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

IN RE: ACCOUNT OF ROSINA CAMMISA-CANTZ
DOCKET NO. 2020-11
CLAIM OF ROSINA CAMMISA-CANTZ

OPINION AND ORDER OF THE BOARD

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

IT IS HEREBY ORDERED that Claimant's request to purchase non-qualifying part-time service credit she rendered with the Philadelphia School District from the 1994-1995 and the 1998-1999 school years is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: 10/20/2023

By: 
Christopher Santa Maria, Chairman

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

IN RE: :
ACCOUNT OF :
ROSINA CAMMISA-CANTZ : **DOCKET NO. 2020-11**
CLAIM OF ROSINA CAMMISA-CANTZ :

AMENDED OPINION AND RECOMMENDATION¹

Date of Hearing: November 2, 2022
Hearing Officer: Carmen L. Rivera, Esquire
Claimant, *Pro Se*: Rosina Cammisa-Cantz
For PSERS: Savannah Durham, Esquire

¹ The recommendation is amended to note that any party may file exceptions in accordance with 1 Pa. Code §§ 35.211 and 35.212.

HISTORY

This matter is before the Public School Employees' Retirement Board ("Board") on an appeal filed by Rosina Cammisa-Cantz ("Claimant") from the November 9, 2020 decision of the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS") that denied Claimant's application to purchase credit with PSERS for non-qualifying part-time ("NQPT") school service because it was untimely filed.

Specifically, Claimant filed a request to purchase credit for former uncredited part-time service with PSERS on February 21, 2020. By letter dated July 6, 2020, PSERS denied Claimant's request as untimely, explaining that Claimant had until June 30, 2014, to apply for the purchase of such time credit according to 2011 legislation.

Claimant timely appealed the PSERS' determination to ESRC. Thereafter, the ESRC upheld PSERS' decision at its September 23, 2020 meeting, noting that Claimant missed the June 30, 2014 deadline to purchase NQPT service. PSERS notified Claimant of the ESRC's decision by letter dated November 9, 2020.

Claimant appealed from the ESRC's determination on December 4, 2020 and asserts that her application should be deemed as timely filed. In support of her appeal, Claimant argues for an exception to the statutory deadline due to her life circumstances occurring during the three-year window she had to purchase NQPT. PSERS maintains that there are no exceptions to statutory deadlines, and the Public School Employees' Retirement Board does not have authority to grant rights beyond those set forth in the Retirement Code.

A hearing on Claimant's appeal was subsequently scheduled for February 16, 2022. On February 7, 2022, Claimant requested a continuance of the hearing to a date after June 15, 2022, due to family obligations. The hearing was continued by order dated February 11, 2022. On July

29, 2022, Claimant requested that the hearing be converted to a virtual hearing. By order dated August 16, 2022, Claimant was permitted to testify remotely at the hearing. The hearing was rescheduled for August 24, 2022, but due to a scheduling conflict with the hearing examiner's office, the hearing was rescheduled for September 7, 2022. By Order dated September 6, 2022, the hearing was continued by agreement of the parties, and rescheduled for November 2, 2022.

Claimant participated in the hearing, *pro se*, and testified on her own behalf on November 2, 2022. Savannah Durham, Esquire represented PSERS at the hearing. PSERS presented its case through the testimony of William Snyder, a PSERS Retirement Communications Counselor, and Gayle Neiman, Supervisor of the Account Maintenance Unit.

The Notes of Testimony ("N.T.") were filed on December 1, 2022. An order scheduling briefs was issued December 12, 2022. Claimant did not file an initial post-hearing brief by January 13, 2023. The Commonwealth filed its brief on February 13, 2023. The evidentiary record in this matter closed with the filing of Claimant's reply letter brief on February 28, 2023. This matter is now before the Board for final disposition.

FINDINGS OF FACTS

PSERS Membership

1. At all relevant times, Rosina Cammisa-Cantz ("Claimant") was a member of PSERS with a mailing address Redacted (N.T. 20, 47-49; PSERS-1).

2. Claimant first qualified for PSERS membership in the 1996-1997 school year through her public school employment with the District. (N.T. 46).

3. Claimant was an active contributing Class T-D member of PSERS on July 1, 2011. (PSERS-3, PSERS-4; N.T. 18, 19, 26, 45, 47, 48, 58).

