

JUN 28 2007

Mail Date: _____

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE: ACCOUNT OF PATTY L. SCHUMACHER
DOCKET NO. 2006-01
CLAIM OF PATTY L. SCHUMACHER

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the Briefs of both parties in the above-referenced matter. We note that neither party filed Exceptions to the Opinion and Recommendation of the Hearing Examiner. The Board finds appropriate the Hearing Examiner's Findings of Fact, Conclusions of Law, Discussion, and Recommendation. Accordingly, we hereby adopt the Hearing Examiners' Opinion as our own.

IT IS HEREBY ORDERED that Claimant's request for a service adjustment for the 1998/1999 school year is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: JUN 28 2007

By: _____

Melva S. Vogler
Melva S. Vogler, Chairman

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

In Re: Account of Patty L. Schumacher :
Claim of Patty L. Schumacher : Docket No. 2006-01
:

OPINION AND RECOMMENDATION

Date of Hearing: November 29, 2006
Hearing Officer: Jackie Wiest Lutz, Esquire
For the Claimant: Patty L. Schumacher-Smith, *pro se*
For PSERS: David W. Speck, Esquire

HISTORY

This matter is before the Public School Employees' Retirement Board (Board) on an appeal filed by Patty L. Schumacher-Smith (Claimant) from a September 15, 2005 decision of the Executive Staff Review Committee (ESRC) of the Public School Employees' Retirement System (PSERS) that denied Claimant's request for, *inter alia*, a service adjustment for the 1998/1999 school year.¹

Claimant was notified of the ESRC's decision by letter dated September 15, 2005.

On or about January 5, 2006, Claimant filed a request for an Administrative Hearing.² Thereafter, on December 6, 2005, David W. Speck, Esquire, filed an Answer to Claimant's Request for Administrative Hearing.

On April 10, 2006, PSERS sent written notice of an opportunity to intervene in Claimant's appeal to the Souderton Area School District (SASD). By letter dated May 9, 2006, PSERS was notified by Jeffrey T. Sultanik, Esquire that the SASD will not be intervening in this proceeding.

¹ Claimant is appealing a reduction of .07 years of service credit, representing unpaid leave following a period of paid leave in the 1998-1999 school year. Although the ESRC also denied Claimant's request for a salary adjustment for the 2000-2001 school year, Claimant provided no evidence on this issue during her hearing; thus, this issue is deemed to be waived.

During PSERS' case-in-chief, Cattermole was asked by PSERS' counsel to respond to questions regarding Claimant's non-qualifying part-time service credit. However, Claimant did not address that issue during her testimony, and did not know why testimony was being elicited on this issue because the ESRC ruled in her favor. (N.T. 89) (The ESRC determined that Claimant provided sufficient evidence to support her claim for 15 days of non-qualifying part-time service credit as opposed to 14 days, which had been reported by the SASD.) Because the ESRC credited Claimant with the 15 days she requested, Claimant is not disputing that in this appeal.

² Although the ESRC's September 15, 2005 decision notified Claimant that her request for administrative hearing must be received at the offices of PSERS within 30 days of the date of its letter, Claimant requested and was granted several extensions of time to file a request for an administrative hearing.

On May 22, 2006, a hearing notice was issued scheduling a hearing on Claimant's appeal for July 26, 2006, in Harrisburg, PA. Claimant requested an unopposed continuance of this hearing on or about July 24, 2006.

On July 25, 2006, an Order Granting Continuance was issued. An Order Rescheduling Hearing was subsequently issued on July 26, 2006; the hearing was rescheduled for November 29, 2006.

On November 29, 2006, the hearing was held as scheduled at 5 North Fifth Street, Harrisburg, PA. Claimant was present at the hearing, *pro se*. David W. Speck, Esquire, represented PSERS.

Following the close of evidence and upon receipt of the hearing transcript, a briefing schedule was established. Pursuant to the briefing schedule, Claimant's brief was due on or before January 16, 2007; PSERS' brief was due February 15, 2007; and, a reply brief, if any, was due by Claimant no later than March 2, 2007.

