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

IN RE: ACCOUNT OF BERNARD J. RIDGELEY  
DOCKET NO.: 2014-05  
CLAIM OF BERNARD J. RIDGELEY

**OPINION AND ORDER OF THE BOARD**

The Public School Employees' Retirement Board has carefully and independently reviewed the entire record of this proceeding, including the Opinion and Recommendation of the Hearing Officer. Neither the Claimant nor PSERS filed exceptions in this matter.

The Board generally finds appropriate the History, Findings of Fact, Conclusions of Law, and Recommendation in the Hearing Officer's Opinion attached hereto with the following modifications:

1. On page 16, first sentence of the second paragraph under the title "PSERS' Position" the Hearing Officer's statement: "There is no dispute that Claimant was an active member when he applied for service or that Clarion University and that Clarion University is a recording unit of PSERS" is amended to read "There is no dispute that Claimant was an active member when he applied for service or that Clarion University is a reporting unit of PSERS."
2. On page 8, Findings of Fact No. 38, the Hearing Officer's statement: "Purchase of service credit' means that a member, if he or she qualifies, may purchase service to fill in gaps of misreported service from a PSERS

employer; if the member qualifies, the member would be eligible to purchase that service to fill in those gaps in work history” is amended to read “‘Purchase of service credit’ means that a member, if he or she qualifies, may purchase service credit to fill in gaps during which service was rendered but not previously reported and/or credited with PSERS; if the member qualifies, the member would be eligible to purchase that service to fill in those gaps in work history.”

With the above modifications we hereby adopt the Hearing Officer’s Opinion and Recommendation as our own, and accordingly:

IT IS HEREBY ORDERED that the Claimant’s request to purchase credit with PSERS for the service he rendered at Clarion University in a work-study position during the 1975-1976 through 1978-1979 school years is DENIED, and Claimant’s Appeal and Request for Administrative Hearing is DISMISSED.

PUBLIC SCHOOL EMPLOYEES’  
RETIREMENT BOARD

Dated: October 6, 2015

By: Melva S. Vogler  
Melva Vogler, Chairman

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COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

PSEERS  
EXECUTIVE OFFICE

IN RE: :  
: :  
Account of Bernard J. Ridgeley : Docket No.: 2014-05  
Claim of Bernard J. Ridgeley :

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OPINION AND RECOMMENDATION

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**Maria Battista**  
**Hearing Examiner**

**Date of Hearing:** January 21, 2015  
**Hearing Examiner:** Maria Battista  
**For the Claimant:** Bernard J. Ridgeley, pro se  
**For PSERS:** Kathrin Smith, Assistant Deputy Chief Counsel

## HISTORY

This matter is before the Public School Employees' Retirement Board ("Board") on an appeal filed by Bernard J. Ridgeley ("Claimant") on February 28, 2014, from a decision of the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS") dated January 31, 2014 ("ESRC denial letter"), denying Claimant's request that the Board grant him the ability to purchase part-time uncredited service for the period of time between the school years of 1975-1976 and 1978-1979 ("1976-1979") when he was in a work-study program at Clarion University.

By letter dated October 15, 2014, Maria Battista was appointed by the Board's Secretary, Jeffrey B. Clay, to act as the Hearing Examiner for Claimant's administrative hearing. By letter of the same date, the Board's Appeal Docket Clerk notified Claimant that the administrative hearing on his appeal was scheduled for January 21, 2015.

By Order dated November 17, 2014, a pre-hearing conference was held on January 9, 2015. The administrative hearing was held as scheduled on January 21, 2015. Claimant attended the hearing, *pro se*, while Kathrin V. Smith, Esquire, represented PSERS. The hearing transcript was filed on February 3, 2015.

On February 18, 2015, Claimant's Social Security Itemized Statement of Earnings was filed. No objections were filed by Attorney Smith within ten (10) days. By Order filed on March 5, 2015, Claimant's Social Security Itemized Statement of Earnings was admitted into evidence as Exhibit A-5.

A second Order filed on March 5, 2015, established a briefing schedule, acknowledged that Claimant waived his right to file his initial brief, directed PSERS to file its post-hearing brief on or before April 3, 2015, and directed Claimant to file his post-hearing reply brief, if any, on or

before April 23, 2015. On March 27, 2015, PSERS filed its brief. On April 22, 2015, Claimant filed a reply brief.

