

Mail Date:

Mail Date: JAN 05 2024

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

IN RE: ACCOUNT OF MABEL CRISOSTOMO  
DOCKET NO. 2021-14  
CLAIM OF MABEL CRISOSTOMO

**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 amend her retirement contract to permit a withdrawal of her contributions and interest is DENIED.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: 12/15/23

By:   
Christopher Santa Maria, Chairman

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

**In Re,** :  
**Account of Mabel Crisostomo** : **Docket No.: 2021-14**  
**Claim of Mabel Crisostomo** :

**OPINION AND RECOMMENDATION**

**Date of Hearing:** February 3, 2023  
**Hearing Officer:** Michael T. Foerster  
**Claimant, Self-Represented:** Mabel D. Crisostomo  
**For PSERS:** Kathrin V. Smith, Esquire

## HISTORY

This matter is before the Public School Employees' Retirement Board on an appeal filed by Mabel D. Crisostomo ("Claimant" or "Ms. Crisostomo"). She appeals from a decision, relayed via letter on June 3, 2021, by the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS" or "the System"). ESRC affirmed the System's decision and denied Claimant's request to change the terms of her retirement plan and withdraw a lump sum from her contributions and interest.

Hearing on Claimant's appeal occurred on February 3, 2023. Claimant appeared for the hearing, self-represented, and testified on her own behalf along with her daughter Anastasia Dawan. Clinton J. Webb, Esquire, represented PSERS at the hearing. PSERS presented its case through the testimony of Avery Romain, a PSERS Retirement Representative of six years, and PSERS entered eleven exhibits.

The evidentiary record in this matter closed with the filing of Notes of Testimony ("N.T.") on February 28, 2023. Claimant and PSERS filed Post-Hearing Briefs. This matter is now before the Board for final disposition.

## FINDINGS OF FACT

1. Claimant was enrolled in PSERS Retirement Plan in 2009 through her employer the School District of Philadelphia. Notes of Testimony ("N.T.") 17-18, 75-76.

2. Claimant is a Class T-D member of PSERS and as such is eligible for retirement benefits after 5 years of contribution. N.T. 75.

3. Claimant, though not yet retired, made a preemptive call via telephone to PSERS to request information regarding her estimated retirement on January 24, 2020. PSERS-1; N.T. 19-20, 77-78.

4. PSERS members are able to request a retirement estimate in order to find out what their monthly pension check would be prior to retiring. N.T. 79, 81.

5. PSERS mailed a letter to Claimant dated February 21, 2021, providing a *Normal Retirement Estimate* which set forth what her estimated monthly retirement check would be depending on which retirement plan she chose and if she chose to withdraw any of her contributions and interest. PSERS-2; N.T. 79-86.

6. In the *Retirement Estimate* letter PSERS recommended that Claimant attend retirement counseling as follows:

When you retire, do not waive Retirement Exit Counseling. Although retirement counseling is not mandatory, we highly recommend that you receive counseling before you terminate school service and file your Application for Retirement. At this meeting, a PSERS representative will review the retirement options to ensure that you understand the choices that are available to you. Your retirement decisions is final; PSERS legally cannot change your option after a certain period.

PSERS-2, p:2.

7. On June 16, 2020, Claimant retired from the Philadelphia School District. PSERS-4 "Retirement Date," PSERS-10 "Retirement Date;" N.T. 18, 94.

8. PSERS received a completed *Application for Retirement* submitted by Claimant on August 28, 2020. PSERS-3; N.T. 23, 86-87.

9. The *Application for Retirement* included instructions as follows:

In addition to receiving your monthly benefit, generally, you may withdraw an amount equal to or less than the sum of your contributions and interest. The amount of money you withdraw will reduce your monthly benefit; the more you withdraw, the greater the reduction.

PSERS-3.

10. PSERS members are not required to withdraw any of their contributions and interest at the time of their retirement and if the member does not make a withdrawal, then their monthly checks will be a higher amount for the remainder of their life. N.T. 86.

11. Claimant selected the option “no” under “Do you want to withdraw money” in her *Application for Retirement*. PSERS-3, p:2; N.T. 25, 88.

