

Mail Date: MAY 01 2012

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

IN RE: ACCOUNT OF CLAIR J. MANNING (D)
DOCKET NO. 2010-15
CLAIM OF MARY ANN MANNING

OPINION AND ORDER OF THE BOARD

The Board has carefully and independently reviewed the entire record of this proceeding, including the Briefs, the Opinion and Recommendation of the Hearing Officer, Claimant's Brief on Exceptions to the Opinion and Recommendation of the Hearing Officer and PSERS' Brief Opposing Claimant's Exceptions.

Claimant excepts to the Hearing Officer's Opinion and Recommendation on the basis that (1) a triggering event did occur and (2) the Member intended to name Claimant as "the beneficiary of his PSERS account." Claimant characterizes the legal issue in this case as one of form over substance.

The Public School Employees' Retirement Code creates a limited statutory exception to the irrevocability of an option election by allowing a member to re-elect a retirement option and nominate a new survivor annuitant or beneficiary if: (1) at the time the member retired, the member elected a survivor annuity option; and (2) (i) the member's marital status changed since such election; or (ii) the member's survivor annuitant predeceased the member. 24 Pa.C.S. § 8507(j). The requirement that a triggering event must occur and that the member must re-elect an option, therefore, are not procedural requirements, but substantive requirements that establish a member's eligibility under Section 8507(j) to re-elect.

Here, the fact that a triggering event occurred after the filing of the 1990 beneficiary form is not dispositive to Claimant's appeal because the eligibility requirements of Section 8507(j) were not met when PSERS received the form in 1990. Essentially, Claimant is asking this Board to cure a premature filing of a beneficiary form by virtue of a triggering event occurring in the future. Such equitable considerations cannot be used to estop the Board from imposing the statutory eligibility requirements of Section 8507(j). It is the date a filing is received by PSERS that determines its timeliness. *Harasty v. Public School Employees' Retirement Board*, 945 A.2d 783 (Pa. Cmwlth. 2008). The Board does not have the authority to deem an untimely filing as timely merely because a triggering event occurred after the filing, nor does the Board have the authority to grant rights to members beyond those specifically set forth in the Retirement Code. *Allen v. Public School Employees' Retirement Board*, 848 A.2d 1031 (Pa. Cmwlth. 2004); *Forman v. Public School Employees' Retirement Board*, 778 A.2d 778 (Pa. Cmwlth. 2001). Because the Member was not eligible at the time he filed the 1990 beneficiary form, the Board cannot accept the 1990 beneficiary form as the Member's re-election of an option under Section 8507(j).

With regard to the Member's intent, the Board does not believe that the intent is as clear as Claimant suggests in his Exceptions. Indeed, Claimant's initial request on appeal was to be named as the Member's survivor annuitant. The nomination of a new survivor annuitant, however, cannot be made without the written re-election of an option and the formation of a new annuity contract. *Myers v. State Employees' Retirement Board*, 486 A.2d 529 (Pa. Cmwlth. 1984); see also *Estate of Burlingame v. Public School Employees' Retirement System*, 557 A.2d 1128 (Pa. Cmwlth. 1989). Because the Member did not re-elect an option and create a new

retirement contract, there is no way PSERS can know which survivor annuity option the Member may have elected; Option 2, 3 or Customized Option 4. See, *Myers v. State Employees' Retirement Board*, 486 A.2d 529 (Pa. Cmwlth. 1984). Furthermore, the use of a beneficiary form does not evidence the Member's intent to name Claimant as a "survivor annuitant" because a beneficiary form is used to nominate a *beneficiary*, not a survivor annuitant. Using a beneficiary form, therefore, is insufficient to name Claimant as a survivor annuitant.

Nonetheless, even if the Board were to accept the 1990 beneficiary form as the Member's election of Option 1 as Claimant now suggests, there is no death benefit payable to Claimant because the evidence presented shows that in the time since November 1990 and the Member's date of death the present value of any Option 1 death benefit has been depleted.

This Board, therefore, finds appropriate the Findings of Fact, Conclusions of Law, Discussion, and Recommendation in the Hearing Examiner's Opinion and Recommendation attached hereto with a modification to Finding of Fact No. 1 to state "Public School Employees' Retirement System (PSERS)" rather than "Pennsylvania State Employees' Retirement System (PSERS)."

