



PSERB Resolution 2024-77

Re: Korb B., Docket No. 2021-11

December 20, 2024

RESOLVED, that in the matter of Betsy R. Korb, Docket No. 2021-11, the Public School Employees' Retirement Board hereby accepts the recommendation of the Benefits and Appeals Committee and adopts the proposed Opinion and Order of the Board and dismisses Claimant's appeal with prejudice.

Mail Date: _____

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

IN RE: ACCOUNT OF BETSY R. KORB
DOCKET NO. 2021-11
CLAIM OF BETSY R. KORB

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the proposed Opinion and Recommendation of the Hearing Examiner. We note that neither party filed Exceptions to the proposed Opinion and Recommendation. The Board finds appropriate the proposed Opinion and Recommendation, and, accordingly, we hereby adopt it as our own.

IT IS HEREBY ORDERED that Claimant's request to purchase credit for the out-of-state service she rendered with the Groton Public School District in Connecticut during the 1984-1985 school year and the 1985-1986 school year is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: _____

By: _____
Richard Vague, Chairman

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

Account of Betsy R. Korb : Docket No.: 2021-11
Claim of Betsy R. Korb :

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PSERB
EXECUTIVE OFFICE

OPINION AND RECOMMENDATION

Date of Hearing: May 9, 2024

Hearing Examiner: Debra Sue Rand, Esquire

For the Claimant: Catherine E. Rowe, Esquire

For PSERS: Savannah Durham, Esquire

I. HISTORY

This matter is before the Public School Employees' Retirement Board ("Board") on an appeal filed by Betsy R. Korb ("Claimant"). On May 3, 2021, the Public School Employees' Retirement System ("PSERS"), through its Executive Staff Review Committee ("ESRC"), denied Claimant's request to purchase credit for two years of out-of-state service for service in Connecticut.

The basis of the ESRC denial was that Claimant's application to purchase out-of-state service was not received by PSERS while Claimant was still an active member with PSERS. More specifically, Claimant's request for out-of-state service credit was first received on October 29, 2020, but Claimant retired and left active service on June 30, 2020.

Claimant timely filed an appeal of the ESRC decision and requested an administrative hearing. Counsel for PSERS timely filed an Answer to Claimant's appeal. Board Secretary Terrill Sanchez appointed a hearing officer for purposes of an administrative hearing in connection with Claimant's appeal. The Board's Docket Clerk served a Notice of Hearing upon the parties and scheduled the hearing on Claimant's appeal for August 30, 2023. On August 24, 2023 Counsel for Claimant filed a request for continuance on the basis she had just been retained to represent Claimant and that request was not opposed. The request was granted by order of that same date.

On January 22, 2024 the Board's Docket Clerk served a Rescheduled Notice of Hearing setting the matter for hearing on May 9, 2024. The hearing convened, as scheduled, at 5 N. Fifth Street, Harrisburg, PA. Savannah Durham, Esquire, represented PSERS at the hearing. Claimant was represented by Catherine E. Rowe, Esquire. Both parties called witnesses and moved exhibits into evidence.

The Notes of Testimony (“NT”) were received on June 7, 2024. By order dated June 10, 2024, a briefing schedule was established. Claimant filed her Brief on July 10, 2024 and PSERS filed its Response Brief on August 9, 2024. No reply brief was filed.

II. FINDINGS OF FACT

1. Claimant was employed as public school teacher in the Commonwealth of Pennsylvania for twenty years and has been a member of PSERS since September of 2000. NT 11-12; 71.
2. Claimant retired on June 30, 2020 and her last position was with the Girard School District in Pennsylvania. Ex. PSERS; NT 11, 73.
3. Prior to her retirement, on October 24, **2019**, Claimant began paperwork to purchase of out-of-state service for time she spent as a teacher in the 1980s both in Massachusetts and Connecticut. Exs. CL-9, CL-17.¹ *See also* NT 11-12, 14, 76.
4. In the context of an exchange of emails Claimant advised PSERS in an April 28, 2020 email that she was “retiring this year.” Ex. CL-3; NT 22.
5. To obtain needed information for the purchase of the Connecticut time, Claimant called Groton School District “and a lot of times” there was no answer due to no one being the office because of COVID. NT 24.
6. Her completed form for the Connecticut service was not received by PSERS until October 29, **2020**. Ex. PSERS-2; NT 75, 77.
7. Terrell Davenport has been employed by PSERS, most recently as a Purchase of Service Supervisor since August of 2022, and prior to that he served as a Retirement Technician. NT 61-62; 66-67.
8. Mr. Davenport also had other service with PSERS prior to resigning in July of 2018. NT 62; 66-67.

