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

IN RE: ACCOUNT OF ALEXANDER M. PELUSO
DOCKET NO. 2013-28
CLAIM OF ALEXANDER M. PELUSO

OPINION AND ORDER OF THE BOARD

The Public School Employees' Retirement Board ("Board") has before it a Motion for Summary Judgment filed by the Public School Employees' Retirement System ("PSERS") in the above-referenced administrative appeal. The issue in this appeal is whether to grant Alexander M. Peluso's ("Claimant") untimely request to elect Class T-F membership with PSERS. PSERS requests that Claimant's Appeal and Request for Administrative Hearing be dismissed because there is no issue of material fact and PSERS is entitled to a summary judgment as a matter of law.

PSERS filed its Motion for Summary Judgment on May 8, 2014, and served a copy by First Class Mail on Claimant as required by the General Rules of Administrative Practice and Procedure. 1 Pa.Code §§ 33.32, 33.35-33.36. By letter dated May 8, 2014, PSERS notified Claimant that he had thirty days to respond to PSERS' motion under Pa.R.C.P. No. 1035.3. Claimant's response, therefore, had to be filed on or before June 9, 2014. See 1 Pa.Code §§ 31.11, 31.12 and 33.34. Claimant did not file a response.

The Board's regulations authorize the use of summary judgment where there are no genuine issues of material fact. 22 Pa.Code § 201.6(b); Pa.R.C.P. Nos. 1035.1-1035.5. To determine whether the party moving for summary judgment has met its burden, the Board must examine the record in the light most favorable to the non-moving party and give him the benefit of all reasonable inferences. See *Thompson v. Nason Hosp.*, 535 A.2d 1177, 1178 (Pa. Super. 1988), *aff'd*, 591 A.2d 703 (Pa. 1991). Any doubts regarding the existence of a genuine issue of material fact must be resolved

in favor of the non-moving party. *El Concilio De Los Trabajadores v. Commonwealth*, 484 A.2d 817, 818 (Pa. Cmwlth. 1984).

“Summary judgment may be entered against a party who does not respond.”
Pa.R.C.P. 1035.3(d).

Claimant has not identified any facts remaining to be determined at an evidentiary hearing that would be material to the legal issue before the Board in this matter. The Board thus finds that there are no disputed material facts. The Board further finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issue of whether Claimant timely filed an election for Class T-F membership.

FINDINGS OF FACT

Based on PSERS’ Motion for Summary Judgment, the Board finds the following facts not in dispute:

1. In August 2012, Claimant was enrolled in PSERS through his part-time, salaried employment with the South Williamsport Area School District.
2. In September 2012, Claimant was enrolled in PSERS through his part-time, hourly employment with the Williamsport Area School District.
3. In October 2012, Claimant was enrolled in PSERS through his part-time, per diem employment with the Loyalsock Township School District and through his part-time, per diem employment with the Montoursville Area School District.
4. On December 2, 2012, PSERS mailed to Claimant at [REDACTED] a welcome packet that included a cover letter that stated, among other things, that “you have now qualified for membership in PSERS.” (Exhibit PSERS-1)
5. By cover letter dated December 2, 2012, PSERS mailed to Claimant at [REDACTED] a *T-F Membership Class Election* form. (Exhibit PSERS-2)

6. The December 2, 2012 cover letter to the *T-F Membership Class Election* form congratulated Claimant “on becoming a member of [PSERS],” informed him that he was required to make contributions to PSERS that would be withheld from his pay, informed him that there were two class of PSERS membership (T-E and T-F), and notified Claimant that if he wished “to elect to become a Class T-F member, [he] must sign and return to PSERS the enclosed *T-F Membership Class Election* (PSRS-1318) form by January 25, 2013.” (PSERS-2)

7. The December 2, 2012 *T-F Membership Class Election* form notified Claimant that “**PSERS must receive this form by January 25, 2013**. Please note that the form must actually be received on or before the due date if you wish to elect Class T-F membership.” (PSERS-2 (emphasis in original))

8. The December 2, 2012 letter that enclosed the *T-F Membership Class Election* form also contained a “Choosing Your Membership Class” handout. (Exhibit PSERS-3)

9. PSERS mailed the December 2, 2012 correspondence to Claimant via first-class mail.

10. PSERS keeps a record of all mail that is returned as undeliverable.

11. The December 2, 2012 correspondence was not returned to PSERS as undeliverable.

12. Claimant received the December 2, 2012 correspondence.

13. PSERS mailed to Claimant at [REDACTED] a follow-up letter dated January 1, 2013, reminding Claimant of the January 25, 2013 deadline to elect Class T-F membership. (Exhibit PSERS-4)

