Mail Date: JUN 23 2026

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE: ACCOUNT OF NABEELAH A. BEY
DOCKET NO. 2024-02
CLAIM OF NABEELAH A. BEY

**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") and the Public School Employees' Retirement System's ("PSERS") Brief on Exceptions ("Exceptions"). Nabeelah A. Bey ("Claimant") did not file exceptions to the HEO, and she did not file a response to PSERS' Exceptions.

The Board agrees with the Hearing Officer's conclusion that Claimant's effective date of retirement must remain December 23, 2019, and that she is not entitled to retroactive pension benefits to June 16, 2019. Separately, the Hearing Examiner finds that Claimant received incorrect information from PSERS' representatives. PSERS excepts to this finding and associated discussion in the HEO. The Board agrees with PSERS' exceptions. The Board finds that some of the proposed findings of fact are not supported by the record or are not relevant to the issue before the Board. Accordingly, based on its independent review, the Board rejects the HEO and issues the following Findings of Fact, Conclusions of Law, Discussion, and Conclusion:[1]

[1] The Board may adopt or reject, in whole or in part, the proposed opinion and recommendation of the Hearing Examiner or issue its own opinion and order. 22 Pa. Code § 201.11(c).

## FINDINGS OF FACT

1. Claimant is a member of PSERS, and qualified for PSERS membership through her employment with various public school employers. (N.T. *passim*).

2. Claimant retired from PSERS in 2013, 2014, and 2019, and thereafter returned to service.[2] (PSERS-1 – PSERS-5, PSERS-11, PSERS-12).

3. An *Application for Retirement* must be filed with PSERS within 90 days of termination of service for retroactive benefits; otherwise, a retirement benefit will be effective the date the *Application for Retirement* is received by PSERS. 24 Pa.C.S. §§ 8102, 8507(i); (PSERS-1, PSERS-4, PSERS-11; N.T. 73).

4. Claimant first terminated public school employment on June 29, 2012, and filed her *Application for Retirement* with PSERS on May 15, 2013. (PSERS-1, PSERS-2).

5. By letter dated May 30, 2013, PSERS informed Claimant of her finalized retirement benefit, with an effective date of May 15, 2013, which was the date the application was received by PSERS. (PSERS-2).

6. Claimant returned to public school employment on August 27, 2013. (PSERS-3).

7. Following Claimant's return to service, PSERS informed her, among other things, that to retire again she would need to file an *Application for Retirement*:

> Your name has been removed from our annuitant payroll and you have been re-enrolled as an active, contributing member.
>
> ***
>
> When you are ready to retire again, you will need to submit a new retirement application to this office.

(PSERS-3; N.T. 58-59).

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2 As the Hearing Examiner notes, it appears Claimant returned to work with the School District of Philadelphia in August of 2021. *See* HEO, p. 7, n. 6.

8. Claimant terminated service for a second time, on September 19, 2013, and filed her *Application for Retirement* with PSERS on November 17, 2014. (PSERS-4, PSERS-5).

9. By letter dated December 16, 2014, PSERS informed Claimant of her finalized retirement benefit, effective November 17, 2014, which was the date the application was received by PSERS. (PSERS-5).

10. Claimant returned to public school employment, on August 16, 2018. (PSERS-8).

11. Following Claimant's return to service, PSERS informed her, among other things, that to retire again she would need to file an *Application for Retirement*:

> Your name has been removed from our annuitant payroll and you have been re-enrolled as an active, contributing member.
>
> ***
>
> When you are ready to retire again, you will need to submit a new retirement application to this office.

(PSERS-8; N.T. 82-83).

12. On June 15, 2019, Claimant terminated public school service for a third time. (PSERS-12).

13. For her first two retirements, Claimant filed an *Application for Retirement* after her 90-day deadline, and her effective date of retirement was the date PSERS received her properly filed application. (PSERS-1, PSERS-2, PSERS-4, PSERS-5; N.T. 79, 82).

14. PSERS' recommended retirement process for members is as follows:

a. Obtain a staff-prepared estimate.

b. Attend an exit counseling session.

c. Complete an *Application for Retirement* (which could be done at the exit counseling session); this form is available online, by calling in, or in person. The *Application for Retirement* can be submitted to PSERS by fax, mail, or dropped off.

d. After the *Application for Retirement* is processed by PSERS, the retiree receives a finalized benefit letter and begins to receive their annuity payments.

(N.T. 70-73, 110-111).

15. Claimant never attended a PSERS' exit counseling session. (PSERS-1, PSERS-4, PSERS-11; N.T. 25, 30, 37, 60, 79, 81, 86).

16. Claimant acknowledges she did not submit an *Application for Retirement* to PSERS within her 90-day deadline of September 13, 2019. (N.T. 33-34).

17. By letters dated November 25, 2019, and December 1, 2019, Claimant was notified that she must file an *Application for Retirement* to begin receiving an unreduced benefit because her "superannuation date" was approaching:

> The Public School Employees' Retirement System (PSERS) records indicate that you terminated employment with all Pennsylvania public school employers and vested your account. You will reach normal retirement (superannuation) on January 20, 2020, and will be eligible to apply for an unreduced retirement benefit.
>
> You must file an *Application for Retirement* (PSRS-8) within 90 days of your normal retirement date or within 90 days of the date of this letter, whichever is later, in order to begin receiving an unreduced retirement benefit.

(PSERS-9, PSERS-10; N.T. 83-85, 109).

18. On December 18, 2019, Claimant called PSERS regarding the status of her pension. (PSERS-14; N.T. 50).

19. During the call, Claimant told the representative that she thought her retirement benefits would just be restarted:

> Mbr called wanting to know status of her pension. She had a frozen annuity and never submitted a new retirement application. She thought the benefits would just be restarted once the numbers were calculated. She said every

> time she called she was told it was just a matter of getting the numbers recalculated. She had the non-elimination estimate that was sent on 11.14.19 but apparently thought the pension payments would just restart. She is also questioning retirement date on application as she insists she was told she would be paid back to her termination date in June. I sent mbr RETAPP via email just before leaving today. She will print and decide on her retirement choices. She may call early tomorrow for assistance with the RETAPP. I advised her to submit asap once completed.

(PSERS-14; N.T. 89-90).

20. Following Claimant's phone call, the PSERS' representative emailed Claimant an *Application for Retirement*. (N.T. 36-37, 89-90).

21. On December 23, 2019, PSERS received Claimant's completed *Application for Retirement*. (PSERS-11; N.T. 85-86).

22. By letter dated February 4, 2020, Claimant was notified that her effective date of retirement was December 23, 2019. (PSERS-12).

23. Claimant appealed the effective date of her retirement to the Executive Staff Review Committee ("ESRC"), and the ESRC denied her appeal by letter dated December 20, 2023. (PSERS-13).

24. On January 19, 2024, Claimant appealed the ESRC denial, by timely filing an *Appeal and Request for Administrative Hearing*. (Docket – *Appeal*).

25. On February 7, 2024, PSERS filed an *Answer* to Claimant's appeal. (Docket – *Answer*).

26. An administrative hearing was held on November 4, 2025.

27. Claimant was afforded notice of the hearing; appeared at the hearing and participated with counsel; was provided the opportunity to testify and admit evidence; was given the opportunity to object to the testimony and evidence presented by the Commonwealth; and, was given the opportunity to file a brief. (N.T. *passim*; Docket).

## CONCLUSIONS OF LAW

1. The Board has jurisdiction to hear this matter. *See* 24 Pa.C.S. § 8101 et seq.

2. Claimant was afforded notice and an opportunity to be heard in connection with her appeal. (Findings of Fact ("F.F") 27).