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

IT IS HEREBY ORDERED that Claimant's request to change the survivor annuitant of Clair J. Manning from Linda Susan Munley to Claimant is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: 4-27-12

By: Sally J. Turley
Sally J. Turley, Vice-Chairman

COMMONWEALTH OF PENNSYLVANIA
Before the Public School Employees' Retirement Board

In re: :
Account of Clair J. Manning (D) :
Claim of Mary Ann Manning : **Docket No. 2010-15**
:

LEGAL OFFICE FEB 16 2012

OPINION AND RECOMMENDATION

Dates of Hearing: July 27, 2011
Hearing Examiner: Linda C. Barrett, Esquire
For the Claimant: Frank J. Santomauro, Esquire
For PSERS: Jennifer A. Mills, Esquire

HISTORY

This matter is before the Public School Employees' Retirement Board (Board) on an appeal filed by Mary Ann Manning (Claimant) from a decision of the Public School Employees Retirement System (PSERS) to recognize Decedent's former spouse, Linda Susan Manning née Munley as the survivor annuitant for Clair J. Manning's (Decedent) retirement account based upon the Decedent's designation of Ms. Munley in his Application of Retirement form. Claimant requests, instead, that she be named as the survivor annuitant for Decedent's retirement account.

On March 21, 2011, Linda C. Barrett, Esquire was appointed to act as hearing officer for the administrative hearing in this matter.¹ A hearing notice was subsequently issued on March 25, 2011 scheduling a hearing for July 27, 2011. Linda Susan Munley was granted intervenor status and notified of the hearing date.

The hearing proceeded as scheduled on July 27, 2011 at 5 North Fifth Street, Harrisburg, Pennsylvania. Claimant appeared at the hearing with counsel, Frank J. Santomauro, Esquire. Jennifer Mills, Esquire, represented PSERS. Intervenor, Ms. Munley did not attend the hearing.

Following the close of evidence and upon receipt of the hearing transcript, a briefing schedule was established by the Hearing Officer. On September 23, 2011, Claimant filed an unopposed request for an extension of time to file her brief. The request was granted and a revised briefing schedule directed Claimant to file her initial brief on or before October 21, 2011. PSERS' brief was due within thirty (30) days after

¹ The date of the appointment letter is March 21, 2010. However, it is clear from the date of receipt (March 22, 2011) and other records within the docket that the correct year is 2011. (Official Notice, Agency Records).

service of Claimant's brief. Claimant was provided with fifteen (15) days after service of PSERS brief to file her reply brief. Timely briefs were filed by all parties.

The matter is now before the Board for final disposition.

FINDINGS OF FACT

1. In October 1987, Clair J Manning ("Decedent") filed an Application for Retirement (Retirement Application) with the Pennsylvania State Employees' Retirement System (PSERS). (N.T. *passim*; Joint Exhibit 1)
2. On the Retirement Application, Decedent nominated his wife "Linda Susan," as the survivor annuitant. (Joint Exhibit 1)
3. At the time of his retirement, Decedent was married to Linda Susan Munley. The Decedent and Linda Susan Munley were married on December 4, 1981.

(Joint Exhibits 1 and 8)
4. On his Retirement Application, Decedent selected option 2 as his benefit which provides the same gross monthly benefit to the designated survivor as the Decedent was receiving. (Joint Exhibit 1)
5. PSERS acknowledged receipt of Decedent's Retirement Application on October 22, 1987 by notifying him of his initial retirement benefit and advising him that his designated survivor annuitant would receive a monthly retirement benefit in the amount of \$76.21. The letter also advised Decedent that he had an obligation to notify PSERS if his marital status changed. (Joint Exhibit 2, p. 2)
6. On March 2, 1988, PSERS sent Decedent a letter notifying him of his final retirement benefit per month. This same letter again advised him that his designated survivor annuitant would receive a monthly retirement benefit in the amount of \$88.23. The letter also advised Decedent that he had an obligation to notify PSERS if his marital status changed. (Joint Exhibit 3, p. 3)

7. Claimant began living with Decedent sometime beginning in 1988 at 1144 Sloan Street, Scranton, Pennsylvania. (N.T. 38, 56-57, 64, 72).

