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

IN RE: ACCOUNT OF AMANDA H. WALTER  
DOCKET NO. 2015-10  
CLAIM OF AMANDA H. WALTER

**OPINION AND ORDER OF THE BOARD**

The Board has carefully and independently reviewed the entire record of this proceeding, including the Briefs and the Hearing Examiner's proposed Opinion and Recommendation. No exceptions to the proposed Opinion and Recommendation were filed.

The Board finds appropriate the Hearing Examiner's History, Findings of Fact, Conclusions of Law, Discussion, and Recommendation, and we hereby adopt them as our own, and accordingly:

IT IS HEREBY ORDERED that Claimant's request to elect Class T-F membership after the 45-day statutory deadline is DENIED.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: May 25, 2016

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

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PSERB  
EXECUTIVE OFFICE

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

In Re:

Account of Amanda H. Walter, }  
Claim of Amanda H. Walter, }  
Claimant }  
}

Docket Number 2015-10

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OPINION AND RECOMMENDATION

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Christopher K. McNally  
Hearing Examiner

Commonwealth of Pennsylvania  
Governor's Office of General Counsel  
Department of State  
Office of Hearing Examiners  
P.O. Box 2649  
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## HISTORY

This case comes before the Hearing Examiner to determine whether to grant or deny the claim of Amanda H. Walter (Claimant), under Sections 8305(e) and 8305.2 of the Public School Employees' Retirement Code<sup>1</sup> (Retirement Code), 24 Pa.C.S. §§ 8305(e), 8305.2, for election of membership in the T-F class.

On November 8, 2014, PSERS mailed a notice to Claimant that she would permanently remain a Class T-E member because she did not elect T-F membership by October 24, 2014. On December 1, 2014, Claimant filed a letter by PSERS by which she appealed to the Executive Staff Review Committee (ESRC) for a review of the determination that she remained a member of the T-E class and alleged that she had not received notice of her eligibility to elect membership in the T-F class. On April 23, 2015, the ESRC reviewed Claimant's request to elect T-F membership and by correspondence dated May 27, 2015, notified Claimant that ESRC denied her request, and informed Claimant of her right to appeal and request a formal hearing, in writing, within 30 days.

On June 26, 2015, Claimant filed an Appeal and Request for Administrative Hearing. On July 16, 2015, PSERS filed an Answer. By correspondence dated September 4, 2015, PSERS notified Claimant that a hearing had been scheduled on her appeal and the case assigned to Hearing Examiner Christopher K. McNally, Esq. By separate correspondence of the same date, Glen R. Grell, Secretary to the Public School Employees' Retirement Board (PSERB) notified the hearing examiner of the assignment of this case with instructions to conduct a formal hearing and issue a proposed opinion and recommendation in accordance with the Retirement Code, PSERB regulations,<sup>2</sup> and the Administrative Agency Law.<sup>3</sup>

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<sup>1</sup> The act of October 2, 1975, P.L. 298, No. 96. 24 Pa.C.S. §§ 8101 – 8536.

<sup>2</sup> 22 Pa.Code §§ 201.1 – 201.12.

<sup>3</sup> The act of April 28, 1978, P.L. 202, No. 53, § 5, *as amended*. 2 Pa.C.S. §§ 501 – 508.

On November 18, 2015, the Hearing Examiner convened the hearing as scheduled. Claimant appeared and acted *pro se*. Assistant Counsel Jennifer A. Mills, Esq. represented PSERS. Claimant testified on her own behalf and called Dean Eisenberger, her father-in-law, as a witness. Counsel for PSERS offered documentary evidence and direct testimony of PSERS employees, Deborah Garraway and Dennis Filipovich. All witnesses were subject to cross-examination.

On November 19, 2015, the Hearing Examiner issued an Order Scheduling Post-Hearing Briefs. The court reporter filed the hearing transcript on December 8, 2015. In accord with the scheduling order, Claimant filed a post-hearing brief on January 5, 2016. PSERS filed a reply brief on February 5, 2016.

