

Mail Date:

JUN 16 2023

Mail Date: _____

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

IN RE: ACCOUNT OF SUSAN D. BARTON
DOCKET NO. 2021-09
CLAIM OF SUSAN D. BARTON

OPINION AND ORDER OF THE BOARD

The Public School Employees' Retirement Board ("Board") has carefully and independently reviewed the entire record of this proceeding, including the proposed Opinion and Recommendation of the Hearing Examiner ("HEO"). We note that neither party filed Exceptions to the HEO.

The Board generally finds appropriate the History, Findings of Fact, Conclusions of Law, Discussion, and Recommendation in the HEO with the following modifications:

1. On page 13, Conclusion of Law Number 4 is amended to provide:
"Claimant failed to satisfy her burden of showing that she timely submitted a completed application to purchase credit for NQPT service rendered for Altoona during the 1991-92 school year to PSERS or her employer."
2. On page 13, Conclusion of Law Number 5 is amended to change "requests to purchase out-of-state service credit" to "request to purchase credit for NQPT service rendered for Altoona during the 1991-92 school year."
3. On page 14, the first sentence is amended to state as follows: "This is an administrative appeal from the denial of Claimant's request to purchase credit for NQPT service for the 1991-92 school year."

4. On page 15, the sentence providing that "Ms. Henry filed her request to purchase the relevant NQPT service on June 22, 2020" is amended to read, "Ms. Barton filed her request to purchase the relevant NQPT service on June 22, 2020."
5. On page 15, the statement that the letter "corrected stated that legislation proscribed a deadline of June 30, 2014, to purchase NQPT," is amended to state that it "correctly stated that legislation prescribed a deadline of June 30, 2014, to purchase credit for NQPT service with PSERS."
6. On page 17, the Recommendation is amended to state that the Hearing Examiner recommends that "the PSERS Executive Staff Review Committee's decision, which denied Claimant's request to purchase NQPT service for the 1991-92 school year, be AFFIRMED."

With the above modifications, we hereby adopt the HEO as our own, and accordingly:

IT IS HEREBY ORDERED that Claimant's request to purchase credit for the non-qualifying part-time service that she rendered during the 1991-1992 school year is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: 6/9/2023

By: 
Christopher Santa Maria, Chairman

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

In Re, :
Account of Susan D. Barton : **Docket No.: 2021-09**
Claim of Susan D. Barton :

OPINION AND RECOMMENDATION

Date of Hearing: August 31, 2022
Hearing Officer: Michael T. Foerster
Claimant, Self-Represented: Susan D. Barton
For PSERS: Cayla B. Jakubowitz, Esquire

HISTORY

This matter is before the Public School Employees' Retirement Board on an appeal filed by Susan D. Barton ("Claimant" or "Ms. Barton"). She appeals from a decision, relayed via May 3, 2021 letter, by the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS" or "the System"). That decision affirmed the System's decision and denied Claimant's request to purchase Non-Qualifying Part Time ("NQPT") service.

Hearing on Claimant's appeal occurred on August 31, 2022. Claimant appeared for the hearing, self-represented, and testified on her own behalf. Claimant entered ten exhibits for evidence. Cayla B. Jakubowitz, Esquire, represented PSERS at the hearing. PSERS presented its case through the testimony of PSERS Regional Office Administrator, John Tucker, and PSERS entered twenty exhibits.

The evidentiary record in this matter closed with the filing of Notes of Testimony ("N.T.") on September 15, 2022. Claimant and PSERS filed Post-Hearing Briefs. This matter is now before the Board for final disposition.

FINDINGS OF FACT

1. Claimant enrolled in PSERS during the 1981-1982 school year through her public school employment as a teacher for Altoona Area School District (“Altoona”). PSERS-20; Notes of Testimony (“N.T.”) 31, 51-52, 77.

2. Claimant is a Class T-D member of PSERS. *See* October 12, 2022 Order correcting N.T. 79.

3. An individual qualifies for membership in PSERS by working for a Pennsylvania public school employer in a full-time position, part-time salaried position, or by working 500 hours or 80 days in a school year. N.T. 72.

4. Prior to the 2010-2011 school year, an individual was required to qualify for PSERS’ membership every school year. N.T. 77.

5. NQPT service is 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. N.T. 72.

6. PSERS receives work information for members through public school employer reporting. N.T. 74-75.

7. Prior to enrolling in PSERS, Claimant performed some work in the spring of 1981, during the 1980-1981 school year, for Altoona and Appalachia Intermediate Unit 8 (“Appalachia IU”). N.T. 52.