12. Claimant’s application had interlineations and deletions. PSERS-3, p:2; N.T.

13. In such cases PSERS has a protocol to interpret such applications. PSERS-3, p:2; N.T. 88-89.

14. Claimant also selected the “Maximum Single Life Annuity” plan on her *Application for Retirement*. PSERS-3, p:3; N.T. 24, 89.

15. Claimant also selected “I am waiving my right to a *Retirement Exit Counseling* session” on her *Application for Retirement*. PSERS-3, p:6; N.T. 25-26, 89-90.

16. PSERS processed Claimant’s *Application for Retirement* and mailed her *Initial Retirement Benefit* letter on September 18, 2020. PSERS-4; N.T. 92-93.

17. The *Initial Retirement Benefit* letter mailed on September 18, 2020, informed Claimant of her monthly benefit amount of \$655.76 and explained that Claimant selected the

“Maximum Single Life Annuity” and to withdraw none of her contributions as her retirement plan through her *Application for Retirement*. PSERS-4, p:1.

18. The September 18, 2020 letter also informed Claimant that her selected retirement plan was binding unless she filed the enclosed *Intent to Change the Terms of the Retirement Plan* form (“ITC form”) by October 21, 2020. PSERS-4, p:1; N.T. 96.

19. Claimant received the *Initial Retirement Benefit* letter mailed by PSERS along with the enclosed ITC form. N.T. 31.

20. Completing the ITC process by the deadline is a retiree’s opportunity to make a change to her retirement plan with PSERS. N.T. 91.

21. Claimant began receiving monthly annuity payments per her selected retirement plan. N.T. 95.

22. Claimant completed the ITC form before the October 21, 2020 deadline and PSERS received it via fax on September 29, 2020. PSERS-5; N.T. 32-33, 97.

23. Submitting a completed ITC form does not automatically make changes to a retiree’s retirement plan with PSERS. N.T. 98.

24. Claimant acknowledged, by signing the ITC form, that she understood that there are additional steps to be completed before the current terms of her retirement could be changed. PSERS-5; N.T. 97.

25. The ITC form stated that the current terms of Claimant’s retirement plan would remain the same until a *Revised Application for Retirement* (PSRS-1239) or a *Revised Application for Disability Retirement* (PSRS-1240) is filed. PSERS-5.

26. PSERS sent Claimant a letter dated October 1, 2020 stating that her ITC form had been received and explaining her options for moving forward with changing her retirement plan. PSERS-6; N.T. 34, 36, 99.

27. Claimant received the October 1, 2020 letter sent from PSERS. N.T. 34, 100.

28. The October 1, 2020 letter included instructions for Claimant to move forward in making changes to her retirement plan as follows:

To change the terms the terms of your retirement plan, you must do one of the following three options:

1. **Receive Intent to Change Counseling**

If you choose to receive counseling from a PSERS Retirement Representative, you must do so by **November 2, 2020**. You must contact PSERS' Southeast Regional Office immediately to schedule an appointment for Intent to Change Counseling by calling toll-free 1.888.733.7748. If you chose to change the terms of your retirement as a result of attending Intent to Change Counseling, you must file either a *Revised Application for Retirement* (PSRS-1239) or a *Revised Application for Disability Retirement* (PSRS-1240). PSERS must receive the revised application within 30 days of the Intent to Change counseling.

-or-

2. **Request an Extension to Receive Intent to Change Counseling**

If you are unable to attend Intent to Change Counseling by **November 2, 2020**, you may request an extension. You must complete the enclosed *Request for Extension to Receive Intent to Change Counseling* form. PSERS must receive your *Request for Extension to Receive Intent to Change Counseling* form before **November 2, 2020**. You will receive a letter from PSERS confirming that your *Request for Extension to Receive Intent to Change Counseling* was approved, and the new date by which you must receive Intent to Change Counseling.

-or-

3. **Waive Intent to Change Counseling**

If you chose to waive Intent to Change Counseling, you must complete the enclosed *Request to Waive Intent to Change Counseling* form. PSERS must receive your *Request to Waive Intent to Change Counseling* form before **November 2, 2020**. After PSERS receives the waiver, a *Revised Application for Retirement* (PSERS-

1239) or a *Revised Application for Disability Retirement* (PSERS-1240) will be mailed to you.