3. Claimant bears the burden of proving the facts alleged in support of her claim. *See* 22 Pa. Code § § 201.12(d), 201.10, and 201.8(a); *Gierschick v. State Emps.' Ret. Bd.,* 733 A.2d 29, 32 (Pa. Cmwlth. 1999).

4. The burden of proof applied in an administrative hearing is the preponderance of evidence standard and is "such proof as leads the fact-finder . . . to find that the evidence of a contested fact is more probable than its nonexistence." *Sigafoss v. Pa. Bd. of Prob. and Parole,* 503 A.2d 1076, 1079 (Pa. Cmwlth. 1986); *Samuel J. Lansbury, Inc. v. Pa. Pub. Util. Comm'n,* 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

5. PSERS is a creature of statute and derives its authority from the provisions of the Public School Employees' Retirement Code ("Retirement Code"). 24 Pa.C.S. § 8101 et seq.

6. The Retirement Code defines "effective date of retirement" as the "first day following the date of termination of service of a member if he has properly filed an application for an annuity within 90 days of such date," or, if after 90 days, the date of filing such application or the date specified on the application, whichever is later. 24 Pa.C.S. § 8102.

7. "Date of termination of service" is defined, in pertinent part, as the "last date of service for which pickup contributions are made for an active member." 24 Pa.C.S. § 8102.

8. Upon termination of service, a member may elect to withdraw their accumulated deductions, vest their retirement rights, or receive an immediate annuity. See 24 Pa.C.S. § 8507(f); 22 Pa. Code § 215.7(e).

9. According to the Retirement Code, if a member does not file an application for retirement within 90 days of their termination of service, their annuity begins on the date the application is filed:

> *Failure to apply for annuity.* – If a member is eligible to receive an annuity from the system and does not file a proper application within 90 days of termination of service, he shall be deemed to have elected to vest, and his annuity will become effective as of the date an application is filed with the board . . . .

24 Pa.C.S. § 8507(i).

10. "Effective date of retirement" is defined as follows:

> The first day following the date of termination of service of a member if he has properly filed an application for an annuity within 90 days of such date or:
>
> (1) In the case of a member who applies for an annuity subsequent to 90 days after termination of service, the date of filing such application or the date specified on the application, whichever is later.
>
> (2) In the case of a vestee who files an application for an annuity within 90 days of his superannuation age, the attainment of such age.
>
> (3) In the case of a vestee who defers the filing of an application for an annuity to a date later than 90 days following attainment of superannuation age, the date of filing or the date specified on the application, whichever is later.
>
> (4) In the case of a finding of disability, the date certified by the board as the effective date of disability.

24 Pa.C.S. § 8102.

11. An application for retirement is filed with PSERS on the date that it is *received by* PSERS. *See* 22 Pa. Code § 201.1 and 1 Pa. Code § 31.11 ("The date of receipt at the office of the agency and not the date of deposit in the mails is determinative."); *Harasty v. Pub. Sch. Emps.' Ret. Bd.*, 945 A.2d 783, 788 (Pa. Cmwlth. 2008).

12. When an annuitant returns to school service, they are re-enrolled as an active, contributing member of PSERS, and their annuity payments cease. *See* 24 Pa.C.S. § 8346(a); 22 Pa. Code § 213.46(a); (PSERS-3, PSERS-8).

13. To begin receiving a retirement benefit after a return to service, a PSERS member must terminate service and reapply for an annuity. *See* 24 Pa.C.S. §§ 8102, 8342(a); *see also* 24 Pa.C.S. § 8346(c), (d); (PSERS-3, PSERS-8).

14. Claimant did not satisfy her burden of proof that she filed *her Application for Retirement* within the prescribed statutory deadline of September 13, 2019, which was 90 days after her termination date of June 15, 2019. (F.F. Nos. 12, 16, 21, 22).

15. The Board cannot be estopped from applying the statutory provisions of the Retirement Code, even if a member receives inadequate, incorrect, or even no information. *See Tyson v. Pub. Sch. Emps.' Ret. Sys.*, 737 A.2d 325 (Pa. Cmwlth. 1999), *alloc. den.* 757 A.2d 937 (Pa. 2000); *Cosgrove v. State Emps.' Ret. Bd.*, 665 A.2d 870 (Pa. Cmwlth. 1995); *Lawrie v. Pub. Sch. Emps.' Bd.*, 595 A.2d 753 (Pa. Cmwlth. 1991); *Finnegan v. Pub. Sch. Emps.' Ret. Bd.*, 560 A.2d 848 (Pa. Cmwlth. 1989).

16. Pursuant to the Retirement Code, Claimant's effective date of retirement is December 23, 2019, the date PSERS received her completed *Application for Retirement*. 24 Pa.C.S. §§ 8102, 8507(i); (F.F. 21).

## DISCUSSION

Claimant retired from PSERS in 2013, 2014, and 2019; however, the effective date of the 2019 retirement is the sole issue in this appeal. (F.F. 2) Claimant asks the Board to change her "effective date of retirement" from December 23, 2019, to June 16, 2019, thereby paying her retroactive benefits to the day after her "date of termination of service." In making this request, Claimant had to prove, by a preponderance of the evidence, that PSERS received her application within the 90-day timeline established by the Retirement Code.

The Retirement Code defines "Effective Date of Retirement" as:

> The first day following the date of termination of service of a member if he has properly filed an application for an annuity within 90 days of such date or:
>
> > (1) In the case of a member who applies for an annuity subsequent to 90 days after termination of service, the date of filing such application or the date specified on the application, whichever is later.
>
> ***

24 Pa.C.S. § 8102; *see also* 24 Pa.C.S. § 8507(i). The "date of termination of service" is the "last day of service for which pickup contributions are made for an active member," which for Claimant was June 15, 2019. *See* 24 Pa.C.S. § 8102; (F.F. 12; PSERS-12).

A member who does not complete the required application within the 90-day deadline cannot receive retroactive benefits. *See generally Harasty v. Pub. Sch. Emps.' Ret. Bd.,* 945 A.2d 783 (Pa. Cmwlth. 2008). Based on Claimant's June 15, 2019, date of termination of service, her 90-day deadline to file a retirement application and to receive retirement benefits retroactive to the day after her termination of service was September 13, 2019. Claimant conceded that she did not submit an *Application for Retirement* within her 90-day deadline, and it is undisputed that PSERS received her *Application for Retirement* on December 23, 2019. (F.F. 16, 21). Thus, as a matter of law, Claimant's effective date of retirement is December 23, 2019. Nevertheless, Claimant asks the Board to waive the 90-day statutory deadline based on her assertion that multiple PSERS' representatives told her, over the phone, to wait to file an *Application for Retirement* and reassured her that her benefits would be retroactive to June 15, 2019.

A discussion regarding the phone calls between Claimant and PSERS is unnecessary to the outcome of the case, because it is uncontested that PSERS received Claimant's *Application for Retirement* on December 23, 2019, 101 days after the 90-day window. (F.F. 16, 21; PSERS-11, PSERS-12). For completeness, however, the Board finds that that the evidence of record does not support a finding that PSERS provided incorrect information to Claimant. Rather, the evidence suggests that there was a misunderstanding.