On April 23, 2015, PSERS filed *Objections to Claimant's Reply Brief to the Hearing Officer*. PSERS argued that the documents attached to Claimant's reply brief were hearsay with no foundation for authenticity because the documents had not been presented or admitted at the administrative hearing or required to be provided after the hearing. PSERS also objected to any discussion in Claimant's reply brief regarding the same documents. Finally, PSERS objected to statements made by Claimant in paragraphs 17, 18, 20, 21, 23, 26, A, and B of his reply brief on grounds of hearsay, speculation and lack of personal knowledge. By Order filed on May 20, 2015, PSERS objections to Claimant's attached documents and discussion of those documents in his reply brief were sustained. As to Claimant's statements in paragraphs 17, 18, 20, 21, 23, 26, A and B, which were not supported by the record, such objections were also sustained. However, to the extent that Claimant's statements in paragraphs 17, 18, 20, 21, 23, 26, A, and B were supported by the record, such objections were overruled.

Accordingly, the record is closed and the matter is now before the Board for final disposition.

## FINDINGS OF FACT

### **Claimant's Educational Background**

1. Bernard J. Ridgeley ("Claimant") attended Clarion State College, now known as Clarion University, as a full-time undergraduate student during the 1975-1976 through 1979-1980 school years. (N.T. 13; Exhibit A-4)
2. Claimant graduated in May 1980 from Clarion University with an undergraduate degree in secondary education with a focus in social studies. (N.T. 13)

### **Extra-curricular Activities at Clarion University**

3. During the 1975-1979 school years, Claimant was a walk-on football player for Clarion University's NCAA Division II football team, where he initially did not receive any meal ticket or compensation or scholarship. (N.T. 10, 36)

### **Claimant's Financial Situation during his Undergraduate Studies**

4. Claimant filled out financial aid forms for his freshman year of college, and he believes the forms were with the Pennsylvania Higher Education Assistance Agency ("PHEAA"). (N.T. 26)
5. While attending Clarion University, Claimant received a social security stipend since his father was retired and received Social Security income. (N.T. 9-10, 12, 32-33; Exhibit A-1)
6. Claimant's social security stipend amounts were as follows:

February 1976-May 1976:	\$ 890.00
June 1976-May 1977:	\$2,268.00
June 1977-May 1978:	\$2,412.00
June 1978-May 1979:	\$2,568.00
June 1979-January 1980:	\$1,880.00

(Exhibits A-1 and A-2)

7. In his Freshman year, Claimant's parents assisted in paying for some of his education. (N.T. 25-26)
8. Claimant received no stipends toward his room or board, tuition or books. (N.T. 18)
9. Claimant received no discounts while an undergraduate student. (N.T. 18)
10. From 1977 to 1980, beginning in Claimant's sophomore or junior year, he was receiving a meal ticket and a sum of alumni money (approximately \$500.00 per year) because he played football for Clarion University. (N.T. 10-11, 25, 27)
11. Claimant's social security stipend along with the meal ticket and alumni money for playing football covered most of Claimant's college expenses. (N.T. 10-11)
12. By the time Claimant graduated from Clarion University, which took five years, he had a surplus of money left over. (N.T. 27)

**Claimant's part-time work while an undergraduate student at Clarion University**

13. Claimant had a work-study position as a janitor at Clarion University while he was a full-time undergraduate student; Claimant started this position in January of 1976, his second semester of his freshman year. (N.T. 11, 16-18, 20-21, 28; PSERS-1; Exhibit A-4)
14. The work study positions were open to students at Clarion University and not open to the general public. (N.T. 20, 57-58)
15. Claimant was paid by the hour at minimum wage for his work-study position. (N.T. 16)
16. Claimant's work-study position was part-time and flexible to fit his school schedule. (N.T. 21)
17. Claimant did not hold the work-study position in the summer because he went home. (N.T. 21)

18. In connection with his work-study position as a janitor at Clarion University, Claimant worked as follows:

1975-1976 school year: (Spring semester only)	Number of hours:	208
	Minimum wage:	\$2.10 per hour
	Salary not reported: <sup>1</sup>	\$437.58
1976-1977 school year:	Number of hours:	367.5
	Minimum wage:	\$2.30 per hour
	Salary not reported:	\$845.46
1977-1978 school year:	Number of hours:	148
	(Oct.-Dec.)	
	Minimum wage:	\$2.30 per hour
	Salary not reported:	\$342.00
	Number of hours:	221.5
	(Jan.-May)	
	Minimum wage:	\$2.65 per hour
	Salary not reported:	\$587.25
1978-1979 school year:	Number of hours:	138
	(Oct.-Dec.)	
	Minimum wage:	\$2.65 per hour
	Salary not reported:	\$366.12
	Number of hours:	180
	(Jan.-May)	
	Minimum wage:	\$2.90 per hour
	Salary not reported:	\$524.07