Both parties filed briefs, as directed.

The matter is now before the Board for final disposition.

FINDINGS OF FACT

1. Claimant is a member of the Public School Employees Retirement System (PSERS). (Official Notice - PSERS' records)
2. At all relevant and material times, Claimant was employed by the Souderton Area School District (SASD). (Official Notice - PSERS' records)
3. At all relevant and material times, the SASD had a "Family and Medical Leave Policy." (Claimant's Exhibit 32)
4. The Family and Medical Leave Policy of the SASD provides, in pertinent part, as follows:

1. Purpose In accordance with the Family and Medical Leave Act of 1993 (the "FMLA") the Souderton Area School District (the "District") will grant up to twelve (12) weeks of family and medical leave to eligible employees during a 12-month period beginning on the first date the employee's "FMLA" leave begins. *The leave may be paid, unpaid, or a combination of paid and unpaid, depending on the circumstances and as specified in this policy.*

...

- F. Use of Paid and Unpaid Leave: If the employee has accrued paid leave the employee must use paid leave first and take the remainder of the twelve (12) weeks as unpaid leave. Therefore, under this policy, paid leave will always be substituted for "FMLA" leave when permitted by the "FMLA."
(Claimant's Exhibit 32, pages 1 and 4)

5. In August 1998, Claimant requested family medical leave, effective September 2, 1998, for the purpose of caring for her son; Claimant's expected date of return to work was September 21, 1998. (Claimant's Exhibits 1, 25, 27 and 28)
6. On September 18, 1998, Claimant requested and was granted additional family medical leave by Dr. H. Nicholas Chubb, Director of Human Resources, for the SASD

(Chubb), due to "hypertension aggravated by stress/anxiety;" Claimant's expected date of return to work was October 5, 1998. (Claimant's Exhibit 2)

7. Claimant was notified that the extension of family medical leave that had been granted until October 5, 1998 "represents a total of five (5) weeks of Family Medical Leave." (Claimant's Exhibit 2)

8. In April 1999, Claimant requested medical leave for herself for at least two weeks due to "chest pain." (Claimant's Exhibits 31 and 32)

9. By memo dated April 12, 1999 Chubb notified Claimant that he received her request to extend her leave for at least the next two weeks; Chubb informed Claimant:

Please be aware that you will have used 7 weeks and 2 days of your FML and have the following days remaining with payment:

Sick: . 10.5 days
Personal: 1 day
(Claimant's Exhibit 32)

10. On May 4, 1999, Claimant requested family medical leave, effective May 18, 1999, for the purpose of caring for her son. (Claimant's Exhibit 33)

11. By memo dated May 18, 1999, Chubb notified Claimant as follows:

This note is to acknowledge receipt and approval of your request to extend FML for the purpose of "care-giver" following your son's operation."

As per my last letter (April 12, 1999), I had informed you that you had used 7 weeks and 2 days of your FML. You have now used 10 weeks and 3 days of your FML (12 weeks total).

However, please be aware that you exhausted all of your personal and sick leave as of May 11 [1999].

Please call if you have any questions regarding this matter.
(Claimant's Exhibits 4 and 34)(emphasis added).

12. When Claimant submitted her requests for family or medical leave, Claimant placed her signature and date below a statement that reads, in pertinent part:

I understand and agree to the following provisions:

- This leave will be unpaid, unless it is company policy to be paid; or in the case of my own disability, payment will occur under a company disability insurance plan, if I am so covered.
- *I may be required to exhaust my paid vacation, personal or sick leave as part of my 12 weeks of leave.*

(Claimant's Exhibits 28, 31 and 33)

13. Claimant formally resigned from the SASD effective December 31, 2000 pursuant to a settlement that was reached between Claimant and the SASD in the matter of *Schumacher v. Souderton Area School District*, in the United States District Court for the Eastern District of Pennsylvania (99-CV-1515). (N.T. 59-60; Claimant's Exhibits 20 - 22)

