

Mail Date: 1/29/2013

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

IN RE: ACCOUNT OF ICILYN WILSON-GREENE  
DOCKET NO. 2011-21  
CLAIM OF ICILYN WILSON-GREENE

**OPINION AND ORDER OF THE BOARD**

The Board has carefully and independently reviewed the entire record of this proceeding, including the Proposed Decision and Recommendation of the Hearing Officer. We note that neither party filed Exceptions to the Proposed Decision and Recommendation of the Hearing Officer. The Board finds appropriate the Findings of Fact, Discussion and Recommendation in the Proposed Decision and Recommendation. Accordingly, we hereby adopt the Hearing Officer's Proposed Decision and Recommendation as our own.

IT IS HEREBY ORDERED that the Board grants the Public School Employees' Retirement System's Motion to Dismiss, and the appeal of Claimant, Icilyn Wilson-Greene, is DISMISSED WITH PREJUDICE.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: 1/25/2013

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

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

IN RE: Account of Icilyn A. Wilson Greene :  
Docket No. 2011-21 :  
Claim of Icilyn A. Wilson Greene :

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OPINION AND RECOMMENDATION

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Date of Hearing: October 3, 2012  
Hearing Officer: Sandra W. Stoner, Esquire  
For the Claimant: Icilyn A. Wilson Greene, *pro se* (not present)  
For PSERS: Kathrin V. Smith, Esquire

Date of Mailing: November 27, 2012

## FINDINGS OF FACT

1. On October 19, 2011, the Public School Employees' Retirement Board (hereinafter "the Board") received an Appeal and Request for an Administrative Hearing dated October 8, 2011, and signed by Icilyn A. Wilson Greene (hereinafter "Claimant") regarding the loss of electing or converting from TC to TD membership. (Official Notice, Board Docket, Appeal and Request for Administrative Hearing; PSERS Exhibit 2, p.1.)<sup>1</sup>
2. On July 16, 2012, the Appeal Docket Clerk mailed a hearing notice by certified mail to the Claimant at Redacted Redacted, advising her that her requested hearing would be held on October 3, 2012, at 1:00 p.m. at the Public School Employees' Retirement System, 5 North Fifth Street, Harrisburg PA 17101. (N.T. 5-6; PSERS Exhibit 2.)
3. This notice advised the Claimant that if she did not "appear at the hearing on the date and time scheduled without good cause, the Hearing Officer, upon motion, will recommend to the Board that your appeal be dismissed with prejudice[,]” so that the appeal would be terminated and Claimant would not be permitted to raise the appealed issue to the Board in the future. (PSERS Exhibit 2, p. 2.)
4. This notice also advised the Claimant how she could reschedule the hearing to a different date, if necessary, and how to request a continuance in the event of an emergency 24 to 48 hours before the hearing. (PSERS Exhibit 2, p. 3.)

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<sup>1</sup> "N.T." refers to the pages of the Notes of Testimony contained in the Transcript from the hearing in this matter. The Exhibits are attached to the Transcript.

5. The United States Postal Service Certified Mail Receipt, attached to the hearing notice establishes that the notice was received and signed for on July 20, 2012. (N.T. 6-7; PSERS Exhibit 2, p. 4.)
6. The Docket Clerk also sent this same hearing notice by first class mail. (N.T. 5-7.)
7. At no time did the Docket Clerk receive any notice that the first class mailed letter was undeliverable. (N.T. 6-7.)
8. The Claimant's hearing was duly advertised in the Pennsylvania Bulletin on July 28, 2012. (N.T. 4-5; PSERS Exhibit 1.)
9. On September 12, 2012, the Docket Clerk sent to the Claimant, via first class mail, a courtesy reminder notice of the hearing that was scheduled for October 3, 2012 at 1:00 p.m., which reminder notice was identical to the first hearing notice other than the date of mailing and contained all the information contained in the first hearing notice previously sent to Claimant. (N.T. 8-9; PSERS Exhibit 3.)
10. On October 3, 2012, the undersigned Hearing Officer was present and ready to proceed with the Claimant's hearing, as was counsel for the Public School Employees' Retirement System (hereinafter "the System"), Kathrin V. Smith, Esquire. (Transcript, *passim*.)
11. At the commencement of the hearing, the Hearing Officer waited until 1:24 p.m. to open the proceeding, in the event that Claimant was running late. (N.T. 3.)
12. The hearing commenced at 1:24 p.m. without the attendance of the Claimant.  
(Transcript, *passim*.)
13. At the hearing the System, through Atty. Smith, moved to dismiss the Claimant's appeal with prejudice, pursuant to 22 Pa. Code §201.8(a) and 1 Pa. Code §§ 35.177 and 35.187.  
(N.T. 3.)

14. The Claimant failed to appear for her scheduled hearing on October 3, 2012 at 1:00 p.m.

(Transcript, *passim*.)

15. At no time prior to the hearing, did the Claimant contact the Docket Clerk or the Hearing Officer to request a continuance, change of date or postponement of the hearing. (N.T. 7-10.)

### DISCUSSION

The Claimant filed a request for an administrative hearing on the issue of her TD membership. The hearing was scheduled for October 3, 2012 at 1:00 p.m. The record establishes that Claimant was indeed notified of the time, date and place of the hearing, of how she could request a continuance or change of hearing date, if necessary, and that if she failed to appear for her hearing, her appeal could be dismissed with prejudice. The record establishes that no communication was received by the Docket Clerk or the Hearing Officer prior to the hearing requesting a change of the hearing date or continuance or giving notice that the Claimant was running late or did not intend to appear. After waiting approximately 24 minutes, the Hearing Officer proceeded with the hearing in the absence of the Claimant.

During the course of the hearing, counsel for the System moved to dismiss, with prejudice, the Claimant's appeal for failure on her part to appear for her scheduled hearing without good cause. Section 201.8 of the regulations provides as follows:

#### **§201.8. Dismissal for nonappearance.**

(a) Whenever a claimant fails to appear, either in person or through counsel, for a scheduled hearing without good cause, the hearing examiner will issue a recommendation to dismiss the case, without considering the merits of the claim.

(b) This section supplements 1 Pa. Code §§35.125, 35.187 and 35.205 (relating to order of procedure; authority delegated to presiding officers; and contents of proposed reports).

22 Pa. Code §201.8.

Counsel for the System presented sufficient evidence to establish that the Claimant received timely notice of the time, place and date of the hearing. The Claimant is the proponent of her Appeal and Request for Administrative Hearing. Nevertheless, Claimant did not appear for her scheduled hearing on October 3, 2012 at 1:00 p.m., nor did she contact anyone to try to reschedule or continue her hearing. Under these circumstances, and pursuant to 22 Pa. Code §201.8(a), it is hereby recommended to the Board that it dismiss the Claimant's appeal with prejudice for failure to appear for her scheduled hearing without good cause.

The following recommendation is made:

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

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RECOMMENDATION

AND NOW, this 27<sup>th</sup> day of November 2012, the Hearing Officer for the Public School Employees' Retirement Board recommends that the appeal filed by Icilyn A. Wilson Greene should be **DISMISSED**, with prejudice, pursuant to the authority of 22 Pa. Code §201.8(a), due to Claimant's failure, without good cause, to appear for her scheduled hearing.

Sandra W. Stoner  
Sandra W. Stoner, Esquire  
Hearing Officer

Date of Mailing: November 27, 2012