¹ The request pertaining to purchasing credit from Massachusetts was granted by PSERS and is not in issue here.

9. Mr. Davenport explained that to purchase out of state credit a PSERS member must utilize a Purchase of Out-of-State Service (“POSS”) application form. Ex. PSERS 3. *See also* NT 69-70, 72-73.
10. The POSS application form has a section for the current employer to complete (Section A), a certification section for the retiring employee to complete (Section B), sections for the out-of-state school district to complete (Sections C and D), and sections and a certification for the out-of-state retirement system to complete (Sections E, F, G and H). Ex. PSERS 3. *See also* NT 76-77.
11. The completed POSS form must be received by PSERS while the applying member is still a qualifying or active member. NT 69-70, 73; *see also* 24 Pa. C.S. § 8304(a) (“active member—shall be eligible to receive...credible nonschool service...”).
12. In June 2007, during which time Claimant was an active PSERS member, active members were bulk mailed an *Active Member Handbook*, that, among other things, discussed purchase of out of state service credit. Ex. PSERS 6, pp.7-8; NT 82-84.
13. In 2008 PSERS’ manual *Let’s Talk About Purchasing Credit for Service* was on the PSERS’ website and remained there until 2013 during, which time Claimant was an active PSERS member. Ex. PSERS 7; NT 88-89.
14. This document encouraged purchasing out of state service credit early in one’s career to avoid processing delays; lower the purchase cost, which includes interest accrual; and “help the employer experience less difficulty locating older service records.” PSERS 7, p. 2; NT 89-90.

15. In a 2012 Active Member Newsletter PSERS advised members who were planning to retire within the next two years to apply to purchase uncredited service. NT 92; Ex. PSERS 8, p. 6.
16. PSERS provided the same advice in a 2015 PSERS Active and Retired Member Update. NT 94; Ex. PSERS 9, p. 6.
17. Claimant received instructions from PSERS online on how to fill out the POSS form. NT 51-52; Ex. PSERS 2.
18. By email dated June 12, 2020 at 2:50 p.m. Claimant reached out to the Connecticut Teachers Retirement System (“CTRS”) to ascertain the status of the application she had sent it in October 2019. NT. 24-25; Ex. CL-7.
19. By email dated June 12, 2020 at 2:58 p.m. Claimant also reached out to Groton School District to ascertain the status of her application. NT 26-27; Ex. CL-8.
20. On June 15, 2020 at 9:01 a.m. CTRS responded by email that it had not yet received anything from Groton School District. NT 26; Ex. CL-7.
21. On June 15, 2020 at 12:03 p.m. Groton School District informed Claimant by email that it had located her file and her completed form and that the “Director of Human Resources will be in the office tomorrow to sign it and we will process it as instructed in the original email request.” NT 27-29; Ex. CL-8.²
22. Based on a telephone call on June 22, 2020 with PSERS representative “Kathy (initially misidentified as “Kevin”) during which purchasing service for both Massachusetts *and Connecticut* was mentioned, Claimant was under the impression

² While the document is hearsay, merely by way of background, Claimant supplied a forwarded email with attachment that bears a signature of the Director of Human Service for Groton Public Schools and is dated June 16, 2020. Ex. CL-24.

that her application for the Connecticut service was grandfathered in. NT 25, 37, 125-131. *See also* NT 31-32.

23. Claimant retired on June 30, 2020. NT 30-31, 49, 73; CL-13.
24. On July 6, 2020 Claimant emailed CTRS again checking on the status of her Connecticut POSS, noting that she had been told that her request to purchase had ended up in someone's spam folder. Exs. CL-10, CL-11; NT 32.
25. On July 7, 2020 Claimant was informed by her financial advisor that Groton School District had approved the service and she should reach out to CTRS for it to approve it and send it to PSERS. Ex. CL-12; NT 33.
26. On July 20, 2020 PSERS received Claimant's Application for Retirement, which was effective on June 30, 2020. NT 73; Exs. CL-13; PSERS 1.
27. On October 29, 2020 PSERS received the POSS form for the Connecticut service. NT 75; Exs. PSERS 2; CL-17.
28. By letter dated November 4, 2020 PSERS informed Claimant that she was ineligible to purchase out of state service because she was no longer an active, contributing member of PSERS; the letter did not specifically identify the Connecticut service. NT 35, 79-80; Exs. CL-18, PSERS 4.
29. On November 5, 2020 Claimant filed a timely appeal of that letter to the Executive Staff Review Committee ("ESRC"). NT 36, 80; Ex. CL-19.
30. By letter dated May 3, 2021, the ESRC denied Claimant's appeal for the same reason cited in the November 4, 2020 letter. NT 81; Exs. PSERS 5, CL-21.
31. By letter date May 26, 2021 and received by PSERS on June 1, 2021, Claimant appealed the ESRC's decision. NT 43, 81; Ex. CL-22.

