1119 (Pa. Cmwlth. 1987).

Accordingly, PSERS' Motion to Dismiss is granted with prejudice, and Claimant's request to receive an additional year of credited service for each school year he worked part-time for the Indiana University of Pennsylvania is denied.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated:                       
OCT 11, 2011

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