The hearing examiner now files this proposed opinion and recommendation with PSERS, together with the transcript of testimony, exhibits and briefs, all of which shall become part of the record. 22 Pa.Code § 201.11. The hearing examiner will serve copies upon all parties and staff counsel. *Id.*

Any party may file exceptions in accordance with 1 Pa. Code §§ 35.211 and 35.212 (relating to procedure to except to proposed report; and content and form of briefs on exceptions). 22 Pa.Code § 201.11(d). PSERB may adopt or reject, in whole or in part, or supplement the proposed opinion and recommendation or issue its own opinion and order, whether or not exceptions to the proposed opinion and recommendation are filed by any party. If exceptions are filed, the Board will rule on the exceptions. 22 Pa.Code § 201.11(c).

### FINDINGS OF FACT

1. Amanda H. Walter (Claimant) is a member of PSERS. (*Hearing Transcript, page 13.*)
2. In June 2014, Claimant enrolled in PSERS through her part-time employment with Central Bucks School District as an assistant. (*Hearing Transcript, page 55, line 18 to page 56, line 9.*)
3. At the time of Claimant's enrollment in PSERS, Central Bucks School District, Claimant's employer at the time, provided PSERS with a home address for Claimant of [REDACTED] Ridge Pike, [REDACTED]. (*Hearing Transcript, page 15, lines 3 – 20; pages 27 - 28; Exhibit PSERS-4.*)
4. Claimant's correct mailing address is [REDACTED] Ridge Pike, [REDACTED] with alternative ZIP Codes of [REDACTED] or [REDACTED]. (*Hearing Transcript, pages 49, 54, lines 17 - 19; Exhibit PSERS-6.*)
5. PSERS receives a member's demographic information, including the home address, from the member's employer upon enrollment. (*Hearing Transcript, pages 15, 27-28; PSERS-4*)
6. PSERS maintains records in its normal course of business that track every piece of mail produced by PSERS until it reaches the United States Post Office. (*Hearing Transcript, pages 37 - 38, 42, 43; Exhibits PSERS-4, -8 through -15.*)
7. From June 2014 to the present, Claimant has lived at [REDACTED] Ridge Pike, [REDACTED] [REDACTED] with her parents and brother and directs all her mail to this address. (*Hearing Transcript, page 54, line 17 to page 55, line 7.*)
8. On June 25, 2014, PSERS staff created a Member Demographic Import

Confirmation Letter, which PSERS mailed to Claimant at [REDACTED] RDG PIKE, [REDACTED] [REDACTED], to confirm that the mailing address was correct as submitted by Claimant's employer and on record with PSERS. (*Hearing Transcript, page 15, lines 4 – 20; Exhibit PSERS-4.*)

9. In September 2014, Claimant began full-time employment with the Philadelphia School District. (*Hearing Transcript, page 53, lines 3 - 13.*)

10. On September 3, 2014, PSERS mailed by First Class Mail, Postage Prepaid, to Claimant addressed to [REDACTED] RDG PIKE, [REDACTED], a Welcome Packet dated August 31, 2014, informing her of her retirement benefits and certain actions that need to be taken when becoming a member. (*Hearing Transcript, page 16, line 3 to page 18, line 20; page 33 – 41; Exhibits PSERS-1, -4,-8,-9,-11, and -15.*)

11. Also on September 3, 2014, PSERS mailed to Claimant by First Class Mail, Postage Prepaid, addressed to [REDACTED] RDG PIKE, [REDACTED], a T-F Membership Class Election (PSRS-1318) form, a cover letter dated August 31, 2014, and an informational page entitled, "Choosing Your Membership Class" (T-F Class Election Packet). (*Hearing Transcript, page 19, lines 10 - 25; Exhibit PSERS-2.*)

12. The cover letter to the T-F Class Election Packet provided notice to Claimant that: (a) there are two classes of membership, T-E and T-F, (b) the class of membership would determine the amount of her retirement benefit, (c) she was automatically enrolled in Class T-E, (d) Class T-E retirement benefit would be calculated based on a specified contribution rate and formula, (e) she had a right to elect to become a Class T-F member, (f) she was required to follow a procedure to exercise her right to elect Class T-F membership, (g) October 24, 2014, was the deadline for exercise of her right of election, (h) her Class T-F retirement benefit would be calculated based upon a specified contribution rate and formula, (i) PSERS enclosed additional information,

instructions and the T-F Membership Class Election form (PSRS-1318), and (j) her decision would be final and binding to remain in Class T-E by doing nothing or to elect Class T-F by timely filing the enclosed Class Election form. (*Hearing Transcript, Exhibit PSERS-2.*)