4. Claimant is currently employed by the District and is vested; therefore, she is eligible for a lifetime annuity with PSERS once she retires.² (N.T. 18, 47).

5. Active members have the option to purchase service credit by making contributions to their account, which can include out of state service, refunded prior service with a different district, or NQPT service (prior service rendered by a nonmember), as is the case here. (N.T. 44-45).

New Law & Deadline for Purchase of NQPT Service

6. In November 2010, the Legislature passed a new law which changed member qualification requirements in the Retirement Code so that members who worked after qualifying for PSERS' membership were no longer required to requalify each school year. (PSERS-6, p. 8-9; Act of Nov. 23, 2010, P.L. 1269, No. 120 ("Act 120"); N.T. 45-46).

² An individual qualifies for membership in PSERS by working for a Pennsylvania public school employer in a full-time or a part-time salaried position or by working 500 hours or 80 days in a school year. (N.T. 44, 98; see 24 Pa.C.S. § 8301(a)). Service rendered for a Pennsylvania public school that is part-time, paid hourly or per diem, and rendered for less than 500 hours or 80 days, or a combination of 0.44, is non-qualifying part-time service ("NQPT service"). (PSERS-4; N.T. 44, 98-99).

7. Act 120 provided all members who were active with PSERS on July 1, 2011, a three-year window to purchase their prior NQPT service, the deadline for the purchase of NQPT service was June 30, 2014. (PSERS-4; PSERS-6, p. 8; PSERS-7, pg. 5; PSERS-8, p. 3; PSERS-9, pp. 1 and 11; PSERS-10, p. 4; PSERS-11, p. 4; PSERS-12, p. 3; PSERS-13, pp. 5-6; PSERS-14; PSERS-15; PSERS-16; N.T. 44-45; see 24 Pa.C.S. § 8303(d)).

Claimant's Years of Service with the Philadelphia School District

8. Claimant has been employed by the Philadelphia School District since 1996. (N.T. 18, 22-23, 46).

9. Claimant selected to change from a PSERS Class T-C member to a Class T-D member on June 29, 2001. (PSERS-1; N.T. 17, 18, 48).

10. During the relevant statutory window of July 1, 2011 through June 30, 2014, Claimant was an active, contributing member of PSERS.³ (PSERS-3, PSERS-15, PSERS-27; N.T. 58, 81).

³ As of June 30, 2010, Claimant had a balance of 10.25 years of service credited by PSERS for her retirement account. (PSERS-2; N.T. 21-22, 55-56). Service credit is service that a PSERS member renders and pays contributions for during the school year; a member can earn up to one year of service credit per school year. (N.T. 43-44) During the 2010-2011 school year, Claimant earned one (1) year of service credit for working 225.15 days and 60 hours. (PSERS-2; N.T. 21-24, 56). In June 2011, the District reported Claimant as an active member of PSERS and reported service and contributions to PSERS for Claimant; therefore, Claimant's service credit balance was increased to 11.25 years of service credit as of June 30, 2011. (PSERS-2; PSERS-3; N.T. 22, 44, 55-57). During the 2011-2012 school year, Claimant earned one (1) year of service credit for working 190.98 days and 57 hours; therefore, Claimant's service credit balance was increased to 12.25 years of service credit as of June 30, 2012. (PSERS-3; N.T. 57-58). During the 2012-2013 school year, Claimant earned one (1) year of service credit for working 273.34 days and 57 hours. (PSERS-15; N.T. 80-81). In addition, Claimant earned one (1) year of service credit for working during the school year. During the 2014-2015 school year, (PSERS-19; N.T. 102). During the 2015-2016 school year, Claimant earned one (1) year of service credit for working during the school year. (PSERS-20; N.T. 102-103). Claimant rendered qualifying service in the 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2015-2016 school years without interruption; therefore, with the passage of Act 120 in 2010, all Pennsylvania school service rendered was qualifying service, whether it is rendered as a salaried employee, a per diem employee, or an hourly employee, until the member breaks that membership through a refund of service. (PSERS-2, PSERS-3, PSERS-15, PSERS-18, PSERS-19 and PSERS-20; N.T. 46-47, 80-81, 99-103). The District reported Claimant's service and contributions to PSERS since the school year ending June 2011. (PSERS-2, PSERS-3, PSERS-15, PSERS-19, PSERS-20 and PSERS-27; N.T. 26, 57-58).