32. By letter dated June 7, 2021 PSERS acknowledged receipt of the appeal. Ex. CL-23.
33. On June 21, 2021, PSERS filed an Answer to Claimant's appeal. Official Notice-Agency records.³
34. The matter was originally scheduled to be heard on August 23, 2023. Official Notice-Agency Records.
35. By order issued August 24, 2023 it was continued based on Claimant having recently retained Counsel. Case file.
36. The matter was rescheduled for May 9, 2024 and was heard as scheduled. Case file.
37. Claimant had notice of the proceedings, appeared with Counsel and had the opportunity to testify, conduct cross examination and present documents. Case file; NT 5-136.

³ Official notice is taken of the Board's records pertaining to Claimant. General Rules of Administrative Practice and Procedure, 1 Pa. Code § 31.1 *et seq.*, at § 35.173; *see also Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A.2d 991 (Pa. Cmwlth. 1987) (The doctrine of official notice allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency's field and those facts contained in reports and records in the agency's files); *Gleeson v. State Bd. of Medicine*, 900 A.2d 430, 440 (Pa. Cmwlth. 2006), *appeal denied*, 917 A.2d 316 (Pa. 2007) (licensing board may take official notice of its own records).

III. CONCLUSIONS OF LAW

1. The Board has jurisdiction to hear this appeal. Findings of Fact Nos. 1-2.
2. Claimant was afforded notice and an opportunity to be heard in connection with her appeal. Finding of Fact No. 37.
3. Claimant has the burden of proof in this proceeding. *Gierschick v. State Employee's Retirement Board*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999). *Accord Disston v. Public School Employees Retirement Board*, (No. 25 CD 2008, Pa Cmwlth, filed January 8, 2009 (not reported)). See also 22 Pa. Code §§ 201.12(d), 201.10, and 201.8(a).
4. PSERS is a creature of statute and derives its authority from the provisions of the Public School Employees' Retirement Code ("Retirement Code"). See 24 Pa. C.S. § 8101, *et seq.*
5. PSERS has no authority to grant rights beyond those specifically set forth in the Retirement Code. *Hughes v. Public School Employees' Retirement Board*, 662 A. 2d 701 (Pa. Cmwlth. 1995), *petition for allowance of appeal denied*, 542 Pa. 678, 668 A.2d 1139 (1995).
6. Claimant has only those rights recognized by the Retirement Code and none beyond. *Hughes v. Public School Employees' Retirement Board*, 662 A. 2d 701 (Pa. Cmwlth. 1995), *petition for allowance of appeal denied*, 542 Pa. 678, 668 A.2d 1139 (1995).
7. Claimant is not eligible to purchase and receive credit for the out-of-state service she rendered in Connecticut, because she did not submit an application to PSERS while she was still an active member. Findings of Fact Nos. 3-36.
8. An "active member" of PSERS may purchase credit and receive eligibility points toward retirement for previous creditable nonschool service. 24 Pa. C.S. § 8304(a).
9. The Retirement Code pertinently defines "active member" as a "school employee for whom pickup contributions are being made to the fund." 24 Pa. C.S. § 8102.

10. The Retirement Code defines “creditable nonschool service” as “[s]ervice other than service as a school employee for which an active member may obtain credit” and includes “[s]ervice in any public school or public educational institution in any state other than this Commonwealth or in any territory or area under the jurisdiction of the United States[.]” 24 Pa. C.S. §§ 8102, 8304(b).

IV. DISCUSSION

Factually, there is little in dispute in this case. Claimant is seeking credit for out-of-state service for two school years for time spent teaching in Connecticut. More specifically, she is seeking to purchase credit for the following two school years: 1984-1985 and 1985-1986.

On July 20, 2020, Claimant filed an Application for Retirement with PSERS, identifying her date of retirement as June 30, 2020. PSERS then processed the Application for Retirement, and Claimant began receiving a monthly annuity pursuant to her selection of a maximum single life annuity. *Passim*. On October 29, 2020, more than three months after her retirement date, PSERS received the POSS, from Connecticut.