14. Claimant stopped receiving any compensation from the SASD as of May 14, 1999. (N.T. 59; PSERS' Exhibit 1)

15. Marla Cattermole (Cattermole) is the manager of the Bureau of Benefits Administration for PSERS. (N.T. 69)

16. During the course of preparing Claimant's Statement of Account for School Year 2004-2005, Cattermole noticed an inconsistency in Claimant's seven year salary history and the number of days that were reported for Claimant by the SASD. (N.T. 70-71; PSERS Exhibit 13, p. 3)

17. The SASD reported 189 days for Claimant during the second quarter of 1998, with a corresponding fiscal year to date salary of \$67, 824.00; during the second quarter

of 1999, the SASD also reported 189 days for Claimant with a drop in salary of approximately \$6,000. (N.T. 71-72; PSERS' Exhibit 13, p. 3)

18. Cattermole generally looks for a progression in salary from year to year; however, in Claimant's case, the days reported stayed the same and the salary dropped. (N.T. 72)

19. Due to this inconsistency, Cattermole requested the SASD to review their records regarding Claimant's service and salary and to make any necessary adjustments to make it correct. (N.T. 73)

20. On January 27, 2005, the Director of Business Affairs for the SASD provided Cattermole with a detailed accounting of Claimant's payroll data for the 1998-1999 school year. (N.T. 73; PSERS' Exhibit 1)

21. The payroll data reveals that the number of days in a teacher work year at the SASD for the 1998-1999 school year was 190 days. (PSERS' Exhibit 1)

22. Service credit of 180 days in one school year constitutes one full year of service; any number of days over 180 does not result in additional service credit because a member cannot earn more than one year of service in any one year. (N.T. 73)

23. The payroll data reveals that Claimant's biweekly pay, commencing with the pay date September 4, 1998 and continuing through April 30, 1999, was \$2,692.31; however, on May 14, 1999, Claimant's biweekly pay was only \$1,402.84. (N.T. 74)

24. The number of work days reported for Claimant during the 1998-1999 school year was only 167.50, which is consistent with the reduction in Claimant's biweekly pay for the pay date May 14, 1999. (N.T. 74; PSERS' Exhibit 1)

25. Service credit of 167.5 days constitutes only .93 years of service (167.5 divided by 180). (N.T. 74)

26. The difference between one full year of service credit (180 days) (which was originally reported for Claimant) and 167.5 days is .07 years of service credit. (N.T. 74)
27. On May 4, 2005 PSERS mailed Claimant a letter notifying Claimant that an adjustment of .07 years of service credit was made to her account. (N.T. 76; PSERS' Exhibit 5)
28. On August 11, 2005, the Director of Business Affairs for the SASD provided additional information to Cattermole that family medical leave was granted to Claimant from April 6, 1999 through May 25, 1999, representing a total of 36 days, 10.5 of which were unpaid, and that Claimant was also on leave without pay for 12 days from May 26, 1999 through June 11, 1999, representing a total of 22.5 days of leave without pay during the 1998-1999 school year. (N.T. 77-78; PSERS' Exhibit 6)
29. Based upon a 190-day school year, Claimant's 22.5 days of unpaid leave during the 1998-1999 school year is consistent with the 167.5 work days that are reflected in the SASD pay roll data for Claimant. (N.T. 78)
30. Retirement credit is never granted for leave without pay because if a member is not receiving compensation, contributions are not being made. (N.T. 77)
31. Claimant understands the SASD Family and Medical Leave Policy to mean that she can be on extended family medical leave for any period of time *with pay*. (N.T. 66-67)
32. Claimant does not agree with the SASD pay roll data because school board minutes that Claimant reviewed do not reflect that she was ever on unpaid leave. (N.T. 64)