13. The T-F Membership Class Election form (PSRS-1318) likewise discussed the election and explained:

**PSERS must receive this form by October 24, 2014.** Please note that the form must actually be received on or before the due date if you wish to elect Class T-F membership. A postmark on the envelope will not determine the filing date of your Class T-F election form. The form itself must actually be received by PSERS headquarters or at one of PSERS' regional offices on or before October 24, 2014. You may also hand deliver your Class T-F election form to PSERS headquarters in Harrisburg or at one of PSERS' regional offices on or before October 24, 2014. Be sure to obtain a date-stamped copy of the form from the PSERS office as proof of your filing. If this form is received by PSERS after the deadline, it will not be effective and you will permanently remain as a Class T-E member.

(*Hearing Transcript, Exhibit PSERS-2.*) (*Bold face in original*)

14. PSERS has a business practice by which if PSERS does not receive a response from the member within 30 days of the generation of the T-F Class Election Packet, as a courtesy, PSERS mails out a second letter to the member reminding the member of the deadline to elect Class T-F membership (Second T-F Election Notice). (*Hearing Transcript, page 21, lines 1 – 17.*)

15. Because Claimant did not respond within 30 days of mailing the T-F Class Election Packet, by correspondence dated September 30, 2014, PSERS mailed Claimant by First Class Mail, Postage Prepaid, the Second T-F Election Notice addressed to [REDACTED] RDG PIKE, [REDACTED], and again notified Claimant of the deadline to elect Class T-F membership. (*Hearing Transcript 21, 41-42; Exhibits PSERS-3, -4, -12, -13 and -15*)

16. The Second T-F Election Notice provided, in pertinent part, as follows:

We are providing you this reminder because your decision to remain a Class T-E member, or to change to a Class T-F member, is final and binding. If you wish to remain as a Class T-E member, you do not have to take any action.

If you wish to remain a Class T-E member, you need to do nothing; Class T-E membership is the automatic membership class. If you would like to change your membership to Class T-F, you must do so by October 24, 2014.

*(Hearing Transcript, Exhibit PSERS-3.)*

17. Claimant did not elect Class T-F membership on or before October 24, 2014.

*(Hearing Transcript, Exhibits PSERS-5 and -7.)*

18. By letter dated November 8, 2014 (T-E Determination Notice), and addressed to Claimant at [REDACTED] RDG PIKE, [REDACTED], PSERS informed Claimant that she would permanently remain a Class T-E member because she did not elect Class T-F membership by the election deadline. *(Hearing Transcript, Exhibit PSERS-5.)*

19. PSERS notified Claimant of her right to appeal PSERS' determination to the ESRC. *(Hearing Transcript, page 21, line 18 to page 22, line 19; Exhibit PSERS-5.)*

20. Claimant denies receiving the Welcome Packet, T-F Class Election Packet and the Second T-F Election Notice, but did receive the T-E Determination Notice. *(Hearing Transcript, pages 56 - 57.)*

21. The Welcome Packet, T-F Class Election Packet, the Second T-F Election Notice, and the T-E Determination Notice were produced by PSERS and sent to Claimant by first class mail in the ordinary course of PSERS' business and placed in the regular place of mailing, with the Welcome Packet and T-F Class Election Packet addressed to Claimant at [REDACTED] RDG PIKE, [REDACTED] and the Second T-F Election Notice, and the T-E Determination Notice addressed to Claimant at [REDACTED] RDG PIKE, [REDACTED]. *(Hearing Transcript, pages 22, 27; Exhibits PSERS-2, -4, -8, -9 through -11, -22.)*

22. PSERS maintains a file for "undeliverable mail" returned from the post office, and there is no evidence that any of PSERS Exhibits -1, -2, and -3, all of which were mailed to Claimant



at the RDG PIKE address, were ever returned by the post office. (*Hearing Transcript, page 23, line 9 to page 24, line 2; page 42, lines 21 – 25; Exhibit PSERS-4.*)

