

Mail Date: APR 30 2012

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

IN RE: ACCOUNT OF CYNTHIA WILSON  
DOCKET NO. 2011-23  
CLAIM OF CYNTHIA WILSON

**OPINION AND ORDER OF THE BOARD**

The Public School Employees' Retirement Board ("Board") has before it a Motion for Summary Judgment filed by the Public School Employees' Retirement System ("PSERS") in the above-referenced administrative appeal, requesting that Cynthia Wilson's ("Claimant") Request for Administrative Hearing be dismissed because there is no issue of material fact, and PSERS is entitled to a summary judgment as a matter of law.

PSERS filed its Motion for Summary Judgment on January 10, 2012, and served a copy by First Class Mail on Claimant as required by the General Rules of Administrative Practice and Procedure ("GRAAP"). 1 Pa.Code §§ 33.32, 33.35-33.36. By letter dated January 10, 2012, PSERS notified Claimant that she had thirty days to respond to PSERS's motion under Pa.R.C.P. No. 1035.3. Claimant's response, therefore, had to be filed on or before February 9, 2012. See 1 Pa.Code §§ 31.11, 31.12 and 33.34. Claimant, however, did not file a response to PSERS's motion as of today.

The Board's regulations specifically authorize the use of summary judgment where there are no genuine issues of material fact. 22 Pa.Code § 201(6)(b); Pa.R.C.P. Nos. 1035.1-1035.5. To determine whether the party moving for summary judgment has met its burden, the Board must examine the record in the light most favorable to the non-moving party, and give such non-moving party the benefit of all reasonable inferences. See *Thompson v. Nason Hosp.*, 535 A.2d 1177, 1178 (Pa.Super. 1988),

*aff'd*, 591 A.2d 703 (Pa. 1991). Any doubts regarding the existence of a genuine issue of material fact must be resolved in favor of the non-moving party. See *El Concilio De Los Trabajadores v. Commonwealth*, 484 A.2d 817, 818 (Pa.Cmwth. 1984).

### FINDINGS OF FACT

Based on the Motion for Summary Judgment and the lack of any response, the Board finds the following facts not in dispute:

1. Claimant became a member of PSERS in June 1985 by virtue of her employment with the School District of Philadelphia.
2. On or about November 13, 2007, Claimant's employer submitted a termination record for Claimant to PSERS.
3. On January 10, 2008, PSERS received an Application for Retirement from Claimant.
4. On or about January 25, 2008, an action was instituted against Claimant in the Court of Common Pleas of Philadelphia County styled *Commonwealth of Pennsylvania v. Cynthia L. Wilson*, Docket No. CP-51-CR-0000935-2008.
5. On February 24, 2011, Claimant was found guilty of Theft by Deception – False Impression, 18 Pa.C.S. § 3922, as a first degree misdemeanor.
6. On March 29, 2011, Claimant was sentenced to probation for a maximum term of five years, restitution in the amount of \$2,000, and 75 hours of community service. Claimant's sentence commenced on March 29, 2011.
7. The criminal complaint alleged that a substantial amount of money was removed from the operating budget of the William C. Bryant School and unlawfully taken without the permission of the School District of Philadelphia.
8. Claimant committed the act of Theft by Deception – False Impression, 18 Pa.C.S. § 3922, on or about September 7, 2004, through her employment with the William C. Bryant School, School District of Philadelphia.

9. By letter dated July 18, 2011, PSERS notified Claimant that any right she may have accrued to receive benefits from PSERS was forfeited pursuant to the Public Employee Pension Forfeiture Act, 43 P.S. § 1311-1315 ("Pension Forfeiture Act").

10. Claimant timely appealed PSERS's July 18, 2011 determination. In her appeal, Claimant asserted that she was not guilty, but admitted that she was found guilty based on her role as a payroll secretary with the School District of Philadelphia.

