

Mail Date: DEC 17 2008

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

IN RE: ACCOUNT OF SAMUEL J. MANTIONE
DOCKET NO. 2008-27
CLAIM OF SAMUEL J. MANTIONE

OPINION AND ORDER OF THE BOARD

The Public School Employees' Retirement Board ("Board") has before it a Motion to Dismiss filed by the Public School Employees' Retirement System ("PSERS") in the above-referenced administrative appeal. PSERS' Motion to Dismiss requests that Claimant's Request for Administrative Hearing on the issue of changing a benefit election be dismissed for legal insufficiency appearing on the face of the request.

PSERS filed its Answer, Motion to Dismiss, and Brief in Support of the Motion on September 10, 2008, and served a copy by First Class Mail on Claimant, through his counsel, Thomas J. Campenni, Esquire, as required by the General Rules of Administrative Practice and Procedure and this Board's regulations. 1 Pa. Code §§33.32, 33.35-33.36; 22 Pa. Code §§201.1, 201.3.

By letter dated September 26, 2008, the Board granted Claimant's counsel an extension to file a response to PSERS' Motion to Dismiss. The Board never received a response to PSERS' Motion.

Claimant seeks to change the Option 3 benefit election made at the time of his retirement to an Option 2.

The Public School Employees Retirement Code ("Retirement Code") limits the right of members to change their beneficiary designation. Section 8507(j) of the Retirement Code, 24 Pa. C.S. § 8507(j), provides, among other things, that a member of PSERS who has, at the time of retirement, elected to receive a reduced annuity under Option 2 or 3 can reelect an option and change the survivor annuitant *only* if the survivor annuitant predeceases the member or the member thereafter becomes either married or divorced. "In no other case shall a benefit plan be changed by an annuitant."

In 1998, the Board additionally promulgated Section 213.45 of its Rules and Regulations to the Retirement Code, 22 Pa. Code § 213.45, which provides that "Notwithstanding the otherwise irrevocable nature of the election of a benefit payment plan, an annuitant may declare an intent to change the final terms of the benefit payment plan by filing a written intent with the System within 30 days of the annuitant's receipt of the initial benefit letter sent to the member by the System."

In this case, Claimant admitted receiving the initial benefit letter and knew about the deadline, but did not file an Intent to Change the Terms of the Retirement Plan form with PSERS within 30 days. He did not contact PSERS until 8 months later, on April 29, 2008. Claimant stated that his delay in filing an Intent to Change the Terms of the Retirement Plan form was due to the failure of his financial advisor to act in a timely manner in finalizing arrangements to purchase an insurance policy through the financial advisor.

The law in this matter is clear. The Retirement Code and its attendant Regulations do not permit Claimant to change the retirement benefit he selected at the time of his retirement unless he filed an Intent to Change the Terms of the Retirement Plan form by August 8, 2007, or unless his survivor annuitant predeceases him or he becomes either married or divorced. Although Claimant claims he was misled by his financial advisor, any issues Claimant may have had with a private financial advisor do not permit the Board to disregard the clear provisions of the Retirement Code and regulations.

The material facts at issue in this appeal are not in dispute. In the absence of disputed material facts, this Board has the authority to decide the legal issues in dispute without an evidentiary hearing. *United Healthcare Benefits Trust v. Insurance Commissioner of Pennsylvania*, 620 A.2d 81 (Pa. Cmwlth. 1993); *Mellinger v. Department of Community Affairs*, 533 A.2d 1119 (Pa. Cmwlth. 1987).

Accordingly, PSERS' Motion to Dismiss is granted.

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ORDER

AND NOW, upon consideration of Claimant's Request for an Administrative Hearing and PSERS' Motion to Dismiss, IT IS HEREBY ORDERED that PSERS' Motion to Dismiss is GRANTED, and Claimant's request to change the Option 3 benefit election made at the time of his retirement is DENIED.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: DEC 17 2008

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