PSERS-6, p:1 (emphasis in original); N.T. 98-99.

29. The October 1, 2020 letter included a telephone number to schedule an appointment for Intent to Change counseling as well as enclosed forms to either request an extension to receive counseling or to waive counseling due November 2, 2020. PSERS 6; N.T. 99-100.

30. The letter sent by PSERS dated October 1, 2020 also advised Claimant that if she did not respond with a selected Intent to Change option by November 2, 2020, then her request to change her retirement plan would be deemed withdrawn:

If you do not respond to one of the three options by **November 2, 2020**, your request to change the terms of your retirement plan will be deemed withdrawn and you will not be permitted to make any changes to your retirement plan.

PSERS-6, p:2 (emphasis in original).

31. A PSERS called Claimant and spoke with her regarding the ITC form on October 5, 2020; representative made a note in Claimant's PSERS account following the phone call as follows: "Called member to see what she wanted to change with the ITC and explain the process. She wants to withdraw a lump sum." PSERS-7; N.T. 101-103.

32. A verbal request to change the terms of a members retirement plan is not acceptable for PSERS to make a change to terms of retiree's retirement plan. N.T. 103; 24 Pa. C.S. § 8307, 24 Pa C.S. §8102; 22 Pa. Code § 213.45.

33. Claimant called PSERS on October 13, 2020, to discuss further the intent to change process; a PSERS representative made a note in Claimant's PSERS account following the phone call as follows:

Member asking about direct deposit. We confirmed that the account number has been corrected for 10/14 and 10/30 deposits. Member asking about completing the Intent to

change waiving counseling form because she doesn't want counseling. Advised that she could talk to tax consultant since we will have to withhold 20% for Federal taxes. She will consult her accountant and send in the form accordingly.

PSERS-8; *see also* N.T. 44-45, 104-105.

34. PSERS did not receive either a request to receive ITC Counseling, a request for an extension to receive ITC Counseling, or a request to waive the ITC Counseling from Claimant prior to the November 2, 2020, deadline. N.T. 106, 108.

35. PSERS sent Claimant a letter dated November 16, 2020, informing her that her request to change the terms of her retirement plan had been withdrawn due to the following:

The Public School Employees' Retirement System (PSERS) has withdrawn your request to change the terms of your retirement plan because you failed to receive counseling, request an extension, or waive counseling by your deadline of **November 2, 2020**. Therefore, your original retirement plan will remain in effect.

PSERS-9 (emphasis in original), N.T. 46, 109-111.

36. The November 16, 2020 letter also stated directions for Claimant to appeal PSERS' decision and that a request for an appeal must be received by December 18, 2020. PSERS-9; N.T. 111.

37. On December 15, 2020, Claimant timely filed to appeal this determination to PSERS' Executive Staff Review Committee ("ESRC"). N.T. 47-48, 111-112.

38. PSERS sent a letter dated April 8, 2021, to inform Claimant of her *Finalized Retirement Benefit* in accordance with her initial retirement plan selections of Maximum Single Life Annuity and no withdrawal of her contributions and interest. PSERS-10; N.T. 48-50, 112-113.

39. Claimant received the *Finalized Retirement Benefit* letter. N.T. 49.

40. The ESRC held a meeting on April 30, 2021, to review Claimant's request to change the terms of her PSERS retirement plan. PSERS-11, p:1.

41. PSERS sent a letter to Claimant on June 3, 2021, to notify her that the ESRC had reviewed and consequently denied her request to change the terms of her retirement plan and withdraw a lump sum. PSERS-11; N.T. 49-50, 113- 115.

42. The June 3, 2021 letter included directions for Claimant to appeal the ESRC's decision. This appeal had a deadline date of July 6, 2021. PSERS-11, p:1; N.T. 114-115.

43. Claimant received the letter sent from PSERS which was dated June 3, 2021. N.T. 50.

44. Claimant appealed ESRC's decision to deny her request to change the terms of her retirement plan and withdraw a lump sum on July 6, 2021. N.T. 50-51, 115.