11. By letter dated November 2, 2011, PSERS's Executive Staff Review Committee ("ESRC") denied Claimant's request to reinstate her retirement benefit that was forfeited pursuant to the Public Employee Pension Forfeiture Act, 43 P.S. § 1311-1315.

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12. Claimant filed an Appeal and Request for Administrative Hearing on November 16, 2011.

13. On December 6, 2011, PSERS filed its Answer and New Matter with a Notice to Plead.

14. On December 23, 2011, Claimant filed another Appeal and Request for Administrative Hearing. Claimant did not directly respond to PSERS's New Matter.

### **DISCUSSION**

The Pension Forfeiture Act disqualifies public employees from receiving retirement benefits if they have been convicted of or pled guilty or no contest to any of the "crimes related to public office or public employment" enumerated in 43 P.S. § 1312. "Crimes related to public office or public employment" include theft by deception, 18 Pa.C.S. § 3922, "when the criminal culpability reaches the level of a misdemeanor of the first degree or higher" and "when committed by a . . . public employee through his public office or position or when his public employment places him in a position to commit the crime." 43 P.S. § 1312.

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On February 24, 2011, Claimant was found guilty in the Court of Common Pleas of Philadelphia County of Theft by Deception – False Impression, 18 Pa.C.S. § 3922, as

a first degree misdemeanor. She was sentenced to probation for a maximum term of five years, restitution in the amount of \$2,000, and 75 hours of community service. Accordingly, Claimant was convicted of and sentenced for a crime expressly enumerated in the Pension Forfeiture Act.

The Pension Forfeiture Act defines "public employee" to include "all persons who are members of any retirement system funded in whole or in part by the Commonwealth or any political subdivision. For the purposes of this act such persons are deemed to be engaged in public employment." 43 P.S. § 1312. At the time the crime was committed, Claimant was employed by the School District of Philadelphia and a PSERS member. Claimant, therefore, is a public employee for purposes of the Pension Forfeiture Act. 43 P.S. §§1312 and 1313(c).

In addition, Claimant committed the criminal act through her position as an employee of the School District of Philadelphia. The criminal complaint alleged that a substantial amount of money was removed from the operating budget of the William C. Bryant School and unlawfully taken without the permission of the School District of Philadelphia. Claimant has admitted to PSERS that she was found guilty based on her position as a payroll secretary with the School District of Philadelphia.

Claimant asks the Board to reconsider the forfeiture because, among other things, she claims that she was wrongfully accused. The Pension Forfeiture Act, however, leaves no discretion to PSERS (or any administrative agency) once a triggering conviction or guilty plea occurs. See *Gierschick v. State Employees' Retirement Board*, 733 A.2d 29 (Pa.Cmwth. 1999), *appeal denied*, 751 A.2d 194 (Pa. 2000). Indeed, PSERS does not have the authority to reinstate Claimant's pension benefits for equitable or other considerations. See *Apgar v. State Employees' Retirement Board*, 655 A.2d 185, 189 (Pa. Cmwth. 1994).

For the above stated reasons, the Board finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issue of whether Claimant's retirement benefits that were lost pursuant to the Public Employee Pension Forfeiture Act, 43 P.S. § 1311-1315, should be reinstated.

Accordingly, PSERS's Motion for Summary Judgment is GRANTED and Claimant's Request for Administrative Hearing is DENIED.

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**ORDER**

AND NOW, upon consideration of Claimant's Request for Administrative Hearing and PSERS's Motion for Summary Judgment:

IT IS HEREBY ORDERED, that PSERS's Motion for Summary Judgment is GRANTED, and Claimant's Request for Administrative Hearing is DISMISSED in compliance with 22 Pa.Code § 201.6(b), as no genuine issue of material fact exists and PSERS is entitled to judgment as a matter of law. Accordingly, this Board denies Claimant's request to reinstate her retirement benefits that were forfeited pursuant to the Public Employee Forfeiture Act, 43 P.S. § 1311-1315.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: 4-27-2012

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