Preliminarily, Claimant testified that she was informed by two PSERS representatives, between June and August 2019, that she could wait to file a retirement application. (N.T. 9-11, 13-14, 33, 41-42, 46). Inherent in this understanding is the awareness that she needed to *file* an application in order to receive a monthly benefit. In a December 2019 phone call with PSERS, however, Claimant stated that she believed her benefits would restart without filing an application. (PSERS-14). If Claimant believed she could wait to file an application, she would presumably have understood her pension would not just restart. Moreover, to the extent there was any confusion regarding whether Claimant needed to file another *Application for Retirement*, the record reflects that PSERS advised Claimant after her first two retirements, in writing, that she must file another *Application for Retirement*.[3] (F.F. 7, 11; PSERS-3, PSERS-8). PSERS also notified Claimant, in writing, that her superannuation date was approaching, and she must file an *Application for Retirement* to begin receiving an unreduced benefit.[4] (F.F. 17; PSERS-9, PSERS-10). Accordingly, the record does not establish that Claimant's delay in filing her application was due to incorrect advice from PSERS.

Claimant also asserts that PSERS assured her that her retirement benefits would be retroactive to her date of termination. Notably, in the first two calls, during which Claimant asserts that she was informed she would receive retroactive benefits, she was within the 90-day window and would have, in fact, received retroactive benefits if she had filed her application. (N.T. 9-10, 13-14, 41-42, 46). PSERS also presented evidence regarding its standard practices and procedures, explaining that all representatives are trained and knowledgeable about the 90-day deadline for retroactive benefits, and would not have counseled Claimant not to file an application or guaranteed her benefits would be retroactive. (N.T. 74, 76, 90-91, 100-101, 107). The evidence further establishes that PSERS had previously advised Claimant that she had to file an application within 90 days

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[3] Indeed, Claimant's pension did not just restart after her second termination of service in 2013. Rather, Claimant filed an *Application for Retirement*, and thereafter began receiving her monthly benefit. (F.F. 8, 13; PSERS-4, PSERS-5).

[4] Notably, Claimant's monthly benefit would have been greater had she reached her normal retirement date, i.e. superannuation. *See* 24 Pa.C.S. §§ 8342(a), 8345; PSERS-9, PSERS-10.

of termination to preserve her retirement date. (PSERS-1, PSERS-4; N.T. 73-74). Claimant retired from PSERS on two prior occasions and did not receive retroactive benefits either time, because just like this 2019 retirement, she filed her application after the 90-day window. (F.F. 13; PSERS-1 – PSERS-5). As such, Claimant has not established that she received incorrect information from PSERS regarding the receipt of retroactive benefits that caused the delay in filing her *Application for Retirement*.

Regardless, as a matter of law, the phone conversations between Claimant and PSERS are not dispositive of the case. The Board does not have the authority to circumvent the express language of the Retirement Code and ignore the statutorily mandated eligibility requirements for retirement. *Marinucci v. State Emps.' Ret. Sys.*, 863 A.2d 43 (Pa. Cmwlth. 2004);[5] *Forman v. Pub. Sch. Emps.' Ret. Bd.*, 778 A.2d 778 (Pa. Cmwlth. 2001). Specifically, even if Claimant had established that she justifiably relied on misinformation from PSERS, the Board would still be without the authority to grant Claimant the relief she seeks. *See Tyson v. Pub. Sch. Emps.; Ret. Sys.*, 737 A.2d 325 (Pa. Cmwlth. 1999), *alloc. den.* 757 A.2d 937 (Pa. 2000); *Cosgrove v. State Emps.' Ret. Bd.*, 665 A.2d 870 (Pa. Cmwlth. 1995); *Lawrie v. Pub. Sch. Emps.' Bd.*, 595 A.2d 753 (Pa. Cmwlth. 1991); *Finnegan v. Pub. Sch. Emps.' Ret. Bd.*, 560 A.2d 848 (Pa. Cmwlth. 1989). The Retirement Code mandates that Claimant's effective date of retirement is December 23, 2019, the day PSERS received her properly filed application.

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5 Cases interpreting provision of the State Employees' Retirement Code "are equally applicable in deciding issues arising under similar or identical provisions" of the Retirement Code. *Krill v. Pub. Sch. Emps.' Ret. Bd.*, 713 A.2d 132, 134 n.3 (Pa. Cmwlth. 1998).

## CONCLUSION

For these reasons, the Board concludes that Claimant failed to satisfy her burden of proof that PSERS received her *Application for Retirement* within the prescribed statutory deadline of September 13, 2019. Consequently, the Board is without authority to grant Claimant's request.

IT IS HEREBY ORDERED that Claimant Nabeelah A. Bey's request to change her effective date of retirement and be paid retroactive pension benefits is **DENIED.**

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: 6/17/2026

By: ______________________
Richard Vague, Chairman

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

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| **IN RE:** | : | |
| | : | |
| **ACCOUNT OF NABEELAH A. BEY** | : | **DOCKET NO. 2024-02** |
| **CLAIM OF NABEELAH A. BEY** | : | |

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# PROPOSED OPINION AND RECOMMENDATION

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Heather J. McCarthy
Hearing Officer

**GOVERNOR'S OFFICE OF GENERAL COUNSEL**
**DEPARTMENT OF STATE**
**OFFICE OF HEARING EXAMINERS**
**P.O. BOX 60130**
**HARRISBURG, PENNSYLVANIA 17106-0130**

## HISTORY

This matter is before the Public School Employees' Retirement Board ("Board" or "PSERB") on an appeal filed by Nabeelah A. Bey ("Claimant") on January 19, 2024. Claimant appealed from a decision of the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS"), issued on December 20, 2023 ("ESRC denial"), which denied Claimant's request to change the effective date of her retirement. Claimant seeks to change her retirement date from December 23, 2019, to June 15, 2019, and to receive payment of her annuity retroactive to June 15, 2019. PSERS filed an *Answer* to Claimant's appeal.

The matter was initially scheduled for a hearing on January 15, 2025. The hearing was continued several times and occurred on November 4, 2025. Claimant appeared with counsel Faye Riva Cohen, Esq. and Tyler J. Smith, Esq., via video as had been requested and granted. Christine M. Trout, Esq. represented PSERS. Claimant presented her own testimony; PSERS presented testimony of one of its representatives and fourteen exhibits. At the close of the hearing, Claimant made a closing argument, and PSERS reserved its argument for a post-hearing brief.

The transcript was received on December 5, 2025. The undersigned issued a *Briefing Order*, directing that PSERS' Brief was due on or before January 7, 2026, and Claimant's Reply Brief (if any) was due on or before January 22, 2026. PSERS' Brief was filed January 7, 2026; thereafter, Claimant requested a short extension of time to file a Reply Brief, which was granted without objection. Claimant's Brief was timely filed, *pro se*,[1] on February 2, 2026.

The record is now closed, and the matter is ripe for adjudication.

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[1] Although Attorneys Cohen and Smith have not withdrawn, the Brief recites that Claimant submits the brief *pro se* due to financial constraints. *Claimant's Brief* at p. 2.

## FINDINGS OF FACT

### Claimant's PSERS Membership

1. Claimant has been a member of PSERS since 2001, with 8.05 credited years of service as of February 2020. N.T. 78; PSERS-12.

2. Claimant has retired and later returned to active service at least three times, in 2013, 2014, and 2019; the effective date of the 2019 retirement is the sole issue in this appeal. N.T. 23-24, 27-33, 59, 78-82; PSERS-1, PSERS-2, PSERS-3, PSERS-4, PSERS-5, PSERS-8, PSERS-11.

### Procedural History of Claimant's Appeal

3. On or about March 2020, Claimant filed an appeal to the PSERS ESRC[2], through counsel, requesting that PSERS change the effective date of her 2019 retirement to June 15, 2019, and that she be given retroactive annuity payments from June 15, 2019, to December 23, 2019.[3] N.T. 15, 17-18, 47, 51; Docket – *Appeal*[4], at p. 4 and Att. E; Docket – *Answer*, at p.4.