(PSERS-1; N.T. 16, 28)

19. Claimant was paid through Clarion University's student payroll system by the Department of Education Comptroller for his work-study position from 1976-1979. (N.T. 23-24, 35; PERS-1; PSERS-3; Exhibit A-5)

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<sup>1</sup> Page 3 of PSERS-1 provides at section E a column for "Salary Not Reported" for uncredited service rendered by Claimant. This would indicate the salary paid to Claimant by Clarion University that was not reported to PSERS. See PSERS-1; N.T. 51.



20. By letter dated December 2, 2011, Shelly L. Williams, Manager of Employee Services, Office of Human Resources, Clarion University, noted the following regarding Claimant's time as a student worker at Clarion University:

This letter is to confirm that Bernard Ridgeley was employed at Clarion University of Pennsylvania from 1976-1979. He has submitted detailed earnings provided by the Social Security Administration verifying quarterly totals for this time period. In addition, Clarion University payroll office has provided detailed information regarding the payroll records during the time in question. The services rendered by Mr. Ridgeley were not part of a financial aid package. Student workers are part of our campus work study program and are paid through our student payroll system.

(PSERS-1at December 2, 2011 letter; *see also* N.T. 11-12, 14-16, 19-24, 28, 35-37, 51, 53, 56-57, 59)

21. Claimant submitted an *Itemized Statement of Earnings* from the Social Security Administration that identifies Claimant's "employer" as the "Department of Education Comptroller" for the 1977, 1978, and 1979 years.<sup>2</sup> (Exhibit A-5; *see also* PSERS-3 and N.T. 15, 22-24, 35, 37)
22. No student payroll data was able to be provided to Claimant from Clarion University.<sup>3</sup> (N.T. 11-12; Exhibit A-4)
23. Claimant did not receive course credit for his work-study position. (N.T. 18-19)
24. Claimant did not have an employment contract with Clarion University for his work study position. (N.T. 19)
25. Claimant did not receive written performance evaluations for his work-study position. (N.T. 19)

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<sup>2</sup>No employer is identified for 1975 and 1976 on the *Itemized Statement of Earnings* as the only time period requested was from January 1977 through December 1980. (Exhibit A-5)

<sup>3</sup>Claimant attempted to obtain his records from Clarion University and was told he could not obtain his records because they were destroyed in a flood, i.e., that the pipes broke in the building where the payroll records were housed. (N.T. 11-12, 15, 22, 38; *see also* Exhibit A-4)

26. Claimant was not a member of the State Employees' Retirement System while he was in his work-study position at Clarion University. (N.T. 24)
27. Claimant received no health insurance, life insurance, dental insurance, or vision insurance while he was in his work-study position. (N.T. 30-31)
28. Claimant received no paid vacation days or sick leave or personal leave while in the work-study position. (N.T. 31)
29. Claimant used the money he received from his work-study position for every day expenses such as food and other incidental expenses. (N.T. 10)
30. Claimant did not continue his part-time position after he graduated from Clarion University in May 1980. (N.T. 17)

#### **Teaching Experience of Claimant after Clarion University**

31. Claimant began teaching social studies in Elyria, Ohio upon his graduation from Clarion University in 1980. (N.T. 17)

#### **Clarion University**

32. Clarion University is a reporting unit of PSERS and was a reporting unit during the 1976-1979 school years. (N.T. 52)
33. Claimant was not enrolled with PSERS through his work study position, and Clarion did not report Claimant to PSERS during the school years of 1976-1979. (N.T. 52, 54, 66)

#### **Department of Education**

34. The Department of Education funds work-study programs, tagging the money for student payroll. (See N.T. 35, 53, 57)

### **Work-Study**

35. Work-study is a form of financial aid, and it can be paid directly to the student (e.g., through a physical check) or indirectly to the student (e.g., paid to the university for room, board, and books). (N.T. 53; PSERS-4)