14. Claimant received the January 1, 2013 reminder letter. (See PSERS-6 and PSERS-8, *infra*)

15. Claimant did not elect Class T-F membership on or before January 25, 2013.

16. By letter dated February 9, 2013, PSERS informed Claimant that he would permanently remain a Class T-E member because he did not elect Class T-F membership by the election deadline. (Exhibit PSERS-5)

17. On February 27, 2013, Claimant appealed PSERS' determination that he could not elect Class T-F membership to the Executive Staff Review Committee ("ESRC"). (Exhibit PSERS-6)

18. By letter dated November 8, 2013, the ESRC denied Claimant's request to change his PSERS membership from Class T-E to Class T-F, explaining as follows:

You were enrolled as a Class T-E member of PSERS in August 2012. You had the choice to remain a Class T-E member or to file a *T-F Membership Class Election* form by January 25, 2013. PSERS did not receive a completed *T-F Membership Class Election* form from you. You will, therefore, permanently remain a Class T-E member.

(Exhibit PSERS-7)

19. Claimant appealed the ESRC's decision on December 9, 2013. (Exhibit PSERS-8)

20. At all times between December 2, 2012 (that is, the date of PSERS' welcome packet) and December 9, 2013 (that is, the date of the ESRC decision), Claimant's home address was [REDACTED]

21. On April 23, 2013, PSERS filed an Answer. (Exhibit PSERS-9)

22. On May 8, 2014, PSERS filed a Motion for Summary Judgment with a supporting memorandum and served a copy of those documents on Claimant by First Class Mail.

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

24. The matter is ripe for Board adjudication.

DISCUSSION

The Public School Employees' Retirement Code ("Retirement Code"), 24 Pa.C.S. § 8101 et seq, provides that a "person who first becomes a school employee and an active member . . . on or after [July 1, 2011] and who is eligible to become a Class T-E member may elect to become a member of Class T-F." 24 Pa.C.S. § 8305.2(a). A member, however, "must elect to become a Class T-F member by filing a written election with the board within 45 days of notification by the board that such member is eligible for such election." 24 Pa.C.S. § 8305.2(b). "If a member fails to timely file an election to become a Class T-F member, then the member shall be enrolled as a member of Class T-E and the member shall never be able to elect Class T-F service[.]" 24 Pa.C.S. § 8305.2(d). Thus, there are no exceptions to the Class T-F election deadline.

Claimant admits that he received correspondence from PSERS that notified him of the deadline to elect Class T-F membership, and he does not dispute that he failed to make the election prior to the statutory deadline. Claimant asserts, however, that he should be permitted to make the election because, at the time he received the notice: (1) he "did not understand the terms of the program in its entirety, nor did [he] have the time to sit down and read all the paperwork"; (2) he did not fully understand that he was paying into his retirement fund while a substitute teacher; and (3) he believes that Class T-F would be more beneficial in the long term.

Preliminarily, had Claimant taken the time to read the correspondence he received from PSERS in a timely manner, he would have discovered that PSERS was a defined benefit retirement plan, that he had qualified for membership with PSERS, that contributions for membership would be withheld from his pay, and that he was facing a deadline to elect Class T-F membership with PSERS. (PSERS-1; PSERS-2; PSERS-3; PSERS-4) In fact, even had he not fully understood the materials when he reviewed them, at a minimum, he would have seen that he was facing a deadline. Regardless, as discussed above, there are *no exceptions* to the statutory deadline to elect Class T-F membership. Accordingly, the Board is not authorized to grant Claimant's untimely request to elect such membership. Indeed, although the Board must liberally

administer the system, it does not have authority to circumvent the express language of the Retirement Code. See *Allen v. Public School Employees' Retirement Board*, 848 A.2d 1031, 1033 (Pa. Cmwlth. 2004); *Forman v. Public School Employees' Retirement Board*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001); see also *Harasty v. Public School Employees' Retirement Board*, 945 A.2d 783, 788 (Pa. Cmwlth. 2008).

For the above stated reasons, the Board finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issue of whether to accept Claimant's untimely request to elect Class T-F membership with PSERS. Accordingly, PSERS' Motion for Summary Judgment is GRANTED and Claimant's Appeal and Request for Administrative Hearing is DENIED.

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ORDER

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

IT IS HEREBY ORDERED, that PSERS' Motion for Summary Judgment is GRANTED, and Claimant's Appeal and Request for Administrative Hearing is DISMISSED in compliance with 22 Pa.Code § 201.6, as no genuine issue of material fact exists and PSERS is entitled to judgment as a matter of law. As a result, this Board denies Claimant's request to elect Class T-F membership after the statutory deadline.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: October 7, 2014

By: Melva S. Vogler
Melva S. Vogler, Chairman