11. PSERS mailed Claimant's *Statements of Account* to her address of record, ^{Redacted}
Redacted, and these statements were not returned to PSERS as undeliverable. (PSERS-2, PSERS-3, PSERS-15, PSERS-19, PSERS-20; N.T. 48-50, 102-103).

12. The purpose of a *Statement of Account* is to inform the member of the information that was reported by their employer, specifically how much service was recorded and how much contributions were reported. (N.T. 55).

Publications and Communications with Claimant Regarding the New Law

13. Because the June 30, 2014 deadline applied to Claimant, PSERS notified Claimant of the deadline through numerous publications and communications. (PSERS-4 through PSERS-16; N.T. 45-46).

14. By Postcard mailed on June 1, 2011, PSERS advised active members of the "New Deadline to Apply for Non-Qualifying Part-Time Service" and informed them that PSERS "will be providing direct notification of your window of opportunity to purchase NQPT service." (PSERS-5; PSERS-14; N.T. 79-80).

15. On behalf of PSERS, the Department of General Services ("DGS") mailed the Postcard, via first class mail, to Claimant at her address on June 1, 2011. (PSERS-5; PSERS-14; N.T. 78).

16. A valid address check was done prior to the mailing. (PSERS-5; N.T. 62)

17. The Postcard was not returned as undeliverable. (N.T. 78).

18. On November 10, 2011, PSERS mailed a letter to Claimant, via first-class mail to Claimant's address of record, explaining that due to the recent pension legislation, she had a limited window of opportunity to purchase NQPT Pennsylvania public school service (the "NQPT letter"). (PSERS-4; N.T. 45, 58-59, 79-80).

19. The November 10, 2011 NQPT letter stated, in pertinent part:

As noted in the newsletters that [PSERS] sends to you, the passage of pension reform legislation limits the window of opportunity to purchase [NQPT] Pennsylvania public school service. NQPT service is any part-time hourly or part-time diem school employment in which the service within a given school year (July 1 - June 3) was fewer than 500 hours or 80 days. NQPT service can be counted towards your retirement benefit. Members who were active on July 1, 2011, have until June 30, 2014 to file an application to purchase this type of service.

Because you were an active member on July 1, 2011, your window to purchase NQPT service expires on June 30, 2014. If you do not have any NQPT service to purchase or you have already purchased your previously acquired NQPT service, there is nothing more that you need to do.

If you wish to purchase NQPT service, you must be an active contributing member and you must submit your application prior to June 30, 2014. You will never have another opportunity to apply to purchase NQPT service beyond that date.

If you have any questions, please contact the PSERS Member Service Center by calling toll-free 1-888-773-7748 (1-888-PSERS4U); Harrisburg local callers, please use (717) 787-8540. To contact PSERS by e-mail, use the following address: contactPSERS@pa.gov. For your convenience, the Member Service Center is staffed each business day from 7:30 a.m. to 5:00 p.m. For more general information, you may visit PSERS online at: www.psers.state.pa.us.

(PSERS-4 (emphasis in original); N.T. 26, 58-59, 79-80).

20. Claimant received PSERS' NQPT letter. (PSERS-4; N.T. 26, 27, 49, 59).
21. The NQPT letter that was mailed to Claimant was not returned to PSERS as undeliverable. (N.T. 58-59).
22. PSERS also mails yearly *Statements of Account* to members, including Claimant, to inform them of any service credit accrued in that school year. (N.T. 49, 55).

23. Claimant's *Statements of Account* were not returned as undeliverable. (N.T. 50).

24. On November 6, 2013, PSERS mailed to Claimant the *Statement of Account for the School Year ending June 30, 2013* with the "SPECIAL NOTICE" pink insert, that stated in relevant part, "You have been identified as a PSERS member with a deadline to apply to purchase NQPT service of 6/30/2014," "PSERS previously notified you of this deadline. **PSERS must receive your application at PSERS headquarters or at one of the regional offices by June 30, 2014,**" and "Before you contact PSERS to inquire about whether or not you have NQPT employment, you should read the information about NQPT service in the Purchasing Service Credit section on the PSERS website at www.sers.state.pa.us." (PSERS-15 (emphasis in original)). (PSERS-15; N.T. 33, 80-82).

