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

IN RE: ACCOUNT OF CAROL L. HOLLERN
DOCKET NO. 2019-06
CLAIM OF CAROL L. HOLLERN

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 Carol L. Hollern's ("Claimant") Appeal and Request for Administrative Hearing be dismissed because there is no issue of material fact and PSERS is entitled to summary judgment as a matter of law.

PSERS filed its Motion for Summary Judgment on July 24, 2020, and served a copy by First Class Mail on Claimant as is required by the General Rules of Administrative Practice and Procedure. 1 Pa. Code §§ 33.32, 33.35-33.36. By letter dated July 24, 2020, PSERS notified Claimant that she had 30 days to respond to PSERS' motion under Pa.R.C.P. No. 1035.3. Claimant did not file a response.

Where no factual issues are in dispute, no evidentiary hearing is required under 2 Pa.C.S. § 504. The function of a summary judgment motion is to eliminate the needless use of time and resources of the litigants and the Board in cases where an evidentiary administrative hearing would be a useless formality. *See Liles v. Balmer*, 567 A.2d 691 (Pa. Super. 1989). The Board's regulations 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 her 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. *El Concilio De Los Trabajadores v. Commonwealth*, 484 A.2d 817, 818 (Pa. Cmwlth. 1984). Additionally, “summary judgment may be entered against a party who does not respond.” Pa.R.C.P. 1035.3(d).

In responding to a motion for summary judgment, an adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response identifying “(1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion . . . , or (2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.” Pa.R.C.P. No. 1035.3(a). “An adverse party may supplement the record or set forth the reasons why the party cannot present evidence essential to justify opposition to the motion and any action proposed to be taken by the party to present such evidence.” Pa.R.C.P. No. 1035.3(b).

Here, Claimant did not respond to PSERS’ motion and, therefore, she has not disputed any of the facts set forth therein. Additionally, Claimant has declined to identify any additional facts remaining to be determined at an evidentiary hearing that would be material to the legal issue before the Board in this matter. Accordingly, the Board finds that there are no disputed material facts. The Board further finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve whether Claimant’s retirement benefit with PSERS was properly forfeited pursuant to the Public Employee Pension Forfeiture Act (“Forfeiture Act”), 43 P.S. §§ 1311-1315.¹

FINDINGS OF FACT

Based on the record, the Board finds the following relevant facts not in dispute:

¹ The Forfeiture Act was amended on March 28, 2019, for crimes committed on or after that date. Because Claimant committed her crimes prior to March 28, 2019, this Board addresses Claimant’s appeal based on the law in place at the time she committed her crime.

1. Carol L. Hollern ("Claimant") was first enrolled in PSERS in July 1994 through her part-time, salaried employment with the Steelton-Highspire School District ("District"). (PSERS' Memorandum of Facts, ¶ 1).

2. Claimant continued working for the District in a part-time capacity through June 30, 2004, and then worked for the District in a full-time capacity from July 1, 2004 through July 31, 2017. (PSERS' Memorandum of Facts, ¶ 2).

3. From July 1994 through July 2017, Claimant accrued service credit with PSERS as an active school employee. (PSERS' Memorandum of Facts, ¶ 3).

4. Claimant filed an Application for Multiple Service Membership with PSERS on August 1, 2001, identifying service she rendered as a member of the State Employees' Retirement System ("SERS") from June 1979 to September 1986. (PSERS' Memorandum of Facts, ¶ 4; PSERS-1).

5. In 2002, Claimant's request for multiple service membership was granted. (PSERS' Memorandum of Facts, ¶ 5).

6. PSERS received Claimant's Application for Retirement on July 17, 2017, in which she elected the Option 1 monthly payment plan and requested a withdrawal of her total contributions and interest. (PSERS' Memorandum of Facts, ¶ 6; PSERS-2).

7. The District reported to PSERS that, on August 1, 2017, Claimant was placed on an unpaid leave of absence and, on August 17, 2017, Claimant terminated employment. (PSERS' Memorandum of Facts, ¶ 7).