### **PSERS Protocol and Appeal Process**

36. "Service credit" is the amount of service rendered in any given fiscal school year. (N.T. 49)
37. The more service credit a member has, the higher the monthly benefit to the member. (N.T. 49)
38. "Purchase service credit" means that a member, if he or she qualifies, may purchase service to fill in gaps of misreported service from a PSERS employer; if the member qualifies, the member would be eligible to purchase that service to fill in those gaps in work history. (N.T. 49-50)
39. There are three general requirements for a member to purchase service credit: 1) the service must have been rendered with a reporting unit of PSERS; 2) the member must have been active and contributing at the time that he or she applied for the service; and 3) the position that the member is applying for must be a qualified recognized position from PSERS. (N.T. 50)
40. In January of 1983, Claimant enrolled with PSERS for the first time through his employment with the Central Cambria School District. (*See* N.T. 48-49)
41. Claimant retired in September 2012. (N.T. 49)

42. On December 14, 2011, Claimant applied to PSERS to purchase credit for his part-time, work-study position at Clarion University for the period of 1976-1979. (N.T. 14-16; PSERS-1)

43. Claimant was an active member of PSERS in December 2011. (N.T. 51-52)

44. By letter dated May 29, 2012, PSERS denied Claimant's request to purchase service, explaining:

Section 8102 of the Retirement Code defines "School Service" as "service rendered as a school employee." Work-study, graduate assistant, resident assistant, and any similar exclusionary programs do not meet the definition of an employer/employee relationship wherein the employee accrues retirement, health and leave benefits, etc. Your request to purchase this service is denied.

(PSERS-2)

45. On June 28, 2012, Claimant appealed PSERS' May 29, 2012 determination to the Executive Staff Review Committee ("ESRC"). (PSERS-3)

46. By letter dated January 31, 2014, the ESRC denied Claimant's request, explaining in part:

According to the information provided by you and by Clarion University (CU), you rendered service for CU as part of a work study program while you were a student. Work study is considered financial aid, since eligibility to participate in a work study program is based on financial need. Service rendered as part of a financial aid package is not eligible for retirement credit, because such a relationship is not that of employer/employee. You have not met the burden of proof that your service at CU was rendered as a University employee; therefore, this service is not eligible for purchase.

(PSERS-4)

47. On February 28, 2014, Claimant filed an Appeal and Request for Administrative Hearing.

(See Appeal and Request for Administrative Hearing)

48. An administrative hearing was held on January 21, 2015, before Hearing Examiner, Maria Battista, Esquire. (N.T., *passim*; Docket No. 2014-05)
49. Claimant was present at the hearing, *pro se*, testified, presented evidence in support of his appeal, and cross-examined witnesses. (N.T., *passim*)

## CONCLUSIONS OF LAW

1. The Public School Employees' Retirement Board ("Board") has jurisdiction in this matter. (Findings of Fact 40-49)
2. Claimant was afforded notice and an opportunity to be heard in connection with his appeal. (Findings of Fact 42-49)
3. PSERS is a creature of the legislature and its members have only those rights created by the Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101 *et seq.* *Forman v. Public Sch. Employes' Ret. Bd.*, 778 A.2d 778, 780 (Pa.Cmwlt. 2001); *Burriss v. State Employes' Ret. Bd.*, 745 A.2d 704 (Pa.Cmwlt. 2000);<sup>4</sup> *Estate of Rosenstein by Rosenstein v. Public Sch. Employees' Ret. Sys.*, 685 A.2d. 624, 626 (Pa. Cmwlt. 1996); *Bittenbender v. State Employees' Ret. Bd.*, 622 A.2d 403 (Pa.Cmwlt. 1992).
4. "PSERB has no authority to grant rights [to members] beyond those specifically set forth in the [R]etirement [C]ode." *Forman, supra*, 778 A.2d at 780.
5. A claimant bears the burden of establishing the facts necessary to sustain his claim. *See, e.g., Gierschick v. State Employees' Ret. Bd.*, 733 A.2d 29, 32 (Pa.Cmwlt. 1999); *Hughes v. Public Sch. Employes' Ret. Bd.*, 662 A.2d 701, 705 (Pa. Cmwlt. 1995); *Wingert v. State Employes' Ret. Bd.*, 589 A.2d 269, 271 (Pa.Cmwlt. 1991).
6. The preponderance of the evidence is the degree of proof required in an administrative action and is "such proof as leads the fact-finder. . . to find that the existence of a contested fact is more probable than its nonexistence" and "a litigant must satisfy its

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<sup>4</sup> Cases interpreting provisions of the State Employees' Retirement Code are equally applicable in deciding issues arising under similar or identical provisions of the Public School Employees' Retirement Code. *See, Krill v. Pub. Sch. Employes' Ret. Bd.*, 713 A.2d 132, 134 n. 3 (Pa.Cmwlt. 1998), citing *Estate of Rosenstein v. Pub. Sch. Employees' Ret. Sys.*, 685 A.2d 624 (Pa.Cmwlt. 1996).

burden of proof with evidence that is substantial and legally credible, [and] not with mere ‘suspicion’ or by only a ‘scintilla’ of evidence.” *Sigafoos v. Pennsylvania Bd. of Probation and Parole*, 503 A.2d 1076, 1079 (Pa.Cmwlth. 1986); *Samuel J. Lansberry, Inc. v. Pennsylvania Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990).