23. The abbreviation “RDG” is accepted by the United States Post Office as an abbreviation for the street name suffix “Ridge.” (*Hearing Transcript, page 27, lines 5 – 19; page 31, lines 2 - 13; see also [http://pe.usps.gov/text/pub28/28apc\\_002.htm](http://pe.usps.gov/text/pub28/28apc_002.htm); last viewed on March 24, 2016; 1 Pa. Code § 35.165 (relating to offering a public document into evidence)*)

24. Claimant testified that she has never received mail bearing the “RDG” abbreviation for “Ridge;” but Claimant admits to receiving the T-E Determination Notice that was addressed using the “RDG” abbreviation for Ridge. (*PSERS-5; Hearing Transcript 56-57*)

25. On December 1, 2014, Claimant appealed the T-E Determination Notice to the ESRC. (*Hearing Transcript, Exhibit PSERS-6.*)

26. By correspondence dated May 27, 2015, PSERS’ Executive Director notified Claimant that the ESRC denied her request to elect Class T-F membership because she did not file an election by October 24, 2014, and Claimant was advised of her right to appeal to PSERB. (*Hearing Transcript, Exhibit PSERS-7.*)

27. An administrative hearing on Claimant’s appeal was held on November 18, 2015 before Hearing Examiner Christopher K. McNally, Esq. (*Hearing Transcript, passim*)

28. Claimant was present for her hearing, made a knowing and intelligent waiver of her right to counsel, and had an opportunity to be heard, to cross-examine witnesses, to make a closing statement for the record, and to file a post-hearing brief in support of her appeal. (*Hearing Transcript, page 7, lines 7 – 11.*)

### CONCLUSIONS OF LAW

1. PSERB has jurisdiction in this matter. (*Finding of Fact Numbers 1, 2, 18, 19.*)
2. Claimant had adequate notice of the adverse determination and was given an opportunity to be heard in accordance with the Retirement Code and the Administrative Agency Law, 2 Pa.C.S. § 504. (*Findings of Fact Numbers 18, 19, 25 - 28.*)
3. Claimant bears the burden of proof in this proceeding. *Tingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa.Cmwlth. 1991).
4. The preponderance of the evidence standard is the correct burden of proof to be applied in this administrative action. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600 (Pa.Cmwlth. 1990), *petition for allowance of appeal denied*, 602 A.2d 863 (Pa. 1998); *Suber v. Pennsylvania Commission on Crime and Delinquency, Deputy Sheriffs Education and Training Board*, 885 A. 2d 678 (Pa.Cmwlth. 2005).
5. The preponderance of the evidence standard has been explained as "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 Board of Probation and Parole*, 503 A.2d 1076, 1079 (Pa.Cmwlth. 1986).
6. Claimant has only those rights recognized by statute and none beyond. *Bittenbender v. State Employees' Retirement Board*, 622 A.2d 403 (Pa.Cmwlth. 1992).
7. The authority of the PSERB to grant or deny Claimant's request to elect Class T-F membership is limited to the provisions of the Retirement Code; the Board has no authority to grant rights beyond those specifically set forth in the Retirement Code or to enlarge a statutorily mandated election period. *Forman v. Public School Employees' Retirement Board*, 778 A.2d 778 (Pa.Cmwlth. 2001); *Burriss v. State Employees' Retirement Board*, 745 A.2d 704, 706 (Pa.Cmwlth.

2000); *Bittenbender*, 622 A.2d 403.

8. A person who first becomes a school employee and an active member on or after July 1, 2011 is enrolled in PSERS as a Class T-E member. 24 Pa.C.S. § 8305(d).

9. Act 120 permits a T-E member to elect to become a Class T-F member provided the Class T-E member files a written election with PSERS within 45 days of notification by PSERS. 24 Pa.C.S. §§ 8305(e) and 8305.2(b).

10. If a Class T-E member fails to file an election to Class T-F membership within 45 days of notification by PSERS, “the member shall never be able to elect Class T-F service[.]” 24 Pa.C.S. § 8305.2(d).

11. In the absence of specific statutory notice provisions, what is required of a governmental unit is that which is sufficient to provide the person to be notified with actual or constructive notice of his or her rights. *Higgins v. Public School Employes’ Retirement System*, 736 A.2d 745 (Pa.Cmwlth. 1999).