45. PSERS filed its *Answer* to Claimant's appeal on July 21, 2021.

46. An administrative hearing was held before Hearing Officer Michael T. Forester on February 3, 2023.

47. Claimant was served with all pleadings, orders, and notices filed of record in this matter and she participated in the hearing remotely via Microsoft Teams where she was provided the opportunity to testify, examine witnesses, and offer evidence. Docket; N.T. *passim*.

## CONCLUSIONS OF LAW

1. The rights of PSERS members are derived solely from the provisions of the Public School Employees' Retirement Code ("Retirement Code"). 24 Pa. C.S. §8101 *et. seq.*; *Forman v. Public School Employees' Retirement Board*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001).
2. The authority of the Board to grant or deny Claimant's request is limited to the provisions of the Retirement Code, and the Board has no authority to grant Claimant rights beyond those specifically set forth in the Retirement Code. *Forman, supra*; *Burriss v. State Employees' Retirement Board*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees' Retirement Board*, 622 A.2d 403, 405 (Pa. Cmwlth. 1992).
3. Claimant entered a binding contract with PSERS by submitting her *Application for Retirement*. Findings of Fact, Nos. 8-20.
4. Claimant's ability to request to change her retirement plan expired on November 2, 2022. Findings of Fact, Nos. 1-35.
5. Claimant failed to satisfy her burden of showing that she requested Intent to Change Counseling, an extension to receive Intent to Change Counseling, or a waiver of Intent to Change Counseling by November 2, 2022. Findings of Fact, Nos. 1-35.
6. Claimant has been afforded reasonable notice of the grounds upon which PSERS denied her requests to change her retirement plan, and she has been provided an adequate opportunity to be heard in this proceeding. Finding of Fact, No. 47.

## DISCUSSION

This is an administrative appeal from the denial of Claimant's request to change her retirement plan. For the following reasons, the hearing officer recommends that the Board affirm the ESRC's denial.

### Burden of Proof

As the party appealing from the determination of the PSERS' Executive Review Committee, Claimant bore the burden of establishing that she is entitled to make changes to her retirement plan that she seeks under Pennsylvania's Public School Employees' Retirement Code, 24 Pa. C.S.A. §8101 *et. seq.* ("Retirement Code"); *Gierschick v. State Employees' Retirement Board*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999); *Wingert v. State Employees' Retirement Board*, 589 A.2d 269, 271 (Pa. Cmwlth. 1991). The degree of proof required by Claimant to establish her case is a preponderance of the evidence.<sup>1</sup>

### Statutory/Regulatory Framework

It is well established that a retiree's right to benefits under the Retirement Code is strictly limited to those specifically set forth by the Code. *See Forman v. Public School Employees' Retirement Board*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001); *Burris v. State Employees' Retirement Board*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees' Retirement Board*,

---

<sup>1</sup> *Suber v. Pennsylvania Commission on Crime and Delinquency, Deputy Sheriff's Education and Training Board*, 885 A.2d 678, 681-83 (Pa. Cmwlth. 2005); *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *app. den.*, 602 A.2d 863 (Pa. 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" through evidence which is substantial and legally credible. *A.B. v. Slippery Rock Area School District*, 906 A. 2d 674 (Pa. Cmwlth. 2006); *Lansberry*, 578 A.2d at 601-602; *Sigafoos v. Pennsylvania Board of Probation and Parole*, 503 A. 2d 1076, 1079 (Pa. Cmwlth. 1986).

622 A.2d 403, 405 (Pa. Cmwlth. 1992). Moreover, PSERS is required to construe its enabling statute according to its plain meaning and in such a manner as to give effect to all of its provisions. 1 Pa. C.S. §1921(a), (b). PSERS was created by the legislature and can grant no rights beyond those specifically set forth in the Retirement Code. *Hughes v. Public Sch. Employees' Ret. Bd.*, 662 A.2d 701, 705 (Pa. Cmwlth. 1995).