33. On or about September 6, 2005, the ESRC considered an appeal filed by Claimant that challenged: (1) the service adjustment of .07 years of service credit that was made by PSERS to Claimant's account; (2) a salary adjustment that was made by the SASD for Claimant during the 2000-2001 school year; and, (3) SASD's report to PSERS that Claimant qualified for 14 days of non-qualifying part-time service (NQPTS) credit for the 1982-83 school year, rather than 15 days of NQPTS credit. (PSERS' Exhibit 9)

34. Claimant was notified of the ESRC's decision by letter dated September 15, 2005. (PSERS' Exhibit 7)

35. The ESRC determined that Claimant provided credible evidence to support her claim for 15 days of NQPTS credit; however, the ESRC declined to grant Claimant service credit beyond the 167.50 work days that the SASD reported for Claimant during the 1998-1999 school year.

36. Claimant filed an appeal from the ESRC's determination and requested an administrative hearing. (Official Notice – PSERS' records)

37. An administrative hearing on Claimant's appeal was held on November 29, 2006. (Transcript, *passim*)

38. Claimant was present at the hearing, *pro se*. (Transcript, *passim*)

CONCLUSIONS OF LAW

1. Claimant was afforded an opportunity to be heard in connection with her appeal.

(Findings of Fact Nos. 33-38)

2. Claimant has the burden of proof in this proceeding. *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991).

3. When a change or mistake in records results in any member receiving from the system more or less than the member would have been entitled to receive had the records been correct, the Board is required, upon discovery of the error, to correct the error. 24 Pa. C.S. §8534(b).

4. In computing creditable school service of a member for a determination of benefits, a full-time salaried school employee shall receive one year of credit for each school year or corresponding fraction, thereof, in accordance with the proportion of the full school year for which the required regular member contributions have been made. 24 Pa. C.S. §8302(a).

5. An employee can only receive retirement credit for the time period where the employee actually engaged in work for the school district and received regular remuneration for that work. 24 Pa. C.S. §§8302(a); *Hoerner v. Public School Employees' Retirement Board*, 546 Pa. 215, 684 A.2d 112 (Pa. 1996).

6. Claimant has failed to proffer sufficient evidence to support her appeal. (Findings of Fact Nos. 1-35)

DISCUSSION

Claimant seeks relief from the Board for what Claimant perceives to be “deliberate misinformation” that has been provided to PSERS from the Souderton Area School District (SASD), which has resulted in a reduction of .07 years of service credit to her account.³ According to Claimant:

Souderton Area School District was requested by Ms. Cattermole to explain a discrepancy in salary for the 98-99 school year. The discrepancy was created by SASD during 99-cv-1515. SASD and/or its representatives withheld payment without notifying Ms. Schumacher and without her permission The actions of SASD with regard to these pay periods were a part of 99-cv-1515 and considered as discrimination and retaliation by SASD and/or its representatives.⁴
(Claimant’s Brief, p. 5)

The record reveals that during the course of preparing Claimant’s Statement of Account for School Year 2004-2005, Cattermole noticed an inconsistency in Claimant’s seven year salary history and the number of days that were reported for Claimant by the SASD. For example, during the second quarter of 1998, the SASD reported 189 days for Claimant with a fiscal year to date salary of \$67,824.00; however, during the second quarter of 1999, the SASD reported the same amount of days for Claimant, i.e., 189, with a drop in salary of approximately \$6,000.

³ Claimant’s Brief, p. 8.

⁴ Claimant previously filed suit against the Souderton Area School District and distrusts the accuracy of SASD’s record keeping. (*Schumacher v. Souderton Area School District*)(99-CV-1515). Claimant referenced her lawsuit against the SASD and a settlement agreement that resulted therefrom several times throughout her testimony. However, a copy of the settlement agreement is not in evidence. Moreover, Claimant’s suit against the School District and any settlement that resulted therefrom has no effect on PSERS. PSERS is duty bound to comply with the provisions of the Retirement Code when it computes creditable school service for any of its members, 24 Pa. C.S. §8302; PSERS cannot be bound by the terms of a settlement agreement to which it is not a party. *Watrel v. Dept. of Education*, 488 A.2d 378 (Pa. Cmwlth. 1985), *aff’d*, 518 A.2d 1158 (Pa. 1986).