8. From the fall of 1981 forward, Claimant only worked for Altoona. N.T. 31, 52-53.

9. During her career at Altoona, Claimant at times worked full-time and at other times worked part-time. PSERS-20; N.T. 52-53.

10. During the 1991-1992 school year, Claimant worked part-time and rendered less than 80 days or 500 hours of service. N.T. 81-82.

11. Altoona did not report service for Claimant during the 1991-1992 school year. N.T. 82, 111.

12. Claimant did not receive service credit with PSERS for the 1991-1992 school year. N.T. 82.

13. A Refund Application is a request by a member to receive back contributions and interest paid to PSERS. PSERS-1; N.T. 80.

14. In August 1992, PSERS received a Refund Application for Claimant, through which Claimant requested that PSERS refund her contributions and interest for the 1991-1992 school year because she rendered less than 80 days or 500 hours of service. PSERS-1; N.T. 53, 79.

15. Claimant used a Refund Application because in 1992 refunds were not done automatically by PSERS' system. N.T. 81.

16. Claimant signed the Refund Application on page 2. PSERS-1, p. 2; N.T. 53.

17. PSERS processed the Refund Application and refunded \$360.97, which Claimant received. N.T. 53, 81.

18. Claimant was aware of the refund for the 1991-1992 school year. N.T. 53.

19. On October 12, 1993, PSERS received a letter from Claimant asking about service credit for the 1990-1991 school year. PSERS-2; N.T. 54, 83.

20. In response to Claimant's letter, a PSERS representative called Claimant and left her a voicemail. PSERS-2; N.T. 54, 83.

21. At that time, in 1993, members were not able to purchase prior NQPT service. N.T. 86.

22. Subsequently, on January 31, 1994, PSERS received an *Application to Purchase Credit for Full-Time Service (in Pennsylvania Public Schools)*, through which Claimant requested to purchase qualifying service with Altoona for the 1990-1991 school year. PSERS-3; N.T. 54, 84.

23. Claimant rendered qualifying service during the 1990-1991 school year, which was eligible for service credit with PSERS. N.T. 84-85.

24. On February 22, 1994, PSERS mailed Claimant a *Statement of Amount Due* for the purchase of qualifying service credit for the 1990-1991 school year. PSERS-4; N.T. 55, 88.

25. Claimant returned the *Statement of Amount Due* to PSERS with a lump sum payment of \$570.29 on May 9, 1994. PSERS-4; N.T. 55, 88-89.

26. When PSERS sells qualifying service, the employer must pay their contributions relating to the purchase. N.T. 90.

27. On February 22, 1994, PSERS mailed Altoona a *Statement of Amount Due* for Claimant's purchase of qualifying service credit for the 1990-1991 school year. PSERS-5; N.T. 89-90.

28. Altoona returned the *Statement of Amount Due* to PSERS with a lump sum payment of \$875.06 on May 31, 1994. PSERS-5; N.T. 90.

29. Prior to 1999, there was no opportunity for members to purchase service credit for prior NQPT service. N.T. 73.

30. In 1999, the Board allowed the purchase of NQPT service, but almost immediately, litigation stopped the Board from proceeding with the purchases. N.T. 73, 91.

31. In May 1999, PSERS mailed a letter to Claimant regarding non-qualifying part-time service as part of a mass mailing. PSERS-6; N.T. 55-56, 91.

32. As of May 1999, PSERS was processing applications to purchase NQPT service for only a very narrow group of members relating to a “30 and out” retirement window and disability retirement. PSERS-6, p. 1; N.T. 92-93.

33. As of May 1999, PSERS was not processing applications to purchase NQPT service for individuals who were not retiring from PSERS. PSERS-6, p. 2; N.T. 92-93.

34. PSERS was not permitted to process a purchase of NQPT service for Claimant in 1999. N.T. 94; *see generally* PSERS-20.

35. On June 11, 1999, PSERS received back from Claimant a signed *Application to Purchase Non-Qualifying Part-Time Pennsylvania School Service*, SP-239 (“SP-239”). PSERS-7; N.T. 94.

36. The 1999 SP-239 preserved a member’s right to purchase the service, if the Board’s policy were upheld by the courts, meaning that, in the event the member retired between 1999 and the end of the litigation, and was no longer an active, contributing member of PSERS, they would still have an opportunity to apply to purchase the service later. N.T. 94-95, 126-27.