4. By letter dated May 11, 2020, PSERS representative Troy Peechatka wrote to Claimant and informed her that her appeal would be presented to the ESRC and would take at least one to two months to process. N.T. 20; Docket – *Appeal*, Att. D; Docket – *Answer*, p. 5.

5. Claimant also completed a "hardship letter" and sent it to PSERS, although the date and content of this letter are not of record. N.T. 51.

6. Having not received a resolution to her ESRC appeal from PSERS, and having

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[2] The ESRC is a process where PSERS executive management performs an initial review of an appeal. *See* 22 Pa. Code § 201.3a; Docket – *Answer*, p. 6; N.T. 40, 87; PSERS-13.

[3] In opening statement, Attorney Smith represented that he believed the amount requested totaled $5,341.62, reflecting six months of back pay. N.T. 6.

[4] Appellant's January 19, 2024, appeal is a 16-page pdf, which is not sequentially numbered; page numbers referenced herein indicate the page's order within the 16-page file.

experienced the death of her initial attorney during this time, Claimant sought assistance from her state representative. N.T. 18, 51.

7. On December 20, 2023, PSERS issued a letter stating that the ESRC denied Claimant's appeal, and provided information about her further appeal rights. N.T. 40; PSERS-13; Docket – *Answer* at p. 5.

8. Claimant spoke to Mr. Peechatka on January 17, 2024, and he informed her how to file an *Appeal and Request for Administrative Hearing*, and explained PSERS call center procedures regarding the retirement process. Docket – *Answer* at p. 3.

9. On or about January 19, 2024, Claimant filed the instant appeal, titled *Appeal and Request for Administrative Hearing*, in which she requested a "zoom/telephone hearing." Docket – *Appeal*.

10. On or about February 7, 2024, PSERS Attorney Trout filed an *Answer* to Claimant's appeal, containing her objection to a telephone hearing but her concurrence in scheduling the hearing with Claimant's availability in mind. Docket – *Answer*.

11. On or about October 16, 2024, Hearing Examiner Michael Foerster was appointed to hold a hearing and issue a *Proposed Opinion and Recommendation*, and a hearing was scheduled for January 15, 2025. Docket – *Appointment Letter dated October 16, 2024, Notice of Hearing dated October 16, 2024.*

12. On or about November 14, 2024, Attorney Trout sent written correspondence in which she reiterated her objection to Claimant's request for a telephonic hearing, but expressed no objection to rescheduling the hearing with Claimant's availability in mind and requested, if a video hearing was granted, standard procedures including exchange of exhibits, etc. Docket – *Attorney Trout letter dated November 14, 2024.*

13. In December 2024, the case was administratively reassigned to the undersigned Hearing Examiner, and by a December 16, 2024, *Order Denying Motion for Zoom/Telephone Hearing, Continuing Hearing, and Directing Hearing to be Rescheduled*, the January 15, 2025, hearing was continued, the request for zoom/telephone hearing was denied, Claimant was directed to provide dates she would be available for an in person hearing, and the PSERS docket clerk was directed to reschedule the hearing. Docket – *Appointment Letter dated January 2, 2025*; *Order Denying Motion for Zoom/Telephone Hearing, Continuing Hearing, and Directing Hearing to be Rescheduled dated December 16, 2024.*

14. By notice dated July 2, 2025, the hearing was rescheduled for August 4, 2025, at PSERS office in Harrisburg. Docket – *Notice of Hearing dated July 2, 2025.*

15. By letter dated July 28, 2025, Attorney Faye Riva Cohen, Esq. entered her appearance for Claimant and requested a brief continuance and for the hearing to be conducted remotely. Docket – *Attorney Cohen Letter dated July 28, 2025.* Attorney Trout did not object to the continuance request and requested a status conference to discuss the request for remote hearing and available hearing dates. Docket – *Attorney Trout Letter dated July 29, 2025.*

16. By *Order* dated July 30, 2025, the August 4, 2025, hearing was continued and a status conference was scheduled to be held by telephone on that date. Docket – *Order dated July 30, 2025.*

17. At the August 4, 2025, status conference, it was agreed that the hearing would be rescheduled to September 23, 2025, at 9:30 a.m. and that Claimant and her attorney could participate by videoconference technology, subject to certain parameters including pre-hearing exchange of exhibits and a video test session. Docket – *Order Rescheduling Hearing, dated August 4, 2025.*

18. By notice of hearing dated August 6, 2025, the hearing was scheduled for September 23, 2025, at 9:30 a.m., the Claimant's video test session was scheduled, and standard video hearing requirements were provided. Docket – *August 6, 2025, Notice of Hearing.*

19. On August 20, 2025, Attorney Trout moved for a continuance, to which there was no objection; the *Motion* was granted by Order issued August 25, 2025. Docket – *PSERS Uncontested Motion for Continuance, Order Granting Continuance dated August 25, 2025.*

20. By hearing notice dated August 29, 2025, the hearing was rescheduled for November 4, 2025, at 10:00 a.m., with Claimant and her attorney participating by videoconference. Docket – *Notice of Hearing dated August 29, 2025.*

21. The hearing occurred as scheduled on November 4, 2025. N.T. *passim.*

**<u>Claimant's Prior Retirements</u>**

22. Following termination[5] of employment on June 29, 2012, Claimant submitted an Application for Retirement to PSERS in 2013, was granted an effective retirement date of May 15, 2013 (the date her Application was received), and began to receive a pension. N.T. 23-24, 27-28, 78-80; PSERS-1, PSERS-2.

23. Claimant returned to active employment in a school on August 27, 2013, and received an overpayment of her annuity due to her return to service; she was notified of that overpayment on December 20, 2013. N.T. 58; PSERS-3.

24. Claimant next terminated her employment on September 19, 2013, and submitted an Application for Retirement on November 17, 2014; she began to receive a pension in 2014.

[5] The word "termination" as used herein does not imply Claimant was fired; "terminated" simply indicates the date of the end of employment, in other words the date that the member is no longer on the school's payroll and/or contributions are no longer coming in to PSERS for that member. N.T. 79; 24 Pa.C.S. § 8102.

N.T. 29-31, 59, 81-82; PSERS-4, PSERS-5.

25. Claimant then returned to active service in a public or charter school in 2018; again, Claimant received an overpayment of her annuity due to her return to service, and she was notified of that overpayment on September 27, 2018. N.T. 31-32, 82; PSERS-8.

26. The overpayment notification letters (PSERS-3 and PSERS-8) also informed Claimant that to retire again she would need to file another Application for Retirement. N.T. 58-49, 82-83; PSERS-3, PSERS-8.

27. When a retired member returns to employment, as Claimant did twice prior to 2019, their annuity is "frozen," and any money that is overpaid becomes a debt on the account. N.T. 80, 82-83, 100, 105.

28. When a member returns to employment and then re-retires, they must file a new Application for Retirement in order to again start receiving their annuity payments; within the Application for Retirement the member has the ability to change payment options, beneficiaries, etc. N.T. 81.

29. PSERS retirement process has not changed between 2012 and 2019. N.T. 70.

30. This is not the first time that Claimant's effective date of retirement has not matched her date of termination; however, this is the first time that Claimant has appealed her retirement date. N.T. 64; PSERS-2, PSERS-5.

**Claimant's 2019 Termination and Application for Retirement**

31. Claimant's last day of work as a school employee relevant to her 2019 application for retirement was June 15, 2019.[6] N.T. 33; PSERS-11.