8. PSERS processed Claimant's Application for Retirement, and Claimant received a lump sum rollover of her total contributions and interest and began receiving a monthly annuity effective August 18, 2017 from PSERS. (PSERS' Memorandum of Facts, ¶ 8; PSERS-3).

9. In August 2017, in the Court of Common Pleas of Dauphin County, a Police Criminal Complaint was filed against Claimant, alleging that Claimant stole

\$57,420.00 from the District's athletic program by writing checks to herself from an account that she managed. (PSERS' Memorandum of Facts, ¶ 9; PSERS-4).

10. Claimant pled guilty to a third degree felony count of 18 Pa.C.S. § 3922 (related to theft by deception – false impression) on October 3, 2018. (PSERS' Memorandum of Facts, ¶ 10; PSERS-5).

11. Claimant was ordered to pay restitution and was sentenced to one year of probation. (PSERS' Memorandum of Facts, ¶ 11; PSERS-6).

12. SERS issued a forfeiture letter to Claimant, dated October 26, 2018, advising her that all pension benefits accrued with SERS were forfeited as of October 3, 2018. (PSERS' Memorandum of Facts, ¶ 12; PSERS-7).

13. PSERS informed Claimant, by letter dated October 29, 2018, that due to her guilty plea, under the Forfeiture Act, her retirement benefit with PSERS had been forfeited, and the retirement benefits she was receiving would be terminated effective October 3, 2018. (PSERS' Memorandum of Facts, ¶ 13; PSERS-8).

14. PSERS and SERS issued separate determination letters and provided Claimant with separate appeal rights based on the service credit she earned through each respective pension system. (PSERS' Memorandum of Facts, ¶ 14; PSERS-7, 8).

15. Claimant filed an appeal with the PSERS Executive Staff Review Committee ("ESRC") on November 19, 2018, asserting that the theft by deception charge only occurred during a portion of her employment at the District, from 2011-2015; she took the money under duress to save her family from threatened violence; she made full restitution; she was only sentenced to one year of probation; and she had superior ratings during her career. Claimant asked the ESRC to consider the extenuating circumstances surrounding her crime and reinstate her pension. (PSERS' Memorandum of Facts, ¶ 15; PSERS-9).

16. By letter dated May 22, 2019, the ESRC denied Claimant's appeal, explaining that PSERS may not look beyond the guilty plea to consider Claimant's

reasons for committing the theft or her prior work performance. (PSERS' Memorandum of Facts, ¶ 16; PSERS-10).

17. On June 5, 2019, Claimant filed her Appeal and Request for Administrative Hearing. Claimant asserts that she does not feel the facts of her criminal court proceeding have been thoroughly reviewed, and she requests that the Board conduct a more comprehensive review and reverse the forfeiture. (PSERS' Memorandum of Facts, ¶ 17; PSERS-11).

18. On June 19, 2019, PSERS filed its Answer. (PSERS' Memorandum of Facts, ¶ 18; PSERS-12).

19. On July 24, 2020, PSERS filed a Motion for Summary Judgment.

20. Claimant did not file a response to PSERS' motion.

21. The matter is ripe for Board Adjudication.

DISCUSSION

The 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.

On October 3, 2018, Claimant pled guilty in the Court of Common Pleas of Dauphin County to theft by deception – false impression, 18 Pa.C.S. § 3922, as a third degree felony. She was ordered to pay restitution and was sentenced to one year of probation. Accordingly, Claimant pled guilty to, and was sentenced for, a crime identified as a forfeitable offense under the Forfeiture Act.

The Forfeiture Act defines “public official” or “public employee” to include any “person who is elected or appointed to any public office or employment . . . or who is acting or who has acted in behalf of the Commonwealth or a political subdivision or any agency thereof....” 43 P.S. § 1312. The term includes “all persons who are members of any retirement system funded in whole or in part by the Commonwealth or any political subdivision.” 43 P.S. § 1312. At the time the crime was committed, Claimant was employed by the District and was a member of PSERS. Claimant, therefore, was a public employee for purposes of the Forfeiture Act. See 43 P.S. § 1312.