12. Notice requirements are satisfied when proper notice is mailed to an interested party’s last known address by first class mail even if she did not personally receive the mailing. *Higgins v. Public School Employes’ Retirement System*, 736 A.2d 745, 753 (Pa.Cmwlth. 1999); *see also Tyson v. Public School Employes’ Retirement System*, 737 A.2d 325 (Pa.Cmwlth. 1999); *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584, 585 (Pa. 1974); *Milford Twp. Bd. of Supervisors v. Dep’t of Env’tl. Resources*, 644 A.2d 217, 218-219 (Pa.Cmwlth. 1994).

13. The mailbox rule provides that the fact of depositing in the mail, a properly addressed, prepaid letter, raises a rebuttable presumption that it reached its destination by due course of mail. *Whitmore v. Dwelling House Ins. Co.*, 23 A. 1131 (Pa. 1892); *Beeman v. Supreme Lodge*, 64 A. 792 (Pa. 1906); *In re Cameron Estate*, 130 A.2d 173 (Pa. 1957); *Sheehan v.*

*Workmen's Compensation Appeal Board (Supermarkets General)*, 600 A.2d 633 (Pa.Cmwlt. 1991), *appeal denied*, 609 A.2d 170 (Pa. 1992); *Chartiers Industrial and Commercial Development Authority v. The Allegheny County Bd. of Property Assessment*, 645 A.2d 944, 946 (Pa.Cmwlt. 1994).

14. Under the mailbox rule, in order for the presumption of receipt of a letter to be triggered, "the party who is seeking the benefit of the presumption must adduce evidentiary proof that the letter was signed in the usual course of business and placed in the regular place of mailing." *Commonwealth of Pennsylvania v. Thomas*, 814 A.2d 754 (Pa.Super. 2002); *Commonwealth of Pennsylvania, Department of Transportation v. Brayman Construction Corporation*, 513 A.2d 562 (Pa.Cmwlt. 1986).

15. "Evidence of actual mailing is not required." *Commonwealth Dep't of Transp. v. Brayman Constr. Corp.*, 513 A.2d 562, 566 (Pa.Cmwlt. 1986).

16. Mere denial of receipt is not sufficient to establish that notice was not provided. *Chartiers*, 645 A.2d at 946.

17. PSERS notified Claimant of her right to elect Class T-F membership when it mailed her the T-F Class Election Packet and reminder letter via first class mail to her correct address. (*Findings of Fact Numbers 3 - 5, 10 - 17, and 20 - 24.*)

18. Claimant is not eligible for Class T-F membership because she received notice of her right to elect Class T-F membership on November 8, 2014, and failed to elect Class T-F membership on or before October 24, 2014, which is more than 45 days from the date of notification by the board. (*Findings of Fact Numbers 1 - 24*)

19. PSERS and the Board are precluded from taking an untimely application and deeming it as timely filed. *Forman*, 778 A.2d 778.

20. Claimant is not entitled to elect Class T-F membership under Section 8305(e) of the Retirement Code, 24 Pa.C.S. § 8305(e), because she did not file her election within 45 days of notification by PSERB, as required by Section 8305.2(b). 24 Pa.C.S. § 8305.2(b). (*Findings of Fact Numbers 1 – 17, 24, 25.*)

## DISCUSSION

### Procedural Due Process

Claimant was provided with a written notice of both the legal and factual grounds on which the PSERS determined that she was permanently classified as a T-E member. The notice also advised her of the procedures for appealing to ESRC and seeking a review of the determination and to request a hearing. ESRC denied her appeal and notified her of rights to request a hearing. Claimant appealed the decision of ESRC.<sup>4</sup>

PSERS issued a hearing notice that explained Claimant's procedural rights under the Retirement Code, the Administrative Agency Law, and the General Rules of Administrative Practice and Procedure (GRAPP).<sup>5</sup> Claimant appeared at the hearing as scheduled and received an oral explanation that she had the burden of proof in this proceeding and that she had the right to be represented by an attorney. She expressed a clear understanding of her burden of proof and her rights and the issues raised regarding her retirement benefit election. At the conclusion of the hearing she was again advised of her right to file a post-hearing brief. Claimant expressly waived her right to counsel and proceeded to represent herself. She filed a post-hearing brief, in accord with PSERB's regulations. 22 Pa.Code § 201.10.