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[6] It appears Claimant has since returned to work with the School District of Philadelphia as of August 2021. (PSERS Docket – *Appeal* at p.3)

32. Per the Retirement Code (24 Pa.C.S. § 8507) there is a 90-day period after the date of termination for the member to submit an Application for Retirement in order to have the benefits paid retroactive to the termination date; if the Application for Retirement is received more than 90 days after date of termination, the effective retirement date is the date PSERS receives the application. N.T. 73.

33. A member may terminate service with an employer but choose not to immediately file for retirement, an option that is also referred to as "vesting" their retirement; one of several reasons a member might delay or vest their retirement is if the member wants to reach normal retirement age (also referred to as their "superannuation" date), so there would not be a reduction in benefit.[7] N.T. 74, 83-84, 111-112.

34. PSERS notifies its members of the statutorily-imposed 90-day deadline to receive benefits retroactive to termination date in several ways, including in writing on the Application for Retirement and on the PSERS website. N.T. 37, 73-74; PSERS-1, PSERS-4, PSERS-11.

35. Claimant did not submit an Application for Retirement within the 90 days following June 15, 2019. N.T. 33-34.

36. On December 18, 2019, following Claimant's phone call, PSERS representative Darlene McCann emailed Claimant an Application for Retirement. N.T. 36-37.

37. Claimant completed the Application for Retirement and submitted it to PSERS by fax; PSERS received Claimant's completed Application for Retirement on December 23, 2019, and since that date was outside the 90-day window for retroactive benefits, PSERS determined December 23, 2019, to be Claimant's effective date of retirement. N.T. 37, 85-86; PSERS-11.

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[7] A normal retirement has no reducing factor; an early retirement has a reducing factor of 4-7%. N.T. 83-85.

38. Claimant received her retirement benefit starting in February 2020 with a small amount of backpay to December 2019. N.T. 15, 38-39; PSERS-12.

**Claimant's June to December 2019 Contacts with PSERS**

39. Claimant spoke with numerous PSERS representatives on the phone between June and December 2019, including an initial phone call, three follow-up phone calls, and the above-referenced December 18, 2019, phone call with Ms. McCann. N.T. 9-14, 36-37, 41-42, 46-47.

40. The first phone call occurred in June or July 2019, where Claimant called PSERS' Warminster office and spoke to David, who told her he needed to "unlock" her account "because [she] was now in retirement status again....And to wait to turn in the application until [she] received an estimate of...whatever [her] benefits would be." N.T. 9-11, 41-42.[8] David told Claimant that when she received the estimate she would be repaid back to her date of retirement, June 15, 2019. N.T. 10, 49.

41. On Claimant's first follow up call on August 20, 2019 (again to the Warminster office), she spoke to Dave who said he had to remove a flag and again assured her she would be paid back to her retirement date. N.T. 11, 13, 46.

42. On Claimant's second follow up call on October 1, 2019 (again to the Warminster office), she spoke to Frank who again told her to be patient as they were "over worked, understaffed," and was assured she would be repaid back to her retirement date. N.T. 13-14, 46.

43. On Claimant's third follow up call on October 18, 2019 (again to the Warminster office), she spoke with a female representative who was "very rude" to her, and gave Claimant

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[8] PSERS admitted in its *Answer* that Claimant spoke with a PSERS representative on July 24, 2019, and that during that phone call, Claimant requested a retirement estimate. Docket – PSERS *Answer*, p.3.

the "same assurances."[9] N.T. 13-14, 56.

44. PSERS makes and keeps audio recordings and logs of members' phone calls, and these types of records are retained for eighteen months; no such records were presented by either party during the hearing. N.T. 106, 108-109, *passim*.

45. On November 25, 2019, and again on December 1, 2019, PSERS notified Claimant by letter that her "superannuation date" was approaching. N.T. 35, 83-85; PSERS-9, PSERS-10.

46. The "superannuation letters" (PSERS-9, PSERS-10) are sent to members whose accounts are dormant (those who are no longer working but not yet receiving an annuity) when they hit their superannuation age[10]; they are sent to notify the member that they should start collecting their benefit because the present value starts to decrease at that point.[11] N.T. 109.

47. In November 2019, Claimant finally received the retirement estimate that she had requested (it was mailed according to PSERS on November 14, 2019, reflecting a processing time of approximately sixteen weeks[12]), which prompted Claimant to call PSERS and speak to Ms. McCann on December 18, 2019; Ms. McCann emailed Claimant the Application for Retirement, and encouraged her to submit it as soon as possible. N.T. 36-37, 50-51, 67; PSERS-14.

48. Ms. McCann made notes of the December 18, 2019, phone call in PSERS records

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[9] The testimony regarding the three follow up phone calls is consistent with Claimant's January 2024 appeal. PSERS Docket – *Appeal*.

[10] The superannuation age is either 60 or 62 depending on the member's category. N.T. 109.

[11] PSERS notifications to Claimant regarding her superannuation date were based on her age and dormant status of her account, and were not related to or triggered by her phone calls to PSERS from June to November 2019. N.T. 109-110.

[12] PSERS admitted that the estimate was requested on July 24, 2019. PSERS-13, Att. A, p.2; Docket – *Answer*. Claimant's *Appeal* contains the purported estimate document which bears a slightly later postmark date, however, this document was not offered nor admitted at the hearing and PSERS objected to it in its *Answer*; PSERS therefore cannot be deemed to have admitted any facts drawn from it. Docket – *Appeal* at p. 4 and Att. D; Docket – *Answer* at p. 4.

as follows:

> Mbr called wanting to know status of her pension. She had a frozen annuity and never submitted a new retirement application. She thought the benefits would just be restarted once the numbers were calculated. She said every time she called she was told it was just a matter of getting the numbers recalculated. She had the non-elimination estimate that was sent on 11.14.19 but apparently thought the pension payments would just restart. She is also questioning retirement date on application as she insists she was told she would be paid back to her termination date in June. I sent mbr RETAPP via email just before leaving today. She will print and decide on her retirement choices. She may call early tomorrow for assistance with the RETAPP. I advised her to submit asap once completed.
>
> PSERS-14; N.T. 89-90.

**PSERS Practices and Procedures**

49. Josh Catalfu is a PSERS employee[13], employed at the southeast regional office in Warminster, who has worked at PSERS for thirteen years and whose job duties include overseeing five field representatives and an intern, scheduling and leading the exit counseling sessions, scheduling "Foundations for Your Future" sessions, and generating estimates for members; as part of his job he also monitors phone calls and emails, including monitoring approximately 70% of his staff's calls. N.T. 69-70, 95-96.

50. Mr. Catalfu's supervisees are the PSERS representatives who present the exit counseling sessions and who answer customer service phone calls. N.T. 106-107.