37. Claimant’s SP-239 served to “reserve [her] right to purchase this service in the event the Board’s policy is upheld by the court and [she] otherwise qualif[ies] for such service.” PSERS-7; N.T. 94.

38. Beginning in about the 2000-2001 school year forward, Claimant continuously worked full-time each year. PSERS-20; N.T. 52-53, 78-79.

39. In December 2004, the NQPT service litigation concluded, allowing PSERS to proceed with processing NQPT applications. N.T. 73.

40. Because Claimant submitted an SP-239 to PSERS in 1999, by letter dated February 28, 2005, PSERS wrote to Claimant regarding purchasing NQPT service. PSERS-8; N.T. 56-57, 95-96.

41. The February 28, 2005 letter indicated to Claimant that her 1999 document was “an Intent, which only preserved your right to apply for NQPT service.” PSERS-8, p. 1.

42. PSERS further notified Claimant, “You must now file an *Application* to actually purchase this service.” PSERS-8, p. 1.

43. PSERS enclosed with the February 28, 2005 letter an *Application to Purchase Credit for Part-Time Service (in Pennsylvania Public Schools (“Application”))*, PSRS-100, for Claimant’s use if she decided to purchase the NQPT service. PSERS-8, pp. 3-4; N.T. 97.

44. The *Application* requests specific information from employers that PSERS needs to sell NQPT service to members, including the salary and amount of service credit. N.T. 97.

45. PSERS further enclosed with its February 28, 2005 letter *Frequently Asked Questions*. PSERS-8, pp. 5-7; N.T. 96-97.

46. The *Frequently Asked Questions* explained that the SP-239 preserved “the right of an active member to apply for NQPT service while the case was in litigation. . . . To actually purchase the service, members must file an *Application* with each employer where the NQPT service was rendered.” PSERS-8, p. 5, FAQ 7.

47. Members who had filed an SP-239 and left public school employment or were leaving public school employment had until September 1, 2005 to file an *Application*. PSERS-8, pp. 2, 3, 6, FAQ 8; N.T. 127-28.

48. Members who filed an SP-239 in 1999 were not required to purchase the NQPT service in 2005. N.T. 95.

49. On May 16, 2005, PSERS received an *Application* from Appalachia IU (“*2005 Appalachia Application*”) through which Claimant requested to purchase 50.5 days of NQPT service rendered for Appalachia IU during the 1980-1981 school year. PSERS-9; N.T. 57, 97-98.

50. Claimant completed the first page of the form, the handwriting in Sections A, B, and C, in which she specified the year and months of service she wished to purchase. PSERS-9, p. 1; N.T. 57, 98.

51. After completing Sections A, B, and C, Claimant submitted the *2005 Appalachia Application* to the employer, which completed the remaining Section D, and submitted the completed form to PSERS. PSERS-9; N.T. 57-58.

52. By letter dated May 24, 2005, PSERS wrote to Claimant to confirm receipt of her *2005 Appalachia Application*. PSERS-10; N.T. 58, 99.

53. PSERS approved Claimant’s request to purchase NQPT service for Appalachia IU from March through June of 1981, as Claimant requested. PSERS-14; N.T. 98.

54. On June 29, 2005, PSERS received an *Application* from Altoona (“*2005 Altoona Application*”) through which Claimant requested to purchase 4.5 days of NQPT service rendered for Altoona during the 1980-1981 school year. PSERS-11; N.T. 58, 101.

55. Claimant completed the first page of the form, the handwriting in Sections A, B, and C, in which she specified the year and months of service she wished to purchase. PSERS-11, p. 1; N.T. 58, 101-02.

56. Claimant wrote on her *2005 Altoona Application* that she was requesting to purchase NQPT service for June of the 1980-1981 school year. PSERS-11, p. 1; N.T. 58.

57. Claimant could have written additional years on the form if she had wanted to purchase additional years of service credit. PSERS-11, p. 1; N.T. 102.

58. Claimant did not request to purchase any other months or years of NQPT service rendered for Altoona, despite the form containing additional lines under "School Year(s)" for the purpose of allowing members to request multiple years of service with a single *Application*. PSERS-11, p. 1.

59. After completing Sections A, B, and C, Claimant submitted the *2005 Altoona Application* in person to Altoona, which completed the remaining Section D, and submitted the completed form to PSERS. PSERS-11; N.T. 58.

60. By letter dated July 1, 2005, PSERS wrote to Claimant to confirm receipt for the *2005 Altoona Application*. PSERS-12; N.T. 58-59, 102-03.