Claimant had adequate notice of her rights and the factual and legal grounds for the determination that she was permanently a member of the T-E Class. Claimant has been afforded adequate notice of the basis for denial of her appeal to ESRC, as well as an opportunity to be heard regarding the appeal and address the merits of the issues in this matter.

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<sup>4</sup> The instant appeal is categorized as an "adjudicatory benefit appeal" as that term is defined by PSERB regulations. 22 Pa.Code § 201.2a.

<sup>5</sup> 1 Pa.Code §§ 31.1 – 35.251.

## **Governing Law**

On November 23, 2010, the General Assembly enacted Act 120,<sup>6</sup> which, *inter alia*, created two new classes of membership: (1) Class T-E membership that provides a benefit accrual rate of 2% and a contribution rate of at least 7.5%; and (2) Class T-F membership that provides a benefit accrual rate of 2.5% and a contribution rate of at least 10.3%.

Under Act 120, a person who becomes a school employee and an active member on or after July 1, 2011 is enrolled in PSERS as a Class T-E member. 24 Pa.C.S. § 8305(d). However, a person who is eligible to become a Class T-E member has the right to elect to become a Class T-F member provided the Class T-E member files a written election with PSERS within 45 days of notification by PSERS. 24 Pa.C.S. §§ 8305(e) and 8305.2(a), (b).

A member's decision is irrevocable. If the member properly elects Class T-F membership, the member shall receive Class T-F service credit on any and all future service, regardless of whether the member terminates service or has a break in service. 24 Pa.C.S. § 8305.2(c). Conversely, if a member fails to file her election in time, she may not elect Class T-F service at any time in the future, even if she terminates service or has a break in service. 24 Pa.C.S. § 8305.2(d).

## **Facts**

Claimant is a member of PSERS, having been enrolled in June 2014 as a summer employee of the Central Bucks School District. In September 2014, she began a permanent full-time position with the Philadelphia School District as a teacher.

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<sup>6</sup> The act of November 23, 2010, P.L. 1269, No. 120. For purposes of this case, the pertinent parts of Act 120 include Sections 1, 3 and 4, each of which amended Title 24 of the Pennsylvania Consolidated Statutes. Section 1 of Act 120 amended Section 8102, relating to definitions, by amending definitions of the terms "basic contribution rate" and "standard single life annuity." Section 3 of Act 120 amended Section 8305 by adding subsection (d), relating to Class T-E membership, and subsection (e), relating to T-F membership. Section 4 of Act 120 added Section 8305.2, relating to election to become a Class T-F member. Section 29(i)(i), (iv), and (v) of Act 120 sets July 1, 2011 as the effective date for Sections 1, 3 and 4.

There are several undisputed facts. Claimant's mailing address is [REDACTED] Ridge Pike, [REDACTED]. She resided at that address with her parents and brother throughout the period of time that is relevant to this matter, June 2014 to November 2014. In fact, she resided and received mail at that address before June 2014 and continues to receive mail at that address up to the date of this proposed opinion and recommendation.

It is also undisputed that from the time of her enrollment, PSERS recorded Claimant's address as "[REDACTED] RDG PIKE, [REDACTED]." At least by September 30, 2014, PSERS amended the ZIP code by adding the four-digit code "[REDACTED]." It is undisputed that [REDACTED] is the correct "ZIP+4" code for Claimant's mailing address.

There is also no dispute regarding the authenticity of PSERS records admitted into evidence. Specifically, PSERS records show that correspondence from PSERS to Claimant dated June 25, 2014 (Member Demographic Import Confirmation Letter), and two separate items dated August 31, 2014 (Welcome Packet and T-F Class Election Packet) were addressed to "[REDACTED] RDG [REDACTED]."

There is no dispute regarding the authenticity of two other items in PSERS records that were admitted into evidence. Those two items include the Second T-F Election Notice and the T-E Determination Notice. Both of those items were addressed to Claimant at "[REDACTED] RDG PIKE, [REDACTED]." Claimant admits to receiving the T-E Determination Notice, and the parties agree that she filed her appeal on December 1, 2014.