51. Mr. Catalfu reviewed and familiarized himself with Claimant's file prior to testifying. N.T. 70.

52. PSERS retirement process is as follows:

a. It is recommended that the member obtain a staff-prepared **estimate** of

[13] Mr. Catalfu's precise job title is not of record. N.T. *passim*.

their benefit, which typically takes four to six weeks (or twelve weeks if the annuity is "frozen" due to prior retirement(s) and return(s) to service, as in Claimant's case); this provides the member with different payment options available to them upon retirement. N.T. 71, 80, 82-83, 100, 105. If a member is close to the expiration of their 90-day window for retroactivity, staff are to suggest the person utilize their PSERS annual statement[14] as the estimate. N.T. 75, 100-101.

b. It is recommended that the member attend an **exit counseling session**, which is a small group meeting offered throughout the state, throughout the year, where PSERS staff goes through the application, deadlines, and return to service; if the member is very close to retirement, PSERS staff would get them scheduled for an exit counseling session even prior to or without receipt of the staff-prepared estimate. N.T. 71-72. The exit counseling sessions are also available on PSERS website with speaker notes and on YouTube. N.T. 104.

c. The retiree fills out an **Application for Retirement** (which could be done at the exit counseling session); this form is available online, by calling in, or in person. N.T. 72-73. The Application for Retirement can be submitted to PSERS by fax, mail, or dropped off. N.T. 110-111.

d. After the Application for Retirement is processed by PSERS, the retiree receives a **finalized benefit letter** and begins to receive their annuity

[14] A PSERS annual statement of account is a document that is sent to members annually in the fall, that projects their benefits if they were to retire June 30 the following year; it is sent annually to all members who are currently working as well as those who are "term vested" (not working but whose account is still sitting with PSERS), in other words, it is sent to everyone "not on [PSERS] payroll." N.T. 107.

payments. N.T. 73

53. Claimant has never attended a PSERS exit counseling session, either in conjunction with her 2019 retirement or any of her earlier retirements. N.T. 25, 30, 37, 60, 79, 81, 86; PSERS-1, PSERS-4, PSERS-11.

54. When a member calls PSERS with a question, there are procedures the representatives are supposed to follow. N.T. 74-75

55. Mr. Catalfu was working in the Warminster office in July 2019; he is familiar with a representative named David and attested David would have been trained on PSERS procedures for handling phone calls; similar testimony was not provided regarding representatives Dave, Frank, the unnamed rude female, or Ms. McCann. N.T. 75.

56. Although he could not speak specifically to their training because the representatives identified by Claimant were not his supervisees, Mr. Catalfu stated generally representatives are trained and knowledgeable about the 90-day deadline for retroactivity, and would not be trained to assure a member they would get retroactive benefits because PSERS cannot predict that until they receive the Application for Retirement, and PSERS representatives would not tell a member that their previously frozen retirement would just "restart." N.T. 76, 90-91, 96, 106-107.

57. Comments are added in PSERS internal system in the member's account after a phone call or contact at the discretion of the representative *if* the representative thought that the next representative would need a heads up; the comment section is not notated following every phone call by a member. N.T. 89, 92. PSERS-14 is a copy of the comment section pertaining to Claimant, but does not capture every single call Claimant had with the agency. N.T. 93. PSERS-14 reflects Ms. McCann's above-quoted comment following the December 18, 2019,

phone call, but does not include comments from any of Complainant's other June-December 2019 phone calls. N.T. 101-102; PSERS-14.

58. Mr. Catalfu disagreed with the hypothetical proposition that a representative may have assumed that since Claimant requested an estimate, it would be received in 4-6 weeks, and therefore within her 90-day window, and not thought much of advising her to wait until she got the estimate. N.T. 80, 82-83, 100, 105.

59. Mr. Catalfu also disagreed that someone at PSERS would have suggested to Claimant that she could have waited for the estimate before doing the application, and maintained that because there was a "timeframe issue," a representative would have advised her to use her statement of account as an estimate. N.T. 100-101.

60. If he had a similar conversation with a member, if there was a "timeframe issue," Mr. Catalfu would have input a comment into PSERS internal records. N.T. 101.

61. If a member called in and reported they were told something not in line with PSERS standard practice/law, it would be Mr. Catalfu's practice to go back and listen to the previous call, in order to train the representative; Ms. McCann's December 18, 2019, comment indicating that Claimant insisted she was told she would be paid back to June is the type of comment that would have prompted him to review recorded phone calls. N.T. 112-113.

62. Mr. Catalfu did not recall auditing or reviewing any of Claimant's phone calls (if made by one of his supervisees, he would have, but he did not believe his supervisees were the representatives she spoke to); he did not know whether anyone else had reviewed the recordings of Complainant's phone calls, but he maintained that other supervisors also audit their staff members' phone calls. N.T. 96, 112-113.

63. Mr. Catalfu had no knowledge of the PSERS appeal process once an appeal letter

is submitted by member. N.T. 99.

**<u>Due Process</u>**

64. Claimant appealed the effective date of her retirement to the ESRC in March 2020; the ESRC denied her appeal by letter dated December 20, 2023; no explanation was provided by PSERS for the nearly four-year duration of the ESRC appeal. PSERS-13; N.T. *passim*.

65. On January 19, 2024, Claimant appealed the ESRC denial, by timely filing an *Appeal* and *Request for Administrative Hearing*. Docket – *Appeal*.

66. On February 7, 2024, PSERS filed an *Answer* to Claimant's appeal. Docket – *Answer*.

67. Respondent was afforded notice of the hearing; appeared at the hearing and participated with counsel; was provided the opportunity to testify and admit evidence; was given the opportunity to object to the testimony and evidence presented by the Commonwealth; and, was given the opportunity to file a brief. N.T. *passim*; Docket.

## CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. *See* 24 Pa.C.S. § 8101 *et seq.*

2. Claimant was afforded notice and an opportunity to be heard in connection with her appeal. Findings of Fact ("F.F") 64-67.

3. Claimant bears the burden of proving the facts alleged in support of her claim. *Wingert v. State Employes' Ret. Bd.*, 589 A.2d 269, 271 (Pa.Cmwlth. 1991); *Frantz v. State Employees Ret. Bd.*, 560 A.2d 284, 285 (Pa.Cmwlth. 1989).

4. The preponderance of evidence standard is the correct burden of proof to be applied in this administrative action. *Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), *petition for allowance of appeal denied*, 602 A.2d 868 (Pa. 1998); *Suber v. Pennsylvania Commission on Crime and Delinquency, Deputy Sheriff's Education and Training Board*, 885 A.2d 678, 681-83 (Pa.Cmwlth. 2005).

5. PSERS is a creature of statute and PSERS' members have only those rights created by and recognized in the Public School Employees' Retirement Code, 24 Pa.C.S. § 8101 *et seq*. ("Retirement Code") and none beyond. *Bittenbender v. State Employees' Ret. Bd.*, 622 A.2d 403, 405 (Pa.Cmwlth. 1992); *Burris v. State Employees' Ret. Bd.*, 745 A.2d 704, 706 (Pa.Cmwlth. 2000); *Hughes v. Public Sch. Employees' Ret. Bd.*, 662 A.2d 701, 706 (Pa.Cmwlth. 1995), *allocator denied*, 668 A.2d 1139 (Pa. 1996).

6. The Retirement Code defines "effective date of retirement" as the "first day following the date of termination of service of a member if he has properly filed an application for an annuity within 90 days of such date," or, if after 90 days, the date of filing such application or the date specified on the application, whichever is later. 24 Pa.C.S. §§ 8102; 8507(i).

7. Upon termination of service, a member may elect to withdraw their accumulated

deductions, vest their retirement rights, or receive an immediate annuity. 24 Pa.C.S. § 8507(f); 22 Pa. Code § 215.7(e).

8. According to the Retirement Code:

> *Failure to apply for annuity.* – If a member is eligible to receive an annuity from the system and does not file a proper application within 90 days of termination of service, he shall be deemed to have elected to vest, and his annuity will become effective as of the date an application is filed with the board....
>
> 24 Pa.C.S. § 8507(i).

9. Claimant has established that she received incorrect information/advice from PSERS representatives; however, that inaccurate information/advice cannot serve to rewrite, amend, or set aside the applicable law. F.F. 1-67; *Finnegan vs. PSERS*, 560 A.2d 848, 850-851 (Pa.Cmwlth. 1989); *Cosgrove v. SERS*, 665 A.2d 870, 874 (Pa.Cmwlth. 1995).