8. PSERS received a Nomination of Beneficiary Form signed by Decedent on November 28, 1990 (1990 Beneficiary Form). The 1990 Beneficiary Form listed Mary Ann Buzza as principal beneficiary and James L. Manning as contingent beneficiary. (Joint Exhibit 4A)

9. The 1990 Beneficiary Form is dated November 12, 1990 and witnessed by Patrick Mellody and Ann Marie Koblinski (sic). (N.T. 12-14, 17; Joint Exhibit 4A)

10. Patrick Mellody is an attorney. Decedent consulted Patrick Mellody before executing the 1990 Beneficiary Form. (N.T. 19-21, 58; Joint Exhibits 4A-4C)

11. Claimant accompanied Decedent to Attorney Mellody's office. (N.T. 13)

12. The 1990 Beneficiary Form along with the Withdrawal of Payment Option form was mailed to PSERS from Attorney Mellody's office. (N.T. 28, 88-89)

13. After receiving the 1990 Beneficiary Form, PSERS made numerous attempts to contact Decedent by telephone on December 5, 10, 11, and 12 regarding this document. No one answered the call. (N.T. 111-113, 129; Joint Exhibit 5)

14. PSERS next sent a letter to Decedent on December 26, 1990 stating:

When you retired, you elected Option 2, and named Mary Ann Buzza as your survivor annuitant...

Under this option you may only change your survivor annuitant and or option if your survivor annuitant predeceases you or if your marital status changes.

(N. T. 34-36, 128-130; Joint Exhibit 6)

15. At the time he signed and submitted the 1990 Beneficiary Form, Decedent was not divorced from his wife, Linda Susan Munley, nor had she predeceased him. (N.T. 65, 82-83; Joint Exhibit 7)

16. At the time Decedent prepared and submitted the 1990 Beneficiary Form he knew that he was still legally married to Linda Susan Munley and that she had not predeceased him. (N.T. 65; Joint Exhibits 4A, 7-8)

17. On April 30, 1991, Decedent and Linda Susan Munley were divorced. (N.T. 39; Joint Exhibit 7)

18. Decedent and Claimant were married on August 27, 1991. (N.T. 11-12, 43, 64-65; Joint Exhibit 9)

19. Decedent died on November 30, 2009. (N.T. 44; Joint Exhibit 11)

20. Claimant provided a copy of the death certificate to PSERS on January 15, 2010. (N.T. 48; Joint Exhibit 11)

21. On July 16, 2010, PSERS received a letter from Claimant including a copy of the 1990 Beneficiary Form and the December 26, 1990 letter. (N.T. 51-53; Joint Exhibit 12)

22. In her July 16, 2010 letter, Claimant asserted that she was the "beneficiary" for Decedent and requested payment of her claim. (N.T. 53-54; Joint Exhibit 12)

23. By letter dated August 12, 2010, PSERS notified Claimant that she was not entitled to receive a death benefit. The letter also explained Claimant's appeal rights. (N.T. 55; Joint Exhibit 13)

24. Claimant appealed by letter dated August 17, 2010. (N.T. 55; Joint Exhibit 14)

25. On September 9, 2010, Claimant provided PSERS with a copy of Decedent's 1991 Divorce Decree and Settlement Agreement. (Joint Exhibit 15).

26. Decedent did not notify PSERS that he and Ms. Munley divorced in 1991. (N.T. 117)

27. By letter dated September 23, 2010, the Executive Staff Review Committee denied Claimant's request to be considered as the Decedent's survivor annuitant because Decedent was not eligible to re-elect an option or name a new survivor annuitant at the time he submitted the 1990 Beneficiary form. (Joint Exhibit 16)

28. On October 18, 2010, Claimant filed a Request for Administrative Hearing (Official Notice, Agency Records)

29. On October 25, 2010, PSERS filed an Answer to Claimant's Request for Administrative Hearing asserting that Claimant was not a named beneficiary or survivor annuitant on Decedent's retirement account. (Official Notice, Agency Records)

30. On March 25, 2011, PSERS notified Claimant that a hearing had been scheduled for July 27, 2011. (Agency Records)

31. On July 27, 2011 a hearing was held in connection with Claimant's request for an administrative hearing. (N.T. *passim*)

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Findings of Fact Nos. 1-31)
2. Claimant timely appealed. (Findings of Fact Nos. 24, 28)

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

4. Claimant received due process. (Findings of Fact Nos. 28-31)

5. The statutory provisions of the Retirement Code create a contract between the Commonwealth and public school employees. *Kline v. Morrison*, 44 A.2d 267 (1945).