Cattermole testified that this was unusual because PSERS normally looks for progression in salary which is consistent with the number of days reported. In Claimant's case, the number of days reported stayed the same, but Claimant's salary decreased. Because of this inconsistency, Cattermole requested the SASD to review its records regarding Claimant's service and salary and to make any necessary adjustments to correct the discrepancy.

Upon review of its records, the SASD provided Cattermole with a detailed accounting of Claimant's payroll data for the 1998-1999 school year. The payroll data revealed that the number of work days for Claimant during the 1998-1999 school year was actually only 167.50, which was consistent with the reduction in Claimant's biweekly pay for the pay date May 14, 1999.

Additional information that was provided by the SASD to Cattermole subsequently revealed that 10.5 days of family medical leave that was granted to Claimant from April 6, 1999 through May 25, 1999 was *unpaid leave* and that Claimant was also on *leave without pay* for 12 days from May 26, 1999 through June 11, 1999. Based on a 190-day school year,⁵ Claimant's 22.5 days of *unpaid leave* during the 1998-1999 school year is also consistent with the 167.50 work days that are reflected in the SASD's pay roll data for Claimant.⁶ Since 167.50 work days constitutes only .93 years of service,⁷ an adjustment of .07 years of service credit was made to Claimant's account.

⁵ The number of days in a teacher work year at the SASD for the 1998-1999 school year was 190 days.

⁶ $(190 - 167.5 = 22.5)$.

⁷ One full year of service credit is the equivalent of 180 days; any number of days over 180 does not result in additional service credit because a member cannot earn more than one year of service in any one year. 24 Pa. C.S. §8302(a).

Although Claimant does not dispute that she requested and was granted family medical leave by the SASD for both herself and her son on several occasions between September of 1998 and May of 1999,⁸ Claimant requests that her account be credited for .07 years because she was never informed by the SASD that she was on unpaid leave.⁹

However, Claimant's own exhibits contradict her testimony.¹⁰ The evidence establishes that on April 12, 1999, Claimant was notified by SASD's Director of Human Resources:

Please be aware that you will have used 7 weeks and 2 days of your FML and have the following days remaining with payment:

Sick: 10.5 days
Personal: 1 day
(Claimant's Exhibit 32)(emphasis added)

Claimant was also provided with *another* copy of the SASD's Family Leave Policy (adopted June 8, 1995) as of April 12, 1999. (Claimant's Exhibit 32). Subsequently, on May 18, 1999, Claimant was notified that she had exhausted all of her personal and sick leave as of May 11, 1999. (Claimant's Exhibit 4) In addition, When Claimant submitted her requests for family or medical leave, Claimant placed her signature and date below the following statement:

I understand and agree to the following provisions:

...

⁸ Claimant's Exhibits 1, 2, 31, 32, and 33.

⁹ Claimant also maintains that she reviewed school board minutes from May of 1988 through November 21, 2000 and found no reference to any formal actions being taken by the school board to approve her for such leave. However, Claimant provided no evidence to support her contention that the school board must first approve this leave before it is effective.

¹⁰ Claimant provided no evidence to support her contention that the school board must first approve this leave before it is effective.

- This leave will be unpaid, unless it is company policy to be paid; or in the case of my own disability, payment will occur under a company disability insurance plan, if I am so covered.
- *I may be required to exhaust my paid vacation, personal or sick leave as part of my 12 weeks of leave.*
(Claimant's Exhibits 28, 31 and 33)

Thus, the evidence does not support Claimant's testimony. Claimant simply disagrees with SASD's records because Claimant's understanding of the SASD Family and Medical Leave Policy is that she could be on extended family medical leave for any period of time *with pay*. (N.T. 67) However, Claimant is mistaken.