10. Pursuant to the Retirement Code, Claimant's effective date of retirement is December 23, 2019, the date PSERS received her completed Application for Retirement. F.F. 1-67; 24 Pa.C.S. §§ 8102, 8507(i).

## DISCUSSION

The issue presented is whether PSERS can and/or must backdate a member's effective date of retirement, when the member alleges that she received incorrect advice/information from PSERS customer service representatives on more than one occasion that resulted in her not the filing her Application for Retirement until several months after the 90-day window for retroactive annuity payments had passed. As relevant to this dispute, Claimant terminated her employment on June 15, 2019, her Application for Retirement was received by PSERS on December 23, 2019, and PSERS deemed that date her effective date of retirement. Claimant requested PSERS change her retirement date to her termination date, because she was assured by multiple customer service representatives that she should wait to receive the staff-prepared estimate before filing an Application *and* was assured that her payments would be retroactive. Through its ERSC, PSERS denied Claimant's request, leading to this appeal.

It is well established that Claimant bears the burden of establishing the facts necessary to sustain her claim. *See Wingert v. State Employes' Ret. Bd.*, 589 A.2d 269, 271 (Pa.Cmwlth. 1991); *Frantz v. State Employees Ret. Bd.*, 560 A.2d 284, 285 (Pa.Cmwlth. 1989). Further, PSERS is a creature of statute, and its members only have those rights created by the Retirement Code and none beyond. *See e.g., Burris v. State Employes' Ret. Bd.*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees' Ret. Bd.*, 622 A.2d 403, 405 (Pa.Cmwlth. 1992); *Hughes v. Public Sch. Employees' Ret. Bd.*, 662 A.2d 701, 706 (Pa.Cmwlth. 1995), *allocator denied*, 668 A.2d 1139 (Pa. 1996). While a member is entitled to a liberal construction of the Retirement Code, PSERS has no authority to grant rights beyond those specifically set forth in the Retirement Code. *Bittenbender*, 622 A.2d at 405; *Forman v. Public Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa.Cmwlth. 2011).

Under the Retirement Code, a PSERS member who desires to have his or her effective date of retirement be the day following the date of termination of service must ensure that PSERS receives his or her Application for Retirement within 90 days from the member's date of termination of service. 24 Pa.C.S. § 8102. The Retirement Code states, in pertinent part, as follows:

> **"Effective date of retirement."** The first day following the date of termination of service of a member if he has properly filed an application for an annuity within 90 days of such date or:
>
> > (1) In the case of a member who applies for an annuity subsequent to 90 days after termination of service, the date of filing such application or the date specified in the application, whichever is later....
>
> 24 Pa.C.S. § 8102.

By default, when PSERS receives an Application for Retirement beyond 90 days from the date of termination of service, the member's effective date of retirement becomes the date of PSERS' receipt of such application (unless a later date is specified therein). *Id.* Therefore, failure of a member to ensure that PSERS receives his or her Application for Retirement within 90 days of the date of termination of service forecloses any opportunity for the member to have the effective date of his or her retirement coincide with the member's termination of service. *See* 24 Pa.C.S. § 8102.

A member may also elect to vest their retirement, or delay receipt of their annuity. One of several reasons a member would do this is to wait to reach normal retirement age (superannuation), in order to receive an unreduced annuity. Pursuant to Section 8507(i) of the Retirement Code, a member will be deemed have elected to vest if she is eligible to receive an annuity from the system and does not file a proper application within 90 days of termination or service, and her annuity will become effective upon the date of filing the Application for Retirement. 24 Pa.C.S. § 8507(i). The relevant section of the Retirement Code proceeds, in pertinent part, as follows:

> **Failure to apply for annuity.** – If a member is eligible to receive an annuity from the system and does not file a proper application within 90 days of termination or service, he shall be deemed to have elected to vest, and his annuity will become effective as of the date an application is filed with the board or the date designated on the application whichever is later, provided that in no event shall a member begin receiving benefits on a date later than the required beginning date.
>
> 24 Pa.C.S. § 8507(i).

As established by the findings of fact,[15] Claimant's last date of employment was June 15, 2019. Claimant made one initial phone call and three follow up calls to PSERS office, during which the customer service representatives told her to wait for receipt of her estimate before completing her Application for Retirement, to be patient, and assured her that her annuity payments would be retroactive to June 15, 2019. She finally received the estimate in mid-November 2019 (*sixteen* weeks after requesting it), and spoke to a final customer service representative on December 18, 2019, who corrected her misunderstanding that her annuity would simply restart and be retroactive to June and who encouraged her to submit her Application for Retirement as soon as possible.

The Code is unambiguous at Sections 8201 and 8507(i): a person who does not complete the required application within 90 days cannot receive the benefit of retroactive date of retirement. *See generally Harasty v. Public Sch. Employees' Ret. Bd.*, 945 A.2d 783, 787-88 (Pa.Cmwlth. 2008); *Estate of Wilson by Killinger v. State Employees' Ret. Bd.*, 219 A.3d 1141, 1152-53 (Pa. 2019). Claimant's 90-day window to complete the Application for Retirement in

[15] In general, the degree of proof required to establish a case before an administrative tribunal is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990). A preponderance of the evidence is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the Claimant's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1950).

time to receive retroactive benefits ended on September 13, 2019. Complainant conceded that, based on her reliance on the PSERS representatives, she did not complete an Application for Retirement within 90 days of her termination of employment, and only completed it in December 2019.

Claimant's account of the multiple phone calls in which she received inaccurate information – while fairly brief – was specific, consistent with her 2024 written appeal, and consistent with her 2020 ESRC appeal.[16] Additionally, there appears to have been no motivation or explanation, aside from that she was misadvised as she claimed, for Claimant to have delayed filing the Application for Retirement; Claimant clearly wanted to receive her monthly annuity after her 2019 termination and not wait for superannuation, and her delay caused her to lose several thousand dollars in annuity payments.

Attorney Smith argued in closing, "Ms. Bey has been adamant about these phone calls....For five, six, years now she's continued to tell the same story. And I'll note that during that opportunity, the retirement system had every opportunity to review these phone calls and see if she was, in fact, told that she would wait until she received the estimate. It's unfortunate that that didn't happen...." (N.T. 117) Claimant requested her retirement date be backdated based on PSERS representatives' assurances in her ESRC appeal made in March 2020. By letter dated May 11, 2020, PSERS acknowledged her letter of appeal, assured her it would review her account, her appeal will be scheduled for presentation at a future ESRC meeting, and she would be notified of the outcome. At the time of her appeal letter and this communication back to her acknowledging her appeal in 2020, PSERS still had the recordings and logs of the phone calls at

[16] While the Claimant's appeal letter to the ESRC is not of record, the ESRC denial letter (PSERS-13, Attachment A, p.3) is of record and confirms that Claimant alleged in 2020 in her ESRC appeal, as she did in her 2024 appeal, that representatives told her she could not apply for retirement until she had an estimate from PSERS and that she was assured she would receive retroactive annuity payments. PSERS-13.

issue. PSERS could have reviewed them to determine the accuracy of Claimant's allegations (it is of course possible that PSERS representatives other than Mr. Catalfu *did* review them); also, *Claimant* who was at that time represented by counsel and who bears the burden in this appeal could also have requested and/or subpoenaed those records. PSERS had the ability to – if inaccurate – easily disprove Claimant's allegations of the content of the phone calls[17]; similarly, Claimant could have sought those records which could have potentially been relevant to her case. The only evidence PSERS presented to rebut Claimant's account of the phone calls was Mr. Catalfu's generalized testimony that such advice would be contrary to PSERS representatives' training and standard procedures, but the value of this evidence is low, since he did not supervise or train the representatives at issue, could not speak to their training, and did not audit their phone calls.