25. Claimant received the *Statement of Account for the School Year ending June 30, 2013*. (N.T. 33, 49, 81).

26. PSERS also routinely sends communications, such as newsletters, to members via bulk rate mail through third-party entities.⁴ (N.T. 59, 62).

27. PSERS mailed to Claimant numerous member Newsletters on the following dates: February 9, 2011, April 22, 2011, August 15, 2011, January 11, 2012, April 17, 2012, August 2, 2012, February 8, 2013, and October 21, 2013. (PSERS-5, PSERS-6, PSERS-7, PSERS-8, PSERS-9, PSERS-10, PSERS-11, PSERS-12, PSERS-13; N.T. 27, 29, 30, 31, 32, 61-70, 72, 73, 75, 76).

28. The Newsletters were sent to Claimant's address on file with PSERS. (PSERS-5; N.T. 27, 29-32, 62-63, 65, 69-70, 72-73, 75-76).

⁴ All third-party entities contracted with PSERS are required to check members' addresses to ensure they are valid prior to sending the communications and must report the mailing date back to PSERS. (N.T. 62).

29. A valid address check for Claimant was performed prior to mailing each Newsletter. (PSERS-5; N.T. 62).

30. PSERS circulated newsletters between 2011 to 2013 containing information about the new law that allowed for the purchase of nonqualifying part-time (NQPT) service within a three-year window; these newsletters also provided guidance on how to purchase part-time service and instructions on how to access an application, Form PSERS-100, under the forms button on the PSERS website. (PSERS- 6, pp. 8-9; PSERS-7, p. 5; PSERS-8, p. 3; PSERS-9, p. 1 and 11; PSERS-10, p. 4; PSERS-11, p. 4; PSERS-12, p. 3; PSERS-13, p. 5-6; N.T. 63-67, 68-73, 75-76).

31. Claimant was occupied with raising children and dealing with other pressing matters, and at times she did not recall reading the newsletters immediately. (N.T. 27-29, 40; PSERS-7; PSERS-8; PSERS-9).

32. Claimant received, but did not read, the Summer 2011 PSERS Active Member Newsletter, Spring 2012 PSERS Active Member Newsletter, Summer 2012 PSERS Active Member Newsletter, Fall 2012 PSERS Active Member Newsletter, and Vol. 3 of the 2013 PSERS Active Member Newsletter. (PSERS-8, PSERS-10, PSERS-11, PSERS-12, PSERS-13; N.T. 29, 30, 31, 32).

33. PSERS also informed members of the June 30, 2014 deadline through an article⁵ posted on its public website at www.psers.state.pa.us; the website was changed to psers.pa.gov in 2017. (PSERS-16; N.T. 82-83).

⁵ The article has been published on the PSERS' website since June 1, 2011, with one minor change in January 2012 to add a bullet point under the Class T-E, T-F members; but no changes to the deadline were made. (PSERS-16; N.T. 83).

Claimant's February 21, 2020 Request to Purchase NQPT Service

34. PSERS keeps records of member communications, and there is no record of Claimant contacting PSERS about NQPT at any time prior to the June 30, 2014 deadline. (N.T. 99-100).

35. On February 21, 2020, PSERS received a *Purchase of Former Part-Time Uncredited Service* form from Claimant, through which Claimant requested to purchase NQPT service for December of 1994 (the 1994-1995 school year) and for September of 2015 (the 2015-2016)⁶ school year, for service rendered with the District. (PSERS-17; PSERS-18 (Instructions); N.T. 36, 95-96, 97,101).

36. Claimant signed the form on January 15, 2020, and the District to completed the employer information on the form on February 6, 2020. (PSERS-17; N.T. 36; 96). (PSERS-17; N.T. 96-97).

37. The District certified that Claimant had unpurchased NQPT service for the 1994-1995 school year during which time Claimant worked 72 days and the 1998-1999 school year during which time Claimant worked 42 days and 3.5 hours. (PSERS-17; N.T. 97-98).