Additionally, Claimant committed the criminal act through her position as an employee of the District. Indeed, the criminal complaint alleged that Claimant removed \$57,420.00 from the District’s athletic program by writing checks to herself from an account that she managed.

Claimant does not dispute that she was a public employee and, therefore, is subject to the Forfeiture Act. Nor does she dispute that she committed a forfeitable crime through her employment at the District. Rather, Claimant requests that the Board consider that the relevant criminal charge occurred during only a portion of her employment at the District, she took the money under duress, she made full restitution, she received a light sentence, and she had superior ratings during her career.

Even accepting all facts in the light most favorable to the Claimant in reviewing PSERS’ Motion for Summary Judgment, the Forfeiture Act leaves no discretion to the Board once a triggering conviction or guilty plea occurs. See 43 P.S. § 1313(b); *Gierschick v. State Employees’ Ret. Bd.*, 733 A.2d 29, 33 (Pa. Cmwlth. 1999). Indeed, the Board does not have the authority to reinstate Claimant’s pension benefits for equitable or other considerations. See *Apgar v. State Employees’ Ret. Sys.*, 655 A.2d 185, 189 (Pa. Cmwlth. 1994); *In re Account of Jacqueline Ruchinski*, Docket No. 2018-06, at *8 (PSERB Aug. 16, 2019) (holding that claimant’s health, cooperation during criminal investigation, and payment of restitution and completion of probation could not alter the requirement that her pension be forfeited). Accordingly, as a matter of law, the Board must enforce the Forfeiture Act once a triggering guilty plea occurs. See *Gierschick*, 733 A.2d at 33.

Additionally, Claimant's argument that the conduct warranting her guilty plea only occurred during a portion of her employment (i.e., 2011-2015) is ostensibly a request that the Board forfeit only the portion of her pension that is related to the time that the conduct occurred. Section 1313(a) of the Forfeiture Act, however, requires forfeiture of Claimant's entire pension and does not permit such relief: "[N]o public employee . . . shall be entitled to receive any retirement or other benefit or payment of any kind . . . , if such [public employee] is convicted or pleads guilty or no defense to any crime related to public office or public employment." 42 P.S. § 1313(a); see *Shiomos v. State Employees' Ret. Bd.*, 626 A.2d 158, 162 (Pa. 1993); see also *In re Account of Dennis L. Bruno*, Docket No. 2011-15, at *17-18 (PSERB May 1, 2013).

Furthermore, and to the extent that Claimant is requesting that the Board revisit the question of her guilt by reviewing the underlying facts of the crime, reviewing an underlying criminal matter and opining on a person's guilt or innocence, is not within the Board's scope of review in determining the Forfeiture Act's applicability. 43 P.S. §§ 1311-1315; see *In re Account of Evelyn Cortez*, Docket No. 2017-04, at *5 (PSERB May 29, 2019). By entering a guilty plea, Claimant acknowledged that she committed the crime and is bound by that plea. See *Commonwealth v. Anthony*, 475 A.2d 1303, 1307 (Pa. 1984). Therefore, Claimant's request amounts to an improper collateral attack of her underlying guilty plea.

CONCLUSION

For these 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 forfeited pursuant to the Forfeiture Act should be reinstated. Accordingly, PSERS' Motion for Summary Judgment is GRANTED, and Claimant's Request for Reinstatement of her Pension Benefits is DENIED.

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

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ORDER

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

IT IS HEREBY ORDERED, that PSERS' Motion for Summary Judgment is GRANTED, and Claimant's Appeal and Request for Administrative Hearing is DISMISSED in accordance with 22 Pa. Code § 201.6(c), as no genuine issue of material fact exists and PSERS is entitled to judgment as a matter of law. As a result, this Board denies Claimant's request that PSERS reinstate Claimant's benefits that have been forfeited by operation of law under the Forfeiture Act.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: _____

10/9/2020

By: _____


Christopher SantaMaria, Chairman