6. A retiree's rights under the Retirement Code are so personal that no other person can exercise those rights on behalf of the member. 24 Pa.C.S. § 8507. *Estate of Rosenstein v. Public School Employees' Retirement Board*, 685 A. 2d 624 (Pa. Cmwlth. 1996).

7. The mere expression of intention by a retirement system member is not enough to alter a contract without performance of the formal acts mandated by law. *See, Myers v. State Employees' Retirement Board*, 486 A.2d. 529 (Pa. Cmwlth. 1984); *see also Hess v. Public School Employees' Retirement Board*, 75 Pa. Commw. Ct. 25, 460 A.2d 1231(1983), *see also Coleman Appeal*, 33 Pa. D. & C. 2d 191 (1963).

8. Under section 8507(j) of the Retirement Code, a *member* who has designated a survivor annuitant at the time of his/her retirement may nominate a new survivor annuitant under only two circumstances: (1) if the survivor annuitant predeceases the retiree/member; or, (2) the member is awarded a divorce or becomes married subsequent to the election of the option. 24 Pa.C.S. § 8507(j).

9. The Board has no authority to change the Decedent's survivor annuitant designation from Ms. Munley to the Claimant. 24 Pa. C.S. §8507; *Estate of Rosenstein v. Public School Employees' Retirement Board*, 685 A. 2d 624 (Pa. Cmwlth. 1996).

10. Claimant is not Decedent's survivor annuitant or beneficiary because at the time Decedent completed the 1990 Beneficiary Form he was not divorced from Linda Susan Munley, the survivor annuitant named at the time of his retirement and Ms. Munley was still alive at the time the 1990 Beneficiary Form was completed. (Findings of Fact Nos. 15-17)

11. The evidence supports PSERS' decision to deny retirement benefits to Claimant. (Findings of Fact Nos. 1-27)

12. The evidence presented by Claimant is insufficient to overturn the decision of PSERS. (Findings of Fact Nos. 1-27)

DISCUSSION

The Board is charged in this matter with determining how the Decedent's death benefits should be distributed.

The facts of this case are principally undisputed. In October 1987, PSERS received a Retirement Application from the Decedent in which the Decedent elected Option 2 and named his wife at the time, Linda Susan Munley, as his survivor annuitant. When the Decedent filed his Retirement Application with PSERS, the Decedent and the Claimant were not married. PSERS repeatedly provided Decedent with explicit instructions that he could only change that designation in the event of his survivor annuitant's death or a change in marital status.

Decedent attempted to designate Claimant as his survivor annuitant in October 1990. He was not divorced at this time. Decedent and Linda Susan Munley were later divorced on April 30, 1991 but Decedent took no steps to designate Claimant after his subsequent marriage to her on August 27, 1991. Decedent died on November 30, 2009.

Claimant believes that she should be named as the Decedent's survivor annuitant because Decedent prepared and submitted a 1990 Beneficiary Form listing her as beneficiary. Claimant contends that because a December 26, 1990 letter from PSERS incorrectly identified Claimant rather than Ms. Munley as Decedent's survivor annuitant, PSERS is obligated to honor that document under the principals of equitable estoppel. This same letter also explained that Decedent could only change his designation if his survivor annuitant died or Decedent had a change in marital status. Claimant maintains that it was clearly Decedent's intention to name her as his survivor annuitant and that fact should be given weight because of the confusion created by PSERS' mistake.

It is unfortunate that Decedent failed to carefully read the December 26, 1990 letter to inquire about the meaning of the language in the letter or take steps to make the proper designation after his divorce was final. Nonetheless, the Board is not empowered to substitute one beneficiary for another in a case like this under the principles of equitable estoppel. The elements of equitable estoppel require a party such as Claimant to prove, by clear and convincing evidence that the December 26, 1990 letter to Decedent induced him to believe that his 1990 Beneficiary Form was valid; (2) he justifiably relied on the validity of the mistaken representation that Mary Ann Manning née Buzza was the properly designated survivor annuitant; his marital status had changed at the time he executed the 1990 Beneficiary Form; or that Linda Susan Munley had died at the time he executed that form; and (3) Decedent relied on these facts to his detriment. *Finnegan v. Public School Employees' Retirement Board*, 560 A.2d. 848 (Pa. Cmwlth. 1988) *aff'd*

591 A.2d. 1053 (Pa. 1991); *Police Pension Fund Association Board v. Hess*, 562 A.2d. 391 (Pa. Cmwlth. 1989) *alloc. denied*, 524 Pa. 614, 569 A.2d. 1371 (Pa. 1989).