Regarding the ability for retirees to change their benefit plan, the Retirement Code states, in pertinent part:

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) (emphasis added). The effective date of this subsection was October 2, 1975.

See the act containing, *inter alia*, § 8101 making the legislative effective, P.L. 298, No. 96.

Predictably the system regulations are consistent to wit:

(a) Notwithstanding the otherwise irrevocable nature of the election of a benefit payment plan, an annuitant may declare an intent to change the final terms of the benefit payment plan by filing a written intent with the System within 30 days of the annuitant's receipt of the initial benefit letter sent to the annuitant by the System. The letter will be deemed to be received by the annuitant 3 business days after the date of mailing.

\*\*\*

(d) An annuitant who has declared an intent to change under subsection (a) or (b) will not be permitted to complete the change unless the annuitant receives counseling on the benefits available under the Retirement Code, or executes a written waiver of counseling on a form prescribed by the System. The counseling is subject to the following rules:

(1) The counseling is provided by an employee or authorized representative of the System.

(2) Counseling, or a written waiver, takes place within 30 days of the filing of the intent to change.

(3) The Secretary of the Board or a designee may extend the period for counseling upon written request filed within the 30-day period, but in no case will the period for counseling be greater than 90 days.

(4) If counseling takes place over several sessions, the sessions take place within the allowed time period.

(5) If the annuitant fails to receive counseling, or to file a written waiver of counseling within the allowed time period, the intent to change will be deemed withdrawn.

(6) Counseling may be conducted by telephone when approved, and under conditions specified by the Secretary.

(e) A formal request to void or change the application for an annuity shall be filed with the System within 30 days of the date of completion of counseling, or within 30 days of the filing of the written waiver of counseling. If the System does not receive the formal request to void or change the application for an annuity within the prescribed time period, the intent to change will be deemed withdrawn.

22 Pa Code § 213.45. The effective date of this subsection was June 13, 1998. *See* the bill containing, *inter alia*, § 213.45 making the code effective, 28 Pa.B. 2688. Thus, Claimant, who received her Initial Benefit Letter on September 18, 2020, (Findings of Fact Nos. 16, 17), had until October 21, 2020, to file her Intent to Change form. Finding of Fact No. 18. Claimant filed her Intent to Change form on September 29, 2020. Finding of Fact No. 22. PSERS informed Claimant of the steps to complete the Intent to Change process through a letter sent on October 1, 2020. Findings of Fact Nos. 26-29. Therefore, Claimant had until November 2, 2020, to file her request for Intent to Change Counseling, file an extension to request Intent to Change Counseling, or file a request to wait Intent to Change Counseling. Findings of Fact Nos. 28-30. PSERS did not receive the required forms to proceed with Claimant's Intent to Change process before statutory deadline. Finding of Fact No. 34. The Board can not look past such clearly written legislation, as quoted above. *See generally Hughes, Foreman, Burris, Bittenbender, supra.*

In conclusion, this matter is straightforward. The letter dated October 1, 2020 correctly stated the proscribed deadline of November 2, 2020, for Claimant to proceed with the Intent to Change process. Claimant failed to meet that deadline. Therefore, Claimant's appeal must fail.

For the foregoing reasons, the following Recommendation appends:

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

**In Re,** :  
**Account of Mabel Crisostomo** : **Docket No.: 2021-14**  
**Claim of Mabel Crisostomo** :

**RECOMMENDATION**

**AND NOW**, this 28<sup>th</sup> day of June, 2023, 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 from the June 3, 2021 decision of the PSERS' Executive Staff Review Committee 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 Administrator and must be received by 30 days after the mailing date of this proposed opinion and recommendation. *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 briefs on exceptions within 20 days after the time limited 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 Administrator and the parties.

*1st M Foerster*

---

**Michael T. Foerster**  
**Hearing Officer**

***For Petitioner:***

Mabel D. Crisostomo

**Redacted**

***For the System:***

Kathrin V. Smith, Esquire  
Public School Employees Retirement System  
5 North 5<sup>th</sup> Street  
Harrisburg, PA 17101

***Docketing Clerk:***

Julie Vitale

***Date of Mailing:***

6/28/23