

Mail Date: DEC 13 2011

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

**IN RE: ACCOUNT OF ORYSIA M. STANKO  
DOCKET NO. 2011-12  
CLAIM OF ORYSIA M. STANKO**

**OPINION AND ORDER OF THE BOARD**

The Board has before it a Motion to Deem Facts Admitted and Quash Administrative Appeal filed by the Public School Employees' Retirement System (PSERS) in the above-referenced administrative appeal.

On June 8, 2011, Claimant, Orysia M. Stanko, filed an Appeal and Request for Administrative Hearing requesting to elect Class T-D membership after the December 31, 2001 statutory deadline.

On June 22, 2011, PSERS timely filed an Answer and New Matter to Claimant's Appeal, denying Claimant's allegation that she did not receive the Executive Staff Review Committee's (ESRC) determination letter dated November 15, 2002, which denied Claimant's request to elect Class T-D membership after the December 31, 2001 statutory deadline, and asserted as new matter that Claimant failed to timely file an appeal and request an administrative hearing. The New Matter portion of PSERS' pleading was endorsed with an appropriate notice to plead and served on Claimant by First Class Mail, as required by the General Rules of Administrative Practice and Procedure. 1 Pa. Code §§ 33.32, 33.35-33.36.

Claimant was required to plead to PSERS' New Matter within twenty days after service. 1 Pa. Code §35.35.

Claimant did not file an answer to PSERS' New Matter within twenty days of service.

On October 14, 2011, PSERS filed its Motion to Deem Facts Admitted and Quash Administrative Appeal for lack of subject matter jurisdiction over the appeal. Claimant timely responded to PSERS' Motion on October 27, 2011.

By failing to plead to PSERS' New Matter, Claimant must be deemed to have admitted PSERS' allegations in the New Matter, 1 Pa. Code §§35.35 and 35.39, the material aspects of which are as follows:

### FINDINGS OF FACT

1. The ESRC mailed Claimant a letter dated November 15, 2002 notifying Claimant that she was ineligible to elect Class T-D membership because she did not file a written election with PSERS on or before the statutory deadline of December 31, 2001 ("Determination Letter").
2. The Determination Letter was sent to Claimant at Redacted Redacted via certified mail and a return receipt was requested.
3. The Determination Letter advised Claimant that if she wished to appeal the decision of the ESRC denying her request to elect Class T-D membership after December 31, 2001, Claimant must file an appeal and request for an administrative hearing within thirty (30) days of the date of the letter.
4. The deadline for Claimant to file an appeal of the Determination Letter and request an administrative hearing was December 16, 2002.
5. The Determination Letter identified the Article Number on the return receipt card as: 7002 0460 0002 7102 3000.
6. The ESRC received a return receipt card signed by the Claimant.
7. The Article Number on the return receipt card signed by the Claimant is the same as the Article Number on the return receipt card.
8. Claimant received the Determination Letter.

9. Claimant did not file an appeal and request for administrative hearing from the Determination Letter by December 16, 2002.

10. Claimant did not file a request for an extension of time to file an appeal and request for administrative hearing at any time.

11. Claimant filed an appeal of the Determination Letter and request for an administrative hearing on May 10, 2011, approximately eight years and six months after the date of the ESRC Determination Letter.

12. Claimant has not alleged any fraud, deception, coercion or duress.<sup>1</sup>

### DISCUSSION

The sole issue before this Board is whether it has jurisdiction to entertain Claimant's appeal when the appeal was not received for filing within the appeal period.

The Board has adopted, with some modifications, the General Rules of Administrative Practice and Procedure, 1 Pa. Code §31.1, et seq., ("GRAPP") for all activities and proceedings before the Board. 22 Pa. Code §201.1. Section 35.20 of GRAPP states that an appeal from an action taken by a subordinate officer must be filed within ten (10) days after service of notice of the action. The ESRC extended the ten (10) day statutory deadline in its Determination Letter to thirty (30) days.<sup>2</sup>

Case law has established that a regulation that has been properly promulgated consistent with the procedural requirements of the Commonwealth Documents Law, 45 Pa.C.S. §§1102-1602, has the force and effect of law and is binding. *Borough of*

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<sup>1</sup> In Claimant's response to PSERS' Motion, Claimant does not argue that she did not receive the Determination Letter as she originally claimed in her Appeal and Request for Administrative Hearing. Rather, Claimant appears to concede to the evidence in PSERS' records that she did, in fact, receive the Determination Letter but failed to timely appeal.