The record establishes that Decedent knew at the time he signed this form he was still legally married to Linda Susan Munley and that she had not predeceased him. Moreover, at the time he received the December 26, 1990 letter from PSERS, Decedent also knew that his marital status had not changed and his wife, Linda Susan Munley had not predeceased him. The record also establishes that Decedent was clearly advised multiple times that absent Ms. Munley's death or a divorce, he could not make a change to his named annuitant. (Findings of Fact Nos. 5-6, 14). Indeed the December 26, 1990 letter explicitly stated that fact, yet Decedent took no steps address the apparent inconsistency in the language of the letter.² The facts do not support the application of the principles of equitable estoppel even if they were available here.

Moreover, the Commonwealth Court has recognized and affirmed that the rights granted to a retiree/member under the Retirement Code are so personal that no person, except the retiree/member, may exercise those rights on his/her behalf. In *Estate of Rosenstein v. Public School Employees' Retirement Board*, 685 A. 2d 624 (Pa. Cmwlth. 1996), the Court acknowledged:

When an employee retires and elects an option for retirement benefits, he or she enters into a contract with a retirement board.

² Claimant also maintains that Decedent relied on the advice of counsel when he signed the 1990 Beneficiary Form causing him to believe he had fulfilled the conditions under the Retirement Code to change his survivor annuitant. Decedent's reliance on the inaccurate or incomplete advice of counsel does not entitle him to equitable estoppel or any other relief. Decedent's belief was not justified in the face of explicit language advising him of the conditions that must exist to change a survivor annuitant. Indeed, the instructions to the 1990 Beneficiary Form indicate that it may be used to nominate any person entitled to receive any applicable benefit payable. Decedent was informed who would be entitled to receive a benefit. (Joint Exhibit 4C). Whether Decedent's counsel engaged in the necessary due diligence to explain how one becomes entitled to that benefit was not clearly established at the hearing as Mr. Mellody did not testify. The appropriate due diligence would have disclosed that Section 8507(j) controlled here. 24 Pa.C.S. § 8507(j).

Bowers v. State Employees' Retirement Board, 29 Pa. Commw. 561, 371 A. 2d 1040 (Pa. Cmwlth. 1977). **Thereafter, the employee is permitted to reelect an option and designate a substitute survivor annuitant only under limited circumstances provided in Section 8507(j) of the [Retirement] Code.**

Id. at 626 (emphasis supplied).

Under section 8507(j) of the Retirement Code, a member who has designated a survivor annuitant at the time of his/her retirement may nominate a new survivor annuitant under only two circumstances: (1) if the survivor annuitant predeceases the retiree/member; or, (2) the member is awarded a divorce or becomes married subsequent to the election of the option.³ The record establishes that at the time Decedent submitted the 1990 Beneficiary Form to PSERS, neither of these circumstances actually existed.

The Board acts as a governmental agency that performs a government function in determining and administering pension benefits of public school employees.

Pennsylvania Ass'n of State Mental Hosp. Physicians v. State Employees' Retirement

³ Section 8507(j) of the Retirement Code provides, in pertinent part, as follows:

§8507. Rights and duties of school employees and members.

(j) Nomination of beneficiary or survivor annuitant. - - A member who is eligible and elects to receive a reduced annuity under Option 1, 2, 3, or 4, shall nominate a beneficiary or a survivor annuitant, as the case may be, by written designation filed with the board at the time of his retirement. . . . A member having designated a survivor annuitant at time of retirement shall not be permitted to nominate a new survivor annuitant unless such survivor annuitant predeceases him or unless the member is awarded a divorce or becomes married subsequent to the election of the option. In such cases, the annuitant shall have the right to reelect an option and to nominate a beneficiary or a new survivor annuitant and to have his annuity recomputed to be actuarially equivalent as of the date of recomputation to the annuity in effect immediately prior to the recomputation. In no other case shall a benefit plan be changed by an annuitant.