Under the SASD Family and Medical Leave Policy, employees may be granted up to twelve (12) weeks of family and medical leave during a 12-month period. However, the policy provides that the leave *may be paid, unpaid, or a combination of paid and unpaid, depending on the circumstances as specified in this policy*. (Claimant's Exhibit 32, page 1) On the issue of paid and unpaid leave, the policy specifically states:

F. Use of Paid and Unpaid Leave: If the employe has accrued paid leave the employe must use paid leave first and take the remainder of the twelve (12) weeks as unpaid leave. Therefore, under this policy, paid leave will always be substituted for "FMLA" leave when permitted by the "FMLA."
(Claimant's Exhibit 32, pages 1 and 4)

Claimant does not dispute that she was paid by the SASD for family medical leave up until May 11, 1999. However, as of that date, all of her personal and sick leave was exhausted. Thus, according to SASD's Family Medical Leave Policy, any remaining family or medical leave that was taken by Claimant was unpaid leave.

PSERS cannot grant Claimant service credit for family medical leave for which Claimant received no remuneration because as a PSERS member, Claimant has only those rights created by statute. *Bittenbender v. State Employees' Retirement Board*, 622

A.2d 403 (Pa. Cmwlth. 1992). For purposes of computing retirement benefits, the Public School Employees Retirement Code (Retirement Code) is very clear:

§8302. Credited school service.

(a) Computation of credited service. In computing credited school service of a member for the determination of benefits, 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. . . .

24 Pa. C.S. §8302(a).

Cattermole explained that retirement credit is never granted for leave without pay because when a member is not receiving compensation, required regular member contributions are not being made. Thus, if a member is not receiving salary, the member is not receiving service credit. (N.T. 77) Our Supreme Court agrees. *Hoerner vs. Public School Employees' Retirement Board*, 546 Pa. 215, 684 A.2d 112 (Pa. 1996)(under the Retirement Code, an employee can only receive retirement credit for the time period where the employee actually engaged in work for the school district *and received regular remuneration for that work.*)(emphasis added).

Here, when Cattermole discovered a discrepancy in Claimant's salary history, she was required, upon discovery of the error, to make appropriate inquiry of the SASD to correct the error. 24 Pa. C.S. §8534(b).¹¹ Upon receiving exact dates from the SASD to

¹¹ Section 8534(b) of the Retirement Code provides as follows:

§8534. **Fraud and adjustment of errors**

(b) ADJUSTMENT OF ERRORS. Should any change or mistake in records result in any member . . . receiving from the system more or less than he would have been entitled to receive had the records been correct, then regardless of the intentional or unintentional nature of the error and upon the discovery of such error, the board shall correct the error and so far as practicable shall adjust the

confirm when Claimant's unpaid leave occurred, Cattermole correctly adjusted Claimant's account to the corresponding fraction in accordance with the proportion of the full school year for which Claimant worked and received regular remuneration.

Claimant bears the burden of proof in this proceeding. Wingert v. State Employees' Retirement Board, 589 A.2d 269 (Pa. Cmwlth. Ct. 1991). Claimant has not proffered sufficient evidence to support her request for a service adjustment of .07 years of credit for the 1998/1999 school year. The following recommendation will therefore be made to the Board:

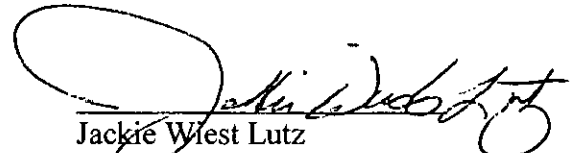
payments which may be made for and to such person in such a manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid. 24 Pa. C.S. §8534(b).

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

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RECOMMENDATION

AND NOW, this 23rd day of March 2007, upon consideration of the foregoing Findings of Fact, Conclusions of Law and Discussion, the hearing officer for the Public School Employees' Retirement System recommends that Claimant's request for a service adjustment for the 1998/1999 school year be **denied**.


Jackie Wiest Lutz
Hearing Officer

Dated: *March 23, 2007*