Claimant's Explanation for the Late Filing

38. Claimant began working as a per diem teacher in 1994, received her teaching certification in 2006, and was finally hired full-time as a teacher on November 23, 2015. (N.T. 11, 12, 14-15).

39. Claimant did not have time read all the papers she received; she was busy working and raising children during the relevant time frame. (N.T. 11-13).

⁶ Claimant identified the 2015-2016 school year on her form, but she had received one (1) full service credit with PSERS for that school year. (PSERS-17 and PSERS-20; N.T. 36, 97, 102-104).

40. Despite receiving the information about NQPT Service over the years, Claimant believes that the information was not simple enough to understand; for example, Claimant did not understand what the term "vested" meant. (Claimant's Post-Hearing Letter; N.T. 13, 19, 40).

41. Claimant was employed full time in November of 2015, and she was not informed by her school district whether she was eligible to apply for NQPT Service prior to that time. (Claimant's Post-Hearing Letter; N.T. 12).

Appeal of PSERS' Denial

42. PSERS reviewed Claimant's application and denied Claimant's request to purchase NQPT service credit for the 1994-1995 and the 1998-1999 school years because the application was received several years after the June 30, 2014 deadline. (PSERS-21; N.T. 99, 104).

43. By letter dated July 6, 2020, PSERS notified Claimant that her request to purchase NQPT service was denied, explaining that PSERS received her application after the "window deadline of June 30, 2014." (PSERS-21; N.T. 104-105).

44. Claimant appealed PSERS' July 6, 2020 determination to the PSERS' Executive Staff Review Committee that reviews non-adjudicatory member appeals. (N.T. 38, 105-106; 22 Pa. Code § 201.3a).

45. By letter dated November 9, 2020, the ESRC denied Claimant's appeal. (PSERS-22; N.T. 106-107).

46. Claimant filed an appeal from the ESRC's determination on or about December 4, 2020, through which she requested an administrative hearing. (Official Notice-agency records; N.T. 38-39; 105-106).⁷

47. PSERS filed an Answer to Claimant's appeal on December 22, 2020. (Agency records; Docket No. 2020-11).

48. Claimant was served with all pleadings, orders and notices filed of record in this matter, and participated in the November 2, 2022 formal administrative hearing *pro se*, during which time Claimant testified and examined witnesses and exhibits.

⁷ Official notice of such matters as might be judicially noticed by courts is permissible under the General Rules of Administrative Practice and Procedure, 1 Pa. Code §35.173, which provides, in pertinent part, as follows:

§35.173. Official notice of facts.

Official notice may be taken by the agency head or the presiding officer of such matters as might be judicially noticed by the courts of this Commonwealth, or any matters as to which the agency by reason of its functions is an expert. . . .

1 Pa. Code §35.173. *See also, Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A.2d 991, 994 n. 6 (Pa. Cmwlth. 1987).

CONCLUSIONS OF LAW

1. The rights of PSERS members are derived solely from the provisions of the Retirement Code. 24 Pa.C.S. § 8101 *et. seq.*; *See 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 Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101, *et seq.*, 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. The burden of proof applied in an administrative action is the preponderance of the evidence standard and is "such proof as leads the fact-finder... to find that the existence of a contested fact is more probable than its nonexistence." *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990); *Sigafoos v. Pa. Bd. of Probation and Parole*, 503 A.2d 1076, 1079 (Pa. Cmwlth. 1986).
4. Claimant bears the burden of establishing those facts upon which she relies in order to prevail. (See 22 Pa. Code §§ 201.12(d), 201.10, and 201.S(a); *Gierschick v. State Employees' Ret. Bd.*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999)).
5. As an active, Class T-D member on July 1, 2011, Claimant's window to purchase NQPT service expired on June 30, 2014. (24 Pa.C.S. § 8303(d); Finding of Fact, Nos. 1-33).
6. Claimant received notice of the June 30, 2014 deadline to request to purchase NQPT with PSERS, but she did not timely make a request to do so. (Finding of Fact, No. 13-41).

7. Claimant failed to satisfy her burden of showing that she filed her *Purchase of Former Part-Time Uncredited Service* form for service rendered to the District during the 1994-1995 and 1998-1999 school years by June 30, 2014 deadline. (Finding of Fact, Nos. 1-48).