By letter dated November 4, 2020, PSERS informed Claimant that she was ineligible to purchase the service because she was no longer an active, contributing member of PSERS at the time she submitted her POSS. PSERS takes the position that the Retirement Code requires a POSS to be filed while a member is still “active,” *i.e.*, prior to retirement. As the ESRC noted in denying her appeal, Claimant had already retired by the time she submitted her POSS.

Claimant filed a timely appeal of that determination to the ESRC.

Burden of Proof and Credibility of Witnesses

Claimant bears the burden of establishing the relief she seeks under the Retirement Code. *See Gierschick v. State Employee's Retirement Board*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999) (State Employees Retirement System); *accord Disston v. Public School Employees Retirement Board*, (No. 25 C.D. 2008, Pa. Cmwlth. filed January 8, 2009 (not reported)). Claimant must satisfy her burden by a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A. 2d 600 (Pa. Cmwlth. 1990), *appeal denied*, 529 Pa. 654, 602 A. 2d 863 (1992). “A preponderance of the evidence 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 (Pa. Cmwlth. 1986). Claimant’s burden of proof has also been described as a ‘more likely than not standard,’ or evidence that is sufficient to tip the mythical scales in her favor. *Agostino v. Township of Collier*, 968 A. 2d 258 (Pa. Cmwlth. 2009).

In an administrative proceeding, the fact finder determines questions of the credibility of witnesses and the weight of the evidence. *See e.g., Nepa v. Department of Public Welfare*, 551 A.2d 354 (Pa. Cmwlth. 1988) (determination of the credibility of witnesses in health care providers’ appeal is the province of the fact finder). In weighing any evidence, a factfinder “may rely on his or her experience [and] common sense” to arrive at a proper conclusion. *Commonwealth v. Segida*, 985 A.2d 871, 879 (Pa. 2009). *See also Summers v. Certainteed Corp.*, 997 A.2d 1152, 1161 (Pa. 2010) (“The credibility of witnesses, professional or lay and the weight to be given their testimony is strictly within the proper province of the trier of fact.”).

Here, the undersigned found the testimony of Claimant credible. The undersigned also found PSERS’ witness, Mr. Davenport, credible, as well, other than when he testified as to the content of the June 22, 2020 telephone conversation, which he had listened to and which had not been provided to Claimant’s Counsel prior to the hearing. The recording speaks for itself and indicates that Connecticut *was* mentioned during that call, despite Mr. Davenport’s recollection to the contrary.

Merits

Turning to the legal issues, it is beyond dispute that PSERS is a creature of the legislature and its members have only those rights created by the Retirement Code. *See Forman v. Pub. Sch. Employees’ Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001). The Code permits, in limited circumstances, an “*active member*” of PSERS to purchase credit and receive eligibility points

toward retirement for previous “creditable nonschool service.” 24 Pa. C.S. § 8304(a). The Retirement Code defines “active member” as a “school employee for whom pickup contributions are being made to the fund.” 24 Pa. C.S. § 8102. It defines “creditable nonschool service” as “[s]ervice other than service as a school employee for which an active member may obtain credit” and includes “[s]ervice in any public school or public educational institution in any state other than this Commonwealth or in any territory or area under the jurisdiction of the United States[.]” 24 Pa. C.S. §§ 8102, 8304(b). Out-of-state service includes, *inter alia*, service rendered in public schools outside of Pennsylvania. 24 Pa. C.S. § 8304(b)(3). The out of state purchase of credit is limited to the lesser of 12 years or the number of years of school service credited in the system. 24 Pa. C.S. § 8304(c).

While the Retirement Code permits a member to purchase credit for out-of-state service in certain circumstances, the statute is clear that the service must be purchased while a member is still active. Here, there is no dispute that on the date PSERS received her POSS form from CTRS for the Connecticut service, Claimant had already been retired for months.

While this fact is not disputed, Claimant argues that if PSERS did not “arbitrarily” require her to obtain the additional certification *from CTRS*, Groton School District would have sent the completed POSS to PSERS before her retirement and that PSERS’ requirement to obtain a certification from an out-of-state retirement system finds no basis in the law. She bolsters this by pointing out that she had been in contact with PSERS, it knew she wanted to purchase the Connecticut time, and “Kathy” gave her assurances that she would be able to do so even after her retirement. She also contends that shutdowns and office closings due to COVID delayed paperwork, which was a circumstance out of her control.

PSERS responds that in order for it to complete its statutory duty to be certain Claimant's Connecticut service would qualify for out of state purchase of credit, it needs all the information it seeks in its POSS. It further contends that even given any possible miscommunication by PSERS' personnel, or other factors, it has no authority whatsoever to grant equitable relief.