The parties dispute whether Claimant received the Member Demographic Import Confirmation Letter, Welcome Packet, T-F Class Election Packet and Second T-F Election Notice. In support of her position, in her post-hearing brief Claimant argued that PSERS cannot track any of the documents that it mailed. She also contends that the abbreviation "RDG" was used for



“Ridge” on correspondence that she did not receive, and that all correspondence mailed after the address change was received.

In response, PSERS contended that RDG is a standard abbreviation for “Ridge” in a street address, according to United States Postal Service addressing standards.<sup>7</sup> Witnesses called by PSERS testified to their understanding that postal addressing standards allow the word “Ridge” to be abbreviated to “RDG.” However, PSERS and its witnesses imprecisely cited Appendix C of Publication 28. By its express terms, Appendix C provides only standard abbreviations for a street *suffix*, not a street *name*.

So, for example, if the Primary Street Suffix Name is “Pike,” as it is in this case, the Postal Service Standard Suffix Abbreviation is “PIKE.” The most common suffixes, “Street” and “Avenue” are abbreviated “St” and “Ave,” respectively in Publication 28. Likewise, “Road” is abbreviated “Rd” and “Boulevard” as “Blvd.” Applying the Publication 28 standard to the words in this case, a street named “Timber Ridge” may be abbreviated “TIMBER RDG” but a street named “Ridge Road” should be abbreviated “RIDGE RD,” not “RDG ROAD” or “RDG RD.” That this qualification of Publication 28 applies to suffixes rather than a street’s proper name is also illustrated by the fact that the publication does not list any abbreviations for common street names like “Main,” “Front,” “Maple,” or “Chestnut.” Although the Postal Service may, in fact, deliver mail accurately with the street name “Ridge” abbreviated “RDG,” Publication 28 does not conclusively resolve that point.

Notwithstanding PSERS’ erroneous reading of postal standards, the Hearing Examiner

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<sup>7</sup> The Hearing Examiner took official notice of an official government publication, Publication 28, Postal Addressing Standards, Appendix C, which is available for review on the internet, and last viewed on March 24, 2016. The online publication is the standard effective May 2015. However, the earlier standard, published in April 2010, is also available at: <http://www.dhsem.wv.gov/Operations/Documents/Postal%20Addressing%20Standards.pdf> (last viewed on March 24, 2016). The earlier publication also lists RDG as the standard abbreviation for the street name suffix “Ridge.”

finds that the T-F Class Election of August 31, 2014, and the Second T-F Election Notice of September 30, 2014, were mailed to Claimant and that she received those notices. The conflict in evidence is resolved in favor of PSERS based upon the assignment of the burden of proof, evidence of mailing and successful delivery of other items mailed to Claimant with the same abbreviated street name of RDG Pike, and the absence of returned mail.

Claimant has the burden of proving that she did not receive notice. Other than her personal recollection, she offered no affirmative evidence that she did not receive notice of her right to elect T-F membership. In addition, she admits that she received the T-E Determination Notice dated November 8, 2014. By that correspondence Claimant was informed that she was a member of the T-E class. That notice was addressed exactly as the Second T-F Election Notice. Contrary to her post-hearing brief contention, the abbreviation RDG was used for Ridge on both letters that she received and those that she denies receiving. Therefore, the evidence does not support, but rather contradicts her position.

Finally, PSERS offered oral testimony that the witnesses examined the records of the agency and found no record of returned mail that had been sent to Claimant. *See Hearing Transcript, pages 23 – 24, 42.* The absence of an entry of undeliverable or returned mail in official records is admissible as evidence of the nonexistence of such fact, *i.e.*, the nonexistence of any undeliverable or returned mail addressed to Claimant. 42 Pa.C.S. § 6104(b).