8. Claimant has been afforded reasonable notice of the grounds upon which PSERS denied her request to purchase out-of-state service credit and was afforded an opportunity to be heard in connection with her appeal. (Finding of Fact, Nos. 42-48).

DISCUSSION

Burden of Proof

As the party appealing from the determination of the PSERS' Executive Review Committee, Claimant bears the burden of establishing that she is entitled to the service credit 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. *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).

Statutory/Regulatory Framework

PSERS administers the retirement system for Pennsylvania public school employees. *See* 24 Pa.C.S. § 8101 *et seq.* PSERS is a creature of the legislature and its members have only those rights created by the Retirement Code, and none beyond. *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001). An individual qualifies for membership in PSERS by working for a Pennsylvania public school employer in a full-time or a part-time salaried position

or by working 500 hours or 80 days in a school year. *See* 24 Pa.C.S. § 8301(a)(2). Prior to November 2010, a public school employee was required to qualify for membership every school year. However, Act 2010-120 changed member qualification requirements so that members generally are no longer required to requalify each school year. (24 Pa.C.S. § 8301(a)(2)⁸; *see* 24 Pa.C.S. § 8102 ("Member")).

PSERS members earn credit for Pennsylvania school service rendered, earning one year of credit for each year worked for full-time employees, and a fractional portion of credit for part-time employees. *See* 24 Pa.C.S. § 8302. Service credit is a critical component in calculating a PSERS member's monthly annuity at retirement and, generally, the more service credit a member accrues, the higher their monthly benefit. *See* 24 Pa.C.S. § 8342. Service credit also counts towards certain eligibility thresholds, such as the years of service needed to vest. *See* 24 Pa.C.S. § 8342; *See also* 24 Pa.C.S. § 8102 ("Vestee").

In addition to earning service credit through credited Pennsylvania public school service, the Retirement Code contains narrow circumstances in which some members are eligible to purchase additional service credit with PSERS, one of which is the purchase of previous noncreditable, or NQPT service. (24 Pa.C.S. § 8303(d)). Class T-D members, like Claimant, who were active members of PSERS on July 1, 2011 were eligible to purchase NQPT service provided they "file a written application with" PSERS by June 30, 2014:

⁸ § 8301. Mandatory and optional membership.

(a) Mandatory membership.--Membership in the system shall be mandatory as of the effective date of employment for all school employees except the following:

* * *

(2) Any school employee who is not a member of the system and who is employed on a per diem or hourly basis for less than 80 full-day sessions or 500 hours in any fiscal year or annuitant who returns to school service under the provisions of section 8346(b) (relating to termination of annuities).

* * *

Class T-C and Class T-D members who are active members on the effective date of this subsection shall have *three years from the effective date of this subsection* to file a written application with the board to purchase any previous noncreditable school service.

24 Pa.C.S. § 8303(d) (emphasis added). The effective date of this subsection was July 1, 2011.

Analysis

Claimant first qualified for PSERS membership in the 1996-1997 school year through her public school employment with the School District of Philadelphia. Through her continued employment with the District, Claimant accrued a total of 10.25 years of service credit for her PSERS retirement account as of June 30, 2010 and continued to render qualifying service in the 2010-2011 school year. As such, all service rendered thereafter constitutes qualifying service, whether it was rendered as a salaried employee, a per diem employee, or an hourly employee. To that end, in June and July of 2011, the District reported one (1) additional year of service and made contributions to PSERS for Claimant, resulting in a balance of 11.25 years of service credit. (PSERS-2, PSERS-3). As such, Claimant was an active, qualifying Class T-D member of PSERS as of July 1, 2011 and had until June 30, 2014 to request to purchase NQPT service. (PSERS-3, PSERS-4; 24 Pa.C.S. §§ 8101("active member"), 8301, 8303(d)).