7. An active member of PSERS may purchase credit and receive eligibility points toward retirement “for previous creditable school service or creditable nonschool service.” 24 Pa.C.S.A. § 8303(c) and (d).
8. The Retirement Code defines “school service” as “[s]ervice rendered as a school employee.” 24 Pa.C.S.A. § 8102.
9. The Retirement Code defines “school employee” 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.A. § 8102.
10. “In cases of doubt, the Board will determine whether any person is a school employee within the meaning of the Retirement Code.” 22 Pa.Code § 215.5(d)(3); *see generally Perry v. State Employees’ Ret. Sys.*, 872 A.2d 273, 278 (Pa.Cmwlth. 2005).
11. “[W]hen a statute is interpreted by an agency, such interpretation shall be accorded great weight and shall be overturned or disregarded only if such construction is clearly erroneous.” *Hawkins v. Pennsylvania Hous. Finance Agency*, 595 A.2d 712, 714 (Pa.Cmwlth. 1991); *see Laurito vs. Public Sch. Employes’ Ret. Bd.*, 606 A.2d 609, 611 (Pa.Cmwlth. 1992).
12. “[W]hile, as a general rule, pension statutes are to be liberally construed in favor of the pensioner, the court construing the statute may consider the consequences of a particular

construction whenever the statute is susceptible of more than one interpretation.” *Panko v. Public Sch. Employees’ Ret. Sys.*, 492 A.2d 805, 807 (Pa. Cmwlth. 1985); *Gault v. Public Sch. Emloyes’ Ret. Bd.*, 720 A.2d 1090, 1094 (Pa. Cmwlth. 1998)

13. “School service” excludes service performed as a student as a part of a work-study program. *Account of Donald G. Bailey*, Docket No. 2012-49, at 15 (PSERB Jan. 22, 2015).
14. Claimant’s service in a work-study position as a janitor from 1976-1979 while he was an undergraduate student at Clarion University is not “school service” as a “school employee” under the Retirement Code. (Findings of Fact 1-49)
15. Claimant is not entitled to purchase credit with PSERS for the service he rendered in his work-study position as a janitor from 1976-1979 at Clarion University. 24 Pa.C.S.A. §§ 8102 and 8303(c) and (d); PSERS-1; Exhibit A-5.



## DISCUSSION

The sole issue in this matter is whether Claimant's time in a work-study position at Clarion University as a janitor from 1976-1979, while he was a full-time undergraduate student, can be considered "school service" as a "school employee" to warrant Claimant's purchase of former part-time uncredited service under the Retirement Code.

An active member of PSERS may purchase credit and receive eligibility points toward retirement "for previous creditable school service or creditable nonschool service." 24 Pa.C.S.A. § 8303(c) and (d). The Retirement Code defines "school service" as "[s]ervice rendered as a school employee." 24 Pa.C.S.A. § 8102. The Retirement Code defines "school employee" 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.A. § 8102. It is this definition of "school employee" which is at issue in this matter.

PSERS contends Claimant was not a "school employee" of Clarion University while he provided service in his work-study position as a janitor, and therefore, did not provide "school service." Claimant argues that he had no financial need and that he received compensation by way of check from the Department of Education for his service as a janitor in a work-study position at Clarion University, and therefore, should be provided the opportunity to purchase credit for that service. In the face of such a dispute, "the Board will determine whether any person is a school employee within the meaning of the Retirement Code." 22 Pa.Code § 215.5(d)(3); *see generally Perry v. State Employees' Ret. Sys.*, 872 A.2d 273, 278 (Pa.Cmwlth. 2005).