61. PSERS approved Claimant's request to purchase NQPT service for Altoona in June of 1981, as Claimant requested. PSERS-13; N.T. 102-04.

62. On June 1, 2010, PSERS mailed Claimant a *Statement of Amount Due*. PSERS-13; N.T. 59, 103-04.

63. The June 1, 2010 *Statement of Amount Due* indicated that Claimant owed \$22.19 for 0.03 years of NQPT service for the school year July 1, 1980 to June 30, 1981. PSERS-13; N.T. 103-04.

64. On June 2, 2010, PSERS mailed Claimant a second *Statement of Amount Due*. PSERS-14; N.T. 59, 104.

65. The June 2, 2010 *Statement of Amount Due* indicated that Claimant owed \$295.28 for 0.28 years of NQPT service for the school year July 1, 1980 to June 30, 1981. PSERS-14; N.T. 59, 104.

66. When PSERS began accepting NQPT *Applications*, it received tens of thousands of *Applications*, which took years to process, and PSERS prioritized *Applications* based on retirement dates. N.T. 99-100.

67. When PSERS began accepting NQPT *Applications*, it did not have the resources to review accounts to check for prior refunds and contact members regarding past NQPT service. N.T. 101.

68. On September 13, 2010, PSERS received payment from Claimant of the full amount due on both *Statements of Amount Due* for NQPT service during the 1980-1981 school year. PSERS-15; N.T. 63, 106.

69. Along with her payment, Claimant sent in a note asking, "Is this for service to both Altoona Area School District & IU08 for this time frame." PSERS-15; N.T. 62-63, 106.

70. Claimant wanted to be sure her payment covered both the service she had requested from Altoona and Appalachia IU. N.T. 63.

71. Claimant did not ask in her note whether she had additional service to purchase from PSERS. PSERS-15.

72. In response to her inquiry, on September 13, 2010, Beth, the PSERS supervisor of the purchase of service section at that time, called and left a voicemail for Claimant, explaining that both *Applications* were processed, but if Claimant had additional service available, she should complete another *Application*. PSERS-15; N.T. 63, 107.

73. Beth documented the September 13, 2010 voicemail at the bottom of Claimant's letter. PSERS-15; N.T. 107.

74. In November 2010, the Legislature passed Act 2010-120, through which it created a window of opportunity to purchase NQPT service. N.T. 74.

75. Members who were active members of PSERS on July 1, 2011, had until June 30, 2014 to apply to purchase any remaining NQPT service. N.T. 74.

76. Act 2010-120 also changed member qualification requirements so that members generally were no longer required to requalify each school year. N.T. 77-78.

77. PSERS could not unilaterally sell NQPT service without a request from the member. N.T. 130.

78. Claimant was an active, contributing, Class T-D member of PSERS as of July 1, 2011. PSERS-20; October 12, 2022 Order; N.T. 78, 108, 129.

79. On November 10, 2011, PSERS mailed a letter to Claimant explaining that due to recent pension legislation she had a limited window, until June 30, 2014, to purchase NQPT service: "Because you were an active member on July 1, 2011, your window to purchase NQPT service expires on June 30, 2014." PSERS-16, p. 1; N.T. 64, 108-09.

80. The November 10, 2011 letter explained both that the purchase was optional, and that this would be Claimant's only opportunity to make the purchase:

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 this date[.]

PSERS-16, p. 1 (emphasis in original).

81. Claimant knew that the deadline to file an application to purchase credit for NQPT service with PSERS was June 30, 2014. PSERS-16; N.T. 64.

82. Claimant did not request to purchase any additional NQPT time, other than the service rendered during the 1980-1981 school year before the June 30, 2014 deadline. PSERS-9; PSERS-11; PSERS-17; N.T. 25-26, 36.

83. On June 22, 2020, PSERS received a *Purchase of Former Part-Time Uncredited Service* form for Claimant (“*2020 Altoona Application*”), through which she requested to purchase NQPT service for the 1991-1992 school year for Altoona. PSERS-17; N.T. 36, 64-65, 109-10.

84. Claimant signed the request on June 2, 2020. PSERS-17, p. 2; N.T. 110.

85. Altoona received Claimant’s *2020 Altoona Application* on June 5, 2020. PSERS-17, p. 2; N.T. 65, 110.

86. PSERS did not approve Claimant’s *2020 Altoona Application* to purchase NQPT service credit with Altoona during the 1991-1992 school year because it was received after the statutory window. N.T. 111.