In light of all of this evidence, the undersigned finds that Claimant did receive incorrect information during the three follow up phone calls on August 20, October 1, and October 18, 2019, although as discussed further below, that is not the end of the analysis.[18] It should be noted that as the 90-day window ran on September 13, 2019, the August 20, 2019, phone call is the only one of the three that affected Claimant's decision not to file the Application for Retirement by September 13, 2019. However, it can be reasonably concluded that if Claimant had received correct information (that her annuity payments would not be retroactive to June 15, 2019) when she called in on October 1, 2019 (and October 18) that she would have filed her Application for

[17] In PSERS *Answer*, Attorney Trout represented, "Upon reasonable investigation, PSERS lacks knowledge or information sufficient to form a belief as to the truth of the averments regarding phone calls with PSERS representatives on August 20, 2019, October 1, 2019, and October 18, 2019…." (Docket – *Answer* at p.4) There is no indication that Attorney Trout personally became involved in the appeal prior to February 2024; however, *PSERS* was aware of Claimant's claims and her appeal to the ESRC as of March 2020 while the recordings still existed and were in its possession.

[18] It is not necessary to find whether she also received inaccurate information in her initial phone call in July 2019, with David, during which she requested an estimate and apparently was not informed of or did not understand the time-sensitive nature of filing the Application for Retirement.

Retirement much sooner than December 23, 2019, and may have received her annuity starting in October or November. Therefore, it is found that the mis-information in the October 1, 2019, and October 18, 2019, phone calls is also relevant to the timing of her Application for Retirement.

To continue the analysis, however, it is generally recognized that individuals are presumed to know the law. *See, e.g.*, *Wilson Area School Dist. v. Skepton*, 586 Pa. 513, 522 (Pa. 2006) (recognizing the general rule that ignorance or mistake of law with full knowledge of the facts is not grounds for equitable relief); *Commonwealth v. Robertson*, 186 A.3d 440, 446 (Pa. Super. 2018) (holding that individuals are presumed to know statutory law as well as developments in case law). The Retirement Code as quoted above is clear that annuity payments can be retroactive to a termination date ***only if*** an Application for Retirement is filed within 90 days, which did not occur here. PSERS alerts its members to this 90-day window in several ways, including in writing on the Application for Retirement (which Claimant had filled out at least twice before 2019) and on the PSERS website. Furthermore, in its briefing, PSERS cited several cases for the proposition that even the receipt of incorrect advice from the agency's employees does not alter the 90-day statutory deadline to receive retroactive benefits or allow a retirement date to be backdated as Claimant requests. The *Finnegan* and *Cosgrove* cases are on point and control this situation.

In *Finnegan vs. PSERS*, 560 A.2d 848 (Pa.Cmwlth. 1989), the retiree received inaccurate information when she retired. She was advised (in what the Court found to be "*numerous* conversations with system employees") that she could purchase fifteen credit years for out of state and government service to add up to thirty and qualify for early retirement; however, the applicable law actually limited the number of years she could purchase to twelve. *Id.* at 849-850 (emphasis added). The Court held that all factual requirements for estoppel had been met (an inducement of a party to believe that certain facts exist, an act of justifiable reliance upon that belief, and a detriment to the actor), but the Court refused to apply estoppel against PSERS. *Id.* at 850-851. The Commonwealth Court held, "Regrettably, [precedent] clearly requires this court to hold, as a matter of law, that the board cannot be estopped from asserting a statutory provision. To decide otherwise would be tantamount to giving employee errors the effect of amending the substance of a statute." *Id.* at 851. This holding was discussed and followed by the Commonwealth Court in a 2004 case as well.[19]

A second case, *Cosgrove v. SERS*, 665 A.2d 870 (Pa.Cmwlth. 1995) is also instructive. Petitioners in *Cosgrove* had received retirement counseling, but later requested to make a retroactive change in their payment options, due to inadequate advice regarding one of the options. *Id.* at 871-872. Petitioners sought to invoke the doctrine of estoppel against SERS for inadequate advice, specifically, failure to tell them about one potentially more favorable option. *Id.* at 872. The Court determined that the law prevented a change in benefit elections, even if pensioners were misled by inadequate counseling. *Id.* at 874. The *Cosgrove* Court held, "If we were to hold otherwise, we would be required to alter the statute. That is a function for the legislature." *Id.* In caution, however, the Court also noted, "we emphasize that we of course do not approve of any situation that permits inadequate counseling to exist. This case, together with *Finnegan* and *Bittenbender*[20], should serve as important warnings to prospective retirees that the decision they are about to make concerning retirement pensions is irrevocable and that it would probably be wise to consult expert advice." *Id.*

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[19] *See Borkey v. Township of Centre*, 847 A.2d 807 (Pa.Cmwlth. 2004).

[20] *Bittbender v. SERS*, 622 A.2d 403 (Pa.Cmwlth. 1992) involved SERS having produced an erroneous retirement estimate showing larger payments than the retiree was actually entitled to, and an appeal by the retiree when SERS corrected its mistake and reduced his annuity. The Court noted that the law required the Board to correct any mistakes. *Id.* at 405. The *Bittbender* Court further noted, "We do not approve of what occurred. At this important time in an employee's life, utmost care should be taken to make certain that the estimates are as accurate as possible." *Id.* at n.1.

Again, the Retirement Code is clear concerning the 90-day deadline for retroactive benefits. 24 Pa.C.S. § 8102; 24 Pa.C.S. § 8507(i). Based on this law and the relevant caselaw, the undersigned must reach the same conclusion as the above-cited cases. The receipt of inaccurate information in phone calls with PSERS customer service representatives cannot serve to change or amend the relevant law, which only allows for annuity payments to be retroactive if the Application for Retirement is filed within 90 days of termination. As the Commonwealth Court articulated in both *Cosgrove* and *Bittbender*, the undersigned does not approve of a member receiving inaccurate advice from customer service representatives. However, while unfortunate[21], the law as far as the 90-day window to obtain retroactive payments is clear and must be applied in this case, with the result being the denial of Claimant's appeal.

Based upon the foregoing, the undersigned makes the following recommendation:

[21] While unfortunate, the undersigned cannot also say this outcome is unfair to Claimant. Claimant could have educated herself on the relevant law or sought counsel or other expert advice before retiring, could have requested the estimate earlier, could have attended or watched an exit counseling session offered by PSERS, and PSERS did make the statutory 90-day retroactivity window known to its members in various ways.

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

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| **IN RE:** | : | |
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| **ACCOUNT OF NABEELAH A. BEY** | : | **DOCKET NO. 2024-02** |
| **CLAIM OF NABEELAH A. BEY** | : | |

## **RECOMMENDATION**

**AND NOW**, this **11th** day of **February**, **2026**, upon consideration of the foregoing Findings of Fact, Conclusions of Law, and Discussion, the Hearing Officer for the Public School Employees' Retirement Board ("PSERB") recommends that the Board **DENY** Claimant's request to change the effective date of her retirement from December 23, 2019, to June 15, 2019, and **DENY** Claimant's request for retroactive payment of pension benefits between June 15, 2019, and December 23, 2019.

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 **March 13, 2026**, 30 days after the mailing date of this proposed 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 PSERB will rule upon the exceptions; PSERB 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.

Heather McCarthy

Heather J. McCarthy
Hearing Officer

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***Date of mailing:***