In addition to setting forth the requirement that one must be an active member at the time of the purchase of the out of state credit, Section 8404 of the Retirement Code has other restrictions. Of note:

- Service can only be purchased if the claimant is “not eligible to receive, eligible to receive now or in the future or is receiving retirement benefits for such service under a retirement system administered and wholly or partially paid for by any other government agency for by any private employer, or a retirement program approved by the employer in accordance with Section 8301(a)(1) of the Retirement Code.” 24 Pa. C.S. § 8304(a).
- Service must be rendered in public schools outside of Pennsylvania. 24 Pa. C.S. § 8304(b)(3);
- Purchase of service credit is “limited to the lesser of 12 years or the number of years of school service credited in the system.” 24 Pa. C.S. § 8304(c).

For PSERS to know if these conditions are met it needs information from both the employing school district and the retirement administrator in the non-Pennsylvania location. Its POSS is clearly designed to obtain that information. While it is true that the statute does not explicitly say that all this information must be received by the date of retirement in Pennsylvania, it does say that the application must be filed while one is in active member in PSERS. An incomplete application does not permit PSERS to do what is mandated to do; therefore, it is logical to conclude that application *in completed form* must be filed by the member's retirement date.

While requiring the various verifications on the form by the school district and retirement administrator takes the control of filing out of a claimant's hands to some degree, PSERS has addressed that by its repeated advice to file early. Moreover, employment and retirement the information sought cannot be provided directly by the claimant; the risk to falsify in order to double dip is real. *See Morris v. Pub. Sch. Emps. Ret. Sys.*, 538 A.2d 1385 (Pa. Cmwlth. 1988). *See also* NT 78.

The Board interprets the deadline for a timely application as *receipt* by PSERS, having adopted the provision for timely filing in GRAPP. *See* 22 Pa. Code § 201.1 (*adopting* 1 Pa. Code §31.11); *see also Harasty v. Pub. Sch. Emps. Ret. Bd.*, 945 A.2d 783, 787-788 (Pa. Cmwlth. 2008). It is undisputed that the completed application was not received by PSERS until after Claimant retired. Therefore, it was late.

In the alternative Claimant argues that PSERS should be estoppel from denying the application based not only on any possible mis-advice she may have received from a PSERS employee, but also on the confusion due to the pandemic, including the closing of schools, limited accessibility for school-related services and late discovery of an email in a spam folder. NT 36; Ex. CL-19

If ever there was a case that deserves a measure of equity it is this one, given the pandemic-related occurrences. However, as PSERS points out, it has no authority to grant equitable relief. *Lawrie v. Pub. Sch. Emps. Ret. Bd.*, 595 A.2d 753, 758 (Pa. Cmwlth. 1991), *alloc. den.*, 608 A.2d 32 (Pa. 1992) (citing *Finnegan v. Pub. Sch. Emps. Ret. Bd.*, 560 A.2d 848 (Pa. Cmwlth. 1989)), *aff'd per curiam*, 591 A.2d 1053 (Pa. 1991). This prohibition includes a request to excuse a statutory deadline. *See, e.g., Forman v. Pub. Sch. Emps. Ret. Bd.*, 778 A.2d 778 (Pa. Cmwlth. 2001).

Based upon the foregoing findings of fact, conclusions of law, and discussion, the following recommendation shall issue.

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

Account of Betsy R. Korb : **Docket No.: 2021-11**
Claim of Betsy R. Korb :

RECOMMENDATION

NOW, September 6, 2024, 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 appeal should be **DENIED** and the decision of PSERS be **AFFIRMED**.

A party may file exceptions to this proposed opinion and recommendation 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). Exceptions shall be filed with the below-noted Appeal Docket Clerk and must be **received by Monday, October 7, 2024**. *See* 1 Pa. Code § 35.211 (participant desiring to appeal to the agency head shall, within 30 days after the service of a copy of a proposed report or such other time as may be fixed by the agency head, file exceptions to the proposed report or part thereof in brief on exceptions; brief opposing exceptions may be filed in response to brief on exceptions within 20 days after the time limit for the filing of briefs on exceptions or such other time as may be fixed by the agency head). If exceptions are filed, the Board will rule upon the exceptions; the Board 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. 22 Pa. Code § 201.11(c).

A legal assistant for the Office of Hearing Examiners will distribute this proposed opinion

and recommendation to the Appeal Docket Clerk and the parties.

/s/Debra Sue Rand
Debra Sue Rand
Chief Hearing Examiner

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