87. Claimant’s last day of public school employment was June 30, 2020, after which she retired. N.T. 31, 53.

88. Claimant is now retired and receiving a monthly annuity from PSERS. N.T. 51, 53, 79.

89. By letter dated September 3, 2020, PSERS denied Claimant’s request to purchase NQPT service rendered during the 1991-1992 school year because PSERS received her *2020 Altoona Application* after the “window deadline of June 30, 2014.” PSERS-18; N.T. 66, 112.

90. Claimant appealed PSERS’ denial of her request to purchase service to the Executive Staff Review Committee (“ESRC”). N.T. 66, 113.

91. The ESRC is a committee at PSERS that reviews member appeals. N.T. 113.

92. By letter dated May 3, 2021, the ESRC denied Claimant’s appeal. PSERS-19; N.T. 66, 113-14.

93. On May 17, 2021, Claimant appealed the ESRC’s decision. N.T. 114.

94. On June 7, 2021, PSERS filed an Answer to Claimant’s appeal.

95. Claimant was served with all pleadings, orders, and notices filed of record in this matter, and she participated at the hearing through which 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's window to purchase NQPT service expired on June 30, 2014. Findings of Fact, Nos. 1 – 21 and 74 – 85.
4. Claimant failed to satisfy her burden of showing that she completed her sections of the application, filed the applications with her employer where the service was rendered, and the employer date stamped her application. Finding of Fact, Nos. 1 – 87.
5. Claimant has been afforded reasonable notice of the grounds upon which PSERS denied her requests to purchase out-of-state service credit, and she has been provided an adequate opportunity to be heard in this proceeding. Finding of Fact, No. 95.

DISCUSSION

This is an administrative appeal from the denial of Claimant's request to purchase NQPT for the 1990-91 school year. 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 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 Employes' 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.¹

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 Employes' Retirement Board*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001); *Burris v. State Employes' Retirement Board*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000); *Bittenbender v. State Employes' Retirement Board*,

¹ *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 purchase of NQPT service, the Retirement Code states, in pertinent part:

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). The effective date of this subsection was July 1, 2011. *See* the act containing, *inter alia*, §8303 making the legislation effective, Pa. Pub. Act No. 120, at § 29 (Nov. 23, 2010). Thus, Claimant, who is a Class T-D member of PSERS and who was active on July 1, 2011 (Findings of Fact Nos. 2, 78), had until June 30, 2014, to file her request to purchase prior NQPT service. Conclusion of Law No. 3. Ms. Henry filed her request to purchase the relevant NQPT service on June 22, 2020. Finding of Fact No. 83. Of course, that is after the statutory deadline. The Board simply does not have the prerogative to look past such clearly written legislation. *See generally Hughes, Foreman, Burris, Bittenbender, supra.*

In the end this matter can be handled syllogistically. Our General Assembly passed pension reform legislation in 2010. The relevant program is described in PSERS-16. That letter is dated November 10, 2011, and corrected stated that legislation proscribed a deadline of June 30, 2014, to purchase NQPT. Ms. Barton did not meet that deadline. Therefore, Ms. Barton's appeal must fail. Q.E.D.

Claimant's various arguments are a good composite exemplar showing the General Assembly's wisdom in setting a drop-dead date for this program. The lives, circumstances,

employment dates, and contributions of more than a half million active and retired members coming from 769 employers is a bewildering set of factors to manage.² Saying that PSERS had the information, from submittals many years earlier, is unreasonable and contrary to the statute. Subsection 8303(d) required a written application for specific NQPT. Obviously, that is what the Board must require.

For the foregoing reasons, the following Recommendation appends:

² The Hearing Officer can take official notice of Department records and does so here. 35 Pa. Code §35.173. These facts are stated at <https://www.psers.pa.gov/About/Documents/2021%20PSERS%20Snapshot%20web.pdf> as of February 9, 2023.

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

In Re, :
Account of Susan D. Barton : **Docket No.: 2021-09**
Claim of Susan D. Barton :

RECOMMENDATION

AND NOW, this 10th day of February, 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 May 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.

lsl M Foerster

Michael T. Foerster
Hearing Officer

For Petitioner:

Susan D. Barton

Redacted

For the System:

Cayla B. Jakubowitz, Esquire
Public School Employees Retirement System
5 North 5th Street
Harrisburg, PA 17101

Docketing Clerk:

Julie Vitale

Date of Mailing:

2/10/23