Because the June 30, 2014 deadline applied to Claimant, PSERS notified her of the deadline through numerous communications. (PSERS-4 through PSERS-16). By Postcard mailed on June 1, 2011, PSERS advised active members of the "New Deadline to Apply for Non-Qualifying Part-Time Service," and also stated that PSERS "will be providing direct notification of your window of opportunity to purchase NQPT service." (PSERS-14). On behalf of PSERS, the Department of General Services mailed the Postcard, via first class mail, to members who were identified as active members of PSERS on July 1, 2011. Although Claimant does not recall

receiving any postcards from PSERS (N.T. 78-79), the Postcard was mailed to Claimant via first class mail to her address on file, and it was not returned as undeliverable. As noted in the Postcard, a letter dated November 10, 2011 was mailed to Claimant notifying her of the June 30, 2014 deadline to purchase NQPT service, which provided in pertinent part, that "Because you were an active member on July 1, 2011, your window to purchase NQPT service expires on June 30, 2014." (PSERS-4).

In 2013, PSERS included a pink insert entitled "SPECIAL NOTICE" with the *Statement of Account for the School Year ending June 30, 2013* for those members who were identified with a deadline to apply to purchase NQPT service of June 30, 2014. (PSERS-15). The special notice served to remind members of the deadline and stated "**PSERS must receive your application at PSERS headquarters or at one of the regional offices by June 30, 2014.**" (PSERS-15 (emphasis in original)). Claimant's statement of account along with the special notice were mailed to Claimant's address of record, and Claimant acknowledges receiving the *Statement of Account for the School Year ending June 30, 2013* with the special notice. (PSERS-15; N.T. 33, 48-49, 81).

In addition to other communications PSERS sent via first-class mail, PSERS also routinely sends publications, such as newsletters, to members via bulk rate mail. From February of 2011 through October of 2013, PSERS mailed to Claimant one PSERS Member Update Newsletter and eight Active Member Newsletters to her address on file with PSERS. The Newsletters all discuss the three- year window to purchase NQPT service. Claimant admits to receiving, but not reading, the following newsletters from PSERS: the Summer 2011 PSERS Active Member Newsletter, Spring 2012 PSERS Active Member Newsletter, Summer 2012 PSERS Active Member Newsletter, Fall 2012 PSERS Active Member Newsletter, and Vol. 3

of the 2013 PSERS Active Member Newsletter. PSERS also informed members of the June 30, 2014 deadline through its public website. The article has been published on the PSERS' website since June 1, 2011.

PSERS received a Purchase of Former Part-Time Uncredited Service form from Claimant on February 21, 2020, through which Claimant requested to purchase NQPT service for the 1994-1995 and 1998-1999 school years. (PSERS-17).

Claimant requests that despite the June 30, 2014 deadline, the Board process her 2020 application to purchase service credit with PSERS for non-qualifying part-time service for work rendered for the District during the 1994-1995 and 1998-1999 school years.

PSERS argues that there are no exceptions to statutory deadlines, and the Public School Employees' Retirement Board does not have authority to grant rights beyond those set forth in the Retirement Code. *Forman*, 778 A.2d at 780; *see also Allen*, 848 A.2d at 1033. Nor is equitable relief available to contradict the express terms of the Retirement Code. *See Forman.*, 778 A.2d at 780; *see also Finnegan v. Pub. Sch. Employees' Ret. Bd.*, 560 A.2d 848, 851 (Pa. Cmwlth. 1989), *aff'd per curiam*, 591 A.2d 1053 (Pa. 1991) (holding that equitable estoppel cannot apply to prevent PSERS from asserting a statutory provision); *Allen v. Pub. Sch. Employees' Ret. Bd.*, 848 A.2d 1031, 1033 (Pa. Cmwlth. 2004).

Claimant explained during the hearing and in her post-hearing brief letter that she was busy working and raising children during the relevant time frame, that she could not access the public website (N.T. 84-85), and that despite receiving the information about NQPT service over the years, the information was not simple enough to understand. She also explained that she had been a substitute teacher until 2015, and she was not informed by her school district whether she was eligible to apply for NQPT service.

Claimant was an active and contributing member of PSERS for a decade prior to the relevant statutory window from July 1, 2011 through June 30, 2014. Throughout this three-year period, PSERS mailed numerous newsletters, notices, postcards, and letters containing specific instructions and guidelines on how to request nonqualifying part-time service. However, Claimant acknowledge that she did not read five of the newsletters she received between 2011 and 2013. The record shows that Claimant never reached out to PSERS for assistance, and did not submit her application until February 2020, which was nearly six years after the deadline.