In making such a determination, certain principles apply. First and foremost, PSERS is a creature of the legislature and its members have only those rights created by the Public School

Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101 *et seq.* *Forman v. Public Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa.Cmwlth. 2001); *Burris v. State Employees' Ret. Bd.*, 745 A.2d 704 (Pa.Cmwlth. 2000); *Estate of Rosenstein by Rosenstein v. Public Sch. Employees' Ret. Sys.*, 685 A.2d 624, 626 (Pa. Cmwlth. 1996); *Bittenbender v. State Employees' Ret. Bd.*, 622 A.2d 403 (Pa.Cmwlth. 1992). Furthermore, "PSERB has no authority to grant rights [to members] beyond those specifically set forth in the [R]etirement [C]ode." *Forman*, 778 A.2d at 780. Also, "[w]hen a statute is interpreted by an agency, such interpretation shall be accorded great weight and shall be overturned or disregarded only if such construction is clearly erroneous." *Hawkins v. Pa. Hous. Finance Agency*, 595 A.2d 712, 714 (Pa.Cmwlth. 1991); *see Laurito v. Public Sch. Employees' Ret. Bd.*, 606 A.2d 609, 611 (Pa.Cmwlth. 1992).

The Commonwealth Court has also noted that "while, as a general rule, pension statutes are to be liberally construed in favor of the pensioner, the court construing the statute may consider the consequences of a particular construction whenever the statute is susceptible of more than one interpretation." *Panko v. Public Sch. Employees' Ret. Sys.*, 492 A.2d 805, 807 (Pa. Cmwlth. 1985); *see also Gault v. Public Sch. Employees' Ret. Bd.*, 720 A.2d 1090, 1092 (Pa. Cmwlth. 1998). Likewise, when interpreting terms of a statute which are not defined, the court is "guided by the rules of construction as set forth in the Statutory Construction Act of 1972, 1 Pa.C.S. §§ 1501-1991, as well as case law applying those rules." *Panko*, 492 A.2d at 807.

In the instant case, Claimant bears the burden of establishing the facts necessary to sustain his claim. *See, e.g., Gierschick v. State Employees' Ret. Bd.*, 733 A.2d 29, 32 (Pa.Cmwlth. 1999); *Hughes v. Public Sch. Employees' Ret. Bd.*, 662 A.2d 701, 705 (Pa. Cmwlth. 1995); *Wingert v. State Employees' Ret. Bd.*, 589 A.2d 269, 271 (Pa.Cmwlth. 1991). He must meet his burden by a preponderance of the evidence, which is the degree of proof required in an

administrative action; it is "such proof as leads the fact-finder. . . to find that the existence of a contested fact is more probable than its nonexistence." *Sigafoos v. Pennsylvania Bd. of Probation and Parole*, 503 A.2d 1076, 1079 (Pa.Cmwlt. 1986); *Samuel J. Lansberry, Inc. v. Pennsylvania Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlt. 1990). "[A] litigant must satisfy its burden of proof with evidence that is substantial and legally credible, [and] not with mere 'suspicion' or by only a 'scintilla' of evidence." *Lansberry* at 602.

### **PSERS' Position**

PSERS' acknowledges that there are three general requirements for a member to purchase service credit: 1) the service must have been rendered with a reporting unit of PSERS; 2) the member must have been active and contributing at the time that he or she applied for the service; and 3) the position that the member is applying for must be a qualified recognized position from PSERS. (N.T. 50)

There is no dispute that Claimant was an active member when he applied for service or that Clarion University and that Clarion University is a reporting unit of PSERS. However, Mr. Steven Wolf, Retirement Administrator, at PSERS, testified that Claimant was not enrolled by Clarion University as a member of PSERS at any time between 1975 and 1980. (N.T. 52) Further, PSERS' position is that Claimant's service as a work-study student at Clarion University was a form of financial aid or assistance, even if it was not a part of a formal financial aid package, and therefore such work-study position is not a qualifying recognized position of PSERS. PSERS also contends that Claimant's paychecks were paid by the Department of Education and not Clarion University, and that this fact supports its argument as to why Claimant had no contract with Clarion University. In addition, PSERS notes that Claimant did not receive performance evaluations, was not enrolled in any retirement system, was not reported by Clarion

University to PSERS, and received no benefits (e.g., no health, dental, vision or life insurance and no paid vacation, sick leave, or personal leave days) in connection with his work-study position. PSERS, therefore, asserts that Claimant failed to establish that he had an employer-employee relationship with Clarion University and that he failed to establish that a true bargained-for-exchange existed between himself and Clarion University.