The official records of PSERS contrast with Claimant's evidence. She and her witness, Mr. Eisenberger, testified that she has never received mail using the abbreviation of "RDG" for "Ridge." However, the absence of evidence that applies to PSERS' evidence does not apply to Claimant's evidence. First, PSERS relies upon "official records." More importantly, PSERS has records of undeliverable or returned mail with entries made contemporaneously with the return of

the mail. Therefore, the absence of a PSERS record of undelivered or returned mail addressed to Claimant supports the inference that all notices sent to her were delivered. Claimant has no comparable contemporaneous record of the addresses for mail that she has received on a daily basis from June through November 2014. She cannot show the finder of fact that none of her mail is addressed with the abbreviation "RDG." The most probable inference to be drawn from Claimant's testimony is only that she has never noticed mail addressed in that fashion.

Based upon the foregoing evaluation of the evidence of record, the Hearing Examiner finds that Claimant received the T-F Class Election Packet and the Second T-F Election Notice. Both notices established a deadline of October 24, 2014, which is 54 days from the date of the T-F Class Election Packet. Even if one were to give Claimant the benefit of the doubt and find that the initial notice did not get to Claimant, Claimant offered no plausible explanation for how she received the T-E Determination Notice but not the Second T-F Election Notice, despite the fact that they were addressed exactly the same. If Claimant received the Second T-F Election Notice, then she was on notice of the deadline of October 24, 2014. Even if the Second T-F Election Notice were treated as the initial notification under Section 8305.2, she did not respond until filing a notice of appeal on December 1, 2014, more than 60 days after the Second T-F Election Notice, and 23 days after service of the T-E Determination Notice.

The Hearing Examiner carefully explored the possibility that the earlier correspondence had been misdirected to another address in the vicinity of [REDACTED] that was similarly named, such as "Reading Pike" and that another recipient failed to return the misdirected mail. However, the testimony of Claimant and Mr. Eisenberger affirmatively ruled out that explanation as both denied knowing of any other similarly named roads. The most likely explanation that resolves the factual dispute is that Claimant, employed in a new teaching position, overlooked or failed to

appreciate the significance of the notices that she received. Therefore, she has no recollection of receiving mail from PSERS until the T-E Determination Notice.

### **Analysis**

This case rests upon the necessary resolution of a factual dispute. Having determined that Claimant failed to sustain her burden of proof that she did not receive notice, there is no alternative conclusion to the case. Claimant received notice dated August 31, 2014 and she was required to file an election for T-F Class membership no later than October 24, 2014.

This finding is consistent with the so-called Mailbox Rule, which provides that the fact of depositing in the mail, a properly addressed, prepaid letter, raises a rebuttable presumption that it reached its destination by due course of mail. PSERS, as the party seeking the benefit of the presumption of the Mailbox Rule, offered detailed, credible and thorough evidence that the Member Demographic Import Confirmation Letter, the T-F Class Election Packet, the Second T-F Election Notice, and the T-E Determination Notice were signed in the usual course of business and placed in the regular place of mailing. Therefore, PSERS had more than sufficient evidence to establish the rebuttable presumption. Claimant did not overcome the presumption.

The Retirement Code is clear and unequivocal as to the result. Claimant is permanently and irrevocably a T-E Class member of PSERS, and the decision of ESRC must be sustained.

Accordingly, based upon the foregoing findings of fact, conclusions of law, and discussion, the following proposed order shall issue:

RECEIVED

MAR 28 2016

PSERS  
EXECUTIVE OFFICE

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

In Re:

Account of Amanda H. Walter  
Claim of Amanda H. Walter,  
Claimant

}  
}  
}  
}

Docket No. 2015-10

RECOMMENDATION

AND NOW, this 28<sup>th</sup> day of March, 2016, having duly reviewed and considered the entire record, and based upon the foregoing Findings of Fact, Conclusions of Law and Discussion, the Hearing Officer for the Public School Employees' Retirement System recommends that Claimant's appeal from the June 26, 2015 determination of the PSERS' Executive Staff Review Committee be **DENIED**.

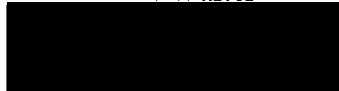
BY ORDER:



Christopher K. McNally  
Hearing Examiner

Claimant:

Amanda H. Walter



Commonwealth Attorney:

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Assistant Counsel  
Public School Employees' Retirement  
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5 North 5th Street  
Harrisburg, PA 17101

Docket Clerk:

Laura Vitale

Date of Mailing:

March 28, 2016