PSERS further supports its position that it has no ability to waive the statutory deadline to purchase NQPT service, citing to the decisions in *Forman* and *Allen, supra*. In *Forman*, the claimant filed an application for retirement on September 2, 1998. 778 A.2d at 779. PSERS later notified her that she was ineligible to retire because she had missed the statutory deadline of July 11, 1998 under Act 41.⁹ *Id.* Forman appealed the decision and argued that mental incapacity resulting from, among other things, her struggle with breast cancer prevented her from filing her application in a timely manner. *Id.* The Commonwealth Court denied her appeal. The Court characterized Forman's claim as seeking to require the Board to "re-open' a legislatively crafted retirement window." *Id.* at 779-780. The Court concluded that Act 41 created a specific window of opportunity without exception, and that Board "has no authority to grant rights beyond those specifically set forth in the retirement code." *Id.* at 780 (citing *Hughes v. Public Sch. Employees' Ret. Bd.*, 662 A.2d 701 (Pa.Cmwlth. 1995)). In other words, without a statute granting the Board the authority to re-open an already expired time period and allow for an untimely application, PSERS is precluded from taking such action. *Id.*

⁹ Act 41 was "early retirement window" legislation that permitted certain employees to retire, although not normally qualified to do so, if they had 30 eligibility points. *Forman*, 778 A.2d at 780.

In *Allen*, the Commonwealth Court held that the Board was precluded from accepting a late-filed Class T-D election form. 848 A.2d at 1034. In *Allen*, the June 6, 2001 letter provided notice to the claimant of her opportunity to elect, among other things, Class T-D membership status. *Id.* at 1031-1032. The election had to be made prior to December 31, 2001. 24 Pa.C.S. § 8305.1(b). Claimant failed to make the election before the deadline due to her "chaotic family situation during the time in question," and the Court concluded that the Board was without authority to deem her request timely filed. *Id.* at 1033-1034. The Court noted there were no exceptions to the statutory deadline. *Id.* at 1033; *see also Harasty v. Pub. Sch. Employees' Ret. Bd.*, 945 A.2d 783, 788 (Pa. Cmwlth. 2008).

PSERS argues, and the hearing examiner agrees, that the present case is similar to *Forman* and *Allen*, as Claimant is requesting that PSERS reopen a legislatively closed door and accept her untimely request to purchase NQPT service based on her busy family situation during the relevant time period and her claims that she was not informed whether or not her part-time work qualified. Like *Forman* and *Allen*, however, no deadline exceptions are provided in Act 120, the Retirement Code, or the regulations adopted under the Retirement Code (22 Pa. Code § 201.1 *et seq.*) that would permit the Board to waive the deadline. Furthermore, equitable relief is not warranted here. *Nunc pro tunc* relief is only available if the untimely filing was the result of fraud, a breakdown in the courts, or negligence on the part of a third party, none of which Claimant has proven. *See Forman*, 778 A.2d at 780. Claimant did not request to purchase NQPT service on or before the June 30, 2014 deadline despite receiving multiple notices since 2011. (PSERS-4, PSERS-10, PSERS-11, PSERS-12, PSERS-13, PSERS-15, PSERS-17, PSERS-21, and PSERS-22).

Based on all the above, the record supports the conclusion that PSERS properly denied Claimants application to purchase credit with PSERS for NQPT school service because the request was untimely filed. The Board is prohibited from processing Claimant's untimely request, and thus must deny it.

The following Recommendation is issued:

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

IN RE: :
ACCOUNT OF :
ROSINA CAMMISA-CANTZ : **DOCKET NO. 2020-11**
CLAIM OF ROSINA CAMMISA-CANTZ :

AMENDED RECOMMENDATION

AND NOW, this day of **April 2023**, upon consideration of the foregoing Findings of Fact, Conclusions of Law, and Discussion, it is hereby recommended that Claimant's request to deem her request to purchase credit for non-qualifying part-time (NQPT) service as timely be **DENIED**.

Either 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 30 days after the mailing date of this Amended opinion and memorandum. 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).

Carmen L. Rivera

Carmen L. Rivera
Hearing Officer

Claimant: Rosina Cammisa-Cantz

Redacted

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Date of Mailing: 4/10/23