In support of its position, PSERS relies on *Account of Donald G. Bailey*, Docket No. 2012-49 (PSERB Jan. 22, 2015)(“Bailey matter”), where the issue was whether Claimant Bailey (“Bailey”) was entitled to purchase school service performed as a resident assistant/hall monitor while enrolled as a full-time undergraduate student at California University of Pennsylvania (“Cal U”). In *Bailey*, the Board determined that service performed by a full-time undergraduate student in a work-study position as a hall monitor or resident assistant was a form of financial aid, even if it was not a part of a formal financial aid package, and therefore was not considered “school service” eligible for retirement credit. *Bailey* at 11, 15, 18-19. The Board also found that the purpose of Bailey’s work-study position was to help defray his educational expenses while he was a student. *Id.* at 18. Therefore, the Board concluded that Bailey’s service in his work-study position was “incidental to the goal of fulfilling his educational requirements” and not “school service” eligible for credit with PSERS. *Id.* at 11, 18-19.

The Board, in reaching its determination that Bailey did not provide “school service” which was eligible for credit, examined the Supreme Court’s decision in *Simmonds v. State Employees’ Ret. Sys.*, 696 A.2d 801 (Pa. 1997) and the Commonwealth Court’s opinion in *Donovan v. State Employes’ Ret. Sys.*, 701 A.2d 310 (Pa. Cmwlth. 1997), concluding that the Board must look to the purpose of the student’s program to determine whether the student rendered service as an employee within the meaning of the Retirement Code. *See Bailey* at 15-17.

The issue in *Simmonds* was “whether an individual enrolled in a residency program in a state university medical center is a ‘state employee’ for purposes of receiving service credit pursuant to the State Employees’ Retirement Code [SERC].” *Simmonds* at 801. The Supreme Court focused on the purpose of the residency program, as well as whether the true bargained-for-exchange that exists in typical employment relationships was present. *Id.* at 803-804.

Also, the Supreme Court enunciated strong public policy reasons as additional support for its determination, finding that

the purpose and intent of the Retirement Code is not served by considering medical residents as state employees. . . . the essential purpose of offering retirement benefits is to attract employees by offering individuals a more attractive compensation package. . . . retirement benefits would not be desired by prospective residents since they are most often significantly in debt and would not want any portion of their stipend withheld. Also, the classification of medical residents as state employees would increase the financial burden of state institutions where the residents serve because the hospitals would be required to fund retirement accounts of individuals who are essentially their students. There would also exist the additional administrative burden on SERS to enroll individuals in the system who would generally be employed by the state institution for only one year.

*Id.* at 804.

Based on these factors, the *Simmonds* Court determined that services rendered by *Simmonds* were not structured solely to meet the hospital’s needs but also to ensure that *Simmonds* obtained required training and certification in the sub-specialty of oncology. *Id.* at 802-804. Furthermore, *Simmonds* paid no tuition and only received a stipend for her services which was far less than she “could have earned as a staff physician or as a physician in private practice,” and with a different benefit package than other Medical Center physicians. *Id.* at 802.

Similarly, in the *Donovan* case, Claimant *Donovan* (“*Donovan*”) requested to purchase non-state service for the four year period he was a cadet at the United States Military Academy

at West Point (“Academy”). *Id.* at 311. The Commonwealth Court in *Donovan* examined the *Simmonds* decision and stated that case law sends “a clear message that a court must examine the purpose of the program in which the resident... is enrolled.” *Id.* at 313 (emphasis added). In the case law, “the residents did not go to work in the true bargained for exchange that would evidence an employment relationship; they were primarily seeking to fulfill educational requirements.” *Id.* (emphasis added).

Therefore, based on the above case law and the *Bailey* determination, PSERS argues that Claimant failed to establish that his primary purpose in his work-study position was for financial gain, rather than to fulfill educational requirements. As a result, PSERS contends that Claimant’s work-study position was a form of financial assistance, which is not a true bargained-for-exchange with Clarion University, and does not warrant service credit with PSERS.

### **Claimant’s Position**

Claimant’s entire focus at the hearing was that he had no financial need, and therefore, his service in the work-study position as a janitor should be service time that he can purchase. Because Claimant believed he had sufficient funds to cover the costs of his education with his Social Security stipend and because he received approximately \$500 a year and a meal ticket for playing football beginning in his sophomore or junior year, Claimant believed that his time in a work-study position was just for “extra” spending money and not because he had any financial need. Claimant also contended that he did, to the best of his ability, provide documentation as to his salary as a result of the student payroll records destroyed by a flood.<sup>5</sup> (N.T. 11-12, 15, 22, 38)

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<sup>5</sup>Regardless of the student payroll records at Clarion University being unavailable in the years that Claimant was a work-study student, there is sufficient other evidence of record to evaluate Claimant’s service in his work-study position from 1976-1979 at Clarion University.