24 Pa. C.S. §8507(j).

Notwithstanding the otherwise irrevocable nature of the election of a benefit payment plan, the Retirement Code's corresponding regulations allow a member to change a retirement option election within 30 days of the initial benefit letter, and within 30 days of the final benefit calculation letter, but, only if specific conditions, which are not applicable here, are met. 22 Pa. Code §213.45.

24 Pa.C.S. § 8507(j).

Board, 375 A. 2d 863 (Pa. Cmwlth. 1977). The Board has only those powers that have been granted to it by the Retirement Code. PSERS is bound by the Retirement Code. The Retirement Code does not authorize anyone, other than the member, to make an annuity option choice on his behalf. *Estate of Rosenstein, supra*; see also *Myers v. State Employees' Retirement Board*, 486 A.2d. 529 (Pa. Cmwlth. 1984).

Claimant also argues that the Commonwealth Court's opinion in *Burlingame v. Public School Employees' Retirement System*, 125 Pa. Commw. Ct. 178, 557 A.2d 1128 (1989) should control here because it held that retirement contracts are to be "liberally construed to effectuate the declared intention of the parties to pay compensation for services rendered in the past." *Burlingame* at 186-187. However, Claimant misconstrues the holding in *Burlingame* as the facts in this matter differ materially from those in *Burlingame*.

Mrs. Burlingame was a member of PSERS at the time of her retirement. Like Decedent, at the time of retirement, Mrs. Burlingame nominated her spouse as her survivor annuitant. Mrs. Burlingame's application was accepted and processed by PSERS and she began to receive benefits. Mrs. Burlingame's survivor annuitant/husband predeceased her. After the death of her husband, Mrs. Burlingame's health began to fail and her niece, Cecelia Burlingame, moved in to care for her. During this time, Mrs. Burlingame told Cecelia that she intended to nominate Cecelia and Cecelia's brother, Jarvis, as her new beneficiaries. Mrs. Burlingame secured a change of beneficiary form through communications with a former retirement counselor and directed Jarvis' wife to complete the form. The nomination of beneficiary form was received by PSERS but Mrs. Burlingame did not elect one of the System's options to

effectuate her intent. The PSERS Board denied the request of Cecelia and Jarvis for benefits pursuant to Option 1, finding that Mrs. Burlingame, although she completed a nomination of beneficiary form, had never re-elected an option in writing before her death. The Board determined that all that was due the estate was a pro rata portion of the annuity check for the last month of her life. On appeal, the Commonwealth Court considered the issue of "whether a retired employee's designation of new beneficiaries is complete without an express selection of payment option when the newly-named beneficiary designation necessarily can involve only one of the several fixed options." *Id.* at 182-183, 557 A.2d at 1130. Recognizing that the agreement between a retiree and PSERS is in the nature of a contract that "should be liberally construed to give effect to the intentions of the parties," *Bowers*, 371 A.2d at 1041, the Court found that by sending PSERS a form entitled Nomination of Beneficiaries, Mrs. Burlingame, by necessary implication evidenced her selection of Option 1, because Option 1 was the only established option that provided for payments to a *beneficiary*. *Burlingame* at 186, 557 A.2d at 1132. Such is not the case here.

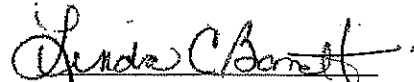
Decedent's named survivor annuitant did not predecease him at the time he completed the 1990 Beneficiary Form nor was he divorced from the named survivor annuitant. What Claimant is asking is not merely recognition of Decedent's intent to name her as his survivor annuitant, she is asking the Board to form a new contract that could not have been formed because the triggering events for the formation itself did not exist at the time Decedent completed the form. This the Board cannot do.

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

Claimant's situation is unfortunate, she has not proferred sufficient evidence to support her appeal. Therefore, the record supports the decision of PSERS to deny Claimant's appeal.

IV. RECOMMENDATION:

Claimant's request to change the survivor annuitant from Ms. Munley to Claimant should be denied.


Linda C. Barrett
Chief Hearing Officer

Date Mailed: February 16, 2011

Mailed to:

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