<sup>2</sup> Section 201.4a.(a) of the Board's regulations, which states: "An adjudicatory benefit appeal and request for administrative hearing from a denial letter from the ESRC must be in writing and received by the Board within 30 days after the date of the ESRC denial letter," was not promulgated until 2008 and is, therefore, not applicable to this appeal.

*Bedford v. Commonwealth, Dep't of Env'tl. Prot.*, 972 A. 2d 53 (Pa. Cmwlth. 2009).

Thus, an appeal period that has been fixed by regulation is as binding on an agency as a statutory appeal period. When a statute or regulation requires that an appeal be filed within a prescribed period of time, "an untimely filing will not perfect the appeal. Untimely appeals raise a jurisdictional issue." *Strawley v. Unemployment Compensation Board of Review*, 358 A. 2d 145, 147 (Pa. Cmwlth. 1976) (citing, *Luckenbach v. Luckenbach*, 281 A. 2d 169 (Pa. 1971)).

The time period in which to appeal a decision of the ESRC is jurisdictional in nature; therefore, failure to timely file an appeal requires dismissal for lack of jurisdiction over the matter. See 1 Pa. Code § 31.15. Courts of this Commonwealth have been consistent in their strict application of statutory or regulatory appeal periods and have been adamant about their powerlessness to extend an appeal period unless there is a showing of fraud, deception, coercion or duress. *Wise v. Cambridge Springs Borough*, 104 A. 863 (Pa. 1918); *Tankin, Inc. v. Williams*, 277 A. 2d 835 (Pa. Cmwlth. 1971); *Yeager v. United Natural Gas Company*, 176 A. 2d 455 (Pa. Super. 1961); *Powell v. Sonntag*, 48 A. 2d 62 (Pa. Super. 1946). Hardship or neglect does not justify an extension of time for an appeal. *Strawley, supra*. The Board, therefore, lacks jurisdiction to enlarge the time for the filing of an appeal of the ESRC denial and deem the filing as timely.

Claimant argues that her administrative appeal was late because she did not receive the Determination Letter. It is clear, however, from the facts admitted that Claimant signed the return receipt card that was requested when the Determination Letter was mailed to Claimant on November 15, 2002. Claimant waited approximately eight years and six months after the due date to file an appeal. Claimant made no attempt to cure her lateness prior to June 8, 2011; nor has Claimant alleged any fraud, deception, coercion or duress to justify her failure to timely appeal.

This Board, therefore, is without jurisdiction to consider Claimant's appeal. Because Claimant failed to appeal the decision of the ESRC within the prescribed time, the decision of the ESRC is deemed final.

Accordingly, PSERS' Motion to Deem Facts Admitted and Quash Administrative Appeal must be granted, and Claimant's administrative appeal must be dismissed.

### CONCLUSIONS OF LAW

1. Claimant had thirty (30) days to appeal the Determination Letter.
2. Only one timely notice is necessary for the administrative appeal period to run. *Higgins v. Public School Employees' Retirement System*, 736 A.2d 745, 752-53 (Pa. Cmwlth. 1999).
3. Absent a showing of fraud, deception, coercion or duress, failure on the part of a Claimant to file an appeal within the time period fixed by statute or regulation mandates dismissal of the appeal. *Strawley*, supra. Hardship or neglect does not justify an extension of time for an appeal. *Id.*
4. Because Claimant failed to appeal the Determination Letter within the prescribed time period, the Determination Letter is deemed final.

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

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ORDER

AND NOW, upon consideration of PSERS' Motion to Deem Facts Admitted and Quash Administrative Appeal and Claimant's response;

IT IS HEREBY ORDERED, that PSERS' Motion to Deem Facts Admitted and Quash Administrative Appeal is GRANTED, and Claimant's Request for Administrative Hearing is DISMISSED for failure to appeal within the prescribed time period.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: \_\_\_\_\_

**DEC 13 2011**

By: \_\_\_\_\_

*Melva S. Vogler*

Melva S. Vogler, Chairman