## Analysis

Claimant, in this case, was a full-time undergraduate student at Clarion University between 1975-1980. Claimant testified that he completed financial aid forms, which he thinks were PHEAA. Claimant was made aware of the student work-study positions from his football coach. Claimant obtained a work-study position as a janitor from January 1976 until the end of 1979. Claimant was paid a minimum hourly wage. Claimant had a flexible schedule in the evenings to accommodate his school schedule. Claimant received none of the typical benefits of an employee at a university while he was in his work-study position. Claimant also testified that he used the money he received from his work-study position for incidental costs during that time.

Further, Shelly Williams, Manager of Employee Services of the Office of Human Resources at Clarion University, stated in her letter dated December 2, 2011, that Claimant's paycheck was paid through the student payroll system, which is supported by Claimant's Social Security Itemized Statement that shows Claimant was paid by the Department of Education Comptroller for his work-study position from 1977-1979.<sup>6,7</sup> Therefore, despite Ms. Williams stating in her letter that Claimant's service in the work-study position as a janitor was not part of a financial aid packet, there is no other corroborating evidence supporting this fact and Ms. Williams did not testify in person or over the phone to clarify that statement.

On the other hand, the testimony of Mr. Wolf indicated that the Department of Education "puts funds to the side, tags them for student payroll, which are only to be paid to students working in student work study positions." (N.T. 57; *see also* N.T. 53) Mr. Wolf also indicated

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<sup>6</sup>Although Claimant provided no documentary evidence of his employer for the 1975 and 1976 school years, Claimant believes it to have been the Department of Education and he was, in fact, in the same work-study position during those years. (N.T. 15-16, 22-24, 35)

<sup>7</sup>A search of the Clarion University staff payroll data did not reveal any record of Claimant on the staff at Clarion University from 1976-1980. (Exhibit A-4)

that because Claimant found out about the position through his football coaching staff, which is a part of campus, there is no indication that the position was available to the general public. (N.T. 57-58) Further, the fact Claimant was fortunate enough to receive a Social Security stipend and additional monies and a meal ticket for playing Division II football, with additional funds left over when he graduated from Clarion University, does not change the classification of his work-study position.

Because Claimant was in a student work-study position, the monies he received by check issued by the Department of Education, were monies tagged for student payroll accounts. As such, they were not monies received by staff at Clarion University and were specifically designated for students in a student work-study program. Moreover, such funding by the Department of Education into student payroll accounts was for the purpose of directly providing financial aid to a student by way of check or physical payment. Therefore, student work-study service is not eligible for purchase under the Retirement Code. (N.T. 53)

Moreover, the public policy considerations as espoused in the *Bailey* opinion and the *Simmonds* and *Donovan* cases, recognize that there would be an adverse economic impact on a university if it has to make unbudgeted retirement contributions for students; an adverse economic impact on the retirement system if students were granted retirement credit; and an adverse administrative impact on the university and PSERS if students have to be enrolled and unenrolled in the retirement system, all support the denial of retirement credit for students. *See Bailey* at 17 (citing *Account of Denenberg*, Docket No. 2000-04 (Opinion and Order of the Board dated May 14, 2001), at 18 – 22).

Therefore, based on all of the evidence, and applying the relevant law discussed above, there is strong indicia in the record that an employer-employee relationship did not exist between



Claimant and Clarion University while he was in a work-study position as a full-time undergraduate student at that school. Moreover, as a result of a work-study position being considered a form of financial aid, Claimant does not meet the definition of "school employee" and "school service" under the Retirement Code.

Accordingly, Claimant should not be permitted to purchase, as creditable service, his time in his work-study position as a janitor at Clarion University from 1976-1979.

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EXECUTIVE OFFICE

COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE: :  
: :  
Account of Bernard J. Ridgeley : Docket No.: 2014-05  
Claim of Bernard J. Ridgeley :

RECOMMENDATION

AND NOW, this 19<sup>th</sup> day of August, 2015, upon consideration of the foregoing findings of fact, conclusions of law and discussion, the Hearing Examiner for the Public School Employees' Retirement Board recommends that the Board affirm the January 31, 2014 decision of the Executive Staff Review Committee, which denied Claimant request to purchase the service he provided at Clarion University in a work-study position, and dismiss Claimant's appeal.

  
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Maria Battista  
Hearing Examiner

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**Date of Mailing:** August 19, 2015